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THE  
ENFRANCHISEMENT OF WOMEN:  
*AN ANCIENT RIGHT, A MODERN NEED.*

A PAPER READ

by

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(POOR LAW GUARDIAN)

TO THE

BEDMINSTER (BRISTOL) CHAMPION LEAGUE,

OF THE

PRIMROSE LEAGUE

ON THE 11TH DECEMBER, 1891.

*(REVISED AND ENLARGED)*

WOMEN'S EMANCIPATION UNION.

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HON.SEC: - MRS. WOLSTENHOLME ELMY,

BUXTON HOUSE, CONGLETON

# THE ENFRANCHISEMENT OF WOMEN :

## AN ANCIENT RIGHT, A MODERN NEED

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IT is with very great pleasure that I find myself enabled to address the Bedminster Champion Habitation of the Primrose League on the Constitutional aspect of Women's Suffrage. The Primrose League, as you are all perfectly well aware, was established as a perpetual remembrance of the great services which Lord Beaconsfield rendered to the Conservative Party.

[1] It is, therefore, peculiarly appropriate now to speak of Lord Beaconsfield, who was one of the earliest friends of the enfranchisement of women. His clear and astute mind plainly discerned the injustice and anomaly of denying to women in Parliamentary representation those rights which, from time immemorial, have been theirs in local representation. Speaking in the House of Commons, on the 27th of April, 1866, Lord Beaconsfield, then Mr. Disraeli, said:—

I have always been of opinion that, if there is to be universal suffrage, women have as much right to vote as men. And, more than that, a woman ought to have a vote in a country in which she may hold manorial courts and sometimes act as church-wardess.

So also, in reply to a memorial from upwards of eleven thousand women of Great Britain and Ireland, which was presented through Mr. Gore Langton, M.P., on April 29th, 1873, Mr. Disraeli wrote—

DEAR GORE LANGTON,- I was much honoured by receiving from your hands the memorial signed by eleven thousand women of England, among them some illustrious names, thanking me for my services in attempting to abolish the anomaly, that the Parliamentary Franchise attached to a household or property qualification, when possessed by a woman, should not be exercised, though in all matters of local government, when similarly qualified, she exercises this right. As I believe this anomaly to be injurious to the best interests of the country, I trust to see it removed by the wisdom of Parliament. - Yours sincerely,  
E. DISRAELI.

Mr. Disraeli, moreover, voted for the second reading of the Women's Disabilities Removal Bill in 1871; paired for it in 1872; and voted for it in 1873, 1875, and 1876, up to the time when he was created a Peer. When, in 1884, the Representation of the People Bill was before the House of Commons, and an amendment enfranchising women was under consideration, another eminent Conservative leader, the late Lord Iddesleigh, then Sir Stafford Northcote, spoke, on June 12th, as follows:—

The point upon which we lay stress is that upon which the late Lord Beaconsfield laid stress, and upon which so much stress has been laid to-night, viz., that by

excluding women, you are excluding a large portion of the property owners of this country from representation, and from their share in the legislation. (Hear, hear.) You are now asked to introduce a certain number of women. We believe there will be 400,000 or 500,000 women who will be so admitted. The number is not difficult to recollect, because that is nearly the exact number of persons you are going to add in Ireland from the lowest population in that country. It is a moderate demand we make when we ask you, as a counterbalance to the effect of admitting so large a body of men, as to whose qualification and efficiency for the franchise you have no reason to believe that they have half as much knowledge of the real question at issue as most of the women of England have, when you are going to admit these people as capable citizens, is it unreasonable to demand that the same privilege shall be given to 400,000 or 500,000 women who are at the heads of households and are managers of property in this country.

On the same occasion, another well-known Conservative statesman, His Grace the Duke of Rutland, then Lord John Manners, said:—

Can anyone allege that the female ratepayers of this country have shown themselves unworthy of the trust which it is proposed to repose in them, from the manner in which they have discharged the functions which have already been entrusted to them? I ventured, in some observations which I made upon the second reading of the Bill, to allude to one class of these female ratepayers—the female farmers of this country. By way of illustration I will again refer to that class, because, as a county member, I naturally have more knowledge of that class, and possibly more interest in them. But, I ask, can anyone allege that from the manner in which during the period of time, now ranging over a great number of years, the female farmers have discharged the duties which have devolved on them, many and important as those duties are, there is the slightest ground for asserting that they are likely to prove themselves unworthy, unfit, or incapable of exercising the Parliamentary franchise? I should like to quote the opinion delivered only the other day in a town with which I am acquainted - the borough of Grantham by a gentleman well known in the agricultural world of Lincolnshire and Leicestershire on this very subject. I refer to Mr. Wilders, who said : "To my mind the greatest injustice is that the female ratepayer and owner should not be allowed to vote. Fancy a woman farming 500 acres of land, and paying the usual contributions to the taxes of the country, having no voice in the representation of the country, while her own labourers have. If any man disputes the business capabilities of women, let him begin an important business transaction with her, and I will answer for it that he will come off second best." Well then, sir, I contend that there has been no reason assigned by anyone why the Parliamentary Franchise should not be conferred upon those fit and capable female ratepayers.

Coming to a still more recent date, at a meeting convened by the Primrose League in their Lyceum Theatre, at Edinburgh, on November 29th. 1888, Lord Salisbury said:—

I earnestly hope that the day is not far distant when women also will bear their share in voting for members of Parliament—(cheers)—and in determining the policy of the country. I can conceive no argument by which they are excluded. It is obvious that they are abundantly as well fitted as many who now possess the suffrage, by

knowledge, by training, and by character, and that their influence is likely to weigh in a direction which, in an age so material as ours, is exceedingly valuable - namely, in the direction of morality and religion.

Still more recently, the present leader of the House of Commons, Mr. A. J. Balfour, speaking at Bury, on Friday, the 23rd October last, said:

I do not now express, my opinions—my opinions are well-known—on the question of female suffrage, but if you are going to say that every intelligent person who is of age has a right to a vote, on what possible principle are you going to exclude the women?

These sympathetic utterances of eminent Conservative leaders will, I trust, have prepared you for the favourable consideration of the enfranchisement of women, as an ancient right and a modern need.

A feeling is rapidly gaining ground that, before the dissolution of the present Parliament, the enfranchisement of women ought to be assured. The straightforward utterances of Lord Salisbury and Mr. Balfour, and the resolutions passed by some Conservative Societies, and still more recently by the National Union of Conservative Associations at the Birmingham Conference, have led women to hope that at last they are to have political justice. At this important juncture it may not be unprofitable to review the past and present position of women in regard to Parliamentary, Municipal, and Parochial Government.

To speak briefly, the present position of women in regard to the various franchises is anomalous and contradictory, unworthy of that great growth of freedom which the nineteenth century has given to men, and degenerate as regards the position which women held in the days of the Plantagenets and the Tudors. [2] Freedom for women has not broadened down "from precedent to precedent." Rather has it suffered by unnecessary legislative interference. Every woman, except the Queen, is politically non-existent. It was not always so. Restrictions unknown to our ancient constitution have crept in, as the following brief sketch of the public functions of women from the earliest times in Britain to the present day may serve to show.

Amongst the ancient Britons the position of women seems to have been broadly equal to that of men. Selden, in his "Epinomis" (Redman Westcot's translation), cites Tacitus as saying of the Britons, "They were wont to war under the conduct of women, and to make no difference of sex in places of command or government."\* [3] The pages of that historian reveal to us the treacherous queen, Cartismandua\*\*, the betrayer of the gallant fugitive Caractacus, as ruling over the Brigantes (the people of Lancashire and Yorkshire) about 50 AD.

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\* Perhaps Selden's reference is to the words of Tacitus, "Ann." xiv. 35. Solitum quidem Britannis feminarum ductu bellare testabatur.

\*\*Tacitus, "Ann." xii. 36.

So, too, in pithy words, they tell us of the wrongs inflicted some years later by Roman hands upon Boadicea, the widowed queen of the Iceni, of her terrible vengeance, and her tragic fate. Almost she succeeded in driving the Romans from Britain; and in the final conflict, with passionate eloquence, stimulated by her intolerable wrongs, she harangued her army, led her troops to battle with the Romans, and when defeated in that bloody fight, in which Tacitus tells us 80,000 Britons were left dead upon the field, ended by poison her mournful life, and her valiant struggle for the freedom of her country.\*\*\*

Yet it was not simply in fierce fight and as valiant viragos that the women of Britain distinguished themselves. Selden, in his "Epinomis," quoting Plutarch, tells us, "That, owing to the frequent intercessions of women in favour of peace, a custom grew up among the Britons that women also had prerogative in deliberative sessions touching either peace-government, or martial affairs." It would thus appear that among the ancient Britons women were as capable of appreciating peace as of conducting warfare. Coming down to Saxon times, we find that Cenwealh, ruler of the West Saxons, after a vigorous reign of thirty years, distinguished by the aggrandisement of Wessex, dying without children, about the year 672 A.D., provided for the administration of his kingdom by committing it to his queen, Sexburh or Sexburga. This princess, in her brief reign of a year, appears to have made a deep impression on the minds of her countrymen, since William of Malmesbury tells us that § "she had a great spirit to discharge the duties of the kingdom. She levied new armies, kept the old ones to duty, governed her subjects with clemency, kept her enemies quiet by threats, and, in a word, did everything at that rate that there was no difference between her and any king in management but her sex." So, too, Ethelfleda, the daughter of the great Alfred, known in history as "The Lady of Mercia," ruled that kingdom after the death of her husband, from 912 to 920 AD, with vigour and success, recovering Derby and Leicester from the Danes, and defeating her foes till the submission of the Danish Host confirmed her authority. Nor did ladies of less than royal birth fail to take their part in public affairs, since Gurdon in his "Antiquities of Parliament," tells us that women sat in the Saxon Witas, and the Venerable Bede assures us that the abbess Wilda presided at an ecclesiastical synod.

After the Norman Conquest, we are assured by Mr. Chisholm Anstey "That 'ladies' sat and voted among the '*Magnates Regni*' in right of their fees or communities long before the name of Parliament was given to those great Councils, and long before the now justly exploded doctrine began to be broached by the Feudalists, which erected masculinity into an essential of every fief, is too well attested by our more ancient records, to justify us in disregarding the statement to that effect of eminent archaeologists and sound lawyers."

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\*\*\*Tacitus, "Ann." xiv. 37.

§ W. Malm. lib. I. Speaking of her death, he writes, "Plus quam f<sup>3</sup>/4mineosanimos anhelantem vita destituit, annua vix potestate perfunctum."

We have, in the Saxon times, a glimpse of the early exercise of those rights which women, both lay and clerical, continued to enjoy for centuries after the Norman Conquest. We can trace, also, that blending of Church and local government which still exists in English rural parishes, where any ratepayer, irrespective of sex, may help to levy rates, and be elected, or take part in electing, the parochial officers. Despite the tendency of feudalism, women did not—in fact, the necessities of the times could not let them—sink into mere objects of chivalrous adoration. Tradition on the one hand, and Feudalism on the other (strange as it may seem to say it), were alike protective of the ancient rights of English women. The wars for the conquest of France, and those between the Houses of York and Lancaster, drew men from their homes and their civil duties, and threw power into the hands of women. King after king placed the administration of the realm and the control of the army in the bands of his Queen Consort. The Queen Consort of an Anglo-Norman or Plantagenet king was a person of scarcely less importance than her lord. William of Normandy frequently left the realm in the charge of his Queen. Queen Philippa, wife of Edward III, showed herself a sagacious ruler and victorious leader of the Feudal Militia. Queen Elinor, in the absence of Henry III, acted as judge in the Highest Court of Judicature, the "*curia regis*," and took her seat on the King's Bench.

So, too, women retained in the Parliaments of the Plantagenets the place and power that had belonged to them in the Saxon Witenagemot. When Parliaments were summoned, women were included in the summons.

Chisholm Anstey, citing Selden, tell us that in the 5th of Edward I, four lady abbesses were summoned by writ in right of their abbeys, as shown by the Patent Rolls still extant in his (Selden's time) ; and Gurdon, in his "History of the High Court of Parliament," tells us that in the times of Henry III. and Edward IV. the abbesses of Shaftesbury, Barking, St. Mary of Winchester, and Wilton were summoned to Parliament. The Rolls of the Parliament of the year 1404 show us that the Commons, having granted certain writs and subsidies for themselves and their constituencies, the "Lords Temporal" (*seignors temporelx*) concurred in so far as the duties for raising those supplies were payable by themselves, and in so far as the "Ladies Temporal" (*dames temporelx*) were to become liable, they also concurred in the grant. These, their several consents were entered on the Roll, and made part of the Statute. At a later period the form of writ was so far changed as to direct the dame to whom it was addressed to choose and name her lawful proxy, to appear for her in the House of Lords, *ad colloquium et tractatum coram rege*; and in one year alone, the 35 Edward III., nine peeresses appear to have been so summoned. But the language used does not imply any disability to render the duty of personal attendance, but rather an exemption from its burden ; whilst it unmistakably affirms, not only the capacity, but the duty to elect.

Nor was it in the High Court of Parliament alone that the women of those days served their country. The office of High Sheriff of Westmoreland was held jointly by Isabella de Clifford, and Idonea de Leybum. In the reigns of John and Henry III, Nicholaa de la Haye succeeded to her husband as

Custodian of Lincoln Castle and Sheriff of the county.

Ela of Salisbury, the most distinguished of four ladies of that name, held office in the reign of Henry III. as High Sheriff of Wilts, and had charge of the Castle of Sarum. In the same reign of Henry III., Maude, Duchess of Norfolk, held custody of the Castles of Strigail and Carisberg, and took by inheritance the office of Marshall; whilst Isabella de Fortibus held the Borough and Camp of Plympton. Under Edward I., Joan, Dowager Countess of Pembroke, ruled the Palatinate for nine years; whilst Matilda, wife of Thos. de Mullet de Gilsland, who survived her husband, her son, and her grandson, ruled as Domina de Gilsland to the day of her death in 1295. In that capacity she sat on the Bench at Assizes at Penrith, and in the 19th of Edward I. was summoned to Parliament. In the reigns of Edwards I. and II., Isabella, widow of John de Vesci, had custody of the Castles of Bamborough and Scarborough; whilst during the latter reign Isabel de Burgo (Lady of Clare) governed the Earldom of Pembroke during the minority of the Earl; and the same Earldom was similarly governed under Edward III. by Agnes de Hastings. Margaret, Countess of Richmond, mother of Henry VII., was a justice of the Peace, and in the reign of Mary Tudor the Lady of Berkeley was appointed a Justice of the Peace in Gloucester.

In Appleby Church may be seen the monument of Baroness Clifford of Westmorland (Anne de Clifford, Countess of Dorset, Pembroke, and Montgomery) who became, in 1643, Hereditary High Sheriff of Westmorland, and sat in that character with the Judges of Assize at Appleby. This is the lady who, when a candidate for one of her boroughs was, after the restoration of Charles II., somewhat too peremptorily urged upon her by the Secretary of State, wrote the memorable letter: "I have been bullied by an usurper, I have been neglected by a Court, but I will not be dictated to by a subject; your man shan't stand.

ANNE, DORSET, PEMBROKE, AND MONTGOMERY."

Even in our day, the office of Hereditary Great Chamberlain of England has been held by the Baroness Willoughby de Eresby, though unlike the ladies whose names I have cited, she discharged its duties by proxy.

Since these earlier days various causes have been at work tending to restrict the civil and political rights and duties of women. The blending of the claims of the Houses of York and Lancaster, by the marriage of Henry VII. and Elizabeth of York, had given peace to the nation. Masculine rule pushed itself to the front. The jealous persistency with which Henry VII. ignored the fact that his chief claim to the throne was through his wife, Elizabeth of York, was, doubtless, copied by less royal spouses. The law of compensation, however, was asserting itself for women. Though the Salic Law had never prevailed in England, no queen had reigned in her own right since the Norman Conquest. The claims of Matilda Atheling, the Empress Maud, and Elizabeth of York, had been made subservient to masculine supremacy. Mary Tudor, the first Queen-Regnant, was soon succeeded by her sister, Elizabeth,

whose great regal talents made her reign alike prosperous at home and brilliant abroad. Both these queens at their inaugurations were girded with the sword of State, and invested with the spurs of knighthood in token that they, equally with their male predecessors in the regal office, were not merely civil, but military rulers.

To come, however, to the more specific question of the exercise by women of the Parliamentary Franchise. It is manifest that from the earliest period our principle of representation has been supposed to be that all who were liable to taxation should have a voice in choosing the representatives by whom the taxes were granted. The first *statute* prescribing qualifications for the County Franchise is the 7 Hen. IV., c. 15, which enacts that all they that be present at the County Court as well suitors summoned for the same cause as others, shall attend to the election of the knights for the Parliament; and neither in this statute, nor in any later one, down to the Reform Act of 1832, is any word used which implies any disability of sex for electoral purposes. The County Court, at which the elections were held, would appear to have been attended no less by women than men. An earlier enactment, the Statute of Marlbridge, 52 Hen. III, c. 10, exempts, amongst others, from attendance at the *tourn*, which was one of the divisions of the County Court, *virii religiosi et mulieres*, unless specially summoned. It is obvious that the intent was not to impose a disability, but to exempt from a burdensome duty, except when the necessities of the case demanded the performance of that duty.

The Borough Franchise, on the other hand, is more obscure in its origin; Hallam, in his "Constitutional History,"\* referring to no fewer than four different theories on the subject. But from the earliest period, women, as well as men, were burgesses in our ancient boroughs, and as such, enjoyed and exercised whatever franchises accrued to their position as burgesses. The female burgesses of Tamworth are recorded in "Domesday Book" as having been free before the Conquest, and still free when the book was compiled.

Early in our Parliamentary History, the practice grew up of evidencing the return of a member, whether the knight of the shire, or the representative of a borough, by indentures entered into between the Crown and certain of the electors in the name of the rest. Prynne, in his "Brevia Parliamentaria Rediviva," refers to sundry Earls, Lords, Nobles, and *some ladies*, who were annual suitors (freeholders) to the County Court of Yorkshire, being the sole electors of the Knights, and sealing their indentures. He gives, pp. 152 and 153, two instances of such indentures. The earliest is dated 13 Hen. IV., and is signed by an attorney of Lucy, Countess of Kent. Another in 2 Henry V, is signed by the attorney of Margaret, widow of Sir H. Vavasour. In the 7 Edward VI., the return for the borough of Gatton was made by the Lady Elizabeth Copley, widow of Roger Copley, and all the inhabitants of the borough.

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\* "C. H.," Vol. II., ch. 13. p. 384.



In a later return for the same borough, 1 and 2 Ph. and M., the same lady made the return in her own name alone, and there is a similar return in 2 and 3 Ph. and M., in which the writ is said to have been directed to her. When, long afterwards, in 1628, the question of whether Gatton was a close or open borough was investigated before a "Committee of Privileges and Elections," the point of the disability of sex was not raised, the only question being, was the lady the sole elector, or did she sign for herself and other inhabitants. Heywood, in his "County Elections," p. 256 quotes the following remarkable return for the borough of Aylesbury, in the 14th Elizabeth:—

"To all Christian people to whom this present writing shall come, I, Dame Dorothy Packington, widow, late wife of Sir John Packington knight, lord, and owner of the town of Aylesbury, sendeth greeting : know ye me, the said Dame Dorothy Packington, to have *shown, named, and appointed* my trusty and well-beloved Thomas Lichfield and John Burden, Esquires, to be *my burgesses of my said town of Aylesbury*. And whatsoever the said Thomas and George, burgesses, shall do in the service of the Queen's highness in that present Parliament, to be holden at Westminster, the 8th day of May next ensuing the date hereof, I, the same Dame Dorothy Packington, do ratify and approve to be my own act, *as fully and wholly as if I were or might be Present there.*"

In this case, the "sole elector being a minor," his widowed mother, *jure repræsentationis*, had actually voted in his stead, elected the two burgesses, signed their indenture, and as returning officer made the preceding return, which was upheld as good. In the inquiry as to the controverted election for Lyme Regis,\* a list was produced of burgesses of the town of Lyme Regis in the 19th Elizabeth, in which we find entered amongst "Burgesses, sive liberi tenentes, Elizabetha filia Thomæ Hyatt, Cuspina Bowden, vidua, Alicia Toller vidua." In the progress of the case a table was produced in evidence of the old usages of the borough, from which Luders† gives the following extract :—  
"The customes and freedomes of the said borough, used tyme out of mind, and in general words confirmed in charter by King Edward I, and after by his successors, kings and queenes of this realm ever since, doe partly concern :—

"*Free Burgesses.*—All those that had freehold within the borough, and would be free of the freedome, were made free by a fine and by an oath, and then they were called free burgesses.

"*Free men.*—All others, not having any freehold as aforesaid, and would be free of the freedome, were made free by fine and oath as aforesaid, and they were called free men.

"*Free women.*—The widow of a free burgess, or of a free man, hath her freedom during her widowhood."

In another list of *liberi homines* of the 19th of Elizabeth, the names of five women occur, and in a similar roll of *liberi burgenses* and *liberi homines* dating from the 21st of Elizabeth, the names of six-teen women are included. It will

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\*2 Luders 13.

† 2 Luders 32.

be observed that a woman became *liber burgo* or *liber homo* of her own right, or by her own deed; whilst the right of a "free woman" only accrued to a widow from her deceased husband.

It will be noted that in the time of Queen Elizabeth women do not seem to have been slack in availing themselves of their civic and political rights ; yet that great Queen, little inclined to tolerate the shortcomings of female burgesses, is said to have reproached the women of Kent because they used their privileges so sparingly.

It is marvellous that Sir Edward Coke, who must have had, unless we are to credit him with "invincible ignorance," many of the facts already cited within his knowledge and recollection, should have ventured in the IV. Institute, by an arbitrary and wholly unsupported dictum, to deny to women the right to that Parliamentary Franchise which they were exercising freely enough down to his own day. Whether his masculine sex bias, manifest not only in this, but in other curious and unsupported *dicta* adverse to the just position of women, was aggravated by his unhappy domestic circumstances, it is not for us to say ; but beyond all question his pronouncement on this matter has helped largely to suppress the political freedom of women, copied, as it has been, without examination or inquiry, into one legal text-book after another. Yet, in justice even to Sir Edward Coke, it should be remembered, as was pointed out by the present Lord Chief justice, when acting as counsel in the case of *Chorlton v. Lings*, that the IV. Institute was not published till after Coke's death, and not having his revision, is of less high authority than the others. But as this is the sole legal authority on which the alleged disability of sex rests—all other voices being mere echoes of this dictum—I cite the actual text Coke is speaking directly of "spiritual assistants, *procuratores cleri*," and only in this slight and passing way refers to the case of women. "And in many cases multitudes are bound by Acts of Parliament which are not parties to the elections of knights, citizens, and burgesses, as all they that have no freehold, or have freehold in ancient demesne, and *all women having freehold or no freehold*, and men within the age of one-and-twenty years."\* I submit that the seven words just cited offer but a slight and unsatisfactory excuse for the virtual disfranchisement, during the past two centuries and a half, of the female portion of the community. No doubt women must also take blame to themselves ; for had they diligently fulfilled their political duties throughout the troublous times which followed, there could be now no question of the re-franchisement of women, who would have been an active and essential part of the body politic. Sternly and clearly is the lesson taught, that the one substantial safeguard of political rights is the faithful performance of political duties. But, beyond all question, the weight of Coke's authority has borne heavily against women, since it has again and again been cited as adequate proof of the legal incapacity of women, under the common law of England to hold or enjoy political rights.

So far did Sir Edward Coke carry his hostility to the action of women in public affairs, that we find from the Commons' Journals, for 1620, that, sitting in that year as member for Liskeard, he objected even to the examination of women as witnesses by the House of Commons, on the plea that "a woman ought not to speak in the congregation." On the particular occasion reported, this plea prevailed, and four \* members were ordered to examine the lady—Mrs. Newdigate—and to report her evidence to the House. The weight of Coke's authority has not, however, led our modern Courts of Law to refuse to hear in public the testimony of women ; and there is no reason of common sense or justice why the "dead hand" of his mere opinion should be permitted to exclude them, in these days, from the polling booth.

Twenty years later, in 1640, on the occasion of an election for the county of Suffolk, the votes of some Puritan women, tendered for Puritan candidates, were taken by some of the clerks, but disallowed by the High Sheriff, Sir Simonds D'Ewes, "conceiving it a matter verie unworthy anie gentlemen, and most dishonourable in such an election to make use of their voices, *although they might in law have been allowed.*" One can almost see the grave-faced Puritan women, moved by duty to exercise the rights their more careless sisters were letting slip into abeyance. And thus the political activities of women, so remarkable in the days of the Plantagenets and Tudors, slackened under the rule of the Puritans, the Stuarts, and the Hanoverians, and women gradually ceased to vote. Still, no statute barred their ancient electoral rights, although it was manifestly not possible, when the chief claim to Parliamentary representation lay in the possession of freehold property, that women in any large numbers could exercise the Franchise. Even now, intestate freehold property only descends to females in default of male heirs. But with the first great extension, in the present century, of the voting rights of men, came the first statutory recognition of female incapacity. The Reform Act of 1832, passed by the Whig Government of Earl Grey, in all its dealings with the ancient franchises carefully employs the word "*person*," and raises no question of sex incapacity. But in dealing with the new franchises which it conferred, the use of the words "*male person*" expressly excluded women. When the Representation of the People Act of 1867, passed by Lord Derby's administration, was drafted, the word "man " was carefully used in every reference to the qualification or right of voting. Mr. John Stuart Mill, who was then in the House of Commons, wished to put on record the express statutory grant of the suffrage to women. He therefore moved an amendment, that instead of the word "man" the word "person " should be used throughout the Act. This was not carried, but another amendment, substituting the words "male person" was also rejected. Accordingly, some thousands of women claimed to vote under the new Act, and their claims were consolidated in two cases—the one that of a woman-occupier in a town, the other that of a woman-freeholder in a county. These cases were argued before the then Court of Common Pleas, and in the result the judges declared, in defiance of history, precedent, and the ordinary construction of Parliamentary enactments, that a woman is legally incapacitated by her sex from voting, and that although in

other legal enactments the word " man" includes woman, in matters affecting the franchise it is not large enough to do so. In effect, Lord Chief Justice Bovill, and justices Byles, Willes, and Keating, committed themselves to the two very extraordinary doctrines – (1) That taxation and representation do not and need not go together, and (2) That one and the same word in Parliamentary enactments means *male and female* when duties and obligations are imposed, but "male" only when rights and privileges are conferred. From this decision no appeal was competent, the House of Commons having thought fit to confer on the Court of Common Pleas the full right of jurisdiction as to the interpretation of the Act, thus practically abdicating that authority which, by long, uniform, and immemorial tradition, belonged to the House alone, of being the sole legal judge of all matters relative to its own constitution and the qualifications of those who elect it. In examining the arguments of the Judges in giving their decision, it is impossible to resist the conviction that the real determining force was nothing more nor less than the same mere masculine sex bias which showed itself so painfully in the case of Sir Edward Coke. But the fact remains that great constitutional principles have been set aside in matters touching the freedom of women, and that the rights of half the nation have been summarily extinguished by a single decision of four judges. To Parliament only can women, therefore, look for redress.

The history of the local franchises enjoyed and exercised by women from time immemorial is more encouraging. In parochial government they possess full and free rights to elect and to be elected. Nor have they lost those rights as parishes have grown into towns. Parochial government is a government of Church and State in miniature. Every year overseers and waywardens are elected, rates levied, parish business discussed and churchwardens appointed. Women, when required, can be legally compelled to fill these offices. In the case of *Rex v. Stubbs*, it was finally decided that a woman may serve as overseer. This interesting case was heard in the year 1788, on the appointment of overseers of a township called the township of the monastery of Renton Abbey, in Staffordshire. One of the persons appointed was a Mrs. Stubbs, and the appointment was confirmed by the Sessions, but subject to the opinion of the Court of King's Bench. It was argued against the appointment that, if a woman were eligible because she was a "substantial householder," so might idiots and lunatics be eligible, as many of them were substantial householders. But Mr. Justice Ashurst confirmed the appointment, saying that the only qualification required of overseers by the Act 43 Eliz. c. 2, was that they should be "substantial householders"; and affirming that "the qualification has no reference to sex." It is right that it should be so ; the only "substantial householder" in a sparsely-populated district may be a woman; and, even of recent years, since the nation has become more populous, women have been obliged, by the needs of the parish, to take on themselves more than one parochial office. The earlier case of *Olive v. Ingram*, heard before the King's Bench in 1739, determined (1) that a woman might be chosen sexton, and (2) that a woman could vote in the election of a sexton. Sir

John Strange, then Solicitor-General, and afterwards Master of the Rolls, who took part in the case, says, in briefly reporting it (2 Strange, 1114) "as to the first, the Court seemed to have no difficulty about it, nor did I think proper to argue it, there having been many cases where offices of greater consequence have been held by women, and there being many women sextons now in London."

Both points were decided in the affirmative, the case, on account of its importance, having been four times before the Court before a final judgment was given. On one of these occasions Chief Justice Lee is reported to have cited a case (in a manuscript collection of Hakewell's), *Catherine v. Surrey*, in which it was expressly decided, that a *feme sole*, if she has a freehold, may vote for members of Parliament; and a further one (from the same collection), *Holt v. Lyle*, in which it was decided, that a *feme sole* householder may claim a voice for Parliament men; but, if married, her husband must vote for her; whilst Justice Page declared, "I see no disability in a woman from voting for a Parliament man." So closely, in the minds of our judges, were the local and Parliamentary franchises bound up, that a question as to the rights of women in local voting seemed to involve considerations as to their right to vote for Parliament men.

Yet, even in the matter of these local franchises, women have suffered, and do suffer, from legislative tinkering and sex-biassed decisions in our law courts.

Down to 1835, women, possessing the qualifications which entitled them to vote, voted freely in municipal elections, and in some important cities, such as London and Edinburgh, the civic rights even of married women, possessing a separate qualification from the husband, were well established. The Municipal Corporations Act of 1835, however (passed by the Whig administration of Lord Melbourne), was framed upon the evil precedent of the Reform Act of 1832, and by the use of the words "male persons," in treating of the franchises under it, disfranchised every woman in the boroughs to which it applied, and this disfranchisement lasted for thirty-four years.

Nevertheless, in non-corporate districts, women continued to vote as freely as before, and thus secured the ultimate restitution of the rights of their disfranchised sisters in incorporated districts ; for, when in 1869, on the consideration of the Municipal Franchise Bill of that year, these peculiar facts were brought to the notice of the House of Commons, and it was shown that the incorporation of any district involved the summary disfranchisement of the women ratepayers, the House, without a dissentient word, or any shadow of opposition, adopted the proposal to omit the word " male " before the word " person " in Section 1 of the Bill, and thus restored the rights of the women ratepayers, of whom many thousands voted, as a consequence of the passing of the Act, in the municipal elections of the following November.

Shortly after this, in the year 1870, the passing of the first Married Women's Property Act, enabled a wife to own and hold her own earnings, and thus to enjoy some, at least, of the advantages of property. It was hoped that the

passing of this Act would enable a small, but steadily-increasing, number of married women to become qualified as voters, against whose local rights had the good custom of the City of London influenced opinion elsewhere no objection could have been raised. But the case of the Queen *v.* Harrald, heard in the Queen's Bench, in January, 1872, decided that a married woman, though qualified by occupancy, and by payment of rates, and put on the Burgess List, cannot vote at the election of town councillors ; and further, that a woman, who is rightly on the Burgess List, but married before the election, is also disqualified from voting. In favour of the married woman it was argued that women are capable of voting, and do vote, that no exceptions are made by statute as to married women; and that "coverture" being no longer a bar to the holding of property, should, therefore, be no bar to the enjoyment of the incidents of property, such as voting. On the other hand, it was argued that a married woman is not a person in the eyes of the law. She is not *sui juris*. Curiously enough the words of the Lord Chief Justice (Cockburn), in giving judgment, show plainly that it is possible, in the discharge of the highest legal functions, to determine questions affecting the civil privileges of women, and yet be painfully ignorant of all matters relevant to the point to be decided upon. The Lord Chief Justice was obviously quite unconscious that women had possessed voting rights from time immemorial and speaks of the Act of 1869, which we have just briefly considered, as though it were the first concession of them, instead of being merely the restitution of such of them as had, possibly inadvertently, been taken away thirty-four years before. It scarcely seems fitting that questions so gravely affecting the interests of women—present and future—should be thus lightly determined upon by persons ignorant of so many of the relevant facts. Since this decision, the Married Women's Property Act of 1882 has given to all women fuller rights of property and contract, and for women married since that year has virtually abolished "coverture" in regard to property. Nevertheless, revising barristers, in general, follow the ruling of the Queen *v.* Harrald, and still treat married women, however fully qualified as ratepayers, as not being persons in the eye of the law, at least for purposes of voting. So great is the influence for evil of one evil precedent. For this limitation has now been most unjustifiably, extended to the voting of married women for Poor Law Guardians. The office of Poor Law Guardian is a parochial one, and there is no legal decision or precedent for this highhanded assumption of disqualification, which is the more grievous because every year the number of married women duly qualified to take part in local affairs is steadily increasing, and such women educated as they are, both by the duties of family life, and the control and administration of property, would form a most important and influential part of the electorate. These limitations are the more anomalous as women, both married and single, have been fulfilling the duties of Poor Law Guardians, and their right to do so has never been seriously questioned. Women also, both single and married, were nominated for the County Council elections. And here we come to two points worthy of very serious consideration. In the case of a man the presumption is that he who may vote, may be voted for,

unless provision to the contrary is expressly made ; and further that the Franchise being a duty as well as a right cannot be forfeited by non-user or laches. So much is this the case that the law carefully safeguards the temporarily suspended rights of lunatics and felons. In regard to women, however, our Law Courts have decided various cases on assumptions the converse of these. For instance, in the case of *Chorlton v. Lings*, the judges did not pretend to deny that women had in the early period of our history, taken part in Parliamentary elections, but practically they said, "How can you claim that women have the right to vote, when for two centuries they have not voted?" And, in the case of *Beresford Hope and Lady Sandhurst*, heard in 1889, the position taken up by the judges may be summed up in the question, "How can you contend that a woman, because she may vote for a County Councillor, may also be elected to the County Council, when, though women have so long voted in municipal matters, no woman has ever yet been elected to the Municipal Council?" These two cases give us warning enough to use to the full whatever civic and political rights we do possess, lest we should be the means of narrowing and limiting, not only our own rights, but those of other women. As a consequence of these recent decisions, it is for the present the law of the land, that a woman may not sit and act as a County Councillor, even though, as in the cases of *Miss Cobden* and *Lady Sandhurst*, the ratepayers give her a magnificent majority, nor as a County Alderman, though the Council, as in the case of *Miss Cons*, select her as one supremely fitted to discharge the functions of that office.

Curiously enough, when *Lady Sandhurst's* case was decided in the Court of Appeal, the Master of the Rolls took occasion to indulge in one of those *obiter dicta* from which women have suffered so much, dicta which presume either gross ignorance of law and of fact, or inveterate masculine bias. For, said he, "I take it that, by neither the Common Law nor the constitution of this country from the beginning of the Common Law until now, can a woman be entitled to exercise any public function."\* Yet at the very time he spoke, women were acting as overseers, waywardens, churchwardens, Poor Law Guardians, and members of School Boards, which can scarcely be reckoned as private functions.

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\*It may be worth mentioning in this connection, that in 1877 the Attorney-General of the day: in the House of Commons, expressed his doubt as to whether a woman could be a churchwarden. Women were acting as churchwardens at that very time, and one lady churchwarden during that Session signed and forwarded for presentation to Parliament a petition for the enfranchisement of women.

The absurd limitations and anomalies and contradictions of our present position are the more extraordinary, when we remember that they have been largely developed during the reign of a Queen, who as maiden, wife, and widow, has represented the highest estate of the realm. We, therefore, plead that the rights which the women of the past carelessly let slip, may be restored as the women of this age who desire to possess them. It has been said that one good precedent establishes a constitutional principle. We have pointed to precedents, but were there no ancient precedents, the spirit of the age demands the enfranchisement of women.

Still more strange is it that a judge would seem, even for a moment, to have forgotten that he held his dignified and important station by the authority of a Queen, whose high office is surely the supreme public function.

To sum up, at the present moment all the parochial franchises in England are exercised fully and freely by women possessing the necessary qualifications. These franchises include the right of voting at vestry meetings, and for overseers, churchwardens, waywardens, parish clerks and sextons; whilst qualified women are legally eligible to fill, and do sometimes actually fill, these several parochial offices. Women have also, when unmarried or widowed, the fully established right, if duly qualified, of voting for Poor Law Guardians, members of Local Boards, School Boards, Town Councils, and County Councils. There seems to be no legal obstacle to the election of a woman as a member of a Local Board, whilst women, married and unmarried alike, are at present sitting and acting as Poor Law Guardians and members of School Boards. Women do not seem to be eligible for Town Councillors, and recent judicial decisions have ruled that they may not, though elected by an overwhelming vote of the ratepayers, sit and act as County Councillors, or, though selected for the office by a large majority of the Council, as County Aldermen. The absurd illogicality of the whole position is apparent when it is added that though married women can sit and vote freely as members of School Boards and Boards of Guardians, their votes for members of these Boards, as well as for Town Councillors and County Councillors, based upon qualifications otherwise unquestionable, are frequently (though not uniformly), and possibly illegally, rejected on the ground that they are married.

Women have, moreover, in the past, not merely exercised the Parliamentary franchise, but seem to have taken part in the Great Councils of the nation, whilst we have given evidence that they have acted as High Sheriff, Marshal, Warden or Governor of a Castle, Keeper of a Prison ; none of which offices seem of recent years to have been entrusted to them.

The absurd limitations, anomalies and contradictions of our present position are the more extraordinary, when we remember that they have largely developed in the reign of a Queen, who as maiden, wife, and widow, has represented the highest estate of the realm. We, therefore, plead that the rights, which women of the past carelessly let slip, may be restored to the women of this age who desire to possess them. It has been said that one good precedent establishes a constitutional principle. We have pointed to precedents, but were there no ancient precedents, the spirit of the age demands the enfranchisement of women.

Let us now consider the great modern need which has arisen for the emancipation of woman. The women householders and ratepayers of England are computed at less than a million, but even the enfranchisement of this small number will be a great safeguard to the sex generally, since no excluded class is ever safe in its rights. The press of work in Parliament is so great that every unrepresented class must suffer, and from the same cause every excluded class is still more endangered by the inclusion of other classes.



The Home Rule cry is growing fainter and fainter, that of "one man one vote" louder and louder. "One man one vote" means that property already deprived of its fair share of representation, when in the hands of women, is to suffer still further deprivation. This is a serious matter for women who have a large stake in the wealth of the country. One of the organs of the Gladstonian party calculates that the alteration of the Registration Laws, proposed by Sir George Trevelyan in the Newcastle resolution, will add two millions of men to the electorate. In these two millions are no inconsiderable part of the fluctuating population of men, labourers who do not want to labour, and workmen who have not sufficient self-respect to give a fair day's work for a fair day's wage, and are, therefore, continually on the move because no employer long retains their services. And even lower down on the social scale are the men who live on the labour, and, worse still, on the degradation of women. These men will be enfranchised, whilst the woman landowner, manufacturer, or trader—many of them finding employment for numbers of men—these women are, according to the programme of the Gladstonian Party, still to be kept outside the electorate. Sir George Trevelyan further proposes payment of members, "so that labour may have proper representation." It is believed that one-third of the women of England are bread winners for themselves and the families, and that seven-tenths of the women of England are dependant on their labour; but what protection is the labour of women to have? It is well known that Trades Unions have often objected to the free employment of female hands. It is reported that there is a chronic state of discontent among the male officials of the Post Office at the employment of women in Post Office work. We know that Parliament has more than once interfered with the labour of women. In the very last Session of Parliament it was enacted, by a clause of the Factories and Workshops Act, that no woman should be permitted to return to the workshop or factory within four weeks after giving birth to a child. Both Houses of Parliament seem to have been persuaded that women, unlike men, love hard work for its own sake, and through this insane love will imperil their own lives and that of their offspring. In vain did thoughtful women such as Mrs. Fawcett, Mrs. Garrett Anderson, Lady Goldsmid, and others urge that women work from sheer necessity and to secure the means to live. Our male Legislature, in the election of which women have no voice, refused to consider this plea, and legalised the enforced exclusion of mothers from their accustomed and best paid industry, but made no provision, or suggestion of provision, for their maintenance during the period of seclusion. And already demands are being made that the prohibited period should cover at least six months. The right to labour and the right to live must not become male prerogatives !

Payment of members, payment of election expenses, and payment of extra registration officials are all to be thrown on the rates; and women, who, for the convenience of the Gladstonian Party, are to remain politically non-existent, are to pay their quota towards these expenses. Already they have to pay a proportion of election inquiry expenses when corrupt male voters abuse the privileges withheld from women. On three important occasions within the

last twenty-two years has Mr. Gladstone used his immense influence in Parliament to prevent the enfranchisement of women. More recently, at a time when he became the instrument of a valuable advertisement for a firm of soap manufacturers, whilst *en route* to Port Sunlight, Mr. Gladstone, at Wirral, took Lord Salisbury to task for declaring that whenever the question of "one man, one vote" comes before Parliament, the enfranchisement of women must also be considered. On this occasion Mr. Gladstone made use of exactly the same nautical simile which he used seven years ago, when he refused to have his Franchise vessel overweighted with Women's Suffrage. An unhappy simile indeed, because, in most cases of danger of shipwreck, the first thought in most Englishmen's minds is, "Let us save the women." Not so Mr. Gladstone. In 1884 he deliberately forced them overboard, in spite of the protest of many of his most faithful followers. And at Wirral and Port Sunlight he showed very clearly that the lives of women and, the labour of women are nothing to him. It would have been remarkable, had it not been in harmony with his previous utterances that, on a day when he was addressing the workpeople of a firm which employs nearly as many women as men (for Sunlight Soap Works employ 416 males and 385 females), that Mr. Gladstone should exultingly tell the men that "their interests were effectually guaranteed," because there had been placed in the hands of work men a fair share of political power, so that if the workman suffers he will suffer by his own negligence. In the morning Mr. Gladstone indicated that he would have no Parliamentary Reform programme weighted with Women's Suffrage, and in the afternoon he reminded the women that there was protection for the labour of men, but none for the labour of women. Yet women have to hold their own, not only against the capitalist, but against the competition of men in that struggle for existence, which makes men, even against their better nature, sometimes jealous of women in the labour market.

Nor is it simply for self-protective purposes alone that women seek political justice. Legislation occupies itself more and more with the interests of the home and the family, and the home and the family are paramount with women. The great social problem in all its manifold aspects, the great moral questions which are surging to the front, will tax all the political sagacity of the future ; nor can they be rightly solved without the help of the insight and experience of both halves of humanity, or without the recognition of justice between sex and sex, as well as between class and class. Mrs. Fawcett, in an admirable speech on Woman Suffrage, recently delivered, referred to the laws affecting the custody and guardianship of children and the laws affecting the relations between men and women as outrageously unjust, and cited a case reported in the *Times* of that very day, illustrating most painfully the injustice of masculine law and masculine opinion in matters affecting women. The case, heard before the Vice-Chancellor of the University of Cambridge was, briefly stated, as follows: — A Mr. Charles Russell, a married man, of Jesus College, Cambridge, had spoken to the prisoner, a girl of 17, asking her, according to his statement, to let him accompany her to her lodgings. Notwithstanding the fact that he admitted speaking to the prisoner first, no

attempt was made to charge this man with any share in her offence. On his evidence the girl was sentenced to a fortnight's imprisonment, whilst this married man, her senior in age, her superior in education and position, suffers no legal penalty whatever. So long as this base double code of morality and justice prevails, so long will men be degraded and so long will women suffer. But with the enfranchisement of women a nobler law and life will dawn, and man and woman shall no longer prey upon each other, oppressing or oppressed.

How soon shall this be? In the year 1873 Women's Suffrage formed part of the Liberal programme, approved at Birmingham. In 1891 it finds no place in the Liberal programme, approved at Newcastle-on-Tyne. As Mr. Balfour pointed out recently at Bury, the Liberals, who are shocked that one man should have two votes, find nothing shocking in the fact that the woman ratepayer and householder has no vote at all.

That nation is indeed foolish which does not use its greatest moral force. We know what France lost by the expatriation of the Huguenots. We know what Spain lost when the "Holy Inquisition" stifled the noblest aspirations of her children. How much longer is Mr. Gladstone, as leader of the misnamed Liberal Party, to perpetuate the "subjection of women," and restrain for his own purposes the great moral force in politics of the wonton of Great Britain and Ireland? and how long will the Constitutional Party permit this deprivation and suppression of constitutional right?

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After the reading of this paper the following resolutions were adopted:—

Proposed by Mr. GREEN, seconded by Mr. WARD,

"That, in the opinion of this meeting, the Enfranchisement of Women is one of the most urgent Parliamentary reforms and that a petition be signed by the Chairman on behalf of this meeting and forwarded for presentation, praying the House of Commons to pass a measure which shall include all duly qualified women."

Proposed by Mr. BURLAND, seconded by Miss DUNN,

"That Memorials be forwarded to the Most Noble the Marquis of Salisbury, and to the Right Honourable Arthur James Balfour, M.P., praying that Her Majesty's Government will, during the Coming Session, introduce a measure to extend the Parliamentary Franchise to all duly qualified women, on the same conditions as it is, or may be, granted to men."

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*Copies of this Pamphlet, and other Papers, may be had from Mrs.  
WOLSTENHOLME ELMY, Congleton, Cheshire.*

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[1] The Primrose League was an organization seeking to influence the British democracy with their Conservative principles.

[2] The reign of the Plantagenets lasted from 1216 to 1400, through the kings Henry III, Edward I, Edward II, Edward III and Richard II. The Tudors reigned from 1485 to 1603

through the monarchs Henry VII, Henry VIII, Edward VI, Jane, Mary I, and Elizabeth I.

[3] John Selden (1584-1654). Jurist, politician and antiquary, among his many works is England's *Epitomis*, 1610 which is concerned with the progress of English law down to Henry II; published in his *Tracts*, 1683). His work established him as the father of English law-history. Cornelius Tacitus, 55-117 AD. *Annals* (Histories) were written ca. 100-110 AD, and were most likely intended to cover the period referred to as the Julio-Claudian period (through emperors Augustus, Tiberius, Caligula, Claudius, and Nero) ending with the death of Nero in 68 [BACK](#)