The Constitution a title-deed to woman's franchise. A letter to Charles Sumner. By Theodore Tilton

The Golden Age TRACTS. No. 2. **The Constitution Title-Deed to Woman's Franchise.** A Letter to Charles Sumner. BY THEODORE TILTON. *"How excellent franchise In Woman is."*— Chaucer. Published at the Office of THE GOLDEN AGE, 9 Spruce St., New York. 1871.

9.9.13. Jul 18 09 THE CONSTITUTION A TITLE-DEED TO WOMAN'S FRANCHISE.

"How excellent franchise In woman is."— Chaucer.

Charles Sumner, *Senator of the United States,*

Honored Sir —I am asked by a number of good women (neighbors and friends of mine) to solicit from you a remedy for a grievance which they suffer. They are public-spirited citizens who want to take a citizen's part in the next presidential election. They believe that the Constitution, by its Fourteenth and Fifteenth Amendments, secures to women, as to other citizens, the right of suffrage. But the state-laws of New York, in defiance of the Supreme Law of the land, deny to women this right. My clients therefore appeal to you, as senior of the Senate and guardian of liberty, to procure the passage of an Act of Congress to enforce the Federal Constitution in the State of New York, so that all citizens herein residing, who possess the qualifications prescribed by law, may exercise unmolested the elective franchise.

In giving the reasons which warrant (nay, compel) this equitable interpretation of the Constitution, I am not presuming to enlighten your learned mind on the meaning of an instrument which you hold in the sacred keeping of your oath of office, but am simply executing a semi-official duty of my own as the president (until lately) of a society for the equal rights of American citizens without distinction of sex.

What is a citizen of the United States, or of a state?

This question was never explicitly answered in the Constitution until the adoption of the Fourteenth Amendment. Previous to this Amendment, a Kentuckian 4 was first a citizen of Kentucky and thereby of the United States, but this Amendment makes him first a citizen of the United States and thereby of Kentucky. Or he may be a citizen of the United States and not of a particular state. "All "persons", says the Amendment (and mark the sweep of the phrase), "all persons born or naturalized in the "United States, and subject to the jurisdiction thereof, "are citizens of the United States, and of the

"states wherein they reside." Even the Judiciary Committee of the House of Representatives, in a majority report against woman's constitutional right to vote, has declared that the term "all persons" is used in this Amendment without limitation by sex; or in other words, that not men only, but women also, are citizens. If I here adduce no judicial decision to this effect, it is only because the point is too self-evident to have been ever questioned in any court. Whenever raised in the Courts of the United States with regard to parties to action under the Constitution, it has been brushed away as frivolous. And probably the Supreme Court will never say that "all persons" include men and women until it shall first feel called upon to say that "all parents" include fathers and mothers, or "all children" boys and girls. If, however, anybody for the sake of a cavil should still deny that women are citizens, I point him to these three facts, namely—to preëmpt land, one must be a citizen; to register a ship, one must be a citizen; to obtain a passport, one must be a citizen; and to three other facts, namely—women preëmpt land; women register ships; women obtain passports. Futhermore, as when Solomon, in naming three things, added a fourth, I add that women are naturalized and thus made citizens. In other words, women are citizens.

Well, then, women being citizens, what are their rights as citizens?

The Constitution as it stood in the early days, and 5 long before it reached the Fourteenth Amendment, declared in the Fourth Article: "The citizens of each "state shall be entitled to all the privileges and immunities "of citizens in the several states."

What were these "privileges and immunities?"

The Washington Circuit Court, two generations ago, through the wise lips of Judge Bushrod Washington, declared its unanimous opinion that one of these "privileges and immunities" was "to enjoy the elective "franchise as regulated and established by the laws "or constitution of the state in which it is to be "exercised."

The Fourteenth Amendment, a later flower of liberty, exhibits these "privileges and immunities" in still fuller bloom. "No state," it says, "shall make or enforce "any law which shall abridge the privileges or "immunities of citizens of the United States."

The difference between the Fourth Article and the Fourteenth Amendment (both being similar in phraseology), is strikingly portrayed in a recent decision by Justice Bradley, of the Supreme Court of the United States, as follows: "The new prohibition that 'no state "shall make or enforce any law which shall abridge the "privileges or immunities of citizens of the United "States" is not identical with the clause in the "Constitution which declared that 'the citizens of each "state shall be entitled to all the privileges and "immunities of citizens in the several states.' It "embraces much more... The

privileges and “immunities secured by the original Constitution were “only such as each state gave to its own citizens... “But the Fourteenth Amendment prohibits any state “from abridging the privileges or immunities of “citizens of the United States, whether its own citizens “or any others. It not merely requires equality of “privileges, but it demands that the privileges and “immunities of all citizens shall be absolutely unabridged “and unimpaired.”

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Now, from these data, let me swiftly trace the practical progress of the elective franchise from its early restriction to white men to its subsequent inclusion of negroes and to its consequent inclusion of women.

The Federal constitution in the First Article said: “The electors in each state shall have the qualifications “requisite for electors of the most numerous branch of “the state legislature”:—a phraseology which, by common consent, was taken to mean that not the National government, but the states had authority over suffrage—and, accordingly, the states administered suffrage to suit themselves, without Federal interference. And yet, lest any state, from local prejudice or sectional animosity, should injuriously withhold this right form citizens moving into it from other states, the Fourth Article, with humane liberality, said: “The citizens of “each state shall be entitled to the privileges and immunities “of citizens in the several state”:—or, in other words (to quote Justice Washington), shall “enjoy “the elective franchise as regulated an established “by the laws or constitution of the state in which it is “to be exercised.” But the states, following a narrow and unworthy policy, excluded certain of their members from citizenship and suffrage; for instance, person guilty of having been born black; and all this was done by the states without Federal countercheck, because of the universal acknowledgement that the states, and not the National government, rightfully controlled suffrage. But later, the American people, taught by the fiery lesson of a war against slavery, passed the Fourteenth Amendment, which said: “All persons born or “naturalized in the United States, and subject to the “jurisdiction thereof, are citizens of the United States “and of the states wherein they reside”:—thereby no longer permitting any state to say to any of its nativeborn or naturalized members, “You are not citizens.” And this Amendment further declared: “No state shall “make or enforce any law which shall abridge the 7 “privileges or immunities of citizens of the United “States”:—thereby no longer permitting any state to say to any of its citizens, “You shall be denied the right “of Suffrage,:” but, on the contrary, securing to these citizens their right of suffrage “absolutely unabridged “and unimpaired.”

In short, under the original Constitution, each state gave the right of suffrage to such citizens as it chose, without dictation by the Federal government; but under the new Amendments, the

Constitution itself now directly secures the right of suffrage to citizens of the United States, and forbids the states to deny or abridge this right.

Now see what this logic proves for women. An argument arises from it, step by step, like the rounds of a ladder, and conducts us to the high conclusion that women, like all other citizen, are already enfranchised by the Federal Constitution, and that the states cannot disfranchise them without violating Supreme Law of the land. The successive beads of the rosary are these;mdash;inasmuch as, by the Federal Constitution, “all persons” (including women) are citizens, and inasmuch as citizens have “privileges and immunities,” among which is suffrage; and inasmuch as these privileges and immunities, including suffrage, cannot be denied or abridged by the states, but must remain “absolutely unabridged and unimpaired”: therefore the National Constitution ordains, first, that women, like other citizens, have the right of suffrage; and second, that they have it so securely that the states cannot impair or abridge it.

If I were to take a hammer and chisel, and engrave this argument on the wall of Gibraltar, I could not say which would be the more impregnable, the logic or the rock.

You are aware that this interpretation is no novel or subtle device of mine. I speak as its expositor, not its originator. Being, as it is, a palladium of the 8 rights of women, I am happy to remember that it was first brought into conspicuity by a woman. The anti-slavery controversy in England owed its final and victorious watchword, namely, “Immediate and Unconditional “Emancipation,” to a woman —Mrs. Elizabeth Heyrick. In like manner, in the United States, the final and victorious watchword for woman's struggling cause, namely, her right of suffrage as decreed already by the Constitution, was proclaimed at the Federal Capital by a woman—Mrs. Victoria C. Woodhull. You know this lady. You remember her Memorial, asking Congress to enforce her constitutional right to vote. You characterized the argument with which she accompanied it as one of the ablest that you had ever heard. You have not forgotten how it elicited the corroboration of many of the best legal minds of the country. Nor need you be re-told that it drew forth in its favor, from Gen. Benj. F. Butler and Judge ghridge, acting jointly, one of the most laborious and admirable reports ever submitted to the House of Representatives. But there can be no higher authority in its support than the assenting verdict of your own judicial mind.

Objections are urged against this construction, but, whom weighed, are found wanting.

It is objected, for instance, that not the National government, but each individual state, has authority over suffrage. The preceding reasonings have already dealt with this idea. Let me deal with it again, to nail it to the counter. Three-quarters of the states solemnly ratified the Fourteenth and Fifteenth Amendments. All the states, as soon as these two Amendments were added to the Supreme Law,

thereby surrendered to it all the powers which these two Amendments contain. Among these powers is one prohibiting each and every state from abridging or denying the right of suffrage to citizens of the United States. So that the states no longer possess a function which they have abandoned 9 to the National government. And Alexander H. Stephens understands this so well in the case of the negro that he wants the Fourteenth and Fifteenth Amendments expunged in order that the states may resume their power over suffrage, and recall the ballot from a race which these Amendments enfranchised. The National Constitution, and not state-law, is now the clear fountain out of which springs the citizen's guarantee of suffrage.

Another objection is that, though the Constitution prohibits disfranchisement on account of color, it does not on account of sex. This argument (or rather, misrepresentation) is founded on the Fifteenth Amendment, which says “The right of citizens of the United States “to vote shall not be denied or abridged by the United “States, or by any state, on account of race, color, or “previous condition of servitude.” But of whom does this Amendment speak? Whose rights does it guarantee? For what purpose was it framed? It enacts, terms declare, “the right of citizens of the United “States to vote.” Now who are these citizens? They are both men and women—not men alone. The preceding Amendment had just declared “all persons” (including women) to be citizens, and had secured to both sexes their right of suffrage. The Fifteenth Amendment then says, the right of men and women, or, to use a shorter phrase, “the right of citizens of “the United States to vote shall not be abridged or “denied on account of race, color, or previous condition “of servitude.” In other words, the Fifteenth Amendment, legislating in behalf of the whole body of citizens, including men and women, provides that, however any state may qualify the franchise of these men and women on account of age, property, or intelligence, nevertheless, it shall not deny this franchise to these men or women on account of “race, color, or previous condition of servitude.” The Fifteenth Amendment was born blind to sex, and wears a bandage against color.

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Another objection is that, as the Constitution gives to the states the right of fixing the *qualifications* of voters, the states may make sex one of these. To this I reply that the citizens, or “all persons,” whom the Constitution thus presents to the states to be qualified as voters, are already shown to be both man and women. After the Supreme Law has once enfranchised these men and women, the state-laws cannot disfranchise these women any more than it can these men. All that the states may do is to “regulate and establish” suffrage by imposing equal qualifications on all citizens both men and women. Moreover, what necessarily be the character of these qualifications? No state can exact a qualification which, in the nature of things, cannot be attained by the citizen from whom it is required. Thus age, property, and intelligence may be made qualifications because the citizen has a fair chance to attain them all. But to impose a specified color or sex as a condition

precedent to voting is not to qualify but to abolish the right of suffrage in the case of all persons of the opposite color or sex. For a negro could never change his color, nor a woman her sex. To fix impossible qualifications is not to "regulate and establish" "suffrage, but to disestablish and annihilate it altogether.

Another objection is that the new Amendments were not *intended* to ordain Woman Suffrage. Neither were they intended to prohibit it. The intent (or the non-intent) serves *my* argument as well as it can serve the opposite. But with or without an intent, a law stands as it is written— *Lex ita scripta est.* As written, the Constitution secures suffrage to all citizens, whether white males, negroes, or women. But *was* there no "intent?" I happen to know that a number of able men, including Senator Matt Carpenter, George W. Julian, Gen. Ashley, Judge Woodward of Pennsylania, and others, either during the pendency or after the passage of the new Amendments, discovered in them a 11 title-deed to Woman Suffrage; and some of these lesgislators voted for, and others against, these Amendments on this account. Furthermore, this discovery, being thus promulgated before the Amendments were adopted, became immediately thereafter the basis of a powerful and widely-echoed demand for the enforcement of this construction. It is therefore a cotemporaneous judgment, not a long-deferred afterthought, which thus takes these two Amendments at their word, nor permits them to keep their promise to the ear for the sake of breaking it to the hope. Even Mr. Bingham, the author of the Fourteenth Amendment, became convinced last winter that this Amendment bore within it a richer burden of meaning than he had meant to freight it with; for, when Mrs. Woodhull took her claim to Washington, he said to her at first, "Madam, "you are not a citizen"; and it was not until she pointed out to him his own phraseology in the Constitution, namely, "All persons born or naturalized, etc., ". . are citizens"—it was not until he had put on his spectacles to read his own handwriting a second time that he thereupon acknowledged, as chairman of the House Judiciary Committee, that the phrase "all persons" must include both sexes. So that if the very author of the Fourteenth Amendment has, since its adoption, changed his mind concerning its "intent," the rest of the people, for the same good reason, should do the same wise thing.

But you yourself, sir, have taught (and I cannot forget the lesson,) that public statutes are to be interpreted evermore in the interest of liberty, and not of bondage. In the Senate, Feb. 5, 1869, you said, "The "true rule under the National Constitution, especially "since its additional Amendments, is, that anything for "human rights is constitutional." As if to give dignity to this declaration, you added, "No learning in the "books, no skill acquired in courts, no sharpness of "forensic dialects, no cunning in splitting hairs, can 12 "impair the vigor of the constitutional principle which "I announce. Whatever you enact for human rights "is constitutional; and this is the Supreme Law of the "land, anything in the constitution or laws of any "state to the contrary notwithstanding." In view of this declaration by your own lips, I add the just deduction that as civil liberty is as much the human right of women as of

men; and as the elective franchise is as much the constitutional right of women as of men; therefore both the law of nature and the law of the land unite by their own inherent “intent” to ordain the beneficent enfranchisement of women and men.

But if this reasoning be too vaguely drawn from general principles, and if I be summoned to substitute for it what Lord Chatham called “the statute-book “doubled down in dog's ears,” I then appeal to the same decision of Justice Bradley, of the Supreme Court, to which I have already referred, and which, in speaking of the Fourteenth Amendment and its intent, says: “If the Amendment does in fact bear a broader “meaning, and does extend its protecting shield “over those who were never thought of when it was “conceived and put in form, and does reach social “evils which were never before prohibited by constitutional “enactment, it is to be presumed that the “American people, in giving it their *imprimatur,* understood “what they were doing, and meant to decree “what in fact they have decreed.”

Now, without stopping to answer further objections (all of which will answer themselves), I point to Article Fourth, section second: “The United States shall “guarantee to every state in this Union a republican “form of government.” For years, negroes were excluded from their civil nd political rights on the pretext that they were not citizens. When negroes were declared by the Fourteenth Amendment to be citizens, these citizens acceded to the “privileges and immunities” “of citizenship, among which was the elective 13 franchise. But the very Amendments which thus secured this chief of all “privileges and immunities” to negroes, secured it at the same time to women. To deny to negroes in New York State the right of suffrage, would be to violate, not only the Fifteenth Amendment, which declares that this right shall not be denied on account of color, but to violate also Article Fourth, section second, which declares that the United States shall guarantee to each state a republican form of government. In like manner, to deny this right to women is to violate equally the same provision of Article Fourth. A republican form of government since the adoption of the Fourteenth and Fifteenth Amendments, requires just as absolutely the participation of negroes and women as it heretofore did of white males. A citizen is a citizen, whether white or black, male or female. Neither you nor I nor any other man can invent a reasonable reason to the contrary.

I now remind you that the Constitution nowhere denies suffrage on account of sex. If any such denial is derivable from the instrument, it must be by inference. But if there be any denial even by inference, it is a denial of man's, not of woman's franchise. Thus the Fourteenth Amendment declared (and this was a blot which the Fifteenth rubbed out), “When the right “to vote at any election. . . is denied to any of the ” *male* inhabitants might (for instance, for the crime of a tropic skin) be disfranchised. But there is nowhere a single reference, direct or indirect, through the entire text of the Constitution, to a possible denial of suffrage to *female* inhabitants. But even if there were

some such dim allusion, it would melt away and disappear before the clear-shining, doctrine that fundamental rights, like the right of suffrage, cannot be taken away by implication. The fact that a man's rights are expressly established does not prove that a woman's rights are impliedly denied. A law which gives the franchise 14 to men does not thereby refuse it to women. But the National Constitution puts an end to all this special pleading by comprehensively guaranteeing the right of suffrage to all citizens, both men and women.

I am sure you have often weighed the golden word citizen. What is its precious meaning? Worcester defines a citizen to be “an inhabitant of a republic, “who has a right to vote for public officers”; Webster, “a person who has the privilege of exercising “the elective franchise”; and Bouvier, in the Law Dictionary, “one who, under the constitution and laws of “the United States, has a right to vote for Representatives “in Congress, and other public officers, and who “is qualified to fill offices in the gift of the people.” In the spirit of all these definitions, the Supreme Court has declared as follows: “There is not to be “found, in the theories of writers on government, or “in any actual experiment heretofore tried, an exposition “of the term citizen which has not been understood “as conferring the actual possession and enjoyment, “or the perfect right of acquisition and enjoyment, “of an entire equality of privileges, civil and “political.”

I am tempted to mention that I have transcribed the preceding declaration (which forms part of the decision in the Dred Scott case) without going for it to a law-book, but from one of your own speeches, in which you accompany it with the following comment: “Thus,” you say, “does that terrible judgment, which “was like a ban to the colored race, now testify to their “indisputable rights as citizens.” My dear friend, on reading this passage I was reminded of King David's sage reflection that God causes the wrath of man to praise Him, and the remainder thereof He restrains. The Dred Scott decision, based on the theory that the negro was not a citizen, lifted the prerogatives of citizenship so high as to be altogether beyond his reach. But in less than ten years after that decision, both negroes 15 and women have been constitutionally declared to be “citizens of the United States, and of the states wherein “they reside.” They have thus come into simultaneous possession of those “privileges and immunities” which Chief Justice Taney's Court withheld from negroes because they were not citizens, but which this very same decision now confirms equally to negroes and women because they both are citizens.

And now I come to the practical point of this discussion. Although the National Constitution, by virtue of the new Amendments, secures to women their right of suffrage, yet the Legislature of New York, a body which attempted to defeat these Amendments, and which defied Congress to declare their adoption, has failed, since their adoption, to conform the laws of this state to the amended Supreme Law of the land, so as to protect women, like other citizens, in the enjoyment of their

elective franchise. Other states have followed the bad example of New York, and women residing in them are still deprived of their right of suffrage, or, if they attempt to execute it, are subject to obstruction, refusal, or denial by the inspectors of election. As a remedy for this wrong, Congress must pass an act for the enforcement of these two Amendments in the case of women, just as it did in the case of negroes. For you remember that after these Amendments were adopted, certain of the states affected to despise their validity, and attempted to set at naught the constitutional rights thereby guaranteed to dark-skinned as to lighter-hued citizens. Accordingly, Congress passed a stringent act (bearing date May 31, 1870), saying: "It shall "be the duty of every officer to give to all citizens of "the United States the same and equal opportunity to "become qualified to vote, without distinction of race, "color, or previous condition of servitude." This law, exactly as it stands, would be sufficient for the present case except that, though it was enacted in behalf of "all "citizens," it is executed for only one-half. Whatever 16 changes are needed to make this or some similar act as effective for women as for negroes, I leave to your own fruitful and suggestive mind. But my clients beg that you will introduce your remedy at the beginning of the session, so that they may concentrate every good influence on its triumph before the winter's end.

I take this occasion to say that at future elections, whether before or after the passage of such an act as I ask you to draft, a number of women in this state, possessing the qualifications requisite for "electors of "the most numerous branch of the state legislature," and being thereby qualified to vote for members of the House of Representatives, will go to the polls and attempt to vote. In case of their repulse by the officers in charge of the ballot-box, they will use their discretion in bringing suits against those officials, or in enduring with further patience the oppression of which they complain. But you can readily see how many vexatious law-suits may be avoided if the National government will be prompt to maintain the rights of citizens under the Constitution of the United States—the obsolete legislation of the states to the contrary notwithstanding.

My dear sir, the rapid progress of Woman Suffrage in England, where all women who own taxable property vote equally with men who own the like, fills me with impatience at the prejudice which still lies as an obstacle between the women of America and their political rights. The next presidential election will be one of such interest that thousands of public-spirited women will be eager to express their civil wishes concerning it. To withhold from them at such a time a prerogative which they doubly claim, first by natural justice, and next by the Federal Constitution, will be unworthy of a generous government, and an enlightened age. In choosing you to be the champion of their natural and constitutional rights, I quote with pleasure the following eloquent passage from your speech of March 7, 17 1866, as follows: "I do not hesitate to say that when "the slaves of our country became 'citizens' they took "their place in the 'body-politic' as a component part "of the 'people,' entitled to equal rights, and under "the protection of these two guardian principles, first, "that

all just government stands on the consent of the “governed, and secondly, that taxation without “representation is tyranny; and these rights it is the “duty of Congress to guarantee as essential to the idea “of a republic.” The doctrine which you have here applied to negroes, I ask you to apply to women. You will agree with me that it is as sound in the one case as in the other. I submit the issue to your native sense of justice. Having gilded your name forever by your championship of the negro, you have now an opportunity to win a companion laurel as a knight-templar for woman's enfranchisement. Will you render to the noble women for whom I speak the chivalrous service of introducing into the Senate a swift and strong act to enforce the rights of women, as of other citizens, in the State of New York, and other states?

With mingled pride and love, I am ever yours, Theodore Tilton.

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