

Woman under the Law.

When the American colonies began their resistance to English tyranny, the women were as active, earnest and self-sacrificing as the men, and, it has been said, were endowed with as lofty a patriotism. Among the women who manifested deep political insight, was Mercy Otis Warren. She was the first to base the struggle for independence upon the inherent rights of the individual - a phase afterward made the corner stone of political authority - and it was she who first counselled separation.

The founders of this Republic were emphatic in their claim that taxation and representation are inseparable, and that government derives its just powers from the consent of the governed. In defense of these principles they waged a seven years war, and yet, when they had wrung from Great Britain the colonies, she would not govern in accordance therewith, and undertook to organize them under their own theory, they cut off one half the people from any representation in the government which claimed their obedience to to its laws - claimed the right to tax them for its support, and the right to punish them for disobedience.

The first American woman to protest against the formation of a government in which women should be unrecognized was Abigail Smith Adams who wrote to her husband, John Adams, in 1776 these words: "I long to hear you have declared an independency, and, by the way, in the new code of laws which I suppose it will be necessary for you to make, I desire you would remember the ladies, and be more generous and favorable to them than your ancestors.

Do not put such unlimited power into the hands of husbands. ~~Remember all men would be tyrants if they could.~~ If particular care and attention are not paid to the ladies, we are determined to foment a rebellion and will not hold ourselves bound to obey any laws in which we have had no voice or representation."

"Thus our country started into governmental life", says Mrs. Harper, "freighted with the protests of the Revolutionary Mothers against being ruled without their consent, and from that hour to the present, women have been continually raising their voices against political tyranny, and demanding equality of opportunity in every department of life".

As might have been foreseen the half of the people thus deprived of the means of self-protection have become victims of unequal and oppressive legislation as will presently be shown.

Ignoring the protests of these noble spirited women, our forefathers adopted the common Law of England which had its origin in an age of barbarism; much of it is derived from customs no longer in vogue. Nevertheless the Supreme Court of Massachusetts recently rendered this decision; "We are not at liberty to refuse to carry out to its consequences any principle of the common law simply because the grounds of policy on which it must be justified seem to us to be hard to find, and probably belonged to a different state of society." Until repealed by legislature all laws on the statute books are operative.

Herbert Spencer says; "The root of all well ordered social action is a sentiment of justice, which at once insists upon personal freedom and is solicitous for the like freedom of others." Our law makers evidently overlooked this fact, for on turning to the statutes of our different states we find woman fettered on every hand by cruel

and unjust laws.

Prof. Walker in his "Introduction to American Law" says: "With regard to political rights women form a positive exception to the general doctrine of equality; we require them to contribute their share in the way of taxes to the support of government, but allow them no voice in its direction. We hold them amenable to the laws when made, but allow them no share in making them". This language applied to men would be the exact definition of political slavery. The law of husband and wife, he further says, is a disgrace to any civilized nation. The merging of her name in that of her husband is emblematic of the fate of all woman's legal rights."

Taking up first the legal disabilities of married women, and dividing the subject into three heads, we will consider: first, The wife's personal subjection to her husband. second, The want of authority over her children. third, Her property rights.

Blakstone says: The very being and legal existence of woman is suspended during marriage, incorporated into that of her husband under whose protection and cover she performs everything. It has been said that "justice", as the foundation of the highest law, is a primal requirement in the relation of the sexes", yet in almost every respect the law gives to the husband complete and irresponsible power over the wife. The legal rights of the husband to the custody of the person, to the strict obedience, and to the services of the wife, are almost precisely those of the father over his child. A recent decision was given in the courts of New Jersey, where a wife refused to give up teaching school, as follows: "A wife must live with her husband or give sufficient reasons for refusing to do so.

A husband may use physical restraint over a wife's person to enforce obedience" Verily our law makers agreed with Shakespear's Petruchio; "Such duty as the subject owes the prince, even such a woman oweth to her husband".

It is entirely characteristic of the existing law of marriage that while the most arbitrary authority is given the husband to secure the legal obligations of the wife, the provisions to secure the same from the husband are most inadequate. The grossest inequality occurs in many states in cases of violation of the marriage vows on the part of husband and wife. In Connecticut if the wife prove unfaithful she may be imprisoned for five years in the State prison, her husband may procure a divorce or turn her out of doors without being liable for her support. But for the same crime on his part he can be punished only by a fine of seven dollars, or by imprisonment for thirty days in the common jail. His wife may leave him, but in that case he is entitled to the children and to her property, even to that which she may subsequently acquire! To be sure she may bring suit for divorce but she must begin by leaving her children, her home and all her property in the hands of the husband by whom she has been wronged.

In law not only the person of the wife but her time, labor and money, in nearly every state of the union are the property of the husband. Not long since in the state of Iowa a woman fell into an open watermain sustaining injuries for which she sought to recover damages through the courts. The Supreme Court of the State rendered the decision that her claim, being a wife, was invalid, as the time lost was not her time. A married woman, being a mere housewife for her husband, any loss of time due to her injuries was his, so he only could collect damages.

In this state, and many others, a wife cannot testify against her

husband: the flagrant injustice of such a law was demonstrated only a few years ago in Michigan in the case of a father who had been convicted of a criminal assault upon the person of his nine year old daughter. The Supreme Court ordered his discharge because the complaint was made by the wife, and mother of the child who had been allowed to testify without her husband's consent!

Many other unjust laws and illustrations might be cited under this head but we forbear and turn to the relation of Mother and child under the law. "If you have tears prepare to shed them now." Legislation on this point has been based on the extraordinary assumption that by the law of nature and the law of God, the father is the sole guardian of the child. Even so great a legal authority as Blackstone declared that "A Mother, as such, is entitled to no power, but only to reverence and respect". Section 197 of the Civil Code of California reads: "The father of a legitimate minor child is entitled to its custody and services." Section 200 reads: "The mother of an illegitimate minor child is entitled to its custody and services".

7 In case of separation of husband and wife the husband is entitled to the custody of the children. The law justifies the father in reclaiming his children even by the harshest means as illustrated by this instance in Connecticut, where a wife, separated from her husband because of his ill treatment, kept her child - a nurseling of eight months. The husband broke in to the house where the mother was, seized the infant from her breast and carried it away in an open carriage in inclement weather! but the Court decided the father had a right to do so!

Section 196 of the Civil Code of California reads: If the support and education which the father of a legitimate child is able to give are inadequate the mother must assist him to the extent of her ability,

and this in the face of the fact that the father alone is entitled to its custody and services!

To illustrate the dire extremity to which honorable wives and Mothers have been driven by these unrighteous laws still on the statute books of most of our states, there is the following actual occurrence. A mother to prevent the court giving her infant child to her husband, who had sued for a divorce in a fit of rage, went before that court and perjured her virtue and her oath. She swore her husband was not the father of her child, driven to this awful alternative by the law of her country. She kept her baby, though she had perforce sacrificed her good name, to her mother love. Judge her not harshly; man, in the laws he had made for his own protection, had left her no choice; she had done what she could.

But what a sacrilege upon Motherhood are such laws! Laws totally at variance with the laws of the Creator; a hen may hover her brood; a tigress may own her whelps but the Mothers of children, born in wedlock, have no legal right or title to them.

"The truth is ", wrote Tolstoi, "we are in the midst of such terrible errors on the subject of woman and her veritable rights, that it is frightful to think of." And yet it has been held that woman's rights are what she makes them! In the state of Massachusetts women petitioned their Legislature literally on their knees, every year for over fifty years for an equal right to their own children before they obtained it, only ten years ago.

Right here I would refer to the most significant fact before the world today - the bill before the Storting of Norway introduced by Mr. Castberg who in the last cabinet filled the post of Minister of Justice - a bill to legitimize illegitimate children! If this law

is passed the father of an illegitimate child will be required to pay for the support of the mother for three months previous and for six weeks after childbirth; to settle all the expenses thereof and to maintain the child till the age of sixteen, and whether he acknowledges his parentage or not, if it can be proved, the child will have the full rights of legitimate offspring!

In Norway women have the full franchise. And yet it has been claimed by a recent exponent of the Antis that woman by her indirect influence can obtain more than she could ever compel by vote.

When we turn now to the laws bearing on the married woman's property rights we find them in most of the states based on the "all sufficiency of man's rights".- In over half the states of the union it is within the husband's power to repudiate any bargain, sale or gift made by the wife as of no legal force. Even in the States where a wife has a right to her separate property, if she wished to retain it she must bear in mind the cardinal principle, that she must not have any direct business relations with her husband. To quote a leading attorney of the Massachusetts bar: "He is the one person in the world whom she cannot legally trust. He is the only person whom the law allows, to swindle her with impunity, no matter how solemn his promises, they are not legally binding upon him. If a woman lend her husband money and takes his promissory note therefore that note is absolutely void. In this state the community property is under the exclusive control of the husband. In over one half the United States not one dollar of the money a wife may earn can she call her own. Truly these precious law givers meant to fulfill the prophecy of old, "that from her that hath not, shall be taken away even that she hath".

The husband's control over the person of his wife is further

secured by her legal inability to become a party to a contract. The learned Professor of Jurisprudence in Cambridge University a few years ago, said in extenuation of this law: "It is not an imputation on the wife's experience or strength of mind, but is wholly grounded on the assumption that she has not sufficient command of her purse or of her future actions"! As though that interpretation lessened her degradation; the person possessing control neither of her earnings nor her actions is in a condition of slavery regardless of the diction of law whereby it is represented! In fact it was John Stuart Mill who declared after the emancipation Proclamation "that the only class of slaves remaining on earth were married women". In no state of the Union can a wife if she die first, bequeath to her children any part of her earnings after marriage.

Here in California if the wife's earnings are sufficient for her support, and the husband allow her to apply them for that purpose, his refusal to contribute one cent toward household expenses is not wilful neglect, because - now mark the profound logic of these law makers - if she earns the money of which he has the control, and he does not prevent her from using the same it is in law, the same as though he supplied it.

A woman anxious to know just what her legal rights as a wife ~~here~~ consulted a lawyer and was told: "Well Madam you have a right to comfortable food, a fire to keep you warm, and two calico dresses a year; these are your legal rights, all beyond are gifts from your husband.

Any system that should so place a man arrived at the full maturity of his mental and physical powers, and should bind him moreover, to

hard labor for a mere maintenance would be reckoned a monstrous tyranny.

Since the time of Aristotle the control of property has been recognized as the basis of social and responsible conditions, and the great German jurists teach that ownership increases both physical and moral capacity. Thus in depriving her of the ownership and control of her own person and earnings, the state has denied to women the chief source of all real developement and education - in taking from her the sense of personal responsibility. Add to this the tendency in human nature to covert custom into right which often makes those facts appear just and equitable which are unjust and despicable and we have some explanation possibly for the apathy and indifference of the majority of women on this vital question of their personal and inalienable rights. With our poet Wordsworth we must deplore the fact that

"Custom hangs upon us with a weight,
Heavy as frost and deep almost as life."

Shall we still cling to the absurd theory that every woman is legally and politically represented by her husband and hence has an adequate guarantee of justice, in the face of the fact that though she has always been so represented, our entire system of laws in regard to women is so utterly wrong that Lord Brougham, the great English jurist, declared it useless to attempt to amend it - "there must be a total reconstruction" he said, "before a woman can have any justice". Of course we are told the law presumes the husband to be kind, but what right has the law to presume at all on the subject? What right has the law to entrust the interest and happiness of one being into the hands of another?

"There is no case on record", says Thomas Buckle in his history

of civilization, "Of any class possessing power without abusing it, these lawss of all nations oppress and degrade women". Legislation is always in favor of the legislating class. There are many beautiful theories about the oneness of man and wife, their common interests etc but as yet they have not entered into the conceptions of law: and it is utter folly to maintain that women are not a class apart from men, so long as there is any difference in the code of laws for men and women; so long as there are discriminations in the customs of society giving advantages to men over women, and so long as in our states constitutions, women alone are classed with lunatics, idiots, paupers and felons!

Therefore woman today all over the world is asking for the means of protecting herself and her children by the same instrumentality which man considers so essential to his freedom and security - the right of Suffrage. The ballot box is the focus of all other rights, it is the pivot upon which all others hang. If once possessed of the right to self representation she will see to it that the laws shall be just and protect her person and her property, as is evidenced in the states where she now has the ballot. Until she has political rights she is not secure in any she may possess. One legislature may alter some oppressive law, give her some right, and the next legislature may take it away.

There yet remains a phase of legislation which even more forcibly demonstrates that a government carried on by one sex alone, must of necessity be one-sided and defective, and to which reference must be made if we would complete our survey of women under the law. "It is only when wrongs find a tongue that they become righted". The darkest page in the history of our time will be the laws relating to our

daughters, and while these laws stain our statute books we dare not ignore them.

It has been said that the true function of government is the protection of its citizens, - especially of the weak against the strong. It is generally conceded that there should be an age of majority before which a child is not recognized as capable of deciding or acting for himself, and is entitled, on account of such disability, to legal protection. In our state before eighteen years of age a girl is incapable of controlling property or making a legal contract for the reason that she is held incapable of fully realizing consequence or resisting influences. Neither by her own consent only, can she make a legal marriage. But be it forever to the shame of our law makers that they have seen fit to bestow upon the minor girl child but one legal right - that of consenting to her own moral ruin. It is certainly as illogical as cruel that at an age when a girl's consent is not held sufficient for legal marriage nor to dispose of property it should be held sufficient to justify her destruction, body and soul!

To grant the honor of our children at least as much protection as is accorded their property seems such simple justice that to demand it should be to obtain it; and yet in the face of unnumbered petitions and the untiring efforts of the mothers of this nation, the law withdraws its protection from the virtue of their daughters at the tender age of fourteen years in over half the states of the Union and in many states at the shockingly low age of from ten to twelve years while Delaware retained on its statute books until 1889, the infamous law which placed the age of consent at the incredible age of seven years. There can be no excuse for such (iniquitous) laws: they are a disgrace to America's boasted civilization, a menace to the peace of

our homes, and the safety of our children.

Surely American fatherhood has not fallen so low as to be willing to have laws stand upon our statute books that protect libertines and make of our little children their legitimate prey? Laws under which it is not held a crime to morally destroy a child of ten years, (or even sixteen, as in our own state) because under those laws she is held responsible for her own undoing, held to possess sufficient judgement to thwart the wiles of men shielded by the legislation of their own sex, in their iniquity, yet the same child may not make an honorable marriage because of immaturity of understanding!

These cruel inhuman laws are the heritage of a barbarous past it is true, but it is equally and painfully true that at nearly every session of the different legislatures, attempts are made to lower the age of propection for girls and only through the unceasing watchfulness og good men and women is this prevented. Was ever travesty on justice greater or has law ever touched a lower depth of degradation? The mainsprings of National life are threatened by such unholy laws - for decay is at the heart of a nation that degrades and tramples upon its womanhood.

A few years ago one of the criminal courts of New York City, two persons were brought before the judge charged with immoral conduct- one of the man at the age of thirty-five years of age, the other a girl child of fifteen.

The judge dismissed the man with a fine of five dollars while he sentenced the child to the penitentiary for three months/ To be sure the evidence showed the girl to be old in crime; but if she were old in crime at fifteen years of age, what could be said of the man at thirty-five?

If in view of laws like these there be women in this state so lost to self respect, to all that is virtuous, noble and true as to refuse to raise their voices in protest against such degrading tyranny, we can only say of that system which has thus robbed womanhood of all its glory and greatness what the immortal Channing said of slavery; "If", said he, "It be true that the slaves are contented and happy - if there is a system that can blot out all love of freedom from the soul of man, destroy every trace of his Divinity, make him happy in a condition so low and benighted and hopeless, I ask for no stronger argument against such slavery as ours".

In her present legal and political position the woman stultifies her conscience who declares she has all the rights she wants; all the rights she wants while these infamous laws relating to wives, to mothers and to daughters exist; laws which strike at the root of the noble principle for which our forefathers fought and died - "equal rights for all, special privileges to none" - laws which place not only the person of the wife, but her lifelong earnings at the disposal of the husband; laws which leave our daughters at the mercy of the moral leper with whose fiendish plottings we, as disfranchised mothers are powerless to cope! All the rights she wants while every principle of republican government is violated in her present position, while denied a voice in the laws which are to regulate her relation to her own children and to make the environment and conditions which are to surround and influence them outside the home, while the inebriate and profligate, the sweepings of European prisons and almshouses, the tramp and male Indian may share in the sovereignty of the state and help to elect their representatives to make laws which shall govern us and our children, and yet we mothers have no voice and our opinion

is not counted? All the rights she wants - God forbid!

In a feudal and military age man was of necessity the protector of woman, who, in her ignorance and weakness was practically defenseless. Man proceeded to represent her as a parent would a child not yet arrived at the years of discretion, and, very naturally, arrogated to himself all authority. But times have greatly changed; in passing from the feudal to our present industrial stage conditions in the social and civil world demand a re-adjustment.

Whether unhappily or otherwise, and without here entering into a consideration of the causes that have brought it about, we must face the fact that woman today is in the business world, and that here in the United States over five million women are obliged to earn their own living. Law after law is passed closely affecting the interests of working women without their having any means of making their wishes effective. In reply to this it is asked: "Are not our legislators husbands, brothers and fathers, and therefore are not the interests of women safe in their hands?" This argument would have more force if it were not so obvious that every legal oppression under which women ever ~~suffered~~ was sanctioned and enforced by these same husbands brothers and fathers!

Per haps the cruellest wrong inflicted upon mothers is the fact of their having no voice in determining conditions outside the home! They would teach their boys to be pure and temperate and honorable, but from the moment a boy or girl crosses the threshold of the home and environment is entered which the disfranchised mother is unable to affect; there men perpetuate institutions which undermine the influence of mothers and corrupt the morals of their sons. The boy finds

in high places men violating all the principles his mother has taught him to honor, and is virtually taught to regard her as an inferior and that it is unmanly to follow her instruction!

We see on every hand the disastrous results of basing the principle relation in life - the relation of the sexes - upon an injustice. Our fathers have not themselves entered into the lists equipped for freedom; they do not perceive that this subjugating of one half the people, which has gone on for ages, had dulled their own apprehension of the meaning of liberty. If one half the people do not believe in republican institutions and in the right of self government, and feel no responsibility or interest in public affairs, an indifference will gradually creep over the other half.

Whatever retards the developement of women retards the developement of the race, for she is the mother of the race, and every stain of littleness and inferiority cast upon her by our institutions will soil the offspring she sends into the world. So surely is Tennyson right -

The woman's cause is man's, they rise or sink
Together, dwarfed or godlike, bond or free;
If she be small slight-natured miserable,
How shall man grow? -

Then apart from all considerations of abstract right or justice, may not woman reasonably ask the extension of the suffrage as a means for her own development; for the deepening and strengthening of her own life? And how can she better make herself more wise, more just and more earnest than through the effort to bring a nobler wisdom, a higher justice and a greater earnestness into all civic, state and national affairs; - that she may - in short - fit herself to bear a nation of free men!

Whether or not women are equal to men there is no question that

they are different, and therein lies their strongest claim to equal representation. Each sees life from a different standpoint, and both are needed for the rounder expression of humanity; never till woman stands side by side with man, his equal in the eye of the law will the high destiny of the race be accomplished.

No immediate regeneration of humanity is to be expected from giving the ballot to woman; by practice only can any one come into the fulness of political knowledge or any other; we too, must learn by failure and mistake - there is no other way. But it will be a step toward freedom, and we are asking it, too, because we believe that every human being is endowed with certain inalienable rights, such as life, liberty, and the pursuit of happiness, and as a consequence, a right to the use of all means necessary to secure these results.

A citizen cannot be said to have the right to life who may be deprived of it for the violation of laws to which she has never consented, who is denied the right of trial by a jury of her peers, who has no voice in the election of judges who are to decide her fate! A citizen cannot be said to have a right to liberty when the custody of her person belongs to another! when she has no right to the wages she earns, no political rights, and yet can be taxed without representation.

A citizen cannot be said to have the right to happiness when denied the right to person, property and children, and when the code of laws under which she is compelled to live is far more unjust than that which our forefathers repudiated at the mouth of the cannon over a century ago!

When men and women, enjoying equal advantages in all respects, untrammelled by outgrown laws, and customs, may carry the life of the home into the larger circle of the commonwealth then may we enter

upon a nobler civilization founded in very truth upon the great
Republican principles of Liberty, Equality, and Fraternity.

LOUISE CARY SMITH.