CHAPTER XX.

THE RIGHTS OF WOMEN.

§ 332. When in certain preceding chapters the fundamental principle of justice was discussed, a relevant question which might have been raised, I decided to postpone, because I thought discussion of it would appropriately introduce the subject-matter of this chapter.

"Why," it might have been asked, "should not men have rights proportionate to their faculties? Why should not the sphere of action of the superior individual be greater than that of the inferior individual? Surely, as a big man occupies more space than a little man, so too does he need larger supplies of the necessaries of life; and so, too, does he need greater scope for the use of his powers. Hence it is unreasonable that the activities of great and small, strong and weak, high and low, should be severally restrained within limits too narrow for these and too wide for those."

The first reply is that the metaphors which we are obliged to use are misleading if interpreted literally. Though, as above, and as in previous chapters, men's equal liberties are figured as spaces surrounding each, which mutually limit one another, yet they cannot be truly represented in so simple a manner. The inferior man, who claims as great a right to bodily integrity as the
superior man, does not by doing this trespass on the bodily integrity of the superior man. If he asserts like freedom with him to move about and to work, he does not thereby prevent him from moving about and working. And if he retains as his own whatever his activities have gained for him, he in no degree prevents the superior man from retaining the produce of his activities, which, by implication, are greater in amount.

The second reply is that denying to inferior faculty a sphere of action equal to that which superior faculty has, is to add an artificial hardship to a natural hardship. To be born with a dwarfed or deformed body, or imperfect senses, or a feeble constitution, or a low intelligence, or ill-balanced emotions, is in itself a pitiable fate. Could we charge Nature with injustice, we might fitly say it is unjust that some should have natural endowments so much lower than others have, and that they should thus be in large measure incapacitated for the battle of life. And if so, what shall we say to the proposal that, being already disadvantaged by having smaller powers, they should be further disadvantaged by having narrower spheres for the exercise of those powers? Sympathy might contrariwise urge that, by way of compensation for inherited disabilities, they should have extended opportunities. But, evidently, the least that can be done is to allow them as much freedom as others to make the best of themselves.

A third reply is that, were it equitable to make men's liberties proportionate to their abilities, it would be impracticable; since we have no means by which either the one or the other can be measured. In the great mass of cases there is no difficulty in carrying out the principle of equality. If, (previous aggression being supposed absent,) A kills B, or knocks him down, or locks him up, it is clear that the liberties of action assumed by the two are unlike; or if C, having bought goods of D, does not pay the price agreed upon, it is clear
that the contract having been fulfilled on one side and
not on the other, the degrees of freedom used are not the
same. But if liberties are to be proportioned to abilities,
then the implication is that the relative amounts of each
faculty, bodily and mental, must be ascertained; and the
further implication is that the several kinds of free-
dom needed must be meted out. Neither of these
things can be done; and therefore, apart from other
reasons, the regard for practicability would require us
to treat men's freedoms as equal, irrespective of their en-
dowments.

§ 333. With change of terms these arguments are ap-
plicable to the relation between the rights of men and the
rights of women. This is not the place for comparing in
detail the capacities of men and women. It suffices for
present purposes to recognize the unquestionable fact that
some women are physically stronger than some men,
and that some women have higher mental endowments
than some men—higher, indeed, than the great ma-
Jority of men. Hence it results, as above, that were
liberties to be adjusted to abilities, the adjustment,
even could we make it, would have to be made irre-
spective of sex.

The difficulty reappears under another form, if we set
out with the proposition that just as, disregarding excep-
tions, the average physical powers of women are less than
the average physical powers of men, so too are their average
mental powers. For we could not conform our plans to
this truth: it would be impossible to ascertain the ratio
between the two averages; and it would be impossible
rightly to proportion the spheres of activity to them.

But, as above argued, generosity prompting equalization
would direct that were any difference to be made it ought
to be that, by way of compensation, smaller faculties should
have greater facilities. Generosity aside however, justice
demands the women, if they are not artificially advantaged, must not, at any rate, be artificially disadvantaged.

Hence, if men and women are severally regarded as independent members of a society, each one of whom has to do the best for himself or herself, it results that no restraints can equitably be placed upon women in respect of the occupations, professions, or other careers which they may wish to adopt. They must have like freedom to prepare themselves, and like freedom to profit by such information and skill as they acquire.

But more involved questions arise when we take into account the relations of women to men in marriage, and the relations of women to men in the State.

§ 334. Of those equal liberties with men which women should have before marriage, we must say that in equity they retain after marriage, all those which are not necessarily interfered with by the marital relation—the rights to physical integrity, the rights to ownership of property earned and property given or bequeathed, the rights to free belief and free speech, &c. Their claims can properly be qualified only in so far as they are traversed by the understood or expressed terms of the contract voluntarily entered into; and as these terms vary in different places and times, the resulting qualifications must vary. Here, in default of definite measures, we must be content with approximations.

In respect of property, for instance, it may be reasonably held that where the husband is exclusively responsible for maintenance of the family, property which would otherwise belong to the wife may equitably be assigned to him—the use, at least, if not the possession; since, if not, it becomes possible for the wife to use her property or its proceeds for her personal benefit only, and refuse to contribute towards the expenses of the joint household. Only if she is equally responsible with him for family maintenance, does it seem right that she should have equally unqualified ownership of
THE RIGHTS OF WOMEN.

property. Yet, on the other hand, we cannot say that the responsibilities must be entirely reciprocal. For though, rights of ownership being supposed equal, it would at first sight appear that the one is as much bound as the other to maintain the two and their children; yet this is negatived by the existence on the one side of onerous functions which do not exist on the other, and which largely incapacitate for active life. Nothing more than a compromise, varying according to the circumstances, seems here possible. The discharge of domestic and maternal duties by the wife may ordinarily be held a fair equivalent for the earning of an income by the husband.

Respecting powers of control over one another's actions and over the household, the conclusions to be drawn are still more indefinite. The relative positions of the two as contributors of monies and services have to be taken into account, as well as their respective natures; and these factors in the problem are variable. When there arise conflicting wills of which both cannot be fulfilled, but one of which must issue in action, the law of equal freedom cannot, in each particular case, be conformed to; but can be conformed to only in the average of cases. Whether it should be conformed to in the average of cases must depend on circumstances. We may, however, say that since, speaking generally, man is more judicially-minded than woman, the balance of authority should incline to the side of the husband; especially as he usually provides the means which make possible the fulfilment of the will of either or the wills of both. But in respect of this relation reasoning goes for little: the characters of those concerned determine the form it takes. The only effect which ethical considerations are likely to have is that of moderating the use of such supremacy as eventually arises.

The remaining question, equally involved or more involved, concerns the possession and management of children. Decisions about management have to be made
daily; and decisions about possession must be made in all cases of separation. What are the relative claims of husband and wife in such cases? On the one hand, it may be said of the direct physical claims, otherwise equal, that that of the mother is rendered far greater by the continued nutrition before and after birth, than that of the father. On the other hand, it may be urged on the part of the father, that in the normal order the food by which the mother has been supported and the nutrition of the infant made possible, has been provided by his labour. Whether this counter-claim be or be not equivalent, it must be admitted that the claim of the mother cannot well be less than that of the father. Of the compromise respecting management which justice thus appears to dictate, we may perhaps reasonably say that the power of the mother may fitly predominate during the earlier part of a child’s life, and that of the father during the later part. The maternal nature is better adjusted to the needs of infancy and early childhood than the paternal nature; while for fitting children, and especially boys, for the battle of life, the father, who has had most experience of it, may be considered the best guide. But it seems alike inequitable and inexpedient that the power of either should at any time be exercised to the exclusion of the power of the other. Of the respective claims to possession where separation takes place, some guidance is again furnished by consideration of children’s welfare; an equal division, where it is possible, being so made that the younger remain with the mother and the elder go with the father. Evidently, however, nothing is here possible but compromise based on consideration of the special circumstances.

Concerning the claims of women, as domestically associated with men, I may add that here in England, and still more in America, the need for urging them is not pressing. In some cases, indeed, there is a converse need. But there are other civilized societies in which
their claims are very inadequately recognized: instance Germany.*

§ 335. As in other cases, let us look now at the stages through which usage and law have grown into conformity with ethics.

Save among the few primitive peoples who do not preach the virtues called Christian but merely practise them—save among those absolutely peaceful tribes here and there found who, while admirable in their general conduct, treat their women with equity as well as kindness, uncivilized tribes at large have no more conception of the rights of women than of the rights of brutes. Such regard for women's claims as enables mothers to survive and rear offspring, of course exists; since tribes in which it is less than this disappear. But, frequently, the regard is not greater than is needful to prevent extinction.

When we read of a Fijian that he might kill and eat his wife if he pleased; of the Fuegians and wilder Australians that they sacrificed their old women for food; and of the many peoples among whom women are killed to accompany their dead husbands to the other world; we see that they are commonly denied even the first of all rights. The facts that in these low stages women, leading the lives of slaves, are also sold as slaves, and, when married, are either stolen or bought, prove that no liberties are recognized as belonging to them. And on remembering that where wives are habitually considered as property, the implication is that independent ownership of property by them can scarcely exist, we are shown that this further fundamental right is at the outset but very vaguely recognized. Though

* With other reasons prompting this remark, is joined the remembrance of a conversation between two Germans residing in England, in which, with contemptuous laughter, they were describing how they had often seen, on a Sunday or other holiday, an English artisan relieving his wife by carrying the child they had with them. Their sneers produced in me a feeling of shame—but not for the artisan.
the matter is in many cases complicated and qualified by
the system of descent in the female line, it is certain that,
speaking generally, in rude societies where among men ag-
gression is restrained only by fear of vengeance, the claims
of women are habitually disregarded.

To trace up in this place the rising status of women is
out of the question. Passing over those ancient societies
in which descent in the female line gave to women a rela-
tively high position, as it did among the Egyptians, it will
sufficient to note that in societies which have arisen by ag-
gregation of patriarchal groups, the rights of women, at
first scarcely more recognized than among savages, have,
during these two thousand years, gradually established
themselves. Limiting our attention to the Aryans who
overspread Europe, we see that save where, as indicated by
Tacitus, women, by sharing in the dangers of war, gained
a better position (a connexion of facts which we find among
various peoples), they were absolutely subordinated. The
primitive Germans bought their wives; and husbands might
sell and even kill them. In the early Teutonic society, as
in the early Roman society, there was perpetual tutelage
of women, and consequent incapacity for independent owner-
ship of property. A like state of things existed here in
the old English period. Brides were purchased: their
wills counting for nothing in the bargains. Mitigations
gradually came. Among the Romans the requirement that
a bride should be transferred to the bridegroom by legal
conveyance, ceased to be observed. The life and death
power came to an end: though sometimes reappearing, as
when the early Angevin ruler, Fulc the Black, burnt his
wife. Generalizing the facts we see that as life became
less exclusively militant, the subjection of women to men
became less extreme. How that decline of the system of
status and rise of the system of contract, which characterizes
industrialism, ameliorated, in early days, the position of
women, is curiously shown by the occurrence of their
signatures in the documents of guilds, while yet their position outside of the guilds remained much as before. This connexion has continued to be a general one. Both in England and in America, where the industrial type of organization is most developed, the legal status of women is higher than on the continent, where militancy is more pronounced. Add to which that among ourselves, along with the modern growth of free institutions characterizing predominant industrialism, the positions of women have been with increasing rapidity approximated to those of men.

Here again, then, ethical deductions harmonize with historical inductions. As in preceding chapters we saw that each of those corollaries from the law of equal freedom which we call a right, has been better established as fast as a higher social life has been reached; so here, we see that the general body of such rights, originally denied entirely to women, has, in the course of this same progress, been acquired by them.

§ 336. There has still to be considered from the ethical point of view, the political position of women as compared with the political position of men; but until the last of these has been dealt with, we cannot in a complete way deal with the first. When, presently, we enter on the consideration of what are commonly called "political rights," we shall find need for changing, in essential ways, the current conceptions of them; and until this has been done the political rights of women cannot be adequately treated of. There is, however, one aspect of the matter which we may deal with now no less conveniently than hereafter.

Are the political rights of women the same as those of men? The assumption that they are the same is now widely made. Along with that identity of rights above set forth as arising from the human nature common to the two sexes, there is supposed to go an identity of rights in respect to the direction of public affairs. At first sight
it seems that the two properly go together; but consideration shows that this is not so. Citizenship does not include only the giving of votes, joined now and again with the fulfilment of representative functions. It includes also certain serious responsibilities. But if so, there cannot be equality of citizenship unless along with the share of good there goes the share of evil. To call that equality of citizenship under which some have their powers gratis, while others pay for their powers by undertaking risks, is absurd. Now men, whatever political powers they may in any case possess, are at the same time severally liable to the loss of liberty, to the privation, and occasionally to the death, consequent on having to defend the country; and if women, along with the same political powers, have not the same liabilities, their position is not one of equality but one of supremacy.

Unless, therefore, women furnish contingents to the army and navy such as men furnish, it is manifest that, ethically considered, the question of the equal "political rights," so-called, of women, cannot be entertained until there is reached a state of permanent peace. Then only will it be possible (whether desirable or not) to make the political positions of men and women the same.

It should be added that of course this reason does not negative the claims of women to equal shares in local governments and administrations. If it is contended that these should be withheld, it must be for reasons of other kinds.