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MYRA BRADWELL: ON DEFYING THE CREATOR AND BECOMING A LAWYER*

JANE M. FRIEDMAN**

This lady, in pondering the additions made to the Constitution of the United States under the 13th, 14th and 15th Amendments, came to the conclusion . . . [which was] interesting in showing the effect produced by legal study on the female mind. Mrs. Bradwell, having applied to the Supreme Court of Illinois for a license as a practicing lawyer, was refused her petition, on the ground that . . . only men could be lawyers. She immediately appealed her case to the Supreme Court at Washington. . . . It is a rather ludicrous illustration of the character of the woman movement, that a prominent female agitator should have seized the opportunity to prove the fitness of her sex for professional life by taking for her first important case one which she must have known the court would decide against her, unless she either supposed that they were likely to be influenced by personal solicitation and clamor, or else that they were all gone crazy.

—*The Nation* (April 1873)¹

Her primary goal was to be helpful to her husband at his law office. But seven men decreed that she could not. Because those seven were all members of the Illinois Supreme Court, Myra Bradwell was officially barred from the bar.

During the latter part of the nineteenth century, there were two avenues of entry into the legal profession. One could either take a formal course of study at a law school or serve as an apprentice at the office of a practicing lawyer. Many prospective lawyers chose the latter alternative. Among them was Myra Bradwell.

Myra's training began informally in 1852, the year of her marriage to James Bradwell, a struggling young law student who was financing his legal apprenticeship by working as a manual laborer. Given the absorptive qualities

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1. *The Supreme Court Righting Itself*, 16 *THE NATION* 280 (Apr. 24, 1873) (unsigned article).

of Myra's mind, it is probable that much of her early learning took place through the process of osmosis. A few years later, however, after James had been admitted to the practice of law in both Tennessee and Illinois, Myra began a more intensive apprenticeship with her husband. It was then that she became "determined to read [law] in good earnest" so that she and James could "work side by side and think side by side."² Her studies, however, were interrupted by several events: the birth of four children (two of whom died in early childhood) and countless civic activities organized all over the North to aid the sick and wounded soldiers of the Civil War.

Finally, on August 2, 1869, Myra Bradwell at the age of thirty-eight, amid predictions that she would "wreck [her] family and break [her] hearthstone to smithereens,"³ passed the Illinois bar exam with high honors and made a formal application to practice law in Illinois. That she chose this moment to do so was probably due to a confluence of three factors.

First, her two surviving children, aged thirteen and eleven no longer needed constant attention. Second, her husband had decided not to run for reelection as judge. He was returning to a busy practice and was in need of her assistance in doing research and preparing briefs. Third, prior to the summer of 1869, there was little hope that a woman would be permitted to practice law anywhere in the United States. However, on June 15 of that year, six weeks before Bradwell passed the bar exam in Illinois, another midwestern state, Iowa, quietly opened the gates of the legal profession to a young married woman, Arabella Mansfield. Mansfield was a teacher of English and history who had no intention of practicing law and who had no subsequent contact with the legal profession. Her admission to the bar was simply part of a plan devised by an Iowa judge, Francis Springer, who was dedicated to promoting the equality of women.⁴

While Mansfield's admission to the Iowa bar met with some adverse reaction in Canada,⁵ it went virtually unnoticed in the United States. Thus, Myra might have reasoned, if there were no gender-based obstacles to Mansfield's admission in Iowa, there should be none to Bradwell's in Illinois.

2. Interview with Myra Bradwell, CHI. TRIB., May 12, 1889, at 26 (col. 1-2) [hereinafter Bradwell Interview]. See generally Herman Kogan, *Myra Bradwell: Crusader at Law*, in 3 CHICAGO HISTORY 132-40 (1974-75).

3. Bradwell Interview, *supra* note 2, at 26.

4. Therefore, Myra Bradwell was technically not the first American woman to pass a state bar examination. That honor belonged to Arabella Mansfield. Mansfield, however, never practiced law, nor was she ever involved in the legal profession in any way. NOTABLE AMERICAN WOMEN 1607-1950, A BIOGRAPHICAL DICTIONARY (Edward T James et al. eds., 1971) (entry on Arabella Mansfield).

5. See, e.g., Anonymous Letter to *Canada Law Journal*, signed only "B.B.," reprinted in 2 CHI. LEGAL NEWS 100 (Dec. 25, 1869) [hereinafter Anonymous Letter].

Myra, however, must have realized that others did not see it that way, for her application was accompanied not only by a document certifying that she had passed the bar examination, but also by a brief in which she stated: "The only question involved in this case is—Does being a woman disqualify [me] under the law of Illinois from receiving a license to practice law?"⁶

The Illinois Supreme Court promptly denied her petition, a decision that probably came as no surprise to either Myra or other interested observers. What jolted many were the grounds upon which the court's denial rested. Myra Bradwell was rejected from the legal profession *not* on the grounds that she was a woman, but because she was a *married* woman. Exactly two months after her stellar performance on the bar examination, she received the following communication from the reporter for the Illinois Supreme Court:

Madam: The court instructs me to inform you that they are compelled to deny your application for a license to practice as an attorney-at-law in the courts of this State, upon the ground that you would not be bound by the [contractual] obligations necessary to be assumed where the relation of attorney and client shall exist, by reason of the **DISABILITY IMPOSED BY YOUR MARRIED CONDITION**—it being assumed that you are a married woman. . . . Until such **DISABILITY** shall be removed by legislation, the court regards itself as powerless to grant your application.⁷

The court's "marital disability" rationale was probably, in part, a pretext—a subterfuge by which the court could mask its antipathy tinged with anxiety over the notion of allowing any woman to mix and compete with the men of the bar. It is unclear whether this fear was premised on the belief that a female attorney would constantly wilt and thereby lose her cases by virtual default; or on the contrary, that she would win her cases either by verbal castration of her opponents or by unconscious seduction of the judges and all-male juries. Perhaps those two fears were undifferentiated in the minds of most; but the latter was explicitly expressed by contemporary male commentators. For example, one such man, writing in 1869, complained:

But really, it is hardly fair to the rest of the profession . . . to permit a charming fair one to pit herself against a learned brother in argument before a jury of twelve men. The latter [i.e., the male attorney]

6. Bradwell's application to the Illinois Supreme Court for a license to practice law, *reprinted* in 2 CHI. LEGAL NEWS 145 (Feb. 5, 1860).

7. Communication from N.L. Freeman, Reporter for the Illinois Supreme Court, to Myra Bradwell (Oct. 1869), *reprinted* in 2 CHI. LEGAL NEWS 145 (Feb. 5, 1870).

would simply have no chance at all.⁸

On the other hand, the Illinois court's ruling that Myra could not practice law because of the "disability imposed by [her] married condition" was grounded at least in part on an ancient precedent, still somewhat viable in the nineteenth century—the law of "coverture." Coverture was simply a principle under which:

By marriage the husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband; under whose wing, protection, and *cover*, she performs everything; . . . her condition during her marriage is called *coverture*. . . . And therefore all deeds executed, and acts done, by her, during her *coverture*, are void;⁹

Thus, the doctrine of coverture, if still alive in Illinois in 1869, could have been a valid basis for the court's refusal to permit Myra to practice law. If that principle were applicable, Myra would not have been legally able to enter into contracts with or on behalf of her clients, a *sine qua non* for any legal practitioner.

Myra believed, however, that the principle of coverture was no longer viable; or, at the very least, that it had been so greatly whittled away by the courts that it no longer served as a bar to a woman's entry into the legal profession. She quickly filed a counterassault. In a detailed and scholarly brief, she cited countless Illinois statutes and cases under which married women's legal disabilities had been removed. In addition to statutory and judicial precedents, she included reports of recent admissions of women to both law schools and medical schools. She also cited the state of Iowa's granting a license to practice law to Arabella Mansfield; and she discussed the recent opening to women of other trades and occupations from which they had previously been barred.

She concluded her brief with the following exhortation:

This honorable court can send me from its bar and prevent me from practicing as an attorney, and it is of small consequence; but if in so doing, [you base your decision on] . . . the disability imposed by [my] married condition, you, in my judgment in striking *me* down, strike a blow at the right of every married woman in the great State of

8. Anonymous Letter, *supra* note 5, at 100.

9. 1 WILLIAM BLACKSTONE, COMMENTARIES *442-44. See also NORMA BASCH, IN THE EYES OF THE LAW (1982).

Illinois who is dependent on her labor for support, and say to her, you can not enter the smallest contract in relation to your earnings or separate property, that can be enforced against you in a court of law.¹⁰

The Illinois Supreme Court was not obligated to respond to Myra's arguments. It had already rejected her application once, and had communicated its rejection and its ostensible rationale to her. The high court could simply have remained silent, or it could have formally ratified its previous denial by the use of just four words: "petition for reconsideration denied."

The Illinois Supreme Court must have known that it had been bested because it quickly issued a second opinion, once again unanimously denying her application for admission.¹¹ This time, however, the court gave a different reason: the obstacle to Myra Bradwell's admission to the bar was not that she was a *married* woman, but simply that she was a woman.

The court began by noting that its previous holding, which had been based on married women's disabilities, had been "earnestly and ably" contested by Myra. Moreover, "of the qualifications of the applicant we have no doubt. . . ." But, explained the court,

[A]fter further consultation in regard to this application, we find ourselves constrained to hold that the *sex of the applicant*, independently of coverture, is, as our law now stands, a sufficient reason for not granting this license.¹²

The court then buttressed its decision with a four-pronged rationale. First, the Illinois legislature had been silent on the issue of whether women could enter the profession. Therefore, concluded the court, the legislature must have intended that women should not be permitted to practice law.

The second reason given by the court was one which lawyers often call the "opening of the floodgates." The court reasoned that if it opened the doors of the legal profession to women then "every civil office in this state may be filled by women—that it . . . [would follow] that women should be made governors and sheriffs." The court stood aghast at its own speculation.

Third, the court was concerned that the "hot strifes of the bar" and the

10. Bradwell's "additional brief to the Illinois Supreme Court," *reprinted in* 2 CHI. LEGAL NEWS 145 (Feb. 5, 1870).

11. *In re Bradwell*, 55 Ill. 535, 538-42 (1869).

12. *Id.* at 537 (emphasis added).

“momentous verdicts, the prizes of struggle [would] tend to destroy the deference and delicacy with which it is a matter of pride of our ruder sex to treat [women]. . . .”

Finally, echoing the anxieties of contemporary commentators, the court voiced concern over “what effect the presence of women as barristers in our courts would have upon the administration of justice.”

Myra’s response to the court’s opinion was swift and curt:

What the decision of the Supreme Court of the United States in the Dred Scott case was to the rights of the negroes as citizens of the U.S., this decision is to the political rights of women in Illinois—*annihilation*.¹³ (Emphasis added)

Yet, Myra had the amazing ability to separate her professional and political goals from her relationships with the men who had attempted to “annihilate” those goals. For example, sitting on the Illinois Supreme Court, which had twice ruled unanimously against her, was Justice Sidney Breeze, a friend of Myra’s with whom she frequently corresponded and socialized.¹⁴ Even in the wake of Breeze’s adverse ruling in Myra’s case, their friendship remained unscathed. Moreover, ten years after the Illinois Supreme Court had decided her case, three of the justices who had ruled against her were still on that court and were seeking reelection. Myra endorsed all three of them. In an article in the *Chicago Legal News* (a newspaper that she published and edited)¹⁵ she stated: “There is not a single judge on the Supreme bench who ought not to be re-elected.”¹⁶

Perhaps Myra’s continuing friendship with Sidney Breeze and her subsequent endorsement of the other three justices were merely ploys and parts of a strategy to secure the good will of the court while she tenaciously maneuvered to secure legal rights for women and other legally handicapped persons.

Although Myra continued to have cordial relations with members of the highest court of Illinois, she did not hesitate to appeal that court’s decision to the

13. 2 CHI. LEGAL NEWS 146 (Feb. 5, 1870).

14. Correspondence by Justice Sidney Breeze and Myra Bradwell (on file in Chicago Historical Library).

15. See *infra* text accompanying notes 52-57. See also JANE M. FRIEDMAN, *AMERICA’S FIRST WOMAN LAWYER: THE BIOGRAPHY OF MYRA BRADWELL* 77-93 (1993) (ch. 5).

16. 11 CHI. LEGAL NEWS 259 (Apr. 26, 1879). The three justices were Pinkney H. Walder, John M. Scott, and Benjamin R. Sheldon.

United States Supreme Court, retaining as her attorney Senator Matthew H. Carpenter of Wisconsin, one of the country's ablest constitutional lawyers. Indeed, Justice Miller of the U.S. Supreme Court (who subsequently authored the majority opinion in Myra's case) had declared that Carpenter was the only person of his acquaintance whom he could honestly call a "man of genius."¹⁷ And the *Philadelphia Times* had exclaimed that "no genius so steady, no intellect so sustained" had appeared in American life since Hamilton and Jefferson.¹⁸

Matthew Carpenter was not only an outstanding constitutional lawyer, he was also a staunch advocate of equal rights for women. In 1870 he had publicly vowed to Elizabeth Cady Stanton that he would fight for women's suffrage in the Senate. Later, in 1874, he pleaded for the remission of a fine that had been slapped on Susan B. Anthony for her audacity in attempting to vote in the presidential election of 1872.¹⁹

In preparing and arguing Myra's case before the U.S. Supreme Court, Carpenter became intensely involved. Indeed, he seems to have made her cause his own, refusing to accept a fee or even to allow Myra to defray his out-of-pocket expenses.²⁰

As Carpenter began to prepare his case, he immediately realized that the greatest *political* obstacle to a favorable judicial decision was the widespread fear that if women were declared constitutionally entitled to practice law, it might follow, as night to day, that they were also constitutionally entitled to vote, even in the absence of a woman's suffrage amendment to the U.S. Constitution.

Carpenter realized that the specter of nationwide woman's suffrage was far more terrifying to the populace than was the threat of women being admitted to the bar. The prospect of women casting the ballot, which was both a symbol and an instrument of independence, was troublesome to every man who feared his wife's (sister's, daughter's, etc.) partial freedom from male control. That idea was terrifying to many nineteenth-century women as well. The prospect of women practicing law, however, was a direct threat to only a select few, the gentlemen of the bar and those few men whose wives or female relatives might wish to enter the profession.

17. CHARLES FAIRMAN, *MR. JUSTICE MILLER AND THE SUPREME COURT 1862-1890*, at 116 (1939).

18. EDWIN BRUCE THOMPSON, *MATTHEW HALE CARPENTER: WEBSTER OF THE WEST* 102 (1954).

19. *Id.* at 292 n.39.

20. Bradwell Interview, *supra* note 2, at 26.

Carpenter thus took great pains to distinguish Myra's constitutional right to practice law from the "establishment of the right of female suffrage, which, it is assumed, would overthrow Christianity, defeat the ends of modern civilization, and overturn the world."²¹ He argued with force that women had no constitutional right to vote unless and until a suffrage amendment was passed.²² This position probably caused him great discomfort, as he had always advocated the cause of woman suffrage. But his first duty was to his client, and he must have believed that the only road to victory was to persuade the Court that a decision favorable to Myra would not, in any way, serve as a precedent requiring the Court to hold that women also had the constitutional right to vote. Not surprisingly, Carpenter's position in Bradwell's case infuriated many suffragists, particularly Susan B. Anthony, who wrote indignantly to Myra:

Carpenter's argument was such a school boy pettifogging speech—wholly without a basic principle—but still the courts are so entirely controlled by prejudice and precedent we have nothing to hope from them but endorsement of dead men's actions.²³

Susan B. Anthony must have been as furious with Myra as she was with Myra's attorney. After all, it was Myra who had retained Carpenter. Moreover, Myra was both legally trained and politically astute. She obviously understood Carpenter's "school boy pettifogging speech" very well, yet she permitted him to argue in the United States Supreme Court that unless and until a suffrage amendment were passed, women had no constitutional right to vote.

Anthony's letter to Myra presaged a twenty-year relationship of

21. Carpenter's Brief in U.S. Supreme Court, *reprinted in* 4 CHI. LEGAL NEWS 108, 110 (Jan. 20, 1872) [hereinafter Carpenter Brief].

22. The gist of Carpenter's distinction was that the right to vote was covered by Section 2 of the Fourteenth Constitutional Amendment, which reduced the number of representatives apportioned to those states that denied blacks the right to vote. That provision contained three references to "male inhabitants" or "male citizens." By the framers' repetitious use of the word "male," deduced Carpenter, "the right of female suffrage is inferentially denied by the [constitutional] provision."

He continued by pointing out that Myra's claim—that the state could not constitutionally prohibit a woman from practicing the profession of her choice—was a derivation from a different portion of the Fourteenth Amendment, § 1. The pertinent part of that section provides: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." Since that provision, unlike the section relating to voting, did not mention "male" citizens, it was obvious (according to Carpenter) that females were not intended to be excluded from its coverage. Therefore, reasoned Myra's attorney, because the right to pursue one's profession and the right to vote were derived from two very differently worded portions of the Fourteenth Amendment, it followed that if the Court were to hold that Myra had the constitutional right to practice law, such a ruling would in no way be a step toward the judicial creation of nationwide women's suffrage.

23. Letter from Susan B. Anthony to Myra Bradwell (July 30, 1873) (recently discovered letter on file with author).

ambivalence between these two feminists, a relationship characterized by both conflict and conciliation.

While Anthony's ire was understandable, her assertion that Carpenter's legal argument (relating to women's right to vote) was "wholly without a basic principle" was simply untenable. The major portion of Carpenter's argument was based on the distinction between the political desirability of granting the ballot to women and the constitutional necessity of doing so. His point was that while in the absence of a suffrage amendment the states were not *constitutionally required* to permit to women vote, it would be *socially beneficial* for Congress or the state legislatures to enfranchise the female population. That principle (i.e., that something can be socially desirable but not mandated by the U.S. Constitution) is certainly axiomatic in our American constitutional system.

Carpenter, attempting to accomplish the antithetical goals of winning Myra's case and yet appeasing the suffragists, made the "constitutional necessity-social desirability" distinction very explicitly: "While I do not believe that female suffrage has been secured by the *existing* amendments to the Constitution, neither do I look upon that result as at all to be dreaded." Then in a discourse that was not even tangentially related to the legal issue involved in Myra's case (i.e., the constitutional right of women to practice law), he eloquently implored that society, through Congress or the legislatures, permit women to vote. His argument was that the status that a nation accords to women's rights is an important index of that nation's advance:

It is not, in my opinion, a question of woman's rights merely, but in a far greater degree a question of man's rights. . . . It will everywhere [in the world] be found that, just in proportion to the equality of women with men in the enjoyment of social and civil rights and privileges, both sexes are proportionately advanced in refinement and all that ennobles nature.²⁴

He completed his political oration by once again explaining that while it would be desirable for Congress or the state legislatures to grant the ballot to women, they were not, in the absence of a woman suffrage amendment, constitutionally compelled to do so.

The remainder of Carpenter's brief in *Bradwell v. Illinois* was based on the argument that the U.S. Constitution *did affirmatively* grant women the legal right to practice law. That assertion was based on the Fourteenth Amendment's

24. This argument by Carpenter seems to be an adaptation of a famous statement made many years earlier by Charles Fourier. See 1 *WOMEN, THE FAMILY, AND FREEDOM: THE DEBATE IN DOCUMENTS (1750-1880)*, at 41 (Susan G. Bell & Karen M. Offen eds., 1983).

"Privileges and Immunities Clause," which provides that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. . . ." Carpenter contended that since Myra was a "citizen of the United States," she had the "privilege" to practice her chosen profession and that that privilege could not be "abridged" by the states. That was the main point to be established, but Carpenter addressed it almost as an afterthought. His argument was based on neither precedent nor logic, and at best can be characterized as a mere assertion:

I maintain that the Fourteenth Amendment opens to every citizen of the U.S., male or female, black or white, married or single, the honorable professions as well as the servile employments of life; and no citizen can be excluded from any one of them. Intelligence, integrity, and honor are the only qualifications that can be prescribed as conditions.²⁵

In responding to the commonly held belief that most men would never retain the services of a female lawyer, Carpenter stated simply that that possibility should be governed by the marketplace, and not by governmental fiat:

The inequalities of sex will undoubtedly have their influence, and be considered by every client desiring to employ counsel. . . . Of a bar composed of men and women of equal integrity and learning, women might be more or less frequently retained, as the taste or judgment of clients might dictate. But the broad shield of the Constitution is over them all, and protects each in that measure of success which his or her individual merits may secure.²⁶

Although Myra exclaimed that Carpenter's argument was "concise and unanswerable,"²⁷ the State of Illinois did not take the matter the least bit seriously. Indeed, the state did not even deign to send counsel to oppose Carpenter in the Supreme Court.²⁸

Moreover, during the pendency of her appeal, Myra was subjected to extreme harassment by her fellow citizens. "Her personal manners [were]

25. Carpenter Brief, *supra* note 21, at 108, 110.

26. *Id.*

27. 4 CHI. LEGAL NEWS 108 (Jan. 20, 1872).

28. 6 CHARLES FAIRMAN, HISTORY OF THE SUPREME COURT OF THE UNITED STATES, RECONSTRUCTION AND REUNION, 1864-88, at 1365 (1971). The reason for the states' inaction, however, may have been that by the time Carpenter argued the case, the matter was almost moot in Illinois. A few months after the case was heard by the Supreme Court, the Illinois legislature passed a law providing that "no person shall be precluded from any profession on account of sex." See *infra* text accompanying notes 46-48.

outrageously aped; her speech falsely reported—while the idle curious followed her about the streets of Washington as if she were some wild animal from the jungle!”²⁹

Not even the nation’s highest tribunal was persuaded or even moved by Myra’s poignant plea: “One half of the citizens of the United States are asking—Is the liberty of pursuit of a profession ours, or are we slaves?”³⁰

The Supreme Court apparently preferred the slavery option; it dismissed Myra’s claim almost unanimously.³¹ Justice Samuel F. Miller, speaking for eight members of the Court, wrote the majority opinion. Only Chief Justice Salmon P. Chase (a distant cousin of Myra) dissented.³²

Justice Miller’s majority opinion was straightforward and was not grounded on notions about the proper role of women. Justice Miller merely cited a precedent that the Court had decided only two days earlier by a vote of five to four.

In that decision, known as the *Slaughterhouse Cases*,³³ the state of Louisiana had granted a twenty-five-year monopoly to a corporation to maintain slaughterhouses in large portions of the state. The plaintiffs, butchers not included in the monopoly, claimed that the law deprived them of the right “to exercise their trade” and therefore violated the Fourteenth Amendment by abridging “the Privileges and Immunities of Citizens of the United States.”

In the *Slaughterhouse Cases*, the Supreme Court, per Justice Miller, sustained the Louisiana law and held, among other things, that the butchers’ exclusion from the state-created monopoly did not violate the Privileges and Immunities Clause of the Fourteenth Amendment. Ironically, the attorney who had argued on behalf of the state of Louisiana, *and against the excluded butchers*, was none other than Matthew Carpenter.

After disposing of the butchers who had been deprived of the right to practice their trade, it was not difficult for Justice Miller and four of his brethren to dispose of Myra. They held only that:

[T]here are privileges and immunities belonging to citizens of the

29. Eleanor Gridley, *Presentation of Bronze Bust of Mrs. Myra Bradwell, First Woman Lawyer in Illinois*, in *TRANSACTIONS OF THE ILLINOIS HISTORICAL SOCIETY* 38 (1931).

30. 7 CHI. LEGAL NEWS 108 (Jan. 20, 1872).

31. *Bradwell v. Illinois*, 83 U.S. (16 Wall.) 442 (1873).

32. 26 CHI. LEGAL NEWS 296 (May 12, 1894). Chief Justice Chase filed no opinion.

33. 83 U.S. (16 Wall.) 394 (1873).

United States . . . and it is these and these alone which a state is forbidden to abridge. But the right to admission to practice in the courts of a state is not one of them.³⁴

But dismissing Myra's claim was not so easy a task for those justices, including Justice Joseph P. Bradley, who had dissented in the *Slaughterhouse Cases*, and who had there pronounced that "among [the privileges and immunities of national citizenship] must be placed the right to pursue a lawful employment in a lawful manner, without other restraint than such as equally affects all persons." Moreover, Justice Bradley had previously declared that "there is no more *sacred right* of citizenship than the right to pursue unmolested a lawful employment in a lawful manner. . . ." ³⁵ How then was Justice Bradley able to deny Myra one of the "sacred rights of citizenship?" The answer is that he did not, for Myra was a woman; therefore (according to the justice), her sacred rights of citizenship were not coextensive with those enjoyed by men. The fallacy underlying Myra's claim, noted Justice Bradley, was that it "assumes that it is one of the privileges and immunities of *women* as citizens to engage in any and every profession, occupation, or employment of civil life." That assumption, he claimed was erroneous.

Bradley then concluded his opinion with an exegesis on the meaning of natural law:

The civil law, as well as nature herself, has always recognized a wide difference in the respective spheres and destinies of man and woman. Man is, or should be, woman's protector and defender. The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life. The constitution of the family organization, which is founded in the *divine ordinances*, as well as in the nature of things, indicates the domestic sphere as that which properly belongs to the domain and functions of womanhood. The harmony, not to say identity of interests and views which belong or should belong to the family institution, is repugnant to the idea of a woman adopting a distinct and independent career from that of her husband. . . . The paramount destiny and mission of woman are to fulfill the noble and benign offices of wife and mother.

34. *Bradwell*, 83 U.S. (16 Wall.) at 445.

35. This was Bradley's opinion in the lower court hearing on the *Slaughterhouse Cases*. Bradley, although a Supreme Court Justice, was then sitting as a circuit court judge, and he authored the lower court opinion that had sustained the claim of excluded butchers. *Live-Stock Dealers' & Butchers' Assoc. v. Crescent City Livestock & Slaughterhouse Co.*, 1 Abb. U.S. 388 (Cir. Ct., D. La. 1870) (emphasis added), *cited in* 83 U.S. (16 Wall.) 394, 418 (1873), *reprinted in* 15 Fed. Cas. 649 (1985).

*This is the law of the Creator.*³⁶

Although Justices Miller and Bradley had both decided the case adversely to Myra, they had reached their results through very different modes of reasoning. Justice Miller had simply construed a provision of the Constitution, and his construction was totally consistent with his earlier decision in which he had dismissed the claim of a group of butchers who had been denied the right to practice their trade. Justice Bradley, on the other hand, had based his concurrence on the distinction between male and female roles, a distinction that he believed was ordained by God and probably handed down at Mount Sinai as part of ecclesiastical law. While Myra was enraged by Justice Bradley's opinion, her reaction to Justice Miller was one of praise. Although she did not agree with the result that he had reached, she took

great pleasure in saying that the opinion delivered by Justice Miller is confined strictly to the points at issue . . . he does not for a moment lower the dignity of the judge by traveling out of the record to give his individual views upon what we commonly term "women's rights."³⁷

In contrast, Myra's contempt for Justice Bradley's concurring opinion was boundless:

We regard the opinion of Judge Bradley as in conflict with his opinion delivered in what are known as the . . . Slaughterhouse Cases. . . . In that case Judge Bradley said: "*There is no more sacred right of citizenship than the right to pursue unmolested a lawful employment in a lawful manner. It is nothing more or less than the sacred right of labor.*"

. . . How can he, then, and be consistent, deprive an American citizen of the right to follow any calling or profession . . . simply because such citizen is a woman?³⁸

The reaction of prominent feminists to the Supreme Court's *Bradwell* opinion was somewhat ambivalent. While they espoused the belief that the

36. *Bradwell v. Illinois*, 83 U.S. (16 Wall.) 442, 446 (1873) (emphasis added). "Divine ordinance" is a term that was used in several subsequent state court decisions upholding laws establishing classifications based on sex. See, e.g., *State v. Heitman*, 105 Kan. 39, 46-47 (1919); *State v. Bearcub*, 1 Or. App. 579, 580; 465 P.2d 252, 253 (1970).

37. 5 CHI. LEGAL NEWS 390 (May 10, 1873) (col. 1). A year after the *Bradwell* decision, the Supreme Court, in *Minor v. Happersett*, 88 U.S. (21 Wall.) 627 (1874), held that the right to vote was not one of the "privileges and immunities of United States citizenship." Therefore, states were not forbidden by the Constitution from according "that important trust to men alone." *Minor*, 88 U.S. (21 Wall.) at 631.

38. 5 CHI. LEGAL NEWS 390 (May 10, 1873).

Court's opinion was regrettable, they hoped to derive political capital from the Court's nearly unanimous rejection of someone of Myra's stature. For example, shortly after the Court rendered its decision, Myra received the following letter from Susan B. Anthony:

My dear Mrs. Bradwell:

Like the Frenchman who didn't swear on a certain occasion—so I don't—simply because no swearing could possibly reach the case. I am fired to White heat. Do send me all *you* say in the [*Chicago Legal*] *News* on the decision and do put all *your lawyer's brain* to it. Write me the best letter you possibly can for me to read at our . . . May meeting in New York. Don't fail—I pray you. . . . Just don't fail to send me everything. Our convention will pour hot shot into that old Court.

Susan B. Anthony³⁹

Although Miss Anthony and other feminists may have wished to “pour hot shot into that old Court,” most nineteenth-century commentators were simply amused. Although lawyers and journalists alike had a great respect for “our Myra's remarkable attainments,”⁴⁰ her earnest and tenacious attempt to become a lawyer was commonly treated as whimsical.⁴¹ For example, the *New York World*, in listing the “follies” that were currently seeking protection under the Fourteenth Amendment, included the “preposterous” claim of a Chicago “she-attorney” that the amendment granted her the right to practice law.⁴² Likewise, the *Nation* called Myra's constitutional claim “ridiculous” and “interesting as showing the effect produced by legal study on the female mind.” It concluded by surmising that Myra “must have known the Court would decide against her, unless she either supposed that they were likely to be influenced by personal solicitation and clamor, or else that they were all gone crazy.”⁴³

Among the news media, the *Rockford Register* and the *St. Louis Republican* seem to have stood virtually alone in condemning the state of Illinois and the U.S. Supreme Court for their combined rejection of Myra's application. The

39. Letter from Susan B. Anthony to Myra Bradwell (April 28, 1873) (recently discovered letter).

40. FAIRMAN, *supra* note 28, at 1365.

41. The *Boston Daily Advertiser*, Apr. 16, 1873, reported that “Judge Bradley's opinion seemed to cause no little amusement upon the Bench and Bar.” Cited in 2 CHARLES WARREN, *THE SUPREME COURT IN UNITED STATES HISTORY* 550 n.1 (1937).

42. THOMPSON, *supra* note 18, at 102.

43. *The Supreme Court Righting Itself*, *supra* note 1, at 280.

St. Louis newspaper lamented:

It seems very hard for some of the Republican States to learn a simple lesson in that liberality which they pretend to teach to others. . . . The Republicans of Illinois appear to have the same horror of a woman that an old-fashioned Democrat once had of a negro.⁴⁴

Similarly, the *Rockford Register*, after referring to the Illinois Supreme Court's rejection of "Mrs. Myra Bradwell, the gifted and accomplished editress of the *Chicago Legal News*," bemoaned:

So it seems there may be brothers, but not sisters in law. . . . Whatever may be thought otherwise, the spirit and movements of the age are for a rational equality, and nothing—not even the Supreme Courts—can stay the progress or prevent the triumph of just and liberal sentiments. . . .⁴⁵

Those words were prophetic, for neither the Illinois Supreme Court nor the U.S. Supreme Court was, in fact, able to "stay the progress or prevent the triumph" of Myra and a few other female pioneers of the law. Indeed, in 1872, one year prior to the U.S. Supreme Court's *Bradwell* decision, the Illinois legislature had passed a law providing that "No person shall be precluded or debarred from any occupation, profession, or employment (except military) on account of sex."⁴⁶ The statute had been codrafted by Myra and Alta M. Hulett,⁴⁷ a young woman of remarkable ability, whose application to practice law had been rejected by the Illinois Supreme Court in 1871. Buttressed by Myra's tutelage and encouragement, and granted permission by the newly enacted Illinois statute, Miss Hulett was subsequently admitted to the Illinois bar in 1873, at the age of nineteen. Even though mandated by statute, Miss Hulett's admission was accompanied by a scolding from one of the justices who admitted her: "If you were my daughter, I would disinherit you!"⁴⁸

Technically, then, the U.S. Supreme Court's 1873 *Bradwell* decision was somewhat moot as to Myra Bradwell. She could have successfully reapplied for admission in 1872 when Illinois no longer had any gender-based barriers to entry into the profession. But what Myra had sought by her appeal to the U.S. Supreme Court was not merely a ruling that would have permitted *her* to

44. Reported in 5 CHI. LEGAL NEWS 454 (June 14, 1873).

45. Reported in 4 CHI. LEGAL NEWS 37 (Nov. 18, 1871).

46. ILL. REV. STAT. ch. 48, para. 3 (Hurd 1874).

47. 2 ALFRED T. ANDREAS, HISTORY OF CHICAGO, FROM THE EARLIEST PERIOD TO THE PRESENT TIME (1884-1886).

48. 5 CHI. LEGAL NEWS 453 (Apr. 19, 1873).

practice law, but rather a Supreme Court fiat to the effect that nowhere in the nation could any woman be barred from practicing the profession of her choice.

Thus, Myra lost her Supreme Court battle; but she had already won the war for legislative creation of new professional opportunities for women. As she remarked a few weeks after her “defeat” in the high Court:

Although we have not succeeded in obtaining an opinion as we hoped, which should affect the rights of women throughout the nation, we are more than compensated for all our trouble in seeing, as the result of the agitation, statutes passed in several States, including our own, admitting women upon the same terms as men. Women have since been admitted in Wyoming, Utah, the District of Columbia, Iowa, Missouri, Ohio and several other States.⁴⁹

Myra never again sought entry into the legal profession, although if she had her admission would almost certainly have been a mere formality. But she was a proud woman and she might have believed that it was beneath her dignity to reapply for a license.⁵⁰ Moreover, by 1873, the year in which the Supreme Court delivered the *Bradwell* opinion, Myra had already achieved extraordinary success as a legal journalist. As she later explained to a reporter for the *Chicago Tribune*:

My business had acquired such dimensions by the time the barriers to my admittance to the Bar were removed that I had no time to give to law practice, and I didn't care to be admitted just for the privilege of putting “Attorney” after my name.⁵¹

The “business” to which she was referring was the *Chicago Legal News*, which Myra founded in 1868, and which for at least two decades was the most widely circulated legal newspaper in the nation. For the remaining twenty-six years of Myra's life, the *Chicago Legal News* was, in essence, her alter ego. She served not only as the journal's publisher and business manager, but also, and more importantly, as its editor-in-chief. In the masthead of the weekly newspaper, Myra inserted the motto *Lex Vincit* (“Law Conquers”) and announced her intention “to do all we can to make it a paper that every lawyer and business man in the Northwest ought to take.”⁵² The paper was an instant

49. 5 CHI. LEGAL NEWS 354 (June 14, 1873).

50. Letter from James Bradwell to William K. McAllister, Chief Justice of the Illinois Supreme Court (July 30, 1872) (beseeching the court to grant Myra a license on its own motion so that she would not have to reapply for admission) (on file with author).

51. Bradwell Interview, *supra* note 2, at 26.

52. 1 CHI. LEGAL NEWS 1 (1868).

success, not only in the Northwest, but throughout the entire country.

The *Chicago Legal News* was, in part, a conventional legal newspaper, offering synopses of important judicial opinions and news of happenings in the Chicago legal community. But its more important function was to serve as the medium through which Myra advocated and obtained the enactment of a vast number of legal reforms. Among those was the Illinois statute which prohibited the state from denying any woman the right to practice any profession or occupation solely on the basis of her gender.⁵³ She also drafted and was instrumental in obtaining the passage of legislation granting many other legal rights for women.⁵⁴ However, she did not confine her energies strictly to the cause of feminism. Many significant nineteenth-century innovations, including those involving the reform of the legal system⁵⁵ and the treatment of the "insane"⁵⁶ are directly traceable to Myra's advocacy.

It was through her columns in the *Chicago Legal News*—which also contained frequent exhortations to the bar and judiciary—that Myra achieved her reputation as the country's first and leading woman lawyer.⁵⁷ Myra was, indeed, practicing law, albeit without a license. Her daily tasks were those of an extremely productive and influential attorney: the drafting not only of social legislation but also of editorial pleas to various courts throughout the country. The latter writings bore a striking resemblance to legal briefs.

In 1890 the *Chicago Legal News* announced to its readers:

We are pleased to say that last week, upon the original record, every member of the Supreme Court of Illinois, cordially acquiesced in granting, on the court's own motion, a license as an attorney and counselor at law to Mrs. Bradwell.⁵⁸

In 1892 the United States Supreme Court followed suit. On the motion of William Henry Harrison Miller, Attorney General of the United States, Myra Bradwell was admitted to practice before the nation's highest tribunal.⁵⁹ Both licenses were granted *nunc pro tunc* ("now for then") as of the date of her original application in 1869, rendering Myra Bradwell the first woman lawyer

53. See *supra* text accompanying notes 46-48.

54. See FRIEDMAN, *supra* note 15, at 195-210 (ch. 10).

55. See *id.* at 95-128 (ch. 6).

56. See *id.* at 195-210 (ch. 10).

57. George Gale, *Myra Bradwell: The First Woman Lawyer*, 39 A.B.A. J. 180 (Dec. 1953). See also Kogan, *supra* note 2, at 132-40.

58. 22 CHI. LEGAL NEWS 265 (Apr. 5, 1890).

59. Robert M. Spector, *Women Against the Law: Myra Bradwell's Struggle for Admission to the Illinois Bar*, 228 J. ILL. HIST. SOC'Y 241 (June 1975).

in the state of Illinois and arguably—depending on how one defines “lawyer”—the first in the United States.

Prior commentators have referred to the actions of these two courts as “noble acts of justice.”⁶⁰ However, recently discovered correspondence between Myra’s husband, James, and the chief justice of the Illinois Supreme Court⁶¹ reveals that Myra’s belated admission was carefully orchestrated (without Myra’s knowledge) by James. At the time, Myra was terminally ill with cancer; and her devoted husband wanted his dying wife to know that while it may not always be true that “the law conquers,” Myra Bradwell had at last conquered the law.

Upon Myra’s death in 1894, one of her eulogists proclaimed:

Discussion of the Myra Bradwell case had the inevitable effect of letting sunlight through many cobwebbed windows. It is not so much by abstract reasoning as by visible examples that reformations come, and Mrs. Bradwell offered herself as a living example of the injustices of the law. [Myra Bradwell] was forbidden by law to practice law, [and that] was too much for the public conscience, tough as the conscience is.⁶²

60. *Chicago Women’s Club, Memorial to Myra Bradwell*, 26 CHI. LEGAL NEWS 296 (May 12, 1894).

61. Letter from James B. Bradwell to Simeon P. Shope, Chief Justice of Illinois Supreme Court (Aug. 21, 1889) (on file with author); Letter from Justice Shope to James Bradwell (Mar. 29, 1890) (on file with author).

62. *Chicago Women’s Club, Memorial to Myra Bradwell*, *supra* note 60, at 296.