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The “ Proper Timidity and Delicacy” of Women: How *Bradwell vs. Illinois* Reflected the  
Ingrained Sexism of 19th Century America

A women’s rights leader and legal writer, Myra Bradwell is an oft-forgotten pioneer for women in law. Despite passing the Illinois bar exam in 1869, Bradwell was denied the right to practice law in Illinois on the basis of her marital status and gender. Appealing to the Supreme Court of the United States, Bradwell cited the Equal Protections Clause of the Fourteenth Amendment as grounds for her right to practice law. The Court’s concurrence with the ruling of Illinois obstructed Bradwell from becoming a lawyer. In the late 19th century, arguments such as Bradwell’s were deemed preposterous in a social climate where women were regarded as housewives and were without the basic right to vote. *Bradwell vs. Illinois* was not only an egregious infringement upon women in the field of law, but represented the pervasive ideology of the cult of domesticity and gender roles that stifled gender equality across America.

Raised an abolitionist, Bradwell was introduced to reform and civil rights at an early age. Her fight for abolitionism would lead to her heading several philanthropic projects during the Civil War and facilitating her later arguments for the women’s rights movements that drew on the parallel she saw between the plight of African Americans and women in 19th century America. Bradwell married a fellow abolitionist and young lawyer James Bradwell in 1852. Bradwell’s husband required legal assistance within his law firm, ultimately catalyzing Bradwell’s fight to become a lawyer. Apprenticing under her husband, Bradwell passed the bar exam in 1869 (Friedman). Only months prior, Arabella Mansfield was granted admission to the Iowa bar in 1869, becoming the first female lawyer in the United States (Fannon-Langton). Bradwell had already established her legal prowess founding the *Chicago Legal News*, a legal newspaper, in

1868 and serving as its editor. Her astute writing on legal happenings and empowerment for legal rights for women marked Bradwell's highly successful publication (Friedman).

The Illinois Supreme Court first denied Bradwell's license to practice law because she was a married woman. "As a married woman [Bradwell] would be bound neither by her express contracts nor by those implied contracts which it is the policy of the law to create between attorney and client," (Supreme Court). The legal doctrine of *feme covert* gave a woman's husband control of her legal matters once married, thus rendering her legal freedoms obsolete. The right to own property and enter contracts were under the jurisdiction of a woman's husband, and the latter provision was the basis of the Illinois Supreme Court's decision (Morello). Bradwell contested the ruling pointing to the recently passed Married Women's Property Acts in 1861 that enabled married Illinois women to own and manage their own land and estates. She stipulated that the Illinois statute elucidated that the court's reasoning based on *feme covert* was outdated, and marriage was no longer a feasible barrier to her practicing law (Jordan).

The court reaffirmed their position, but this time they denied Bradwell access to the bar simply because she was a woman. What had belied the Court's initial marital argument, was thinly veiled prejudice and a belief in the stereotypical "proper" role of a woman at the time. The court stated, "God designed the sexes to occupy different spheres of action, and that it belonged to men to make, apply, and execute the laws, was regarded as an almost axiomatic truth. In view of these facts, we are certainly warranted in saying that when the legislature gave to this Court the power of granting licenses to practice law, it was with not the slightest expectation that this privilege would be extended to women," (Supreme Court). Though not explicitly excluded by the legislator as a "person" barred from receiving a license to practice law, women, the Court held, were morally not intended to become lawyers, and thus the Illinois Supreme Court was not

legally required to grant her a license. Bradwell's response was scathing, "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," (Bradwell).

Undeterred, Bradwell filed a writ of error to the Supreme Court of the United States. Senator Matthew Carpenter of Wisconsin served as Bradwell's attorney. A gifted constitutional lawyer and advocate for women's rights, Carpenter was praised across the political spectrum by the likes of Supreme Court Justice Samuel Miller (who would eventually rule against Bradwell in *Bradwell vs. Illinois*) and suffragists Elizabeth Cady Stanton and Susan B. Anthony (Friedman). In developing his argument, Carpenter contended that the U.S. Constitution, specifically the Fourteenth Amendment, granted Bradwell the right to practice law. "I maintain that the fourteenth amendment opens to every citizen of the United States, male or female, black or white, married or single, the honorable professions as well as the servile employments of life; and that no citizen can be excluded from any one of them. Intelligence, integrity, and honor are the only qualifications that can be prescribed as conditions precedent to an entry upon any honorable pursuit or profitable avocation, and all the privileges and immunities which I vindicate to a colored citizen, I vindicate to our mothers, our sisters, and our daughters," (Supreme Court). The argument presented equal opportunities to pursue a profession within the United States as protected by the Fourteenth Amendment regardless of gender or race. Carpenter emphasized the parallel between the struggles of African American citizens and women in the United States, perhaps hoping to highlight how the Fourteenth Amendment applied to citizens beyond the amendments original intent

In Reconstruction-era America, the Fourteenth Amendment was originally designed as a statute for freedom following the peril of slavery and the Civil War. However, several Supreme Court cases, including *Bradwell vs. Illinois*, eroded the Fourteenth Amendment's initial objective. The 1896 *Plessy vs. Ferguson* Supreme Court Case ruled that separate but equal accommodations did not violate the Fourteenth Amendment opening the door for an onslaught of Jim Crow laws and segregation in the south (“Plessy v. Ferguson). In the 1869 *Slaughterhouse Cases*, Louisiana had granted a monopoly to the Crescent City Livestock Landing and Slaughterhouse company. Several thousand butchers argued the motion violated the 14th amendment. Hypocritically, Matthew Carpenter, Bradwell’s aforementioned attorney, argued against the butchers, interpreting the Fourteenth Amendment as only serving to protect African American rights and denying the federal government jurisdiction over state economic activity (Thompson).

It was the precedent established in the *Slaughterhouse Cases* that Supreme Court Justice Miller used in his majority opinion statement against Bradwell. “The right to control and regulate the granting of license to practice law in the courts of a State is one of those powers which are not transferred for its protection to the Federal government, and its exercise is in no manner governed or controlled by citizenship of the United States in the party seeking such license,” (Supreme Court).

Justice Bradley reached the same consensus as Justice Miller, but he reasoned that the natural femininity and righteousness of a woman predisposed her to domestic life, one that would be severely disrupted by her pursuit of a career in law. “On the contrary, 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 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 fulfil the noble and benign offices of wife and mother," (Supreme Court). This assumption of a woman's "timidity and delicacy" was an ingrained stereotype of the 19th century, and the ruling in *Bradwell v. Illinois* reified an ingrained bias against the female sex within government and the legal system.

Bradley's asinine claims infuriated Bradwell and other prominent women's rights leaders. In a letter to Bradwell, suffragist Susan B. Anthony wrote, "Our convention will pour hot shot into that old Court," (Anthony). This principle of the cult of domesticity was not an aberration in 19th century America. Very few women held jobs outside of the home and coverture strangled married women's rights. It wasn't until the passage of the Nineteenth Amendment 50 years later in 1920 that women were granted access to the polls. But in the 19th century, challenges to the cult of domesticity came in the form of the suffrage movement. Leaders like Susan B. Anthony, Elizabeth Cady Stanton, and Lucy Stone were all leaders in the movement to garner the right to vote for women. Early mobilization included the Seneca Falls Convention and the Declaration of Rights and Sentiments, but suffragists began to diverge over the ratification of the 15th amendment that granted all *male* US citizens the right to vote. Stone was willing to support the 15th amendment, believing the advancement of the abolitionist movement would eventually help their case. She subsequently formed the American Woman Suffrage Association. Stanton and Anthony opposed the 15th amendment and formed the National Woman Suffrage Association. Myra Bradwell had close ties to the women's rights movement corresponding frequently with

Susan B. Anthony and even supporting Anthony after she was arrested for voting in New York. Bradwell also served as a member of the American Woman Suffrage Association and Illinois State Suffrage Association (Friedman).

Bradwell's dedication to women in the profession of law would eventually come to fruition. Belva Lockwood, an ally of Bradwell's, would make history as the first woman to argue before the Supreme Court, and Alta M. Hullet would join forces with Bradwell to pass a law in Illinois prohibiting the denial of someone to an occupation based on gender. This ultimately allowed women in Illinois to practice law and Hullet became the first female lawyer in Illinois. Bradwell was eventually granted access to the bar in 1892, though she never practiced law (Friedman).

It is a stark truth *Bradwell vs. Illinois* revealed: sexism was deeply rooted in the foundation of the U.S. government. The denial of basic human rights was perpetuated for centuries in America, elucidated by Bradwell, "One half of the United States are asking --Is the liberty of a pursuit of a profession ours, or are we slaves?" (Friedman). The 20th century was a revolution for the rights of women, but even today gender equality is not guaranteed. Our founding fathers promised in writing freedom and liberty for all Americans but only through action will that be truly realized.

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## Appendix

Supreme Court. *Bradwell vs. Illinois*. *United States Reports*, vol. 83, Dec. 1872, p. 130. *Library of Congress*, [www.loc.gov/item/usrep083130/](http://www.loc.gov/item/usrep083130/). (Excerpt below)

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BRADWELL v. THE STATE.

[Sup. Ct.]

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Statement of the case.

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I earnestly hope that the consequences to follow may prove less serious and far-reaching than the minority fear they will be.

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BRADWELL v. THE STATE.

1. The Supreme Court of Illinois having refused to grant to a woman a license to practice law in the courts of that State, on the ground that females are not eligible under the laws of that State; *Held*, that such a decision violates no provision of the Federal Constitution.
2. The second section of the fourth article is inapplicable, because the plaintiff was a citizen of the State of whose action she complains, and that section only guarantees privileges and immunities to citizens of other States, in that State.
3. Nor is the right to practice law in the State courts a privilege or immunity of a citizen of the United States, within the meaning of the first section of the fourteenth article of amendment of the Constitution of the United States.
4. The power of a State to prescribe the qualifications for admission to the bar of its own courts is unaffected by the fourteenth amendment, and this court cannot inquire into the reasonableness or propriety of the rules it may prescribe.

IN error to the Supreme Court of the State of Illinois.

Mrs. Myra Bradwell, residing in the State of Illinois, made application to the judges of the Supreme Court of that State for a license to practice law. She accompanied her petition with the usual certificate from an inferior court of her good character, and that on due examination she had been found to possess the requisite qualifications. Pending this application she also filed an affidavit, to the effect "that she was born in the State of Vermont; that she was (had been) a citizen of that State; that she is now a citizen of the United States, and has been for many years past a resident of the city of Chicago, in the State of Illinois." And with this affidavit she also filed a paper asserting that, under the foregoing facts, she was entitled to the license prayed for by virtue of the second section of the fourth article of the Constitution of the United States, and of the fourteenth article of amendment of that instrument.