MYRA COLBY BRADWELL:
A DECADE OF LEGISLATIVE REFORM IN ILLINOIS

Gender & the Law In American History Seminar
Professor Richard Chused & Professor Wendy Williams

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The ground of liberty is to be gained by inches. We must be contented to secure what we can get from time to time and eternally press forward for what is yet to get.

Thomas Jefferson

History buffs and legal historians often characterize Myra Bradwell, the editor and publisher of the Chicago Legal News, as a pioneer in the legal profession and as a New Departure suffragist who believed that the Privileges and Immunities Clause of Fourteenth Amendment secured woman suffrage.¹ At first blush, this characterization appears apt.

During an era in which women’s rights were still severely restricted by coverture, Bradwell established the News - the first legal newspaper in the west.² By August 1869, Bradwell was also one of the first women to seek admission to the bar.³ Because of her marital status, the Illinois

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² The first edition of the Chicago Legal News was printed in October 1868. See Dictionary Of American Biography, V. 1 (Allen Johnson ed., Charles Scribner’s Sons 1964)

³ Arabella Mansfield of Iowa had been admitted to the bar a few months prior to Bradwell’s petition. The Iowa court construed a statute similar to that at issue in Bradwell’s case in favor of women lawyers. See 2 Chicago Legal News 146 (Myra C. Bradwell ed., The Chicago Legal News Company 1870)
Supreme Court denied her admission. Upon Bradwell’s filing of a printed argument, the Illinois Supreme Court once again denied admittance. This time, their denial was based on the ground that she was a woman. Angered, Bradwell appealed her case to the United States Supreme Court after amending her brief to include arguments based on the Fourteenth Amendment, the Civil Rights Act of 1866 and the IV Article of the United States Constitution. Despite the Supreme Court’s decision to sustain the opinion of the lower court, New Departure suffragists heralded the case. From their prospective, Bradwell v. Illinois was a civil rights test case. It was a precursor for future claims under the New Departure theory. Bradwell v. Illinois is the best known case involving the exclusion of women from the practice of law.

A close study of Bradwell’s life, however, shows that her actions were not solely motivated by the desire to open the door for future female advocates. Bradwell’s editorial comments in the News covered a wide range of issues from the morality of the bar to the need for women school officers. She was more than a legal pioneer. Bradwell was an influential member of the

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4 As a married woman, Bradwell was not a legal person. Thus, her contracts were not binding. Since contracts are the essence of the attorney-client relationship, Bradwell could not become an attorney. Appellant’s Petition at 2, Bradwell v. Illinois, 16 Wall, 130 (Sup. Ct. 1873) (No. 487)

5 Id.


7 JOAN HOFF, LAW GENDER & INJUSTICE 164 (1991)

8 See, e.g., 2 CHICAGO LEGAL NEWS 82 (Myra C. Bradwell ed., The Chicago Legal News Company 1869), for discussion on the morality of the bar; 5 CHICAGO LEGAL NEWS 330 (Myra C. Bradwell ed., The Chicago Legal News Company 1873), for a
community who lobbied for the rights of all women, not just those pursuing careers in law.

Nor do Bradwell’s actions and discourse conform with the rhetoric of the New Departure suffragists. Bradwell lobbied for citizenship rights at the state level. From 1861 to 1873, Bradwell successfully lobbied the Illinois Generally Assembly to pass laws which eventually lead to the demise of coverture in Illinois. As a result of her efforts, a gradual but lasting change occurred in Illinois with respect to the rights of all women. By 1873, a woman could own property separate from her husband; receive, use and possess her own earnings and sue for such in her own name; be entitled to receive a widow’s allowance upon the death of her husband; hold any occupation, profession or employment; and be elected as a school officer. These rights, according to Bradwell, were part of a larger notion of liberty which, once secured, would lead to the ultimate prize: the right to vote.

In contrast, the New Departure suffragists preferred the battlefield of the courtroom and lobbied for women’s enfranchisement at the federal as well as state level. They called for a federal amendment granting woman suffrage. Bradwell v. Illinois, when viewed in light of Bradwell’s state legislative accomplishments, her rhetoric in the News and her participation in the American discussion of women as school officers

9 In Memoriam, The Woman’s Journal, March 17, 1894

10 See 11 CHICAGO LEGAL NEWS 179 (Myra C. Bradwell ed., The Chicago Legal News Company 1879)

11 See, e.g., THE HISTORY OF WOMAN SUFFRAGE, supra note 6; see also JOAN HOFF, supra note 7, at 149.
Woman Suffrage Association, was not a New Departure case. It was one step in a broader scheme to secure for women the right to vote.\textsuperscript{12}

If women are allowed to be physicians, clergymen, and last but not least, lawyers, to hold school officers, act as notaries public, own property, and control their own earnings, why should they not be allowed to vote.

Myra Bradwell, Chicago Legal News\textsuperscript{13}

The first section of this paper will focus on Bradwell’s early life and her interaction with the three individuals who had the greatest impact on her development as an editor, lawyer and suffragist. The second section of this paper will provide a brief synopsis of the women’s suffrage movement from the Civil War to the time in which Bradwell was most active in securing state legislative reform (1869). The third and fourth sections of this paper will cover Bradwell’s gradualist approach to woman suffrage during the post war era. The fourth section of this paper will also place Bradwell v. Illinois within the context of her agenda. The paper concludes that Bradwell was more than just a legal pioneer, she was ardent suffragists. It will also illustrate that Bradwell v. Illinois, was not a test case for New Departure suffragists.

\textsuperscript{12} This methodology for acquiring rights has been called a “gradualist” theory. Discussion with Richard Chused, Professor, in Washington, D.C. (November 1996)

\textsuperscript{13} 11 CHICAGO LEGAL NEWS 179 (Myra C. Bradwell ed., The Chicago Legal News Company 1879)
I. MYRA BRADWELL: THE SHAPING OF A LEADER

There were three people in Bradwell's early life who contributed the most to her development as an editor, lawyer and woman suffrage advocate: Elijah Lovejoy, Judge James Bradwell and Mary Livermore.

A. Elijah Lovejoy

Myra Colby Bradwell was born on February 12, 1831. Bradwell's parents, Eban Colby and Abigail Willey Colby, were of solid New England stock. Her father was the son of a Baptist minister and a descendant of the Colby family who had settled in Boston in 1630. Bradwell's paternal grandmother was a lineal descendant of Aquilla Chase whose familial line had also produced Bishop Philander Chase of the Episcopal Church and Salmon P. Chase, Chief Justice of the United States Supreme Court. Her mother, was a descendent of the Willeys who settled in America in 1640. Two members of the Willey family were represented during the battle of Bunker Hill in the American Revolution.14

Eban and Abigail Colby were staunch abolitionists and friends of the Rev. and Mrs. Daniel Lovejoy. Their oldest son, Elijah Parish Lovejoy, was a renowned abolitionist. In 1837, the death of 35 year old editor of the Observer shocked the abolitionist community. Elijah Lovejoy,

like his father before him, was a minister. He was also an abolitionist who used the columns of the Observer to speak out against the atrocities of slavery. At first, Lovejoy did not support the abolitionist movement. He did not want to end slavery outright. Instead, he lobbied for the gradual cessation of slavery. But as he became more and more aware of the crimes committed against slaves, Lovejoy realized that slavery was a sin and developed the conviction to speak out against it. As a result of his anti-slavery statements, Lovejoy received numerous threats. Animosity against him continued to grow as his position against slavery compelled him to increasingly speak out. In a span of four years, Lovejoy’s press and business were destroyed twice. He was also forced to move his family from St. Louis to Alton. But because of his belief in the freedom of the press and righteousness of his message, Lovejoy continued to print anti-slavery sentiments. On November 7, 1837, Lovejoy was murdered while trying to defend his press against an angry mob of drunken, slavery advocates.\textsuperscript{15}

Because of the kinship between the Colby and Lovejoy families, Bradwell was acquainted with the story of the abolitionist martyr. It is believed that Lovejoy’s fate made a lasting impression on the mind of six year old Myra.\textsuperscript{16} Her commitment to freedom of the press is evidenced by her outspoken editorials in the pages of the Chicago Legal News. Bradwell used the columns of her paper to speak out on the issues of greatest importance to her: immorality of the bar, the demise of coverture and support of woman suffrage.

\footnotesize{\textsuperscript{15} PAUL SIMON, LOVEJOY MARTYR TO FREEDOM (1964)}

\footnotesize{\textsuperscript{16} THE BENCH AND THE BAR OF ILLINOIS 277 (John M. Palmer ed., The Lewis Publishing Company 1899)}
was to better assist him in his profession. As a result of her legal studies, Bradwell discovered that married women were legally disabled. Under the laws of coverture, a wife could not own property free from her husband’s claim or control. From then on, Bradwell was determined to reform the laws for the benefit of all women.\textsuperscript{21}

January 1861 marks Bradwell’s first recorded attempt at reform. On that day, Bradwell without support or endorsement of any organization, appealed to the Illinois State General Assembly to secure the passage of an act giving to married women the full and exclusive control of her property and of its earnings.\textsuperscript{22}

AN ACT to protect Married Women in their separate property.

\textsc{section 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly, That all the property, both real and personal, belonging to any married woman, as her sole and separate property, or which any

\textsuperscript{21} 27 CHICAGO LEGAL NEWS 175 (Myra C. Bradwell ed., The Chicago Legal News Company 1895). The Journals of both the Illinois State House of Representatives and Senate were not available for 1861. However, a survey of succeeding years (1865-1873) revealed only procedural comments. After checking with the Illinois State Archives, it was determined that no written recording akin to the Congressional Record of the United States Congress was kept for the Illinois General Assembly. The Chicago Tribune and the (Springfield) Daily State Journal were also searched for legislative comment. Although acknowledgment of the Act’s passage was found in the Tribune, legislative debate on this Act was not recorded. See \textit{List of Bills Approved by the Governor}, CHI. TRIB, Feb. 22, 1861.

\textsuperscript{22} 27 CHICAGO LEGAL NEWS, supra note 21.
woman hereafter married owns at the time of her marriage, or which any married woman, during the coverture, acquires, in good faith, from any person, other than her husband, by descent, devise of otherwise, together with all the rents, issues, increase and profits, thereof, shall, not withstanding her marriage, be and remain, during coverture, her sole and separate property, under her sole control, and be held, owned, possessed and enjoyed by her the same as though she was sole and unmarried: and shall not be subject to the disposal, control of interference of her husband, and shall be exempt from execution or attachment for the debts of her husband.

Approved February 21, 1861.23

The lack of any Illinois State General Assembly records other than a strictly procedural journal makes it impossible to comment on any difficulties Bradwell may have encountered while getting this statute passed. However, one can hypothesize that the Illinois State General Assembly was probably receptive to Bradwell’s petition. In February 1861, legislators had to be aware of the growing tensions between the North and the South. Given the political climate, they may have wanted to protect the property interests of their daughters and sisters should their spouses not return from a war.

Bradwell’s successful lobbying may also be due to her husband’s earnest entry into the field of

23 Act to protect Married Women in their separate property, 1861 Ill. Laws
politics. James Bradwell was elected county judge in 1861.\textsuperscript{24} His campaigning may have opened the door for Bradwell’s petition to the Illinois State General Assembly.

C. Mary A. Livermore

Bradwell’s editorial conviction was inspired by the Lovejoy story. Her knowledge of the law and influence in politics came from her husband, but her role model for establishing a newspaper and gradualist perspective as an advocate for woman suffrage was kindled by her friendship with Livermore.

In 1857, Mary A. Livermore and her husband, Daniel moved from Massachusetts to Illinois.\textsuperscript{25} They settled across the street from the Bradwells and the couples became close friends.\textsuperscript{26} Daniel purchased the New Covenant, a Universalist monthly, in 1858. Mary was associate editor and acting manager when her husband was absent on missionary trips.\textsuperscript{27} According to Mary, she had

\begin{itemize}
\item \textsuperscript{24} THE BENCH AND THE BAR OF ILLINOIS, supra note 17.
\item \textsuperscript{25} The Livermores were actually on their way to Kansas to join anti-slavery emigrants. A daughter’s illness en route kept Mary in Chicago. After traveling back and forth between Illinois and Kansas, Daniel decided to settle in Chicago. NOTABLE AMERICAN WOMEN, V. 2, at 411 (Edward T. James ed., The Belknap Press of Harvard University Press 1971)
\item \textsuperscript{27} NOTABLE AMERICAN WOMEN, supra note 25. Daniel was also pastor of the Second Universalist Church. Id.
\end{itemize}
kept the columns of her "husband's paper ablaze with demands for the opening to women of colleges and professional schools, for the repeal of unjust laws that block their progress; and for the enlargement of their industrial opportunities, that they might become self supporting." It was not until after the Civil War, however, that Mary believed that all these rights would be meaningless without woman suffrage.29

Between 1861 and 1867, Bradwell worked with Mary Livermore on the Chicago Sanitary Commission.30 Livermore was an associate member of the Commission and was designated as co-chair, along with Jane Hoge, of the 1863 Chicago Sanitary Fair. Livermore called upon the Bradwell's to create one the of chief exhibits of the fair - the Curiosities Shop. This exhibit was displayed at the Cook County Court House which Judge Bradwell closed for two weeks for the event.31

II. THE NINETEENTH CENTURY WOMEN'S MOVEMENT BETWEEN 1861 AND 1869

The woman suffrage movement had officially become organized approximately 13 years before

28 MARY A. LIVERMORE, THE STORY OF MY LIFE OR THE SUNSHINE AND SHADOW OF SEVENTY YEARS 479 (1897)
29 Id.
30 JOHN MOSES & JOSEPH KIRKLAND, HISTORY OF CHICAGO 196-198 (1895)
31 Lana Ruegamer, supra note 26, at 88-90.
the Civil War by Lucretia Mott and Elizabeth Cady Stanton. From 1861 to 1865, the woman suffrage movement was temporarily suspended as the nation focused on the struggle between North and South. With the return of peace, it was resuscitated. The Civil War had launched women into activities outside the home. Every major battle brought news of shortages in medical personnel and supplies. In response to this need, women banded together with those men who had been exempted from service to form Sanitary Commissions. These commissions were designed to supplement the government’s efforts in furnishing supplies for the wounded and the sick. They were run jointly by men and women alike. Mary Livermore, Myra Bradwell and Judge James Bradwell served as leaders in the Chicago Sanitary Commission and the Soldiers’ Home. As a result of women’s activities during the War, “she had developed potencies and possibilities of whose existence she had not been aware, and which surprised her...” After the Civil War, many women who were active participants in the war effort and proponents in their private lives of the equality of women finally joined the organized woman suffrage movement.

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32 The woman suffrage movement is generally said to have begun with the Seneca Falls Convention of 1848. JOAN HOFF, supra note 7, at 140.

33 MARY A. LIVERMORE, supra note 28, at 479-485

34 JOHN MOSES & JOSEPH KIRKLAND, supra note 31.

35 In addition to being a co-chair for the 1963 Chicago Sanitary Fair, Mary Livermore was an executive committee member for the formation of the Soldiers’ Home. Upon its incorporation on February 28, 1867, Judge Bradwell was named president and Myra Bradwell was named assistant treasurer. Id.

36 MARY A. LIVERMORE, supra note 28, at 485.
Mary Livermore and Myra Bradwell were among those women who joined.  

This expansive growth, however, was short lived. By 1868, the first stirrings of disunity within the woman suffrage movement were evident. The rift centered along a difference in ideology and strategy. The more moderate suffrage leaders were upset by the actions of Susan B. Anthony and Elizabeth Cady Stanton. Anthony and Stanton represented the more militant wing of the woman suffrage movement. They opposed Negro enfranchisement and were associates with George Francis Twain. Both Anthony and Stanton were interested in divorce and labor questions. This difference in ideology was further exacerbated by the passage of the reconstruction amendments. The reconstruction amendments inspired Stanton and Anthony to revise their strategy. They called for a two prong approach 1) oppose the passage of the Fourteenth Amendment on the ground that §2 specifically refers to "male" citizenship and 2) initiate litigation under §1, the privileges and immunities clause arguing that it conferred

37 See MARY A. LIVERMORE, supra note 28, at 479; 1 CHICAGO LEGAL NEWS 45 (Myra C. Bradwell ed., The Chicago Legal News Company 1868)

38 See, e.g., The Work at the West, The Revolution, October 33, 1968, for a reprint of a private letter from Chicago to the editors of The Revolution. The letter may have been penned by Mary Livermore.

39 Although Stanton and Anthony fervently supported the abolitionist movement, they felt strongly that African Americans should not be given the vote ahead of women. NOTABLE AMERICAN WOMEN, V. 1, at 53 (Edward T. James ed., The Belknap Press of Harvard University Press 1971). George Francis Train was a wealthy, flamboyant and eccentric Democrat who raised the ire of man Republicans. Id.

40 Id. at 54.

41 The Thirteenth, Fourteenth and Fifteenth Amendments
citizenship to women. The belief by some woman suffragists was termed the “New Departure.”

In contrast, moderate suffragists were convinced that the right to vote should be obtained through wide-spread, low profile, state-level political activity, rather than high profile litigation. By 1869, the schism was complete. The First Women’s movement had split into two groups: the National Women Suffrage Association (NWSA) and the American Woman Suffrage Association (AWSA). The NWSA was comprised of the more militant individuals in the woman suffrage movement, such as Anthony and Stanton. The AWSA represented the more moderate individuals, such as Bradwell and Livermore. The former served as the first corresponding secretary to the AWSA while the latter was one of the first vice presidents at large.

III. LAUNCHING A WOMAN SUFFRAGE CAMPAIGN BASED ON THE AWSA MODEL

By the end of the war, Bradwell had fully committed herself to the cause of woman suffrage. Her first objective was to establish a forum in which she could discuss women’s rights issues and ensure the circulation of laws pertaining to the rights of women.

42 Francis Minor was the first to call attention to the view that women were enfranchised by the Fourteenth Amendment. At a woman suffrage convention in St. Louis, October 1869, he proposed the Minor Resolutions. Among other things, these resolutions established that woman suffrage was guaranteed by the spirit and the letter of the Fourteenth Amendment. THE HISTORY OF WOMAN SUFFRAGE, supra note 6, at 407-408

43 JOAN HOFF, supra note 7, at 146-150.

44 Id.

45 See, e.g., THE WOMAN’S JOURNAL (Mary Livermore ET AL. ed., 1870)
A review of the *Chicago Tribune* and the [Springfield] *Daily State Journal* between 1861 and 1873 reveals a noticeable lack of coverage on woman suffrage issues.\(^{46}\) In a commentary on Stanton’s speech concerning woman suffrage, the editors of the *Daily State Journal* reflected the sentiment of most newspaper journalists towards woman suffrage during that era.

> "We regret that the crowded state of our columns will not allow us to follow the eloquent lady [Stanton] in all her arguments in support of her theory, for although we cannot approve some of the theories advance by the woman’s rights advocates, we would wish to give them a careful hearing."\(^{47}\)

In other words, woman suffrage issues would only be covered if the paper had room. As a result, new reforms on behalf of women often went unpublished and unheralded. It was as if the laws had never been changed.

In order to combat this lack of journalistic coverage, women began to establish newspapers of their own. In January 1868, Stanton and Anthony of the NWSA, commenced publication of *The Revolution*, a forum dedicated to the more militant wing of the woman suffrage

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\(^{46}\) Author read editions of the Chicago Tribune and the [Springfield] Daily State Journal. The dates selected were those in which legislation had been passed affecting the rights of women. In order to be thorough, editions of both paper were read three weeks prior to the date of enactment and after the date of enactment.

\(^{47}\) *Female Suffrage*, DAILY STATE JOURNAL, Feb. 20, 1869.
movement. Ten months later, Bradwell established the *Chicago Legal News*, and by January 1869, *The Agitator* was being edited and published by Livermore. Both *The Agitator* and the *Chicago Legal News* would represent the more moderate approach to woman suffrage.

The *Chicago Legal News* was a weekly paper "devoted to the publication of new and important decisions, and of other matters useful to the practicing lawyer or man of business." Bradwell’s purpose for establishing the *News* was purportedly two-fold. The paper was to fill a niche in the publication of legal materials in the west. It was also to be a vehicle to promote woman suffrage. Bradwell ensured that her readers understood the latter objective from the very beginning. Although her paper was neutral with regards to politics, Bradwell viewed woman suffrage not as a political question but rather a question of reform.

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48 NOTABLE AMERICAN WOMEN, *supra* note 39, at 53.

49 *See* 1 CHICAGO LEGAL NEWS 4 (Myra C. Bradwell ed., The Chicago Legal News Company 1868) *see also* MARY A. LIVERMORE, *supra* note 28, at 482.


51 27 CHICAGO LEGAL NEWS 175 (Myra C. Bradwell ed., The Chicago Legal News Company 1895).

52 1 CHICAGO LEGAL NEWS, *supra* note 50, at 45.
one thing we do claim—that woman has a right to think and act as an individual—believing if the great Father had intended it to be otherwise—he would have placed Eve in a cage and given Adam the key.\(^{53}\)

The *News* was the first legal paper in the United States to come out in favor of woman suffrage.\(^{54}\) Bradwell used the columns of the *News* to circulate information on woman suffrage and to promulgate laws intended to achieve equal rights for women.

Bradwell’s second objective was to lobby the Illinois State General Assembly for two kinds of laws. The first set of laws pertained to the *News* and were designed to ensure its standing in the legal community. These laws were very important to Bradwell since, more often than not, she would be the first to report on acts passed relating to the rights of women. She wanted a woman to be able file suit based on what was printed in the *News* alone. The second set of laws were constructed to assist in the demise of coverture.

On February 27, 1869, the *Chicago Legal News* was incorporated under the laws of Illinois with Bradwell at helm. Despite her married status, Bradwell could sue and be sued under the law and in equity.\(^{55}\) Approximately two weeks later, Bradwell was able to secure the passage of an Act requiring the secretary of state to furnish the *News* with laws on demand. The same duty was

\(^{53}\) Id.

\(^{54}\) Id.

\(^{55}\) Act to incorporate the Chicago Legal News Company, 1869 Ill. Laws.
attached to the clerk of the Illinois Supreme Court with respect to court decisions.\textsuperscript{56} This Act, which was enacted on March 11, 1896, further stated that all laws of the state and decisions of the Supreme Court of Illinois printed in the \textit{News} were to be considered prima facie evidence of the existence and contents of such laws and decisions. The final Act passed by the General Assembly pertaining to the \textit{News} required the secretary of state to furnish the \textit{News} with certified copies of all public laws enacted during that session immediately upon adjournment of the General Assembly. Once again, all laws published in the \textit{News} would be prima facie evidence of the existence of such laws.\textsuperscript{57} Since Bradwell was concerned with the quick dissemination of laws relating to women's rights, these acts were essential to procure. By virtue of their passage, women in Illinois could institute a suit on the basis of the \textit{News} alone. And women from other states, who subscribed to the \textit{News}, could quickly learn about news laws that may be beneficial if enacted in their own state. Bradwell had begun to employ the AWSA's approach of widespread, low-profile, state-level political activity.

The second set of bills for which Bradwell lobbied pertained to the coverture laws in Illinois. Under the laws of coverture, a woman could not own property independent from her husband's claim and control. In 1861, Bradwell was able to secure the passage of an act giving to married women the full and exclusive control of her property and of its earnings.\textsuperscript{58} The 1861 Act, however, did not address those earnings acquired by a wife through her labor rather than property

\textsuperscript{56} Act of Mar. 11, 1869, 1869 Ill. Laws.

\textsuperscript{57} Act of Mar. 24, 1869, 1869 Ill. Laws.

\textsuperscript{58} Act to protect Married Women in their separate property, 1861 Ill. Laws.
ownership. The earnings of a wife acquired through her labor still remained under her husband’s claim and/or control. Bradwell, in the columns of the News and on the steps of the General Assembly, lobbied for a bill to amend the Act of 1861. She asked that the bill give a married woman control of her own earning and the right to sue for and collect those earnings in her own name. In addition, Bradwell requested that the bill incorporate a provision making a wife solely responsible for her contracts and liable to be sued in her own name.\(^{59}\) Bradwell’s first attempt at amending the 1851 Act occurred in July 1868. Apparently, she was unsuccessful. In 1869 she requested such a bill once again. This time Bradwell was part of a larger delegation from the Chicago Woman Suffrage Convention.\(^{60}\) Although Bradwell was not able to get an amendment of the Act of 1861, she was able to draft and secure the passage of the following act.

AN ACT in relation to the earnings of Married Women

SECTION 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly, That a married woman shall be entitled to receive, use and possess her own earnings, and sue for the same in her own name, free from the interference of her husband or her creditors; Provided, this act shall not be construed to give the wife any right to compensation for any labor performed for

\(^{59}\) See 1 CHICAGO LEGAL NEWS, supra note 51, at 125 for a synopsis of her argument.

\(^{60}\) The Chicago Woman Suffrage Convention was organized by Livermore. MARY A. LIVERMORE, supra note 28, at 481-482. Bradwell also served as a vice president at the convention. 1 CHICAGO LEGAL NEWS, supra note 51, at 164.
her minor children or husband.

Approved March 24, 1869.\textsuperscript{61}

Ironically, although this act contained a right to sue provision, it did not include a provision to be sued. The act, when read literally, did not make the wife responsible for her own contracts nor was she liable to be sued in her own name.\textsuperscript{62}

During this same visit, the delegation was also successful in securing the passage of an act pertaining to widows. This act, which was also drafted by Bradwell, ensured the widow her award in all cases, whether her husband died testate or intestate.\textsuperscript{63}

An Act to amend chapter 109 of the revised statutes, entitled “Wills.”

\textbf{SECTION 1.} \textit{Be it enacted by the people of the State of Illinois, represented in the General Assembly}, That the widow of a deceased person shall be entitled to receive what is known as the widow’s award whether her husband die testate or intestate.

\textsuperscript{61} Act in relation to earnings of married women, 1869 Ill. Laws.

\textsuperscript{62} The lack of provision making a married woman responsible for her own contracts and liable to be sued under her own name would come to haunt Bradwell in her application to be admitted to the bar.

\textsuperscript{63} 1 CHICAGO LEGAL NEWS, \textit{supra} note 50, at 248. Note the News referred to the title of this Act as “An Act to amend Chapter 110 of the revised statutes, entitled “Wills.” When actually pulled from the Public Laws of the State of Illinois, the Act is entitled as provided in the text below.
intestate, and the same shall be considered and classed as number one preferred.

SECTION 2. This act shall take affect from and after its passage, and all acts or parts of acts in conflict with this act are repealed.

Approved March 31, 1869.64

Other states refer to the widow’s award as the widow’s allowance. In either case, it is the amount of property a widow may claim from her husband’s estate, free of all claims.65 In Illinois, the widow’s award was equivalent to the value of “one pair of cards, one spinning wheel, one loom and its appendages, and one side saddle.”66 Despite Bradwell’s call for an increase in the widow’s award, the legislature did respond by amending 109 to include an increase.67

IV. SECURING THE PATH FOR FREEDOM OF OCCUPATION

Bradwell was successful in establishing a forum to disseminate laws relating to woman suffrage - the Chicago Legal News. She had effectively lobbied for laws that would change coverture forever in Illinois. Her next area of reform focused on the elimination of occupational barriers to entry.

64 Act of Mar. 31, 1869, 1869 Ill. Laws.

65 BLACK’S LAW DICTIONARY 1598 (6th ed. 1990)

66 1 CHICAGO LEGAL NEWS, supra note 50, at 172.

67 Id.
When taken in the context of her 1869 legislative victories and her participation in the AWSA, Bradwell’s decision to take the bar was probably not based on a desire to practice the law. She was more likely trying to achieve additional reforms through the courts. Because she advocated women’s enrollment in institutions of higher education, Bradwell had to also be sensitive to the limited amount job opportunities available to women graduates.\textsuperscript{68} The laws of a state could precluded women from certain occupations either by implication or explicit statement. Illinois had one such law. The Illinois the statute governing admittance to the bar refers to all applicants as “he”; thus, implicitly barring women from becoming lawyers.\textsuperscript{69}

On June 15, 1869, Arabella Mansfield of Iowa became the first woman to be admitted to the bar. She gained acceptance despite an Iowa statute similar to that of Illinois.\textsuperscript{70} Because of Bradwell’s position as editor of the News and her ready access to Illinois laws under the Act of March 11, 1868, she undoubtedly knew of the similarities between the Iowa and Illinois laws. Inspired by Mansfield success, Bradwell decided to test the waters of Illinois herself.

On August 2, 1859, after passing the required examination and obtaining the required certificate, Bradwell petitioned the Illinois Supreme Court to be admitted to the bar. Anticipating a debate on the construction of the applicable Illinois statute, Bradwell filed a written application which

\textsuperscript{68} See, e.g., 1 CHICAGO LEGAL NEWS, supra note 50, at 100.

\textsuperscript{69} Appellant’s Petition at 2, Bradwell v. Illinois, 16 Wall 130 (Sup. Ct. 1873) (No. 487)

\textsuperscript{70} In Iowa, the statute allows for “white male citizens,” but the Judge construed the words “men” and “male” to cover women as well. NOTABLE AMERICAN WOMEN, V. 2, at 492 (Edward T. James ed., The Belknap Press of Harvard University Press 1971).
posed a single question: “Does being a woman disqualify her under the laws of Illinois from receiving a license to practice law?” Her answer was “No.”

Bradwell conceded that the relevant statute, the legislature used a masculine pronoun, “he,” to refer to applicants seeking admission to the bar. Nevertheless, she asserted that “he” was used indefinitely throughout the whole chapter when referencing any person. Thus, if taken in that context, “he” may refer to either a man or a woman. Bradwell further bolstered her position by citing §28 of the Revised Statutes of Illinois. This section declared that any words in the Revised Statutes importing the masculine gender shall be deemed to include females as well as males. 71

The court was unpersuaded. No order was entered upon or opinion filed in the case. Rather, Bradwell received a communication dated October 7, 1869 from the reporter of the Supreme Court of Illinois, Norman L. Freeman. 72 Bradwell had been denied admission on the ground that she was a married. As a married woman, Bradwell was not a legal person. Therefore, her contracts were not binding. Since contracts were the essence of an attorney-client relationship, according to Freeman, married women could not become attorneys. Freeman further went on to state that until legislation recognized a married woman’s ability to sue and be sued, the hands of

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71 Appellant’s Petition at 2, Bradwell v. Illinois, 16 Wall. 130 (Sup. Ct. 1873) (No. 487)

72 Id. It is also interesting to note that on October 10, 1868, Norman Freeman began to provide Myra and the Chicago Legal News with the head notes from decisions of the Supreme Court of Illinois prior to their publication. Therefore, he knew of Myra’s capabilities. See 1 CHICAGO LEGAL NEWS 4 (Myra C. Bradwell ed., The Chicago Legal News Company 1868)
the court were tied.\textsuperscript{73}

Angered, Bradwell filed an additional brief with the Illinois Supreme Court. She asserted that under the common law, as modified by the Acts of 1861 and 1869, she could not properly be denied a license to practice law solely on the ground of her married status. Legal treatises and learned scholars had long recognized the ability of married women to act as agents. An attorney was merely an agent for her client. Next, Bradwell reminded the court that many institutions of higher learning, including law schools, had opened its doors to both genders on an equal basis.\textsuperscript{74}

Another factor in her favor, Bradwell argued, was that the bar was not without its women lawyers. Arabella Mansfield of Iowa had already gained admittance in August.\textsuperscript{75} Finally, Bradwell refuted the claim that she could not make legally enforceable contracts by citing the Illinois statutes pertaining to the incorporation of the \textit{News}.\textsuperscript{76}

\textsuperscript{73} 2 CHICAGO LEGAL NEWS 145 (Myra C. Bradwell ed., The Chicago Legal News Company 1870).

\textsuperscript{74} \textit{Id.} The Law School of St. Louis admitted its first woman law student in 1868. See 1 CHICAGO LEGAL NEWS 100 (Myra C. Bradwell ed., The Chicago Legal News Company 1868) President Haven of the University of Michigan had expressed his support of admitting women to all the schools within the university. See 1 CHICAGO LEGAL NEWS 52 (Myra C. Bradwell ed., The Chicago Legal News Company 1868)

\textsuperscript{75} Arabella Mansfield had been admitted to the bar a few months prior to Myra’s petition. The Iowa court considered a clause similar to that of Illinois and had construed it in favor of women lawyers. See 2 CHICAGO LEGAL NEWS 146 (Myra C. Bradwell ed., The Chicago Legal News Company 1870)

\textsuperscript{76}Appellant’s Petition at 2, Bradwell v. Illinois, 16 Wall. 130 (Sup. Ct. 1873) (No. 487)
Before the Illinois Supreme Court could issue an opinion, on December 31, 1869, Bradwell filed a supplemental affidavit. In her third and final argument, Bradwell made two Constitutional claims: an equal rights claim under the Fourteenth Amendment and the Civil Rights Act of 1866 and a privileges and immunities claim under Article IV of the United States Constitution. The first claim focused on her ability to bring suit and her right to practice the law under the same terms and conditions as applied to every Illinois citizen, while the second claim focused on the privileges and immunities of state citizenship. Bradwell argued that as a current resident of Illinois who once resided in Vermont, Illinois could not deny her the right to pursue the occupation of her choice.  

In January 1870, the court filed an opinion. Once again, Bradwell was denied admission, but this time on the basis of her gender alone. The court conceded that the Act of 1861 removed the common law disabilities of married women as it pertained to ownership of property derived separate from their husband, but it refused to construe this act as removing all the common law disabilities of married women and thereby allowing them to make contracts equally with men. Given their holding in this case, the court also declined to consider the impact and range of the Act of 1869. The court, however, did respond to Bradwell’s attorney as agents claim.

According to the court, an attorney is an agent for his client, but he is also an officer of the court.

77 Id. see also Nancy T. Gilliam, A Professional Pioneer: Myra Bradwell’s Fight to Practice Law, LAW & HIS. REV., Spring 1987, at 114-115.

78 Appellant’s Petition at 2, Bradwell v. Illinois, 16 Wall. 130 (Sup. Ct. 1873) (No. 487)
Therefore, rules have been promulgated by the judiciary to ensure the integrity and the capability of those individuals admitted to the bar. The legislature gave the courts great latitude in establishing these rules, but there were two limitations. The rules must promote the proper administration of justice and the rules should not allow admittance to any persons not intended by the legislature. This latter limitation applies to Bradwell.\textsuperscript{79}

The court looked to the history of the English Law and the Law of God in order to establish legislative intent. Based on these two legal strands, the court determined that the legislature had not intended to extend the privilege of practicing law to women. Furthermore, the court concluded that there had been no legislation since that period signaling a change in legislative intent. Bradwell’s §28 claim was rebuffed by the court’s assertion that §28 was limited in its application. § 39 provided that the rule of construction [establishing that any words of masculine gender in the Revised Statutes implies women as well as men] shall not apply where there is anything in the context that is repugnant to such construction. Since the legislature never intended for women to practice law, §39 applied. Given the position the court took in this case, it declined to address Bradwell’s constitutional arguments.\textsuperscript{80}

In a statement the court’s holding, Bradwell asserted that “what the decision of the Supreme Court of the United States in the Dred Scott case was to the rights of Negroes as citizens of the

\textsuperscript{79} Id.

\textsuperscript{80} Id.
United States, this decision is to the political rights of women in Illinois—annihilation.\textsuperscript{81}

Bradwell believed that the right to pursue any occupation was an integral part of a larger notion of liberty. The Illinois Supreme Court’s decision had chipped away from the foundation of rights Bradwell had secured for women. These rights when taken in the aggregate would lead an inextricable conclusion that women should be accorded the right to vote.

Although Bradwell could have ended her suit with this opinion by the Illinois Supreme Court, she decided to pursue an appeal to United States Supreme Court. The basis for her appeal were the two Constitutional claims she submitted at last moment. On August 16, 1870, Bradwell sued out a writ of error against the State of Illinois in the Supreme Court of the United States.\textsuperscript{82} She retained as her attorney Senator Matthew Carpenter, a well-known and highly admired constitutional law advocate. Carpenter was also a champion of woman suffrage\textsuperscript{83}

Carpenter’s argument on behalf of Bradwell was heard by the Supreme Court of the United States on January 18, 1872. According to Carpenter, the single issue in Bradwell v. Illinois was: “whether a married woman, being a citizen of the United States and of a State, and possessing the

\textsuperscript{81} 2 CHICAGO LEGAL NEWS 146 (Myra C. Bradwell ed., The Chicago Legal News Company 1870)

\textsuperscript{82} Writ of Error at 14, Bradwell v. Illinois, 16 Wall. 130 (Sup. Ct. 1873) (No. 487)

\textsuperscript{83} During an appeal for “impartial suffrage: without regard to color, nationality or previous condition,” a person asked whether impartial suffrage should apply to women as well. Carpenter replied, “Yes. I always include women in my please for impartial suffrage, and always will.” FRANK A. FLOWER, LIFE OF MATTHEW HALE CARPENTER 501 (1884)
necessary qualifications, is entitled by the Constitution of the United States to be admitted to practice as an attorney and counselor at law in the courts of the State in which she resides.” Prior to beginning his argument, he distinguished Bradwell v. Illinois from the issue of woman suffrage. Carpenter took this posture to allay the fears of conservatives and to prevent any Judge from using an association between Bradwell and woman suffrage as a basis for denying relief.

Carpenter began his argument by establishing that the Fourteenth Amendment executes itself in every state of the union; and thus, it requires that the privileges and immunities in one state correspond with the privileges and immunities of all other states. These privileges and immunities were to apply to all citizens with equal force. After establishing the relevance of the Fourteenth Amendment to this case, Carpenter argued that admission to the bar was a privilege within the meaning of the Fourteenth Amendment. Attorneys were neither elected nor appointed. Their admission or exclusion bar was made on the basis of judicial power alone. Although the legislature may prescribe limits, it may not exclude a class of citizens from admission to the bar, such an act would abridge the right of those citizens. If the legislature cannot declare colored citizen’s excluded from the practice the law than neither can it declare female citizens excluded

84 Bradwell v. Illinois, 83 U.S. 130, 133 (1873)

85 This latter argument was based on the Court’s position in Cummings v. Missouri and Ex parte Garland. In Cummings, the court stated that “the theory upon which our political institution rest is, that all men have certain inalienable rights—that among these are life, liberty and the pursuit of happiness: and that in the pursuit of happiness all avocations, all honors, all positions, are alike open to every one, and that in the protection of these rights, all are equal before the law.” Ex parte Garland, recognized the pursuit of law as an avocation open to every citizen of the United States. Id.
from the practice of the law. Bradwell was excluded from bar not for lack of citizenship but because she was a married woman.\textsuperscript{86} By phrasing the Bradwell's position in this manner, Carpenter emphasized the question of whether married women were citizens within the meaning of the Constitution of the United States.

On April 15, 1873, the Supreme Court submitted its decision to affirm the judgement of the lower court. The Court held that admission to the bar of the state was not among the privileges and immunities guaranteed by the Fourteenth Amendment. Justice Miller delivered the brief opinion of the court. \textsuperscript{87}

We agree with him [Carpenter] that there are privileges and immunities belonging to citizens of the United States...and that these and these alone which a State is forbidden to abridge. But the right to admission to practice in the court of a State is not one of them. This right in no sense depends on citizenship of the United States. It has not, as far as we know, ever been made in any State, or in any case, to depend on citizenship at all.\textsuperscript{88}

The Court only elaborated on the point by stating if the right were to depend on citizenship then "as to the courts of the state, it would relate to the citizenship of the state, and as to the Federal

\textsuperscript{86} Id.

\textsuperscript{87} Bradwell v. Illinois, 83 U.S. 130, 137-139 (1873)

\textsuperscript{88} Id.
courts, it would relate to the citizenship of the United States. It concluded by stating that the decision in the Slaughter-House Cases controlled in this instance.

Based on Carpenter’s argument in the Supreme Court, it is easy to conclude that Bradwell v. Illinois was indeed a test case for the New Departure suffragists. After all, it was asking the essential question of citizenship. A strict comparison, however, between the NWSA’s rationale for Fourteenth Amendment litigation and Bradwell’s rationale for pursuing her claim under the Fourteenth Amendment belies any assertion that Bradwell v. Illinois was a civil rights test case.

The NWSA suffragists believed litigation, under the New Departure theory, would prove that the Fourteenth Amendment conferred full citizenship to women, including the right to vote.

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89 Id.

90 The Slaughter-House Cases were decided the day before by the Supreme Court. As in Bradwell, the Constitutional issue in the case revolved around the Fourteenth amendment. The Crescent City Slaughter House Company obtained from the Louisiana Legislature exclusive right to slaughter animals for the New Orleans Market. The suit was brought by the Butchers’ Benevolent Association of New Orleans to test the legality of the grant. The latter claimed that the Fourteenth Amendment of the Constitution guaranteed the life, liberty and the pursuit of happiness; the grant abridges these rights which they are due as United States citizens. The Supreme Court affirmed the decision of the lower courts by construing the Privileges and Immunities Clause narrowly. It is said that Bradwell v. Illinois is the practical application of the Slaughter-House Cases. The Butcher’s Benevolent Association of New Orleans v. The Crescent City Livestock Landing and Slaughter-House. CO., 83 U.S. 36, 78-79 (1873)

91 But Carpenter misstated the issue in the case by referring to married women rather women in general. He also failed to argue the case under Bradwell’s initial Article Fourth theory. Instead, he argued her case under a Fourteenth Amendment privileges and immunities claim. See Nancy T. Gilliam, A Professional Pioneer: Myra Bradwell’s Fight to Practice Law, Law & His. Rev, Spring 1987, at 122.
Bradwell, on the other hand, pursued her claim only because she believed that the Fourteenth Amendment conferred at least some rights to women such as the liberty of pursuit. Bradwell considered her ability to appeal to this case to Supreme Court as triumph in and of itself.\textsuperscript{92} Clearly, Bradwell felt that her efforts were not in vain.

Although we have not succeeded in obtaining an opinion as we hoped, which would affect the rights of women throughout the nation, we are more than compensated for all our trouble in seeing, as a result of the agitation, statutes passed in several state, including our own, admitting women upon the same terms as men.\textsuperscript{93}

IV. THE AFTERMATH OF BRADWELL V. ILLINOIS

During the three years it took for the Supreme Court to reach a decision in her case, Bradwell continued to lobby on behalf of women on the state level. On March 22, 1872, perhaps feeling that an unfavorable decision was becoming more probable, Bradwell co-authored a bill that would allow all persons freedom to pursue the occupation of their choice.\textsuperscript{94}

\textsuperscript{92} 5 CHICAGO LEGAL NEWS 354 (Myra C. Bradwell ed., The Chicago Legal News Company 1873)

\textsuperscript{93} Id.

\textsuperscript{94} The bill was co-authored with Ada Kepley and Alta Hulet two law school graduates from Chicago. Like Bradwell, both Kepley and Hulet had been denied admission on the basis of their gender. 5 CHICAGO LEGAL NEWS, supra note 92, at 37; 438
An Act to secure to all persons freedom in the selection of an occupation, profession or employment.

Section 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly, that no person shall be precluded or debarred from any occupation, profession or employment (except military) on account of sex: Provided, that this act shall not be construed to affect the eligibility of any person to an elective office.

§ 2. Nothing in this act shall be construed as requiring any female to work on streets or roads, or serve on juries.

§ 3. All laws inconsistent with this act are hereby repealed.

APPROVED March 22, 1872

The Act of March 22, 1872, was very broadly written. It illustrates Bradwell’s concern for all women, not just aspiring lawyers. In 1872, Judge Bradwell was elected to the Illinois State House of Representatives. His influence as a legislator probably helped Bradwell to secure passage of this bill. One year later, with his assistance and support, the Bradwell was able get a bill which authorized the election of women as school officers signed into law.

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95 Act of Mar. 22, 1872, 1872 Ill. Law.

96 JOHN MOSES & JOSEPH KIRKLAND, supra note 31, at 227.

97 THE WOMAN’S JOURNAL (Mary Livermore ET AL. ed., 1873)
V. CONCLUSION

Bradwell was an editor, a lawyer, and a woman suffragist. Like all of us, her attitudes and beliefs were shaped by those around her. Although, she is remembered most for her role in Bradwell v. Illinois and as legal pioneer, Bradwell was so much more. Her passion was not really the law but the passage of laws that were for the benefit of women. Ever diligent in her efforts, Bradwell systematically fought for rights that in the aggregate would eventually lead to the right to vote. Her strategy was acquired through working with the AWSA and Mary Livermore. It stands almost in complete juxtaposition with the methodology of Anthony and Stanton who promoted continued litigation and the federal appeals as well as grass roots endeavors.

Bradwell v. Illinois when viewed in light of Carpenter's arguments does seem to be a New Departure case. However, Bradwell never intended for her case to be a civil right test case. She sought the admission to the bar to encourage reform to age old statutes that prevented women from entering into the legal profession. She did not appeal her case to the United States Supreme Court because she felt personally aggrieved. Rather, Bradwell appealed because she felt she had that right as a citizen under the Fourteenth Amendment.