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Civil Rights and Suffrage: Myra Bradwell's Struggle for the Equal Citizenship for Women

by Louisa S. Ruffine*

After the Civil War, while the nation debated the range of rights which would be secured to the freedmen, the women's rights movement worked to insure that women would also receive equal rights, particularly the right to vote. When the Fourteenth and Fifteenth Amendments did not enfranchise women, many women who had fought against slavery and for universal suffrage felt betrayed. The Republican Party's refusal to include women's rights in the party platform deepened the sense of betrayal and forced suffragists1 to take up their cause for equal rights of citizenship separately from the freedmen.2 Two inequities in particular animated women's rights activists' fight: married women's civil death in marriage, and all women's lack of political rights.

This article will analyze Myra Bradwell's struggle for equal citizenship within the nineteenth century women's rights framework. In her life and her writing, Bradwell fought for and gained some of the women's rights movement's most sought after reforms. Today, Bradwell is known

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1. For convenience, this article uses the term "suffragists" interchangeably with "women's rights activists" to describe women who worked for equal rights for women—most importantly suffrage. This is a simplification of a complex movement, but this article takes the basis of the movement at this time to be the National Women Suffrage Association and later the National American Woman Suffrage Association.

2. Ellen Carol Dubois, Outgrowing the Compact of the Fathers: Equal Rights, Woman Suffrage, and the United States Constitution, 1820-1878, 74 J. AM. HIST. 836, 837 (1987) [hereinafter Compact of the Fathers]. Dubois emphasizes that women, betrayed by the abolitionists, even turned to racist tactics to appeal to segments of the male electorate. They stopped supporting the Republican party and began to seek allies in the Democratic party. Toward that end, suffragists argued that if the lowly negro had the vote, then certainly higher born white women should have it. See, e.g., ELLEN CAROL DUBOIS, FEMINISM AND SUFFRAGE 79-104 (1978) (discussing the suffragist alliance with racists in the Democratic party in the Kansas suffrage campaign).
primarily for her role in *Bradwell v. State*, the case in which she sought admission to the Illinois bar. She is also noted for being the publisher of Illinois’ first legal newspaper, a crusader for married women’s property rights, and an active participant in the Illinois Woman Suffrage movement.

Previous articles on Bradwell have focused almost exclusively on Bradwell’s struggle to practice law. These articles argue that Bradwell’s application to be admitted to the bar is indicative of her vision of equal citizenship. While it is true that Bradwell’s case illustrates her struggle for equal citizenship, the picture is not complete unless one examines the range of Bradwell’s work for women’s rights.

Myra Bradwell had a vision of equal citizenship for women which encompassed every right of citizenship granted to white men. As an influential member of the community, Bradwell was able to work within the Illinois political and legal systems to lobby for women’s rights. This article argues that while Bradwell’s battles in the legislature and the courts ostensibly focused on equal “civil” rights (married women’s right to keep their earnings and women’s right to practice law), her writing and her involvement with the Illinois Woman Suffrage Association reveal that these “civil” rights were integral parts of a broader notion of independence which would secure to women equal citizenship and the most sought after “political” right: the vote. Bradwell had established the goal of breaking down each barrier that stood in women’s path to equal citizenship.

Part One of the article provides a brief introduction to the nineteenth century women’s movement in order to give a background to the political context within which Myra Bradwell worked. Part Two discusses Myra Bradwell, and tells the stories of two of her most significant reform campaigns: to secure for married women the right to retain their own earnings, and to secure for all women the right to practice law. Part Three of the article places these reforms into the framework of Bradwell’s woman suffrage position and argues that both of these “civil” rights reforms were intended to have a great effect on women’s “political” right to vote.

The paper concludes that Bradwell did not accept the conventional nineteenth century distinctions made between “civil” and “political” rights. Bradwell, and women like her in the women’s rights movement, would not meekly “accept” whichever rights the courts or legislatures were willing to

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3. 83 U.S. (16 Wall.) 130 (1873).
bestow. She was working toward full rights of citizenship. As the Illinois Woman Suffrage Association resolved:

... all facilities for education, and all avenues of remunerative industry should be open to woman, and that no legal impediment should be placed in the way of her engaging in every department of social, civil, and political life.5

Women would not be satisfied until they gained the full rights of citizenship guaranteed to men. Conventional distinctions between "civil" and "political" rights may have satisfied the needs of white men, but they would not satisfy the demands of women's rights activists.

I. THE NINETEENTH CENTURY WOMEN'S RIGHTS MOVEMENT

Individual rights and equality of opportunity for women were the most common themes in the early nineteenth century women's rights movement. The movement concentrated on the claim that women should be included in the citizenship of the United States.6 Women's rights activists were greatly influenced by the republican concepts of rights, individualism, and equality. These principles had a discrete impact on the way that women's rights activists understood themselves and on the way they expressed their sense of a woman's proper role in society.7 The women in the movement believed in equality and individualism and insisted that women were men's equals. As taxpayers and citizens, women were entitled to all the rights of citizenship, including an equal voice in the government.8 As citizens with nominal rights, women in the movement sought rights equal to the rights guaranteed to full citizens — men.

Nineteenth century distinctions between "civil" and "political" rights thwarted suffragists' ability to attain equal citizenship. While the distinctions between which rights were "political" and which rights were "civil" were often blurred, the categories could be distinguished in some contexts. In the conventional thought of the day, "political" rights included the right to vote and the right to sit on a jury.9 "Civil" rights embraced

5. 1 CHI. LEGAL NEWS, Feb. 20, 1869, at 164.
8. Id. at 841 (quoting the Seneca Falls Declaration of Sentiments).
9. CONG. GLOBE, 39th Cong., 1st Sess. 476, 599, 1121 (1866) (arguing that the federal government does not have power to enforce political rights in the states, and responses of Senator Lyman Trumbull arguing that the Civil Rights Act does not protect political rights such as the right to vote).
the rights to enforce legal rights in the courts, to make contracts, and to acquire, inherit and dispose of property. Legislatures and courts were more willing to grant rights they viewed as purely "civil" rights and would withhold rights which were considered "political." Women's rights activists wanted to secure all types of rights, civil and political.

From the inception of the women's rights movement, its action focused on the most important "political" right — the right to vote. Suffragists considered the denial of the right to vote to be the most egregious of a "package" of discrimination which worked to destroy a woman's "confidence in her own powers, to lessen her self-respect, and to make her willing to lead a dependent and abject life." Suffrage was a central right of citizenship. Suffragists believed that the abilities incumbent in full citizenship would empower individual women to assert control over their lives.

The scope of the women's rights movement also included the issue of a wife's civil subordination to her husband, and a woman's ability to control her own life. Through the common law of coverture, married women were stuck in a system of enforced dependence on men. Coverture was based on the legal assumption that husband and wife were one person in marriage; married women possessed neither independent minds nor independent power. They could not act independently from their husbands and could exercise absolutely no control over their property. Although equity courts often gave women relief by granting them power over their own property, this relief was not available to all women, only to those who had access to the courts. Equitable relief was also

10. See, e.g., Cong. Globe, 39th Cong., 1st Sess. 475, 476, 598-600 (1866). Id. at 474 (Remarks of Senator Trumbull using Blackstonian definition of civil liberty, "restraints introduced by the law should be equal to all, or as much so as the nature of things will admit."). But the lines between "political" and "civil" rights were not entirely clear. See, e.g., Cong. Globe, 39th Cong., 1st Sess. 1122 (Remarks of Senator Rogers: "The right of suffrage is not a natural right. It is a civil right. It is a right derived from the Government and municipal law."). See also Alexander Bickel, The Original Understanding of the Segregation Decision, 69 Harv. L. Rev. 1, 17 (1955); Mark Tushnet, The Politics of Equality in Constitutional Law: The Equal Protection Clause, Dr. Du Bois, and Charles Hamilton Houston, 74 J. Am. Hist. 884, 888 (1987).
11. Karst, supra note 6, at 112 (quoting the Seneca Falls Declaration of Sentiments).
12. Id. at 119.
16. Giving married women control over their property was known as granting feme sole status. Feme sole status bestowed upon married women the right to contract and to control their property the same as if they were unmarried women. In most cases, feme sole status would be granted to women only if their husbands had abandoned them or were otherwise away from home for long periods of time. Id. at 44.
insufficient because equitable principles were not enforced consistently in the states that did recognize equitable doctrines for women's property, and because equity courts were not available in all states.\textsuperscript{17}

While the "unity of person" ideal of coverture supposedly strengthened family bonds, women in the movement seized on women's civil death in marriage as a basis for criticism.\textsuperscript{18} They fought for reforms to eradicate married women's subordination to their husbands. Beginning in the 1830's, Married Women's Property Acts gave women the power to control and dispose of their own property.\textsuperscript{19} In turn, increased control over property gave women more power within marriage.\textsuperscript{20}

It is important to keep in mind that women fighting for equal rights and recognition as individuals repeatedly confronted (and continue to confront) a double-bind. Men did not want women to be equal, because that would bring women up to a male-defined norm—making women like men. On the other hand, women who maintained their "femininity" remained different, and therefore subordinate.\textsuperscript{21} Some of the women in the

17. Puritans, for example, were resistant to chancery, and committed to a desire to simplify land law and facilitate the transfer of property. Property law was simpler to administer when married women had fewer property rights. \textit{Id.} at 188.

18. \textit{Id.} at 13; DuBois, \textit{Compact of the Fathers, supra} note 2, at 842.

19. Although many reasons have been given for the impetus behind the reform of married women's property law beginning in the 1830's, that debate is academic. Whether or not the enactment of Married Women's Property Acts in different states was the product of the codification movement, a result of economic downturn or due to the desire to keep spendthrift husbands from their wives' dower rights in property, it is clear that the women who worked for the acts saw their passage as vital for obtaining control over their own property, and thus, control over their own lives. For a range of theories on the motivations behind the Acts, see Richard Chused, \textit{Married Women's Property Law: 1800-1850}, 71 GEO. L.J. 1359 (1983); Linda E. Speth, \textit{The Married Women's Property Acts, 1839-1865: Reform, Reaction, or Revolution?} in 2 \textit{WOMEN AND THE LAW: A SOCIAL HISTORICAL PERSPECTIVE} 69 (D. Kelly Weisberg, ed., 1982); LAWRENCE M. FRIEDMAN, \textit{A HISTORY OF AMERICAN LAW} 209-211. \textit{See also infra, notes 44 \\& 123.}

20. SALMON, \textit{supra} note 15, at xii. Salmon asserts that control over property is an important baseline for learning how men and women share power in the family. However, another historian, Frances Olsen, argues that while reforms in the law of married women's property promoted equality, they also undermined the altruistic bases of the family and left women open to individualistic market struggles which they were ill-equipped to handle after years of "protection" under their husband's control. Thus, while the Married Women's Property Acts achieved their goal of equal rights for women, the Acts did not make relations within the family any more democratic. Frances E. Olsen, \textit{The Family and Market: A Study of Ideology and Legal Reform}, 96 HARV. L. REV. 1497, 1532 (1983).

Alternatively, a commentator in 1887 noted that "[t]he world is conservative in regard to granting power to those who have not held it, but of one thing we may be sure, that neither the family nor the state will fall to pieces because of granting to a woman equal property rights with her husband." M. Fredrika Perry, \textit{Property Rights of Married People}, 1 CHI. LAW TIMES 187, 195 (1887).

21. KARST, \textit{supra} note 6, at 118. This is a common theme among today's radical feminists. \textit{See generally CATHARINE MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE} (1989).
women's rights movement who were most successful in gaining the ear of the legislature were effective because they did not appear to threaten men's dominance or to be trying to step outside of women's traditional roles. In a way, some women's ability to gradually work within the male-constructed political world without sacrificing their feminine roles made them more effective women's rights advocates. Myra Bradwell is a good example of this type of woman. Unfortunately, femininity also detracted from women's credibility as deserving of equal rights. For example, while Bradwell could work effectively within the system to improve women's status, this article illustrates that the establishment honored her especially for upholding traditional women's roles.

II. MYRA BRADWELL AND THE FIGHT FOR EQUALITY

A. A SHORT BIOGRAPHY

Myra Bradwell was born Myra Colby in Manchester, Vermont on February 12, 1831.22 From Vermont, her family moved briefly to New York. In 1843, they settled in Elgin (Cook County), Illinois where Myra Colby attended public school. She later attended a Ladies' Seminary in Kenosha, Wisconsin. In 1852, Myra Colby married James Bradwell, and moved with him to Memphis to teach in a private school where he was the principal. When the Bradwells returned to Chicago in 1855, James was admitted to the local bar where he began a long and distinguished legal career. After practicing law for a few years, he became a county court probate judge and then a state legislator. The Bradwells had four children, two of whom survived to adulthood.

Mrs. Bradwell's activism in Illinois politics apparently began with her involvement in the Sanitary Commission during the Civil War.23 At the 1865 Sanitary Fair, Bradwell coordinated the Fair's major attraction, the booth for the Committee on Arms, Trophies and Curiosities.24 After the war and the disappointment of the Reconstruction amendments, Myra

22. Biographical information found in Gilliam, supra note 4, at 105.
23. The organization that became the Sanitary Commission was started in New York by Elizabeth Blackwell, the first American woman doctor. In a number of northern states, Sanitary Commissions coordinated the efforts of volunteers to help the army medical department get supplies to where they were needed on the battlefront. Although men organized the Sanitary Commissions, women did the majority of the work. After the creation, men held the majority of offices within the association, but women ran the statewide efforts. See 2 HISTORY OF WOMAN SUFFRAGE 15-17 (Susan B. Anthony, Elizabeth Cady Stanton, & Matilda Joslyn Gage eds., 1881).
Bradwell and other women from the Sanitary Commission formed a statewide network of women interested in the women's rights movement.25

On October 3, 1868, Bradwell began publishing the Chicago Legal News (hereinafter News), the first paper in Illinois devoted exclusively to legal news. The newspaper covered the northwestern legal community by publishing the full texts of statutes and reported cases, as well as abstracts from court opinions. The News also published notes about legal reform issues, attorney profiles, and news on Chicago lawyers. In the first edition, Bradwell wrote, "[in] presenting to the public the Chicago Legal News, we offer no apology and make no promises, except to say that we shall do all we can to make it a paper that every lawyer and business man in the northwest ought to take."26

The distribution of the prospectus for the paper apparently created quite a stir. The Chicago Sunday Times stated, "[I]t would seem to be a novel enterprise for a lady, but it is a lady who is going to undertake it."27 The Grand Rapids Democrat called the newspaper "a valuable acquisition to the legal literature of the northwest," and opined, "It is singular that Chicago should surrender that field to a lady."28

Within a short period of time, the News became required reading for the northwestern legal community.29 In 1873 the Chicago Tribune called the paper, "the best law-newspaper in the country."30 As the American Law Review observed in 1894, "[p]ractical newspapermen and prominent lawyers at once predicted its failure, but they underestimated the ability and power of the little woman."31

Bradwell's control of the News was extraordinary for the time. The Bradwells had sufficient influence within the legislature to secure approval for Bradwell to serve as president of the Chicago Legal News Publishing Company without the usual legal disabilities that accompanied married women's attempts to enter business.32 Another special legislative act

25. Id. at 52. The other two women who were instrumental in organizing the statewide network were Mary Livermore and Catherine Waite. Both women assumed preeminent positions in the Woman Suffrage Movement.
27. Id. at 7 (quoting Chi. Sunday Times, Sept. 13, 1868).
29. 2 Chi. Legal News, Jan. 1, 1870, at 109 (quoting a letter from court reporter N.L. Freeman: "By the prompt and reliable report of recent cases, you have made the News not only desirable, but necessary to every practicing lawyer.").
30. Chi. Trib., April 20, 1873, at 8, col. 3.
32. Wheeler, supra note 24, at 52; 1 Notable American Women, 1607-1950, at 224 (Edward T. James et al. eds., 1974). Illinois at the time adhered to the Common Law of Coverture. The Illinois Court had narrowly construed the 1861 Married Women's Property Act. The legislature granted Bradwell feme sole status, discussed supra at note 16. This status gave her the ability to contract in relationship to the newspaper and to retain all the
declared the *News* a valid source of information for all Illinois laws, and acceptable as prima facie evidence of the laws in any court in Illinois.\(^{33}\) Through her persistence, the *News* became the “most important [legal newspaper] west of the Alleghenies” and was often cited by lawyers for both its cases and its commentary.\(^{34}\)

Bradwell assumed an extraordinary amount of influence within the legal community of the northwest as a publisher and interpreter of laws. Through her paper, she exercised “an influence just as powerful as she would have in the courts, by virtue of her personal presence and her professional erudition.”\(^{35}\) Bradwell understood the power of her position, and obviously intended to make a difference.\(^{36}\) She used the *News* as a forum for all kinds of legal reform issues, particularly the reform of the “Law Relating to Women.”\(^{37}\)

Bradwell was in a particularly good position to exert her influence at a most opportune time. The *Chicago Legal News* commenced publishing at a turbulent time in the history of the nation. In 1868 the country was undergoing the upheaval of Reconstruction. The passage of the Fifteenth Amendment in 1869 led to the development of an independent woman suffrage movement. Bradwell circulated the call for the first Woman Suffrage Convention in Chicago in February 1869.\(^{38}\) She used her paper earnings from it. Bradwell was the first (and probably the only) woman who ever specifically received the right to control her own earnings from the Illinois legislature. 26 CHI. LEGAL NEWS, Feb. 17, 1894, at 202.

33. CHI. LEGAL NEWS, Apr. 17, 1869, at 228.
34. WHEELER, supra note 24, at 52. See, e.g., Joel Prentiss Bishop, 2 COMMENTARIES ON THE LAW OF MARRIED WOMEN 347 (1873-75). See also Patricia Cain, Feminism and the Limits of Equality, 24 GA. L. REV. 803, 816 (1990).
35. CHI. TRIB., Apr. 20, 1873, at 8, col. 3.
36. 1 CHI. LEGAL NEWS, Feb. 27, 1869, at 172. In this issue, she invited the “gentlemen” of the Illinois Register and the Illinois State Journal to visit the offices of “the Revolution, Agitator and Legal News.” By grouping the Legal News with the national and Illinois woman suffrage newspapers, Bradwell placed her respected mainstream legal newspaper in radical company. This seems an emphatic admission that Bradwell knew the power her newspaper could have and intended to use her mainstream newspaper to advocate iconoclastic causes, even though she had to do it as an outsider, due to her lack of access to the courts.
37. A column by this name first appeared on October 17, 1868. It is likely that this column was suggested by Bradwell’s friend, Catherine Waite, who was the editor of the New Covenant. The New Covenant suggested, “[w]e hope Mrs. Bradwell may add to her little weekly another feature which will especially interest her own sex—a brief and clear summary . . . of the laws of the various states that bear especially upon women, married and single, with a resume of the legal disabilities to which these subject them. . . . Mrs. Bradwell can render invaluable aid to women by putting them in possession of knowledge of their legal status in their state of residence.” 1 CHI. LEGAL NEWS, Oct. 17, 1868, at 23 (quoting NEW COVENANT, Oct. 10, 1868). Although the column itself was short-lived, the *News* continued to devote generous space to the law relating to women in its case notes and commentary.
38. 1 CHI. LEGAL NEWS, Feb. 6, 1869, at 149.
as a forum for supporting such issues as a married women's earnings act, woman suffrage, a widow's right to a regular share in her husband's estate, and a woman's right to practice law.\textsuperscript{39}

In her writing, Bradwell made two things clear. First, she personally expected to be able to participate in society on the same basis as men and to be recognized for her own considerable talents. Second, she wanted all women to participate in the life of the nation to the same extent that men did.

It is important to keep in mind in reading about her reform successes that much of Bradwell's success was due to her connections. Like most women of her day, Bradwell had difficulty getting men of the establishment to accept her work as an individual without looking at her status as a woman. Bradwell had to couch her arguments to avoid overstepping women's bounds and offending men's sensibilities. Unlike most women of her time, Bradwell had a supportive husband, friends in the legislature, and an influential legal newspaper; all these things helped her gain men's ears.

An examination of the community's reaction to her work reveals that Bradwell was never completely successful in escaping the traditional notion of the correct behavior for women. Rather, she garnered respect because she worked in a man's field and lobbied for women's rights without violating society's limits on women.\textsuperscript{40}

At her death in 1894, the \textit{American Law Review} observed,

\begin{quote}
Mrs. Bradwell was one of those who lived their creed instead of preaching it. She did not spend her days proclaiming on the rostrum the rights of women but quietly, none the less effectively, set to work to clear away the barriers.\textsuperscript{41}
\end{quote}

Other observers were impressed by her "quiet self-possession."\textsuperscript{42} The Illinois Press Association eulogized, "[s]he had no respect for the platform babblers who prated of their 'rights' but who had neither the ability nor inclination to really do something for their sex."\textsuperscript{43}

\textsuperscript{39.} See generally Dubois, \textit{Compact of the Fathers}, supra note 2, and \textit{DUBOIS, FEMINISM AND SUFFRAGE}, supra note 2. See also \textit{SALMON, supra note 15}, and infra notes 45-75. One commentator mentioned that "perhaps . . . too large a space is devoted to the rights of wives," but the publication "show[ed] no mean ability; and, above all, it shows good, hard, honest, useful work." \textit{BOOK NOTICE, CHI. LEGAL NEWS, 3 AM. L. REV. 362 (Jan. 1, 1869).}

\textsuperscript{40.} Spector, \textit{supra note 4}, at 228.

\textsuperscript{41.} \textit{Death of Mrs. Myra Bradwell, supra note 31}, at 282. This was taken (without citation) from the obituary in 26 \textit{CHI. LEGAL NEWS}, Feb. 17, 1894, at 202.

\textsuperscript{42.} 1 \textit{CHI. LEGAL NEWS}, May 15, 1869, at 274 (quoting \textit{THE WESTERN JURIST}).

\textsuperscript{43.} 26 \textit{CHI. LEGAL NEWS}, Feb. 24, 1894, at 210 (quoting the ILL. PRESS ASS'N MEMORIAL).
The *American Law Review* previously had reviewed the *News* and Bradwell’s work:

She has begun at the right end: and we commend her example to those Eastern women who so volubly proclaim that they are the equals of men: let them prove it, as their Western sister has done; let them turn to, and show that they, too, can do a man’s work.44

All these comments ignored the fact that Bradwell could remain quietly effective because of her ability to work within the system. She worked so that other women could become part of the system as well. The “platform babblers” took to their platforms because they had no friends in the legislature. Bradwell did not have to proclaim “on the rostrum.” She had a respected forum in her newspaper, and friends in the legislature who would listen.

Without the work Bradwell did for women’s rights, it would not have been easy for other women to accept the *American Law Review*’s challenge to do a man’s work. It was unmistakable that every step Bradwell took for women’s rights had one goal in mind—equal citizenship for all women, including full political participation. Only when all women had equal citizenship would they have the same ability to do the work that Myra Bradwell had.

B. MARRIED WOMEN’S EARNINGS

In the third issue of the *News*, Bradwell began a campaign for the passage of an act to insure that married women could retain control over their own earnings.45 Bradwell’s campaign began as a reaction to the narrow reading that had been given to the 1861 Illinois Married Women’s Property Act.46 By judicial construction, the 1861 Act covered only real...
and personal property, not married women’s earnings or any of the property purchased with those earnings.\(^47\) The Illinois courts’ construction of the 1861 Act was consistent with the common law of married women’s earnings. Under the common law, unless a man allowed his wife to keep her earnings as separate property, they became his.\(^48\) The first publication of the “Law Relating to Women” column announced, “Earnings of A Married Woman Not Within Act of 1861.”\(^49\) Bradwell inquired, “should not the Act of 1861 be so amended as to embrace her earnings for labor performed outside her own household?\(^50\)

Bradwell’s campaign for the Married Women’s Earnings Act (the “Act”) may be divided into two segments. First, Bradwell lobbied for passage of the Act. While she was lobbying for its passage, Bradwell was a shrewd politician. She appealed to legislators to protect the pitiful women whose earnings were not under their own control. These arguments were consistent with arguments that had been made for early Married Women’s Property Acts in other states, but did not reveal the true intention behind Bradwell’s position.\(^51\) After the Act passed, Bradwell advocated its broad construction. This portion of her campaign reveals Bradwell’s individual rights arguments and the centrality of property rights for her definitions of citizenship and equality.

on the petition, so she approached the legislator who was supposed to handle the issue. When he protested that it was too late in the session, she approached Mr. Pickett, who told her to draft a bill giving women, during coverture, certain personal and property rights. Pickett presented the petitions, formed a special committee, and then took the bill before the full legislature where it passed and became law. 3 HISTORY OF WOMAN SUFFRAGE 561-62 (Susan B. Anthony, Elizabeth Cady Stanton, & Matilda Joslyn Gage eds., 1881). Cutler was a resident of Ohio who also conducted and participated in petition drives in New York and Ohio. 1 NOTABLE AMERICAN WOMEN, 1607-1950, supra note 32, at 426-27. The bill passed by a vote of 12 to 10 in the Senate and 39 to 28 in the House. ILL. SENATE J., Feb. 4, 1861, at 249; ILL. HOUSE J., Feb. 20, 1861, at 860. An act that the House considered which would have “secure[d] to married women their property and earnings and other rights” was reported back to the House together with certain petitions and recommended reference to the select committee. ILL. HOUSE J., Feb. 7, 1861 at 394. The version eventually passed in the House was the version considered by the Senate which made no mention of “earnings and other rights.” Taking a failure to act as intent, this means that earnings were not meant to be included in the Act—they were viewed as different than property. The Act was codified at Statutes of Ill. ch. 69a § 2 (Gross 1871).

\(^47\) 1 CHI. LEGAL NEWS, Oct. 17, 1868, at 22. 1 CHI. LEGAL NEWS, Nov. 13, 1869, at 53.

\(^48\) Joel Prentiss Bishop, 1 COMMENTARIES ON THE LAW OF MARRIED WOMEN § 21 (William S. Hein ed., 1887) (1873-75). Moreover, even if he gave her permission to keep her earnings separately, if he changed his mind at any time, her earnings became his. Salmon, supra note 15, at 57.

\(^49\) 1 CHI. LEGAL NEWS, Oct. 17, 1868, at 22.

\(^50\) Id.

\(^51\) See generally Chused, supra note 19.
It may be assumed from examining the arguments when she lobbied for passage of the Married Women’s Earnings Act that Bradwell knew the audience to whom her arguments were addressed. She couched her claims in terms that would be acceptable, and persuasive, to the Illinois Legislature and to the powerful men who read the News. During this first stage, Bradwell appealed to the legislature to amend the 1861 Act to protect women from “rich, shoddy creditors” taking the wife’s earnings to pay the husband’s debts.52 She gave as an example a case in which the wages of the wife of a “drunken, spendthrift” husband were garnished to pay his bar tab. From this case, she argued that giving the woman control over her earnings would save the wife and children from want by placing the wife’s earnings beyond the creditor’s reach.53

In another issue, Bradwell called the attention of her readers to a case involving a woman in Chicago who owned her own store, “worked like a slave,” and now found that her store was subject to a mechanics’ lien against her husband because the leasehold was purchased with the wife’s earnings while she was married.54 Bradwell pointed out that the woman had run the store by herself and was a successful, wholly responsible businesswoman. Bradwell solicited her readers’ sympathy. It was inequitable for this woman’s hard work to go to paying her husband’s debts. She wrote, “we call the attention of the members of the Legislature to the law of 1861, and ask them to amend it so that a married woman may be entitled to her own earnings.”55

Although Bradwell stayed with sympathy appeals during the first stage of her involvement with the Married Women’s Earnings Act, in some places it appeared that the rights guaranteed by the Act were either the means to achieving or symbolic of a larger goal. For example, in one issue Bradwell published a letter which purportedly rejected giving married women the absolute right to their earnings.56 Actually, the letter presented another women’s rights position. The reader wrote that Bradwell’s reform theory for protecting helpless women ignored another truth of marriage. He agreed that a married woman’s property should be safe from her husband’s capricious disposal. The reader saw trouble arising when creditors could not get to the wife’s property and the husband had none; the husband and wife colluded to deprive the creditor of the money he was entitled to. The wife received food, clothing and other things from credit, but the creditor could not reach the wife’s property. The reader argued that

52. 1 CHI. LEGAL NEWS, Oct. 31, 1868, at 37.
53. 1 CHI. LEGAL NEWS, Oct. 17, 1868, at 22.
54. 1 CHI. LEGAL NEWS, Nov. 21, 1868, at 60 (citing Schwartz v. Sanders, 46 Ill. 18, 24-25 (Freeman 1867)).
55. Id.
56. 1 CHI. LEGAL NEWS, Nov. 14, 1868, at 53.
a married woman's property must be held on a basis equitable and just to
the husband's creditors.\footnote{Id.}

In another letter, the same reader elaborated on his argument. He wrote
that the 1861 Married Women's Property Act did not meet its goals
because it was based on one idea of protecting the wife's separate property
without regard to the effect this might have on other classes of the
community.\footnote{1 CHI. LEGAL NEWS, Dec. 12, 1868, at 85.} The reader argued that although the common law was
unfair to the wife, the statute was unfair to the husband. Bradwell's statute
would make husband and wife strangers, each having no say in each other's
property. Unfortunately, because the community at large dealt with the
husband and wife as a family, all debts for the family were technically the
husband's. The reader argued that for prevention of fraud, the wife's
property should be taken to pay off debts incurred for the benefit of the
family.\footnote{Id.} The wife should contribute to the family to the best of her
ability.

Bradwell supported the implications of the reader's statement — that
women were capable of contributing to the family's support and should be
permitted to do so. The letter's publication was the first, albeit oblique,
statement in the News that the Act could have a larger purpose than
protecting helpless women; women could make a contribution to the family
outside of the home.

The idea that women could contribute to the family's support was not
common in Bradwell's time. In 1869, few white married women were
working outside the home. Although there are no studies readily available
for Chicago at this time, as late as 1890 less than five percent of married
women in the United States were in the workforce.\footnote{Chused, supra note 19, at 1363 (citing U.S. BUREAU OF THE CENSUS, THE
STATISTICAL HISTORY OF THE U.S. FROM COLONIAL TIMES TO THE PRESENT 500 (1976)).} Bradwell was
interested in protecting that small percentage and insuring that these
women's contributions were recognized and protected.

During the first stage, Bradwell only published one argument for
married women's right to control their own earnings which took an
individual rights stance. She reprinted an article on married women's
earnings and property from a British magazine:

\[T]\he common law of England on the subject of marriage
makes a great mistake. It ignores the individuality of
persons and merges the distinct interests of two human

\begin{footnotes}
\footnote{57. Id.}
\footnote{58. 1 CHI. LEGAL NEWS, Dec. 12, 1868, at 85.}
\footnote{59. Id.}
\footnote{60. Chused, supra note 19, at 1363 (citing U.S. BUREAU OF THE CENSUS, THE
STATISTICAL HISTORY OF THE U.S. FROM COLONIAL TIMES TO THE PRESENT 500 (1976)).}
\end{footnotes}
beings into one interest; that one . . . a complete suppression of one beneath the other. 61

This stated the women’s rights position against women’s civil death in marriage. Bradwell concluded that the arguments from Great Britain applied “with equal force in our own state.”  62

Although Bradwell had begun to lobby the idea of a bill in her third issue, she did not take the bill to the legislature until just after the Woman Suffrage Convention in Chicago in February of 1869. At the convention, a committee of six, including Judge and Mrs. Bradwell, were appointed to go to Springfield to lobby for the bill Bradwell had written to give married women a property right to their earnings equivalent to those of married men. 63

After the Act passed the Illinois legislature, Bradwell argued that it should be interpreted to broaden women’s individual rights. She published a step-by-step summary of the cases construing the 1861 Act, 64 and suggested that there were two modes of construing the act of 1861. One was according to the Common Law, the other according to the “progressive spirit of the age and the intention of the Legislature as plainly expressed in the act itself.” 65 She argued that unity of the husband and wife, so far as it related to property, was effectually destroyed by the act of 1861; the husband and wife were “no longer one but two.” 66 What she had only hinted at before became absolutely clear at this point: Bradwell meant her statute to be construed to give women absolute control over their own

61. Id. at 125.

62. Id. at 126.

63. 1 CHI. LEGAL NEWS, Feb. 20, 1869, at 164; 1 CHI. LEGAL NEWS, Mar. 13, 1869, at 188. Judge Bradwell brought the matter up at the convention. CHI. TRIB., Feb. 20, 1869, at 4, col. 3. Myra Bradwell specifically intended the act, entitled “An act to amend an act to protect married women in their separate property . . . and to declare the purpose and intent of the same,” would, first, overturn the narrow common law interpretation, and second, declare that the 1861 statute was to be interpreted liberally. The law read:

Be it enacted . . . 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 his creditors; provided, this act shall not be construed to give to the wife any right to compensation for any labor performed for her minor children or husband.

Stat. of Ill. ch. 69a § 13 (Gross 1871), 1 CHI. LEGAL NEWS, Apr. 3, 1869, at 212.

The bill was read by Mr. Bond and referred to the committee on the judiciary. It passed the House unanimously and was sent to the Senate for its approval. ILL. HOUSE J., Mar. 4, 1869, at 706. Apparently, the bill faced some small resistance in the Senate. The Senate Judiciary Committee recommended passage, but Mr. Fuller, the committee spokesman for the bill, voted against it, as did two of his political allies. ILL. SENATE J., Mar. 8, 1869, at 364; Mar. 16, 1869, at 585. The governor approved the legislation. ILL. SENATE J., Apr. 14, 1869, at 775.

64. See, e.g., 1 CHI. LEGAL NEWS, July 17, 1869, at 364.

65. 2 CHI. LEGAL NEWS, Nov. 27, 1869, at 68.

66. Id.
property and to insure that women maintained autonomy from their husbands.

Bradwell made bolder statements to this effect on other occasions. For example, in commenting on a case regarding a wife's ability to hire her husband, she wrote:

[When we drew the bill for earnings,] we aimed a blow at the law effecting the property of married women far beyond their earnings, thinking that when the reason for making many of these distinctions against the wife should be removed, that the distinctions themselves would fall. We believe that when this statute is construed by the courts it will be found that we were not mistaken.67

Bradwell understood that an act which provided protection for women could be used to keep them in a subordinate role.68 She wanted the Act to be interpreted so that women would be treated exactly the same as men in regard to their earnings. For example, soon after the Act was passed, Bradwell printed a decision interpreting the 1861 Act according to the old common law rules.69 This case held that a husband was still liable for the debts of his wife contracted before they were married because he was entitled to her labor, skill, and earnings.70 Bradwell declared that now that the wife was entitled to her own earnings, the husband should be freed from paying his wife's debts contracted before marriage.71 If the wife was not liable to pay the husband's debts contracted before the marriage, the husband should not be liable to pay the wife's debts.72

67. 1 CHI. LEGAL NEWS, July 10, 1869, at 356. According to Bradwell, the court held that under the Married Women's Property Act, a married woman may carry on her business on her own account for her own interest, that she may employ all needed labor, workmen and agents, and that she may employ her husband and pay him.

68. See KARST, supra note 6, at 117 ("women can be hurt by false paternalism and by false equality") (quoting Frances Olsen, False Paternalism to False Equality: Judicial Assaults on Feminist Community, Illinois 1869-1895, 84 MICH. L. REV. 1518, 1541 (1986)). This concept is explored in depth in Olsen's article. See also infra, note 97.

69. 1 CHI. LEGAL NEWS, July 17, 1869, at 364. In McMurtry v. Webster, 48 Ill. 123 (1868), the court could not apply the new law because the dispute in question took place before the new law was passed.

70. Id. at 124.

71. 1 CHI. LEGAL NEWS, July 17, 1869, at 364. This bolsters the argument that Bradwell could be asserting this right to force absolute equality and the reform of the workplace so that women could work. How could women find true economic independence from their husbands if fewer than 5% were working outside the home and they had no right to payment for services provided inside the home to their families?

72. Id.
In 1872, the Illinois court construed the 1861 and 1869 acts together to hold a woman liable for attorney’s fees out of her separate property.73 The court stated that a woman should bear the burdens of her unsuccessful litigation. The court noted, “the extension of rights usually imposes corresponding liabilities. So in this case, holding or having the right to hold separate property and earnings, [the wife] must be held liable to costs incurred in maintaining her separate rights.”74 Bradwell approved of this case, but would have taken the holding further. She wanted no “protection” for women, but expected equal treatment:

Many of the perplexing questions in regard to the property rights of married women that now trouble the ablest members of the profession, would be satisfactorily settled if our supreme court would construe these reformatory acts according to the intention of the legislature that passed them, and hold that married woman for any contract relating to her separate property, might be sued in an action at law, and upon judgment going against her, that it might be satisfied out of the separate property of her earnings.75

In 1873, the Illinois Supreme Court broadly construed the terms of the Married Women’s Earnings statute. Bradwell saw the Act’s full potential realized. The court held that when the legislature gave a woman the right to “use and possess the property and earnings, free from the control or interference of her husband” it conferred the right to take and possess earnings.76 Without the right to labor to acquire earnings, the law conferred a barren right.77 The court said that the legislature intended to give a woman the right to control her own time, manage her separate property and contract with reference to it.78 Coverture was defeated. In a bold statement, the court declared, “[the husband’s] legal supremacy is gone, and the sceptre has departed from him.”79

Bradwell heralded this decision. She wrote in an editorial, “[w]hen we drew the act of 1869, giving to a married woman her own earnings, it was with a view of making the right of husband and wife to labor, hold and acquire property, equal before the law.”80 This was far bolder than any

73. 4 CHI. LEGAL NEWS, Jan. 13, 1872, at 101 (Musgrave v. Musgrave, 54 Ill. (Freeman) 186, 188 (1872)).
74. Id.
75. 4 CHI. LEGAL NEWS, Jan. 13, 1872, at 103.
76. Martin v. Robson, 65 Ill. 129, 130 (Freeman 1873).
77. Id.
78. Id. at 132.
79. Id. at 139.
80. 5 CHI. LEGAL NEWS, Mar. 22, 1873, at 306.
statement Bradwell had made when she argued for the Act’s passage, but obviously the court’s broad construction realized Bradwell’s goals for the Act.

An examination of other contemporary commentary on the 1873 case shows that Bradwell had struck a blow for women’s rights under law. In his 1875 Commentaries on the Law of Married Women, Joel Prentiss Bishop restated the old Blackstonian view that woman was not to be separate from man; the unity of the marriage relation forbade it. Bishop blasted the broad description of Bradwell’s Act and supported a more constrictive interpretation according to the common law unity of person under marriage. He asked, “what shall hinder . . . the wife [from leaving] her husband’s bed and board, and his domicil, in pursuit of richer pastures or more golden harvests in fields of labor elsewhere?” Bishop would have ignored the spirit behind the statutory reform of the law of Married Women in favor of maintaining old common law strictures. Bradwell’s Act helped divert the Illinois Supreme Court from that path.

C. THE FIGHT FOR ADMISSION TO THE BAR

In the same year that she lobbied the Married Women’s Earnings Act, Bradwell initiated the next step in her fight for women’s rights: her battle to be admitted to practice law in the State of Illinois. As the first woman to try to gain admission to the bar in Illinois, Bradwell litigated a woman’s right to practice law through the Illinois Supreme Court up to the United States Supreme Court. Although Bradwell’s attempt to use the courts to gain admission to the bar was unsuccessful, her effort had great effect in gaining rights for women in Illinois. In her suit, Bradwell tried to push women’s rights concerns to their logical conclusion, and to gain more ground for women in the process.

As she revealed in 1873, Bradwell had intended that the Married Women’s Earnings Act would be construed to give married women the equal right under law to labor and to hold and acquire property. In her lawsuit to gain admission to the bar, she attempted to test the Illinois court’s willingness to apply that statute broadly to expand married women’s rights. Although the Illinois court did not accept her arguments in 1869, without Bradwell’s work to gain admission to the bar, it is conceivable that the court would not have given the Act such a broad interpretation in 1873.

It is not known exactly at what point or for what purpose she undertook the study of law, but Bradwell began studying law on her own

81. Bishop, supra note 48, at 20-22 n. 2.
82. Id. at 347.
83. See supra notes 50-51, 56-62 and accompanying text.
84. See supra notes 77-79 and accompanying text.
for several years before she applied to the Illinois bar in the summer of 1869.\(^\text{85}\) The requirements for admission had been formulated by the Illinois legislature:

> [N]o person shall be permitted to practice as an attorney or counselor at law . . . in any court of record within the state . . . without having previously obtained a license for that purpose from some two of the Justices of the Supreme Court . . . [which] shall authorize him to appear in all the courts of record.\(^\text{86}\)

Pursuant to the requirements of the statute, Bradwell submitted to the Illinois Supreme Court a certificate of qualification signed by a circuit judge and a state’s attorney. A superior court judge examined her and a member of the Chicago bar filed a certificate of examination and character.\(^\text{87}\) Apparently, Bradwell passed a “most creditable” examination.\(^\text{88}\)

Bradwell knew she would face resistance from the Illinois Supreme Court. Therefore, in addition to the required formalities, she submitted a written application asking the Illinois Supreme Court to admit her to the bar.\(^\text{89}\) She set out a two part argument. First, she noted that she had submitted all her qualifications. Consequently, there was only one question: “[d]oes being a woman disqualify her under the laws of Illinois from receiving a license to practice law?”\(^\text{90}\) Bradwell insisted that under the statute setting forth the terms of admission, the Illinois legislature intended that women be admitted to the bar. Her argument relied on an Illinois statute regarding the construction of other statutes. This statute provided, “[w]hen any party or person is described or referred to by words importing the masculine gender, females as well as males shall be deemed to be included.”\(^\text{91}\) Bradwell insisted that, therefore, a woman should be admitted to the bar if she met the qualifications set out in the statute.

Bradwell quoted sections of the Illinois Declaration of Rights to illustrate her point. She wrote, for example, if “‘all men have a natural and indefeasible right to worship Almighty God,’ . . . [i]t will not be

\(^{85}\) Gale, \textit{supra} note 4, at 1080. She may have begun to study law to assist her husband, and then changed plans to open the \textit{Chicago Legal News}. Frances Olsen reports that many women began to apply for admission to the bar after the Civil War; having read the law to fill in during the War, “[l]ike Rosie the Riviter [sic], . . . many women who filled in at ‘men’s jobs’ wanted to keep working after the war ended.” Olsen, \textit{supra} note 20, at 1523.

\(^{86}\) Bradwell v. State, 83 U.S. (16 Wall.) 130, 131 (1873) (No. 73-487).

\(^{87}\) 2 CHI. LEGAL NEWS, Feb. 5, 1870, at 145.

\(^{88}\) 26 CHI. LEGAL NEWS, Feb. 24, 1894, at 210.

\(^{89}\) All the information on her application to the Illinois court is taken from 2 CHI. LEGAL NEWS, Feb. 5, 1870, at 145-47. Subsequent citations are omitted.

\(^{90}\) Record at 2, \textit{Bradwell} (No. 73-487).

\(^{91}\) \textit{Id.} at 3, \textit{citing} Ill. Rev. Stat. ch.90 § 28 (1845).
contended that women are not included within this provision." Bradwell argued that any other construction of the statute would place women absolutely outside the protection and reach of any of Illinois' laws. She insisted that the court was constrained to read the Illinois qualifications for attorneys to admit her to the bar.

On October 7, 1869, Bradwell received a written reply from the court reporter. The court denied her application on the grounds that a married woman could not be bound by the legal and contractual obligations it was necessary for an attorney to assume. She was rejected solely due to the "DISABILITY IMPOSED BY YOUR MARRIED CONDITION." The court reporter noted that the right to practice law had been denied to people under twenty-one years of age as well. Until the legislature removed Bradwell's marital disability, the court regarded itself powerless to grant her application.

On November 18, 1869, Bradwell filed an additional brief with the court. First, she insisted "most firmly" that it was not a crime or a disqualification under the laws of Illinois to be a married woman. She then elaborated upon what an attorney was, and who could be one. In brief, she argued that attorneys were agents of their clients. Under judicial construction of the Married Women's Property Acts, a married woman could be an agent of her husband, or act as the agent of another in a contract with her husband. Moreover, she noted that even under the common law if a married woman represented herself to be a feme sole, she rendered herself personally liable on any contract she made. Bradwell asked for a new general rule that a married woman could be the same as a feme sole for all business purposes. She quoted Lord Mansfield, "the times alter new customs and new manners arise, which require new exceptions, and a different application of the general rule."

Bradwell relied heavily on the Married Women's Property Acts. Under those acts, women had the power of holding property for their own use, and of making legally enforceable contracts necessary or convenient to the property's beneficial enjoyment. Bradwell contended that if, under the 1861 Married Women's Property Act, a woman had the power to hire an agent, this carried with it the liability to pay the agent a reasonable compensation for his services. Taken together with the 1869 Act, giving

92. Id. at 3.
93. Id. at 7 (emphasis in original).
94. Id.
95. Bradwell admitted that, in fact, she was a married woman—although that fact had not appeared in the record. Id. at 4. Obviously, the members of the court knew her.
96. Id. at 5.
97. 2 CHI. LEGAL NEWS, Nov. 27, 1869, at 68.
98. Id.
the wife her own earnings and the rights to sue for the same in her own name, Bradwell argued, a woman had the right to be employed as “an agent, or attorney or physician, if she is capable, and [could] agree to do the duties of her profession.” She insisted that since the passage of the 1869 Act, a married woman could agree to the duties of any profession and was not to be classed with an infant.

Bradwell also argued that the court should look at her as an individual, not simply as a woman. She had been treated with favor by the Illinois Legislature which had granted her *feme sole* status for her business with the *Chicago Legal News* company. Moreover, the legislature granted her newspaper salutary recognition by allowing it to be admitted as evidence in the courts of the state. The Illinois Legislature obviously thought Bradwell was a capable person; she wanted the Illinois court to take that fact into account in considering her application.

Finally, Bradwell delivered a forceful individualism argument:

[I]t is for the court to say, in advance, that it will not admit a married woman? Should she be admitted, and fail to perform her duty, or to comply with all her contracts as an attorney, could not the court, upon application, strike her name from the roll, or inflict more summary punishment? . . . Not a line of written law, or a single decision in our State, can be found disqualifying a married woman from acting as an attorney. . . . You, in my judgment, in striking me down, strike a blow at the rights of every married woman in the great State of Illinois who is dependent on her labor for support, and say to her, you cannot enter into the smallest contract in relation to your earnings or separate property, that can be enforced against you in a court of law. . . . This result can, in my opinion, only be reached by disregarding the liberal statutes of our State, passed for the sole purpose of extending the rights of married women, and forever removing from our law, relating to their power to contract in regard to their earnings and property, the fossil foot-prints of the feudal system, and following the strictest rules of the common law.

99. *Id.* at 6.

100. This may have been Bradwell’s first open statement that she intended that a married woman’s ability to control her own earnings would give her the right to contract to generate earnings, and therefore, the right to labor at any profession she chose. This was four years before the Illinois Supreme Court’s decision in *Martin v. Robson*, 65 Ill. 129 (Freeman 1873).

101. Record at 7-8, *Bradwell* (No. 73-487).
Bradwell’s argument unequivocally reveals her stance on women’s rights. She asked the court to look at her, Myra Bradwell, as an individual. She insisted that if the court examined her personal qualifications, separate from the fact that she was a woman, that it would have no choice but to admit her to the Illinois bar. Her argument underscores the fact that Bradwell wanted a vindication of women’s rights, and expected a broad construction of the Married Women’s Acts to be a cornerstone of that vindication. She entreated the court to give a broad construction to acts which it had previously construed very narrowly.

Bradwell probably foresaw the Illinois Supreme Court’s rejection of all her arguments. With this in mind, after she filed her brief, she filed an affidavit alleging violations of the Constitution and the Reconstruction Civil Rights Act. Bradwell had her eye on the United States Supreme Court.

In her affidavit, Bradwell argued that under the Equal Protection Clause of the Fourteenth Amendment she had the “right to exercise and follow the profession of an attorney-at-law upon the same terms, conditions and restrictions as are applied to every other citizen of the state of Illinois.”

Moreover, she insisted, it was contrary to the true intent and meaning of the amendment for her to be refused a license based “upon the sole ground of her ‘married condition.’”

Next, Bradwell declared, “the right to enjoyment of life and liberty, to acquire and possess property, to reside in the State, to carry on trade, and the right to follow any professional pursuit under the laws of the State, which must work equally upon all the citizens of the State,” secured the constitutional right to receive a license to practice law upon the same terms and conditions as the most favored citizen of the State of Illinois.

The Illinois court responded that it had no doubts that Bradwell was qualified to practice law, but that the Legislature had not made its intention clear. Therefore, the court was not in a position to grant a license to Bradwell. The court rejected Bradwell’s construction of the Married Women’s Acts. It stated that the 1869 Act was passed after the right to

102. Id. at 8-9.
103. Id. at 9.
104. Bradwell also made some claims based upon her former citizenship in Vermont, and her citizenship of the United States. She claimed that these varied citizenships entitled her to the “privileges and immunities of citizens in the several States.” Id. at 9. Katharine Bartlett says Bradwell was of the first to “ask the woman question” as to whether the privileges and immunities of citizenship for women included the right to practice law. Katharine Bartlett, Feminist Legal Methods, 103 HARV. L. REV. 829, 839 (1990). The “woman question asks about the gender implications of a social practice or rule: have women been left out of consideration?” Id. at 837.
105. Record at 9, Bradwell (No. 73-487).
106. Id.
contract for property was construed into the 1861 Act. Therefore, the
court would not read the right to contract for labor into the Married
Women's Earnings Act. The court refused to determine how far the
1869 Act would extend married women's power to contract, since, "after
further consultation in regard to this application, we find ourselves
constrained to hold that the sex of the applicant, independently of
coverter, is, as our law now stands, a sufficient reason for not granting
this license." The court stated:

[It is not] the province of a court to attempt, by giving a
new interpretation to an ancient statute, to introduce so
important a change in the legal position of one-half the
people. Courts of justice were not intended to be made the
instruments of pushing forward measures of popular reform.

In fairness to the court, it felt constrained by common law canons of
construction. In its conclusion, the court observed:

While those theories which are popularly known as
"woman's rights" can not be expected to meet with a very
cordial acceptance among the members of a profession
which, more than any other, inclines its followers, if not to
stand immovable upon the ancient ways, at least to make
no hot haste in measures of reform, still all right-minded

107. 2 CHI. LEGAL NEWS, Feb. 5, 1870, at 146-47.
108. Apparently the court would not be ready to take this action for another four years.
See Martin v. Robson, 65 Ill. at 129. By that time, Bradwell's case had already made it to
the Supreme Court and women had gained the right to practice law in Illinois. See infra,
note 133 and accompanying text.
109. Record at 10, Bradwell (No. 73-487).
110. Id. at 12.
111. This is consistent with judicial behavior of the time. In the nineteenth century, the
judiciary was supposed to take a passive, not an active stance—at least in social matters.
Gilliam, supra note 4, at 112 (citing G.E. WHITE, EARL WARREN: A PUBLIC LIFE 351-57
(1982)). The court also rejected Bradwell's argument for construction of the statute in light
of the legislature's rule of construction to include women. Revised Stat., 1845, ch.90 § 28.
The court pointed to another statute which provided that "this rule of construction shall not
apply where there is anything in the subject or context repugnant to such construction."
Revised Stat., 1845, ch. 90 § 36. The court certainly felt that admitting Bradwell to the
practice of law would have been repugnant to the meaning of the statute. Olsen calls the
court's approach "footdragging". She points out that women's common law disabilities
were judge-made and could be judge-broken. Olsen, supra note 20, at 1531, 1533.
However, judging from the conservative legal atmosphere, and the fact that the legislatures
were already changing the laws through the Married Women's Property Acts, Olsen's
argument seems ahistorical.
...men must gladly see new spheres of action opened to women.\textsuperscript{112}

Although the decision of the Illinois Supreme Court in Bradwell's case was consistent with its construction of the Married Women's Property Act and the common law, Bradwell could well have expected a more judicious construction considering the recent developments in the 1861 law, as well as her favorable individual treatment before the legislature. Unfortunately, the court refused to look beyond the implications of granting a woman admission. It would not admit Bradwell on the basis of her own qualifications. Unquestionably, the court admitted that she was capable enough for admission. Her admission was automatically disallowed solely because she was a woman.

The court's decision was a minor setback for Bradwell. Her next step was the United States Supreme Court. Toward that end, Bradwell retained Wisconsin Senator Matthew Hale Carpenter. Carpenter was one of the more famous attorneys of the time, an acknowledged authority on constitutional issues who had publicly supported woman suffrage.\textsuperscript{113} From the time she retained him, Bradwell gave control of the case to Carpenter. Carpenter sent Bradwell a copy of the brief only after he submitted it to the court. The brief appears to have been hastily written, and was logically unpersuasive.\textsuperscript{114}

The most important and innovative part of Carpenter's argument, like Bradwell's addition to her Illinois brief, rested on the Fourteenth Amendment. Carpenter argued that women were included in the Fourteenth Amendment declaration, "all persons born and naturalized in the United States . . . are citizens of the United States, and of the State wherein they reside."\textsuperscript{115} Although he conceded for the sake of argument that the right to vote was not one of the privileges and immunities guaranteed by the Fourteenth Amendment,\textsuperscript{116} the question remained whether denying admission to the bar to a properly qualified person would violate the privileges and immunities clause. The privileges of American citizenship included, "Life, liberty and the pursuit of happiness, and, in the pursuit of

\textsuperscript{112} Record at 13, \textit{Bradwell} (No. 73-487).
\textsuperscript{113} Gilliam, \textit{supra} note 4, at 116.
\textsuperscript{114} \textit{Id.} at 119. It appears that, contrary to his standard practice, Carpenter spent little time going over the brief. Moreover, at that time, the percentage of Carpenter's winning cases was rather low. In the term that Bradwell's case came before the Court, Carpenter lost eight of the ten cases he argued before the Court. \textit{Id.} at 123. Carpenter's argument may also have been logically unpersuasive because the same day he argued Bradwell's case, he argued the winning side in the \textit{Slaughterhouse Cases}. \textit{Id.} at 124. Bradwell, however, called Carpenter's brief a "concise, able and unanswerable argument." \textit{4 CHI. LEGAL NEWS}, Jan. 20, 1872 at 108.
\textsuperscript{115} Appellant's Brief at 3, \textit{Bradwell} (No. 73-487).
\textsuperscript{116} \textit{Id.} at 4.
happiness, all avocations, all honors, all positions are alike open to everyone; and in the protection of these rights all are equal before the law."[117]

Carpenter challenged:

[if the privileges and immunities clause did] not open all the professions all the avocations, all the methods by which a man may pursue happiness, to the colored as well as the white man, then the Legislatures of the States may exclude colored men from all the honorable pursuits of life, and compel them to support their existence in a condition of servitude. And if this provision does protect the colored citizen, then it protects every citizen, black or white, male or female.[118]

In a vein similar to Bradwell's brief before the Illinois court, Carpenter stated, "It is provided that citizens may be disfranchised for treason; but it is nowhere provided that a citizen shall be disfranchised for being a married woman."[119]

Perhaps to gain the sympathy of the justices, Carpenter then used an approach similar to Bradwell's "sympathy" campaign — the first stage — for the Married Women's Earnings Act:

There may be cases in which a client's rights can only be rescued by an exercise of the rough qualities possessed by men. There are many causes in which the telling sympathy and the silver voice of woman would accomplish more than the severity and sternness of man could achieve. 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.[120]

Although Carpenter began with an appeal to the possible success women would have due solely to their femininity, his conclusion vindicated Bradwell's individual rights position.

117. Id. at 8.
118. Id. at 10.
119. Id. at 11. Today the word disfranchised is associated mainly with the vote. Its broader definition, however, is "to be deprived of a legal right." Of course, the common law deprived women citizens of many legal rights solely on the basis of the fact that they were women.
120. Id. at 10 (emphasis added).
In an 8-1 decision, the Supreme Court rejected Carpenter’s arguments. The Bradwell decision is usually referred to as a “practical application” of the Slaughterhouse Cases philosophy. In the Slaughterhouse Cases, the Court held that the Fourteenth Amendment merely forbade state infringement of the rights of national citizenship. Under the federal Constitution, the rights of state citizenship could still be infringed upon by the states.

Due to the inconsistencies of the concurring opinions in Bradwell’s case from the justices who had dissented from the Slaughterhouse Cases, it is clear that sex discrimination was also a major factor in Bradwell’s case. The Slaughterhouse decision only made it easier for the court to reach the decision that it did. For example, in his famous concurring opinion, Justice Bradley made absolutely no reference to any law except “the law of the creator” as interpreted by the “founders of the common law”:

The paramount destiny and mission of woman are to fulfill the noble and benign offices of wife and mother. This is the law of the Creator. And the rules of civil society must be adapted to the general constitution of things, and things cannot be based upon exceptional cases.

Bradley’s concurrence essentially said that women are delicate, timid, and dependent. They would fulfill their destiny in the home. Women were unsuited for independent active lives in the public sphere. Obviously, Bradley was not personally acquainted with Myra Bradwell. Even if he had been, it may not have mattered because she was only an “exceptional case” in the category of all women.

While Bradwell applauded Justice Miller’s majority opinion for at least confining itself to the points at issue without going out of the record to give his individual views on women’s rights, she deplored the fact that

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121. There is no dissenting opinion from Chief Justice Chase (who, it is interesting to note, was related to Bradwell on her mother’s side). He died three weeks after the decision was handed down. Chase dissented in the Slaughterhouse Cases as well. See Spector, supra note 4, at 237.

122. Gilliam, supra note 4, at 117 (citing Charles Warren, 2 THE SUPREME COURT IN UNITED STATES HISTORY 550 (1928)). See also Olsen, supra note 20, at 1526-28.

123. 83 U.S. (16 Wall.) 36, 74-79 (1873).


126. Frances Olsen describes the Bradwell decision as an instance of false paternalism, mentioned briefly, supra note 20 and accompanying text. Olsen points out that Justice Bradley used women’s “exalted” role to keep women in a subordinate position: “Bradley favored overruling Bradwell’s choice not for her sake but rather to advance other goals.” Olsen, supra note 20, at 1532.
“[w]e applied . . . [and were turned down] on the sole ground that we were a woman.”127 Bradwell declared that she had tried to insure the liberty of pursuit which was guaranteed to every citizen by the Fourteenth Amendment under laws which should operate equally upon all.128 She had hoped to demonstrate in taking the case to the Supreme Court that “women have some rights and privileges as citizens of the United States which are guaranteed by the [F]ourteenth [A]mendment.”129

Bradwell had not been waiting idly for the Court’s decision. While the case was under consideration, Bradwell and Alta Hulett, who became the first woman admitted to the Illinois bar, lobbied a bill through the Illinois legislature which would bar discrimination in employment.130 Bradwell stated that she may not have had success before the Court, but she was more than compensated in seeing that as a result of her agitation, statutes had been passed in several states including Wyoming, Utah, Missouri, Iowa, Ohio, and the District of Columbia.131 This made it clear that Bradwell was concerned about more than her own ability to practice law. Without the anti-discrimination statute, the court may not have construed the 1869 Act to have given women the right to labor to acquire earnings, to take care of themselves and their families.

One author says, in an article about Bradwell’s case, that Bradwell did not pursue her claim after the Supreme Court rejected her because she would not beg for rights: “[p]rinciple, more than a lack of free time, dictated her decision not to bring the matter before the Supreme Court again.”132 This is not entirely true. Once Bradwell and Hulett’s statute passed the legislature, Bradwell did not apply for admission to the bar.133 Bradwell was not as interested in practicing law as she was in advancing the cause of women’s rights. She had accomplished some of her goals simply by putting the issue out for consideration, and seeing statutes passed to allow women to practice law in Illinois and in other states. Although she could not convince the courts to alter their antiquated common law path, Bradwell struck a blow for women’s rights in the legislatures and in

127. 5 CHI. LEGAL NEWS, April 19, 1873, at 354.
128. Record at 8-9 Bradwell (No. 73-487).
129. Id. Of course, that struggle continues in the women’s rights movement to the present day.
130. Wheeler, supra note 24, at 53. The law read:

[No] person shall be precluded or debarred from any occupation, profession or employment . . . on account of sex; Provided, that this act shall not be construed to affect the eligibility of any person to an elective office.

Stat. of Ill. ch. 48 § 3 (Hurd 1874), 5 CHI. LEGAL NEWS, April 19, 1873, at 354.
131. 5 CHI. LEGAL NEWS, April 19, 1873, at 354 (all now repealed).
132. Gilliam, supra note 4, at 128.
133. The Illinois bar later admitted her on its own motion. 26 CHI. LEGAL NEWS, Feb. 24, 1894, at 210.
the history books. Unfortunately, Bradwell's blow was not strong enough to reach her end goal of suffrage.

III. THE BLURRY LINE BETWEEN CIVIL AND POLITICAL RIGHTS

Bradwell wanted equal rights for women. She was willing to gain rights through step-by-step "reforms" or through exercising the ballot, but she would not be satisfied with having either "civil" or "political" rights but not both. Historically, the rights accompanying control over earnings and practicing law had implications outside the "civil" rights context. Property ownership had been a traditional prerequisite for voting. Later, the focus shifted to control of one's own labor. Both of these qualifications were related to married women's control of their own earnings. Similarly, attorneys were traditionally regarded as officers of the court, a semi-public service office which practically carried with it a presumption of political ability.

Although Bradwell never stated it in her arguments for "civil" rights reforms, when examined through the lens of her woman suffrage advocacy, the "civil" rights she secured had clear "political" rights implications that Bradwell was well aware of. Bradwell did not make her arguments for married women's earnings in conjunction with arguments for woman suffrage, but the intersection of the two is clear in an historical context and in Bradwell's woman suffrage writing.

The American colonists inherited the British tradition of using property ownership as a qualification for voting. In Britain, this practice arose from the idea that so long as the landowners directly paid the bulk of public taxes, it was fair to confine Commons' elections to landowners. Blackstone argued that a property qualification was necessary because those who did not own property had "no will of their own"; they were under the control of their landlords. The egalitarian rhetoric of the American Revolution and the levelling that occurred after the War forced Americans to re-examine property qualifications and led many states to adopt taxpaying qualifications instead.

Even after property qualifications were abolished, voting requirements still incorporated the Blackstonian notion that a voter had to have a will of his own. The new qualifications only redefined which individuals were in

135. Id. at 6.
136. Id. at 11; see also Robert Steinfeld, Property and Suffrage in the Early American Republic, 41 Stan. L. Rev. 335, 340 (1989).
137. Williamson, supra note 134, at 92-207. The force of Revolutionary rhetoric was not powerful enough to compel all states to change property qualifications.
control of their wills. Citizens who earned wages for their labor came to be considered independent.\(^{138}\) Paupers and women were excluded from suffrage because they were all considered dependent on others.\(^ {139} \)

The relation between property, labor control, independence, and suffrage were clear in Bradwell's work for married women's earnings. In one issue, Bradwell presented a simple and straightforward historical argument that once women gained full property rights they should have the right to vote:

> Every citizen who owns and controls property in his or her own right, not being subject to any disability, should have the right to assist in making the laws that regulate the sale of such property, and the taxation imposed thereon, without regard to whether such person is male or female.

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The law in regard to the person and property of women has been changed much, within a few centuries—from a mere slave that could own no property, or make a valid contract without the consent of her husband, the aid of a court of the intervention of a trustee. . . . she has become a person capable of owning property and controlling it, free from the interference of her husband. . . .

There is now a necessity, when woman is clothed with all these responsibilities and privileges, that she should have a voice in the government, and be allowed to vote.\(^{140}\)

Bradwell believed that as women's property rights had evolved, women should have gained the right to vote.

In another issue of the \textit{News}, Bradwell presented the resolutions of the New Hampshire woman suffrage convention. These resolutions declared, "taxation without representation is tyranny."\(^ {141}\) It was unfair for women to be taxed for earnings and property by legislators women had not helped to select. Bradwell placed a brief comment on married women's earnings after the New Hampshire resolutions: "[i]n New Hampshire, married women have the right to collect their own earnings. We hope, before the

\(^{138}\) Steinfeld, \textit{supra} note 136, at 361-64, 375.
\(^{139}\) \textit{Id}. at 375. Rowland Berthoff, \textit{Conventional Mentality: Free Blacks, Women, and Business Corporations as Unequal Persons, 1820-1870}, 76 J. AM. HIST. 753, 760 (1989). Those who opposed woman suffrage adhered to the ideal that the man voted for the family as a unit. White men trusted that their wives were content to go on in the home. \textit{Id}. at 784.
\(^{140}\) 1 CHI. LEGAL NEWS, Nov. 7, 1868, at 45.
\(^{141}\) 1 CHI. LEGAL NEWS, Jan. 9, 1869, at 117.
adjournment of the present legislature, they will have that right in Illinois.\textsuperscript{142}

The right to earnings was an important "civil" right, but was more important as a part of the end goal of autonomy. Before married women could be individual agents, they had to have complete control over their labor and their property. Women in Illinois could not make the same broad claims to suffrage as the women in New Hampshire until they had full authority over all their property, including their earnings. As Bradwell had stated in her application to practice law, control over earnings also gave women the right to contract to labor.\textsuperscript{143} This complete independence should have guaranteed women's right to vote.

Unfortunately, Bradwell's Married Women's Earnings Act could not increase the status of women as far toward full autonomy as she may have needed in order to compel the autonomy—suffrage conclusion. The Act specifically provided, "this act shall not be construed to give to the wife any right to compensation for any labor performed for her minor children or husband."\textsuperscript{144} This provision was rooted in the idea that a husband was entitled to his wife's labor in the home.\textsuperscript{145} This form of entitlement could only continue women's subordination to their husbands. It would also bolster the anti-suffragists' arguments that the husband, as head of the family, voted for the interests of the entire family, including the wife.\textsuperscript{146}

The ties of a "civil" right to practice law and the "political" right to vote may have been even closer than property ownership and control and the right to vote. First, as noted above, the right to practice law or any occupation was tied up with the rights of citizenship. This was the basis of Bradwell's lawsuit. As Bradwell demanded when she published Carpenter's brief, "[o]ne half the citizens of the United States are asking—Is the liberty of pursuit guaranteed to us, or are we slaves?"\textsuperscript{147} If women could not practice law or choose any calling, they were deprived of significant rights of citizenship. Citizens who could not choose their occupation were certainly not autonomous enough to vote.

Second, the character of the legal profession historically had "political" rights implications. Under English law as adopted in America, an attorney was (and still is) considered an "officer of the court."\textsuperscript{148} In England,

\begin{itemize}
\item \textsuperscript{142} Id.
\item \textsuperscript{143} 2 CHI. LEGAL NEWS, Feb. 5, 1870, at 146-147.
\item \textsuperscript{144} Id.
\item \textsuperscript{146} See Berthoff, supra note 139, at 760; AILEEN KRADOR, IDEAS OF THE WOMAN SUFFRAGE MOVEMENT, 1890-1920 25 (1965).
\item \textsuperscript{147} 4 CHI. LEGAL NEWS, Jan. 20, 1872, at 108.
\item \textsuperscript{148} Robert J. Martineau, \textit{The Attorney As An Officer of the Court: Time to Take the Gown Off the Bar}, 35 S. C. L. REV. 541, 547 (1984). The idea that an attorney was an officer of a court was first adopted in a watered down manner in the United States in 1810. At this
attorneys were called officers of the court because most of them had some independent official status, such as that of clerk of the court or an undersheriff. That status not only made them subject to regulation by the court but also gave them certain privileges. As an officer of the court, an attorney held a semi-public office which could also have been considered "political." In 1876, the Wisconsin Supreme Court stated that if attorneys were officers of the court then they were "certainly, in some sense, officers of the state for which the court acts." The court continued, "attorneys and counselors of a court, though not properly public officers, are quasi officers of the state whose justice is administered by the court."

In 1867, the United States Supreme Court announced that attorneys were "officers of the court, admitted as such by its order, upon evidence of their possessing sufficient legal learning and fair private character." The court emphasized that to be an attorney was not a mere profession. The right to practice law was "more than a mere indulgence, revocable at the pleasure of the court or command of the legislature." An attorney could be removed only for "moral or professional delinquency." The legislature could prescribe qualifications for attorneys as it could for any profession, but only the Court had the power to remove attorneys.


time, the Virginia court announced that an attorney's position is similar to that of a juror (a "political" right), who also has responsibilities and duties to execute faithfully. Id. at 549.

149. Id. at 541.
150. Id.
151. In the Matter of the Motion to Admit Ole Mosness, Esq., 39 Wis. 509, 510 (1876).
152. Id. (emphasis in original).
154. Id. at 379.
155. Id. Garland was a Confederate Senator whom Congress disqualified from practicing law after the Civil War. In Ex Parte Garland, the Supreme Court said that the loyalty oath required by Congress after Garland was pardoned by the President was an ex post facto law; Congress could not deprive him of the right to practice law. Interestingly enough, Matthew Carpenter helped argue the case for the petitioner, Garland. Although Garland won, his argument did not focus on the position of an attorney as officer of the court. Garland's arguments focused on Constitutional prohibitions against bills of attainder and ex post facto laws. Id. at 340. Garland's attorneys also focused on attorneys as a "class," necessary "for the protection of the citizen." Id. at 370. In Bradwell's case, Carpenter cited Garland for the proposition that the profession of law is open to every citizen of the United States. 4 CHI. LEGAL NEWS, Jan. 20, 1872, at 109.
156. Id. at 109 (citing Ex parte Secombe, 19 How. 9 (1857)). The United States argued that Congress had decided the qualifications for admission to the Supreme Court bar, and therefore had given Garland the right to practice. Now, Congress could take that right away. The Court said that an attorney is not like an office created by Congress which depends upon the will of Congress for its continuance. Mississippi, for example, had held that once the attorney was admitted to the bar, he had a property right to practice law. Ex parte Heyfron, 8 Miss. (7 How.) 127 (1843).
The fact that there was controversy over who could remove an attorney and what role an attorney played in the government and the society shows that there was a tenuous line between whether an attorney was a public official or simply a professional.

Bradwell and the Illinois Supreme Court were well aware of the officer of the court doctrine. The Illinois Supreme Court in Bradwell's case stated that an attorney is an “officer of the court. . . . He is appointed to assist in the administration of justice, is required to take an oath of office, and is privileged from arrest while attending courts.” The court relied on the fact that there were no woman attorneys in England and that if women were allowed to practice law, “every civil office in this State may be filled by women . . . that women should be made governors, judges and sheriffs.” The court was unwilling to admit Bradwell to be an officer of the court because that would have meant they had to admit her to any office in the state, including public and possibly political offices.

The wording of the non-discrimination statute that Bradwell and Hulett lobbied while Bradwell's case was pending before the Supreme Court illustrates that the line between “civil” and “political” rights was blurred where occupations such as the practice of law were concerned. The legislature wanted to insure that just because women could hold any occupation they could not hold any public office or garner any “political” rights. The statute specifically provided, “this act shall not be construed to affect the eligibility of any person to an elective office.” The legislature and the courts held any role in government strictly off limits to women.

The fact that the women’s movement viewed Bradwell’s lawsuit as an important attempt for the political rights of women illustrates that the right to practice law was closely tied to suffrage. As a Constitutional case, Bradwell’s suit was the first of the “New Departure” cases brought by women active in the women’s rights movement. The New Departure took the stand that women “had merely to take a right that was already theirs.” After they were excluded by the framers of the Reconstruction amendments, suffragists saw that the traditional methods to getting their

157. 2 CHI. LEGAL NEWS, Feb. 5, 1870, at 147. In Re Bradwell, 55 Ill. 535, 537.
158. Id. at 539-540.
159. Stat. of Ill. ch. 48 § 3 (Hurd 1874), 5 CHI. LEGAL NEWS, April 19, 1873, at 354.
160. Stanton et al., supra note 23, at 601. Bradwell's approach helped start the New Departure era, and was part of the upsurge in women's rights activism after the Reconstruction amendments. Bradwell's application for admission to the Illinois bar coincided with the application of seven women for admission to the Iowa and Illinois bars or enrollment in northwestern law schools. Gilliam, supra note 4, at 107. Although there is no evidence that these women worked in concert, it is clear that their actions were part of a new method of attacking restrictions on women's independence.
rights recognized by amending the Constitution had failed. Therefore, they began to seek new avenues in the courts by attempting to get their rights read into the Constitution. Suffragists viewed Bradwell’s case as a test suit to help determine judicial responsiveness to women’s right to vote under existing laws because it pushed an interpretation of the Fourteenth Amendment which could have given women the right to vote.162 Bradwell’s suit made it to the Supreme Court two years before the most famous New Departure suit: Virginia Minor’s claim that women had the right of suffrage already granted in the Constitution.163

Carpenter’s argument before the Supreme Court supports the proposition that Bradwell’s case pushed an interpretation sympathetic to woman suffrage. After explaining the background of the case, Carpenter attempted to “quiet the fears of the timid and conservative.”164 He proceeded carefully to distinguish the right of woman suffrage from the right Bradwell was requesting. He specifically declared that the practice of law was one of a citizen’s “privileges or immunities;” suffrage was a question of man’s rights.165 Carpenter said he had faith in female suffrage to reform the election system:

If our wives, sisters and daughters were going to the polls, we should go with them, and good order would be observed or a row would follow, which would secure order in the future. . . . Who believes that if ladies were admitted to seats in Congress, or upon the bench, or were participating in discussions at the bar, such proceedings would thereby be rendered less refined, or that less regard would be paid to the rights of all?166

Nevertheless, Carpenter argued that the question of woman suffrage was settled by the exclusion of women from the Fifteenth Amendment.167 The close connection between practicing law, holding political office, and voting was very clear in Carpenter’s brief. His effort to distinguish suffrage from the right to practice law demonstrates that the right to vote could follow closely on the heels of gaining admission to the bar.

Bradwell’s response to the Illinois Supreme Court’s decision was probably the best summary of the connection between the “civil” right to practice law and the “political” right of suffrage. She declared, “what the

162. Stanton et al., supra note 23 at 615.
164. 4 CHI. LEGAL NEWS, Jan. 20, 1872, at 109. Earlier in the brief, Carpenter called the right to practice law a “civil” right. Id. at 108.
165. Id.
166. Id. at 108.
167. Stanton et al., supra note 23 at 615-616.
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 United States, this decision is to the political rights of women in Illinois—annihilation." Bradwell knew that if she could not get admitted to the bar in Illinois, she would also not be able to gain the right to vote in Illinois. First, because it would be a symbol of the lack of autonomy; second, because the right to practice law had such great "political" implications.

IV. CONCLUSION

Myra Bradwell was an important representative of the Illinois and National Woman Suffrage Association positions. Her career serves as a perfect illustration of the problems and barriers women faced in the 1870's and, to a lesser extent, still face today. Her unique circumstances placed her in an influential position. As the wife of a powerful man who supported women's rights, Bradwell was able to mount a fight for women's rights in an age when married women were only slowly emerging from the constraining arm of coverture. As the publisher of an influential legal newspaper, Bradwell had a forum to gain the ear of the legal community. As a woman with connections in the legislature, she could successfully lobby for women's rights issues. Bradwell combined these special circumstances with her considerable abilities and tried to make a real difference in women's status in Illinois and across the country. While Bradwell gained some ground for women, she was unable to break down the barrier between "civil" and "political" rights to gain the full equality she sought.

Bradwell argued for the Married Women's Earnings Act because property rights and the right to control labor were inherent rights of citizenship and conventional symbols of autonomy. As citizens, women's property could not be taken without consent or due process of law. Bradwell knew, however, that the Act was only a step toward control over property. Suffrage was the only form of organized political consent. If women had property which could be taxed, then they must have the vote to insure that property remained secure.

Bradwell pushed her application to the Illinois bar through to try to determine the extent to which women were considered citizens under the Fourteenth Amendment. If women could be denied the right to choose whatever job they wanted, then obviously, women were not full citizens.

168. 2 CHI. LEGAL NEWS, Feb. 5, 1870, at 147 (emphasis added). Although it is possible to argue that this statement means that the definition of an attorney's position placed practicing law in the realm of "political" rights, it is clear from the context that practicing law was a "civil" right, a step to "political" rights.

169. This article did not begin to cover the other smaller measures Bradwell pushed through the legislature to improve married women's status during and after marriage.
It was only through the *Slaughterhouse Cases*’ artful reading of the Fourteenth Amendment that the Supreme Court could dodge Bradwell’s argument. The right to practice law also had powerful “political” implications. If Bradwell had been able on the basis of her privileges and immunities arguments to become an officer of the court, she could have stood on more solid ground for gaining suffrage. Although she obtained an anti-discrimination statute, the disqualification from political offices weakened Bradwell’s hope for connecting admission to the bar and suffrage.

On the whole, women’s attainment of rights in marriage, property and children may have been more important than the right to vote. Without attaining financial and legal independence within the home, women could not have gone out to achieve professional and “political” rights outside it.170 In the end, the distinction between “civil” and “political” rights may have been part of the conventional thinking of the day, but it had no acceptable applications for women’s rights activists. Women like Myra Bradwell were not willing to accept one type of right or another.171 Women in the movement wanted to be treated as individuals, and as equal citizens on all levels.


171. Aileen Kraditor posits that, for Elizabeth Cady Stanton, suffrage was just one means to the end of equal rights, but Susan B. Anthony decided suffrage was the one cause to which she should devote her life. Kraditor, *supra* note 146, at 10-11. This implies that Susan B. Anthony did not care for other rights or that Anthony did not advocate other women’s rights reforms. This is not true; Anthony worked for the overall goal of women’s rights just as Stanton did. Anthony once said that she became a “woman’s rights woman” when she discovered that “no married woman had any legal right, even to the fifty cents she earned over the wash-tub.” Stanley, *supra* note 145, at 483 (quoting Revolution, Sept. 24, 1868). Perhaps suffrage seemed like the best way to secure all other rights, but Anthony did not ignore civil rights reforms.