Bradwell v. State Of Illinois

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During the September Term 1869, Myra Bradwell, thirty-eight-year-old wife of Cook County Judge James Bradwell, applied to the Illinois Supreme Court for a license to practice law in the courts of this state. She was denied admittance to the Bar because, as a married woman, she "would be bound neither by her express contracts nor by those implied contracts which it is the policy of the law to create between attorney and client." 1

At the time of Mrs. Bradwell's application, the State of Illinois enforced the Common Law of England. Common Law regarding the status of married women was based upon, "the biblical idea that at marriage the male and female became one flesh. Under the law they become one person and that person [is] the husband." 2 Until 1874, when Illinois Statutes were revised, women were legally barred from entering into contracts.

Mrs. Bradwell was notified of the court's decision in a letter from the Illinois Supreme Court reporter. Her response was to file a brief in which she cited several cases opposing the court's views in her case, and reports of admissions of women to law schools and medical colleges in other areas of the country. She accused the court of denying to married women the right to support themselves. Bradwell also cited Article IV, section two of the United States Constitution, and the privileges and immunities clause of the Fourteenth Amendment. By taking this action, she in effect forced the hand of the court, which again denied her a license to practice law, but this time not because she was a married woman, but instead because SHE WAS A WOMAN.

Citing history, the Constitution, Illinois Statutes, and God as a
basis for its decision, the Court argued that women were unknown as attorneys in England, and "a proposition that a woman should enter the courts of Westminster Hall in that capacity, or as a barrister, would have created hardly less astonishment than that she should ascend the bench of bishops, or be elected to a seat in the House of Commons."³

As to Mrs. Bradwell’s claims regarding the denial of her constitutional rights, the court found as follows: 1) Although Mrs. Bradwell was born in Vermont, she had resided in Illinois for many years, making her a citizen of this state, and ineligible for the rights of Article IV.²⁴; and 2) the right to practice law in state courts is not a privilege or immunity of a United States citizen, within the context of the Fourteenth Amendment.⁵

The final point of the Illinois court’s argument rested on the statutes of the State. The court held that even though Mrs. Bradwell had met the State Statute’s requirements for a certificate of examination, signed by a Circuit Judge and the State’s Attorney of the circuit in which she lived, and had a certificate of good moral character from a county court, she still was unqualified because she could not meet one of the two limitations placed on the court by the state legislature when determining who should be awarded a license to practice law: No person should be admitted to the practice of law who was not intended by the state legislature to be admitted. In this regard the Illinois court argued that “God designed the sexes to occupy different spheres of action, and that it belonged to men to make, apply, and execute the laws, was regarded as an almost axiomatic truth.”⁶ Thus, the court held that as a result of all the reasons stated, including the intentions of God, it was impossible that the state legislature had ever intended to have the Court issue licenses for the practice of law to women.

Upon hearing the judgement of the Illinois Supreme Court, Mrs. Bradwell said:

What the decision of the Supreme Court of the United States in the Dred Scott Case was as to the rights of Negroes as citizens of the United States, this decision is to the political rights of women of Illinois—in annihilation.⁷
In response to the court's statement regarding the intentions of the Creator, she printed in her *Chicago Legal News*:

...one thing we [The Legal News] do claim—that woman has a right to think and act as an individual—believing that if the Great Father had intended it to be otherwise, he would have placed Eve in a cage and given Adam the key.\(^8\)

Myra Bradwell was determined to achieve what she considered to be simple justice, and the decision of the Illinois court only served to spur her to further action. She took her case to the United States Supreme Court, where it was heard on a writ of error in December 1872. She was represented by Senator Matt H. Carpenter of Wisconsin, a family friend and well-known constitutional lawyer. It is interesting to note that Carpenter also served as counsel in one of the *Slaughter House* cases that came before the Court at approximately the same time as the *Bradwell* case, and presented similar arguments.\(^9\)

The *Slaughter House* cases were argued before the Supreme Court approximately two weeks after the Bradwell case, but the Court handed down the decision on the *Slaughter House* cases one day before the Bradwell decision. Leslie Friedman Goldstein has observed that the record of the proceedings of the Illinois Supreme Court in the *Bradwell* case was sketchy, and that the State of Illinois neglected to send counsel to represent its side before the United States Supreme Court, considering the case too trivial to bother with. Goldstein suggests that the Court may have reversed the order of the cases because it wanted to use a case with more complete records, knowing it would make constitutional history.\(^10\) The actual reasons for the Supreme Court reversal of the order of the two cases was more than likely that the *Slaughter House* cases involved far more politically significant matters than the *Bradwell* case and that, once the *Slaughter House* cases were decided, the Bradwell case would become relatively simple to decide. Hence, the *Slaughter House* cases were decided prior to the *Bradwell* case, establishing the first official interpretation of the Fourteenth Amendment. The Court held for state's rights in the *Slaughter House* cases, establishing the concept of dual citizenship (state privileges and immunities and federal privileges
and immunities).

In Bradwell v. State of Illinois, Mr. Justice Miller delivered the opinion of the Court, upholding the Illinois Supreme Court ruling on every point. The only dissent was that of Mr. Chief Justice Chase. With the precedent established the day before in the Slaughter House cases, the Court found little difficulty in saying the right to practice law was not a privilege of United States citizenship, but rather a privilege to be administered by the laws of the states.

It is intriguing that in the Slaughter House cases, whose arguments were almost identical to those of the Bradwell case, four Justices had dissented, while only one day later three of the four dissenters concurred with the majority in a similar decision. It appears that, because the Bradwell case involved a woman attempting to enter the sanctum sanctorum of men, everything objected to the previous day had become null and void.

Senator Carpenter prepared a most convincing case for Mrs. Bradwell, placing a great deal of emphasis on the privileges and immunities clause of the Fourteenth Amendment. He stated that if no state can make a law to truncate the privileges of a citizen, it must follow that the privileges of all citizens must be the same. He then continued by saying:

> It is evident that there are certain‘privileges and immunities’ which belong to a citizen of the United States as such; otherwise it would be nonsense for the fourteenth amendment to prohibit a state from abridging them.¹¹

Carpenter continued to build his case by arguing:

> ...the profession of the law, like the clerical profession and that of medicine, is an avocation open to every citizen of the United States. And while the legislature may prescribe qualifications for entering upon this pursuit, they cannot, under the guise of fixing qualifications, exclude a class of citizens from admission to the Bar.¹²

In the Slaughter House cases, Justice Bradley’s opinion spoke of the privileges to which American citizens were entitled. “Included in the bundle of national privileges and immunities, in Bradley’s view,
was 'the right of any citizen to follow whatever lawful employment he chooses to adopt (submitting himself to all lawful regulations...).' "13

In Myra Bradwell's case, Justice Bradley again spoke of privileges and immunities regarding employment. On that occasion however, he put conditions on those rights, which did not appear in his *Slaughter House* opinion:

The humane movements of modern society, which have for their object the multiplication of avenues for woman's advancement, and of occupations adapted to her condition and sex, have my heartiest concurrence. But I am not prepared to say that it is one of her fundamental rights and privileges to be admitted into every office and position, including those which require highly special qualifications and demanding special responsibilities. In the nature of things it is not every citizen of every age, sex and condition that is qualified for every calling and position.14

By focusing on some of Bradley's words and phrases, it is possible to conceptualize what his beliefs were regarding the upgrading of women's rights. The phrase "occupations adapted to her condition and sex" is one example expressing his position regarding just how much the new rights should allow women to achieve. Woman, in Justice Bradley's opinion, should be allowed to have an occupation, but the scope of her aspirations must be limited. Viewed in the context of 1982, one must ask what is the special condition of woman and what is so special or different about her sex, making her ineligible to meet the "highly special qualifications" or "demanding special responsibilities" of particular professions? Today the answer would have to be: nothing. But in 1872 the opinions of both the Illinois Supreme Court and the United States Supreme Court were not unusual. Under the Common Law of England which was enforced at the time, married women were legally invested with nearly as few rights as Negroes. It would take a rare man to judge women's suffrage objectively in 1872.

There was only one Justice on the Court, Chief Justice Chase, who was able to adjudicate with any objectivity in the *Bradwell* case and fully accept the implications of his dissent in the *Slaughter House*
cases. Unfortunately, Chief Justice Chase dissented without opinion in the *Bradwell* case, and dissents without opinion carry very little weight. It takes little imagination, however, to figure out the procedure of his logic. The previous day he had concurred with a dissent that argued:

'Equality of rights, among citizens in the pursuit of the ordinary avocations of life...with exemptions from all disparaging and partial enactments...is the distinguishing privilege of all citizens of the United States.'

Because the first clause of the Fourteenth Amendment granted citizenship to 'all persons' born in the United States, and because women were clearly persons, the validity of Mrs. Bradwell's claim would seem to be the obvious conclusion.15

Apart from his decision to voice a dissent with opinion, Chief Justice Chase clearly lacked the support of his brethren in the *Bradwell* case. The Supreme Court of the United States held that the judgement of the Illinois Supreme Court be affirmed, upholding the ruling in the *Slaughter House* cases. The Court agreed, as Justice Bradley had said in his decision, that "it is the prerogative of the legislature to prescribe regulations founded on nature, reason, and experience for the due admission of qualified persons to professions and callings demanding special skill and confidence."16 The admittance of a woman to the Bar in Illinois would have to wait until 1873.

The highest Court in the land may have denied Myra Bradwell the right to be an attorney, but it was unable to keep her from fighting for women's rights or assisting other women in their struggle to achieve recognition according to their ability. As a result of Mrs. Bradwell's efforts, a bill was passed by the Illinois Legislature in March 1872, providing that "no person could be precluded or debarred from employment, except military, on account of sex." On June 4, 1873, Alta M. Hulett, a young woman encouraged by Mrs. Bradwell, became the first woman in Illinois admitted to the Bar.17 When Justice C.B. Lawrence who had handed down the original Illinois Supreme Court ruling in the *Bradwell* case, heard about Miss Hulett's admittance, he was reputed to have said that if Miss Hulett were his daughter he would disinherit her.18 Justice Lawrence's
words carried no weight; Myra Bradwell, through her own tenacity and the success of Alta M. Hulett, had finally won her case.

The impact of the Bradwell case has less current relevance than Myra Bradwell herself. Although cases testing the Fourteenth Amendment have come before the Court many times since Myra Bradwell's case, and have expanded the interpretation of the Amendment, it was Mrs. Bradwell and not her case that influenced women's rights in Illinois. Her increasing involvement in the fight for women's rights led to changes in many unfair laws affecting women in this state; and it is because of women who followed her lead and fought as she had throughout this nation, that women today can enjoy the privileges so many of us take for granted.

Today, women are entitled to privileges undreamed of in Mrs. Bradwell's lifetime. In light of the importance of the ERA amendment, spawned by the "Women's Movement" of the 1970's and 1980's, the Bradwell case assumes more historical significance than it was previously accorded. Bradwell v. State of Illinois is an obscure case in the annals of jurisprudence, little known outside the study of Law; yet it is because of the Myra Bradwells of this country that modern women can stand beside men as equals.

* Note: The discrepancies regarding the date of Bradwell v. State of Illinois in this paper have occurred because there were different dates presented as the correct date in various resources I used. In Reconstruction and Reunion 1864-88, Charles Fairman noted that occasionally such dates are inaccurate or incomplete.
FOOTNOTES

1Bradwell v. State of Illinois, 16 Wall. 130 (1872).
4Article IV.2 states that the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states. In the Bradwell case the Illinois court held that Mrs. Bradwell no longer had the right to carry with her into Illinois the privileges and immunities of a Vermont citizen, because she had lived in Illinois too many years, and had become a citizen of that state.
5“...No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States....” (U.S. Constitution, amend. XIV, sec. 1).
616 Wall. 130 at 132.
8Kogan, Chicago History, p. 134.
9Slaughter House Cases, 16 Wall. 36, 21 L Ed. 394 (1873).
11Bradwell v. State of Illinois. 16 Wall. 130, 134 (1872).
1216 Wall. 130 at 135.
1416 Wall 130 at 142.
16See note 13.
18 Kogan, Chicago History, p. 138.

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