

A BRIEF HISTORY OF GENDER LAW JOURNALS: THE HERITAGE OF MYRA BRADWELL'S CHICAGO LEGAL NEWS

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In the front of the first issue of the Columbia Journal of Gender and Law published twelve years ago, the members of the staff inserted a brief statement of purpose.¹ Claiming that their “working job titles confer[red] no greater or lesser power, but serve[d] only to define primary responsibilities,” they hoped “to publish legal and interdisciplinary writings on feminism and gender issues and to expand feminist jurisprudence.”² For its moment in history, this was a fairly radical statement of purpose. Eschewing most aspects of hierarchy and viewing their primary audience as students and academics,³ the members aimed “to promote an expansive view of feminism embracing women and men of different colors, classes, sexual orientations, and cultures.”⁴

A brief comment by Ruth Bader Ginsburg followed immediately after the journal members’ statement of purpose.⁵ She focused not on theoretical and philosophical questions, but on events preceding her rise to a position of power and authority. Harking back to the lament of a 1922 Barnard graduate who was denied admission to Columbia Law School, recalling the faculty decision to reverse that result and accept women as students in 1928, recollecting (with a certain perverse glee I am sure) that Harvard declined to accept women until 1950, and recognizing the enormous legal and cultural changes of the 1970s, Justice Ginsburg dwelled on the sorts of practical steps taken by courageous women and men to alter the landscape of the legal academy and the legal profession.

This was not the first time Justice Ginsburg wrote an opening essay for a new gender law journal. While a member of the faculty at Rutgers

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¹ 1 Colum. J. Gender & L. n.p. (1991).

² *Id.*

³ One line in the statement focused on a small group of people outside of university settings. The members also hoped to “serve as a resource to people working to improve conditions of women through the law both domestically and internationally.” *Id.*

⁴ *Id.* Not surprisingly those who founded the journal were mostly women. Of the thirty-five staffers listed in the masthead of the first issue only three were men. *Id.*

⁵ Ruth Bader Ginsburg, Introduction, 1 Colum. J. Gender & L. 1 (1991).

Law School in Newark, she wrote a brief essay to mark the arrival of the Women's Rights Law Reporter at that institution.⁶ This journal, which first appeared in 1972, was the first gender and law journal published at an American law school.⁷ As its name suggests, its original focus was on essays, notes, case reports, and notices designed to provide practical information about legal issues and events for the bench and bar, as well as the academy.⁸ Indeed, Justice Ginsburg's contribution was a case note on Reed v. Reed⁹ intended to provide some basic background on the case for use by the then emerging anti-discrimination bar.¹⁰

The differing approaches of those who founded the journals at Columbia and Rutgers mirror debates that go back through much of the history of the nation. Arguments about legal and political strategy have long been visible in the various legally-related publications overseen by women. From the time of Myra Bradwell—known for both the infamous case¹¹ in which the United States Supreme Court refused to require states to admit women to their bars and the founding of the Chicago Legal News,¹²—until

⁶ Ruth Bader Ginsburg, Comment on Reed v. Reed, 1 Women's Rts. L. Rep. 7 (1972).

⁷ The issue containing Justice Ginsburg's note on Reed v. Reed was actually the second issue of the journal. *Supra* note 6. A non-profit corporation not affiliated with a university released the first. When that venture floundered, Elizabeth Langer, then a law student at Rutgers and now my wife, arranged to move the journal and oversaw publication of the second issue. Initially, the Rutgers University Law School faculty voted to allow the journal to use the institution's name and physical facilities, but did not provide any funds. Later, funding was provided. Gender journals now exist at twenty-one law schools: American, Buffalo, California Berkeley, California Hastings, Cardozo, Columbia, Duke, Georgetown, Harvard, Iowa, Michigan, Rutgers, St. Mary's, Texas, Tulane, UCLA, USC, William and Mary, Wisconsin, and Yale. Fifteen began publication in the 1990s. Only two—Rutgers and Harvard—appeared in the 1970s. The other four—California Berkeley, California Hastings, Wisconsin, and Yale—began in the 1980s.

⁸ The origins of the journal outside of a law school had a major impact on its format. *See supra* note 7. Those originally setting up the publication hoped to provide useful information for practitioners in the field. In addition to adopting a "law reporting" style, it used a larger than typical page size and contained graphics. Many of these features remain, making the journal quite unique. During its formative years, the Women's Rights Law Reporter played a very important role as an information clearing house for lawyers in the field.

⁹ 404 U.S. 71 (1971). In this case, the Court invalidated a statute giving mandatory preference to the father (as a male) over the mother in the appointment of an administrator of their deceased son's estate.

¹⁰ Reed was decided the same year Justice Ginsburg helped establish the Women's Rights Project of the American Civil Liberties Union.

¹¹ Bradwell v. Illinois, 83 U.S. 130 (1872).

¹² The centrality of her role was recognized in the initial issues of the journals at both Columbia and Rutgers. After Justice Ginsburg's essay, Columbia reprinted the panel discussion held on Myra Bradwell Day in 1990. The first issue of Women's Rights Law

today, those laboring in journal offices have struggled to find purpose and meaning in their work. The career of Bradwell, who tried to fulfill the ambitions of both the Columbia and Rutgers journals by meeting the needs of practitioners and feminists alike, teaches us much about the difficulties and pleasures, frustrations and joys of using the written word to stimulate legal change.

The first issue of the Chicago Legal News appeared on October 3, 1868. Good businesswoman that she was, Bradwell widely distributed a Prospectus seeking subscribers during the month before the first issue was printed. Neither gender, feminist theory, nor the “woman question” were mentioned. Noting “the want of a legal publication in the West,” Bradwell stated simply that the paper “will give abstracts of the points decided in our local courts, comment freely, but fairly, upon the conduct of our judges, the members of the bar, officers of courts, members of congress and our state legislature in their administration of public affairs.”¹³

But in the third issue of the paper, Bradwell—perhaps feeling confident because of the obvious success of her fledgling enterprise¹⁴—began what became a regular feature, a column entitled Law Relating to Women. As far as I know, these columns were the first instances in which a legal publication run by a woman contained arguments about the “woman question.”¹⁵ In the first such column, clearly written by Bradwell, she described some of the rules limiting the civil legal status of married women,¹⁶ outlined a case decided over three years earlier¹⁷ holding that a

Reporter released before it came to Rutgers opened with a brief description of the Bradwell case.

¹³ Myra Bradwell, Prospectus, Chi. Legal News, Oct. 3, 1868.

¹⁴ In the second issue, she indicated that the business was doing well and thanked all of those who had agreed to help her provide up to the minute news on legal developments. Myra Bradwell, Introduction, Chi. Legal News, Oct. 10, 1868.

¹⁵ Publications run by women but oriented to a non-legal audience began to appear with some frequency in the United States beginning in the 1840s. The Lily, run by Amelia Bloomer, first appeared in 1849. Elizabeth Cady Stanton began publishing The Revolution in 1868, the same year Bradwell began the Chicago Legal News. The first politically oriented woman’s book widely read in the country was probably Mary Wollstonecraft’s Vindication of the Rights of Woman, published in 1792. Other feminist tracts did not appear until the 1820s, including the work of two English women—Fanny Wright’s collection of letters Views of Society and Manners in America . . . by an Englishwoman in 1821 and Anna Wheeler’s Appeal of One Half the Human Race, Women, against the Pretensions of the Other Half, Men, to Retain Them in Political, and Thence in Civil and Domestic Slavery in 1825. In America, the abolitionist movement led to the emergence of a number of women speakers and writers, including the Grimke sisters in the 1830s. The best history of writings, speeches, and publications of women in the first half of the nineteenth century, both here and in Europe, is Bonnie S. Anderson, Joyous Greetings: The First International Women’s Movement, 1830-1860 (2000).

¹⁶ For a description of these rules and the reforms adopted in most states during the nineteenth century, see Richard H. Chused, Married Women’s Property Law: 1800-1850, 71 Geo. L.J. 1359 (1983).

married woman could not sue in her own name to recover her earnings, and opined that the Illinois Married Woman's Act of 1861¹⁸ should be amended to include earnings among the types of property eligible for control by married women. "In the case of a drunken or spendthrift husband, such an amendment would often save the wife and children from want," Bradwell argued, "as well as place the wife's earnings beyond the reach of her husband's creditors."¹⁹ The Law Relating to Women column published the following week claimed that the process of separately examining married women before allowing their deeds waiving dower to take effect was loosely enforced. "We think," Bradwell wrote, "that the law should be so changed, that if a married woman signs a deed, and there is no fraud or force used in obtaining her signature, that she should not be allowed to recover her dower."²⁰

The seemingly tame quality of the two initial columns quickly gave way to bolder salvos about suffrage. Anticipating a state constitutional convention the following year, Bradwell urged in the third column that the new charter should not limit the vote to men, writing that, "In many of the states of the union negroes can vote, women can not. Is not a woman as good as a negro? Shall it be said that we accord the negro a voice in this government, that we deny to women?"²¹

¹⁷ Bear v. Hays, 36 Ill. 280 (1864).

¹⁸ 1861 Ill. Laws 143 (1861).

¹⁹ Myra Bradwell, Law Relating to Women, Chi. Legal News, Oct. 17, 1868. Most of the first wave of married women's property acts adopted before 1860 provided that various forms of property could be held by married women in their own names and remain free from attachment by husbandly creditors. It was not until after the Civil War that states began to treat married women's property as commercially important by allowing it to be used as security for loans or to be attached by wifely creditors. See also Chused, *supra* note 16.

²⁰ Myra Bradwell, Law Relating to Women, Chi. Legal News, Oct. 24, 1868. The separate examination system was a byproduct of two forces. First, English practice prior to the Revolutionary War, which putatively banned married women from signing deeds, allowed women to waive dower in a charade filled process of fine and recovery. Though the English charade was abolished here very early, the custom of having a magistrate examine married women to make sure they signed their deeds voluntarily and without duress from their husbands continued in many jurisdictions. This is the custom critiqued by Bradwell. For more information on the separate examination, see Marylynn Salmon, Women and the Law of Property in Early America 16-18 (1986) and Stacy Lorraine Braukman & Michael A. Ross, Married Women's Property and Male Coercion: United States' Courts and the Privy Examination, 1864-1887, J. Women's Hist., Summer 2000, at 57.

²¹ Myra Bradwell, Law Relating to Women, Chi. Legal News, Oct. 31, 1868. This statement is likely to be read with hostility in the present day. Many in the suffrage movement used race in a negative fashion to further the cause. While Bradwell certainly can be accused of suggesting here that white women were superior to blacks, she did not argue, as many of her colleagues did later, that she would be willing to allow the disenfranchisement of blacks as a "compromise" in order to gain suffrage for women. We also know that her husband made the necessary motions to gain the first admission of a black

The following week, a long editorial urged women to see to it that the delegate from their district pledge his commitment to woman suffrage. And, given the topic of this symposium, Bradwell closed this column in a most interesting fashion:

We believe ours is the first legal paper in the United States to come out in favor of woman suffrage.

We are asked, is not the News *neutral* in politics? It is.

We do not regard this as a political question, but as a reform.

In fact, we do not know which of the two great parties of the day will be for or against it.

We have never said anything in the columns of the News and never intend to, from which any person could tell whether we were in favor of the Democratic or Republican party—the Methodist, Baptist, Universalist, or Catholic churches. But one thing we do claim—that woman has a right to think and act as an individual—believing if the great Father had intended it to be otherwise—he would have placed Eve in a cage and given Adam the key.

What are we to make of these opening editorial gambits? Who was Myra Bradwell and what was she trying to accomplish? Despite her historical renown, remarkably little has been written about her.²² In many

person to the Illinois Bar in 1869. Jeanine Becker, Myra Colby Bradwell: Sisterhood, Strategy & Family, Women's Legal History Project, Stanford Law School 14, *available at* <http://www.stanford.edu/group/WLHP/papers/Bradwell.pdf> (last visited Oct. 1, 2003).

²² There is a biography. See Jane M. Friedman, America's First Woman Lawyer: The Biography of Myra Bradwell (1993). A first-rate tome on Bradwell, however, is yet to be written. A good thesis on her professional career is available. Caroline K. Goddard, Law, Women's Rights, and the Organization of the Legal Profession in the Gilded Age: Myra Bradwell's Chicago Legal News, 1865-1890 (2001). There are also a few articles about various aspects of Bradwell's life. Becker, *supra* note 21; George W. Gale, Myra Bradwell: The First Woman Lawyer, 39 A.B.A. J. 1080 (1953); Nancy T. Gilliam, A Professional Pioneer: Myra Bradwell's Fight to Practice Law, 5 L. & Hist. Rev. 105 (1987); Meg Gorecki, Legal Pioneers: Four of Illinois' First Women Lawyers, 78 Ill. B.J. 510 (1990); Robert M. Spector, Woman Against the Law: Myra Bradwell's Struggle for Admission to the Illinois Bar, 68 J. Ill. St. Hist. Soc'y 228 (1975). The best book on early women in the legal profession is Virginia Drachman, Sisters in Law: Women Lawyers in Modern American History (1998). Bradwell, by the way, was by no means the first woman lawyer in America. She was not actually admitted to the Illinois Bar until 1890, long after a number of other women had joined the profession. At least six other women applied for bar membership the same year as Bradwell. Gilliam, *supra*, at 107. Two of them were admitted in nearby states while Bradwell was pursuing her famous case seeking membership in the Illinois Bar. Arabella Mansfield was licensed to practice law in Iowa in September, 1869, Chi. Legal News, Oct. 18, 1869, and Emma Barkeloo in Missouri in March, 1870, Chi. Legal News Apr. 3, 1870. Two other women—Alta Hulett and Ada Kepley—sought membership in the Illinois Bar at the same time as Bradwell. Kepley was actually admitted to practice by a judge in a trial level Illinois court despite the refusal of the state Supreme Court to admit Bradwell. Gorecki, *supra*, at 512-513.

ways she is unknown to us. But we can establish some pretty clear understandings about why she published the Chicago Legal News. Beyond the obvious fact that Bradwell was a clever entrepreneur who saw an opening and filled it, her adult life demonstrated a deep commitment to law, to the establishment and improvement of standards for the legal profession, and to juridical equality.²³

The Adam and Eve images Bradwell used to close her fourth Law Relating to Women column are remarkably revealing. “Woman,” she wrote, has “a right to think and act as an individual—believing if the great Father had intended it to be otherwise—he would have placed Eve in a cage and given Adam the key.” This statement was a pungent, powerful evocation of American liberalism—a vociferous claim that women were entitled to the same autonomy and liberty as men. And it called upon a series of rhetorical streams about citizenship from the nineteenth-century abolitionist and suffrage movements.

Concepts of citizenship in the early republic revolved around the ability of white men to make independent political judgments.²⁴ Economically and culturally dependent souls—children, slaves, the landless, and women—were subject to the will of others and therefore incapable of intelligently participating in governance. By Bradwell’s time, debates about the nature of citizenship struck different chords. Beginning early in the nineteenth century and continuing through the Jacksonian era, white male wage earners, small farmers, and entrepreneurs successfully claimed that they were independent political actors and gained access to the vote.²⁵ Abolitionists seized on Jacksonian rhetoric. They asserted that the right to contract for one’s labor was not only the central indicia of political autonomy and citizenship, but also the *sine qua non* of liberty.

Suffragists made a similar shift in their discourse.²⁶ Forced dependency was critiqued as antithetical to citizenship and equality. Rhetoric of independence—in thought, action, economic life, and political acumen—was standard fare. By the time of Bradwell, many suffragists viewed the ability to earn a wage not as a prerequisite for entry into the body politic, but as the fulcrum of liberty and freedom from patriarchal

²³ By “juridical equality” I refer only to a standard of legal fairness. Bradwell, like virtually all of her nineteenth-century, suffragist colleagues, declined to view black Americans as her social or cultural equal.

²⁴ For a terrific discussion of the impact of this basic idea on women, see Linda K. Kerber, No Constitutional Right to be Ladies: Women and the Obligations of Citizenship (1998).

²⁵ Robert J. Steinfeld, Property and Suffrage in the Early American Republic, 41 *Stan. L. Rev.* 335 (1989).

²⁶ The interplay between notions of independence, contractual freedom, and gender is wonderfully chronicled in Amy Dru Stanley, From Bondage to Contract: Wage Labor, Marriage, and the Market in the Age of Slave Emancipation (1998).

governmental control. In many ways, it was classical liberalism at its purest.²⁷ The first four Law Relating to Women columns fit this image to a tee. Adam was not free to cage Eve. Property rights of husbands and wives, Bradwell argued, should be equal. Women, she claimed, were capable of making their own independent decisions—without oversight by magistrates—about conveying property. And access to the political system, including suffrage, was the right of women and men alike.

But Bradwell's belief structure also had a cautious streak. While more radical suffragists attacked religious leaders hostile to suffrage,²⁸ linked their political ambitions to other controversial topics such as divorce or unusual spiritual movements,²⁹ and worked tirelessly for an amendment to the national constitution, Bradwell focused her attention on the right of women to attain positions of authority,³⁰ the importance of improving the professional status of accomplished women,³¹ the need for incremental changes in women's status,³² the significant role of state legislatures, and the paramount importance of reason and logic in the development of law and political strategy.³³ In this light, both her founding of the Chicago Legal News and her decision to apply for membership in the Illinois Bar were understandable moves. Though her ambitions were large, she was a tactical gradualist.

²⁷ The Lochnerian version of classical liberalism that became the mantra for many large business interests at the end of the nineteenth and the beginning of the twentieth centuries has much in common with the claims of the early suffragists. By the time freedom of contract took on the politically conservative cast displayed in Lochner v. New York, 198 U.S. 45 (1905), those in the mainline suffrage movement—including many women who relied upon classical liberal rhetoric through the end of the 1860s—often spoke about women's virtue, morality, and goodness. Women voters, it was claimed, would use their superior moral sensibilities to improve American culture. Similar theories led many women to support temperance. It was not surprising, therefore, that women's suffrage and temperance became embedded in the Constitution at about the same time.

²⁸ See, for example, Kathi Kern, Mrs. Stanton's Bible (2001), which tells the story of Stanton's long antipathy to religious organizations and the eventual publication of her Woman's Bible in 1895 and 1898.

²⁹ See, e.g., Barbara Goldsmith, Other Powers: The Age of Suffrage, Spiritualism, and the Scandalous Victoria Woodhull (1998).

³⁰ For example, she pushed for legislation allowing women to be notaries, sit on juries, and hold school offices. Gale, *supra* note 22, at 1081; Spector, *supra* note 22, at 241.

³¹ Bradwell spent a great deal of time on improving the status of lawyers and bar associations. She and her husband were important figures in the formation and maintenance of early professional associations in Chicago. See Goddard, *supra* note 22.

³² Bradwell was deeply involved in drafting and lobbying for state legislation on property and other issues, including the 1869 Married Women's Property Act, Ill. Laws 255 (1869), and an act allowing her to incorporate her own business and control its operation, Ill. Laws 876 (1869).

³³ Much of this story is told in Goddard, *supra* note 22, at 178-255.

When Bradwell applied for membership in the Illinois Bar in 1869, her newspaper already was an acknowledged success. Seeking further recognition of her professional credentials was a natural next step. Her husband James, with whom she had studied law for many years, was a well-respected member of the legal community and a local judge.³⁴ Perhaps Myra wanted to formally join his practice when he decided to step down from the Probate Court bench in 1869. But it is more likely that she saw her bar application, like her newspaper, as a tool for reform. Bradwell knew that a number of women were seeking bar membership that year in both Illinois and other states.³⁵ It was a nascent “movement” and she joined in.³⁶ Even though shortly after Bradwell lost her case in the United States Supreme Court, Illinois adopted legislation allowing women to join the state bar, Bradwell did not reapply for membership. After winning the larger reform, she had no interest in renewing her personal contest.³⁷

Bradwell, it turns out, was one of those rare people who find a way to merge their political, social, and personal vision with their professional career. The division between theory and practice—a common topic of debate in the legal academy that was so evident in the differing ambitions of those establishing gender journals at Columbia and Rutgers—did not exist in her life. The very existence of her legal newspaper, like her application for membership in the bar, was a powerful, practical weapon in her reform arsenal. And she used it to benefit her cause. The Law Relating to Women column was only a small part of a steady stream of information on women’s issues that Bradwell published.³⁸ The very existence of the paper was a powerful cultural statement. Like those women before her who fought to

³⁴ They married in 1852. James practiced law first in Tennessee and then in Chicago. He was elected to the Probate Court in Chicago in 1861 and served there until 1869. Four years later he became a member of the state House of Representatives.

³⁵ See *supra* note 22.

³⁶ This was not the only instance of such behavior by Bradwell in the late 1860s. Francis and Virginia Minor, President of the Missouri Suffrage Association, submitted a resolution at a St. Louis women’s rights convention in 1869 arguing that the privileges and immunities clause of the recently adopted Fourteenth Amendment had already enfranchised women. The resolution was adopted by those in attendance and quickly became a new rallying cry for the suffrage movement. Bradwell, after hearing about the resolution, filed a third brief before the Illinois Supreme Court arguing that the same privileges and immunities clause protected the right of women to practice a profession of their choice. This was the claim that was eventually heard by the United States Supreme Court. For further details on this aspect of her bar membership litigation, see Richard Chused, Cases, Materials, and Problems in Property 158-63 (2d ed. 1999).

³⁷ She became a member of the Illinois Bar in 1890. Membership was conferred as an honor to her. In a similar vein she was admitted to the Bar of the United States Supreme Court in 1892.

³⁸ Of course, she reported on her own case as well. The complete proceedings were published in the paper. *Chi. Legal News*, Feb. 5, 1870.

become literate,³⁹ like Wollstonecraft and others who claimed the right to publicly voice their displeasure about their status, like the many nineteenth century women who wrote novels, plays, and poetry,⁴⁰ Bradwell finally claimed the legal periodical as a site for the exercise of women's power.

It should now be clear why defining a role for contemporary journals of gender and law is so difficult. Your right to speak is unquestioned and for that Myra Bradwell deserves much of the credit. But unlike Bradwell's day, the mere publication of a journal is no longer an obvious statement of cultural reform, let alone radical change. The mere existence of a publication is not a clear meshing of theory and practice. Such a merger still may have been possible in 1972 when the Women's Rights Law Reporter first claimed the pages of law school journals for women's benefit, but it is no longer. Though you stand on Myra Bradwell's shoulders, the purpose of your voice is not as clear as hers. That, of course, is why this symposium is important.

³⁹ For centuries women were much less likely than men to be literate. While exact information on literacy rates is difficult to acquire, it is pretty clear that women's literacy rates rose substantially in eighteenth-century colonial America. Surely this was a baseline prerequisite to any of the discussion occurring at this symposium. For a history of literacy, see Lee Soltow & Edward Stevens, The Rise of Literacy and the Common School in the United States: A Socioeconomic Analysis to 1870 (1981). The best summaries of the literature on literacy and gender may be found in John E. Murray, Generation(s) of Human Capital: Literacy in American Families, 1830-1875, 27 *J. Interdisc. Hist.* 413 (1997) and Joel Perlmann & Dennis Shirley, When Did New England Women Acquire Literacy?, 48 *Wm. & Mary Q.* 50 (1991).

⁴⁰ In many ways, the novel became the province of women in nineteenth-century America. See Ann Douglas, The Feminization of American Culture (1977).