

Evan Atkins

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Dr. Allison Critcher

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

In this (reimagined) decision, Chief Justice Chase writes for a 5-4 majority, joined by Justices Clifford, Davis, Strong, and Hunt. Justice Miller writes in dissent, joined by Justices Bradley, Field, and Swayne.

Mrs. Myra Bradwell meets every requirement Illinois law sets for bar admission. She has good character, requisite legal training, and demonstrable competence in legal analysis, as evidenced by her work founding and editing the Chicago Legal News. Nevertheless, the Illinois Supreme Court denied her application for one reason: she is a woman. We are asked whether this denial violates the Fourteenth Amendment. It does.

The facts of the case are straightforward and showcase the arbitrary nature of sex-based exclusions from professional life. Mrs. Bradwell studied under her husband, James Bradwell, then founded the leading midwest legal publication and drafted significant legislation, including Illinois' Married Women's Property Act. The Illinois statute governing bar admission requires any adult "person" of good character and requisite training to be admitted to practice law. Mrs. Bradwell clearly meets these criteria.

The Illinois Supreme Court acknowledged her qualifications but rejected her application because her "married condition" imposed a legal disability. The court declared 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” (Bradwell 132-33). The court further reasoned that “when the legislature gave to this court the power of granting licenses to practice law, it was with not the slightest expectation that this privilege would be extended to women” (Bradwell 133). This reasoning exposes the factual basis for exclusion: not individual qualifications, but generalized assumptions about women’s capabilities based solely on their sex.

The Fourteenth Amendment provides that “No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.” The right to pursue a lawful profession represents a fundamental privilege of citizenship. When Illinois excludes qualified women from legal practice based solely on sex, it creates two classes of citizens with different rights. This is precisely what the Fourteenth Amendment was designed to prevent.

Illinois would have this court construe the Privileges or Immunities Clause with extraordinary narrowness, arguing that “the right to control and regulate the granting of license to practice law in the courts of a State is one of those powers which are not transferred for its protection to the Federal government” (Bradwell 139). However, this interpretation fundamentally misunderstands the Amendment’s purpose. The federal government must indeed protect citizens from state discrimination that creates artificial barriers to full participation in American society. Legal practice is essential to our constitutional system. Attorneys serve as officers of the court and ensure citizens can access their constitutional rights. Excluding qualified citizens from this profession based on sex undermines both individual liberty and the proper functioning of justice.

More fundamentally, Illinois’ exclusion of women violates the Equal Protection Clause. When states create classifications based on immutable characteristics unrelated to ability, such classifications must face heightened scrutiny. The state offers no compelling justification related

to actual legal practice, only assumptions rooted in the “separate spheres” ideology that has excluded women from public life.

Justice Bradley’s dissenting opinion in this decision exemplifies the destructive reasoning that has confined women to subordinate roles. Bradley declares that “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” (Bradwell 141). His assertion that “the harmony of interest and views which belong to the family institution is repugnant to the idea of a woman adopting a distinct and independent career from that of her husband” (Bradwell 141) reveals not natural law, but socially constructed barriers designed to maintain male dominance.

Justice Bradley’s approach illustrates what feminist scholar Catharine MacKinnon would later systematically analyze as the construction of women’s identity according to male perspectives (Mackinnon 1979). The separate spheres ideology divides the world into public/male and private/female domains and serves to exclude women from positions of economic power while restricting men’s family participation. This artificial division wastes human potential on a massive scale.

Mrs. Bradwell herself demonstrates this waste. Her legal expertise is evident to anyone familiar with her work, yet Justice Bradley’s dissenting view would consign her talents to purely domestic endeavors. Such exclusion denies society the full contributions of half its citizens based on nothing more than prejudice disguised as natural law.

The exclusion of women from legal practice creates concrete harms that violate constitutional equality principles. Legal questions affecting women’s property rights, child custody, and protection from domestic violence will continue to be decided exclusively by men, many of whom lack understanding of women’s experiences. This cannot satisfy any meaningful

standard of justice. Consider the ripple effects: how many qualified women will be denied economic independence? How many legal innovations will be lost because half the population cannot contribute to legal development? How many injustices will persist because those most affected by gender based laws have no voice in their interpretation?

The constitutional guarantee of equal protection demands more than formal neutrality. It requires active dismantling of systems that perpetuate subordination. As feminist scholarship has demonstrated, women's participation in professional life enhances rather than diminishes their contributions to society. The rigid separation of spheres harms families by preventing meaningful relationships between fathers and children while imposing impossible burdens on women to manage all domestic responsibilities (Williams 2000).

The dissenting justices argue that our decision represents too dramatic a departure from traditional understandings. However, the constitution will not forever remain frozen in eighteenth-century assumptions about women's capabilities. Constitutional principles must evolve to address expanding concepts of human dignity and democratic participation. The exclusion of qualified women from legal practice rests not on constitutional principle, but on custom and prejudice. Where custom contradicts a constitutional guarantee, the constitution must prevail. The promise of equal protection demands full inclusion of all citizens in public life, regardless of sex.

Mrs. Bradwell seeks not special treatment, only equal treatment. She asks for an evaluation based on individual merit rather than group stereotypes. This represents the essence of constitutional equality. The state's exclusion constitutes what feminist theorist Carrie Menkel-Meadow terms "structural discrimination," which involves systemic barriers that prevent

groups from participating in public life regardless of qualifications (Menkel-Meadow 1994). Such structural exclusions require structural remedies.

Mrs. Bradwell possesses the character, training, and competence necessary for bar admission. Illinois has offered no legitimate reason for denying her application except her sex. Such exclusion violates both the privileges or immunities clause and the equal protection clause of the Fourteenth Amendment. We therefore hold that states may not exclude qualified candidates from bar admission solely based on sex. Professional competence, not gender stereotypes, must govern access to the legal profession.

The judgment of the Illinois Supreme Court is reversed. Mrs. Bradwell must be admitted to practice law upon meeting the same requirements applied to all qualified candidates.

This decision opens the door not merely to one woman's professional advancement, but to full participation by half our nation's citizens in the work of law and justice. The Constitution demands no less, and American democracy depends upon nothing more. When we exclude qualified citizens from professional life on the basis of an arbitrary characteristic, we diminish both individual liberty and collective prosperity. The separate spheres ideology, which has historically confined women to domestic roles, serves neither constitutional principles nor practical needs. A legal system that includes the perspectives and expertise of all qualified citizens will better serve justice than one that artificially limits participation based on sex.

It is so ordered.

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