

RESTORED TO REASON:
A CASE STUDY OF WOMEN'S USE OF LEGISLATIVE REFORM FOR THE PURPOSE OF
LEGAL EQUALITY

A Thesis by

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The following faculty members have examined the final copy of this thesis for form and content, and recommend that it be accepted in partial fulfillment of the requirement for the degree of Master of Arts with a major in History.

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DEDICATION

For my tribe: Wendy, Emily, and Angela. For my family: Chuck, Isaac, and Isabelle; my parents and my grandparents. Thank you for your love and unwavering support.

ABSTRACT

Women of the nineteenth century, dissatisfied with the legal role in which they had been cast, utilized the process of legislative reform and through its use, obtained legislation for equal parity and self-ownership. They systematically dismantled the common-law doctrine of coverture through legislative acts, increasing legal equality and rights for women. At the same time, each act passed showcased the existing loopholes and inspired further reform. The emerging mental health reform movement, which required legislative acts for state-run asylums, was one area where women worked on their own behalf to secure their personal freedom and right to property. Galvanized by their experiences with the laws and courts, Elizabeth Packard, Myra Bradwell, and Mary Lincoln effected changes within the Illinois insanity laws beginning in 1860. In an effort to protect and advocate for themselves, these women challenged the traditional social structures of their day and fought for women's justice in the laws, facilitating the creation of gender neutral legal equality throughout the nation.

TABLE OF CONTENTS

Chapter	Page
1. INTRODUCTION TO WOMEN’S USE OF LEGISLATIVE REFORM.....	1
2. HISTORIOGRAPHY.....	9
3. RELEVANT BACKGROUND INFORMATION.....	24
4. A CASE STUDY ANALYSIS OF LEGISLATIVE REFORM.....	35
4.1 Preface	35
4.2 Elizabeth Packard: A New Law	38
4.3 Myra Bradwell: Legal Advocate	54
4.4 Mary Lincoln: In Self-Defense	68
4.5 Conclusion	80
5. CONCLUSIONS.....	88
BIBLIOGRAPHY.....	99

CHAPTER 1

AN INTRODUCTION TO WOMEN'S USE OF LEGISLATIVE REFORM

Women of the nineteenth century, dissatisfied with the legal role in which they had been cast, utilized the process of legislative reform and through its use, obtained legislation for equal parity and self-ownership. They systematically dismantled the common-law doctrine of coverture through legislative acts, increasing legal equality and rights for women. At the same time, each act passed showcased the existing loopholes and inspired further reform. The emerging mental health reform movement, which required legislative acts for state-run asylums, was one area where women worked on their own behalf to secure their personal freedom and right to property. Galvanized by their experiences with the laws and courts, Elizabeth Packard, Myra Bradwell, and Mary Lincoln effected changes within the Illinois insanity laws beginning in 1860. In an effort to protect and advocate for themselves, these women challenged the traditional social structures of their day and fought for women's justice in the laws, facilitating the creation of gender neutral legal equality throughout the nation.¹

No identity separate from a husband. No name, no rights, no economic stability. Under the common-law doctrine of coverture, a married woman was a class unto herself, set apart through custom, as secondary to her husband. A married woman was held below the umbrella of protection wielded by her husband who provided legal shelter and security. He safeguarded his

¹ Rick Geddes and Dean Uleck, "The Gains from Self-Ownership and the Expansion of Women's Rights," *The American Economic Review*, vol. 92, no. 4 (Sept., 2002): 1079-92; Mary P. Ryan, "The Power of Women's Networks: A Case Study of Female Moral Reform in Antebellum America," *Feminist Studies*, vol. 5, no. 1 (Spring 1979): 66-85. See also Norma Basch, *In the Eyes of the Law: Women, Marriage, and Property in Nineteenth-Century New York* (Ithaca: Cornell University Press, 1982).

wife's honor and freed her to focus on the duties to home and family. First codified in England, coverture was held out as natural law, the innate order of the world wherein the husband assumed headship duties and the wife subordinate ones. It was a legalized, classified system wherein a woman through the very act of marriage surrendered her legal identity. Although upheld as a benevolent doctrine, coverture robbed married women of equal standing within society, equal rights to citizenship, and equality before the law. Woven into the very fabric of government, a woman's opportunity to challenge the common law was virtually nonexistent. However, during the nineteenth century, tensions between the court's task to enforce the laws and the legislature's duty to write them, opened a door for women to engage in legislative reform.²

The legislative reform movement gave women a vehicle to end coverture and provide full legal rights for themselves. Commandeering popular theories of women's work and women's place in society, women wrote, lobbied, and saw passed, legislation guaranteeing them rights based on their own status before the law. Beginning with married women's property laws in 1839, women adopted the process of legislative reform to undo this legal reliance on coverture. Women used legislation to establish their rights to real and personal property, wages, guardianship of children, and guardianship of themselves. Thus, by using the power of the

² Sir William Blackstone, *Commentaries on the Laws of England in Four Books* (London : Printed by A. Strahan for T. Cadell and W. Davies, 1809) Found at: Lonang Institute <http://www.lonang.com/exlibris/blackstone/bla-115.htm> on February 16, 2015; Norma Basch, "Invisible Women: The Legal Fiction of Marital Unity in Nineteenth-Century America," *Feminist Studies*, vol. 5, no. 2 (Summer, 1979): 346-66.

legislature, women worked to end the courts' dependence on the use of coverture, and created more legal equality for themselves.³

The nineteenth century saw changes not only to the common-law doctrine of coverture, but also to the study and treatment of mental illness. Legislatures responded to these new medical practices with funding and legislative controls for new institutions. Instead of home or church care, states built asylums and certified private institutions to attend to the insane within this new branch of medical care. While gender-neutral laws governed asylums and madness, involuntary commitments practiced the common-law doctrine of coverture, leaving married women at the mercy of their husbands, his word against hers. Under these laws, a husband could deliver a married woman to the doorstep of an asylum completely against her will, where she could be held in the facility indefinitely. As the experiences of Elizabeth Packard and Mary Lincoln will show, women were powerless to stop the proceedings. No amount of protestations on their own behalf had any effect on their position. Crowds that gathered as a woman was dragged away by a husband were cautioned not to interfere, as this was within the legal rights of the husband. In this new area of mental health, women were at the mercy of the doctrine of coverture as women who were committed against their wishes were stripped of their independence. In order to push back against this injustice, women used the legislative process to change the insanity laws.⁴

³ Basch, "Invisible Women: The Legal Fiction of Marital Unity in Nineteenth-Century America." *Feminist Studies*. vol. 5, no. 2 (Summer, 1979): 346-66.

⁴ Deborah Brunton, *Health and Wellness in the 19th Century* (Santa Barbara, California: Greenwood) an imprint of ABC-CLIO, LLC, 2014. eBook Collection (EBSCOhost), EBSCOhost (accessed November 1, 2014); Revised Massachusetts Commitment Law as found in Appendix 3 of Barbara Sapinsley, *The Private War of Mrs. Packard* (New York: Paragon House, 1991); Public Laws of the State of Illinois passed by the Twenty-Fifth General Assembly

This new mental health legislation varied by state. Some states required medical evidence of insanity. Others, like Massachusetts, asked for ten affidavits from family members to commit a married woman. Illinois adopted the Personal Liberty Law of 1867. This law guaranteed to all potential asylum patients, regardless of gender or marital status, an insanity trial by jury. Evidence, both anecdotal and medical, was presented to the jury which contained at least one medical doctor. The full jury then rendered the final diagnosis and decision in each case based on the evidence given.⁵

The Illinois law was born out of Elizabeth Packard's imprisonment in the state insane asylum in Jacksonville. Put away based on her husband's word alone, Packard endured three years isolated from her family and friends, unable to communicate this great injustice to anyone able to help. When Packard denied she was insane, this denial itself was used as evidence to hold her longer. She witnessed harm and mistreatment and suffered through abandonment by her husband and separation from her children. Once released, Packard was imprisoned in her own home while her husband searched for another asylum in which to deposit her. Through her own ingenuity, she was granted a court hearing and exonerated of all charges of insanity. Packard traveled the country utilizing legislative reform to install safeguards for future women in similar situations.⁶

Within Packard's legislative campaign through Illinois, she became friends with Myra Bradwell. Bradwell was a fellow advocate for legislative reform who had written legislation on

Convened January 7, 1867 "Protection of Personal Liberty. An Act for the protection of personal liberty" Approved March 5, 1867.

⁵ Ibid.

⁶ For an overview of the life of Elizabeth Packard, see the biographies written by Sapinsley, *The Private War of Mrs. Packard*, as well as Linda V. Carlisle, *Elizabeth Packard: A Noble Fight* (Urbana: University of Chicago, 2010).

behalf of women's rights. Bradwell knew first-hand the disability of coverture and the gross inequality of women in the law. Bradwell's U. S. Supreme Court case, *Bradwell v. Illinois* (1873), contained damning language from the Court giving credibility to the doctrine of coverture as protecting a woman's "paramount destiny" to serve as wife and mother. Denied bar admission on the basis of her gender, she nonetheless, had a successful legal career, serving as the editor of *The Chicago Legal News* from its inception and defending equality for women in the legislature. She helped Packard write the Personal Liberty Law and lobbied for its passage though she herself was never affected by the legal aspects of insanity.⁷

Bradwell used her powers of advocacy, connections with the press, and her understanding of the insanity laws to further empower her friend Mary Lincoln. Lincoln was tried under the Personal Liberty Law and the jury returned a verdict of insane. Unlike Packard, Lincoln had opportunity to communicate with her friends and family. She wrote letters, engaged the governor, and gave interviews to the press, in order to win her freedom. Lincoln pushed the boundaries of coverture not by appearing before the legislature with signed petitions, but by lending her notoriety to the cause of women's continued unequal treatment by insanity laws. Ultimately, Lincoln's experiences with the public nature of insanity trials lent evidence to further amend insanity laws, doing away with public trials altogether. While Packard's law was intended to protect married women from nefarious husbands, the law eventually served to punish unconventional women and reinforce societal norms. Lincoln was humiliated and her liberty and property were temporarily stolen. Lincoln's guile and sense of self-ownership enabled her to ask

⁷ For an overview of the life of Myra Bradwell see the biography written by Jane M. Friedman, *America's First Woman Lawyer: The Biography of Myra Bradwell* (Buffalo: Prometheus Books, 1993).

for help and advocate on her own behalf. While Lincoln's contributions to legislative reform are not as direct as Packard's and Bradwell's, they are equally important as the embodiment of legislative reform's duty to women's self-empowerment.⁸

These three women all pushed the traditional boundaries and definitions of womanhood in the nineteenth century. Packard stood in the statehouse, addressing legislatures at every opportunity. Bradwell ran a successful business and fought her cause for women in the professions all the way to the Supreme Court. Lincoln used every available means of publicity to shed light on her situation and the great injustice for women under insanity laws. They each openly advocated their own agenda, and fought for freedom, liberty, and equality for women. Through their work, both independent and dependent of each other, they created spaces for their own unconventionality and drew the perimeter of womanhood a little broader for those who followed. While these women made headlines for their work, they were largely excluded from the tomes of the women's rights movement, their work undervalued. Yet their contributions are priceless.⁹

⁸ See also: Friedman, *America's First Woman Lawyer*; Jason Emerson, *Mary Lincoln's Insanity Case: A Documentary History* (Urbana: University of Illinois Press, 2012); Jason Emerson, *The Madness of Mary Lincoln* (Carbondale: Southern Illinois University Press, 2007); Mark E. Neely, Jr., and R. Gerald McMurtry, *The Insanity File: The Case of Mary Todd Lincoln* (Carbondale: Southern Illinois University Press, 1986); Myra Helmer Pritchard, *The Dark Days of Abraham Lincoln's Widow: As Revealed by Her Own Letters*, Edited and annotated by Jason Emerson (Carbondale: Southern Illinois University Press, 2011).

⁹ See: Sapinsley, *The Private War of Mrs. Packard*; Friedman, *America's First Woman Lawyer*; In recent years Mary Lincoln's court file was moved to the Lincoln Presidential Library where I viewed the file as well as other documents pertaining to Lincoln's life after the White House which have not been published. For a comprehensive look at some of the documents as well as letters found at the home of Robert Lincoln, please see: Emerson, *Mary Lincoln's Insanity Case*.

As women in the nineteenth century, Packard, Bradwell, and Lincoln lived their lives under the shadow of the doctrine of coverture and the commonly held belief that such a doctrine was natural. Coverture was the common thread running through the theories of republican motherhood, as well as the cult of domesticity, society's guiding principles of femininity and female success. Yet Packard, Bradwell, and Lincoln all lived lives beyond the boundaries of conventionality, made possible by their own sense of value and self-ownership.

The following pages explore more fully the contributions to legislative reform made by Packard, Bradwell, and Lincoln. It also examines the specific circumstances in which these women found themselves as they came to be involved in legislative reform. A brief examination of the historiography of the doctrine of coverture, women's use of legislative reform, and nineteenth-century mental health, highlight the major arguments that apply to Packard, Bradwell, and Lincoln and to the argument that women created legal changes on their own behalf by using the process of legislative reform. Research of secondary sources regarding Packard, Bradwell, and Lincoln show them to be reformers who lived and worked within popular women's theories of the nineteenth century and who were also affected by the rise of asylum reform during the same period. The secondary sources offer a framework for a more detailed study of not only legislative reform, but also to Packard, Bradwell, and Lincoln themselves. Sources covering Packard and Bradwell are not always concurrent in listing the basic facts which causes a discontinuity in their academic study as subjects. Mary Lincoln's contributions to her own self-ownership as well as the role she played for other women has not been studied fully and is an area open for future consideration. I conclude my thesis with an in-depth look at the events and outcomes which surrounded Elizabeth Packard, Myra Bradwell, and Mary Lincoln and their

involvement with the insanity laws of Illinois between 1860-1876. A case study of Packard, Bradwell, and Lincoln, which focuses on their connections to each other and the Illinois insanity laws, allows an in-depth analysis of women's use of legislative reform as they employed the legislative process for legal equality. These three women fought for women's justice in the laws, using legislative reform to their advantage and forwarding the larger battle for gender equality.

CHAPTER 2

HISTORIOGRAPHY

The earliest formal definition of coverture was recorded by Sir William Blackstone's 1769 treatise *Commentaries on the Laws of England*. Blackstone defined coverture as "by marriage, the husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband: under whose wing, protection, and cover, she performs every thing..." This definition of marriage was used to order familial relationships with the husband as the head of the family. It also presumptuously assumed all married women would be protected by husbands and never need protection from them or legal authority of their own. In the United States, Tapping Reeve's 1816 treatise *The Law of Baron and Femme*, Chancellor James Kent's *Commentaries* in 1826, and Joseph Story's treatise, *Commentaries on the Constitution of the United States* in 1833 all incorporated the doctrine of coverture into United States legal commentaries.¹⁰

While the American treatises did not change the definition of coverture, their inclusion of coverture perpetuated the doctrine's use throughout legislation and court decisions. Because the treatises were popular with both legal and lay audiences, they educated an expanding population as to the concepts and applications of coverture beyond a Biblical picture of a husband and wife as one. In church and in court, husbands were the natural guardians of women and children through which all family business must pass. But coverture was a simple explanation for a

¹⁰ Blackstone, *Commentaries on the Laws of England in Four Books*, Book 1, Chapter 15, part 3, "The Legal Consequences of Marriage," 430; Basch, *In the Eyes of the Law*, 42-69. See also: Basch, "Invisible Women."

complex reality. A woman under coverture could not make a contract, write a will, sue, or be sued. She could not own her own property whether real or personal, or have any guaranteed right to her own wages. A woman had no legal guardianship of her own children. She had no ownership over her own body. Historian Linda Kerber contends that due to the doctrine of coverture, the American Revolution was not realized for women. Because women could not own property, her pursuit of happiness was curtailed and her new role as republican mother existed within the boundaries of coverture. It was the doctrine of coverture, and its effects on women's rights, that inspired women to enter the political arena under the guise of legislative reform, to enact some legal justice on their own behalf. Women like Packard, Bradwell, and Lincoln lived under coverture and were harmed by its use.¹¹

Historians Norma Basch and Mary Lyndon Shanley both suggest that women's

¹¹ Clare Cushman, *Supreme Court Decisions and Women's Rights: Milestones to Equality*. (Washington D.C.: CQ Press, 2001), 1; Norma Basch, "The Emerging Legal History and Women in the United States: Property, Divorce, and the Constitution," *Signs*, vol. 12, no. 1 (Autumn, 1986): 97-117. See also: Linda K. Kerber, *Women of the Republic: Intellect and Ideology in Revolutionary America* (Chapel Hill: University of North Carolina Press, 1980). Claudia Zaher, in her article "When a Woman's Marital Status Determined Her Legal Status: A Research Guide on the Common Law Doctrine of Coverture," *Law Library Journal* 94, 3 (2002): 459-86, 463 argues that "Coverture has almost faded from the legal scene, but remnants remain intact. Even today, it is usually the wife who is adversely affected by corporate rules against marriage between employees. It is most often the woman who suffers the greatest economic loss upon termination of a marriage, since her contribution to the family's welfare is not regarded as favorably as the husband's contribution. It is the wife who is most frequently an innocent victim of government forfeiture laws and bankruptcy laws, and in these kinds of suits, courts often seem to follow the old principle that what's his is his—and what's hers is his. And in the twenty-first century, it seems incredible that new technology like the Internet has promoted a lively market in mail-order brides into this country, and few of these brides realize they have any individual rights apart from the husbands who bought them and imported them. It is true that married women still face subtle discrimination, but it is also true that the legal trappings and justifications for the discrimination are eroding."

involvement in legislative reform movements was the initial strike against the doctrine of coverture. The earliest reform movements, as described by Basch, show women worked within the boundaries of protecting home and hearth to reform vice laws. Women attacked gambling, prostitution, and alcohol at the local level. While these first reforms did not extend the legal rights of women, the process of forming an organization with elected officers, writing legal petitions, and presenting them for signature, mobilized women for future change. The earliest reforms which attempted to equalize women's legal rights were the married women's property laws, also passed at the state and local levels beginning with Mississippi in 1839. Myra Bradwell was involved with the early married women's property laws in her state of Illinois. Broadly speaking, these laws protected a married woman's property from her husband's creditors but did not explicitly expand her rights to manage the property. Instead, a married woman's property was held in trust and managed by an executor, usually the woman's husband. Both Basch and Sara Zeigler also attest that despite what the legislature passed, it was up to the courts to interpret and rule. Local and state courts were reticent to step away from the principles recorded in the American treatises and therefore continued to rely on the doctrine of coverture, crafting their decisions of the new legislation to continue to incorporate the common law. The concurring opinion in Bradwell's U.S. Supreme Court case highlights the Court's reliance on coverture regardless of the legislature and to women's detriment.¹²

¹² Mary Lyndon Shanley, "Suffrage, Protective Labor Legislation, and Married Women's Property Laws in England," *Signs*, vol. 12, no. 1 (Autumn, 1986): 62-77; Sara L. Zeigler, "Uniformity and Conformity: Regionalism and the Adjudication of the Married Women's Property Acts," *Polity*, Vol. 28, No. 4 (Summer, 1996): 467-95; Richard H. Chused, "Late Nineteenth-Century Married Women's Property Law: Reception of the Early Married Women's Property Acts by Courts and Legislatures," *The American Journal of Legal History*, vol. 29, no. 1 (Jan., 1985): 3-35; Basch, *In the Eyes of the Law*, 113-35, 200-23; Alison, M. Parker, *Articulating Rights: Nineteenth-Century American Women on Race, Reform, and the State*

According to Alison M. Parker, early legislative reform of women's rights was the result of economics, as well as applying the principles of the American Revolution to women. The early nineteenth century was filled with economic uncertainty. There were several boom and bust cycles as well as a growing population with expanded land ownership. The Industrial Revolution grew cities and created job opportunities outside of family owned land. But women were left out, legally unable to individually own and control their property. If the right to pursue happiness was predicated on the ability to own land, women were relegated to the sidelines, confined to republican motherhood and the cult of domesticity. Women who desired reform and more legal parity, found supporters among legislators who wanted to challenge judges and their reliance on the common law. The resulting struggle between the courts and local legislative bodies provided a wedge in for women reformers. While Basch adds that these acts passed on their economic merits and men's desire to protect themselves, she also says legislators understood they were opening a door to expand legal parity for women, granting women rights that had been withheld for centuries. Packard and Bradwell depended on legislators like this to take their petitions to the legislative floors, to argue their causes when necessary, and willingly open more legal rights for women. Although not a deciding moment for ending coverture, many women felt victorious with the passage of each new married women's property act.¹³

While early legislative reform focused on pushing back against the doctrine of coverture

(Dekalb: Northern Illinois University Press, 2010), 139-76. See also: Basch, "The Emerging Legal History and Women in the United States."

¹³ Basch, *In the Eyes of the Law*, 113-35, 162-99; Parker, *Articulating Rights*, 139-176. See also: Basch, "The Emerging Legal History and Women in the United States;" Basch, "Invisible Women."

through expanding married women's property acts, the science of mental health and asylum reforms were another area of vulnerability for women. Lynn Gamwell and Nancy Tomes writes that asylum reform was based less on science and more on Christian charity and common sense. "The gradual shift from the care of the insane by families and community to confinement in mental hospitals reflected the need for new forms of social control in times of rapid political and social change." According to Carroll Smith-Rosenberg and Charles Rosenberg, during the nineteenth century, economic and social forces began to compromise traditional gender social roles. As many women began to question or even challenge the status quo of inequality, men as individuals or within organizations, fought to preserve it. Men, as the dominant group were in a position to employ medical and biological arguments to rationalize these traditional sex roles even suggesting ideas such as the cult of domesticity were biologically necessary. Biological science from the time reported that because a woman was more delicate than a man, her nerves were created differently, being wired to her uterus and were therefore more prone to overstimulation. Women were declared a product and a prisoner of their biology, most notably, their reproductive organs. Packard and Lincoln were both victims of this thinking. Their desire to expand traditional sex roles prompted men in authority positions in their lives to push back. Those men used the loose definitions of insanity and the laws that funded and supported asylums as tools to curb Packard and Lincoln and attempt to force them back into conformity.¹⁴

¹⁴ Lynn Gamwell and Nancy Tomes, *Madness in America: Cultural and Medical Perceptions of Mental Illness Before 1914* (New York: Cornell University Press, 1995), 20; Carroll Smith-Rosenberg and Charles Rosenberg, "The Female Animal: Medical and Biological Views of Women and Her Role in Nineteenth-Century America," *Journal of American History*, vol. 60, no. 2 (1973): 332-56.

Ellen Dwyer stresses in *Homes for the Mad*, that gender was a major factor in the diagnosis of mental illness. Elaine Showalter affirms this point that from its inception, asylum care was intended to claim more women than men as evidenced by the number of dorms built for each gender. While asylums were supposed to serve the role of a nineteenth-century middle class family home writ large, they were built as dichotomous institutions, doctors versus patients, with patients divided by sex. Mary Lincoln's institution, though ran by a male doctor, only treated female patients. In *Mental Health, Racism, and Sexism*, John Townsend asserts that patients were more likely to be committed to an institution if they lacked a community of advocacy and support which included women, in particular married women, with no one legally able to come to their aid. Lower classes, non-white races, and women were most susceptible, in part because the diagnosis was handed down by an upper-class, white man. Also in *Mental Health, Raism, and Sexim*, Patricia Perri Reiker and M. Kay Jankowski suggest that "essentialist philosophy constructs a framework for representing women and men as a dichotomy where implicitly men are the standard for normalcy and women are the deficient other ... the other is essentially different and, therefore, inferior to oneself."¹⁵

Elizabeth Howell and Marjorie Bayes, in *Women and Mental Health*, claim that women are placed in a subordinate group while men are placed in the dominant one. This dichotomy leads to some women adopting the beliefs and behaviors of the dominant group as they are primarily concerned with survival. The dominant group benefits from this arrangement and even

¹⁵ Charles V. Willie, Patricia Perri Rieker, Bernard M. Kramer, Bertram S. Brown, editors, *Mental Health, Racism, and Sexism* (Pittsburgh: University of Pittsburgh Press, 1995), 27-50. See also: Ellen Dwyer, *Homes for the Mad: Life Inside Two Nineteenth-Century Asylums* (New Brunswick: Rutgers University Press, 1987); Elaine Showalter, *The Female Malady: Women, Madness, and English Culture 1830-1980* (New York: Pantheon Books, 1985).

though they might recognize the unequal relationship, over time they come to believe the groups are in fact different, but equal. This theory might explain why the doctrine of coverture and other gendered laws were widely accepted by both genders. However, women involved in legislative reform, women who worked for gender equality on all fronts, obviously did not accept this argument. Women such as Packard, Bradwell, and Lincoln may not have believed all people were equal. But they did believe they, as individuals, were equal to the men making adverse decisions for them.¹⁶

Elizabeth Packard and Myra Bradwell are often overlooked advocates for women's rights. Because early primary source documentation regarding women's rights focused on the suffrage movement as recorded by Elizabeth Cady Stanton and Susan B. Anthony, women working outside of suffrage or the National American Woman Suffrage Association (NAWSA) were left out of their pages of *The History of Woman Suffrage*. Both Packard and Bradwell were best known for their contributions to expanded women's rights through legislative reform. Although Bradwell and her husband were eventually included in a later volume of *History*, she was recorded for her work on behalf of expanding women's membership in the professions, specifically in the practice of law. However, biographers for Packard and Bradwell use their subject's publications and letters to reconstruct lives spent in battle for legislative reform.¹⁷

In 1991, Barbara Sapinsley published the first biography covering the life of Elizabeth Packard. Inspired by a conversation she had at a party with one of Packard's distant relatives,

¹⁶ Elizabeth Howell and Marjorie Bayes, editors, *Women and Mental Health* (New York: Basic Books, Inc. Publishers, 1981).

¹⁷ Elizabeth Cady Stanton, Susan Brownell Anthony, Matilda Joslyn Gage, and Ida Husted Harper, *History of Woman Suffrage*, Volume 2 (Rochester: Charles Mann Printing, 1881), 568. See also: Friedman, *America's First Woman Lawyer*; Sapinsley, *The Private War of Mrs. Packard*.

Sapinsley believed the life and work Packard accomplished on behalf of married women and insanity laws was fading from collective memory. Despite Packard's published works, she was not regularly studied or widely known. Sapinsley's biography *The Private War of Mrs. Packard* attempted to bring Packard's experiences and work in legislative reform back into the conversation regarding women's rights. Before she died, Sapinsley passed her research to historian Linda V. Carlisle, who added more primary documentation and source citations to her biography *Elizabeth Packard: A Noble Fight*.¹⁸

In the study of the Fourteenth Amendment, *Bradwell v. Illinois* (1873), Myra Bradwell's U.S. Supreme Court case to open the legal profession to all qualified candidates regardless of gender, is primarily discussed for its application of the ruling in *Slaughterhouse Cases* (1873) and not on its own merits. Both of these cases were decided at the same time, shared an attorney, and argued the same question of law: whether the Fourteenth Amendment guaranteed an individual's right to practice a profession over the state's right to regulate under the police powers. Despite their similarities, *Bradwell* is often a footnote, the first opportunity for the Court to apply its reasoning in *Slaughterhouse*. This is a missed opportunity to discuss the application of *Bradwell* and its decision to the broader category of women's rights. The decision in *Bradwell* which refuses to extend broader citizenship rights to women, foreshadowed both the decision against Susan B. Anthony who was fined for voting and the more explicit decision in *Minor v. Happersett* (1875). *Minor* argued that the Fourteenth Amendment should extend suffrage rights to women who qualify as citizens. However the Court unanimously stated instead

¹⁸ See also: Sapinsley, *The Private War of Mrs. Packard*; Carlisle, *Elizabeth Packard: A Noble Fight*.

“the Constitution of the United States does not confer the right of suffrage upon any one, and that the constitutions and laws of the several States which commit that important trust to men alone are not necessarily void.”¹⁹

Within the context of legislative reform, Bradwell was far more successful than with her court cases. But because she refused to join Susan B. Anthony’s suffrage organization and instead supported more moderate limited suffrage rights for women, Bradwell was shunned from early documentation of women’s rights reformers. Biographer Jane M. Friedman in *America’s First Woman Lawyer: The Biography of Myra Bradwell*, argues Bradwell’s Supreme Court case was just one component of a woman who dedicated her life to the legal profession and legal equality for women. As the founder of a great publishing business and the editor of *The Chicago Legal News*, Bradwell found success within the public sphere and applied her business acumen to legislative reform for women’s rights.²⁰

Mary Lincoln, though friends with Bradwell, was a different kind of woman, with a different kind of family and historical background. Her husband, Abraham Lincoln is one of the most popular figures in American history. The Lincoln family is studied extensively under their own section of history known as Lincolniana. Now, as during their lifetime, the Lincolns were the subjects of gossip and rumor, making the job of any historian more difficult as they set out to separate the fact from the myth. Following the Civil War and Abraham Lincoln’s assassination, the Great Emancipator became sainted by his admirers. In the process of exalting the man, Mary Lincoln was diminished until her primary role in her family was the millstone who was her

¹⁹ *Minor v. Happersett*, 88 U.S. 162 (1875), 178. See also: *Bradwell v. The State of Illinois*, 83 U.S. 16 Wall. 130 (1873); *The Slaughterhouse Cases*, 83 U.S. 65 (1873).

²⁰ See also: Friedman, *America’s First Woman Lawyer*; *Chicago Legal News*, 1868-1875.

husband's eventual ruin. Catherine Clinton asserts that Mary's "reputation caved in on itself in widowhood." But Jean Baker argues Lincoln was disliked by the public long before her husband's death. Justin G. Turner with Linda Levitt Turner published the first biography of Mary Lincoln which included the bulk of Lincoln's correspondence known at the time. In their attempt to present Mary Lincoln through her own words, their research uncovered references to Lincoln as unworthy of her great husband or his greatest embarrassment. Despite her education and ability to do so, Mary Lincoln never bothered to set the record straight by publishing her own account of Abraham Lincoln and their life together. Instead, it is her letters, court documents, and the recollections of others, who speak for her. Robert Lincoln maintained the privacy of his family, even after Mary Lincoln's death, burning papers and letters. Mary Harlan Lincoln, Robert's wife, worked hard to keep that legacy of privacy, even suing Myra Pritchard for her manuscript and letters between Mary Lincoln and Pritchard's grandmother, Myra Bradwell.²¹

History was shaped against Mary Lincoln with the early biographies of her husband provided by William Herndon, Abraham Lincoln's old law partner as well as the account of White House living provided by Elizabeth Keckley, Mary Lincoln's friend, confidant, and seamstress. Herndon's dislike of Mary Lincoln is well documented though it is not clear why. Douglas L. Wilson believed Herndon was embarrassed by a comment he made to Mary Lincoln when she was young. Mary Lincoln's biographers Baker and Clinton believe Herndon saw Mary

²¹ Justin G. Turner and Linda Levitt Turner, eds. *Mary Todd Lincoln: Her Life and Letters* (New York: Alfred A Knopf, 1972); Pritchard, *The Dark Days of Abraham Lincoln's Widow*; Catherine Clinton, *Mrs. Lincoln: A Life* (New York, HarperCollins, 2009), 4; The Lincoln Presidential Library contains most of Mary Lincoln's letters in several different collections including those letters found in the Turner book and thirty letters that have not been published at all.

as a rival for Abraham's attention. But he may have intended no harm and simply wrote what he believed to be true. Regardless, his biography of Abraham Lincoln was an opportunity to describe Mary as a tyrant who made her husband miserable. Herndon is also the source for the much reported rumor that the real love of Abraham's life was not actually his wife, a story that was incredibly hurtful to the Lincoln family and one which upset Mary Lincoln to such a degree, she did speak out against it. Later when Herndon had second thoughts about his treatment of Mary Lincoln and attempted to soften his approach, the earlier stories remained popular and were impossible to take back.²²

Elizabeth Keckley's memoir, *Behind the Scenes. Or, Thirty Years a Slave, and Four Years in the White House*, was released after the Old Clothing Sale, a scandal wherein Mary Lincoln attempted to sell some of her gowns from her terms as First Lady but instead was vilified in the press for her supposed extravagance during war time. Keckley's book may have been a chance to make some money from Lincoln after the dress sale fell through. Lincoln was disappointed with her portrayal in the book and more importantly, with the appendix which included several private letters Lincoln had written to Keckly, a woman she considered a close trusted friend. Keckley reached out to Lincoln to say she had not known the letters would be included but there is no historical evidence Lincoln responded or ever forgave Keckley for the betrayal. Lincoln cut ties with Keckley after the book's release. The earliest biography of Mary

²² William H. Herndon and Jesse William Weik, A.M., *Herndon's Lincoln: The True Story of a Great Life, Etiam in minimis major The History and Personal Recollections of Abraham Lincoln* (Springfield: The Herndon's Lincoln Publishing Company, 1888). Herndon disparaged the Lincoln marriage arguing the couple did not love each other but actually loved other people, 210-11; Elizabeth Keckley, *Behind the Scenes. Or, Thirty Years a Slave, and Four Years in the White House* (New York: Oxford University Press, 1988) originally published in New York: G.W. Carleton and Co., Publishers, 1868.

Lincoln, written by Myra Helmer Pritchard, Myra Bradwell's granddaughter, is based on letters and personal accounts passed down to Pritchard from her mother and Bradwell. This narrative was presumed destroyed but a lone copy was recovered from a trunk of papers belonging to the Lincoln family lawyer. Pritchard's book was at last published in 2011, annotated and edited by Jason Emerson.²³

Baker and Clinton use Lincoln's letters, newspapers, and the impressions of others who knew her to draw out the life of Lincoln and her variety of experiences. Both biographers give the impression that Lincoln, while stubborn and strong willed, was victimized by her life's circumstances, felled by her grief. Lincoln's desire to help her husband in politics, her sharp wit, and her quick intelligence are characterized as one-offs, instead of studied within the greater context of her time and gender. More recent scholarship into Mary Lincoln swings between her vilification or vehement defense of her actions instead of portraying Lincoln as a complex woman of the nineteenth century. *The Mary Lincoln Enigma*, a book of essays edited by Frank J. Williams and Michael Burkheimer, continues this tradition of definitively defining "who is Mary Lincoln," while each contributor is assigned one attribute.²⁴

²³ Ibid.; Jean H Baker, *Mary Todd Lincoln: A Biography* (New York: W.W. Norton and Company, 1987), 267-68; Douglas L. Wilson, "William H Herndon and Mary Todd Lincoln," as found in Frank J. Williams and Michael Burkheimer, editors, *The Mary Lincoln Enigma: Historians on America's Most Controversial First Lady* (Carbondale: Southern Illinois University Press, 2012), 112-39. See also: Clinton, *Mrs. Lincoln*; Pritchard, *The Dark Days of Abraham Lincoln's Widow*. Throughout her life, Mary Lincoln marked a great many letters as personal and private, often writing "private" at the top. Yet many of these letters not only survive today, but have been published both during and after her lifetime.

²⁴ Baker, *Mary Todd Lincoln*, 130-62; Williams, *The Mary Lincoln Enigma*, 1-13. See also: Emerson, *Mary Lincoln's Insanity Case*; Emerson, *The Madness of Mary Lincoln*; Jason Emerson has published several articles and books regarding Mary Lincoln's insanity case. His latest publication which includes copies of the primary documentation used in his research also includes corrections to his earlier work. He is currently working on a Robert Lincoln biography and his bias towards Robert is evident in his reports of Mary.

The most recent studies of Mary Lincoln were conducted by Emerson and Mark E. Neely Jr. and R. Gerald McMurtry, based on letters fortuitously discovered regarding Mary Lincoln previously thought destroyed. The authors used these letters, as well as court documents also uncovered within the last fifteen years, to create a narrative of Lincoln's experiences with the insanity court and her subsequent stay in Bellevue, Illinois. However, in Emerson's retelling of Lincoln's insanity trial and subsequent days, his heroine is secondary to the hero, Robert Lincoln. In Baker's review of Emerson's work, she argues Emerson's goal to exonerate Robert results in ignoring Mary. Baker also claims that while Emerson's publication of primary source documentation is a positive to the study of Mary Lincoln, his suppositions on broader subjects, such as mental illness, nineteenth-century insanity, and women's history show a lack of understanding for the larger subject matter.²⁵

In the preface of his book *Mary Lincoln's Insanity Case*, Emerson alleges Mary Lincoln had an inherited insanity illness that manifested itself in delusions, hallucinations, and depression. In Emerson's earlier book, *The Madness of Mary Lincoln*, Emerson suggests Lincoln is most likely bipolar. Defending Robert Lincoln as an honest Victorian son, Emerson draws these conclusions as a counter argument made by Baker and Clinton who claim that Robert Lincoln was greedy and that Mary Lincoln was a victim. Neither argument is particularly important to looking at Lincoln's involvement with the legislative reform of the insanity laws, or her experiences under them.²⁶

²⁵ Madness of Mary Lincoln reviewed by: Jean Baker, *Journal of the Abraham Lincoln Association*, Vol. 29, No. 2 (Summer, 2008): 80-83. See also: Neely Jr., *The Insanity File*; Emerson, *Mary Lincoln's Insanity Case*.

²⁶ James S. Brust, M.D., "A Psychiatrist Looks at Mary Lincoln," as found in Williams, *The Mary Lincoln Enigma*, 237-58. See also: Emerson, *Mary Lincoln's Insanity Case*; Emerson, *The Madness of Mary Lincoln*; Baker, *Mary Todd Lincoln*.

Books by Neely and McMurtry, Samuel A. Schreiner Jr., Emerson, and Williams discuss the merits of Bellevue sanitarium over a state run institution and argue about the Bradwell's involvement with Mary Lincoln. While Friedman portrays Bradwell as a help and a friend to Lincoln during this particular struggle, Neely and Emerson both agree with Robert Lincoln's description of the Bradwells as meddlers seeking publicity. What seems to be missing from their accounts is Mary Lincoln herself. It does not matter what it was like in Batavia. For Mary Lincoln, it was a prison. None of the authors mentioned give any credit to letters from Sally Orne, Lincoln's long-time friend or Elizabeth Edwards, Lincoln's sister, with whom she lived upon her release from Batavia. As fellow nineteenth-century women, and the people who knew Lincoln the longest, their insights into Lincoln are invaluable yet overlooked. Both Orne and Edwards believed Lincoln was sane, was the same as she ever was, was deserving of some quiet, and had earned compassion and grace.²⁷

While Packard, Bradwell, and especially Lincoln are well covered by secondary sources, placing the three women together and within the context of legislative reform is new. Biographers for the women cursorily link Packard to Bradwell and Bradwell to Lincoln but no single source discusses the three women together. Secondary sources regarding Mary Lincoln far outnumber sources available on both Packard and Bradwell, yet none fully examine Lincoln's advocacy work. Schreiner Jr., Neely Jr. and McMurtry, and Emerson who all offer in-depth

²⁷ Mary Lincoln Insanity File, Lincoln Presidential Library, Springfield, Illinois; Catherine Clinton, "Epilogue: The Compelling Mrs. Lincoln" in Williams, *The Mary Lincoln Enigma*, 349-64; Samuel A. Schreiner Jr., *The Trials of Mrs. Lincoln* (Lincoln: University of Nebraska Press, 1987). This book contains several letters in the appendix including letters to Robert Lincoln from Elizabeth Edwards ("Aunt Lizzie") dated November 5, 1875, 212-15. See also: Turner, *Mary Todd Lincoln*.

looks at Lincoln's insanity trial, overlook Lincoln's actions on her own behalf. Packard, Bradwell, and Lincoln each made a unique contribution to legislative reform of the insanity laws of Illinois, on purpose and by accident. They were a help or helped each other through difficult personal circumstances. They took a stand against the invasive use of coverture within the laws of Illinois and struck back in the name of women's legal equality. Both fully under the traditions of the nineteenth-century woman as outlined by Kerber and Barbara Welter, yet also pushing against the boundaries to find a larger space for themselves, Packard, Bradwell, and Lincoln together are examples of women working on behalf of themselves and each other through the process of legislative reform.²⁸

²⁸ Barbara Welter, "The Cult of True Womanhood: 1820-1860," (*American Quarterly* vol. 18, no.2, pt. 1 (Summer 1966): 151-74. Welter argues that women of the nineteenth century were bound by society to conform their behavior to fit within the four pillars of piety, purity, submissiveness, and domesticity. This theory is known as the cult of true womanhood or the cult of domesticity. Under this belief system, a woman was the moral guide of the home which was based on her pure lifestyle choices, submissive attitude and behavior, and her housekeeping skills.

CHAPTER 3

RELEVANT BACKGROUND INFORMATION

Republican motherhood was one of the first political roles for women in the newly formed United States. This social protocol was based on white, middle-class ideals and was a signpost to middle-class status. A woman's role was confined to her home and the domestic space in which she ruled. Women were tasked with raising politically educated sons who would leave the domestic firesides to enter the public sphere of politics and government; daughters needed just enough education to duplicate the role of their mother in their own homes, focusing less on their formal education and more on their domestic lessons. Education was intended more for boys and it was widely believed too much education for girls would cause them ruin by either masculinizing them or worse, driving them insane, a fact not overlooked in the cases of Elizabeth Packard and Mary Lincoln. Both women were formally educated beyond what was socially necessary and most likely beyond the level of their mothers. Ambition, energy, and originality were imparted to sons but not widely valued characteristics for women. Under the new government, these middle-class women had become "citizens but not constituents." However, the ideas of the Revolution were shared by men and women, many believing that citizenship should be gender neutral. A woman's participation was necessary for this unique and new nation to thrive. Packard, Bradwell, and Lincoln all participated to some degree in republican motherhood. But their education levels empowered them to move beyond that structure. Packard became a writer and public speaker, Bradwell also a writer, and Lincoln was her

husband's sounding board throughout his political career.²⁹

Marriage was an economic institution which allowed women to obtain economic and class security. While the growing nation facilitated a sharp rise in literacy rates for all people including women, the type of formal education available to each gender was unique. While boys studied classical subjects such as latin, history, geography, literature, and algebra, many girls were offered only education on domestic responsibilities, reading, needlework, and dancing. Throughout most of the nineteenth century, women were not accepted into the professions such as law or medicine. Universities were for men only. While women attended higher educational institutions such as normal schools or women's seminaries, these colleges offered a limited curriculum, such as training teachers or social workers and were focused on the traditional female duties of ultimately becoming a wife and mother. Packard, Bradwell, and Lincoln all received more classical educations. Although in the minority, they were not isolated cases. While Bradwell fought for women's equal rights to the professions, attendance at law school was not required when she took the bar exam. Thus none of these women attempted to enter into a university, which might have pushed the limits of educating daughters too far for their families. Instead, these women all chose married life at the end of their educational training which was what their families and society had intended and expected.

But marriage did not exclude letter writing or reading. As the literacy gap closed, novels aimed at a female audience became increasingly popular. Female authors used the novel as a way to educate readers as to the dangers of the doctrine of coverture, using literary devices such as the Gothic heroine who was buried alive or hidden away, to stand in for the realities of legal

²⁹ Kerber, *Women of the Republic*, 283; Parker, *Articulating Rights*, 3-24, 139-76.

inequalities. But as the concept of republican motherhood solidified and became more strict, women were restricted by the structure, not uplifted as a cherished and equal partner, set apart for different yet important work. Women authors were criticized as bad mothers or for being masculine, using the idea of republican motherhood to shame women out of public work. Yet women did work outside of the home and had contributed to the family income before the Industrial Revolution changed the marketplace. Elizabeth Packard managed a professional career of public speaking and lobbying for legislation. She also published books and pamphlets in support of her legislative causes. Myra Bradwell created an entire publishing empire on her own merits which she ran herself, contributing weekly commentary on legal matters through her journal *The Chicago Legal News*.³⁰

With the increase of urbanization and industrialization, city populations grew as did the opportunities to work in shops, manufacturing, or in service industries. For married, middle-class women, this change in family life created a physical definition of the concept of separate spheres, one public for men, and one at home in private for women. Presented in women's magazines as well as religious literature of the nineteenth century, this idea of the "true woman" inspired consistency and stability in a rapidly changing society facing fluctuating and uncertain economic times. Packard, Bradwell, and Lincoln held fast to the idea of women working primarily in the home, raising children and running domestic matters. But circumstances throughout the lives of the women opened doors for a more unconventional way of life.³¹

³⁰ Kristin Kalsem, *In Contempt: Nineteenth-Century Women, Law, and Literature* (Columbus: The Ohio State University Press, 2012), 1-67. See also: Kerber, *Women of the Republic*.

³¹ Jeanne Boydston, "The Woman Who Wasn't There: Women's Market Labor and the Transition to Capitalism in the United States," *Journal of the Early Republic* vol. 16, no. 2

The cult of true womanhood or the cult of domesticity, was based on four pillars by which a woman could be easily judged by herself, her neighbors and her family. These pillars or values: piety, purity, submissiveness, and domesticity, were the key to a woman's success and happiness. Where piety opened the door for women to lead in religious and moral teaching in the home, concepts of purity and submissiveness could be interpreted to shrink a woman's influence. Domestic success placed the husband's faithfulness, ability to earn a good wage, and his demeanor on the wife's ability to succeed as a true woman. She was encouraged to keep her hard work out of sight, diminishing the value of her sphere.³²

Yet despite the restrictive nature of these philosophies, women did get involved with early reform movements such as abolition, temperance, and advocating for expanded women's legal rights. Packard, Bradwell, and Lincoln were just three women of a much larger population of women who fought for equal rights on several fronts, including using legislative reform for legal equality. Deft women used the concepts within the cult of domesticity to push their role as guardian of virtue and morality to apply to their greater community. They created organizations which elected officers, created bylaws and platforms, and circulated petitions for legal change. Reformers used grassroots tactics and built local organizations that grew into national movements. Reformers presented petitions and legislation at the state level.

But some legislation, such as the married women's property acts, were nationally debated. While the debate was national, no federal concessions to gender equality resulted. Courts around the country continually found against women who signed contracts for sale,

Special Issue on Capitalism in the Early Republic (Summer, 1996): 183-206. See also: Kerber, *Women of the Republic*; Welter, "The Cult of True Womanhood."

³² Welter, "The Cult of True Womanhood."

wanted to claim their own wages, and even in custody fights where the father was clearly incapable of caring for the children. These debates educated the public about the disabilities of married women under the doctrine of coverture and in combination with abolition, led to the creation of the women's movement in antebellum United States. Women abolitionists, such as Sarah Grimké, connected the condition of slaves with those of women under the doctrine of coverture, which was also a common argument of Elizabeth Packard. But the legal changes of Reconstruction, such as the Fourteenth Amendment, largely left women's rights out of the transition, despite all Myra Bradwell attempted with her Supreme Court case in which she argued she, and all women, were protected under the Fourteenth Amendment.³³

Without agitation on the part of women, state legislatures did not consider married women's rights separate from husbands. They continued to legislate building on the doctrine of coverture. The study and treatment of mental health was another popular reform of the nineteenth century resulting in state sponsored insane asylums and new legislation to govern the organizations and the patients within them. This legislation also contained provisions for husbands' rights at the expense of women's rights. Throughout the eighteenth century, insane or mad relatives were cared for at home by family members. But the nineteenth century saw governments become more invested in not only those who were violent but anyone deemed treatable. Changes in society, such as industrialization, population growth, employment opportunities, and urbanization created a need within communities for insanity treatments outside of the family. Emerging science and pseudoscience reshaped society's understanding of

³³ Basch, *In the Eyes of the Law*, 113-35, 136-61, 162-99; Parker, *Articulating Rights*, 139-76; Cushman, *Supreme Court Decisions and Women's Rights*, 1. See also: Basch, "The Emerging Legal History and Women in the United States;" Basch, "Invisible Women;" Geddes, "The Gains from Self-Ownership and the Expansion of Women's Rights."

madness and opened the door for new diagnoses and treatments of lunacy. With the introduction of moral insanity and moral treatment, insanity was not only a threat to social stability, but an opportunity for rehabilitation. Communities confined more and more lunatics to jails and almshouses. But as society's confidence in science grew, counties and states invested in building asylums for the treatment of the mentally ill. According to Michel Foucault, the nineteenth century ushered in a shift from locking madness away from society to treating that madness by applying social norms and morality onto the patient. National reformer, Dorothea Dix, herself a depression sufferer, advocated for state sponsored care for all patients. State budgets were limited so those believed curable were the most likely to be treated. Packard's diagnosis of incurable maniac may have actually saved her. Likely given in exasperation, Packard's treating physician had no reason to keep her confined after he declared she was untreatable. Class and race paid a large part in not only how a mad person was treated, but also where. Whereas paupers were sent to almshouses, wealthy families sent mad family members to private homes, like the asylum Bellevue Place in Batavia, Illinois, where Mary Lincoln was confined.³⁴

While place of treatment was influenced by economic class, diagnosis of madness was influenced by gender. As reported by Foucault, madness was structured by the cultural forces at work within a society which changed throughout time. This structure was dependent on the shape and size of the cultural space allocated to madness, allowing madness to be construed as both a moral deficiency and a physical disorder. Throughout the nineteenth century, madness, or the more gendered terms lunacy and hysteria, became a woman's disease, focused on a defined

³⁴ Ibid.; Brunton, *Health and Wellness in the 19th Century*; Gamwell, *Madness in America*, 11-36, 37-118; Michel Foucault, *Madness and Civilization: A History of Insanity in the Age of Reason* (New York: Vintage Books, 1964), 227-29.

moral lapse. Legislation governing asylums and the insane appeared as gender or class neutral, yet it was increasingly the disenfranchised and more vulnerable members of society, such as women with no legal standing, who were affected. Elaine Showalter in *The Female Malady*, argues “female insanity came from a cultural context” which operated as a way “of controlling and mastering feminine difference itself.” By the 1850s, the majority of asylum patients were women. While historical evidence suggests that Packard’s husband exhibited signs of insanity, there was no one to question his behavior. He, on the other hand, was legislatively protected and entitled to pass the judgement of insanity on his wife, with no legal safeguards for her appeal.³⁵

Not only were women more likely to be found insane, they also were commonly diagnosed with hysteria, a condition for which there is no clear definition. By the mid-nineteenth century, hysteria was considered a physical disorder of the womb, rooted in the very nature of being female. This physical disease required a physical treatment, such as the rest cure or more radical surgeries. Showalter argues the rest cure was an “obvious defense” used by men to discredit women seeking more admission to public space. Forced to re-enter an infant-like state, the rest cure kept reading, writing, work, and all forms of creativity away from women, encouraging them to become completely reliant on their male doctors for all their needs, like a baby, and gradually re-emerge ready to follow the dictates of society. Other female patients received clitorectomies. Showalter writes that “shame, misery, pain, self-hatred, and fear” resulted from these surgeries but “ladylike values of silence, decorum, taste, service, piety,

³⁵ Dwyer, *Homes for the Mad*, 1-6, 85-116; Showalter, *The Female Malady*, 1-20, quote from page 17; John Townsend, “Racial, Ethnic, and Mental Illness Stereotypes: Cognitive Process and Behavioral Effects,” as found in Willie, *Mental Health, Racism, and Sexism*, 119-47; Gamwell, *Madness in America*, 37-118. See also: Foucault, *Madness and Civilization*.

and gratitude” were the goal.³⁶

Hysteria was the most closely linked diagnosis to the feminist movement, believed to be directly linked to activism. According to Roy Porter, “history, anatomy, destiny, evolution - all were conscripted to clamp women in their place.” Medical policy regarding women mutually reinforced the political policy regulating women’s legal and political rights. Women patients were expected to submit and listen to their male doctors and accept their treatment plans. Any degression from social norms, like activism or asking for a divorce, was punishable with a diagnosis of insanity. Sanity itself became tied to following society’s rules. Doctors believed minds, like bodies, were gendered and therefore, it was part of a woman’s mental nature to serve her husband and family. Insanity, or breakdowns and resulting hysteria, happened when women went against this nature.³⁷

Private and state asylums were overseen by one doctor, called the superintendent of the asylum. He was assisted by other assistant doctors as well as attendants who saw to the daily needs of patients. Most patients were diagnosed at an intake appointment, based on observations of their attending relatives or guardian. The decision to commit a patient was often decided first and a diagnosis second. Symptoms of madness included: irrational behaviors like delusions, hallucinations, removing clothing, wandering around, singing or shouting, aggression or violence, as well as failure to deal with family or work responsibilities. Eventually madness also included diagnoses of idiocy or imbecility, homosexuality, and particular to women both

³⁶ Showalter, *The Female Malady*, 51-73, 74-98, 121-44.

³⁷ Ibid., 145-164; Helen King, “Once Upon a Text,” in Sander L. Gilman, Helen King, Roy Porter, G.S. Rousseau, and Elaine Showalter, *Hysteria Beyond Freud* (Berkeley: University of California Press, 1993) 3-90; quotation from Roy Porter, “The Body and the Mind, The Doctor and the Patient, Negotiating Hysteria,” in Gilman, *Hysteria Beyond Freud*, 225-285; Elaine Showalter, “Hysteria, Feminism, and Gender,” in Gilman, *Hysteria Beyond Freud*, 286-344.

over-sexualization or high intellectual ability. Many patients were committed against their will and once released, recounted stories of abusive treatments and neglect, as did Packard. They described doctors as sadists and questioned the motives of the relatives who had them committed. Lincoln quite famously broke relations with her son upon her commitment to Bellevue Place. While she did reconcile with him very late in life, she, as well as several historians, questioned whether Robert Lincoln was motivated by greed.³⁸

Early asylums were based on retraining patients, and tried to mimic extended family and domestic settings. If insanity was defined as a deviance from socially acceptable behavior, then sanity could be restored through will-power of the patient: a moral treatment for moral insanity. Originally based on the studies of Philippe Pinel a French doctor who wrote about the disease of insanity and its cure in *Treatise on Insanity*, moral therapy relied on the idea that patients could be cured of their madness if they regained their self-control. Monomania, where a patient was rational in all aspects save one subject specific to each patient, was also managed with moral treatment. Patients were encouraged to return to conventional behavior and dress with routine and scheduled activities intended to divert and retrain the patients mind to turn from irrational thoughts, typically about religion, finances, or politics, and fall in line with social norms. Women who pushed against the cult of domesticity were labeled monomaniacs. As part of moral treatment, patients were treated to Lunatic Balls, where men and women within the otherwise segregated asylum had the opportunity to socialize. As asylums grew and became overcrowded, moral therapy was harder to manage and in many cases abandoned altogether. Patients in over-full wards spent their days staring, sitting in one place, with nothing to occupy their hands

³⁸ Ibid.; Gamwell, *Madness in America*, 7, 37-118.

or minds except the very behaviors that landed them in the asylum in the first place.³⁹

Both Packard and Lincoln were treated with “moral therapy,” where they were encouraged to conform their behavior to something more socially acceptable. In Packard’s case, she was encouraged to obey her husband, to put aside her own ideas and conform only to his. Lincoln’s prolonged mourning and grief over her family, her spending habits, and her spiritualist background were discouraged by her doctor. Instead, Lincoln was bolstered by quaint surroundings, quiet walks and carriage rides, and visits in the parlor, all activities socially acceptable for a woman of her social standing.

Asylums and the treatment for the insane continued to change throughout the nineteenth century as scientific and medical knowledge transformed the practice. After the acceptance of germ theory in 1885, scientific psychiatry began to replace asylum care, as mental health doctors looked for a specific germ or a hereditary causation for insanity. By the late nineteenth century, state boards throughout the country were convened to investigate asylum care as well as the ratio of money spent to people cured and released. Inspired by negative press and patient complaints of abuse, state legislative committees performed inspections and collected evidence from patients, attendants, and doctors. Asylums became a place for confinement instead of treatment, housing patients ruled incurable or who would otherwise tarnish the ideal model of domesticity. In Illinois, these investigations led to a change of asylum leadership and ultimately ended the

³⁹ Jimenez, *Changing Faces of Madness: Early American Attitudes and Treatment of the Insane*, Hanover: University Press of New England, 1987, 31-48, 49-64, 106-30; Ellen Dwyer, *Homes for the Mad*, 7-28, 29-54, 117-8; Elaine Showalter, *The Female Malady*, 23-50, 51-73; Willie, *Mental Health, Racism, and Sexism*, 119-147; Brunton, *Health and Wellness in the Nineteenth-Century*; Gamwell, *Madness in America*, 37-118.

practice of public insanity hearings, a change in which Lincoln's public case played a role.⁴⁰

Packard, Bradwell, and Lincoln were women in the nineteenth century, governed by the social mandates of republican motherhood and the cult of domesticity. When they chose marriage, they dedicated themselves to husbands, children, and homes. But all three women were highly educated for a woman during this time. They attended school for longer than was the average for a woman of the nineteenth century and they were also schooled in classical subjects on par with men's education. The concept of separate spheres is more difficult to apply to these three women. While they were wives and mothers, they also worked outside of the home writing, speaking, and engaging in legislative reform. Packard traveled throughout the United States in her quest for legislative reform. Bradwell ran her own successful business and studied law for the purpose of helping in her husband's practice. Lincoln also aided her husband's political work, offering advice on appointments and political strategies. Both fully in and fully outside of nineteenth-century conventions, Packard, Bradwell, and Lincoln pushed the boundaries of femininity and female customs increasing their circle of influence.

⁴⁰ Jimenez, *Changing Faces of Madness*, 90-105; 131-39; Dwyer, *Homes for the Mad*, 85-116; 117-162; Showalter, *The Female Malady*, 101-20; Gamwell, *Madness in America*, 119-73.

CHAPTER 4

A CASE STUDY ANALYSIS OF LEGISLATIVE REFORM

4.1 Preface

Organizations, including women's clubs and groups, utilized legislative reform for change. Women's clubs framed their early reform efforts, such as those involving vice laws, within the purview of the women's sphere of domesticity. As women under the cult of domesticity, they were charged with the moral virtue and purity of the home. They extended the boundaries of home to include their whole communities. Thus by this extension, women appointed themselves guardians of the populace and used legislative reform as a way to expand their sphere of influence. For example, the Women's Christian Temperance Union worked under this premise of expanded boundaries for women to enforce their particular views of alcohol throughout their communities. However, the very act of appearing publicly to advertise their cause and collect signatures on petitions gave women an avenue out of the home, and thereby pushed them into more public arenas, less domestic and more civic. Thus by expanding their borders, women used legislative reform not only to enact changes to the laws but also as a way to act with more legal equality and authority over themselves and their lives.

Women as individuals also employed legislative reform as a tool to modify and equalize their environment. Alone or in small bands without official ties to one another, women achieved early legislative reforms including state laws protecting married women's property. While these first married women's property laws protected property held in a married woman's name from her husband's creditors, they did not give women full autonomy to manage their property. Instead, married women were required to have an executor, typically the woman's husband,

make all legal decisions regarding the property in question. By advocating for one change, new areas of vulnerability were brought to light. Often women were drawn into these legislative questions and inspired to act by discovering their own vulnerabilities within the current set of laws.⁴¹

Such was the case for Elizabeth Packard. While she may have been aware of her limited legal rights as a married person, she could not have guessed that her husband would commit her to an insane asylum because she disagreed with his theology. Her experiences under the law as well as three years spent within the confines of the Illinois state insane asylum in Jacksonville, shaped her life. She fought first for her own freedom from the institution and then was compelled to change the laws outright. Through trial and error, she developed a systematic business approach to writing and lobbying for acts protecting married women in relation to insanity laws. She never formed or joined formal organizations. She did accept the help of friends and family, however, as she traveled throughout the United States safeguarding first married women, and later all potential patients, from questionable commitments. Later, she used the same methods at a national level to provide mail rights to all asylum patients. Though her national campaign was not successful, her publicized approach inspired new state laws throughout the country.⁴²

⁴¹ For further reading, see: Ryan, “The Power of Women’s Networks: A Case Study of Female Moral Reform in Antebellum America.”

⁴² For an overview of Elizabeth Packard, please see her two biographies: Barbara Sapinsley, *The Private War of Mrs. Packard: The Dramatic Story of the 19th-Century Feminist Who Lobbied for Laws to Protect Wives from Husbands Who Could Commit Them to Mental Institutions Without Legitimate Cause* (New York: Paragon House, 1991) and Linda V. Carlisle, *Elizabeth Packard: A Noble Fight* (Urbana: University of Chicago, 2010). See also her own account of her experiences with the law and her legislative efforts in Elizabeth Parsons Ware Packard, *Marital Power Exemplified in Mrs. Packard's Trial, and Self-Defence from the Charge of Insanity; Or, Three Years' Imprisonment for Religious Belief, by the Arbitrary Will of a Husband, with an*

Myra Bradwell was a friend of Packard who helped write and lobby for the Illinois Personal Liberty Law. Bradwell had studied law but been denied bar admission by her state. She took her case to the U.S. Supreme Court in the hopes of enacting national change for women in the professions. Unsuccessful, she instead galvanized state legislative changes throughout the United States. Bradwell used her own legal press outlet, *The Chicago Legal News*, as well as her connections to the legislators, not only to help Packard's bill pass but to enact other changes for women's legal equality. She struck a blow to the doctrine of coverture by her very success as a business woman as well as the acts for women's equality she helped pass through the legislature.⁴³

Mary Lincoln was not walking the halls of the legislative building or working in legislative reform for women's equality. But she was the recipient of work done by Packard and Bradwell and she faced the same set of restrictive societal conditions. She was tried for insanity under the reformed law for which Packard and Bradwell had worked successfully to pass. Once convicted, Lincoln was empowered by her friendship with Bradwell to fight for her own freedom. While Lincoln's contribution to legislative reform was not accomplished by direct involvement with the legislature, her life of notoriety allowed Lincoln to share her struggles in the press, shedding light on the loopholes in the laws meant to protect and equalize women. Her

Appeal to the Government to so Change the Laws as to Afford Legal Protection to Married Women, (Hartford, Printed by the Authoress, 1866). Found in the Wichita State University Gale Digital Collections.

⁴³ For an overview of Myra Bradwell, see her biography Jane M. Friedman, *America's First Woman Lawyer: The Biography of Myra Bradwell* (Buffalo: Prometheus Books, 1993).

letters to family and friends show Lincoln as a woman who embraced independence and change in women's status even within the boundaries of nineteenth-century womanhood.⁴⁴

The following chapter is a case-study look at Elizabeth Packard, Myra Bradwell, and Mary Lincoln and their contributions to legislative reform. They fought against coverture, battled for their own rights and equality in the law, extended those rights to others, and served as living examples of women who existed within the cult of domesticity as well as beyond it. Packard created a new law which she hoped would spare future women from her fate in the state insane asylum. Bradwell was a legal advocate, regardless of bar membership, who used her personal touch to affect change for others. Lincoln was not a casualty of her circumstance, but a powerful mind who fought for her freedom and rights to self-ownership and agency. These women are examples of strength and self-assurance who pushed the borders of traditional nineteenth-century womanhood.

4.2 Elizabeth Packard: A New Law

Elizabeth Parsons Ware Packard not only advocated for her own freedom, but embraced legislative reform to protect all married women from a similar fate. Packard lived a life comparable to other middle-class women in the mid-nineteenth century, focused on her husband, children, and home. But her experiences within the state insane asylum, a reality she believed she did not deserve, shaped her heart and sense of self into something other than wife and mother. As was common in the early women's movement, Packard applied the concepts of self-ownership and freedom not only to slavery, but to the common law notion of coverture as

⁴⁴ Mary Lincoln's life has been documented in multiple biographies and essays. Most recently, her insanity court documents and letters surrounding those years have been compiled by Jason Emerson in *Mary Lincoln's Insanity Case: A Documentary History* (Urbana: University of Illinois Press, 2012).

well. She spent the better part of her life moving from state to state, appealing to the legislatures to amend insanity laws and attacking the intrinsic nature of coverture with new legislation. As she saw first hand the injustice of married women's lack of legal standing within existing insanity laws, she petitioned, spoke, wrote, and otherwise lived a life of advocacy to insure legal safeguards for married women in relationship to husbands, doctors, and insanity hearings. At the most basic level of self-ownership, Packard fought for her right and the rights of other married women to their personal freedom and safety from false imprisonment within insane asylums. In Packard's home state of Illinois, she joined forces with another formidable woman reformer, Myra Bradwell, and changed the law that had robbed Packard of her freedom, children, and earthly possessions. Although her advocacy in legislative reform spanned over thirty years, she is best remembered for writing and lobbying for "An Act for the Protection of Personal Liberty" which was signed into Illinois state law on March 5, 1867. Through her advocacy, she ultimately faced her jailer and through further legislative procedure, found vindication. At the same time, she pushed legislative reforms throughout the country, protecting untold women from a fate similar to her own.⁴⁵

Born December 28, 1816 in Ware, Massachusetts, Elizabeth Parsons Ware was the sixth child born to her parents Reverend Samuel Ware and his wife Lucy Parsons, but the first child to survive infancy. Betsey, as her parents named her, was loved beyond measure. By the time she was ready to attend school, Betsey renamed herself the more serious sounding Elizabeth.

Regardless of gender, the Wares educated their three children in the classical subjects of science,

⁴⁵ See: Sapinsley, *The Private War of Mrs. Packard*; Carlisle, *Elizabeth Packard*. Throughout her own writing, Packard referred to herself by her full name Elizabeth Parsons Ware Packard, or by her initials E.P.W. Packard, though these biography titles overlook this preference.

philosophy, and literature, as well as algebra and French. As Samuel Ware was from a wealthy shipping family, he relied on family money and he retired from the ministry while his children were still at home. The family traveled and Mr. Ware studied, spending much of his time examining alternative Christian views which he discussed with his wife and children.⁴⁶

Elizabeth Ware was considered an intense personality. She was an excellent student and well regarded by her teachers and peers. She was influenced not only by the subjects she studied at school but also by the Transcendentalists, the abolitionists, and later, by the women's movement and the Declaration of Sentiments written in Seneca Falls, New York. At the age of nineteen, Ware became ill with what was called "brain fever." Though she recovered from the immediate illness, to her family she appeared changed and she was hospitalized by her parents for six weeks. Through this experience, Ware developed a strong dislike for doctors and the medical community in general. After her release, Ware lived at home for three years before marrying Theophilus Packard, a Congregationalist pastor like her father, whom she had known since she was ten years old.⁴⁷

Theophilus Packard was also the child of a pastor. He was the oldest of eight children raised in a strict and old-fashioned family who did not embrace new ideas or change, but instead clung to the previous century. He was pessimistic and hard on himself. Theophilus was a mediocre student who was not interested in learning new ideas and he suffered extreme bouts of severe anxiety over his soul. His father suggested he attend Princeton Theological Seminary

⁴⁶ Sapinsley, *The Private War of Mrs. Packard*, 18-70. Elizabeth Packard attended Amherst Female Seminary where the curriculum offered for girls looked similar to the education offered for boys which made them different than a more traditional school for girls focused on domesticity over classical subjects.

⁴⁷ Ibid.

where Packard was trained in strict Calvinist doctrine. He received his licence to preach in 1826. On May 21, 1839, when he was thirty-seven years old and Ware was twenty-two, the two were married in South Deerfield, Massachusetts.⁴⁸

Married life for Elizabeth was lonely. She was often homesick for her parents and siblings. She continued the practice of studying religion outside of her husband's sermons and teaching and often debated his views with him at home. Like her father, she examined different Christian theologies outside of Calvinism. After a visit to her cousins in Cazenovia, New York, Elizabeth became a spiritualist, though she hid her beliefs from her husband. As Elizabeth's religious philosophies continued to part from her husband's, Theophilus became increasingly concerned about her attitude. He believed that as his wife, Elizabeth should have only opinions that agreed with her husband. This frustrated Elizabeth who was interested in the early women's movement and believed that wives should be allowed opinions of their own.⁴⁹

Theophilus took leave from the pulpit in order to travel back east to visit friends and family. In his absence, and with his blessing, Elizabeth taught the Sunday school class at church. Elizabeth hid her beliefs in Spiritualism from her husband but within their home, she did openly challenge and argue with his strict adherence to the Calvinist doctrine. Theophilus was aware that Elizabeth did not share his Christian views and that she candidly asserted her own beliefs instead. While Theophilus did approve of Elizabeth as the Sunday school teacher in the church during his absence, he did not consent to Elizabeth teaching her own unique view of Christianity because she never shared with him her plan. When Theophilus returned from his trip, he found his church embroiled in controversy and his wife at the epicenter. Elizabeth agreed to step down

⁴⁸ Ibid.

⁴⁹ Ibid.

as the teacher but only on the conditions that she do so without disgrace and without lying.

Theophilus thought Elizabeth's reaction to the situation was out of proportion with his request.

He found her behavior overly dramatic and suggested Elizabeth was certifiably insane. When he told her so, Elizabeth became enraged. Theophilus thought her anger was another symptom of insanity and he began to publicly discuss Elizabeth's divergence from the Calvinist doctrine and her reactions to his rebukes to build a case of insanity against her. Soon rumors that Elizabeth was mad began to circulate through the congregation and the community. Theophilus tried to get rid of Elizabeth by sending her away to her brothers but she refused to go without her six children and dowry rights. Theophilus saw this as further evidence of her insanity and contacted medical doctors to confirm his diagnosis and retain documentation for committing his wife.⁵⁰

With the rise of asylum care, most states enacted legislation not only establishing state insane asylums and mechanisms for their management, but also for the commitment of those who would not go on into treatment on their own. Classification and hospitalization for those characterized as insane became important to communities and this shift in priorities was evident through legislation. Moving into what seemed like the modern age for mental illness, states established paternalistic systems to treat mentally ill patients who were labeled as curable and return them back into society as testaments to the new system. Governments concerned themselves with creating state of the art facilities for the insane that would motivate families to entrust loved ones within this new method of treatment and move them out of their homes and churches. Most of the laws were written without mention of gender and states proceeded to commit individuals based on the specific medical requirements per each state. However, there

⁵⁰ Ibid.

was a societal belief that women were more likely than men to develop symptoms of insanity. In accord with Illinois state legislation, a family member needed to find two sympathetic doctors who would sign an affidavit that the person in question was insane in order to legally commit them to an asylum. But this section of the law was used primarily to commit men. For a married woman to be committed to an insane asylum, the admitting doctor needed only the word of the woman's husband that she was insane. Section 10 of an "Act to Amend the Act Establishing the Illinois State Hospital for the Insane" said: "Married women and infants, who in the judgment of the medical superintendent are evidently insane or distracted, may be received and detained in the hospital on the request of the husband, or the woman, or parent, or guardian of the infants, without the evidence of insanity or distraction required in other cases." Despite evidentiary requirements having been included within other sections of the act to insure certain safety measures for potential patients, married women were set apart, not protected. In addition, married women had no legal way to refute charges of insanity through the courts because they had no legal standing separate from their husbands.⁵¹

Theophilus invited three doctors to examine Elizabeth. All three took her pulse and then signed an affidavit of insanity upon hearing the husband's accusations. Still Elizabeth fought being separated from her children and home. Creating what must have been a scene, Elizabeth Packard was carried to the train station and forcefully loaded into the train for Jacksonville. In Elizabeth's own words she was "kidnapped" by her husband while her friends and the

⁵¹ Cheree A. Carlson, *The Crimes of Womanhood: Defining Femininity in a Court of Law* (Urbana: University of Illinois Press, 2009), 1-13, 15-20; Public Laws of the State of Illinois Passed by the Sixteenth General Assembly at the Second Session, Commencing October 22, 1849 "An Act to amend the act establishing the Illinois State Hospital for the Insane" Approved February 15, 1851.

community were powerless to stop him. The sheriff was present and assured the gathering crowds that Mr. Packard was acting within his legal duty as Mrs. Packard's husband and had every right to forcefully take her away.⁵² Elizabeth was admitted as a patient at the Illinois state insane asylum in Jacksonville. Dr. Andrew McFarland met with the couple the next day when he told Packard she would surely not be a patient for long.

Packard was assigned to the seventh ward, filled with other married women who Packard would later testify were also not insane. She stayed in a private room, had freedom to move about, helped with patient outings, shopping, ate dinner with the McFarland family, and even sewed gifts for McFarland's children. According to biographer Linda Carlisle, the Illinois state insane asylum records from 1860 to 1864 show more married women were admitted than men during this time at a ratio not commensurate with the state's population. After about four months in Jacksonville, Packard made a formal, written request to her doctor and the board of trustees for her release. While she did not retract her beliefs or show signs of contrition for arguing with her husband, she did not believe these were symptoms of insanity. She understood herself to be fully sane, believing that married women as well as men were entitled to hold their own beliefs and opinions. She missed her home and children and her incarceration at the asylum was not a benefit to her mental state. She had shown since her arrival that she was a fully functioning member of society. Her request was denied.⁵³

⁵² Sapinsley, *The Private War of Mrs. Packard*, 71-75. See also: Packard, *Marital Power Exemplified in Mrs. Packard's Trial*.

⁵³ Sapinsley, *The Private War of Mrs. Packard*, 78-84, 86-90; Packard, *Marital Power Exemplified in Mrs. Packard's Trial*; Brunton, *Health and Wellness in the 19th Century*; testimony heard by Joint Legislative Committee Investigation of the Jacksonville Hospital, 1867, as found in the Illinois State Archives, Springfield, Illinois; Carlisle, *Elizabeth Packard*, 65.

McFarland may have given Packard hope of an early release upon her initial admission to the facility but once he witnessed her rebellious nature toward her husband, McFarland concluded she was indeed insane. Everything Packard did in her own defense was read as further evidence of her madness. Packard continued to make requests for her release from the hospital, each one becoming more and more frantic as the reality of the situation set in. Packard's frenzied pleas for release were seen as further evidence of insanity. As her plight became painfully clear to Packard, she began to openly criticize McFarland's methodology. Her previous privileges were revoked and Packard was moved to the crowded Ward Eight where her attendants were told to "break her like every other patient." One attendant said she had been ordered to beat Packard. It was here that Packard saw what was happening to other women within the confines of the state asylum.⁵⁴

According to biographer Barbara Sapinsley, during these initial four months, McFarland observed Packard's disobedience towards her husband and concluded she was morally insane. Later when their paths crossed again, McFarland referred to Packard as incurably insane. There is no legal difference for different degrees or types of insanity but the distinction was important in discussing treatments and curability. Moral insanity was prefaced on immoral behavior of varying types and most commonly treated by moral treatment. Moral treatment forced a patient into a routine of behavior, dress, and schedule based on white, male, middle-class values and held the patient to that standard until it replaced the old immoral habit with the new moral

⁵⁴ Sapinsley, *The Private War of Mrs. Packard*, 84, 86-90; Packard, *Marital Power Exemplified in Mrs. Packard's Trial*; Brunton, *Health and Wellness in the 19th Century*; Testimony heard by Joint Legislative Committee Investigation of the Jacksonville Hospital, 1867.

behavior. In Packard's case, her immoral behavior was disobedience to her husband as well as her specific Christian beliefs.⁵⁵

Packard remained in Jacksonville for three years during which time she never saw her children. Theophilus visited only twice. Eventually, after continual petitions for release made to McFarland, the trustees of the asylum agreed to meet with Elizabeth and discuss her situation. Theophilus, and McFarland were also present. The board orally questioned Elizabeth as to her Christian beliefs as well as her belief that a married woman had the right to personal opinions not held by a husband. She also discussed her struggles within the institution after she read them an account of her experiences. Finally, on June 18, 1863, Elizabeth was released back into the care of her husband. Theophilus took Elizabeth begrudgingly and the couple agreed to live separately. But Elizabeth missed her children and eventually went back to the family home. Once at home, Theophilus kept her a prisoner in the house, denying her visitors and locking her in an upstairs nursery whose windows were nailed shut. Through a turn of happenstance, Packard was made aware of Theophilus's plan to have her recommitted to an asylum in another state. Desperate, Packard got the attention of a man passing her window and passed him a letter intended for her friend Mrs. A.C. Haslett pleading for help. Haslett contacted her husband who contacted the local judge who requested Theophilus release his wife and provide evidence of her insanity.⁵⁶

Elizabeth, once freed from the locked nursery room upstairs, stayed with her friends the Haslett's until and during the trial. She had to borrow a dress for court because Theophilus

⁵⁵ Ibid.

⁵⁶ Sapinsley, *The Private War of Mrs. Packard*, 93, 104-06; Packard, *Marital Power Exemplified in Mrs. Packard's Trial*, 15-30.

refused to hand over any of her clothing or personal possessions. Although current Illinois law provided for insanity trials in the instance of men and single women, married women were exempt. In Packard's case, her trial was not a typical insanity trial because it was first about the charge of illegal imprisonment. Because of this, Packard was uniquely allowed to present a defense. The doctors who testified against Packard still found her intelligent, educated, and opinionated. Original trial documents no longer exist but notes from the trial taken by Packard's attorney, Stephen Moore, quoted one doctor saying Packard's "conduct comports strictly to the sphere usually occupied by women." They based their insanity diagnosis on the facts that Packard was not obeying her husband, she argued with him, and she got upset when someone called her insane. Regardless, after the five-day trial, the jury found her sane. Sadly for Elizabeth, Theophilus left town in the dead of night, before the trial was finished. He took all their possessions, Elizabeth's clothing, and the children. After the duration of the trial Elizabeth was free, but she had no legal rights to the sale proceeds of her former house or to visit her children. According to Elizabeth, Theophilus returned to Massachusetts because it was a far more conservative environment than Illinois that afforded him the opportunity to spin his own stories of her behavior as the community and press in Illinois were against him.⁵⁷

During the nineteenth century, popular trials got attention in the press and were followed by the public. Packard's story was printed in several newspapers and because of the turn of play from the trial, it was even more salacious. Packard used this momentum created by her popularity in print to find a publisher for her story in her own words. She was motivated initially by a desire to support herself and build a home for her children, but she also saw an opportunity

⁵⁷ Sapinsley, *The Private War of Mrs. Packard*, 105-11, 135-38, 145; Packard, *Marital Power Exemplified in Mrs. Packard's Trial*, 45; Carlson, *The Crimes of Womanhood*, 15-20.

to further educate the public about the current insanity laws and due to the ingrained doctrine of coverture, their harsh treatment toward married women. She was unable to afford the cost of printing. So Packard sold tickets, or vouchers to her friends, family, and even complete strangers, which gave the bearer a right to one copy of her book once it went to print. She sold 12,000 tickets, which gave her ample funds to start the printing process. As her book went to print, Packard followed Theophilus back to Massachusetts where she was able for the first time, to tell her father her side of the story. Her father immediately came to her defense and wrote to Theophilus demanding the return of his daughter's clothing and that she be allowed to visit with the children. While Theophilus did return some of Elizabeth's personal property, she did not meet with her children at this time.⁵⁸

Finally on firmer footing, Packard wanted to do more than publish her experiences. Believing in the powers of her own mind and the rights of married women to personal freedom, Packard met with members of the Massachusetts state legislature to advocate for a change in the state's insanity laws and provide protection for other married women in similar circumstances. She met with Samuel Sewall, a stalwart champion for the weak and defenseless, as well as two married women who had similar experiences to Packard's. She joined with Sewall's petition and used her story to add 116 new signatures. This was Packard's first experience with legislative reform.

Packard also naively put forward her own proposals for new laws, explaining her plight to the Massachusetts state legislature. Packard's first proposed bill would have protected the expression of a married women's opinion as specifically not meeting the definition of

⁵⁸ Sapinsley, *The Private War of Mrs. Packard*, 125-29; Packard, *Marital Power Exemplified in Mrs. Packard's Trial*, 47; Carlson, *The Crimes of Womanhood*, 11.

monomania. The bill read “No person shall be regarded or treated as an Insane person, or a Monomaniac, simply for *the expression of opinions*, no matter how absurd these opinions might appear to others.” Packard listed four reasons why the bill was necessary, among them personal protection for reformers. She even suggested it was treason against the United States to attack a would-be reformer. She also proposed a new definition of insanity, allowing only “irregularities of conduct, such as indicate that the individual is so lost to reason, as to render him an unaccountable moral agent” be confined to an insane asylum. This would, in her opinion, protect other married women, as well as reformers and radical thinkers, from false imprisonment in insane asylums. The legislature did not act on these proposals. However, the legislature did change the commitment law in Massachusetts. Like Illinois, Massachusetts had allowed husbands to commit wives without medical evidence. But the new law required a husband to include the agreement of ten family members in any petition to commit a wife.⁵⁹

Riding high on her success, Packard traveled to neighboring state Connecticut with similar plans to advocate for change, embarking on a journey for reform and protection for married women. She was completely shut out likely due to the broad nature of the bill presented which attacked the doctrine of coverture in its entirety. The proposed Connecticut bill requested an end to the doctrine of coverture in all its forms, seeking the legislature abolish “this slavish principle of common law, viz: *the legal nonentity of the wife*, [and] protect her against the abuse of this absolute power of her husband, by granting her legally the same protection in government, which the enlightened public sentiment of the present age grants her in her social

⁵⁹ Sapinsley, *The Private War of Mrs. Packard*, 125-29, Appendix 4; Packard, *Marital Power Exemplified in Mrs. Packard’s Trial*, 47; Carlisle, *Elizabeth Packard*, 124-25.

position in society.”⁶⁰

In December 1866, Packard returned to Chicago to continue her crusade for married women’s rights. Since Packard’s commitment, the Illinois legislature had on their own changed the commitment laws of the state, taking out the married woman’s provision which had doomed Packard. However, the new law had no plan for enforcement and it was widely ignored. James Bradwell was tasked through the legislature to review the admission records of the insane asylum where he discovered that both genders were often admitted without trials. Packard formed an alliance with Myra Bradwell and her husband and the three of them wrote a new petition to change the law again. Packard took the new petition and met with Governor Oglesby, where she shared her personal experiences as well as her idea for a more enforceable law. He supported her suggestions. Shortly after her arrival in Springfield, the *Illinois State Register* announced her cause on their front page. The author called Packard “an intelligent lady, whose appearance and manners indicated education and heart ... Mrs. Packard designs to bring the subject matter of complaint before the general assembly to the end that relief may be provided other unfortunates who are suffering under similar persecution.”⁶¹

⁶⁰ Ibid.

⁶¹ Sapinsley, *The Private War of Mrs. Packard*, 43, 135-48, 138; Carlisle, *Elizabeth Packard*, 133-35; When word of Packard’s advocacy reached Dr. McFarland, he came to Springfield and met with many of the legislators to convince them Packard was an incurable maniac. Whether in an deliberate attempt to discredit Packard or in an attempt at brevity or simply an inattentiveness to details, McFarland changed much of what happened to Packard and her views on the topics of religion. McFarland was fond of retelling Packard’s views opposing Calvinism included the delusion that she herself with the Holy Ghost in the Trinity. However, none of Packard’s surviving documentation included such a belief and when asked on the record either by reporters or during testimony given to the legislature, she denied the delusion and her audience believed her.

Packard's greatest resource for change was her own experiences and circumstances. She held meetings over her proposed bill in the common rooms of the boarding houses and hotels where the legislators stayed during session. She sent anonymous letters to the press outlining the purpose of the new law where it was favorably reported. When the bill stalled in the Senate, Packard went to the statehouse and lobbied the Senators one at a time until the bill was brought to the floor and passed. Governor Oglesby signed the bill "An Act for the Protection of Personal Liberty" on March 5, 1867. Now all potential patients regardless of gender or marital status must receive an insanity trial by jury. The law also provided an immediate trial to all current patients, and lobbied fines and penalties if the law was ignored.⁶²

For Packard, her successful lobbying campaign and the passage of her legislation to create safeguards for potential asylum patients was only half of the battle. She also had first-hand knowledge of the abuses and treatments ladled out on patients in Jacksonville and a desire to reform the institution. After the new legislation took effect, Dr. McFarland continued to speak of Packard's case, insisting she was insane. So Packard returned to legislative reform to protect herself from further abuse. Packard gathered letters from former patients, their families, and former employees of the asylum. Then she waited. In 1867, the legislature began an investigation into the hospital which lasted seven months. The committee visited the asylum on several occasions and took testimony from past employees, past patients, and from Packard and McFarland. McFarland was furious at the investigation and insisted that he be allowed to testify, as if he were on trial. Records kept by the committee painted a picture of McFarland's outrage and panic at the situation, not unlike the behavior he had found insane in others. After testimony

⁶² Ibid.

from Julia Ann Wilson, who supplied evidence that McFarland made an indecent proposal in exchange for her sister's release, the legislature found that while the institution was financially sound, new leadership was needed. McFarland was dismissed. No new legislation was created as a result of the investigation but the leadership of the asylum changed and Packard called this a personal victory indeed.⁶³

While Packard remained in Illinois, she continued to lobby for legislative reform, working on bills to equalize parenting rights as well as protect women's wages from husbands. Packard's first bill for women's legal equality, written by her son, Samuel, included granting women the rights to their own property, earnings, and child custody rights. The bill was too broad and it did not pass. On the advice of Bradwell, Packard lobbied for a new bill that focused solely on wages, which did pass. Illinois eventually passed separate bills which provided for property and equal child custody rights. But there is some controversy as to who should get the credit. While Packard's biographers suggest this was her work, Stanton, Anthony, Gage and Harper, the authors of *The History of Women Suffrage*, credit the bill's passage to the Illinois Suffrage Committee. Biographer Jane Friedman says that it was Myra Bradwell who drafted the bill, hand carried it to the legislature and lobbied it through with help from the Suffrage

⁶³ Sapinsley, *The Private War of Mrs. Packard*, 150-70; Joint Legislative Committee Investigation of the Jacksonville hospital, 1867, testimony from November 12, 1867; also testimony from November 13-December 4 given by Dr. McFarland; Carlisle, *Elizabeth Packard*, 141-50. Before being dismissed from the asylum in Jacksonville, McFarland made \$100 testifying against Mary Lincoln in her insanity file. This fee was paid for by Robert Lincoln who later reimbursed himself from Mary Lincoln's estate. After his dismissal, Dr. McFarland spent some time traveling through Europe and later opened and ran two private asylums in the United States. He suffered a head injury from a fall off a ladder and never fully recovered, having bouts of depression for the rest of his life. At the age of seventy-four, McFarland hung himself in November 1891.

Committee. As Bradwell and Packard did not support radical suffragism, they were not on good terms with the authors of *The History of Women's Suffrage*. The women might have been slighted and their work and role left out of the book on purpose.⁶⁴

Regardless of which women were most responsible for the legislative initiatives, legislative reform was changing the doctrine of coverture. When Packard traveled to Massachusetts to visit her children, she discovered the state had passed an equal parenting law in her absence. When she sued for her children, Theophilus did not argue and gave up the three minor children to Elizabeth's care. The older three boys, of their own accord, returned with her as well. They all went back to Chicago, the children living with Elizabeth, while Theophilus found rooms about a mile away, which were paid for by Samuel. Packard wrote that this time at home with her children was a comfort to her, though she never again lived with her husband.

Packard continued her crusade into legislative reform. Her next stop was Iowa, where she lobbied for free mail rights for all asylum patients. Her legislation passed. Next she had successful campaigns in New York and Maine, lobbying for insanity trials and mail rights for patients. After writing and circulating petitions, lobbying lawmakers, and crafting legislation, Packard developed a professional and businesslike approach to legislative reform. Though her bills varied, as did the existing laws and circumstances, she joined her expertise and experience with like-minded local reformers, never creating or joining a reform organization. Throughout her travels and work, no one thought she was insane.⁶⁵

⁶⁴ Carlisle, *Elizabeth Packard*, 156-58; Sapinsley, *The Private War of Mrs. Packard*, 150-70; Friedman, *America's First Woman Lawyer*; Stanton, *History of Woman Suffrage, Volume 2*.

⁶⁵ Sapinsley, *The Private War of Mrs. Packard*, 150-70; Carlisle, *Elizabeth Packard*, 161.

While her house survived the Chicago fire of 1871, Packard's publishing business was lost. Her children did not remain home for long as they moved on with their lives, establishing careers and marrying. In 1897, Packard returned to Chicago with her only daughter. Libby Packard Gordon had been confined to an insane asylum in California by her husband. Packard was appalled that after all the work she had done on behalf of insanity laws and after her experiences locked away from family, that her daughter would suffer a similar fate. Once notified of Gordon's condition, Packard requested Gordon be released to Packard's care. They stayed briefly with Packard's son Samuel, who was widowed and raising five children on his own, but the stress of Gordon's condition was too much for the family. Regardless, Packard saved her daughter from experiencing asylum life and cared for her at home.

4.3 Myra Bradwell: Legal Advocate

Myra Bradwell successfully utilized the process of legislative reform throughout her lifetime. Not only did she work with Elizabeth Packard's bill for personal liberty, she also worked with her husband, James Bradwell, on several other bills for women's legal equality. Bradwell wrote, lobbied, and saw passed, two married women's property acts, as well as acts equalizing the guardianship rights for parents, giving married women rights to their own wages, and allowing women to run for certain political offices, and serve as a notary public. Bradwell was not a member of any suffrage organization, however, and because of this, her work in the area of legislative reform was overlooked in the records of those organizations. Yet Bradwell was familiar with the capacity of legislative reform for women's rights and for her personal rights. She used the powers of the Illinois legislature to gain *feme sole* status for the purpose of running her own printing business and weekly legal newspaper, *The Chicago Legal News*.

Bradwell's greatest struggle against the doctrine of coverture and for gender equality was conducted through the courts. When Bradwell met all the qualifications for bar admission and was denied acceptance based on her gender, she did not petition the legislature for a change in the law. Instead, she filed a lawsuit, first with the state courts and then with the U.S. Supreme Court. Bradwell wanted to win her case at the national level and create national precedence for women to enter the legal profession. Instead, the Court decided against her. While the Illinois legislature did change the law prohibiting women from joining the bar association, Bradwell was not involved. As her court battle died down, she used her connections in the news media, and her strongly held belief that while different, women should be legally equal to men to empower, advise, and advocate for her friends, including Mary Lincoln in Lincoln's darkest hours.⁶⁶

Myra Bradwell was born Myra Colby on February 12, 1831, in Manchester, Vermont. As a young girl she moved with her family to Illinois. She married James Bradwell in 1862 and after a brief time in Tennessee running a school, the couple returned to Chicago. Bradwell wanted to study law alongside her husband and help in his career. While juggling her duties at home, Bradwell read law with her husband. She easily passed the Illinois bar exam on August 2, 1869, the first Illinois woman to ever take the test. The justices who administered her oral exam recorded she demonstrated a fine understanding of the laws, better than other male counterparts who tested at the same time. As Bradwell was blazing the trail for women lawyers in Illinois, the

⁶⁶ Friedman, *America's First Woman Lawyer*, 78-111, 199; Robert M. Spector, "Women Against the Law: Myra Bradwell's Struggle for Admission to the Illinois Bar" *Journal of the Illinois State Historical Society (1908-1984)*, Vol. 68, No. 3 (Jun., 1975): 231-32. See also: Sapinsley, *The Private War of Mrs. Packard*.

neighboring state of Iowa admitted Arabella Mansfield as the first female member of their state bar.⁶⁷

Bradwell believed the law should be blind to gender. She herself had worked to pass legislation furthering women's rights in cases of divorce or abandonment but she was always a staunch believer in the sanctity of marriage. While she railed against attorneys who, in her eyes, were tarnishing the profession as divorce attorneys, she avoided revolutionary tactics and incendiary words, a practice that irritated many in the women's rights movement, such as Susan B. Anthony. Bradwell remained an advocate for legal rights for women, but she preferred a more moderate approach, focusing on what she could do in the arena of legal rights using legislative reform as well as her newspaper for influence. Worth noting, Bradwell did not write or lobby on behalf of protective legislation which she believed was detrimental to the concept of gender equality. She believed all people should be equal under the law and she worked hard for that end. She used humor and wit to dispel the myths that brilliant women were manish and that suffragists and other reformers were insane. Yet she also followed the culture of the time, complimenting women subjects on their womanly attributes of home and beauty.⁶⁸

⁶⁷ Friedman, *America's First Woman Lawyer*, 18-41.

⁶⁸ Ibid; Jane M. Friedman suggests that Bradwell and Anthony were not friends. Bradwell was not a supporter of many of the conferences and activities of the National American Woman's Suffrage Association, although Bradwell did publically call for the first women's rights conference held in Chicago in 1868. Anthony's response seemed to be writing Bradwell's work out of her treatise *The History of Woman Suffrage*. While Bradwell and Anthony did not see eye to eye on most working aspects of the women's movement, she did hold Bradwell in high esteem. *The History of Woman Suffrage* was a huge undertaking, not completed within Anthony's lifetime. As would be expected, she focused on the many friends and workers in her own suffrage movement. But James and Myra Bradwell were both mentioned in later volumes, recording Bradwell's U.S. Supreme Court battle. Anthony donated the first volume of the *Chicago Legal News* to the Library of Congress inscribing the front page to let future readers know of the importance of its editor.

Bradwell's tenacity is notable. Whether her goals were equality for women, the reinvention of the legal field, or simply her personal business ambitions, she stopped for nothing. The *Chicago Legal News* in its entirety was more than just a personal victory of Myra Bradwell or a platform for legislative reform and women's rights. It transformed the practice of law, allowing attorneys from across the country to better connect across the states, and courts within the states to access case decisions immediately. Bradwell's editorials highlighted what in her judgement was good and noble about the practice of law. She was just as quick to write about what was wrong or tarnishing the field. She demanded those with a license to practice law do so with integrity. She was herself, a legal success as she was accepted into a world that was thought to be off limits to women. She was a showcase of women in the legal profession while maintaining integrity within the legal community. She used her newspaper to make the legal profession better by demanding those who practiced law do so with principles. She also created in *The Chicago Legal News* an indispensable tool for modern attorneys.⁶⁹

As the *Chicago Legal News* became irreplaceable in the practice of law throughout the country, Bradwell also added to her publishing empire. She printed and bound state court decisions, printed boilerplate forms for attorneys offices, and also printed legal books and treatises purchased by attorneys for their libraries. While maintaining her status as a moderate women's rights advocate, her every success was proof that women could find a place outside of the domestic sphere. She showed by her example that women could indeed be an asset to the professions. She was a smart, savvy businesswoman with a quick legal mind and offered proof to any detractor that women could be trusted with public affairs. Not even the Chicago fire of

⁶⁹ Friedman, *America's First Woman Lawyer*, 84-89.

1871 could stop Myra Bradwell and the *Chicago Legal News*. While Bradwell's building and equipment were lost in the fire, just like Packard's printing business, Bradwell saved her subscription ledger and rented a publishing establishment in Milwaukee, Wisconsin, never missing a weekly edition.⁷⁰

During the years following the Civil War, the legal profession reorganized and inclusion in professional organizations became vital to its practice. During the fifteen years immediately preceding the Civil War, there were two ways to become an attorney. A student could read law with a licensed attorney, like being apprenticed, or they could attend law school. Prior to 1878, most students read law with an attorney, as Bradwell did. Hopeful students would then sign up to take the bar exam orally at designated times and cities throughout each state.⁷¹

Bradwell passed the bar exam as administered by the Illinois Supreme Court. She acquired the documentation necessary to complete her bar application. The Illinois bar denied her admission request based on the "disability imposed by your marital condition." Bradwell was the first woman in Illinois to sit for the bar exam. The initial ruling suggested the court was most interested in Bradwell's marital status more so than her gender. As the doctrine of coverture hindered a married woman's rights to make contracts or appear on her own behalf in court

⁷⁰ Ibid. The historical record regarding the *Chicago Legal News* subscription ledger is unclear. The ledger was saved and printing and delivery went on uninterrupted. Some accounts suggest Bradwell's daughter Bessie ran to the offices and saved the ledger, separating her from her family as they struggled to save belongings and escape the city. She was reunited with her parents the next morning, with the ledger in hand.

⁷¹ After 1878, as the ranks of the profession were growing, law schools became more prevalent, popularizing the case law method of study developed at Harvard. However, Harvard, as well as Yale and Columbia, would not admit women students until the 20th century. Prior to 1885, the bar exam was administered orally. Mary Jane Mossman, *The First Women Lawyers: A Comparative Study of Gender, Law, and the Legal Professions* (Oxford and Portland: Hart Publishing, 2006), 10-39.

proceedings, the concept of a married woman acting on behalf of others' legal rights was murky waters. But legislation had passed broadening the legal rights of a married woman. Despite these gains, the courts insisted on relying on the common law doctrine instead. When Bradwell reapplied, she submitted a short brief citing her *feme sole* status. This designation should have negated any disadvantages of a married woman acting within a legal court. Bradwell also included a list of precedent showcasing prior acts of women advocates on behalf of others.⁷²

Again, Bradwell's petition was denied, but this time based on her classification as a woman regardless of marital status. In its second opinion, the court made clear their position that no woman belonged in the Illinois bar association. Bradwell made a final petition to the Illinois Supreme Court, arguing their ruling denied her constitutionally protected rights of privileges and immunities assured to all citizens under the newly ratified Fourteenth Amendment. Believing the Fourteenth Amendment protected her right to practice any profession for which she was qualified, Bradwell pursued her case to the U.S. Supreme Court, fighting not only for her right to practice law but for all women who wanted admission into the professions.⁷³

⁷² Nancy T Gilliam, "A Professional Pioneer: Myra Bradwell's Fight to Practice Law" *Law and History Review*, Vol. 5, No. 1 (Spring, 1987): 105-133. Quotation from the Court Record of Myra Bradwell; Barbara Young Welke, *Law and the Borders of Belonging in the Long Nineteenth Century United States* (New York: Cambridge University Press, 2010), 46-47. This kind of sociology as evidence was made most popular in the case *Muller v. Oregon* 208 U.S. 412 (1908) where Louis Brandeis submitted his famous legal brief on behalf of Muller which detailed empirical data from hundreds of sources. A precursor to this "Brandeis Brief" can be found in Myra Bradwell's own court records. J.A. Lupton, "Myra Bradwell and the Profession of Law: Case Documents" *Journal of Supreme Court History*, vol. 36, issue 3, 236-63.

⁷³ Gilliam, "A Professional Pioneer: Myra Bradwell's Fight to Practice Law;" Quotation from the Court Record of Myra Bradwell found in Lupton, "Myra Bradwell and the Profession of Law: Case Documents," 236-63; Welke, *Law and the Borders of Belonging in the Long Nineteenth Century United States*, 46-47, 98-99, 105; Mossman, *The First Women Lawyers*, 41.

In 1848, Elizabeth Cady Stanton introduced her document, “The Declaration of Sentiments” at the first women’s rights conference, held in Seneca Falls, New York. Stanton called for “equal rights in the universities, in the trades, and professions.” While women were vital in the movement to uphold the Union and end slavery, their request for equal rights was not included in the Reconstruction amendments passed after the war. Shut out by their male abolitionist counterparts, women began to advocate for themselves. As a fellow abolitionist, Bradwell knew of Stanton’s work on behalf of both the abolition of slavery and women’s rights. Bradwell’s court battle, and her desire to see a national change for women in the professions, was directly influenced by Stanton’s call to arms.⁷⁴

Foregoing localized legislative reform, Bradwell’s U.S. Supreme Court case had the opportunity to change not only her position within the Illinois Bar Association but the position of all women who wanted admission to the professions. Individual resistance to the previous court decisions could lead to sweeping national changes, or at least lead to more collective resistance. As a citizen, she was guaranteed her full and equal benefit of all laws. But her most persuasive argument focused on the equal rights clause of the Fourteenth Amendment which guaranteed all citizens the rights of equal protection of the laws regardless of class. Bradwell believed that no one’s rights should be denied based on the classification of gender. By bringing her case to the Court, Bradwell asserted not only her rights to practice her chosen profession but also her rights

⁷⁴ Aileen S. Kraditor, *The Ideas of the Women’s Suffrage Movement 1890-1920* (New York: W.W. and Norton Company, 1981), 5. Many of the early women’s rights advocates came from an abolitionist background. The language used in both of these campaigns remained similar up until the suffrage rights group split with its abolitionist roots in order to appeal to southern states. See also Amy Dru Stanley, *From Bondage to Contract: Wage Labor, Marriage, and the Market in the Age of Slave Emancipation* (New York: Cambridge University Press, 1998) and Welke *Law and the Borders of Belonging*, 101; Mossman *The First Women Lawyers*, 30.

as a citizen, regardless of gender, to bring a lawsuit in her own name in the first place.⁷⁵

While Bradwell's case made its way to the U.S. Supreme Court, the *Slaughterhouse Cases* (1873) came up a similar path. Both cases looked at the rights of individuals within a state in contrast with the rights of the state government to regulate. Justice Samuel Miller's opinion in *Slaughterhouse* is studied today for its historical significance as the first ruling on the Fourteenth Amendment as well as for its basic fallacies. *Bradwell v. Illinois* (1873) is often relegated to a footnote, used as an example of the *Slaughterhouse* application and noted as the first case to use *Slaughterhouse* as precedent. *Slaughterhouse* declared that the state had a right to regulate professions within its borders and by application, Bradwell's request for federal intervention on behalf of women in Illinois who desired bar admission, was made moot. However, *Bradwell* was more specifically about gender equality within the existing state laws. Its decision had far-reaching impacts on women in the professions and the limitations of the Fourteenth

⁷⁵ Lupton, "Myra Bradwell and the Profession of Law: Case Documents," 236–63; Welke, *Law and the Borders of Belonging*, 98-99, 105; Mossman, *The First Women Lawyers*, 41; In November 1872, before the Supreme Court ruled in *Bradwell*, Susan B. Anthony cast a ballot in the 1872 Presidential elections. Anthony claimed the right to vote was given to her as a citizen of the United States and guaranteed by the Fourteenth Amendment. Although allowed to cast a ballot, it was not counted and Anthony was arrested and tried for illegally voting. She was not allowed to testify at her own trial and the jury was specifically instructed to return a guilty verdict, which they did. She was fined \$100 which she refused to pay. She was never jailed and the federal government never sought collection of the fine. But she was also unable to appeal her case to the Supreme Court. In October 1872, Mrs. Virginia Minor attempted to register to vote in Missouri for the November Presidential elections. Mr. Happersett, the Registrar of Voters, refused her request. After arguing her case through the Missouri court system, Mrs. Minor filed her case with the U.S. Supreme Court. The Court sided with Mr. Happersett, and explicitly stated women's suffrage was not intended to be included within the Fourteenth Amendment's privileges and immunities clause. Bradwell's court case, though not successful, was also used in Canada and throughout the British Empire. Although not binding precedent, her arguments for women's rights continued. Eventually all of the British Empire opened up the professions to women though they were thirty years behind the United States. For transcripts of Susan B. Anthony's trial, see www.law2.umkc.edu/facultyprojects/ftrials/anythony/trialrecord; *Virginia Minor v. Reese Happersett* 88 U.S. 162 (1875); Mossman, *The First Women Lawyers*, 13-43.

Amendment. This decision could be studied independent of *Slaughterhouse* as an example of the Court's reliance on the doctrine of coverture and its detrimental impacts to legal equality.⁷⁶

Both *Slaughterhouse* and *Bradwell* were argued in front of the Court at the same time. Both cases, shared a lawyer, Matthew Carpenter, who argued for the State of Louisiana and its right to police the slaughterhouse profession and also on behalf of Bradwell and her individual right to practice a profession uninhibited by state control. The Court read the *Slaughterhouse* decision first, on April 14, 1873 where they found for the state of Louisiana, against the butchers in a 5-4 decision. Within the opinion, Miller outlined a narrow interpretation of the Fourteenth Amendment. Instead of a broad protection of citizens rights, he focused on the differences between federal and state citizenship, limiting the Fourteenth Amendment's protection to the federal citizen only.⁷⁷

The *Slaughterhouse* opinion was divided into two parts. Within the first section, Miller outlined his decision based on the police powers of the state allowing for public health legislation. The Court recognized that states had a legitimate authority under the police powers to regulate business activity, and especially health issues within the individual state without federal government interference. Miller said public health obviously fell within the purview of state police powers; as long as the state did not exceed their power, they were within their rights

⁷⁶ *Bradwell v. The State of Illinois*, 83 U.S. 16 Wall. 130 (1873); *The Slaughterhouse Cases*, 83 U.S. 65 (1873); Lupton, "Myra Bradwell and the Profession of Law: Case Documents," 236-63. In previous papers, I argued that Justice Miller based in part his decision in *Slaughterhouse* on New Orleans experiences with cholera and Miller's background as a medical doctor who witnessed the cholera epidemic in 1832 and 1849 while studying and practicing medicine in Kentucky. Mary Lincoln's father, Robert S. Todd, died from cholera while residing in Kentucky during the 1849 outbreak.

⁷⁷ *The Slaughterhouse Cases*, 83 U.S. 65 (1873), 62; *Bradwell v. The State of Illinois*, 83 U.S. 16 Wall. 130 (1873).

to use it. Miller wrote that “Persons and property are subjected to all kinds of restraints and burdens in order to secure the general comfort, health and prosperity of the state...” At the same time, Justice Miller included sections within his decision in the hopes that future Fourteenth Amendment cases would uphold the spirit of the new amendment, protecting those citizens who had been freed from slavery. The second part of the decision focused on creating a two-tiered system of citizenship, where one was a citizen of a residential state and also a citizen of the United States. This distinction allowed the Court to narrowly apply the rights promised within the Fourteenth Amendment to federal rights alone, leaving the states’ rights to regulate themselves intact.⁷⁸

The written decision in *Bradwell*’s case was short. In a vote of 8 to 1, the Court sided with the State of Illinois, ruling who was admitted to the bar was a state’s issue and one in which the federal government had no interest in interfering. The Court stated, “the right to admission to practice in the courts of a state is not [a federal citizenship right]. This right in no sense depends on citizenship of the United States.” Instead of including a longer section explaining their legal reasoning within the *Bradwell* decision, the Court simply cited *Slaughterhouse* and its two categories of citizenship foregoing any further explanation. The majority opinion in *Bradwell* stated that “the opinion just delivered in the *Slaughter-House Cases* renders elaborate argument

⁷⁸*The Slaughterhouse Cases*, 83 U.S. 65 (1873), 62-63; Kermit L. Hall, Paul Finkelman, James W. Ely, Jr., *American Legal History: Cases and Materials, Fourth Edition* (New York: Oxford University Press, 2011), 270-4; Wendy E. Parmet, “From *Slaughter-House* to *Lochner*: The Rise and Fall of the Constitutionalization of Public Health,” *The American Journal of Legal History*, Vol. 40, No. 4 (Oct., 1996): 476-505; John E. Nowak and Ronald D. Rotunda, *Constitutional Law: Fifth Edition* (St. Paul: West Publishing Co., 1995), 171-72; Ronald M. Labbé and Jonathan Lurie, *The Slaughterhouse Cases: Regulation, Reconstruction, and the Fourteenth Amendment* (Lawrence: University Press of Kansas, 2003), 211.

in the present case unnecessary.”⁷⁹

Because of the decision in *Slaughterhouse*, state’s were left alone to regulate their citizens regardless of the new federal rights. The Court traded women’s rights to the professions in the process of protecting states rights and the concepts of federalism. In creating a constitutional pocket of protection for public health and state police powers, Miller and the Court, missed an opportunity to nationally change legal rights for women, at least in regards to the professions. Instead they perpetuated the doctrine of coverture, continuing a gender-stratified system of citizenship, which denied women constitutional protection to pursue professions, leaving women no other avenue of pursuit except to return to state-by-state legislative reform changes. Justice Miller’s ruling in *Slaughterhouse* allowed the Court to ignore the sweeping state level legislative changes and maintain a woman’s “paramount destiny and mission...to fulfill the noble and benign offices of wife and mother. This is the law of the Creator.”⁸⁰

Justice Joseph Bradley wrote the concurring opinion in *Bradwell*, which was also signed by Justices Noah Swayne and Stephen Field. This concurring opinion included the infamous “paramount destiny” discussion where Bradley, Swayne, and Field declared a woman’s primary function was that of wife and mother and this was a more natural course for a woman’s life, instead of pursuing a profession. The justices based their opinion on natural law, otherwise known as the doctrine of coverture. While not binding precedent, the concurring opinion was

⁷⁹ *Bradwell v. The State of Illinois*, 83 U.S. 16 Wall. 130 (1873); The State of Illinois while securing a favorable ruling from the U.S. Supreme Court, never submitted their own written brief on the case.

⁸⁰ Spector, “Women Against the Law,” 228-242; Nancy T. Gilliam, “A Professional Pioneer;” Geddes, “The Gains from Self-Ownership and the Expansion of Women’s Rights;” quotation from *Bradwell v. Illinois* concurring opinion written by Justice Joseph Bradley. See also: Cushman, *Supreme Court Decisions and Women’s Rights*.

quoted throughout newspapers reporting on the decision and even used in the Oregon Supreme Court's reasoning to continue to deny women bar admission in that state. Through *Bradwell*, the doctrine of coverture was kept intact for the national courts. Not only did the Fourteenth Amendment not apply privileges and immunities to the pursuit of a profession, it offered no equal protection for an entire class of U.S. citizen. The Court's reasoning kept intact a system of justice where men were citizens and women were subjects. Instead of applying the new protections of the Fourteenth Amendment broadly to individual citizens, the narrow ruling in *Slaughterhouse* created a complicated system of justice and application of the Reconstruction Amendments based on the two-tiered system of state versus federal citizenship.⁸¹

While the *Bradwell* case was at the Supreme Court, the state of Illinois passed a specific statute opening up the professions to all qualified applicants. The Illinois law read "no person shall be precluded . . . from any occupation, profession, or employment (except military) on account of sex." A few other states followed suit. During this same time, the Illinois legislature also passed laws allowing women to hold school district offices and serve as notary publics. On April 19, 1873, upon hearing the decision in her case, Myra Bradwell stated,

We had hoped in taking this case to the Supreme Court of the United States to have demonstrated that women have some rights and privileges as citizens of the United States which are guaranteed by the Fourteenth amendment... Although we have not succeeded in obtaining an opinion as we hoped, which should affect the rights of women throughout the nation, we are more than compensated for all our trouble in seeing, as a result of the agitation, statutes passed in several of the states, including our own, admitting women upon the same terms as men.⁸²

Always mindful of her audience, even in the face of defeat, Bradwell stated her opinion of

⁸¹ *Bradwell v. Illinois* 83 U.S. 16 Wall. (1873); Mossman, *The First Women Lawyers*, 47; Welke, *Law and the Borders of Belonging*, 43.

⁸² *Chicago Legal News*, April 19, 1873.

the case is short, succinct terms and got back to work. She was not involved directly in the legislative reform that led to the law change and she also did not take advantage of it.

Friedman argues that Bradwell was too stubborn to reapply for bar admission or she might have been convinced that her work outside of the courtroom was equally important to any accomplishment within it. The battle to admit women to the Illinois bar had been won, but there was more work to accomplish for gender equality. On June 7, 1873, Bradwell printed a congratulations to Miss Ada M. Hulitt, who was admitted to the Illinois State Bar “without regard to sex.” As reported in the *Omaha Herald*, “through her case the admission of women to the bar was made the subject of legislation, and many women are today enjoying the privilege which she fought so hard to gain.”⁸³

On February 14, 1894, Bradwell died in her home from stomach cancer. Newspapers across the country wrote tributes to her contributions to legal rights for herself and women everywhere. The *Omaha World Herald* said “she was not the sort of woman to be rebuffed by failure ... she being on principle determined to establish the right of her sex to practice at the bar.” This is a fitting tribute for a woman who even in the face of failure at the Supreme Court, continued to make a difference in the legal profession with *The Chicago Legal News* and her publishing empire. *The Kansas City Star* missed Bradwell’s message entirely when they eulogized her with claims that “she would have been a brilliant man with her talents and she asked no favors because of her sex ... her example has been good for her sex. It has also had its disadvantages; it has given a number of very stupid women an opportunity to assert themselves and demand attention merely because they happen to be women; but on the whole men and

⁸³ *Chicago Legal News*, April 19, 1873 and June 7, 1873; Cushman, *Supreme Court Decisions and Women’s Rights*, 9.

women who this woman has influenced directly and indirectly have been better because she lived and fought.” The *Macon Weekly Telegraph* on March 3, 1894, printed “it is a pleasure to know in the midst of sadness caused by her death that Myra Bradwell did not go out of life till she saw the cause for which she worked indefatigably for thirty years almost won. Even in Maryland women may now practice law and there are hundreds of women law students throughout the country... She had to work for twenty years before she could get this decision reversed but she never gave up and finally triumphed. Those who never give up always win at last.” Even though the *Bradwell* case was not successful on its face, the national spark Bradwell started with her arguments for women in the legal profession caught fire and spread throughout the country.⁸⁴

Despite Bradwell’s success in the legal field, she never had a career arguing cases in the courtroom. Bradwell was inspired to begin the *Chicago Legal News* because she saw a need for such a trade publication while working on the front lines of the legal profession as it changed. By her own words, Bradwell admitted her catalyst for arguing her case to the U.S. Supreme Court level was to open up the professions for all women and strike a chord for women’s equality beside her friends and contemporaries who were also fighting for women’s rights. Bradwell sought more than a personal licence to practice law. She worked on the cusp of legal change for women’s rights in Illinois and in the nation. She eventually saw the legal profession gradually open for women.

Bradwell’s agenda was simple. She advocated necessary legal change to advance women’s rights in the areas of education, work, contract, guardianship, property, and inheritance. She worked on behalf of laws that guaranteed women some protection from physically abusive

⁸⁴ Quotations not cited in paragraph belong to *The Kansas City Star*, January 30, 1894 and February 14, 1894; *Omaha World Herald*, February 14, 1894.

spouses. She was a moderate in the women's movement who concentrated her efforts through her platform of the *Chicago Legal News* and through legislative reform.⁸⁵ Without further application, the Supreme Court of Illinois granted her original petition on March 21, 1890, twenty years after her first request. In 1892, the U.S. Attorney General William Henry Harrison Miller, granted Bradwell a federal law license *nunc pro tunc* thereby securing Myra Bradwell's place in history as the first woman attorney in the United States.

4.4 Mary Lincoln: In Self-Defense

In 1875, Robert Lincoln, the only surviving child of Abraham and Mary, filed legal papers to have his mother declared legally insane. Mary Lincoln was fetched from her rooms, forced into court, and sat helpless as eighteen witnesses testified that she was insane. At the end of her brief trial, the jury found Mary Lincoln was unable to take care of herself and should be sent to a facility for the mentally ill while her estate was taken from her and managed by a conservator. Regardless of the changes in the insanity laws of Illinois, despite all the gains in self ownership made by women through legislative reforms, Mary Lincoln's rights to her money, freedom, and agency were stripped in a mere three hours at the hands of the court and her proper Victorian son. With the encouragement of friends and the intrinsic belief in herself, Mary Lincoln worked on her own behalf, mailing letters under subterfuge, secretly meeting with reporters, and outright advocating for her rights to freedom and to run her own affairs. Her success took a toll on her relationship with family as well as her historical legacy. Yet Mary

⁸⁵ Bradwell while respected in most legal circles was not universally loved. *The Daily Picayune*, May 23, 1878 accused her of reprinting decisions from their state without proper permission or citation. Bradwell was sued for libel in 1880 based on articles and "unfriendly letters" written by Bradwell, Thomas Bradwell (no relation), and William H. Gibson. *Daily Inter Ocean*, May 19, 1880.

Lincoln serves as a most visible example of a woman who challenged the traditional place of her gender in society and won her own independence.⁸⁶

Mary Ann Todd was born December 13, 1818 in Louisville, Kentucky, to Robert and Eliza. When Mary was six years old, her mother died and was quickly replaced with a despised step-mother who added nine more children over the years. Mary's childhood home was described as a boarding house, full with boisterous squabbling siblings, all fighting for their father's attention. Robert Todd provided an education for all of his children regardless of gender. In 1827, Mary attended Shelby Female Academy, also known as Ward's, after its director. Later Mary moved to Madame Mentelle's where she studied a more classical class course. Spending five years at each school, Mary received more education than was typically given to daughters. She studied hard and excelled at school. Later, she returned to Ward's where she was an apprentice teacher until she left Kentucky for Springfield, Illinois.⁸⁷

In the spring of 1837, Mary went to Springfield, Illinois to visit her sister Elizabeth Edwards, the oldest of the Todd children, for three months. In the fall of 1839, Mary returned to Springfield to stay. She met Abraham Lincoln, and in November 1842 the couple married. Mary's father helped them buy a house where they settled to raise their family. The Lincolns had four sons, Robert, Eddie, Willie, and Tad, all born in Springfield. Only two children, Robert and Tad lived past childhood and only Robert outlived his parents. Mary's primary role was that

⁸⁶ Emerson, *Mary Lincoln's Insanity Case*, 44-50; Insanity Trial documents from the Insanity File found at the Lincoln Presidential Library 1875.05.19 which include: Subpoena, Arrest Warrant, Venire for a Jury, and Verdict.

⁸⁷ Baker, *Mary Todd Lincoln*, 3-98; Williams, *The Mary Lincoln Enigma*, 1-13; Stephen Berry, "There's Something About Mary: Mary Lincoln and Her Siblings" from Williams, *The Mary Lincoln Enigma*, 14-35; Brian Dirck, "Mary Lincoln: Race and Slavery" in Williams, *The Mary Lincoln Enigma*, 36-59.

of wife and mother, as was the nineteenth-century custom. But because Abraham was away from home so often as a circuit judge, Mary was much more independent than average wives of the era. Both the Lincolns were remembered as permissive parents who often played along with their boys.⁸⁸

In 1861, the Lincolns moved into the White House. Mary, like most women at the beginning of the war, vowed to put the physical needs of the Union troops ahead of the comforts of her own family. Reserving resources for uniforms, boots, and blankets, Lincoln put plans for White House improvements on hold. However, Abraham insisted that a strong economy was vital to the war efforts and encouraged Mary to continue her intentions to spruce up the White House and create a home befitting her family and the Office of President. In January 1861, Mary Lincoln traveled to New York on her first recorded shopping spree where she purchased personal items and fine clothing for White House life. In the spring of 1861, she traveled to Philadelphia, Boston, and New York, with her cousin Elizabeth Grimsley, to buy furnishings and wares for the White House. She quickly spent through the allocated \$20,000 and supplemented her expenses with Lincoln's own salary. Mary hid many of her expenses from her husband by padding bills and creative accounting aided by Benjamin Brown French, federal Commissioner of Public Buildings. Through Mary's dress and her improvements to the White House, Mary kept the United States from looking foolish or impoverished to outsiders, an important role in maintaining a positive international reputation while the country was at war.⁸⁹

⁸⁸ Baker, *Mary Todd Lincoln*, 74-98.

⁸⁹ Neely Jr., *The Insanity File*, 5; Baker, *Mary Todd Lincoln*, 178, 182-200; Williams, *The Mary Lincoln Enigma*, 1-13; Turner, *Mary Todd Lincoln*, 69-89; C.J. King, *Four Marys and a Jessie: The Story of the Lincoln Women* (Manchester: Friends of Hildene Inc., 2005) 40-43; Donna McCreary, "Fashion plate or Fashion Trendsetter?" in Williams, *The Mary Lincoln Enigma*, 186-218.

Lincoln, like other educated women of the era, was an avid letter writer, with much of her correspondence surviving today. Her letters include family news, her personal feelings, business, and show a deep love for her friends and family. Lincoln never published a pamphlet. She was not an author. She did not speak publicly. But her letters are evidence of her opinions on important issues as well as her personal vehicle for advocacy. Without walking the legislative halls, Lincoln's personal letters used the same tactics as other legislative reformers, pointing out the injustices for women under the current laws and lobbying for change. In 1862, Mary Lincoln wrote a letter to the Governor of New York, Edwin D. Morgan, pleading for mercy on behalf of another woman, Mary Real, who had been convicted of manslaughter in the third degree in the death of her husband. There is no evidence that the Governor responded, but the letter serves as a record of Lincoln's advocacy on behalf of other women. During the war, so many women ran family businesses, made contracts, and bought and sold goods, to keep their homes running while husbands, brothers, and fathers were at war. These women also wrote to Mary Lincoln and asked for help securing patronage jobs for their husbands or sons. Some wrote looking only for someone else to understand their situation, and when Lincoln was able, she tried to help. In a letter dated March 13, 1864, Lincoln shared her grief over the loss of her son Willie with Mrs. Alexander, a woman who too had recently lost her son. Lincoln wrote, "and if I were now with you, we could freely weep together. The loss of my noble beautiful boy is as keen a pang to me *now* as it was at first, indeed, I realize it more, only the grave can close upon such *affliction*." Her loyalty to her friends was repaid, at least by some, when she needed advocacy help in securing a government pension after Abraham Lincoln was assassinated. Letters from family friends, both men and women, poured into Washington

arguing on Lincoln's behalf. Coupled with Lincoln's own advocacy in the forms of letters or calling in favors, her pension as a war widow as well as a lump sum payment of the rest of Abraham's salary for his second presidential term, was secured.⁹⁰

A nineteenth-century women had few choices outside of marriage to provide financial security. Other than the pension and promised three years' salary, Lincoln had limited options. She worried about money and debt. Lincoln was known for her thrift before going to Washington and her change of circumstances, limited earning potential coupled with debt to shopkeepers, was jarring. Before Lincoln's pension was secured, she created a plan to showcase and sell some of her White House clothes and jewels. While a sale like this was unique in the United States, Lincoln had heard stories of royalty conducting similar successful sales in Europe. With the help of Elizabeth Keckley's tailoring contacts, Lincoln chose a shop in New York and announced the sale. The American press was appalled and they speculated on Lincoln's estate and finances as well as judged Lincoln for making such extravagant purchases during the Civil War. While patrons in New York lined up to view her dresses, no clothing was sold. In fact, the

⁹⁰ Baker, *Mary Todd Lincoln*, 204; King, *Four Marys and a Jessie*, 87-8; Turner, *Mary Todd Lincoln*, the letters to Sally Orne; T1864.03.13 Lincoln, Mary T 13 March [18]64, ALS [Washington, D.C.], to Mrs. Alexander from Letters from Mary Lincoln. Taper Collection. Abraham Lincoln Presidential Library, Springfield, Illinois. Mary Lincoln had a unique way of writing letters to friends and family. After her husband's death, Lincoln used mourning stationery with a large black border around each sheet for the rest of her life. Lincoln's script is easily recognized though not so easily transcribed as she was in the habit of using all available space to write and then would criss cross previous paragraphs writing new paragraphs perpendicular but on top of the first ones. Lincoln had approximately thirty ways to identify herself in letters and whether formal or informal, she never used her maiden name as an identifier. According to James Cornelius, curator of the Lincoln Presidential Library, this habit of referring to Mary Lincoln as Mary Todd Lincoln was started after her death by some of the Todd cousins. Lincoln's letters from the early White House years are full of both authority and mirth. After Willie's death, her letters have a sadness that never fades. Brief notes recovered from her last days in the White House are palatably full of grief.

entire scheme cost Lincoln money. David Davis heard of the sale and cautioned Robert Lincoln that selling her clothes was an act of insanity. Around the same time, Robert wrote to his fiancée Mary Harlan complaining that his mother was surely insane in the subject of money. While news of the clothing scandal raged, Robert and Mary Harlan married and Lincoln took this opportunity to travel with Tad to Europe while the clothing scandal stories died away. However, the memory of Lincoln's clothing scandal stayed with Davis and Robert. Both men dredged up the affair during Lincoln's insanity proceedings.⁹¹

Tad died shortly after returning to the United States. Lincoln became restless and Robert thought she acted addled and confused. He hired a private investigator to follow his mother and report on her habits and behaviors, in preparation to have his mother committed to an asylum. While Robert paid out of his own pocket for the Pinkerton men who followed his mother, once he became the executor of his mother's estate, he reimbursed himself for the investigator expense as well as the cost of filing court documents and arranging for the testimony of doctors. Robert also hired a legal team headed by Leonard Swett who put together a team of medical experts to testify at the trial. Mary Lincoln was already seeing Dr. Willis Danforth for her feelings of anxiety and frequent headaches and sleeplessness. While the personal liberty law of Elizabeth Packard did require a trial for anyone to be committed to an insane asylum, the law was vague as to the other legalities of the proceedings. There was no required pre-trial notice and no required defense attorney. Because of the status of the Lincoln family in American society, Swett insisted Mary have an attorney. Swett knew the press would report the event of the trial regardless of the outcome and Swett also believed that Lincoln was indeed insane. He

⁹¹ Baker, *Mary Todd Lincoln*, 262, 272-77; Emerson, *Mary Lincoln's Insanity Case*, 4-5; King, *Four Marys and a Jessie*, 83.

wanted to be above reproach and felt that a defense attorney would prove to the public that every precaution was taken to secure a just verdict. Even though Isaac Arnold also believed Mary was insane, he agreed to represent her at Swett's urging, as a favor to the family. All of these preparations were done in secret. Mary had no idea.⁹²

Lincoln was summoned to court in the morning of May 19, 1875, before she was ready for the day. Swett explained the situation and Lincoln understood what was about to take place. She was reluctant to go to the courthouse. Swett prodded Lincoln at every step, finally getting her into the carriage after several hours. Swett reported Lincoln's behavior as wild, and just like with Elizabeth Packard, the men involved in the trial believed Lincoln's insistence on her sanity was evidence of insanity. Once at the trial, the witnesses and doctors called to testify were asked two questions: did they find Mary Lincoln insane and should she be confined. Ultimately, the jury returned the verdict that they "are satisfied that Mary Lincoln is insane, and is a fit person to be sent to a State Hospital for the Insane..." Robert Lincoln was made the conservator of the estate.⁹³

⁹² Neely Jr., *The Insanity File*, 8, 9, 17, 24-25; Baker, *Mary Todd Lincoln*, 280. Evidence offered at Lincoln's insanity hearing suggested another symptom of her insanity was her irrational belief that she was being followed by men intending to harm her. As later evidence revealed, she was correct in the fact that she was being tailed, her every move recorded and reported to her son. Though the Pinkerton men surely meant Lincoln no physical harm, their presence caused Lincoln emotional distress and helped secure the insanity verdict at trial.

⁹³ Emerson, *Mary Lincoln's Insanity Case*, 44-50; Williams, *The Mary Lincoln Enigma*, 1-13; Mary Lincoln never wrote about her trial in any detail. The best account of the day's activities comes from a letter written by Leonard Swett to David Davis, providing a narrative of the day not found in the press reports; Mary Lincoln Insanity File, 1875.05.19 Verdict. Throughout the insanity court documents, Mary Lincoln is rarely referred to by her name alone. She is "Mary Lincoln, widow," Mary Lincoln, wife of Abraham, dec.," and even "Mrs. (Abraham) Mary Lincoln." She was defined throughout as not only insane, but as still legally attached to her deceased husband. Only when Lincoln is listed as a "lunatic" is her name unattached to her husband.

Though the insanity courts were enforcing a law written to protect women in cases of insanity, there was no way for Lincoln to avoid the patriarchy in the room. Elizabeth Packard's legislative reform only insured a wife a trial regardless of the testimony of her husband. But Lincoln was brought to court by her son, as her husband was deceased. Myra Bradwell's advocacy through state legislation made considerable gains for women's rights to hold their own property, but did not protect that right against insanity verdicts. Thus once found insane, Mary Lincoln lost all control of her property. Though the gains through legislative reform were significant, those gains did not reach Mary Lincoln's needs. Packard and Bradwell had secured rights for married women in spite of the doctrine of coverture, but their reforms stopped short of Lincoln's situation.⁹⁴

Throughout the entire trial, doctors, lawyers, and jury members judged whether Mrs. Lincoln behaved in a way that made sense to them. At the trial, Robert Lincoln testified that his mother was never the same after his father's death. He viewed her grief as going beyond what was rational. David Davis said that the spiritualism that gave Mary comfort in the loss of her family, as well as her spending habits, were both signs of insanity. To her family and to outsiders, Mary Lincoln was judged a failure. She did not have a husband and children to care for at home. She did not mourn in accordance with her son's' ideals. She did not spend her money in a way that made sense to her lawyers, and she sought solace from her grief from the wrong kind of spiritual leaders.⁹⁵

Mary Lincoln, like Packard and Bradwell, desired something beyond convention. These three women lived lives that did not resemble a strict adherence to the cult of domesticity ideal

⁹⁴ See: Sapinsley, *The Private War of Mrs. Packard*; Friedman, *America's First Woman Lawyer*.

⁹⁵ Mary Lincoln Insanity File; Emerson, *Mary Lincoln's Insanity Case*, 44-50.

lauded through the women's magazines and self-help pamphlets. Lincoln, like Packard and Bradwell, married, had families, and made it their life's work to care for their homes. But these three women fulfilled this duty in unique ways. Though they gave a cursory nod to the cult of domesticity, they accomplished this role of wife and mother with broader, brighter strokes of the brush. But, as Lincoln penned to Bradwell, "It appears there is no law for the widow - in this land." Through her insanity trial, Lincoln was publicly denied the right to choose unconventionality, her choices put on trial under the heading of madness. Frank Williams says that Lincoln lived life on her own terms. But being forced to plead for your sanity and freedom in front of jurors, witnesses, and the press, hardly suggested Lincoln was setting the terms. She was forced into conformity as her freedom was revoked.⁹⁶

Instead of sending his mother to the state insane asylum where Elizabeth Packard had spent three years, Robert chose a small, private, all women facility in Batavia, Illinois ran by Dr. Richard J. Patterson. Patterson advertised Bellevue Place as a retreat for "modern management of mental disease" for the "private class" with a high cure rate. Patterson may have billed the establishment as spa-like, but it was still a prison for Mary Lincoln. She was sent away by someone else where she was told what she could do and how to manage her time. No carriage ride or walk along the grounds was solitary; Lincoln's every moment was chaperoned. Even her letters were read and often confiscated. Myra Bradwell said it best when she told Elizabeth Edwards that even though Mary Lincoln was not in restraints, she was no less restrained. She

⁹⁶ Schreiner Jr., *The Trials of Mrs. Lincoln*, 48, 155, 203, 219; Neely Jr., *The Insanity File*, 4; Emerson, *Mary Lincoln's Insanity Case*, 13; Williams, *The Mary Lincoln Enigma*, 1-13. See also: Welke, *Law and the Borders of Belonging*; Sapinsley, *The Private War of Mrs. Packard*; Friedman, *America's First Woman Lawyer*. Quotation from a letter to Myra Bradwell from Mary Lincoln dated June 18, 1876 as recorded by Pritchard, *The Dark Days of Abraham Lincoln's Widow*, 120.

wondered how any of those who sent Lincoln to Batavia would like the same treatment. When Edwards replied to Bradwell's letter, she said that her "heart rebelled at the thought of placing her in an asylum. ... Had I been consulted, I would have remonstrated earnestly against the step taken."⁹⁷

Intake records at Bellevue record Mary Lincoln as mentally ill from the death of her husband and sons. But from her first day there (May 20, 1875) Lincoln was single mindedly resolved to get out. While writing letters was Lincoln's greatest advocacy tool, she had to get the letters out of the institution unseen to which end she used the Bradwells. Before the Bradwell's visitation privileges were revoked, Lincoln passed them letters to mail to friends and family. She also requested in her letters to the Bradwells that they contact specific people on her behalf. In the initial days of her incarceration, Lincoln's letters to the Bradwells provided cover for Lincoln herself to enclose secret letters to others in her own hand for the Bradwell's to mail. Throughout all of her letters, Lincoln demanded justice in the form of her freedom. She invited friends and family to visit her and asked her sister to allow her to visit in Springfield. She wrote:

It does not appear that God is good, to have placed me here. I endeavor to read my Bible and offer up my petitions three times a day. But my afflicted heart fails me and my voice often falters in prayer. I have worshipped my son and no unpleasant word ever passed between us, yet I cannot understand why I should have been brought out here. I must see some of my friends and your noble, kind-hearted husband will see to this, I am sure, immediately. May I trouble you to write a letter to Mrs. Henry T. Blow ... Mrs. Bradwell, my dearest friend, I love you very much. Go to my friends, go and see Mrs. Harriet Farlin and her son Mr. Farlin ... Go to Mrs. F. ... Write a note when you receive this to Gen'l

⁹⁷ The *Post and Mail*, a Chicago newspaper ran a long article regarding Batavia and the Bellevue sanatorium dated July 13, 1875 as found in Emerson, *Mary Lincoln's Insanity Case*, 84-90. Within the article, the *Post* maintained Batavia was a lovely respite from the realities of the world and described the asylum as a quiet retreat. They failed to mention none of the women in residence had picked to come to Batavia of their own accord. The quote from Elizabeth Edwards is found in a letter from Edwards to Myra Bradwell dated August 3, 1875 as recorded by Pritchard, *The Dark Days of Abraham Lincoln's Widow*, 56.

Farnsworth requesting him to come and see me on tomorrow afternoon ... Pray for me that I may be able to leave such a place as this.⁹⁸

In her greatest move of self advocacy, Lincoln wrote to Governor Palmer asking for his intercession on her behalf. Both Robert Lincoln and Davis, in letters to each other, commented on Palmer's involvement and wrote to the Governor themselves assuring him that the situation was well in hand.⁹⁹

Not only did Lincoln use the Bradwells visits as cover to mail letters, she also utilized Myra Bradwell's connections in the press to tell her story and to press Robert Lincoln into moving out of her way. Before Robert put a stop to the Bradwell's visits, they brought a trusted friend and journalist to Batavia to interview Lincoln. She told the journalist directly that she wanted to leave Batavia and return to Springfield to live with her sister. Once the press published this story, Robert was resigned. He stopped fighting his mother's wishes to leave the asylum for fear of even more negative press. Thus, Lincoln was able to secure her release from Bellevue Place three months and three weeks after her arrival and she moved in with her sister Elizabeth Edwards, in Springfield. She severed her relationship with her son. On June 14, 1876, Mary Lincoln filed a Petition to Remove Conservator and gain access to her own property and estate. On June 15, 1876, Lincoln had another insanity hearing where the jurors unanimously agreed "wherein Mary Lincoln who was heretofore found to be insane and who is now alleged to

⁹⁸ Letter to Myra Bradwell from Mary Lincoln dated August 3, 1875 as recorded by Prichard, *The Dark Days of Abraham Lincoln's Widow*, 62.

⁹⁹Neely Jr., *The Insanity File*, 337; Emerson, *Mary Lincoln's Insanity Case*, 60-71, 92, 94; Schreiner Jr., *The Trials of Mrs. Lincoln*, 145. See also: Baker, *Mary Todd Lincoln*.

be restored to reason having heard the evidence in said cause, find that the said Mary Lincoln is restored to reason and is capable to manage and control her estate.”¹⁰⁰

Once freed from her conservatorship, Lincoln, according to recollections recorded by Myra Helmer Pritchard, became a changed woman. Letters to Bradwell are laced with anger and rage over her previous circumstances aimed at her son. “She believed she had been unjustly, cruelly dealt with, and this, no doubt, made doubly bitter the memory of older injustices and cruelties. She was resentful, sharply, scornfully resentful, and she did not hesitate to spread her feelings upon paper.” In one letter shortly after her property was restored, Lincoln penned, “I have been a deeply wronged woman, by one, for whom I would have poured out, my life’s blood. R.T.L.’s imprecations against you all, have been very great ... Let not *his wickedness* triumph.” Though she remained deeply wounded by the actions of Robert, Mary and Robert did make peace shortly before Mary’s death.¹⁰¹

Bradwell helped Lincoln fight her imprisonment at Batavia because she believed Lincoln had been wrongly put there, but also because the two were dear friends. While Bradwell’s biographers see her friendship with Lincoln and work on her behalf as an example of Bradwell’s work with women’s rights and advocacy, Robert Lincoln always held the Bradwells were meddlers. Neither Robert Lincoln nor biographer Jason Emerson give Mary Lincoln any credit for her own actions. Instead, they continue to view her as though she is incapable of rationality. Mary said herself, in a letter to Bradwell, “The only trouble about me, in all my sorrows and bereavements has been that my mind has always been too *clear* and remembrances have always

¹⁰⁰ Friedman, *America’s First Woman Lawyer*; 6.15.76 Insanity File Verdict; Clinton, *Mrs. Lincoln*, 311.

¹⁰¹ Pritchard, *The Dark Days of Abraham Lincoln’s Widow*, 116; Emerson, *Mary Lincoln’s Insanity Case*, 187.

been too keen, in the midst of my griefs.” But the women who knew Mary Lincoln personally had a far different opinion. Bradwell believed Mary Lincoln had the right to her liberty and property and did not see Robert Lincoln or his actions as those of a dutiful son. In a letter to her nephew dated November 5, 1875, Elizabeth Edwards, the woman who knew Lincoln for her entire life, wrote, “I have no hesitation in pronouncing her sane, and far more reasonable, and gentle, than in former years ... She is capable of taking care of her interests ... The reunion with her family, receiving the calls of former acquaintances, and returning visits, has already had a very beneficial [effect] upon her spirits.” A few days later Edwards continued her advocacy on behalf of Lincoln writing again to Robert saying, “It has always been a prominent trait -- in her character, to accumulate a large amount of clothing, and now that she has the means, it seems to be, the only available pleasure... There is no evidence of derangement - and to impose restraint of any kind, would involve more contention, than could be endured.”¹⁰²

Mary Lincoln was the recipient of the work of some strong women, such as Packard and Bradwell. But she was also strong herself. Her actions, reactions, and advocacy for self, were all indicative of the changing time. She knew she owned herself and wanted that recognized by others, particularly the last man standing, her son.¹⁰³

4.5 Conclusions

Elizabeth Packard, Myra Bradwell, and Mary Lincoln were not members of the same women’s club. They did not commit their life’s work to the same cause. Yet each of them

¹⁰² Schreiner Jr., *The Trials of Mrs. Lincoln*, 212-14. Robert Lincoln incorrectly associated Myra Bradwell with spiritualism and called her a “high priestess” of the denomination. He later admitted in writing he was wrong on that account but never accepted her assistance to his mother as legitimate; Emerson, *Mary Lincoln’s Insanity Case*, 187.

¹⁰³ Baker, *Mary Todd Lincoln*, 336.

impacted or was impacted by the work and the circumstances of the other. Through Packard's ordeal with her husband, she created a life for herself advocating legislative reform changes in state insanity laws. Myra Bradwell's experiences with the Illinois Bar Association led her to challenge all state laws banning women from professions in front of the U.S. Supreme Court. Unsuccessful, she turned instead to advocacy for women through state legislative reforms, aiding Packard in her triumph in Illinois. Lincoln, though she was tried under Packard's law, was still left unprotected by a patriarchal system which judged her based on criteria she could not meet. Through her own belief in self and encouragement from Bradwell, Lincoln followed Packard and Bradwell's lead. Using the press, letters, and government contacts, she found a way to regain her freedom and her estate.

Through the relentlessness of Elizabeth Packard, Illinois law regarding insanity commitments was enhanced to provide not only a trial for the accused, but penalties for ignoring the edict. But for many families, a public trial was not ideal. Mental illness still carried a social stigma. Some people continued to view those inflicted as personally responsible for their condition, especially in regards to morality. Even with a trial, a woman was still likely to be found insane as they were still believed to be weak and therefore likely to succumb to contemporary pressures. With monomania and moral insanity still used to diagnose patients, the line between sane and insane was thin. A public trial for current patients whose condition had been hidden, made it difficult for families to be vague about the whereabouts of a relative in an asylum because now, their name was recorded in the public notices and on trial dockets.¹⁰⁴

¹⁰⁴ Sapinsley, *The Private War of Mrs. Packard*, 146-48; Public Laws of the State of Illinois passed by the Twenty-Fifth General Assembly Convened January 7, 1867 "Protection of Personal Liberty. An Act for the protection of personal liberty" Approved March 5, 1867; Carlisle, *Elizabeth Packard*, 65, 74; testimony given during the Joint Legislative Committee

However, for Packard and those who supported her crusade, bringing mental illness into the open was necessary to protect those who were least able to protect themselves. Packard said “God only knows how many innocent wives and mothers my case represents, who have thus lost their liberty for life, by this arbitrary power unchecked as it is by no law on the statute book of Illinois.” Regardless of the expense to the state or the inconvenience to some families, taking the legislature to task and harnessing the power of the courts to protect, was her life’s goal. When the Illinois bill was signed by Governor Oglesby, there were approximately 350 patients in the Jacksonville asylum and according to the provisions of the bill, all of those patients should have an insanity hearing within sixty days. Seventy five of the patients refused the trial and many did not have the mental capacity to understand what was being offered. In the end, the state insisted all patients comply and the initial panel of jurors did send several patients home.¹⁰⁵

Throughout her ordeal, Packard remained true to the idea of marriage. When audience members or friends would suggest she divorce Theophilus, she refused. Inspired by the ideas of abolition, Packard compared a married woman’s legal position to that of a slave, declaring both systems to be immoral. She knew not all married women were abused but she saw that anyone could be abused. The best protection against this abuse was legislating reforms and Packard saw herself as part of the greater women’s movement working toward this end. Packard did feel punished, abandoned, and sad about her experiences and the way her life had gone. For all her life, she believed her husband knew she was sane but had placed his doctrine of Calvinism above all else, sacrificing his wife and his family to save it. Though she spent her life promoting

Investigation of the Jacksonville Hospital, 1867, as found at the Illinois State Archives, Springfield, Illinois.

¹⁰⁵ Ibid.; Packard, *Marital Power Exemplified in Mrs. Packard’s Trial*, quotation found on page 14.

legislative change in favor of married women's rights and the rights of the insane, Packard never felt fulfilled or satisfied in this calling. "It is our government; the man government of America, who have placed me in my deplorable condition; for I am just where their own laws place me, and render all other married women liable to be placed in the same position. It is the "Common Law" ... which makes an nonentity of a married woman."¹⁰⁶

In 1874, Packard decided to lobby in Congress instead of continuing her state by state campaign. Joining forces with Belva Ann Lockwood they wrote a national bill to require post office boxes be placed in asylums. While Packard was a patient in Jacksonville, her letters to her children and family and friends were confiscated. In fact, at one point in her three years away, McFarland denied her the use of pen and paper. Nationally speaking, it was common to censor or confiscate patient mail, as had been the case for Mary Lincoln as well. Packard believed the free movement of mail would grant patients and families a safeguard for humane treatment. Such a law would have greatly aided Lincoln. The bill was lost in committee and never made it to the floor for a vote. However, states and territories did pass similar legislation. Possible press over the proposed legislation could have influenced both Robert Lincoln and Dr. Patterson's choice to stop blockading Mary Lincoln's endeavors to secure her freedom using the mail as well. Over the next fifteen years, Packard traveled to twenty-five more states where she campaigned for mail rights and treatment and intake changes, as well as insanity trials by jury.¹⁰⁷

¹⁰⁶ Sapinsley, *The Private War of Mrs. Packard*, 92, 125-29; Packard, *Marital Power Exemplified in Mrs. Packard's Trial*, quotation found on page 111.

¹⁰⁷ Sapinsley, *The Private War of Mrs. Packard*, 195-99; Carlisle, *Elizabeth Packard*, 178; Ellen Dwyer, *Homes for the Mad*, 185-212; testimony from the Joint Legislative Committee Investigation of the Jacksonville Hospital.

Yet all things do end and so did jury trials for the insane. After much concern over the public nature of the trials and the hardship they created for families and patients, the Illinois legislature amended Packard's Personal Liberty Law to strike mandatory public trials from the commitment requirements. In the March 3, 1879 edition of *The Chicago Legal News*, an editorial spoke out against the recent legislative push to end jury trials for insanity cases. The article said that women in particular needed the protection that Packard's law provided. In 1893, the Illinois Legislature completely overhauled the state's insanity laws, providing specific definitions for what kind of patient should be housed in an insane asylum and further amending how those patients should be incarcerated against their will. The new law provided for a commission of two people including one doctor to take the place of a jury although a trial with six jurors, kept on a separate county docket was still acceptable. The state also required a treating physician be included in any court filing to have a patient declared insane. One of the most significant changes in the new law was the required notice of hearing given to potential commitment patients thereby ensuring no one else was caught by surprise as Lincoln had on the day of her hearing.¹⁰⁸

Through all of the publicity Mary Lincoln's trial garnered, and much of it inaccurate, her trial and subsequent legal battles were evidence of the harmful effects of such a private event being conducted in such a public manner. Whether Lincoln would have agreed that public

¹⁰⁸ Public Laws of the State of Illinois passed by the Thirty-Eighth General Assembly Convened January 4, 1893. "An Act to revise the law in relation to the commitment and detention of lunatics, and to provide for the appointment and removal of conservators, and to repeal certain acts therein named." Approved June 21, 1893. This overhaul kept intact most of the provisions from Packard's law except for the mandatory jury trials. The new law also explicitly protected the rights of all mental patients to communicate with friends and family via the mail and did not reinstate any special provisions based on gender or marital status. This new law was in no way a loss for Elizabeth Packard, simply an evolution of insanity laws within Illinois.

insanity trials were destructive, her experiences did aid in ending the proceedings. Elizabeth Packard was a proponent for married women and their rights. She was inspired to protect others and worked to that end. Yet through that advocacy, Mary Lincoln was taken on a very public journey which required a different kind of advocacy to right. It is as if Lincoln found all the loopholes in the Personal Protection Law. Regardless of the work all of these women accomplished, nineteenth-century women were simply vulnerable to the common law.¹⁰⁹

Because of new letters and evidence, historians are better understanding the close relationship between the Lincoln and Bradwell families. Within the last thirty years, some of Myra Bradwell's personal correspondence was found in the possession of James Gordon of Grand Rapids, Michigan after being hidden away in an attic trunk for over 100 years, these included letters to and from Mary Lincoln. Five years ago, even more personal papers were discovered in another attic in New York. In 1927, Myra Helmer Pritchard gathered the letters Mary Lincoln had sent to Myra Bradwell, Myra Pritchard's grandmother, and began work on the first biography of Mary Lincoln. She did this in accordance with her mother's wishes, Bessie Bradwell Helmer, third editor of the *Chicago Legal News*. Pritchard planned to publish her manuscript in nine installments for *Liberty* magazine and then publish it all together as a book. Along with the thirty letters from Mary Lincoln to Myra Bradwell and six to James Bradwell, Pritchard also inherited Bessie Helmer's recollection of the events. The women thought the record should be put straight, in regards to Mary Lincoln's mental state; that the public should know the truth, that Lincoln was sane all along. After she completed her manuscript, Pritchard

¹⁰⁹ Sapinsley, *The Private War of Mrs. Packard*, 195-99; Carlisle, *Elizabeth Packard*, 178; *Chicago Legal News* March 3, 1879; Ellen Dwyer, *Homes for the Mad*, 185-212; testimony from the Joint Legislative Committee Investigation of the Jacksonville Hospital.

visited Mary Harlan Lincoln, Robert Lincoln's widow, as a courtesy. Lincoln was at first supportive of Pritchard's book but upon second thought, did not want it published in order to protect Robert's legacy of privacy. Despite Pritchard's contract with *Liberty* and her desire to follow her mother's wishes, legal precedent said letters belonged to the sender not the recipient. Pritchard sold the letters and her manuscript to the Lincolns for \$22,500 to avoid a lawsuit. Against the contract, Pritchard kept a copy. When Pritchard died, her daughter Margreta Pritchard inherited her mother's papers including a copy of the manuscript and letters with a note to destroy them upon Myra Pritchard's death. Margreta burned the entire file. However, the Lincoln's attorney, Mr. Towers, kept the letters and the manuscript copy purchased by Mary Harlan Lincoln. They were found in the Towers estate in storage and finally published in 2011.¹¹⁰

While working within the boundaries of the nineteenth-century woman, Packard, Bradwell, and Lincoln all played a role in legislative changes for women. Whether in a direct attempt to end the doctrine of coverture, like Packard and Bradwell, or by simply choosing self-advocacy through dire circumstances, like Lincoln, these three women played an historical, though understudied role for women's rights. Their lives and work on behalf of themselves, and nameless women, impacted each other, even when they did not know it. Packard changed the law to protect all married women who would come after her. Bradwell fought her own battle to a profession and used her contacts and legal knowledge to aid Packard. She empowered

¹¹⁰ Pritchard, *The Dark Days of Abraham Lincoln's Widow*; Friedman, *America's First Woman Lawyer*; Emerson, *The Madness of Mary Lincoln*; Neely Jr., *The Insanity File*, 58-61. Neely's research predates the discovery of Myra Bradwell's letters and papers in Mr. Gordon's attic as well as Myra Pritchard's manuscript. While the description of Mary Lincoln's trial is undisputed, the historic understanding of the Bradwells' role in her release has been altered slightly by the newer research.

countless women by her successes in legislative reforms as well as *The Chicago Legal News*. By her friendship she encouraged Mary Lincoln to advocate for her own freedom, and Lincoln was commissioned to continue the fight on her own behalf. All three women lived lives of notoriety, leaving papers and accounts for historical study. Their friends, family, newspaper articles, and personal letters paint a picture of multifaceted, complex, brilliant women who willingly or not, left their mark on future generations. Though they all died before the doctrine of coverture was fully overturned, their lives were examples of how women accomplished great strides toward its end before women's suffrage, investing in each other, exacting change one law, one state at a time. They are the shoulders on which we stand and go forward.

CHAPTER 5

CONCLUSIONS

Assigned the role of Republican Mother, middle-class, married women wielded their influence in the home. Through the early reform movements, such as those aimed at vice laws, women extended the boundary of home to include their communities and whole societies. Women began to publicly demand equal rights through their work with abolition organizations, applying abolition philosophies to the legal condition of women. Dissatisfied with the common-law doctrine of coverture that continued to quietly appear in legislation and court decisions, women used the legislative process itself to halt the doctrine in its tracks. By writing, circulating, and presenting petitions to state legislatures, women secured legal rights of their own that were already guaranteed to their husbands and male counterparts.

By working within the popular social structures of womanhood and femininity, women pushed their sphere of influence beyond their homes to include their communities and beyond their families to include the nation. Laws allowing women to hold legislative office or even vote for those running were gradually added at the local level, but were not universal. However, women reformers still developed methods of using the process of legislation to stop the doctrine of coverture from further infiltration into U.S. laws. Results were slowly won, state by state, one right at a time, as legislators limited the scope of new legislation. Reformers were careful not to ask for too much too quickly, but instead focused on incremental improvements to legal equality. As Packard learned throughout her legislative crusades, state legislatures were more likely to pass a new bill with clear, defined scope. She was most successful when her bills asked for changes for women under specific conditions and not on the condition of womanhood universal.

But through this continual effort in front of state legislatures, women advocated for legal equality and their rights to own themselves.¹¹¹

Elizabeth Packard, Myra Bradwell, and Mary Lincoln worked on various state and national stages as they advocated legal changes and equality for themselves. As Packard discovered, the nineteenth-century Illinois state legislature was a particularly reform-minded organization. The Illinois legislature was among the early states to pass a married women's property law and they embraced the emerging changes in the care and treatment of the mentally ill. As state and community run insane asylums became the modern treatment option for madness, Illinois passed legislation outlining a state system for treating its patients and running a state facility.

Although the Illinois legislature progressively adopted new changes in the field of mental health, they continued to let the doctrine of coverture creep into the laws. The initial insanity legislation contained an entire separate section governing married women, allowing a married woman to be put away in the asylum based on the word of her husband alone. There were no legal safeguards given to married women against duplicitous husbands, and no equal standing in the law to oppose it. As Bradwell discovered after passing the bar exam, the state of Illinois was also slow to embrace women in the professions until confronted with the injustice at their doorstep. But these were just the sort of circumstance that could best be righted through legislative reform.¹¹²

¹¹¹ See: Basch, *In the Eyes of the Law*; Geddes, "The Gains from Self-Ownership and the Expansion of Women's Rights;" Ryan, "The Power of Women's Networks."

¹¹² Public Laws of the State of Illinois Passed by the Sixteenth General Assembly at the Second Session, Commencing October 22, 1849 "An Act to amend the act establishing the Illinois State Hospital for the Insane" Approved February 15, 1851.

Based on her first hand experiences inside the Jacksonville asylum, Elizabeth Packard fearlessly campaigned to change the insanity laws of Illinois. With the help of her accomplished friend, Myra Bradwell, the women were successful. However, Mary Lincoln unwittingly served as the litmus test which found all the ways the new law could let down a woman who was tried under it. Forced to endure a public trial and months in a private insane asylum, Lincoln's trials ultimately provided proof that even newer legislation was necessary. But the work these three women did on their own behalf, for each other, and for the women who followed in their path, made a lasting impact on the perceptions of womanhood.

None of these women were the type to sit on the sidelines or be victimized by their circumstances. Instead they were inspired to act. Packard, Bradwell, and Lincoln all were involved in legislative reforms of the Illinois insanity laws. Bradwell continued to use the process of legislative reform in her further campaign for women's legal equality. Throughout their appeals, these women publicly shared their experiences, their lives, and their frustrations at where the law had let them down. They lived according to the social dictates of the time and also beyond them, being both feminine ladies and early feminists. Their work in the field of legislative reform, their advocacy for self and for women, and their public campaigns for equality, left lasting impacts throughout the country.¹¹³

Reform movements to curtail coverture and reforms in mental health landed in front of state legislatures at the same time. Reforms to end coverture and create a more legally equal reality for women as well as reforms in the treatment of insanity converged on the state house

¹¹³ See: Sapinsley, *The Private War of Mrs. Packard*; Carlisle, *Elizabeth Packard*; Friedman, *America's First Woman Lawyer*; Emerson, *Mary Lincoln's Insanity Case*; Neely Jr., *The Insanity File*; Schreiner Jr., *The Trials of Mrs. Lincoln*.

together, making legislative reform the ideal vehicle for change in both areas. Initially, legislatures continued to codify the common-law doctrine of coverture as did Illinois. Though the state was quick to establish a state insane asylum with a superintendent and a board of trustees with legislatively spelled out duties, they also included within its initial laws a special section covering married women. While men or those beyond the reach of a guardian were guaranteed that medical proof of their condition was necessary to commit them to the asylum, married women were left vulnerable. Like other laws relying on coverture, women had no security, no shield of protection, against unwarranted commitments into the asylum. Women were susceptible to two kinds of injustice, injustice at the hands of coverture and injustice at the hands of the new insanity legislation. By the mid-nineteenth century, this injustice was made clear to at least one woman whose experiences under the insanity law rewrote her life.¹¹⁴

Elizabeth Packard used her experiences in the Jacksonville insane asylum to inspire her life outside of it. Packard insisted she had the right to study and learn outside of what her husband taught. She believed that all people, regardless of gender, had a right to her or his own opinion. She refused to see her insistence in her own mind, her own abilities, as immoral. She refused, even after the attendants at the asylum were tasked with “breaking” her, to admit any wrong-doing in standing by her own beliefs over the wishes of her husband. For this, she was imprisoned, first by the state and second by her husband, until finally, Packard was justified in court. She knew first hand that other women were being shuttered away from their children and families by a husband’s insistence in totalitarian rule because she had seen these women within

¹¹⁴ Public Laws of the State of Illinois Passed by the Sixteenth General Assembly at the Second Session, Commencing October 22, 1849 “An Act to amend the act establishing the Illinois State Hospital for the Insane” Approved February 15, 1851. See also: Sapinsley, *The Private War of Mrs. Packard*.

the walls of the Jacksonville asylum. So after Packard was reunited with her family, she crusaded not only to save other women from loopholes in the insanity laws, but to end the doctrine of coverture's hold on the laws. Throughout the course of her lifetime, Packard campaigned for legislative changes in thirty-four states, including Illinois. Throughout the process, she joined other like-minded reformers, systematically building a process to present new laws to state legislatures. While her efforts at a national level were not successful, the publicity she brought to the issues of insanity treatments affected laws at the state level throughout the country.¹¹⁵

Myra Bradwell's national campaign to allow women to enter the professions was also unsuccessful. When the U.S. Supreme Court denied her claim that under the Fourteenth Amendment, that she had a right to bar admission in the state of Illinois, Bradwell took the news in stride. She continued to work in the area of legislative reform, aiding in the passage of bills protecting women against the doctrine of coverture in regards to their children, wages, and property. She further impacted women's rights through the legislature by writing and lobbying for the passage of bills allowing women more civic opportunities, such as the right to serve as a notary public. Though Bradwell refused to champion any legislation which would change her professional circumstances, Illinois did change the law and strike down the gender requirement for bar admission. Bradwell was not only a presence in new legislation and further reforms, but she used her platform as a publisher and editor of the *Chicago Legal News* to grandstand for her causes propelling women's rights forward. Though not a lawyer, she was certainly an advocate for her most famous "client" and friend, Mary Lincoln. Bradwell's aid to Lincoln, while

¹¹⁵ For further reading see: Carlisle, *Elizabeth Packard*; Sapinsley, *The Private War of Mrs. Packard*.

controversial, provided enough room and leverage to allow Lincoln to fight for her freedom and property.¹¹⁶

Convicted of insanity under Packard's law, Mary Lincoln endured a public and humiliating trial criticizing her mental state. Her every move, every purchase, was printed in newspapers across the country. Her betrayal was made all the more unendurable because it was brought about by her only surviving child. Although letters from Lincoln years after her trials are filled with a sense of quiet and love for others, she was scarred by her experiences under the insanity laws and her time at Bellevue Place. Imprisoned by her son and by the judgement of others who attempted to force Lincoln into conformity, Lincoln fought back. Using legislative reform methods, such as letter writing, and shaping the stories about herself in the press, Lincoln was not victimized by her circumstances for long. She rose to the challenge, as she always had, and fought for her freedom. By forcing Robert's hand when she seized command of her own story in the press, Lincoln secured her release from the sanitarium. Through a court petition written in her own hand, Lincoln demanded her property be reinstated, and this time, she was victorious. Once restored to reason, Lincoln regained control of her property and affairs. Upon reinstatement of her estate, Lincoln chose to live abroad, separated from her son, and distanced herself from the embarrassing trials. Through these acts, she won control and ownership of herself.¹¹⁷

By looking specifically at the work of Packard, Bradwell, and Lincoln in the area of the Illinois insanity laws, historians can begin to craft a larger picture of women's involvement in

¹¹⁶ See: Friedman, *America's First Woman Lawyer*.

¹¹⁷ Also see: Emerson, *Mary Lincoln's Insanity Case*; Neely Jr., *The Insanity File*; Schreiner Jr., *The Trials of Mrs. Lincoln*.

securing more legal equality for themselves. The suffrage organizations, like the women featured here, used the press to garner public support and then used that support to apply pressure to the legislatures to change the laws. Before the Nineteenth Amendment, thirty-four states, including Illinois passed legislation allowing women in their states limited voting rights. This was done using the same methods as Packard and Bradwell in their quest for legislative reform. Throughout the nineteenth century, successful women's organizations used systematic, businesslike approaches to legislative changes similar to the methods Packard developed over time.¹¹⁸

Going forward, the lives of Packard and Bradwell are wide open for further study. While Bradwell's personal correspondence was mostly burned after her death, twenty-six years of *The Chicago Legal News* offer insights into her desires for further legal and women's reform. Bradwell raised a family full of strong women who became lawyers, editors, and writers. Their scholarship for women's rights as well as insights into their matriarch have not been fully plumbed. Packard's own publications embrace ideas far more reaching than my research or insanity laws in general. She, like Bradwell, was a proponent of marriage despite the doctrine of coverture, as well as gender equality in all its forms. Though a great deal has been published regarding Mary Lincoln, including most of her correspondence found to date, there is now enough evidence of her advocacy for herself to see more work done in this area. While my research focused on her self advocacy regarding her insanity trials, Lincoln also used those skills to secure for herself a war widow's pension, have it raised, and be paid a lump sum of her husband's salary. If we, as a public, could get over our fascination of whether or not Lincoln

¹¹⁸ For further reading please see: Kraditor, *The Ideas of the Woman Suffrage Movement/1890-1920*.

was insane, we could move forward to study how she thought and worked on her own behalf. We could undo one hundred and thirty years of blame foisted upon this woman and add Mary Lincoln to the list of women who advocated for women. We could look at her letters, her actions, and all the experiences in which she was embroiled in a new light, giving her credit for being an intelligent, well-educated woman with insight to spare. Beyond advocacy, Lincoln had deep friendships and strong beliefs that are far more interesting to study without the shadow of her mental health clouding all other opinions.

While researching the ties between laws, insanity, and women, I thought back to the book *Alice's Adventures in Wonderland* by Lewis Carroll. Author Kristin Kalsem used Alice as an example of a strong woman too far outside the norm to fit into a courtroom, in her book *In Contempt: Nineteenth-Century Women, Law, and Literature*. Kalsem discusses how women in the nineteenth century used literature as a way to explore the legal condition of women and educate other women for action. She cites examples of strong women in literature, including both Portia from Shakespeare's *The Merchant of Venice* as well as Carroll's Alice. Though I understand Carroll wrote the *Alice* books for children, there have been several books and articles published regarding Carroll which assign political, feminist, and social commentary into the subtext. ("Everything's got a moral, if only you can find it.") For example, Alison Lurie argues that Carroll's books while based on nonsense, helped shape the argument of how best to educate children during the mid-nineteenth century, when the books were first published. Instead of treating children like small adults, children were allowed to experience whimsy and fantasy through this new kind of literature.¹¹⁹

¹¹⁹ Alison Lurie, *Don't Tell the Grown-ups: Subversive Children's Literature* (Boston: Little, Brown and Company, 1990); Laura E. Ciolkowski, "Visions of Life on the Border: Wonderland

Laura Ciolkowski and Lurie take opposite views of the books portrayal of women. While Lurie sees Alice as the anti-Victorian, an adventurous highly opinionated young woman far removed from the precepts of the cult of domesticity, Ciolkowski argues that the other three women characters in the Alice books are so cruel and violent, that Alice is the most Victorian of the lot. Jan B. Gordon, in her essay “The *Alice* Books and the Metaphors of Victorian Childhood,” argues that the books can be read as commentary on the advances as well as the injustices facing contemporary mental health patients and laws. Carroll created many “mad” characters throughout Wonderland and yet he did so with compassion. They are not gawked at like zoo animals, much like the early nineteenth-century asylum patients in England. Instead, Carroll elevated them above animal characteristics and instilled in his characters a sense of humanity, thereby suggesting a humane treatment for insanity. Carroll lore runs deep and reaches far beyond the case study presented here. However, there are similarities within *Alice’s Adventures in Wonderland* and Packard, Bradwell, and Lincoln.¹²⁰

Throughout Alice’s adventures, Alice is surrounded by madness and accused of madness herself. She insisted “I can’t go back to yesterday, because yesterday I was a different person.”

Women, Imperial Travelers, and Bourgeois Womanhood in the Nineteenth Century” *Genders* 27. (1998); Jan B. Gordon, “The *Alice* Books and the Metaphors of Victorian Childhood,” *Aspects of Alice*. ed Robert Phillips (New York: The Vanguard Press Inc., 1971). All sources originally found from the website “Curiouser and Curiouser: The Evolution of Wonderland. This website is part of Lauren Millikan’s senior comprehensive project “The Internet as a Medium for Lewis Carroll’s *Alice’s Adventures in Wonderland* (Chapters 5, 6, and 7) and found at: <http://www.carleton.edu/departments/ENGL/Alice/index.html>, accessed on March 4, 2015. Freda Briggs, Professor of English, Butler Community College, provided background information regarding Lewis Carroll as well as the previously mentioned website. Comparing Packard, Bradwell, and Lincoln’s adventures to *Alice* was my invention but inspired by Kristin Kalsem, *In Contempt: Nineteenth-Century Women, Law, and Literature* (Columbus: The Ohio State University Press, 2012) 1-17; 17-32; Lewis Carroll, *Alice’s Adventures in Wonderland*, HTML Edition, location 763.

¹²⁰ Ibid.

But she pressed on, looking for direction and finding kindred spirits along the way. This was Elizabeth Packard's experiences as well. Indicted of madness, she was punished for her opinions, locked away for three years before she found release. Despite the label of insanity that Dr. McFarland continued to attach to her name, Packard boldly crusaded to enact changes in insanity legislation. She worked with like-minded individuals throughout the country to aid in her cause. Packard's success was due in part to her own drive born out of her own experiences, as well as her ingenuity and systematic approach to legislative reform which she learned from her own trial and error. Yet without the camaraderie of fellow reformers, Packard might have been less successful.¹²¹

When Alice attended the trial of the knave, she started to grow and was told by the mouse, "you've no right to grow here." Since she grew over a mile high, she was escorted out for breaking Rule Forty-Two. Bradwell also, was denied justice through the court system. Maybe, like Alice, Bradwell's request for women's equality in the professions was too great a change all at once. Instead, Bradwell pursued legislative reform as a means to gain more legal equality for women and used her journalistic platform to continue those reforms as well as to empower others to seek their own kind of justice.¹²²

Bradwell encouraged Mary Lincoln in those dark days after her husband's assassination. Though Lincoln worked on her own behalf, Bradwell helped give her the space necessary. After she was released from Bellevue Place and ultimately regained her power over property and self, Lincoln's letters to Bradwell are full of anger at her situation, the humiliation she suffered, and directed toward her son, the instigator of her troubles. But as time continued, Lincoln's letters

¹²¹ Lewis Carroll, *Alice's Adventures in Wonderland*, location 512-529.

¹²² *Ibid.*, location 987.

were again filled with love for her friends and longing for her family. Lincoln, like Alice, “told her sister, as well as she could remember them, all these strange Adventures of hers.” Lincoln remembered her children, her husband, her time in the White House at the center of politics, and her dear friends. I hope she also remembered her strength and the positive work she did on behalf of herself and other unconventional women in the area of insanity reform and legal rights for women.¹²³

“And you can’t help that,” said the cat. “We’re all mad here.”¹²⁴

¹²³ Ibid., location 1104.

¹²⁴ Ibid., location 512.

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