

Women Trailblazers

The Changing Role of Women in American Legal History.



Professor JoEllen Lind presents the history of Myra Bradwell at the November 12 Seegers Lecture.

by Professor JoEllen Lind

Many of those who have attended this year's Seegers Lectures have been surprised to find that so many women became lawyers in the nineteenth century. Because the large influx of female students into law schools only began to occur in the early 1970s, it is often assumed that women did not make inroads into the profession until recently. While before the modern era the number of women attorneys has been extremely small, women's efforts to obtain legal training and to be admitted to practice go all the way back to the female emancipation movement that blossomed in the period after the Civil War and eventually led to women's gaining the right to vote by passage of the Nineteenth Amendment in 1920.

In the Jacksonian period prior to the Civil War, major social changes occurred that historians believe were catalysts to women's emerging desire to change their situation. During this time, there were simultaneous demands made on the American polity for more democratization of the government and more moral perfection in daily life as a counter to the increasing mercantilism of the age. It was in this period that the large reform movements of the nineteenth century had their birth—abolition, temperance, religious revivalism, early organized labor and the woman suffrage movement. Historians believe that as women like Antoinette Dakin Leach, Myra Bradwell and others were drawn up in the reform fervor of the age, especially abolition, they came to see the limitations of their own existence, to apply emerging doctrines of human rights to their own situation, and to embark on self-conscious reformism in their own interest.

The legal condition of women like Bradwell in the years before the war between the states was grim. Elizabeth Cady Stanton often compared it to slavery. This condition was largely a result of the tremendous influence

of Blackstone's common law doctrine of *femme covert*, or coverture, which had been introduced to American law by *his Commentaries* and became sedimented there. According to its tenets, a married woman was to merge her legal existence with that of her husband. As a result, she was unable to own her own property, even her wages or personal effects, to inherit from her husband on his death, to enter into contracts without his consent, to sue or be sued, to obtain a divorce or to have a right of custody over her children. Moreover, American law explicitly recognized the privilege of husbands to beat their wives to subdue them. Finally, women had no political means by which to change these restrictions, for they were not entitled to vote or otherwise have a voice in government.

In addition to the notion that a woman should have no independent existence apart from her husband, it was the dominant view that her activities should be confined to the private domestic sphere. As a result, women were not to seek paid employment outside of the family nor to enter the public forum of politics to speak and agitate for reform. It was these customs and attitudes that women's rights activists like Elizabeth Cady Stanton, Lucretia Mott and Susan B. Anthony had begun to challenge in 1848 when they issued their historic Declaration of Sentiments at the first women's rights convention. They were greatly assisted by the emergence of a female education movement that was also instrumental in providing women who were to become professionals with the basic access to education that they needed.

In the early decades of the 1800s, a general push for wider access to education had taken place. This was the time when public schools began to be widely established, the idea of land grant colleges started to take hold and literacy levels among men increased. Unfortunately, women were often excluded from this process on the theory that being primarily suited for home and family life, they did not need the skills a good education could provide to those destined to enter the marketplace. Although women *had* made some progress toward receiving rudimentary training in the years after the Revolution, they had little opportunity to obtain a more sophisticated, higher form of learning of the sort provided by a college education. This was the case because in the America of the 1830s there was not one college or university that would admit women for matriculation. Nonetheless, in the early decades of the nineteenth century, the female seminary movement gained ground and a number of institutions were created devoted to giving women training in the feminine arts, but also including some advanced courses of study. While not comparable to a university experience, female seminaries and finishing schools gave many middle class women access to better education than they had ever had before and many of the women who were eventually to push to become lawyers in the period after the Civil War were beneficiaries of this phenomenon.

With the social upheaval of the Civil War came the first real opportunity for women to escape customary limitations on their freedom. With its advent, women's activities outside the home became not only

respectable, but patriotic. Women were needed to write to soldiers in the field, to form hospital and sanitary units, to act as nurses, to make and send bandages and other supplies to the front, and to work in traditional male occupations while men served away from home. Like countless others, the women who were to become America's first female lawyers were caught up in these activities. Having tasted the freedom of involvement in public life, they were not content to quietly return to the domestic sphere of the family. As the war wound down, many turned their attention to the general issue of female emancipation, and numbers of exceptional ones among them sought professional licenses as a means to promote their cause. Not surprisingly, the practice of law particularly appealed to them.

During this period and in all jurisdictions, courts made the initial decision on the applications of women to the bar. Whereas some were willing to contemplate their entry into the profession, others were not ready to challenge their own and the public's belief that it was improper social behavior for females to appear in public and advocate in a courtroom. Thus, in many states, women's first attempts to gain entry to the profession were frustrated by the general societal attitude that women were not suited to the competitive world of law practice and ought to stay home in the private sphere of the family. This was an especial problem for the first wave of female lawyers like Myra Bradwell, whose legal challenge to Illinois' refusal to grant her a license went all the way to the United States Supreme Court, where it was rejected on grounds that the ability to pursue a profession was not a privilege and immunity of federal citizenship. But by the 1890s when Antoinette Dakin Leach sought entry to the practice from the Indiana Supreme Court, things had changed significantly. Her claim was validated and she became one of the most prominent women and lawyers of her era. By the turn of the century, women were finding access to quality higher education and a small but significant number of them went on to obtain law training in some of the most prestigious law schools in the country. Many of them became activists in the social movement for women's rights that resulted in the passage of the Nineteenth Amendment giving females the right to vote in 1920.

Nowadays, we are used to seeing female lawyers in every aspect of the practice, but we often overlook the contribution of the earliest women lawyers to the profession in general and to the opportunities women now enjoy as lawyers. This year's Seegers Lectures have gone a long way toward remedying this situation and provide a fascinating glimpse into the lives of attorneys during the last century.