Paramount Destiny:
The Gender Consequence of Constitutionalizing Public Health

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Ratified in 1868, the Fourteenth Amendment granted citizenship to "all persons born or naturalized in the United States," including recently freed slaves. The Amendment also precluded states from denying to any person "life, liberty or property, without due process of law," or to "deny to any person within its jurisdiction the equal protection of the laws."[1] However, within the initial rulings of the U.S. Supreme Court on the Amendment, that broad language was narrowly interpreted. Instead of expanding individual citizens' rights, the initial cases only protected individual rights guaranteed under a newly designated federal citizenship, and protected the states' rights to wield their police powers through industry regulation. The Court's first case, *Slaughterhouse Cases* (1873)[2] left intact new state legislation intended to clean up the New Orleans water supply. For those involved with sanitation reform, this early decision was a win. But for reformers working to earn legal equality for women, it was a loss as the second decision on the Amendment, *Bradwell v. State of Illinois* (1873)[3], denied the rights of women to enter into the professions. Thus through the initial Fourteenth Amendment decisions, public health and sanitation were protected over legal parity for women.

Justice Samuel F. Miller penned the first decision on the newly ratified Fourteenth Amendment in *Slaughterhouse Cases*. Miller's vision for the Fourteenth Amendment was influenced by his time spent as a country doctor, and his frustration at the lack of health care improvements and sanitation efforts in the South. Justice Miller used his early decisions on the Fourteenth Amendment, combined with his knowledge of medicine, to create a constitutionalized pocket of protection for state-enacted public health and sanitation initiatives authorized under state police powers. This decision in *Slaughterhouse* had immediate repercussions against Myra Bradwell and a woman's right to enter into the professions. The Court's legal reasoning from *Slaughterhouse,* was simultaneously used in *Bradwell* where the Court determined that the Fourteenth Amendment did not extend its protection of individual rights to state citizenship. With good intentions to protect citizens' health, Miller created a Constitutional environment hostile to individual rights, further upholding the common-law doctrine of coverture and a secondary class structure of gender.[4]

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[1] U.S. Const. amend. XIV, § 1.

[2] *Slaughterhouse Cases*, 83 U.S. 36 (1873).

[3] *Bradwell v. State of Illinois*, 83 U.S. 130 (1873).

[4] *Slaughterhouse Cases*, 83 U.S. 36 (1873); *Bradwell v. State of Illinois*, 83 U.S. 130 (1873).

The United States did not have one singular national law which provided legal equality to the genders or which ended coverture[5] for married women. Instead, throughout the nineteenth century, women won legal parity through the state legislatures and occasionally, in state and federal courts. Early acts protecting women's property and wages were passed by state legislatures beginning in 1839, giving married women limited rights to their own property. Later legislation protected a woman's wages and guaranteed her equal guardianship of her children. By 1873, two-thirds of the states had passed such laws. However, women remained barred from all-male universities and professional schools. For several years after the end of the Civil War, those who wished to study the law could read law with another attorney instead of attending a professional program at a university, so law school was not a strict requirement. However, state bar associations could limit bar admission based on the gender of the applicant.[6]

At this same time, Americans ready to move past the Civil War, turned their attention to building strong cities and healthy citizens. State legislatures empowered public health boards to enact sanitation laws protecting the public from disease outbreaks. States, through the police powers granted in the U.S. Constitution, passed public health acts or codes, and began cleaning up their environments. While improving health and sanitation conditions was a priority for most cities, the southern states were also tasked with rebuilding local constitutions and legislative bodies, and meeting changing federal conditions for statehood under Reconstruction. Forced to ratify the federal Reconstruction Amendments, many southerners harbored negative feelings toward the new laws and those who passed them. Thus, the public health movement in the South was not a straightforward endeavor. The exercise of creating a more sanitary environment within southern cities got tangled up with politics, white supremacy ideology, corruption, and hatred of the North, landing *Slaughterhouse* on the steps of the Supreme Court. Justice Miller, as a resident of both southern and northern states was uniquely qualified to rule on such a case.[7]

Prior to his time in the U.S. Supreme Court, Justice Samuel F. Miller was a medical school graduate who had previously practiced medicine in rural Kentucky. As a student, Miller had researched and written on the topic of cholera, and in 1833, Miller helplessly watched cholera strike all along the Cumberland River waterway killing 450 of Lexington, Kentucky's 6000 residents at a rate of fifty deaths daily. After graduation, Miller served the rural community of

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[5] Coverture is best defined by Sir William Blackstone, in 1765. Blackstone wrote that "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 incorporated and consolidated into that of the husband: under whose wing, protection, and *cover*, she performs every thing," *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, September 14, 2009.

[6] 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.

[7] John Duffy, *The Sanitarians: A History of American Public Health,* (Urbana: University of Illinois Press, 1990), 79-92.

Barbourville, Kentucky, until 1847. Health boards and doctors throughout the country used quarantines of ships and port cities in an attempt to quell the spread of cholera, but it did not stop cholera from moving inland. The treatments of calomel and bleeding did nothing to alleviate the symptoms of cholera's victims. Doctors, biologists, chemists, and scientists, continued to work on a treatment and further their understanding of the disease but by the second cholera outbreak in 1848, the medical and scientific community were no closer to extinguishing the fears of the population.[8]

As Dr. Miller became increasingly disenchanted with the practice of medicine, he turned to reading law and he was admitted to the Kentucky state bar in 1847. Ultimately, Miller rejected the slave-holding philosophy of the southern states. At the age of thirty-five, with his wife and two children, Miller left Kentucky for Keokuk, Iowa, a northern state with no slave ownership. Once there, Miller emancipated the slaves he had inherited from his father and opened up a law practice. In 1862, President Lincoln nominated Samuel Miller to the U.S. Supreme Court, filling a vacancy left by John Campbell who abandoned his position in solidarity with southern secession. In April 1873, Justice Miller composed the decision in *Slaughterhouse*, defining the Fourteenth Amendment, and directly addressing the government regulation of sanitation in Louisiana.[9]

Louisiana is located in a subtropical climate and the city of New Orleans sits below sea level, creating a drainage issue for the entire area. Because of its climate and the frequency of disease outbreaks like yellow fever and cholera, New Orleans was passed over as a major port, missing out on economic growth possibilities. Public health boards came and went, all of them too political to make much progress in improving the health conditions of New Orleans. For those who could afford it, they left the city in the summer to avoid disease, further impeding New Orleans' ability to become a larger commercial center. In 1851, Dr. J.C. Simonds traveled to a public health conference in Boston to prove New Orleans was just as cosmopolitan as any city in the East. Instead, the statistics of disease outbreaks and lack of sanitation gathered showed New Orleans was unhealthy in comparison, years behind improvements made in other parts of the United States. In May 1862 during the Civil War, General Benjamin Butler was stationed in New Orleans and began a public health cleanup and sanitation enforcement in order to protect his troops from disease. When Butler left the city in December he said he had proven the city

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[8] Charles Noble Gregory, "Samuel Freeman Miller: Associate Justice of the Supreme Court of the United States," *The Yale Law Journal,* Vol. 17, No. 6 (April, 1908), 422-42, 428; Lunsford P. Yandell, M.D. "An Account of Spasmodic Cholera as it Appeared in the City of Lexington in June 1833" accessed from: http://collections.nlm.nih.gov/pdf/nlm:nlmuid-101204866-bk, March 20, 2014; Michael A. Ross, "Hill-Country Doctor: The Early Life and Career of Supreme Court Justice Samuel F. Miller in Kentucky, 1816-1849," *The Filson Club History Quarterly,* Vol. 71, No. 4, October 1997, 447; Charles Rosenberg, *The Cholera Years: The United States in 1832, 1849, and 1866,* (Chicago: University of Chicago Press, 2009), 101-51.

[9] Ross, "Hill Country Doctor,"446; Gregory, "Samuel Freeman Miller;" 424-8; ---"Samuel F. Miller, 1862-1890," *The Supreme Court Historical Society: The History of the Court,* Accessed March 20, 2014.

could be kept clean and healthy. But it did not stay that way. As the city reverted back to civilian control, the mayor of New Orleans asked the citizens to keep up with the new sanitation arrangements. But the regulations were so enmeshed with northern policies, the proud southern citizens rejected them. Within two weeks, no one was following the mayor's request.[10]

Slaughterhouses in New Orleans were found throughout the city, mixed in with homes, schools, hospitals, and other businesses. The waste from these slaughterhouses was dumped in the streets and directly into the Mississippi River, the water source for the city. In 1866, cholera returned to the city twice, once in March and then throughout the summer months, sparking a new debate on public health and slaughterhouses. The first public health ordinance to regulate the location of slaughterhouses in the U.S. was passed in Chicago but it was quickly overruled. However, the city of New York used Chicago's ordinance as a template for its own, which passed and proved successful in cleaning up the water supply. Citing New York as an example, cities such as San Francisco, Boston, Milwaukee, and Philadelphia also passed ordinances resulting in cleaner water. Following this example, concerned residents of New Orleans signed a petition for the state legislature requesting all butchering within the city limits be moved into one area. Citizens testified before the legislature as to the "entrails, liver, blood, urine, dung, and other refuse portions in an advanced state of decomposition" that were thrown into the river. In March 1868, the state legislature passed a bill called "An Act to Protect the Health of the City of New Orleans." This act required the butchers of the city of New Orleans to slaughter their animals across the Mississippi River from the city instead of their personal shops.[11]

Despite some New Orleans residents seeking legislative assistance in sanitation efforts, many residents of the city resented and resisted any plan which made their city look northern. These people also had a strong dislike for their new bi-racial Reconstruction state government. The slaughterhouse bill was passed through the legislature at the same time as a bill integrating the schools, and white-owned newspapers suggested all white citizens should fight the passage of any legislation coming from the current government. The new slaughterhouse legislation required all animal slaughtering to be conducted outside of the city limits of New Orleans at a facility called The Crescent City Livestock Slaughterhouse (CCLS). The CCLS charged a fee to all the butchers who used its facility and subjected them to sanitation inspections. But because this was the only facility available for slaughtering livestock, the facility

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[10] Ronald M. Labbé, and Jonathan Lurie, *The Slaughterhouse Cases: Regulation, Reconstruction, and the Fourteenth Amendment,* (Lawrence: University Press of Kansas, 2003), 20-26; 30-1; 35-7; 53; Ross, "Justice Miller's Reconstruction," 658.; 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, 485.

[11] Labbé, *The Slaughterhouse Cases,* 60; 44-6, 75, 6-7; Louisiana Legislature. Act No. 118. March 8, 1869. "An Act. To Protect the Health of the City of New Orleans, to Locate the Stock Landings and Slaughter Houses, and to Incorporate 'The Crescent City Live Stock Landing and Slaughter House Company'" as found in Labbé, *The Slaughterhouse Cases,* 253-7; Ross, "Justice Miller's Reconstruction," 655-6.

became an unregulated monopoly, able to charge whatever price they wanted. This new legislation also opened up the profession of butcher to black citizens who had previously been kept out of the trade because they could not afford the costs associated with opening a butchering business.[12]

Butchers in New Orleans were involved in a smelly, dirty business, which had conspired for years to keep prices in the city high. The Gascon butchers had held a near-monopoly on the trade in New Orleans for years and resented the change of circumstance created by the new legislation. They did not want to close their own shops and pay for butchering rights at another facility and they did not want to see new butchers, in particular black butchers, enter the trade and affect their ability to control prices. Their plight, through legislative reform, became intertwined with other white citizens who opposed Reconstruction and the new state government. The Gascon butchers sued the state of Louisiana, asserting their rights to practice their profession had been taken away and they were forced to participate in an unregulated monopoly. They lost 3-1. After this defeat, the butchers hired John Campbell who took their case to the U.S. Supreme Court.[13]

Campbell was a southern sympathizer who had a strong dislike of the Reconstruction Amendments and saw this case as a chance to destroy them. Campbell asked the Court to limit the power of the state legislature and limit the power of the Reconstruction Amendments by multiplying their application beyond freedmen's rights to include everyone, even white butchers. The Fourteenth Amendment was added to the U.S. Constitution as a protection for freedmen. But by arguing for its expansion, Campbell could insure those freedmen were not protected. He asked the Court to find Louisiana in violation of the Fourteenth Amendment's clauses against due process, privileges and immunities, and equal protection by their slaughterhouse act. Campbell argued that the butchers, by this legislation, were placed in a position of involuntary servitude. In opposition, the state of Louisiana's attorney Matthew Carpenter, argued the state had a right under the state's police power, to pass legislation regulating the health of the city. Because of the long history of sanitation efforts in New Orleans, this act was easily defended as an honest use of the state's police powers.[14]

While the New Orleans butchers were arguing that the Fourteenth Amendment protected their rights to practice their profession, Myra Bradwell was doing the same. Bradwell was born Myra Colby on February 12, 1831, in Manchester, Vermont. She moved with her family to Illinois and in 1862, she married James Bradwell. In order to help her husband with his law practice, Bradwell passed the Illinois bar exam on August 2, 1869 and acquired the documentation

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[12] Labbé, *The Slaughterhouse Cases,* 60; 44-6, 75, 6-7; Lecture titled "The Supreme Court, the *Slaughter-House Cases,* and the Retreat from Reconstruction" given by Michael Ross, accessed from the Osher Lifelong Learning Institute: rce.csuchico.edu/osher, March 10, 2015.

[13] Ross, "Justice Miller's Reconstruction," 656; Labbé, *The Slaughterhouse Cases,* 131.

[14] 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; Parmet, "From *Slaughter-House* to Lochner," 476-505; Labbé, *The Slaughterhouse Cases,* 133, 184; Ross, "Justice Miller's Reconstruction," 665-7.

necessary to complete her bar application. However the Illinois bar denied her admission request, because of the "disability imposed by your marital condition."[15]

Many courts, regardless of the legislative work done to end coverture, continued to fall back on the common-law doctrine, ruling married women were legal non-persons. When Bradwell reapplied to the bar, she submitted a short brief citing her *feme sole* status and included a list of precedent showcasing the prior acts of women on behalf of others.[16] Again, Bradwell's petition was denied, but this time, based on her classification as a woman regardless of marital status. Bradwell made a final petition to the Illinois Supreme Court, arguing that she was denied her privileges and immunities assured to all citizens under the 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 also for all women who wanted admission into the professions.[17]

Prior to her Supreme Court case, Bradwell had been involved with legislative reform for married women's legal equality. She wrote and lobbied for two married women's property laws passed in the state of Illinois in 1861 and 1867, as well as bills allowing women access to their own wages, and guardianship of their children. Early in Bradwell's advocacy career, she met Elizabeth Packard who was crusading to change insanity commitment laws throughout the country. Bradwell aided Elizabeth Packard's lobbying efforts and saw the successful passage of the "Bill for the Protection of Personal Liberty" in 1867. These legislative acts limited coverture's reach within Illinois state laws only. Unless the U.S. Congress or the Supreme Court ruled in

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[15] For an overview of Myra Bradwell, please see Jane M. Friedman, *America's First Woman Lawyer: The Biography of Myra Bradwell, (*Buffalo: Prometheus Books, 1993), 18-41. 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, did not admit women students until the twentieth century. Prior to 1885, the bar exam was administered orally. Mossman, *The First Women Lawyers,* 10-39; Quotation from the Court Record of Myra Bradwell.

[16] 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; Barbara Young Welke, *Law and the Borders of Belonging in the Long Nineteenth Century United States.* (New York: Cambridge University Press, 2010), 46-7. Bradwell had previously filed for *feme sole* status giving her legal rights to negotiate her own contracts to aid her in running *The Chicago Legal News*, a weekly law journal, as well as her printing press. The court had granted her request with no hesitation. This kind of sociology as evidence used by Bradwell 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.

[17] Court records; Welke, *Law and the Borders of Belonging.* 98-9, 105; Mary Jane Mossman *The First Women Lawyers: A Comparative Study of Gender, Law, and the Legal Professions* (Oxford and Portland: Hart Publishing, 2006), 41.

favor of women's rights, each step towards gender legal equality had to be fought one right at a time and one state at a time.[18]

When Bradwell brought her case to the Supreme Court, she wanted to create a national precedent for women in the professions. She hired Matthew Carpenter to argue her case in front of the Court. Unlike his argument for the State of Louisiana, Carpenter argued Bradwell had an individual right to practice a profession which should be uninhibited by state control. Both *Slaughterhouse Cases* and *Bradwell* looked at the same question of law: the rights of an individual within a state in contrast with the rights of the state government to regulate. Miller's opinion in *Slaughterhouse* is studied for its historical significance as the first ruling on the Fourteenth Amendment, its narrow interpretation, and its dual system of citizenship, none of which are included in later Fourteenth Amendment decisions. The *Bradwell* case is often relegated to a footnote, used as an example of the *Slaughterhouse* application and its division of federal and state citizenship. With *Slaughterhouse,* Miller protected states' rights to regulate while trading women's rights to the professions in the process.[19]

The Court read the *Slaughterhouse* decision first, on April 14, 1873 where, in a 5-4 decision, they found for the state of Louisiana, against Campbell and the butchers. Rejecting Campbell's broad application argument, Miller outlined a narrow interpretation of the Fourteenth Amendment. Instead of extending the Fourteenth Amendment's application to individual rights, Miller ruled there were two kinds of citizenship within the U.S., a federal citizenship and a separate citizenship at the state level. While the Fourteenth Amendment had an interest in protecting federal citizenship rights, the rights of a profession were granted by the state.[20]

Miller understood not only the legal arguments of the case, testing the limits of the Reconstruction amendments, but also the desire of the Louisiana State Legislature to protect its citizens and improve its sanitation through the use of police powers. Regardless of his carefully worded opinion, he changed the course of the Fourteenth Amendment. Miller outlined his decision based on the police powers of the state allowing for public health legislation. Quoting Chancellor Kent, Miller wrote, "unwholesome trades, slaughter-houses, operations offensive to the senses...may all be interdicted by law in the midst of dense masses of population, on the general and rational principle, that every person ought so to use his property as not to injure his neighbors; and that private interests must be made subservient to the general interests of the

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[18] Friedman, *America's First Woman Lawyer,* 78-111, 199; Barbara Sapinsley, *The Private War of Mrs. Packard.* (New York: Paragon House, 1991); 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) 231-2; Mossman, *The First Women Lawyers,* 30.

[19] Clare Cushman, *Supreme Court Decisions and Women's Rights: Milestones to Equality.* (Washington D.C.: CQ Press, 2001); 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) 228-242; Gilliam, "A Professional Pioneer," 105-133.

[20] *Chicago Legal News,* April 19, 1873; J.A. Lupton, "Myra Bradwell and the Profession of Law: Case Documents" *Journal of Supreme Court History*, vol. 36, Issue 3, 236-263; *Slaughterhouse Cases*, 83 U.S. 36 (1873); *Bradwell v. State of Illinois*, 83 U.S. 130 (1873).

community." 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 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…(and) the regulation of the place and manner of conducting the slaughtering of animals, and the business of butchering within a city, and the inspection of the animals to be killed for meat, and of the meat afterwards, are among the most necessary and frequent exercises of this power.[21]

The decision in *Slaughterhouse*, including the concurring opinions as well as the dissent, was so long, that there was not time that day to read the second decision made by the Court. Instead, the Court read its decision in *Bradwell* on the following day. In a vote of 8 to 1, the U.S. Supreme Court sided with the State of Illinois against Bradwell, ruling that bar admission was a state's issue and one in which the federal government had no interest. The Court continued its discussion of the *Bradwell* case with Justices Bradley, Swayne, and Field's concurring opinion which included the infamous "paramount destiny" discussion. Justice Bradley wrote "... a woman had no legal existence separate from her husband...this cardinal principle still exist in full force in most states...The paramount destiny and mission of woman are to fulfill the noble and benign offices of wife and mother. This is the law of the Creator." While not binding precedent, this concurring opinion, which relied on the common-law doctrine of coverture, was quoted throughout newspapers reporting on the decision and was also used in the Oregon Supreme Court's reasoning to continue to deny women bar admission. Nationally, the doctrine of coverture was kept intact. Because of the decision in *Bradwell*, the Fourteenth Amendment did not apply privileges and immunities to the pursuit of a profession, and it did not extend equal protection for women. While the Supreme Court had ruled to protect the health of the citizens of its cities, that same 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* constitutionalized public health. By interpreting the police powers, including public health initiatives, as exclusively the rights of the state, those rights became protected against individual and federal interference. Public health found itself within the U.S. Constitution as individual rights were sacrificed for the greater good.[22]

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[21] Ross, "Hill-Country Doctor;" Michael A. Ross, "Justice Miller's Reconstruction: The Slaughter-House Cases, Health Codes, and Civil Rights in New Orleans, 1861-1873," *The Journal of Southern History,* Vol. 64, No. 4 (Nov., 1998), 649-76; ---, "Samuel F. Miller;" *The Slaughterhouse Cases,* 83 U.S. 65 (1873), 62-3;Hall, *American Legal History,* 270-4*;* Parmet, "From *Slaughter-House* to Lochner;" Nowak, *Constitutional Law: Fifth Edition,* 171-2*;* Labbé, *The Slaughterhouse Cases,* 211.

[22] Quotations from the opinions issued in *Bradwell v. Illinois* 83 U.S. 16 Wall. (1873); Mossman, *The First Women Lawyers,* 47; Welke, *Law and the Borders of Belonging,* 43.

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. Both of those acts were written and lobbied by Myra Bradwell. 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 14th 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.[23]

On June 7, 1873, Bradwell, in the *Chicago Legal News,* printed 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."[24]

In an effort to support the progress made in public health in Louisiana, Justice Miller shaped the course of state legislation throughout the country. His past experiences with cholera and sanitation conditions surrounding slaughterhouses fashioned Miller's interpretation of the Fourteenth Amendment. He focused the decision on public health and the states police powers. This ruling, while improving sanitation efforts in New Orleans, kept women from the professions and left the door wide open for Jim Crow laws and discrimination against both freedmen and women. Even though Justice Miller employed specific language as to how the Fourteenth Amendment should be applied to freedmen, the opinion instead, was turned against them, upholding the states' rights to limit the liberties of individual citizens in the name of police powers.[25]

While public health and its advancement were responsible for strides made in the quality of life for all people in industrialized communities, it was not without drawbacks. Protecting the health of a population often meant passing legislation that was unpopular. The courts were left to weigh not only the constitutionality of those legislative acts but also the greater good through public health that this legislation accomplished. Because of Justice Miller's extensive background with cholera and the slaughterhouse industry, he was in a unique position to protect a public

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[23] *Chicago Legal News,* April 19, 1873.

[24] Cushman, *Supreme Court Decisions and Women's Rights,* 9.

[25] Ross, "Justice Miller's Reconstruction;" Ross, "Hill-Country Doctor;" Gregory, "Samuel Freeman Miller;" Tom Longden, "Samuel Freeman Miller."

health agenda, while he supported the close of Reconstruction and new beginnings in the South. But there were disastrous side effects of Miller's immediate ruling in *Slaughterhouse*, as shown in *Bradwell*. Miller hoped his opinion would further public health in the South and protect New Orleans from any future outbreaks of cholera. But his narrow interpretation of the Fourteenth Amendment created a friendly environment for discrimination, unequal pay, violence, and nearly 100 more years of oppression for women.[26]

[26] Ibid.