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Kate Chase, the "Sphere of Women's Work," and Her Influence Upon Her Father's Dissent In Bradwell v. Illinois

Richard L. Aynes
Professor of Law
John F. Seiberling Chair of Constitutional Law,
Director of the Constitutional Law Center

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Kate Chase, the "Sphere of Women's Work," and Her Influence upon Her Father's Dissent in *Bradwell v. Illinois*

RICHARD L. AYNES

> I have always favored the enlargement of the sphere of women's work and the payment of just compensation for it.
>
> Salmon P. Chase, 1872

Kate Chase was said to be the most beautiful and the most intelligent woman of her age. Her father, Salmon P. Chase, is remembered today as Lincoln's secretary of the treasury and as a chief judge of the U. S. Supreme Court. In his own time, Chase was considered one of the nation's political giants; Abraham Lincoln described him as "one and a half times bigger than any other man" he had ever known.[1] Carl Schurz's summary still echoes today: "More than anyone else he looked the great man. Tall, broad-shouldered, and proudly erect, . . . he was a picture of intelligence, strength, courage and dignity. He looked as you would wish a statesman to look."[2]

Throughout his political career, Chase sought ways to better the position of African Americans. A man of deep convictions, he publicly and consistently advocated voting rights for African Americans as early as 1845. While his political affiliations often shifted, to the end of his life he was consistent in his advocacy of universal male suffrage for African Americans. While his

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1. Albert Bushnell Hart, *Salmon P. Chase* (New York: Mifflin., 1899), 435.

2. Alice Hunt Sokoloff, *Kate Chase for the Defense* (New York: Dodd, Mead, 1971), 15; quoting Carl Schurz, *The Autobiography of Carl Schurz* (New York: Scribners, 1961), 118, 154.

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lieutenants were negotiating for his election by the legislature to the U.S. Senate, Chase insisted that part of the "deal" would be the repeal of Ohio's Black Laws, which discriminated against African Americans.[3]

Chase devoted much of his legal talent to creating a nationwide legal strategy by which slavery would be divorced from the national government and be solely dependent upon local government. His policy was summed up in his antislavery slogan: "Freedom National, Slavery Local." As Harold Hyman noted, "for a tumultuous one-third of a century [Chase] was the antislavery crusaders' premier legal strategist."[4]

In spite of Chase's egalitarian sentiments on race that our stereotypes suggest would be a hindrance to his political career, he was twice elected governor of the State of Ohio, twice elected to the U.S. Senate, and served as secretary of the treasury under President Lincoln. As Les Benedict has observed, Chase was a serious and important contender for the nomination of president of the United States in every election from 1856 through 1872.[5] As chief justice of the United States, Chase is chiefly remembered for his nationalistic opinion in *Texas v. White* and his dissent in the *Legal Tender Cases*.[6] His judicial reputation no doubt suffered from Felix Frankfurter's conclusion that his commerce clause opinions were of no value to the modern era and the negative assessment of Chase's chief justiceship by Frankfurter student and protégé Charles Fairman.[7] Modern biographers have offered a significantly more balanced assessment of Chase.

3. Sokoloff, *Kate Chase for the Defense,* 26 ("True democracy makes no inquiry about the color of the skin . . . the exclusion of the colored people from the election franchise [is] incompatible with true democratic principles."). On Mary Towne, see *The Salmon P. Chase Papers,* vol. 1: *Journals, 1829–1872,* ed. John Niven (Kent, Ohio: Kent State Univ. Press, 1993), 162n34. See Richard L. Aynes, "Constricting the Law of Freedom: Justice Miller and the Fourteenth Amendment, and the Slaughter-House Cases," *Chicago-Kent Law Review* 70 (1994): 627, 677n315; John Niven, *Salmon P. Chase* (New York: Oxford Univ. Press, 1995), 119, 122.

4. Harold M. Hyman, *The Reconstruction Justice of Salmon P. Chase* (Lawrence, Kans.: Univ. Press of Kansas, 1997), 168. See also Michael Les Benedict, "Salmon P. Chase and Constitutional Politics," *Law and Social Inquiry* 22 (1997): 459 ("Chase was the leading expositor of the Republican argument about the relationship between the federal government and slavery."). At the time, he was known as the attorney general of runaway slaves and Chase was counsel in a variety of runaway slave cases, including *Jones v. Van Zandt,* 13 F. Cas. 1047 (C.C.D. Ohio 1843) (No. 7502); 46 U.S. 215 (1847); 13 F. Cas. 1054, 4 McLean 599 (C.C.D. Ohio 1849) (No. 7503); 13 F. Cas. 1056, 4 McLean 604 (C.C.D. Ohio 1849) (No. 7504); 13 F. Cas. 1056, 5 McLean 214 (C.C.D. Ohio 1851) (No. 7505); *Birney v. Ohio,* 8 Ohio 230 (1837) (involving Matilda); *State v. Hoppess,* 2 West L.J. 279; *Driskill v. Parrish,* 7 F. Cas. 1100 (C.C.D. Ohio 1845) (No. 4089); 7 F. Cas. 1093 (C.C.D. Ohio 1847) (No. 4087); 7 F. Cas. 1095 (C.C.D. Ohio 1849) (No. 4088); 7 F. Cas. 1068 (C.C.D. Ohio 1851) (No. 4075); Niven, *Salmon P. Chase Papers,* 1:162n34.

5. Michael Les Benedict, "Salmon P. Chase as Jurist and Politician: Comment on G. Edward White, Reconstructing Chase's Jurisprudence," *Northern Kentucky Law Review* 21(1993): 133, 135. Chase was the first Republican governor of a major state.

6. 74 U.S. (7 Wall.) 700 (1869) and 69 U.S. (12 Wall.) 457 (1870).

7. Felix Frankfurter, *The Commerce Clause under Marshall, Taney, and White* (Chapel Hill: Univ. of North Carolina Press, 1937): 74; Charles Fairman, *Reunion and Reconstruction,* part 1 (New York: Macmillan, 1971), and part 2 (New York: Macmillan, 1987).

Chase participated in some of the most important constitutional cases of his times, including authoring majority opinions in seven of the court's major Reconstruction cases. This article explores the influence that Kate Chase may have had on her father's dissent without opinion in the Fourteenth Amendment case of *Bradwell v. Illinois.*

CONTEXT: THE SLAUGHTER-HOUSE CASES

Chief Justice Chase came to the Supreme Court in 1864 without any judicial experience. Lincoln's selection of him for chief justice has puzzled many. After all, Chase had been Lincoln's political rival in 1860 and in 1864. Because of his political ambition, Chase had been a politically faithless member of the cabinet as secretary of the treasury. Further, Lincoln was not without choices. Two of his own appointees, Justice Samuel Miller and Justice Noah Swayne, were aspirants for the chief justiceship. But Lincoln was concerned with results, not politics. In spite of Chase's lack of judicial experience, his view on a variety of issues concerning slavery, nationalism, states' rights, and use of the president's war powers were already a matter of public record. Lincoln's reflection on how to pick a chief justice led to his well-known conclusion: "We cannot ask a man what he will do, and if we should, and he should answer us, we should despise him for it. Therefore we must take a man whose opinions are known." Lincoln told New York congressman Augustus Frank that Chase was "sound" on the "general issues of the war" that might come before the court.[8]

As Professor Hyman has suggested, "more than any other, Chase . . . had long wrestled with both theoretical and practical aspects of race-driven labor law and with legal and constitutional theories of state-based federalism. Indeed, Justice William Strong, Chase's contemporary, believed Chase showed "great power" in constitutional law cases that developed from "legislation during or following the war." Thus, Lincoln chose Chase over Miller and Swayne for such an occasion as the *Slaughter-House Cases.*[9]

At the time of Chase's dissent in *Bradwell,* sitting members of the court included James Buchanan's appointee, Nathan Clifford, the court's senior justice. Clifford's democratic principles and his relationship with Chase were congenial, but Chase's antislavery and nationalistic views must have

8. Thomas Graham Belden and Marva Robins Belden, *So Fell the Angels: The Story of Chase, Lincoln's Ambitious Chief Justice, His Bold Designing Daughter, and the Husband Who Could Finance Her Plans* (Boston: Little, Brown, 1956), 139, quoting Herbert Agar, *The Price of Union* (Boston: Houghton, Mifflin, 1950), 324–25; Niven, *Salmon P. Chase,* 374.

9. Hyman, *Reconstruction Justice of Salmon P. Chase,* 9, 24; Fairman, *Reunion and Reconstruction,* part 1:1476–77; Aynes, "Constricting the Law of Freedom," 687.

been an anathema to the "dough-face" Clifford.[10] Also on the court was Justice Samuel Miller, a strong-willed appointee of Abraham Lincoln who viewed himself as the embodiment of reasonableness and proper judicial decision making. Though Miller at one time had great respect for Chase's ability, by the time of the *Legal Tender Cases* he considered him a "domineering Chief."[11] Also on the court was Abraham Lincoln's former campaign manager, the conservative David Davis, and California Unionist and War Democrat Stephen Field. Justice Noah Swayne was perhaps the only "true" Lincoln Republican on the court. Justice Ward Hunt had served on the New York Court of Appeals prior to his appointment to the Supreme Court. Finally, the court included Justice Joseph Bradley and Justice William Strong, both Republicans of Democratic antecedents whom President Grant had appointed in hopes of sustaining the government's use of paper currency.

The story of the *Slaughter-House Cases* is an often told one. Ultimately, a five-member majority composed of Justice Miller, Justice Clifford, Justice Hunt, Justice Davis, and Justice Strong refused to recognize a right under the privileges and immunities clause of the Fourteenth Amendment for butchers to pursue their trade in New Orleans without going through a state-created monopoly slaughter house. A four-member minority composed of Justice Field, Chief Justice Chase, Justice Bradley, and Justice Swayne dissented.[12] One way of analyzing this decision is to note that all of the dissenters had explicitly endorsed and embraced the Fourteenth Amendment (Justice Field, Chief Justice Chase), had the type of political background to make it likely they endorsed the Fourteenth Amendment (Justice Swayne), or demonstrated familiarity with the antislavery theories that underlay the amendment (Justice Bradley). Alternatively, key members of the majority had either explicitly rejected it (Justice Miller), or had a political background making it likely that they would (Justices Clifford and Davis). While there is no evidence indicating that majority Justices Hunt and Strong opposed the adoption of the Fourteenth Amendment, there is also no evidence they supported it.[13] When the *Slaughter-House* decision was announced on April 14, 1873, Chase was seriously ill. Rather than writing a separate opinion, he joined that of Justice Field. Little is known about

10. For an account of Clifford's background and his opposition to the Fourteenth Amendment, see Aynes, "Constricting the Law of Freedom," 664–67.

11. For a summary of Miller's background, see Aynes, "Constricting the Law of Freedom," 655–65. Miller had only a rudimentary apprenticeship education in law, which may explain his seeming contempt for the use of legal authorities and his reliance on what he considered "justice." G. Edward White, "Reconstructing the Constitutional Jurisprudence of Salmon P. Chase," *Northern Kentucky Law Review* 21 (1993): 41 (quoting Miller as saying of Chase that there was "no one against whom I would attempt to measure myself with more diffidence").

12. See Aynes, "Constricting the Law of Freedom" and articles cited, 628n7.

13. Ibid., 655–78.

Chase's independent views of the case, except that his must have overlapped much of what Justice Field said in his dissent.

BRADWELL V. ILLINOIS

The *Slaughter-House Cases* set the stage for the Supreme Court's decision the next day in *Bradwell v. Illinois.* Myra Bradwell edited a nationwide law and business publication, the *Chicago Legal News,* and had studied law in her husband's office. She was an extraordinary woman whose newspaper columns reported cases, who wrote editorials advocating legal reform, and who often wrote legislation which was adopted into law. On August 2, 1869, at the age of thirty-eight, Myra Bradwell passed the Illinois Bar examination with "high honors."[14] However, she was denied admission to the bar by the Supreme Court of Illinois because of her gender, even though there was no provision in the applicable statute limiting legal practice to men. She sought review in the U.S. Supreme Court upon a theory which paralleled that of the butchers in the *Slaughter-House Cases:* because she was a citizen of the United States, the privileges and immunities clause protected her legal right to pursue the lawful profession of the law. Her counsel in the Supreme Court, U.S. senator Matthew Carpenter, was a noted member of the Supreme Court Bar who had also represented one of the parties in the *Slaughter-House Cases*. The court denied Bradwell's claim in an eight-to-one decision. For the *Slaughter-House* majority, speaking through Justice Miller, this was a simple matter. If the privileges and immunities clause did not protect the rights of male butchers to pursue their occupation without interference by a monopoly, then they could be logically consistent in concluding it did not protect Bradwell's right to pursue her occupation.[15]

Three of the *Slaughter-House* dissenters, Justices Field, Bradley, and Swayne, apparently believed they had to explain how they could vote to uphold the right of the male butchers but deny Bradwell's claim under the privileges and immunities clause. Justices Swayne and Bradley both wrote concurring opinions. But it is Justice Bradley's concurrence that has attracted historical attention. Bradley justified the difference in his vote on the gender of the plaintiff; in lines that are now infamous and apparently provoked laughter in the courtroom from the spectators at the time, he wrote: "The

14. Jane M. Friedman, *America's First Woman Lawyer: The Biography of Myra Bradwell* (Buffalo, N.Y.: Prometheus, 1993), 18.

15. There is, of course, a way to distinguish those opinions. The majority might have argued that the butchers were not precluded from pursuing their occupation, they were only regulated through the monopoly. Hence, the majority could have logically voted to deny the claim of the butchers in the *Slaughter-House Cases* and still support the claim of Mrs. Bradwell. So, it may be the difference of gender, the difference of different occupations, or some other reason rather than consistency that motivated the majority's opinion.

natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life. . . . The domestic sphere . . . properly belongs to [women]. . . . The paramount destiny and mission of women are to fulfill the noble and benign offices of wife and mother. This is the law of the creator."[16] The lone vote dissenting from the denial of Bradwell's claim came from the dying chief justice.

Chase had an active interest in the Bradwell case and is said to have "hoped" to be able to write a dissenting opinion.[17] But during Chase's last days his strength had "manifestly diminished." Indeed, on the last day the Supreme Court was in session that term, Chase did something he had never done before: he turned the role of presiding justice over to Senior Justice Clifford. Though Chase sat on the bench, he rested his head upon his hands the entire day: "What thoughts oppressed him, or what shadow of the disaster so fast approaching drew its pall over his spirit, no man may know."[18]

THE SIGNIFICANCE OF CHASE'S DISSENT

It is not unusual for a justice, particularly the chief justice, to "trim" his sails in order to maintain the authority of the court or to facilitate inner court relationships. Chief Justice Marshall is known to have sacrificed his own individual judgments to make opinions of the court appear unanimous.[19] Whether influenced by Marshall's example or simply the duties of the office, Chase apparently followed the same pattern. In his diary he indicated that "except in very *important* cases dissent [is] inexpedient." These recorded views appear consistent with Chase's actions on the bench. Of the 237 opinions he authored, there are only 11 dissents. These occur in only critical cases

16. *Bradwell v. Illinois,* 83 U.S. (16 Wall.) 130, 141 (1873). There were contrary examples. Iowa had admitted a woman to the bar in 1869, Michigan in 1871, and Maine in 1872. Karen Berger Morello, *The Invisible Bar: The Woman Lawyers in America 1638 to Present* (Boston: Beacon Press, 1986), 11–12, 37. After the *Bradwell* case, North Carolina admitted its first woman to the bar in 1878. Michael Kent Curtis, "Albion Tourgee: Remembering Plessy's Lawyer on the 100th Anniversary of *Plessy v. Ferguson,*" *Constitutional Commentary* 13 (1996): 187, 192. In the subsequent opinion of Chief Justice Ryan, the Wisconsin Supreme Court reached a similar conclusion: "The law of nature destines and qualifies the female sex for the bearing and nurture of the children of our race and for the custody of the homes of the world and their maintenance in love and honor. And all life-long callings of women, inconsistent with these radical and sacred duties of their sex, as is the profession of law, are departures from the order of nature; and, when voluntary, treason against it." *In re Goodell,* 39 Wis. 232, 245 (1875).

17. David F. Hughes, "Salmon P. Chase: Chief Justice," *Vanderbilt Law Review* 18 (1965): 569, 613.

18. J. W. Schuckers, *The Life and Public Services of Salmon Portland Chase* (New York: D. Appleton, 1874), 622.

19. Meredith Kolsky, "Justice William Johnson and the History of the Supreme Court Dissent," *Georgetown Law Journal* 83 (1995): 2069, 2075.

Chase thought of great importance.[20] Thus, that Chase publicly dissented in *Bradwell* is a matter of some significance. That he dissented alone may indicate he considered *Bradwell* an especially important case. Given the state of his health, that he did not write an opinion takes nothing away from this analysis. The question for consideration is why did Chase dissent?

CHASE'S VALUES

While known among historians and legal scholars as a champion of slaves and African Americans, Chase is not necessarily thought of in connection with women's rights. By careful selection, one could make a case that Chase was a strong supporter of women's rights in the modern sense. As governor of Ohio, he had supported the reform of the property law to give married women control over their own property.[21] He was a pioneer in the employment of women in government. Prior to 1862, only seven women had been employed by the U.S. government. But under his leadership, the Treasury Department was the "first government office to hire a large number of women." By 1865, 447 women were employed by the Treasury Department in the roles of copyists, currency counters, and clerks.[22] In 1872, Chase wrote that he had "always favored the enlargement of the sphere of women's work and the payment of just compensation for it."[23] When asked why he hired large numbers of African Americans and women Chase replied: "I gave them employment to be able to provide for themselves and their families."[24]

Harold Hyman takes a familiar case decided by Chase, *In re Turner,* and calls our attention to a detail not often noticed: the name and person of the plaintiff, Elizabeth Turner, a "young person of color." In the words of Hyman, "To

20. Niven, *Salmon P. Chase Papers,* 1:517 (Chase's diary entry of Jan. 16, 1865).

21. Ibid., 192; Cathryn L. Claussen, "Gendered Merit: Women and the Merit Concept in Federal Employment, 1864–1944," *Am. J. Legal Hist.* 40 (1996): 229, 230.

22. Claussen, "Gendered Merit," 229, 230. The needs of the war for workers caused the rebellious states to adopt the same policy and employ a large number of women. Janet Kaufman, "Treasury Girls," *Civil War Times Illustrated* 25 (May 1986): 32. I am indebted to Jennifer E. Aynes Wright for calling this article to my attention; Donna M. DeBlasio, "Down from the Pedestal: Kate Chase, a Subtle Feminist" (M.A. thesis, Youngstown State Univ., 1976), 34. The terms of the employment are not clear. Citing 13 Stat. 22 (1864), Claussen indicates that women were paid less than men (230). However, Hyman writes that Chase's policy was "equal-pay-for- equal-work." See Hyman, *Reconstruction Justice of Salmon P. Chase,* 78.

23. Hyman, *Reconstruction Justice of Salmon P. Chase,* 80 (citing Chase to A. F. Boyle, Dec. 11, 1872), Chase Letterbooks, ser. 4, Washington, D.C.: Manuscripts Division, Library of Congress, 121:15.

24. Hyman, *Reconstruction Justice of Salmon P. Chase,* 78, 79. Hyman suggests that Chase's actions in hiring women and blacks hurt him politically with the conservative factions of both the Republican and Democratic Parties and male voters and that he knew his actions hurt his chances to be president.

Chase's credit, free labor was color-blind and gender-neutral."[25] Hyman suggests that Chase believed many of the "wartime degradations resulted from customs and laws that sanctioned inferior rewards from labor for women and blacks" and that he used Elizabeth Turner's case as a way to apply the "nobler standards" of the Thirteenth Amendment and the civil rights acts to correct the wrong. Indeed, Professor Hyman suggests that in Chase's vision of the future of the Union after the war there would be equal rights for all people, without respect to race or gender.[26] Chase's opinion in *In re Turner* was the first case to shield women under the war amendments and the 1866 Civil Rights Act, and his dissent in *Bradwell* was the first Fourteenth Amendment case to seek to offer protection to women.

But a searching look into Chase's life also shows values concerning women more consistent with Justice Bradley's concurring opinion. Hyman notes that while Chase employed large numbers of women as clerks in the Treasury Department, none were employed in the more important and lucrative positions as revenue agents. Further, one of Chase's key assistants indicated that Chase had "an inflexible rule . . . never to transact business with ladies."[27] An illustration of the paradoxical nature of Chase's views is found in his stand on adopting a right to vote for women. Less than a month after the January 18, 1873, *Bradwell* argument, the rights of women was the subject of Chase's thoughts. In a letter to his old antislavery ally Gerrit Smith, Chase wrote: "My opinions and feelings are in favor of Woman suffrage, but I would make haste slowly."[28]

Though votes for women were at least consistent with his motto of universal suffrage and universal amnesty, Chase nevertheless indicated that Susan B. Anthony wanted change "a little too fast." In an undated letter to Smith's daughter, Elizabeth Smith Miller, Chase wrote that he was in favor of "all things which will really improve the condition of women." Among these he included "access to, and peaceful security in, all employments for which she is qualified by strength, capacity, and integrity."[29] With respect to

25. 24 F. Cas. 337 (C.C. Md. 1867) (No. 14,247). Hyman suggests that Chase may have held some special empathy for Elizabeth Turner because he too had served an apprenticeship and/or because she was from Maryland like Matilda, one of the runaway slaves Chase had unsuccessfully represented many years before. See Hyman, *Reconstruction Justice of Salmon P. Chase,* 124, 119.

26. Hyman, *Reconstruction Justice of Salmon P. Chase,* 73, 80, 81, 163.

27. Schuckers, *Life and Public Services of Salmon Portland Chase,* 602.

28. S. P. Chase to G. Smith, Feb. 13, 1873, General Correspondence, box 27, Salmon P. Chase Papers, Library of Congress. I am grateful to James P. McClure for calling this letter to my attention and providing a typescript of it.

29. Salmon P. Chase to Elizabeth Miller, n.d., quoted in DeBlasio, "Down from the Pedestal," 88, quoting Ishbel Ross, *Proud Kate: Portrait of an Ambitious Woman* (New York: Harper, 1953), 221–22.

suffrage, Chase favored testing women's voting in a few states and indicated that he would vote to have Ohio try the experiment.

So Chase appears to provide us with a paradox: a man who opened up government employment to women but refused to conduct business with women; a man who privately supported women's right to vote but did not want to pursue it "too fast"; and a man who saw a traditional role for his own daughters and yet, put his daughter Kate in unconventional roles. Chase's ambiguous views were consistent with the ambiguous Republican Party National Platform in 1872. Acknowledging an "obligation" to loyal women of America, it promised only "respectful consideration" of their "honest demand" for "additional rights." At the same time, the Republican Party declared that it viewed women's "admission to wider fields of usefulness" with "satisfaction."[30]

While the paradox may never be resolved, I want to suggest that the key to understanding Chase's views lies with two women, Kate Chase and Myra Bradwell. Kate Chase may be the key to explaining Chase's advanced views on women, and Myra Bradwell may explain how he could consistently hold views similar to those of Justice Bradley and still vote to admit Bradwell to the bar. Chase's general views on equality could be logically applied to women as well as African Americans. It is therefore possible that his general views on equality naturally led to his views with respect to women. Yet this application was not inevitable, as is shown from the fact that many antislavery advocates did not embrace women's rights. It seems likely that Chase's relationship with his daughter Kate helped him take a further step in the application of his views that others were unable to take.

CATHERINE (KATE) CHASE

It may be particularly important to note the tragedy of Chase's life, that he survived the death of three wives and five children. He was a single parent of two daughters he raised to adulthood, Kate and her half-sister Janet (Nettie) Chase. Chase's unique relationship with his oldest daughter is revealing. Born Catherine Jane Chase in 1840, she was a treasure reminding him of earlier losses. Though her mother was Chase's second wife, Kate was named after Chase's first wife, Catherine Jane Garniss Chase. This was also the name of his first child, who died in infancy.[31]

30. Donald Bruce Johnson, comp., *National Party Platforms 1840–1956,* 2 vols. (Urbana: Univ. of Illinois Press, 1978), 1:47. I want to acknowledge my debt to Akhil Amar for calling this provision to my attention.

31. Mary Merwin Phelps, *Kate Chase, Dominant Daughter: The Life Story of a Brilliant Woman and Her Famous Father* (New York: Thomas Y. Crowell, 1935), 18, 23.

During her first few years of life Chase read the Bible to Kate and taught her to read and to recite poems. Her favorite childhood story was about her father's efforts to save the African American Matilda from being returned to slavery. As she grew, Chase played games of strategy, such as chess and backgammon, with Kate. Early in her life her father treated her "as his equal in years and understanding."[32] Sent to an all-girls' school in New York at the age of eight, she learned French, German, history, literature, grammar, Greek, and Latin. Less serious studies included piano, elocution, dancing, and horseback riding.[33] There is much to suggest that women educated in all-girls' schools, as Kate did, develop more leadership qualities than she might have in a coeducational setting.

Intelligent, witty, dedicated to her father and his career, she impressed and charmed even staid men of power like Massachusetts's stuffy Senator Charles Sumner and former U. S. attorney general Willard Wirt. In conversation and in letters, Chase and his daughter dwelt on politics. Chase often sent Kate copies of senators' speeches and made sure she read the newspapers. While his correspondence contained paternal and paternalistic admonitions on the role of a young woman in society, he also shared with her news of battle, political speculation, and his hopes for the future. Chase was said to "go over his cases with" his oldest daughter as she was growing up, and "he delighted in her understanding" of the cases. It was suggested that eventually "she had become genuinely helpful to him" in his analyses of them.[34] In his later career, Kate was his constant companion, often walking him from their home to his office; to the Senate, where she sat in the galleries; or to the Supreme Court, where she witnessed the arguments.[35] She was also his horse-riding companion.

Relationships between fathers and daughters have always had the potential for a unique closeness.[36] If Chase was devoted to his daughter, she was likewise devoted to him. "Rarely have the lives of father and daughter been so closely bound together. . . . Each played a major role in the life of the other."

32. Virginia Tatnall Peacock, *Famous American Belles of the Nineteenth Century* (Philadelphia: J. P. Lippincott, 1901), 209–11; Ross, *Proud Kate,* 10, 37. See also Belden and Belden, *So Fell the Angels,* 22.

33. Niven, *Salmon P. Chase,* 200; Peacock, *Famous American Belles of the Nineteenth Century,* 212; and Phelps, *Kate Chase,* 75; Sokoloff, *Kate Chase for the Defense,* 296n8. At the age of eight, not seven as often reported, Chase sent Kate to be educated at Miss Haines's school in New York City. Miss Haines was the sister of a onetime governor of New Jersey. When she was fourteen, Kate was enrolled in a school outside of Philadelphia. When Chase became governor of Ohio, Kate and Nettie attended the Esther Institute in Columbus.

34. Peacock, *Famous American Belles of the Nineteenth Century,* 211. See also Ross, *Proud Kate,* 10.

35. Peacock, *Famous American Belles of the Nineteenth Century,* 221.

36. See generally Nicky Marone, *How to Father a Successful Daughter* (New York: Fawcett Columbine, 1988).

Salmon P. Chase is shown with daughters Janet (Nettie) (left) and Catherine Jane (Kate). Kate acted as her father's hostess in Columbus while he was governor and in Washington after his appointment as treasury secretary. (Library of Congress)

She became "the pride and blessing" of his existence. This "solitary," "austere," and "reserved" man felt at ease with Kate, "as with no other human being."[37] When even letters to one's spouse often used a formal salutation, the normally formal, stiff, and awkward Chase addressed his twenty-two-year-old daughter as "My darling Katie." Even after she was married, Kate responded in kind, signing letters as "Lovingly your child" and "Your devoted Katie."[38]

37. Sokoloff, *Kate Chase for the Defense,* 15; Phelps, *Kate Chase,* 28; Belden and Belden, *So Fell the Angels,* 16.

38. Niven, *The Salmon P. Chase Papers,* vol. 3: *Correspondence, 1858–March 1863* (Kent,

Chase's official stations as governor, senator, and secretary of the treasury involved a number of social obligations with a customary female figure as a hostess. Close as he and Kate were, the political obligations of his career caused him to call on her to play public roles that gave her responsibility in a public light at an earlier age than she might otherwise have done. In the words of John Niven, Kate's "growing maturity matched his maturing political career," and her beauty, poise, and intelligence "made her a most useful if not indispensable adjunct to Chase's career plans."[39] Thus, at the age of approximately fifteen, Kate became the female head of her father's house in the governor's mansion in Columbus, Ohio. As governor, Chase sent his oldest daughter to represent him on public occasions, such as delivering a pardon to a former Polish revolutionary. Like other strong women of that era who worked through their male relatives, Kate Chase eventually became a social and political force in her own right.

Indeed, Kate "knew intimately the strong men who formed the nucleus" of the Republican Party. She knew the party's "aims and purposes and was in possession of its secret history contained in her father's letters and journals and in her own memory of its inception and progress." By the time she left the governor's mansion, she had earned her own reputation as "an astute politician."[40] When Kate went to Washington with her secretary of the treasury father in 1861, she was his official hostess. With Secretary of State Seward's wife being ill and withdrawn from society, Kate was "the first lady of the Cabinet." Her "fame" surpassed "that of every woman of her generation in America," and she obtained a "social prestige never before enjoyed by so young a woman." Yet her role went beyond the social role allotted to women of the era. Chase valued her ability and frequently put her in positions of discussing subjects normally reserved for men. For example, after the Battle of Antietam in 1862 when he went to visit General Joseph Hooker to discuss army politics and military strategy, Chase took with him Col. James Garfield and Kate.[41] Two years after her death, an assessment of

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Ohio: Kent State Univ. Press, 1996), 226 (Salmon Chase to Kate Chase, July 13, 1862). See also Phelps, *Kate Chase,* 226, reproducing a "My darling Katie" letter from her father dated May 4, 1869; Ross, *Proud Kate,* 203, 207.

39. Niven, *Salmon P. Chase,* 202.

40. Peacock, *Famous American Belles of the Nineteenth Century,* 212, 214; Niven, *Salmon P. Chase Papers,* 3:10n4. I am thinking particularly of the role Elizabeth Bacon Custer played in orchestrating the preservation of her husband's memory (Shirley A. Leckie, *Elizabeth Bacon Custer and the Making of a Myth* [Norman: Univ. of Oklahoma Press, 1993]) and LaSalle Corbell Pickett's role in preserving the legend of her husband, Gen. George Pickett (Leslie Gordon, "*Let the People See the Old Life as It Was*": *LaSalle Corbell Pickett and the Myth of the Lost Cause* [Bloomington: Indiana Univ. Press, 2000]); Phelps, *Kate Chase,* 90.

41. Phelps, *Kate Chase,* 104. The Treasury Department was considered second only to the State Department. Peacock, *Famous American Belles of the Nineteenth Century,* 216–17; Niven, *Salmon P. Chase,* 307.

Kate's life suggested that she enjoyed "a political power which no woman before or since her day has ever possessed." By the 1950s, biographers would refer to her as "the most powerful woman in the United States."[42]

That political power came not from her unquestioned beauty but from her intelligence, political ability, and charisma. Kate Chase had the reputation of being "one of the most beautiful women" and, at the same time, "the most brilliant woman of her day." In 1901 she was characterized as having had "one of the most astute and brilliant minds with which a woman was ever gifted." Indeed, she had "a scientific knowledge of politics that no woman, and few men, have ever surpassed." When journalist Henry Villard recalled her at the turn of the twentieth century, he referred to her as not only "beautiful" but also "gifted." In addition to beauty and intelligence, she possessed "that rare quality of charisma."[43]

Kate took a vital interest in her father's aspirations to become president of the United States. Married in 1863, in a wedding that drew international attention, to the wealthy former governor and U.S. senator William Sprague of Rhode Island, she was in a position to advance her father's career.[44] Sprague, reputed to be the wealthiest man in Rhode Island, was an early war hero. As governor, he personally led Rhode Island troops to help protect Washington, D.C., and in the first Battle of Bull Run had a horse shot out from under him. Kate and William Sprague were widely considered the two most eligible single people in Washington, D.C. As official hostess, she presided over social events designed to win her father allies and promote his career. She also functioned as her father's private secretary, often managing his correspondence. There are suggestions that she was working behind the scenes with her father's other friends to help promote his presidential ambitions in 1860 and 1864.

In 1868 Chase was a leading candidate for the Republican presidential nomination until Ulysses S. Grant became a contender. Chase's national prominence, his hard money stand, and his historical affinity for principles of the Democratic Party allowed him to then become a leading candidate for the 1868 Democratic nomination. Kate went to New York to coordinate efforts to nominate her father at the Democratic National Convention. She was consistently referred to as her father's "campaign manager" at the convention. The press found her "active and visibly in charge" of the Chase

42. Peacock, *Famous American Belles of the Nineteenth Century,* 216; Belden and Belden, *So Fell the Angels,* 349.

43. Sokoloff, *Kate Chase for the Defense,* 13, 39, 133; Ross, *Proud Kate,* 289; Peacock, *Famous American Belles of the Nineteenth Century,* 210, 214; DeBlasio, "Down from the Pedestal," 52 (quoting Henry Villard, *Memoirs of Henry Villard, Journalist and Financier, 1835–1900* [Boston: Houghton, Mifflin, 1904]), 175.

44. Peacock, *Famous American Belles of the Nineteenth Century,* 216. See also Belden and Belden, *So Fell the Angels,* 349, 203.

headquarters. Never before had a woman played such a prominent role in the attempt to select a presidential candidate. Though unsuccessful, John Niven has concluded that Kate "played the hand dealt her with skill."[45]

Like Myra Bradwell, Kate Chase had crashed gender barriers of her own. During her prime in public life Kate was said to have had "a dominant influence over public men and the course of public events." At a time when women were known by their husband's name, Mrs. Sprague was widely referred to as "Kate Chase." Evidence of her crossing of gender lines may be seen in the suggestion that her "intellect" was "naturally endowed with many masculine qualities" and that her father treated her "in all respects more as if she were a son than a daughter." To at least one modern observer, Kate was a "subtle feminist."[46]

The story of Kate Chase and her father allows speculation about four ways Kate may have influenced her father's views of the case. First, whatever his devotion to the conventional roles of women, he may have seen his daughter as an extraordinary person who could defy convention. It is not too much to speculate that Chase, like many another father, may have thought that his daughter deserved the right to function up to her abilities and not be rigidly constrained by gender roles, whether in politics, business, or even law had she so desired. If so, he may have been empathetic with someone, like Myra Bradwell, who had done likewise.

Second, Kate's life may have helped him develop a political and philosophical view that, as he wrote in a private letter in 1872, led him to support "the enlargement of the sphere of women's work." One has a sense of this in Chase's letter to Kate on women's rights where he wrote about placing the government in the hands of women. He concluded: "Certainly I don't see but you [Kate] and Nettie are as qualified to take part in [public] affairs as I was at your age."[47] Third, his discussions with Kate about the law, about his

45. Niven, *Salmon P. Chase,* 431; Ross, *Proud Kate,* 202. Yet "there were boundaries even" for Kate Chase; as a woman she was not allowed to go on the floor of the convention and work among the delegates while the convention was in session. Belden and Belden, *So Fell the Angels,* 214; Niven, *Salmon P. Chase,* 431. Such was the father/daughter relationship that when Chase learned he would not be nominated, his first question was: "Does Mrs. Sprague know and how does she bear it?" (432).

46. Phelps, *Kate Chase,* 286 (quoting the *Philadelphia Record* at the time of Kate's death in 1899); Peacock, *Famous American Belles of the Nineteenth Century,* 215. See also Sokoloff, *Kate Chase for the Defense,* 42; Belden and Belden, *So Fell the Angels,* 6; Ross, *Proud Kate,* 202; DeBlasio, "Down from the Pedestal," 2. While never identified publicly with the women's suffrage movement, Kate had hosted a "parlor lecture" for suffrage advocate Julia Ward Howe (63). In an 1886 newspaper interview, Kate indicated she was sympathetic with the movement for women to vote and that she believed "they will do whatever they want to do; whenever they want to vote they will vote, and no power on earth will stop them" (Sokoloff, *Kate Chase for the Defense,* 267).

47. Ross, *Proud Kate,* 186.

cases as a lawyer and as a justice, may well have convinced him that women could successfully deal with the lawyer role.

Finally, there is the possibility that the father and daughter actually discussed the case together. Chase's letter indicating that he would dissent from the majority opinion in *Bradwell* was written from his daughter's home rather than his own. After so many long discussions about Chase's life work and ambition, it might not be too much to expect that in the discussion of his day's work the father might have discussed Bradwell's case with his daughter who counseled her father-lawyer on legal strategy, who influenced her father-governor's decisions on pardons, and who counseled him on matters of the Treasury Department.[48] Whatever the impact, human nature suggests that Chase's view of *Bradwell v. Illinois* could not help but be informed by his love for and his experience with his extraordinary daughter Kate.

MYRA BRADWELL AND THE TRUE WOMAN

In spite of his relationship with Kate, one may still be puzzled that Chase could support Myra Bradwell's case, given statements in Chase's diaries and letters which reflect stereotypical, traditional, and restrictive stereotypes of gender. He was protective, referring to Kate as "naturally delicate" and worrying that coffee or tea might "derange" her nerves. Chase sought for her marriage to "a Christian gentleman who would be to you the affectionate protector you need."[49] After receiving a letter from his daughter about difficulties with her husband, Chase responded: "Trust God, have faith in Christ, accuse no one but yourself, cherish every wifely sentiment whether now reciprocated or not. . . . Don't rebel, or let impatience be suffered in your thoughts. Make all happy around you."[50]

Similarly, in 1868 Kate had left Washington, apparently angry at her husband. Her father wrote that she had "sometimes forgotten that the happiness of a wife is most certainly secured by loving submission." On another occasion Chase wrote: "You must reflect, my darling, that there can be but one head to a family, and . . . that it is the wife's part after the husband chooses to act in any matter upon his own judgment without asking hers, to acquiesce cheerfully and affectionately."[51] Sentiments like these make one wonder how

48. Ibid.; John Niven to Richard L. Aynes, Nov. 14, 1995 (letter on file with author). Dr. Niven doubted that any such discussion took place. Phelps, *Kate Chase,* 90; Peacock, *Famous American Belles of the Nineteenth Century,* 220.

49. Sokoloff, *Kate Chase for the Defense,* 76.

50. Phelps, *Kate Chase,* 226 (quoting S. P. Chase to Kate Chase Sprague, May 4, 1869).

51. Sokoloff, *Kate Chase for the Defense,* 156 (quoting S. P. Chase to Kate Chase Sprague, Aug. 9, 1868).

Chase could have simultaneously advocated an expansion of the sphere of women's work. But Jane Friedman's work on Myra Bradwell provides a way to resolve what at first might have appeared to be an inconsistency between Chase's adherence to gender stereotypes and his dissent in *Bradwell.* Friedman, in examining Myra Bradwell's life, outlines the nineteenth-century ideal of a "true woman."[52]

The view of "True Womanhood" embodied "four cardinal virtues—piety, purity, submissiveness and domesticity." Friedman indicates that while the modern reader might suppose Myra Bradwell had repudiated the cult of true womanhood, "in fact the contrary seems to be true."[53] Indeed Bradwell herself wrote of "the sweetness of true womanhood."[54] By 1869, when she sought admission to the bar, her children were thirteen and eleven, no longer needing close daily attention from their mother. Myra Bradwell did not pursue law as an opportunity to gain her financial and social independence from her husband. To the contrary, she wanted to work with him: "I acquired the idea [of studying law] from helping my husband in his office. I was always with him, helping in whatever way I could. . . . I believed that married people should share the same toil and the same interests and be separated in no way. . . . If they worked side by side and thought side by side we would need no divorce courts."[55] In spite of her business, political, and social accomplishments, Myra Bradwell still viewed herself as fulfilling the traditional role of a nineteenth-century woman, whose main province was dealing with the family.

This image of a "true woman" who could also engage in work activities that would break gender barriers both informs our judgment about how Chase may have seen his own daughter and also about how he may have viewed Bradwell's claim. If this hypothesis is correct, then Chase could, consistently with his opinion in *Slaughter-House,* vote to uphold her claim without believing he was in any way compromising his traditional, more limiting values. Equally as important, he could view his own daughter's life, which included marriage and the birth of three children, as consistent with the "cult of true womanhood."[56] Given his illness, which resulted in not only a lack of a written opinion but also a lack of diary entries and letters during this time, we cannot reconstruct Chase's actual thinking or logic.

Professor Hyman suggests that Chase was "disappointed" that Bradley, Swayne, and Field—the other *Slaughter-House* dissenters—had concurred

52. Friedman, *America's First Woman Lawyer,* 37.

53. Sokoloff, *Kate Chase for the Defense,* 31, 76.

54. Friedman, *America's First Woman Lawyer,* 37.

55. Ibid., 38–39; Niven, *Salmon P. Chase,* 424 (quoting S. P. Chase to Kate Chase Sprague, May 10, 1868); Sokoloff, *Kate Chase for the Defense,* 156 (quoting S. P. Chase to Kate Chase Sprague, Aug. 9, 1868).

56. By 1873, when Bradwell's case was decided, Kate was thirty-three years old and the mother of two children.

in the majority decision in *Bradwell*. This was so because the majority opinion was "antithetical to Chase's understanding of Christian doctrine and America's history and constitutional law." While Chase was too ill, "in body and spirit" to write an opinion, he made it clear he broke ranks not only with the majority but also with his fellow dissenters in *Slaughter-House:* "The CHIEF JUSTICE dissented from the judgment of the court, and from all the opinions."[57]

AFTERWORD

After an initial heart attack in 1870, Chase's health had been in decline. By 1873 he had suffered from a heart attack, a stroke, chronic malaria, and diabetes. Just eighteen days after the court's opinion was issued, on May 3, 1873, he died of a stroke at the New York home of his younger daughter, Nettie. Both Kate and Nettie were at his side.[58]

Chase's daughter Kate continued in an unhappy marriage to the former Rhode Island governor and senator William Sprague until 1882, when they divorced. The court returned to her the name "Chase," by which the public had known her all along. Over the years she was an advisor on political strategy to such notables as James Garfield, Ulysses Grant, Chester A. Arthur, and John Hay. She was a behind-the-scenes strategist for Roscoe Conkling in the 1884 election. But never again was Kate to exercise the prominent role in American politics which she did while her father was alive. It was suggested that she "never recovered from the death of her father." Kate Chase, the "most brilliant woman of her day," died impoverished in 1899. She was buried in Cincinnati, Ohio, fittingly, next to her father.[59]

Myra Bradwell went on to even greater successes. Even before the Supreme Court issued its decision in *Bradwell,* she had helped convince the legislature of Illinois to pass a statute that provided: "No person shall be precluded or debarred from any occupation, profession, or employment (except military) on account of sex."[60] By 1873, with the encouragement of

57. Hyman reads much into the simple words. "In effect, Chase stipulated by his dissent in Bradwell v. Illinois that he still stood on the far broader ground of race-free and gender-free access to life's opportunities, benefits, and hazards" (*Reconstruction Justice of Salmon P. Chase,* 165).

58. Belden and Belden, *So Fell the Angels,* 273.

59. Phelps, *Kate Chase,* 213, 262, 286 (obituary from the *Washington Evening Star*); Belden and Belden, *So Fell the Angels,* 169, 275 (John Hay consulted Kate before turning down a position as the secretary to Secretary of State Seward.); Peacock, *Famous American Belles of the Nineteenth Century,* 215;

60. Friedman, *America's First Woman Lawyer,* 28. This undoubtedly means that the case before the Supreme Court was moot. But it appears that the court was unaware of the Illinois statute.

Myra Bradwell, nineteen-year-old Altan Hulett became the first woman admitted to practice in the State of Illinois. Bradwell continued to follow the progress of women across the nation in gaining admission to law school and the bar, trumpeting their triumphs in the columns of the *Chicago Legal News.* She never took advantage of that statute, indicating that by the time the Supreme Court rendered its decision, "My business had acquired such dimensions by the time the barriers to my admittance to the bar were removed that I had no time to give to law practice, and I didn't care to be admitted just for the privilege of putting 'Attorney' after my name."[61]

As soon as the *Slaughter-House* opinion was issued, Bradwell took "great pleasure" in praising Justice Miller's opinion as being "confined strictly to the points at issue" and condemned Justice Bradley for the conflict between his dissenting opinion in the *Slaughter-House Cases* and his concurring opinion in *Bradwell v. Illinois.* Bradwell served as the publisher, business manager, and editor-in-chief of the *Chicago Legal News,* which "for at least two decades was the most widely circulated legal newspaper in the nation." She served in that capacity for twenty-five years and edited 1,300 issues of the newspaper.

James Bradwell went on to become a member of the legislature, where he successfully advocated many of the reforms initiated by his wife in her newspaper columns. Their two children, Bessie and Thomas, both became lawyers. Apparently as a result of the behind-the-scenes prompting by her husband, the Supreme Court of Illinois and the Supreme Court of the United States, on their own motions, granted Myra Bradwell admission to their bars in 1890 and 1892, respectively. She died of cancer in 1894.[62]

Justice Miller lived until 1890, removed from the court only by death. His memory is preserved in a eulogistic biography by Charles Fairman and a more thoughtful one by Michael Ross.[63] Held in high regard by Felix Frankfurter, Fairman, and their associates, Miller is known today largely for his opinion on the *Slaughter-House Cases,* which, while not overruled, is regarded with virtual unanimity to have been incorrectly decided. Justice Bradley continued on the court until 1892 when he died. Though touted as one of the great justices by New Deal–era lawyers like Felix Frankfurter and his protégé Charles Fairman, by 1948 even Fairman could find no decision by Justice Bradley worthy of being included in his constitutional law casebook.

61. Ibid., 29.

62. Ibid., 30.

63. Charles Fairman, *Mr. Justice Miller and the Supreme Court 1862–1890* (Cambridge, Mass.: Harvard Univ. Press, 1939). Michael Ross, *Justice of Shattered Dreams, Samuel Freeman Miller and the Supreme Court during the Civil War Era* (Baton Rouge: Louisiana State Univ. Press, 2003).

The Supreme Court continued on its path of restricting protections and national rights in *U.S. v. Cruikshank,* declaring the 1875 Civil Rights Act unconstitutional, supporting segregation and a variety of similar decisions. It was not until almost a century had passed, in *Reed v. Reed* (1971), that the Supreme Court used the equal protection clause (rather than the privileges and immunities clause) to accomplish what Chase might well have intended with his dissent in *Bradwell* when it held unconstitutional a state statute directing that only men could be administrators of probate estates.[64] It may be that somewhere in heaven Kate Chase and Myra Bradwell both smiled knowingly at *Reed*'s adoption of their own and Salmon Chase's principles.

64. 92 U.S. 542 (1875); *The Civil Rights Cases,* 109 U.S. 3 (1883); *Plessy v. Ferguson,* 163 U.S. 537 (1896); and *Reed v. Reed,* 404 U.S. 71 (1971).