

ELIZABETH PARSONS WARE PACKARD: AN ADVOCATE FOR CULTURAL, RELIGIOUS, AND LEGAL CHANGE

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INTRODUCTION

After living a long and productive life, Elizabeth Parsons Ware Packard died at age eighty-one on July 25, 1897, just before the turn of the century.¹ Her life accomplishments did not go unnoticed. The *Chicago Tribune* ran a long obituary in which it was said, "The greatest part of her life she had been a hard worker in the cause she espoused. . . . Through the influence of her books, added to her untiring efforts, thirty-four bills have been passed by various legislatures, each benefiting the insane in some way."² The numerous bills that Elizabeth³ supported concerning the rights of the insane were known as the "Packard Laws," as they are still known today.⁴ The *Boston Transcript* noted, "It has been claimed that no woman of her day, except possibly Harriet Beecher Stowe, exercised a wider influence in the interest of humanity."⁵ Elizabeth captured the attention of the public and her

1. BARBARA SAPINSLEY, *THE PRIVATE WAR OF MRS. PACKARD* 197 (1995).

2. *Id.* at 198. Throughout this Article, I have used conventional quotation style to quote Sapinsley's words. However, throughout her book she used quotation marks without reference to any source.

3. Throughout this Article, I will refer to Elizabeth Parsons Ware Packard simply as "Elizabeth." This distinguishes her from other people that impact the narrative of her life that share either the same first or last name. Furthermore, I feel that by using Mrs. Packard's first name one gains a better sense of her voice, her self, and her vision.

4. JAMES C. MOHR, *DOCTORS AND THE LAW: MEDICAL JURISPRUDENCE IN NINETEENTH-CENTURY AMERICA* 169 (1993); Hendrik Hartog, *Mrs. Packard on Dependency*, 1 *YALE J.L. & HUMAN.* 79, 82 (1988).

5. SAPINSLEY, *supra* note 1, at 198.

crusades and story were familiar to many people. She died after spending the last forty years of her life trying to improve the lives of others.

Elizabeth Parsons Ware was born on December 28, 1816, to Reverend Samuel Ware and Lucy Parsons in Ware, Massachusetts.⁶ In 1839, Elizabeth married Congregational pastor Theophilus Packard.⁷ He was a devout man who followed the strict orthodoxy of Calvinism.⁸ After twenty-one years of marriage and six children, Theophilus committed Elizabeth to the Jacksonville Insane Asylum because she defied him by publicly expressing her liberal religious beliefs.⁹ Elizabeth spent three years in the Jacksonville Insane Asylum, and upon her release from the asylum, she returned home and Theophilus confined her to the nursery.¹⁰ Elizabeth's friends obtained a writ of habeas corpus, and a public trial regarding her sanity ensued.¹¹ The trial attracted national news coverage and resulted in the exploration and confirmation of Elizabeth's sanity.¹² After the trial, Elizabeth spent her life writing books about her experience in the Jacksonville Insane Asylum, her religious beliefs, and her legal crusades for the rights of women, children, and the insane.¹³ Despite her lack of experience in the business world, she became a successful businesswoman, promoting her books and earning enough money to purchase a home in Chicago.¹⁴ In all, Elizabeth wrote seven books and numerous pamphlets.¹⁵

6. *Id.* at 18.

7. *Id.* at 36.

8. *Id.* at 33.

9. MOHR, *supra* note 4, at 165.

10. SAPINSLEY, *supra* note 1, at 102, 107.

11. *Id.* at 2-5.

12. MOHR, *supra* note 4, at 165-66.

13. *Id.* at 166; Hartog, *supra* note 4, at 82-83.

14. SAPINSLEY, *supra* note 1, at 171.

15. See generally 1 ELIZABETH PARSONS WARE PACKARD, MODERN PERSECUTION, OR INSANE ASYLUMS UNVEILED: AS DEMONSTRATED BY THE REPORT OF THE INVESTIGATING COMMITTEE OF THE LEGISLATURE OF ILLINOIS (Hartford, published by author, 12th ed. 1891) [hereinafter PACKARD, MODERN PERSECUTION 1]; 1 ELIZABETH PARSONS WARE PACKARD, THE PRISONERS' HIDDEN LIFE, OR—OR—INSANE ASYLUMS UNVEILED: AS DEMONSTRATED BY THE REPORT OF THE INVESTIGATING COMMITTEE OF THE LEGISLATURE OF ILLINOIS, TOGETHER WITH MRS. PACKARD'S COADJUTORS' TESTIMONY (Chicago, published by author 1868) (this text is similar to PACKARD, MODERN PERSECUTION 1, *supra*, except that it has several additional chapters) [hereinafter PACKARD, PRISONERS' HIDDEN LIFE 1]; 2 ELIZABETH PARSONS WARE PACKARD, THE PRISONERS' HIDDEN LIFE, OR MRS. OLSEN'S NARRATIVE OF HER ONE YEAR'S IMPRISONMENT, AT JACKSONVILLE INSANE ASYLUM: WITH THE TESTIMONY OF MRS. MINARD, MRS. SHEDD, MRS. YATES, AND MRS. LAKE, ALL CORROBORATED BY THE INVESTIGATING COMMITTEE OF THE LEGISLATURE OF ILLINOIS (Chicago, published by author 1868); 2 ELIZABETH PARSONS WARE PACKARD, MODERN PERSECUTION OR MARRIED WOMAN'S LIABILITIES, AS DEMONSTRATED BY THE ACTION OF THE ILLINOIS LEGISLATURE (Hartford, published by author, 12th ed. 1891) [hereinafter PACKARD, MODERN PERSECUTION 2]; ELIZABETH PARSONS WARE PACKARD, MARITAL POWER EXEMPLIFIED IN MRS. PACKARD'S TRIAL, AND SELF-DEFENCE FROM THE CHARGE OF INSANITY; OR THREE YEAR'S IMPRISONMENT FOR RELIGIOUS BELIEF, BY THE ARBITRARY WILL OF A HUSBAND, WITH AN APPEAL TO THE GOVERNMENT TO SO CHANGE THE LAWS AS TO PROTECT THE RIGHTS OF MARRIED WOMEN (Jenni Parrish & Sara Robbins eds., Fred. B. Rothman & Co. 1994) (1866) [hereinafter PACKARD, MARITAL POWER EXEMPLIFIED]; ELIZABETH PARSONS WARE PACKARD, GREAT DISCLOSURE OF SPIRITUAL WICKEDNESS!! IN HIGH PLACES. WITH AN APPEAL TO THE GOVERNMENT TO PROTECT THE INALIENABLE RIGHTS OF MARRIED WOMEN (Leon Stein & Annette K. Baxter eds., Arno Press 1974) (4th ed. 1865) [hereinafter PACKARD, GREAT DISCLOSURE]; ELIZABETH PARSONS WARE PACKARD, THE MYSTIC KEY: OR, THE ASYLUM SECRET UNLOCKED (Hartford, published by author

Elizabeth was masterful at bringing about legal change. She understood that in order to do so, it was necessary to not just resort to a court case. Instead, she utilized the courts when necessary—to gain recognition that she was sane and to gain custody of her children. But she also saw the value in educating the public about her causes (insanity, married woman's property rights, and child custody rights) through her books and the benefits of lobbying legislatures to change laws. She recognized that in order to effect legal change one must fight on several fronts—in the courts, at the legislative level, and with public education. There is much to be learned from Elizabeth's life journey because she sets forth a model and paradigm in how to succeed as a legal advocate.

As important, Elizabeth's journey represents one woman's response to negotiating and creating her own self—legally, culturally, religiously, and personally. The self that Elizabeth constructed was complex. For instance, she sought to lessen the legal disabilities that married women faced, yet she opposed a woman's right to vote. Despite Theophilus's treatment toward her, she never divorced him. Elizabeth does not fall easily within the traditional theoretical approaches to a woman's self—that is, one has a hard time labeling her as a domestic, domestic-feminist, feminist, relational feminist, individualist feminist, or true woman. But this is precisely why we can learn a great deal from Elizabeth's story. She, like other women during the nineteenth century, was complicated and not monolithic. While certainly there is much merit to the theoretical approaches (domestic, domestic-feminist, feminist, relational feminist, individualist feminist, and true woman) that have been devised to analyze the lives of nineteenth century women, such constructs to some extent result in an oversimplification of how women shaped their own self.¹⁶ There is much to be gained from unearthing and grappling with the inconsistencies and intricacies of women's lives during the nineteenth century—in that we can better understand the fluidity of women's lives and how they shaped and were shaped by various forces, including law, religion, and culture.

Women existed within a diverse and continually shifting world. Some remained almost exclusively within their private landscape—that of home and children—remaining dormant voyagers. We should not discount the value of understanding their lives. Within the private landscape existed, as Carroll Smith-Rosenberg contends, a vibrant world, one in which bonds were formed and women searched to capture their selves.¹⁷ These women in

1873) [hereinafter PACKARD, MYSTIC KEY]; ELIZABETH PARSONS WARE PACKARD, THE EXPOSURE ON BOARD THE ATLANTIC & PACIFIC CAR OF EMANCIPATION FOR THE SLAVES OF OLD COLUMBIA, ENGINEERED BY THE LIGHTNING EXPRESS; OR, CHRISTIANITY & CALVINISM COMPARED. WITH AN APPEAL TO THE GOVERNMENT TO EMANCIPATE THE SLAVES OF THE MARRIAGE UNION (Chicago, published by author 1864); ELIZABETH PARSONS WARE PACKARD, THE GREAT DRAMA, OR, THE MILLENNIAL HARBINGER (Hartford, published by author 1879). Throughout this Article, I have adopted the convention of using standard quotes when citing to Elizabeth's statements. However, Elizabeth frequently used double quotes to refer to her remarks or her remarks to others.

16. See notes 667-78 *infra* and accompanying text.

17. See CARROLL SMITH-ROSENBERG, DISORDERLY CONDUCT: VISIONS OF GENDER IN VICTORIAN

many ways constructed a liminal space of empowerment. Some women attempted to restructure their private landscape in order to gain greater power—these women were hesitant voyagers. They were the women who gained confidence from the private landscape and began to express themselves. Circumstances, or perhaps self-revelation, caused some women to become daring voyagers—that is, women willing to enter the borderlands—the sites of contestation. Suddenly, the private/public dichotomy disappeared for these women as they attempted to capture their selves—in all realms, private and public. Yet, what is critical to understand is that as a voyager, a woman during her lifetime could assume multiple roles—daring in some aspects, hesitant in others, as well as dormant—depending on the subject (i.e., religion, law, cultural norms) and situation.

The key is to remember that no matter what landscape a woman occupied—private or public—she was on a voyage in some way to capture her self. Some women were simply more willing to enter the terrain of the unknown—the borderlands. Conceiving of women in this way allows us to approach women's lives with open-mindedness and to search for the value and complexity in all that they did—be it as mothers, or in other roles, as we see with Elizabeth. Elizabeth throughout her life vacillated—she was at times a dormant, hesitant, and daring voyager. She was in many ways tied to her private landscape, but in other ways willing and able to move beyond it. The voyager concept allows us to conceive of women as multidimensional beings who are continually shifting and struggling to create and capture their selves—selves that were dynamic, contradictory, and complex.

Religion turned out to be a source of empowerment for Elizabeth, as it allowed her to challenge Theophilus's authority and societal norms. After gaining her freedom, Elizabeth supported herself through writing and marketing her books. Elizabeth was a savvy businesswoman. She also was a talented advocate. Elizabeth assumed the role of a lobbyist—a nontraditional role for a woman of her time—when she crusaded to change insanity laws. In her fight for married woman's property rights and child custody rights, one can see Elizabeth's connection to the woman's movement. Through the act of writing, Elizabeth was able to construct her own voice. Elizabeth emerged from Jacksonville Insane Asylum and the nursery, not as a shattered person, but invigorated. That in and of itself is remarkable and is what makes Elizabeth's life story so fascinating. Elizabeth voyaged through the borderlands—through the sites of political, personal, economic, cultural, gender, sexual, and religious contestations and contradictions. It is my sense that Elizabeth found purpose and meaning in life through her constant quest to create her own voice and self. What one takes away from Elizabeth's story is how one woman through the process of being confined and attaining her freedom, managed to shape a vision for her own life, and impacted the lives of others. In this way, Elizabeth was a daring voyager, ready and will-

ing to enter to the borderlands. Conceiving of nineteenth women as voyagers—be it dormant, hesitant, or daring—within the borderlands provides us with the ability to explore how a woman continually shifted and created her self. Women after all were not stagnant—they constantly shaped and were shaped by a variety of influences—cultural, legal, religious, and social. Elizabeth allows us to enter the vast and complex world of nineteenth century women—that is, the diverse, fluid, and ever-changing world.

I will employ the New Historicism methodology in this Article. This is appropriate, given that William W. Fisher argues that Hendrik Hartog's article, *Mrs. Packard on Dependency*, exemplifies the New Historicism methodology.¹⁸ I will explore the "ways that texts influence their cultural contexts" as well as the "ways texts are shaped by their contexts."¹⁹ Elizabeth's life story requires analysis of the "multiple, conflicting, polyhonous contexts" that emerge from studying her writing, allowing us, as Fisher posits, to "bridge the worlds of literature and history."²⁰ Hartog analyzes the "complex relationship between [Elizabeth's] dependency on men and her autonomy as a moral individual and a rights holder" via New Historicism.²¹ This Article is a response to Hendrik Hartog's conclusion that Elizabeth's life story is worthy of in-depth study and should not be ignored. As Hartog explained:

As an incipient biographer, I want to insist (gratefully and happily) that she has been unjustly ignored by previous historians—legal, medical, and religious. In part, my insistence is founded on Mrs. Packard's distinctive and peculiar voice, a voice which I have come to admire. But in the greater part, my insistence arises from Mrs. Packard's status as a "site" through which ran many of the most important highways of American cultural history. Histories of libertarianism, of religious pluralism, of institutionalization and social control, of women's rights, and of family law would all be enriched if attention were paid to Mrs. Packard's perspective and to the events of her life.²²

18. William W. Fisher, *Texts and Contexts: The Application to American Legal History of the Methodologies of Intellectual History*, 49 STAN. L. REV. 1065, 1084 (1997); see Hartog, *supra* note 4, at 83 n.22. At least within academic publications, Elizabeth has received minimal attention. Barbara Sapiensley's biography of Elizabeth's life, *The Private War of Mrs. Packard*, *supra* note 1, lacks footnotes and a bibliography, rendering it a more popular, rather than academic, work. The Sapiensley's biography focuses on the psychological dimensions of Elizabeth's story, hence the introduction by Phyllis Chesler, author of *Women and Madness* (1972). One can find short references to Elizabeth Packard's case in the following books: JANE M. FRIEDMAN, *AMERICA'S FIRST WOMAN LAWYER: THE BIOGRAPHY OF MYRA BRADWELL* 203-05 (1993); GERALD N. GROB, *MENTAL INSTITUTIONS IN AMERICA: SOCIAL POLICY TO 1875*, at 263 (1973); MOHR, *supra* note 4, at 165-67; Hartog, *supra* note 4, at 83 n.22 (discussing publications that address Elizabeth's life story).

19. Fisher, *supra* note 18, at 1071.

20. *Id.* at 1071-72.

21. Hartog, *supra* note 4, at 102.

22. *Id.* at 83.

This Article will conduct an in-depth analysis of Elizabeth's writing and, in the process, delve into those "important highways of American cultural history."²³ In particular, this Article will explore Elizabeth's perspective and the events of her life concerning religion, women's rights, institutionalization and social control, and family law.

Part I of this Article explores Elizabeth's early years and how they influenced her later in life. Part II analyzes what led to Elizabeth's commitment; her experience in the insane asylum, and the trial for her freedom. Part III addresses Elizabeth's crusade for the rights of the insane, married women's property and earning rights, and child custody rights. Part IV examines Elizabeth's beliefs concerning religion, marriage, and a woman's legal being. Part V delves into how Elizabeth, Charlotte Brontë, and Elizabeth Stoddard, through the act of writing, confronted the male mirror to create their own mirrors. The final Part of this Article posits that Elizabeth entered the borderlands—the sites of contestation—as a dormant, hesitant, and daring voyager.

Elizabeth's life provides a roadmap to how one woman created a self-identity and in the process shaped and was shaped by the cultural, political, and religious norms of the nineteenth century. Without question, Elizabeth constantly adhered to particular constructs in various realms, including woman's issues, religion, and the law, while simultaneously transcending them to create her own liminal spaces. Every aspect of Elizabeth's life reveals how she negotiated and reacted to the environment and period within which she lived. As a consequence, Elizabeth's story has tremendous value not only because we can learn so much from her particular experiences, but also because she provides a window into the larger legal, religious, and cultural landscapes of her time. In many ways, this Article begins where Hartog left off with his exploration of Elizabeth Parsons Ware Packard's story. That is, Hartog in the last line of his article queried: "All of this might suggest passivity and subservience, but again, the details of Mrs. Packard's life belie that suggestion."²⁴ The task that I have undertaken is to unearth the details of Elizabeth's seemingly contradictory life.

I. EARLY YEARS

A. Elizabeth's Education, Home Life, Institutionalization, and Marriage

Elizabeth's defiance of Theophilus's authority is best understood in the context of her family background and early years. On December 28, 1816, Elizabeth was born to Reverend Samuel Ware and Lucy Parsons Ware in Ware, Massachusetts.²⁵ Originally, Samuel and Lucy named Elizabeth

23. *Id.*

24. Hartog, *supra* note 4, at 103.

25. SAPINSLEY, *supra* note 1, at 18.

"Betsey," but in her teens she renamed herself Elizabeth.²⁶ Apparently, Elizabeth at an early age recognized that her parents' image of her, reflected in the name Betsey, was incompatible with the person she intended to become.

Samuel and Lucy greatly shaped Elizabeth's self. Her father provided all his children with the best possible education.²⁷ Consequently, Elizabeth attended Amherst Female Seminary, where she pursued rigorous studies like science, philosophy, and literature.²⁸ Her thirst for knowledge caused her to absorb passionately all that she learned, and Elizabeth's teachers felt that she was "the best scholar in their school."²⁹ During this period, providing an education for a woman was quite controversial.³⁰ As Clarke's *Sex in Education* warned, women were unfit for such rigorous study.³¹ Samuel Ware believed that his daughter should receive a comprehensive education, despite her gender.³² Elizabeth's strong educational background undoubtedly fostered her keen analytical capacities. Later, she would rely on her sharp mind when arguing for her freedom from the Jacksonville Insane Asylum and for her right to be an independent thinker.

In contrast to the strong and rather open-minded figure of her father, Elizabeth's mother revealed to her the hardships of being a woman.³³ Lucy married at a later age than most (thirty-one) and five of her children died young.³⁴ The memory of her children apparently haunted her, for Lucy suffered hysterical spells when they were discussed.³⁵ During such spells Lucy would cry and pray for the souls of her family and friends.³⁶ Elizabeth's mother's propensity toward hysteria was not unusual.³⁷ During the nineteenth century hysteria was widespread among women due to various life pressures, like motherhood, wifely duties, childbirth, and other household responsibilities.³⁸

Two important incidents forever affected Elizabeth's life: her bout with brain fever and her marriage to Theophilus.³⁹ Around Christmas 1835, Elizabeth became delirious.⁴⁰ Amherst doctors tried bleedings, purges, and emetics to cure her.⁴¹ Because nothing seemed to be working, her parents

26. *Id.* at 19.

27. *Id.* at 23.

28. *Id.*

29. *Id.*

30. SAPINSLEY, *supra* note 1, at 23.

31. 2 ELIZABETH K. HELSINGER ET AL., *THE WOMAN QUESTION: SOCIETY AND LITERATURE IN BRITAIN AND AMERICA 1837-1883—SOCIAL ISSUES* 82-83 (1983).

32. SAPINSLEY, *supra* note 1, at 23.

33. *Id.* at 19.

34. *Id.*

35. *Id.*

36. *Id.*

37. SAPINSLEY, *supra* note 1, at 19.

38. SMITH-ROSENBERG, *supra* note 17, at 197.

39. SAPINSLEY, *supra* note 1, at 23-27.

40. *Id.* at 23-24.

41. *Id.* at 24.

decided to place her in Worcester State Hospital, the first public New England psychiatric institution.⁴² Samuel told the doctors that he believed the cause of Elizabeth's illness was "too much mental effort" due to her supposedly overexerting herself from teaching, as well as having been "laced too tight"—wearing her clothes too tightly.⁴³ This incident influenced Elizabeth's self: She attributed the initial bleeding and medication she received from the Amherst doctors as the cause of her worsening condition that resulted in her being placed in Worcester and she developed a dislike for medical treatment.⁴⁴

The Worcester experience haunted Elizabeth for the rest of her life and her relationship with her father was severely damaged.⁴⁵ She accused him of "very needlessly and unkindly" committing her to Worcester.⁴⁶ The deep respect that Elizabeth had for her father diminished greatly and she continually searched for a man who would provide her with the kind of respect that her father had given her before the asylum incident.⁴⁷ Her eventual husband, Theophilus, would trace Elizabeth's alleged insanity back to this incident and to her mother's hysterical fits.⁴⁸ Theophilus knew of the Worcester incident because he had been friendly with the Wares since 1826.⁴⁹ Theophilus married Elizabeth in large part because he had known her from a distance through her parents.⁵⁰ As a result, Theophilus's and Elizabeth's union was not a passionate one, but rather it was arranged out of convenience and circumstances.⁵¹

B. Elizabeth's Use of the Bible Class to Discuss Her Religious Views

Theophilus placed Elizabeth in the Jacksonville Asylum because of her nontraditional religious thoughts.⁵² Elizabeth never lost her innate skepticism, which she harbored while growing up, toward Calvinist doctrines like original sin and predestination.⁵³ Throughout her marriage to Theophilus she voiced her doubts about Calvinist doctrines, despite his reluctance to discuss her questions.⁵⁴ In the private world of their home, Theophilus ignored his wife's ideas, but when she publicly proclaimed them it disturbed him deeply.⁵⁵ Unintentionally, Theophilus provided Elizabeth with a public

42. *Id.*

43. *Id.* at 25.

44. SAPINSLEY, *supra* note 1, at 26.

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.* at 27.

49. SAPINSLEY, *supra* note 1, at 27, 33.

50. *Id.* at 33, 36.

51. *Id.* at 36, 38.

52. MOHR, *supra* note 4, at 165.

53. SAPINSLEY, *supra* note 1, at 20.

54. *Id.* at 49-50, 57.

55. *Id.* at 59-61.

forum to express her views.⁵⁶ In hindsight, his actions may seem conspiratorial, but probably were not.⁵⁷ Theophilus's congregation was not thriving, so he decided, perhaps at the coaxing of his brother-in-law Abijah Dole, Deacon of the Sunday school, to allow Elizabeth to join the Bible class in 1860.⁵⁸ Theophilus thought that Elizabeth's expressiveness and ideas would enliven the class.⁵⁹ He deemed this environment safe because he assumed with the Bible as the topic of discussion, her troubling questions concerning Calvinism would not arise.⁶⁰ On the first supposition, Theophilus was correct: His wife managed to attract quite a following, and the class grew from six men to forty-six men and women.⁶¹ His second assumption that Elizabeth would hide her true feelings was incorrect.⁶²

Elizabeth seized the public forum of the Bible class to express her views.⁶³ The Bible class provided Elizabeth with the opportunity to move from her private domestic landscape into the public landscape of philosophical, religious thought. Her passion for learning, or as she termed it, her "scientific education," caused her to enjoy her Bible class.⁶⁴ In fact, Elizabeth remarked: "I have been led, by the simple exercise of my own reason and common sense, to endorse theological views in conflict with my educated belief and the creed of the church with which I am connected."⁶⁵ The Bible class afforded Elizabeth much "pleasure and profit" because it allowed her to engage in "free and animated discussions."⁶⁶ During these discussions, Elizabeth presented numerous papers regarding her ideas.⁶⁷ In a sense, Elizabeth treated the Bible class meetings as an academic forum for open debate, in which she felt she had the right to present her ideas. Unlike other women of her era, who assumed a locus of power in the church through charity and missionary acts, and church-related social movements like abolitionism and temperance,⁶⁸ Elizabeth chose to use the church as a forum to debate theological issues. She was not fully aware of how radical a choice she had made in deciding to share her theological views.

From Elizabeth's perspective, exercising one's mind intellectually was not merely a man's terrain. Because she had undergone a rigorous education she believed that, despite her gender, she could voice her opinions regarding

56. *Id.* at 59.

57. *Id.*

58. SAPINSLEY, *supra* note 1, at 59.

59. *Id.*

60. *Id.*

61. *Id.* at 59-60.

62. *Id.*

63. PACKARD, MODERN PERSECUTION 1, *supra* note 15, at 34.

64. *Id.* at 33.

65. *Id.*

66. *Id.* at 35.

67. *Id.* at 36.

68. See generally CHRISTINE STANSELL, CITY OF WOMEN: SEX AND CLASS IN NEW YORK, 1789-1860 (1987). Throughout her book, Stansell details upper-class women's charity work and how their work affected lower-class women.

theology.⁶⁹ By doing so, she challenged the deeply held Calvinist views of her husband and the gender norms of her time. To begin with, Elizabeth maintained that there were “truths and errors in all denominations.”⁷⁰ For her, “religious toleration” was critical.⁷¹ Although she found theologians’ opinions valuable, she did not believe that their ideas were the final word of God.⁷² Instead, Elizabeth argued that “God holds us individually responsible for our belief.”⁷³ Even though Elizabeth’s logic may seem reasonable, her words by nineteenth century standards were quite radical. By declaring that she followed no particular “creed,” “sect,” or “denomination,” Elizabeth suggested that all religious associations, and in particular Calvinism, contained fallacies.⁷⁴ Elizabeth’s ideas were considered quite unconventional because women were not supposed to concern themselves with theology or, more importantly, to voice their conception of God and theology publicly. Elizabeth’s rejection of the Calvinist creed was a rejection of the theology taught to her by her father and practiced by her husband.⁷⁵ She openly defied her submissive role by announcing that Calvinism did not meet her spiritual needs—her needs as a woman with her own thoughts, motives, and feelings.

Elizabeth’s main contention with Calvinism and all religious sects stemmed from her desire to think freely about religious matters and all matters of life.⁷⁶ She stressed her right to free thought: “It is my own God given right to superintend my own thoughts, and this right I shall never delegate to any other human being. . . . Yes, I do, and shall judge for myself what is right for me to think, what is right for me to speak, and what is right for me to do.”⁷⁷ The clarity, forcefulness, and tone of Elizabeth’s words reveal her deep unrest. She thirsted for the opportunity to create herself unhampered by religious creeds and direction from others, such as Theophilus.⁷⁸ By no means was she a “true woman”—a pious, pure, submissive, and domestic woman.⁷⁹ Elizabeth wanted to control her own ideas, voice, and actions.⁸⁰ Such a declaration of independence reflects Elizabeth’s deeply spiritual nature and her radical side. In essence, her entire life had been structured around Calvinist creeds. Because her father and husband were Calvinist

69. PACKARD, MODERN PERSECUTION 1, *supra* note 15, at 33.

70. *Id.* at 147.

71. *Id.*

72. *Id.* at xvi-xvii.

73. *Id.* at xvi.

74. PACKARD, MODERN PERSECUTION 1, *supra* note 15, at xvi.

75. See Jenni Parrish, *Introduction* to PACKARD, MARITAL POWER EXEMPLIFIED, *supra* note 15, at i-ii. Parrish refers to Elizabeth’s father as being a Protestant minister. *Id.* at i. Therefore, I assume he was a Protestant minister affiliated with a Presbyterian church, or at the very least one who followed Calvinist ideology. Thus, Elizabeth was presumably raised within the Calvinist tradition, although to what extent is not fully clear.

76. PACKARD, MODERN PERSECUTION 1, *supra* note 15, at xvi-xvii.

77. PACKARD, MODERN PERSECUTION 2, *supra* note 15, at 117.

78. *Id.* at 117-18.

79. Barbara Welter, *The Cult of True Womanhood: 1820-1860*, 18 AM. Q. 151, 151-74 (1966).

80. PACKARD, MODERN PERSECUTION 2, *supra* note 15, at 117.

ministers, Elizabeth had always remained in the private landscape where they believed she belonged, and in turn, her self remained muted and enclosed. Nevertheless, as Elizabeth wrote to a friend while in the Jacksonville Asylum:

Yes, Mrs. Fisher, the persecutions through which we are now passing is securing to us spiritual freedom, liberty, a right, a determination to call no man master, to know no teacher but the Spirit, to follow no light or guide not sanctioned by the Word of God and our conscience, to know no 'ism' or creed, but truthism, and no pattern but Christ.⁸¹

In this brief statement, Elizabeth clearly attacked the division that existed between the gender landscapes. She wanted to erode the barriers between the two. In this way, she proclaimed her movement into the borderlands—the sites of contestation.

By refusing to have a “man master,” Elizabeth was toppling the fragile gender landscape divide. God in Elizabeth’s vision was the only master worth following, because God brought people toward truth—“truth has its source in God, and is eternal.”⁸² God’s truth presumably allowed Elizabeth to transcend social constructions and to clearly define herself and her own desires in a lucid state of comprehension. Therefore, Elizabeth stressed that other people should be “left entirely free and unshackled to believe just as their own developed reason dictates.”⁸³ A desire to gain freedom of thought, action, and voice drove Elizabeth to confront Theophilus.⁸⁴ She could no longer remain silent. The restricted role assigned to her as a woman had caused her to suppress all her anger, frustration, and hopes. When Theophilus finally gave Elizabeth the opportunity in the Bible class to express publicly her passionate beliefs, her ideas burst forth like an erupting volcano. No one could ever erase or ignore her words. Once out, they had to be addressed.

Another radical aspect of her critique of Calvinism, as even she admitted, was her rejection of the doctrine of original sin.⁸⁵ The story of the Fall served as the reason why women should be subservient to men, for Eve brought sin into the world by tempting Adam, and so woman was naturally weaker and inferior than man.⁸⁶ Woman was considered the sinner—essentially the evil temptress.⁸⁷ The idea that woman was innately inferior disturbed Elizabeth greatly.⁸⁸ She at great length explained:

81. *Id.* at 121.

82. *Id.*

83. *Id.* at 118.

84. *Id.* at 117-18.

85. PACKARD, MODERN PERSECUTION 2, *supra* note 15, at 120-21.

86. HELSINGER ET AL., *supra* note 31, at 169.

87. *Id.*

88. PACKARD, MODERN PERSECUTION 2, *supra* note 15, at 120-21.

That terrible dogma that our natures are depraved, has ruined its advocates, and led astray many a guileless, confiding soul. Why can we not accept of God's well done work as perfect, and instead of defiling, perverting it, let it stand in all its holy proportions, filling the place God designed it to occupy, and adorn the temple it was fitted for? I for one, Mrs. Fisher, am determined to be a woman, true to my nature. I regard my nature as holy, and every deviation from its instinctive tendency I regard as a perversion—a sin. To live a natural, holy life, as Christ did, I regard as my highest honor, my chief glory.

I know this sentiment conflicts with our educated beliefs—our Church creeds—and the honestly cherished opinions of our relatives and friends. Still I believe a 'thus saith the Lord' supports it. *Could Christ take upon himself our nature, and yet know no sin, if our natures are necessarily sinful?* Are not God's simple, common sense teachings, sufficient authority for our opinions?

Indeed, Mrs. Fisher, I have become so radical, as to call in question every opinion of my educated belief, which conflicts with the dictates of reason and common sense.⁸⁹

Elizabeth knew her ideas attacking the religious underpinnings of woman's inferior status were "radical."⁹⁰ She argued that if Christ was not sinful and if he has woman as part of his nature, then necessarily woman is not the inherent sinner represented in the story of the Fall.⁹¹ Elizabeth not only attacked the sinful role of woman proclaimed in most Christian faiths, particularly Calvinism, but she also elevated woman to a more holy and God-like position. Elizabeth felt her "nature" as a woman was "holy" and not inherently sinful and inferior.⁹² Consequently, she did not need to worry about limiting her conscience, her thoughts, or her voice.

Elizabeth's attack of Eve's sinful nature was not merely a religious affront, but a gender one as well: Because Eve was not a sinner, there was no reason for women to remain inferior to men. Elizabeth knew her public critique of Calvinism could be used to attack her prescribed role as mother, wife, and nurturer, yet she valued all these roles highly and defended them vehemently.⁹³ Nevertheless, she also defended her right to be heard, to think as she desired, and to be active in the public world.⁹⁴ Elizabeth's rejection of Eve's sin symbolized her rejection of her inferior status; thus, she mounted a "radical" gender and religious battle.⁹⁵

89. *Id.* (emphasis added).

90. *Id.* at 121.

91. *Id.*

92. *Id.* at 120-23.

93. PACKARD, MODERN PERSECUTION 2, *supra* note 15, at 111-12.

94. *Id.* at 117-18.

95. See ANN DOUGLAS, THE FEMINIZATION OF AMERICAN CULTURE 18-79 (1977), for a discussion of how women and the clergy underwent role shifts—"disestablishment"—in the nineteenth century.

C. Spiritualism and Its Influence on Elizabeth

In 1857, two and half years prior to her commitment by her husband, Elizabeth encountered Spiritualism.⁹⁶ While staying with her cousin, Dr. Fordice Rice, in Cazenovia, New York, she heard the spirit of her dead mother speaking to her through the medium of Mrs. Laura P. Rice.⁹⁷ Her mother's spirit warned, "But my child, prepare for Persecution! Persecution! Persecution!!!"⁹⁸ Another encounter with a spirit occurred when Elizabeth was talking with Mrs. Smith in the presence of a medium.⁹⁹ Elizabeth told Mrs. Smith: "I think it unfortunate for me that the light of new truths should dawn upon my mind prior to that of Mr. Packard's, for it seems to me a reversion of God's order, for the weaker vessel to lead the stronger."¹⁰⁰ At that point, "the medium laughed outright and remarked: 'I have made a strange episode!' reading: 'Weaker vessel! When you pass from this to the spirit world, then you will see which is the *Weaker vessel!*'"¹⁰¹

Such encounters with spirits caused Elizabeth to believe in, but not wholly support, Spiritualism.¹⁰² The messages that Elizabeth received from

Ministers and women thus formed a symbiotic relationship: Women needed to emphasize their pious natures to remain powerful in the private sphere and the clergy needed women to preach enthusiastically their message to maintain their function in society. *Id.* at 97. Through writing and producing sentimental literature women solidified their new role as domestic, religious, and caring beings. This process of producing and consuming sentimental literature Douglas terms the dual role of woman, that of "saint and consumer." *Id.* at 60. By elevating their private sphere through writing, women indirectly supported the public world of their husbands by purchasing literary goods. Douglas concludes that although some women participated in the public world—the world of writing and publishing—they often used their positions to inscribe further women into the private sphere. *Id.* at 45. This ironic twist, the "feminization of American culture" simultaneous with the negation and marginalization of women by women, becomes the focal point of Douglas's work. Douglas argues that the majority of women writers in nineteenth century America reinforced the "separate spheres" ideology in their works and did not challenge the "binary opposition." *Id. passim*. Douglas's argument presents a question regarding Elizabeth: Is Elizabeth's emphasis on religion merely an elevation of a woman's role in the private landscape, or did she depart radically from the sentimental tradition? There is, of course, no obvious answer. In spirit, much of Elizabeth's work existed outside the mainstream sentimental culture. Although Douglas feels that only well-known "feminist" writers like Margaret Fuller exemplify a challenge to the "separate spheres" ideology, it can be argued that there was a range of responses and criticisms within sentimental women's writing regarding the "binary opposition" between the genders. MARY POOVEY, *UNEVEN DEVELOPMENTS: THE IDEOLOGICAL WORK OF GENDER IN MID-VICTORIAN ENGLAND* 3, 8 (1988). Literary critic Jane Tompkins argues that there is a value in studying and recovering sentimental women writers' voices as well as "feminist" voices in order to understand the gender dynamics of the nineteenth century better. JANE TOMPKINS, *SENSATIONAL DESIGNS: THE CULTURAL WORK OF AMERICAN FICTION, 1790-1860*, at xi-xix, 122-46 (1985). Sentimental writers did express "feminist" ideas, just as "feminist" writers expressed sentimental thoughts. Elizabeth defies labels, and her contradictory nature makes her a worthwhile subject to study. Simultaneously, she voiced ideas that range from the center to the margins—from the sentimental to the radical. Her ideas reflected the inscription of cultural metaphors into her core self; nevertheless, many of her thoughts revealed how she rejected and reformulated such cultural inscriptions. Elizabeth's writing shows how she lived both within the sentimental world—the center—and outside it—at the margins.

96. PACKARD, *MODERN PERSECUTION* 2, *supra* note 15, at 151.

97. *Id.* at 151-52.

98. *Id.* at 152.

99. *Id.* at 152-53.

100. *Id.*

101. PACKARD, *MODERN PERSECUTION* 2, *supra* note 15, at 153.

102. *Id.* at 155.

the spirits were eerily prophetic. Her life events did include persecution and the need to prove that the weaker vessel—woman—was as strong as, or perhaps stronger than, man. Whether or not such prophecies caused Elizabeth to openly challenge her husband will never be known. Nevertheless, Spiritualism touched Elizabeth's soul and the way she thought.

In her Bible class she wanted to present a paper concerning "Spiritual Gifts," but she was denied the opportunity because her ideas were found to "favor Spiritualism."¹⁰³ The opening remarks of this paper prove Elizabeth's belief in spirits:

I differ from Deacon Merrick in the opinion that those spiritual gifts mentioned in the 12th chapter of 1st Corinthians—viz.: 'the gifts of healing, working of miracles, prophecy, discerning of spirits, interpretation of tongues, the word of wisdom, and the word of knowledge,' etc., were confined to the apostolic age. But it is my opinion that they are the legitimate fruits of pure Christianity, and attendant upon it to the end of time.¹⁰⁴

In Elizabeth's mind, the concept of spirits was not unfathomable.¹⁰⁵ She saw no reason why spirits should not be considered a legitimate form of spirituality; she never understood why people opposed religious sects, like Spiritualism.¹⁰⁶ One must remember that Elizabeth was more tolerant than most of a variety of religious ideas and she found certain points in a multitude of creeds worthwhile. She saw herself as holy—in a sense as a type of spirit and medium of God; her attraction to Spiritualism was quite consistent with her religious outlook.¹⁰⁷

Spiritualism as a formal sect existed on the margins, well outside the mainstream.¹⁰⁸ Basic to the Spiritualist's philosophy was the belief that the dead could return to earth through mediums.¹⁰⁹ The movement itself attracted many female followers, in particular "feminist" followers, because the movement's deemphasis of God and rejection of the Fall allowed women to assume roles as spiritual leaders.¹¹⁰ Although Elizabeth never discussed her attraction to Spiritualism, one can assume she liked the fact that the sect rejected the total depravity doctrine and that it allowed females

103. PACKARD, MODERN PERSECUTION 1, *supra* note 15, at xxiii. See *id.* pages xxiii-xxix for the entire text of "Spiritual Gifts."

104. *Id.* at xxiii-xxiv.

105. *Id.* at xxv-xxix.

106. See generally *id.* at xxvii ("This faith is the natural outgrowth of human nature—that is, it has that universal principle of human nature, viz: trust or confidence, for its foundation to rest upon.").

107. See *infra* Part II.F.

108. See SYDNEY E. AHLSTROM, A RELIGIOUS HISTORY OF THE AMERICAN PEOPLE 490 (1972).

109. See PACKARD, GREAT DISCLOSURE, *supra* note 15, at 50 ("There are many in this Asylum who are living witnesses to this truth. They can remember having lived in different bodies . . .").

110. See generally Mary Farrell Bednarowski, *Outside the Mainstream: Women's Religion and Women Religious Leaders in Nineteenth-Century America*, XLVIII/2 J. AM. ACAD. RELIGION 207, 207-31. All the basic information about Spiritualism is taken from this article.

to act as mediums.¹¹¹ In *Great Disclosure*, Elizabeth defended a woman's right to be a Spiritualist.¹¹² She argued in *Transmigration of Souls* that insane asylum superintendents were imprisoning too many women for expressing their beliefs that they were mediums.¹¹³ According to Elizabeth, these women were being wrongly persecuted.¹¹⁴ Historian Jennifer A. Yeager confirms Elizabeth's contention in her article.¹¹⁵ Yeager discusses how science, organized religion, medicine, law, and the media all condemned Spiritualism.¹¹⁶ The fields of law and medicine worked together to stop female Spiritual practitioners: Doctors declared Spiritualism a form of insanity and the courts institutionalized Spiritualists.¹¹⁷ Not surprisingly, Elizabeth encountered many Spiritualists in Jacksonville¹¹⁸ and, to some extent, she was likely labeled as insane because of her desire to present a paper to the Bible class concerning Spiritualism.¹¹⁹ Evidently, Elizabeth was informally associated with Spiritualism and was willing to defend the creed publicly.¹²⁰ Such willingness on her part to defend Spiritualism did not win her many advocates, for Spiritualism was, at the time, associated with free love and radicalism.¹²¹ The lecture she attempted to present to her Bible class about "Spiritual Gifts" was immediately censored because it opposed the strict, conservative Calvinist creed of Theophilus's church.¹²² Theophilus likely questioned Elizabeth's sanity in part because she expressed a belief in Spiritualism, for he probably wondered why a Calvinist woman would even half-heartedly endorse such blasphemous views.

*D. Theophilus's Religious Outlook and Disapproval of
Elizabeth's Behavior*

Theophilus was a devout man. Raised within a Congregationalist family, Theophilus's father was a Congregationalist minister, who exposed him to a strict Calvinist doctrine.¹²³ Although Theophilus was born in the nineteenth century, his parents raised him with an eighteenth century ideology that included an emphasis on religiosity and prayer.¹²⁴ As a result of such an upbringing, he would later in life obsess over his fate in the afterlife and

111. See PACKARD, MODERN PERSECUTION 2, *supra* note 15, at 151-55.

112. PACKARD, GREAT DISCLOSURE, *supra* note 15, at 50-53.

113. *Id.* at 50-53.

114. *Id.* at 51.

115. Jennifer A. Yeager, *Opportunities and Limitations: Female Spiritual Practice in Nineteenth-Century America*, 7 AM. TRANSCENDENTAL Q. 217, 217-28 (1997).

116. *Id.*

117. *Id.* at 224.

118. PACKARD, GREAT DISCLOSURE, *supra* note 15, at 14, 50-53.

119. PACKARD, MODERN PERSECUTION 1, *supra* note 15, at xxiii.

120. *Id.* at xxiii-xxiv.

121. See Yeager, *supra* note 115, at 225-26.

122. PACKARD, MODERN PERSECUTION 1, *supra* note 15, at xxiii-xxix.

123. SAPINSLEY, *supra* note 1, at 27-33.

124. *Id.* at 28.

how to improve his chances of being admitted to heaven.¹²⁵ In his mind, the questions and answers concerning the problems of theology were unchanging. Calvinism and its creeds, such as original sin, the role of a woman in society, and his role as a spiritual leader, fully defined the world for Theophilus.¹²⁶ Theophilus was raised within the Congregationalist church, but he later became a Presbyterian minister.¹²⁷ Because both Congregationalism and Presbyterianism were conservative and based upon Calvinism, Theophilus's shift to the more conservative doctrine of Presbyterianism was not a radical move.¹²⁸

Elizabeth's religious outlook threatened Theophilus's religious authority and his authority at home.¹²⁹ First, she was rejecting the basis of Calvinism—the doctrines of original sin and predestination.¹³⁰ By presenting her liberal theological views, Elizabeth was usurping Theophilus's religiously justified right to control her mind, her actions, and her words, as Elizabeth acknowledged:

I can distinctly recollect we had had a warm discussion on the subject of woman's rights; that is, I had taken occasion from the application of his insane dogma, namely, that 'a woman has no rights that a man is bound to respect,' to defend the opposite position of equal rights.¹³¹

In this brief reflection, Elizabeth exposed how she consciously disagreed with the dichotomy between the gender landscapes. Apparently, Elizabeth was well aware of the woman's movement and went to the extent of debating with her husband the movement's viability. She believed in a woman's right to receive respect from men and to receive "equal rights" with men.¹³² Elizabeth never publicly partook in any woman's rights conventions nor supported the suffragist movement.¹³³ However, she did support the notion that a woman should develop her own being free from any imposed restrictions:

Thus our [Elizabeth and Theophilus] differences of opinion can be accounted for on scientific principles. Here we see his sluggish, conservative temperament, rejecting light, which costs any effort to obtain or use—clinging, serf-like to the old paths, as with a death grasp—while my active, radical temperament, calls for light to bear

125. See generally *id.* at 27-37, 50.

126. *Id.* at 27-37.

127. *Id.* at 48.

128. See ALBERT M. SHULUMAN, *THE RELIGIOUS HERITAGE OF AMERICA* 51-57 (1981), for discussion of Congregationalism, and *id.* at 78-91, for a discussion of Presbyterianism.

129. See SAPINSLEY, *supra* note 1, at 43-50.

130. *Id.* at 60.

131. PACKARD, *MODERN PERSECUTION* 2, *supra* note 15, at 164.

132. *Id.*

133. SAPINSLEY, *supra* note 1, at 65-66.

me onward and upward, never satisfied until all available means are faithfully used to reach a more progressive state.¹³⁴

Elizabeth's depiction accurately described the distance between herself and Theophilus; her tone was quite harsh. More sympathetically and objectively, yet still accurately and insightfully, she described their marriage in this way: "In our mental states we simply grew apart, instead of together. He was dwindling, dying—I was living, growing, expanding."¹³⁵

Born in 1802, Theophilus was about fifteen years older than Elizabeth, and from a different generation.¹³⁶ His world consisted of definitive and rather conservative ideas about religion, gender roles, and life.¹³⁷ He still believed in the "separate spheres" ideology and viewed woman as inferior due to Eve's actions.¹³⁸ When he married Elizabeth, he probably expected to have an obedient wife and a fulfilling career. Neither of these hopes ever materialized for him. Evangelical and more liberal doctrines caused his church following to shrink.¹³⁹ His wife, a mere twenty-two-year-old woman when he married her, had changed as well. She had grown aware of the emerging woman's movement and more importantly of her own self—of her own mind, body, and soul.¹⁴⁰ She, too, like the newly arising liberal theologies, challenged tradition. Theophilus's world was crumbling both publicly and privately. He could do little about the spiritual shift in the world around him, but he could try to control Elizabeth's shifting being and so he did. Elizabeth later said: "And this natural development of intellectual power in me seemed to arouse this morbid feeling of jealousy [Theophilus's jealousy] towards me, lest I outshine him."¹⁴¹ It is logical to presume that Elizabeth's awakening intellectual spirit and developing self threatened Theophilus. Apparently, he used what power and authority he still possessed to eradicate the personal threat he felt in his private world. The law gave him power over his wife and he used the law to assert his dwindling authority.¹⁴² In fairness to Theophilus, he honestly believed that Elizabeth's defiance of her feminine role was a sign of her insanity, as she was openly defying a cultural and religious norm of womanhood—"true womanhood"—that society and, presumably, Theophilus held sacred.¹⁴³

134. PACKARD, MODERN PERSECUTION 2, *supra* note 15, at 166.

135. *Id.* at 167.

136. SAPINSLEY, *supra* note 1, at 27, 36.

137. *Id.* at 27-36.

138. *See id.* at 35.

139. *See id.* at 48.

140. *See infra* notes 565-62 and accompanying text.

141. PACKARD, MODERN PERSECUTION 2, *supra* note 15, at 167.

142. *See infra* notes 159-86 and accompanying text.

143. *See* PACKARD, MODERN PERSECUTION 1, *supra* note 15, at 33-38.

II. CONFINEMENT AND TRIUMPH

A. Theophilus's Reasoning for Committing Elizabeth to the Jacksonville Asylum

Elizabeth's involvement with the Bible class ultimately led to her commitment to Illinois's Jacksonville insane asylum. Theophilus initially tried to deal with Elizabeth's irreverent behavior by simply asking her to resign from the Bible class, stating "Now, wife, hadn't you better give up these Bible-class discussions? Deacon Smith thinks you had better, and so do some others, and I think you had better too."¹⁴⁴ Theophilus disapproved of Elizabeth's behavior in the class, but apparently some members of the community also perceived that she was acting inappropriately. Theophilus probably felt communal pressure to quiet his wife and to control her behavior.

Elizabeth refused to resign from the Bible class peacefully, and would resign only if she could declare that her resignation was due to community pressure and not her own desires. Naturally, Theophilus disliked Elizabeth's response, probably finding it quite disrespectful, and told her, "Well, you must do it!"¹⁴⁵ Believing in her right to be heard, Elizabeth refused to obey Theophilus's command. Instead, she accused Theophilus of not acting as her "protector," for she wanted him to fulfill that role by announcing to the community: "My wife has just as good a right to her opinions as you have to yours, and I shall protect her in that right."¹⁴⁶ From Elizabeth's standpoint, man had the responsibility to protect—to guard—woman's rights and being. For a husband to act in any other manner meant that he was assuming the role of a "persecutor" and not the role of a "protector."¹⁴⁷ Elizabeth's definition of "protector" was quite nuanced and radical. She conceived of a "protector" as someone who would support a woman's right to her opinions, voice, and self—far from the "true woman" ideal—and not as someone who would use his power to limit or control a woman's actions and words. Theophilus clearly disagreed with Elizabeth's notion of a "protector." He believed that he had the right to control Elizabeth's actions and voice and he did so by committing her to the Jacksonville asylum.¹⁴⁸ The progressive and radical vision Elizabeth held for herself was simply in opposition with Theophilus's ideas and eventually he drew on his legal supremacy to silence Elizabeth. She did not remain quiet for long in Jacksonville. Upon her release, her voice resounded loudly and unabashedly.

Theophilus announced his intentions to commit Elizabeth during an argument they had over money.¹⁴⁹ In an attempt to get Elizabeth to quit the

144. *Id.* at 37.

145. *Id.*

146. *Id.*

147. *Id.* at 37-38.

148. PACKARD, MODERN PERSECUTION 1, *supra* note 15, at 38.

149. *Id.* at 39-41.

Bible class, Theophilus suggested that she visit her brother in Batavia, New York.¹⁵⁰ Agreeing to the plan, Elizabeth requested ten dollars of her “patri-money [sic] money” to take with her to use as “spending money.”¹⁵¹ Theophilus refused to give her the money because he declared that he could not “trust” her with it.¹⁵² Such reasoning enraged Elizabeth, and she responded:

Well, husband, if I can't be trusted with ten dollars of my own money under these circumstances, I should not think I was capable of being trusted with two sick children three months away from home, wholly dependent on a poor brother's charities. Indeed I had rather stay at home and not go at all, than go under such circumstances.¹⁵³

Responding quite definitively, Theophilus said, “You shall not go at all! . . . You *shall* go into an asylum.”¹⁵⁴ Apparently, Theophilus had been unhappy with Elizabeth's behavior and the commitment idea was likely something he had considered for a while.

Elizabeth's religious and woman's rights views, among other things, especially bothered Theophilus. Elizabeth intimately connected her religious ideas to her conception of a woman's role. Elizabeth truly felt she ruled her own being—her own mind, body, and soul. Therefore, she saw nothing wrong with expressing her conception of God in the Bible class. Theophilus, however, thought that Elizabeth should not be an independent thinker. Her attacks on Calvinism represented an attack on his self and his sacred beliefs: “He told me he did this [put me in an asylum], to give the impression that I was insane, so that my opinions need not be believed, for, said he, ‘I must protect the cause of Christ!’”¹⁵⁵ The “cause of Christ” was the means by which Theophilus gained his authority; particularly his authority over Elizabeth. To a large extent, Theophilus justified his actions toward Elizabeth as necessary, because he saw his defense of Calvinism as a holy cause and not as a power struggle. In reality, his actions did involve a gender power struggle.

Whether Theophilus actually believed that Elizabeth was insane or not we will never know. Certainly, her unfeminine behavior frightened him. Elizabeth later discovered that the discussions she and Theophilus had about woman's rights caused him to write a “confidential” letter to relatives and dear friends that stated: “That I have sad reason to fear my wife's mind is getting out of order; she is becoming insane on the subject of woman's rights.”¹⁵⁶ From Theophilus's perspective, Elizabeth's desire to be an inde-

150. *Id.* at 39.

151. *Id.*

152. *Id.* at 40.

153. PACKARD, MODERN PERSECUTION 1, *supra* note 15, at 40.

154. *Id.* at 41.

155. *Id.* at 38.

156. PACKARD, MODERN PERSECUTION 2, *supra* note 15, at 165.

pendent being, equal to him, revealed a deranged mind. Her insistence on her independence, expressed again in her remark over money, finally precipitated Theophilus to announce his intention to commit Elizabeth, for money was not generally considered a woman's domain. Elizabeth's vehement assertion to her right to her "patrimoney money" proved to Theophilus that she no longer understood her proper role as wife, mother, and nurturer.¹⁵⁷ Elizabeth's willingness to move beyond the private landscape into the public one was, in Theophilus's mind, a grave transgression. Undeniably, Elizabeth exhibited several breaches of convention—her preaching, her woman's rights ideas, and her request for money—that suggested to Theophilus that his wife's mind was disturbed. Of course, Elizabeth was far from insane; rather, she was a woman who would not conform to the cultural image of a "true woman." Unlike Theophilus, who viewed a woman's role as static, Elizabeth viewed herself as fluid—as being malleable and expandable.¹⁵⁸ She strived to expand and develop her mind, soul, and body.

B. The Legal Regime that Allowed Theophilus to Commit Elizabeth

Legally, Theophilus had the right to commit Elizabeth in the Jacksonville, Illinois, insane asylum. As Elizabeth explained:

I could not then credit this statement, but now *know* it to be too sadly true, for the statute of Illinois expressly states that a man may put his wife into an insane asylum without evidence of insanity. The law now stands on 96th page, section 10, of Illinois statute-book, under the general head of "Charities!" It was passed Feb. 15th, 1851, and reads thus:

"Married women and infants, who, in the judgment of the medical superintendent (meaning the Superintendent of the Illinois State Hospital for the Insane) are evidently insane or distracted, may be entered or detained in the hospital on the request of the husband of the woman or the guardian of the infant, *without* the evidence of insanity required in other cases."¹⁵⁹

Women and children were subjected a different legal standard than men with respect to commitment procedures. Under the 1851 law, courts or a judge had a right to decide a man's mental state, while married women and infants could be committed merely on the basis of a medical superintendent's judgment.¹⁶⁰ An 1853 statute guaranteed men jury trials to determine their sanity.¹⁶¹ The 1851 law placed women and children in a vulnerable

157. PACKARD, MODERN PERSECUTION 1, *supra* note 15, at 39.

158. PACKARD, MODERN PERSECUTION 2, *supra* note 15, at 167.

159. 1851 Ill. Laws 98; PACKARD, MODERN PERSECUTION 1, *supra* note 15, at 54.

160. 1851 Ill. Laws 98.

161. Ill. Stat. 1869 Digest, ch. 50(a) § 7 (1853).

situation—a situation where they could not fight for their freedom through a court or jury hearing.

Theophilus took advantage of the 1851 law that empowered him to commit Elizabeth. While unnecessary under the law, Theophilus had two doctors examine Elizabeth to help convince the superintendent of the Jacksonville Insane Asylum, Dr. Andrew McFarland, of Elizabeth's insanity.¹⁶² Early on June 18, 1860, two physicians, both members of Theophilus's church and the Bible class, along with Sheriff Burgess, entered Elizabeth's room and declared her insane.¹⁶³ Her pulse was beating rapidly because the gentlemen had abruptly entered her room while she was dressing.¹⁶⁴ They mistakenly declared her rapid heartbeat as a sign of her insanity.¹⁶⁵ Unable to defend herself, Elizabeth requested to dress alone before being taken away.¹⁶⁶ Elizabeth desired to be alone so that she could secure her "Bible-class documents" and have in "writing" a "defence" of her opinions, if she needed to prove her sanity.¹⁶⁷ Theophilus refused Elizabeth's request.¹⁶⁸ We learn from this incident that Elizabeth was aware of the importance of her own voice and the importance of being able to document her thoughts. From this moment on, Elizabeth would use her words as a source of strength—as means to defend herself and her right to be heard.

Elizabeth refused to enter the asylum voluntarily and without a trial.¹⁶⁹ Theophilus explained to her that she had no right to a trial:

I am doing as the laws of Illinois allow me to do. You have no protection in law but myself, and I am protecting you now! It is for your good I am doing this; I want to save your soul! You don't believe in total depravity [original sin], and I want to make you right.¹⁷⁰

Elizabeth in turn asked, "Husband, have I not a right to my opinion?"¹⁷¹ In response Theophilus said, "Yes; you have a right to your opinions if you think right."¹⁷²

According to Theophilus, the "right" way of thinking was following the Calvinist creed of total depravity. He feared that Elizabeth's rejection of such a doctrine would cause her soul to go to hell and would perhaps somehow affect his soul's destiny. He, after all, was supposed to be in charge of his wife because, as Paul said in 1 *Corinthians* 11:3-5, "But I will that you

162. PACKARD, MODERN PERSECUTION 1, *supra* note 15, at 51-55.

163. *Id.* at 51.

164. *Id.*

165. *Id.*

166. *Id.* at 52.

167. PACKARD, MODERN PERSECUTION 1, *supra* note 15, at 52.

168. *Id.*

169. *Id.* at 53.

170. *Id.*

171. *Id.*

172. PACKARD, MODERN PERSECUTION 1, *supra* note 15, at 53.

know, that Christ is the head of every man: & the man is the woman's head."¹⁷³ From Theophilus's perspective, committing Elizabeth was the "right" and humane decision and the law gave him the authority to make that decision.

By contrast, Elizabeth believed that her rejection of the total depravity doctrine was logical and personally fulfilling, for it made her connection with God stronger. She saw no reason why her behavior was wrong, nor did she feel that Theophilus should be able to assert his authority over her. Consequently, she asked him, "But does not the Constitution defend the right of private judgment to all American citizens?"¹⁷⁴ Elizabeth was under the mistaken impression that in the eyes of the law she was equal to her husband. At that time women were not legally equal to their husbands, but were legally subordinate beings. In fact, the husband was the woman's legal representative and had legal control of his wife. Theophilus explained the right of private judgment:

Yes, to all citizens it does defend this right. But you are not a citizen; while a married woman, you are a legal nonentity, without even a soul in law. In short, you are dead as to any legal existence, while a married woman, and therefore have no legal protection as a married woman.¹⁷⁵

Although Theophilus articulated a harsh and rather cruel depiction of a woman's legal status, he was absolutely right. Married women had limited legal rights and were utterly dependent on, and under the control of, their husbands. Elizabeth obviously had little idea of this reality, perhaps because she never imagined that she would need to defend herself legally. Marriage for her signified a holy union of two individuals, who were supposed to respect and care for one another.¹⁷⁶ But as she quickly came to realize, holy unions were not unbreakable and perfect. Theophilus's words showed how all-powerful a husband's authority was over his wife. After this exchange, Elizabeth concluded, "Thus I learned my first lesson in that chapter of common law, which denies to married women a legal right to her own identity or individuality."¹⁷⁷ Such a revelation would haunt and fuel Elizabeth's quest to change woman's legal status. Just as women deserved religious freedom of thought, so too she felt that women deserved legal rights. She refused to allow the law to silence her. Instead, Elizabeth dedicated herself to crusading against cruel laws, like the 1851 law that allowed married women and children to be committed without a trial concerning their sanity. Before Elizabeth began her crusade, she would spend three years in Jack-

173. WOMEN IN AMERICAN RELIGION 30 (Janet Wilson James ed., 1980).

174. PACKARD, MODERN PERSECUTION 1, *supra* note 15, at 53.

175. *Id.* at 53-54.

176. *See infra* Part IV.B.

177. PACKARD, MODERN PERSECUTION 1, *supra* note 15, at 55.

sonville, and every moment she spent there fostered her rage and drive to change woman's legal status.

C. The Inhumane Conditions inside the Jacksonville Asylum

Upon her arrival at Jacksonville, she understood her hopeless position. Theophilus and Dr. McFarland, the Superintendent of Jacksonville, retained the authority to confine Elizabeth in the asylum or release her.¹⁷⁸ Elizabeth analogized her situation to that of a witch who was being haunted.¹⁷⁹ She remarked how if she were living in the sixteenth century, people would have called her a heretic, rather than labeling her as insane.¹⁸⁰ She explained that in the nineteenth century people viewed the Salem witch trials as wrong, and she wondered why her imprisonment was viewed as right.¹⁸¹ Elizabeth realized that she was being persecuted and treated unfairly, just like the supposed witches of the sixteenth century. She also learned that she was not alone, for many married women had been unjustly committed, just like her.¹⁸² They were neither raving mad nor incomprehensible, but rather they were ordinary human beings held against their will:

It was a matter of great surprise to me to find so many in the Seventh ward, who, like myself, had never shown any insanity while there, and these were almost uniformly married women, who were put there either by strategy or by force. None of these unfortunate sane prisoners had had any trial or any chance of self-defense.¹⁸³

At least in the Seventh ward, Elizabeth realized how much in common she had with her fellow inmates. In particular, Elizabeth noticed that men imprisoned their wives in order to make them more obedient and submissive:

Another fact I noticed, that he [McFarland] invariably kept these sane wives until they begged to be sent home. This led me to suspect that there was a secret understanding between the husband and the Doctor; that the *subjection* of the wife was the cure the husband was seeking to effect under the specious plea of insanity.¹⁸⁴

Elizabeth's observation, although perhaps colored by her own reality, may be quite accurate. After all, a woman was expected to be submissive to her husband's authority. Presumably there were women who defied such a role,

178. *Id.* at 94-95.

179. *Id.* at 95.

180. *Id.*

181. *Id.*

182. PACKARD, MODERN PERSECUTION 1, *supra* note 15, at 83.

183. *Id.* at 99.

184. *Id.* at 99-100.

like Elizabeth, and thus threatened their husbands. By committing such nonconforming women, husbands had the opportunity to expose their wives to harsh conditions in the hopes that their wives would then appreciate their submissive womanly role. Elizabeth's reasoning, whether or not totally accurate or numerically provable, remains important. She possessed a keen understanding of gender relations and the asymmetrical power relationship between men and women. Men's dominance in the legal, social, and religious worlds limited woman's power. The asylum was merely another world that men ran and at least some men likely used this institution as another tool by which to rule over women.

The inhumane treatment of patients infuriated Elizabeth. In an attempt to change this, she wrote *My Reproof to Dr. McFarland for his Abuse of his Patients*.¹⁸⁵ The *Reproof* best summarizes Elizabeth's attitude toward the asylum environment. Elizabeth contended: "They [patients] are treated in a very insane manner—in a manner the best calculated to make maniacs that human ingenuity could devise. . . . Again, a person is very apt to *become* what they are taken to *be*."¹⁸⁶ In the *Reproof*, Elizabeth charged McFarland with willfully trying to make people mad. Her charge was serious and sincere. She realized that if people were treated as if they were mad, they would eventually conform to such a role. Their madness was a self-fulfilling prophecy, rather than an innate condition. She told McFarland: "I believe that you like Nebuchadnezzar will really become insane—that is, devoid of reason like the beasts, and you will receive the same punishment for it that you have inflicted upon your helpless victims."¹⁸⁷ The pain and suffering patients underwent while at Jacksonville deeply concerned Elizabeth and she wanted McFarland to feel their pain. Because of the abuse that she witnessed throughout her stay at Jacksonville, Elizabeth vehemently disliked McFarland. For instance, one employee said, "I have seen patients choked nearly to death, so that their faces were black and their tongues hung out of their mouths."¹⁸⁸ Another example of pure torture Elizabeth witnessed herself: A woman of "refinement" upon her entrance into Jacksonville was stripped of her clothing, except her torn chemise, in order to strap her down.¹⁸⁹ This very same woman received again "the torture of the straps" when she asked that "a cat should not be locked up in her room all night with her alone, lest she would gnaw her emaciated limbs before life was extinct?"¹⁹⁰

Other means of torture used by caretakers consisted of the screen room and the straight-jacket.¹⁹¹ The screen room had a blind or screen made of "perforated tin," which covered the window, allowing very little light to

185. *Id.* at 120.

186. *Id.* at 120-21.

187. PACKARD, MODERN PERSECUTION 1, *supra* note 15, at 123.

188. *Id.* at 133.

189. *Id.*

190. *Id.*

191. *Id.* at 152.

enter the room.¹⁹² A straight-jacket deprived a patient of the use of her hands or arms.¹⁹³ These forms of torture and stories of abuse Elizabeth knew of comprised only some of the abuse occurring at Jacksonville. Elizabeth provided examples of abuse concerning women because in asylums male and female patients lived separately and they interacted only at dances, otherwise known as "lunatic balls."¹⁹⁴ Therefore, she had minimal contact with male patients while living at Jacksonville. She did include in *Modern Persecution Vol. 1* a chapter dedicated to an "Interview with Mr. Wells, of Chicago—A Victim of Homesickness," whom she interacted with at one of the "dancing parties."¹⁹⁵ Elizabeth did not extensively discuss the state of affairs in the male wards because she had limited access to such information. Elizabeth was moved to the Eighth ward because of her *Reproof* and there saw how the women lived in subhuman conditions.¹⁹⁶ She took it upon herself to clean the patients and the rooms of this ward.¹⁹⁷ Outraged by the conditions of the asylum, Elizabeth refused to remain silent.

Elizabeth's *Reproof* foreshadowed her activist nature. She by no means lacked a voice or the courage to pursue her ideals. In her *Reproof*, she boldly charged McFarland to face "Repentance or exposure!"¹⁹⁸ and offered him the following two options: Improve the conditions of Jacksonville or else suffer being publicly exposed as a cruel superintendent.¹⁹⁹ She was not afraid to use her own voice—her pen—to expose McFarland publicly.²⁰⁰ She was confident in her own credibility and purpose: "I came here a sane person—I shall leave a sane person—I shall make a sane report of my sane observations here, since it now seems my duty, from appearances, to present."²⁰¹ She did not fear that people would ignore her words as the words of an insane woman. Believing in her sanity, her voice, and herself, Elizabeth told McFarland, "Remember, Dr. McFarland, 'The earth helped the woman.' . . . You just imprison me another three months, and I engage to transfer the records of the adamantine pen, with the steel pen, for the iron pen of the press of 1861."²⁰² This statement is quite remarkable; it is a very brave announcement on the part of a nineteenth century woman, especially one who was a wife, mother, and seemingly subservient being. Elizabeth wanted to act radically, and she saw no reason why she should not. She knew that the pen and words were powerful tools. McFarland never responded to Elizabeth's *Reproof*, perhaps because he presumed that she

192. PACKARD, MODERN PERSECUTION 1, *supra* note 15, at 152.

193. *Id.*

194. LYNN GAMWELL & NANCY TOMES, MADNESS IN AMERICA: CULTURAL AND MEDICAL PERCEPTIONS OF MENTAL ILLNESS BEFORE 1914, at 42 (1995).

195. PACKARD, MODERN PERSECUTION 1, *supra* note 15, at 284-90.

196. *Id.* at 114, 139-42.

197. *Id.* at 139-40.

198. *Id.* at 137.

199. *Id.* at 132-34.

200. PACKARD, MODERN PERSECUTION 1, *supra* note 15, at 132-34.

201. *Id.* at 132.

202. *Id.*

would never follow through on her threats—that she would never use a pen, a traditionally male tool, to make her point. In any case, Elizabeth did wholeheartedly and passionately fulfill her threat. She wrote numerous books exposing McFarland's abuse and the legal disadvantage of married women.²⁰³ Her most powerful tool was her pen, and like a sword, Elizabeth used it as a weapon and source of power. She acted unconventionally by writing her story, but she was determined to improve the lives of others and the condition of woman's existence.

*D. Elizabeth's Release from the Jacksonville Asylum
and Confinement in Her Home's Nursery*

Elizabeth not only used her pen to express disapproval of Jacksonville, but she utilized it to secure her release from the institution as well. Elizabeth met with the trustees and presented a defense of her religious beliefs.²⁰⁴ During her speech, she explained the contentions she had with Calvinism.²⁰⁵ Despite the fact that the trustees were Calvinists themselves, they found Elizabeth's argument logical.²⁰⁶ They agreed to release her because they did not believe that she was insane.²⁰⁷ Elizabeth left Jacksonville in 1863 and went to Granville, Putnam County, Illinois, where she lived with her adopted sister Angelina Ware Field, because she feared returning to Theophilus.²⁰⁸ He still had the right to commit her into an asylum and she thought if she returned to him, he would incarcerate her again.²⁰⁹ After staying in Granville for four months, Elizabeth went back to Theophilus in order to be with her children.²¹⁰

Her decision led to another frightening and unpleasant episode in her life. Theophilus deprived Elizabeth of her personal liberty upon her return home in 1863.²¹¹ The result of the ensuing confrontation was a trial addressing Elizabeth's sanity, which received national coverage.²¹²

After Elizabeth returned home, she resumed her usual duties and attempted to restore order to the chaotic state of her household.²¹³ One day Theophilus usurped Elizabeth's freedom, presumably because he saw her as a threat and wished to confine her until he could place her in an asylum in

203. See, e.g., PACKARD, GREAT DISCLOSURE, *supra* note 15; PACKARD, MODERN PERSECUTION 1, *supra* note 15.

204. PACKARD, GREAT DISCLOSURE, *supra* note 15, at 18-27.

205. *Id.* at 19 (noting that "Calvinism befriends slavery," requires "the subjection of married women," and is "treason to God's government").

206. PACKARD, MARITAL POWER EXEMPLIFIED, *supra* note 15, at 6-7.

207. *Id.*

208. *Id.* at 8.

209. *Id.*

210. *Id.*

211. MOHR, *supra* note 4, at 165-66; PACKARD, MARITAL POWER EXEMPLIFIED, *supra* note 15, at 8-12.

212. MOHR, *supra* note 4, at 165-67.

213. SAPINSLEY, *supra* note 1, at 106-07.

Northampton, Massachusetts.²¹⁴ He locked her in the nursery for six weeks, with the windows in the nursery nailed shut.²¹⁵ The only contact Elizabeth was allowed was with her children.²¹⁶ She taught them for a few hours a day, but had no parental authority over them.²¹⁷ Elizabeth's confinement symbolized her total helplessness. Very much like an infant who cannot defend itself, Elizabeth was wholly under the control of Theophilus.

Elizabeth managed to avert further disaster. She learned of her husband's plan to commit her to the Northampton asylum and she took action to stop Theophilus from committing her again.²¹⁸ Elizabeth was aware that a strange man passed by her window daily to get water from the Packard's pump.²¹⁹ Hastily, Elizabeth wrote a note to her friend, Mrs. Haslett, and when she next saw the strange man at the water pump, she tapped on the window until he noticed.²²⁰ She then slid the letter between the inner and outer frames of her window, the note dropped outside her window, and the stranger apparently delivered the note to Mrs. Haslett.²²¹ In response to the note, Mrs. Haslett went to the courthouse in Kankakee City, Illinois, to consult Judge Charles R. Starr.²²² Mrs. Haslett's meeting with Judge Starr set in motion the process that would lead to the *Packard v. Packard* trial and Elizabeth's freedom. Judge Starr told Mrs. Haslett that if she could get people to swear in writing that Elizabeth was a prisoner in her own home, he would issue a writ of habeas corpus and grant Elizabeth a trial.²²³ Sometime before January 11, 1864, perhaps January 10, William Haslett, Daniel Beedy, Zaimon Hanford, and J. Younglove appeared before Judge Starr on behalf of Elizabeth requesting a writ of habeas corpus.²²⁴ The request asserted that Theophilus would not let Elizabeth go to Kankakee to petition for the writ of habeas corpus herself.²²⁵ The writ of habeas corpus, if issued, would force Theophilus to bring his wife before Judge Starr, so that it could be determined whether Theophilus had a right to confine Elizabeth. In the affidavit, the four men alleged that Theophilus "cruelly abuses and misuses said wife" and was depriving her of winter clothing.²²⁶ On January 11, 1864, Judge Starr responded to the request for the writ of habeas corpus and issued it, demanding that at one o'clock on January 12, 1864, Theophilus bring his wife and himself to his chambers.²²⁷

214. PACKARD, MARITAL POWER EXEMPLIFIED, *supra* note 15, at 8.

215. SAPINSLEY, *supra* note 1, at 107.

216. *Id.*

217. *Id.*

218. *Id.* at 109.

219. PACKARD, MARITAL POWER EXEMPLIFIED, *supra* note 15, at 10.

220. SAPINSLEY, *supra* note 1, at 110.

221. PACKARD, MARITAL POWER EXEMPLIFIED, *supra* note 15, at 10; SAPINSLEY, *supra* note 1, at 110.

222. SAPINSLEY, *supra* note 1, at 110.

223. *Id.*

224. *Id.* at 14-16.

225. *Id.* at 15.

226. *Id.* at 14.

227. SAPINSLEY, *supra* note 1, at 14-15.

In response, Theophilus refused to appear before Judge Starr with Elizabeth on the grounds that he denied restraining Elizabeth and the charge of not providing her warm clothes; he also claimed that Elizabeth never requested to go to Kankakee to get a writ of habeas corpus.²²⁸ Additionally, Theophilus briefly detailed Elizabeth's history of insanity and her supposed incurable state.²²⁹ Presumably, he detailed Elizabeth's insanity to prove that the writ of habeas corpus was invalid because Elizabeth was not of sound mind, thus giving him the right to confine her. Theophilus's letter was unconvincing. Judge Starr wanted a jury to decide if Elizabeth was capable of living on her own, or whether she was insane and therefore needed to be under Theophilus's care.²³⁰

E. Elizabeth's Trial to Gain Her Freedom

At last Elizabeth had won the right to a trial concerning her freedom and sanity. From the very beginning of her ordeal, Elizabeth had protested that without a trial, her confinement was illegal. Now she had the opportunity to vindicate herself publicly. Her trial became a national story that piqued the interests of many.²³¹ The interest in Elizabeth's case seems natural, considering that few women of the nineteenth century publicly accused their husbands of cruel treatment. Once the trial concluded, on January 18, 1864, the jury deliberated for seven minutes and then issued a verdict that Elizabeth was sane.²³² The court decreed: "It is hereby ordered that Mrs. Elizabeth P.W. Packard be relieved from all restraint incompatible with her condition as a sane woman."²³³ With her new status as a sane woman, Elizabeth could be secure, at least in Illinois, in her freedom.

The only surviving record of the trial is from one of Elizabeth's attorneys, Stephen Moore.²³⁴ The Kankakee County courthouse has burned twice since 1864, destroying all records of Elizabeth's trial.²³⁵ Still, Moore's account is quite accurate, as he took testimony verbatim, except when people talked too rapidly or too volubly.²³⁶ The surviving account of Elizabeth's trial is a remarkable historical document. Its value is primarily located in the various testimonies of competing and diverse cultural conceptions of religion, a woman's role, insanity, a married woman's legal status, and other important social concerns. Elizabeth's trial represents a moment in history when racial, gender, and legal norms were in flux. A trial of such kind evoked debate surrounding the shifting cultural norms and provides an ex-

228. *Id.* at 16-17.

229. PACKARD, MARITAL POWER EXEMPLIFIED, *supra* note 15, at 16-17.

230. SAPINSLEY, *supra* note 1, at 10.

231. MOHR, *supra* note 4, at 165-67.

232. PACKARD, MARITAL POWER EXEMPLIFIED, *supra* note 15, at 38.

233. *Id.* at 39.

234. SAPINSLEY, *supra* note 1, at 6.

235. *Id.*

236. *Id.*

cellent historical map to constructs and borderlands of the time—gender, religious, and legal. This document allows us to enter the minds and worlds of those testifying—worlds where complex, competing, and evolving ideas can be found.

Moore's record of the trial began with a short note of his own. Moore characterized Theophilus as deeply tied to Calvinism and as a man who "is cold, selfish, and illiberal in his views, possessed of but little talent, and a physiognomy innocent of expression. He has large self-will, and his stubbornness is only exceeded by his bigotry."²³⁷ Moore described Theophilus unsympathetically, and in a somewhat villainous light. Certainly, Moore's characterization could be easily attributed to Elizabeth. She expressed similar ideas about Theophilus throughout her books.²³⁸ Sapinsley argues that Moore's statement proves that he loved Elizabeth.²³⁹ Sapinsley's assumption is speculative, for one can easily argue that Moore's words about Theophilus were merely a summation of his defense and reflected his sympathy for Elizabeth. As Elizabeth's lawyer, it was his job to defend her by portraying Theophilus in a negative light. Far from being a statement of love toward Elizabeth, Moore's words reflected his opinion that Theophilus was an obstinate man, especially in his treatment of Elizabeth.²⁴⁰

Moore's description of Elizabeth was quite favorable. He concluded that her religious ideas were in harmony with the more "liberal views" of her time.²⁴¹ In one respect Moore's association of Elizabeth with emerging liberal religious movements was accurate, for her belief in human goodness and personal accountability to God were in accord with Protestant ideologies. Nevertheless, Moore ignored how many of Elizabeth's religious beliefs were quite radical and more woman-centered, and thus not necessarily mainstream even in a liberal theological sense.²⁴² Many of Elizabeth's theological ideas specifically involved rejecting the notion that Eve was a sinner and seeing herself as a "holy" being—a "holy" woman.²⁴³ She viewed woman's relation to God in a gendered manner, and her view reshaped her role as a woman. By insisting that women possessed a holy position, Elizabeth argued that women were powerful forces who should not be ignored. Moore recognized to some extent the radical nature of Elizabeth's ideas, but ultimately he was unable to comprehend her conceptualizations fully. He remarked of her, "She is an original, vigorous, masculine thinker, and were it not for her superior judgment, combined with native modesty, she would rank as a 'strong-minded woman.' As it is, her conduct comports strictly

237. PACKARD, MARITAL POWER EXEMPLIFIED, *supra* note 15, at 13.

238. *E.g.*, PACKARD, MODERN PERSECUTION 1, *supra* note 15, at 41 (describing Theophilus's "inflexibility of purpose").

239. SAPINSLEY, *supra* note 1, at 5.

240. *Id.* at 5-6.

241. PACKARD, MARITAL POWER EXEMPLIFIED, *supra* note 15, at 13.

242. SAPINSLEY, *supra* note 1, at 5.

243. PACKARD, GREAT DISCLOSURE, *supra* note 15, at 23.

with the sphere usually occupied by woman.”²⁴⁴ Moore rightfully depicted Elizabeth as an “original” and “vigorous” thinker. His labeling of her thought as “masculine” proves how Elizabeth had moved beyond her landscape—the female landscape—into the male landscape of thought.

Elizabeth’s upbringing and educational background trained her to be a critical thinker, to be what Moore considered a “masculine thinker.”²⁴⁵ Yet, Moore hastened to add that Elizabeth’s “modesty” tempered her “strong-minded” features and he characterized her actions as generally in line with those expected of a woman. His characterization of Elizabeth is contradictory. Elizabeth was not irreverent of her womanly role. She often praised such a role, but she in some sense defied it. In numerous ways, Elizabeth entered the borderlands—through her writing, her legal actions, and her religious ideologies. She contested and exposed the inherent weakness in the legal concept of coverture, the religious conceptualization of a male-based theology, and the system that gave a great amount of economic power to males.

Elizabeth nonetheless was a “strong-minded woman” who fought her entire life to achieve personal autonomy.²⁴⁶ She did not want to be merely a “masculine thinker,” but rather an independent thinker and an evolving woman.²⁴⁷ Moore may have envisioned Elizabeth as a proper and feminine woman, but her writing revealed her rage, her passion, her lively mind, and her strong will—all of which were characteristics in opposition to the “true woman” ideal. Elizabeth defies labels such as masculine or feminine. Her life journey entailed being a mother, a wife, an activist, a writer, a publisher, and a spiritual being; thus, she created her own unique border woman self, a self that had masculine and feminine traits—traits of both gender landscapes.

*F. The Prosecution’s Witnesses and Elizabeth’s
Understanding of the Trinity*

Moore was not the only one who characterized Elizabeth in a contradictory manner during the trial. Most of the prosecution’s witnesses described Elizabeth as intellectually bright, but noted that her theological ideas were not normal or sane.²⁴⁸ Being bright in and of itself was not considered problematic or a sign of insanity in a nineteenth century woman, except when a woman misapplied her abilities. Elizabeth did not merely use her intelligence to run her household more efficiently or to teach her children more rigorously. Instead, she used her knowledge to explore issues of theology, woman’s rights, and herself. These areas were all domains that existed well

244. PACKARD, MARITAL POWER EXEMPLIFIED, *supra* note 15, at 13.

245. *Id.*

246. *Id.*

247. *Id.* at 13.

248. *Id.* 17-31.

beyond the private landscape. Dr. Christopher W. Knott, a physician, said that Elizabeth was a “monomaniac” on the “subject of religion.”²⁴⁹ He acknowledged that she had “fine mental abilities, possessing more ability than ordinarily found.”²⁵⁰ Furthermore, Knott said she had a “nervous temperament” and a “strong will”—seemingly contradictory characteristics.²⁵¹ Her type of insanity, he concluded, resembled the type of insanity from which Henry Ward Beecher or Horace Greely suffered.²⁵² Unintentionally, Knott’s analogy provides much insight into how he viewed the condition and attributes of insanity. Obviously, in his mind passionate people like Beecher or Greely, who vocally expressed their views, were deranged. In a sense, Knott was paying Elizabeth a tremendous compliment. He was suggesting that she, too, like men of Beecher’s and Greely’s stature, possessed a passionate and intellectual mind. Knott, like Moore, recognized but misinterpreted Elizabeth’s quest to gain a voice, to gain an independent being. He viewed her quest as irrational. Interestingly, Knott contended that rest could cure Elizabeth’s excited state, but he warned that confining her would worsen her condition.²⁵³ Knott’s testimony supported the notion that Elizabeth was insane only in terms of her religious beliefs.²⁵⁴ Perhaps her greatest offense, at least in Knott’s eyes, was that her intellectual nature caused her to pursue inappropriate religious ideas and actions.

J.W. Brown, another physician who examined Elizabeth, also found her legally and clinically insane. Brown had an extended meeting with Elizabeth, and at first she seemed mentally stable to him.²⁵⁵ Brown felt that her ideas on the “social condition of the female sex,” although not in accord with his own views, were not proof of her insanity.²⁵⁶ He did not find Elizabeth’s comment that “Mr. Packard was opposing her, to overthrow free thought in woman; that the despotism of man may prevail over the wife; but that she had right and truth on her side, and that she would prevail” as insane.²⁵⁷ For Brown, Elizabeth’s religious views, in part, proved her insanity. Her conception of the Trinity particularly bothered him.²⁵⁸ According to Elizabeth, mankind was represented in the Father, womankind in the Holy Ghost, and the “fruit” of the Father and the Holy Ghost was the Son.²⁵⁹

During her trial the prosecution addressed Elizabeth’s interpretation of the Trinity. Dr. Brown, a witness for the prosecution, concluded that Elizabeth was insane because she viewed the Trinity in an unorthodox manner.²⁶⁰

249. PACKARD, MARITAL POWER EXEMPLIFIED, *supra* note 15, at at 17.

250. *Id.* at 18.

251. *Id.*

252. *Id.*

253. *Id.*

254. PACKARD, MARITAL POWER EXEMPLIFIED, *supra* note 15, at 18.

255. *Id.* at 18-19.

256. *Id.* at 19.

257. *Id.*

258. *Id.* at 19-20.

259. PACKARD, MARITAL POWER EXEMPLIFIED, *supra* note 15, at at 19-20.

260. *Id.* at 19.

The source of Elizabeth's conceptualization of the Trinity is unknown. One can assume her familiarity with Swedenborgianism and Spiritualism influenced her thoughts. Also, perhaps Elizabeth recalled, albeit imprecisely, discussions of the Trinity among her father and his fellow scholars.²⁶¹ Elizabeth formed a radical vision of the Trinity that centered around her conception of the Holy Ghost. She maintained that the "impious, Calvinistic" doctrine attempted to "*chain*" her "*thoughts*" through the charge of insanity and her imprisonment.²⁶² She declared herself "a spiritual woman—a 'temple of the Holy Ghost.'"²⁶³ Just as those who called Jesus insane were "blaspheming him," so too, were her opponents blaspheming a "spiritual woman"—a "Holy Ghost" who,

[I]nasmuch as she is a more spiritual being, and, therefore, more sensitive to abuses of her spiritual nature; and, since her position in society renders her a more weak, defenseless being than a man, therefore it is a much more aggravated offense to kidnap a woman's accountability than a man's.²⁶⁴

Understanding Elizabeth's charge and conception of the Trinity is crucial to understanding her radical nature, her border woman nature, and her rhetoric.

Her theory of the Trinity drove individuals like Dr. Brown to declare Elizabeth religiously insane, for her conceptualization had grave religious, gender, and cultural ramifications. The traditional trinity consisted of the Father, the Son, and the Holy Ghost. The Father and the Son were envisioned as male, but the Holy Ghost remained an ambiguous gender.²⁶⁵ Recognizing this fact, Elizabeth announced that woman was the Holy Ghost, thus infusing the element of gender into the Trinity, and she proclaimed herself as a representative of the Holy Ghost.²⁶⁶ Although perhaps Elizabeth wanted to reorient the Trinity toward a family image (father, mother, and son), she was most concerned with the position of woman within this structure than the structure itself. She argued that as one should not blaspheme Jesus, one should not blaspheme the Holy Ghost (woman).²⁶⁷ Essentially, Elizabeth accorded woman the same position as Jesus in the spiritual realm and hierarchy. She cleverly pointed out that in the earthly realm woman was relegated to "a more weak" position—a socially constructed position of inferiority.²⁶⁸ Consequently, in her re-conceptualization of the Trinity,

261. SAPINSLEY, *supra* note 1, at 42.

262. PACKARD, GREAT DISCLOSURE, *supra* note 15, at 23.

263. *Id.*

264. *Id.*

265. See SAPINSLEY, *supra* note 1, at 42-43.

266. PACKARD, GREAT DISCLOSURE, *supra* note 15, at 23.

267. *Id.*

268. *Id.*

woman was not “weak.”²⁶⁹ Instead, Elizabeth equated and perhaps equalized man and woman in the spiritual realm.²⁷⁰

Because Elizabeth believed that the spiritual realm influenced the earthly realm, her concept of the Trinity inherently challenged not only theological norms, but gender norms as well. One can assume she hoped earthly power relations between man and woman would be reformulated, in time, to be more equitable, just like the Trinity. Elizabeth mounted a critique of the “separate spheres” ideology with her view of the Trinity. She knew that women were socialized to be “weak,” but she realized this was not an inherent aspect of a woman’s being.²⁷¹ However, Elizabeth often rhetorically referred to woman as “weak” throughout her books.²⁷² She likely resorted to such rhetoric in part to appeal to her targeted male audience. Elizabeth presented a contradictory vision of a “weak” woman—a vision that stressed the inherent and constructed aspects of woman’s weakness.²⁷³ It seems that her intent was to negate the “weak” woman idea, rather than comply or bolster it. She herself negated the “weak” woman concept in that she possessed a strong voice, an ability to write, to live alone, and to crusade to change laws. She knew she could enter the borderlands and there she could form a being that was “holy”—powerful, respected, and valuable—and not “weak.”²⁷⁴

Elizabeth’s self-image disturbed Brown. Elizabeth without hesitation proclaimed that she was superior to Theophilus: “She claimed to be better than her husband—that she was right—and that he was wrong—and that all she did was good, and all he did was bad; that she was farther advanced than other people, and more near perfection.”²⁷⁵ Presumably Brown found Elizabeth’s comment troublesome because she was announcing her defiance of the “cult of true womanhood” standard.²⁷⁶ Elizabeth’s words have the tone of a self-assured woman and may have suggested to Brown that she was part of the woman’s movement. However, she was not part of the suffragist woman’s movement, nor was she actively part of any other more broadly based woman’s groups.²⁷⁷ Many doctors of this period did not wholeheartedly approve of the woman’s movement.²⁷⁸ Brown was clearly a more conservative-minded doctor, and his commentary shows he felt that a woman should be pious and submissive, rather than vocal, strong, intelligent, and spiritual.

269. *See id.*

270. *See id.*

271. PACKARD, GREAT DISCLOSURE, *supra* note 15, at 23.

272. *See, e.g., id.*

273. *See id.*

274. *See infra* Part VI (discussing the borderlands).

275. PACKARD, MARITAL POWER EXEMPLIFIED, *supra* note 15, at 20.

276. Welter, *supra* note 79, at 151-74.

277. *See supra* note 133 and accompanying text.

278. Doctors’ responses to women’s rights spanned a range, from liberal to conservative. *See supra* note 117 and accompanying text.

Other witnesses discussed Elizabeth's nontraditional ideas and behavior. Abijah Dole recalled visiting Elizabeth when Lizzy (Libby), her daughter, was ill and he stated that Elizabeth said, "I am one of the children of heaven; Libby is one of the branches." "The woman shall bruise the serpent's head."²⁷⁹ He also testified that she remarked, "Christ had come into the world to save men, and that she had come to save woman."²⁸⁰ Elizabeth's theology troubled Dole because she was suggesting that there existed a female counterpart to Jesus and that people should not solely blame the Fall on woman.²⁸¹ Elizabeth articulated a more woman-centered theology. Her conception of woman as holy appears to have meant that a woman was not subservient to man, but rather his equal or perhaps his superior. Furthermore, her public announcement that she wanted to leave Theophilus's church showed how she rejected the conservative Calvinist doctrine. For her opponents, the matter was simple: a woman should obey her husband in all matters—religious, economic, and social—and Elizabeth did not do so.

G. Elizabeth's Defense at Trial

In her defense, several people testified to her sanity.²⁸² One person who assessed Elizabeth accurately was Dr. Duncanson.²⁸³ He declared Elizabeth sane and the "most intelligent lady" he had talked with in some time.²⁸⁴ He stated that her religious views were akin to Swedenborgianism and her conception of the Trinity was a "very ancient theological dogma."²⁸⁵ Apparently, Duncanson mentioned Swedenborgianism because this religious sect, which based its theology upon the ideas of Emanuel Swedenborg, was more liberal than the mainstream.²⁸⁶ Swedenborg was a mystical man, who stressed the importance of the self and the self's connection to God.²⁸⁷ Elizabeth too was very mystical, and she also stressed her own being and her relationship to God.²⁸⁸ Duncanson determined that Elizabeth had "a strong and vigorous mind" and declared, "I pronounce her a sane woman, and wish we had a nation of such women."²⁸⁹ Duncanson learned from his examination that Elizabeth merely harbored liberal religious views and that she had a strong mind and sense of self. He found her ideas intellectually stimulating and her discussion thought-provoking. Duncanson's European

279. PACKARD, MARITAL POWER EXEMPLIFIED, *supra* note 15, at 22.

280. *Id.*

281. *See id.*

282. *Id.* at 31-38.

283. *Id.* at 37.

284. PACKARD, MARITAL POWER EXEMPLIFIED, *supra* note 15, at 37.

285. *Id.*

286. *Id.*

287. See AHLSTROM, *supra* note 108, at 483-86, and THEOPHILUS PARSONS, OUTLINES OF THE RELIGION AND PHILOSOPHY OF SWEDENBORG (New York, The New Church Press 1876), for information about Emanuel Swedenborg and Swedenborgianism.

288. *See supra* notes 266-78 and accompanying text.

289. PACKARD, MARITAL POWER EXEMPLIFIED, *supra* note 15, at 37-38.

education and background may have made him a more liberal-minded person, and thus more sympathetic toward Elizabeth.²⁹⁰ Unlike his American counterparts, he felt Swedenborgianism and other liberal religious sects were not madness, but viable religions.²⁹¹

Elizabeth's trial reveals a great deal about the competing and shifting cultural norms in America. No longer were Calvinism and the binary opposition between the genders all-pervasive norms. Dr. Brown, Theophilus, and Abijah Dole were experiencing a sense of "dis-ease" in relation to Elizabeth's behavior. Writer Eva Hoffman explains the meaning of what she calls "speech dis-ease" and states that "[she] can tell, in other words, the degree of their ease or disease, the extent of authority that shapes the rhythms of their speech."²⁹² Gilbert and Gubar define "dis-ease" as a "disaffection, a disturbance, a distrust."²⁹³ Certainly, Theophilus harbored a sense of "dis-ease" toward Elizabeth. She defied set norms, and thrived in multiple landscapes and continually shifting terrains. Standard religious, gender, legal, and personal borders collapsed in her world. Instead of joining Elizabeth in her voyage into culturally uncharted territories, Theophilus staked his position in the known—the set borders. Using the law as a tool, Elizabeth gained her right to be recognized as sane. Many people were not willing to embrace a woman who defied set landscapes—legal, religious, and social—and so their own fear, "dis-ease," led them to label her as insane. Elizabeth won her case because the jury did not feel the same sense of "dis-ease" as others, like Theophilus. By the mid-nineteenth century, religious ideas were in flux and people were more willing to accept different religious conceptions. Elizabeth's triumph reflects this shift in society—a shift from a rigid Puritanical culture to a more diverse religious culture. To the average person, the juror, it was not critical that Elizabeth did not believe in predestination. They probably simply viewed her as a woman with more marginal, nontraditional religious ideas and therefore they did not feel that was enough to prove her insane.

H. Elizabeth as a Businesswoman

In 1864, upon gaining her freedom through the jury's declaration of her sanity, Elizabeth went to live with her friends, the Hanfords.²⁹⁴ Elizabeth wanted to be financially independent and to make her story known to help persuade male legislatures to change the oppressive laws existing against women.²⁹⁵ Accordingly, she borrowed ten dollars from Mr. Hanford to go to

290. Duncanson attended the University of Glasgow and Anderson University of Glasgow. *Id.* at 37.

291. *See id.*

292. EVA HOFFMAN, *LOST IN TRANSLATION* 123-24 (1989).

293. SANDRA M. GILBERT & SUSAN GUBAR, *THE MADWOMAN IN THE ATTIC: THE WOMAN WRITER AND THE NINETEENTH-CENTURY LITERARY IMAGINATION* 51 (1979).

294. SAPINSLEY, *supra* note 1, at 111, 120.

295. *See id.* at 121.

Chicago to begin her writing and publishing career.²⁹⁶ She managed to convince the Times Steam Job Printing House to print her *Reproof to Dr. McFarland for his Abuses of His Patients* for a hundred dollars.²⁹⁷ Elizabeth was able to raise the necessary funds to print her pamphlet by borrowing money from friends and from the money that the people in Granville had given her.²⁹⁸ At ten cents each, Elizabeth sold a thousand copies and earned a ninety-dollar profit from the venture.²⁹⁹

With such success, Elizabeth realized that if she printed her *Great Drama*, a 2500-page book, she could earn a livelihood from the sales.³⁰⁰ She needed to become self-sufficient because she was separated, though not legally, from Theophilus, and had to support herself.³⁰¹ Furthermore, Elizabeth knew that she must become economically independent if she ever wanted to have a good chance of regaining custody of her children.³⁰² While in Chicago, Elizabeth inquired about printing an "Introductory volume" of the *Great Drama*.³⁰³ Because the cost to do so was prohibitive, Elizabeth sold fifty-cent tickets ensuring the bearer to the first volume of *The Great Drama, or the Millennial Harbinger* to raise the necessary capital.³⁰⁴ Complications with the initial printing company, The American Press, led her to hire a man at the *Chicago Tribune* to print the book.³⁰⁵ He remembered Elizabeth from her 1864 trial.³⁰⁶ At his request, she hired a stereotyper, an engraver, and a bookbinder.³⁰⁷ Elizabeth was a deft saleswoman: She traveled throughout Illinois promoting her book, but she always returned to check the proofs and to pay her employees in Chicago.³⁰⁸ After fifteen months, she had sold twelve thousand tickets.³⁰⁹

Elizabeth was a smart businesswoman, too. She managed to raise her own capital, promote her own books, and oversee their publication.³¹⁰ Despite her lack of experience in the business world, she seemed to succeed quite well. The only problem was that her earnings technically belonged to Theophilus.³¹¹ Elizabeth continued to promote her books and eventually made enough money to purchase a home in Chicago.³¹² During her lifetime,

296. *Id.*

297. *Id.*

298. *Id.*; see *supra* note 208 and accompanying text.

299. SAPINSLEY, *supra* note 1, at 121.

300. See *id.* at 121-22.

301. See *id.* at 120-21.

302. *Id.* at 171.

303. PACKARD, MODERN PERSECUTION 2, *supra* note 15, at 84-85.

304. SAPINSLEY, *supra* note 1, at 122.

305. *Id.* at 123.

306. *Id.*

307. *Id.*

308. *Id.* at 123-24.

309. PACKARD, MODERN PERSECUTION 2, *supra* note 15, at 87; SAPINSLEY, *supra* note 1, at 124.

310. PACKARD, MODERN PERSECUTION 2, *supra* note 15, at 84-90 (discussing how Elizabeth marketed and sold her books in a chapter entitled "How to Commence Business Without Capital"); SAPINSLEY, *supra* note 1, at 121-24.

311. *Id.* at 171.

312. *Id.*

Elizabeth wrote seven books and other pamphlets, all related to her asylum experience and to her political and economic ideas.³¹³ She told her story over and over and in different ways and different variations. Therefore, the same sections appear in several of her books.³¹⁴ Elizabeth wrote a great deal about important issues, like woman's legal, religious, and economic being, and the rights of the insane. Proud of her accomplishments, Elizabeth said:

As the sum of these six years toil [presumably in 1864-1873], I wrote seven different books and published them myself, without either begging or borrowing money to aid me in so doing; and also sold twenty-eight thousand of these books myself, by single sales, besides doing the arduous and expensive work of lobbying for my four bills, during four different legislative sessions.

...

From this [writing, publishing, and lobbying] experience I am prepared to infer, that vigorous, active, energetic, persevering exercise of both body and mind is a healthy, and, as I think, a natural condition, favorable to both intellectual and spiritual growth.³¹⁵

Elizabeth was explicitly denying the divide between the gender landscapes. She found that her economic pursuits strengthened her sense of self and she was proud of her accomplishments. Elizabeth realized that being involved in the public world of business could cause a person to grow, and she believed that her business experiences had allowed her to grow without overwhelming her or causing her to be less mentally or physically healthy. Thus, Elizabeth vocalized her feeling that as a woman she could participate in the economic world and succeed. Implicitly, she was suggesting other women could grow immensely if they entered the economic world as she did.

Having made the decision to separate from Theophilus, Elizabeth had to survive somehow. She could have chosen perhaps to live with her father, who was quite wealthy, but Elizabeth was far too independent to rely on him. In addition, she harbored some resentment toward her father because he had initially believed Theophilus's assessment that she was insane.³¹⁶ However, after her release Elizabeth and her father reconciled; he recanted his belief that she was insane.³¹⁷ Elizabeth chose to support herself rather than live upon charity the rest of her life. Consequently, Elizabeth wore her "gender on [her] sleeves"³¹⁸ and marketed this fact to survive, which was quite a daring move for a nineteenth century woman. Elizabeth was a border

313. See *supra* note 15.

314. For example, both PACKARD, MODERN PERSECUTION 2, *supra* note 15, and PACKARD, PRISONERS' HIDDEN LIFE 1, *supra* note 15, contain the chapter entitled *My Abduction*.

315. PACKARD, MODERN PERSECUTION 2, *supra* note 15, at 380.

316. SAPINSLEY, *supra* note 1, at 124.

317. *Id.* at 124, 132-33.

318. ANNA QUINDLEN, THINKING OUT LOUD: ON THE PERSONAL, THE POLITICAL, AND THE PUBLIC, AND THE PRIVATE, at xxviii (1993).

woman. Therefore, she eagerly entered the business world and battled to make her voice known and to prosper. She accomplished both goals, and the books that she published allow us to enter her world. Her success must have been immense because today her books are preserved at historical societies, and many of her books can be found on the shelves of general collections in universities. Although the academic world has lately ignored Elizabeth, her story and her voice are not lost; rather, her books are readily available to anyone interested and eager to recover her story. Elizabeth's story gained the attention of her contemporaries and by recovering her voice through her writing we can enter her world—a world full of trials, triumphs, journeys, passion, and perseverance to capture her self—a self that was dynamic, contradictory, and complex.

III. POLITICAL CRUSADES AND PUBLIC REACTION

A. The Personal Liberty Bill and the Race Connection

After her trial for personal liberty in 1864, Elizabeth again challenged the Illinois legal world with her proposed personal liberty bill—a bill meant to ensure women and children a trial to ascertain their mental state, rather than just allowing their husbands and fathers to do so as the 1851 law permitted. Already Elizabeth had managed successfully to bring about a legal change in how people in Massachusetts could commit citizens to insane asylums.³¹⁹ The Massachusetts legislature enacted a law in 1865 requiring that ten relatives and two other people of the alleged insane person's choice be notified of the person's commitment.³²⁰ After such a triumph, Elizabeth returned to Illinois hoping to change the Illinois insanity laws.

By 1865, the Illinois state legislature had already revised the insanity laws, requiring a trial in front of a jury and judge to decide the mental state of an individual.³²¹ This 1865 law provided no specific penalties for non-compliance.³²² Therefore, it was easily ignored. Elizabeth intended to lobby for the passage of an act to enforce the 1865 law.³²³ Her crusade was highly personal. While in Jacksonville, Elizabeth announced her commitment to changing married woman's legal status. She told Dr. McFarland that the extent of married woman's liabilities was great:

Indeed Doctor, this fact has become so notorious here, that our attendants echo the remark made by Elizabeth Bonne, the other day, viz: "I did once think I would get married; but since I have been here, and seen so many wives brought here by their husbands, when

319. SAPINSLEY, *supra* note 1, at 129.

320. *Id.*

321. *Id.* at 136; Ill. Stat. 1869 Digest, ch. 50(a) §§ 19-21 (1865).

322. SAPINSLEY, *supra* note 1, at 136.

323. *Id.*

nothing ails them, I am firmly resolved never to venture to marry in Illinois! I can take better care of myself, alone."³²⁴

Such a comment, although perhaps somewhat dramatic, proved the legal vulnerability married women faced. Elizabeth was committed to changing this reality: "I am resolved to fight my way through all obstacles to victory—to the *Emancipation of married women!*"³²⁵ She dedicated her life to the "settlement of this great woman question"—to the cause of woman's personal liberty.³²⁶ Believing she was "God's chosen instrument to raise woman to her proper position," Elizabeth began her mission in Massachusetts and then continued it in Illinois.³²⁷

The name that Elizabeth chose for her Illinois bill, "An Act for the Protection of Personal Liberty in Illinois," is rhetorically reminiscent of the so-called "personal liberty laws" passed to protect slaves.³²⁸ The North passed these "personal liberty laws" in an attempt to protect free blacks from kidnapping and to hinder the return of fugitive slaves.³²⁹ Apparently, Elizabeth still closely associated a woman's status with a slave's status. In *Modern Persecution Vol. 2*, Elizabeth devoted a chapter to the idea: "Return to my Home—Married Woman a Slave!"³³⁰

Elizabeth's continued identification of woman's legal status with the slaves' legal status is problematic. To begin with, by the time Elizabeth published *Modern Persecution* in 1873, the suffragist woman's movement had severed its ties with the black community because of the Fifteenth Amendment.³³¹ The Fifteenth Amendment was proposed on February 27, 1869, and ratified on February 3, 1870.³³² Leading "feminists" like Elizabeth Cady Stanton and Susan B. Anthony were upset by the fact that the Fifteenth Amendment did not guarantee women a right to vote.³³³ From this point on, according to Ellen Carol DuBois, the woman's movement "no longer approached women's rights by linking claims of race and sex."³³⁴ By the mid- to late 1860s, the woman's movement stressed the need for women's suffrage as its primary goal.³³⁵ Elizabeth did not believe in a

324. PACKARD, *MODERN PERSECUTION 2*, *supra* note 15, at 188.

325. *Id.*

326. *Id.*

327. *Id.* at 189.

328. SAPINSLEY, *supra* note 1, at 208.

329. PAUL FINKELMAN, *SLAVERY IN THE COURTROOM: AN ANNOTATED BIBLIOGRAPHY OF AMERICAN CASES* 62 (1985).

330. PACKARD, *MODERN PERSECUTION 2*, *supra* note 15, at 66-72.

331. Ellen Carol DuBois, *Introduction to THE ELIZABETH CADY STANTON-SUSAN B. ANTHONY READER: CORRESPONDENCE, WRITINGS, SPEECHES*, at xvi (Ellen Carol DuBois ed., 1992) [hereinafter DuBois, *Introduction*].

332. U.S. CONST. amend. XV.

333. Ellen Carol DuBois, *Introduction, Part Two THE ELIZABETH CADY STANTON-SUSAN B. ANTHONY READER*, *supra* note 331, at 90-92 [hereinafter DuBois, *Part Two*].

334. DuBois, *Introduction*, *supra* note 331, at xvi; see also Alfred L. Brophy, "A Revolution which Seeks to Abolish Law, Must End Necessarily in Despotism": Louisa McCord and Antebellum Southern Legal Thought, 5 CARDOZO WOMEN'S L.J. 33 (1998).

335. See DuBois, *Part Two*, *supra* note 333, at 88-92.

woman's right to vote and therefore she was not part of the mainstream woman's movement.³³⁶ As a result, she continued to join woman's rights with "claims of race and sex."³³⁷ Throughout her books, she compared and linked women and slaves.³³⁸ For instance, Elizabeth explained: "Why, I have always been an abolitionist, and I never knew that I was a slave. I supposed I was the partner and companion of my husband. I never suspected or thought I was his *slave*!"³³⁹ Even though Elizabeth, unlike the larger woman's movement, did not abandon the race and sex connection, she nonetheless expressed racist views at times:

As Uncle Tom's case aroused the indignation of the people against the slave code, so my case, so far as it is known, arouses the same feeling of indignation against those laws which protect married servitude. Married woman needs legal emancipation from married servitude, as much as the slave needed legal emancipation from his servitude.

Again, all slaves did not suffer under negro slavery, neither do all married women suffer from this legalized servitude. Still, the principle of slavery is wrong, and the principle of emancipation is right, and the laws ought so to regard it. And this married servitude exposes the wife to as great suffering as negro servitude did.

It is my candid opinion, that no Southern slave ever suffered more spiritual agony than I have suffered; as I am more developed in my moral and spiritual nature than they are, therefore more capable of suffering. I think no slave mother ever endured more keen anguish by being deprived of her own off-spring than I have in being legally separated from my own.³⁴⁰

Her comment that she was "more developed" than a slave reinforced a stereotypical racial hierarchy—that is the notion that whites were superior to blacks because of their supposed greater intellectual capabilities.

Nonetheless, Elizabeth recognized that a married woman, like a slave, had no legal personhood. The decision by the woman's movement to end the tie between race and gender continues to haunt and divide women along racial lines, and the women's movement of today is still trying to erase this division.³⁴¹ Primarily because she existed outside the woman's movement, Elizabeth never contributed to this divide, and in fact, to some extent tried to encourage a connection between the race and gender issue.³⁴²

336. PACKARD, *MODERN PERSECUTION 2*, *supra* note 15, at 194-95.

337. DuBois, *Introduction*, *supra* note 331, at xvi.

338. *E.g.*, PACKARD, *MODERN PERSECUTION 2*, *supra* note 15, at 68-69.

339. *Id.* at 69.

340. *Id.* at 110.

341. DuBois, *Introduction*, *supra* note 331, at xvi.

342. See PACKARD, *MODERN PERSECUTION 2*, *supra* note 15, at 68-69.

B. Elizabeth's Lobbying Efforts on Behalf of the Personal Liberty Bill

Aided by public opinion and friends, Elizabeth waged her crusade to have the personal liberty bill passed in Illinois. Judge James B. Bradwell and other legal advisers helped her create the petition.³⁴³ She then lobbied intensively to gain support for the bill. The *Chicago Tribune* and *Chicago Times* ran favorable editorials in support of the petition.³⁴⁴ Elizabeth received further support from the press: The *Chicago Tribune*, *Springfield Journal*, and *State Register* printed her anonymous articles on the topic, thus giving Elizabeth the opportunity to voice herself publicly.³⁴⁵ When the bill was in jeopardy of not passing, Elizabeth acted quickly by making her way onto the Senate floor and actively lobbying for the bill's passage.³⁴⁶ Elizabeth understood the boldness of her actions when she said, "They are wondering if that is a sane woman lobbying in this style among the Senators, doing what no lady was ever found doing before her!"³⁴⁷ Elizabeth ignored that she was a woman entering the exclusively male political landscape and focused on her goal. At that moment she moved from the margins of the political world—the gallery—into the center—the floor of action. While in the center—the locus of action and power—Elizabeth triumphed. She persuaded enough Senators to support her bill so it would be considered, and with some difficulties the bill did in fact pass.³⁴⁸

Women supported Elizabeth's endeavors. While she lobbied for her goal on the Senate floor, a group of women flocked to observe the proceedings: "The agitation of my bill became so general that the after-noon session found the front gallery full of ladies, who were in sympathy with me, for the fate of the bill for the protection of the personal liberty of their own sex."³⁴⁹ Apparently, Elizabeth was not alone in her feelings about married woman's liabilities. Other women actively supported her cause by publicly attending the proceedings.³⁵⁰ A true female world of activism arose from Elizabeth's crusade. Essentially, these women and Elizabeth formed a political lobby. One may assume that some women in the gallery, by their very presence within a political space, were acting in a subversive manner against their husbands and the other men present. Far from being a lone crusader, Elizabeth received support from some of her female counterparts.³⁵¹ Their support reveals how nuanced changes in gender roles, like women sitting in the gallery, can gradually, but significantly, shift the locus of power possessed

343. *Id.* at 190.

344. *Id.*

345. *Id.* at 197.

346. *Id.* at 199-200.

347. PACKARD, MODERN PERSECUTION 2, *supra* note 15, at 200.

348. *Id.* at 200-01, 203-04.

349. *Id.* at 201.

350. *Id.*

351. *Id.*

by women. The Governor approved the personal liberty bill on March 5, 1867.³⁵²

C. Myra Bradwell's Advocacy Opposing Commitment Procedures

One woman in particular, Myra Bradwell, who called herself "editress" of the *Chicago Legal News*, was also concerned about the process of committing people to insane asylums.³⁵³ Throughout her years as editress of *Chicago Legal News*, Myra advocated trials for the commitment of the insane.³⁵⁴ She felt that the 1851 law, which allowed the commitment of married women and children without a trial, was a true outrage.³⁵⁵

Myra worried that the "Private Madhouse" bill, which allowed for the private commitment of all persons to state insane asylums, would be passed.³⁵⁶ The bill had been presented in different forms during the first two decades of the *Chicago Legal News's* existence.³⁵⁷ According to Jane Friedman, the bill was never enacted "probably due in large measure to twenty years of campaigning by Myra."³⁵⁸ Myra Bradwell, like Elizabeth, recognized the value of personal liberty. At the heart of the issue, for Myra as well as Elizabeth, was a woman's legal self-possession.³⁵⁹ Without any legal being, women were vulnerable to false commitment and other abuses.³⁶⁰ Possessing one's own mind, body, and soul was the primary goal of Myra's and Elizabeth's life crusades—herein one can see the connection between the two advocates. They never wanted a man to be able to accuse a

352. PACKARD, MODERN PERSECUTION 2, *supra* note 15, at 210-12 (containing a reprint of the full personal liberty bill of 1867); see *id.* at 190-219, for a full discussion of Elizabeth's advocacy for the personal liberty law.

353. CHI. LEGAL NEWS, Nov. 21, 1868, at 60; FRIEDMAN, *supra* note 18, at 202-08; see STEVEN M. BUECHLER, THE TRANSFORMATION OF THE WOMAN SUFFRAGE MOVEMENT: THE CASE OF ILLINOIS, 1850-1920, at 62-65 (1986), for a discussion of Myra Bradwell generally.

354. See, e.g., Myra Bradwell, *Our Insane*, CHI. LEGAL NEWS, Nov. 21, 1868, at 60; Myra Bradwell, *Our Insane*, CHI. LEGAL NEWS, Nov. 28, 1868, at 68; Myra Bradwell, *Our Insane*, CHI. LEGAL NEWS, Jan. 2, 1869, at 109-10 (publishing a portion of T. Laycock, M.D.'s essay *Suggestions For Rendering Medico-Mental Science Available to the Better Administration of Justice, and the More Effectual Prevention of Lunacy Vice and Crime*); Myra Bradwell, *Our Insane*, CHI. LEGAL NEWS, Jan. 9, 1869, at 116-17 (publishing more of T. Laycock, M.D.'s essay); Myra Bradwell, *Our Insane*, CHI. LEGAL NEWS, May 3, 1879, at 267; Myra Bradwell, *Our Insane*, CHI. LEGAL NEWS, May 24, 1879, at 291; Myra Bradwell, *Personal Liberty*, CHI. LEGAL NEWS, Feb. 28, 1885, at 212; see FRIEDMAN, *supra* note 18, at 202-08 (citing and discussing certain of these articles).

355. FRIEDMAN, *supra* note 18, at 205-06 (quoting and discussing CHI. LEGAL NEWS, Nov. 21, 1868, at 60); see *supra* note 160 and accompanying text for pertinent portions of the 1851 law.

356. FRIEDMAN, *supra* note 18, at 206.

357. *Id.*

358. *Id.* Friedman asserted: "Elizabeth Packard was thus responsible for the *passage* of the two laws prohibiting men from institutionalizing their wives without a jury trial and order of a court. But the fact that those laws *remained* on the statute books was due, in large measure, to the efforts of Myra Bradwell." *Id.* at 205. Friedman's comment tends to suggest that Myra Bradwell's efforts were more important with respect to personal liberty than Elizabeth's. The fact that both Elizabeth and Myra Bradwell exerted efforts to advocate personal liberty shows the connection between these women and the importance of the issue. In the end, both women contributed in a significant manner to further the personal liberty of married women and children.

359. See, e.g., Myra Bradwell, *Our Insane*, CHI. LEGAL NEWS, Nov. 21, 1868, at 60.

360. *Id.*

woman of insanity merely because he did not approve of her thoughts.³⁶¹ These border women placed great value in being autonomous, legally and personally.

D. The State Investigation of the Jacksonville Asylum

The personal liberty bill was not the only controversial issue that Elizabeth pursued in 1867. A letter that she wrote to the *State Register* prompted a state-led investigation into the conditions of the Jacksonville Asylum.³⁶² In the letter, Elizabeth provided testimony by Mrs. S.A. Kain, a former Jacksonville attendant, who told of the abuse occurring in the institution.³⁶³ In her testimony, Mrs. Kain spoke of the "screen-room," where an iron screen covered the window so that a patient would not break it.³⁶⁴ Further, patients, while in the screen-room, were usually jacketed with "a strong, closely fitting waist, with sleeves coming below the hand and sewed up, with a loop-hole through which can be passed a strong cord."³⁶⁵ She continued to describe how, with their arms crossed in front of them and their hands tied and drawn behind them, the patients were "thrown" on the screen-room floor and beaten.³⁶⁶ The patients would scream and the noise was audible for quite a distance.³⁶⁷ Screen-room torture was only one method of abuse. The cold bath practice was another. This method consisted of stripping a patient, placing her in cold, or sometimes hot, water, tying her hands and feet, and then plunging her under water until she neared death.³⁶⁸ The cycle of plunging and brief allowances to breathe was repeated until satisfactory pain had been inflicted upon the patient.³⁶⁹ Mrs. Kain's accusations and description of abuse caused such public outrage that Dr. McFarland feared public discussions would cause people to question his competency.³⁷⁰ Therefore, he asked a friend to have the legislature thoroughly investigate Jacksonville in hopes that his reputation would be cleared.³⁷¹ An investigation led by three house and two senate members ensued.³⁷²

The legislative investigation unleashed a flurry of opinions regarding the treatment and commitment of the insane.³⁷³ In the end, the legislative committee condemned the practices of the Jacksonville asylum, while the

361. See, e.g., PACKARD, MODERN PERSECUTION 2, *supra* note 15, at 186-89.

362. *Id.* at 220-23; SAPINSLEY, *supra* note 1, at 149-52.

363. PACKARD, MODERN PERSECUTION 2, *supra* note 15, at 220-23.

364. *Id.* at 222.

365. *Id.* at 223.

366. *Id.*

367. *Id.*

368. PACKARD, MODERN PERSECUTION 2, *supra* note 15, at 223.

369. *Id.*

370. SAPINSLEY, *supra* note 1, at 152.

371. *Id.*

372. PACKARD, MODERN PERSECUTION 2, *supra* note 15, at 223.

373. SAPINSLEY, *supra* note 1, at 149-70; *Report of Committee on Insanity*, CHI. MED. EXAMINER, Sept. 1869, at 513-25 [hereinafter *Report*].

trustees of Jacksonville and Dr. McFarland denied the allegations of abuse.³⁷⁴ They solicited testimony nationwide regarding abuse and received much response.³⁷⁵ Initially, they did not invite the trustees or Dr. McFarland to defend Jacksonville.³⁷⁶

Eventually, three competing and separate stances emerged. The investigative committee called for the resignation of Dr. McFarland, the trustees charged the committee with conducting a biased investigation, and the medical society emphasized the problematic aspects of the personal liberty bill. Though the evidence indicated that abuse did occur, the extent is not clear. Many people who gave testimonies throughout Elizabeth's books discussed the screen-room and cold bath methods of abuse.³⁷⁷ From these similar descriptions, it is evident that these sorts of abuses took place, even if the prevalence and extent of the abuse is unknowable. However, the trustees' allegations concerning the bias of the legislative investigations inquiry were also valid. Likewise, the medical society was justified in voicing its concern that the 1867 law subjected too many insane people to unnecessary trials and that these trials would potentially postpone the care that some patients needed.³⁷⁸

The *Chicago Tribune*, on December 7, 1867, printed the legislative committee's findings.³⁷⁹ The *Tribune* was the only paper that received the full report to print.³⁸⁰ The *Tribune* was printing much awaited and highly secretive news. An editorial preceding the report praised the committee's work and condemned the trustees for acting with "gross neglect of their duty."³⁸¹ The report duly noted Elizabeth's story and other people's stories of abuse.³⁸² The *Tribune* printed sensationalist headlines like *Astounding Evidences of Brutality to Inmates, Patients knocked Down and Beaten, Choked, Kicked, Dragged About by the Heels, Handcuffed, and Otherwise Outrageously Maltreated*, and *The Cases of Women Unjustly Imprisoned*.³⁸³ The *Tribune* seems to have supported the committee's findings but presumably also recognized that this kind of news really interested readers; thus, the *Tribune* capitalized on the issue by running sensationalist headlines to grab readers' attention in order to sell more copies of the paper.³⁸⁴

374. See PACKARD, MODERN PERSECUTION 2, *supra* note 15, at 225.

375. See *id.* at 224-71.

376. See *id.*; SAPINSLEY, *supra* note 1, at 149-70.

377. See, e.g., PACKARD, MODERN PERSECUTION 2, *supra* note 15, at 242, 246-53.

378. Report, *supra* note 373, at 518.

379. *Illinois Insane Asylum*, CHI. TRIB., Dec. 7, 1867.

380. SAPINSLEY, *supra* note 1, at 162-63.

381. *Id.*

382. *Id.*

383. *Id.*

384. See *id.*

E. Analyzing Elizabeth's Alleged Love Letter to Dr. McFarland

During the investigation, in hopes of discrediting Elizabeth, the trustees gave the committee a supposed "love letter" that Elizabeth wrote to Dr. McFarland.³⁸⁵ Ultimately, the letter did not negate Elizabeth's testimony, but it did cause her a great deal of anguish because the trustee's allegations directly attacked her character, a trait she valued highly.³⁸⁶ The letter can be read on two levels: spiritual and sexual. The latter was the angle that the trustees wanted the committee to notice.³⁸⁷ In the most damning line, Elizabeth declared that she was "marking" Dr. McFarland as her "future husband," to whom she felt she "could instinctively pay homage, as my head, as the husband should be to the wife."³⁸⁸ Despite the seemingly illicit nature of Elizabeth's remark, later in the letter she qualified this previous statement, "I love your *spirit*, your manliness, now, but I must not love your *person*, so long as that love is justly claimed by another woman—your legal wife."³⁸⁹ She actually envisioned their relationship occurring in a "far off land, or a Farland" (presumably, the "Farland" was heaven).³⁹⁰ Elizabeth was not intending to have an affair on earth, but in heaven. Perhaps to the trustees the idea of any sort of relationship, earthly or heavenly, was not appropriate, and that alone proved Elizabeth to be sexually aggressive and insane.

In her own defense of the "love letter," Elizabeth explained that she believed men were made in "God's image" and so a man was a "personified Deity."³⁹¹ She continually sought a man who would, like God, love and protect her. By "protect," Elizabeth meant she wanted a man to act as "either a natural or legal protector of my rights of conscience."³⁹² Here we see once again how Elizabeth felt a "protector" was not a person in control of a woman's life, but rather an individual that would ensure her rights to free thought—quite a radical reformulation of the word.³⁹³ What convinced Elizabeth that Dr. McFarland should be her protector was that he allowed her "to write an individual, independent book, free from all restraint or dictation."³⁹⁴ His refusal to allow her to publish her book shattered her opinion

385. SAPINSLEY, *supra* note 1, at 155.

386. SPECIAL REPORT OF THE ILLINOIS HOSPITAL FOR THE INSANE, *in* REVIEW OF A REPORT OF A LEGISLATIVE COMMITTEE APPOINTED BY THE TWENTY-FIFTH GENERAL ASSEMBLY 35-37 (Springfield, Baker, Bailhache & Co. 1868) [hereinafter SPECIAL REPORT]; PACKARD, MYSTIC KEY, *supra* note 15, 56-102; SAPINSLEY, *supra* note 1, at 164-65.

387. See *Illinois Legislation Regarding Hospitals for the Insane*, AM. J. INSANITY, Oct. 1869 [hereinafter JOURNAL OF INSANITY]. Although the article is not attributed to the trustees, I assume they wrote it, because it has the same tone as their report. They were great supporters of McFarland and so it is logical that they wrote this article in his defense.

388. SPECIAL REPORT, *supra* note 386, at 34.

389. *Id.*

390. *Id.* at 35.

391. *Id.*

392. *Id.*

393. See Hartog, *supra* note 4, at 99-101.

394. SPECIAL REPORT, *supra* note 386, at 36.

of him.³⁹⁵ McFarland failed to fulfill Elizabeth's definition of a "protector." Elizabeth never found a "protector" because her definition challenged too many gender norms of the time. She was looking for a man to be supportive and respectful of her endeavors—essentially a partner and not a ruler. This type of man was difficult to locate, because this kind of man would have to transcend the "separate spheres" ideal, an ideal which most men of her time, and for that matter women, followed.

Elizabeth's letter disturbed the trustees because of its supposedly sexual connotations. The trustees wanted the public to recognize Elizabeth's lustful, Eve-like nature, and to be as enraged by this fact as they were. In a later report they called her a "handsome and talkative crazy woman."³⁹⁶ They also compared her to, Juno, the mythological figure.³⁹⁷ This allusion reveals a great deal about how the trustees viewed Elizabeth. Juno, in Roman mythology, was chief goddess and female counterpart of Jupiter.³⁹⁸ Identified with the Greek goddess Hera, Juno was associated with all aspects of a woman's life, especially marriage.³⁹⁹ (Hera, the Greek chief goddess, was married to Zeus and depicted as the jealous and rancorous wife.)⁴⁰⁰ Often Juno was portrayed as a formidable, beautiful, and sometimes militaristic woman.⁴⁰¹ Apparently, the trustees felt Elizabeth was beautiful, powerful, and warrior-like—dangerous and aggressive—like the mythological Juno. These characteristics also created an image of Elizabeth as a seductress—as Eve, the sinner. After alluding to Juno, the trustees concluded, "An attractive person and a double-springed tongue gave force and persuasion to the direful romance of this fascinating woman, and she was successful enough, by her feminine arts, to bewitch a whole legislature into the appointment of a joint committee to investigate the affairs of the unfortunate asylum."⁴⁰²

The trustees determined that Elizabeth's "talkative" tongue, her voice, represented her sexual desire. They linked her vocal, assertive nature with her inherent nature as a sexual temptress in an attempt to discredit her voice and words.⁴⁰³ Clearly, the trustees described her words as irrational thoughts originating from the insatiable desires that caused her insanity. The allusions to Juno and to a witch were carefully chosen images to make people understand the improper, insane, and devilish nature of Elizabeth.

In reality, Elizabeth's "love letter" does not prove her seductive, Eve-like nature, but rather her subversive nature. The trustees were correct in

395. *Id.*

396. JOURNAL OF INSANITY, *supra* note 387, at 204.

397. *Id.* at 205-06.

398. Family Education Network, *Encyclopedia*, at <http://www.infoplease.com> (last visited Feb. 19, 2003).

399. *Id.*

400. *Id.*

401. *Id.*

402. JOURNAL OF INSANITY, *supra* note 387, at 207.

403. Prominent doctors of the trustees' own sexually repressive times linked sexual excitement and insanity. HELSINGER ET AL., *supra* note 31, at 56, 61 (citing the example of Dr. William Acton's book *The Functions and Disorders of the Reproductive Organs* (1857)).

concluding that Elizabeth was a “talkative” woman.⁴⁰⁴ She wanted to be an independent thinker allowed to explore her identity. Nonetheless, she wanted to follow the Biblical proscription: “Wives, submit yourselves unto your own husbands, as unto the Lord.”⁴⁰⁵ The difficulty Elizabeth had with this passage was that she refused to be submissive. Her “protector,” in her mind, had to respect her right to be an autonomous being, in action and thoughts.⁴⁰⁶ Consequently, Dr. McFarland seemed to fulfill this role when he allowed her to write her book. When he did not, however, allow her to publish the book, he failed to live up to her progressive expectations fully.

Elizabeth seems to have had a very passionate, sensual side. She did not simply have a radical vision for men and women, but she also harbored an internally radical and contradictory vision of her own sexuality. While Elizabeth’s “love letter” did not show her sensual side, throughout her books she provided glimpses of this side of her being. She remarked in *Modern Persecution Vol. 1* that Dr. McFarland was a “fine-looking gentleman.”⁴⁰⁷ Obviously, she was somewhat physically attracted to him and later said, “The affectionate pressure of his great hand seemed to impart a kind of vitality to my nervous system, which did help me bear my spiritual tortures with greater fortitude and composure.”⁴⁰⁸ Both comments by Elizabeth disclose the sensual side of herself. Elizabeth did not consciously acknowledge such impulses. Her deeply religious nature caused her to deny such feelings, but within her the pure and the sensual impulses competed.⁴⁰⁹ Peter T. Cominos explains how females during the Victorian era were taught about *Femina Sensualis*, a concept used to teach young females that the “temptation to sinful indulgence” involved a conflict between their higher nature—their soul and duty, essentially their conscience—and their lower nature—their sexual desire, basically portrayed as animalism.⁴¹⁰ Most women, according to Cominos, never intensely experienced this conflict because they were socialized to marry and to follow normative sexual behavior that quelled such an internal tension.⁴¹¹ Undoubtedly, Elizabeth’s parents taught her to elevate her higher nature and to suppress her lower nature. Elizabeth never resolved or complied fully with the *Femina Sensualis* resolution, and obviously struggled internally with her lower and higher nature. Her sexual attraction toward Dr. McFarland was a manifestation of this internal conflict.

Elizabeth was a passionate person who thirsted for a passionate partner—one who was intellectually and perhaps sexually passionate. She ex-

404. JOURNAL OF INSANITY, *supra* note 387, at 204.

405. *Ephesians* 5:22-24.

406. SPECIAL REPORT, *supra* note 386, at 35-37.

407. PACKARD, MODERN PERSECUTION 1, *supra* note 15, at 79.

408. *Id.* at 97.

409. Peter T. Cominos, *Innocent Femina Sensualis in Unconscious Conflict*, in *SUFFER AND BE STILL: WOMEN IN THE VICTORIAN AGE 155-72* (Martha Vicinus ed., 1972).

410. *Id.* at 156.

411. *Id.* at 161.

pressed her concept of an intellectually passionate and respectful man more lucidly because it was very important to her and did not defy what she saw as her religious and social duty—her duty to be pure.⁴¹² Although, Elizabeth clearly harbored less than pure thoughts, her “love letter” gave no indication of such ideas.⁴¹³ It contained a highly spiritual tone, but the trustees extrapolated from it a sexual tone to justify their depiction of her as a seductress and improper woman.⁴¹⁴ Nevertheless, Elizabeth did live in a personal sexual borderland—she battled within herself to balance her lower and higher nature. Despite this personal and public battle, she never muted her voice out of a sense of embarrassment. She wrote a book, *The Mystic Key* (1878), in which she defended her “love letter” and continued to crusade publicly for changes in insanity laws.⁴¹⁵

This entire scandal demonstrates the vulnerability a woman faced if she deviated from the Victorian “true woman” model. The trustees depicted Elizabeth as a talkative seductress using the alleged “love letter.” According to Cominos, the trustees’ mindset was not unusual: “Women were classified into polar extremes. They were either sexless ministering angels or sensuously oversexed temptresses of the devil.”⁴¹⁶ A sexually driven woman defied the “true woman” norm and the female-male power relationship.⁴¹⁷ In large part, the trustees depicted Elizabeth as insane because she threatened their authority and power. They recognized that she was calling for a radical restructuring of the traditional woman’s role. Elizabeth’s own words provide a guide to her own conflicted state—she lived in a personal borderland.⁴¹⁸ Sexual passion and purity as well as intellectual passion and wifely duties were tensions that haunted her. Her possession of such dual impulses and her continual struggle with them makes Elizabeth a border woman who fought to transcend her internal borders in her own way.

IV. ELIZABETH’S VIEWPOINT ON RELIGION, MARRIAGE, AND THE LAW

A. The Connection between Elizabeth’s Religious Beliefs and Her Self

Elizabeth admitted that defying church creed was her way of gaining personal autonomy.⁴¹⁹ Reared to be an obedient woman, Elizabeth for a long time refused to acknowledge her dissatisfaction with being “an unresisting victim to Mr. Packard’s marital power or authority.”⁴²⁰ “But unde-

412. SPECIAL REPORT, *supra* note 386, at 35-36.

413. *See id.* at 34-35.

414. *See* JOURNAL OF INSANITY, *supra* note 387, at 204-07.

415. PACKARD, MYSTIC KEY, *supra* note 15. In the preface to *The Mystic Key*, Elizabeth stated that the book was “a full and frank explanation of the whole case,” the case being the “love-letter” issue. *Id.* at 7-8.

416. Cominos, *supra* note 409, at 167.

417. *Id.* at 167-68.

418. *See* SPECIAL REPORT, *supra* note 386, at 35-37.

419. PACKARD, MODERN PERSECUTION 1, *supra* note 15, at 78-79.

420. *Id.* at 77.

veloped as I then was," she continued, "my true nature instinctively revolted at this principle as wrong; but wherein, it was then difficult for me to demonstrate, even to my own satisfaction."⁴²¹ Elizabeth's association with Spiritualism and Swedenborgianism may have caused her to be dissatisfied with her limited life options, as she not only underwent a spiritual revolution, but a personal revolution of self-identification and self-possession as well. Although initially willing to assume an inferior and subservient role to Theophilus, Elizabeth gradually became dissatisfied. Being "silent" no longer fulfilled her.⁴²² And thus, Elizabeth began the process of self-discovery:

But I can now see that my nature was only claiming its just rights, by this instinctive resistance to this marital authority. It was the *protection* of my identity or individuality which I was thus claiming from my husband, instead of its subjection, as *he* claimed. The parental authority, I admit, has a subjective claim, to a degree; but the marital has only the authority of protection.⁴²³

A self-revelation occurred within her soul. She realized that Theophilus was denying her the opportunity to exist as an independent being, with thoughts and feelings of her own.⁴²⁴ Her word choice of "protection" seems puzzling in light of such a grand and radical statement of self-possession. Elizabeth's usage of "protect," however, was subversive because she redefined its meaning. She did not want men to protect her as a "true woman," which was a submissive, weak, and inferior woman. Instead, Elizabeth wanted Theophilus to protect her right to be daring and a free thinker—what she termed her real "womanly nature."⁴²⁵ Elizabeth drew on culturally encoded terms, like "womanly nature," and used such words in a new manner, thus inscribing them with a radical and very personal meaning. Essentially, she defined her own vocabulary and created a space in which she could express her true self and not the self that her culture had attempted to define and to structure.

Elizabeth, over a period of forty-four years, underwent a personal "(r)evolution"—a simultaneous evolution and revolution—evolving internally and externally, and in the process brought about revolutionary changes in society and within herself.⁴²⁶ Explaining this process, Elizabeth stated:

I hope my impulsive readers will now be prepared to understand that it is not because I did not feel these insults [Theophilus's insults] that I did not resent them; but I had not then reached that stage of womanly development where I had the moral courage to

421. *Id.*

422. *Id.*

423. *Id.* at 77-78.

424. PACKARD, MODERN PERSECUTION 1, *supra* note 15, at 77.

425. *Id.* at 76.

426. GLORIA ANZALDÚA, BORDERLANDS/LA FRONTERA: THE NEW MESTIZA 81 (1987).

defend myself by asserting my own rights. This stage of growth was indeed just dawning upon me; but O! the dense clouds attending this dawning of my individual existence!

I had indeed practically asserted one of these inalienable rights, by not yielding my conscience and opinion to the dictates of creeds or church tyranny.⁴²⁷

Elizabeth, in *Modern Persecution Vol. 1*, consciously recognized her own “(r)evolution.” She had chosen to enter the borderlands. Religion was the first site she decided to contest in order to grow personally. She had reached a point internally where she felt confident of her ability to challenge Theophilus. As Elizabeth recalled, such a personal awakening greatly frightened Theophilus:

Yes, I had maintained my rights of conscience in defiance of the marital power also. And this, too, had been the very hinge on which my reputation for sanity had been suspended. As Mr. Packard expressed himself:

“Never before had Elizabeth persistently resisted his will or wishes—a few kind words and a little coaxing would always before set her right; but now she seems strangely determined to have her own way, and it must be she is insane.”⁴²⁸

Elizabeth was fully aware of the radical and subversive nature of asserting her own voice and rights. She realized that this was the primary reason why Theophilus found her mad. Theophilus could not understand why Elizabeth would act so vocally, since before he could always control her without much effort or persuasion.⁴²⁹ Theophilus simply could not understand how his wife of twenty-one years could suddenly discover herself—her own mind, body, and soul.

Although Elizabeth had spent most of her life acting submissively, she finally discovered her core self and her inner strength. She decided to suppress no longer her feelings of “dis-ease” with her “husband’s tyranny” and therefore contested Theophilus’s authority.⁴³⁰ Once she committed herself to entering the borderlands, she declared her resolve not to revert back to her former behavior: “I have no recantations to make, and can give no pledges of future subjection to either of these powers [religion or husband], where their claims demand the surrender of my conscience to their dictation.”⁴³¹ Elizabeth lived the rest of her life by these very words. She never apologized for her behavior, her voice, her writing, or any of her life deci-

427. PACKARD, *MODERN PERSECUTION* 1, *supra* note 15, at 78-79.

428. *Id.* at 79.

429. *Id.* at 77.

430. *Id.* at 77-78.

431. *Id.* at 79.

sions. Her own ideas and “conscience” ruled how she lived her life. Although Elizabeth never divorced Theophilus (perhaps because she believed divorce was appropriate only in adultery cases), she remained separated from him for the rest of her life.⁴³² Orthodox religion and her husband no longer ran her life. Instead, she thrived in the vast open sea of life’s possibilities. She set sail and never looked back, never regretted her choices, and never wondered what would have been. A new dawn had arisen within Elizabeth—a personal (r)evolution, self-revelation, self-identification, and self-possession had occurred within her. With this new sense of “courage,” she pursued a life that brought her personal “satisfaction.”⁴³³

B. Elizabeth’s Reformulation of the Marriage Relationship

With her newfound self, Elizabeth redefined her view of the marriage relationship. She declared that the despotic rule of the husband over the wife must be “overthrown.”⁴³⁴ Even though the Gospel said “Wives obey your husbands” and that the husband was the “head of the wife,” these commands did not fully convince Elizabeth that a woman should be subservient to her husband.⁴³⁵ Instead, Elizabeth called for a “co-partnership” between a husband and wife.⁴³⁶ In such a scenario, man and woman would assume their respective God-given roles, the former in the domestic sphere and the latter in the public/financial sphere.⁴³⁷ Although this type of division seems to support the “separate spheres” ideology, Elizabeth envisioned a marriage relationship that reformulated, contested, and negotiated the separate gender landscapes. In this marriage “firm,” a man would be head or senior partner and woman would be the junior partner.⁴³⁸ Each copartner was supposed to listen to one another and share opinions: “But the true woman, like the true man, will naturally consult the wishes and feelings of her husband, in this matter, as he does hers, in his department.”⁴³⁹ The beauty of this type of relationship, according to Elizabeth, was that neither partner had “the right of usurpation.”⁴⁴⁰ Elizabeth’s conception of marriage as a firm with junior and senior partners contained both progressive and traditional elements. The notion of a partnership, consisting of a mutually interdependent husband and wife, certainly was a radical concept. Furthermore, she was declaring that women possessed a voice and should have the power to voice them-

432. SAPIINSLEY, *supra* note 1, at 15, 17. However, Sapinsley notes that Elizabeth filed for divorce after her acquittal, though the divorce was never finalized. *Id.* at 111; *see also* PACKARD, MODERN PERSECUTION 2, *supra* note 15, at 17, 67 (containing Elizabeth’s thoughts on divorce).

433. PACKARD, MODERN PERSECUTION 1, *supra* note 15, at 77, 79.

434. PACKARD, MODERN PERSECUTION 2, *supra* note 15, at 362.

435. *Id.*; 1 *Corinthians* 11:3.

436. PACKARD, MODERN PERSECUTION 2, *supra* note 15, at 363.

437. *Id.* at 397.

438. *Id.* at 397-98.

439. *Id.* at 398.

440. *Id.* at 363.

selves within the family structure. Elizabeth was stressing a new power relationship between wife and husband, one of respect and communication.

Elizabeth's progressive idea fell short on two accounts: her need to create a junior/senior dichotomy and her acceptance of standard feminine/masculine roles. Her unwillingness to do away with both "separate spheres" relics had to do in part with her religious views. She was still tied to the idea that man had to be, albeit it in a much less powerful form, the "head" of the household.⁴⁴¹ Furthermore, she felt that God designated woman to be mother and wife and man to be the financial provider: "It seems to me to be the appointment of God, that man should bear the toil, and woman bear the children."⁴⁴² Notwithstanding these rather traditional components of Elizabeth's partnership, her emphasis that men and women should consult one another when making important decisions in their respective roles suggested a blurring of the private/public, female/male role division. She recognized the value of the partners communicating with one another about their decisions instead of acting and deciding things in isolation or, as was more likely the case, the husband would make all the decisions regarding finances and other important family matters. This notion genuinely empowered the woman in that it allowed woman an active, rather than submissive, role within the marriage—it granted woman a voice. Certainly, Elizabeth's copartnership idea had very progressive elements that advocated the expansion and shifting of gender roles. The more conservative elements reflected how Elizabeth's self had been inscribed by gender norms that she could not quite fully transcend. Accordingly, her view of marriage both transcended and reflected the cultural norms of her time.

Elizabeth's interest in the marriage relationship stemmed largely from her concern with woman's being, both personally and legally. She passionately advocated the need not only for women to have voices within their marriages, but within the legal world, as well. Throughout her books she gave innumerable illustrations of the legal disadvantages of married women.⁴⁴³ As Elizabeth quickly learned when Theophilus imprisoned her, married women lacked a right to their own property, children, and selves.⁴⁴⁴ Elizabeth complained:

If the married woman has no right to her home, no right to her food, or property to buy food with, and no right to her children, what right has she to be hungry or to be cold, or to desire offspring, if she is a 'nonentity' or a chattel, as is the case while she is a married woman, under the common law?⁴⁴⁵

441. PACKARD, MODERN PERSECUTION 2, *supra* note 15, at 362.

442. *Id.* at 397.

443. *See supra* note 15.

444. PACKARD, MODERN PERSECUTION 2, *supra* note 15, at 365-71.

445. *Id.* at 73.

This question haunted Elizabeth throughout her life. She fought to change the legal status of married women because she had learned that not all men would "protect" women on her terms.⁴⁴⁶

*C. Elizabeth's Pursuit to Change Married Women's
Property and Child Custody Laws*

Elizabeth desired to regain custody of her children, but quickly learned that as a married woman she had no legal right to her children.⁴⁴⁷ This realization caused Elizabeth to pursue legal change with respect to married woman's property and child custody rights. It was clear to Elizabeth that "before [she] could reasonably hope to succeed in getting the custody of [her] three minor children" she would need to be able to support them financially.⁴⁴⁸ To that end, she pursued writing and selling her books, with the result that she was able "to purchase a nice little cottage and lot in Chicago, free from all encumbrance."⁴⁴⁹ Yet, such financial independence was not enough, as Elizabeth explained:

But as the laws of Illinois then were, all my earnings which had paid for this home in full, were entirely subject to my husband's control, and thereby liable any day to be taken from me by my husband. The imperative necessity of self-protection drove me to seek a change in the laws of Illinois, to secure to me a safe title to the ownership of this property.⁴⁵⁰

Elizabeth was eager to accomplish her goal: "As a preparatory step, as soon as the legislature for 1869 was chosen, I mailed to each member of that body a copy of my book, the postage alone of which cost me forty dollars."⁴⁵¹ Thereafter, Elizabeth "suspended all other business, and paid [her] board in Springfield another entire session" to advocate the passage of her bill, which "had for its object—'To equalize the rights and responsibilities of the husband and wife.'"⁴⁵² Elizabeth's bill was primarily focused upon gaining rights for married women with respect to property and child custody.⁴⁵³

446. Elizabeth not only crusaded for woman's rights, but also for the general rights of the insane, such as their postal rights. See SAPINSLEY, *supra* note 1, at 180-82, for a discussion of this issue.

447. PACKARD, MODERN PERSECUTION 2, *supra* note 15, at 365.

448. *Id.* at 366.

449. *Id.*

450. *Id.*

451. *Id.*

452. PACKARD, MODERN PERSECUTION 2, *supra* note 15, at 366-67.

453. Her proposed bill,

[C]overed the whole ground of married woman's legal disabilities, the passage of which would not only entitle her to the rights of an individual property owner, the same as her husband, but also to the right of co-partnership with her husband in the use and control of the property acquired during coverture, and also the right of co-partnership with her husband in the guardianship, custody and control of the children, and also an equal right with her hus-

Elizabeth wrote anonymous articles to the *Chicago Tribune* and *Springfield State Journal* "upon the subject of [her] bill."⁴⁵⁴ She remarked how the newspapers attributed her anonymous articles to Mary Livermore of Chicago, which she considered to be an honor.⁴⁵⁵ Livermore was the editor of the *Agitator*, which appeared in Chicago on March 13, 1869, and ceased publication in 1870.⁴⁵⁶ "[D]uring its brief tenure in Chicago the *Agitator* became a nationally recognized voice for women's rights and a major organ for expressing feminist sentiment in Chicago and the Midwest."⁴⁵⁷

Elizabeth included within *Modern Persecution Vol. 2* two of her anonymous articles, *The Rights of Children* (February 2, 1869) and *The Mother's Legal Rights* (January 29, 1869), which she wrote in order to gain the attention of the legislature.⁴⁵⁸ Both articles stressed woman's God-given right to raise her children.⁴⁵⁹ She drew on the religious and separate spheres language to support her position. Nevertheless, she expanded the "mother's heaven-assigned sphere" to include property ownership, equal right to rear and train her children, and joint ownership of common property with her husband.⁴⁶⁰ Subtly, but not completely innocently, Elizabeth was advocating a lessening of the barriers between the gender landscapes. By engaging in the cultural discourse, Elizabeth gained necessary support, but she conceded that all the rights she sought would "elevate" married women by making them less "dependent" on men.⁴⁶¹ Apparently, Elizabeth believed that women should be able to leave their husbands without fearing that they might never win custody of their children. Despite Elizabeth's emphasis on a woman's motherly role, she also acknowledged that a father should be

band, as surviving partner, to the administration of the estate and guardianship of the children.

Id. at 367.

454. *Id.*

455. *Id.*

456. BUECHLER, *supra* note 353, at 76-77; see *id.* at 65-67, for a general discussion regarding Mary Livermore.

457. *Id.* at 77.

458. PACKARD, *MODERN PERSECUTION 2*, *supra* note 15, at 367-71.

459. "True, a court of chancery may award this right to the mother, if her claim to competency can be sustained; still the common law secures to the father the right to usurp this sacred right which God has given the mother to be the natural guardian of the child." *Id.* at 368. She continued:

As the right of the mother to rear her own children is one of married woman's natural rights, which the common law of marriage entirely ignores, the manliness of the legislators of the present age should, by statute law so modify this unjust principle, as to recognize in married woman a legal right to be the guardian of her own offspring.

Id. at 370.

460. *Id.* at 370-71.

461. Elizabeth drew a comparison between married women and slaves to make this point:

It was once argued that the negro slave must first be fitted for freedom before he could be trusted with it; but the more enlightened claimed that the very best way to fit him for freedom was to elevate him to the position of a free man.

Responsibility does elevate, and therefore the most sure and effectual method of capacitating married woman for these trusts is to lift her out of her dependent condition, and entrust her with those high and noble duties and responsibilities which cluster around the mother's heaven-assigned sphere.

Id. at 371.

able to petition for his children.⁴⁶² Implicitly, she was suggesting that men had as much of a right as women to their children and that they were as capable as women in raising them. Therefore, it seems that Elizabeth used the motherly rhetoric to convince the legislature to expand woman's legal rights, but she did not necessarily believe that women were superior to men in raising children.

To gain support for the passage of her bill, Elizabeth met with the Judiciary Committee of the House at the Leland House, where she presented her defense of the bill to a "crowded audience in the committee's room."⁴⁶³ The chairman told Elizabeth that he "would like to see many of the provisions of the bill introduced into the statute laws of Illinois, but did not consider it expedient to recommend a bill including so many radical changes at once."⁴⁶⁴ Accordingly, he said that it was "his candid opinion the House would reject it by a large majority, if presented as it was, for there were too many changes, although good in themselves, to introduce at one time."⁴⁶⁵ Elizabeth decided against "urg[ing] the bill any farther in its present comprehensive character."⁴⁶⁶ Instead, she wrote to Judge Bradwell of Chicago to see if he could visit Springfield and provide her assistance with the matter.⁴⁶⁷ Judge Bradwell came to Springfield, and Elizabeth met with Judge Bradwell and Mrs. Bradwell,

[A]t the Leland House, where, after thoroughly canvassing the subject, he advised that, instead of mutilating my bill, which in his judgment was admirable, to lay it by for this session, and present one which simply included a married woman's right to hold and use her own earnings, independent of the interference of her husband.⁴⁶⁸

Elizabeth agreed with Judge Bradwell's suggestion and she "accepted his kind offer to draft the bill, which he promptly did."⁴⁶⁹ The simplified bill was approved March 24, 1869.⁴⁷⁰ Elizabeth was satisfied with the statute: "I, in common with other married women in Illinois, am now protected by

462. PACKARD, MODERN PERSECUTION 2, *supra* note 15, at 369.

463. *Id.* at 371-72.

464. *Id.* at 372.

465. *Id.*

466. *Id.*

467. PACKARD, MODERN PERSECUTION 2, *supra* note 15, at 372.

468. *Id.*

469. *Id.*

470. *Id.* The actual statute reads:

AN ACT in relation to the earnings of married women. Section 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That a married woman shall be entitled to receive, use and possess her own earnings, and sue for the same in her own name, free from the interference of her husband or his creditors: *Provided*, this act shall not be construed to give to the wife any right to compensation for any labor performed for her minor children or husband.

Married Women's Property Act, 1869 Ill. LAWS 255.

law in my rights to my home, bought with my own earnings.”⁴⁷¹ Without question, the statute had provided Elizabeth with financial independence.

Elizabeth was still determined to pursue the other aspects of her original bill. She therefore sent to the 1871 legislature a “Bill to equalize the rights and responsibilities of husband and wife.”⁴⁷² Senator Dore of Chicago presented the bill after which it was discussed on the floor of the Senate and in the columns of the papers.⁴⁷³ Before the session closed, Elizabeth received a letter from Senator Dore informing her that:

[T]he main features of the Bill had passed into a law, so that now a married woman is equally with the husband entitled to the custody, control and earnings of the children, and can administer upon the estate, and is equally with the husband the natural and legal guardian of the children on the death of her partner, and her right to her own property is protected equally with that of her husband.⁴⁷⁴

Elizabeth mentioned that she was indebted to her son, Samuel, a lawyer in Chicago, for assisting her in drafting the aforementioned bill.⁴⁷⁵

D. The Evolution of Married Women's Property Rights in Illinois

The passage of these statutes was part of a larger story. Illinois had followed the national trend and in 1861 passed “AN ACT to protect Married Women in their separate property” guaranteeing her ownership of “both real and personal” property.⁴⁷⁶ In *Bear v. Hayes*,⁴⁷⁷ the Illinois Supreme Court sharply limited those rights. The court ruled that:

Her claim is not embraced in the act of eighteen hundred and sixty-one, to protect married women in their separate property. That act

471. PACKARD, MODERN PERSECUTION 2, *supra* note 15, at 373.

472. *Id.*

473. *Id.*

474. *Id.*

475. *Id.* Many of the provisions that Elizabeth mentions can be found at 1872 Ill. LAWS; see also note 509, *infra*, for a discussion of this legislation.

476. The Act reads:

AN ACT to protect Married Women in their separate property. Section 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly*, That all the property, both real and personal, belonging to any married woman, as her sole and separate property, or which any woman hereafter married owns at the time of marriage, or which any married woman, during coverture, acquires, in good faith, from any person, other than her husband, by descent, devise or otherwise, together with all the rents, issues, increases and profits thereof, shall, notwithstanding her marriage, be and remain, during coverture, her sole and separate property, under her sole control, and be held, owned, possessed and enjoyed by her the same as though she was sole and unmarried; and shall not be subject to the disposal, control or interference of her husband, and shall be exempt from execution or attachment for the debts of her husband.

Married Women's Property Act, 1861 Ill. LAWS 143.

477. 36 Ill. 280 (Ill. 1865); *Law Relating to Women*, CHI. LEGAL NEWS, Oct. 17, 1868 at 22 (discussing *Bear*).

applies only to property real and personal, and the rents, issues, increases and profits thereof, but not to her earnings—they belong to the husband, and he alone is entitled to them.⁴⁷⁸

The *Bear* decision, which declared that women could own their property, but not earn their own money, was based on the reasoning that the 1861 Married Women's Property Act did not specifically mention a woman's right to her own earnings.⁴⁷⁹ In a later Illinois Supreme Court case, *Schwartz v. Saunders*,⁴⁸⁰ Mrs. Schwartz had used her earnings to buy property, but the court reminded her: "It was proved it was purchased with the earnings of the wife while *covert*. This court has decided such earnings belong to the husband, and are not saved to the wife by the act of 1861."⁴⁸¹ Therefore, the court declared that because Mrs. Schwartz bought the property with earnings that legally were her husband's, the property also belonged to him.⁴⁸² *Schwartz* extended the reasoning behind *Bear*; if a woman could not solely own her earnings, then she could certainly not own property that she had purchased with such earnings. In the eyes of the law, a woman was still one and the same as her husband when the issue involved earnings.

The court in *Schwartz* correctly pointed out that the act of 1861 did not grant a married woman *femme sole* (single woman) status, but at the same time these judges had the authority to interpret the act of 1861 liberally or conservatively. They chose the latter, leaving women subject to their husbands' wills. Presumably, the 1861 Married Women's Property Act lacked an earning rights stipulation because women knew that the male legislators would resist such a progressive statute. Women hoped that judges would liberally interpret the 1861 Act.⁴⁸³ The 1865 and 1867 decisions certainly reconfirmed their fears that they lacked any real legal power. The passage of the 1869 Women's Earnings Statute reversed the *Bear* and *Schwartz* decisions.⁴⁸⁴ For Elizabeth, such a reversal was critical, because it ensured that the house she purchased with her own earnings would be considered her own property.

From a legal vantage point, the 1869 Married Women's Property Act began the process of interaction between the public and private spheres and the debate surrounding such contact. In 1873, the case of *Martin v. Robson*⁴⁸⁵ gained public attention, when it appeared both in the *Chicago Legal News* and *The Woman's Journal*.⁴⁸⁶ Judge Thornton, writing for the

478. *Bear*, 36 Ill. at 281.

479. *See id.*

480. *Schwartz v. Saunders*, 46 Ill. 18 (Ill. 1867); *Laws Relating to Women*, CHI. LEGAL NEWS, Nov. 21, 1868 at 60 (discussing *Schwartz*).

481. *Schwartz*, 46 Ill. at 24 (citing *Bear*, 36 Ill. at 24).

482. *Id.* at 24-25.

483. *See, e.g.*, FRIEDMAN, *supra* note 18, at 199-201.

484. Women's Earning Statute (Married Women's Property Act), 1869 Ill. LAWS 255.

485. 65 Ill. 129 (Ill. 1872).

486. CHI. LEGAL NEWS, Mar. 22, 1873, at 304-05; *Equal Rights for Married Women*, WOMAN'S J.: B., CHI. & ST. LOUIS, Apr. 12, 1873, at 114.

court, attributed the new legal status of women to the “policy and wisdom of the [1869 Married Women’s Property Act], which has effected a change so radical the legislature alone is responsible.”⁴⁸⁷ Thornton declared:

If the relations of husband and wife have been so changed as to deprive him of all right to her property and to the control of her person and her time, every principle of right would be violated, to hold him still responsible for her conduct. If she is emancipated, he should be no longer enslaved.⁴⁸⁸

Both genders were free to manage their property as they pleased, as long as they followed the general legal provisions regarding property rights (although it is debatable what constituted property—land, housework, or labor outside the home).⁴⁸⁹ The Married Women’s Property Act of 1869, which allowed women to retain their own earnings, stated: “*Provided*, this act shall not be construed to give to the wife any right to compensation for any labor performed for her minor children or husband.”⁴⁹⁰ Judge Thornton acknowledged his anxiety about women’s work at home by stressing that the law did not permit “unwifely conduct” and required a wife to “love and cherish the husband, and to obey him in all reasonable demands not inconsistent with the exercise of her legal rights.”⁴⁹¹ In return a man must “protect and maintain” his wife.⁴⁹² Judge Thornton wanted to ensure that the Married Women’s Property Act would not erode the division of the “separate spheres.” But he recognized that: “[S]o far as the separate personal property of the wife is concerned, she is now the same as a *femme sole*.”⁴⁹³

The borderland of the legal binary opposition still existed, but now allowed for more fluidity. The male and female landscapes were fully intact, but women might now enter, in a limited manner through legal provisions, the public sphere. Relegating Judge Thornton’s positive tone toward women to a naive understanding of women’s legal position slights his seemingly sincere hope and sympathy for women. He described men in the condition of “his legal supremacy is gone, and the sceptre has departed from him,” and later continued, stating that “[t]he chains of the past have been broken by the progression of the present, and she may now enter upon the stern conflicts of life untrammelled.”⁴⁹⁴ He understood that this decision afforded women real opportunity to change their lives. He perceptively recognized that the border was open, in a limited sense, to women; if they chose to,

487. CHI. LEGAL NEWS, Mar. 22, 1873, at 304.

488. *Id.*

489. *See id.* at 305.

490. Married Women’s Property Act, 1869 Ill. LAWS 255.

491. CHI. LEGAL NEWS, Mar. 22, 1873, at 304.

492. *Id.*

493. *Id.* at 305.

494. *Id.* at 305.

they could cross it and actively reformulate the legal landscape to meet their needs.

Judge Sheldon tempered Judge Thornton's celebration of women's newfound legal independence in his dissenting opinion.⁴⁹⁵ More pessimistically, Judge Sheldon said that most labor performed by a married woman was for her husband or children, adding that any other was "exceptional."⁴⁹⁶ He interpreted the act to be far from a true emancipation of women and to contain technical legal flaws.⁴⁹⁷ Because women were not full legal beings, as they only gained recognition of "*femme sole*" status in regard to property, Judge Sheldon said:

One remedy which our law has provided for torts is imprisonment on execution. But a wife is not liable to be imprisoned for a private wrong without her husband. . . . This remedy then will be unavailing where a wife is a tortfeasor, if the husband be exempted from liability. As the acquisitions of the joint industry of the husband and wife belong to the former, we may expect it to be the exception, rather than the rule, where there will be found separate estate, belonging to the wife to be reached by execution.

This will make the remedy, by recovery of damages, by suit against the wife alone, of little worth. Thus the abrogation of the law in question leaves the party who may receive injuries at the hands of a married woman, practically remediless. It will so be that she, in most instances, may commit private wrongs with legal impunity, and wives will be made, as it were, licensed wrongdoers.⁴⁹⁸

Because a woman could not be placed in jail for acting as a tortfeasor, a person so wronged would have no means by which to receive remedy, unless he sued the woman's husband.⁴⁹⁹ Therefore, allowing a woman to own her own property was problematic in that she faced no legal liabilities for this right. Judge Sheldon apparently understood that without a revolutionary change in woman's legal status, small increments of change in woman's status would only further "uncertainty" in the law and increase the existing vagueness, which already caused enough confusion and tension.⁵⁰⁰

Judge Sheldon and Judge Thornton realized the practical limitations of the 1869 Married Women's Property Act. Judge Sheldon was a realist and a pessimist, while Judge Thornton was an idealist and an optimist. Although arguably their viewpoints are not completely oppositional, their differing tones regarding woman's legal status did affect women's lives tremendously. Judge Thornton seemed more willing to allow women to enter the

495. See *id.* at 305.

496. CHI. LEGAL NEWS, Mar. 22, 1873, at 305.

497. *Id.*

498. *Id.* (citations omitted) (emphasis added).

499. See *id.*

500. *Id.*

legal world.⁵⁰¹ His enthusiasm, despite its sugarcoated aspects, marked him to some extent a woman's advocate. In contrast, Judge Sheldon more realistically assessed the actual position of women, but such realism prevented him from comprehending how change, even in small increments, could lead to vast improvements for all women's lives, particularly by opening the door for even more revolutionary change.⁵⁰² The law, as Judge Sheldon must have known, remained fairly static to allow for stability. Revolutionary change in a woman's status was unrealistic in such a system. Judge Sheldon and Judge Thornton represented two divergent, yet presumably common voices in a male-dominated legal world. When men of Judge Thornton's nature made legal decisions, the borders tended to shift and lessen.

The married women's acts of 1861 and 1869 illustrated well the constant tension between the judicial and legislative entities. Every new act came under the scrutiny and interpretation of the judiciary. The moment the judiciary failed to liberally interpret the act of 1861 was the moment when women voiced their outrage and began their journey to pass a more liberal statute.⁵⁰³ This type of process—two steps forward and one step back—represents the “uneven developments” in the law that women fought to eradicate.⁵⁰⁴

E. Elizabeth's Connection to the Woman's Rights Movement

Elizabeth's advocacy for change in married women's property and child custody rights shows her ties to the greater woman's rights movement. Elizabeth mentioned that she enlisted the assistance of Judge Bradwell to draft a bill that was narrower in scope than the bill that addressed many of women's legal disabilities, in the hopes that it would gain support and be passed.⁵⁰⁵ Judge and Mrs. Bradwell did go to Springfield and the earnings statute was passed.⁵⁰⁶ It appears that the Bradwells were present in Springfield as part of a legislative committee of the Illinois Woman Suffrage Association (IWSA), which included Mary Livermore among others, to lobby for a bill to allow married women the right to their own earnings.⁵⁰⁷ It is clear that Elizabeth was not the only one who recognized that an earnings

501. CHI. LEGAL NEWS, Mar. 22, 1873, at 304-05.

502. *See id.*

503. *See, e.g.,* FRIEDMAN, *supra* note 18, at 199-201; PACKARD, MODERN PERSECUTION 2, *supra* note 15, at 366-73.

504. *See* POOVEY, *supra* note 95, at 3.

505. PACKARD, MODERN PERSECUTION 2, *supra* note 15, at 372.

506. *Id.* at 372-73; FRIEDMAN, *supra* note 18, at 199-201 (detailing Myra Bradwells's advocacy for the married women's earning statute).

507. BUECHLER, *supra* note 353, at 75; 3 HISTORY OF WOMAN SUFFRAGE 1876-1885, at 569-70 (Elizabeth Cady Stanton et al. eds., Arno Press 1969) (1886). Neither of these accounts mentions Elizabeth's involvement in supporting the married women's earning statute, and although Elizabeth discussed the Bradwells' assistance with such a statute, she did not address the legislative committee. It appears Elizabeth, the Bradwells, and the legislative committee were each instrumental in advocating for the earnings statute.

statute was important to a woman's legal being, because the IWSA legislative committee supported the earnings bill also. The bill was the subject of much news coverage, as seen by the articles in the *Chicago Legal News*, *The Agitator*, and *The Revolution* concerning the passage of the 1869 Married Woman's Property Act.⁵⁰⁸ Myra Bradwell, like Elizabeth, advocated changing the child custody laws in Illinois.⁵⁰⁹ Again, we see that Elizabeth

508. All three journals attributed the drafting of the bill to Myra Bradwell. Myra Bradwell said: "The editress of this paper wrote a bill for an act giving a married woman her own earnings and the right to sue for the same in her own name . . ." *Ourselves*, CHI. LEGAL NEWS, Mar. 13, 1869, at 188. "The law, drawn by the editress of the *Legal News*, giving to a married woman her own earnings, has been signed by the Governor, and will be found, in this issue, under the head of Illinois Laws." *The Laws of Illinois*, CHI. LEGAL NEWS, Apr. 3, 1869, at 212. From THE AGITATOR:

The Illinois Legislature at its late session passed two laws of great practical benefit to the women of the state. One of these is to protect married women in their separate earnings, so that drunken, worthless husband cannot squander the earnings of his hardworking, industrious wife, or deprive her and her children of the bread own by the mother's toil. . . . For the passage of these laws, the women of this state are mainly indebted to Mrs. Myra Bradwell, editor of the *Chicago Legal News*. She drew up the bills, and was indefatigable in her efforts until they were passed through the Legislature.

What Women are Doing, THE AGITATOR, Mar. 20, 1869, at 4; and from THE REVOLUTION:

THE west is now well awake to the importance of justice to woman. Illinois is fortunate in having one woman not only well versed in the laws as they are, but able also to suggest both in fact and form what they should be. The editor of the *Chicago Legal News* (editress as she chooses to designate herself) has been down to Springfield to visit and assist the legislature in their work, the result of which is, that a bill giving to a married woman her own earnings and the right to sue for the same in her own name . . . both [bills] drawn by her, have passed both houses of the General Assembly, and only await the signature of Governor Palmer, of which she is sure, to become laws.

Women's Property Rights in Illinois, THE REVOLUTION, Mar. 25, 1869, at 187. Moreover, secondary sources concur in attributing the drafting of the statute to Myra Bradwell: "Bradwell drafted Illinois's earnings statute, which, like the Massachusetts statute, expressly excluded labor a wife performed for her family; and she discussed the legislation in her paper, the *Chicago Legal News*, as a victory for women, without commenting on its exclusionary language." Reva B. Siegel, *Home as Works: The First Woman's Rights Claims Concerning Wives' Household Labor, 1850-1880*, 103 YALE L.J. 1073, 1177, n.394 (1994); see also FRIEDMAN, *supra* note 18, at 199-201 (attributing the drafting of the earnings statute to Myra Bradwell). None of the aforementioned sources mention either Elizabeth's or Judge Bradwell's involvement in the drafting of the earning statute. However, based upon Elizabeth's account, it is quite clear they both were involved. My sense is that when Myra Bradwell claimed that she "wrote" a bill concerning married women's earnings, her assertion was not completely inaccurate. She was apparently present, and probably assisted, in drafting the final bill. Her account fails, however, to acknowledge that others aided in the process. From her vantage point, it probably was only important to report upon her involvement in obtaining the passage of the married women's earning statute.

509. FRIEDMAN, *supra* note 18, at 195-99 (describing Myra Bradwell's involvement in child custody laws in Illinois). There is no mention by Friedman of Elizabeth's advocacy with respect to child custody laws, nor does Elizabeth mention Myra Bradwell's support to change the Illinois child custody laws. Yet, it appears both Myra Bradwell and Elizabeth contributed to the change of the Illinois child custody laws. Moreover, Friedman claims Myra Bradwell drafted a bill that stated: "Neither parent shall dispose of the custody of a minor child without the consent of the other; and in all cases the surviving parent, being a fit and component person, shall be entitled to the guardianship of his or her minor child." *Id.* at 199. The *Chicago Legal News* article in which one can find this version of the bill does not specifically mention that Myra Bradwell drafted this bill. See CHI. LEGAL NEWS, Apr. 29, 1871, at 243. It appears the final bill concerning child custody was passed in April 10, 1872, and had similar language to the aforementioned bill, but was somewhat different:

The guardian of a minor shall have, under the direction of the court, the custody, nurture and tuition of his ward, and the care and management of all his estate. But the father of the minor, if living, and in the case of his death the mother, they being respectively competent to transact their own business, and fit persons, shall be entitled to the custody of the person of the minor and the care of his education. In case the father and mother shall live apart, the court

was not the sole person advocating change in the Illinois child custody laws and that Elizabeth, with respect to her advocacy of married woman's property rights and child custody rights, was part of the larger woman's movement. Two prominent women, Livermore and Bradwell, supported her cause. Elizabeth, Bradwell, and Livermore, all in their own way, certainly dedicated their lives to advocating for a woman's right to her legal being and to her voice.

Elizabeth, Bradwell, and Livermore were not the only women concerned with woman's legal status. They were women who were willing to actively lobby the legislature to change laws, but there also existed by the late 1860s and early 1870s a world of woman's journals, like *The Agitator* (1869), *The Woman's Journal* (1870-1890), and *The Revolution* (1868-1870), in which women voiced their concerns about their religious, legal, social, and cultural status. *The Agitator* advertised its purpose as,

[I]ncreasing interest in the questions of Woman's Education, Work, Wages, Social Legal and Political Status, calls for a Western journal, devoted to their discussion. THE AGITATOR is issued to meet this demand. It advocates the rights of woman in every department, reports the progress of the cause at home and abroad, and maintains a literary department.⁵¹⁰

"The chief aim of the WOMAN'S JOURNAL" was "to make itself superfluous as soon as possible. When woman's disabilities are removed, its work will be done and its very name be an anachronism."⁵¹¹ *The Revolution* stated that it advocated suffrage, however, it was especially interested in being the "mouth-piece of women, that they may give the world the feminine thought in politics, religion and social life."⁵¹² *The Revolution* "declare[d] war" against "creeds, codes and customs of the world" that said "woman was made for man."⁵¹³ Instead, *The Revolution* felt that woman "was created by God for INDIVIDUAL, MORAL RESPONSIBILITY and progress here and forever."⁵¹⁴ All three journals were interested in the various aspects of women's lives and women's voices—personal, political, economic, physical, social, legal, and spiritual.

By the early 1870s, suffrage became the central focus of the woman's movement and hence the main topic discussed in woman's journals, but there were many articles devoted to issues like religion, marriage, and woman's limited legal being. In an article titled *What Is the Aim of the*

may, for good reason, award the custody and education of the minor to the mother or other proper person.

ILL. STAT., ch. 34, § 4 (1872).

510. *THE AGITATOR. A Woman's Paper*, THE AGITATOR, Apr. 3, 1869, at 8.

511. *Woman and Man.*, WOMAN'S J.: B. & CHL., Jan. 22, 1870, at 1.

512. *The Revolution, For 1870*, THE REVOLUTION, Jan. 6, 1870, at 1.

513. *Id.*

514. *Id.*

Woman Movement, an anonymous author described woman's legal disabilities:

Hampered, hindered, limited, denied only a partial and very incomplete and insufficient education, kept for ages in the dependence and minority of childhood, legislated against, denied rights of property, right to her own children, right to herself, compelled to the drudgery and menial service of the world, without any pay, or at best, half pay, or else accepted as a doll or toy, or a pampered plaything, criticized, judged and condemned as a rational and human being, and yet denied the status, rights and freedom of one—such has been woman's state in the past.⁵¹⁵

This woman continued to describe how women were fighting to change the legal and life opportunities accorded to women.⁵¹⁶ Women faced many legal disabilities and life disabilities that needed to be eradicated. Women did not have full property rights, earning rights, or child custody rights in every state.⁵¹⁷ As presumably one anonymous woman said,

A great majority of the women in this country who are married have no name of their own, have no legal status, have no property, have little or no personality, and how they can be happy is a problem ever as difficult of successful solution as the happiness of slaves has always been difficult to solve.⁵¹⁸

This woman's critique of a woman's life options is quite interesting. She realized that a woman could not find her personality if legally she is denied the opportunity to conduct business or exist as a distinct legal being, separate from her husband. Institutions, like the law, clearly limited a woman's self. As another woman, Mary Gooding, said, "[I]t is necessary that her right to life and liberty, to the *ownership of herself*, to individuality, be no longer denied her by law and custom."⁵¹⁹ She concluded that woman should

insist upon her right to life and liberty, viz.: to the *ownership of herself*; and to insist that, in every department of life, the individuality of woman shall be recognized. . . . [I]nfluence and create a public opinion which shall respect the individual woman, exacting from

515. *What Is the Aim of the Woman Movement*, WOMAN'S J.: B. & CHI., Apr. 9, 1870, at 108.

516. I am assuming that the anonymous author was a woman because this article appeared in *The Woman's Journal*. Of course, men did write articles for the journal, but it seems highly probable that a woman would be most concerned with defining the purpose of the woman's movement, therefore I have attributed this article to a woman.

517. JOAN HOFF, LAW, GENDER AND INJUSTICE: A LEGAL HISTORY OF U.S. WOMEN 129 (1991).

518. *Duties of Husbands to Wives*, THE AGITATOR, Apr. 10, 1869, at 2.

519. Mary Gooding, *Woman's Need at the Present Day*, THE REVOLUTION, Mar. 10, 1870, at 147.

her the duties, and according to her the privilege of a *free, independent life*.⁵²⁰

Being able to control one's destiny and formation of one's self-identity was important to Gooding. The law hampered her ability and other women's ability to voice themselves and to live life as they pleased. Certainly, Elizabeth's ordeal shows how "*ownership*" of the self can be crucial. She fought her entire life to gain self-ownership and to develop an identity of her own and not one mandated by cultural or legal norms. Self-ownership, self-possession, and self-identity were issues of great importance for some women.

F. Elizabeth's Crusade to Gain Custody of Her Children

While Elizabeth expended a great deal of her time and energy to changing married woman's property rights and child custody rights in Illinois, she was primarily concerned with obtaining custody of her own children.⁵²¹ She learned that "the laws do respect the right of maternity in the single woman, but in the married woman this right, like all her other rights, is ignored by this suspension of rights during coverture."⁵²² In 1869, she returned to Massachusetts to fight for custody of them.⁵²³ Her younger children were, at this point, living with Theophilus in Massachusetts.⁵²⁴ Theophilus and the children had for a while lived with his sister in South Deerfield, Massachusetts, but he eventually rented a house in Greenfield, Massachusetts.⁵²⁵

By the mid-nineteenth century, according to historian Michael Grossberg, some women were lobbying legislatures to enact laws that ensured that married women could sue for custody of their children.⁵²⁶ Colonial Anglo-American laws had granted the father almost unlimited rights to his children because the courts felt that the father would be the best provider and that in essence his children were his property.⁵²⁷ States in the early Republic adopted this ideology. Nonetheless, women advocated for married women's child custody acts to ensure that they would have the legal right to sue for custody of their children. Elizabeth was one of the women who advocated for legislative change for child custody rights.⁵²⁸ This legislation did not succeed in Illinois until the early 1870s.⁵²⁹ Elizabeth "sent a bill to Hon. S.E. Sewall, of Boston, requesting him to present it to the Massachu-

520. *Id.*

521. See SAPINSLEY, *supra* note 1, at 171.

522. PACKARD, MODERN PERSECUTION 2, *supra* note 15, at 71.

523. SAPINSLEY, *supra* note 1, at 175.

524. *Id.*

525. *Id.*

526. MICHAEL GROSSBERG, GOVERNING THE HEARTH: LAW AND THE FAMILY IN NINETEENTH-CENTURY AMERICA 244-45 (1985).

527. *Id.* at 235.

528. PACKARD, MODERN PERSECUTION 2, *supra* note 15, at 367-73.

529. See *supra* notes 452-512.

setts Legislature and defend it before the Committee, if necessary, in order to secure its passage.”⁵³⁰ In response, Elizabeth received the

most welcome intelligence, in the Spring of 1869, that the laws of Massachusetts had been so changed that a mother had now an equal right before the law to the custody and control of the children, with that of the father, and that in case of separation, the Court must determine by the merits of each individual case, with which of the parents the children should remain.⁵³¹

With this change in the Massachusetts custody laws, Elizabeth decided to “go directly to Boston to petition the Court for the custody” of her children.⁵³²

Elizabeth prepared for her petition for her children by obtaining certificates from her friends in Chicago, including Judge Bradwell, her real estate agent, and her two eldest sons.⁵³³ S.E. Sewall and T. Currier acted as her attorneys in her suit against Theophilus to gain custody of her minor children—Elizabeth, George, and Arthur.⁵³⁴ Theophilus, when he realized that he was not going to win the custody battle, decided to voluntarily give up custody of the children, prior to any court decision being rendered.⁵³⁵ He stipulated in the agreement that he should have unlimited visiting rights with them and that the children be permitted to attend the church of their own choice.⁵³⁶ This was the arrangement that Elizabeth and Theophilus agreed upon, and in June of 1869, Elizabeth took her children to Chicago, to her home at 1496 Prairie Avenue.⁵³⁷ Elizabeth seemed to rejoice in having her entire family at home: “My three oldest boys in their majority, doing business in Chicago, boarded with me and my three minor children, thus obtained, constituting ‘The Re-united Family’ of seven, living in peace and harmony.”⁵³⁸ The entire family attended a Methodist church near Elizabeth’s home.⁵³⁹ Later, Theophilus insisted that the younger children attend an Evangelical church and Sabbath school.⁵⁴⁰ As per normal, Elizabeth demanded that her children respect Theophilus.⁵⁴¹ Elizabeth had always made a point of not depicting Theophilus as a villain and tried her best to put her children’s needs ahead of her own. She felt that Theophilus’s love and presence was an important aspect of their lives, despite his shortcomings.

530. PACKARD, MODERN PERSECUTION 2, *supra* note 15, at 374.

531. *Id.*

532. *Id.*

533. *Id.* at 375-78.

534. *Id.* at 379; note 542, *infra*.

535. PACKARD, MODERN PERSECUTION 2, *supra* note 15, at 379.

536. SAPINSLEY, *supra* note 1, at 175.

537. PACKARD, MODERN PERSECUTION 2, *supra* note 15, at 379.

538. *Id.*

539. *Id.* at 382.

540. SAPINSLEY, *supra* note 1, at 176.

541. *See id.*; PACKARD, MODERN PERSECUTION 2, *supra* note 15, at 383.

By the time that Elizabeth had gained custody of her children they were for the most part quite grown: Theophilus, Jr. (27), Isaac (25), Samuel (22), Elizabeth (19), George (16), and Arthur (11).⁵⁴² Accordingly, they only lived in Chicago with her for three years.⁵⁴³ The two eldest sons married during this three-year period, and the other children left home for various reasons.⁵⁴⁴ Arthur, the youngest son, was merely two when Elizabeth entered Jacksonville.⁵⁴⁵ He preferred being with Theophilus and went to live with his father.⁵⁴⁶ Although Arthur's decision saddened Elizabeth, she accepted it, as she knew it would be best for him.⁵⁴⁷ Even though Elizabeth had only three brief years with her children, she valued this time greatly. Since her commitment in 1860, she had been with them briefly in 1863, as she was locked in the nursery most of the time, and so nine years had passed since she had assumed the role of mother. She took this role very seriously, stating that it was "paramount to all others."⁵⁴⁸ Elizabeth had to work to support her family.⁵⁴⁹ She managed to leave home to sell her books for just three months of the year, ensuring that for the remaining nine months she would be home with her children.⁵⁵⁰ This is quite a progressive arrangement, akin to a twentieth century single mother's challenge of juggling a career, motherhood, and other duties. Elizabeth believed that her motherly duty was the most important of all her obligations:

The remaining nine months I have devoted almost exclusively to my family, refusing all the calls of social life and its varied responsibilities, that I might devote all my energies in moulding [*sic*] and shaping the characters of my long neglected children.

To my mind the claims of the public are secondary at least to those of maternity. Never primary when her children's training is at stake. Could I have prevented it my children would never have been separated from their mother.⁵⁵¹

Elizabeth took her role as mother seriously, an attitude that explains, to a large extent, her vehement opposition to a woman's right to vote.

542. See PACKARD, MODERN PERSECUTION 1, *supra* note 15, at v ("To you, my first-born son, THEOPHILUS PACKARD, JR., born March 17, 1842; and you, my second child, ISAAC WARE PACKARD, born June 24, 1844; and you, my third child, SAMUEL WARE PACKARD, born November 29, 1847; and you my only daughter, ELIZABETH WARE PACKARD, born May 10, 1850; and you, my fifth child, GEORGE HASTINGS PACKARD, born July 18, 1853; and you, my sixth child, ARTHUR DWIGHT PACKARD, born December 18, 1858."). Therefore, when Elizabeth was reunited with her family in June of 1869, they would have been the ages indicated in the main text.

543. PACKARD, MODERN PERSECUTION 2, *supra* note 15, at 383-84.

544. *Id.*; SAPINSLEY, *supra* note 1, at 177.

545. PACKARD, MODERN PERSECUTION 2, *supra* note 15, at 384; SAPINSLEY, *supra* note 1, at 177.

546. PACKARD, MODERN PERSECUTION 2, *supra* note 15, at 384; SAPINSLEY, *supra* note 1, at 177.

547. PACKARD, MODERN PERSECUTION 2, *supra* note 15, at 384; SAPINSLEY, *supra* note 1, at 177.

548. PACKARD, MODERN PERSECUTION 2, *supra* note 15, at 381.

549. *Id.*

550. *Id.*

551. *Id.*

The omission and virtual silence regarding her children in her books perhaps represents the internal void, the loss and pain that Elizabeth experienced in relation to her children. Her children who had been so integral to her life before her commitment were forever negatively affected by her absence. Because she could do nothing about this, she apparently suffered in silence the rest of her life. Undoubtedly, this pain drove Elizabeth to passionately lobby for changes in commitment laws and the legal status of married women. She had personally learned the devastation that resulted from being denied a voice and the power to act. Tragically, the “palace” of opportunities that Elizabeth envisioned Lizzy pursuing would be a dream that Lizzy would never fulfill.⁵⁵² Instead, Elizabeth spent her remaining years witnessing how her own legal vulnerability affected her daughter’s life and her other children’s lives. Elizabeth’s commitment and Theophilus’s behavior affected the children’s lives. For instance, Ira had cancer and when it did not respond to Christian Science readings, he took his own life and Arthur committed suicide later in life.⁵⁵³ Fits of sadness plagued Lizzy from the age of twenty on.⁵⁵⁴ Apparently, Lizzy suffered from depression, which may have resulted from that fact that, at age ten, she had to take care of her brothers and the house because of Elizabeth’s commitment.⁵⁵⁵ Elizabeth’s only daughter was forever less than whole because of her mother’s ordeal. Lizzy would continue to have periodic breakdowns throughout her life, and toward the end of her life she was seriously disturbed. Elizabeth refused to institutionalize her and instead cared for Lizzy until her own death in 1897, after which Lizzy was institutionalized and died a year later.⁵⁵⁶ Elizabeth’s hope that Lizzy would be a “cornerstone” in the “palace”—the vast and rich world of women’s opportunities—would never be fulfilled.⁵⁵⁷ When she reunited with Lizzy, it was apparent that her daughter was not destined to assume such a role because of her illness, but Elizabeth nonetheless in 1873 published the dedication, knowing Lizzy’s problems.⁵⁵⁸ Perhaps she felt that Lizzy would overcome them. Elizabeth was deeply upset by Lizzy’s condition and the state of her other children. Presumably, this was a heart-wrenching and difficult situation for Elizabeth, as she was a strong and vibrant woman and wished her daughter, Lizzy, to carry on this tradition by advocating the expansion of woman’s role. This sense of personal agony,

552. Elizabeth stated:

Yes, the mother has died! But she has risen again—the mother of her country—and her sons and daughters are—*The American Republic*. Children, it is for the service of your country your mother has dedicated you, one and all. May you, my sons, be fitted to adorn the garden of American freedom, ‘as plants,’ grown up in your youth, from the rocky but luxuriant soil of family persecution. *And may you, my daughter, be as a ‘cornerstone,’ in our new temple of American freedom—‘polished after the similitude of a palace.’*

PACKARD, MODERN PERSECUTION 1, *supra* note 15, at v-vi (emphasis added).

553. SAPINSLEY, *supra* note 1, at 198.

554. *Id.* at 176-77, 195-97.

555. *Id.* at 176-77.

556. *Id.* at 195-98.

557. PACKARD, MODERN PERSECUTION 1, *supra* note 15, at vi.

558. *See supra* note 552.

one may assume, was why she chose not to share her sense of tragedy with her readers. She likely felt that such a personal tragedy was not appropriate for books targeted to changing laws and presumably this issue was also too painful for her to share and to express with others.

G. Elizabeth's Attitude toward a Woman's Right to Vote

Despite Elizabeth's active involvement with trying to lessen the legal liabilities of women and her hope for expanding woman's life options, she stressed that women needed to be protected in their sphere—as mothers and wives. At some level Elizabeth believed in the essential roles of man and woman, but it must also be remembered that Elizabeth was writing her books for a male audience. She wanted men to buy her books, to sympathize with her, and to use such compassion to effect legal change. To what extent, then, did Elizabeth stress the “separate spheres” ideology in order to please her targeted audience? This question cannot be definitively answered, but it is reasonable to assume that she used “separate spheres” rhetoric as a strategy to improve the legal status of women and their lives in general. In fact, she quite assuredly said, “[W]e are aiming to establish . . . that the woman should be a legal partner in the family firm, not a mere appendage to it. We want an equality of rights, so far as co-partners are concerned.”⁵⁵⁹ Prior to this comment Elizabeth had discussed how some people felt that women were already protected enough by the new laws that allowed them to own their own property and to conduct their own business.⁵⁶⁰ Elizabeth's response was that property rights and business rights were not the only goals women were seeking.⁵⁶¹ Thus, she talked about the need for “equality” of “co-partners.”⁵⁶² She explained what she meant by these terms:

Then, and only till then, is she his companion on an equality, in legal standing, with her husband, and sharing with him the protection of that Government which she has done so much to sustain; which Government is based on the great fundamental principle of God's Government, namely, an equality of rights to all accountable moral agents. Our Government can never echo this heavenly principle, until it defends “equal rights,” independent of sex or color.⁵⁶³

This statement suggests the need for a legal revolution for women. Elizabeth understood the legal disabilities facing married women:

559. PACKARD, MODERN PERSECUTION 2, *supra* note 15, at 392.

560. *Id.*

561. *Id.*

562. *Id.*

563. *Id.*

It is to delineate the spiritual wrongs of women, that I have given my narrative to the public, hoping that my more tangible experiences may draw the attention of the philanthropic public to a more just consideration of married woman's legal disabilities; for since the emancipation of the negro, there is no class of American citizens who so much need legal protection, and who receive so little, as this class.

As their representative, I do not make complaint of physical abuses, but it is the usurpation of our natural rights of which we complain; and it is our legal position of *nonentity*, which renders us so liable and exposed to suffering and persecution from this source.⁵⁶⁴

Elizabeth's aforementioned remarks appear to suggest that she had an affiliation with the woman's movement.

At other points in *Modern Persecution Volume 2* Elizabeth presented a different vision of woman's legal needs and her affiliation with the woman's movement. After the personal liberty bill passed in Illinois, Elizabeth said "[t]hat it is the honest intention of the Legislation of the present day to protect the rights of woman as well as their own rights."⁵⁶⁵ She continued to discuss how women should gain legal protection for "*her sphere*" and that she did not believe in a woman's need to vote.⁵⁶⁶ She argued that the desire of the "'Woman's Rights' movement" to secure the vote was not a good idea because she feared that women would ignore their designated roles as mothers and wives.⁵⁶⁷ Elizabeth saw herself as part of the "woman's rights" movement. Note that Elizabeth did not use capitals when she referred to her affiliation with the "woman's rights" movement.⁵⁶⁸ Apparently, the capitalized version, "Woman's Rights" movement, signified in her mind the suffragist movement.⁵⁶⁹ At one level, we can read Elizabeth's comment literally, although the radical statements above would seem quite contradictory. To really understand Elizabeth's "woman's rights" outlook one must consider the complex aspects of Elizabeth's commentaries.

Elizabeth wrote about her anti-suffragist feelings in particular contexts. She specifically mentioned such feelings after praising the Illinois male legislators in 1867 for being able to represent women's legal needs.⁵⁷⁰ Considering her male audience, at some level her comments were perhaps a means to gain male support for her cause. This type of reasoning, which appears sporadically throughout *Modern Persecution*, is often found when she addressed men. For instance, this same anti-suffrage rhetoric appeared

564. PACKARD, *MODERN PERSECUTION 2*, *supra* note 15, at iii-iv.

565. *Id.* at 194.

566. *Id.*

567. *Id.* at 195.

568. *Id.* at 164.

569. PACKARD, *MODERN PERSECUTION 2*, *supra* note 15, at 195.

570. *Id.* at 190-95.

in a plea written for the Connecticut Legislature.⁵⁷¹ In one sense we can attribute Elizabeth's anti-suffrage statements to mere rhetoric. Nevertheless, Elizabeth's books produce skepticism about her real commitment to suffrage. She never discussed at great length a woman's right to vote in her books. This was not of primary concern to Elizabeth. We will perhaps never know how Elizabeth actually viewed woman's suffrage. My sense is that Elizabeth was not completely opposed to the idea, but she worried that the right to vote would interfere with women's duties as a mother and a wife. Having said that, Elizabeth does not seem to have actively campaigned against a woman's right to vote. In this sense, she did not hamper the goal of the suffragist movement. Her type of "woman's rights" involved battling for issues besides suffrage. For this reason, Elizabeth was on the margins of the Woman's Movement. By the mid- to late 1860s, the movement had established that suffrage was the major tenet of the cause and expended great energy to realize this goal.⁵⁷² Conventions centered around the issue of suffrage as did the journals produced by women.⁵⁷³

Elizabeth was not part of the "Woman's Movement," that is, she was not part of the centralized political worlds of women like Elizabeth Cady Stanton or Lucy Stone. She did not apparently attend "Woman's Rights" conventions nor did she voice herself through woman's journals. Elizabeth saw herself as part of a movement, a "woman's movement" that involved advocating woman's self and woman's voice, which was still at the heart of the overall Woman's Movement. Her position, although arguably more fringe, and perhaps was considered by some women as conservative, was not oppositional to the purpose of the Woman's Movement. As an anonymous writer, presumably a woman, wrote in an article titled *What Is The Aim Of The Woman Movement!*:

We answer, *freedom for woman*. Not a struggle for supremacy, not a vulgar tournament for office-holding, not merely an effort to obtain the ballot *as an end*. But it is a movement to give to woman possession of herself, with the unrestricted use of all her faculties, and the power of deciding for herself what she can do and cannot do in the world—what is, and what is not her sphere.⁵⁷⁴

This woman recognized the need to deconstruct the barriers between the gender landscapes in order to create a world in which a woman could choose what role—what sphere—she would like to occupy. This vision of the "woman's movement" is inclusive and suggests that the "woman's movement" involved much more than the attainment of the vote for women.

571. *Id.* at 394.

572. DuBois, *Part Two*, *supra* note 333, at 88-94.

573. *Id.* Informal surveys of *The Revolution* (1868-1870), *The Agitator* (1869), and *The Woman's Journal* (1869) show a clearly heightened emphasis on suffrage.

574. *What Is The Aim Of The Woman Movement*, *THE AGITATOR*, Aug. 7, 1869, at 4.

It involved creating a new “crossroads,” new life options for women, options that would allow women to decide what type of life they wanted to pursue.⁵⁷⁵ At the heart of this woman’s comment is a concern with a woman’s self-possession, that is her voice, her being, and her self-identification. These are the very concerns that Elizabeth spent her life addressing. Therefore, in this sense Elizabeth was part of the “woman’s movement,” a movement seeking to help expand woman’s life options in order that she could decide what landscape, what kind of life, she wanted to pursue. Such a vision of the world allowed women to pursue diverse roles simultaneously: as mothers, wives, businesswomen, spiritual beings, activists, and political beings. Elizabeth spent her life constructing her own particular “sphere.” She was a “daring voyager” who entered the borderlands to deconstruct limiting life barriers. Advocating woman’s self-possession, self-identity, and voice were most important to her. Elizabeth’s conception of the “woman’s movement” reveals the diversity of voices that challenged the gender landscape dichotomy.

Clearly, Elizabeth’s voice represented one strain of women’s voices that tried to work toward improving the lives of women. The “woman’s movement” itself was a borderland. Consequently, it is not very important that Elizabeth did not actively support the suffrage movement, as she did support and help improve women’s actual lives, perhaps in more critical ways than the suffragists. Her willingness to fight restrictive legal, medical, and religious norms set an example for other women and helped her form her own self-conception—her own vision of herself in the mirror, a mirror that women continually faced and that some women tried to make reflective of their own being. Her desire to contest gender, legal, social, medical, economic, religious, and cultural constructions and to locate herself is how Elizabeth contributed to the “woman’s movement.”

V. CONFRONTING THE MALE MIRROR THROUGH THE ACT OF WRITING

America is now wholly given over to a d—d mob of
scribbling women

—Nathaniel Hawthorne⁵⁷⁶

A. Elizabeth Defies the “Scribbling Woman” Label

Hawthorne disliked the fact that most women writers wrote sentimental literature.⁵⁷⁷ He appreciated Fanny Fern’s novel, *Ruth Hall*, because:

575. ANZALDÚA, *supra* note 426, at 195.

576. CAROLINE TICKNOR, HAWTHORNE AND HIS PUBLISHER 141 (1913).

577. *See id.* at 141-42.

The woman [Fanny Fern] writes as if the Devil was in her; and that is the only condition under which a woman ever writes anything worth reading. Generally women write like emasculated men, and are only to be distinguished from male authors by greater feebleness and folly; but when they throw off the restraints of decency, and come before the public stark naked, as it were,—then their books are sure to possess character and value.⁵⁷⁸

Elizabeth was certainly not a “scribbling woman” writer, as Hawthorne portrays most women writers. Her books were political, critical of social norms, and in a sense “stark naked” in that they revealed much about herself and her own opinions. It is quite ironic that Hawthorne praised Fern for writing like “the devil was in her,” considering that many people considered Elizabeth’s writing as not praiseworthy because they viewed her words as devilish. Perhaps Hawthorne would have approved of Elizabeth’s work because it was so daring. Understanding how Elizabeth viewed her own writing sheds a great deal of light on her character and motives. She did not write purely sentimental literature. Her books were not merely about domesticity and a “nonsectarian religious fervor.”⁵⁷⁹ Instead, Elizabeth wrote to support herself financially, to change the status of married woman legally, and to develop herself.⁵⁸⁰ Writing for Elizabeth was the way she shaped and created herself and her voice. An array of topics fills the pages of her books, on subjects ranging from religion to woman’s property rights. What is so remarkable about Elizabeth’s writing is that her ideas are at once subversive, yet also traditional. As evidenced by her conflicted personal sense of religion, sexuality, marriage, the role of a woman, and the role of the law in a woman’s life, cultural prescriptions influenced Elizabeth’s being, though she continually questioned, defied, and reformulated such encoding.

Elizabeth’s conceptualization of her writing had a radical tone. She defended her right to her own voice and her right to express that voice publicly.⁵⁸¹ She saw no need to mask her voice in meek language and her books are passionate, forceful, truthful, and uninhibited. She defended her right to be bold and not sentimental:

And here I will add, I do not write books merely to tickle the fancy, and lull the guilty conscience into a treacherous sleep, whose waking is death. Nor do I write to secure notoriety or popularity.

But I do write to defend the cause of human rights; and these rights can never be vindicated, unless these usurpations be exposed to public view, so that an appeal can be made to the public con-

578. *Id.* at 142.

579. Ann D. Wood, *The ‘Scribbling Women’ and Fanny Fern: Why Women Wrote*, 23 AM. Q. 3, 7 (1971).

580. See *supra* notes 9-13, 200-20 and accompanying text.

581. See PACKARD, MODERN PERSECUTION 2, *supra* note 15, at 176.

science, on the firm basis of unchangeable truth—the truth of facts as they do actually exist.⁵⁸²

It was important to Elizabeth that her writing be taken seriously and not read as merely an exaggeration of reality, as sentimental. Her language and word choice were accordingly direct and not embellished. Throughout her books, Elizabeth utilized logical arguments, such as analogies, to prove her points.⁵⁸³ She provided evidence from other sources—friends, newspapers, and other asylum patients—to verify and support her ideas.⁵⁸⁴ Her books serve as true historical treasures because she does such a fine job of narrating her life events as well as discussing the opinions and issues intimately connected to her story. Her story is not one of mere emotion, but one that is well planned, researched, and organized.

Elizabeth was consciously aware of the great importance and affect her writing could have on women's lives. She believed in the power of a woman's voice to change woman's status: "And one thing you [Dr. McFarland] may rest assured, the time for downtrodden and oppressed women to have their rights, has come. *Her voice and her pen are going to move the world*; and if you wish to be popular, despise her not!"⁵⁸⁵ This is perhaps the most radical and visionary statement Elizabeth ever made and certainly the most heartfelt. The words practically leap off the page; they resound with life, purpose, and courage. Elizabeth had a mission and these words are her mission statement—her intention was to use her voice to change woman's status from oppression to freedom. Elizabeth's books contain implicitly the same tone of urgency as the above statement. Elizabeth did "move the world" with her actions and her writing.

Elizabeth's belief in a woman's "voice and her pen"⁵⁸⁶ is a "daring voyager" rally call and one that reveals her dedication to deconstructing the silent and limited world that women occupied. Her vision and hope that women would "move the world," that women would influence, impact, and construct all aspects of society—social, cultural, political, economic, sexual, legal, and spiritual—is prophetic.⁵⁸⁷ Although women voiced themselves through fiction and nonfiction writings before the nineteenth century, it is during the nineteenth century, particularly the mid-nineteenth century and beyond, that women truly began to locate and articulate their voices and their selves through writing.⁵⁸⁸ Through this mode of expression, women have contested limiting landscapes and have captured their selves in the process. Elizabeth perhaps was able to foresee the connection between the

582. *Id.*

583. *See, e.g., supra* note 338 and accompanying text.

584. *See, e.g., supra* note 195 and accompanying text.

585. PACKARD, MODERN PERSECUTION 1, *supra* note 15, at 130 (emphasis added).

586. *Id.*

587. *Id.*

588. *See generally* GILBERT & GUBAR, *supra* note 293 (discussing prominent nineteenth century women writers).

“pen” and women’s “voices,” in large part, because she experienced being silenced in an overt manner.⁵⁸⁹ Her confinement, her actual loss of voice, made her all too aware of the oppression and voicelessness that women experienced. Words are powerful tools, and Elizabeth quickly realized this while she was confined. She knew that women must use this tool to give birth to their selves—to their visions, to their passions, and to the “palace[s]” lurking within them.⁵⁹⁰

The world of women’s voices that Elizabeth envisioned did emerge throughout the nineteenth and twentieth centuries. Today, women writers of both these periods have gained critical as well as cultural attention. For instance, Charlotte Brontë, Jane Austen, Toni Morrison, Doris Lessing, and Erica Jung are well-known examples of this trend. Literary critics Sandra M. Gilbert and Susan Gubar address how women writers found their voices and their pens in their seminal book *The Madwoman in the Attic: The Woman Writer and the Nineteenth-Century Literary Imagination*.⁵⁹¹ Central to their argument is the exploration of male authority and women’s lack of authority in the realm of writing.⁵⁹² As Gilbert and Gubar state, “For as Humpty Dumpty tells Alice in *Through the Looking Glass*, the ‘master’ of words, utterances, phrases, literary properties, ‘can manage the whole lot of them!’”⁵⁹³ Words are weapons of power and control, of male power and control. To begin the arduous process of entering such a male domain, women writers must, according to Gilbert and Gubar, first “glance into the mirror of the male-inscribed literary text . . . [and by] looking long enough, looking hard enough, she would see—like the speaker of Mary Elizabeth Coleridge’s ‘The Other Side of the Mirror’—an enraged prisoner: herself.”⁵⁹⁴ Elizabeth underwent the very process that Gilbert and Gubar describe. She confronted the male mirror and said to her readers, “I state facts through which the reader may look into woman’s soul, as through a mirror, that her realm of suffering may be thus portrayed.”⁵⁹⁵ By transcending the male mirror, Elizabeth provided her readers with a vision of herself, her own reflection in the mirror, and not the culturally imposed version. Throughout Elizabeth’s books we meet the “enraged prisoner,” herself.

But as Gilbert and Gubar comprehend, it is difficult for women writers to transcend, negotiate, and confront the male mirror. They raise the following questions concerning this issue: “[D]oes the Queen try to sound like the King, imitating his tone, his inflections, his phrasing, his point of view? Or does she ‘talk back’ to him in her own vocabulary, her own timbre, insisting on her own viewpoint?”⁵⁹⁶ The problem a woman writer faced was the need

589. See *supra* notes 157-65 and accompanying text.

590. PACKARD, MODERN PERSECUTION 1, *supra* note 15, at vi.

591. GILBERT & GUBAR, *supra* note 293.

592. *Id.* at 3-44.

593. *Id.* at 13.

594. *Id.* at 15.

595. PACKARD, MODERN PERSECUTION 2, *supra* note 15, at iv.

596. GILBERT & GUBAR, *supra* note 293, at 46.

to “examine, assimilate, and transcend the extreme images of ‘angel’ and ‘monster’ which male authors have generated for her.”⁵⁹⁷ Many women writers dealt with this very challenge “by simultaneously conforming to and subverting patriarchal literary standards.”⁵⁹⁸ As a result, in women’s writings, there is often another, subversive, hidden plot: “[W]hat literary women have hidden or disguised is what each writer knows is in some sense her own story”—her own “quest for self-definition.”⁵⁹⁹ The “madwoman” character is one way in which women indirectly reveal their passionate, subversive, and daring side.⁶⁰⁰ Gilbert and Gubar argue that madwomen characters are truly doubles of the author’s self and her struggle to deal with the twin image of woman as angel and monster.⁶⁰¹ It is a way for women writers to confront their sense of “fragmentation, their own keen sense of the discrepancies between what they are and what they are supposed to be.”⁶⁰² Writing is a means for women to locate their selves and to express their own story.

Elizabeth’s experience did not occur in a vacuum. While Elizabeth lived through and wrote about her commitment, confinement, and search for self, writers like Brontë and Stoddard were exploring these themes in their fictional works. It is important to comprehend how Elizabeth’s story is connected to these women writers. We can gain a better understanding of Elizabeth through exploring how she, Brontë, and Stoddard, through the act of writing, confronted the male mirror and in the process constructed mirrors of their own—personal, cultural, religious, and legal.

B. Jane Eyre and the Quest to Capture One’s Self

Charlotte Brontë’s *Jane Eyre* focuses on one woman’s journey to capture her voice, her self, and her identity.⁶⁰³ Contemporary readers of *Jane Eyre* noticed such aspects of the novel and its inherently subversive tone. An article in *The Revolution* described *Jane Eyre* as being “written too soon to be understood in accordance with what should and must have been the purpose” of the author.⁶⁰⁴ The real purpose of *Jane Eyre*, according to this article, must have been a desire on Brontë’s part to expose the dangers of marriage for women:

If Rochester was the victim of an unutterably false marriage, forced upon him by circumstances beyond his knowledge or control, how much more was Mrs. Bronte? And to wake her nation and the world to the unutterable evil, injustice and cruelty of such alli-

597. *Id.* at 17.

598. *Id.* at 73.

599. *Id.* at 75-76.

600. *Id.* at 77-78.

601. GILBERT & GUBAR, *supra* note 293, at 78.

602. *Id.*

603. CHARLOTTE BRONTË, *JANE EYRE* (Beth Newman ed., St. Martin’s Press 1996) (1847).

604. *Mrs. Holloway on Charlotte Bronte*, *THE REVOLUTION*, Feb. 3, 1870, at 73.

ances, was the unspoken, and so, to a purblind world, the undiscovered purpose of the writer, of the yet-to-be reread, understood and appreciated *Jane Eyre*.⁶⁰⁵

This nineteenth century reviewer of *Jane Eyre* articulated well the central, yet elusive drama of Brontë's book, a drama that emphasized issues like marriage, gender relations, and the self. All these issues are themes that Elizabeth addressed in her books, but unlike the fictionalized Bertha Mason, Elizabeth lived through being labeled insane and confined. Although one is a real life story and the other is fictional, both emphasize married woman's liabilities and a woman's quest for herself. Both writers used their pens to voice distress concerning woman's oppressed state and need for self-growth; in this way their works were complementary and interconnected.

Brontë's *Jane Eyre* subtly but resoundingly addresses a married woman's legal and social powerlessness.⁶⁰⁶ But as the nineteenth century reviewer said, many people likely did not recognize such underlying themes.⁶⁰⁷ One can easily read *Jane Eyre* as a story of a man married to an insane woman—a woman who because of her illness needs to be confined. Such a reading allows the reader to sympathize with Rochester and to understand his desire to marry Jane, despite the fact Bertha is living. Brontë crafted her novel with a much more radical vision of Bertha, Rochester, and Jane in mind.⁶⁰⁸ Throughout the novel, there exists a connection between Bertha Mason, the madwoman locked in the attic, and Jane, the governess for Rochester's supposed daughter. Brontë formed this link early on when she described Jane's experience of being confined in the "red-room" as a child.⁶⁰⁹ Jane was powerless to escape being confined in the "red-room," and felt that it was an "unjust" act of "oppression."⁶¹⁰ This experience would haunt Jane for the rest of her life as her first encounter with being denied a voice and a right to her freedom.⁶¹¹ Jane was placed in the "red-room" for allegedly hitting her cousin, but in reality her cousin knocked her down.⁶¹² Jane's experience is meant to make the reader wonder later if perhaps Bertha Mason, like Jane, was "unjust[ly]" confined.⁶¹³ In this way, Brontë ingeniously undermined Rochester's claim of being unduly burdened by Bertha, for Jane's early incident suggests an alternative scenario to Rochester's view of Bertha and his self-pitying claims.

605. *Id.*

606. See GILBERT & GUBAR, *supra* note 293, at 336-71, for a discussion of *Jane Eyre*. My own conception of *Jane Eyre* has been influenced by Gilbert's and Gubar's analysis, but I have presented in this Article primarily my own understanding of the text.

607. See *Mrs. Holloway on Charlotte Bronte*, *supra* note 604, at 73.

608. See generally GILBERT & GUBAR, *supra* note 293, at 336-71.

609. BRONTË, *supra* note 603, at 24-30.

610. *Id.* at 27.

611. See GILBERT & GUBAR, *supra* note 293, at 341 (noting "Jane's anomalous, orphaned position in society, her enclosure in stultifying roles and houses").

612. BRONTË, *supra* note 603, at 24.

613. *Id.* at 27.

Images of confinement, darkness, and enclosure haunted Jane's experience. Eventually, after the "red-room" incident, Jane's aunt sent her to Lowood, another confined world in which she suffers.⁶¹⁴ She learned a great deal at Lowood, but the atmosphere was one of "rules and systems," and Jane wanted "to seek real knowledge of life amidst its perils."⁶¹⁵ She thirsted for freedom: "I desired liberty; for liberty I gasped; for liberty I uttered a prayer; it seemed scattered on the wind then faintly blowing."⁶¹⁶ The liberty Jane sought materializes when she leaves Lowood for Thornfield to be the governess in Rochester's home.⁶¹⁷ Again Jane enters a limited world—a world in which she lives in a confined space with little opportunity for life experience and exploration.⁶¹⁸ In many senses, Jane lived a life of many confinements, while she yearned for freedom, independence, and adventure. Brontë connected Bertha's actual confinement with Jane's metaphorical confinement.⁶¹⁹

There is a moment in the novel when Jane enters the attic alone and discusses the unnecessary limitations imposed upon women.⁶²⁰ Her presence in the attic symbolically solidifies the connection between her and Bertha. Jane, although not confined like Bertha, really does, like Bertha, live in an attic—in a restrictive and enclosed world. While in the attic, Jane argues against women's continual confinement:

Women are supposed to be very calm generally: but women feel just as men feel; they need exercise for their faculties, and a field for their efforts as much as their brothers do; they suffer from too rigid a restraint, too absolute a stagnation, precisely as men would suffer; and it is narrow-minded in their more privileged fellow-creatures to say that they ought to confine themselves to making puddings and knitting stockings, to playing on the piano and embroidering bags. It is thoughtless to condemn them, or laugh at them, if they seek to do more or learn more than custom has pronounced necessary for their sex.⁶²¹

Jane obviously perceives that her life and being are confined because of her gender, and that men's unwillingness to allow women to develop as they please is quite oppressive. The "attic" that some women live in is the private landscape—their circumscribed and dictated world of motherhood, house-keeping, and wifely duties. Jane believes that men see her as mad for wanting to expand her life options. Certainly, many people deemed Elizabeth

614. *Id.* at 51-100.

615. *Id.* at 93.

616. *Id.*

617. BRONTË, *supra* note 603, at 101.

618. *See* GILBERT & GUBAR, *supra* note 293, at 347.

619. *See id.* at 360 (describing Bertha as Jane's "darkest double").

620. BRONTË, *supra* note 603, at 116.

621. *Id.* at 116-17.

mad because she too wanted to venture outside her private world borders. These borders, though, are not impenetrable, as Elizabeth proved. Jane is Bertha Mason; she is the madwoman in the attic. She is the woman with “mad” ideas—nontraditional, passionate, and creative—living in a world of restrictions. Jane is the shadow of and double of Bertha.⁶²²

Brontë intentionally provided little background information about Bertha because Jane is her focus. Jane’s journey of the self serves to show how women, even those not actually confined, live in “attics,” just like a madwoman.⁶²³ In such light, Brontë’s message is quite radical and related closely to Elizabeth’s theme. Elizabeth, like Brontë, was deeply concerned about woman’s self-development. The dependent legal status and the limiting social role that a woman occupied placed her in a confined world—an attic. The cries of Bertha Mason symbolically represent how some women cried—voiced out loud—their desires to escape, expand, and reformulate their attic. Elizabeth never mentioned reading *Jane Eyre*, but it seems that Jane’s and Elizabeth’s crusades complement one another. Brontë and Elizabeth had a keen sense of woman’s limited life options and both challenged such reality with their pens.

C. Elizabeth Stoddard’s Vision of the “All”

Elizabeth Stoddard, who wrote both fiction and nonfiction, was also interested in exploring woman’s self. She published five books as well as numerous “short stories, sketches, critical essays, poems, and miscellaneous journalistic pieces.”⁶²⁴ A theme that runs throughout Elizabeth Stoddard’s *The Morgesons* is the image of the land and the sea—restriction versus possibility. In its first edition (1862), *The Morgesons* received good reviews, but sold modestly.⁶²⁵ The later 1889 edition was more of a commercial success.⁶²⁶ Perhaps Stoddard struggled a great deal in her attempt at achieving success because of the radical tone of her writing, as exemplified in her semi-monthly “Lady Correspondent” column for the *Daily Alta California* of San Francisco.⁶²⁷ In her *Alta* column, her personal opinions regarding the woman’s movement, religion, women’s literary position, and admiration for certain writers, like the Brontë sisters, emerged.⁶²⁸ Literary critics Lawrence Buell and Sandra A. Zagrell contend that Stoddard’s *Alta* columns represent her best work because “they actually take the form of the public journal

622. GILBERT & GUBAR, *supra* note 293, at 360.

623. *See id.* at 339.

624. Lawrence Buell & Sandra A. Zagrell, *Biographical and Critical Introduction to ELIZABETH STODDARD, THE MORGESONS & OTHER WRITINGS, PUBLISHED AND UNPUBLISHED*, at xxvii (Lawrence Buell & Sandra A. Zagrell eds., 1984) [hereinafter Buell & Zagrell, *Introduction*].

625. *Id.* at xxxiii.

626. *Id.* at xx, xxxiv.

627. Lawrence Buell & Sandra A. Zagrell, *Introduction to Early Journalism*, in STODDARD, *supra* note 624, at 311 [hereinafter Buell & Zagrell, *Early Journalism*].

628. *Excerpts from “Our Lady’s Correspondent’s” Column, Daily Alta California*, in STODDARD, *supra* note 624, at 313-29 [hereinafter *Excerpts*].

of a witty, sophisticated, often acerbic woman-on-the move” who harbored a progressive vision for gender relations and social issues.⁶²⁹

In one particular column, Stoddard voiced her radical vision for women writers:

All the women in this country can follow out their fancies, as far as book making is concerned. No criticism assails them. Men are polite to the woman, and contemptuous to the intellect. They do not allow woman to enter their intellectual arena to do battle with them. Hence the intolerable vanity of our female writers.⁶³⁰

Stoddard disliked sentimentality, and *The Morgesons* is not pious, pure, submissive, or domestic in tone.⁶³¹ The characters that Stoddard created are embattled—the sentimental Veronica versus the radical, border woman Cassandra. Veronica is the pious, submissive, and ill sister, while Cassandra is the nonreligious, aggressive, and healthy sister. Stoddard set the story in a town near the sea. She drew upon the actual setting to create a metaphorical divide between Cassandra and Veronica. Cassandra is the sister who is drawn to the sea and is constantly described as near it and Veronica is the sister drawn to the land and thus described in terms of the land. Metaphorically, Cassandra is associated with the sea and with a sense of daring and openness to life possibilities. In contrast, Veronica is associated with the land and she seems more static and domestic.

Stoddard herself identified more with Cassandra’s character and battled continually to be like Cassandra rather than Veronica. In her *Alta* column, Stoddard declared, “Your correspondent . . . takes an humble place in the ranks of Women’s Rights and Women’s Shall Haves, especially in the latter.”⁶³² Apparently Stoddard found the term “Women’s Rights” inadequate and preferred the term “Women’s Shall Haves.”⁶³³ The latter phraseology is more assertive in tone and conjures an image of women’s entitlement to immense possibilities in all life realms—legal, social, political, sexual, economic, and marriage. This type of understanding is very progressive. Rights in the nineteenth century generally referred to only civil issues. Stoddard’s term “Women’s Shall Haves” truly foreshadows the legal shift that would occur in the twentieth century—a shift that would cause an expansion of the law’s scope to include more personal matters, like sexual and marital issues. Stoddard had a vision that was radical. She foresaw how the law could be a tool to help shape and protect more than a person’s economic needs, and could thus be a means to expanding one’s self.

629. Buell & Zagrell, *Early Journalism*, *supra* note 627, at 311.

630. *Excerpts*, *supra* note 628, at 314.

631. See Buell & Zagrell, *Introduction*, *supra* note 624, at xvii-xix.

632. *Excerpts*, *supra* note 628, at 328.

633. *Id.*

In *The Morgesons*, Cassandra, the woman who adheres more to the “Women’s Shall Haves” ideology, seems to triumph, while Veronica, the more “true woman” type character suffers—her husband dies and her baby is apparently an idiot.⁶³⁴ Nonetheless, Stoddard did not simply create a “binary opposition” between Cassandra and Veronica.⁶³⁵ Instead, she revealed the points of attraction, repulsion, and empathy between the sisters. Cassandra and Veronica emerge as internally conflicted characters as well as ones in contestation with one another. Stoddard herself, much like Elizabeth, lived within such borderlands: She too resented and sympathized with sentimental women writers and with the domestic (versus radical) woman’s role.⁶³⁶ Her novel is, very much like Elizabeth’s books, an exploration of her own contradictory, border-like nature.

Cassandra’s revelatory moment occurs when she is walking along the seashore and is drawn to the sea—to “the lighthouse”—to the light of hope.⁶³⁷ She approaches a pool of water, a cove perhaps, and sees the “shadow” of her face.⁶³⁸ When this occurs, an “internal oscillation” overcomes her, she places her hand in the water, and she cries, “Hail, Cassandra! Hail!”⁶³⁹ A “flying Spirit” who “touched” Cassandra caused this self-recognition.⁶⁴⁰ Stoddard’s reference to a “Spirit” is quite interesting, for she was not a conventional Christian.⁶⁴¹ She did not care for institutional religion, especially Evangelical Protestantism.⁶⁴² Yet Stoddard did not completely abandon religion, becoming instead agnostic; it is not clear to what extent she did or did not believe in God’s existence.⁶⁴³ Cassandra’s character is deeply against the more strict religious setting that she was raised in, but Stoddard never illuminated Cassandra’s real views about religion. Considering Stoddard’s own religious beliefs, it is interesting that she chose to associate Cassandra’s awakening with a “flying Spirit.” A Spirit can empower and infuse the self with the possibilities of life. In a sense, a “flying Spirit” can overcome a person’s being, and as a result, this spirit can allow one to transcend life’s barriers to locate one’s self and desires. As Cassandra stands by the sea—this God-like space—she declares, “Have then at life! . . . We will possess its longing silence, rifle its waiting beauty. We will rise up in its light and warmth, and cry, ‘Come, for we wait.’ Its roar, its beauty, its madness—we will have—all.”⁶⁴⁴ Cassandra’s brief personal declaration is

634. Elizabeth Stoddard, *The Morgesons*, in STODDARD, *supra* note 624, at 252-53.

635. POOVEY, *supra* note 504, at 4, 6.

636. Buell & Zagrell, *Introduction*, *supra* note 624, at xv.

637. Elizabeth Stoddard, *The Morgesons*, in STODDARD, *supra* note 624, at 213.

638. *Id.* at 214.

639. *Id.*

640. *Id.*

641. Telephone Interview with Meg Amstutz, Ph.D. candidate at Washington University, who focuses on Stoddard’s work (Apr. 24, 1996).

642. *Id.*

643. *Id.*

644. Elizabeth Stoddard, *The Morgesons*, in STODDARD, *supra* note 624, at 214-15; see Sybil Weir, *The Morgesons: A Neglected Feminist Bildungsroman*, 49 NEW ENG. Q. 427, 427-39 (1976). Weir aptly describes Cassandra as a “heroine who passionately undertakes a voyage of self-discovery and firmly

obtuse and mysterious. Stoddard's writing in general is very open-ended and elusive, perhaps purposefully so.

Numerous meanings can be attributed to Cassandra's revelation. The "it" can presumably be the actual sea as well as the metaphoric sea of life. Life is indeed complex and vibrant with roars, beauty, and madness. Cassandra intends to "have," reminiscent of Stoddard's phrase, "Women's Shall Haves," a chance to experience "*all*"—love, law, politics, economics, sexuality, marriage—every opportunity of life. On another level, we can read Cassandra's revelation in a more spiritual sense. Such an interpretation seems appropriate considering that Stoddard introduced the concept of a "flying Spirit." A spiritual reading does not negate or diminish the highly radical tone of this passage.

The "*all*" concept seems to be a multidimensional vision. Stoddard provided few clues about the meaning of the "*all*." What could Stoddard have meant by the "*all*?" Possibly her meaning of the "*all*" is related or connected to Margaret Fuller's usage of the very same word:

I saw there was no self; that selfishness was all folly, and the result of circumstance; that it was only because I thought self real that I suffered; that I had only to live in the idea of the *all*, and all was mine. This truth came to me, and I received it unhesitatingly; so that I was for that hour taken up into God. In that true ray most of the relations of earth seemed mere films, phenomena.⁶⁴⁵

Fuller then discussed how she never again experienced being consumed by God—the "*all*."⁶⁴⁶ At the end of *The Morgesons*, Cassandra alludes to the fact that she no longer feels consumed by the "*all*:" "Before [our house's] windows rolls the blue summer sea. Its beauty wears a relentless aspect to me now; its eternal monotone expresses no pity, no compassion."⁶⁴⁷ The "it" appears to refer to both the sea and to the "*all*," since Cassandra associated the sea with the "*all*." Stoddard's Cassandra can no longer clearly hear the "*all*" calling to her. The similarities between Fuller's description of the

rejects the established social institutions." *Id.* at 427. Weir recognizes that profound vision that Cassandra articulates as a part of her voyage of self-discovery:

Cassandra is a waif, alone on a dangerous voyage in an uncertain world. Stoddard, like Melville, rejects Emerson's early optimism about nature. Nature, she writes, "shows us the beautiful while she conceals the interior," hiding "from us her skeletons" (45). The sea's "beauty wears a relentless aspect," (269), its beauty mocking "the country . . . crazy with barrenness" (120). Despite the danger and the uncertainty, one must go on the journey. In "this mad world" (270), even if the mind is "chained to the edge of the yawning grave" (58), one must affirm life. "Its roar, its beauty, its madness—we shall have—*all*" (228). In American fiction no other heroine make such a daring commitment—not in the nineteenth century or—to the best of my knowledge—in the twentieth century.

Id. at 438.

645. BELL GALE CHEVIGNY, *THE WOMAN AND THE MYTH: MARGARET FULLER'S LIFE & WRITINGS* 168 (1994).

646. *Id.* at 169.

647. Elizabeth Stoddard, *The Morgesons*, in STODDARD, *supra* note 624, at 252.

"all" and Stoddard's are uncanny. Read in tandem, the two shed much light on the idea of self-possession and self-identification; two attributes that allowed women like Fuller, Stoddard, and Elizabeth to move beyond their domestic spheres. Fuller in her description commented on the impossibility of locating one's self.⁶⁴⁸ She seemed to comprehend that constructed entities, like the law or social norms, influence one's self. The only means by which one can transcend such construction was to "live in the idea of the all"—to be God-like, holy, or consumed by a higher being. Then, and only then, could a person transcend her boundaries in order to be able to experience all the possibilities of life. Cassandra desires, like Fuller, to transcend her constructed self and to enter into a more divine realm, where she has the power to formulate herself fully and to experience life to its fullest extent. Elizabeth, like Stoddard and Fuller, emphasized the idea of being holy and internally driven by a divine spirit.⁶⁴⁹ After discussing her disillusionment with the fact that "man has fallen from his noble position of woman's protector," she said, "This period of subjection through which woman is passing, is developing her self-reliant character, by compelling her to defend herself, in order to secure the safety of her own soul."⁶⁵⁰ She, too, like Fuller and Cassandra, was trying to locate herself. All three women, Fuller, Elizabeth, and the fictional character Cassandra, long to be continually inspired and to be able to transcend life's barriers.⁶⁵¹

Elizabeth spoke of how she began her own journey of self-discovery by first questioning more traditional religious ideals, like Calvinism, in order to form a stronger bond with God.⁶⁵² Her challenge of religious norms inspired her to contest legal norms and other aspects of society. Her moment of revelation influenced the rest of her life.⁶⁵³ As a very mystical being, Elizabeth conceived of her earthly being as directly connected to God's. Her God,

648. CHEVIGNY, *supra* note 645, at 62.

649. See *supra* notes 92-98 and accompanying text.

650. PACKARD, PRISONERS' HIDDEN LIFE 1, *supra* note 15, at 125.

651. Literary critic Susan K. Harris disagrees with this reading of Cassandra's final comments about the sea. SUSAN K. HARRIS, 19TH CENTURY AMERICAN WOMEN'S NOVELS: INTERPRETATIVE STRATEGIES 161-62 (1990). Harris contends that Cassandra at the end of the novel is not in touch with "nature" and "nature's God," but instead recognizes her ability to shape the world "through her own self-possession." *Id.* Harris's reading is not necessarily completely oppositional to the one presented in this paper, although her interpretation and the one presented here conceive of Cassandra's self-awakening and her reaction to it in different lights. One could argue that Cassandra at the end of the novel is still in touch with the "flying Spirit" and yearns for the "all." The sea still haunts her "relentlessly," but now it provides no assistance and no answers. Therefore, she must draw on her brief moment of communion with the "all" to live her life as she pleases. Cassandra has experienced a moment of personal revelation—an inner spirit has touched her. She must use this inner spirit to voice herself, to contest social norms, and to cultivate her being. Like Fuller, however, there is only one such moment in her life. In the end, the sea still haunts Cassandra. It seems that those women who in some manner rejected the traditional Eve conception and instead formulated their own connection with God were the ones with the strength to enter the borderlands. That is to say religion, at least a woman-centered one, could be a source of empowerment and not oppression. Elizabeth, Margaret Fuller, and authors like Elizabeth Stoddard, sought their own path in life and thus lived concurrently at the margins and in the center of life.

652. PACKARD, MODERN PERSECUTION 1, *supra* note 15, at xvi-xxiii.

653. See *supra* notes 423-44 and accompanying text.

though, allowed her access to all of life's possibilities. Like Fuller and Stoddard, Elizabeth was a woman who managed to some extent to transcend the traditional Eve conception. She took the fact that she could reformulate the spiritual aspect of her life as a sign that other parts of her life were not beyond restructuring, that the "all"—life's possibilities and spiritual guidance—was within her reach.

VI. VOYAGING THROUGH THE BORDERLANDS

Elizabeth led an existence that "belies" easy definition.⁶⁵⁴ She existed outside the mainstream woman's movement.⁶⁵⁵ Elizabeth apparently opposed suffrage, which by the mid- to late 1860s and beyond was a major tenet of the woman's movement—historically known as the "first wave of feminism."⁶⁵⁶ She stressed that a woman needed to gain legal protection for "her sphere"—as mother and wife and believed that the "Woman's Rights movements" emphasis upon securing the right to vote encouraged women to ignore their designated roles as mothers and wives.⁶⁵⁷ Elizabeth saw herself as part of a broader "woman's rights" movement.⁶⁵⁸ In this respect, Elizabeth adhered to the prototypical separate spheres ideology.⁶⁵⁹ Yet, as Elizabeth herself acknowledged, she conceived of a sphere for women that was empowering. According to Carroll Smith-Rosenberg, a historian, there existed in nineteenth century America a "Female World of Love and Ritual."⁶⁶⁰ Although this world revolved around domestic duties and private issues, it was a world where women were allowed to grow and to forge close bonds.⁶⁶¹ The exclusively female world of pregnancy, childbirth, nursing, and menopause created a "homosocial" world of intimate emotional connections between women.⁶⁶² Mother-daughter relationships comprised an integral component of this world.⁶⁶³ Contemporary letters and diaries reveal that there were thriving relationships between women that ranged from friendships to actual sensual love.⁶⁶⁴ Previous scholarship often depicted this female world as submissive and static, but Smith-Rosenberg re-

654. Hartog, *supra* note 4, at 103.

655. I surveyed *The Woman's Journal* (1870-1873) and *The Revolution* (1868-1870) and did not find any mention of Elizabeth or her books. She had been publishing since 1864 and certainly her campaigns were known throughout the country.

656. DuBois, *Part Two*, *supra* note 333, at 88-92.

657. See PACKARD, MODERN PERSECUTION 2, *supra* note 15, at 195.

658. Elizabeth did not use capitals when she referred to her affiliation with the "woman's rights" movement. *Id.* at 164. The capitalized version, "Woman's Rights" signified in her mind the suffragist movement. *See id.* at 195.

659. Linda K. Kerber, *Separate Spheres, Female Worlds, Woman's Place: The Rhetoric of Women's History*, 75 J. AM. HIST. 9, 11 (1988).

660. SMITH-ROSENBERG, *supra* note 17, at 53-76.

661. *Id.* at 53-54.

662. *Id.* at 59.

663. *Id.* at 60.

664. *Id.* at 62-63.

veals that a vibrant and even empowering community of women existed in the nineteenth century.⁶⁶⁵

Elizabeth led a life that was by no means completely focused upon motherhood and her children and was in many ways very nontraditional.⁶⁶⁶ She separated from her husband, lobbied numerous legislatures in order to change insanity laws, fought for woman's property and custody rights, successfully wrote, published, and promoted her own books, and was financially independent.⁶⁶⁷ These activities may cause one to believe that Elizabeth was part of the individualist feminist tradition, which "emphasized more abstract concepts of individual human rights and celebrated the quest for personal independence (or autonomy)."⁶⁶⁸ However, Elizabeth also espoused the importance of the private sphere and women gaining power within that sphere. The relational feminism tradition "emphasized women's rights as women (defined principally by their childbearing and/or nurturing capacities) in relation to men."⁶⁶⁹ Relational feminism stressed an egalitarian view of the family relationship within traditional gender roles.⁶⁷⁰ Individualist feminism is more characteristic of American and British traditions prior to the twentieth century, whereas relational feminism is more characteristic of the European tradition.⁶⁷¹ Elizabeth does not fit neatly into either the individualist or relational feminist framework.

But even Elizabeth Cady Stanton, who was part of the Anglo-American individualist feminist tradition, was not completely monolithic in her thoughts and approach to women's status. Historian Karen Offen suggests that a more thorough study needs to be done regarding the relational and individualist ideas present in Stanton's work.⁶⁷² The spirit of Stanton's thoughts clearly focused on the independence of women within society, yet it is important to understand that she was a conflicted person.⁶⁷³ Historian Ellen Carol DuBois admits that Stanton often stressed the distinct role of women as mothers as well as women's specific differences from men that made them more equipped for particular roles in society.⁶⁷⁴

Elizabeth continually spoke of woman's need for independence and autonomy, echoing the spirit of Stanton's writing, but she also discussed woman's proper sphere as well. It is difficult therefore to label Elizabeth as either an individualist or relational feminist as she embodied strains of both feminist traditions; therefore, she forces one to grapple with her radical and

665. SMITH-ROSENBERG, *supra* note 17, at 53-76.

666. See *supra* notes 6-15 and accompanying text.

667. See *supra* notes 6-15 and accompanying text.

668. Karen Offen, *Defining Feminism: A Comparative Historical Approach*, 14 SIGNS: J. WOMEN CULTURE & SOC'Y 119, 136 (1988).

669. Offen, *supra* note 668, at 136 (emphasis omitted).

670. See *id.*

671. See *id.*

672. *Id.*

673. *Id.* at 136-37.

674. Ellen Carol DuBois, *Comment on Karen Offens' Defining Feminism: A Comparative Approach*, 14 SIGNS: J. WOMEN CULTURE & SOC'Y 195, 196 (1988).

essentialist vision of the world in the realm of not only woman's issues, but with respect to religion, law, politics, and culture. Perhaps focusing on whether Elizabeth was a feminist—be it a relational or individualist—is not necessary. The term “feminist” was not created until the late 1890s and was not commonly used in the United States until 1910. There remains a question as to whether any nineteenth century women should be labeled a feminist.⁶⁷⁵ Nor is it necessarily productive to focus on placing Elizabeth's thoughts within the “separate spheres ideology,” because as Linda K. Kerber notes, “The ideology of separate spheres could be both instrumental and perspective; its double character has made it difficult for historians to work with.”⁶⁷⁶ Elizabeth's thoughts cause her not to be firmly in any one particular analytical category—be it individualist feminist, relational feminist, true woman, or the separate spheres ideology. She expressed viewpoints that fit somewhat within all the aforementioned theoretical constructs. The challenge then is to find an analytical framework that can help explain Elizabeth's diverse and complicated being.

Historian Mary Poovey, in her book *Uneven Developments: The Ideological Work of Gender in Mid-Victorian England*, provides a means by which one can begin to conceptualize the life of Elizabeth.⁶⁷⁷ Poovey defines “uneven developments” as the obvious positional differences that people occupy within society and institutional structures based on class, sex, or race, for example.⁶⁷⁸ These types of divisions lead to a series of “binary oppositions”—that is, constructed social and legal boundaries and tensions between the private and public sphere.⁶⁷⁹ She created the term “border cases” to describe those people, ideas, or institutions that had “the potential to expose the artificiality of the binary logic.”⁶⁸⁰ The relational/individualistic feminist concept and the separate spheres ideology dissolve within Poovey's analysis. She discusses the complex, contradictory, and contested reality of gender relationships. Not all women are “true women” or “feminist,” nor is the social order always divided between public/private space.⁶⁸¹ Instead, these “binary oppositions” ebb, flow, and compete for dominance.⁶⁸²

Mary Poovey's theoretical conception of “border cases” illustrates well the tenuous nature of the “binary opposition” in Victorian culture. Contemporary writer Gloria Anzaldúa's *Borderlands/La Frontera: The New Mes-*

675. See Nancy F. Cott et al., *Comment on Karen Offen's Defining Feminism: A Historical Approach*, 15 SIGNS: J. WOMEN CULTURE & SOC'Y 195-209 (1989); DuBois, *Introduction*, *supra* note 331, at xiv-xv (arguing against limiting the use of the term feminism to the present); HOFF, *supra* note 517, at 15 (supporting the use of the term feminism for people prior to 1910); Offen, *supra* note 668, at 119-57.

676. Kerber, *supra* note 659, at 26.

677. See POOVEY, *supra* note 504.

678. *Id.* at 3.

679. *Id.* at 12.

680. *Id.*

681. *Id. passim.*

682. POOVEY, *supra* note 504, *passim.*

tiza also addressed the concept of border cases.⁶⁸³ Anzaldúa traced the struggle that existed and exists between the Mexican and American borders—this contested arena constitutes, in her terms, the borderlands:

The actual physical borderland that I'm dealing with in this book is the Texas-U.S. Southwest / Mexican border. The psychological borderlands, the sexual borderlands and the spiritual borderlands are not particular to the Southwest. In fact, the Borderlands are physically present wherever two or more cultures edge each other, where people of different races occupy the same territory, where under, lower, middle and upper classes touch, where the space between two individuals shrinks with intimacy.⁶⁸⁴

The concept of "borderlands" can be applied to nineteenth century America as well. The public/private worlds of men and women thrived in the same territory, America, and the men and women intimately interacted daily. Those people who challenged the separation, or as Poovey says, the "artificiality" of such demarcations, are the ones who entered the borderlands—the sites of contestation. In the borderlands, they could contest the borders—the barriers—that stopped free movement between certain liminal spaces—cultural, gender, political, economic, religious, and sexual. They were trying to allow for free and open flow between the artificially constructed landscapes. When a barrier is eroded, an open flow is created, and one can then cross back and forth more freely between the landscapes. There is no demand to abandon one's original world for the opportunities of the new landscape. "Borderlands" as a theoretical framework illustrates the fluidity of nineteenth century life.

There were many types of "borderlands" that nineteenth century individuals entered. Within themselves, people existed in a state of constant flux and turmoil—a personal borderlands. Judges and lawmakers debated the efficacy of coverture and *femme sole*—a legal borderlands. Culturally, men and women contested what roles they each should assume—a gender borderlands. Religiously, sects entered into exchanges concerning issues like original sin—a religious borderlands. Anzaldúa remarked:

I am a border woman. I grew up between two cultures, the Mexican (with a heavy Indian influence) and the Anglo (as a member of a colonized people in our own territory). I have been strad-

683. See ANZALDÚA, *supra* note 426.

684. *Id.* at *Preface*. See RENATO ROSALDO, CULTURE AND TRUTH: THE REMAKING OF SOCIAL ANALYSIS 196-217 (1989), for a discussion of the Mexican/American border conflict and its implications, particularly the cultural implications.

dling that *tejas*-Mexican border, and others, all my life. It's not a comfortable territory to live in, this place of contradictions.⁶⁸⁵

She continued later, "Living on borders and in margins, keeping intact one's shifting and multiple identity and integrity, is like trying to swim in a new element, an 'alien' element."⁶⁸⁶ We have explored the lives of those women who recognized the contradictions of their prescribed role and voiced unease with their positioning in society. When one leaves the landscape of the known—for a nineteenth century middle-class woman, the known was the private landscape—to venture into the unknown—for her, the public landscape—a shift, reformulation, and dislocation of one's self occurs.

Elizabeth on her life journey left her known territory and challenged—battled—the unknown. She became a "border woman" living in the borderlands. By no means is entering the borderlands painless: "In the Borderlands/ you are the battleground/ where enemies are kin to each other."⁶⁸⁷ This is an accurate description of women who challenged their culturally prescribed role. They were challenging their husbands, other women who believed in a woman's sphere, and their own internal conception of their selves. Anzaldúa stated, "To survive the Borderlands/ you must live *sin fronteras* [without borders]/ be a crossroads."⁶⁸⁸ Anzaldúa's conception of living without borders—personally, culturally, legally, religiously, sexually, and socially—represents an ideal difficult to attain. But, as evident in Elizabeth's story, each time an individual attempts to destroy a barrier, a new vision—"crossroads"—emerges.

Elizabeth, in *Great Disclosure*, recognized her journey as a life voyage. She said of her writing, "I feel now that I have sea-room, where I can navigate my boat, fearless of the shoals and quicksands and harbors of a circumscribed coasting limit."⁶⁸⁹ Elizabeth heeded Margaret Fuller's call: "Let them [women] be sea-captains."⁶⁹⁰ Implicit in Fuller's remark was that women should take control of their lives and venture into the wide-open sea of life possibilities. Elizabeth did this. She navigated through the waters and barriers and challenged the concept that only males could embark upon journeys of soul searching and growth.⁶⁹¹ She did not spontaneously emerge as a border woman, but rather underwent a transformation.

Initially, Elizabeth passively occupied the role of a domestic woman, as the wife of a Calvinist minister and mother of six children.⁶⁹² In relation to the borderlands she at this point was a "dormant voyager"—a woman tied to

685. ANZALDÚA, *supra* note 426, at *Preface*.

686. *Id.*

687. *Id.* at 194.

688. *Id.* at 195.

689. PACKARD, *GREAT DISCLOSURE*, *supra* note 15, at 17.

690. CHEVIGNY, *supra* note 645, at 276.

691. The sea image is generally used in relationship to a male's journey, as in Richard Henry Dana Jr.'s novel *Two Years before the Mast* (1838). See ROBERT A. FERGUSON, *LAW AND LETTERS IN AMERICAN CULTURE* 257-59 (1984).

692. SAPINSLEY, *supra* note 1, at 38-48.

her private landscape, like many women of her time.⁶⁹³ Suddenly, being a “dormant voyager” in life no longer satisfied her, so she warily approached the borderlands, when she decided to defy her husband by openly preaching a liberal theology.⁶⁹⁴ She used religion as a means of defiance and as a means to gain more power.⁶⁹⁵ During this period Elizabeth began her journey from a “dormant voyager” to a “hesitant voyager”—a woman willing to restructure her position of power within her private landscape, but not yet willing to move beyond it.⁶⁹⁶ For instance, Elizabeth tried to restructure her position of power in relation to Theophilus when she openly challenged his ideas about women.⁶⁹⁷ All along there lurked within Elizabeth a “dormant”—subconscious—sense of marginalization. Her journey into the borderlands began with the rage she felt against being unjustly committed to an insane asylum by her husband. Her “dormant” and “hesitant” tendencies vanished when she felt herself—her mind, body, and soul—being attacked and violated. At this moment, Elizabeth set sail on a journey. She assumed the role of a “daring voyager”—a woman ready and eager to enter the borderlands.⁶⁹⁸ As a character in Elizabeth Stoddard’s *The Morgesons* said of Cassandra, “*Then, to my amazement, I saw that, unlike most women, you understood your instincts; that you dared to define them, and were impious enough to follow them.*”⁶⁹⁹ Becoming a “daring voyager” involved a willingness on the part of the woman to claim and define herself—her own mind, body, and soul. If a woman chose to define her being, then she entered a place of contestation, of possibility, of fluidity, of liminality, and of uncertainty. In such a place, the borderlands, a woman could “dare” to define herself. Eagerly, Elizabeth challenged legal, religious, sexual, social, economic, and political norms and became a “daring voyager” and a border woman. Elizabeth’s revolution and evolution within—“(r)evolution”—illustrates how some women possessed deep within themselves a sense of powerlessness and rage.⁷⁰⁰ Slowly, Elizabeth’s rage surfaced and became a source of the power to challenge her husband’s authority.

693. This is a term I have created to be used instead of more accepted terms like “domestic” or “True Womanhood.” I think it more accurately describes the state of a woman who remained in her private sphere.

694. See *supra* notes 63-68 and accompanying text.

695. See *supra* notes 53-84 and accompanying text.

696. This term is meant to replace the notion of “domestic feminist,” which I find contradictory and very static. The term “hesitant voyager” reveals the motion of woman’s lives.

697. See *supra* notes 129-47 and accompanying text.

698. Gerda Lerner wants to avoid the ahistorical term “feminist” in discussing the nineteenth century, so she suggests using the terms “women’s emancipation” and “women’s rights,” the former to signify autonomy and self-determination and the latter to signify women’s drive to gain civil rights. GERDA LERNER, *THE MAJORITY FINDS ITS PAST: PLACING WOMEN IN HISTORY* 48-49 (1979). Such definitions create a “binary opposition” and inaccurate distinction. I really feel that there existed “daring women voyagers” that dared to enter the sites of contestation and to reformulate themselves.

699. Elizabeth Stoddard, *The Morgesons*, in STODDARD, *supra* note 624, at 226 (emphasis added).

700. See ANZALDÚA, *supra* note 426, at 81. The term “(r)evolution” is useful because it shows how people evolve internally and externally and in the process bring about revolutionary change in society and within themselves, as did the women discussed in this paper.

Women observing and reading about Elizabeth's trial presumably could relate to her evolving sense of self-identity. They could envision being in her place and being forced to leave their "dormant" position. Elizabeth's self-journey was far from too remote or too theoretical for nineteenth century women to identify with strongly. Many women were presumably "dormant" or "hesitant" life voyagers and Elizabeth's case resonated loudly in their beings. Conceiving of women as voyagers, undergoing "(r)evolutions," is integral to beginning the process of trying to understand the fluidity, complexity, and challenges of these women's daily lives.

Elizabeth spent the greater part of her life contesting religious, legal, and cultural norms. The process was gradual. It began with Elizabeth's contesting Theophilus's religious outlook. The rest logically followed with her experience. While confined, Elizabeth was vocal about the conditions in the asylum and insisted she was sane. Without hesitation, Elizabeth welcomed the public trial concerning her sanity. Once declared sane and having gained her freedom, she turned to writing and lobbying for legal change in the commitment process, married woman's property rights, and child custody rights. At every turn, Elizabeth seized opportunities to confront and shape accepted norms, whether religious, legal, or cultural. To some extent Elizabeth had no other choice. She could have remained silent and lived a confined life, both literally and figuratively. The alternative was to challenge Theophilus's authority and pursue a life of her own. Elizabeth chose the latter course. However, Elizabeth's life path grew in large part out of her circumstances. Had she never been confined, perhaps she would have never challenged the religious, legal, and cultural norms of her time. Yet, when placed in the situation of having to choose, she rose to the occasion, left behind the comfort of her home and the familiar, and ventured out. Such is what makes her so worthy of in-depth study.

Women in the nineteenth century did not occupy fixed roles. Historians often label women according to static categories, such as "domestic," "domestic-feminist," "feminist," "relational feminist," individualist feminist," and "true woman."⁷⁰¹ Women of this period occupied considerably more fluid roles. Certain women were voyagers in life, whether dormant, hesitant, or daring. These terms illustrate the fluid nature of women's minds and lives. Not every woman was locked into a fixed category, but rather continually shifted her outlook on life. Terms like "domestic," "domestic-feminist," "feminist," "relational feminist," individualist feminist," and "true woman" tend to be both rigid and unreflective of women's actual lives. Women of this period never called themselves dormant, hesitant, or

701. See Welter, *supra* note 79, for a discussion of a domestic woman; D. Scott Smith, *Family Limitation, Sexual Control and Domestic Feminism in Victorian America*, in CLIO'S CONSCIOUSNESS RAISED: NEW PERSPECTIVES ON THE HISTORY OF WOMEN 119-36 (Mary S. Hartman & Lois Banner eds., 1974), for a discussion of domestic feminism; JANE RENDALL, *THE ORIGINS OF MODERN FEMINISM: WOMEN IN BRITAIN, FRANCE, AND THE UNITED STATES, 1780-1860* (1984), for a discussion of feminism.

daring voyagers, but some women did refer to the word “daring,” making this term seem apropos. By re-conceiving of nineteenth century women’s lives and their relationship to one another, it is hoped that this Article will provide a more insightful analysis that does justice to nineteenth century women’s fluid, active, and vocal worlds.

It is important to understand that women entered the borderlands in varying degrees and ways, as individuals and collectives, to develop themselves and to gain their selfhoods—a fully developed and particular identity. At the most basic level, those women who challenged the “separate spheres” ideology had personal motives and hopes for doing so. Those women who took part in the woman’s movement, and those women outside it, were in continual contestation. The conceptualization of women as voyagers allows us to comprehend a woman’s particular situation and the way her evolution is similar yet different from other women. The voyager concept is meant to convey the range of female responses to the “separate spheres” ideology, though they all still existed within the same fluid, vast, and conflictive world. Once a woman became a daring voyager, she became a border woman, living her life in flux and contestation, trying continually to reconcile her conservative and radical tendencies, trying to freely move between the gender landscapes. Elizabeth was a border woman, voyaging on a life journey of self-identification and self-fulfillment. She was at once a mother, a political activist, a businesswoman, a spiritual being, and a sexual being. She truly existed in the borderlands—within a fluid, contradictory, and shifting realm.

My purpose has been to recover the actual story of Elizabeth—its complexities, radicalness, conservativeness, and contradictions. The dormant, hesitant, and daring voyager constructs are my response to the debates concerning the concepts of “feminism” and “separate spheres.” To solidify my argument that we should transcend ahistorical and somewhat restrictive labels, I have connected Elizabeth’s voyage as a border woman to other women of the time, like Charlotte Brontë (1816-1855), Margaret Fuller (1810-1850), and Elizabeth Stoddard (1823-1902). These literary/cultural figures display the same type of border woman nature in their writing. Elizabeth was not an anomaly nor does she confuse me. She, like these other nineteenth century women, and much like women of today, was not monolithic. She was on a quest to capture herself—a self that was complex, contradictory, and continually shifting. This Article is reflective of my own quest to move beyond existing scholarship and in the process provide a more meaningful way to understand the “groundwork” that nineteenth century women created for us—us being the diverse, conflictive, and contradictory women that thrive today.⁷⁰²

702. QUINDLEN, *supra* note 318, at xxviii.

