

Mary Ann Shadd Cary:  
A Biographical Sketch of The Rebel

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## Introduction

“Mrs. Carey is resolute and determined. . . . Had she been a man, she would probably have been with John Brown at Harper’s Ferry.”<sup>1</sup>

In her time Mary Ann had been romanticized for her writings on the emigration to Canada, demonized for her radical political leanings, and praised for her literary contributions. However, there has been little attention focused on her contributions to the legal community and as one of the first black female legal scholars.<sup>2</sup> As the first African American woman to enroll in law school, she has an undeniable place in history. Her early papers from law school provide a window onto the life of a law student in the late nineteenth century.

Moreover, with the current focus in on an interdisciplinary legal education, it is a treat to examine Mary Ann’s legal writings. Since she had already had a career running a newspaper and teaching for many years, her analysis of legal issues was unique. In addition, she had developed a public voice through her newspaper editorials and pamphlets. She had a reputation for incendiary writings and a personality to match. Did she bring her feminist and militant leanings to her legal analysis? Although there is little information on her practice, three of her law school papers exist.

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<sup>1</sup> J. Clay Smith, *Emancipation*. (1993) p. 84 n. 220 (quoting William Wells Brown, *The Rising Sun; Or, the Antecedents and Advancement of the Colored Race* 539-40 (1873)).

<sup>2</sup> Despite its title, Harold B. Hancock’s article, “Mary Ann Shadd: Negro Editor, Educator, and Lawyer,” gives an overview of Mary Ann’s life and family history without focusing on her legal education. Harold B. Hancock’s, “Mary Ann Shadd: Negro Editor, Educator, and Lawyer,” *Delaware History*, Volume XV, Number 3, Historical Society of Delaware, Wilmington, Delaware, (April, 1973) 187-194.

In addition, Mary Ann had a unique position in the vibrant reconstruction black community in Washington, DC , as a woman with a legal education. What could she do with this education? Since practicing law as an African American woman in Washington, DC was virtually impossible in the late nineteenth century, how did she use her degree? Was she able to earn a living as an attorney? Did she increase her social standing?

Ultimately, it was her personality characteristics of determination, frankness and wit that gained her recognition during her lifetime. These same qualities made her an intriguing person to study. Come and meet the fascinating, contradictory, outspoken, erudite, and tenacious Mary Ann Shadd Cary.

### **Family and Early Years**

Mary Ann was born in Wilmington, Delaware on October 9, 1823. She was the oldest of thirteen children born to Abraham and Harriett Shadd. Although Delaware was a slave state, the Shadds were free and had an interesting history. Abraham Shadd descended from a German soldier, Hans Schad and a free black woman, Elizabeth Jackson.<sup>3</sup> Hans Schad (which was changed to Shadd) served under General Braddock in 1755. The Shadds were hardworking small business owners. Abraham's father, Jeremiah Shadd, was a shoemaker. At the time of his death, he left Abraham and his siblings an estate valued at \$1,300 and included a store and house.<sup>4</sup> Abraham follow in his fathers footsteps and also earned his living as a shoemaker. He was also a delegate

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<sup>3</sup> *Id.* at 188.

<sup>4</sup> *Id.*

from Delaware to national conventions of colored people in Philadelphia in 1830, 1831 and 1832.<sup>5</sup>

In 1833, the Shadds moved from Delaware to West Chester, Pennsylvania. This was a small town outside of Philadelphia. This move to Pennsylvania greatly benefited the Shadd family socially and financially. Mary Ann attended a Quaker school in West Chester. In addition, Abraham also did business with many Quakers in the area.<sup>6</sup>

After the move, Abraham began to rise in black Philadelphia society and politics. The Shadd home was a stop on the Underground Railroad.<sup>7</sup> Although Pennsylvania was not a slave state, blacks still could not vote. Moreover, there was a large immigrant community in Philadelphia that replaced many blacks in the semi and unskilled labor market.

In spite of that, Philadelphia did have a vibrant, affluent free black community led by a select group of individuals<sup>8</sup>. Abraham Shadd with his long family history of being free, his fair complexion and solid financial position was a welcome addition to Philadelphia black society. Frequently social position and opportunities were somewhat dictated by color within the free black communities.<sup>9</sup> For example, there were social clubs that were color-exclusive that catered to propertied men in many large cities.<sup>10</sup>

The free black communities particularly in the southern states adopted the patriarchal constraint derived from the plantation societies within their own

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<sup>5</sup> *Id.*

<sup>6</sup> The account books from Abraham's shoe shop show transactions made by many prominent Quakers in the West Chester area. *Id.* at 189.

<sup>7</sup> *Id.* at 189.

<sup>8</sup> Sail maker James Forten, worth over \$100,000 in the 1840's and lumber merchant William Whipper were leaders of colored society in Philadelphia. Jane Rhodes, *Mary Ann Shadd Cary: Black Press and Protest in the Nineteenth Century*. 16 (1998).

<sup>9</sup> James Oliver Horton, *Free People of Color: Inside the African American Community*, 125 (1993).

<sup>10</sup> One example is the Brown Fellowship Society in Charleston, SC. *Id.* at 125.

communities. A lighter skinned slave was presumed to have the “better” white blood of the aristocratic master of the plantation. The lighter your skin, the closer to whiter you were and the more “pure” your blood became. As a result of having the master’s blood, a slave was treated differently. A mulatto slave had a better chance of working in the house and having less physically onerous chores. As a result of their proximity to the family and avoidance of the fields, these slaves were more likely to learn a trade or even learn to read.<sup>11</sup>

Fairness of skin was extremely important for women as well. Although they did not join business clubs, there were other social benefits from lighter skin. Since lighter skin was deemed to be more attractive, a fair skinned woman had better prospects for marriage. Mary Ann was described as “tall and slim, of the ravishing dream-born beauty, - that twilight of the race which we call mulatto.”<sup>12</sup> James Horton discussed the importance of color in his book, *Free People of Color*. He devoted an entire chapter entitled *Shades of Color* to the discussion of color in antebellum northern cities. He asserted:

There was status associated with the acquisition of the affections of a mulatto woman. Dark men might possibly marry lighter women if they (the men) were well situated financially and/or occupationally.<sup>13</sup>

Philadelphia was an odd mix odd mix on northern industry with many of the social norms, such as being “color struck,” of the south. This entrenched society of blacks welcomed the Shadd family. Abraham Shadd was active in abolitionist groups and other political organizations that discussed black immigration to Canada, Africa and

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<sup>11</sup> *Id.* at 137.

<sup>12</sup> This was a romanticized description of Mary Ann written twenty years after her death. Rhodes, *supra* note 8, at 223, citing W.E. B. Du Bois, *The Damnation of Women* (1923).

<sup>13</sup> Horton, *supra* note 9, at 137.

the West Indies. He was an agent of subscriptions for William Lloyd Garrison's newspaper, the *Liberator*. He and his family began to socialize with the more affluent blacks in Philadelphia. He was elected president of the National Convention for the Improvement of Free People of Color in the United States.

Moving to Pennsylvania and watching her father's political activities, set Mary Ann's activist career in motion. With her strong education from the Quaker school, she had roots in as an integrationalist. She would leave West Chester, but not lessons learned from her early upbringing.

### **Young Professional and Early Publications**

After graduating from the Quaker school in West Chester, Mary Ann began her teaching career. She returned to Delaware for a time and taught at a school for blacks. Eventually, she would have teaching positions in Trenton, New Jersey and New York City as well. Teaching was a socially acceptable profession for middle class black women. It was a calling that had prestige in the community and would allow a woman to earn a living. Even though she would move from her family in Pennsylvania, they stayed in close contact. During those early years, she would solicit advice from her father when things were not meeting her expectations. This was particularly true while she taught in Trenton. In a letter her father wrote:

Dear Child,

I received your letter . . . asking my advice respecting your continuing in Trenton. I am sorry to think the colored population of Trenton are such as you represent them to be although I believe your description of them to be correct from what I have heard, but I hasten at once to give you my advice, over all the difficulties that lay in your way in regard to the school. You say that your throat is no

better and the state of our health seems not to warrant you in continuing to teach through the winter. . . . I therefore advise you to come home as soon as you can. . . .be cautious about how you inform your school . . . that you are about to leave.

Your affectionate Father.<sup>14</sup>

Mary Ann followed her father’s advice and returned to her family’s home in West Chester. It is unclear if she continued to teach while living at home. However, she was not idle.

In 1849, she published her first essay, “Hints to the Colored People of the North,” which focused on antislavery reform and building a collective consciousness for blacks. According to the biographer, Jane Rhodes, no complete copy of the pamphlet exists today. Mary Ann argued that there was no collective consciousness in the black community. She asserted that the antislavery movement would be a call to arms for blacks to begin to build a collective identity.

But in portions, Mary Ann attacked the emerging cultural identity of free blacks by attacking one of its strongest institutions, Black Church.<sup>15</sup> She discouraged the “processions, expensive entertainments, excursions, public dinners and suppers, a display of costly apparel and churches on churches, to minister to our vanity.”<sup>16</sup> In addition, she criticized rituals in the black church such as funeral celebrations and ministers that were embraced by a large portion of free blacks, particularly the lower classes. Although she entitled her essay “Hints,” her voice indicated that these suggestions were a call to arms. The tone of her essay was strident and condemning in the parts quoted in the *North Star*.

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<sup>14</sup> Letter from Abraham Shadd, dated December 1844. Mary Ann Shadd Cary Papers. Moorland-Spingarn Research Center, Howard University, Washington, D.C. hereinafter (MASC/MS), Folder 5.

<sup>15</sup> Rhodes, *supra* note 8, at 22.

<sup>16</sup> Excerpt from “Hints to Colored People of the North” as printed in the *North Star*. *Id.* at 22.

She followed the piece with a stirring letter to Frederick Douglass, editor of the newspaper, the *North Star*. This piece also had a sharp tone that struck a chord among many readers. By critiquing the ineffectiveness of the existing paradigm for change, she also condemned many of the leaders in the free communities. She wrote:

We have been holding conventions for years—have been assembling together and whining over our difficulties and afflictions, passing resolutions on resolutions to any extent but it does really seem that we made but little progress, considering our resolves. We have put forth few practical efforts to an end. I, as one of the people, see no reason for our distinctive meetings, if we do not do something. . . . What intellectually we most need, and the absence of which we most feel, is the knowledge of the white man. . . no possible opportunity to seize upon [it]. . . should be allowed to escape . . . . The possibility of final success . . . [is]binging about the desired end ourselves, and not waiting for the whites of the country to do so.<sup>17</sup>

In a letter published in Frederick Douglass’s *North Star*, she wrote about the corrupt influence of the black church over the freed blacks and the way to improve the condition of free blacks was to reject materialism. She further asserted that the “influence of a corrupt clergy among us, sapping our every means, inculcating ignorance as a duty, superstition as true religion”<sup>18</sup> was one of the traps set for free blacks that hold them back from progress. In this letter, she asserted the need for education and collective action as a people to address the difficulties and injustices faced by blacks. The condemnation of ineffective meetings and resolutions rings true for many organizations within the black community today.

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<sup>17</sup> Letter to Frederick Douglass, *North Star*. 23 March 1849. Nora Darlene Hall, *On Being an African-American Woman: Gender and Race in the Writings of Six Black women Journalists, 1849-1936* (1998) unpublished dissertation, University of Minnesota) (on file with the University of Minnesota Library), at 72.

<sup>18</sup> Letter to Frederick Douglass, *North Star*. 23 March 1849. Rhodes, *supra* note 8, at 21.

## Emigration to Canada

Mary Ann had found her voice in the public sphere. She shared her often incendiary views with a general audience. In 1850, the Fugitive Slave Act was passed which ostensibly addressed the concerns of slaveholders attempting to retain control over their property. However, the ramifications of the Fugitive Slave Act invaded the free black community in the United States. Free blacks feared for their freedom and for the few privileges they enjoyed in the U.S. Factions supporting emigration became more vocal with the passage of the Act. Many activists advocated a move to Africa, Canada, Mexico, the West Indies or South America.

In 1850, Mary Ann attended a meeting with her father that discussed the topic of immigration to Canada. After the meeting, Mary Ann and her younger brother Isaac, traveled with Henry Bibb to Windsor, Canada.<sup>19</sup> In her 1852 pamphlet, "A Plea for Emigration or Notes on Canada West," Mary Ann wrote:

It is well know that the Fugitive bill makes insecure every northern colored man, - free are alike at the risk of being sent south, - consequently, many persons, always free, will leave the United States, and settle in Canada, and other countries, who would have remained had not that law been enacted.<sup>20</sup>

There was no linear relationship to trace Mary Ann's teaching in New York with her move to Canada. Her pamphlet may tell some of the story. She noted that Canada West was the most logical choice for free blacks, since it was similar in culture to the United States with the same language, religion and climate. Moreover, Canada abolished slavery

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<sup>19</sup> Windsor is located in Ontario on the U.S./ Canada border near Detroit, Michigan.

<sup>20</sup> Shirley Yee, *Finding a Place: Mary Ann Shadd and the Dilemmas of Black Migration to Canada, 1850-1870*. Frontiers. (1997) at 4. (citing Shadd, "A Plea for Emigration or Notes of Canada West in Its Moral, Social, and Political Aspect: Suggestions Respecting Mexico, W. Indies and Vancouver's Island, For the Information of Colored Emigrants" (Detroit: George W. Pattison, 1852)).

in 1833. Black men could vote, serve in the military, serve on a jury and own property. In addition, the American Missionary Association (AMA) of which her father was a member, was a supporter of black settlements and sending representatives to Canada West. The American Missionary Association sponsored Mary Ann's move to Canada. Under their auspices, Mary Ann intended to teach.

Teaching in Windsor was a hardship due to the sparse facilities, accommodation and lack of funds for supplies. This was to be her first battle in Canada. During her first few months, Mary Ann repeatedly wrote to the AMA for additional funds for the school. While waiting for the funds from the AMA, Mary Ann began to charge students tuition. She gained the support of a local missionary, Alexander McArthur, and he aided her in her requests. His request gave revealing summation of her character at the time. He wrote:

Miss S. is a young (light colored) lady of fine diction, refined address and Christian deportment and possessing an energy of character & enlargement of views well fitting her for the work of teaching amongst such a people as this.<sup>21</sup>

A few months later, Mary Ann received the funds from the AMA. However, she did not publicly announce that receipt of the grant and continued to collect tuition from her students to improve the conditions of the school.<sup>22</sup>

These actions would haunt Mary Ann. The Mission school was the second school in the area. Mrs. Mary Bibb, wife of Henry Bibb also ran a school in the area. However, her school supported the idea of segregation. Four months after Mary Ann received the funds, an article in the *Voice of the Fugitive* reported the grant of \$125. Henry Bibb was

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<sup>21</sup> Rhodes, *supra* note 8, at 38.

<sup>22</sup> Cheryl MacDonald, *Mary Ann Shadd in Canada: Last Stop on the Underground Railroad*. The Beaver. (February/March 1990) at 35.

the publisher of the *Voice*. Henry Bibb and Mary Ann maintained different political view. This would not be the last time they would clash publicly in the Canadian press.

### **Friends and Foes in Publishing**

As a young woman with radical views and an outspoken personality, Mary Ann made quite an impression on the residents Windsor and its neighboring communities. Many of the blacks in Windsor and Chatham were fugitive slaves and had a vastly different upbringing from Mary Ann and her middle class bourgeoisie home life in West Chester. Unlike Mary Ann who argued for the understanding of white institutions and adopted many Euro centric Victorian values, many ex slaves were segregationists and wanted no association with whites or their institutions.

Henry Bibb fit into the latter category. He was an ex Kentucky slave fled to Canada. He held a separatist view and founded the Refugee Home Society. This operation collected funds to support new refugees. The funds paid for housing and other necessities. In addition, Bibb published the newspaper, *Voice of the Fugitive*. In the *Voice*, Bibb once commented that Mary Ann “has said and writes many things we think will add nothing to her credit as a lady.”<sup>23</sup> In addition, the paper also referred to her as “a designing individual whose duplicity is sufficient to prove a genealogical descent from the serpent that beguiled mother Eve, in the Garden of Eden.”<sup>24</sup> Bibb’s public condemnation Mary Ann ended when the offices of the *Voice* burned to the ground. Ironically, they fire occurred on Mary Ann’s thirtieth birthday.<sup>25</sup>

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<sup>23</sup> Yee, *supra* note 20, at 5.

<sup>24</sup> Rhodes, *supra* note 8, at 73

<sup>25</sup> *Id.* at 82.

Mary Ann teamed up with Samuel Ward, a minister, to start a competing newspaper to provide a different viewpoint than that of the *Voice*. They began publishing the *Provincial Freeman*. In 1854, as the first woman of African descent to publish a weekly newspaper.<sup>26</sup> Abolitionists and activists such as Harriet Beecher Stowe, Frederick Douglass and William Still were frequent contributors to the paper.

Cary incited those activists remaining in the United States after the Dredd Scott decision to move to Canada. In the *Freeman*, she wrote:

Do the Purvises, Remonds and others, who took part in the meeting intend to stay in the U. States? If so, the resolutions amount to nothing, if not why not say so friends? Your national ship is rotten sinking, why not leave it, and why not say so boldly, manfully? Canada is a good country – we have British freedom and an abundance of it, -- equal political rights of course, and if you covet it, social intercourse with those in your position in life. . . . If Canada should be distasteful, British Europe, or the Isles, may be more to your mind at all events, leave that slavery-cursed republic.<sup>27</sup>

Cary addressed well-known abolitionists, Charles Remond and Charles Purvis. Many deemed the Dredd Scott decision a blight on American jurisprudence.<sup>28</sup> Mary Ann saw it as a confirmation of her decision to abandon the United States. She urged other free blacks to join her in exile. However, her tone is not persuasive, but slightly belligerent.

Mary Ann's contributions as a writer, editor and publisher sometimes garnered a negative response from readers. It was unclear if the negative response was to a woman editor or a woman with Mary Ann's strident tone and caustic views editing a newspaper. In response to the negative public opinion of a woman editor and decreased subscriptions,

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<sup>26</sup> Although she and Samuel Ward initially shared the editorial and publishing duties, his frequent absences from Canada made Mary Ann the publisher in fact. *Id.* at 82-83.

<sup>27</sup> Hall, *supra* note 17, at 80 citing *Provincial Freeman*, April 18, 1857.

<sup>28</sup> *Dredd Scott v. Sandford*, 60 U.S. (19 How.) 393 (1857).

Mary Ann publicly set aside her role for the good of the paper. She and her sister, Amelia who often contributed to the paper, wrote:

In taking leave of our readers . . . we do so for the best interests of the enterprise. . . . We want the Freeman to prosper and shall labour to that end. We have worked for it through difficulties such as few females have had to contend against, except the sister who shared our labors for awhile. We present it afresh to the patronage of friends to truth and justice and its editor, the Rev. Wm. P. Newman to their kind consideration. To its enemies, we would say, be less captious to him than to us' be more considerate, if you will' it is fit that you should deport your ugliest to a woman.<sup>29</sup>

Mary Ann did not stay away from the paper very long. Although, her detractors were vocal, her supporters were often more influential. Frederick Douglass was a frequent contributor to the *Freeman* and knew Mary Ann's work well. Douglass, a lifelong friend and colleague noted:

This lady, with very little assistance from others has sustained *The Provincial Freeman* for more than two years. She has had to contend with lukewarmness, false friends, open enemies, ignorance and small pecuniary means. . . . We are bound to bear testimony to the unceasing industry, the unconquerable zeal and commendable ability, which she has shown.<sup>30</sup>

Douglass was a great supporter of Mary Ann throughout her career.

In January, 1856, Mary Ann married Thomas Cary of Toronto in ceremony at her sister Amelia's home. It was Mary Ann's first marriage at the age of thirty-two. Thomas was a barber and owned his own barbershop. Thomas had been married before and had three children from the marriage. It is unclear whether he was a widower or if he was divorced. There were no details available on his first marriage.

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<sup>29</sup> Hall, *supra* note 17, at 82 citing *Freeman*, June 30 1855.

<sup>30</sup> *Id.* citing *North Star*, 4 July 1856.

Mary Ann and Thomas occupied comparable social positions in the Canadian black community even though Mary Ann was a teacher and publisher. If anything, Mary Ann's new role as a wife and mother made her more acceptable in society. Thomas' occupation would not detract or cause speculation within the community. Although, Thomas was a barber, he owned his own business. It was a mark of prestige for a black man to own his own business. At the time, many women activists were not married.

Horton noted:

The decision not to marry was unconventional, but it offered on means of reconciling the conflicting responsibilities placed on black women. Many women prepared themselves for the possibility of life without a man as a realistic response to the gender imbalance among urban free blacks. . . . Even in middle-class black families, it made sense that young girls be readied for self-sufficiency. Unmarried black women were not common, but neither were they unique. Accordingly, when black women elected to prolong their "bachelorhood" in the cause of political activism, their decision was not generally condemned.<sup>31</sup>

Mary Ann's marital status was the cause of some teasing for her. Some sources state that they called her "old maid."<sup>32</sup> There is some speculation whether this was a marriage to bolster Mary Ann's image and to silence those that made negative comments on her marital status or if it was a "real" marriage. In one fell swoop, Mary Ann became a wife and a mother.

From an objective point of view, the marriage was not conventional. Five days after the marriage, Mary Ann left Canada for a fundraising tour of the Midwest for the *Freeman*.<sup>33</sup> Thomas continued to live and work in Toronto, which was approximately

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<sup>31</sup> Horton, *supra* note 9, at 114-115.

<sup>32</sup> Friend William Still and an aunt referred to Mary Ann in letters as the "old maid." Hall, *supra* note 17, at 87.

<sup>33</sup> Horton, *supra* note 9, at 114.

180 miles from Chatham where Mary Ann lived during the marriage. Historian James Horton wrote:

Mary Shadd Cary was remarkable. Most could not manage such a complex life or were not willing to maintain such a separate existence from their husbands and families. Thomas Cary was also unusual; many men would have objected to such a marital arrangement.<sup>34</sup>

Although unconventional, the marriage produced two children, Sarah born in 1857 and Linton, born in 1860. In 1860 right before Linton was born, Thomas Cary died and Mary Ann had two small children and three teenagers in her care.

### **Returning to the United States and Reconstruction**

After Linton was born in 1860, Mary Ann returned to the United States. This was a striking move, since her earlier writings such as a “A Plea for Emigration” and one of her later editorials that referred to the United States as a “rotten sinking ship.”<sup>35</sup> Her first employment seemed to be as a recruiter of black soldiers for the union army. Being appointed a recruiting officer was a high prestige position, but inconsistent with earlier writings and life. She returned to a country which she left and condemned. Of course, at this time President Lincoln had issued the Emancipation Proclamation and outlawed slavery.

It is unclear whether the end of slavery was the impetus for Mary Ann to return to the United States. Perhaps with the death of her husband, the closing of the Freeman and her disillusionment with Canada as the Promised Land, she saw great opportunity for blacks to contribute in the war effort. With the advent of the war, there may have been

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<sup>34</sup> *Id.*

<sup>35</sup> Hall, *supra* note 17, at 80 citing *Provincial Freeman*, April 18, 1857.

more economic opportunities for women to work outside of the home. With the death of her husband, Mary Ann was the sole income for her small family. She may have been seeking more economic stability in the United States. During the war and immediately after, Detroit with its proximity to the railroad and the Great Lakes was a manufacturing center.<sup>36</sup> Mary Ann taught in the Detroit school system. In 1868, the city awarded her a teacher's certificate.<sup>37</sup>

Shortly thereafter Mary Ann left Detroit for Washington. Ironically, while in Washington, Mary Ann was elected by prominent citizen Samuel Watson and other Detroit leaders to represent Michigan at the convention of the Colored National Labor Union. There were 214 delegates at the meeting in Washington, DC. She had a positive reception at the convention and was praised as an "efficient delegate."<sup>38</sup> Mary Ann was recognized for her keen intelligence and for the fact that she had already moved to Washington, DC. This saved the Michigan branch the cost of sending someone as a delegate from Detroit.<sup>39</sup>

The convention addressed civil right and economic progress for black workers. It also addressed the possible formations of black unions. Mary Ann made her splash by being elected to the executive committee and making a speech addressing the black woman's role in the labor movement. She was a member of the Committee of Female Suffrage as well. She delivered their report to the general delegation. The report incited

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<sup>36</sup> Rhodes, *supra* note 8, at 165.

<sup>37</sup> Letter from State of Indiana appointing Mary Ann a recruiting officer to enlist colored volunteers. (August 15, 1864). MASC/MS, Folder 31.

<sup>38</sup> Letter from Samuel Watson to Mary Ann Shadd Cary (December 26, 1869). MASC/MS Folder 6.

<sup>39</sup> "If the truth must be told your and Mr. S – were chosen because we were too poor to raise the amount to send any one from here. Not that if you had been here and the money could have been raised but that you would have been chosen." *Id.*

women to “learn trades, to engage in whatever pursuits women of the most highly favored classes now pursue, and to . . . enlarge their sphere and influence of labor.”<sup>40</sup>

### **Washington, DC and Law School**

In 1869, Mary Ann enrolled in Howard University Law School. Mary Ann and Lemma Barkaloo, who entered law school at the Washington University, were the first women to be admitted to law school.<sup>41</sup> This was the law school’s first class of students. There were 46 students in the incoming class, including her younger brother Abraham W. Shadd. Abraham was 20 years younger than Mary Ann. As a 46 year-old black woman, she was a pioneer in the legal field. While attending classes at night, she continued to work as a teacher at the Lincoln Mission School during the day. At this time most students worked as clerks and messengers during the day to pay for tuition and living expenses.

There is some confusion and controversy about Mary Ann’s law school career. While Lemma Barkaloo claims her place in history as the first woman to be admitted to law school in the United States, writers often discuss Mary Ann’s accomplishment with reluctance or her role is omitted entirely. It is often noted that Mary Ann “claimed” that she was admitted in 1869<sup>42</sup> or phrased, [“if she is to be believed.”]

However, there is evidence that Mary Ann was in fact a law student in 1869. The law school organized a ceremony in the community to present student papers on various legal topics. Mary Ann participate in a ceremony put on by the law school in July 1870

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<sup>40</sup> Rhodes, *supra* note 9, at 169.

<sup>41</sup> Lelia Robinson, *Women Lawyers in the United States*, 2 *Green Bag* 10, 13, 28 (1890). See J. Clay Smith, *Emancipation*. University of Pennsylvania Press. 55, 84 n220 (1993).

<sup>42</sup> Smith, *supra* note 1, at 55, 84 n220 (1993).

and read her paper, *The Origin & Necessity of Corporations*. The black newspaper, the *New National Era* published by friend Frederick Douglass, wrote about the event. A writer noted the presence of a woman in the group of speakers and stated that the event showed “the capacity of the freed people for all the duties of the highest citizenship.”<sup>43</sup> Since Mary Ann was the only woman enrolled in the law school, the woman’s presence noted as a speaker and participant in the ceremony was hers. Charlotte E. Ray, the first black woman to graduate from a law school, did not enroll until the following year.<sup>44</sup>

Part of the controversy stems from the fact that Mary Ann did not graduate with her law school class. Abraham Shadd completed his legal studies at Howard and graduated in 1871.<sup>45</sup> Shortly after graduation, Abraham moved to Mississippi where he worked as an attorney. He wrote to his sister: “Dear Sis, I may be down your way ere long. I was admitted to the bar on Saturday – 4<sup>th</sup> and now am attorney at law.”<sup>46</sup> Abraham gained admission to both the Mississippi and Arkansas bar.<sup>47</sup> Later, Abraham would serve in the Mississippi state legislature.<sup>48</sup>

In addition, when discussing pioneer black women lawyers, many writers and scholars begin their discussion of black women lawyers with Charlotte E. Ray. She had the honor and distinction of being the first black woman to graduate from law school. However she was the second to enter as a law student. The two women could not have been more different in their stages in life. Ray entered law school as a young woman in her early twenties. She continued her studies without disruption and graduated in 1872.

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<sup>43</sup> Rhodes, *supra* note 8, at 186.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* at 187. A commencement program from the ceremony in 1871 was located in Mary Ann’s papers at Howard. Her name did not appear. MASC/MS, Folder 54.

<sup>46</sup> *Id.*

<sup>47</sup> Smith, *supra* note 1, at 323.

<sup>48</sup> *Id.* at 290.

Mary Ann was in her late forties and the widowed mother with two children and a full time job as a teacher.

There are some claims that Ray gained admission to the D.C. bar by signing C.E. Ray in order to keep her sex a secret from the admissions board.<sup>49</sup> Further, biographer, Jane Rhodes, noted that this rumor might have been started by Mary Ann.<sup>50</sup> This controversy surrounding Mary Ann may be contrived. Ray's father, Charles Ray was a prominent minister and abolitionist in New York, was a member of the American Missionary Society. He was a member of the committee that followed and partially funded Mary Ann's school in Windsor, Canada. Mr. Ray was also on the committee that decided to revoke her teaching position in Windsor.

However, there is little to support the contention that Mary Ann leaked the story of Ray's bar admissions play to the *Green Bag*. Moreover, the *New National Era* reported the story of Ray's graduation and celebrated the event of a black female law graduate. The article lauded "the first colored lady n the world to graduate in law graduated from Howard University."<sup>51</sup> C.E. Ray's sex was not a secret to the Washington, DC legal community.

She may have lost some fame and glory to Charlotte Ray for her legal accomplishment, but Mary Ann continued to be in the media as writer and as a topic of various articles. In addition, throughout Mary Ann's writings, she urged blacks to become more educated and thereby become empowered. Any attempt to undermine the legitimacy of Ray's admission to the Washington bar would have been damaging to the

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<sup>49</sup> Robinson, *supra* note 41, at 28.

<sup>50</sup> Rhodes, *supra* note 8, at 189.

<sup>51</sup> *Id.*

community of black women aspiring to be lawyers and other women in various professions with similar institutional obstacles.

In Lelia Robinson's article, Mary Ann claimed that Howard refused to allow her to graduate on account of her sex.<sup>52</sup> Robinson surveyed women attorney and women that studied law and relied on their responses for the content of the article. Another woman gave evidence of Howard's discrimination against women in Robinson's article. Five years later, after the graduation of Charlotte Ray and successful bar admission, Mrs. Eliza Chambers claimed that the faculty refused to submit her name for consideration for admission to the bar.<sup>53</sup> However, Mrs. Havens, another Howard graduate, praised the institution and faculty.<sup>54</sup> Although, institutional sexism was more the standard than the exception, Mary Ann's claim may not have been true.

In 1869, Howard's law school was the first to declare a nondiscriminatory policy and some of its earliest graduates from both the law school and college were white women.<sup>55</sup> Eight women graduated from Howard Law School between 1869 and 1900.<sup>56</sup> Despite these facts, Mary Ann claimed that even though she was admitted to the law school and participated in ceremony celebrating the academic achievement of its students, the administration denied her a diploma. Since it was documented that Mary Ann did not participate in the graduation ceremony even though she began her law school career auspiciously, she may have sought to manipulate the press with a plausible story claiming institutional discrimination. As a semi-public figure, she may have wanted to preserve her image in the legal community as a strong scholar and somewhat of an

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<sup>52</sup> Robinson, *supra* note 41, at 28.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> Smith, *supra* note 41, at 54

<sup>56</sup> *Id.* at 55.

unstoppable force that could edit and publish a paper, teach, attend law school and raise two children.

Throughout law school, she continued to teach and write for the *New National Era*. Frederick Douglass was an enthusiastic supporter of Mary Ann’s continued involvement with the paper and her efforts as a subscriptions agent. He wrote, “I will . . . bespeak for you the cordial and respectful welcome which you so well deserve, not only because of your talents but because of your many and efficient labors for the freedom, education and elevation of our still oppressed people.”<sup>57</sup> Mary Ann continued on as a subscriptions agent to earn extra income even after Douglass turned over the reigns to his sons.<sup>58</sup> Mary Ann’s busy life also caught the attention of another lifelong friend and colleague. In 1871, William Still wrote, “ I understand you are exploring Blackstone and teaching at the same time. . . . Now just listen. I am a grandpapa. What a shame it is that even your own children will help to make you seem old”<sup>59</sup>

Mary Ann may have been overcome with health issues during 1872 and 1873, which precluded her from maintaining her busy schedule. The grueling pace and aging may have left her vulnerable to fatigue and illness. Moreover, Mary Ann was not a young woman at this time. Friend and writer William Still acknowledged the pains of getting older, while maintaining the demands of a busy schedule. In a letter to Mary Ann during the summer of 1873, he wrote:

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<sup>57</sup>He signed the letter, “Your Friend and fellow worker.” Letter from Frederick Douglass dated July 4<sup>th</sup> 1871. MASC/MS Folder 3.

<sup>58</sup>In July, 1871, Frederick Douglass retired as publisher of the *New National Era*. His sons Lewis and Frederick took over his duties. However, Mary Ann continued to work as a circulation agent for the paper. Frederick Douglass wrote: “My opinion is that with your voice and pen and with the “*New National Era*” to assist in holding up your hands you will be grandly successful not only in helping the paper and the people but in helping yourself.” Letter from Frederick Douglass dated July 5<sup>th</sup> 1871. MASC/MS Folder 3.

<sup>59</sup>Letter from William Still dated April 13, 1871. The letter discussed his work on “big job” the *Underground Railroad*. He wrote: “I will say confidentially there is not a man on this Continent I believe who have the narratives, letters and facts for a book such as I have.” MASC/MS Folder 5.

I assure you that I very much regret the interference of that old visitor rheumatism, in this case, and if I had the means of affording instant relief, you may rest assured I would do so in double quick time. Indeed, if the spirit should move you again, come along [on vacation] although you may have to bring the rheumatism with you.<sup>60</sup>

Biographer, Rhodes believed that the rheumatism may have been so severe that it prohibited Mary Ann from finishing law school at the most, certainly slowed the pace of her life considerably at the least.<sup>61</sup> In addition, in the mid and late 1870's, Howard University became an institution facing serious financial difficulties with the closing of its primary source of funding, the Freedmen's Bureau. Frequently, classes were disrupted or cancelled.<sup>62</sup>

Finally, in 1883, Mary Ann completed her legal studies. She was one of four women graduates and the only black woman in the class.<sup>63</sup> It is unclear if she ever practiced in Washington, DC. Biographers of Charlotte E. Ray documented the powerful struggle for a black woman to maintain a successful law practice in Washington, DC.<sup>64</sup> Shortly after Ray's graduation from Howard in 1872, she attempted to practice in Washington, but was forced out of business unable to maintain a client base. Perhaps, like Ray, Mary Ann struggled unsuccessfully to practice. According to Robinson's article, Mary Ann reportedly practiced for four years in Washington, DC.<sup>65</sup>

In support of this contention, biographer Jane Rhodes believes that Mary Ann did practice in Washington, DC. She stated that Mary Ann advertised her services in the city directory.<sup>66</sup> There is little to support the contention that Mary Ann earned a living and

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<sup>60</sup> Letter from William Still, July 3, 1873. MASC/MS Folder 5.

<sup>61</sup> Rhodes, *supra* note 8, at 189-190.

<sup>62</sup> *Id.* at 191.

<sup>63</sup> Edward T. James, ed., *Notable American Women*, "Mary Ann Shadd Cary," (1971). Rhodes 209.

<sup>64</sup> Smith, *supra* note 1, at 55.

<sup>65</sup> Robinson, *supra* note 41, at 28.

<sup>66</sup> Rhodes, *supra* note 8, at 209.

supported herself as an attorney. Her name was not listed on any court records for trying either criminal or civil cases. In her papers in Washington, DC, there was a handwritten documents that discussed the disposition of property.<sup>67</sup> Rhodes used this as proof that Mary Ann practiced and may have tried civil cases.<sup>68</sup>

Mary Ann, a seasoned businesswoman, entrepreneur, orator and writer may have sought a legal degree to give her more prominence in her literary and activist circles. Her motives and intentions for attending law school in 1869 may have changed by time she graduated thirteen years later at the age of sixty. Gaining a legal education may have her more notoriety when writing her columns, making speeches or fundraising for the New Era. On March 14, 1885, Mary Ann was the first black female to enter the state of Mississippi. She gave a speech entitled, “Race, Pride, and Cooperation.” One source noted that he speech “ruffled the dead-sea level of life in [Mississippi].”<sup>69</sup> The paper noted her as “M. A. Shadd Cary, Esq., a colored lady lawyer.”<sup>70</sup>

Prior to graduating in 1883, Mary Ann represented herself as an attorney. In 1874 she attempted to get a manuscript published. Many of her fellow activists and abolitionist friends had documented their experiences and published their deeds. Although Mary Ann played an active role in the abolitionist movement, many of her friends and sometimes foes did not include her in their works.<sup>71</sup> In a letter to Mary Ann he wrote:

This morning the first order called for “20 copies;” the 2<sup>nd</sup> order “13 do[zen];” the 3<sup>rd</sup> order “12 do[zen];” & the 4<sup>th</sup> &

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<sup>67</sup> The writing was unclear and there was only one sheet of paper entitled, the “Washington Case.” MASC/MS Folder 55.

<sup>68</sup> Rhodes, *supra* note 8, at 210.

<sup>69</sup> Smith, *supra* note 1, at 300 (quoting *New York Freeman*, April 11, 1885).

<sup>70</sup> Rhodes, *supra* note 8, at 209.

<sup>71</sup> William Still, though a lifelong friend, did not include her in his masterpiece, *The Underground Railroad*.

last “6 do[zen].” For a hot day like today this is not bad. The fact is I have my hands full day and night yet I must confess I find much delight in the management of my two branches of business – viz. the coal and book. You ask, “Am I right in hearing that you have started a publishing house?” I cannot assume that I have started a publishing house. I am however the publisher of *The Underground Railroad*.<sup>72</sup>

Mary Ann served as the Washington, D.C. sales agent for *The Underground Railroad*.

While working with Still, Mary Ann also sought to immortalize herself by describing her role in the abolitionist movement and offering practical advice on collective action in the black community.<sup>73</sup> It was unclear from the letters if she asked Still to publish her work. However, from his letter, he pointed Mary Ann in another direction by stating that only work he published was *The Underground Railroad*. In response to her manuscript submission, a New York Publisher wrote his reply to “Mr. M.A.S. Cary Esq.”<sup>74</sup> Perhaps, by signing her name ambiguously with Esq., she hoped to be better received. However, the additional letters at the end of an androgynous name did not gain her a publisher.

One of the most interesting and innovative things Mary Ann orchestrated was the Colored Women’s Progressive Franchise Association (CWPFSA).<sup>75</sup> The first meeting was held on February 9, 1880. The group seemed to be a culmination of many of Mary Ann’s passions. The organization touched upon Mary Ann’s idea that blacks should empower themselves economically and not look to the outside groups for support. In addition, it encouraged the support and training of girls and women in non-traditional professions.

As a woman editor and law student, she was uniquely qualified to lead such a group.

<sup>72</sup> Letter from William Still. July 30, 1873. MASC/MS, Folder 5.

<sup>73</sup> Rhodes *supra* note 8, at 182.

<sup>74</sup> Letter from New York publishing house, September 3, 1874. MASC/MS, Folder 8.

<sup>75</sup> The group included both men and women. At least four men attended the first meeting. Comments from Rev. J. Nichols, Mr. Wright, Mr. I Washington and Mr. Williams were noted in the minutes from the first meeting. Minutes from the Women’s Progressive Committee. MASC/MS, Folder 46.

First, the group was organized to behave like a private corporation. Part of the mission statement resembled a legal corporate document. The mission statement read:

Plan

A joint stock company the shares to be one dollar each to be paid monthly. The funds to be invested in combination enterprises – to be loaned out on notes of small amounts on 30, 60 and ninety days time without bonus but at reasonable interest and thus enable poor person to get a start in business. . .<sup>76</sup>

The group would function as a type of lending institution in the community. I would assume that the shares would be held by the members of the group or a member of the group that paid the one dollar purchase price, thus each paying member would be a shareholder in the organization. The “notes” would be short term and on the same time period as the U.S. Treasury note of 30, 60 or 90 maturity. In addition, they would bear reasonable interest to be paid to the organization. The separate and enumerated paragraphs of the Statement of Purpose outlined the various businesses to be singled out for aid.<sup>77</sup>

Second, the group was also devoted to the cause of women’s suffrage and women’s rights, which included economic opportunity for girls. The first enumerated paragraph of the Mission Statement called for equal rights for women. In the third paragraph, they articulated:

3. . . . [S]eek to obtain the ballot to look after the welfare of both girls & boys in the training of the youth and to work promptly for the establishment of industries and to extend the number of occupations for women.<sup>78</sup>

The minutes of the first meeting also support the contention that one of the main goals of the franchise association, was to discuss and eventually mobilize people to fight

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<sup>76</sup> Statement of Purpose – The Colored Women’s Franchise Association. MASC/MS Folder 46.

<sup>77</sup> Newspapers, agriculture, dry goods and grocery stores “with no tipping encouraged.” Statement of Purpose – The Colored Women’s Franchise Association. MASC/MS, Folder 46.

<sup>78</sup> Id.

for a woman's right to vote. It was organized for the "discussion of the franchise question and the practical extensions of privileges and measures for public good, without sex discrimination. The need of a paper or papers unbiased by sex restrictions and jealousies - the need of institutions wherein the girls should enlarge their sphere of usefulness. The right of election to make practical all progressive theories."<sup>79</sup> The goal of debate was achieved, since not all attendees of the meeting shared the same views. In fact at the first meeting, Mr. I. Washington disclosed that although he supported some of the goals of the group, he thought "the ballot useless" to a woman.<sup>80</sup>

The group had an ambitious agenda that sought to encompass fighting for a woman's right to vote, funding a newspaper, grocery store and "fancy millinery" shop. The goals of the group may have been too diverse to gain a core group of dedicated individuals.

Her years in Washington, indicate a breadth of experiences. Mary Ann seemed to have her hands in many different things. However, it was unclear whether her involvement in the newspapers, book distributions and attending law school were schemes to earn money and gain financial stability or attempts to keep her voice active in the literary community. Mary Ann continued to get good press from Washington papers.

In 1888 a reporter noted:

Mrs. Mary Shadd Cary one of the most, talented colored women of the country is in the lecture field of temperance and other progressive subjects. The many great reforms now crowding to the front create a need or just such able advocates as Mrs. Cary. May the season be prosperous both for the cause and her.<sup>81</sup>

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<sup>79</sup> Minutes from the Women's Progressive Committee. MASC/MS, Folder 46.

<sup>80</sup> *Id.*

<sup>81</sup> *Washington Star*, 1888. MASC/MS, Folder 52.

## Legal Writings

At Howard University, there were three of Mary Ann’s legal writings included in her papers. I have examined each of them and attempted to analyze them from a legal perspective. In July, 1870, Mary Ann presented a law school paper at a ceremony organized by the Howard faculty. In her paper, “The Origin & Necessity of Corporations,” Cary cited legal scholars such as Blackstone and John Marshall. She began her paper by exploring different definitions of a corporation. She asserted that the corporation arose out of necessity to correct community abuses and act as an element of social progress.<sup>82</sup> Cary stated:

“. . . [S]pringing out of public ones, private corporations were introduced, - and these, united make up the atom of good, in Society, which warring for centuries against the forces of evil in church and state, have made no uncertain record in the history of the world. This necessity of corporations, as a corrective of abuses, and an element of social progress, must in all cases be the condition precedent of their creation.”<sup>83</sup>

These corporation included businesses, government agencies and religious organizations.

It seems as if Cary’s definition of a corporation was closer to that of an institution – for profit and not for profit. From their inception, Cary asserted, the corporation served the interest of the people.<sup>84</sup> There is no discussion of the modern definition of a corporation as an entity designed for profit.

She made sweeping statements about the institutions without giving specific examples of their impact and effects on their respective communities. She traced the

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<sup>82</sup> MASC/MS, Folder 24. “The Origin & Necessity of Corporations.” (undated)

<sup>83</sup> *Id.*

<sup>84</sup> *Id.* Cary stated, “It is both interesting and gratifying to note the course of these organizations, as they emerge from the mists,- the semi-obscurity of the earliest times, n political history, through the tumultuous changes of nations and peoples commencing with the ancient governments of Greece and Rome, traveling with them along the path of empire, through and over conquered kingdoms and dependencies, vitalizing, energizing; influencing and modifying their policy’ yet, ever faithful to the original conception, - the interests of the people.”

advent of institutions from the ancient world of Greece and Rome and their government institutions to the trading companies of Western Europe.<sup>85</sup> She noted the trading corporations for their influence in their countries, but did not discuss the roots of their origins. She did not discuss what needs they served for their communities.

Ironically, in her discussion of various municipal and private, she did not discuss the institution of slavery and the slave trade. Some of the most notable for profit corporations and governments were involved with the slave trade. The institution of slavery permeated every nuance of American culture and was woven into the social fabric of the nation. As a staunch abolitionist and freedom fighter, the absence of a discussion of the slave trade is glaring to a modern reader.

As a piece of legal scholarship, Cary's paper is lacking. However, it does allow the reader to understand how legal papers were organized. In addition, it shed light on what subjects were discussed in formal legal papers as opposed to writing for the general public. Cary shared her views on slavery and its continued effects on the black community in her published writings and speeches. However, in a paper where she embraced almost every type of institution, she remained silent on the enterprise and the societal impact of slavery.

Fortunately, Cary had other legal documents preserved that showed her grasp of legal analysis. In her papers at Howard University, two similarly drafted legal papers remain. Her writings exhibited clear organization with a question presented, conclusion, clear arguments and finally a restatement of her conclusion. They seem to be legal writing exercises either for a class or from school examinations. Neither work discussed

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<sup>85</sup> *Id.* She used the East India Company, The Hudson Bay Company and the Levant Company as examples of institutions that arose from a rivalry among rulers to control commerce.

specific fact patterns or contained any names of parties, therefore it seems more likely that these were writing exercises as opposed to legal memoranda for a court or produced for a client.<sup>86</sup> Both began with a proposition clearly set forth, similar to presenting an issue on an examination.<sup>87</sup> Then Cary methodically refuted the proposition with her own thoughts and support from legal texts and case law.

The first examined the importance given to legal precedents. The memorandum examined whether too much importance was given to precedents in courts.<sup>88</sup> In her introduction, Cary stated her conclusion and rejected the proposition. She began to discuss the origins of the common law and its social necessity. She made many allusions to the success and importance of ancient Roman civil laws and governing methods. Then she enumerated six distinct arguments to support her position.

She refuted the idea that statutes were sufficient to govern society. She asserted that “it would be found impossible to secure the legal ability requisite to frame sufficient variety to meet the diverse necessities for society.”<sup>89</sup> Further she argued:

“They [precedents] being a digest of the prevailing & best legal opinion of the times, it is more in accordance with strict justice, than can be acts of parliaments, congress, legislatures, composed as they are of a mixed multitude, for judges, the class from whom well considered precedents emanate are not only called upon to decide as to the rightfulness of statutory provisions but frequently to set them aside altogether.”<sup>90</sup>

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<sup>86</sup> Unfortunately neither work is dated. It is unclear whether they were written during her first year at Howard or if they were written when she returned to her studies. Since the styles and organization is similar, they may have been written during the same time period. The style of these two works is markedly different than the paper, “The Origin & Necessity of Corporations,” which was presented in 1872.

<sup>87</sup> The first paper began, “Resolved, that too much importance is given to precedents in Courts of Law” Moorland Springarn. MASC collection. Folder 11. The second work began, “Resolved, That the principle that a marriage which is valid where celebrated, is valid everywhere is contrary to the current of authority, and, against public policy.” MASC/MS, Folder 26.

<sup>88</sup> MASC/MS, Folder 11.

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

This position is an interesting for Cary to take. For this generation of blacks, the acts of congress and other legislative bodies have been most favorable in advancing their civil rights and had a sweeping and undeniable impact on their lives whether free or slave. While articulating clear arguments based on classical studies and the system of jurisprudence in the United States, it is difficult to examine her arguments without thinking of the importance of the Emancipation Proclamation, the recent passage of the thirteenth amendment abolishing and outlawing slavery<sup>91</sup> and the fourteenth amendment<sup>92</sup> of the U.S. Constitution. In addition, she did not allude to the Dredd Scott decision, either.<sup>93</sup> These legal milestones all occurred within her lifetime, the most recent, the adoption of the fourteenth amendment, within ten to fifteen years of this paper.

A black female, rebel and reformer, giving such importance to judicial precedent during the time of reconstruction was surprising. During Cary's lifetime, the courts were not proponents of civil rights. Blacks' legal progress originated with the legislature during reconstruction. They gained and defended their citizenship through writing new laws and including enforcement provisions. Looking to the judiciary, local or federal, to promote civil rights and social change was a disappointing endeavor. In her

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<sup>91</sup> Section 1. Slavery Prohibited. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction. Amendment 13, Section 1. U.S. Constitution. The thirteenth amendment was ratified in 1865.

<sup>92</sup> Section 1. Citizens of the United States. All persons born or naturalized in the United States, and subject to the jurisdiction therefore, are citizens of the United States and the state wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. Amendment 14, Section 1. U.S. Constitution. The fourteenth amendment was ratified in 1868.

<sup>93</sup> Scott v. Sandford, [60 U.S. \(19 How.\) 393, 404](#) -06, 417-18, 419-20 (1857).

memorandum, Cary did note that precedents do not always hold with social change and should therefore be set aside. But she also contended that the same was true for statutes:

“In the ever advancing march of society the statute law of one period is being repealed and amended or set aside for something more in agreement with social change, so that, added to the expensive character of legislation the advantage is in favor of precedents as being more in keeping with civil economy.”<sup>94</sup>

Cary’s examination of the importance of precedent was clear, concise and balanced. What arguments Cary did not present were as interesting as the arguments she did articulate. Her legal writings were vastly different than her editorials and early pamphlets. The legal writing was much more formal and less passionate. However, her positions and arguments may have still caused some controversy at the university. It seems clear that she had the intellectual ability and a flexible mind to complete her legal education in a timely manner.

The second and more interesting of the two examined whether a marriage which was valid where celebrated, was 1) valid everywhere and 2) if that proposition went against public policy.<sup>95</sup> In her memorandum, she cited Kent, Blackstone, John Milton, the Bible and English case law.<sup>96</sup> Similar to her prior papers, she discussed the role of marriage in ancient times as well as current times. She frequently used ancient Roman law as persuasive authority to support her arguments.

In addition, she asserted that the law of customary actions supported her contention that a marriage should be universally recognized. She stated, “No institution of so extensive application –to all nations and peoples can be contrary to public policy.”<sup>97</sup>

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<sup>94</sup> MASC/MS, Folder 11.

<sup>95</sup> MASC/MS, Folder 26.

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

She cited a case that did not support her position, but she promptly distinguished it as an exception to the general rule that she proposed. Thus, she made a neat argument by acknowledging possible contrary case law and noted why that case did not discredit her assertion.

However, in her discussion of marriage as a recognizable institution everywhere, she relied upon different society's divorce laws as support for premise that recognizing marriage universally was not against public policy in two separate arguments. Given Mary Ann's personal history, this is interesting. Since Mary Ann waited so late in life to marry at age 33, her personal view on the importance of marriage was unclear. In addition, her husband, Thomas Cary had been married before.<sup>98</sup> It was unclear whether he was divorced or a widower. However, he did have three children from the prior marriage.

Mary Ann also discussed surprising topics such as polygamy and divorce in foreign nations. She boldly stated:

Even in polygamous nations the first wife maintains the autonomy of the institution' the addenda however numerous – holding a doubtful relation. And in those countries where divorces are permitted with the greatest facility India, China & Arabia such legal restrictions are interposed as to make the divorce, laws almost operate against their own enforcement, or at best, show rather a protest against the natural equality of the sexes than as a disposition to hold the institution of marriage either of slight importance to the state or one that should not be valid everywhere.<sup>99</sup>

It was surprising to see references to polygamy, first wives and divorce in a legal memorandum. More importantly, Mary Ann was a staunch Christian and was devoted to

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<sup>98</sup> Rhodes, *supra* note 8, at 112-113.

<sup>99</sup> *Id.*

the temperance movement later in life.<sup>100</sup> This more conservative and traditional outlook on marriage and divorce was in contradiction with the memorandum.

Mary Ann's legal writings possessed a keen grasp of legal analysis and the tools lawyers employed to make a cohesive and coherent argument. Although her personal life seemed to be contradictory to her legal writings, the purpose of the writings was unclear. If the writings were in fact legal writing exercises or school examinations, then they were not intended to support or discredit her personal beliefs and should not be examined for that purpose. However, analyzing the old law school exams has the benefit of shedding light on the life of a nineteenth century law student.

## Conclusion

In 1893, Mary Ann died at her home in Washington after battling stomach cancer. She was survived by her daughter, Sarah. She left an estate valued at \$150.<sup>101</sup> Her obituary in the *Washington Bee* read:

Mrs. M. S. Carey one of the best-known women in this country died at her residence on last Monday morning at 4:50 a.m. Mrs. Carey was a woman of excellent traits of character and loved by all who knew her. While she may have been excentric at times, she was a woman of kind disposition.<sup>102</sup>

Family took pride in her accomplishments and preserved her image. Her daughter Sarah

Cary Evans wrote an essay about her mother in Hallie Quinn Brown's *Homespun*

*Heroines*.<sup>103</sup>

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<sup>100</sup> Rhodes, *supra* note 8, at 197-199. In addition, Mary Ann wrote Christian and temperance songs. MASC/MS, Folder 28,44, and 45.

<sup>101</sup> Rhodes, , *supra* note 8, at 211.

<sup>102</sup> *Washington Bee*, 10 June 1893.

<sup>103</sup> Rhodes, *supra* note 8, at 216. See Halide Q. Brown, ed. *Homespun Heroines and Other Women of Distinction* (1926). Reprint. New York (1988)

Mary Ann showed great tenacity throughout her life and embraced change. She had the courage to stand up for her beliefs and voice her opinions in a time when many black women were silenced due to their sex, race or economic status. Mary Ann did not let any of those obstacles silence her. If anything, these were the traits that gave her voice its unique and resonant tone. Her voice through pamphlets, editorials, or legal writings rings through. It also shows a progressive maturing, but not a mellowing of her views.

Mary Ann defied convention with the help of many supporters, the first of whom was her father continuing with lifelong friends like Frederick Douglass and William Still. The characters she met along her journey, made it richer for the adversity they brought and peculiar situations upon which she was later able to chronicle. Mary Ann's life was fascinating and much too complex to understand completely from my focus on her legal papers and works. If there was one thread, it was no one was safe from her criticism. It was not personal, simply a part of her personality to critique and attempt to improve upon the status quo. Whether for slaves, free black, women in general or black women in particular, Mary Ann had a comment. And we thank her for it.

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**Timeline**  
**Mary Ann Shadd Cary**  
**1823 – 1893**

**1<sup>st</sup> African American Woman to enroll in Law School**  
**1<sup>st</sup> African American Woman Editor and Publisher of a Newspaper**

**Family and Early Years**

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- 1823 Born Mary Ann Shadd on October 9, 1823 to a free family in Delaware. She was the oldest of thirteen children born to Abraham and Harriett Shadd. Delaware was still a slave state.
- 1830/33 Family moved to West Chester, PA outside of Philadelphia. Mary Ann attended a Quaker school in the area.

Abraham Shadd was active in abolitionist groups and other political organizations that discussed black immigration to Canada, Africa and the West Indies. He was an agent of subscriptions for William Lloyd Garrison's newspaper, the *Liberator*. He and his family began to socialize with the more affluent Blacks in Philadelphia. In 1833, he was elected president of the National Convention for the Improvement of Free People of Color in the United States. The meeting was held in Philadelphia.

The Shadd home in West Chester was an active stop on the underground railroad.

**Young Professional / Early Publications**

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- 1839 - Began teaching career. She held teaching positions in Delaware and Trenton, New Jersey.
- 1848
- 1849 She published her first essay, "*Hints to the Colored People of the North*," which focused on antislavery reform and building a collective consciousness for blacks. In a letter published in Fredrick Douglas's *North Star*, she wrote about the corrupt influence of the black church over the freed blacks and the way to improve the condition of free blacks was to reject materialism. She urged blacks to be "producers instead of mere consumers."
- 1850 Passage of Fugitive Slave Act
- 1851 Teaching in New York City.

Attended a meeting with her father in Toronto Canada to discuss black immigration to Canada.

Immigrated to Canada West (Windsor, Ontario). She traveled with Henry Bibb, the publisher of Canada's first black newspaper, *Voice of the Fugitive*. Bibb, a former slave from Kentucky, was also a leader in a neighboring settlement. Bibb was a staunch separatist

## Emigration to Canada

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1851 - 52 Settled in Windsor under the sponsorship of the American Missionary Association as a teacher. There were no adequate accommodations for a school and Mary Ann wrote to the AMA for money. Mary Ann's father was a member of the AMA. She obtained the recommendations of several prominent men in New York and a letter from the local missionary.

Several months later, she received the funds to open a new integrated school in the sparsely populated settlement. She had 23 children in day school and about 1 adults in night school. Mary Ann did not publicize that she received grant money from the AMA.

Mary Bibb, the wife of Henry Bibb, opened a rival segregated school. Henry Bibb writes a story about Shadd's receipt of the grant money in his paper, *Voice of the Fugitive*.

1852 Published "A Plea for Emigration or Notes on Canada West in Its Moral, Social, and Political Aspect: Suggestions Respecting Mexico, W. Indies and Vancouver's Island For the Information of Colored Emigrants." Mary Ann extolled the virtues of Canada in her pamphlet and urged American blacks to move north. She cited the common language, culture and religion as the primary reasons for blacks to consider Canada first.

## Friends and Foes in Publishing

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1853 Teamed up with Samuel Ward, a preacher for the Anti-Slavery Society, and several others to publish the newspaper, *The Provincial Freeman*. Fredrick Douglass was also an editor of the *Freeman*. The motto of the *Freeman* was, "Self-Reliance is the True Road to Independence." This paper was competition for Bibb's *Voice of the Fugitive*.

Contributors to the *Freeman* included Harriet Beecher Stowe, Fredrick Douglass and William Still. Mary Ann and Still maintained an enduring friendship that continued throughout her life.

1854 Took over editing the *Freeman*. The first black female editor and publisher in North America. She announced in an article that she had "broken the editorial ice."

1855 Begins to disassociate herself from the Canadian movement. Racism against black is prevalent in Canada as well as in the United States. Slave catchers often traveled to Canada tracking runaway slaves and returned them to their masters in the U.S.

1856 Married Thomas Cary, a Toronto barber. He had three children from a previous marriage.

Mary Ann continued to live in Chatham, approximately 180 miles from Toronto, after the marriage.

- 1857 Daughter Sarah born.  
*Freeman* encumbered with high debts.
- 1858 Thomas moved to Chatham.
- 1859 Opened school with sister in law, Amelia Freeman Shadd, in Chatham
- 1860 Thomas F. Cary died. Mary Ann continued to work in Chatham as a teacher supporting her daughter.  
*Freeman* closed.  
Son Linton born.
- 1861 American Civil War began.

### **Returning to the US and Reconstruction**

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- 1863 President Lincoln issued the Emancipation Proclamation
- 1864 Gained permission from the U.S. government to recruit black soldiers for the union army.
- 1865 Civil War ended.  
13<sup>th</sup> Amendment to the Constitution adopted and formally abolished slavery.  
Obtained a Canadian passport. Ht: 5'6", color of hair: black, complexion: mulatto, nose: pug, general appearance: slight figure, **age: 35**. She would have been 42.
- 1867 Moved to Detroit, Michigan, where she obtained work as a teacher.  
Howard University incorporated.
- 1868 Awarded teacher's certificate from Detroit Board of Education  
Purchased a house in Detroit.  
14<sup>th</sup> Amendment to the Constitution adopted
- 1869 Elected by Samuel Watson and other Detroit leaders to represent Michigan at the convention of the Colored National Labor Union in Washington, DC  
Moved to Washington, DC

### **Washington, DC, Law School and the Suffragist Movement**

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- 1869 First woman to enroll in Howard University Law School. First African American woman to enroll in law school. Brother, Abraham Shadd who was 20 years younger than Cary, also enrolled.  
Cary worked as a teacher at the Lincoln Mission School during the day and attended classes in the evenings.
- 1870 Presented her paper, "The Origins and Necessity of Corporations" at a university sponsored ceremony.  
15<sup>th</sup> Amendment to the Constitution adopted prohibiting racial discrimination

- against voters.
- 1871 Brother Abraham graduated from law school and moved to Mississippi where he was admitted to the bar. He was also admitted to practice in Arkansas.  
 Cary and 63 other women attempted to register to vote at the local poll.
- 1872 First African American woman, Charlotte Ray, graduated from Howard Law School.
- 1873 Sister, Amelia, and her husband moved to Washington, DC  
 Howard closed its doors due to economic hardship.
- 1874 Prepared testimony to present before the House Judiciary Committee in support of the women's suffrage.  
 Submitted manuscript of book outlining her contribution to the abolitionist movement to a New York publisher. The book was rejected with a letter addressed to "M.A. S. Cary, Esq."
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- 1877 Howard reopened.  
 Attended two meetings of the National Women's Suffrage Association and appointed to a seven person business committee.
- 1880 Formed the Colored Women's Progressive Franchise Association
- 1883 Received her LLB from Howard Law School. One of four women to graduate from the law school.
- 1887 One of two black representatives at the annual congress of the Association for the Advancement of Women in New York. Poet and abolitionist Frances Ellen Watkins Harper also attended.
- 1892 Son Linton died.
- 1893 Died from stomach cancer.

**Personal traits – "The Rebel"**

- Du Bois "The Damnation of Women," *Darkwater: Voices from within the Veil* (New York: Harcourt, Brace, 1920) ch. 7 *Romanticized view after her death*
  - She was tall and slim, of the ravishing dream-born beauty, - that twilight of the race which we call mulatto. Well-educated, vivacious, with determination shining from her sharp eyes, she threw herself single-handed into the great Canadian pilgrimage."
- Letter from local missionary, Alexander McArthur in support of her request: Miss S. is a young (light colored) lady of fine diction, refined address and Christian deportment and possessing an energy of character & enlargement of views well fitting her for the work of teaching amongst such a people as this"