

Race, Gender, and, Feminist Legal Advocacy during the Long Civil Rights Movement

Author : Felice Batlan

Date : November 26, 2012

Serena Mayeri, [*Reasoning from Race: Feminism, Law, and the Civil Rights Revolution*](#), (Harvard University Press, 2011).

Scholars have understood well that second wave feminism has deep roots in the Civil Rights Movement. Only in recent years, however, have historians explored the full extent of the material and ideological connections between these two movements. *Reasoning from Race* brings this agenda to the field of legal history. It examines what it meant for feminist legal advocates to use race analogies, how this changed over time, and how ultimately civil rights lawyers then attempted to reason from sex. In doing so, Mayeri seeks to demonstrate that the Civil Rights Movement and the Women's Rights Movement cannot be understood in isolation from each other. Rather the movements were in dialogue with one another, taking the lead from and piggybacking on each other at different times.

Reasoning from Race makes three overlapping central arguments. The first is that women legal advocates used the tools, legal strategies, arguments, and precedent that African-American civil rights lawyers first developed. The second is that some of the leading architects and plaintiffs in sex discrimination cases were African-American women, and the third is that race and sex are intertwined categories. Mayeri also intervenes in the periodization of the Civil Rights Movement, arguing that the Women's Movement must be considered part of the larger Civil Rights Movement. Thus the Civil Rights Movement began in the 1950s and continued into the 1980s. Yet the height of the Women's Movement also corresponded to the beginning of the backlash against the Civil Rights Movement. This would have important implications in regard to legal strategies.

Mayeri continues the recent attention paid to Pauli Murray as a figure who knits together the Civil Rights Movement and the Women's Movement. Mayeri writes, "No one did more than Murray to make race-sex analogies the legal currency of feminism." (P. 14.) In her famous memorandum, written for the 1961 President's Commission on the Status of Women, Pauli analogized racial discrimination to discrimination against women and strategized that Fourteenth Amendment litigation was key to ending legal discrimination against women. This strategy, in part, was intended to end the impasse amongst women's organizations that feared that the Equal Rights Amendment would end legislation that protected women. Rather Fourteenth Amendment litigation would allow for a more flexible approach. It also explicitly linked together the Civil Rights Movement and the growing Women Rights Movement. Yet where liberals might be convinced that racial segregation was odious, many were less certain that sex segregation was discriminatory, especially when laws seemed benign or to the advantage of women. For a time, feminist and civil rights organizations cooperated in a number of important law suits, and built a variety of coalitions.

Reasoning from Race most clearly contributes to our historical knowledge when discussing some of the less well known civil rights cases. For example, *Andrews v. Drew* (1973) involved an African- American woman who challenged a Mississippi school board's policy of not hiring unmarried parents. This supposedly race and gender neutral policy was a subterfuge for not hiring African-American women. In other words, it was a policy based on white supremacy and sex discrimination that the school board packaged as neutral morals regulation. The suit brought to the fore issues of race, sexuality, gender,

and reproduction. Famed civil rights leader Fannie Lou Hamer testified as an expert regarding black community morals, black women's attempts to gain economic independence, and how moral regulations were applied in a racially discriminatory manner. As decided by the courts in a series of decisions that stretched from 1973 to 1976, the racial dimensions of the case, as well as those involving reproductive freedom, became lost and the courts instead treated it as a case of pure sex discrimination. In doing so, they refused to apply a standard of strict scrutiny used in race discrimination cases and instead used a more lenient rational basis standard. When the Supreme Court dismissed *certiorari* as improvidently granted, Mayeri writes that the opportunity was lost for *Andrews* to become part of the "feminist canon." (P. 165.)

Mayeri produces a litany of cases with African-American women plaintiffs, some involving desegregation of schools and others involving jury service, which combined sex and race discrimination. She explains this pattern as part of the temporal lag between the height of the Civil Rights Movement and the Women's Movement and importantly argues that white supremacy adapted itself. When overt race discrimination was no longer tolerated, it masked itself in sex discrimination. Moreover, in terms of the larger narrative of sex equality, the race of the plaintiff disappeared, especially in higher court decisions. Sex discrimination law was literally whitewashed by the courts. Mayeri argues, if courts had been able to see and understand the connections between race and sex, a more robust and honest jurisprudence would have emerged that reflected lived experiences and which could fulfill the emancipatory potential of the Civil Rights and Women's Movement. By the late 1970s, feminists had generally won those cases involving explicit classifications by sex but had limited success with disparate impact claims. In other words, law could get at the tip of the iceberg but it could not dismantle the super structure of patriarchy.

As the book concludes, in the early 1980s, feminists were still fighting for the Equal Rights Amendment which Mayeri argues demanded a real substantive equality that did not materialize fully through feminists use of Fourteenth Amendment litigation. Mayeri writes, "Feminists now reasoned beyond race" and needed new strategies. (P. 215.) Women of color also insisted that comparisons between race and sex further enshrined white women's privilege. During the same period, the conservative movement grew, and the feminist movement became a straw woman blamed for its own defeats and for a narrow focus on white privileged women which belied its true diversity and elided the role of African-American women.

Reasoning from Race is squarely a legal history focused on courts and litigation and relying primarily on an extensive range of legal sources. These are very valid choices but at certain moments the book becomes slightly bogged down in analyzing the feminist legal canon of Supreme Court cases. Instead, it would have made for an even richer story, if the work had focused a bit more on grassroots feminist organizations such as the Chicago Women's Union or Boston's Bread and Roses. One is left wondering how did these more radical organizations respond to the work of legal feminists. What was the relationship between grass roots feminism, feminist legal advocacy, and the strategies that lawyers employed? How did reasoning from race affect the larger feminist movement and for that matter how did the Black Power Movement influence and affect reasoning from race? Even with these slight limitations, *Reasoning from Race* provides a crucial new narrative of feminist legal advocacy.

Cite as: Felice Batlan, *Race, Gender, and, Feminist Legal Advocacy during the Long Civil Rights Movement*, JOTWELL (November 26, 2012) (reviewing Serena Mayeri, *Reasoning from Race: Feminism, Law, and the Civil Rights Revolution*, (Harvard University Press, 2011)), <https://legalhist.jotwell.com/race-gender-and-feminist-legal-advocacy-during-the-long-civil-rights-movement/>.