

# Texas Law Review

## *Dicta*

### Book Review

REASONING FROM RACE: FEMINISM, LAW, AND THE CIVIL RIGHTS  
REVOLUTION. By Serena Mayeri. Cambridge, Massachusetts: Harvard  
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#### I. Introduction

Because racism is inimical to our founding ideals, the black struggle for civil rights spurred public debate for decades and helped to shape much of twentieth-century jurisprudence. Black civil rights advocacy challenged prevailing legal understandings and norms, and ultimately succeeded on many fronts. Due to its successes, black civil rights became the paradigm for other identity-based rights claims such as the quest for women's equality, and this race–sex congruence framed the legal strategy of many feminist advocates.<sup>1</sup> There are a number of works that address the history of the relationship between feminism, law, and the civil rights movement.<sup>2</sup> Some

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1. SERENA MAYERI, REASONING FROM RACE: FEMINISM, LAW, AND THE CIVIL RIGHTS REVOLUTION 2–4 (2011).

2. See, e.g., CRITICAL RACE FEMINISM: A READER (Adrien Katherine Wing ed., 2d ed. 2003) (collecting essays regarding the intersections among race, racism, civil rights, and constitutional law); Elsa Barkley Brown, "What Has Happened Here": *The Politics of Difference in Women's History and Feminist Politics*, in "WE SPECIALIZE IN THE WHOLLY IMPOSSIBLE": A READER IN BLACK WOMEN'S HISTORY 39, 42–43, 48 (Darlene Clark Hine et al. eds., 1995) (encouraging nonlinear and asymmetrical analysis of women's history, and acknowledging the varied experiences of women and African-Americans); Bernie D. Jones, *Southern Free Women of Color in the Antebellum North: Race, Class, and a "New Women's Legal History"*, 41 AKRON L. REV. 763, 769 & n.27 (2008) (citing Evelyn Brooks Higginbotham, *African-American Women's History and the Metalanguage of Race*, in "WE SPECIALIZE IN THE WHOLLY IMPOSSIBLE": A READER IN BLACK

writings have queried the oft-presumed consubstantiality of the civil rights movement of the 1960s and 1970s with the feminist movement, with many addressing the complex relationship between race and gender.<sup>3</sup> While many of these writings acknowledge the debt that feminist jurisprudence owes to race-based legal theories, some give the impression of a simple borrowing of established ideas. Serena Mayeri challenges such accounts in *Reasoning from Race*.<sup>4</sup> Mayeri explores the organic process by which theories formed in the context of black civil rights were reformulated and deployed by feminist legal theorists.<sup>5</sup> In assessing both Mayeri's book and the process of reasoning from race that she addresses, two popular culture endeavors come to mind as apposite metaphors: jazz<sup>6</sup> and double-dutch jump rope.<sup>7</sup>

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WOMEN'S HISTORY, *supra*, at 3, 3–24) (recognizing the value of understanding the intersection between race and gender in critical theories); *see also* Cynthia Grant Bowman et al., *Race and Gender in the Law Review*, 100 NW. U. L. REV. 27, 27 (2006) (observing the emerging intersection of race and gender issues in *Northwestern Law Review* scholarship, when its content originally “reflect[ed] a territory inhabited only by white males and their legal problems”).

3. Race and sex have often been discussed in the context of “intersectional analysis”—engaging in a multifaceted analysis that addresses the ways in which various socially- or culturally-constructed identity categories interact. *See* Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139, 166 (arguing that black liberationists and feminists cannot ignore the intersections of their respective constituents' experiences). There is a large body of scholarship on intersectionality, and it has become almost an article of faith in some scholarly areas. For some of the foundational writings in this area, *see id.*; Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1991); Angela P. Harris, *Race and Essentialism In Feminist Legal Theory*, 42 STAN. L. REV. 581 (1990); and Judy Scales-Trent, *Black Women and the Constitution: Finding Our Place, Asserting Our Rights*, 24 HARV. C.R.-C.L. L. REV. 9 (1989). For an overview of works examining the intersection between “racial power” and “social life,” *see* Kimberlé Crenshaw et al., *Introduction to CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT* (Kimberlé Crenshaw et al. eds., 1996), *reprinted in* THE CANON OF AMERICAN LEGAL THOUGHT 903, 903–25 (David Kennedy & William W. Fisher III eds., 2006). One scholar has offered an alternate view of intersectionality. Gowri Ramachandran, *Intersectionality as “Catch 22”: Why Identity Performance Demands Are Neither Harmless Nor Reasonable*, 69 ALB. L. REV. 299 (2005). Ramachandran coins the word *intersectionals* as a noun meaning “persons who are members of more than one ‘low-status’ category, such as women of color, queer persons of color, or indigent women.” *Id.* at 301. She then uses *intersectionality* to refer to the conflict created by multiple competing identities. *Id.* at 303.

4. SERENA MAYERI, *REASONING FROM RACE: FEMINISM, LAW, AND THE CIVIL RIGHTS REVOLUTION* (2011).

5. *Id.* at 4–6.

6. Jazz music is a sonorous, syncopated music originated by black musicians at the beginning of the twentieth century. PETER TOWNSEND, *JAZZ IN AMERICAN CULTURE* viii (2000). Jazz, though including many diverse trends in music, is said to have three fundamental characteristics: (1) improvisation; (2) syncopated, offbeat, and, often, multiple rhythms; (3) a sound that, though often founded on written notes, may exist entirely outside of the notes as a result of differing styles of play; and (4) unique tones infused into the preexisting melody that frames the work. *See generally id.* at 3–32 (summarizing the melodic and improvisational features of jazz music). Jazz offers the right to solo and valorizes improvisation and change, but ultimately recognizes all such riffs as part of the process of enriching and supporting the underlying song. *See* Thomas Brothers, *Solo and Cycle in African-American Jazz*, 78 MUSICAL Q. 479, 489 (1994) (observing that jazz solos depart from fixed rhythms yet depend on the song's underlying harmony to provide the solo with meaning).

Jazz has been widely used as a metaphor for critical-race-theory discussions.<sup>8</sup> However, I employ the jazz metaphor here to help articulate the way in which reasoning from race was sometimes considered “second-class” reasoning in comparison to conventional legal reasoning and mainstream jurisprudence. This is similar to how early jazz was defined by and disparaged in its relation to Western classical music.<sup>9</sup> Moreover, jazz as a metaphor helps to describe the relationship between feminist legal strategies and civil rights legal strategies: feminist legal theorists have at times disdained and at times embraced reasoning from race in much the same way that some jazz artists have rejected assertions of the musical “otherness” of jazz as they queried its place in the larger Western musical canon.<sup>10</sup>

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7. Double-dutch jumping is an elaborate game of jump rope in which the rope turners systematically turn two ropes in tandem and jumpers try to meet the challenges mounted by the turners. KYRA D. GAUNT, *THE GAMES BLACK GIRLS PLAY: LEARNING THE ROPES FROM DOUBLE-DUTCH TO HIP-HOP* 134–35 (2006). In the basic game of double-dutch, the ropes are equidistant at all times, with one up and one down; as one rope converges toward the other, the other must move away to keep the ropes in play. *See id.* at 134 (describing the “elliptical space” created by the turning ropes). However, the most that expert turners can do is to bring the ropes parallel on the ground or in the air, or overlap them at will, without halting the movement of the ropes. *See id.* at 134 (describing the undulating nature of the ropes in double-dutch). Double-dutch jumping has in other instances been used as a metaphor for combining two diverse but closely related narrative strands. *See, e.g.*, VALERIE LEE, *GRANNY MIDWIVES AND BLACK WOMEN WRITERS: DOUBLE-DUTCHED READINGS* 2–3 (1996) (elaborating on the metaphor as it relates to the life stories of African-American grannies and their representation by African-American authors).

8. Some theorists have noted the relationship between jazz and critical race theory, focusing especially on the traits of improvisation and multiplicity. *See, e.g.*, John O. Calmore, *Critical Race Theory, Archie Shepp, and Fire Music: Securing an Authentic Intellectual Life in a Multicultural World*, 65 S. CAL. L. REV. 2129, 2135 n.13 (1992) (noting that jazz and critical race theory are joined by a “common tradition of African-American culture that speaks of a perspective structured by emphatic declarations of dissent from dominant norms”); Jonathan A. Beyer, Note, *The Second Line: Reconstructing the Jazz Metaphor in Critical Race Theory*, 88 GEO. L.J. 537, 554 (2000) (“Just as Ellington developed the singular sounds of his musicians into an improved group harmony, critical race scholars may accommodate the particularities of race into a pluralist society.”); *see also* Christopher A. Bracey, *Adjudication, Antisubordination, and the Jazz Connection*, 54 ALA. L. REV. 853, 858 (2003) (arguing that characteristics of jazz music, including improvisation and reimagination, should inform how judges act with respect to issues confronting subordinated groups); Alfred L. Brophy, Foreword, *Lawyers and Social Change in American Legal History*, 54 ALA. L. REV. 771, 778 & n.35 (2003) (discussing the unfinished work of the late Kellis Parker, *Jazz: The Law the Slaves Made*, that draws parallels between law and jazz); Kevin R. Johnson, Commentary, *Roll Over Beethoven: “A Critical Examination of Recent Writing About Race,”* 82 TEXAS L. REV. 717, 722 n.24 (2004) (observing that “[critical race theory] traditionally has had an improvisational quality to it”).

9. *See* Lolita Buckner Inniss, *A ‘Ho New World, Raced and Gendered Insult as Ersatz Carnival and the Corruption of Freedom of Expression Norms*, 33 N.Y.U. REV. L. & SOC. CHANGE 43, 51 (2009) (citing Reginald Thomas, *The Rhythm of Rhyme: A Look at Rap Music as an Art Form from a Jazz Perspective*, in *AFRICAN AMERICAN JAZZ AND RAP: SOCIAL AND PHILOSOPHICAL EXAMINATIONS OF BLACK EXPRESSIVE BEHAVIOR* 163, 163–64 (James L. Conyers, Jr. ed., 2001)) (observing that jazz “affronted mainstream norms” at its inception). Thomas describes how blues music, ragtime, and jazz were, when first offered, greatly scrutinized and often deemed unworthy of being called art. *Id.* at 51.

10. ERIC PORTER, *WHAT IS THIS THING CALLED JAZZ? AFRICAN AMERICAN MUSICIANS AS ARTISTS, CRITICS, AND ACTIVISTS*, at xv–xvi, 159–61 (2002). Porter writes, “Musicians have also

Double-dutch jumping is a metaphor that captures the fluid relationship between feminist legal projects and the black civil rights movement along not only occasionally diverging strands but also along converging, parallel, or intersecting strands. Few writings have explored both the ideological groundings as well as the pragmatic understandings about how racial analogies informed feminist strategies. This may be a result of the failure to closely interrogate the nature of the racial antecedents of sex discrimination norms in law. Serena Mayeri helps to fill this void with *Reasoning from Race*.

## II. Overview of the Book

Mayeri offers a history of the legal strategy of “reasoning from race,” that is, using antiblack racism as a principal analogy to inform strategies to counter sex discrimination.<sup>11</sup> In its scope and depth, the book is in some respects a primer that offers an advocate’s look at some of the cases that form the core of United States women’s rights jurisprudence and especially of major United States Supreme Court cases. Along the way, *Reasoning from Race* also brings to light some of the lawyers behind the cases, especially several whose work in the area of women’s rights may be less well-known, such as Caruthers Gholsen Berger,<sup>12</sup> Jane Picker,<sup>13</sup> and Ruth

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negotiated the fields of jazz and classical music, sometimes reifying the distinctions between them and at other times seeking to dismantle the boundaries that separate them.” *Id.* at xv. He adds,

Many jazz musicians have been trained as classical players but have seen their ambitions in the realm of concert music stymied by racial discrimination. They have also been aware of jazz’s “second-class” status in relation to classical music. For some of these musicians, seeking to dismantle the divisions between the fields or defining their music as an alternative “classical” tradition has been a means of legitimizing their own artistic projects. Yet for others, emphasizing the distinctions between jazz and classical music has been a more affirming vision.

*Id.*

11. Note that “reasoning from race” refers to a particular jurisprudential approach that adopts certain legal norms, perspectives, and arguments due to race. MAYERI, *supra* note 1, at 4–5. Reasoning from race especially refers to approaches that situate blacks as the archetypal “other” against which to measure both whites and other oppressed groups. WENDY LEO MOORE, *REPRODUCING RACISM: WHITE SPACE, ELITE LAW SCHOOLS, AND RACIAL INEQUALITY* 78 (2008). Reasoning from race is to be distinguished from the more general practice of racial reasoning, though the two are related. Racial reasoning is a broader political and ethical construct that supports taking certain social, legal, or even, moral positions. *See id.* (noting the rhetorical and ideological techniques employed by civil rights leaders to gain greater access to legal rights); *see also* CORNEL WEST, *RACE MATTERS* 26 (2001) (observing that “blackness is a political and ethical construct,” which includes a “political and ethical dimension”). Racial reasoning is premised on claims of racial authenticity that come from race-based oppression or struggle. WEST, *supra*, at 26; *see also* Henry Louis Gates, Jr., *Talkin’ that Talk*, in “RACE,” *WRITING, AND DIFFERENCE* 402, 402 (Henry Louis Gates, Jr. ed., 1986) (observing that analyses of race are often untethered to observations and empirics). Gates writes, “‘Racial reasoning’ . . . is reasoning from causes to effects without reference to experience, in terms of a fixed essence.” *Id.*

12. MAYERI, *supra* note 1, at 29–30, 37.

13. *Id.* at 108. Cleveland lawyer and law professor Jane Picker, who represented plaintiffs Elizabeth Smith and Jo Carol LaFleur, founded the Women’s Law Fund, a Cleveland-based

Weyand.<sup>14</sup> Given its structure and focus, *Reasoning from Race* seems to fall within the increasingly influential genre of applied legal history—legal–historical work that, in self-reflexive fashion, “works history,” seeking to make legal history directly relevant to contemporary socio-legal concerns.<sup>15</sup> *Reasoning from Race*, however, is more of a prolegomenon that explains how the process of reasoning from race developed, thereby laying a foundation for new understandings and exposing the potential for new applications. In this regard, it may be equally apt to describe this work as one of critical legal history.<sup>16</sup>

The introduction considers how reasoning from race is currently deployed in discussing efforts to expand the civil rights of gays and lesbians, and describes how, despite an intriguing and in many ways successful strategy of feminist reasoning from race, the business of sex equality is still unfinished.<sup>17</sup> The book goes on to explore the renaissance of race–sex analogies in the 1960s that revitalized and expanded race–sex congruence theories that had briefly flourished but then went fallow in the post-Civil War era and in the 1940s and 1950s.<sup>18</sup> The book then shows how women and minorities were discursively paired in a feminist project that was at once deconstructive and reconstitutive, seeking to dismantle sex-based inequalities

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advocacy group that addressed women’s legal concerns. *See id.* (describing the representation of Smith and LaFleur); Deborah Dinner, *Recovering the LaFleur Doctrine*, 22 YALE J.L. & FEMINISM 343, 365 (2010) (describing the Women’s Law Fund). Picker was in large measure responsible for the groundbreaking decision in *Cleveland Board of Education v. LaFleur*, 414 U.S. 632 (1974), which held pregnancy dismissal policies unconstitutional. MAYERI, *supra* note 1, at 651. *LaFleur* has been described as an underdiscussed case from the perspective of both women’s rights jurisprudence and constitutional jurisprudence more broadly. *See* Dinner, *supra*, at 344–45 (“No scholar has yet comprehensively researched the social and legal history of the case.”).

14. MAYERI, *supra* note 1, at 108, 114.

15. *See, e.g.*, Robert N. Clinton, *The Curse of Relevance: An Essay on the Relationship of Historical Research to Federal Indian Litigation*, 28 ARIZ. L. REV. 29, 44, 46 (1986) (contrasting “applied, relevant Native American history” to more conventional approaches to Native American history, and arguing that applied history goes beyond non-Indian sources and has more contemporary relevance); *see also, e.g.*, Sarah Ludington et al., *Applied Legal History: Demystifying the Doctrine of Odious Debts*, 11 THEORETICAL INQ. L. 247, 248–50 (2010) (applying the history of odious debts to modern discourse). Applied legal history may be seen as a narrower strand of a much larger endeavor, applied history—sometimes called public history. *See* REBECCA CONARD, BENJAMIN SHAMBAUGH AND THE INTELLECTUAL FOUNDATIONS OF PUBLIC HISTORY 148 (2002) (highlighting the emergence of the public-history movement from other traditions, including applied history and commonwealth history); *see also* 1 Benjamin F. Shambaugh, *Introduction to STATE HISTORICAL SOCIETY OF IOWA, APPLIED HISTORY*, at viii–ix (Benjamin F. Shambaugh ed., 1912) (arguing that applied history arose from “the use of the creative power of scientific knowledge in politics and administration”).

16. A critical legal history is one that, among other things, understands that common ways of thinking about law and history are “as culturally and historically contingent as ‘society’ and ‘law’ themselves.” Robert W. Gordon, *Critical Legal Histories*, 36 STAN. L. REV. 57, 101 (1984). Moreover, critical legal history understands that conventional views of legal history are mediated by entrenched narrative story lines infused with ideological purposes. *Id.* at 101–02.

17. MAYERI, *supra* note 1, at 1–2.

18. *Id.* at 10, 11.

for all women by querying certain givens of law and social policy.<sup>19</sup> Chapter 3 details how, just as the strategy of reasoning from race began to bear fruit, the economic recession of the mid-1970s helped to deepen resistance to women's equality and damaged already tenuous coalitions around race and gender.<sup>20</sup> Chapters 4 and 5 address the growing disaggregation of race–sex analogies as legal advocates for women saw such claims as liabilities in an increasingly hostile legal climate.<sup>21</sup> Buoyed by victories premised on reasoning primarily from sex, some feminist strategists embraced norms of formal equality over substantive equality. Chapter 6 describes the late civil rights era of 1977 and beyond when, after a period in which the race–sex analogies used by feminists were sometimes hidden from view, they were once again placed on the main stage of feminist legal theorizing.<sup>22</sup> The conclusion brings the reader back to the beginning by considering how reasoning from race may not be a winning strategy for prevailing in the fight against sexual-orientation discrimination and by summarizing the history of feminist reasoning from race premised on the black civil rights movement.<sup>23</sup> Finally, in a postscript chapter, the author tells us what became of some of the key figures in the book.<sup>24</sup>

### III. The Principal Strengths of *Reasoning from Race*

Much of the power of *Reasoning from Race* lies in its penetrating look at how legal advocates reshaped the relationship between racial inequality and gender inequality, especially during the 1960s and 1970s. *Reasoning from Race* also offers a potent reminder that though race–sex analogies are now considered unremarkable and indeed are sometimes viewed as an almost-required part of sustaining arguments in support of women's rights,<sup>25</sup> this has only been consistently true since the 1960s and 1970s.<sup>26</sup> The book focuses on groups and individuals responsible for the rise of this sort of argument. A key figure was Anna Pauline “Pauli” Murray, a black lawyer, activist, and scholar, whose interest in the women's rights agenda was

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19. See generally *id.* at 41–75.

20. *Id.* at 76–105.

21. *Id.* at 106–85.

22. *Id.* at 186–224.

23. *Id.* at 225–33.

24. See, e.g., *id.* at 234 (discussing the death of Pauli Murray). For a discussion of Pauli Murray's role in women's activism, see *infra* Part III.

25. On the inevitability of reasoning from race, Mayeri quotes legal scholar Janet E. Halley, who stated, “[A]sking the advocates of gay, women's or disabled peoples' rights to give up ‘like race’ similes would be like asking them to write their speeches and briefs without using the word the.” MAYERI, *supra* note 1, at 2 (citing Janet E. Halley, *Gay Rights and Identity Imitation: Issues in the Ethics of Representation*, in *THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE* 115, 120 (David Kairys ed., 3d ed. 1998)).

26. See *id.* at 5–6 (recognizing the varied history of reasoning from race, beginning with its emergence in the 1960s).

spurred by her own experiences with both racism and sexism.<sup>27</sup> Mayeri briefly considers how Murray's own struggles with sexual identity may have been a catalyst for her work in the area of women's rights.<sup>28</sup> Murray's sexual identity, though in no way a major strand of the work, is a riff on the almost jazz-like theme of the relevance of reasoning from race to gay-and-lesbian rights offered at the beginning and end of the book.<sup>29</sup> This is part of the "unfinished business of sex equality" that Mayeri refers to in her introduction:<sup>30</sup> even in light of significant gains for blacks and women, there is still a deep divide as to whether to give full protection to sexual orientation or gender identities and expressions.

Murray receives particular attention from Mayeri; one might argue that she is the heroine of the book. Murray railed against what she called "Jane Crow"—the exclusion of women from certain types of male-identified activities.<sup>31</sup> Jane Crow was, of course, a pun on Jim Crow, the series of laws enacted mostly in the South in the latter half of the nineteenth century that restricted many of the new privileges granted to blacks after the Civil War and enforced a rigid system of racial segregation.<sup>32</sup> In terming discrimination against women *Jane Crow*, Murray harnessed the rhetoric of almost a century of white racist animosity aimed at blacks and the resultant black demoralization and disenfranchisement.

#### IV. Conclusion

*Reasoning from Race* traces the varying agendas of the multiple aspects of feminist reasoning from race—from hesitant recognition of race–sex similarity to acceptance. If there is any shortcoming at all to this book, it is its relatively brief treatment of the black-feminist movement, especially in view of the book's allusion to the common critique of the feminist movement as benefitting only white women. In large measure, *Reasoning from Race* is about how feminist legal theorists incorporated into the "woman question"

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27. *Id.* at 3 (activist background); *id.* at 16 (sexism); *id.* at 23–24 (racism).

28. *Id.* at 16.

29. In jazz, the theme is a musical interlude that sets the tone throughout but often appears only at the beginning and the end. See Avril Dankworth, *Introductory*, in *JAZZ: AN INTRODUCTION TO ITS MUSICAL BASIS* (1968), reprinted in ANDREW CLARK, RIFFS & CHORUSES: A NEW JAZZ ANTHOLOGY 22, 22 (2001) (observing thematic variation in jazz compositions, including that "later choruses often break away from [the theme] entirely" and "become new melodies"). A riff is a short, incisive musical passage that is repeated but with subtle variations on a theme. Albert Murray, *Playing the Blues*, in SIGNIFYIN(G), SANCTIFYIN', & SLAM DUNKING: A READER IN AFRICAN AMERICAN EXPRESSIVE CULTURE 96, 98 (Gena Dagele Caponi ed., 1999).

30. MAYERI, *supra* note 1, at 2.

31. See *id.* at 15 (identifying *Jane Crow* as a label for sexism).

32. JERROLD M. PACKARD, *AMERICAN NIGHTMARE: THE HISTORY OF JIM CROW* vii–viii (2003) (providing an overview of Jim Crow segregation); ROSALIND ROSENBERG, *DIVIDED LIVES: AMERICAN WOMEN IN THE TWENTIETH CENTURY* 169 (rev. ed. 2008) (describing the link between Jim Crow and Jane Crow).

legal theories drawn from the black (formerly, the Negro) question.<sup>33</sup> Although Mayeri gives attention to black women advocates (such as Pauli Murray, Eleanor Holmes Norton, and Patricia Roberts Harris)<sup>34</sup> and to black women plaintiffs (such as Emma DeGraffenreid<sup>35</sup> and Elizabeth Smith<sup>36</sup>) who helped to frame the larger feminist legal program, the black-woman question<sup>37</sup> on its own terms is mostly absent from the book. To put the woman question and the black-woman question in the context of jazz, the woman question is a jazz takeoff of mainstream male-centric social and legal norms, capturing the underlying values and claims as its melody but reinvigorating them and reforming them to make a new musical standard. In like fashion, the black-woman question may be seen as a riff on the feminist jazz song, offering its own twists and turns, but it nonetheless enriches and informs feminism's underlying melody.<sup>38</sup>

Mayeri clearly establishes that racial discrimination as a core analogy has deeply informed sex discrimination jurisprudence. *Reasoning from Race* makes manifest that race and sex remain inexorably linked and that together they help to form the basis of what one commentator has called a

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33. The woman question “focused attention on men and male social roles, asking questions about the nature and function of gender, and whether gender should be a factor in granting or limiting rights such as voting.” Lolita Buckner Inniss, *Toward a Sui Generis View of Black Rights in Canada? Overcoming the Difference—Denial Model of Countering Anti-Black Racism*, 9 BERKELEY J. AFR.-AM. L. & POL’Y 32, 68 (2007). The black question refers to the century-old problem of fitting blacks into the American polity. See generally W.E.B. DUBOIS, *THE STUDY OF THE NEGRO PROBLEMS* (Am. Acad. of Political & Soc. Sci. 1898), available at 568 ANAMAPSS 13 (WL) (identifying considerations concerning the study of problems affecting African-Americans in the late nineteenth century).

34. MAYERI, *supra* note 1, at 47–50.

35. Emma DeGraffenreid was the plaintiff in *DeGraffenreid v. General Motors Assembly Division, St. Louis*, 413 F. Supp. 142 (E.D. Mo. 1976). The District Court, in rejecting a black woman’s claim of both race and sex discrimination under Title VII, found that plaintiffs could not “combine statutory remedies to create a new ‘super-remedy.’” *Id.* at 143.

36. Elizabeth Smith was the plaintiff in *Smith v. City of East Cleveland*, 363 F. Supp 1131 (N.D. Ohio 1973). In *Smith*, the court used 43 U.S.C. § 1983 and the Equal Protection Clause of the Fourteenth Amendment to find that the East Cleveland Police Department’s height and weight requirements disproportionately excluded women and that the written test discriminated against blacks and women. *Id.* at 1144.

37. The black-woman question addresses the multiple forms of oppression often faced by black women, including gender, race, and class discrimination. See Inniss, *supra* note 33, at 68–69 & 69 n.192 (citing JERRY GAFIO WATTS, *AMIRI BARAKA: THE POLITICS AND ART OF A BLACK INTELLECTUAL* 346 (2001)) (exploring the sociological intersections of the different forms of oppression that black women confront in Canada and the United States).

38. See Amy Leigh Wilson, Commentary, *A Unifying Anthem or Path to Degradation?: The Jazz Influence in American Property Law*, 55 ALA. L. REV. 425, 425 (2004) (stating that the “unconventional nature of jazz reflects the modernizing American spirit”). Wilson writes, “The story of jazz is the story of both America’s struggle to accept changing moral, political, and legal views and the clashing resistance against those views.” *Id.* (citing BURTON W. PERETTI, *JAZZ IN AMERICAN CULTURE* 11 (1997)).



“perspectivist aesthetic.”<sup>39</sup> Mayeri succeeds admirably in addressing the diverse but closely allied strands of legal strategizing about feminism premised on race. Her book, in jazz-like fashion, gives color, tone, depth, and rich, legal–historical detail to an account that has at other times been presented as a grayscale grand narrative. Mayeri moreover interweaves in elegant, double-dutch jump rope fashion the sometimes divergent, sometimes convergent, and always related legal–historical strands of race and sex analogies in the search for women’s rights.

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39. Pierre Schlag, Commentary, *The Aesthetics of American Law*, 115 HARV. L. REV. 1047, 1085 (2002) (“The introduction and development of a perspectivist aesthetic in American law owes much to feminist and critical race theory scholarship of the 1980s and 1990s.”).