THE NEW YORKER

THE SEX AMENDMENT

How women got in on the Civil Rights Act.

By Louis Menand

Most Americans who made it past the fourth grade have a pretty good idea who Thurgood Marshall, Rosa Parks, and Martin Luther King, Jr., were. Not many Americans have even heard of Alice Paul, Howard W. Smith, and Martha Griffiths. But they played almost as big a role in the history of women's rights as Marshall and King played in the history of civil rights for African-Americans. They gave women the handle to the door to economic opportunity, and nearly all the gains women have made in that sphere since the nineteen-sixties were made because of what they did.

What's peculiar about their achievement—and this may have something to do with why fourth graders don't learn about them, and why streets and schools all across the land are not named after them—is that it was accomplished in the face of the unequivocal opposition of the liberal establishment. Their story is a classic case of what Hegel called "the cunning of reason": the way apparently random or anomalous events later turn out to be pieces in a larger historical design.

Among those who opposed the efforts of Paul, Smith, and Griffiths were the leaders of the civil-rights movement themselves. They thought that women's-rights advocates were trying to piggyback on the movement for rights for African-Americans, and that the load would kill the piggy. They turned out to be wrong about the second thing, but they were completely right about the first.

The crusade for civil rights for African-Americans dates back well into the nineteenth century, but from the failure of Reconstruction until 1954 it was mostly a crusade in futility. Then, suddenly, it enjoyed two unexpected and spectacular successes: the unanimous Supreme Court decision in Brown v. Board of Education, striking down the doctrine of "separate but equal," and, a year later, the Montgomery bus boycott, triggered by Parks's arrest and ending, almost thirteen months later, with the court-ordered integration of city buses.

These triumphs eventually brought together most, if not quite all, of the disparate advocates for rights for African-Americans. The movement expanded to include an extraordinary range of people: veteran organizers like Roy Wilkins and Bayard Rustin; young activists like James Bevel, Diane Nash, and Bob Moses; religious groups like the National Council of Churches, headed by the millionaire industrialist J. Irwin Miller; and cautious but increasingly committed Justice Department officials like Burke Marshall, John Doar, Nicholas Katzenbach, and Attorney General Robert F. Kennedy.

All these people believed that they were playing with fire. White opposition to civil rights in the seventeen states that had de-jure segregation had the unapologetic support of Southern judges and elected officials, and was backed by official and officially condoned vigilante violence. Some whites elsewhere were sympathetic to the marches, boycotts, and sit-ins run by King's Southern Christian Leadership Conference, and by groups like the Student Non-Violent Coördinating Committee (SNCC). But many thought that, although old customs die hard, they die eventually, and blamed the protesters for inciting the violence. Politically, the movement lived in perpetual fear of a white backlash.

People in the movement also knew that broad-based coalitions of the kind they were part of are rare in politics, and that its unity depended on maintaining publicly the appearance of forward momentum, along with the willingness privately to suppress disagreements in the interest of the common goal. The last thing any of these people wanted was a group with a different agenda crashing the party.

The story of how the movement's signature piece of legislation, the Civil Rights Act of 1964, was written and passed has been told many times, in books like Hugh Davis Graham's "The Civil Rights Era" and Taylor Branch's great trilogy, "America in the King Years." In recognition of the fiftieth anniversary of the day the bill was signed into law by President Lyndon B. Johnson—July 2, 1964—two new books about the legislative process have appeared: Clay Risen's "The Bill of the Century" (Bloomsbury) and Todd Purdum's "An Idea Whose Time Has Come" (Holt).

They are worthy books, timely and intelligent. Risen's is a little more rooted in the archives; Purdum's is a bit lighter on its feet. By good luck or bad, they are also substantively pretty much the same book and make pretty much the same points.

One is that Johnson's part in the story has been overblown. Almost a century after the Emancipation Proclamation, Robert Caro writes in the most recent volume of his Johnson biography, black men and women "still did not enjoy many of the rights which America supposedly guaranteed its citizens. . . . It was Lyndon Johnson who gave them those rights." Risen doesn't quote this, but it's the kind of thing he has in mind when he complains that Johnson's role "has grown to mythic proportions."

Purdum largely agrees, although he thinks that, in getting the bill through Congress, Johnson was "the shotgun behind the door." Politicians were wary of crossing him. Purdum and Risen believe that it was really thanks to the efforts of the unsung and under-sung that the bill came relatively unscathed through a Congress thick with Southern trolls and procedural booby traps. For Risen, the grassroots work of the National Council of Churches was crucial. Purdum thinks that the hero of the hour was a now forgotten Republican congressman from Ohio named William McCulloch.

It's a little bit of a which-part-of-the-elephant problem. Johnson was obsessed with the bill; he made it a priority from almost the day Kennedy was assassinated. If you tell the story from his point of view, his moves look crucial to the outcome. But there were a lot of moving pieces because there was a lot that could go wrong. If you enjoy legislative chess, you will enjoy these books.

The books do make two things clear. The first is how deliberately the 1964 Civil Rights Act was conceived of as the accomplishment of white men. The second is that it really wasn't Johnson's or King's act. It was the Kennedys' act. The Kennedy Administration wrote the bill, and, after John Kennedy died, Robert, who despised Lyndon Johnson and knew he would take the credit, dedicated himself to seeing it through. "He didn't even have the satisfaction of being killed for civil rights. It had to be some silly little Communist," Jackie Kennedy is supposed to have said after her husband's assassination. John Kennedy was not a martyr for civil rights, but his death aided the cause.

"The child of a storm," King called the act. He meant that by 1964 the movement for civil rights was in the streets. The N.A.A.C.P.'s legal strategy of using the equal-protection clause of the Fourteenth Amendment to chip away at segregation laws—Marshall and the N.A.A.C.P. spent eight years clearing a jurisprudential path to Brown—had been eclipsed by a movement based largely on Scripture that involved

putting bodies in the way of billy clubs, fire hoses, and, occasionally, bullets. As King knew, it was the images of the bodies, not the constitutional logic of the case, that got Kennedy's attention.

The rap on Kennedy is that he was a reluctant advocate for civil rights, and the rap is true as far as it goes. Those were the days when the Republican Party was proud to call itself "the Party of Lincoln" and really mean it. In the 1956 Presidential election, in which Dwight Eisenhower clobbered Adlai Stevenson, Eisenhower's African-American support was broad. Stevenson carried just seven states, every one of them with laws mandating racial segregation.

When Kennedy ran for President, four years later, his campaign managers avoided even mentioning the words "civil rights." The most admired African-American in the country, Jackie Robinson, was campaigning for his opponent, Richard Nixon. And Nixon was running to the left of Kennedy on the issue of racial equality: when Nixon's running mate, Henry Cabot Lodge, Jr., suggested that, if he and Nixon were elected, an African-American would be appointed to the Cabinet, Kennedy was quick to call the promise "racism at its worst."

Still, King was in touch with the Kennedy campaign through two Kennedy aides, Louis Martin and Harris Wofford, who were friendly to civil rights. And when King was sentenced, in Atlanta, to four months of hard labor on a state road gang—the original charge was driving with an out-of-state license—Wofford arranged for Kennedy to place a two-minute sympathy call to King's wife, Coretta.

When Robert Kennedy, who was his brother's chief campaign manager, heard about the call, he was livid. "You bomb-throwers have lost the whole campaign," he complained. But he secretly called the judge in Georgia and got King released, thereby transforming a courtesy call into an act of statesmanship. The campaign distributed to black voters the news of Kennedy's call as surreptitiously as possible, and, in one of the closest Presidential elections in American history, Kennedy got about seventy per cent of the African-American vote, much more than Stevenson had got.

Civil-rights leaders naturally felt that Kennedy owed them. Kennedy didn't see it that way. The only allusion to civil rights in his inaugural address—the only mention of domestic issues at all in a speech otherwise entirely devoted to Cold War exhortation—

was the phrase "at home" in a sentence about America's commitment to human rights. The words were inserted at the last minute in response to pleas from Martin and Wofford.

But civil rights was not on the minds of the electorate in 1960. In opinion polls, voters named relations with the Soviet Union as their No. 1 concern. Branch says that in the Kennedy White House civil-rights violations were considered human-interest stories, minor distractions from the business of protecting the Free World.

Alabama changed all that. King's movement had been losing traction during Kennedy's first two years in office. Demonstrations in Albany, Georgia, had led to minor rioting and no concessions from city officials. This was in part because local officials, displaying a degree of wisdom virtually Solomonic by Southern standards in that period, had responded with restraint, and let the protesters wear themselves out.

Officials in Alabama did not get the message. "Segregation now, segregation tomorrow, and segregation forever!" the state's new governor, George Wallace, vowed in his inaugural address, on January 14, 1963. Demonstrations in Birmingham began on April 3rd. On May 3rd, Birmingham police, under the direction of the public-safety commissioner, Eugene (Bull) Connor, trained fire hoses and sicked dogs on young protesters.

The pictures were seen around the world, and Kennedy began to understand that racial oppression might not be so incidental to international politics. The Administration stopped treating civil-rights violations as back-page stories. On June 11th in Tuscaloosa, Wallace, in a face-to-face standoff with Katzenbach, representing the Justice Department, barred the entrance of two black students, Vivian Malone and James Hood, to the University of Alabama.

In fact, the confrontation—Wallace's famous "stand in the schoolhouse door"—was staged. By prior agreement, the students were quietly admitted to the university through another building. This was consistent with the Administration's policy of defusing tensions by making back-channel deals with Southern judges and officials. This time, Kennedy seems to have realized that allowing men like Wallace to be seen resisting an order of the federal government was no way to win a war. He decided it

was time to take ownership of the issue, and that evening he delivered a television address on civil rights.

The Administration had little time to produce a speech, and Kennedy was obliged to ad-lib the last four minutes:

> We have a right to expect that the Negro community will be responsible, will uphold the law, but they have a right to expect that the law will be fair, that the Constitution will be color blind, as Justice Harlan said at the turn of the century. This is what we are talking about and this is a matter which concerns this country and what it stands for, and in meeting it I ask the support of all our citizens.

Purdum says that, with his speech, "Kennedy had done what no other American president, not even Abraham Lincoln, had ever done: he had committed his country to assuring full equality for black Americans in the eyes of the law, and had declared that doing so was a moral imperative."

This is not quite true. Harry Truman had said much the same thing in a speech to the N.A.A.C.P. in 1947. But Truman was whistling in the wind. He was able to end racial segregation in the armed forces by executive order, which he did, in 1948, but there was no chance that his Congress would pass anti-lynching or anti-segregation laws.

Kennedy's televised address put civil rights in the public eye. And events kept it there. In Jackson that night, the N.A.A.C.P. field secretary for Mississippi, Medgar Evers, was shot and killed by a Klansman named Byron De La Beckwith. Evers's wife and his three little children, who had stayed up to watch Kennedy's speech, saw him die. A week later, on June 19th, Evers was buried in Arlington National Cemetery. The same day, the White House sent a civil-rights bill to Congress.

The bill faced three problems: Democrats, Republicans, and African-Americans. The "we" in Kennedy's television address clearly referred to white Americans. That use of the collective pronoun was characteristic of Johnson's civil-rights rhetoric, too. It was a way of casting the issue as a commitment by the American government to come to the aid of an oppressed people, in much the way that the United States might intervene in a foreign war of aggression. It was important to Kennedy that he not be perceived as dancing to a tune played by King and other movement figures. Kennedy was not part of the movement. He was the leader of the Free World.

Kennedy was initially opposed to the March on Washington, on August 28th, although, after assurances, he relented. He worried that a demonstration would hurt the bill's chances in Congress, whose members might resent the display of public pressure, and he didn't want to be associated with whatever extreme views might be expressed. Some of the remarks that John Lewis, of SNCC, had prepared were censored as inflammatory, and Risen says that a Justice Department official stood by with a 78-r.p.m. record of Mahalia Jackson singing "He's Got the Whole World in His Hands" hooked up to the sound system, to be switched on if any of the speakers strayed from their approved scripts.

The Kennedys were impressed by King's famous speech. But they continued to keep their relations with King, as much as possible, off camera. As did Johnson when he was President. After the bill passed, King was one of two hundred guests at the Presidential signing, on July 2nd. Two days later, when Johnson heard that his press secretary, George Reedy, had informed reporters that the President was "in touch with Martin Luther King continuously," he demanded to know why Reedy had said such a thing. Reedy pointed out that the press had, after all, seen King at the signing. "I'm sorry he was there," Johnson said. "It was very unfortunate he was there." The Civil Rights Act was an act for, not by, African-Americans.

Republicans presented a different peril. The Republicans calculated that, if the bill passed and African-Americans became a force at the ballot box, their party stood to benefit. In their wildest dreams, they imagined white Southerners waking up to the thought that a pro-business, budget-cutting party like the Republican Party was their kind of party, and envisioned Republicans stealing the South away from the Democrats forever.

Some Republicans in Congress therefore decided to outflank the Administration by proposing maximalist civil-rights legislation of their own. They were playing with house money: they didn't need their bills to pass; they only needed African-Americans to see that it was Democrats who diluted or killed the bills. As a result, by the middle of June, 1963, there were more than a hundred civil-rights bills before the House of Representatives, many of them sponsored by Republicans.

Two Republicans were key players in keeping the Administration's bill from being butchered in the legislative process. One was McCulloch, the ranking minority member of the House Judiciary Committee and a conservative lawmaker. Purdum points out that he "supported school prayer and gun rights, opposed foreign aid and federal involvement in education." African-Americans constituted less than three per cent of the electorate in his district. But he had been a consistent supporter of civil rights.

The liberal approach to civil-rights legislation was to have the House pass a bill overloaded with strong provisions, on the theory that those could then be traded away for support in the Senate. But the bills always either died or emerged toothless. That is what had happened to the 1957 Civil Rights Act, pruned to the point of ineffectuality by Johnson himself, then the Senate majority leader. McCulloch had no respect for this stratagem, and he offered the Justice Department a deal. If the Democrats presented the strongest bill they could hope to see pass, and resisted attempts to load it up with trade bait, he would support the legislation and keep Republicans who followed his lead in line.

The other Republican principal was Everett Dirksen, of Illinois, the Senate minority leader, a word machine for whom the word "oleaginous" might have been coined. Risen recounts a political joke of the era in which a reporter says to Dirksen, "In a thousand words or less, are you verbose?"

The Administration figured that, if the bill passed, Dirksen would want a large share of the credit. Dirksen had reservations about Title II, which outlawed segregation in public accommodations (hotels, restaurants, theatres, and so on), and he was clearly planning to use those reservations as a bargaining chip. The White House and the Justice Department decided that Dirksen should be kept in the loop, in the expectation

that if the train looked like it was leaving the station he would jump on board. They did, and so did he.

Last, but not least annoying, there were the Democrats. As they had in every Congress since 1932 but two (1947-49 and 1953-55), Democrats had a majority in both houses. But many were from the South, and virtually every legislative accomplishment since 1932, including New Deal legislation under Franklin Roosevelt, had required a compromise with the South's insistence on maintaining Jim Crow and the regime of white supremacy.

It wasn't just that the Southerners could be counted on to oppose the bill in its entirety, which they did. It was also that key committees were chaired by Southerners, providing them with many opportunities to delay or sabotage the legislation. The chair of the Senate Judiciary Committee was James Eastland, of Mississippi, a man who called the bill a "complete blueprint for a totalitarian state." In the House, the major player was the Democratic chairman of the Rules Committee, Howard Smith, of Virginia, a legendary wizard of procedure. "The House substitute for the Dixie filibuster," said the *Times*, "is Howard Smith."

Smith was eighty. His name was attached to two notoriously illiberal Acts of Congress: the Alien Registration Act of 1940 (known as the Smith Act), used to prosecute resident aliens suspected of subversiveness, and the War Labor Disputes Act of 1943 (the Smith-Connally Act), which curbed the power of labor unions.

The Southerners' plan was to delay a vote, in the hope that violent protests would lead to a white backlash. Smith promised to drag out hearings on the bill. But in January, 1964, he was threatened with a discharge petition—a measure, rarely used, to bring legislation out of committee against the wishes of the chairman—into releasing it for debate. It was during that debate that he introduced, on February 8, 1964, the sex amendment.

The amendment was a one-word addition, "sex," to Title VII of the bill, which prohibited employers from discriminating on the basis of "race, color, religion, or national origin." Opponents of Smith's amendment, led by Emanuel Celler, of Brooklyn, the seventy-five-year-old chairman of the House Judiciary Committee and the bill's floor leader, regarded it as either a prank intended to expose the limits of

liberal egalitarianism or a poison pill that would make the bill more difficult to pass in the House, which had twelve female members, and impossible to pass in the Senate, which had two.

Opponents of civil-rights legislation had offered the sex amendment before. In 1950, Congress debated the resurrection of the Fair Employment Practices Committee, which had been created by Roosevelt to ban discrimination by government contractors, but which, after the war, under the leadership of Smith and Richard Russell, of Georgia, Congress had shut down. A Florida congressman, Dwight Rogers, proposed adding "sex" to the list of categories to be protected from discrimination. The House adopted the amendment, and the bill died in the Senate.

If Smith's amendment was a prank, it backfired. The House accepted it by a "teller" vote (that is, a head count) of 168 to 133. Most of the yeas were reported to have been Republicans and Southern Democrats. Johnson and Robert Kennedy were firm about minimizing changes to the bill after it reached the Senate, and although there were some alterations, the ban on discrimination by gender stayed in. On July 2nd, it became law.

For twenty years, the belief that the sex provision was a monkey wrench that unintentionally became part of the machine was the conventional wisdom about Title VII. But when scholars—including Michael Gold, Carl Brauer, Cynthia Deitch, Jo Freeman, and Robert Bird—dug into the archives they not only learned that the real story of the sex amendment was quite different; they essentially uncovered an alternative history of women's rights.

The person behind the sex amendment was the seventy-nine-year-old leader of a tiny fringe organization called the National Woman's Party. Alice Paul was a major figure in the American suffragist movement, back at the time of the First World War. Paul was a Quaker. She attended Swarthmore and then the University of Pennsylvania, where she earned the first of many advanced degrees. In 1907, she went to study in Britain and got caught up in the suffragist movement, led by Emmeline Pankhurst. It changed her life.

Pankhurst ranks with Gandhi and King as one of the great practitioners of what King and others called "direct action." She had suffragists break windows, chain themselves

to the gates of Buckingham Palace, disrupt meetings. Demonstrators were jailed and went on hunger strikes. Paul herself was arrested several times, and when she returned to the United States she energized the American suffragist movement. She shifted its focus to securing a constitutional amendment, and protesters started chaining themselves to the fence in front of the White House and burning President Wilson's speeches at public rallies. Paul was described as the Lenin of suffragism.

By 1918, Wilson had had enough. He proclaimed that giving women the right to vote was "vital to the winning of the war," and Congress passed the Nineteenth Amendment. Ratification was completed in 1920. A new, carefully researched biography by J. D. Zahniser and Amelia R. Fry, "Alice Paul: Claiming Power" (Oxford), ends her story there. But Paul lived for another fifty-seven years, and not in vain.

The women's-suffrage movement had been led by an organization called the National American Woman Suffrage Association (NAWSA). Paul thought that its approach was insufficiently militant (NAWSA thought that Paul was a maniac), and in 1916 she formed the much smaller National Woman's Party (N.W.P.). After the Nineteenth Amendment was ratified, Paul embarked on a new crusade: to pass an Equal Rights Amendment.

The N.W.P. became a lobby. It sent out letters promoting the election and appointment of sympathetic candidates and judges, and wrote annually to members of Congress to ask them to introduce an E.R.A. bill. Every year, starting in 1923, an equal-rights bill was brought before Congress.

The E.R.A. was opposed by virtually every other women's organization; they believed that it was reactionary. One of the great achievements of the Progressive Era had been the passage of laws that protected women in the workplace. In 1908, Louis Brandeis's brief on behalf of the state of Oregon had helped persuade the Supreme Court to abandon the constitutionally dubious theory of "liberty of contract," and uphold a law limiting the number of hours that women could work. An Equal Rights Amendment would make such laws unconstitutionally discriminatory.

Who might be in favor of such an amendment? Businessmen might be. So the N.W.P.'s best customers on Capitol Hill tended to be anti-union conservatives—for example, Howard Smith. Virginia textile mills employed large numbers of women, and

Smith was interested in any legislation that might benefit mill owners. Smith and Paul were also friends, and Smith had been a supporter of the E.R.A. since 1945.

African-American groups were onto the N.W.P.'s game. When civil-rights legislation was before Congress in 1956, for example, Paul persuaded a California congressman named Gordon McDonough to introduce a sex amendment. The N.A.A.C.P. got wind of it, and its chief Washington lobbyist, Clarence Mitchell, called McDonough's wife to warn her. She took him to mean that if the Congressman didn't withdraw his amendment the N.A.A.C.P would see that he did not win reëlection. McDonough stuck with the amendment.

Tension between advocates of women's rights and advocates of rights for African-Americans goes back to the days of the abolitionists, and it continued after the Civil War. The view of the African-Americans in these disputes was that blacks came first. They argued that the privileges of being white, minus the disadvantages of being a woman, left white women far better off than black Americans. The view of the women was that a law protecting all African-Americans from discrimination as a class would leave one group legally unprotected: white women.

There was no love lost between the groups. In 1869, after listening to advocates for women's suffrage speak at the annual meeting of the American Equal Rights Association, Frederick Douglass rose to object. "I must say that I do not see how any one can pretend that there is the same urgency in giving the ballot to woman as to the negro," he said.

> When women, because they are women, are hunted down through the cities of New York and New Orleans; when they are dragged from their houses and hung upon lamp-posts; when their children are torn from their arms, and their brains dashed out upon the pavement; when they are objects of insult and outrage at every turn; when they are in danger of having their homes burnt down over their

> heads; when their children are not allowed to enter schools; then they will have an urgency to obtain the ballot equal to our own.

The great reformer Susan B. Anthony saw fit to reply as follows:

> If you will not give the whole loaf of suffrage to the entire people, give it to the most intelligent first. If intelligence, justice, and morality are to have precedence in the Government, let the question of woman be brought up first and that of the negro last.

The long-standing practice of keeping women's rights distinct from racial issues may have been one reason that there were almost no women on the three-hour program at the March on Washington.

By 1963, the N.W.P. was an organization of mostly wealthy white women, many of them elderly veterans of the suffrage movement. The chair, Emma Guffey Miller, was eighty-nine. The Civil Rights Bill presented it with a huge target of opportunity. Paul called on two N.W.P. members from Virginia, Nina Avery and Butler Franklin, to begin lobbying. Both wrote to Smith in December, 1963, asking him to add "sex" to the bill.

In January, Avery wrote to another Virginia congressman, J. Vaughan Gary. She explained that she disliked the bill itself, though, and hoped it would not pass anytime soon:

> Thank God for the Members of Congress who are from the South and for those Members from the East, North and West who will use their brains and energies to prevent a mongrel race in the United States and who will fight

> for the rights of white citizens in order that discriminations against them may be stopped.

The N.W.P.'s lobbying was no secret. Katzenbach called the Oregon congresswoman Edith Green and told her that if a sex amendment was proposed she needed to speak against it. She did, but she was too late. For Martha Griffiths, a congresswoman from Michigan, had raised the stakes.

Smith made his motion in a jocular spirit. He read a letter from a constituent who asked him to offer an additional amendment addressing the demographic imbalance between men and women—a "grave injustice" that abrogated the right of every woman to have a husband of her own. Emanuel Celler replied that he knew all about equality for women. He had been married for forty-nine years, he said, and he usually had the last two words: "Yes, dear." The jokes continued until Griffiths got the floor. "If there had been any necessity to have pointed out that women were a second-class sex," she said, "the laughter would have proved it."

Griffiths had anticipated this moment, and she was prepared. She had been in Congress since 1955; she had also been a member of the N.W.P. She answered Celler with the N.W.P. line. If you pass this bill, she said, "you are going to have white men in one bracket, you are going to try to take colored men and colored women and give them equal employment rights, and down at the bottom of the list is going to be a white woman with no rights at all." The law would protect a black woman from employment discrimination on account of race, but not a white woman. Other congresswomen rose to join Griffiths.

Liberals counterattacked. New York's John Lindsay spoke against the amendment. James Roosevelt said that his mother, Eleanor, would have been opposed to it. (Eleanor Roosevelt had indeed been a lifelong opponent of the E.R.A.) Letters were read from the Department of Labor and the American Association of University Women opposing the amendment. But the House accepted it. When the vote was announced, two women in the visitors' gallery shouted, "We've won!" and "We've made it!" They were removed by guards.

Before the bill reached the Senate, Emma Miller wrote to a Mississippi member of the N.W.P., explaining that "you and I as white Christian women could be discriminated against," and asking her to write to Senator Eastland on behalf of the sex provision. But the provision provoked little substantive debate in the Senate; Dirksen eventually dropped his opposition to it, in order, he explained, "to avoid the wrath of the women." Three months later, after surviving the longest debate in Senate history, capped by a fourteen-hour speech by West Virginia Senator Robert Byrd, the Civil Rights Bill became law.

On the day the bill went to the President, July 2nd, Smith pronounced his valediction in the House. "You have sowed the wind," he told his colleagues. "Now an oppressed people are to reap the whirlwind."

> Already the second invasion of carpetbaggers of the Southland has begun. Hordes of beatniks, misfits, and agitators from the North, with the admitted aid of the Communists, are streaming into the Southland on mischief bent, backed and defended by other hordes of Federal marshals, Federal agents, and Federal power.

In the event, compliance with Title II was relatively painless. In Georgia, Lester Maddox chased African-Americans out of his fried-chicken restaurant, waving a pistol. But on December 14, 1964, in Heart of Atlanta Motel v. U.S., a suit filed within hours of Johnson's signing, the Supreme Court unanimously rejected a challenge to Title II's constitutionality. After that, there were efforts to evade the law (by turning restaurants into private clubs, which were exempt, for example), but it was rarely defied.

Title VII was more complicated. To oversee it, the act created the Equal Employment Opportunity Commission (E.E.O.C.), but gave it no enforcement powers. The commission was supposed to induce compliance by persuasion and mediation. It came into existence on July 2, 1965, after employers had had a year to adapt to the new law.

As chair, Johnson appointed Franklin Roosevelt, Jr. "What about sex?" Roosevelt was asked at his first press conference. "Don't get me started," he said. "I'm all for it."

Roosevelt maintained that the ban on sex discrimination was an inadvertent add-on, not to be interpreted as strictly as the ban on racial discrimination. The commission's second executive director, Herman Edelsberg, who took office that fall, referred to the sex provision as a "fluke" that was "conceived out of wedlock." It became known in Washington as the Bunny Law, after a hypothetical case in which a man is turned down for a job as a bunny in a Playboy Club. But, of 8,854 complaints filed in the E.E.O.C.'s first year, almost a third charged gender discrimination. To process them, the commission hired the lawyer wife of a staff member. She was a temp.

Two cases in particular tied the commissioners in knots. One was newspapers' practice of listing classified help-wanted ads by gender; the other was airlines' practice of laying off female flight attendants—stewardesses—after they married or reached a certain age. The commission wondered whether, in the case of flight attendants, gender might qualify as a "bona fide occupational qualification"—known as a B.F.O.Q.

In June, 1966, during a conference of state Commissions on the Status of Women, Administration officials made it clear that the E.E.O.C. would maintain a soft approach to gender discrimination. That month, Griffiths delivered a scathing address in the House. "The whole attitude of the E.E.O.C. toward discrimination based on sex is specious, negative, and arrogant," she said. No one would think that the law permitted a newspaper to list help-wanted ads under "white" and "colored." Why was it O.K. to list them under "male" and "female"?

As for B.F.O.Q.s, "Can any Equal Employment Opportunity Commissioner seriously believe that the business of the airlines would suffer if all of them hired flight attendants on the basis of their individual qualifications and ability?" Griffiths asked. "Do they really think for one moment that men or women make plane trips for the sole purpose of having a female—or male—flight attendant serve them lunch or give them an aspirin?" In an earlier congressional hearing, she had made the point with less nuance. "If you are trying to run a whorehouse in the sky," she said, "get a license."

Copies of Griffiths's speech were circulated among participants at the conference. For many of them, the moment called for an organization that would do for women what

the N.A.A.C.P. did for African-Americans. And that summer the National Organization for Women was born, with Betty Friedan as its first president. The first thing NOW did was to seek a writ of mandamus against the E.E.O.C., compelling it to perform its legal function. For Title VII was the only statutory weapon the women's movement had.

Changes were swift. In February, 1968, the E.E.O.C. denied flight attendants B.F.O.Q. status. (The real reason airlines laid off the attendants was that the practice prevented the women from gaining seniority, and kept wages low.) In August, it determined that listing help-wanted ads by gender was unlawful. In November, a federal district court ruled that Title VII made state women's labor-protection laws unconstitutional. Labor-protection laws did not disappear, as many liberals had feared; they were now written to cover both sexes.

Title VII enabled a limited rapprochement between feminists and civil-rights organizations. The first Title VII gender-discrimination case to reach the Supreme Court was Phillips v. Martin Marietta, in 1971. In a unanimous decision, the Court held that Martin Marietta's policy of not hiring women with children of preschool age violated Title VII. The case was brought by a white woman, Ida Phillips, who was represented by the Legal Defense and Education Fund of the N.A.A.C.P.

And in 1970, at the urging of, among others, Emma Miller, now ninety-four, Martha Griffiths used a discharge petition to extract Equal Rights Amendment legislation from Celler's Judiciary Committee. Celler complained that "neither the National Woman's Party nor the delightful, delectable, and dedicated gentlelady from Michigan can change nature," but the amendment passed both houses by the required two-thirds majorities and went to the states for ratification in 1972. The E.R.A. had the enthusiastic support of liberal politicians and rights groups. No one mentioned Alice Paul, but she was still alive.

Howard Smith lost in the 1966 midterm elections, but Russell and Eastland were both reëlected. The same year, Lester Maddox was elected governor of Georgia. In 1968, after Johnson withdrew from the race and King and Robert Kennedy were killed, George Wallace ran for President on the American Independent Party ticket and carried five states. In 1972, Emanuel Celler lost the Democratic primary to Elizabeth Holtzman, who became one of seven new women, including three African-Americans,

to join the House. Everett Dirksen died in 1969. In 2005, his seat was taken by Barack Obama. ♦

Louis Menand, a staff writer since 2001, was awarded the 2016 National Humanities Medal. Read more »