

## Filling in the (Gender) Gaps

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A Response to Patricia Seith, *Congressional Power to Effect Sex Equality*,  
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In the early 1980s, feminists found themselves at a crossroads. Their advocacy in the preceding decade brought about significant reforms to women's legal status through legislation, litigation, administrative rulemaking, and public activism.<sup>1</sup> In spite of these advances, the Equal Rights Amendment (ERA) failed to garner the required three-fourths of ratifying states by its June, 1982 deadline. Though the demise of this symbolic centerpiece of feminists' legal agenda was certainly significant, legal historians and constitutional theorists subsequently came to view the ratification failure as largely beside the point. Reva Siegel later argued that litigation under the equal protection clause of the Fourteenth Amendment, federal legislation, and state legal reforms comprised a "de facto ERA."<sup>2</sup>

Feminists' assessments at the time were mixed. Many who had worked tirelessly for the ERA expressed profound disillusionment as they mourned its defeat.<sup>3</sup> Others were more sanguine about the setback, perhaps recognizing how much they had achieved through means other than the ERA, including the galvanizing process of constitutional amendment advocacy itself.<sup>4</sup> Some relished the opportunity to pursue other goals

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<sup>1</sup> I have written in detail about feminist legal advocacy between 1960 and the early 1980s in SERENA MAYERI, *REASONING FROM RACE: FEMINISM, LAW, AND THE CIVIL RIGHTS REVOLUTION* (2011) [hereinafter *MAYERI, REASONING FROM RACE*].

<sup>2</sup> See generally Reva B. Siegel, *Constitutional Culture, Social Movement Conflict and Constitutional Change: The Case of the de facto ERA*, 94 CAL. L. REV. 1323 (2006) (describing how social movement conflict over the ERA helped to produce sex equality jurisprudence under the Fourteenth Amendment).

<sup>3</sup> See, e.g., JANE J. MANSBRIDGE, *WHY WE LOST THE ERA* x (1986).

<sup>4</sup> For a sampling of reactions as reported in the press, see, for example, Michel McQueen, *ERA's Triumph: Activists, Gaining Strength in Defeat, Continue the Fight*, WASH. POST, July 7, 1982, at VA1; Dorothy Collin, *Tears and cheers for the end of an ERA*, CHI. TRIB., July 1, 1982, at A1. Scholarly post-mortems in the 1980s also recognized the gains

without worrying that their promotion of more expansive conceptions of equality would doom the ERA.<sup>5</sup> Still others, no doubt, saw the ERA's failure as the least of their problems. Ronald Reagan's election in 1980 jeopardized the hard-won gains of feminists and civil rights advocates in anti-discrimination enforcement, reproductive rights, and funding for social programs.<sup>6</sup>

Disappointing though it was, the failure of the ERA freed feminists to rethink their legal and constitutional aspirations.<sup>7</sup> Hearings held after the reintroduction of the ERA in 1983 (ERA II) provide a glimpse of feminists' constitutional agenda at this juncture.<sup>8</sup> The debate over ERA II revealed that, having eliminated most (though not all) sex-based classifications from American law, feminists now sought not merely "equality in theory" but "equality in fact."<sup>9</sup> Among other principles, they endorsed a disparate impact theory that would invalidate not only facially discriminatory laws, but also those that disproportionately burdened women and perpetuated past discrimination against them.<sup>10</sup>

When ERA II also failed, and the Supreme Court became less hospitable to equal rights claims, leading feminists urged a shift away from a primary focus on federal litigation and constitutional amendment advocacy. Accomplished litigators such as Ruth Bader Ginsburg and Wendy Webster Williams argued that legislation was the most promising avenue to achieve further change.<sup>11</sup> But, as it happened, the next major

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feminists made during, and through, the ERA struggle. *See, e.g.*, MANSBRIDGE, *supra* note 3, at 45–59; MARY FRANCES BERRY, *WHY ERA FAILED* 86–100 (1986).

<sup>5</sup> *See, e.g.*, Catharine A. MacKinnon, *Excerpts from MacKinnon/Schlafly Debate*, 1 *LAW & INEQ.* 341, 341 (1983); Catharine A. MacKinnon, *Unthinking ERA Thinking*, 54 *U. CHI. L. REV.* 759, 764 (1987) (reviewing MANSBRIDGE, *supra* note 3) (“[T]he continual revisions of the public image of what the ERA ‘would do,’ equivocations designed to win over the opposition by reassurance, *did* effectively vitiate the potentially explosive organizing effect the ERA might have had on those who had the world to gain from actual sex equality.”)

<sup>6</sup> On feminist legal advocacy during the Reagan era, see MAYERI, *REASONING FROM RACE*, *supra* note 1, at ch. 6; *see also* Serena Mayeri, *A New E.R.A. or a New Era? Amendment Advocacy and the Reconstitution of Feminism*, 103 *NW. U. L. REV.* 1223, 1230–31 (2009) [hereinafter Mayeri, *New E.R.A.*].

<sup>7</sup> The Reagan Revolution's silver linings for progressive advocates included its galvanizing impact on organizations that united in opposition to the conservative retrenchment. *See* MAYERI, *REASONING FROM RACE*, *supra* note 1, at 187–96.

<sup>8</sup> *See id.* at 214–20; *see also generally* Mayeri, *New E.R.A.*, *supra* note 6.

<sup>9</sup> Memorandum from Phyllis Segal, Legal Director, NOW Legal Defense and Education Fund, to ERA Legislative History Project (Mar. 21, 1983) (on file with Harvard University Schlesinger Library, Catherine East Papers, Box 23, Folder 29), *quoted in* Mayeri, *New E.R.A.*, *supra* note 6, at 1264.

<sup>10</sup> For an in depth discussion of this point, see Mayeri, *New E.R.A.*, *supra* note 6, at 1243–70.

<sup>11</sup> Mayeri, *New E.R.A.*, *supra* note 6, at 1297–98.

legislative landmarks—the Civil Rights Act of 1991, the Family and Medical Leave Act of 1993, and the Violence Against Women Act of 1994—were still years away.

What did feminists and their congressional allies do in the meantime, during the dark days of the Reagan-Bush era? Patricia Seith's groundbreaking article, *Congressional Power to Effect Sex Equality*, and the painstaking research on which it is based, begin to answer that question.<sup>12</sup>

The early 1980s was not the first time that members of Congress had proposed legislation designed to enact the ERA's sex equality mandate, as Seith notes.<sup>13</sup> But while such efforts enjoyed significant support among lawmakers, feminist advocates—particularly ERA proponents—largely resisted statutory substitutes for a constitutional amendment.<sup>14</sup> For one thing, unlike an amendment, statutes could easily be repealed. Additionally, the statutes often referred in some way to the Fourteenth Amendment's equal protection guarantee, which risked either incorporating the very limitations of equal protection jurisprudence that feminists sought to transcend, or extending beyond Congress's power, under section 5 of the Fourteenth Amendment, to enforce the equal protection principle. Though they had other concerns as well, feminists mostly worried that a statutory substitute would compete with, and thereby undermine, the ERA.<sup>15</sup>

The legislation that comprised the Economic Equity Act, however, differed from these earlier stand-ins for the ERA. Seith emphasizes that, rather than stating a broad, general equality principle, the Equity Act was an omnibus bill, evolving in its substantive content but always composed of specific provisions designed to rectify the disparate impact on women of facially neutral laws.<sup>16</sup> Methodologically, this approach was closer to what the ERA's old progressive foes, the liberal defenders of protective labor legislation, had advocated in the days when the amendment enjoyed support from the likes of South Carolina segregationist Senator Strom Thurmond.<sup>17</sup>

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<sup>12</sup> Patricia A. Seith, *Congressional Power to Effect Sex Equality*, 36 HARV. J. L. & GENDER 1 (2013).

<sup>13</sup> *Id.* at 12–13.

<sup>14</sup> One such statutory substitute was proposed shortly after the ERA's ratification failure in 1982, by Washington Senator Slade Gorton, a moderate Republican, in consultation with Stanford Law Professor Gerald Gunther. See Mayeri, *New E.R.A.*, *supra* note 6, at 1280–87.

<sup>15</sup> On the politics of ERA substitutes in the early 1970s, see Serena Mayeri, *Constitutional Choices: Legal Feminism and the Historical Dynamics of Change*, 92 CAL. L. REV. 755, 808–13 (2004).

<sup>16</sup> Seith, *supra* note 12, at 30–31.

<sup>17</sup> On the evolving partisan political context surrounding the ERA between its congressional passage in the early 1970s and its reintroduction in the early 1980s, see Mayeri, *New E.R.A.*, *supra* note 6, at 1230–31.

Indeed, historian Dorothy Sue Cobble once remarked that what feminists resolved to pursue after the ERA's failure looked a lot like what her "other women's movement"—labor feminists of the pre-1970s era—hoped to do in the period before feminists coalesced around the ERA.<sup>18</sup> In the parlance of the day, these earlier advocates supported "specific bills for specific ills" and substantive rather than formal equality.<sup>19</sup> Similarly, as Seith's research reveals, the Equity Act's supporters targeted particular manifestations of inequality rather than seeking a general declaration of equal rights.<sup>20</sup>

"Specific bills for specific ills" allowed advocates to avoid having to explain and defend an unwieldy abstraction in all of its ambiguity and potentially radical implications. In the debate over ERA II, feminists searched (somewhat in vain) for a limiting principle to the disparate impact theory as they faced relentless questions from opponents who demanded to know exactly which laws would fall and what remedies would be required if discriminatory intent ceased to be the touchstone of unlawful discrimination. The Equity Act approach—enacting piecemeal legislation to rectify disparate impact—challenged feminists to specify exactly how they would change Social Security to be fairer to divorced women and to dual-earner households.<sup>21</sup> However, it did not force them to determine, for example, whether an ERA would render welfare budget cuts unconstitutional because they had a disproportionate impact on women. Nor were feminists compelled to answer whether a preference for awarding custody to a child's primary caretaker would be unlawful because it differentially affected fathers and mothers in ways that some believed harmful to women, to men, or to both.<sup>22</sup>

There are a number of ways to interpret the lawmaking, and the attempts at lawmaking, that the Equity Act represents. First, it is possible to see the Equity Act's provisions as an effort by legislators (and possibly feminist advocates) to bridge the gaps left by the *de facto* ERA. Filling many of these lacunae—such as abortion funding, gay rights, military equality, and affirmative action—was a political non-starter in the 1980s.

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<sup>18</sup> Dorothy Sue Cobble, Excerpts from Comments at Penn Law Conference 1 (Feb. 23, 2007) (unpublished manuscript) (on file with author). *See generally* DOROTHY SUE COBBLE, *THE OTHER WOMEN'S MOVEMENT: WORKPLACE JUSTICE AND SOCIAL RIGHTS IN MODERN AMERICA* (2004) (tracing the history of labor feminism in the post-war United States).

<sup>19</sup> *See, e.g.*, NATIONAL LEAGUE OF WOMEN VOTERS, *SPECIFIC BILLS FOR SPECIFIC ILLS* (1924) (arguing that advocates for women should pursue legislation addressing specific discriminations against women rather than an ERA).

<sup>20</sup> Seith, *supra* note 12, at 30–31.

<sup>21</sup> *Id.* at 31, 34.

<sup>22</sup> On the difficulties ERA II proponents faced in elaborating the disparate impact principle, see Mayeri, *New E.R.A.*, *supra* note 6, at 1243–70.

Enacting a general disparate impact principle through constitutional amendment raised thorny questions about how far such a principle could extend without invalidating every piece of legislation that disproportionately affected women. However, the disparate impact of at least some facially neutral laws could be combated without the sex-based classifications that made affirmative action divisive, the radical changes portended by guaranteeing full equality to women in the military, or the controversial extension of public funding to reproductive health services, for example. Expanding women's access to credit,<sup>23</sup> adjusting the tax code,<sup>24</sup> extending Social Security benefits,<sup>25</sup> helping women start and sustain small businesses,<sup>26</sup> and other Equity Act provisions augmented the broad prohibitions on discrimination that characterized many 1970s legislative efforts without opening the Pandora's Box of advocating for an abstract sex equality guarantee.

We might therefore view the Equity Act less as a gap-filling measure than as an extension of the "de facto ERA." The substance of the de facto ERA, Siegel argues, emerged from an evolving dialogue between proponents and opponents of the amendment, with both sides incorporating some of their adversaries' premises.<sup>27</sup> Debate over the Equity Act did not, for the most part, unfold in public, which was a significant difference from the ERA.<sup>28</sup> But, as a product of legislative compromise, it bore the imprint of both feminists and anti-feminists. For instance, the early emphasis on assisting displaced homemakers was responsive both to feminists who had long labored for the recognition of homemakers' contributions to family assets at divorce, and to ERA opponents who warned that legal equality would devastate homemakers by further eroding husbands' duty of support.<sup>29</sup> With their promises of helping women and children while protecting the public fisc and holding men financially responsible for children while also reducing the welfare rolls, child support enforcement efforts attracted adherents across the political spectrum.<sup>30</sup> The Equity Act's growing focus on moving women into the public sphere of work complemented feminists' penchant for equal employment opportunity as

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<sup>23</sup> Seith, *supra* note 12, at 7, 44.

<sup>24</sup> *Id.* at 72, 73.

<sup>25</sup> *Id.* at 22, 31, 34, 49, 62–63.

<sup>26</sup> *Id.* at 43, 47, 75.

<sup>27</sup> *See generally* Siegel, *supra* note 2.

<sup>28</sup> Seith, *supra* note 12, at 24–26.

<sup>29</sup> *Id.* at 26–27.

<sup>30</sup> *See generally, e.g.,* JOCELYN ELISE CROWLEY, *THE POLITICS OF CHILD SUPPORT IN AMERICA* (2003) (describing the work of various "policy entrepreneurs," including women leaders, conservatives, and social workers, in securing child support enforcement compliance).

well as conservatives' desire to require that public assistance recipients (though not married middle- and upper-class mothers) work outside the home.<sup>31</sup>

Another, more pessimistic way to view the Equity Act is as the lowest common denominator of what Democrats and moderate Republicans laboring in the shadow of a conservative Administration could plausibly support. The terms of the ERA II debate suggests that 1980s legislation promising equality for women may have functioned as a partisan political weapon as well as a sincere attempt to achieve social change.<sup>32</sup> For some lawmakers, the Equity Act may have been a convenient response to the "gender gap"<sup>33</sup> that emerged after the 1980 election—a relatively easy way for Democrats and moderate Republicans to signal their disagreement with Reaganomics without pursuing the more controversial elements of the sex equality feminists sought. On the other hand, for liberals eager to exploit the gender gap and to use women's rights legislation to embarrass the Administration and the GOP, the bipartisan nature of many successful Equity Act provisions might have cut against attempts to paint Republicans as anti-women.

The relationship between the Equity Act and perceptions about the gender gap and its causes deserves further exploration. Seith observes that both the substance of the Equity Act and supporters' rhetorical emphasis shifted over time toward a focus on women's changing economic roles and increasing participation in the workforce.<sup>34</sup> So too, according to historian Marissa Chappell, did the Reagan Administration's rhetorical strategy shift in response to the "gender gap."<sup>35</sup> During his first presidential campaign, Reagan opposed the ERA, aligned himself with the New Right, and declared that working wives "threaten[ed] the very structure of family life itself."<sup>36</sup> After polls showed a growing chasm between men's and women's support for Republicans in the 1982 mid-term elections, advisors such as White House Coordinating Council on Women chair Elizabeth Dole urged

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<sup>31</sup> On feminist advocacy on behalf of displaced homemakers, see generally Mary Ziegler, *The Incomplete Revolution: Feminists and the History of Marital Property Reform*, 19 MICH. J. L. & GENDER 101 (2012).

<sup>32</sup> On ERA II as a partisan political weapon, see Mayeri, *A New E.R.A.*, *supra* note 6, at 1223–32, 1288–91.

<sup>33</sup> *Id.* at 1231–32, 1288–91. "Gender gap" here refers to differences in men's and women's voting patterns—namely, greater male support for Republicans and women's greater support for Democrats. On the role of the "gender gap" in congressional debates over the Equity Act, see Seith, *supra* note 12, at 35–36.

<sup>34</sup> Seith, *supra* note 12, at 9, 56.

<sup>35</sup> Marissa Chappell, *Reagan's 'Gender Gap' Strategy and the Limitations of Free-Market Feminism*, 24 J. POL'Y HIST. 115, 118 (2012).

<sup>36</sup> *Id.* at 120 (internal citation omitted).

Reagan and his deputies towards a more moderate position. Strategists like Dole advised the administration to “make it resoundingly and decisively clear that we accept the new role of women, especially working women,” and to convey their “recognition of the changing role of women as breadwinners as well as homemakers.”<sup>37</sup> Reagan’s deputies recognized that economically vulnerable single women were least likely to support the President and some counselors recommended policy initiatives designed to “build a credible record on issues of concern to women.”<sup>38</sup>

Dole’s diagnosis of sex inequality sounds strikingly similar to the analysis of the Economic Equity Act’s proponents. She argued that the “real gender gap” was “not political . . . but financial and legal.”<sup>39</sup> She cited women’s lower earning wages, a tax and Social Security system based on an outdated male breadwinner model, lack of adequate and affordable child care, and the feminization of poverty.<sup>40</sup> Sensing an opening, Republican feminists within the administration, by then a dying breed,<sup>41</sup> called for modest government interventions that might alleviate the economic burdens on women, particularly impoverished single mothers, without conflicting too sharply with free-market principles. For example, they suggested expanding the earned income tax credit, eliminating taxes for the working poor, reconsidering some social spending cuts, and preserving health care benefit eligibility for families eliminated from welfare rolls.<sup>42</sup> Like many of the Equity Act’s provisions, these were not sweeping legislative initiatives, but specific bills for specific ills that did not require massive public spending or additional infrastructure.

However, Reagan’s more influential political advisors quickly recognized that poor single mothers were unlikely converts to the GOP. Instead, they deliberately targeted women of greater means in order to reduce the gender gap. They proposed, for instance, to eliminate remaining sex classifications in state and federal law, expand tax credits for child care and provide tax exemptions for employer child-care contributions, and—to avoid the appearance of encouraging married women to work rather than stay home—allow workers to open individual retirement accounts, popularly known as the “homemaker’s IRA,” for their non-earning spouses.<sup>43</sup>

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<sup>37</sup> *Id.* (internal citations omitted).

<sup>38</sup> *Id.* at 121 (internal citations omitted).

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> On the demise of Republican feminism in the Reagan era, see CATHERINE RYMPH, *REPUBLICAN WOMEN: FEMINISM AND CONSERVATISM FROM SUFFRAGE TO THE RISE OF THE NEW RIGHT* 212–38 (2006).

<sup>42</sup> Chappell, *supra* note 35, at 122–23.

<sup>43</sup> *Id.* at 122–28.

Similarly, not only did the Equity Act omit most of the controversial elements of feminists' agenda, but the provisions that passed tended to be inexpensive<sup>44</sup> and to require little additional state capacity. Moreover, Seith emphasizes, the successful elements of the Equity Act usually privatized dependency, often through marriage, or sought to facilitate women's entrepreneurship in the private sector.<sup>45</sup> These limitations meant that the ultimate effect of the Equity Act arguably was to promote an agenda useful primarily to upper-middle-class women, most of whom were white. Such women were more likely than their poorer counterparts to be displaced homemakers, to be or have been married, to have the resources to launch businesses, to have enough money to make tax reforms beneficial to them, and to have ex-spouses who could afford to pay child support. They were less likely to be impoverished, to rely on public assistance, to be unmarried, and to face intersecting forms of discrimination based on race, class, and sexuality as well as sex.

Just as the lawmakers described in Seith's article failed to push through the Equity Act's more expensive and ambitious measures,<sup>46</sup> Chappell concludes that the Reagan Administration's free-market principles (and need to appeal to New Right constituencies) precluded significant investment in policies to advance sex equality.<sup>47</sup> The administration implemented nothing more than "a set of tepid policies designed to enhance choices among upwardly mobile, middle-class women."<sup>48</sup> This "free-market feminism," Chappell observes, may have allowed some middle- and upper-income working wives greater latitude to choose between homemaking and breadwinning, but offered little to low-income women<sup>49</sup> who were unlikely to benefit from tax credits and lacked husbands able to save for retirement. Reagan's "gender gap" strategy, modest and short-lived as it was, evaporated after he won the 1984 election by a comfortable margin, while supporters of the Equity Act soldiered on through the early 1990s. Reading Seith's and Chappell's accounts side-by-side underscores the limits of what feminists could achieve in an era of conservative retrenchment.

These limitations lead me to wonder about the relationship between the Economic Equity Act as *proposed* and the laws actually *enacted*. I have argued elsewhere that the narrow, assimilationist, elitist version of formal legal equality feminists are accused of pursuing in the 1970s is more a reflection of Supreme Court jurisprudence than of the much more expansive

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<sup>44</sup> Seith, *supra* note 12, at 50.

<sup>45</sup> *See id.* at 43, 50, 47, 75.

<sup>46</sup> *Id.* at 50.

<sup>47</sup> *See generally* Chappell, *supra* note 35.

<sup>48</sup> *Id.* at 121.

<sup>49</sup> *Id.* at 129.

vision of equality feminists themselves were seeking.<sup>50</sup> In other words, to assume that feminists got what they asked for from the courts, no more and no less, is to confuse outputs with inputs. It is not entirely clear whether the same is true of the Equity Act. Or perhaps the bills proposed by members of Congress already anticipated that a conservative political climate allowed for only limited, targeted interventions that would affect relatively privileged women.

Seith's article challenges legal scholars to rethink the conventional narrative of constitutional sex equality.<sup>51</sup> Excavating the Equity Act also affects the way we think about feminism more generally in the 1980s. In some ways, Seith's account seems consonant with the assessment of historian Sara Evans, who depicts the 1980s as a period of institution-building, professionalization, and reflection, as well as one of fragmentation, political setbacks, and ideological backlash.<sup>52</sup> The Equity Act has a similarly mixed legacy. Seith suggests that the Equity Act laid groundwork for the more visible legislative achievements of the 1990s, such as the Family and Medical Leave Act.<sup>53</sup> In that way, the Equity Act may have played a role similar to that of the ERA during the period beginning with its introduction in the 1920s until its serious consideration by Congress in 1970: keeping the issue of sex equality before Congress and winning allies whose support would eventually be necessary to pass legislation when the political climate became more favorable. On the other hand, one can also see in the Equity Act story the seeds of less progressive legislative enactments in the 1990s, such as the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, which intensified pressure on single mothers to enter the workforce, and attempted to incentivize marriage in an explicit effort to alleviate poverty by privatizing dependency.<sup>54</sup>

The story of the Economic Equity Act also raises important questions about the relationship between the Congressional Women's Caucus and feminist organizations. Further research might address questions including: How did the Equity Act compare with the legislative agenda pursued by feminist organizations in the 1980s? How much time and resources did women's groups invest in lobbying for the Equity Act? How frequently and intensely did these organizations interact with the

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<sup>50</sup> See MAYERI, REASONING FROM RACE, *supra* note 1, at 6–8, 225–33.

<sup>51</sup> Seith, *supra* note 12.

<sup>52</sup> See SARA M. EVANS, TIDAL WAVE: HOW WOMEN CHANGED AMERICA AT CENTURY'S END 176–212 (2004).

<sup>53</sup> Seith, *supra* note 12, at 43, 59.

<sup>54</sup> See Gwendolyn Mink, *Aren't Poor Single Mothers Women? Feminists, Welfare Reform, and Welfare Justice*, in WHOSE WELFARE? 171–72 (Gwendolyn Mink ed., 1999); Angela Onwuachi-Willig, *The Return of the Ring: Welfare Reform's Marriage Cure as the Revival of Post-Bellum Control*, 93 CAL. L. REV. 1647, 1675–76 (2005).

Congressional Women's Caucus? Were the disagreements between feminist organizations and the Caucus over welfare reform isolated instances or reflections of divergent priorities?<sup>55</sup> Feminists in the 1980s devoted much energy to exploring differences among women, and differences between men and women.<sup>56</sup> The turn toward a "difference feminism" that emphasized the re-valuation of traditional women's work and feminine attributes<sup>57</sup> and the growing attention in feminist theory and practice to intersections between race, class, gender, and sexuality<sup>58</sup> (trends which were in some tension with one another) seem to have had relatively little effect on the Equity Act agenda. Members of Congress likely were not immersed in feminist theory or women's studies, nor, perhaps, were the women's organizations who lobbied them. Ultimately, the Equity Act's focus may reflect, more than anything, the distance between feminists' aspirations and political reality during the Reagan-Bush era.<sup>59</sup>

Seith's research also opens up exciting new avenues of exploration that have been relatively understudied by historians of feminism and law. Chief among these are what Seith identifies as economic equity provisions that do not fall into the usual categories of employment discrimination, welfare, and family policy.<sup>60</sup> Women's access to credit and facilitative laws to promote women as independent economic actors—not only as gainfully employed workers, but also as business owners, homeowners, and financially solvent single household heads—are subjects Seith plans to explore in future research.<sup>61</sup> Her findings will be eagerly awaited.

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<sup>55</sup> For a critical view of the relationship between feminists, lawmakers, and late twentieth-century welfare reform, see, e.g., Mink, *supra* note 54, at 171, 171–88. For a masterful account of women's and men's economic citizenship as mediated by class and race as well as gender in the New Deal state and beyond, see ALICE KESSLER-HARRIS, *IN PURSUIT OF EQUITY: WOMEN, MEN, AND THE QUEST FOR ECONOMIC CITIZENSHIP IN TWENTIETH-CENTURY AMERICA* (1998).

<sup>56</sup> See, e.g., EVANS, *supra* note 52, at 176–212 (discussing feminist attention to differences among women); MARTHA CHAMALLAS, *INTRODUCTION TO FEMINIST LEGAL THEORY* 51–89 (3d ed. 2012) (discussing feminist focus on differences between women and men).

<sup>57</sup> On difference feminism in the legal academy, see CHAMALLAS, *supra* note , at 51–89.

<sup>58</sup> See, e.g., BELL HOOKS, *AIN'T I A WOMAN* (1981); ELIZABETH V. SPELMAN, *THE INESSENTIAL WOMAN* (1990).

<sup>59</sup> See, e.g., MAYERI, *REASONING FROM RACE*, *supra* note 1, at 198–200

<sup>60</sup> Seith, *supra* note 12, at 7.

<sup>61</sup> Patricia A. Seith, *A Credit History: Emancipating the Identities of Married Women* (January 2013) (unpublished manuscript) (on file with author).