Law Day Essay Contest 2021:
First Place

What the ERA Can Teach Us About the Importance of the Rule of Law
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Allow me to preface this essay by acknowledging two things. First, I do understand that the Equal Rights Amendment is well-intentioned. Second, I also understand that most people would be wholly hard-pressed to meet someone of my age and sex who opposes it. But here I am, standing firmly in my conviction that the ERA does more harm than good - and that the rule of law has much to do with why. In its purest form, the rule of law demands that all persons, institutions, and entities are accountable to laws. It commands justice in a moral way. But it wasn’t until I came across humanitarian lawyer, Kimberley Motley, that I found validation for my reservations. During her advocacy work, Ms. Motley uncovered a passion for helping young girls avoid child marriage by using forgotten laws. Naturally, she also developed a deep appreciation for what a fully-promoted rule of law can do for women. She believes it could be achieved by simple measures: the public’s knowledge of the law, the fight against supersession or ignorance of the law, and the willingness to uphold the law. While watching her lecture on the matter, I came to the realization that these same basic measures she had worked to implement in developing nations couldn’t even be found in our own self-identified democratic superpower. Especially when it came to discrimination on the basis of sex.

The sheer popularity of the ERA is easily explained by Ms. Motley’s first measure, knowledge of the law, since no one will assume they have protection already unless it is explicitly offered to them. In On Morality, Law, and Politics, political thinker and religious fanatic, Thomas Aquinas, defines a law as being (among other things) known by all people. And though I would seldom seek validation from a rebellious monk (what an oxymoron), here I welcome it. Women are painfully unaware of their own pre-existing constitutional protection despite the fact that it’s nearly a
century and a half old. The 14th Amendment states that a citizen of the United States is anyone that’s born here (that’s me). And, later on, that “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States;... nor deny to any person within its jurisdiction the equal protection of the laws.” Constitutionally, I ought to be covered. The 14th Amendment was even the fire-fueling force behind the women’s suffrage movement. Women argued that they were already equal under that very Equal Protection Clause and demanded the tangible proof to accompany the written. And it was granted to them in the form of the 19th Amendment.

This success sets up Ms. Motley’s second measure perfectly – the fight against supersession or ignorance of laws. Women are likely not aware that they have any protection already because of the numerous violations they’ve grown accustomed to. The 19th Amendment itself was a direct response to one of those violations, and it was succeeded by the Equal Pay Act, which has proved to be ineffective. This is mainly due to a lack of properly enforced penalties, which render the legislation useless without reconstruction. This is some of what the ERA aims to correct, despite the fact that it can’t be applied to the private sector at all, so women will still need to rely on the ERA for protection. Additionally, consider this; it’s an amendment (that requires voter confirmation) to determine that I am constitutionally equal to a man. Ignoring the humiliation that comes attached to realizing there was reasonable doubt beforehand, it also introduces a strange paradox; losing power by gaining additional protection. Redundancy makes the Federal government look like a weak institution similarly to how it makes women look like a soft subset of the population in need of special protection. The ERA gives credence to the blatant sexism and the legal violations that warranted it. Fighting against supersession and ignorance includes holding people accountable to the legal standards already in place, rather than validating their behavior by introducing new ones. This means the addition or strengthening of penalties.
After all, the primary reason for the violation of any law is the simple ability to do so and get away with it. A common argument heard from 2nd Amendment advocates is that we don’t need any new laws; what we need is for the government to enforce the laws we already have in place. This is because laws that are unwieldy and unenforceable aren’t laws at all, they’re suggestions – and this sentiment can also be applied to sex-based discrimination.

This brings me to Ms. Motley’s third and final measure; the willingness of public voices to uphold the laws. No matter the level of awareness or the strength of the fight, the quality of the rule of law comes down to whether or not those in power will uphold their predecessors’ decisions. Discourse is healthy; downright refusal to acknowledge a law’s applications is disastrous – especially when it creates legal inconsistencies. Former Associate Justice, Antonin Scalia, was notorious for his strict constructionist approach to legal interpretation. And despite the 14th Amendment’s rich historical usage in women’s rights issues (some of which he had witnessed during his lifetime – namely Title IX), he denied that it could even be applied to sex-based discrimination. He argued that “Nobody ever thought that that’s what it meant. Nobody ever voted for that.” The idealistic concept that the Courts should be above politics is far from new, but there’s no denying that appointment tends to interfere with impartiality.

Make no mistake, the ERA is merely one example of how the rule of law can be better promoted, and one could apply Ms. Motley’s measures to practically any civil rights issue and be able to build a cogent argument about enforceability. I’ve chosen to respond to the prompt in this way simply because this matters to me – and because I love my liberty far too well to hand it back in exchange for my own amendment.


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