

## Book Reviews

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Kenneth W. Mack, *Representing the Race: The Creation of the Civil Rights Lawyer*, Cambridge, MA: Harvard University Press, 2012. Pp. 330. \$35 (ISBN 9780674046870).

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Kenneth W. Mack's *Representing the Race: The Creation of the Civil Rights Lawyer* is a strikingly humane work of legal history. In his study of African American lawyers in the 1920s through the 1950s, people, more than historical arguments, dominate the pages. The men and women at the heart of the book played major roles in breaking down the Jim Crow era's oppressive legal structures. However, *Representing the Race* is less about these well-known achievements than about the challenges these lawyers faced in balancing the demands of their racial and professional identities. The book offers a "collective biography of a contentious and diverse group" (267) united by race, by profession, and by "an enduring paradox of race relations." This paradox, Mack explains, was that "black civil rights lawyers were people caught between the needs and desires of the larger, white-dominated culture, and those of their own racial group, and there was no simply way out of that dilemma" (4). It is the dilemma of racial representation that is the thematic heart of Mack's insightful and often moving book.

The problem of representation—whether an individual (or a group) can speak and act on behalf of some larger group—can be found everywhere in society, but it has a particularly contentious history with regard to race relations. Furthermore, as *Representing the Race* compellingly demonstrates, the issue takes on particularly sharp form when race and lawyering intersect. One of the key insights of the book is to show that the professional identity of black lawyers was often every bit as important as their racial identity, even in the era of Jim Crow. Demands of legal practice meant that African American lawyers, like white lawyers, had to demonstrate their value and competence in the eyes of an overwhelmingly white profession. In the courtroom, this dynamic was only heightened: a lawyer's success in court depended upon the views of judges and juries, who were almost uniformly white throughout the Jim Crow era. "From the beginning, lawyers were a special case for racial representation," Mack notes (267). "To succeed

in law, a black person labored publicly under the gaze of white observers as in no other field" (5). However—and here is the crux of the dilemma—demonstrating oneself to be a skilled lawyer meant defining oneself to be an exceptional, even atypical representative of black Americans, thus pulling the African American lawyer further and further away from racial “authenticity.”

*Representing the Race* focuses predominantly on the 1920s through the 1940s and revolves around the stories of approximately a half dozen prominent black lawyers. The book’s leading characters—Charles Hamilton Houston, Raymond Pace Alexander, Sadie Alexander, Thurgood Marshall, Loren Miller, Pauli Murray—are likely familiar names to legal historians. However, although these figures are subject to the most extensive analysis and provide a measure of continuity to the book’s narrative, they are only a small fraction of the cast of characters that populate the book. For every in-depth profile of a well-known black lawyer, Mack seems to have ten additional profiles, often of lesser-known, even obscure, black lawyers, which he uses to fill out his portrait of the black bar. The wide net that Mack casts over his subject field alone is a major achievement of the book. Not only does it contribute to our historical knowledge of a critically important component of modern American legal history, but it also allows Mack to show the familiar figures who dominate the book in a new light. These people are not just leaders in the civil rights struggle, they are *lawyers*, and by more fully situating them within the black bar, Mack emphasizes the professional ties and demands that linked black lawyers. This book thus shifts our focus away from the direct legal challenges to Jim Crow and toward the more prosaic work of the lawyer—defending clients in court, hustling for new clients, establishing professional relationships with other black lawyers and with the white bar. It was often in the day-to-day life of the practicing lawyer that the dilemma of racial representation played out.

The book unfolds in a loosely chronological fashion, with each chapter revolving around one or two black lawyers and how their professional lives illuminated various elements of the racial representation dilemma. The opening chapter offers a thematic prelude for the rest of the book. It centers on the career of John Mercer Langston, “the quintessential nineteenth-century representative black man” (14) and the most prominent black lawyer of his era, whose many accomplishments included being the first dean of Howard Law School. He, like the generations of black lawyers who would follow, sought to use their professional accomplishments as a barricade against the hardening color line. The challenge of making a living as a black lawyer in the 1920s is the focus of the next chapter. Much of this chapter focuses on the work of Charles Houston, practicing in Washington, D.C., and Raymond Alexander, practicing in Philadelphia. It was difficult to make a living as a black lawyer in this period; they relied primarily on black clients, but many blacks lacked

resources to afford lawyers and those who did had to be convinced that they should rely upon a black rather than a white lawyer. Most of the legal work was basic civil and criminal litigation. However, one of Mack's goals is to break down the distinction between day-to-day legal practice and civil rights work. Being a successful lawyer—representing the race, in all its meanings—was necessarily a claim for racial equality. And for some lawyers, such as Houston, legal practice was critical in provided the financial security and reputation that would allow for future civil rights litigation.

In the next chapters, Houston and Alexander stay at center stage as Mack considers the ways in which the space of the court functioned to destabilize racial assumptions and identities. Courtrooms “remained open to the crossing of racial boundaries in a way that most other public places were not” (62). If black lawyers in the age of Jim Crow saw themselves as “bridgeheads to the white world” (28), the courtroom provided the public stage where they put their roles to the test. *Representing the Race* offers some beautifully rendered courtroom scenes, dramas in which black lawyers negotiated the competing demands of their clients, the local (and sometimes national) black community, and white lawyers and judges.

A particularly powerful case study of the dynamics of racial representation can be found in Houston's experience in 1933 representing, in a courtroom in rural Loudoun County, Virginia, a black man accused of murdering a wealthy white socialite. His performance impressed those in attendance, both whites and blacks. The presiding judge seemed intent on demonstrating that, at least as far as counsel was concerned, his courtroom would not replicate the racial hierarchies of surrounding society; he “sent the signal to the local bar that they should close ranks to welcome their black counterpart into their insular community” (95). But whereas Houston was treated with surprising respect from white lawyers, he came under fire from black lawyers. Although his client had been the likely victim of police abuse, Houston did not to directly challenge the prosecution on this point. He chose to accept the professional façade of racial fairness in the legal process and to expend his energies avoiding a death sentence. African American critics accused him of placing his own professional identity and relations with the white bar ahead of the best interests of the defendant. He succeeded in keeping his client from being executed, but Houston's reputation as a representative of the larger black community came under fire, foreshadowing a newly emboldened insurgent movement among black activists who would accuse the black bar of being out of touch with the struggles of black America.

Although later in his career Thurgood Marshall would face similar accusations of becoming detached from the black community, as a young lawyer he made his name in large part because of his remarkable skills at negotiating the representation dilemma. Marshall was able to balance expectations of white lawyers who saw fair treatment of black lawyers as indicative

of the basic justice of the legal system and African Americans who felt the first role of the black lawyer should be to challenge that system's obvious injustices. Marshall was able to do both as well as anyone of his generation.

In the 1930s, simmering tensions of racial representation turned into open controversy as a new generation of lawyers challenged the black legal establishment. Young radicals questioned the older generation's commitment to reform through the courts, a challenge based on differences of strategy as well as different ideas of what was in the interests of black America—a different conception, that is, of what it meant to represent the black community. They criticized established black lawyers for privileging a commitment to their role in the legal establishment over a commitment to the needs of African Americans.

The challenge of the 1930s forced some leading figures of the black bar to reassess their approaches, but it did not derail the growing momentum behind a movement of black lawyers to challenge Jim Crow in the courts. Insight into the attractions of the radical critique of the black legal establishment as well as the ultimate limitations of this critique is demonstrated in Mack's profile of the remarkable career of Loren Miller. As a young leftist, Miller was an outspoken critic of the National Association for the Advancement of Colored People (NAACP) and its lawyers. However, he would become a leading civil rights lawyer, a skilled practitioner of exactly what he had spent his early years denouncing. Miller's abrupt transformation was caused less by some intellectual reevaluation than by a change in professional identity: Miller needed money; therefore, in 1936, he began to practice law. The day-to-day work of struggling to make a living in the law changed his perspective, as "Miller found himself enmeshed in a web of relationships that made practicing law seem far different from what he had always imagined" (197). He had clients, often victims of racial discrimination, and he felt that in the law he had the tools to do something to improve their situations. Taking on antidiscrimination cases led Miller "to see everything from a different point of view" (200). "Miller's turn to law had changed his politics," as Mack puts it (204). He now found himself struggling with the same balancing act he had once attacked as a devil's bargain, cultivating the professional connections necessary to be a successful lawyer while attempting to remain connected to the black community he sought to represent.

In two chapters, Mack considers the careers of black female lawyers, among them Jane Bolin, the first black woman judge; Edith Sampson, a successful Chicago lawyer who would go on to be elected as a state judge; Sadie Alexander, who first made a name for herself working at her husband Raymond's firm and then went on to national prominence on her own; and Pauli Murray, a remarkable and troubled person who would become a leading feminist lawyer. A dominant theme in Mack's examination of these lawyers

was the difficulty they had in even describing the distinctness of their situations as a tiny minority within a minority within the legal profession. “They made their way in a profession where a public persona was key to getting ahead in the world, but their appearance in that public was so overlaid with race and gender perceptions that no one could sort them all out” (140). One way to minimize the challenges of the public sphere for these pathbreaking women was to find less public ways in which to advance one’s career. With the cross-racial professional connections that her male colleagues relied upon less available to her, Alexander made a name for herself through legal office practice. Sampson made her name in a juvenile court system, before moving on to divorce law, and then government service. Murray’s frustrations at the limits her gender placed on her legal career would help push her to develop her argument that analogized sex discrimination to racial discrimination—“Jane Crow” was the term she used.

The book’s final chapter offers a survey of the experiences of Mack’s cast of black lawyers in the decades following World War II. With the unfolding drama of integration in American society, including in the legal profession, new dilemmas of representation took shape. Black lawyers were gradually becoming part of the liberal establishment, particularly in the Democratic administrations from Franklin Delano Roosevelt’s New Deal through Lyndon B. Johnson’s Great Society. These prominent roles risked pulling black lawyers farther and farther away from black society, and this growing gap was the target of attack by a new insurgent generation of black activists as the civil rights movement took off. Sadie Alexander, for example, served on the Truman Committee on Civil Rights in the late 1940s, an incredibly prestigious appointment, but she found herself being challenged as out of touch in her home community. Thurgood Marshall faced similar challenges of remaining connected as his reputation in the nation took off following the NAACP’s victory in *Brown v. The Board of Education*. The 1960s, like the 1930s, brought to the forefront a new wave of critics of the black legal establishment. And once again, questions of representation formed the heart of their challenge.

This is a rich book, filled with insights and material that deserve more consideration. In concluding, I will briefly touch upon two particularly fascinating points raised. First is the fact that the dilemma of representation, although often a considerable burden and obstacle for black lawyers, also provided some rare opportunities for advancing the cause of racial equality at a time when such opportunities were few and far between. Legal practice provided a forum that could be uniquely receptive to the kinds of challenges to the status quo that representative figures posed. Relations between lawyers functioned as “professional glue” (170), which black lawyers who were skillful in craft and interracial diplomacy could take advantage of. Black lawyers regularly emphasized how little discrimination they experienced in

the courtroom, even in the South during segregation's heyday. These lawyers were hardly naïve about their situations. Rather, Mack explains, in emphasizing the lack of racial prejudice at play in their professional lives, they "simply referenced the cross-racial professionalism that made their interactions with white lawyers and judges seem like the most distinctive feature of their lives" (158). The take-away point here is striking and important: even in the Jim Crow South, white legal actors would regularly treat black lawyers' professional identity as just as important as, and at times even more important than, their racial identity. There are echoes of claims about the "autonomy of the law" here, but, instead of doctrine, it is practice and professionalism that has created a sphere standing (partially) apart from the rest of society.

Second is the more general point regarding the potential that representation offers as an alternative framework for understanding the history of race and law. In part, the racial representation dilemma functions in the book as a unifying theme, as a way to bring together the stories of this diverse group of lawyers. However, Mack argues that representation, as a tool of analysis, also offers grounds for a sweeping critique of existing civil rights scholarship. He defines his goal as not only to "put[] aside the segregation-to-integration narrative," but also—and this is the striking point—"the stories that accompany that narrative—stories of protest and accommodation, heroes and villains, assimilation and black separatism, movement building and backlash, progress and retrenchment." He "also declines the invitation to recover the agency of oppressed people living under slavery and segregation" (4). The concepts of agency and resistance emphasize one big and important point; namely, that groups and individuals who by traditional measures are defined by their lack of power, by their victimhood, in fact often exercise considerable control over their circumstances and ability to challenge those who seek to oppress them. This point is a critically important corrective to those historical accounts that tend to limit their treatment of such groups to mere targets of repression. However, as demonstrated in *Representing the Race*, the idea of representation has the potential to open up an array of issues that the agency and resistance frameworks slight. Representation, like agency and resistance, is a tool against the dominant class; less a tool of direct insurgency, it operates by adopting avenues of expression accepted by mainstream society. But representation also allows for a more thorough consideration of the fissures and power struggles within a group. Intra-racial tension is a critically important but still understudied aspect of the civil rights struggle, a shortcoming that Tomiko Brown-Nagin and others are doing excellent work in addressing. The struggle for representation is a tool of resistance, an exercise in agency, but it is also a tool by which a group can define the nature of that resistance and who leads the resistance. In introducing such a powerful demonstration of the potential of representation as a way of understanding

the experience of black lawyers in the twentieth century, Mack has made a major contribution to the field of legal history.

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Joanna L. Grossman and Lawrence M. Friedman, *Inside the Castle: Law and the Family in 20th Century America*, Stanford: Stanford University Press, 2011. Pp. 448. \$35.00 (ISBN: 9780691149820).

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Family law is a perplexing term. Whereas in one sense it regulates private relationships, it is far more than protection of a person's home and castle. Family law as an overarching category not only encompasses intimate relationships such as marriage, divorce, unmarried romantic relationships, parents and children, and care for elderly relatives—all of which are discussed in the book—but also intersects with constitutional law, criminal law, trusts and estates, and torts. Treating each topic with significant depth would result in a backbreaking tome; therefore, it is particularly impressive that Grossman and Friedman touch upon each, even if only briefly.

The book is organized topically, beginning with one of the legal underpinnings of family: marriage. Marriage is introduced as an institution both sharply limited and protected by law, as adroitly framed through the lives of Mildred Jeter Loving and Foneta Jessop. Both women died at the end of the twentieth century decades after entering into illegal marriages: Loving as one half of an interracial couple in a state that banned marriages between white and nonwhite persons, and Jessop as one member of a polygamous family. Loving's marriage was vindicated by the Supreme Court in 1967; Jessop's marriage is still unlawful in every state. Playing off these contrasts, Grossman and Friedman spend four chapters surveying marriage law. Because the "most basic assumption" of the book is that "[f]amily law follows family life," (2) this also requires discussion of societal changes in relationships, tracing how the law evolved one step behind great shifts in expectations for what marriage is. Interestingly, this assumption triggers discussions of the decline of two previously common legal entities that gradually fell out of favor: common law marriage and "heart balm" causes of action. Civil claims brought against third parties who contributed to the demise of a marriage make headlines today only in rare instances, such as the 2009 alienation of affection claim brought by the now ex-wife of former Representative Chip Pickering against a woman with whom he allegedly