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DOES THE CIVIL RIGHTS MOVEMENT MODEL STILL WORK?

THE CIVIL RIGHTS MOVEMENT PIONEERED A FORMULA FOR
LEGAL CHANGE INVOLVING PEACEFUL PROTESTS, CREATIVE
LAWYERING, AND SAVVY MESSAGING — AND OFFERED A
POWERFUL TEMPLATE FOR OTHER EFFORTS.
ARE THERE LESSONS FOR TODAY?

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The civil rights movement for African American equality stands out as the archetypical social change drive in American history. This is not only because of the momentous transformation it brought to the lives of African Americans, but because it has arguably served as a template for nearly every disenfranchised, persecuted group seeking social justice in the United States since the 1960s.

From the women's movement to the successful campaign to win marriage equality, the civil rights movement has been credited with inspiring the strategies and tactics that drove these battles for equality and acceptance.

The question remains, however: Can this template be used to address the current issues plaguing the African-American community? Can the theory of change created by the civil rights movement, which

has spawned successive victories for other movements, still work for the very people it was created to benefit?

In the Beginning, There Was Charles Hamilton Houston

Charles Hamilton Houston was a legal scholar and civil rights pioneer who, as dean of the Howard University School of Law and, later, as special counsel for the National Association for the Advancement of Colored People (NAACP), devised and implemented the legal strategy that culminated in *Brown v. Board of Education*.¹ This successful strategy, which led to the U.S. Supreme Court striking down segregation in public schools in 1954, catalyzed a mass movement beyond the education realm to vindicate the civil rights of African Americans in areas such as voting, employment, and housing. Over the next decade, this movement won significant victories in the courts and legislatures — and, though not without resistance, in the court of public opinion. Among the jewels in its legacy are the Civil Rights Act of 1964 and Voting Rights Act of 1965.

Houston aimed to undo the “separate but equal” doctrine established in the Court’s odious 1896 ruling in *Plessy v. Ferguson*,² which provided legal cover for laws mandating racial segregation. His great insight was to attack *Plessy* in a piecemeal fashion, through a series of incremental legal victories that undermined its doctrinal foundations, rather than attempt to overturn the ruling in one bold stroke.³ The strategy also focused on changing minds in “the court of public opinion,” not only about equality in the public education system, but also about race generally.⁴

The Seeds of Change: Brown Leading the Way

The Court’s ruling in *Brown* opened the door for challenges to other forms of institutional segregation in the United States, beyond education. Although the decision struck down *Plessy*’s “separate but equal” doctrine, many states refused to follow the Court’s order.⁵ Strategists and organizers concluded that expanding the promise of *Brown* required directly challenging these other forms of segregation.

Among the early test cases was that of Claudette Colvin, a 15-year-old from Virginia, who was arrested on March 2, 1955 for refusing to give up her seat on a bus to a white person.⁶ But it was not until the 1956 boycott of the segregated bus system of Montgomery, Alabama, that the outlines of an effective social justice movement began to take real shape.

The Montgomery Bus Boycott presented the first real opportunity for an organized and sustained protest to tackle segregation in another everyday institution — public transportation. A. Philip Randolph, a noted labor leader and head of the Brotherhood of Sleeping Car Porters, helped devise the strategy behind the boycott. Bayard Rustin, the noted intellectual and pacifist, who traveled to Montgomery to lend support, helped shape the nonviolent approach that later became the strategy for the movement. This is when Rustin introduced Dr. Martin Luther King, Jr. to the teachings of Mahatma Gandhi and the concept of nonviolent protest as a means for creating social change.

As we know from history, the Montgomery Bus Boycott was indeed successful, working in tandem with strategic litigation to force change. As the nation's attention was riveted on the boycott throughout 1956, a federal district court invalidated the state's segregation policy in *Browder v. Gayle*.⁷ The Supreme Court affirmed the decision in November of that year. And in December — after a boycott lasting 381 days — the city succumbed to these twin pressures and passed an ordinance permitting black and white passengers to ride on an equal basis.

But it was more than simply a successful movement to integrate the public transportation system in Montgomery. It was the first major successful campaign to desegregate a racist system since *Brown*, using a combination of the principles and teachings of nonviolent resistance and strategic, planned coordination as well as the tools of the law.

The example set by the Montgomery Bus Boycott became the template for other civil rights campaigns throughout the South, from a drive to desegregate the interstate travel system to efforts to remove barriers to voting. Each campaign, led by entities like the Student Nonviolent Coordinating Committee (SNCC), relied on the “playbook” developed through Houston's legal strategy and expanded upon by Rustin, Randolph, and later King and countless other leaders.

The successful use of this strategy led to the end of legally mandated segregation in housing, employment, voting, and public transportation.⁸

The movement's formula for success started with devising specific campaigns with clear goals and objectives. Once these goals and objectives were established, plans were put in place to determine how each would be achieved. A combination of sustained peaceful protests, savvy messaging, well-positioned political pressure, and creative lawyering were all ingredients in the recipe for creating a successful and sustained movement. The use of these very same elements — in varying combinations — became the template for many of the social justice campaigns that would be waged from the 1960s onward.

The Civil Rights Movement as a Model for Reform

The civil rights movement developed a successful model for social change that relied on several key features. First, the movement recognized the importance of having visionary leaders to serve as its spokespeople and tacticians. Second, it organized activists and concerned citizens into an effective mass movement. Third, it garnered support through messaging that appealed to the American public's sense of fairness and justice. And fourth, it looked to the courts as a forum for redress. Identifying the correct legal challenge to discrimination was the key element in successfully gaining civil rights victories in the 1950s and 1960s. As in the case of the Montgomery Bus Boycott, resolution by the courts, in the face of relentless public resistance, served as the foundation for some of the key civil rights victories during this period. At its peak, the movement also inspired the political branches to act, enshrining voting rights and other protections against discrimination through legislation.

Significant and history-altering events, building upon the success in Montgomery, served as breakthroughs during the 1960s. Birmingham, Alabama, was the battleground for street protests led by children (and the children were, for the first time, the victims of manifested segregationist hatred). These protests eventually led to a negotiated plan to desegregate in exchange for an end to demonstrations. In Selma,

Alabama, protestors led peaceful marches for voting rights, the first of which resulted in Bloody Sunday, when marchers attempting to walk to Montgomery were beaten back at the foot of the Edmund Pettus Bridge. Both of these efforts led to the eventual passage of key legislation, like the Civil Rights Act of 1964 and the Voting Rights Act of 1965. The focus of the movement in the 1960s turned from a particular focus on court victories to one marked by legislative victories. Legal mechanisms remained a way to protect the efforts of the protestors, including the Freedom Riders who sought to desegregate interstate transportation, but the largest victories of the 1960s were political ones. This bifurcated strategy of using legal and political tools to effect change is a hallmark of the template from which other movements learned and copied best practices for creating social change.

Many of the significant social justice movements of the latter half of the 20th century and the early part of the 21st have adhered to this template. Activists with a wide array of goals have found inspiration in the pioneering work of civil rights activists, organizing themselves in the same tradition as the “civil rights movements.”

A brief look at a small sample of other social justice movements bears evidence of the impact the civil rights movement had on other historic campaigns for equality.

Gender Equity and the Fight for Reproductive Rights

The fight for women’s rights in the United States has a long and storied history dating back to 1848, when the first women’s rights convention was held in Seneca Falls, New York. That meeting produced a Declaration of Sentiments identifying social, legal, and institutional barriers that limited women’s rights.⁹ It would take decades before activists coalesced around the more controversial goal of securing the right to vote, culminating in the passage of the 19th Amendment to the U.S. Constitution in 1919.¹⁰

After decades of gradual social change — as more women sought higher education and joined the workforce — another transformative women’s rights revolution took hold in the 1960s, drawing on the model

of the civil rights movement. This new wave of activism coincided with the advent of the birth control pill, approved by the Food and Drug Administration in 1960.¹¹ Significant victories resulted from a focus on legal challenges and legislative reform including the 1964 passage of the Civil Rights Act, which barred discrimination in employment on the basis of race or sex.¹²

The real change that galvanized the movement was the effort to add an “Equal Rights Amendment” (ERA) to the Constitution. The push to pass the ERA became the principle organizing, movement building, and political strategy for the women’s movement in the 1970s and into the 1980s. While the proposed amendment fell just short of the support needed for final ratification, it fostered a national debate over gender inequality. That helped propel a visionary litigation strategy — led by Ruth Bader Ginsburg and others — to greatly expand protections for women under other constitutional provisions, including the Equal Protection Clause.

As with the civil rights movement, strong leaders emerged who would lead the effort for equal rights for women, leaders like Gloria Steinem, Eleanor Smeal, and Bella Abzug, to name a few. These leaders, like King, Lewis, Randolph, Abernathy, and others, would become the faces of the movement and would help chart the path to victories in both the court of law and the court of public opinion.¹³

The Gay Rights Movement and the Fight for Marriage Equality

The fight for gay rights in the United States can be traced at least as far back as 1924 when the Society for Human Rights was founded by Henry Gerber in Chicago,¹⁴ the first documented gay rights organization in America. While other nascent efforts to expand and protect gay rights occurred throughout the first half of the 20th century, it was not until the Stonewall Riots of 1969 that the movement took a historic turn.¹⁵

From the outset, the modern gay rights movement patterned itself as a “liberation” movement, taking a cue from the women’s movement. Initially, it focused less on the courts — which were dismissive of gay rights claims — and more on social action to promote tolerance and

visibility. Peaceful demonstrations, drawing on the powerful marches of the civil rights era, became a mainstay of the gay rights movement, beginning with the first Christopher St. Liberation Day parade commemorating the one-year anniversary of the Stonewall riots.¹⁶

Like the civil rights movement, gay rights advocates sought to advance legal and policy goals through city councils, legislatures — and eventually the courts. The movement's early priorities were laws barring discrimination in employment and housing, protection from violence and bullying, and early forms of family recognition, including hospital visitation rights, and adoption and child custody rights. But much energy was also directed to the battle against government indifference to the AIDS crisis and the campaign to protect the right of gays and lesbians to serve openly in the military. Unlike the civil rights movement, LGBT rights activism rarely coalesced around a unified goal. The LGBT community also lacked leaders with the stature of a Dr. King. Despite these differences, beginning in the mid-2000s, a coalition of state and national groups developed and executed a successful campaign to bring marriage to all 50 states — drawing heavily on the lessons of the civil rights movement.¹⁷

The Next Generation

One need not look far to see that the template created by the civil rights movement continues to serve as a roadmap for new fights for equality affecting the next generation. The “Dreamers,” who seek to secure the rights of children of the undocumented who came to the U.S. at a young age, have used similar techniques to successfully garner attention from the public and support from the White House to expand their opportunities.

The Occupy Wall Street movement is another recent example. This coalition of activists sought to challenge the status quo and demand a solution to the unequal wealth distribution that many feel is destroying the middle class. Chief among their concerns was the vertically hierarchical nature of society's economic and political distributions. Although each local group in the movement focused on a

different problem, each rallied behind the primary concern of economic inequality. Like the civil rights movement, strategic use of the media in this case, of social media — played a major role in elevating the issues of economic inequality and the challenges facing the “99 percent.” that meant strategic use of social media. Messages of nonviolence were shared and the group developed a clear agenda by working toward and agreeing on consensus-based decisions.

The Current State of Civil Rights and Thinking Ahead

The civil rights movement was one of the most successful efforts to secure equal rights for a disenfranchised group in the history of the United States. And the strategy devised by Charles Hamilton Houston and other activists provided a roadmap for other struggles: for women’s rights, LGBT rights, and the fight for economic justice.

But the struggle for civil rights within the African-American community — and indeed for all of these groups — is far from over. In fact, the fight has arguably taken on a new urgency with a new set of targets and social ills to combat. But does the strategy employed in the 1950s and 1960s, which won significant gains in the areas of housing, voting, and education, remain a viable strategy to combat the problems African Americans currently face?

Unlike the 1960s, today’s problems facing the African-American community are less blatant and more wide-ranging. Many of the problems — from economic inequality to mass incarceration — are systemic problems not easily dealt with through a court order. They require longer, more far-reaching responses. Mass incarceration has disproportionately impacted the African-American community with staggering numbers of black men serving draconian prison sentences for low-level drug crimes. The housing bubble of 2006-2008 resulted in the loss of massive wealth within the African-American community. Many experts predict it will take generations before the black community will be able to regain that lost wealth.¹⁸ More potent than the loss of voting rights, freedom, and wealth has been the loss of life. Since the death of Trayvon Martin, an unarmed teenager shot by a neighborhood watch

patrol in 2012, there has been a seeming barrage of police-involved shootings of unarmed African-American men and women. The “Black Lives Matter” movement, formed in response to these recent killings, is — like the civil rights movement of the 1950s and 1960s — a strategic, youth-led movement focused on securing rights and protections for the African-American community.

Also unlike the 1960s, the courts today play a different role. In the decade after *Brown*, the civil rights movement depended on brave federal judges who upheld the rights of African Americans in the face of searing public condemnation. But today, the federal courts are far less friendly to claims of racial discrimination. Nearly 50 years after the passage of the Voting Rights Act of 1965, the Supreme Court gutted a key provision of the Act, removing protections that many experts argue are still vitally needed to ensure equal access to the ballot box for African Americans. To today’s Supreme Court, racial discrimination seems to be a thing of the past.

As our young activists chant “Black Lives Matter” and look toward the vanguard of leadership that won signal victories to end segregation and advance equal opportunity, we must ask ourselves, “What is the state of the civil rights movement?” Can the template shaped by Charles Hamilton Houston and molded by civil rights leaders throughout the 1960s and early ’70s serve as the roadmap for 21st century battles for racial justice as it did for other disenfranchised groups? Can it successfully address the myriad ills that plague the African-American community today?

The answers to these difficult questions are uncertain. We should start by examining whether the tools of change that were so heavily relied upon in the 1960s are still viable to address the problems facing the African-American community in the early 21st century. This question is significant not only for the current civil rights movement, but also for the movements that will follow.

