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Murdering Crows: Pauli Murray, Intersectionality, and Black Freedom

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Abstract

What is intersectionality's origin story and how did it make its way into human rights? Beginning in the 1940s, Pauli Murray (1910–1985) used Jane Crow to capture two distinct relationships between race and sex discrimination. One Jane used the race-sex analogy to show that race and sex were both unconstitutionally arbitrary. The other Jane captured Black women's experiences and rights deprivations at the intersection of race and sex. Both Janes were based on Murray's fundamental

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belief that the struggles against race and sex discrimination were different phases of the fight for human rights.

In 1966, Murray was part of the American Civil Liberties Union team that litigated White v. Crook. *In* White*, a three-judge federal district court panel declared Lowndes County, Alabama's jury selection process discriminated against the county's Black residents based on both race and sex in violation of the Fourteenth Amendment. What appeared to be an intersectional victory for Black women, was, in fact, an analogical victory for white women. The reasoning and the remedy erased the Black women litigants and the Lowndes County Black Freedom Movement, both of which were essential to the litigation.*

By situating White *in the context of the Lowndes County movement, this Article demonstrates the centrality of Black feminist praxis to the county's Black Freedom politics. The women in the movement took aim at Jane Crow which personified their intersectional experiences. Freedom for the county's Black female majority did not require white women's subjugation. By contrast, white women's equality was a claim to share power with white men which included the power to maintain Jim and Jane Crow. Therefore, intersectional Jane and analogical Jane were on opposite sides of the fight for Black freedom in Lowndes County where white Jane's equality required Black Jane to remain unfree.*

Table of Contents

"What shall I do about killing Jane Crow?"[1]

"eenie meenie minie moe
catch a voter by her toe
if she hollers then you know
got yourself a real jane crow"[2]

"Until the killing of black mothers' sons is as important as the killing of white mothers' sons, we who believe in freedom cannot rest."[3]

INTRODUCTION

Pauli Murray spent a lifetime pushing boundaries and engaging intersections. Whether it was "the dual burden" of race and sex discrimination faced by Black women;[4] the triple burdens or "multiple disadvantages" of either "race, sex, and economic exploitation,"[5] race, sex, and age;[6] or the "quadruple burdens of being Black, female, poor, and sexually non-conformist,"[7] her life and work demonstrated that neither

1. Letter from Pauli Murray to Leon Ransom (May 1954), *in* PAULI MURRAY ARCHIVES, BOX 84; F. 1467 (Schlesinger Library, Harvard Radcliffe Institute).

2. Rebecca Foust, *Evie Shockley: "Women's Voting Rights at One Hundred (But Who's Counting?)*," WOMEN'S VOICES FOR CHANGE (Oct. 25, 2020), https://perma.cc/34U2-YY95.

3. BARBARA RANSBY, ELLA BAKER AND THE BLACK FREEDOM MOVEMENT: A RADICAL DEMOCRATIC VISION 335 (2003).

4. *E.g.*, Pauli Murray, *The Negro Woman in the Quest for Equality*, *in* REBELS IN LAW: VOICES IN HISTORY OF BLACK WOMEN LAWYERS 172 (J. Clay Smith ed. 2000) [hereinafter Murray, *Quest for Equality*]; PAULI MURRAY, SONG IN A WEARY THROAT: MEMOIR OF AN AMERICAN PILGRIMAGE 388 (1987) [hereinafter MURRAY, SONG]; Pauli Murray, *The Liberation of Black Women*, *in* WORDS OF FIRE: AN ANTHOLOGY OF AFRICAN-AMERICAN FEMINIST THOUGHT 186 (Beverly Guy-Sheftall ed. 1995) [hereinafter Murray, *Liberation*].

5. MURRAY, SONG, *supra* note 4, at 744.

6. *Id.* at 311–12.

7. Florence Wagman Roisman, *Lessons for Advocacy from the Life and Legacy of the Reverend Doctor Pauli Murray,* 20 U. MD. L.J. RACE, RELIGION, GENDER, & CLASS 1, 2 (2020); *see* BRITTNEY C. COOPER, BEYOND RESPECTABILITY: THE INTELLECTUAL THOUGHT OF RACE WOMEN 87 (2017) (identifying Murray's "struggles with queer and nonnormative sex and gender identities").

identity nor discrimination was one-dimensional.[8] Although Murray was committed to ending all forms of oppression, she paid particular attention to race and sex discrimination as "different phases of the fundamental and indivisible issue of human rights."[9] Murray's work at the intersection of race and sex was personified by Jane Crow almost forty years before Jane would be understood as "intersectional."[10]

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8. *See* COOPER, *supra* note 7, at 87–88 (describing some of Murray's challenges in the legal and academic fields due to her race, gender identification, or both). This Article adopts the she/her/hers pronouns Murray used in written work.

9. Pauli Murray & Mary O. Eastwood, *Jane Crow and the Law: Sex Discrimination and Title VII*, 34 GEO. WASH. L. REV. 232, 235 (1965). For Murray, the universality of human rights meant they were rights to be enjoyed by all "without regard to national origin, race, color, language, religion, sex, political or other opinion, parentage, or economic status." PAULI MURRAY, HUMAN RIGHTS, U.S.A.: 1948–1966 1 (1967) [hereinafter, MURRAY, HUMAN RIGHTS]; *see also* MURRAY, SONG, *supra* note 4, at 341–42; Pauli Murray, Memorandum in Support of Retaining the Amendment to H.R. 7152, Title VII (Equal Opportunity) to Prohibit Discrimination in Employment Because of Sex 4–13 (Apr. 14, 1964) (on file with Schlesinger Libr., Radcliffe Inst. for Advanced Stud., Harv. Univ.) [hereinafter Murray, Title VII Memorandum] (noting the parallel between race and sex discrimination and that both are human rights violations). Murray's human rights praxis translates this universality into a need "to see the whole" through which "[w]e discover that we do not have one identity but several overlapping identities." Pauli Murray, *Black Strategies Responding to Thomas Sowell. I Know Where You're Coming from, But . . ., in* REBELS IN LAW: VOICES IN HISTORY OF BLACK WOMEN LAWYERS 163 (J. Clay Smith ed. 2000) [hereinafter Murray, *Black Strategies*]; *see also* Murray, *Liberation*, *supra* note 4, at 197 ("The lesson of history [is] that all human rights are indivisible and that the failure to adhere to this principle jeopardizes the rights of all."). Murray wrote about human rights as early as 1950 when, in the introduction to *States' Laws on Race and Color*, Murray noted that "[b]ecause of the widespread interest in the broad field of human rights, many state legislatures were exceedingly active in this area during 1949." PAULI MURRAY, STATES' LAWS ON RACE AND COLOR 6 (2016) [hereinafter MURRAY, STATES' LAWS]; *see also*, Lisa A. Crooms, *"To Establish My Legitimate Name Inside the Consciousness of Strangers": Critical Race Praxis, Progressive Women-of-Color Theorizing, and Human Rights*, 46 HOW. L.J. 229, 238 n.32 (2003).

10. *See* Murray & Eastwood, *supra* note 9, at 242 (discussing Title VII's protections for Black women workers); MURRAY, HUMAN RIGHTS, *supra* note 9, at 1, 7; MURRAY, SONG, *supra* note 4, at 334 ("Howard Law School . . . was also the place where I first became conscious of the twin evil of discriminatory sex bias, which I quickly labeled Jane Crow."); *see also* Elizabeth Alexander, *Introduction* to PAULI MURRAY, DARK TESTAMENT AND OTHER POEMS xi–xii (1970) ("Murray was an intersectional analyst on race, gender, and class before those who would develop the theory and the phrase were born."); COOPER,

Born sometime between 1941 and 1944 while Murray was a student at the Howard University School of Law, Jane Crow captured Murray's awareness of Jim Crow's "twin evil of discriminatory sex bias."[11] As the only woman in her graduating class, Murray found "the racial factor was removed in the intimate environment of a Negro law school dominated by men, and the factor of gender was fully exposed."[12] If Howard was where Jane was named, then Harvard Law School was Murray's opponent in her "first battle against 'Jane Crow.'"[13] "[C]aught between the tradition of Howard and the tradition of Harvard not to admit women," Murray "decided . . . to put up a clean fight to get into Harvard."[14] Although the fight was clean, Murray did not prevail.[15] Consequently, in the fall of 1944, Murray enrolled at the University of California at Berkeley, where she earned her L.L.M. degree.[16]

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supra note 7, at 91 ("Jane Crow is . . . one of the earliest articulations of intersectional theory within Black feminist thought."); PATRICIA HILL COLLINS, INTERSECTIONALITY AS CRITICAL SOCIAL THEORY 221 (2019) ("Murray's intellectual activism . . . prefigures the core ideas of intersectionality's content . . . ."); Roisman, *supra* note 7, at 23 ("Murray's life and work emphasized the centrality of intersectionality."); Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1 U. CHI. LEGAL F. 139, 140 (1989) (introducing the term "intersectionality" in legal scholarship); Lisa A. Crooms, *Indivisible Rights and Intersectional Identities or, "What Do Women's Human Rights Have To Do with the Race Convention?*", 40 HOW. L.J. 619, 623 (1997) (discussing intersectionality in human rights law and discourse).

11. MURRAY, SONG, *supra* note 4, at 334.

12. *Id.* at 335.

13. *Id.* at 442; *see also id.* at 431

> I had entered law school preoccupied with the racial struggle . . . but I graduated an unabashed feminist as well. Ironically, my effort to become a more proficient advocate in the first struggle led directly into the second through an unanticipated chain of events which began in the late fall of my senior year.

14. *See* Pauli Murray, *Pauli Murray's Appeal: For Admission to Harvard Law School*, *in* REBELS IN LAW: VOICES IN HISTORY OF BLACK WOMEN LAWYERS 79, 81 (J. Clay Smith ed. 2000) [hereinafter Murray, *Appeal to Harvard Law*] (noting that Murray was denied admission to Harvard Law School because she was "a functionally normal woman" even though her rank as first in her graduating class would have otherwise garnered her admission to Harvard); *see also* MURRAY, SONG, *supra* note 4, at 238–44.

15. MURRAY, SONG, *supra* note 4, at 441–42.

16. *Id.* at 447.

Despite her initial defeat, Murray's belief in Jane's liberatory potential in the war against discrimination did not waiver. Murray pressed Jane into service to convince Black women they had a "stake in the . . . movement to make the guarantee of equal rights without regard to sex part of the fundamental law of the land."[17] Murray also used Jane to challenge Black women's second-class status in movements for racial justice[18] and women's rights.[19] Murray's Jane needed "sex" added to Title VII of the Civil Rights Act of 1964,[20] because without it the law "would benefit Negro males primarily and thus offer genuine equality of opportunity to only one-half of the potential Negro workforce."[21] Murray's Jane also highlighted

17. Pauli Murray, *Constitutional Law and Black Women*, *in* REBELS IN LAW: VOICES IN HISTORY OF BLACK WOMEN LAWYERS 59 (J. Clay Smith ed. 2000) [hereinafter Murray, *Constitutional Law*]; *see also* Murray, *Quest for Equality*, *supra* note 4, at 172; MURRAY, SONG, *supra* note 4, at 388–89 ("My discovery of the historical links between the struggles for the abolition of slavery and the rights of women gave me a new perspective that helped me balance the tensions created by the double burden of race and sex."); SERENA MAYERI, REASONING FROM RACE: FEMINISM, LAW, AND THE CIVIL RIGHTS REVOLUTION 50 (2011) ("Reasoning from race allowed black feminists to invoke paradigms already accepted by the civil rights and legal establishments and to highlight the benefits of allying themselves with a numerous and potentially powerful constituency—white women.").

18. Murray, *Quest for Equality*, *supra* note 4, at 175 (criticizing the "deliberate" omission at the March on Washington where "[n]ot a single woman was invited to make one of the major speeches or to be part of the delegation of leaders who sent to the White House"); *see also* MURRAY, LIBERATION, *supra* note 4, at 189 (describing Black Power as "a bid for black males to share power with white males in a continuing patriarchal society in which both black and white females are relegated to secondary status"). *But see Official Program for the March on Washington (1963)*, NAT.'L ARCHIVES, https://perma.cc/KEV5-P9XS (listing Mrs. Medgar Evers as delivering a "Tribute to Negro Women Fighters for Freedom" recognizing herself, Daisy Bates, Diane Nash Bevel, Mrs. Herbert Lee, Rosa Parks, and Gloria Richardson).

19. *See* SARAH AZARANASKY, THE DREAM IS FREEDOM: PAULI MURRAY AND AMERICAN DEMOCRATIC FAITH 67 (2011) (describing the circumstances of Murray's resignation from the National Organization for Women).

20. Pub. L. No. 88-352, 78 Stat. 241 (codified as amended in scattered sections of 42 U.S.C.).

21. Murray, Title VII Memorandum, *supra* note 9, at 20–21; *see also* MURRAY, SONG, *supra* note 4, at 641–42 (explaining Murray's resolve to retain "sex" in Title VII in order to avoid excluding "so large a category as women workers"); Murray & Eastwood, *supra* note 9, at 24; Murray, *Liberation*, *supra* note 4, at 187 (identifying Black women's "economic necessity to earn a living

"the distance between the degraded Black female and the exalted stereotype of her white counterpart, the Southern lady."[22]

Murray's Janes were multiple, and their particularities depended on where and how Murray used them. At times Jane was found in the "parallels between race and gender."[23] At other times, she was found at the intersection of the "'dual burden' [of race and sex] in the lives of Black women."[24] In 1965, both Janes made their courtroom debut before a three-judge federal district court panel in Montgomery, Alabama, in a case Murray predicted would be the "*Brown v. Board of Education* for women

to help support their families" as driving gender and sex relations within the Black community, which supported adding sex to Title VII); *id.* at 196 ("In the face of their multiple disadvantages, it seems clear that black women can neither postpone nor subordinate the fight against sex discrimination to the black revolution."); MAYERI, *supra* note 17, at 22; COLLINS, *supra* note 10, at 234 (describing Jane Crow as capturing "how racism and sexism took particular form in the experiences of African American women"); COOPER, *supra* note 7, at 88 (characterizing Murray's Jane Crow as "nam[ing] a powerful system of gender disciplining within Black intellectual communities"); Caroline Chiappetti, *Winning the Battle But Losing the War: The Birth and Death of Intersecting Notions of Race and Sex Discrimination in* White v. Crook, 52 HARV. C.R.-C.L. L. REV. 469, 481 (2017) (explaining that Murray's Jane Crow "describe[s] the system of overlapping discrimination she faced as an African-American woman"); ROSALIND ROSENBERG, JANE CROW: THE LIFE OF PAULI MURRAY 309 (2017) (observing that one version of Jane Crow describes "the compounding effects of gender plus race discrimination for women of color"); Roisman, *supra* note 7, at 11 (noting that "[a]s early as 1945, Murray wrote that [she] was 'beginning to believe strongly that the . . . [Fair Employment Practices Commission] bill should be amended to include "sex" along with its other "race, color, creed or national origin" factors.'" (quoting PAULI MURRAY & CAROLINE WARE, FORTY YEARS OF LETTERS IN BLACK AND WHITE 35–36 (Anne Firor Scott ed. 2006))).

22. Murray, *Constitutional Law*, *supra* note 17, at 59; *see also* Murray, *Quest for Equality*, *supra* note 4, at 173.

23. ROSENBERG, *supra* note 21, at 309.

24. *Id.*

in this country."[25] *White v. Crook*[26] challenged the constitutionality of using race and sex to limit juror eligibility to white men in a county where Black women were the plurality.[27] Murray and the American Civil Liberties Union (ACLU) litigation team[28] filed the case on behalf of the "male and female

25. MAYERI, *supra* note 17, at 29 (citation omitted); *see also* MURRAY, HUMAN RIGHTS, *supra* note 9, at 10 (describing *White* as "a historic victory for civil rights as well as women's rights"); ROSENBERG, *supra* note 21, at 296 (describing Murray's joy and optimism at the jury's verdict in *White*). Although Murray's characterization was accurate, Alabama Attorney General Richmond Flowers chose not to appeal the district court's decision to the Supreme Court. MAYERI, *supra* note 17, at 29. Five years later the Supreme Court found sex discrimination to be unconstitutionally arbitrary and unreasonable. *Id.* It would be another four years before the Supreme Court struck down a state law that treated men and women differently for the purposes of jury service. *See* Taylor v. Louisiana, 419 U.S. 522, 523, 537 (1975) (holding that a male defendant charged with aggravated kidnapping had standing to challenge a Louisiana law that excluded women from jury service unless they "previously filed a written declaration of [their] desire to be subject to jury service," and that the law, so challenged, was unconstitutional); *see also* Ballard v. United States, 329 U.S. 187, 195 (1946) ("The systematic and intentional exclusion of women, like the exclusion of a racial group or an economic or social class, deprives the jury system of the broad base it was designed by Congress to have in our democratic society." (citations omitted)); J.E.B. v. Alabama, 511 U.S. 127, 143 (1994) (declaring the use of peremptory challenges to strike men as potential jurors in a case brought by a mother in a paternity and child support proceeding to be unconstitutional and, as a result, rendering women's sex irrelevant to the constitutional protections against sex discrimination for which *White* stood); Chiappetti, *supra* note 21, at 469 (noting that until *White v. Crook* sex-based classifications did not violate equal protection); Fred P. Graham, *The Law: Rights Case Yields Dividend for Women*, N.Y. TIMES (Feb. 13, 1966), https://perma.cc/6BK2-Q7M6 ("Under the Federal rules, the three-judge court could decide the racial issue, once the female exclusion law brought the case before it."). Murray and Dorothy Kenyon are listed as co-authors on the ACLU's brief arguing that the Idaho probate code's preference for male estate administrators was unconstitutionally arbitrary. *See* Brief for Petitioner at 1, Reed v. Reed, 404 U.S. 71 (1971) (No. 70-4).

26. 251 F. Supp. 401 (M.D. Ala. 1966).

27. *See id.* at 404

> The 1960 census reflects that the total population of Lowndes County was 15,417 and that Negroes comprised 80.7% of the total county population and 72.0% of the adult male population. The white males between the ages of 21 to 65 totaled 738, and the nonwhite males between the ages of 21 to 65 totaled 1,798. The white females between the ages of 21 to 65 totaled 789, and the nonwhite females between the ages of 21 to 65 totaled 2,278.

28. The ACLU team included Charles Morgan, head of ACLU's Southern Regional Office, and Dorothy Kenyon. Samantha Barbas, *Dorothy Kenyon and*

Negro citizens and residents in Lowndes County, Alabama."[29] They contended Lowndes County's exclusion of Black men and all women from jury service violated the Fourteenth Amendment.[30]

The race discrimination was caused by the failure of the jury commissioners and the commission clerk to follow Alabama law.[31] Instead of compiling a list of potential jurors from multiple sources, county officials relied almost exclusively on the list of registered voters in a county where Blacks had been prevented from registering to vote for almost a century.[32] These voter lists provided a "race-neutral" means to achieve the racially discriminatory end of all-white juries.[33] Failing to

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the Making of Modern Legal Feminism, 5 STAN. J. C.R. & C.L. 423, 424 (2009). Kenyon, a former New York City municipal judge, advocated for Gwendolyn Hoyt in her 1961 challenge to her conviction by an all-male jury for killing her abusive husband. *See generally* Brief for the Florida Civil Liberties Union and the American Civil Liberties Union as Amici Curiae Supporting Petitioner, Hoyt v. Florida, 368 U.S. 57 (1961) (No. 31). Kenyon and Murray met in 1946 in New York. MURRAY, SONG, *supra* note 4, at 490.

29. *White*, 251 F. Supp. at 401. The five plaintiffs were Gardenia White, Lillian McGill, Jesse Favor, Willie Mae Strickland, and John Hulett. *Id.*

30. *Id.*

31. *Id.*; *see also id.* at 404 (noting that Alabama required jury commissioners and commission clerks "to scan the [voter] registration lists, the list returned to the tax assessor, any city directories and telephone directories, and any and every other source of information, and to visit every precinct in the county at least once a year"); *id.* at 403 (describing the procedure implemented by the jury commissioner "to obtain the name of every male citizen of the county over twenty-one and under sixty-five years of age and their occupation, place of residence and place of business" (internal quotations omitted)).

32. *Id.* at 405; *see also* HASAN KWAME JEFFRIES, BLOODY LOWNDES: CIVIL RIGHTS AND BLACK POWER IN ALABAMA'S BLACK BELT 14–17 (2009) (noting that during the Reconstruction Era, Blacks in Lowndes County elected a Black man to represent the County in the Alabama state legislature); *id.* at 76–79 (stating that Lowndes was one of 548 counties in the United States that met the Voting Rights Act criteria for a federal registrar, and "one of . . . nine to receive them immediately"); CLAYBORNE CARSON, IN STRUGGLE: SNCC AND THE BLACK AWAKENING OF THE 1960S 165 (1995) ("The voter registration effort received a boost on August 10[, 1965] . . . when a federal registrar arrived in the County under the provisions of the recently enacted Voting Rights Act.").

33. *See White*, 251 F. Supp. at 403 (finding that between 1953 and the beginning of the *White* trial, "98% of the names on venires of prospective jurors appeared on the contemporaneous voting lists"); *see also* MURRAY, STATES' LAWS, *supra* note 9, at 21 (cataloging Alabama's facially-neutral but racially discriminatory voting requirements); *County in Alabama Drops Voting Test*

proffer any evidence to explain how all-white juries were possible in a majority Black county left the inference of de facto racial discrimination unrebutted.[34] Consequently, the Court concluded the Lowndes County officials had violated the Fourteenth Amendment.[35]

The sex discrimination was caused by an Alabama statute that excluded all women from jury service.[36] To succeed on this claim, Jane would have to do something new.[37] Four years earlier, in *Hoyt v. Florida*,[38] the Supreme Court upheld a Florida statute that treated women and men differently for the purposes

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Called Harsh, N.Y. TIMES (July 9, 1965), https://perma.cc/FH3U-UMLY (announcing the discontinuation of a literacy test requirement for prospective new voters in Lowndes County in light of the pending lawsuit challenging its constitutionality); Davis v. Schnell, 81 F. Supp. 872, 880 (S.D. Ala. 1949) (declaring the racially-neutral Boswell Amendment unconstitutional because it "was intended to be . . . used for the purpose of discriminating against applicants for the franchise on the basis of race or color"); Graham, *supra* note 25 (describing the residual benefits to women from the Civil Rights Movement); John Lewis & Archie E. Allen, *Black Voter Registration Efforts in the South*, 48 NOTRE DAME L. REV. 105, 108–09 (1972) (enumerating disenfranchising devices including registration, literacy tests, constitutional reading and interpretation tests, civic understanding tests, good character tests, residential requirements, and poll taxes); MURRAY, SONG, *supra* note 4, at 306–07 (stating that in Pittsylvania County, Virginia, voter lists used to compile juror lists and poll taxes acted as a virtual bar to both the voting booth and jury box for those unable to pay the poll tax).

34. *See White*, 251 F. Supp. at 405 (describing the systematic exclusion of female and Black male citizens from jury service in Lowndes County).

35. *Id.* at 408.

36. In 1965, Alabama, Mississippi, and South Carolina banned women from jury service. *See id.* at 408 n.14 (stating that South Carolina repealed its ban in 1967 and Mississippi followed suit in 1968). *But see* State v. Hall, 187 So. 2d 861, 870 (Miss. 1966) (declining to follow *White*).

37. *See* Goesaert v. Cleary, 335 U.S. 464, 466 (1948) (holding that a Michigan law prohibiting a woman from obtaining a bartending license unless she tended bar in an establishment owned by her father or husband did not violate the Fourteenth Amendment's Equal Protection Clause); Minor v. Happersett, 88 U.S. 162 (1874) (holding that voting was not among the privileges and immunities of citizenship guaranteed by the Fourteenth Amendment); Bradwell v. Illinois, 83 U.S. 130, 138–39 (1872) (excluding admission to state bar and licensure to practice law from the privileges and immunities of citizenship guaranteed by the Fourteenth Amendment); *Ex parte* Lockwood, 154 U.S. 116, 117 (1894) (reaffirming *Bradwell*).

38. 368 U.S. 57 (1961).

of jury service.[39] *White* could be distinguished from *Hoyt* because the litigants in *White* asserted their rights to serve as jurors while Gwendolyn Hoyt asserted her right to be tried and convicted by a jury of her peers.[40] This distinction allowed *White* to take advantage of a doctrinal opening that, twelve years earlier, changed the touchstone of constitutional equality from race to arbitrariness.[41] The Black women plaintiffs in *White* expanded constitutional equality based on their lawyers' arguments analogizing the sex discrimination in *White* to the discrimination based on Mexican ancestry that the Supreme Court declared arbitrary and unreasonable in *Hernandez v. Texas*.[42] The strategy worked, the plaintiffs prevailed, and the

39. *See id.* at 69 ("[T]he disproportion of women to men on the list independently carries no constitutional significance. In the administration of the jury lows proportional class representation is not a constitutionally required factor.").

40. *Compare* White v. Crook, 251 F. Supp. 401, 408 (M.D. Ala. 1966) ("The women plaintiffs on behalf of themselves and other women similarly situated contend very forcefully that the Alabama statute that bars their exercise of this basic right is unconstitutional."), *with Hoyt*, 368 U.S. at 58 ("At the core of appellant's argument is the claim that the nature of the crime of which she was convicted peculiarly demanded the inclusion of persons of her own sex on the jury.").

41. In *Hernandez,* the Supreme Court interpreted the Fourteenth Amendment to reach non-racial discrimination that was as arbitrary as racial discrimination. Hernandez v. Texas, 347 U.S. 475, 482 (1954). The case was brought by a criminal defendant of Mexican ancestry who challenged his conviction by an exclusively white and Anglo jury. *Id.* at 477. Striking potential jurors with Spanish surnames or Mexican ancestry violated Hernandez's constitutional rights. *Id.* at 480–81. The violation, however, was not based on race because Texas defined those of Mexican ancestry as white. *Id.* at 479. Therefore, Hernandez's claim was intra-racial and challenged Texas' hierarchy of whiteness, according to which Mexican ancestry othered some whites vis-à-vis the normative whiteness possessed by those without Mexican ancestry. *Id.*; *see also* ROSENBERG, *supra* note 21, at 254 (describing *Hernandez* as having helped to overcome originalist arguments regarding the Fourteenth Amendment's purpose). A significant difference between *Hernandez* and *White* was that the latter involved rights of jurors and, the former, like *Hoyt*, involved rights of criminal defendants. *See supra* note 40. The Supreme Court would incorporate the Sixth Amendment's jury trial rights, including juror impartiality, into the Fourteenth Amendment, thereby making them applicable to the states. *See* Duncan v. Louisiana, 391 U.S. 145, 160 (1968).

42. 347 U.S. 475 (1954); *see White*, 251 F. Supp. at 408. (advancing a judicially pragmatic view of the Fourteenth Amendment that reflects "general principles meant to govern society and the institutions of government as they evolve through time," which in this case supports the "conclusion . . . that the

District Court struck down the Alabama law by violating the Fourteenth Amendment.[43]

The outcome in *White* led Murray to credit the Black women litigants as having "won jury service rights not only for [themselves] but for all the women of Alabama, Black and White."[44] But is this true? Did Gardenia White, Lillian S. McGill, and Willie Mae Strickland, in fact, secure jury service rights for all women in Alabama? The answers to these questions are found in the case's two Janes. Although the Black women secured all women's right not to be excluded from jury service because of their sex, the Court's remedy was limited to the group of women for whom sex was their only obstacle.[45] The sex discrimination remedy alone would have had little effect on the Black women who were excluded from both the voting booth and the jury box because of their race and sex. Therefore, the women whose constitutional injuries were remedied by *White*'s sex discrimination claim were white. *White* involves two Janes not one.

The two Janes in *White* reflect a truth that neither the litigators nor the court seemed willing to face. The Jane who personified the intersectional race and sex discrimination faced

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complete exclusion of women from jury service in Alabama is arbitrary"); *see also* Ala. Tchrs. Ass'n v. Lowndes Cty. Bd. of Educ., 289 F. Supp. 300, 306 (M.D. Ala. 1968) (noting that the Constitution requires legal distinctions to be "based upon some reasonable ground—some difference which bears a just and proper relationship to the attempted class—and not a mere arbitrary selection" (quoting Connolly v. Union Sewer Pipe Co., 184 U.S. 540, 560–61 (1902))); Murray & Eastwood, *supra* note 9, at 238 (citing *Hernandez* for the proposition that "[t]he protective cover of the Fourteenth Amendment is broad enough to reach all arbitrary class discrimination"); Smith v. King, 277 F. Supp. 31, 38 (M.D. Ala. 1967) (holding that a "substitute father" regulation is a race-neutral constitutionally arbitrary rule that "must always rest upon some difference which bears a reasonable and just relationship to the act in respect to which the classification is proposed" (citing *White*, 251 F. Supp. at 408–09)); *cf.* Fred P. Graham, *Alabama Warns of Welfare Cuts: Says It May Slash Payments if High Court Voids Purge*, N.Y. TIMES (Nov. 22, 1967), https://perma.cc/U4TS-J4JN (PDF) (describing the threatened elimination of welfare payments if Alabama was forced to restore children to welfare rolls when their mothers had extramarital relations).

43. *White*, 251 F. Supp. at 408–09.

44. Murray, *Constitutional Law*, *supra* note 17, at 57–58.

45. *See White*, 251 F. Supp. at 409 ("In this case it is the women themselves who assert their right to serve as jurors, or, more accurately, their right not to be excluded from jury service solely because of their sex.").

by the Black women litigants was at odds with the single-axis analogical Jane whose narrative proved that sex, like race, was unconstitutionally arbitrary.[46] Analogical white Jane is the juridical actor recognized in the case's theory and remedy. She is "clandestinely racialized," thereby masking the racial specificity and normativity of her whiteness and erasing Black Jane without whom white Jane would have not prevailed.[47]

For Murray, the two Janes also reflect the cognitive dissonance caused by Murray's aspirations and experiences. On the one hand, Murray aspired to use Jane to tap the unrealized potential of an interracial sisterhood committed to constitutional sex equality. On the other hand, Murray experienced "the dichotomy of a racially segregated society which ha[d] become increasingly polarized" and "prevented [Black and white] women from cementing a natural alliance."[48] Murray appears not to see this racial polarization as relevant to the women's sex discrimination claim in *White*.[49] Murray, the lawyers, and the judges involved in the case underestimated the significance of white women's complicity in maintaining white

46. *See* MURRAY, HUMAN RIGHTS, *supra* note 9, at 7 (considering race and sex discrimination as parallel and analogical and noting that the movements to oppose both occasionally "converged"); Murray, *Liberation*, *supra* note 4, at 191 (stating that "[t]he parallels between racism and sexism have been distinctive features of American society," and sometimes had "interchangeable leadership"); AZARANASKY, *supra* note 19, at 67 (recounting that Murray "cowrote the ACLU brief that framed women's rights to serve on juries according to the standards of protection detailed in the Fourteenth Amendment"); Chiappetti, *supra* note 21, at 496 ("For Murray, intersectional and analogical arguments were intertwined; she frequently invoked her own identity to demonstrate that without special attention to sex discrimination one-half of black Americans would be left without protection, fatally hampering racial progress." (internal quotations omitted)).

47. The litigation strategy needed a statutory challenge to ensure a direct appeal to the Supreme Court if things at trial went awry. *See supra* note 45 and accompanying text; Chiappetti, *supra* note 21, at 495 ("Though neither discrimination in the selection of jurors on the basis of race nor on the basis of sex ended with *White v. Crook* or any of the subsequent cases to reach the Supreme Court, the constitutional language of the court was nevertheless revolutionary."); *see also* 28 U.S.C. § 2284 (requiring a three-judge panel to hear challenges to the constitutionality of the apportionment of congressional districts or the apportionment of any statewide legislative body).

48. Murray, *Liberation*, *supra* note 4, at 191.

49. *See* Murray, *Black Strategies*, *supra* note 9, at 163.

minority rule in the majority Black and female county.[50] Murray and the others failed to hold analogical white Jane to account for her role in keeping Jim and Black Jane unfree. The misalignment of Black women's bodies and universalized white women's evidence required Murray to "rationalize, ignore and even deny" that the Black and white women in Alabama were adversaries rather than allies.[51]

This Article focuses on the two Janes who, after *White,* stood on the precipice of a jurisprudential break that "signaled a turning point in the law."[52] On the other side of the doctrinal chasm, their paths diverged, and only one Jane was in fact intersectional.[53] Seeing Black intersectional Jane requires centering not only Black women, but also the Lowndes County Black Freedom Movement, both of which are essential to *White*'s intersectional potential.[54]

The remainder of this Article is organized as follows. Part I uses intersectionality as developed by Patricia Hill Collins to demonstrate how Jim and Jane Crow in Lowndes County as well as the Black Freedom Movement are essential for *White* to

50. Kelly Coleman, the jury commission clerk, was a defendant in the case. The other defendants included "the members of the jury commission . . . ; the judge for the Second Judicial Circuit of Alabama, which includes Lowndes County; the probate judge and the sheriff of Lowndes County; the solicitor and the clerk of the Second Judicial Circuit of Alabama, which includes Lowndes County; the foreman of the grand jury of Lowndes County; and the solicitor of Lowndes County." White v. Crook, 251 F. Supp. 401, 408 (M.D. Ala. 1966).

51. FRANTZ FANON, BLACK SKIN, WHITE MASKS (Charles Lam Markmann trans., Pluto Press 1986) (1952).

52. MURRAY, SONG, *supra* note 4, at 655. A jurisprudential break is like an epistemological break which Greg Tate describes as "hella crunk nouveau knowledge that interrupts, disrupts, and transforms our sense of life's possibilities and the kind of folk we believe to be forces for apocalyptic change in the world too." GREG TATE, *Charles Edward Anderson Berry and the History of Our Future*, *in* FLYBOY 2: THE GREG TATE READER 59 (2016).

53. Chiapetti, *supra* note 21, at 472 ("*White v. Crook* failed to achieve jurisprudential convergence and demonstrate the bifurcated history[,] and legal literature . . . maintains this divergence.").

54. Jeffries defines Black Freedom politics as combining "political engagement . . . with the movement's egalitarian organizing methods [and] the people's freedom rights agenda." JEFFRIES, *supra* note 32, at 145; *see also* RANSBY, *supra* note 3, at 345 ("With great hopes for building an oasis of black political empowerment in the Deep South, SNCC helped launch the Lowndes County Freedom Organization in Alabama . . . .").

maintain its intersectional integrity.[55] Part II uses a narrative for the women in *White* that centers Black women in the Black Freedom Movement, as well as their feminist politics and praxis.[56] This narrative is intersectional and overcomes the cognitive dissonance caused by the way *White* was litigated and the way the Black women plaintiffs experienced the convergence of race and sex discrimination. Part III considers the fundamental difference between reasoning though race to achieve Black freedom and reasoning from race to achieve equality which is understood in this case to be race neutral rather than racially contingent.[57]

I. INTERSECTIONALITY, JIM AND JANE CROW, AND THE BLACK FREEDOM MOVEMENT

In *Intersectionality as Critical Social Theory*, Patricia Hill Collins invites readers to examine "saturated sites of intersectionality [that] constitute hypervisible sites of intersecting power relations and have [the] feel of an important conjuncture."[58] These sites are "important for intersectionality's theoretical development" in three ways.[59] First, they are "a form of conceptual glue that binds intersecting systems of power together" and operate "as a constellation of practices" that are "essential to organizing and managing power as domination."[60] Second, they reveal "new pathways for conceptualizing domination" that "reframe them not as a matter of human nature or circumstance, but as fundamental to power as

55. *See infra* Part I.

56. *See infra* Part II.

57. *See infra* Part III.

58. COLLINS, *supra* note 10, at 235. Collins explains that these "are places where intersecting systems of oppression converge, yet they are not static. They change as the systems to which they are attached change." *Id.* Collins "provide[s] a set of analytical tools for intersectionality's practitioners . . . who want to develop intersectionality's critical analyses with an eye toward social problem solving and social change." *Id.* "Strengthening intersectionality's theoretical core is essential for meeting this goal." *Id.* at 288; *see also* AZARANSKY, *supra* note 19, at 73 ("[S]tandpoint theory identifies how entanglements of class, gender, race, and imperialism, among others, produce interstructured oppressions from which emerges different descriptions of reality.").

59. COLLINS, *supra* note 10, at 238.

60. *Id.*

domination."[61] Third, they illuminate "resistant knowledge projects . . . as . . . saturated sites of intersecting power relations [and] invite[] entirely new questions concerning the types of [oppositional] ideas and actions" at work.[62]

First, in 1965, Lowndes County was a "saturated" and "hypervisible site[] of intersecting power relations" between Blacks and whites living under Jim and Jane Crow.[63] Throughout Alabama, Jim and Jane Crow produced and policed a hierarchy of power relations and norms expressed in a complex scheme of laws and practices that applied to women and men of both races.[64] Strict racial segregation, combined with gendered labor market segmentation, determined which bodies were suited for what kind of labor.[65] Alabama laws also defined the boundaries of proper intimacy to protect racial purity in the name of morality and public safety.[66] Jim and Jane were the

61. *Id.* at 238–39.

62. *Id.*

63. *Id.* at 235.

64. In the same year that the district court decided *White*, it also noted that "forty-four sections of the Alabama Code [are] devoted to the maintenance of segregation in schools, public utilities, mental institutions, nursing, penal and correctional institutions, pauper care, and the marriage choice. Negroes have been excluded from municipal recreational facilities, swimming pools, parks, libraries and museums, and from jury service." United States v. Alabama, 252 F. Supp. 95, 102 (M.D. Ala. 1966); *see also* MURRAY, STATES' LAWS, *supra* note 9, at 29–32; COOPER, *supra* note 7, at 95 (arguing that Jim and Jane Crow, "and the politics of respectability that arose in response, constituted a racialized production of a gender schema").

65. For example, Title 46, Section 189(19) of the Alabama Code prohibited white women nurses from working "in wards or rooms in hospitals . . . in which negro men [were] placed for treatment, or to be nursed." MURRAY, STATES' LAWS, *supra* note 9, at 31. Consequently, these hospitals were staffed exclusively with Black women nurses. Similarly, domestic work was an overwhelmingly Black and female occupation. STUDENT NONVIOLENT COORDINATING COMMITTEE, THE GENERAL CONDITION OF THE ALABAMA NEGRO 18 (1965), https://perma.cc/GSN5-XMS8 (PDF). In 1960, 53% of Black women in Alabama worked in domestic service as compared to 3% of white women. *Id.* One percent were Black men and there were no white men. *Id.* In this way, domestic service was a Black woman's job. *Id.*; *see also* HANDS ON THE FREEDOM PLOW: PERSONAL ACCOUNTS BY WOMEN IN SNCC 463 (Faith S. Holsaert, et al. eds., 2012) [hereinafter HANDS].

66. *See e.g.*, MURRAY, STATES' LAWS, *supra* note 9, at 30–31 (stating that Alabama classified marriage, adultery, and fornication between white persons and negroes, as well as the issuance of licenses and performance of marriages, as criminal offenses); *id.* at 31 (noting that in Alabama, prisoners in jails and

"conceptual glue that [bound] intersecting systems of [white supremacy, patriarchy, and class exploitation] together . . . as a constellation of practices . . . essential to organizing and managing [race, sex, and class] power as domination."[67] Key to this domination in Lowndes County was the complete control over local politics and the administration of justice by the white minority, which required the Black majority to be disenfranchised.

Second, focusing on the race, gender, and class dimensions of Jim and Jane Crow in Lowndes County reveals new pathways for conceptualizing domination as multidimensional. *White*'s remedy for the sex discrimination claim was limited to the minority of white women for whom sex was their only obstacle to jury service.[68] Black women could not serve as jurors because of both their race and sex. Therefore, making the Black women whole required simultaneously remedying both the race and sex discrimination. In other words, their intersectional injury required an intersectional remedy. This set them apart from both Black men and white women whose rights were secured by the resolutions of the race and sex claims, respectively. All the parties, however, were implicated in Jim and Jane Crow, albeit in radically different ways. In making the case for the arbitrariness of sex, *White* ignored the extent to which white women used their power and position to dominate Black people and keep Jim and his partner Jane unfree. Unlike women's equality, Black freedom required white women to divest themselves from an equality with white men who were invested in maintaining Jim and Jane Crow.[69] That white women wielded

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prisons must be separated by race and sex with an exception for husbands and wives, who could be held together).

67. COLLINS, *supra* note 10, at 238.

68. *Id.*

69. TONI MORRISON, *Women, Race, and Memory*, *in* THE SOURCE OF SELF-REGARD: SELECTED ESSAYS, SPEECHES, AND MEDITATIONS 92 (2019) [hereinaftter MORRISON, *Women, Race, and Memory*]. Feminists do not necessarily reject the male model or retain it because it is superior, but rather assert their right to be equal to men because they, as individuals or a group, are just as capable and entitled as those men. Murray was not rejecting maleness as the model but was instead asserting her right to be afforded opportunities based on her individual ability without sex as a disability. *See, e.g.*, Murray, *Appeal to Harvard Law*, *supra* note 14, at 79. This analysis is reflected in the doctrine of constitutional equality that permits sex to be used as a classification only if it is substantially related to an important

power and oppressed Black people is the backstory of the narrative of women's achievement, which places them in both the class of women on whose behalf the sex discrimination claim was litigated, and the group of defendants opposed to Black freedom rights.[70] Seeing these differences is the type of "critical engage[ment] with racism" that reveals "the tyranny of the universal," which is reflected in the sex discrimination claim on behalf of all women.[71]

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governmental interest and there is an "exceedingly persuasive justification" for using sex to discriminate among otherwise equal or similar individuals. United States v. Virginia, 518 U.S. 515, 531 (1996).

70. Hulda Coleman, superintendent of the county's public schools, was an exemplar included in the women's narrative who used her power to oppose the federal desegregation mandate. JEFFRIES, *supra* note 32, at 111, 113; *see also Lowndes Schools Told to Integrate,* N.Y. TIMES (Feb. 12, 1966), https://perma.cc/AN4G-M99D (PDF). Federal efforts to desegregate Lowndes County's public schools caused white parents to boycott the schools and to establish a private all-white academy not subject to *Brown*'s desegregation mandate. JEFFRIES, *supra* note 32, at 114. They were aided in their efforts by Governor George Wallace's televised financial appeal. *Id.* at 113; *see also Alabama County Planning Private School for Whites*, N.Y. TIMES (July 21, 1965), https://perma.cc/X4EW-ESP7 (PDF); *Lowndes County High School Opens with White Boycott*, N.Y. TIMES (Sept. 6, 1966), https://perma.cc/Y5AD-WXDP (PDF). *See* MURRAY, STATES' LAWS, *supra* note 8, at 21–28. Agnes Baggett served three terms as Alabama's Secretary of State (1951–1955, 1963–1967, and 1975–1979). Glen Browder, *Office of the Secretary of State*, ENCYCLOPEDIA OF ALA. (May 19, 2008), http://www.encyclopediaofalabama.org/article/h-1541 (last updated Oct. 21, 2016). In *Sims v. Baggett,* 247 F. Supp. 96 (M.D. Ala. 1965), the district court held that Alabama's proposed house apportionment plan was adopted for "the sole purpose of preventing election of Negroes to house membership." *Id.* at 109. As such, the racially-neutral plan violated the Fourteenth and Fifteenth Amendments. *Id.* Twenty Black sharecroppers and tenant-farmers unsuccessfully sued their white landlords, claiming their contracts had been altered or terminated because they registered to vote. Miles v. Dickson, 40 F.R.D. 386, 388–89 (M.D. Ala. June 15, 1966). The group that sued included Mrs. Muffin Miles and her seven children, who were forced to leave their home by her landlord. *Id.*; *see also* Press Release, Student Nonviolent Coordinating Committee (SNCC) News Release (Dec. 29, 1965), https://perma.cc/AL5W-ZXN7 (PDF); HANDS, *supra* note 65, at 509 (describing SNCC workers living in a "tent city . . . with sharecropping families who had been evicted because they registered to vote or took part in the Movement").

71. ANGELA Y. DAVIS, The Truth Telling Project: Violence in America, Speech Given in St. Louis, Missouri (July 27, 2015), *in* FREEDOM IS A CONSTANT STRUGGLE: FERGUSON, PALESTINE, AND THE FOUNDATIONS OF A MOVEMENT 86–87 (2016); *see also* TONI MORRISON, PLAYING IN THE DARK: WHITENESS AND LITERARY IMAGINATION (1992) (stating that universalism masks racial

Third, casting Jim and Jane Crow as the result of race, gender, and class oppression also illuminates the Black Freedom Movement as a resistant knowledge project and invites new questions regarding oppositional ideas and actions in Lowndes County. Black women's freedom required eliminating the "brand[s] . . . affixed by the law" and practices that marked their purported inferiority.[72] Black women and freedom operate in the larger context of resisting Jim and Jane Crow, which in Lowndes County took the form of Black freedom rather than equality.

II. INTERSECTIONALITY, BLACK FREEDOM, AND BLACK FEMINIST PRAXIS

Within the Black Freedom Movement, Black women played important roles that helped to push Black Jane's freedom beyond "the boundaries of standard gender conventions."[73] These women rejected the idea "[t]hat . . . gender should prevent [them] from a role in [the Movement]."[74] Their organizing "engendered . . . equality in many spheres" and was part of a "political process of redefining race relations in the South" by which "the . . . women . . . [also] redefined themselves."[75]

This is not meant to suggest that these women were either blind or immune to sexism and patriarchy. The Student Nonviolent Coordinating Committee (SNCC) was part of a movement in which Kwame Ture (né Stokely Carmichael) famously quipped a woman's position was prone.[76] The internal

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specificity and the normativity of whiteness as well as the marginalization of Black as other).

72. White v. Crook, 251 F. Supp. 401, 405 (M.D. Ala. 1966).

73. HANDS, *supra* note 65, at 512. According to Gloria House, an SNCC field secretary in Lowndes County, her "ideas were respected, and [she] felt free to take on any aspects of the projects in which [the SNCC] were involved." *Id.* For House, "neither [her] work as a field secretary nor [her] personhood was ever diminished or disrespected by SNCC men." *Id.*; *see also id.* at 459 (quoting Annie Lee Avery as stating "[i]n all the projects I worked in, black women were very important" and "strong women [who] were the force in their communities"); JEFFRIES, *supra* note 32, at 60.

74. HANDS, *supra* note 65, at 521.

75. *Id.* at 527.

76. *See Women, SNCC, and Stokely: An Email Dialog, 2013–2014*, C.R. MOVEMENT ARCHIVE, https://perma.cc/4EC9-68G8; *see also* Casey Hayden, *In the Attics of My Mind*, *in* HANDS ON THE FREEDOM PLOW: PERSONAL ACCOUNTS

debate about patriarchy, however, was part of a larger effort to redefine the organization and its work. SNCC's thoroughgoing commitment to Black self-determination raised questions about the relationship between race, gender, and Black freedom. It did so without centering either whiteness or maleness as the standard according to which that freedom would be assessed. These debates informed the decision to use only Black staff in Lowndes County for reasons that went to the very core of Black Freedom politics.[77]

In the exclusively Black space of Lowndes County, "obvious gender disparities" were confronted as principled points of

BY WOMEN IN SNCC 381, 384–85 (Faith S. Holsaert, et al. eds., 2012) (characterizing SNCC's culture as "where the women in SNCC were truly revealed," which made the organization "unique," and describing SNCC as "radically humanistic, placing human values above those of law and order, insisting that values could and should be acted out to be realized").

77. The debate about the role of whites in SNCC raised three concerns. First, for many, authentically working for Black self-determination on the one hand, and using white SNCC staff in Lowndes County and seeking "white liberal support in service of elusive dreams of integration" on the other hand, were mutually exclusive. JEFFRIES, *supra* note 32, at 181. Gloria House described SNCC's position about white staff in Lowndes County as a question of "[h]ow could we send white organizers to black sharecroppers to convince them we could be self-determining as a race?" HANDS, *supra* note 65, at 512; *see also* WESLEY HOGAN, MANY MINDS, ONE HEART: SNCC'S DREAM FOR A NEW AMERICA 390 (2009) (quoting Mary King as stating that the choice to rely exclusively on Black staff reflected "how deeply hurt and alienated" Black Americans felt and the need for whites "to try to understand the feelings *behind* Black rejection of white help" (emphasis in original)); CARSON, *supra* note 32, at 199. Second, whites posed a particular danger both to themselves and the movements with which they were associated. This was illustrated by the trials the ACLU hoped to postpone until Blacks were seated on juries. JEFFRIES, *supra* note 32, at 181. Both Tom Coleman and Collie Leroy Wilkes were tried and acquitted by all-white, all-male juries for murdering white civil rights workers Jonathan Daniels and Viola Liuzzo in Lowndes County. *Id.* The ACLU filed *White* to "delay the trial of Tom Coleman until a jury that included African Americans could be impaneled." *Id.*; *see also* PENIEL E. JOSEPH, WAITING 'TIL THE MIDNIGHT HOUR: A NARRATIVE HISTORY OF BLACK POWER IN AMERICA 59 (2006) (noting that the decision in Lowndes County was influenced by "experiences in Mississippi [that] taught them that working with whites was unnecessarily dangerous and weakened racial solidarity at the grassroots"). Third, the nation appeared to be outraged about white racist violence in the South only when white civil rights workers were harmed. JEFFRIES, *supra* note 32, at 51. J. Edgar Hoover and the FBI "worked hard to prevent Liuzzo's martyrdom by circulating malicious tales impugning her character and casting doubt on her competence as a mother." *Id.* at 52.

internal struggle.[78] The Black women in the Movement used parallels between race and sex to make the case for universal Black freedom as a matter of race, sex, and class.[79] They used these parallels and analogies to advance an intersectional critique that identified Black women's labor as essential to both the cotton economy and the Movement's economy.[80] This Black feminist critique also allowed Black women's labor in the Movement to evolve in ways that reflected progress in the Movement's internal struggles around sex and gender roles.[81] These contestations seeded the ground into which the Movement sowed Black women's "unity with their black brothers [that] superseded a public break over the men's sexist behavior."[82] They were committed to a "vision of freedom" that rejected the idea that Black women should "be enslaved inside [their] organization."[83] They developed a Black feminist praxis that helped them redefine not only "who [they] were as females"[84] but also what it meant to be free.[85]

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78. *See* HOGAN, *supra* note 77, at 289–90.

79. *See id.* at 232 (explaining how the community eventually "joined race, gender, and interracial sex as issues to be worked through").

80. *See id.* ("Just as black labor underlay the entire cotton economy, women [were] the crucial factor that [kept] the movement running on a day-to-day basis." (internal quotations omitted)).

81. The SNCC was different from other organizations, such as the Southern Christian Leadership Conference (SCLC). Avery reports were not as prevalent in SNCC based on what Ella Baker shared about her experiences in SCLC. HANDS, *supra* note 65, at 521. In the SNCC, women were often assigned "women's" jobs such as "typing, desk work, telephone work, filing, library work, cooking, and the 'assistant' kind of administrative work, but rarely the 'executive kind.'" HOGAN, *supra* note 77, at 232. At some point in time, most, if not all, SNCC women were prohibited from driving cars in Lowndes County. HANDS, *supra* note 65, at 459. This, however, changed by the time Jean Wiley reached the community. *See id.* at 521 ("By the time I got to the South, SNCC women were driving cars and riding mules, organizing the plantations and directing the field staff, writing the reports and mobilizing the Northern campuses.").

82. HOGAN, *supra* note 77, at 232.

83. HANDS, supra note 65, at 481.

84. *Id.* at 582.

85. *See* HOGAN, *supra* note 77, at 230 ("Outgrowths of the SNCC experience included participation in the Black Power, women's liberation, community organizing, draft-resistance, and labor movements."). The direct connection between SNCC, Black Power/Freedom, and feminism is captured in "an internal education paper on women in the movement" which "attempt[ed] to bring forward the fact that sexism was comparable to racism."

In the mid-1960s, however, Murray saw the politics in Lowndes County as an outgrowth of the "increasing group consciousness and militancy among lower-income Negroes as well as young Negro intellectuals, reflected in the transformation of SNCC and [Congress of Racial Equality] to all-Negro led organizations appealing primarily to Negro masses coupled with the withdrawal of whites from the activist phases of the civil rights struggle."[86] Only later would Murray see Black Freedom's efforts to make "political power responsive to black people" as a necessary "stage in our struggle to create a society in which people can make free choices as equals about all aspects of their daily lives."[87] In Lowndes County, obtaining freedom and self-determination required the Black majority to seize political power and to use that power to extend "freedom rights to everyone."[88]

Black Jane's freedom requires Jim Crow, patriarchy, and class exploitation to be eliminated, regardless of the sex of the perpetrators. Murray, the ACLU, the Department of Justice,

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Id. at 232 (internal quotations omitted); *see also id.* at 234 ("As Bernice Reagon observed in the 1970s, SNCC gave birth to all of these movements—Black Power, [Economic Research and Action Projects], women's liberation, and the draft resistance movement.").

86. MURRAY, HUMAN RIGHTS, *supra* note 9, at 53; *U.S. Aids Negroes Fighting Jury Bar,* N.Y. TIMES (Oct. 26, 1965), https://perma.cc/2KXV-WDCK (PDF); Paul L. Montgomery, *Woman Is Shot to Death on Lowndes County Road*, N.Y. TIMES (Mar. 26, 1965), https://perma.cc/WH8M-KTQA; HOGAN, *supra* note 77, at 240 ("[T]he federal government's inaction in the face of local abuses between 1960 and 1965 dramatized its deep complicity in Jim Crow."); *see generally* Brief for the United States in Support of Intervenor's Findings of Fact, Conclusions of Law and Decree, White v. Crook, 251 F. Supp. 401 (M.D. Ala. 1966) (No. 2663-N) [hereinafter U.S. Brief in Support of Intervenor], https://perma.cc/TP9E-LZBU (PDF).

87. MURRAY, HUMAN RIGHTS, *supra* note 9, at 58

> Black Power means that in Lowndes County, Alabama (80 percent Negro) . . . if a Negro is elected tax assessor, he will be able to tax equitably and channel funds for the building of better roads and schools serving Negroes. If elected sheriff, he can end police brutality . . . . On the state and national level, it means that black people can say to white authorities, "We need X million dollars to fix our roads and we have X million votes behind us."

The Black Freedom Movement reflected an "evolving black consciousness," which Black "[w]omen . . . were among the first to promote [as] a needed first step in organizing." HANDS, *supra* note 65, at 512, 529.

88. JEFFRIES, *supra* note 32, at 179.

and the district court, however, failed to hold white Jane to account for her role in keeping Black Jane unfree. Instead, they "reasoned from race" to secure rights for white women who they contended had the potential to transform southern juries and justice in Alabama.[89] This view of the potential of white women to change the nature of justice delivered by southern juries centered white women as the key to Black freedom.[90] It not only ignored white women's role in maintaining Jim and Jane Crow, but also minimized the importance of a self-determining Black majority.[91] There was nothing to suggest that the 789 white women between the ages of 21 and 65 would be more impactful than the 4,076 Black people *White* required be added to the jury

89. *See* Robert Coles, M.D., Dep. at 35, ACLU Archives, Box 1832, Folder: White G. v. Jury Commission, 1869, F. 2 (Mudd Manuscript Library, Princeton University) (noting that Coles based his assessment of white women's potential on the idea that white women and Blacks had suffered under similar discrimination, leaving them with "a very strong role of sympathy toward the Negro" and that white women who were "very active church women in protesting lynching" were also sympathetic); ACLU News Release, Mar. 4, 1966, ACLU Archives, Box 1869, F.2 (Mudd Manuscript Library, Princeton University) ("Mississippi and Alabama, both of which exclude women from juries by statute, are the two states in which the grossest miscarriages of justice in civil rights murders have occurred."). At the time, the ACLU commented that, "[a]lthough *White v. Crook* is a historic victory for women's rights in the United States, its deeper significance is that it will have a salutary effect upon the administration of justice generally in the South." *Id.* The Department of Justice, however, was a bit more circumspect, noting that, "although we think it is clearly arbitrary and therefore unconstitutional for Alabama to presently exclude women from juries, we do not think that the exclusion necessarily results or has resulted in unfair trials for criminal defendants." U.S. Brief in Support of Intervenor, *supra* note 86, at 35–36. *But see* ACLU News Release, Mar. 4, 1966, ACLU Archives (Mudd Manuscript Library, Princeton University) ("An official of the Department of Justice . . . observed that where women have served on southern juries in civil rights cases, the chances for impartial verdicts have been increased.").

90. *See, e.g.*, MURRAY, HUMAN RIGHTS, *supra* note 9, at 10

> It is not surprising that [Alabama and Mississippi] have been the scenes of the most violent suppression of constitutional rights in recent years and the accused slayers of Negroes and [white] civil rights workers have frequently escaped punishment through acquittals or refusals to indict by all-white, all-male juries from which the overwhelming majority of the adult population of jury age has been excluded.

91. *See U.S. Asks Judges to Void Ban on Women Jurors in Alabama*, N.Y. TIMES (Dec. 30, 1965), https://perma.cc/33QE-KPWK (PDF). *White* was one of six jury exclusion cases filed by the ACLU in Alabama and Mississippi. *U.S. Aids Negroes Fighting Jury Bar*, *supra* note 86.

list.[92] Moreover, eliminating both the de facto racial discrimination and the de jure sex discrimination meant the majority of new names added to the jury list belonged to the 2,278 Black women who, after *White*, were eligible to serve as jurors.[93]

III. INTERSECTIONAL JANE REASONS THROUGH RACE TO BLACK FREEDOM, ANALOGICAL JANE REASONS FROM RACE TO CONSTITUTIONAL EQUALITY

In *White*, Murray's clandestinely racialized analogical Jane Crow "reasoned from race" to make the case that sex discrimination was as arbitrary as race discrimination and both violate the Fourteenth Amendment.[94] Jane's logic was found in the parallels between race and sex discrimination which used the movement to end Jim Crow as "the yardstick against which all other reform movements [were] measured."[95] To prevail in *White*, race and sex had to be sufficiently similar to warrant equal treatment. This was the "analogical reasoning [that]

92. White v. Crook, 251 F. Supp. 401, 404 (M.D. Ala. 1966).

93. *See id.* at 407, 409.

94. *See* MAYERI, *supra* note 17, at 6 (noting that Murray was responsible for making "race-sex analogies the legal currency of feminism"); *id.* at 3 (stating that Jane Crow was Murray's shorthand for all "laws and practices that segregated or discriminated against women"); COOPER, *supra* note 7, at 101 ("The use of the race-sex analogy become one of Murray's most signal contributions to legal thought and civil rights activism."); COLLINS, *supra* note 10, at 201 (identifying "analogical reasoning as a convention of philosophy and Western social theory").

95. MAYERI, *supra* note 17, at 2; *see, e.g.*, Murray, *Liberation*, *supra* note 4, at 191; Pauli Murray, Roots of the Racial Crisis: Prologue to Policy (1965) (S.J.D. dissertation, Yale University) (Schlesinger Library, Harvard Radcliffe Institute) [hereinafter Murray, Roots] (discussing how Gunnar Myrdal and Ashley Montague analyze the parallels between white supremacy and patriarchy); Murray & Eastwood, *supra* note 9, at 234–35 (discussing Simone de Beauvoir, Myrdal, and Montague as among the "[c]ontemporary scholars" who explored "the interrelation of [race and sex discrimination] in the United States"); MURRAY, SONG, *supra* note 4, at 362 (crediting Caroline Ware for encouraging Murray to "develop a broader perspective on [her] minority status and to see parallels between racism and sexism"); *see also* PAULI MURRAY & CAROLINE WARE, FORTY YEARS OF LETTERS IN BLACK AND WHITE (Anne Firor Scott ed. 2006); ROSENBERG, *supra* note 21, at 150–52; COLLINS, *supra* note 10, at 281 (identifying "[de Beauvoir]'s conception of existential freedom as a form of resistance to women's oppression" as an example of "[w]omen . . . invok[ing] the emancipatory language of freedom").

justified applying accepted principles [regarding Jim Crow] to new circumstances" faced by Jane Crow."[96]

By contrast, an intersectional analysis reasons through, not from, race. It does so by centering Black Jane's "dual handicap . . . of race and sex."[97] It treats Black women as full juridical subjects whose constitutional injuries are remedied as matters of freedom not equality. Being unfree in Lowndes County included being barred from jury boxes and voting booths, both of which were important indicia of self-determination for the county's Black majority. Black women and men worked together "to transform southern politics"[98] by creating a "new,

96. MAYERI, *supra* note 17, at 2; *see also* ROSENBERG, *supra* note 21, at 150–51 ("Murray believed that the approach she advocated for killing Jim Crow . . . could work for killing Jane Crow [because the latter was] a form of bias that mimicked [the former] and was best attacked using the same legal theories."); J.E.B. v. Alabama, 511 U.S. 127, 136 (1994) ("[T]hroughout much of the 19th Century the position of women in our society was, in many respects comparable to that of Blacks under the pre-Civil War slave codes. Neither slaves nor women could hold office, serve on juries, or bring suit in their own names." (citing Frontiero v. Richardson, 411 U.S. 677, 685 (1973))).

97. Murray, *Constitutional Law*, *supra* note 17, at 58; *see also* Murray & Eastwood, *supra* note 9, at 242–56. Murray was a speaker at the National Council of Negro Women's 1963 Convention, "The Negro Woman in the Emancipation Century." National Council of Negro Women/National Archives for Black Women's History, Subgroup 1, Series 2, Box 16, F. 169 (on file with the National Park Service). The Convention call described Black women as having "lived in a cultural milieu of racial discrimination and fought for rights denied her first as a woman, then a Negro." *Id.*; *see also* Murray, *Constitutional Law*, *supra* note 17, at 58; Murray, *Quest for Equality*, *supra* note 4, at 173 (describing Black women as having "to fight against the stereotypes of 'female dominance' on the one hand and loose morals on the other hand, both growing out of the roles forced upon them during the slavery experience and its aftermath"); Murray, Roots, *supra* note 95, at 30 (recognizing that "the great majority of Negro Americans—the poor, the unemployed, the uprooted, and the dispossessed" demonstrated the need to "go beyond legal guarantees and attack the behavioral consequences of protracted deprivation"); ROSENBERG, *supra* note 21, at 270–73 (describing "loose morals" as a problem for Black people and how prevailing "stereotypes grew out of leadership roles forced on black women by slavery and sustained through Jim Crow").

98. HANDS, *supra* note 65, at 509; *see also* JEFFRIES, *supra* note 32, at 3. Two of the main places in which Black protests took root were Calhoun and White Hall, where the county's Black landowners were located and enjoyed "the greater economic independence that owning land conferred on black farmers." *Id.*; *see also* CARSON, *supra* note 32, at 164 (noting that Black property owners were the core of "a group of militant and self-reliant local black residents who sustained the movement in Lowndes County").

more democratic political culture rooted in freedom politics."[99] Black jurors could change the way justice was delivered by the county's courts. Registered Black voters, however, could change things like "running water, paved roads, better schools, and a law-abiding sheriff" only if they could vote for candidates who shared their vision of freedom.[100] An Alabama law permitting independent political parties to field candidates in municipal and county elections led to the founding of the Lowndes County Black Panther Party (the Party).[101] The Party "transformed local protest by providing African-Americans with a formal social movement organization through which they could mobilize a sizeable segment of the black population in a sustained, organized, public effort to secure freedom rights."[102] This movement was not about the right "to sit beside a white person in a classroom or at a lunch counter."[103] Rather, its members adopted "a freedom rights platform, selected candidates from the poor and working class, and practiced democratic decision making."[104]

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99. JEFFRIES, *supra* note 32, at 157.

100. *Id.* at 66–67; *see, e.g.*, Walter Goodman, *The Case of Mrs. Sylvester Smith; A Victory for 400,000 Children*, N.Y. TIMES (Aug. 25, 1968), https://perma.cc/742A-4JGF (PDF).

101. *See* JEFFRIES, *supra* note 32, at 179–81.

102. JEFFRIES, *supra* note 32, at 47; *see* HANDS, *supra* note 65, at 522 (describing "sharecroppers, tenant farmers and domestics" as "the people closest to all the venom and violence of the white South"); CARSON, *supra* note 25, at 162 ("[T]he black residents of Lowndes County were typically poor, landless, and economically dependent upon a small elite of white plantation owners."); HANDS, *supra* note 65, at 501 ("The whole point . . . of joining with Southern sharecroppers and domestic workers in such a dangerous battle was to make radical social change, to build those 'vehicles of power' Miss Baker talked about and help them coalesce into a mass movement in the Deep South.").

103. HANDS, *supra* note 70, at 519.

104. JEFFRIES, *supra* note 32, at 145. At the Lowndes County Freedom Organization's (LCFO) inaugural convention in 1965, the delegates chose a slate of seven Black candidates for "sheriff, tax assessor, tax collector, coroner, and three seats on the school board." JEFFRIES, *supra* note 32, at 151. Six of the seven candidates were women: Alice Moore, Josephine Waginer, Bernice Kelly, Virginia White, Willie Mae Strickland, and Annie Bell Scott. *Id.* Alice Moore stated her platform was "tax the rich to feed the poor." *Id.* at 179; *see also id.* at 143–78. The LCFO's intensive voter education effort featured "workshops, mass meetings, and primers to increase general knowledge of local government and democratize political behavior." JEFFRIES, *supra* note 32, at 145; *see also* JOSEPH, *supra* note 77, at 128–29.

Moreover, constitutional equality cloaks the race and sex normativity of white men as full persons and citizens.[105] In *White*, analogical Jane's equality accepts the legitimacy of the white male norm and seeks to share power equally with white men in circumstances where it would be arbitrary and

105. Collins contends that "the construct of *nation* gains meaning from related constructs of *ethnicity* and *race*." COLLINS, *supra* note 10, at 263 (emphasis added). Consequently, "[b]ecoming American meant becoming white." *Id.* In Lowndes County and elsewhere in Alabama, this meant Jim Crow was used both to situate individuals and groups within the racialized and gendered hierarchy of citizenship and personhood, as well as to justify their placement within that hierarchy. The fight for Black Freedom directly challenged the legitimacy of the hierarchy, as well as the entire concept of racially exclusive citizenship and claims regarding belonging. Imani Perry observes that "[t]he West [has] effectively constructed nation-states and citizenship in terms that define 'the patriarch as citizen.'" IMANI PERRY, VEXY THING: ON GENDER AND LIBERATION 87 (2018). Perry continues, "Patriarchy is made of personhood, sovereignty, and property. This entails laws and citizenship and nation-states." *Id.* at 175. Toni Morrison makes a similar observation about "how whiteness matures and ascends the throne of universalism by maintaining its power to describe and to enforce its descriptions." TONI MORRISON, *The Trouble with Paradise*, *in* THE SOURCE OF SELF-REGARD: SELECTED ESSAYS, SPEECHES, AND MEDITATIONS 273 (2019). The universality of whiteness and maleness work in tandem to undermine efforts to secure women's liberation because this version of liberation uncritically adopts a calculus in which "the concept of masculinity . . . connotes adventure, integrity, intellect, freedom, and, most of all, power." MORRISON, *Women, Race, and Memory*, *supra* note 69, at 92. The tension between women's freedom and male supremacy raises, for Morrison, "the burning question of twentieth-century feminism: How can a woman be viewed and respected as a human being without becoming a male-like or male-dominated citizen?" *Id.* at 86. Framed in this way, any effort by those who are not white cisgender male patriarchs to assert rights or status related to personhood and citizenship as a matter of U.S. law is Sisyphean. *But see* MARTHA JONES, BIRTHRIGHT CITIZENS: A HISTORY OF RACE AND RIGHTS IN ANTEBELLUM AMERICA (2018) (positing that Black people in antebellum America asserted their citizenship rights as matter of birthright which would eventually be constitutionalized in Section 1 of the Fourteenth Amendment); JOHN MERCER LANGSTON, *Equality Before the Law: The Treatment of the American Man of Color Before and Since the Adoption of the Thirteenth Amendment*, *in* FREEDOM AND CITIZENSHIP: SELECTED LECTURES AND ADDRESSES OF HON. JOHN MERCER LANGSTON, L.L.; U.S. MINISTER RESIDENT AT HAITI 141–61 (1969) ("The law has . . . forever determined, and to our advantage, that nativity, without any regard to nationality or complexion, settles, absolutely, the question of citizenship [which is contrary to the belief that] our color, race, and degradation, all or either, rendered the colored American incapable of becoming a citizen of the United States.").

unreasonable not to do so.[106] Centering Black Jane's identity, community, and freedom "enlarge[s] and expand[s] and complicate[s] and deepen[s] . . . theories and practices of freedom."[107] This centering reveals *White*'s contradictions, forcing us to "separate those things we assume go together and to combine those things we assume are separate."[108] To do this effectively, we must "develop understandings of social relations, whose connections are often initially only intuited."[109] Black Jane encourages us to develop the vision needed to "trouble the norm rather than normalize it . . . [,] seeking to expand our understanding of" Black freedom, sex equality, and the Constitution.[110]

In *White*, Black Jane represents the women in the Black Freedom Movement who adopted one of the "early models of 'womanist' practice[]."[111] Originating at the intersection of race and sex, Black Jane's path reasoned through race to freedom for all Black people. Her freedom was not defined in terms of either white women's subjugation or Black men's valorization as the quintessential holders of Black Freedom rights. Rather, her

106. *See* White v. Crook, 251 F. Supp. 401, 409 (M.D. Ala. 1966) ("The time must come when a state's complete exclusion of women from jury service is recognized as so arbitrary and unreasonable as to be unconstitutional.").

107. DAVIS, *supra* note 71, at 104.

108. *Id.* at 105.

109. *Id.* at 142.

110. *Id.* at 104; *see also* JUDITH BUTLER, GENDER TROUBLE: FEMINISM AND THE SUBVERSION OF IDENTITY (Routledge, 2d. ed. 1999).

111. HOGAN, *supra* note 77, at 241. Among the theorists was Frances Beale, whom Gwen Patton credits with "provid[ing] the most profound insights and analyses of our triple jeopardy—gender, race, and class status." HANDS, *supra* note 70, at 583–84; *see also* JOSEPH, *supra* note 77, at 271 (stating that Frances Beale was the founder of SNCC's Black Women's Liberation Committee (BWLC), and that by 1970 BWLC changed its name to Third World Women's Alliance (TWWA)); AZARANSKY, *supra* note 46, at 85 (arguing that Murray's critique of the masculinist bent of Black Power was shared by Frances Beale and the TWWA, who "crafted a multi-positioned political space through which they fashioned feminist politics that also theorized and enacted central ideological commitments of the Black Power Movement as part of their feminist politics"); Chiappetti, *supra* note 21, at 477 ("[I]t was the sex discrimination operating *within* the civil rights movement of [this period] that ultimately radicalized black women." (emphasis in original)); ROSENBERG, *supra* note 21, at 331. *See generally* Frances Beale, *Double Jeopardy: To Be Black and Female, in* WORDS OF FIRE: AN ANTHOLOGY OF AFRICAN-AMERICAN FEMINIST THOUGHT 146–55 (Beverly Guy-Sheftall ed. 1995).

freedom required undoing the lingering badges and incidents of slavery at the root of Jim and Jane Crow laws and practices. To achieve this end, she simultaneously challenged both white supremacy and patriarchy.[112]

By contrast, white Jane represents the white women in Lowndes County who were committed to the idea that power, suffrage, and jury service should be exclusively white.[113] The analogical reasoning and the language of equality used in *White* allowed white Jane to be liberated on the back of Black Jane, whose continued subjugation under Jim Crow is indispensable to the equality white Jane seeks.[114] Although both Janes are involved in a constitutional makeover, they enter the doctrinal space from two very different starting points. White Jane emerged from the interstices between sex and race as advanced

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112. *See, e.g.*, Jones v. Alfred H. Mayer Co., 392 US 409, 441–43 (1968)

> [T]his Court recognized long ago that, whatever else they may have encompassed, the badges and incidents of slavery—its "burdens and disabilities"—included restraints upon "those fundamental rights which are the essence of civil freedom, namely, the same right . . . to inherit, purchase, lease, sell and convey property, as is enjoyed by white citizens. Just as the Black Codes, enacted after the Civil War to restrict the free exercise of those rights, were substitutes for the slave system, so the exclusion of Negroes from white communities became a substitute for the Black Codes. And when racial discrimination herds men into ghettos and makes their ability to buy property turn on the color of their skin, then it too is a relic of slavery. (quoting The Civil Rights Cases, 109 U.S. 3, 22 (1883)).

113. *See* MORRISON, *Women, Race, and Memory*, *supra* note 69, at 92 ("[M]asculinity is very much the measure of adulthood (personhood)."). Equality between the sexes proceeds not based on the assumption that the male norm is inferior but rather with "the tacit agreement that masculinity is preferable" and "a tacit acceptance of male supremacy." *Id.* at 93; *see generally* Craig v. Boren, 429 U.S. 190 (1976); Taylor v. Louisiana, 419 U.S. 522 (1975); J.E.B. v. Alabama, 511 U.S. 127 (1994). Therefore, women can be irrelevant to sex claims in the same way Black women are largely irrelevant to *White*'s sex claim.

114. *See* JEFFRIES, *supra* note 32, at 36 (crediting white women as doubling attendance at the second Lowndes County White Citizens Council meeting in 1956 because they "convinced their husbands, fathers, and brothers to allow them to join"); *see also id.* at 84 ("[W]hite activists . . . were race traitors . . . and they, like Viola Liuzzo, deserved their fate. 'If they'd been tending to their own business like I tend to mine, they'd be living today and enjoying themselves today . . . .'"); Roy Reed, *White Supremacist Jurors Approved in Liuzzo Trial,* N.Y. TIMES (Oct. 21, 1965), https://perma.cc/RKN2-EGV2 (PDF) (documenting Attorney General Richmond Flowers' unsuccessful attempt "to purge racists from the jury" after "he spent two and a half days documenting their prejudice").

in parallel in *White*. This analysis all but ignored the race discrimination that not only made the case necessary but also demonstrated the arbitrariness of sex. Plaintiffs and defendants alike operated according to the racialized and gendered hierarchy in which relationships between Black and white women were experienced rather than theorized.[115] Although the theory assumed that sex unified Black and white women, the experiences made it probable that the constitutional rights *White* guaranteed for white women, as well as the power they would gain, would most certainly be used to continue to keep Black women and men unfree.[116]

CONCLUSION

Recognizing Pauli Murray as an intersectional ancestor requires abandoning the idea that all Janes are equal. This was the case in *White* where the desire to establish women's constitutional equality meant that the racial differences between the two Janes had to be minimized, if not ignored. A close reading of *White*, however, reveals that the paradox of Murray's Janes is that intersectional Black Jane makes white Jane's sex equality possible based on white Jane's record of keeping Black Jane unfree. Black Jane maintains her intersectionality only by reasoning through race to freedom for all Black people. Her freedom requires neither white Jane's subjugation nor equality among the Janes based on theoretical parallels between race and sex. Black Jane's freedom as part of a self-determining community free from discrimination based on race, sex, and class was an essential part of the vision of Black Freedom embraced by the Black women and men in Lowndes

115. Chiapetti claims civil rights activists and feminists "collaborated" and that through *White* they closed the "distance between the civil rights movement and the women's movement, as well as the careers of the lawyers who brought them together for a brief moment in time, notably Pauli Murray." Chiapetti, *supra* note 21, at 469. This collaboration was limited to women outside of Lowndes County and failed to account for the absence of a civil rights campaign in Lowndes. *Id.* at 470.

116. *Statement by Attorney General Nicholas deB. Katzenbach Before Subcommittee No. 5, House Judiciary Committee in Support of the Proposed "Civil Rights Act of 1966" (H.R. 14765)*: Hearing on H.R. 14765 before the Subcomm. No. 5 of the H. Comm. on the Judiciary, 89th Cong. 2 (1966) (statement of Attorney General Nicholas Katzenbach, accompanied by Stephen Pollack, First Assistant, Civil Rights Division, and Alan Marer).

County. Without these freedom fighters, *White* and the women's equality it mandated would not have been possible.