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## After Suffrage: The Unfinished Business of Feminist Legal Advocacy

Serena Mayeri

**ABSTRACT.** This Essay considers post-suffrage women's citizenship through the eyes of Pauli Murray, a key figure at the intersection of the twentieth-century movements for racial justice and feminism. Murray drew critical lessons from the woman suffrage movement and the Reconstruction-era disintegration of an abolitionist-feminist alliance to craft legal and constitutional strategies that continue to shape equality law and advocacy today. Murray placed African American women at the center of a vision of universal human rights that relied upon interracial and intergenerational alliances and anticipated what scholars later named intersectionality. As Murray foresaw, women of color formed a feminist vanguard in the second half of the twentieth century, pioneering social movements and legal claims that enjoyed significant success. But Murray's hope that women's solidarity could overcome ideological divides and the legacy of white supremacy went unfulfilled. As a result, the more expansive visions of racial, sexual, economic, and reproductive justice that intersectional advocacy produced remain the most pressing unfinished business of sex equality today, at the Nineteenth Amendment's centennial.

### INTRODUCTION

The Nineteenth Amendment's passage and ratification left much business unfinished. For many American women, the Amendment failed to confer suffrage. Poll taxes, literacy tests, white primaries, and the threat of economic reprisals and violence kept African American women and men from vindicating their constitutional right to vote.<sup>1</sup> And for American women generally, voting

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1. The disenfranchisement of Native Americans as well as some Asian and Latinx Americans persisted, too. See ALEXANDER KEYSSAR, *THE RIGHT TO VOTE: THE CONTESTED HISTORY OF DEMOCRACY IN THE UNITED STATES*, at xvi, 123-24 (rev. ed. 2018); Maggie Blackhawk, *Federal*

rights comprised only part of the full enfranchisement suffragists and other advocates for women's equal citizenship sought.<sup>2</sup>

Prompted by movements for racial justice, the rights revolution that began in the mid-twentieth century extended voting rights to African American women and men forty-five years after the Nineteenth Amendment; gave people of color some legal tools to pursue equal opportunity in education and employment; opened public accommodations; and allowed for greater civic participation by persons formerly excluded on the basis of race. After the realization of universal adult citizen suffrage in 1965, feminist, antiracist, and economic-justice advocates pressed beyond the vote, seeking to fulfill the broader visions of freedom and equality long bound up with quests for universal suffrage.

This Essay begins by considering post-suffrage women's citizenship from the vantage point of a central figure at the intersection of the civil-rights and feminist movements of the 1960s and 1970s: Pauli Murray. Murray, whose posthumously published autobiography's subtitle described her as a "Black activist, feminist, lawyer, priest and poet," was a largely unsung architect of second-wave feminism's legal and constitutional strategy.<sup>3</sup> Her theories and strategies anticipated elements of what legal scholar Kimberlé Crenshaw later named intersectionality.<sup>4</sup> From the woman suffrage movement that culminated in the Nineteenth Amendment's passage and ratification, Murray drew crucial lessons about

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*Indian Law as Paradigm Within American Public Law*, 132 HARV. L. REV. 1787, 1843-45 (2019); see also *infra* note 38 (explaining barriers faced by Asian and other non-European immigrants). On disability and suffrage, see RABIA BELT, *DISABLING DEMOCRACY IN AMERICA: DISABILITY, CITIZENSHIP, SUFFRAGE, AND THE LAW*, 1819-1920 (forthcoming).

2. See Reva B. Siegel, *The Nineteenth Amendment and the Democratization of the Family*, 129 YALE L.J.F. 450, 459-60 (2020); Reva B. Siegel, *She the People: The Nineteenth Amendment, Sex Equality, Federalism, and the Family*, 115 HARV. L. REV. 947, 951-52 (2002); Martha S. Jones, *How Black Suffragists Fought for the Right to Vote and a Modicum of Respect*, 40 HUMANITIES, Summer 2019, <https://www.neh.gov/article/how-black-suffragists-fought-right-vote-and-modicum-respect> [<https://perma.cc/9L86-WH2C>].
3. Scholarly attention to Murray has accelerated in recent years. See, e.g., SARAH AZARANSKY, *THE DREAM IS FREEDOM: PAULI MURRAY AND AMERICAN DEMOCRATIC FAITH* (2011); PATRICIA BELL-SCOTT, *THE FIREBRAND AND THE FIRST LADY: PORTRAIT OF A FRIENDSHIP: PAULI MURRAY, ELEANOR ROOSEVELT, AND THE STRUGGLE FOR SOCIAL JUSTICE* (2016); BRITTNEY C. COOPER, *BEYOND RESPECTABILITY: THE INTELLECTUAL THOUGHT OF RACE WOMEN* (2017); GLENDA ELIZABETH GILMORE, *DEFYING DIXIE: THE RADICAL ROOTS OF CIVIL RIGHTS, 1919-1950* (2008); KENNETH W. MACK, *REPRESENTING THE RACE: THE CREATION OF THE CIVIL RIGHTS LAWYER* (2012); SERENA MAYERI, *REASONING FROM RACE: FEMINISM, LAW, AND THE CIVIL RIGHTS REVOLUTION* (2011); ROSALIND ROSENBERG, *JANE CROW: THE LIFE OF PAULI MURRAY* (2017); ANNE FIROR SCOTT, *PAULI MURRAY & CAROLINE WARE: FORTY YEARS OF LETTERS IN BLACK AND WHITE* (2006).
4. See, e.g., Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics*, 1989 U. CHI. L.F. 139 (1989).

interracial coalition, universal human rights, and the centrality of “Negro women” to struggles for racial justice and sex equality. Through legal, constitutional, and political strategies that linked racial, gender, and economic justice, Murray and other black feminist leaders built alliances with civil-rights organizations and with predominantly white women’s groups and sought to place African American women—including lawyers, activists, theorists, grassroots organizers, and ordinary citizens—at the center of movement strategy. They fought for jury service and criminal justice, freedom from reproductive control and access to health care, equal employment opportunity, an end to sexual exploitation and violence, welfare rights and living wages, support for mothers’ roles as caregivers and breadwinners, and a vision of sexual and economic citizenship that embraced parents and children regardless of marital or birth status.

However, feminists faced formidable obstacles. The 1965 Moynihan Report encapsulated the dominant consensus among both liberal and conservative policy-makers, which blamed the “Negro family’s” “matriarchal” structure for the “cultural pathology” afflicting impoverished urban black communities and saw the restoration of the patriarchal family as the key to racial progress.<sup>5</sup> Over the following decades, a right-wing resurgence, fueled by movements for racial retrenchment and against feminism, realigned American electoral politics and rendered all three branches of government increasingly inhospitable to progressive aims. Though her vision of a civil-rights-feminist coalition and black female leadership bore fruit, Murray’s hope that southern white women would lend a moderating voice to racial politics went largely unrealized.

Feminists won some significant victories after suffrage,<sup>6</sup> often buoyed by African American women’s pioneering advocacy. Civil-rights and feminist activists formed fragile but important coalitions. Despite these efforts, a century after the Nineteenth Amendment and more than fifty years after suffrage became a reality for adult U.S. citizens, the more expansive visions of racial, sexual, economic, and reproductive justice that flourish at the intersections remain the most urgent unfinished business of sex equality.

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5. OFFICE OF POLICY PLANNING & RESEARCH, U.S. DEP’T OF LABOR, *THE NEGRO FAMILY: THE CASE FOR NATIONAL ACTION* 29-40 (1965).

6. I follow Martha Jones and others in dating the achievement of women’s suffrage to the 1965 enactment of the Voting Rights Act. See Martha S. Jones, *How the Daughters and Granddaughters of Former Slaves Secured Voting Rights for All*, SMITHSONIAN MAG. (Mar. 8, 2019), <https://www.smithsonianmag.com/smithsonian-institution/how-daughters-and-granddaughters-former-slaves-secured-voting-rights-all-180971660> [https://perma.cc/PEM4-TVYH] (noting that the ratification of the Nineteenth Amendment “was but a brief pause in [black women’s] ongoing struggle for voting rights”).

## I. THE LOST PROMISE OF THE SUFFRAGE MOVEMENT

When Pauli Murray conceived a new strategy to realize the promise of equal citizenship for women in the early 1960s, the woman-suffrage movement provided an inspirational but cautionary tale. The activism that culminated in the passage and ratification of the Nineteenth Amendment began in the crucible of abolitionism. Leading white advocates for woman suffrage, such as Elizabeth Cady Stanton, found their political voices in antislavery agitation, articulating a critique of women's legal, political, and social subordination in documents such as the 1848 Declaration of Sentiments signed at Seneca Falls.<sup>7</sup> Among the proponents of women's enfranchisement were Sojourner Truth and Frederick Douglass, giants in the African American freedom struggle.<sup>8</sup> African American woman suffragist Frances Ellen Watkins Harper called for the inclusion of black women "as part of 'one great privileged nation'" of enfranchised persons. She declared: "We are all bound up in one great bundle of humanity, and society cannot trample on the weakest and feeblest of its members without receiving the curse of its own soul."<sup>9</sup>

But the abolitionist-feminist alliance did not survive Reconstruction. Suffragists lost a hard-fought battle to enfranchise women: the Fourteenth Amendment introduced the word "male" into the Constitution, penalizing states that denied male citizens the vote with a reduction in representation, and the Fifteenth Amendment prohibited abridgement of voting rights based on race but not sex.<sup>10</sup> Over the following decades, some leading white suffragists advocated women's enfranchisement as an antidote to the voting power of black, immigrant, poor, and disabled men and rebuffed African Americans who continued to fight for women's right to vote.<sup>11</sup>

For Murray, the story of a universalist human-rights movement splintering into factions that elevated one claim (black male suffrage) over another (enfranchisement of all women and men) had a familiar ring.<sup>12</sup> Murray had struggled

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7. Siegel, *supra* note 2, at 459-60.

8. ELLEN CAROL DUBOIS, *FEMINISM AND SUFFRAGE: THE EMERGENCE OF AN INDEPENDENT WOMEN'S MOVEMENT IN AMERICA, 1848-1869*, at 68-70 (2d ed. 1999); NELL IRVIN PAINTER, *SOJOURNER TRUTH: A LIFE, A SYMBOL* 220-21 (1996).

9. Jones, *supra* note 6.

10. DUBOIS, *supra* note 8, at 163.

11. ROSALYN TERBORG-PENN, *AFRICAN AMERICAN WOMEN IN THE STRUGGLE FOR THE VOTE, 1850-1920*, at 161-66 (1998).

12. Works that informed Murray's understanding of the woman's suffrage movement included GUNNAR MYRDAL, 2 *AN AMERICAN DILEMMA: THE NEGRO PROBLEM AND MODERN DEMOCRACY* 1073-78 (1944); and ELEANOR FLEXNER, *CENTURY OF STRUGGLE: THE WOMAN'S RIGHTS MOVEMENT IN THE UNITED STATES* (1959).

against what she called “Jane Crow” since law school, where she faced prejudice from her male Howard classmates and professors and outright exclusion from Harvard Law School when she applied for a fellowship traditionally awarded to Howard’s top graduate.<sup>13</sup> Murray immediately likened Harvard’s 1944 edict— “members of your sex are not admitted to the University”— to the University of North Carolina’s refusal to consider her application to its graduate program in sociology six years earlier, because of her race. She resolved to fight the “twin immoralities” of Jim and Jane Crow.<sup>14</sup>

In 1962, Murray seized her chance: as a member of the Civil and Political Rights Committee of the President’s Commission on the Status of Women, she wrote a founding document of modern feminist constitutionalism.<sup>15</sup> Advocates for women divided, sometimes bitterly, over the proposed Equal Rights Amendment (ERA), while opponents worried that formal legal equality would vanish hard-won protective labor legislation for women. Some leaders in the pro-ERA National Woman’s Party (NWP) saw racial-justice movements as competitors, even antagonists. Murray’s memorandum tacitly mended both rifts: she recommended that advocates organize an “NAACP for women” and pursue equal-rights litigation under the Fourteenth Amendment in a strategy modeled on the NAACP Legal Defense Fund’s campaign against racial segregation.<sup>16</sup>

The following year, Murray authored another pivotal memorandum defending a proposed amendment to the 1964 Civil Rights Act prohibiting employment discrimination based on sex.<sup>17</sup> When NWP leaders and some congresswomen declared the provision necessary to protect “white, Christian women of United

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13. Mary Elizabeth Basile, *Pauli Murray’s Campaign Against Harvard Law School’s “Jane Crow” Admissions Policy*, 57 J. LEGAL EDUC. 77, 79-80 (2007); PAULI MURRAY, *SONG IN A WEARY THROAT: MEMOIR OF AN AMERICAN PILGRIMAGE* 147-67, 308-16 (1987); J. CLAY SMITH, JR., *REBELS IN LAW: VOICES IN HISTORY OF BLACK WOMEN LAWYERS* 79-83 (1998).

14. See MURRAY, *supra* note 13, at 147-67, 308-16; ROSENBERG, *supra* note 3, at 339 (quoting Statement of Pauli Murray on the Equal Rights Amendment (S.J. Res. 61) submitted to the Senate Judiciary Committee 5 (Sept. 16, 1970) (Pauli Murray Papers, Box 89, Folder 1542V, on file with the Schlesinger Library, Radcliffe Institute, Harvard University)).

15. Pauli Murray, *A Proposal to Reexamine the Applicability of the Fourteenth Amendment to State Laws and Practices Which Discriminate on the Basis of Sex Per Se* 10 (Dec. 1, 1962) (President’s Commission on the Status of Women Papers, Doc. II-20, Box 8, Folder 62, on file with the Schlesinger Library, Radcliffe Institute, Harvard University).

16. *Id.*

17. Pauli Murray, *Memorandum in Support of Retaining the Amendment to H.R. 7152, Title VII (Equal Employment Opportunity) to Prohibit Discrimination in Employment Because of Sex*, in *HOW AND WHY WAS FEMINIST LEGAL STRATEGY TRANSFORMED, 1960-1973?*, at 4 (Serena Mayeri ed., 2007).

States origin”<sup>18</sup> from discrimination and many civil-rights sympathizers warned that the amendment would sink the civil-rights bill, Murray reframed the debate. Without a sex amendment, Murray warned, Title VII would “offer genuine equality of opportunity to only *half* of the potential Negro work force,” leaving “*both* Negro and white women” to “share a common fate of discrimination.”<sup>19</sup> Murray’s theory of politics placed “Negro women” at the center of struggles for justice that often pitted “Negroes” against “women” as if these were mutually exclusive categories.

The post-Civil War abolitionist/feminist split over suffrage informed Murray’s approach to law reform and constitutional change, and imbued her efforts to unite racial justice and women’s rights with special urgency. Murray believed that “the rights of women and the rights of Negroes are only different phases of the fundamental and indivisible issue of human rights.”<sup>20</sup> “American history” taught the “costly lesson” that “human rights” could not “be affirmed for one social group and ignored in the case of another without tragic consequences.”<sup>21</sup>

Murray saw the failure to achieve woman suffrage after the Civil War as especially fateful. Not only had many Republicans and male abolitionists betrayed the cause of universal enfranchisement, but African Americans lost valuable potential allies in disenfranchised white southern women; had women won the vote in 1870, Murray suggested, their “political emancipation . . . might well have eased the transition from a slave society to a society of free men and women.”<sup>22</sup> Specifically, “[p]olitical power in the hands of white women . . . could have reduced the fear of ‘Negro domination’” in the defeated South and mitigated post-Reconstruction racial retrenchment.<sup>23</sup> Murray even cited a “sharp drop in lynching” after pass of the Nineteenth Amendment in 1920 to support her contention that white female voters exerted a progressive influence on the politics of race.<sup>24</sup>

Murray invoked universal suffrage’s failure in the 1860s to promote a “natural alli[ance]” between “women” and “disadvantaged minorities” a century

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18. Serena Mayeri, *Constitutional Choices: Legal Feminism and the Historical Dynamics of Change*, 92 CALIF. L. REV. 755, 770-71 (2004). For more on Murray’s memo, see, e.g., Serena Mayeri, *Intersectionality and Title VII: A Brief (Pre-)History*, 95 B.U. L. REV. 713, 718-21 (2015).

19. Murray, *supra* note 17, at 20-21.

20. *Id.* at 9.

21. *Id.* She warned, “Whenever political expediency has dictated that the recognition of basic human rights be postponed, the resulting dissension and conflict has been aggravated.” *Id.*

22. *Id.*

23. *Id.*

24. *Id.* at 11.

later.<sup>25</sup> The “bitter memories” of the Reconstruction-era fracture made (white) women “understandably apprehensive and resentful of any proposed legislation which may appear to grant rights to Negroes at the expense of their own rights,” Murray wrote.<sup>26</sup> Her memo appealed to lawmakers’ “statesmanship” to “prevent a possible injustice” by banning sex discrimination.<sup>27</sup> To skeptical civil-rights and labor leaders, Murray evoked common understandings of how employers – and politicians – pitted vulnerable groups against one another, from enslaved and free (white) workers, to immigrant and native-born laborers, to “Negro strikebreakers” and underpaid women who kept wages low.

Murray’s efforts were at once savvy and sincere: in her work as an advocate for workers, criminal justice, civil rights, and other progressive causes, she had long cultivated close personal friendships and intellectual partnerships with white as well as black women.<sup>28</sup> Murray’s calls for a coalition between white women and people of color spoke to multiple audiences: civil-rights leaders wary of white feminists’ flirtations with segregationists; white women preoccupied with sex equality at the expense of racial justice; black and working-class women skeptical that women’s interests aligned across race and class.<sup>29</sup> By identifying intersecting axes of inequality, Murray sought to persuade those who believed their interests to be divergent that they shared a common cause.<sup>30</sup>

For Murray, the position of “Negro women” provided the most urgent illustration of sexual and racial injustice. Long before scholars spoke of intersectionality, Murray theorized how women of color shouldered uniquely heavy burdens and provided underappreciated leadership in movements for racial justice and

25. *Id.*

26. *Id.* at 12.

27. *Id.* at 13.

28. See, e.g., BELL-SCOTT, *supra* note 3; SCOTT, *supra* note 3.

29. Murray had long called on women as a group to exercise their majority voting strength in favor of progressive racial and social policies. See, e.g., *Says Yearly Brotherhood Meetings Are Not Enough*, ALA. TRIBUNE, Feb. 14, 1947, at 7 (quoting Murray as telling an interracial group that “women’s organizations in particular must participate in programs of social and legislative action” against racial prejudice and discrimination).

30. As Dorothy Roberts explains, “One of the important things about how power operates intersectionally . . . is that it has a way of making people not see the power itself. In other words, the intersectional nature of structures of power has a way of leaving certain people out, marginalizing certain people, but also making people who are disadvantaged by power structures not see how it’s in their interest to fight these structures in coalition with others.” Email from Dorothy Roberts, Prof., University of Pennsylvania Law, to Author (Dec. 7, 2019, 3:12 PM EST) (on file with author) (echoing remarks made at the University of Pennsylvania Law Lecture on Intersectionality and the Law (Oct. 23, 2019), <https://pennlaw.hosted.panopto.com/Panopto/Pages/Viewer.aspx?id=f2ffe4c9-552e-4a70-9f9f-aae201386991> [https://perma.cc/9YUR-Z5D9]).



women's liberation.<sup>31</sup> "[T]he Negro woman," she wrote, "has less chances of finding a mate, remains single longer and in higher incidence, bears more children, is in the labor market longer, has less education, earns less, is widowed earlier and carries a heavier economic burden as a family head."<sup>32</sup> Without protection from antidiscrimination laws, black women could not provide necessary support for themselves or their families. To advocates concerned that antidiscrimination laws might demolish sex-specific protective labor legislation, Murray's focus on African American women who toiled to provide both support and care to their families highlighted the plight they shared with other working-class women.<sup>33</sup>

Impelled by the historical memory of the woman-suffrage split, Murray's activism and writings in the 1960s and early 1970s endeavored to bridge gaps between movements for racial justice and for sex equality. Murray emphasized the centrality of women's activism to racial-justice movements and protested the exclusion of black women from the speakers' dais at the 1963 March on Washington, declaring: "The Negro woman can no longer postpone or subordinate the fight against discrimination because of sex to the civil rights struggle but must carry on both fights simultaneously," because women's "full participation and leadership" was "necessary to the success of the civil rights revolution."<sup>34</sup> And she adamantly refused to subordinate or subdivide her complex identities as a "Negro woman" of mixed racial heritage, a civil-rights lawyer, a labor

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31. On African American women's civil-rights activism during this period, see, for example, PAULA GIDDINGS, *WHEN AND WHERE I ENTER: THE IMPACT OF BLACK WOMEN ON RACE AND SEX IN AMERICA* (1985); BARBARA RANSBY, *ELLA BAKER AND THE BLACK FREEDOM MOVEMENT: A RADICAL DEMOCRATIC VISION* (2003); SISTERS IN THE STRUGGLE: AFRICAN AMERICAN WOMEN IN THE CIVIL RIGHTS-BLACK POWER MOVEMENTS (Bettye Collier-Thomas & V.P. Franklin eds., 2001); REBECCA TUURI, *STRATEGIC SISTERHOOD: THE NATIONAL COUNCIL OF NEGRO WOMEN IN THE BLACK FREEDOM STRUGGLE* (2018); DEBORAH GRAY WHITE, *TOO HEAVY A LOAD: BLACK WOMEN IN DEFENSE OF THEMSELVES, 1894-1994* (1999).

32. Murray, *supra* note 17, at 21.

33. On the diverse and complicated positions working-class and labor-union women took in debates about workplace protections and antidiscrimination laws, see DOROTHY SUE COBBLE, *THE OTHER WOMEN'S MOVEMENT: WORKPLACE JUSTICE AND SOCIAL RIGHTS IN MODERN AMERICA* (2004); Deborah Dinner, *Equal by What Measure? The Lost Struggle for Universal State Protective Labor Standards*, in *VULNERABILITY AND THE LEGAL ORGANIZATION OF WORK* 283 (Martha Albertson Fineman & Jonathan W. Fineman eds., 2018).

34. Pauli Murray, *The Negro Woman in the Quest for Equality*, ACORN, July 1964, at 5. The *Pittsburgh Courier* paraphrased Murray as saying in a November 1963 speech that "often women prefer their independence to marriage, and thus often mother 'illegitimate children' with no effort to identify fathers." Robert L. Robinson, *Rights Heads Accused of Sex Discrimination Snub Women in Top Ranks*, *Says Educator*, PITTSBURGH COURIER, Nov. 23, 1963, at 4.

advocate, and a champion of universal human rights.<sup>35</sup> To the reawakening feminist movement she brought the legacy of racial-justice activism, calling for a women’s March on Washington if the EEOC failed to enforce Title VII’s sex discrimination prohibition.<sup>36</sup> When racial, generational, and ideological differences threatened to divide feminists, Murray urged intergenerational and interracial alliances.

## II. AFTER SUFFRAGE: THE BLACK FEMINIST VANGUARD

The passage of Title VII, by linking the fates of race- and sex-discrimination law, eventually enabled a fragile but potent coalition between “women and minorities,” civil-rights and feminist movements.<sup>37</sup> Even so, Murray’s vision of equal citizenship for women faced formidable obstacles. Almost a half-century after the Nineteenth Amendment’s ratification and nearly a century after the Fifteenth’s, African American women and men in the south possessed only nominal suffrage rights.<sup>38</sup> The Voting Rights Act of 1965, the culmination of decades of activism, finally delivered on the promise of universal adult suffrage.

But even those who embraced civil rights and voting rights clung to a gendered family political economy that rewarded households headed by a male breadwinner and a female homemaker and caregiver. The 1965 Moynihan Report crystallized this liberal consensus, which held that the first line of defense against a “matriarchal” family structure that bred poverty, “illegitimacy,” and violence was the restoration of African American men to their proper role as heads of households.<sup>39</sup> In short, many civil-rights leaders and policy-makers saw equal opportunity for women as a threat rather than a boon to the cause of racial equality.

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35. See, e.g., SUSAN HARTMANN, *THE OTHER FEMINISTS: ACTIVISTS IN THE LIBERAL ESTABLISHMENT 190* (1998) (describing Murray’s concern that “a movement ‘confined almost solely to ‘women’s rights’ without strong bonds with other movements toward human rights . . . might develop into a head-on collision’ with black liberation initiatives, as had happened after the Civil War when some white feminists had advanced their claim to suffrage ahead of that of black men”).

36. Edith Evans Asbury, *Protest Proposed on Women’s Jobs*, N.Y. TIMES, Oct. 13, 1965, at 32.

37. NANCY MACLEAN, *FREEDOM IS NOT ENOUGH: THE OPENING OF THE AMERICAN WORKPLACE* 117-54 (2006); MAYERI, *supra* note 3, at 41-75; Mayeri, *supra* note 18, at 769-77.

38. Asian and other non-European immigrants confronted often insuperable barriers to entry and naturalization, a prerequisite to suffrage and many other rights and opportunities. See, e.g., MAE NGAI, *IMPOSSIBLE SUBJECTS: ILLEGAL ALIENS AND THE MAKING OF MODERN AMERICA* (2004); KUNAL M. PARKER, *MAKING FOREIGNERS: IMMIGRATION AND CITIZENSHIP LAW IN AMERICA, 1600-2000* (2015).

39. OFFICE OF POLICY PLANNING & RESEARCH, *supra* note 5.

Murray and other feminists resisted the Moynihan Report's analysis and advanced their own vision of the relationship between racial progress, sex equality, family structure, and state action.<sup>40</sup> They fought women's subordination in education, employment, jury service, political participation, and office-holding, as well as in marriage and family life. African American women formed a vanguard of feminist activism and legal advocacy on each of these fronts.<sup>41</sup> Their efforts met with mixed success. Many signature feminist legal victories are rooted in intersectional advocacy. So is much of the unfinished business of sex equality.

#### A. *Intersectional Advocacy in Jury Service, Politics, and Employment*

The culmination of black women and men's activism in the Voting Rights Act of 1965 seemed to secure universal adult citizen suffrage at long last. But voting rights, crucial as they were, did not exhaust demands for full enfranchisement and civic participation. State-level de jure exclusion of (all) women and de facto exclusion of black men from juries had long prevented defendants from receiving fair trials and denied equal citizenship to white women and persons of color.<sup>42</sup> In 1965, Pauli Murray and ACLU stalwart Dorothy Kenyon championed the cause of voting-rights organizer Gardenia White and other black women excluded from the all-white, all-male jury that acquitted the accused murderers of a civil-rights worker.<sup>43</sup> Their efforts to overturn outright bans on women's jury service succeeded in 1966 when a three-judge federal district court declared Alabama's law a violation of the Equal Protection Clause. A panel that included Judges Frank M. Johnson, Jr. and Richard Rives, judicial champions of civil rights, accepted Murray's and Kenyon's argument that exclusions based on sex, as well as those based on race, contravened the Constitution.<sup>44</sup> The state's decision not to appeal dashed Murray's hope for a landmark Supreme Court sex-discrimination ruling on par with *Brown*.<sup>45</sup> She had hoped that such a decision would spotlight how racial discrimination intersected with the paternalistic assumptions about gender and family roles that stunted women's participation in public life.

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40. See Serena Mayeri, *Historicizing the "End of Men": The Politics of Reaction(s)*, B.U. L. REV. 729, 735-36 (2013).

41. MAYERI, *supra* note 3, at 90-105, 144-85.

42. On women's jury service, see LINDA K. KERBER, *NO CONSTITUTIONAL RIGHT TO BE LADIES: WOMEN AND THE OBLIGATIONS OF CITIZENSHIP*, 124-220 (1998).

43. *Id.* at 197-99; MAYERI, *supra* note 3, at 26-29; ROSENBERG, *supra* note 3, at 293-96.

44. *White v. Crook*, 251 F. Supp. 401 (M.D. Ala. 1966).

45. MAYERI, *supra* note 3, at 29.

Lillie Willis's case illuminated the stakes of jury service for African Americans' political participation and activism. Willis, head of the local chapter of the Mississippi Freedom Democratic Party, faced charges of perjury and forgery related to her mother's attempt to register to vote; she had also "been active in seeing that the children of plantation workers and displaced farm hands enrolled in formerly all-white schools in Mississippi."<sup>46</sup> Twenty-eight-year-old Eleanor Holmes Norton, an African American attorney whom Murray had mentored at Yale Law School, helped draft a brief challenging the exclusion of black men and all women from the jury pool in Sharkey County, Mississippi.<sup>47</sup> The Willis family paid a steep price for their multi-generational activism. Jennie Joyce Willis, Lillie Willis's thirteen-year-old daughter, lost her right eye to gunfire when she stepped outside her home on Thanksgiving Day in 1966. Her mother suspected that the bullet was meant for her, though Jennie, too, was a civil-rights activist in her own right, having attempted to register for seventh grade at a local all-white elementary school earlier that fall.<sup>48</sup> "My daughter has lost an eye, and I've got something to work for—freedom," Lillie Willis told reporters.<sup>49</sup>

Murray also saw sex and racial equality in jury service as essential to fairness for black defendants. Murray's advocacy for Odell Waller, an African American man sentenced to death for the murder of his white employer, helped steer her toward a career in law.<sup>50</sup> Just as excluding women, black and white, from suffrage impeded racial progress, so too did all-male juries reduce the chances for African American men and women to receive fair trials. Opening jury service to women generally, Murray hoped, would serve the goal of race- as well as sex-blind criminal justice.<sup>51</sup>

Murray and other feminists also continued to emphasize how the full enfranchisement of women required much more than the ballot:<sup>52</sup> on the fiftieth anniversary of the Nineteenth Amendment, for instance, Murray called for "qualified

46. *Girl, 13, Has Eye Shot Out in Mississippi*, PITTSBURGH COURIER, Dec. 10, 1966, at 1.

47. I use similar language to describe the Willis case in MAYERI, REASONING FROM RACE, *supra* note 3, at 174-75.

48. *Id.*; John Carr, *Shot from the Night Takes Youngster's Eye*, DELTA DEMOCRAT-TIMES, Nov. 29, 1966, at 1.

49. *Negro Woman Tells of Thanksgiving Shooting*, JACKSON CLARION-LEDGER, Dec. 1, 1966, at 51. After a brief hiatus, Mrs. Willis resumed her activism. See, e.g., *Natchez Leaders Censure Bombing*, DELTA DEMOCRAT-TIMES, Mar. 3, 1967, at 1 (describing a petition Willis organized to ask federal officials to pass a law to "protect Negroes against brutality").

50. See MACK, *supra* note 3, at 226; MURRAY, *supra* note 13, at 204-10; ROSENBERG, *supra* note 3, at 104-05.

51. For more on the intersection of race and sex in jury-service exclusion cases, see generally KERBER, NO CONSTITUTIONAL RIGHTS TO BE LADIES (1998), and MAYERI, *supra* note 3, at 173-81.

52. Siegel, *supra* note 7; Siegel, *supra* note 2.

women” to hold high offices, including the presidency, at least one-third of congressional seats, and a minimum of three or four seats on the Supreme Court.<sup>53</sup> Women’s representation in high office fell far short of Murray’s goal: few women, and even fewer women of color, served in Congress in the 1960s and early 1970s.<sup>54</sup> But a reinvigorated women’s movement backed a growing contingent of feminist lawmakers who sponsored a raft of legislation designed to enhance women’s legal status.<sup>55</sup> Representative Patsy Takemoto Mink (D-HI), the first nonwhite woman elected to Congress, championed the rights of immigrants, people of color, labor-union members, and poor and low-income Americans.<sup>56</sup> She sponsored women’s rights legislation, including the Child Care Development Act of 1971 and Title IX of the Education Amendments of 1972.<sup>57</sup> The National Women’s Political Caucus, established in 1971, included elected officials such as Representative Shirley Chisholm (D-NY), the Brooklyn-born daughter of Caribbean parents who became the first black woman elected to Congress in 1968 after winning unemployment benefits for domestic workers<sup>58</sup> and defeating an English-only literacy test in the New York State Assembly.<sup>59</sup> A founding member of the Congressional Black Caucus, Chisholm helped lead the nearly successful effort to pass a universal child-care bill and became the first woman to mount a nationwide campaign for the Democratic presidential nomination, in 1972.<sup>60</sup> Mink and Chisholm often partnered with Representative Bella Abzug

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53. *Women’s Liberation: From What? For What?*, ROBESONIAN, Jan. 17, 1971 at 7.

54. Women’s representation in Congress fell from a high of twenty Senators and Representatives in 1961–63 to eleven in 1969–71, and did not reach twenty again until 1977–79. See *History of Women in the U.S. Congress*, CTR. FOR AM. WOMEN & POL., <https://cawp.rutgers.edu/history-women-us-congress> [<https://perma.cc/Y22S-H9V7>].

55. See, e.g., Title IX of the Education Amendments Act of 1972, Pub. L. No. 92-318, 86 Stat. 235 (codified as amended at 20 U.S.C. §1681 et seq. (2018)); Equal Employment Opportunity Act of 1972, Pub. L. No. 92-261, 86 Stat. 103; Equal Rights Amendment to the Federal Constitution, 92 H.J. Res. 208, 86 Stat. 1523 (1972). Congresswomen such as Representatives Edith Green (D-OR) and Martha Griffiths (D-MI) had been instrumental in passing earlier women’s rights legislation such as the Equal Pay Act of 1963.

56. *Patsy Takemoto Mink*, U.S. H.R. HIST., ART & ARCH., <https://history.house.gov/People/detail/18329> [<https://perma.cc/4H84-4LQ6>].

57. *Id.*

58. *Rep. Chisholm Tells of Climb*, TIMES-TRIBUNE (Scranton, Pa.), Feb. 7, 1970, at 2; *Are Domestic Home Free With Benefits?*, CHI. TRIB., May 23, 1973, at 72.

59. *Literacy Vote Test is Made*, DAILY MESSENGER (Canandaigua, N.Y.), May 19, 1965, at 12.

60. See Shirley CHISHOLM, UNBOUGHT AND UNBOSSSED: EXPANDED 40TH ANNIVERSARY EDITION (2010); Anastasia Curwood, *Black Feminism on Capitol Hill: Shirley Chisholm and Movement Politics, 1968-1984*, 13 MERIDIANS 204 (2005); Julie Gallagher, *Waging “The Good Fight”: The Political Career of Shirley Chisholm, 1953-1982*, 92 J. AF. AM. HIST. 392 (2007). Mink ran a more limited campaign for the presidency in 1972. See Wallace Turner, *Mrs. Mink, Vying with McGovern, Offers Oregon a Choice*, N.Y. TIMES, May 10, 1972, at 36; Judy T. Wu, *Feminist*

(D-NY), a labor and civil-rights lawyer who fought hard for the Equal Rights Amendment and introduced some of the first federal gay-rights legislation in 1974.<sup>61</sup>

Intersectional advocacy also left a lasting mark on employment discrimination law, as women of color frequently pioneered new claims. Many of the earliest sexual-harassment cases, for example, featured African American female plaintiffs who may have seen in men's abuses of power in the workplace echoes of the exploitation and violence suffered by their forebears under slavery and Jim Crow. Kimberlé Crenshaw later speculated that the "racialization of sexual harassment" may account for Black women's "disproportionate represent[ation] in these cases. . . . Racism may provide the clarity to see that sexual harassment is . . . an intentional act of sex discrimination."<sup>62</sup> As chair first of the New York City Human Rights Commission and later of the EEOC, Eleanor Holmes Norton became one of the first government officials to champion the recognition and remediation of sexual harassment.<sup>63</sup> Anita Hill's 1991 testimony at Clarence Thomas's confirmation hearings awakened the nation to the prevalence and wrongfulness of sexual harassment and underscored black women's longstanding vanguard position in the feminist movement.<sup>64</sup>

### *B. Family Status, Economic Citizenship, and Sexuality*

Full citizenship, sex-equality advocates emphasized, required what Murray called a "human rights revolution" that touched every aspect of public and private life.<sup>65</sup> As the "personal" became "political," in the parlance of the period, feminists such as Murray and Eleanor Holmes Norton inverted Moynihan's thinking to argue that the more equal partnerships enjoyed by black couples could serve as models for white families by using their "head start on egalitarian family life" to "pioneer in establishing new male-female relationships around

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Invisibility in the 1970s: Race, Region, and Representations of Patsy Takemoto Mink, Presentation at the American Historical Association Annual Meeting (Jan. 5, 2017).

61. LEANDRA ZARNOW, *BATTLING BELLA: THE PROTEST POLITICS OF BELLA ABZUG* (2019).
62. Kimberlé Crenshaw, *Race, Gender, and Sexual Harassment*, 65 S. CAL. L. REV. 1467, 1469-70 (1992); see also CATHARINE MACKINNON, *SEXUAL HARASSMENT OF WORKING WOMEN: A CASE OF SEX DISCRIMINATION* 127-41 (1979); Carrie N. Baker, *Race, Class, and Sexual Harassment in the 1970s*, 30 FEMINIST STUD. 7 (2004).
63. On the emergence of activism against sexual harassment, see CARRIE N. BAKER, *THE WOMEN'S MOVEMENT AGAINST SEXUAL HARASSMENT* (1998).
64. *Id.* at 183.
65. Anthony B. Pinn, *Introduction*, in PAULI MURRAY: *SELECTED SERMONS AND WRITINGS*, at 182 (Anthony B. Pinn ed., 2006).

two careers,” in Norton’s words.<sup>66</sup> Women’s full participation in the public spheres of work and politics, and men’s involvement in family care, they insisted, was integral rather than antithetical to racial progress.<sup>67</sup>

This vision of egalitarian marriage informed Ruth Bader Ginsburg’s 1970s litigation campaign and produced many of the period’s landmark constitutional sex-equality decisions. In the 1973 case *Frontiero v. Richardson*, the Supreme Court held that the government could not offer military housing and health benefits to all servicemen’s wives by default but require that husbands of service-women prove their dependency to establish eligibility.<sup>68</sup> Two years later in *Weinberger v. Wiesenfeld*, a majority of the Justices accepted Ginsburg’s argument that denying “mother’s insurance benefits” to surviving widowers devalued their deceased wives’ work in support of their families.<sup>69</sup> By the end of the decade, husbands and wives had become almost functionally interchangeable spouses in the eyes of the law, though certainly not in the lived realities of American families.<sup>70</sup>

Less coordinated, less visible, and ultimately less successful were efforts to challenge the legal supremacy of marriage itself.<sup>71</sup> Women of color led grassroots efforts to advance racial, gender, and economic justice for poor and low-income nonmarital families, whose numbers grew in the second half of the twentieth century.<sup>72</sup> Welfare-rights activists such as Johnnie Tillmon sought to liberate women from a Hobson’s choice between depending on a man, relying on stingy public assistance, or offering backbreaking labor in exchange for low wages and unrelenting poverty.<sup>73</sup> Tillmon’s National Welfare Rights Organization demanded the right to a minimum income that would allow women to bear and raise children outside of marriage without submitting to the employer exploitation and punitive state surveillance to which poor single mothers of color were

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66. JOAN STEINAU LESTER, *FIRE IN MY SOUL: THE LIFE OF ELEANOR HOLMES NORTON* 148 (2004); Charlayne Hunter, *Many Blacks Wary of ‘Women’s Liberation’ Movement in U.S.*, N.Y. TIMES, Nov. 17, 1970. For more, see Serena Mayeri, *Historicizing the “End of Men”: The Politics of Reaction(s)*, 93 B.U. L. REV. 729 (2013).

67. MAYERI, *supra* note 3, at 41-75.

68. 411 U.S. 677 (1973).

69. 420 U.S. 636 (1975).

70. Serena Mayeri, *Marriage (In)equality and the Historical Legacies of Feminism*, 6 CALIF. L. REV. CIR. 126, 128-29 (2015).

71. *Id.* at 131-33 (describing these efforts).

72. See *The American Family Today*, PEW RES. CTR. (Dec. 17, 2015), <https://www.pewsocial-trends.org/2015/12/17/1-the-american-family-today> [<https://perma.cc/XD74-BXSU>].

73. For the classic articulation of Tillmon’s position, see Johnnie Tillmon, *Welfare as a Women’s Issue*, MS., Spring 1972, at 111; see also Premilla Nadasen, *Expanding the Boundaries of the Women’s Movement: Black Feminism and the Struggle for Welfare Rights*, 28 FEMINIST STUD. 270 (2002).

routinely subjected when they worked in low-wage jobs or applied for government benefits.<sup>74</sup> Mrs. Sylvester Smith challenged Alabama’s “substitute father” law, which denied public assistance to families headed by mothers who pursued intimate relationships outside of marriage. Smith claimed the freedom to engage in nonmarital sex without losing the government benefits that supplemented the meager wages she earned from full-time work as a cook.<sup>75</sup> The women who resisted laws that required poor unmarried mothers to disclose paternity or face fines and imprisonment asserted a right to sexual privacy and to the autonomy to make decisions based on their independent assessment of their children’s best interests.<sup>76</sup>

Women who were engaged in challenges to the legal supremacy of marriage sought to redefine responsible citizenship to include single parenthood.<sup>77</sup> Community activists such as Lois Fernandez of Philadelphia lobbied to reform the laws of “illegitimacy,” which stigmatized children and parents and withheld public and private benefits from nonmarital families.<sup>78</sup> Fernandez declared single motherhood a positive lifestyle worthy of respect and admiration; she proudly embraced her decision to parent alone as a voluntary choice.<sup>79</sup> Aspiring educators challenged school districts that refused to hire unmarried parents in the aftermath of racial desegregation.<sup>80</sup> They resisted dominant narratives about promiscuity and profligacy and reframed single mothers as heroic pioneers who pursued education and employment against all odds.<sup>81</sup>

These reconstructive projects insisted that marital or birth status should not determine access to government-provided family benefits. Margaret Gonzales, for instance, sought the same Social Security “mother’s insurance benefits” for her children after the death of their nonmarital father that Stephen Wiesenfeld

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74. On the NWRO as a feminist organization, see PREMILLA NADASEN, *WELFARE WARRIORS: THE WELFARE RIGHTS MOVEMENT IN THE UNITED STATES* (2005); Nadasen, *supra* note 73.

75. *King v. Smith*, 392 U.S. 309 (1968); Serena Mayeri, *Intersectionality and the Constitution of Family Status*, 32 CONST. COMMENT. 377, 386-87 (2017).

76. See *Roe v. Norton*, 422 U.S. 391 (1975); Serena Mayeri, *Marital Supremacy and the Constitution of the Nonmarital Family*, 103 CALIF. L. REV. 1277, 1317-21 (2015) [hereinafter Mayeri, *Marital Supremacy*]; Serena Mayeri, *Race, Sexual Citizenship, and the Constitution*, in *HISTORIES OF HETEROSEXUALITY* (Rebecca L. Davis & Michele Mitchell eds., forthcoming 2020).

77. Mayeri, *supra* note 75.

78. *Id.* at 392; Mayeri, *Marital Supremacy*, *supra* note 76 (describing constitutional challenges to birth-status discrimination in wrongful death recovery, workers’ compensation, inheritance, Social Security benefits, child-support obligations, and derivative citizenship).

79. *Id.*

80. MAYERI, *supra* note 3, at 144-85 (discussing *Andrews v. Drew Muni. Separate Sch. Dist.*, 371 F. Supp. 27 (N.D. Miss. 1973)).

81. *Id.*



won for married fathers.<sup>82</sup> But these efforts were notably less successful than Ginsburg’s quest for formal legal equality for husbands and wives. When plaintiffs in family-status discrimination cases did succeed, it was largely because they persuaded courts that “hapless and innocent children” should not be punished for the “sins” of their parents.<sup>83</sup> The capacious constitutional arguments women advanced – that family-status-based disadvantage discriminated based on race and poverty, subordinated women, denied parental autonomy, and limited sexual and reproductive freedom – fell on deaf judicial ears.<sup>84</sup> Marital supremacy survived, modified to afford some protection to blameless children and to women who could provide for their children without any help from the state.<sup>85</sup>

For those who departed from norms of heterosexuality and gender conformity, the late 1960s and early 1970s provided unprecedented hope for relief from the imposition of oppressive and punitive constraints. Movements for gay rights and liberation, lesbian feminism, and other alternatives to heterosexual nuclear-family life flourished in the open.<sup>86</sup> Pauli Murray’s public persona as a “Negro woman” who wrote poignantly about her mixed-race heritage masked private struggles with sexuality and gender identity throughout much of her earlier life.<sup>87</sup> In the 1940s, Murray felt trapped in a woman’s body; she dressed and passed as a young man, and sought hormonal and other medical treatments to reconcile the conflict between physical and emotional beings.<sup>88</sup> As a young adult, Murray married briefly “in an attempt to be a ‘normal woman,’” and suffered intermittently from severe emotional distress.<sup>89</sup> Murray had a series of intense

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82. *Califano v. Boles*, 443 U.S. 282, 285 (1979); Mayeri, *Marital Supremacy*, *supra* note 76, at 1335-40.

83. Mayeri, *Marital Supremacy*, *supra* note 76, at 1284.

84. *See generally id.*; Mayeri, *supra* note 75 (discussing the ineffective nature of these arguments).

85. Serena Mayeri, *The State of Illegitimacy After the Civil Rights Revolution*, in *INTIMATE STATES: GENDER, SEXUALITY, AND GOVERNANCE IN MODERN U.S. HISTORY* (Margot Canaday, Nancy F. Cott & Robert O. Self eds., forthcoming).

86. *See, e.g.*, JOHN D’EMILIO, *SEXUAL POLITICS, SEXUAL COMMUNITIES* (1983); LILLIAN FADERMAN, *THE GAY REVOLUTION* (2018).

87. On Murray’s struggles with sexuality and identity, see AZARANSKY, *supra* note 3, at 12; COOPER, *supra* note 3, at 87-114; GILMORE, *supra* note 3, at 288-89; MACK, *supra* note 3, at 207-33; JOANNE MEYEROWITZ, *HOW SEX CHANGED: A HISTORY OF TRANSSEXUALITY* (2004); ROSENBERG, *supra* note 3, *passim*; Doreen Marie Drury, *Love, Ambition, and ‘Invisible Footnotes’ in the Life and Writing of Pauli Murray*, 11 *SOULS: CRITICAL J. BLACK POL., CULTURE & SOC’Y* 295 (2009); Doreen Marie Drury, *Boy-Girl, Imp Priest: Pauli Murray and the Limits of Identity*, 29 *J. FEM. STUD. IN RELIGION* 142 (2013).

88. In a letter to her Aunt Pauline during this period, Murray referred to her “boy-girl self,” and later wrote of her “queerness” in a letter to Helene Hanff. ROSENBERG, *supra* note 3, at 389 n.3.

89. *Id.* at 2.

love affairs with women that left her alternately exhilarated and bereft. By the 1960s, Murray had found a way to live as a woman, secure in a happy and fulfilling relationship with Renee Barlow, whom she met while working at the firm Paul Weiss in the 1950s.<sup>90</sup> But the feeling of never quite belonging, of transcending categories of gender and race, informed Murray's social and legal theorizing.<sup>91</sup> Sex, like race, she insisted, should not limit a person's life opportunities or dictate their social roles.

Though Murray did not grapple publicly with "homosexuality" or "transsexuality" during these years, her conception of sex as largely irrelevant to a person's capacities as a worker or citizen resonated with Americans who experienced discrimination because they were gay, lesbian, or transgender. Sonia Pressman Fuentes, a pioneering feminist lawyer at the EEOC, publicly invited such claims.<sup>92</sup> As the historian Margot Canaday has uncovered, in the early 1970s these workers filed sex-discrimination claims with the EEOC, and some regional offices accepted and resolved them.<sup>93</sup> This success likely surprises modern readers because growing resistance in the 1970s eroded the gains of advocates for racial justice, feminism, and gay rights and liberation. The EEOC backed away from its early receptiveness to gay and lesbian complainants in 1975, declaring that Title VII did not cover homosexuality;<sup>94</sup> the Equal Rights Amendment encountered increasingly vocal and effective opposition;<sup>95</sup> and a conservative jurisprudence of race began to overtake earlier victories.<sup>96</sup> By the end of the 1970s, momentum favored retrenchment: movements for racial justice, feminism, and gay liberation assumed a defensive posture.

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90. *Id.* at 214-15.

91. See MACK, *supra* note 3, at 233 (describing Murray's concept of "Jane Crow" as "a theory born from her own struggles with categories that seemed to do violence to Murray's own sense of self—sometimes black and white, but far more often men and women."); ROSENBERG, *supra* note 3, at 3 (describing how Murray came "to see her trouble with 'boundaries,' her sense of herself as 'queer,' as strengths, qualities that allowed her to understand gender and race not as fixed categories, but rather as unreasonable classifications").

92. Brief of Historians as Amici Curiae Supporting Employees at 26, *Bostock v. Clayton Cty.*, No. 17-1618 (U.S. July 3, 2019) (quoting *Unexpected Support*, Homophile Action League Newsletter (Phil., Pa.), Jan. 26, 1971, at 2-3).

93. *Id.* at 25-26.

94. *Id.* at 35-38.

95. MARY FRANCES BERRY, *WHY ERA FAILED* 82 (1986) ("The movement never realized the depth of the opposition.").

96. See, e.g., MAYERI, *supra* note 3, at 76-105.

### III. UNFINISHED BUSINESS: POLITICAL REALIGNMENT AND THE LEGACIES OF INTERSECTIONAL ADVOCACY

The rise of conservatism and the partisan realignment that built to a crescendo with Ronald Reagan's 1980 election transformed the political landscape that Murray surveyed in 1964 when she reflected on the legacy of the abolitionist/feminist split over woman suffrage. As President Lyndon Johnson famously remarked hours after signing the Civil Rights Act, the Democrats had "delivered the South to the Republican Party for a long time to come" – though this partisan realignment took decades, rather than the months some white southern lawmakers predicted.<sup>97</sup> The impact of the Voting Rights Act on black political participation proved more immediate, as voter registration and office-holding among African Americans burgeoned.<sup>98</sup>

Murray continued to promote an interracial, cross-class feminism even as more radical, countercultural, and separatist strands of activism flourished in the late 1960s and early 1970s.<sup>99</sup> In 1970, she maintained that "a ten percent minority, even if it were one hundred percent organized, cannot bring about a successful transformation of society."<sup>100</sup> Even after black enfranchisement began to change the southern electorate, sheer numbers made white women's support crucial to any successful struggle for racial justice and universal human rights, in Murray's view.<sup>101</sup>

Murray's ambitions for an interracial feminist coalition enjoyed some success, due in no small part to Title VII and other legislation and litigation – for which her legal theories and strategies laid the groundwork – uniting the fates of race and sex anti-discrimination laws.<sup>102</sup> These alliances remained uneasy and subject to renegotiation, as many feminists of color articulated priorities distinct

97. Michael Oreskes, *Civil Rights Act Leaves Deep Mark on the American Political Landscape*, N.Y. TIMES (July 2, 1989), <https://www.nytimes.com/1989/07/02/us/civil-rights-act-leaves-deep-mark-on-the-american-political-landscape.html> [<https://perma.cc/2VUG-V28M>].

98. See *Introduction to Federal Voting Rights Law*, U.S. DEP'T JUST. (2019), [https://epic.org/privacy/voting/register/intro\\_c.html](https://epic.org/privacy/voting/register/intro_c.html) [<https://perma.cc/BPL7-2Q4H>] (providing data on the effectiveness of the Voting Rights Act in increasing black voter registration).

99. MURRAY, *supra* note 14, at 397-417.

100. *Women's Liberation: From What? For What*, *supra* note 53.

101. *Id.*

102. Mayeri, *supra* note 18, at 769-76; MACLEAN, *supra* note 37, at chapter 4; MAYERI, *supra* note 3, at 41-75, 186-224; Caryn E. Neumann, *Enabled by the Holy Spirit*, in *FEMINIST COALITIONS: HISTORICAL PERSPECTIVES ON SECOND-WAVE FEMINISM IN THE UNITED STATES* 113, 124-27 (Stephanie Gilmore ed., 2008); JENNIFER NELSON, *WOMEN OF COLOR AND THE REPRODUCTIVE RIGHTS MOVEMENT* (2003); SHERIE M. RANDOLPH, *FLORENCE "FLO" KENNEDY: THE LIFE OF A BLACK FEMINIST RADICAL* (2016); Judy Scales-Trent, *Equal Rights Advocates: Addressing the Legal Issues of Women of Color*, 13 BERKELEY WOMEN'S L.J. 34 *passim* (1998).

from mainstream, white-dominated women's organizations.<sup>103</sup> The reproductive-justice movement reached beyond abortion rights to tackle coercive sterilization, health-care access, and the economic deprivations that prevented poor and low-income Americans from raising their children in safe, flourishing communities.<sup>104</sup> Women of color who fought intimate-partner violence sought community-based approaches and remained skeptical of criminalization and state violence as a solution.<sup>105</sup> Poor and low-income women struggled for access to jobs and better wages and working conditions; pink-collar workers tried to make inroads into blue-collar jobs as professional women sought access to elite employment.<sup>106</sup>

To be sure, women's interests across race, class, and citizenship status were not always aligned: anemic state support for families, lack of affordable child care, and other structural barriers meant that professional women's success in the workplace often rested upon the undercompensated labor of poor and immigrant women of color.<sup>107</sup> Women and men who deviated from normative marital heterosexuality faced daunting obstacles to family formation and flourishing,

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103. On feminist organizing among black women, see, for example, PREMILLA NADASEN, *HOUSEHOLD WORKERS UNITE: THE UNTOLD STORY OF AFRICAN AMERICAN WOMEN WHO BUILT A MOVEMENT* (2015); KIMBERLY SPRINGER, *LIVING FOR THE REVOLUTION: BLACK FEMINIST ORGANIZATIONS, 1968-1980* (2005); TUURI, *supra* note 31; DEBORAH GRAY WHITE, *TOO HEAVY A LOAD: BLACK WOMEN IN DEFENSE OF THEMSELVES, 1894-1994* (1999); and *Combahee River Collective Statement*, COMBAHEE RIVER COLLECTIVE (Apr. 1977), <https://combaheerivercollective.weebly.com/the-combahee-river-collective-statement.html> [<https://perma.cc/2965-3D5S>].

104. See NELSON, *supra* note 102; DOROTHY ROBERTS, *KILLING THE BLACK BODY* (1997); LORETTA J. ROSS & RICKIE SOLINGER, *REPRODUCTIVE JUSTICE: AN INTRODUCTION* 10-17, 30-53, 63-65 (2017); *UNDIVIDED RIGHTS: WOMEN OF COLOR ORGANIZING FOR REPRODUCTIVE JUSTICE* (Jael Silliman et al. eds., 2004).

105. BETH RICHIE, *ARRESTED JUSTICE: BLACK WOMEN, VIOLENCE, AND AMERICA'S PRISON NATION* (2012); see also ANDREA J. RITCHIE, *INVISIBLE NO MORE: POLICE VIOLENCE AGAINST BLACK WOMEN AND WOMEN OF COLOR* (2017).

106. MACLEAN, *supra* note 37, at 265-99; KATHERINE TURK, *EQUALITY ON TRIAL: GENDER AND RIGHTS IN THE MODERN AMERICAN WORKPLACE* 43-71 (2016); see also CRYSTAL SANDERS, *A CHANCE FOR CHANGE: HEAD START AND MISSISSIPPI'S BLACK FREEDOM STRUGGLE* (2016) (chronicling how black women used Head Start to catalyze opportunities for employment, community activism, and political participation).

107. See, e.g., NADASEN, *supra* note 103; Dorothy E. Roberts, *Spiritual and Menial Housework*, 9 *YALE J.L. & FEM.* 51, 51-62 (1997).

and to gainful employment.<sup>108</sup> Internal dissension sometimes overcame the coalition-building impulses that undergirded intersectional advocacy.<sup>109</sup>

Nevertheless, an increasingly conservative political climate bound antiracist and feminist politicians and advocates together against a common adversary.<sup>110</sup> Phyllis Schlafly launched her crusade to defeat the Equal Rights Amendment in service of a longer-term effort to unite conservative Catholics and Protestants behind an antifeminist platform of “traditional family values” and transform the Republican Party.<sup>111</sup> Like Murray, white southerners harbored regrets about the Reconstruction era, but their tragic touchstone was not the failure to win woman suffrage. Rather, they lamented the enfranchisement—and temporary electoral power—of freedmen.<sup>112</sup> The impulse to invoke the inviolability of white womanhood as a bulwark against racial and social change persisted as Jim Crow gave way to the New South.

As it became less acceptable to warn of black enfranchisement’s threat to white supremacy, the dangers posed by secularism, feminism, and homosexuality served similar political ends. The antifeminist values that Schlafly embodied found a receptive audience not only with conservative white men but also with many white Christian women, especially but not only in regions with a Confederate cultural heritage.<sup>113</sup> The STOP ERA movement Schlafly led connected “forced busing” with unisex bathrooms, compulsory employment and military service for women, welfare queens and delinquent children, and abortion and gay rights as the cultural apocalypse liberalism invited.<sup>114</sup> In the late 1970s and early 1980s, the fusion of social and economic conservatism in the Republican

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108. See, e.g., MARGOT CANADAY, *THE PINK PRECARIAT: LGBT WORKERS IN THE SHADOW OF CIVIL RIGHTS, 1945-2000* (forthcoming); GEORGE CHAUNCEY, *THE MAKING OF A MODERN GAY WORLD* (forthcoming 2020); LILLIAN FADERMAN, *ODD GIRLS AND TWILIGHT LOVERS: A HISTORY OF LESBIAN LIFE IN TWENTIETH-CENTURY AMERICA* (1991); KEVIN MUMFORD, *NOT STRAIGHT, NOT WHITE: BLACK GAY MEN FROM THE MARCH ON WASHINGTON TO THE AIDS CRISIS* (2016); SUSAN STRYKER, *TRANSGENDER HISTORY: THE ROOTS OF TODAY’S REVOLUTION* (2d. ed. 2017).

109. See, e.g., WINIFRED BREINES, *THE TROUBLE BETWEEN US: AN UNEASY HISTORY OF BLACK AND WHITE WOMEN IN THE FEMINIST MOVEMENT* (2006); BELL HOOKS, *AIN’T I A WOMAN* (1981).

110. MAYERI, *supra* note 3, at 186-224.

111. DONALD T. CRITCHLOW, *PHYLLIS SCHLAFLY AND GRASSROOTS CONSERVATISM* 213-42 (2005); Reva B. Siegel, *Constitutional Culture, Social Movement Conflict, and Constitutional Change: The Case of the De Facto ERA*, 94 CALIF. L. REV. 1323, 1389-406 (2006).

112. ANGIE MAXWELL & TODD SHIELDS, *THE LONG SOUTHERN STRATEGY: HOW CHASING WHITE VOTERS IN THE SOUTH CHANGED AMERICAN POLITICS* 5 (2019).

113. *Id.* at 13-14.

114. BERRY, *supra* note 95, at 70-120; JANE J. MANSBRIDGE, *WHY WE LOST THE ERA* 90-117 (1986); DONALD G. MATHEWS & JANE SHERRON DE HART, *SEX, GENDER, AND THE POLITICS OF ERA: A STATE AND THE NATION* (1990); Siegel, *supra* note 111, at 1378-403.

Party opened a partisan “gender gap,” in which the Democratic Party increasingly won a disproportionate share of women’s votes, while the GOP attracted the majority of male voters.

By the early twenty-first century, the “gender gap” had only widened. But media attention to gender alone obscured how race, region, religiosity, and marital status inflected Americans’ voting behavior. The 2016 election laid bare trends decades in the making: that the majority of white women voted for Donald Trump did not surprise keen observers of electoral politics. In some regions and among some demographic groups, the gender gap barely registered. Southern white women had long voted for Republicans in numbers nearly equal to their male counterparts. The partisan gap between African American women and men proved similarly slight. And for all the focus on the gender gap, racially polarized voting, especially in the South, rendered “women” and “men” virtually meaningless as electoral categories.<sup>115</sup> Marital status and education, too, cleaved (white) female voters. Married white women, especially those without a college degree, leaned Republican, while their unmarried and college-educated counterparts voted for Democrats. These outcomes were the result not merely of tactics pursued by Nixon, Reagan, and the conservative electoral strategists of the 1970s. Rather, today’s electoral landscape derives from a concerted effort lasting over half a century. This “Long Southern Strategy” invoked threats to traditional gender roles, heterosexual hegemony, and conservative evangelical Christianity, along with white supremacy, to transform American politics.<sup>116</sup>

While Murray’s vision of white-southern-female progressivism faltered in practice,<sup>117</sup> her conviction that women of color would provide pivotal leadership for an American human-rights revolution found a lasting legacy. Social movements such as #MeToo, the Movement for Black Lives, #SayHerName, the sanctuary-cities and immigrant’-rights movements, revitalized voter-protection efforts, ongoing reproductive-justice activism, prison and foster-care

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115. As Melissa Harris-Perry wrote in November 2016, “The truth is this: There is race gap of enormous proportions and a gender gap of very slim margins in this country. Presidential elections are primarily determined by the proportional turnout of the relevant racial groups, which increasingly map onto partisan and geographic identities in ways that make electoral vote counts a fairly simple task. Gender politics is a secondary game, not the main show.” Melissa Harris-Perry, *24 Books, Essays, and Other Texts to Read Because You’re Still Having Trouble Processing the Election*, ELLE (Nov. 29, 2016), <https://www.elle.com/culture/career-politics/a41063/election-reflection-syllabus> [<https://perma.cc/Q9L6-ZUTN>].

116. MAXWELL & SHIELDS, *supra* note 112, at 1-35.

117. Frances Ellen Watkins Harper’s 1869 speech at an American Equal Rights Association meeting proved prescient: “I do not believe that giving the woman the ballot is immediately going to cure all the ills of life. I do not believe that white women are dew-drops just exhaled from the skies. I think that like men they may be divided into three classes, the good, the bad, and the indifferent.” Jones, *supra* note 6.

abolitionism, criminal-justice reform, low-wage and domestic workers' organizing, to name a few, all continue this tradition.<sup>118</sup> Murray created some of the first courses in Black and Women's Studies at Brandeis in the late 1960s while supporting law reform and litigation on behalf of women's rights. Today, scholar-activists continue to bring intersectional perspectives to enrich discourse and support grassroots efforts to uncover and combat injustice that transcend identity categories and recognize the inseparability of structural systems of oppression.<sup>119</sup> Activists now strive openly, as Murray never felt she could,<sup>120</sup> for safety and justice for people with diverse sexual orientations and gender identities.<sup>121</sup>

In 1973, after the death of her life partner, Murray gave up her hard-won, tenured academic appointment at Brandeis to enter seminary and fulfill her

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118. See, e.g., Angela Onwuachi-Willig, *What About #UsToo?: The Invisibility of Race in the #MeToo Movement*, 128 *YALE L.J.F.* 105 *passim* (2018); Dorothy E. Roberts, *The Supreme Court, 2018 Term – Foreword: Abolitionist Constitutionalism*, 133 *HARV. L. REV.* 1 (2019); Loretta J. Ross, *Reproductive Justice as Intersectional Feminist Activism*, 19 *SOULS* 286 (2017); Kimberlé Williams Crenshaw & Andrea J. Ritchie, *Say Her Name: Resisting Police Brutality Against Black Women*, *AFR. AM. POL'Y E.* 7 (July 2015), [http://static1.squarespace.com/static/53f20d90e4b0b80451158d8c/t/560co68ee4boaf26f72741df/1443628686535/AAPF\\_SMN\\_Brief\\_Full\\_singles-min.pdf](http://static1.squarespace.com/static/53f20d90e4b0b80451158d8c/t/560co68ee4boaf26f72741df/1443628686535/AAPF_SMN_Brief_Full_singles-min.pdf) [<https://perma.cc/JJX7-AR8T>]; *Living in the Shadows: Latina Domestic Workers in the Texas-Mexico Border Region*, A.Y.U.D.A. INC. ET AL. 21 (2018), [https://actionnetwork.org/user\\_files/user\\_files/000/024/054/original/Living\\_in\\_the\\_Shadows\\_rpt\\_Eng\\_final\\_screen\\_\(1\)\\_1.pdf](https://actionnetwork.org/user_files/user_files/000/024/054/original/Living_in_the_Shadows_rpt_Eng_final_screen_(1)_1.pdf) [<https://perma.cc/HG66-FAYK>]; Andrea J. Ritchie & Monique W. Morris, *Centering Black Women, Girls, Gender Nonconforming People and Fem(me)s in Campaigns for Expanded Sanctuary and Freedom Cities*, NAT'L BLACK WOMEN'S JUST. INST. 9 (Sept. 2017), <https://forwomen.org/wp-content/uploads/2017/09/Centering-Black-women-final-draft6.pdf> [<https://perma.cc/R5QW-8MBU>]; Michel Martin, *Stacey Abrams Talks New 2020 Voter Protection Initiative*, NPR (Aug. 17, 2019), <https://www.npr.org/2019/08/17/752075430> [<https://perma.cc/JGU6-5K26>].
119. For a few recent examples in legal scholarship, see KHIARA BRIDGES, *THE POVERTY OF PRIVACY RIGHTS* (2017); KIMBERLÉ CRENSHAW, *ON INTERSECTIONALITY: ESSENTIAL WRITINGS* (forthcoming 2020); Regina Austin, "Second Looks, Second Chances": *Collaborating with Lifers Inc. on a Video About Commutation of LWOP Sentences*, 22 *U. PA. J. L. & SOC. CHANGE* 71 (2019); Devon W. Carbado & Cheryl I. Harris, *Intersectionality at 30: Mapping the Margins of Anti-Essentialism, Intersectionality, and Dominance Theory*, 132 *HARV. L. REV.* 2193 (2019); Priscilla A. Ocen, *Incapacitating Motherhood*, 51 *U.C. DAVIS L. REV.* 2191 (2018); Dorothy E. Roberts, *Prison, Foster Care, and the Systemic Punishment of Black Mothers*, 59 *UCLA L. REV.* 1474 (2012).
120. ROSENBERG, *supra* note 3, at 6 ("Although a pioneering leader in both the civil rights and feminist movements, Murray insisted to the end of her life that nontraditional gender identity and sexual orientation were private matters that should be protected as part of the campaign for human rights, not used for the purposes of separate organizing efforts.").
121. See, e.g., CHARLENE A. CARRUTHERS, *UNAPOLOGETIC: A BLACK, QUEER, AND FEMINIST MANDATE FOR RADICAL MOVEMENTS* (2018); DEAN SPADE, *NORMAL LIFE: ADMINISTRATIVE VIOLENCE, CRITICAL TRANS POLITICS, AND THE LIMITS OF LAW* (2011); Ritchie & Morris, *supra* note 118.

religious calling.<sup>122</sup> Ordained in 1977 as the first African American female Episcopal priest, Murray developed a black feminist-liberationist theology that affirmed the inviolability and universality of human rights.<sup>123</sup> Today, too, the politics of hatred and division that rend the fabric of American political life inspire the renewal of models of leadership that foster alliances and seek to alert citizens—and aspiring citizens—to their common interests and values. A century after the Nineteenth Amendment and more than a half-century after suffrage, intersectional advocacy that bridges islands of identity and ideology flourishes in the words and deeds of Murray’s inheritors. “Hope,” Murray wrote in a poem published in 1970, “is a song in a weary throat.”<sup>124</sup> Her words ring just as true fifty years later, as the unfinished business of equality and justice demands urgent action now more than ever.

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122. AZARANSKY, *supra* note 3, at 86-87; MURRAY, *supra* note 13, at 417-35; ROSENBERG, *supra* note 3, at 354-79.

123. AZARANSKY, *supra* note 3, at 97; Pinn, *supra* note 65, at xx, xxxvi.

124. PAULI MURRAY, DARK TESTAMENT AND OTHER POEMS 13 (1970).