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PAULI MURRAY: HUMAN RIGHTS VISIONARY AND TRAILBLAZER

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While other scholars have discussed Dr. Pauli Murray's remarkable contributions to race and sex equality law,[1] few, if any, have placed her contributions within the context of the broader tradition of human rights law. And yet, she identified herself specifically through this lens, using the terminology and law of human rights, in part shaped by her friendship with First Lady Eleanor Roosevelt, a delegate to the UN Drafting Committee for the Universal Declaration of Human Rights (UDHR).[2] This essay addresses a lacuna in legal scholarship by exploring the ways in which Murray's work fits into the Black intellectual tradition concerning the human rights idea. It also seeks to provide a greater understanding concerning contributions to human rights (and more broadly, international law) made by Howard University School of Law, where she attended law school and one of us is on the faculty. Among other linkages, Clarence Clyde Ferguson, a dean of Howard Law School and former ambassador, was the first Black president of the American Society of International Law.

From Civil Rights to Human Rights

As we have discussed elsewhere, Black intellectuals have long made linkages between U.S. domestic civil rights and global anti-colonial and human rights struggles.[3] Lamenting the shortcoming of U.S. law, Pauli Murray noted, "as I look back over my life, [] all of these problems of human rights in which I had been involved were moral and spiritual problems."[4] Because of slavery, Jim Crow, and ongoing assumptions of Black inferiority, the U.S. approach to civil rights was never capacious enough to embrace substantive equality. Thus, at least as far back as the Civil War and Reconstruction periods, Black intellectuals "in both the abolition and women's suffrage movements embraced a shared notion of *human* rights—one that Black women were central in articulating and

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[1] *See, e.g.*, Serena Mayeri, Reasoning from Race: Feminism, Law, and the Civil Rights Revolution 50 (2011); Lisa A. Crooms-Robinson, *Murdering Crows: Pauli Murray, Intersectionality, and Black Freedom*, 79 Wash. & Lee L. Rev. 1093 (2022).

[2] Pauli Murray, Pauli Murray: The Autobiography of a Black Activist, Feminist, Lawyer, Priest, and Poet 289 (1989) [hereinafter, Murray Autobiography].

[3] *See* Catherine Powell, *Viral Convergence: Interconnected Pandemics as Portal to Racial Justice*, *in* 6 Race and National Security (Matiangai Sirleaf ed., forthcoming 2023) [hereinafter, *Viral Convergence*] (on draft with authors); Darin E. W. Johnson, *How U.S. Civil Rights Leaders' Human Rights Agenda Shaped the United Nations*, 1 How. Hum. & Civ. Rts. L. Rev. 33 (2017); *cf.* Catherine Powell, *Human Rights at Home: A Domestic Policy Blueprint for a New Administration*, Am. Const. Soc'y (Oct. 2008).

[4] My Name Is Pauli Murray, at 1:19:30 (Amazon Studios 2021).

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embodying."[5] In the twentieth century, Martin Luther King Jr. pivoted from civil rights to human rights toward the end of his life, both with respect to his opposition to the Vietnam War, as well as in his bridging of racial inequality and poverty.[6]

It is critical to place Pauli Murray in the context of this human rights tradition, as her work—indeed her very existence—helped explode the demeaning ways in which discrimination based on socially constructed categories, such as race and gender, can be used to deny marginalized individuals fundamental, universal human rights. Significantly, Murray's ideas and legal theories—and personal experience as a queer[7] African American woman—were central to advancing core human rights protections for all in the United States, most notably in the areas of race and sex-based anti-discrimination law. Iconic jurists Thurgood Marshall and Ruth Bader Ginsburg, widely recognized for their trailblazing litigation work in advancing the rights of, respectively, African Americans and women under the law, each owe a debt of gratitude to constitutional theories that Pauli Murray developed and advanced.[8]

Murray grew up in the segregated South and experienced first-hand the insult and terror resulting from a system where, by dint of race, she was subjected to separate and inferior treatment in public accommodations, such as stores, theaters, and trains.[9] Further, she was explicitly denied admission on the basis of race from graduate school at the University of North Carolina and on the basis of her sex from graduate studies at Harvard Law School.[10]

Murray met the discrimination she faced with activism that foreshadowed the tactics of the civil rights movement. Fifteen years before Rosa Parks was arrested for refusing to give up her seat on a segregated bus, Murray and a friend were arrested, convicted, and fined for refusing to leave their seats on a segregated bus in Petersburg, Virginia.[11] The National Association for the Advancement of Colored People (NAACP) represented them as a test case to challenge the constitutionality of Virginia's segregation law in interstate travel.[12] Although they lost at trial and decided not to appeal, the experience of defying Jim Crow segregation and participating in strategic litigation convinced Murray of the power of nonviolent resistance and legal advocacy.[13]

During her final year at Howard Law School, Murray participated in a civil rights seminar whose singular focus was to develop arguments on how to overthrow Jim Crow through the courts.[14] In the seminar, Murray argued for a frontal assault on the Supreme Court's 1896 *Plessy v. Ferguson* decision, which established the "separate but equal" doctrine that paved the way for Jim Crow.[15] At the time, few, if any, civil rights lawyers viewed this as a viable

[5] *Viral Convergence*, *supra* note 3, at 7 (emphasis added) (discussing the roles of Francis Ellen Watkins Harper and Frederick Douglass).

[6] *Id.*

[7] While it is unclear how Murray identified herself, evidence suggests that she had a long-term female partner and identified as gender fluid and/or non-binary—long before language to express such identities was widely utilized, much less broadly embraced. My Name Is Pauli Murray, *supra* note 4, at 1:05–1:37, 1:16–end.

[8] *Id.* This documentary features interviews and correspondence in which Ruth Bader Ginsburg credits Pauli Murray's contributions to Ginsburg's successful women's rights litigation strategy. Further, as discussed below, in this documentary, Murray recounts that *Brown v. Board of Education* attorney, Spottswood Robinson, acknowledged that a paper she wrote as his student at Howard Law School provided a basis for the winning litigation strategy that struck down the "separate but equal" doctrine.

[9] Murray Autobiography, *supra* note 2, at 32–39.

[10] *Id.* at 115, 239–40.

[11] *Id.* at 138–42.

[12] *Id.* at 146–47.

[13] *Id.* at 149. Murray also helped organize sit-in protests at Washington, D.C. restaurants that refused to serve Black customers. These sit-ins occurred in the midst of World War II and two decades before the sit-ins of the 1960s civil rights movement. *Id.* at 207–09.

[14] *Id.* at 220.

[15] *Id.* at 221.

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strategy—the NAACP Legal Defense and Educational Fund's (LDF) approach was to challenge the equality of the separate facilities, while leaving the *Plessy* precedent itself unchallenged.[16] Nevertheless, Murray chose the frontal assault strategy as the topic of her seminar paper.[17] She argued that the separate but equal doctrine was "a badge of inferiority,"[18] citing references to psychological and sociological data that supported her argument, as she had no existing legal precedents to rely upon.[19]

Ten years later, the 1954 Supreme Court decision in *Brown v. Board of Education* accepted similar arguments in overturning the separate but equal doctrine. The Court found that separating Black students from their peers solely on the basis of race "generates a feeling of inferiority [] that may affect their hearts and minds in a way unlikely ever to be undone," and relied upon sociological and psychological research in reaching its decision.[20] Murray's legal theory appeared in the Court's holding because her law school seminar professor, Spottswood Robinson, had saved her paper from all those years prior and, with the other members of the NAACP LDF team, relied upon it in drafting their legal brief for the *Brown* oral argument.[21]

Before and after the *Brown* litigation, Murray's work reflected an intuition that international human rights law would enhance arguments under U.S. civil rights law.[22] In 1951, Murray completed a 746-page book which was the first compilation of all laws in the United States on racial segregation and racial equality.[23] Murray included in her book the then-new Universal Declaration of Human Rights, the UN Charter, the Inter-American Act of Chapultepec, and the UN Educational, Scientific and Cultural Organization Charter and Report on Race, reflecting her view that these early human rights era international instruments had relevance to the U.S. civil rights movement.[24]

From Race and Gender Silos to Intersectionality and Interdependence of Rights

Decades before Professor Kimberlé Crenshaw coined and popularized the term "intersectionality" through her groundbreaking work,[25] Pauli Murray was attuned to ways in which race and sex-based discrimination imposed unique and compounding effects on African American women.[26] By centering Black women, Murray's experience and legal work highlighted the "'dual handicap . . . of race and sex.'"[27] Thus, Pauli Murray coined the term, "Jane

[16] *Id.*

[17] *Id.* at 221–22.

[18] *Id.* at 254.

[19] *Id.*

[20] Brown v. Bd. of Educ., 347 U.S. 483 (1954).

[21] My Name Is Pauli Murray, *supra* note 4, at 40:15.

[22] Murray Autobiography, *supra* note 2, at 283.

[23] *Id.* at 285–87; Pauli Murray, States' Laws on Race and Color (1951) [hereinafter, States' Laws on Race and Color].

[24] States' Laws on Race and Color, *supra* note 23, at App. 1 – International Documents, 525–48.

[25] *See generally* Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. Chi. Legal F. 139 (1989).

[26] Crooms-Robinson, *supra* note 1, at 1095–96 (*citing* Pauli Murray & Mary O. Eastwood, *Jane Crow and the Law: Sex Discrimination and Title VII*, 34 Geo. Wash. L. Rev. 232, 235 (1965)). For a discussion of other scholars who anticipated the idea of intersectionality, see Catherine Powell & Camille Gear Rich, *The "Welfare Queen" Goes to the Polls: Race-Based Fractures in Gender Politics and Opportunities for Intersectional Coalitions*, 108 Geo. L.J. 105, 108 (2020).

[27] Crooms-Robinson, *supra* note 1, at 1117 (*quoting* Pauli Murray, *Constitutional Law and Black Women*, *in* Rebels in Law: Voices in History of Black Women Lawyers 58 (J. Clay Smith ed., 2000)).

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Crow," as a way to analogize from "Jim Crow."[28] As Professor Lisa Crooms-Robinson deftly notes, Murray, in effect theorized two "Janes": "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."[29]

In addition to anticipating the notion of intersectionality, Murray embraced the related human rights idea that rights are interdependent. In her pioneering work on "Jane Crow," she pointed out that "three human rights conventions, two of which are of special importance to women, were submitted to the [U.S.] Senate for its advice and consent to ratification in 1963."[30] Murray further contended that "the rights of women and the rights of Negroes are only different phases of the fundamental and indivisible issue of human rights."[31] Citing foundational international law texts, Murray noted: "[t]he [UN] Charter and the UDHR both stress respect for human rights and fundamental freedoms for all persons without distinction as to race, sex, language, or religion."[32] Flagging the shortcomings of U.S. equality law, Murray explained that "[c]ourts have not yet fully realized that women's rights are a part of human rights[.]"[33] Broadly, she argued, "We are entering the age of human rights."[34]

More specifically, in her work on Title VII of the 1964 Civil Rights Act, Murray argued that including "sex" in this provision barring discrimination in employment "represents an important step toward implementation of our commitment to *human* rights."[35] Through her scholarship and advocacy of her theory of Jane Crow, she refined arguments for applying Title VII to prohibit sex discrimination in employment.[36] In helping to resolve the debate about whether "sex" should be listed among the protected categories in Title VII, she wrote a memo noting that without the inclusion of "sex," one half of the Black community—namely, Black women—would remain unprotected.[37] Murray's memo, in part, persuaded the White House and Congress that the prohibition against sex discrimination would advance the goals of the legislation.[38]

While serving on the President's Commission on the Status of Women, in 1962, Murray had already prepared a memorandum establishing a Fourteenth Amendment women's rights litigation strategy based on analogies to race and civil rights.[39] Further, she persuaded feminist leader Betty Friedan to co-found (with Murray) the National Organization for Women (NOW), a national non-governmental organization similar to the NAACP, which would politically advocate for the rights of women.[40] Through her work, Murray "reasoned from race" to pave the way

[28] *See generally* Pauli Murray & Mary O. Eastwood, *Jane Crow and the Law: Sex Discrimination and Title VII*, 34 GEO. WASH. L. REV. 232 (1965).

[29] Crooms-Robinson, *supra* note 1, at 1093–94.

[30] Murray & Eastwood, *supra* note 28, at 232–33 (*citing* the UN Convention on the Political Rights of Women (1953); the UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1951); and the International Labour Organization Convention on the Abolition of Forced Labor (1957)).

[31] Murray & Eastwood, *supra* note 28, at 235.

[32] *Id.* (*citing* UN Charter, pmbl.; Art. 1, para. 3; Art. 8; Art. 13, para. i; Art. 55; Art. 76; and the Universal Declaration of Human Rights, pmbl.; Art. 2; Art. 16, para. 1).

[33] Murray & Eastwood, *supra* note 28, at 238.

[34] *Id.* at 256.

[35] *Id.* at 235 (emphasis added).

[36] *Id.*

[37] Serena Mayeri, *Pauli Murray and the Twentieth-Century Quest for Legal and Social Equality*, 2 IND. J. L. & SOC. EQUAL. 80, 83 (2013).

[38] *Id.*

[39] *Id.* at 82.

[40] MURRAY AUTOBIOGRAPHY, *supra* note 2, at 365–68.

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for Ruth Bader Ginsburg and the Supreme Court in establishing a theory regarding sex discrimination by analogy to race.[41]

Black Liberation in the United States as Part of a Global Struggle for Human Rights

Pauli Murray understood her activism in the United States was part of a broader transnational human rights struggle, similar to the diasporic approach of W.E.B. Du Bois. Murray noted that she was "a person committed to human rights whether . . . in North Carolina or Accra Ghana,"[42] and credited her time living in International House while obtaining her law degree at UC Berkeley School of Law as informing her understanding of "the civil rights struggle within the wider context of all human rights."[43]

In 1960, Murray realized her dream to visit Africa when she joined the University of Ghana School of Law faculty. While there, she indirectly became involved in a nascent human rights struggle within the country. Ghanaians had just completed their first post-colonial constitution and had elected their first president under the new political system.[44] Although the regime began to teeter toward authoritarianism, Murray provided her law students with a robust education in constitutional law and the separation of powers, giving them insights into how their new constitution could be interpreted.[45] Her students, some of whom worked for the government, began asking questions about the authoritarian turn of the government.[46] As the political climate continued to worsen in Ghana, Murray was encouraged to depart because her class was seen as a threat to the government.[47]

Before departing, Murray co-authored an influential book, titled "The Constitution and Government of Ghana," to serve as a resource for future teachers, students, lawyers, judges, and government officials about the Ghanaian constitution and legal system.[48] As was her custom, she sought to advance human rights in Ghana through her scholarship and advocacy. Immediately prior to her departure, Murray was approached by one of her students to assist with arguments in a court challenge to the government's detention of political opponents under a draconian security law.[49] Murray secretly assisted with arguments that the law violated tenets of the Ghanaian constitution.[50] The Ghana Supreme Court's rejection of the argument led to the government's detention of the Ghanaian lawyer and senior opposition figure who had brought the habeas proceedings.[51] Murray departed Ghana with regret over the vast needs that she was leaving behind, but she returned to her work on human rights as the first African American doctoral student at Yale Law School, where she continued her research on human rights in the newly independent African states and on race and gender equality in the United States.[52]

[41] Mayeri, *supra* note 1, at 50; Mayeri, *supra* note 37, at 82–84.

[42] My Name Is Pauli Murray, *supra* note 4, at 55:41.

[43] Murray Autobiography, *supra* note 2, at 261.

[44] *Id.* at 333.

[45] *Id.* at 335.

[46] *Id.* at 339.

[47] *Id.*

[48] *Id.* at 339–40.

[49] *Id.* at 342.

[50] *Id.* at 343.

[51] *Id.*

[52] *Id.* at 344–47.

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Conclusion

As ACLU attorney Chase Strangio notes, "[i]t's always the people who are experiencing the most forms of discrimination who have the most insight into how to build the solutions. And Pauli was that person."[53] This too is a human rights insight, along with the notion that rights should be defended locally, with the international system as a back-up where national safeguards fail. As Eleanor Roosevelt once said, "[w]here, after all, do universal human rights begin? In small places, close to home[.]"[54]

While Murray's work fits into a long and illustrious legacy of Black intellectuals linking U.S. civil rights and international human rights, she was in many ways ahead of her time. Murray herself lamented that at least: "I've lived to see my lost causes found."[55] Indeed, the Black intellectual tradition is filled with luminaries who were ahead of their time in the fight for human rights. Whether or not they lived long enough to enjoy the fruits of their labor, we all stand to benefit from the groundbreaking human rights work of Pauli Murray and others who paved the way for us today.

[53] My Name Is Pauli Murray, *supra* note 4, at 1:02:42.

[54] Courage in a Dangerous World: The Political Writings of Eleanor Roosevelt (Allida M. Black ed., 2013).

[55] My Name Is Pauli Murray, *supra* note 4, at 1:04:30.

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