EXPERIMENTAL MEETS INTERSECTIONAL: VISIONARY BLACK FEMINIST PRAGMATISM AND PRACTICING CONSTITUTIONAL DEMOCRACY

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ABSTRACT

That pragmatism can do—and already is doing—real work to repair and improve constitutional democracy in the United States is a conviction voiced in the academy, in social movements, and in social media. But what does pragmatism mean, as used in these contexts? Sometimes, pragmatism seems to connote simply being practical (rather than idealistic) and focusing on results. But sometimes, commentators are saying more: pragmatism as a distinctive political philosophy has the power to fuel meaningful democratic change. This Article focuses on the creative and productive melding of classical American pragmatism (as exemplified by John Dewey and others) with feminism. In particular, I engage with Deva Woodly's recent book, Reckoning: Black Lives Matter and the Necessity of Democratic Social Movements*, in which Woodly argues both that democratic social movements are important institutional structures in U.S. constitutional democracy and that the transformative Movement for Black Lives is based on a unique political philosophy, "radical Black feminist pragmatism." This Article also examines strands of "visionary Black feminist pragmatism" (as elaborated by V. Denise James and Patricia Hill Collins). The Article also looks back to the work that pragmatism was doing, during the "renaissance" of pragmatism in the legal academy in the 1990s, in significant work by feminist legal theorists, including Margaret Radin, Mari Matsuda, and Katherine Bartlett. It offers some comparisons and contrasts in these different engagements with pragmatism, concluding that the "futurity" and "politics of care" characteristic of*

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radical Black feminist pragmatism offer vital commitments and strategies for societal repair and for strengthening constitutional democracy.

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"Today is a moment shaped largely by the Black women who have long played a crucial role in our democracy. Their pragmatism helped nominate Biden; their insistence helped nominate Harris. Their determination helped to elect them both."[1]

"[P]ragmatic choices reflect the principled stances that people take in response to the constraints and opportunities associated with specific social contexts. Black women's visionary pragmatism has long expressed this creative tension between the desirable, the possible, the probable and the practical."[2]

"[A] search for a methodology through which to think about democracy and the moral claims those of us interested in feminism and critical race theory must make against our current ways of thinking and practicing democracy for the goods of equality and freedom, pragmatism emerges as a possible partner in the struggle."[3]

I. INTRODUCTION

That pragmatism can do—and already is doing—real work to repair and improve constitutional democracy in the United States is a conviction voiced in the academy, in social movements, and in social media. But what does pragmatism mean, as used in these contexts? Sometimes, pragmatism seems to connote simply being practical (rather than idealistic) and focusing on results.[4] But sometimes, commentators are saying more: pragmatism as *a distinctive political philosophy* has the power to fuel meaningful democratic change.[5] This Article focuses on the creative and productive melding of classical American pragmatism (as exemplified by John Dewey and others)

1. Errin Haines (@emarvelous), TWITTER (Nov. 7, 2020, 10:39 AM), https://twitter.com/emarvelous/status/1325115651132968960 [https://perma.cc/V8KA-2FH9].

2. Patricia Hill Collins, *Piecing Together a Genealogical Puzzle: Intersectionality and American Pragmatism*, 3 EUR. J. PRAGMATISM & AM. PHIL. 88, 108 (2011) [hereinafter *Piecing Together*].

3. V. Denise James, *Theorizing Black Feminist Pragmatism: Forethoughts on the Practice and Purpose of Philosophy as Envisioned by Black Feminists and John Dewey*, J. SPECULATIVE PHIL., Jan. 2009, at 92, 92 [hereinafter *Theorizing Black Feminist Pragmatism*]. For brevity in the above epigraph, I have omitted the opening words of this quoted passage from Professor James; they are: "Recognizing no essential divide between theory and practice . . ." *Id.*

4. Some common dictionary definitions of "pragmatic" are along these lines. *See*, *e.g.*, *Pragmatic*, MERRIAM WEBSTER'S COLLEGIATE DICTIONARY (11th ed. 2003).

5. *See* discussion *infra* Parts III, IV.

with feminism called, alternatively, "radical Black feminist pragmatism" and "visionary Black feminist pragmatism."

Pragmatism is a term associated with perhaps the most visible and significant social movement of recent years, the Movement for Black Lives ("M4BL"), started in 2013 by three Black women—"radical Black organizers" Alicia Garza, Patrisse Cullors, and Opal Tometti—in response to the acquittal of George Zimmerman for the murder of Trayvon Martin.[6] M4BL reached new levels of national recognition and support in 2020, during the nationwide #BlackLivesMatter protests initially spurred by the murder of George Floyd by police officer Derek Chauvin on May 25, 2020, but also condemning the police killings of Breonna Taylor, Jacob Blake, Rayshard Brooks, and other Black Americans.[7] Political philosopher and Professor Deva Woodly argues that M4BL is based on a "rich and dynamic political philosophy," which she calls "radical Black feminist pragmatism."[8]

6. *Herstory*, BLACK LIVES MATTER, https://blacklivesmatter.com/herstory/ (using term "radical Black organizers"). *See* Nimalan Yoganathan, *Black Lives Matter Movement Uses Creative Tactics to Confront Systemic Racism*, CONVERSATION (July 30, 2020), https://theconversation.com/black-lives-matter-movement-uses-creative-tactics-to-confront-systemic-racism-143273 [https://perma.cc/N3JL-H3KZ] (arguing that "[t]he Black Lives Matter movement is pragmatic in its methods of disrupting the status quo"). However, some commentators disagree and contend that "BLM proves that politically, it pays to ditch hollow American pragmatism." Harrison Raskin, *Black Lives Matter and Hollow American Pragmatism*, DAILY CAMPUS (Sept. 15, 2020), https://dailycampus.com/2020/09/15/black-lives-matter-and-hollow-american-pragmatism/ [https://perma.cc/JXC2-NMNY].

7. Griff Witte & Mark Berman, *With Breonna Taylor Decision, Summer's Anguished Protests Get Fresh Impetus for the Fall*, WASH. POST (Sept. 23, 2020), https://www.washingtonpost.com/national/with-breonna-taylor-decision-summers-anguished-protests-get-fresh-impetus-for-the-fall/2020/09/23/1cd15f38-fddb-11ea-8d05-9beaaa91c71f_story.html [https://perma.cc/3RKV-A4Q2]. Earlier in May 2020, there were also protests over the two-month delay in arresting and charging the White father and son, Gregory and Travis McMichael, who pursued, shot, and killed Ahmaud Arbery as he was jogging. Sabina Ghebremedhin & Christina Carrega, *Ahmaud Arbery Protestors Demand the Resignation of 2 Local Prosecutors*, ABC NEWS (May 16, 2020), https://abcnews.go.com/US/ahmaud-arbery-protesters-demand-resignation-local-prosecutors/story?id=70707316 [https://perma.cc/2899-9VCX].

8. DEVA WOODLY, RECKONING: BLACK LIVES MATTER AND THE DEMOCRATIC NECESSITY OF SOCIAL MOVEMENTS 49 (Oxford Univ. Press 2021).

Further, Woodly argues that such pragmatism is "the first political philosophy born and bred in the twenty-first century."[9]

While this Symposium's theme is re-examining the role of pragmatism in constitutional interpretation, arguably, the civic participation by actors in social movements and in politics are critical to the health of constitutional democracy in the United States—to "make our union 'more perfect,' as the U.S. Constitution says."[10] Indeed, in a new book, *Reckoning: Black Lives Matter and the Necessity of Democratic Social Movements*, Professor Woodly argues that democratic social movements are important institutional structures in U.S. constitutional democracy—an "essential . . . Fifth Estate."[11] Woodly adds that such social movements are a reminder of "a public sphere where politics can and must take place if democracy is to be both authorized by and responsive to the people."[12] Social movements—"pragmatic politics in process"—are "a potential antidote to the politics of despair," because "[t]hey allow us to enact citizenship, not only through performing duties, but also by authoring new understandings, priorities, and even governing institutions."[13] Similarly, in his recent diagnosis of "constitutional rot" in the United States, constitutional theorist Jack Balkin asserts that "transformative social movement[s]" may help to usher in a new constitutional regime and a way out of such rot.[14]

A focus on democracy also seems apt in this Symposium on the revival of pragmatism, given that "democracy is the key organising concept"

9. *Id.*

10. *See* EDUCATING FOR AM. DEMOCRACY, EXCELLENCE IN HISTORY AND CIVICS FOR ALL LEARNERS 9 (2021), https://www.educatingforamericandemocracy.org/wp-content/uploads/2021/02/Educating-for-American-Democracy-Report-Excellence-in-History-and-Civics-for-All-Learners.pdf [https://perma.cc/A554-7TE9] ("Education in civics and history equips members of a democratic society to understand, appreciate, nurture, and, where necessary, improve their political system and civil society: to make our union 'more perfect,' as the U.S. Constitution says."). *See also* Linda C. McClain & James E. Fleming, *Civic Education in Circumstances of Constitutional Rot and Strong Polarization,* 101 B.U. L. Rev. 1771 (2021) (arguing for crucial role of civic education and evaluating the Educating for American Democracy initiative as a promising approach).

11. WOODLY, *supra* note 8, at 10.

12. *Id.* at 17.

13. *Id.* at 16–17.

14. JACK M. BALKIN, THE CYCLES OF CONSTITUTIONAL TIME 164–65 (Oxford Univ. Press 2020).

of the political philosophy of American pragmatist philosopher Dewey.[15] Dewey viewed democracy as not only "the 'political machinery' of democracy" (such as voting and formal institutions) but also "a mode of associated living" and a method for identifying and solving problems communities face.[16] Further, Dewey's ideal of modern democracy was to transform "the great society," that is, abstract and impersonal modern industrial society, "into the great community," in which members could experience "the mutual comprehension and appreciation" similar to smaller, "'face-to-face' communities."[17]

As developed below, a focus on Dewey is also apt because Dewey is a key interlocutor in much of the feminist legal theory and philosophy discussed in this Article. For example, credited for developing a "new" or "advanced liberalism," Dewey—commentators argue—was also "radical" and "visionary."[18] As discussed below, in articulating "radical" and "visionary" forms of Black feminist pragmatism, both V. Denise James and Deva Woodly engage various tenets of Dewey's political philosophy. Pertinent is that Dewey was "a visionary about the here and now," rather than utopian, stressing the pursuit of "the positive goals of human emancipation and human happiness," with "whatever information and intelligence we can acquire."[19] As democratic theorist Melvin Rogers explains, Dewey's philosophical outlook was antifoundational, experimental, and contextual, emphasizing that "the creative potential of a democratic community is constitutively connected to contestation as the community revises and develops its institutional structures and values."[20]

This Article examines the work that the terms "pragmatism" or "pragmatic" are doing in the identification of pragmatism as a generative force for advancing constitutional democracy. In turn, it asks how the terms "progressive," "radical Black feminist," or "visionary Black feminist" modify and shape "pragmatism" and the form it takes. And what do these

15. Matthew Festenstein, *Dewey's Political Philosophy*, STAN. ENCYCLOPEDIA PHIL. (July 26, 2018), https://plato.stanford.edu/entries/dewey-political/ [https://perma.cc/4TAW-3G5E].

16. *Id.*

17. ALAN RYAN, JOHN DEWEY AND THE HIGH TIDE OF AMERICAN LIBERALISM 219 (W. W. Norton & Co. 1995). For an exploration of the "possibilities and limitations" of Dewey's conception of democracy, particularly in his work, *The Public and Its Problems: An Essay in Political Inquiry*, see Melvin L. Rogers, *Introduction: Revisiting the Public and Its Problems*, 7 CONT. PRAGMATISM 1 (2010) (introducing symposium by noting that the themes in *The Public and Its Problems* "remain as important today as they did when Dewey first engaged them").

18. *See, e.g.*, RYAN, *supra* note 17, at 11, 21, 117, 322–23, 369; Melvin L. Rogers, *Dewey and His Vision of Democracy*, 7 CONTEMP. PRAGMATISM 69, 87 (2010) (describing Dewey's conception of a "democratic state" as "radically inclusive in theory").

19. RYAN, *supra* note 17, at 369.

20. Rogers, *supra* note 17, at 3.

various forms of pragmatism suggest about its vitality? My title refers, in part, to pragmatism as a *method:* doing what works, or taking "an incremental, experimental, and evidence-based approach to finding solutions."[21] Dewey, as noted above, came to call his philosophy "experimentalism"—rather than "pragmatism" or "instrumentalism"—to capture the relevance of experience for assessing the truth of belief or action.[22] But pragmatism also has normative principles, or substantive dimensions, such as a commitment to problem solving "in pursuit of a common good,"[23] and to the crucial role of "intelligent action" in such problem solving.[24] Further, at least in Deweyian pragmatism, there is a rejection of the idea that governance rests only with experts and the elite; instead, Dewey embraced participatory democracy as an "ethical ideal" that called on "men and women to build communities in which the necessary opportunities and resources are available for every individual to realize fully his or her particular capacities and powers through participation in political, social, and cultural life."[25] These ideas about developing human capacities and access to resources, wedded to a "politics of care," are also central, as elaborated in Part IV, to radical Black feminist pragmatism.

In pairing experimentalism with intersectionality, my title also alludes to the question posed by pioneering Black feminist scholar Patricia Hill Collins: "how might intersectionality and American pragmatism as knowledge projects inform each other?"[26] Black feminist philosopher V.

21. *See* Derrick Darby & Richard E. Levy, *Postracial Remedies*, 50 U. MICH. J.L. REFORM 387, 458 (2017).

22. RYAN, *supra* note 17, at 20.

23. Darby & Levy, *supra* note 21, at 458.

24. RYAN, *supra* note 17, at 20; *see also* JOHN DEWEY, LIBERALISM AND SOCIAL ACTION (G. P. Putnam's Sons 1935) (discussing the role of "freed intelligence" as a force directing social action).

25. Rogers, *supra* note 17, at 3 (quoting ROBERT B. WESTBROOK, JOHN DEWEY AND AMERICAN DEMOCRACY xiv–xv (Cornell Univ. Press 1991)). Dewey was rejecting Walter Lippmann's skepticism about the possibility of the public being able to form "a coherent public opinion" about "the good of the country," on which politicians could in turn act; Lippmann imagined "a disinterested elite"—committees of social science experts, for example—who could manage matters and enjoy public support. RYAN, *supra* note 17, at 216–17.

26. *Piecing Together*, *supra* note 2, at 89; *see also* Patricia Hill Collins, *Social Inequality, Power, and Politics: Intersectionality and American Pragmatism in Dialogue*, 26 J. SPECULATIVE PHIL. 442, 443 (2012) [hereinafter *Social Inequality*]. Collins traces the genealogy of intersectionality as a concept to a broad range of Black feminist politics and writing in the 1960s, 1970s, and 1980s, prior to the use of the specific term "intersectionality" by legal scholar Kimberlé Crenshaw in her now-classic law review articles from 1989 and 1991. *See* Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1991); Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex:*

Denise James[27] similarly explores points of convergence—such as situated knowledge—between Black feminist theorizing and classical American pragmatist exemplars like Dewey and William James.[28]

Both Collins and V. Denise James describe Black feminist pragmatism as "visionary pragmatism," using a term first introduced by Stanlie James and Abena Busia nearly 30 years ago.[29] That earlier formulation paired pragmatism's simultaneous focus on the incremental and on the broader vision of a more just society: "Black feminists are simultaneously envisioning incremental changes and radical transformations not only within Black communities but throughout the broader society as well."[30] Finally, Woodly uses the term "radical Black feminist pragmatism" to explain the political philosophy that guides M4BL and explains each term: "*radical* is a mode of questioning, *Black feminism* is an ethical system, and *pragmatism* is a mode of judgment that guides action."[31] That political philosophy uses a "pragmatic imagination" that shows "the path from the world as it is to the desired one that might be" and "an intersectional lens" and the "margin-to-center ethic."[32]

A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics, 1989 U. CHI. LEGAL F. 139 (1989).

27. Here, I use Professor James's own self-description. *See* V. Denise James, *Musing: A Black Feminist Philosopher: Is That Possible?*, HYPATIA, Winter 2014, at 189, 189 (describing the reply, "I am a black feminist philosopher," when asked by other academics, "What do you do?").

28. *Theorizing Black Feminist Pragmatism*, *supra* note 3, at 92. On William James, see V. Denise James, *Reading Anna J. Cooper with William James: Black Feminist Visionary Pragmatism, Philosophy's Culture of Justification, and Belief*, PLURALIST, Sept. 2013, at 32, 32 [hereinafter *Black Feminist Visionary Pragmatism*].

29. As elaborated below, for this "visionary" pragmatism, both Collins and Professor James cite the anthology THEORIZING BLACK FEMINISMS: THE VISIONARY PRAGMATISM OF BLACK WOMEN i (Stanlie M. James & Abena P.A. Busia eds., Routledge 1993) [hereinafter THEORIZING BLACK FEMINISMS]; *see Theorizing Black Feminist Pragmatism*, *supra* note 3, at 95.

30. *Theorizing Black Feminist Pragmatism*, *supra* note 3, at 97 (quoting THEORIZING BLACK FEMINISMS, *supra* note 29, at 3).

31. WOODLY, *supra* note 8, at 50.

32. *Id.* at 51, 53. On the intersectional lens and margin-to-center ethic, Professor Woodly cites Crenshaw and bell hooks. *Id.* at 69. As elaborated below, Professor Woodly explains that "[i]ntersectionality and its theoretical antecedents," such as "double jeopardy" (Frances M. Beal), "triple oppression" (Claudia Jones), "simultaneity" (Combahee River Collective Statement), and "interlocking oppressions" (Patricia Hill Collins), "all describe a similar social fact." *Id.* at 78 & n.6.

Although this Article's focus is on these efforts to meld classical American pragmatism and intersectional feminism, it is worth observing that the term "pragmatism," used to connote the combined focus on incremental change and a broader vision of justice, also features in characterizations of the efficacious efforts of Black women as democratic actors. For example, as seen in the tweet by journalist Errin Haines quoted above, Black women's pragmatism received well-deserved credit for bringing then-former Vice President Joe Biden and then-Senator Kamala Harris over the finish line in the 2020 presidential election.[33] Prominent among those pragmatic Black women is Stacey Abrams (a self-described pragmatist),[34] who made crucial efforts to promote free, fair, and secure elections through Fair Fight and other organizations. Further, the New Georgia Project, founded by Abrams in 2014 and led by Nsé Ufot,[35] helped to register over 400,000 voters and to turn out the vote in Georgia not only in the November 2020 election but also in the two Senate races in Georgia in January 2021.[36] The result of those races was the historic election of Senators Jon Ossoff (the first Jewish person elected Senator in Georgia)[37] and Reverend Raphael Warnock (Georgia's first Black Senator).[38] This consequential result also gave Democrats control (50–50) of the Senate.[39] When President Biden announced his historic choice of Vice President Harris, a Black and South Asian woman, as his running mate, Ufot published "A Love Letter to Black Women, Who Have Always Labored for Our Democracy."[40] Further, press reports described

33. Haines, *supra* note 1.

34. Kevin Powell, *The Power of Stacey Abrams*, WASH. POST (May 14, 2020), https://www.washingtonpost.com/magazine/2020/05/14/stacey-abrams-political-power/ [https://perma.cc/W48R-QFSU].

35. *Leadership at NGP*, NEW GA. PROJECT, https://newgeorgiaproject.org /leadership-at-ngp/ [https://perma.cc/B9VA-8P2L].

36. *See Voting Rights Organizers Claim Victory and Biden Takes Narrow Lead in Georgia*, NPR, (Nov. 7, 2020), https://www.npr.org/2020 /11/07/932422815/voting-rights-organizers-claim-victory-as-biden-takes-narrow-lead-in-georgia [https://perma.cc/K7UA-ZNKZ].

37. *Sen. Ossoff Sworn in as Georgia's First Jewish Senator*, FOX 5 ATLANTA (Jan. 20, 2021), https://www.fox5atlanta.com/news/sen-ossoff-sworn-in-as-georgias-first-jewish-senator [https://perma.cc/2JRE-U7Z4] [hereinafter *Sen. Ossoff*].

38. David Smith, *'The New South': Raphael Warnock Becomes Georgia's First Black Senator*, GUARDIAN (Jan. 6, 2021), https://www.theguardian.com/us-news/2021/jan/06/raphael-warnock-first-black-senator-from-georgia [https://perma.cc/W4Y3-SQW3].

39. *See Sen. Ossoff*, *supra* note 37.

40. Nse Ufot, *A Love Letter to Black Women, Who Have Always Labored for Our Democracy*, ROOT (Sept. 7, 2020), https://theglowup.theroot.com/a-love-letter-to-black-

Vice President Harris as a "pragmatic progressive."[41] Vice President Harris has repeatedly said she "stand[s] on the shoulders of Shirley Chisholm,[42] often described as a pragmatist during her years in Congress.[43] To honor Representative Chisholm's efforts on behalf of the U.S. people, Vice President Harris chose the same colors for her own campaign for President—red and yellow—that Chisholm used nearly four decades earlier in her historic campaign for the Democratic nomination.[44]

This Symposium's conveners have also related their investigation of pragmatism to an earlier exploration from the early 1990s of the "renaissance of pragmatism in American legal thought."[45] For that reason, this Article will revisit that moment, examining analyses by Professors Margaret Radin, Mari Matsuda, and Katharine Bartlett of the relationship between feminism and pragmatism.[46] This reexamination proves a fruitful

women-who-have-always-labored-f-1844961865?fbclid=IwAR3xc4yP8VK4e30z7ZDAP6I5aAqiXweXGtJtXSxuu1l-e69Q1PCrVC2oi_Q [https://perma.cc/T4NY-7PHL].

41. Alex Seitz-Wald, *Kamala Harris: A Pragmatic Progressive Different from Biden in Many Ways*, NBC NEWS (Aug. 11, 2020), https://www.nbcnews.com/politics/2020-election/kamala-harris-pragmatic-progressive-different-biden-many-ways-n1236475 [https://perma.cc/E8LB-8NSL].

42. *'We Stand on the Shoulders of Shirley Chisholm': Brooklyn Political Powerhouse Serves as Source of Inspiration for Sen. Kamala Harris*, CBS N.Y. (Aug. 12, 2020), https://newyork.cbslocal.com/2020/08/12/kamala-harris-shirley-chisholm/ [https://perma.cc/5LCY-8U8N].

43. Mary Breasted, *Shirley Chisholm: 'They Will Remember a 100-Pound Woman*,' VILL. VOICE, Dec. 2, 1971, at 7, *reprinted in* VILL. VOICE (Nov. 9, 2020), https://www.villagevoice.com/2020/11/09/shirley-chisolm-they-will-remember-a-100-pound-woman/; Andrew O'Hehir, *Shirley Chisholm, the Democrats' Forgotten Hero*, SALON (Sept. 9, 2012) https://www.salon.com/2012/09/09/shirley_chisholm_the_democrats_forgotten _hero/ ("As the history of her relationship with [George] Wallace may suggest, Chisholm was more of a realist and pragmatist than anyone could see in 1972 . . . .").

44. *Sen. Kamala Harris Pays Homage to Shirley Chisholm*, DIVERSITYINC (Jan. 22, 2019), https://www.diversityinc.com/kamala-harris-honors-shirley-chisholm/ [https://perma.cc/5N5Y-6HPL].

45. *See* E-mail from Professor Mark Kende, James Madison Chair in Const. L., Drake Const. L. Ctr. (May 9, 2020, 17:18 CST) (on file with author) (inviting author to participate in symposium and referring to "a constitutional and feminist pragmatist movement around the early 90s"). The reference in text is to the symposium: *Symposium on the Renaissance of Pragmatism in American Legal Thought*, 63 S. CAL. L. REV. 1569 (1990) [hereinafter *Renaissance*].

46. *See* Margaret Jane Radin, *The Pragmatist and the Feminist*, 63 S. CAL. L. REV. 1699 (1990); Mari J. Matsuda, *Pragmatism Modified and the False Consciousness*

preface to considering radical or visionary Black feminist pragmatism, since a common concern is the problem of domination and oppression and the possibility of liberation. So too, a shared methodology is valuing and prioritizing the experiences and perspectives of the oppressed and excluded.

Professor Radin characterized her influential article *The Pragmatist and the Feminist* as offering "interlinked short essays" in which she believed she was "'doing' both pragmatism and feminism" as well as exploring "a broader theoretical connection between" the two.[47] Unlike Radin, I make no claim to be "doing" pragmatism.[48] However, I follow Radin's structure by offering distinct forays into the possible connections between pragmatism and feminism: (1) revisiting efforts by Radin, Matsuda, Bartlett, and other feminist legal theorists to constructively engage pragmatism and feminism; and (2) exploring forms of radical or visionary Black feminist pragmatism, as elaborated in the work of political philosophers and theorists and in their explication of the political philosophy of the M4BL. After these forays, this Article will draw some tentative conclusions about methodological and normative commitments in these forms of pragmatism, pointing to some common themes as well as to some significant differences.[49] In concluding, I will consider the relevance of these forms of feminist pragmatism for democracy and constitutionalism.

Problem, 63 S. CAL. L. REV. 1763 (1990); Katharine T. Bartlett, *Feminist Legal Methods*, 103 HARV. L. REV. 829 (1990). The Radin and Matsuda articles appear in *Renaissance*, *supra* note 45. These and similar works by feminist legal scholars were my own introduction, as a new legal scholar, to this relationship.

47. Radin, *supra* note 46, at 1699.

48. I have framed my own work as liberal feminist (although informed by other strands of feminist theory) and as synthesizing civic republican, feminist, and liberal legal and political theory. *See, e.g.*, LINDA C. MCCLAIN, THE PLACE OF FAMILIES: FOSTERING CAPACITY, EQUALITY, AND RESPONSIBILITY 3 (Harvard Univ. Press 2006) (advancing a liberal feminist account of "the question of the place of families in our constitutional and political order"); JAMES E. FLEMING & LINDA C. MCCLAIN, ORDERED LIBERTY: RIGHTS, RESPONSIBILITIES, AND VIRTUES 3–4, 17 (Harvard Univ. Press 2013) (advancing a "constitutional liberalism" that argues for a model of "ordered liberty" through "taking rights, responsibilities, and virtues seriously" and addressing leading critiques of rights and rights talk).

49. For example, common themes include disrupting the status quo, valuing situated knowledge and experience, and centering marginalized perspectives; also present is the dual commitment to making incremental progress while advancing more radical change.

II. FEMINIST LEGAL THEORISTS ASSESS PRAGMATISM'S "RENAISSANCE"

In this Part, I revisit the keen interest in the legal academy during the 1990s in the potential of pragmatism in legal theory. More specifically, I look at how feminist legal theorists assessed that potential. For example, in 1990, when the *Southern California Law Review* published a symposium on "The Renaissance of Pragmatism in American Legal Thought,"[50] one topic explored was the relationship between feminism and pragmatism.[51] This Part begins with contributions to that symposium by feminist legal scholars Margaret Radin and Mari Matsuda; it then considers engagement by Katharine Bartlett and other legal feminists with pragmatism, including with the work of Richard Rorty. This Article does not aim to offer a comprehensive review of all feminist legal engagement with pragmatism from the 1990s to the present day; rather, it revisits a sampling of that feminist work to illuminate some themes sounded by feminist legal theorists as they considered how feminism and pragmatism could inform each other. It will later compare those themes with the work of Black feminist political philosophers on how classical American pragmatism and Black feminist thought may inform perspectives on democracy.

A. *Professor Margaret Radin*

1. Allying Feminism and Pragmatism

In her often discussed article, *The Pragmatist and the Feminist*, Professor Radin offered four "short essays" on how she was "doing" both feminism and pragmatism in her own writing.[52] In these "essays," she cautions that it is "problematic" to try to speak theoretically "about pragmatism and feminism together," given that, rather than two large "-isms," there are distinctive strands of pragmatism and feminism.[53] Instead, she seeks to compare feminism and pragmatism as "ways of proceeding" and to consider how they might be "allied" in some of their commitments.[54] Of particular interest for my analysis are the first two essays: "The Double Bind" and "The Perspective of Domination and the Problem of Bad Coherence."[55]

50. *See Renaissance*, *supra* note 45.
51. *See* Radin, *supra* note 46.
52. *Id.* at 1699.
53. *Id.* at 1705.
54. *Id.* at 1705–06.
55. *See id.* at 1699, 1705.

Radin explains the "double bind" by reference to the commodification of sexuality and reproduction: both commodification and non-commodification are harmful under oppressive social conditions.[56] On the one hand, "[i]f the social regime permits buying and selling of sexual and reproductive activities, thereby treating them as fungible market commodities given the current capitalistic understandings of monetary exchange, there is a threat to the personhood of women, who are the 'owners' of these 'commodities.'"[57] On the other hand, "if the social regime prohibits this kind of commodification, it denies women the choice to market their sexual or reproductive services, and given the current feminization of poverty and lack of avenues for free choice for women, this also poses a threat to the personhood of women."[58] The solution to the double bind, she argues, "is not to solve but to dissolve it: remove the oppressive circumstances."[59] However, in the meantime, feminists must "think about nonideal justice: given where we now find ourselves, what is the better decision?"[60] Radin describes this as a pragmatic solution, thus linking feminism and pragmatism: "nonideal justice [is] the process by which we try to make progress . . . toward our vision of the good world."[61] Radin identifies a similar "double bind" with respect to numerous other issues commonly termed "women's issues," including the treatment of pregnancy, affirmative action programs, conceptions of rape, and the valuation of partners' contributions in divorce.[62] Stressing the importance of context, Radin explains that "[t]he pragmatist feminist need not seek a general solution that will dictate how to resolve all double bind issues."[63] Instead, with all of these issues, "[t]he pragmatist solution is to confront each dilemma separately and choose the alternative that will hinder empowerment the least and further it the most."[64] As circumstances change, the best solution to a particular double bind may change as well.[65]

56. *Id.* at 1699–1700.
57. *Id.* at 1699.
58. *Id.* at 1700.
59. *Id.*
60. *Id.*
61. *Id.* at 1701.
62. *Id.* at 1701–04.
63. *Id.* at 1704.
64. *Id.*
65. *Id.*

The pragmatist feminist also focuses on the necessary vision for dissolving double binds "by changing the framework that creates them."[66] Written over thirty years ago, these words are worth repeating even now for their recognition of this visionary task concerning gender:

> Perhaps it is obvious that the reason the double bind recurs throughout feminist struggles is that it is an artifact of the dominant social conception of the meaning of gender. The double bind is a series of two-pronged dilemmas in which both prongs are, or can be, losers for the oppressed. . . . [T]he way out . . . is to . . . . dissolve the prevalent conception of gender.
>
> Calling for dissolution . . . is the visionary half of the problem: we must create a new vision of the meaning of male and female in order to change the dominant social conception of gender and change the double bind. In order to do that, however, we need the social empowerment that the dominant social conception of gender keeps us from achieving.[67]

The second essay addresses the perspective of domination and the problem of bad coherence, which concerns dilemmas regarding theories about "truth."[68] With the above disclaimer about the challenge of comparing two "-isms," Professor Radin suggests that feminism and pragmatism "largely share . . . a commitment against abstract idealism, transcendence, foundationalism, and atemporal universality," and a "commitment to finding knowledge in the particulars of experience" (such as the feminist method of consciousness-raising).[69] Other commitments are to "concreteness, situatedness, contextuality, [and] embeddedness."[70] Both feminism and pragmatism share a commitment to "the dissolution of traditional dichotomies,"[71] and to "shared meaning arising out of shared interactions with the world."[72]

Radin observes that Dewey and William James viewed truth as "inevitably plural, concrete, and provisional;" as illustrative, she quotes

66. *Id.*

67. *Id.* A present-day statement of this "new vision" about gender might also include addressing the gender binary itself.

68. *See id.* at 1706.

69. *Id.* at 1707.

70. *Id.*

71. *Id.*

72. *Id.* at 1708.

Dewey: "Truth is a collection of truths; and these constituent truths are in the keeping of the best available methods of inquiry and testing as to matters-of-fact . . . ."[73] Radin suggests that feminists "largely share the pragmatist commitment that truth is hammered out piecemeal in the crucible of life and our situatedness" as well as "the pragmatist understanding that truth is provisional and ever changing."[74] Both pragmatists and feminists stress "embodiment," or "an embodied perspectivist view of knowledge," with feminists stressing embodiment even more, given the ways embodied experiences such as menstruation, pregnancy, birth, and more shape their treatment in the world.[75]

A potential tension between pragmatism and feminism arises, Radin suggests, because "[p]ragmatists have tended toward coherence theories of truth and goodness;"[76] such theories "tend toward conservativism" in the sense that (following William James) we "count a new idea as true if we can use it to assimilate a new experience to our old beliefs without disturbing them too much."[77] She characterizes William James's approach as being that "we should, and do, believe those things that work best in our lives."[78] The dilemma for feminists concerns whose standpoint or perspective is the benchmark for what works.[79] Suppose that the entire system of belief could be "coherent" and also "coherently bad" when built up upon sexism, racism, and other forms of bias.[80] Professor Radin elaborates: "We know we cannot argue that any given sexist decision is wrong simply because it does not fit well with all our history and institutions, for the problem is more likely that it fits only too well."[81] "Bad coherence," then, "creates the double bind."[82]

To integrate pragmatism and feminism, Professor Radin concludes, requires an "understand[ing of] the perspective of the oppressed as making

73. *Id.* at 1706 (quoting JOHN DEWEY, EXPERIENCE AND NATURE 410 (Open Ct. Publ'g Co. 2d. ed. 1929)).

74. *Id.* at 1707.

75. *Id.*

76. *Id.* at 1708. Professor Radin admits that her claim about coherence theory "is subject to dispute," citing as an example Hilary Putnam's rejection of coherence theory. *Id.* at 1707 n.26.

77. *Id.* at 1708–09.

78. *Id.* at 1709.

79. *See id.* at 1710.

80. *Id.*

81. *Id.*

82. *Id.*

possible an understanding that coherence can be plural" and supporting oppressed groups' efforts "to change dominant conceptions in order to make possible [their] own empowerment."[83] Radin illustrates this by questioning who the "we" is that seeks "coherence in 'our' commitments"; she adds that "[d]ominant groups have tended to understand themselves without question as the only 'we,' whereas oppressed groups, simply by virtue of recognizing themselves as an oppressed group, have understood that there can be plural 'we's'."[84] Radin concludes that "[t]he perspective of domination, and the critical ramifications it must produce once it is taken seriously, seem to be feminism's important contribution to pragmatism."[85] In other words, pragmatist methods must account for the perspective of the oppressed in order to achieve true coherence.

Responding to subsequent criticism that her pragmatism is conservative rather than transformative, Professor Radin later clarified her view of the relationship between theory and real world (political) action: a pragmatic understanding of theory recognizes that theory creates the vision of the better world and must evolve as steps are taken in the real world.[86] "This pragmatic understanding of theory led [her] to stress the notion of nonideal decisionmaking and to recognize the pervasiveness of the double bind."[87] Radin explains that "[t]he primary problem of politics is how to get from here (the nonideal) to there (the ideal as now constituted)."[88] As for how to approach the double bind, she suggests that some attempts to put the ideal into practice now will cause more harm than good under current circumstances, and a pragmatic decision should be made about how to proceed in each circumstance.[89] Radin also addressed the critique that legal scholars should deconstruct concepts that they rely on in their attempts to justify or reform the law; she explained that while legal feminists "should not base feminist critiques and recommendations on uncritical acceptance of a traditional conception of women's nature, … *sometimes* we can [still] use this ideology for our own political gain, and in such a case it might be appropriate

83. *Id.* at 1710–11.

84. *Id.*

85. *Id.* at 1711.

86. *See* Margaret Jane Radin, *Lacking a Transformative Social Theory: A Response*, 45 STAN. L. REV. 409, 413 (1993) (responding to Professor Steven Schnably's critique of her article in Stephen J. Schnably, *Property and Pragmatism: A Critique of Radin's Theory of Property and Personhood*, 45 STAN. L. REV. 347 (1993)).

87. *Id.*

88. *Id.*

89. *Id.*

to accept it for the time being."[90] Radin notes that "[t]his political choice is an aspect of the double bind."[91] In each individual situation, feminist pragmatists must consider whether the best outcome in terms of current conditions will arise from trying to change the traditional conception or trying to argue within it, in terms which those who have political power are more likely to understand.[92] She questions the deconstruction approach, concluding that "such frontal attacks [sometimes] not only do not dislodge the reader's conceptions, but indeed seem barely comprehensible in light of how deeply entrenched those conceptions are."[93]

2. Feminist Applications of Radin's "Double Bind"

In the 1990s, Professor Radin's idea of the double bind inspired other legal feminists to examine the potential of pragmatist feminism/feminist pragmatism. While a full review is beyond the scope of this Article, a few examples may be helpful. Feminist legal scholar Mary Becker argued that feminist pragmatism had advantages over other legal feminist approaches like formal equality, hedonic feminism, and dominance theory in dealing with double binds in areas such as regulating surrogacy,[94] child custody rules, and arguing for legal recognition of same-sex relationships.[95] Becker concluded that "[p]ragmatism can help us to understand why it is that these

90. *Id.* at 416.

91. *Id.*

92. *See id.*

93. *Id.* at 418.

94. *See* Mary Becker, *Four Feminist Theoretical Approaches and the Double Bind of Surrogacy*, 69 CHI.-KENT L. REV. 303 (1993) [hereinafter *Four Feminist Theoretical Approaches*]. Becker associates "formal equality" with treating men and women who are similarly situated the same way; "hedonic feminism" (as in the work of Robin West) argues that the legal system ignores women's differences from men, particularly their distinctive pleasures and pains; "dominance theory" (as in the work of Catharine MacKinnon) analyzes sex inequality as a systematic problem of men's power over women. *Id.* at 304–09.

95. Mary Becker, *Strength in Diversity: Feminist Theoretical Approaches to Child Custody and Same-Sex Relationships*, 23 STETSON L. REV. 701, 703 (1994) [hereinafter *Strength in Diversity*]. Becker explains the double bind when determining "the appropriate standard for child custody at divorce in a dispute between a mother and father who have been living with the child." *Id.* at 715. While "a sex-specific rule like the traditional maternal preference may be inconsistent with the sorts of long-term social change needed if women and men are ever to be equal," "the best interest standard . . . fails to adequately protect the needs of women who have already invested much of their time and energy, emotional and otherwise, in their relationships with their children." *Id.* at 723.

grand theories often actually provide us with very little in the way of concrete guidance for how to resolve a specific issue."[96] As Becker explicated a feminist pragmatist method: "all we can do is make our best guess about what is likely to be best for women in this situation today," and "whatever we do we need to watch how things work out in the real world and make continuous reassessments, considering whether in fact this is working out to be good for women or bad for women."[97] On custody rules, for example, "[g]iven the uncertainty about what sexual equality means and the many unknowns about advantages and disadvantages of various approaches to custody, a pragmatist would likely favor experimentation," with different standards in different states and an eye on the outcomes.[98] With respect to lesbian and gay rights, pragmatism would counsel selection of arguments from the various feminist approaches depending on the intended audience.[99] Becker also observed that, given how various theoretical approaches in feminism have distinctive goals, such as non-coercion, power, and satisfaction, "each goal is good but may interfere with the achievement of another, [and therefore,] each goal should be pursued only in the context of concrete issues."[100]

As another example, in *Pragmatism and Parity in Appointments*, Professor Yxta Maya Murray enlisted Radin's idea of the double bind to propose a pragmatic approach to reduce race and gender bias in the judicial appointments process.[101] Murray noted that, "[s]ince the demise of Judge Robert Bork at the hands of the Senate Judiciary Committee, a number of books from both ends of the political spectrum have been written about the judicial selection process and appointments in general."[102] Focusing on Professor Stephen L. Carter's book *The Confirmation Mess*, which centers on the problem of indecency in appointments, Professor Murray offered race and gender bias as an alternative explanation for appointment battles and recommended pragmatism "to develop tools for constructing a better

96. *Four Feminist Theoretical Approaches*, *supra* note 94, at 309.

97. *Id.* at 309–10.

98. *Strength in Diversity*, *supra* note 95, at 724.

99. *Id.* at 739–40 (reasoning that formal equality might best convince courts, while hedonic arguments might be more effective before legislatures and the general public).

100. *Id.* at 742.

101. *See* Yxta Maya Murray, *Pragmatism and Parity in Appointments*, 3 MICH. J. GENDER & L. 11, 28–31 (1996).

102. *Id.* at 11.

appointment process."[103] To uncover the influence of racial bias, she observes that Lani Guinier was attacked for "her [work] on repairing racial voting disadvantages," leading to the nickname "Quota Queen."[104] Among these attacks, "part of the ruckus was about Guinier's open revelation that racism still exists in this country."[105] With respect to the significance of nominees' gender, Murray highlights how child care problems thwarted both "the nomination of Zoe Baird and the near nomination of Judge Kimba Wood for the position of Attorney General;" "they had hired undocumented workers to baby sit for their children."[106] Murray argues that "expectations that women are responsible for primary childcare and the readiness to dig into women's personal lives focused the inquiry on Baird's and Wood's childcare arrangements, which became the linchpins of their failures."[107]

Arguing that Carter's solutions fail to address such biases in the appointment process, Murray instead relies on pragmatism—"a replacement for grand, sweeping theory, which, although it makes stabs at the 'best world,' cannot reach this goal on account of existing societal inequities such as racism, sexism, and classism."[108] She employed pragmatic methods alongside "parity, the concept of equality that fuels not only legal scholarship but also much of political and social discourse."[109] According to Murray, "[t]he conceptual tools of parity and pragmatism together may . . . be useful in interpreting and cleaning up the appointment process in a way not anticipated by Carter."[110] Invoking Radin's work, Murray noted that "finding solutions to specific problems of prejudice is a frustrating job when 'current social conditions' constitute 'oppressive circumstances.'"[111] Applying the idea of the double bind, Murray explained that treating women and people of color differently in the appointments process would result in reluctance to nominate such candidates because of the political meaning,

103. *Id.* at 15.

104. *Id.* at 19. For a memorial tribute to Professor Guinier's impactful career that does not lead with this controversy (by contrast to many obituaries), see Brett Milano, *In Memoriam: 1950-2022,* HARVARD LAW TODAY (Jan. 7, 2022), https://today.law.harvard.edu/in-memoriam-lani-guinier-1950-2022/ [https://perma.cc/EQ8L-NEF4].

105. Murray, *supra* note 101, at 21.

106. *Id.*

107. *Id.* at 22.

108. *Id.* at 26.

109. *Id.* at 27.

110. *Id.* at 28.

111. *Id.* (quoting Radin, *supra* note 46, at 1700).

while treating them the same maintains the status quo.[112] As perhaps the best approach toward this double bind, pragmatism "acknowledges that each situation may call for a different method of salvage and repair."[113]

B. Professor Mari Matsuda: Bending Pragmatism Toward Liberation

Professor Matsuda's contribution to the 1990 symposium on "The Renaissance of Pragmatism in American Legal Thought" was *Pragmatism Modified and the False Consciousness Problem*, in which she proposed three ways that pragmatism could bend toward feminism, toward critical race theory, and toward "liberation."[114] First, observing that pragmatism's tools of "multiple consciousness, experimentation, and flexibility" are methods attractive and familiar to "subordinated people," she argues it is necessary to "weigh the pragmatic method to identify and give special credence to the perspective of the subordinated."[115] This provides "the antidote to what Professor Radin calls bad coherence," which could result from listening only to "the situated knowledge of the golden few."[116] As Matsuda argues: "Listening long and hard to less privileged voices is restitutional, reparational, rectifying, and reconstructive."[117] Drawing on accounts by Catharine MacKinnon and other legal feminists on how structures of power can seem invisible, so that a group's systematic mistreatment seems justified, Matsuda argues that resisting "[t]he centrifugal force of dominant culture" requires more than "a weak neutrality"; instead, pragmatic method is enriched by "weighting it to retrieve subordinated voices in order to attain a truer account of social reality and human possibilities."[118]

Second, to weighted pragmatism as a method, Matsuda would add "first principles" of rectifying "past injustice" and eliminating "all present forms of subordination."[119] Matsuda rejects the interpretation of pragmatism's emphasis on context and provisional truth as leading to an

112. *See id.* at 28–29.

113. *Id.* at 30.

114. Matsuda, *supra* note 46, at 1763–64.

115. *Id.* at 1764. On "multiple consciousness," see Mari J. Matsuda, *When the First Quail Calls: Multiple Consciousness as Jurisprudential Method*, 11 WOMEN'S RTS. L. REP. 7 (1989).

116. Matsuda, *supra* note 46, at 1764.

117. *Id.*

118. *Id.* at 1765–66, 1768.

119. *Id.* at 1768.

ethical relativism.[120] Matsuda counters that this prevents neither "the critique of present injustice" nor a normative vision of justice; as an example of the latter, she embraces philosopher Cornel West's articulation of a prophetic pragmatism, which "hears the human plea for decent lives."[121] Matsuda argues that "pragmatism as a method is valuable as a method to an end, and the end of all human striving is justice."[122] Given that "ambitious and grand" goals like justice may "become the excuse for ignorance and inhumanity," pragmatism counsels humility along with this ambition, in light of "the chilling history of mistakes made in the name of Truth."[123] As such humility informs pragmatism, "[t]he method of holding truth provisional can encourage knowing more and thinking harder so that when we make the difficult choices, we are at our best"; it does not mean, Matsuda added, that "there is no truth, no justice."[124] Legal strategies derived from the pragmatic method should be evaluated against their effectiveness in helping to "dismantle structures of subordination" and helping subordinated people live better lives.[125]

Professor Matsuda's third proposal to bend pragmatism toward feminism and other theories aimed at liberation is to defend the plausibility of a "normative notion of pragmatism," with a commitment to "the anti-subordination principle."[126] Here, Matsuda challenges "[t]he perceived dichotomy between pragmatic method and normative absolutes" and refuses to "choose between commitment to an anti-subordination morality and commitment to the truth-seeking method of pragmatism."[127] Matsuda chooses to embrace the tensions and contradictions that arise in embracing these simultaneous commitments.[128]

Professor Matsuda concluded her essay by explaining "[t]o approach truth without exalting too soon a claim to it and to seek justice without forgetting the fallibility of justice-seekers is my quest."[129] "Pragmatism, posed . . . on the cusp of the modern and postmodern worlds," offers "a

120. *See id.* at 1768–69 (discussing Hilary Putnam's reading of Dewey).
121. *Id.* (citing CORNEL WEST, PROPHETIC PRAGMATISM (1988)).
122. *Id.* at 1769.
123. *Id.* at 1769–70.
124. *Id.* at 1770.
125. *See id.* at 1770–71.
126. *Id.* at 1771.
127. *Id.*
128. *Id.* at 1771–72.
129. *Id.* at 1781.

legacy rich with contradiction and promise for those who judge theory according to its potential for empowering the least powerful among us."[130] Matsuda closed with invocations of both Dewey and Cornel West on the long and uncertain road to liberation and freedom.[131]

C. *Katherine Bartlett: "Feminist Practical Reasoning" as Pragmatist*

Another influential early 1990s work exploring the relationship between feminist legal theory and pragmatism was Professor Katherine Bartlett's *Feminist Legal Methods*, in which she discussed several feminist legal methods, including a method she called "feminist practical reasoning," or feminist pragmatism.[132] Bartlett defined the method as "reasoning from an ideal in which legal resolutions are pragmatic responses to concrete dilemmas rather than static choices between opposing, often mismatched perspectives."[133] Bartlett prefaced her introduction of this form of reasoning with the following assertions of principles: "women are more sensitive to situation and context, that they resist universal principles and generalizations, especially those that do not fit their own experiences, and that they believe that 'the practicalities of everyday life' should not be neglected for the sake of abstract justice."[134] Whether or not these assertions are true for most women, Bartlett observed that they have taken on a normative significance within feminism.[135] Further, a reason such practical reasoning is "feminist" is that it "tak[es] into account the perspectives of the excluded."[136]

Context, Bartlett explained, is critical in all practical reasoning: "Not only the resolution of the problem, but even what counts as a problem emerges from the specifics of the situation itself, rather than from some foreordained definition or prescription."[137] Context then also guides the decisionmaker's understanding of the goals of the law.[138] Practical reasoning does not reject rules; it acknowledges that "[r]ules represent accumulated past wisdom, which must be reconciled with the contingencies and

130. *Id.*
131. *See id.* at 1781–82.
132. *See* Bartlett, *supra* note 46, at 831.
133. *Id.*
134. *Id.* at 849.
135. *Id.*
136. *Id.* at 850.
137. *Id.* at 851.
138. *See id.*

practicalities presented by fresh facts."[139] "Ideally, however, rules leave room for the new insights and perspectives generated by new contexts."[140]

From these foundations, "[f]eminist practical reasoning builds upon the traditional mode of practical reasoning by bringing to it the critical concerns and values reflected in other feminist methods, including the woman question."[141] Recognizing the problem that White feminists conceive the category "woman" in an exclusionary way by "identifying the oppression they experience primarily as gender-based," Bartlett argued that asking the woman question could become "a model for deeper inquiry into the consequences of overlapping forms of oppression."[142] Describing this as "[c]onverting the [w]oman [q]uestion into the [q]uestion of the [e]xcluded,"[143] Bartlett suggested that this "deeper inquiry" would "go beyond issues of gender bias to seek out other bases of exclusion," and ask, for example: "what assumptions are made by law (or practice or analysis) about those whom it affects? Whose point of view do these assumptions reflect? Whose interests are invisible or peripheral? How might excluded viewpoints be identified and taken into account?"[144]

Next, Bartlett argued that if it is neither possible nor desirable to "eliminate political and moral factors from legal decisionmaking," practical reasoning could help to make such factors more visible.[145] She explained that "[t]he 'substance' of feminist practical reasoning consists of an alertness to certain forms of injustice that otherwise go unnoticed and unaddressed"; judicial examples of such alertness include the shift from *Plessy v. Ferguson*[146] to *Brown v. Board of Education*[147] as well as the Court's gender revolution in interpreting the Equal Protection Clause.[148]

Bartlett brought pragmatism to bear in considering four different "feminist explanations for what it means to be 'right' in law": the rational/empirical position, standpoint epistemology, postmodernism, and

139. *Id.* at 852.
140. *Id.* at 853.
141. *Id.* at 854–55.
142. *Id.* at 847–48.
143. *Id.* at 847.
144. *Id.* at 848.
145. *Id.* at 862.
146. 163 U.S. 537 (1896), *overruled by* Brown v. Bd. of Educ., 347 U.S. 483 (1954).
147. 347 U.S. 483.
148. *See* Bartlett, *supra* note 46, at 863.

positionality.[149] She evaluated these positions from a "pragmatic viewpoint," which asks: "how can that position help feminists, using feminist methods, to generate the kind of insights, values, and self-knowledge that feminism needs to maintain its critical challenge to existing structures of power and to reconstruct new, and better, structures in their place?"[150] Notably, a "pragmatic viewpoint" both focuses on everyday challenges and is visionary in seeking reconstruction.[151]

Pointing out strengths and weaknesses of the first three approaches, Bartlett argued for the fourth, positionality, which seems consonant with a pragmatic approach to truth. She described positionality both as "a stance from which a number of apparently inconsistent feminist 'truths' make sense" and as a "stance [that] acknowledges the existence of empirical truths, values and knowledge, and also their contingency."[152] "[T]he positional knower conceives of truth as situated and partial . . . in that it emerges from particular involvements and relationships."[153] Overall, positionality "imposes a twin obligation to make commitments based on the current truths and values that have emerged from methods of feminism, and to be open to previously unseen perspectives that might come to alter these commitments."[154] The main benefit of this way of thinking is that it "can reconcile the apparent contradiction within feminist thought between the need to recognize the diversity of people's lives and the value in trying to transcend that diversity."[155] Bartlett finds that feminist practical reasoning is consistent with positionality, in that it "exposes and helps to limit the damage that universalizing rules and assumptions can do; universalizations will always be present, but contextualized reasoning will help to identify those currently useful and eliminate the others."[156] Bartlett stresses the transformative process of feminist knowing and doing (law): "human flourishing," from the perspective of positionality, means being "engaged, with others" through "critical yet constructive feminist methods" and

149. *Id.* at 867–68.
150. *Id.* at 868.
151. *See id.*
152. *Id.* at 880.
153. *Id.*
154. *Id.* at 883.
155. *Id.* at 885.
156. *Id.* at 887.

"effort[s] to reappraise, deconstruct, and transform."[157] Bartlett's conception of feminist knowing stresses its communal and visionary dimensions.[158]

D. *Richard Rorty and His Feminist Interlocutors*

In 1991, Rorty, "the acknowledged philosophical leader of the [early 1990s] revival of interest in pragmatism,"[159] published *Feminism and Pragmatism*, in which he considered how feminism could make use of pragmatism.[160] The article warrants mention for its pragmatist take on the feminist theory of Professor MacKinnon and for Rorty's articulation of pragmatism's imagining or constructing of a better world.[161] Rorty quoted MacKinnon's suggestion that "we have no idea what women as women would have to say" and her "evoking for women a role that we have yet to make, in the name of a voice that, unsilenced, might say something that has never been heard."[162] Rorty glossed these statements to explain: "[o]nly if somebody has a dream, and a voice to describe that dream, does what looked like nature begin to look like culture, what looked like fate begin to look like a moral abomination."[163] In a phrase subsequently quoted by MacKinnon (and others), Rorty took MacKinnon's central point to be "that 'a woman' is not yet the name of a way of being human—not yet the name of a moral identity, but, at most, the name of a disability."[164]

Rorty argued that pragmatism is well-suited to this problem because, instead of focusing on the difference between appearance and reality, pragmatism distinguishes between the purposes that various beliefs might serve.[165] In other words, rather than asserting that women, by nature, have certain characteristics or rights, pragmatism considers the purposes served by any given set of beliefs about women. He contrasts this with universalism

157. *Id.* at 887–88.

158. *See id.* at 867–87.

159. Lynn A. Baker, *"Just Do It": Pragmatism and Progressive Social Change*, 78 VA. L. REV. 697, 697 (1992).

160. *See* Richard Rorty, *Feminism and Pragmatism*, RADICAL PHILOSOPHY, Fall 1991, at 3.

161. *See id.*

162. *Id.* (quoting CATHARINE A. MACKINNON, FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW 77 (Harvard Univ. Press 1987)).

163. *Id.*

164. *Id.* at 4; *cf. id.* at 8 ("[I]nterpretation goes all the way down: . . . what a human being is, for moral purposes, is largely a matter of how he or she describes himself or herself.").

165. *See id.* at 4.

and realism, which are "committed to the idea of . . . an unchanging moral reality . . . and thus unable to make sense of the claim that a new voice is needed."[166]

Rorty argued that certain "realist" references in feminism are problematic, such as MacKinnon's "defin[ition of] feminism as the belief 'that women are human beings in truth but not in social reality,'" which suggested the existence of some other distinct and unchanging reality.[167] He acknowledged that "practical politics will doubtless often require feminists to speak with the universalist vulgar" about intrinsic values but urged that feminists "might profit from thinking with the pragmatists."[168] For example, pragmatism instructs that, to charges that feminists' aims "are unnatural, their demands irrational, or their claims hyperbolic," feminists respond by "try[ing] to invent a reality of [their] own by selecting aspects of the world which lend themselves to the support of [*their*] judgment of the worth-while life."[169] In other words, "[i]nstead of appealing from the transitory current appearances to the permanent reality," which still operated within a universalism or realism dichotomy, pragmatism would "appeal to a *still only dimly imagined future practice*."[170] The way forward for feminists, Rorty suggested, is to first develop semantic authority over themselves as women,[171] and then, with time, to achieve "'full personhood' in the eyes of everybody, having first achieved it only in the eyes of fellow-members of their own club."[172] Pragmatism "think[s] of . . . women inventing themselves rather than discovering themselves, and thus of the larger society as coming to terms with something new."[173] He concluded that MacKinnon's vision for society would best be accomplished through "the production of a better set of social constructs than the ones presently available, and thus as the creation of a new and better sort of human being."[174]

166. *See id.* at 5.
167. *Id.* (quoting MACKINNON, *supra* note 162, at 126).
168. *Id.*
169. *Id.* at 6–7.
170. *Id.* at 7 (emphasis added).
171. *Id.* at 9.
172. *Id.*
173. *Id.* at 10.
174. *Id.*

"*Just do it*,"[175] in other words. Sound simple? Some feminist legal theorists expressed skepticism that Rorty's pragmatism would be useful for feminists seeking social change. One such critique is *Just Do It: Pragmatism and Progressive Social Change*, by Professor Lynn Baker.[176] Rorty's pragmatism, Baker observed, had a prophetic (or visionary) strand of imagining a better world and what vehicles to use to move toward it and a processual strand, or how to use those vehicles for such movement.[177] That "better world" is one with less suffering, more freedom, and equality of opportunity; the vehicles for moving toward that world, Rorty suggested, are narratives and separatist groups.[178] As for process, Baker described Rorty's belief that "[s]eparatist groups move society toward [his] utopian vision through their creation of new linguistic practices; narratives do so through an expansion of individual empathy."[179] These suggestions, Baker argued, have some resonance with proposals by Radin and Matsuda (discussed above) "that pragmatism could be improved by explicitly incorporating a concern for oppressed persons."[180] Baker, however, concluded that Rorty's suggestions were more useful at the level of *prophecy*—urging marginalized people to articulate a better world—rather than for the task of bringing about concrete change.[181]

At a normative level, Professor Baker challenged Rorty's claim that pragmatism's commitment to "anti-foundationalism"—the rejection of an objective truth or reality in favor of ideas of revisability—is actually superior to what she called "metaphysics"—the search for or belief in an objective truth or reality—for achieving social change.[182] Baker argued that "it is far from clear that an anti-foundationalist culture would be more revisable *in the direction of social progress*, or that it would have more (or more influential) prophets sharing Rorty's vision of a better world."[183] She contended that Rorty's idea of "contingency"—that one's vision of social progress and a better world must continually evolve—is not clearly more

175. Here, I reference the title of Baker's trenchant critique of Rorty's claim that pragmatist philosophy might aid feminist politics, discussed *infra.*

176. *See* Baker, *supra* note 159.

177. *Id.* at 698–99.

178. *Id.* at 699.

179. *Id.* at 702.

180. *Id.* at 705.

181. *See id.* at 709.

182. *See id.* at 712.

183. *Id.* (emphasis added).

useful to those who seek to lead the way toward their current vision.[184] Countering Rorty's claim "that anti-foundationalism offers feminist prophets useful rules of rhetoric," Baker asserted that "anti-foundationalist rhetoric and arguments would seem to be of questionable use to prophets who are selling their vision to a foundationalist society."[185] Matsuda seemed to recognize this dilemma in her own proposals for bending pragmatism toward feminism and liberation by defending anti-subordination as a first principle.[186] Matsuda, as discussed earlier in this Article, attempted to hold on both to a "normative notion" of pragmatism and its truth-seeking methods.[187] Baker concluded that "a belief in anti-foundationalism seems neither necessary nor sufficient for actually becoming a prophet."[188] Therefore, she concluded that "pragmatism is of scant use for alleviating oppression in American society."[189] At best, pragmatist statements, such as "[t]here is no method or procedure to be followed except courageous and imaginative experimentation," might inspire people to become prophets of social change.[190]

Another feminist legal critique of Rorty's pragmatism is by Joan Williams, who has embraced elements of John Dewey's pragmatism in her own "reconstructive feminism."[191] In *Rorty, Radicalism, Romanticism: The Politics of the Gaze*, Williams evaluated the tension between the fact that

184. *Id.* at 714–15.

185. *Id.* at 715.

186. *See* Matsuda, *supra* note 46, at 1771.

187. *See supra* text accompanying notes 126–28.

188. Baker, *supra* note 159, at 716.

189. *Id.* at 717.

190. *Id.* at 716 (quoting Richard Rorty, *Feminism and Pragmatism*, 30 MICH. Q. REV. 231, 242 (1991)).

191. *See, e.g.*, Joan C. Williams, *Culture and Certainty: Legal History and the Reconstructive Project*, 76 VA. L. REV. 713, 735–36 (1990) (advocating pragmatism's skepticism about absolute truths and its "search for a workable society" by seeking "a series of necessarily transient and provisional understandings"); JOAN C. WILLIAMS, UNBENDING GENDER: WHY FAMILY AND WORK CONFLICT AND WHAT TO DO ABOUT IT 244–45, 260–61 (Oxford Univ. Press 2000) (explaining that "reconstructive feminism" "embeds several themes from Dewey's pragmatism," including a social theory of truth); *see also* Laura T. Kessler, *Feminism for Everyone*, 34 SEATTLE U. L. REV. 679, 672, 683, 693–95 (2011) (discussing how feminism and pragmatism "constitute one another" in William's work, so that "Williams's visionary feminism and philosophical pragmatism are moving in the same direction" (discussing JOAN C. WILLIAMS, RESHAPING THE WORK-FAMILY DEBATE: WHY MEN AND CLASS MATTER 260–61 (Harvard Univ. Press 2010))).

Rorty "is an egalitarian, a feminist, a social democrat" and the fact that that some of his work has been criticized for reinforcing systems of oppression.[192] Williams argued that "[t]he trouble . . . is Rorty's apparent unawareness of the ways that our institutions and patterns of thought currently render his egalitarian principles unattainable."[193] In other words, "Rorty's recent work is built around a Romantic idea of self-creation that serves to deflect his gaze from ingrained patterns of gender, class, and race inequities."[194] That idea of self-creation values "mastery, autonomy, and masculinity"; although Rorty tries to distance himself from some of these values, "he fails to appreciate how his model of self-creation subtly but systematically deflects his gaze away from his egalitarian aspirations."[195]

Williams points out that "Rorty encapsulates his ideal in the notion of the 'strong poet;'" yet, as others—including feminists—have explained, "Romantics used gendered imagery to establish the moral and intellectual authority of the strong poet" and "to exclude women."[196] While Rorty attempted "to decenter the scientist" as an authority figure, he instead adopted "the Romantic strategy of associating poets with traditionally male attributes as a way of supporting their claim to cultural authority."[197] Expanding on feminist criticism "that masculinized notions such as that of the strong poet make women feel left out," Williams argued that "[m]asculinist ideology is destructive not only because it leaves out women, but because it blinds both men and women to the full range of their concerns and aspirations."[198]

In attempting to justify giving priority to self-creation, "Rorty attempts to solve this problem with a wall between public and private."[199] However, drawing that line seems inconsistent with pragmatism's allowance for the contingency of ideals and arbitrariness of line-drawing in individual lives.[200] Williams contended that "[t]he Romantic model of the strong poet is part of a much larger family of cultural images that flatten out our sense of what

192. Joan C. Williams, *Rorty, Radicalism, Romanticism: The Politics of the Gaze*, 1992 WIS. L. REV. 131, 133 (1992).

193. *Id.* at 134.

194. *Id.*

195. *Id.* at 144.

196. *Id.* at 144–46.

197. *Id.* at 147.

198. *Id.* at 148–49.

199. *Id.* at 150.

200. *See id.*

enriches human life."[201] Highlighting inequities of resources and opportunities that fall along race, sex, and class lines, Williams argued that, "[i]f our goals are egalitarian, making progress on race, class, and gender inequities is a necessary part of our personal projects of self-creation."[202] In assessing the impact of the focus on Romantic ideals in Rorty's work, Williams concluded: "Though one pattern of blindness will be replaced by another, it is time to try a new one whose blind spots do not align so eerily with pervasive patterns of oppression."[203]

III. VARIETIES OF RADICAL/VISIONARY BLACK FEMINIST PRAGMATISM

This Part will discuss varieties of Black feminist pragmatism. Parallel to Part II, I look back to the early 1990s, beginning with the articulation of a visionary Black feminist pragmatism. I then move forward to the twenty-first century, highlighting the work of two Black feminist philosophers, V. Denise James and Deva Woodly, who have explored the relationship between Black feminist theory and classical American pragmatism and proposed models, respectively, of visionary and radical Black feminist pragmatism. A common theme highlighted in my exposition is the contribution that such a visionary pragmatism can make to democracy. Professor James has argued that:

> Recognizing no essential divide between theory and practice, a search for a methodology through which to think about democracy and the moral claims those of us interested in feminism and critical race theory must make against our current ways of thinking and practicing democracy for the goods of equality and freedom, pragmatism emerges as a possible partner in the struggle. [204]

Professor Woodly describes the political philosophy underlying M4BL's social movement as "radical Black feminist pragmatism" ("RBFP") and analyzes M4BL to "explicate what social movements *do* for democracy."[205] Both scholars engage with American pragmatist philosophers (such as Dewey and William James) and also build on prior Black feminist thought outside of and within the academy.[206] I will explicate

201. *Id.* at 153.
202. *Id.* at 154.
203. *Id.* at 155.
204. *Theorizing Black Feminist Pragmatism*, *supra* note 3, at 92.
205. WOODLY, *supra* note 8, at 4.
206. Within the academy, one significant influence is Collins's work putting U.S. pragmatism and intersectionality into dialogue. *See, e.g.*, *Social Inequality*, *supra* note 26, at 443.

how both James and Woodly elaborate a pragmatism that is experimental, incremental, and intersectional, as well as radical/visionary. Dewey is a key interlocutor in this constructive work; James and Woodly engage with some of the key concepts of his political philosophy introduced in Part I.

A. *1993: Black Women as "Visionary and Pragmatic Agents of Change"*

In introducing the collection of essays in the volume *Theorizing Black Feminisms: The Visionary Pragmatism of Black Women* co-edited by Stanlie James and Abena Busia,[207] Stanlie James explained that the essays "outline[d] some of the crucial debates going on within [then] contemporary Black feminist activity"[208] and grew out of a "three-day multidisciplinary Black Feminist Seminar" held at University of Wisconsin-Madison, James's institutional home.[209] Explaining the genesis of the project, James observed that, even though "[t]he 1990s marked the era when issues of multiple oppression were finally being addressed in [academic] conferences," she had difficulty—as a new academic—finding conferences that "specifically addressed issues of Black feminisms."[210]

How is Black feminist theorizing pragmatic and visionary? Stanlie James explained how theory arises out of experience, fueling a "pragmatic activism":

> Theorizing by Black feminists develops out of Black women's experiences of multiple interrelated oppressions including (but not limited to) racism/ethnocentrism, sexism/homophobia and classism. While reflecting the diversity of its many adherents it also struggles to embrace contradictions. Thus Black feminists' theorizing reflects a proactive/reactive stance *of pragmatic activism* which addresses those issues deemed deleterious to the well-being of Black women.[211]

James then challenged the characterization of Black women as victims, countering that "theorizing is a form of agency that provides [Black women] with opportunities to 'learn, think, imagine, judge, speak, write and act,' . . . —which transforms not only the individual (from victim to activist, for example) but the community, and the society as well."[212] The description of

207. THEORIZING BLACK FEMINISMS, *supra* note 29, at i.
208. *Id.*
209. *Id.* at 1. Legal scholar Patricia Williams was among the participants. *Id.*
210. *Id.*
211. *Id.* at 2 (emphasis added).
212. *Id.* (citation omitted).

the book also resisted the agent/victim divide; similarly, it explicitly linked pragmatism and vision: "[E]ach essay in the volume begins from the premise that Black women are not simply victims of various oppressions. They are also, say the authors, visionary and pragmatic agents of change."[213]

Black feminist pragmatism, as Stanlie James elaborates it, is incremental and visionary or radical: "Black feminists are simultaneously envisioning incremental changes and radical transformations not only within Black communities but throughout the broader society as well."[214] James asserted that "Black feminism's theorizing is rooted in Black communities and nourished by them even as it challenges those very communities to address issues of internal oppression."[215] Offering as a then-recent example the Anita Hill/Justice Clarence Thomas debacle, James mentioned how "African American Women in Defense of Ourselves, a self-described grassroots initiative of 1,063 women from the academy, the arts and the community," challenged "external/internal oppressions" by placing an ad in *The New York Times* to "express[] their outrage."[216] "The ad defined the issues of racist and sexist oppression" in the nomination of Justice Thomas, "supported Anita Hill's right to make public allegations of sexual harassment, solicited the support of the Black community," and also critiqued the Senate Judiciary Committee hearings as a "circus."[217]

Stanlie James also described Black feminist theorizing as "humanistic visionary pragmatism."[218] Such pragmatism "seeks the establishment of just societies where human rights are implemented with respect and dignity even as the world's resources are equitably distributed in ways that encourage individual autonomy and development."[219] Finally, James traces "[t]he tradition of Black feminist theorizing" to earlier centuries of "our African and American heritage" and to many Black women (such as Maria Stewart, Anna Julia Cooper, Ida B. Wells, and Rosa Parks) as well as to "the social change movements for civil rights and Black Power of the 1960s," which inspired other social change movements as well as new departments in Afro-American studies (and later, women's studies) at colleges and universities.[220]

213. *Id.* at i.
214. *Id.* at 3.
215. *Id.* at 2.
216. *Id.*
217. *Id.*
218. *Id.* at 3.
219. *Id.*
220. *Id.*

Paraphrasing a famous anthology, James reported the "dual marginalization" that Black women experienced in these new academic spaces: "all the women are white [and] all the Blacks are men."[221] Such marginalization led to Black feminist critiques in the 1970s and 1980s by, among others, Angela Davis, bell hooks, Toni Cade, Barbara Smith, and Paula Giddings, who developed "the parameters of a Black feminist perspective and address[ed] issues of multiple oppression."[222] James situated the essays in *Theorizing Black Feminisms* as contributing to this discourse and also as responding to the summons of Black feminist theorist Patricia Hill Collins "to engage in 'theoretical interpretations of Black women's reality by those who live it.'"[223] James quotes Collins's then-recent (now classic) *Black Feminist Thought: Knowledge, Consciousness, and the Politics of Empowerment.*[224] Notably, in her pioneering book, Collins characterized the "primary guiding principle of Black feminism" as "a recurring humanist vision"—seen in the thought and action of Anna Julia Cooper, Pauli Murray, Representative Shirley Chisholm, among many others—that is committed to human solidarity and to political action that struggles against domination and seeks to empower people "to actualize a humanist vision of community."[225] As discussed below, Collins has also characterized such Black feminism as visionary pragmatism.[226]

Although visionary pragmatism is the frame that Stanlie James and her co-editor Busia argued united the book's essays, the essay authors did not explicitly use or explain the term.[227] Nonetheless, a brief description of a few of the essays may be helpful to suggest some of the earmarks of what the editors consider exemplify visionary pragmatism. In *Theorizing Race, Class and Gender: The New Scholarship of Black Feminist Intellectuals and Black Women's Labor,* Rose M. Brewer argued that "running through Black feminist analyses is the principle of 'the simultaneity of oppression.'"[228]

221. *Id.* (citation omitted).

222. *Id.* at 3–4.

223. *Id.* (quoting PATRICIA HILL COLLINS, BLACK FEMINIST THOUGHT: KNOWLEDGE, CONSCIOUSNESS, AND THE POLITICS OF EMPOWERMENT 22 (Routledge 1991) [hereinafter BLACK FEMINIST THOUGHT (1991)]).

224. *See id.* at 4.

225. BLACK FEMINIST THOUGHT (1991), *supra* note 223, at 37–39. Collins also acknowledges author Alice Walker's preference for the term "womanist" as capturing "this notion of the solidarity of humanity." *Id.* at 37–38.

226. *See* discussion *infra* pp. 858–60 (discussing visionary pragmatism).

227. *See* THEORIZING BLACK FEMINISMS, *supra* note 29.

228. Rose M. Brewer, *Theorizing Race, Class and Gender: The New Scholarship of*

Black feminist theorizing views race, class, and gender as simultaneous forces of oppression, and thus "eschew[s] additive analyses: race + class + gender."[229] Brewer also observed "that experience is crucial to Black women's ways of knowing and being in the world."[230] Thus, this focus on lived experience makes a valuable important contribution to existing scholarship, which "miss[es] an essential reality, the qualitative difference in the lives of African-American women through the simultaneity of oppression and resistance."[231] Drawing on theorizing about gender, race, and class as social constructions, Brewer argued that: "[s]ocial constructions of Black womanhood and manhood are inextricably linked to racial hierarchy, meaning systems and institutionalization."[232]

A second example is an essay contributed by co-editor Stanlie James on the role of mothering in social transformation. James first clarified her use of the term "mothering" to include "responsibility for the welfare of non-blood related children," which "within the Afro-American community and throughout the Black diaspora can be viewed as a form of cultural work."[233] She posited "that these forms of mothering . . . may serve as an important Black feminist link to the development of new models for social transformation in the twenty-first century."[234] James traces this form of mothering back to African communal societies, which "were characterized by high degrees of interdependence and the belief that individual self-development and personal fulfillment were dependent upon the well-being of all members of the community."[235] This viewpoint "was adapted to meet the needs of the enslaved community in the [United States,]" where women would step in to care for a child whose enslaved parents either died or were sold.[236]

Moving forward in time, Stanlie James next explained that a community othermother holds a respected position in a community and can

Black Feminist Intellectuals and Black Women's Labor, *in* THEORIZING BLACK FEMINISMS, *supra* note 29, at 13, 16 (citation omitted).

229. *Id.* at 16.

230. *Id.* at 15.

231. *Id.* at 28.

232. *Id.* at 17.

233. Stanlie M. James, *Mothering: A Possible Black Feminist Link to Social Transformation?*, *in* THEORIZING BLACK FEMINISMS, *supra* note 29, at 44.

234. *Id.* at 45.

235. *Id.* at 46.

236. *Id.* at 47.

provide analysis and critique of individual community members' behavior and conditions or situations affecting the community.[237] James offered as one example Daisy Bates, who nurtured the Black children who integrated Little Rock's Central High School.[238] A second example is community organizer Ella Baker, who employed a leadership style "designed to nurture individual growth and empower community people to assume responsibility for the mundane tasks that would foster social change."[239] Overall, James concludes, the various forms of mothering—and the women who have taken it on—have been powerful agents of change when conditions negatively impacted the community.[240] Their work shows that "power [i]s a verb as opposed to a noun."[241]

In her own writing about Black women and motherhood, Collins interpreted Stanlie James's essay as showing the visionary pragmatism of Black mothers.[242] By helping children adapt to their environment while also preparing them to go further than their mothers were allowed to go, mother figures, Collins observed, "remain simultaneously visionary about what is possible, yet pragmatic about what it might take to get there."[243]

B. *Professor V. Denise James on Theorizing Black Feminist Pragmatism*

In a series of articles, philosopher V. Denise James has explored how putting Black feminism in conversation with works of classical American pragmatists—particularly, Dewey—may open up "new avenues for black feminist democracy theory" and for realizing "an inclusive American democracy."[244] Professor James posits that "Dewey's concerns with the ends of philosophy and democracy . . . make him an apposite resource for black feminist thought, because what is characteristic of much black feminist thought is a preoccupation with the future in spite of, or perhaps because of,

237. *Id.* at 48.

238. *Id.* at 48–49.

239. *Id.* at 49–50.

240. *Id.* at 51.

241. *Id.* at 52.

242. *See* PATRICIA HILL COLLINS, BLACK FEMINIST THOUGHT: KNOWLEDGE, CONSCIOUSNESS, AND THE POLITICS OF EMPOWERMENT 178–84 (Routledge 2002).

243. *Id.* at 184.

244. *Theorizing Black Feminist Pragmatism*, *supra* note 3, at 92. I focus on Professor James's writing on Dewey, but she has also explicated "Black feminist visionary pragmatism" by putting William James into conversation with Anna Julia Cooper. *See Black Feminist Visionary Pragmatism*, *supra* note 28, at 32.

the philosophical backlash against utopian thought."[245] Identifying both as "a black feminist philosopher" and "a black feminist pragmatist,"[246] Professor James observes that while some Black feminists have "taken up the term *pragmatism* to name their endeavors," "few black feminist projects concerning the works of the classical American pragmatists—Pierce, James, Dewey, and Mead—have emerged."[247] By comparison, some feminists scholars have sought to engage with Dewey and "reinterpret" the canon; also, largely through the elaboration of a "prophetic pragmatism" by Cornel West (a student of Rorty), "a body of literature that centers the critical race theory of African American men and the classical American pragmatists continues to grow."[248] James mentions the constructive engagement with Dewey by West's student Eddie S. Glaude Jr. as an example of the latter;[249] a more recent example is Melvin L. Rogers's work on Dewey.[250] A similar engagement by Black feminists would be useful, James argues, because "black feminists' concerns offer different insight into pragmatic methods because of their emphasis on experience that is both raced and gendered."[251]

1. *Putting John Dewey and Patricia Hill Collins in Conversation on Visionary Pragmatism*

Illustrating with the work of Collins, Professor James argues that Dewey and Black feminist thought share a view of "philosophy" as (in Dewey's words) "an intellectualized wish, an aspiration subjected to rational discriminations and tests, a social hope reduced to a working program of

245. *Theorizing Black Feminist Pragmatism*, *supra* note 3, at 93.

246. *See Black Feminist Visionary Pragmatism*, *supra* note 28, at 189–90.

247. *Theorizing Black Feminist Pragmatism*, *supra* note 3, at 92.

248. *Id.* at 93, 95. As an example of feminist efforts, Professor James cites FEMINIST INTERPRETATIONS OF JOHN DEWEY (Charlene Haddock Seigfried ed., Penn. State Univ. Press 2002).

249. *Id.* at 98 n.1 (citing EDDIE S. GLAUDE JR., IN A SHADE OF BLUE: PRAGMATISM AND THE POLITICS OF BLACK AMERICA (Univ. of Chi. Press 2007)).

250. *See* MELVIN L. ROGERS, THE UNDISCOVERED DEWEY: RELIGION, MORALITY, AND THE ETHOS OF DEMOCRACY (2012); JOHN DEWEY, THE PUBLIC AND ITS PROBLEMS (Melvin L. Rogers ed., Swallow Press 2016).

251. *Theorizing Black Feminist Pragmatism*, *supra* note 3, at 92. In an endnote, for example, Professor James comments on what is missing from work by African American male intellectuals on pragmatism: "West's student Eddie S. Glaude Jr. makes a compelling case for Dewey's pragmatism and sense of the tragic against West's prophetic pragmatism in his *In a Shade of Blue: Pragmatism and the Politics of Black America* (2007). However, Glaude's text woefully neglects the experiences of U.S. black women and the theories of black feminists." *Id.* at 98 n.1.

action, a prophecy of the future, but one disciplined by serious thought and knowledge."[252] Social hope, in particular, "is an identifying marker of black feminism."[253] "Dewey believed that the purpose of philosophy is to consider the moral dimensions of our strivings."[254] For Dewey, similarly, "[t]he use of science, social science, and politics is to be measured in regard to the increase of human flourishing."[255]

James finds Dewey's pragmatism to have closer affinity to Black feminist thought than that of West, who grounds "his progressive philosophy and politics" in Christianity and a notion of utopia.[256] By comparison, Black feminist thinkers have not relied on this "view of the transcendent;" instead, they "have posited positive visions for the advancement of democracy and theory by centering black women's experiences" and "concentrat[ing] on the possibilities inherent in our current political situations."[257] Describing this as "visionary pragmatism," James references the use of the term by Stanlie James and Busia "to catalog a set of practices and theories by black feminists."[258] Professor James observes that, "[a]lthough they do not reference Dewey, the praxis of which they speak aligns itself more closely to Dewey's pragmatism than West's."[259] In support she quotes passages from the book noted above, both about Black feminists "simultaneously envisioning incremental changes and radical transformations" and about their vision of a "humanistic visionary pragmatism."[260]

Professor James further argues that Collins's "formulation of visionary pragmatism" (building on Stanlie James's and Busia's term) has "many points of convergence with Dewey."[261] Professor James offers the example of how Collins wrote about the efforts of Black women in her childhood community, who often used the Black church as a site for community organizing.[262] Such "women believed in the possibility of social hope that saw the road to justice and equality as an ongoing process that involved

252. *Id.* at 93.
253. *Id.*
254. *Id.* at 97.
255. *Id.*
256. *Id.* at 96–97.
257. *Id.* at 96.
258. *Id.*
259. *Id.* at 97.
260. *Id.*
261. *Id.*
262. *See id.*

deliberation about moral ends, practical tactics, the use of available resources, and the revision of plans."[263] Collins herself explained that "[t]he notion of visionary pragmatism more closely approximates a creative tension symbolized by an ongoing journey" than "[a]rriving at some predetermined destination."[264] For, Collins continues:

> [A]lthough Black women's visionary pragmatism points to a vision, it doesn't prescribe a fixed end point of a universal truth. One never arrives but constantly strives. At the same time, by stressing the pragmatic, it reveals how current actions are part of some larger, more meaningful struggle. Domination succeeds by cutting people off from one another. Actions bring people in touch with the humanity of other struggles by demonstrating that truthful and ethical visions for community cannot be separated from pragmatic struggles on their behalf.[265]

Commenting on this passage, James concludes that "[f]or both the black feminist pragmatism and Dewey, community is integral to progressive democratic politics."[266] Also, "[f]or both, the future is something to be pondered and set as a goal for today in our theories and in our practices. The future emerges as a process and not as an end in unrealistic utopia or supernatural salvation."[267]

Professor James concludes her essay with several questions raised by Collins that James views as

> guides to future black feminist pragmatism: 'First, does this social theory speak the truth to people about the reality of their lives? . . . Does this social theory equip people to resist oppression? Is this social theory functional as a tool for social change? . . . Does this critical social theory move people to struggle?'[268]

Professor James further speaks of the potential for "black feminist social theory," "in the character of Deweyan pragmatism," to investigate "the lived

263. *Id.* (describing Collins's discussion in PATRICIA HILL COLLINS, FIGHTING WORDS: BLACK WOMEN AND THE SEARCH FOR JUSTICE 189–90 (Univ. of Minn. Press 1998) [hereinafter FIGHTING WORDS]).

264. *Id.* (quoting FIGHTING WORDS, *supra* note 263, at 189–90).

265. *Id.* (quoting FIGHTING WORDS, *supra* note 263, at 189–90).

266. *Id.*

267. *Id.*

268. *Id.* at 98 (quoting FIGHTING WORDS, *supra* note 263, at 198–99).

experiences of black women" and offer "propositions concerning how we might achieve deeper democracy."[269] Black feminist engagement with Dewey could begin with his need both to recover philosophy and his "charge to avoid the danger of complacency in philosophy."[270] Dewey wrote of the problem that "[a]ll peoples at all times have been narrowly realistic in practice and have then employed idealization to cover up in sentiment and theory their brutalities."[271] But Dewey also expressed "faith" that combines pragmatism's incremental and visionary elements: "Faith in the power of intelligence to imagine a future which is the projection of the desirable in the present, and to invent the instrumentalities of its realization, is our salvation"—a faith "which must be nurtured and made articulate" by philosophy.[272]

2. *John Dewey, W.E.B. DuBois, and Angela Davis in Conversation over Pragmatism and Radicalism*

In *Pragmatism and Radical Social Justice*, Professor James puts Dewey in conversation with Black radicalism.[273] She begins by acknowledging that "[p]ragmatism is rarely associated with radicalism."[274] However, she argues that both Dewey and W. E. B. Du Bois were radical thinkers:[275] "Where they diverged is on the attention and importance they placed on the problem of race in the United States."[276] James argues that "Du Bois's analyses of oppression and the desperate need for social change offer an important corrective to Deweyan pragmatism."[277] Investigating Dewey and Du Bois together reveals "that, if we are to think through radical justice, we must reject the common philosophical distinctions made between freedom and

269. *Id.*

270. *Id.*

271. *Id.* (quoting John Dewey, *The Need for a Recovery of Philosophy (1917)*, *in* THE ESSENTIAL DEWEY 69 (Larry A. Hickman & Thomas M. Alexander eds., Ind. Univ. Press 1998)).

272. *Id.*

273. *See* V. Denise James, *Pragmatism and Radical Social Justice*, *in* PRAGMATISM AND JUSTICE (Susan Dieleman, David Rondel & Christopher Voparil eds., Oxford Univ. Press 2017) [hereinafter *Pragmatism*].

274. *Id.* at 163.

275. On Dewey as radical, *see* RYAN, *supra* note 17.

276. *Pragmatism*, *supra* note 273, at 163.

277. *Id.* at 163–64.

justice."[278] Instead, "[t]he resulting messy, complex attempt to define social justice is thoroughly pragmatic and radical."[279]

Professor James observes that Dewey's sense of the "ideal turns on his conception of freedom and not, or at least not explicitly, on any conception of justice,"[280] and some commentators on Dewey have read him as thinking that "freedom, rather than justice, . . . is the first virtue of social institutions."[281] To be fair, Dewey's conception of freedom includes both freedom from interference "as well as freedom to command resources essential for the realization of one's desires and aims."[282] Alan Ryan observes that "individual freedom" for Dewey was not the "old-fashioned, traditional laissez-faire individualism[,]" but a "new" individualism that was "ultrasocial" and held to an "ideal of equal opportunity."[283] Such freedom meant pursuing the life of democratic equality, in which each member of U.S. society was encouraged to contribute his own individuality to the development of the individuality of others.[284] However, James argues that Dewey's "emphasis on freedom as analytically distinct from justice" yields an idea of freedom "fraught with historical and experiential problems."[285] Further, "[t]he freedom to grow and have experiences that is so essential to Dewey's position is historically bound to and made possible by unjust social relations and institutions."[286] For example, "Dewey praises the pioneer period of U.S. expansion and the democracy of Jefferson," but James argues that this idealizes the experience of freedom "by a select few men during a time of grave injustices" toward Native Americans, enslaved and marginalized African Americans, and disenfranchised White women.[287]

278. *Id.* at 164.

279. *Id.*

280. *Id.* at 165.

281. *Id.* at 167 (citing JENNIFER WELCHMAN, DEWEY'S ETHICAL THOUGHT 194 (Cornell Univ. Press 1995)).

282. *Id.* (quoting WELCHMAN, *supra* note 281, at 194).

283. RYAN, *supra* note 17, at 319.

284. *Id.*

285. *Pragmatism*, *supra* note 273, at 167–68. James points out that this particular conception of "freedom" for some men depended on the oppression of women and racial minorities. *Id.* at 165, 168.

286. *Id.* at 168.

287. *Id.* at 165. James states that these injustices "were the conditions of that freedom." *Id.*

At the same time, "Dewey's faith in the intelligence and potential of not just White men, but in nonwhite and female others too, is a radical democratic commitment."[288] To illustrate, Professor James quotes Dewey's inclusive interpretation of the "[b]elief in the Common Man"—"a familiar article in the democratic creed": "That belief is without basis and significance save as it means faith in the potentialities of human nature as that nature is exhibited in every human being irrespective of race, color, sex, birth and family, of material or cultural wealth."[289] On balance, "[t]he seeds of a conception of radical pragmatist justice are present in Dewey, but they require a black radical corrective," which James finds in Du Bois.[290]

"Du Bois spent his long life deeply engaged in practical political organizing against racial injustice and working for increased social democracy."[291] He, "like many black radicals [and like Dewey], was keenly interested in notions of emancipation and freedom."[292] Du Bois differed from Dewey, because he "tempered his freedom claims with justice claims."[293] "Du Bois argued that in any social movement that argued for some increase of freedom or justice, there was always some class of people whose needs were overlooked, trivialized, or excluded."[294] Because "Dewey neglects to attend to the group-based social justice claims necessary to make [everyone's] freedom possible,"[295] James argues his "pragmatism may be improved and extended by black radicalism."[296]

Fortunately, Professor James observes, there are numerous "[s]ources for radical, pragmatic habits of justice . . . in the history of black radical thought in the United States."[297] James argues that Angela Davis provides "a good resource for the habits of justice that might replace the habits of oppression prevalent in our society."[298] She also highlights Davis's "habit of historical consciousness[:]" "[l]ooking to the past helps us understand how

288. *Id.* at 166.

289. *Id.* (quoting JOHN DEWEY: THE LATER WORKS, 1925–1953, at 226 (Jo Ann Boydston ed., S. Ill. Univ. Press 1990)).

290. *Id.* at 168.

291. *Id.* at 168–69.

292. *Id.* at 170.

293. *Id.* at 171.

294. *Id.*

295. *Id.*

296. *Id.* at 172.

297. *Id.* at 173.

298. *Id.*

we've ended up where we are and gives us lessons on what might happen if we focus our efforts in certain directions."[299] Davis's "habits of justice," James further argues, turn on a broader and more transformative conception of freedom than found either in Dewey or Du Bois, since "it is a participatory process that demands new ways of thinking and being."[300]

James observes that Black radicalism like that exemplified by Davis includes a "futurity," with "'freedom dreams' and poetic knowledge."[301] Further, "the conditions and the very existence of social movements enable participants to imagine something different, to realize things need not always be this way."[302] While Deweyan pragmatism has this element of futurity, James observes that it is more fully expressed by Du Bois, and, even more so by Davis: "Whatever we are doing, wherever we are, it is imperative that we believe in the possibility of change. We cannot allow ourselves to be ensconced in the present, so the very first step is to actively imagine possible futures—futures beyond the prison and beyond capitalism."[303] James argues that Davis's idea of futurity and the ability "to imagine a new society" is compatible with a Deweyan pragmatist orientation, to the extent that such orientation includes a belief in change.[304]

Professor James concludes that Davis's work also supports a claim that pragmatism can be *radical*: "According to Davis, 'If we are not afraid to adopt a revolutionary stance—if, indeed, we wish to be radical in our quest for change—then we must get to the root of our oppression. After all, radical simply means grasping things at the root.'"[305] Thus, Professor James concludes, "[i]f radical means grasping at the root causes and proposing change, then a pragmatist could certainly be a radical."[306] Both the

299. *Id.* at 174–75.

300. *Id.* at 173–74.

301. *Id.* at 173 (citation omitted).

302. *Id.* (citation omitted).

303. *Id.* at 175 (quoting ANGELA Y. DAVIS, ABOLITION DEMOCRACY: BEYOND EMPIRE, PRISONS, AND TORTURE 83 (Seven Stories Press 2005)).

304. *Id.* at 173 (citation omitted).

305. *Id.* at 175–76 (quoting ANGELA Y. DAVIS, WOMEN, CULTURE, AND POLITICS 14 (Vintage 1990)). As a liberal, Dewey biographers observe that Dewey hewed to an "unflinching middle-of-the road radicalism" in his writings in the 1930s. RYAN, *supra* note 17, at 298. Already critical of Marxism and Communism, by "the 1940s, Dewey became more aggressively hostile to Stalinism and the Soviet Union," in contrast to "the starry-eyed view of Russia that many people took during the Second World War." *Id.* at 297.

306. *Pragmatism*, *supra* note 273, at 176.

importance of "futurity" and the idea about radical going to the root are central in Professor Woodly's account of the radical Black feminist pragmatism undergirding the M4BL, to which I now turn.

C. *Professor Deva Woodly: The Political Philosophy of the Movement for Black Lives as "Radical Black Feminist Pragmatism"*

"[[I]]t is within the spaces of imagination, the dream spaces, that liberatory practices are born and grow, leading to the [ability] to act and to transform."

Charlene Carruthers[307]

"I'm involved in Black Lives Matter because it pushes me to think creatively . . . about what actions, what kind of strategy, what tactics can come from a call like Black Lives Matter."

Patrisse Khan-Cullors[308]

Professor Woodly explores a melding of Deweyian pragmatism and Black feminism in her argument that the political philosophy of the M4BL is "radical Black feminist pragmatism (RBFP)."[309] In her book, *Reckoning: Black Lives Matter and the Democratic Necessity of Social Movements,* Woodly offers M4BL as a case study to highlight the vital role of social movements in counteracting "the politics of despair by 're-politiciz[ing] public life.'"[310] Woodly contends that "[s]ocial movements infuse the essential elements of pragmatic imagination, social intelligence, and democratic experimentation into public spheres that are ailing, and have become nonresponsive, stagnant, and/or closed."[311]

Earlier in this Article, I argued that the civic participation by actors in social movements and in politics is critical to the health of constitutional democracy in the United States—to "make our union 'more perfect,' as the

307. WOODLY, *supra* note 8, at 53 (citing CHARLENE CARRUTHERS, UNAPOLOGETIC: A BLACK, QUEER, AND FEMINIST MANDATE FOR RADICAL MOVEMENTS 25 (2018)) (alterations made by Woodly).

308. *Id.* (quoting Monica J. Caspar, *Black Lives Matter/Black Life Matters: A Conversation with Patrisse Cullors and Darnell L. Moore*, FEMINIST WIRE (Dec. 1, 2014), https://thefeministwire.com/2014/12/black-lives-matter-black-life-matters-conversation-patrisse-cullors-darnell-l-moore/ [https://perma.cc/4AU2-KPQH]).

309. *Id.* at 49.

310. *Id.* at 3–4 (alteration in original) (citation omitted).

311. *Id.* at 4.

U.S. Constitution says."[312] Thus, I concur with Professor Woodly's argument that democratic social movements are important institutional structures in U.S. constitutional democracy, which she describes as an "essential . . . Fifth Estate."[313]

Drawing on Sydney Tarrow's work, Woodly argues that, beginning with the 2009 emergence of the Tea Party movement, the United States has been in what Tarrow calls a "cycle of contention," that is, a "phase of heightened conflict across the social system," including more "rapid diffusion of collective action and mobilization" and "innovation in the forms of contention."[314] Woodly selects M4BL as a case study of a twenty-first century movement during these contentious times, both because "it has had a measurable and dramatic political impact" and "as it persists over time, it has the promise for effecting transformative, historically unique change."[315] Woodly argues that this "promise" is due in part to M4BL's "peculiar political philosophy," which does not have an obvious historical corollary and has "struck an unusually resonant political chord" since its emergence only several years ago.[316]

Woodly argues that this political philosophy is "akin to Imani Perry's notion of 'liberation feminism,' a set of practices for understanding and working against domination and oppression rather than a doctrine."[317] This Part will summarize Woodly's articulation of the elements of RBFP and why she characterizes this philosophy as a form of pragmatism.

1. *The Distinctive Elements in the Political Philosophy of M4BL*

Professor Woodly explains the contribution made by each term in the label, "radical Black feminist pragmatism," her coinage for the political philosophy of M4BL: "*radical* is a mode of questioning, *Black feminism* is an ethical system, and *pragmatism* is a mode of judgment that guides action."[318] As with V. Denise James's explication of Davis's explanation that "radical

312. *See* EDUCATING FOR AM. DEMOCRACY, *supra* note 10, at 9 ("Education in civics and history equips members of a democratic society to understand, appreciate, nurture, and, where necessary, improve their political system and civil society: to make our union 'more perfect,' as the U.S. Constitution says.").

313. WOODLY, *supra* note 8, at 10.

314. *Id.* at 4 (citation omitted).

315. *Id.*

316. *Id.*

317. *Id.* at 49 (citation omitted).

318. *Id.* at 50.

simply means grasping things at the root,"[319] Woodly explains that "[p]articipants in the [M4BL] understand their task to be addressing the *radix* (root) of the problems that plague us, and imagining and devising ways to address those root-stalk ills."[320]

Professor Woodly's analysis identifies nine elements of RBFP: the four "constitutive elements," which "function as the framework or scaffolding for the substantive principles—are recognizably in the tradition of American pragmatism."[321] They "include a belief in the Deweyan concept of social intelligence, a fundamental investment in pragmatic imagination, a commitment to democratic experimentation, and an aim toward liberatory ends."[322] The five "substantive elements" of RBFP, which "give the philosophy content and meaning—combine new thinking with ideas that have surfaced in a variety of traditions, most significantly Black feminism."[323] Those elements are comprised of the following: "the political claim that Black Lives Matter, the radical mandate, an intersectional lens, a margin-to-center ethic, and a politics of care."[324] These substantive elements comprise "ideas about the meaning and ends of politics," while the theory's "constitutive elements relate those ideas to a theory of political process."[325]

By way of further introduction, Woodly explains the specific and experience-based nature of RBFP: it "calls out anti-Blackness directly and forcefully because without that direct address, our political tendency is to look away toward abstract universalism."[326] Yet, that RBFP "is built from the specific lived experience of Black peoples should not obscure" that the vision has something to offer to everyone.[327] Woodly explains, showing its margin-to-center ethic: "the idea that we deserve to thrive because life is valuable and the only way to build a society, polity, and world where this is possible is to devise ways to change the *lived experience* of the most marginalized in the direction of what we all deserve."[328] Here, Woodly's

319. *Pragmatism*, *supra* note 273, at 176.
320. WOODLY, *supra* note 8, at 70.
321. *Id.* at 50 (citation omitted).
322. *Id.* at 51.
323. *Id.*
324. *Id.*
325. *Id.*
326. *Id.*
327. *Id.*
328. *Id.*

analysis echoes earlier characterizations of visionary Black feminist pragmatism as humanistic.

2. *The Pragmatic Elements*

In explaining the element of "pragmatic imagination," Professor Woodly focuses on pragmatism as "a mode of judgment that guides action," and includes "inductive observation."[329] Because of this basis in experience, M4BL's "inductive observation of the problem of injustice" does not ask, "[w]hat constitutes justice?," but rather "[w]hat does it mean to experience justice?"[330] Woodly draws on the work of pragmatist philosopher Charles Sanders Peirce to explain why framing the question in that way is pragmatist: pragmatist inquiry aims "to think about what the truth of statements means in terms of action—that is, to think of not only the concept, but also of what it means for the concept to be enacted in reality."[331]

Pragmatic method is joined to "an insistence on the centrality of radical imagination," not in the sense of "flights of fancy," but in the sense of "forming new ideas, or images or concepts" not yet present to our senses—"the creative divergence from the well-trod habitual and lexical paths that are set in the common sense of a given time and place."[332] Imagination is, thus, "a normal political faculty," that aids in political change, just as closing down imagination helps to maintain "status quo relations of power and privilege."[333] Woodly quotes the work of feminist philosopher Iris Marion Young on the importance of "[p]olitical imaginaries": "movements arise within . . . society, on the fringes of bureaucratic institutions [and] carv[e] out new social spaces not dreamt of in their rules."[334] Thus, "the imagination of social movements is political"; M4BL "insist[s] that another world is possible" and "do[es] so with a philosophically pragmatist, not utopian, conviction."[335]

By contrast to "utopian imaginaries," where thinkers decline "to engage in building a bridge from the world as it is to the world that might

329. *Id*. at 51–52.

330. *Id.*

331. *Id.* at 52.

332. *Id.*

333. *Id.*

334. *Id.* at 17, 52 (citing IRIS MARION YOUNG, JUSTICE AND THE POLITICS OF DIFFERENCE 82 (Princeton Univ. Press 1990)).

335. *Id.* at 52.

be, . . . pragmatic imagination is rooted in inquiry about current conditions and oriented toward actions given those conditions."[336] Professor Woodly quotes founders of M4BL on the critical faculty of imagining the future.[337] Thus, Patrisse Khan-Cullors has stated: "I'm involved in Black Lives Matter because it pushes me to think creatively . . . about what actions, what kind of strategy, what tactics can come from a call like Black Lives Matter."[338] Charlene Carruthers has stated: "[[I]]t is within the spaces of imagination, the dream spaces, that liberatory practices are born and grow, leading to the [ability] to act and to transform."[339] M4BL participants speak in terms of "building, rather than arriving, in a new world."[340] Woodly elaborates further: "What is radical about the Movement for Black Lives is not merely their policy recommendations, but the fact that they claim the authority to author new possibilities for the arrangements of decision-making power, sociality, and governance."[341]

Professor Woodly relates the other pragmatic elements, "social intelligence" and "democratic experimentation," to "pragmatic imagination," which "gives rise to unusual approaches to leadership, organization, and political situations."[342] M4BL, Woodly elaborates, resisting the trope of "the charismatic leader," and instead develops an approach to leadership that draws both on pragmatism (as in John Dewey and William James) and Black feminist thought (particularly Ella Baker), as "expanded and annotated" by M4BL's organizers.[343] From the tradition of U.S. pragmatism, Woodly identifies the idea that "leadership comes from the interaction between genius and the social and political environment—what John Dewey calls 'social intelligence.'"[344] Dewey did not view

336. *Id.* at 53. Woodly cites contemporary pragmatist theorist Melvin Rogers on the idea that utopian thought is "pure fantasy" without a "philosophy of action" accompanying it. *Id.* Although Woodly does not discuss Dewey on this distinction, he was also "visionary" rather than a utopian: "he did not speak of a distant goal or a city not built with hands," but instead, "was a visionary about the here and now." RYAN, *supra* note 17, at 369.

337. *See* WOODLY, *supra* note 8, at 53–54.

338. *Id.* at 53 (alteration in original).

339. *Id.* (second alteration in original).

340. *Id.* at 54.

341. *Id.*

342. *Id.*

343. *Id.* at 56.

344. *Id.* Woodly also cites Williams James on how "genius" is relative to the time period in which a person is born. *Id.*

intelligence as a "mere abstraction of a native endowment unaffected by social relationships" but rather recognized the critical role of the interaction of "native capacity" and the "social conditions" in which one "lives, moves and has his being."[345] In explaining the idea of "social intelligence," Dewey stresses a temporal element; Woodly quotes Dewey that intelligence is the "remaking of the old through the union with the new. . . . It is the conversion of past experience into knowledge and projection of that knowledge in ideas and purposes that anticipate what may come to be in the future and that indicate how to realize what is desired."[346] Woodly adds the observation of Deweyian pragmatist Rogers: "[i]ntelligence develops within the sphere of action for the sake of possibilities not yet given."[347]

Drawing on Dewey and Rogers, Professor Woodly explains that social intelligence has three elements:

> First, it is a critical orientation that questions and interrupts old habits of thinking and acting. Second, it includes what Melvin Rogers calls a "theory of action," or a sense of how new ideas about governance and justice can become real in the world through changes in beliefs, habits, custom, institutions, law, and policy. Third, and finally, it involves a group commitment to and demonstration of those experimental actions in the world, or, as Dewey puts it, "organization." In this way, social intelligence involves the ability to see existing political opportunities where they may not be obvious.[348]

Elaborating on this idea of seeing not-yet-obvious political opportunities, Woodly suggests this capacity of foresight "verges on prophecy—the ability to see through what is not yet but might be"—or "radical imagination" that emerges from "visionary labor."[349] Woodly concludes that M4BL adheres to "the efficacy of radical imagination" about conditions and outcomes that "require the transformation of common beliefs, practices, laws, and institutions," while grounding that imagination in a "philosophically pragmatic orientation toward the world."[350] As an example, she notes the types of questions to ask for "[r]adical imaginings of systems of care that enable the well-being of the most marginalized," among

345. *Id.* at 56–57 (citation omitted).
346. *Id.* at 57 (alteration in original).
347. *Id.* (alteration in original).
348. *Id.*
349. *Id.* (quoting abolitionist legal scholar Amna Akbar).
350. *Id.* at 58.

them, "What do we have to do to get from here to there? . . . What kinds of institutions do we have to build? . . . What majorities must we build?" and, "How do we make the world we have imagined not only possible, but also irresistible?"[351] This method, as Woodly interprets it, is one of problem solving and producing practical wisdom. In their "pragmatic orientation toward transformation[,] . . . [M4BL] organizers are keenly aware, as Dewey was, that their knowledge is contingent and that experience may cause them to change their minds, revise their vision, or alter their tactics."[352] With this orientation, expanding upon Ella Baker's approach to leadership and on pragmatism's understanding of leadership as the "interaction of genius and environment," Black feminist thought treats leadership as "group work" and uses the term "leaderful" to reference this group process.[353]

"Democratic experimentation" is another constituent element drawn from pragmatism; M4BL implements such experimentation both "within the organizations that function under the umbrella of the Movement for Black Lives and with the campaigns those organizations author."[354] Professor Woodly offers examples of how M4BL resists being a "captured constituency," but instead, is a "countervailing political force" through using "a full range of tactics, both confrontational and conciliatory, to shape political change."[355]

Finally, in asking "[t]he inductive and pragmatic question, 'What does it mean to experience justice?,'" M4BL stresses "liberation" or getting free; the conception of freedom is not binary (either/or) but an ongoing "process of flight toward freedom as liberation," that is, "the ongoing undoing of common understandings, systems, and practices that (re)produce oppressive conditions."[356] Liberation "calls for political, social, and interpersonal strategies that take aim at identifying and mitigating the complicated structural and institutional causes and effects of domination and oppression."[357] It "is a collective and imaginative ongoing process of perception, analysis, experimentation, and implementation."[358]

351. *Id.*
352. *Id.*
353. *Id.* at 58–59.
354. *Id.* at 59.
355. *Id.* at 60.
356. *Id.* at 61–62 (drawing on NEIL ROBERTS, FREEDOM AS MARRONAGE (Univ. of Chi. Press 2015)).
357. *Id.* at 62.
358. *Id.*

Understandings of domination draw on the "reality of situated individuality" that people have choices but they "are constrained by the world as it currently exists."[359] Members of M4BL speak of the necessary "work" as "about changing people's behavior so that Black people can live free, full lives in this democracy."[360] Professor Brittney Cooper has expressed the "core goal" in terms of thriving: "what do Black people need to live and thrive? . . . [H]ow can we put structures in place so that Black thriving is actually a political priority?"[361] Similar to V. Denise James's identification of the importance of "futurity" in imagining justice, Cullors speaks of being "hopeful for Black futures" and of imagining "Black people living and thriving."[362]

3. *The Constitutive Elements: Contribution of Radical Black Feminism*

As introduced above, the five constituent elements of radical Black feminist pragmatism are: "the political claim that Black Lives Matter, the radical mandate, an intersectional lens, a margin-to-center ethic, and a politics of care."[363] The first is the claim that "Black lives—all Black lives, as such—matter."[364] As Professor Woodly elaborates, the movement organizers realized "that to win they would have to change the way people valued Black lives," and needed "expansive thinking about how to change culture;" this, in turn, led to the political philosophy with a "foundational premise" about what "Black people deserve because Black people matter, because a life where thriving is possible matters."[365]

Some of the other constituent elements mirror the discussion of visionary Black feminist pragmatism earlier in this Article, particularly an emphasis on valuing "embodiment" and "lived experience" and on recognizing that "the interconnectedness or *intersection* of oppressions must be at the heart of our analysis and our political solutions."[366] Here, too, the political philosophy is pragmatist in not deducing the meaning of justice "from an abstract universalism" but instead—similar to Dewey's insistence

359. *Id.*
360. *Id.* at 64 (citation omitted).
361. *Id.* (citation omitted).
362. *Id.* at 65.
363. *Id.* at 51.
364. *Id.* at 66.
365. *Id.* at 67–68.
366. *Id.* at 69. Woodly cites a number of Black feminist thinkers, including Kimberlé Crenshaw, bell hooks, and Brittney Cooper. *See id.*

that the concerns of philosophy were "the problems of men"—in insisting on specificity and on understanding "the inequality produced by the current dominant paradigm."[367]

Woodly contends that, by insisting on going to the root of the problem and continually shifting (as theorist Adrienne Maree Brown puts it) "[w]hat is politically possible at this moment," "M4BL's radicalism and its pragmatism are complimentary."[368] Rather than a static "telos," the goal is "world-building" and "creat[ing] political conditions that make new things possible."[369] These "[p]ragmatist politics are implicitly democratic because they posit an ever-relevant quest for progress that has no end."[370] In other words, "politics . . . is an iterative process and we should prepare ourselves (through education, cultural orientation, material support, etc.) to be able to engage in it."[371]

The political philosophy of M4BL, as noted above, is radical; thus, its "radical mandate" is another substantive element.[372] Woodly quotes M4BL organizer Mary Hooks: "[t]he mandate of Black people in this time is to avenge the suffering of our ancestors, to earn the respect of future generations, and [to] be willing to be transformed in the service of the work."[373] Interviewing Hooks about the meaning of these three elements, which Woodly phrases as "intergenerational connection, responsibility, and transformation," revealed that to avenge includes both an affirmation of "defending and cultivating Black joy" and recognizing anger.[374] Both emotions can be political resources; on the latter, Woodly cites Audre Lorde's famous speech about how when anger is "[f]ocused with precision it can become a powerful source of energy serving progress and change."[375] Woodly describes the work of intergenerational connection as requiring "sacrifice, pragmatic imagination, and democratic experimentation[,] . . . [that help] create the conditions and practices that make it possible for Black people to be a bit freer from oppression and domination."[376]

367. *Id.* at 69–70.
368. *Id.* at 70.
369. *Id.* (emphasis omitted).
370. *Id.* at 71.
371. *Id.* (emphasis omitted).
372. *Id.*
373. *Id.*
374. *Id.* at 72–73.
375. *Id.* at 74–76 (citation omitted).
376. *Id.* at 77.

The two elements of an intersectional lens and a margin-to-center ethic—"theorizing from and acting on behalf of those most impacted by systems of oppression"[377]—draw on earlier decades of Black feminist thought and practice explicated earlier in this Article.[378] As Professor Woodly explains, "intersectionality" has "theoretical antecedents" — "double jeopardy" (Frances M. Beal), "triple oppression" (Claudia Jones), "simultaneity" (Combahee River Collective Statement), and "interlocking oppressions" (Patricia Hill Collins).[379] These "describe a similar social fact: oppressive institutions and dominative arrangements of power are interconnected and cannot be examined separately, especially because their effects are impossible to disentangle in people's lived experiences."[380] In this political philosophy, an intersectional lens does not simply call for a redistribution of resources as part of a conception of justice but rather "for creating capacity and capabilities under the principle that freedom requires the ability to flourish."[381] One example of using an intersectional lens and margin to center orientation to guide political action is Carruthers's use of a "Black queer feminist lens" in the organization BYP100: the lens requires "ask[ing] those different types of questions," such as "how mass incarceration impacts Black trans people" and "com[ing] up with different solutions to the problems."[382] Woodly traces the margin-to-center ethic to bell hooks and, before her, to Du Bois's idea of "double consciousness,"[383] but also notes that other thinkers, in addition to African American thinkers, have contributed to conceptualizing the margin-to-center ethic as a key principle for justice.[384]

Finally, the "politics of care" brings a change of orientation from viewing politics as managing competition "over naturally divergent interests" to a focus on what is needed for "dignity and flourishing of the individual-in-context."[385] There is an extensive body of work—particularly by feminist theorists—on care ethics;[386] thus, Woodly observes that the

377. *Id.* at 78.
378. *See supra* Parts III.A, III.B.
379. *Id.* at 78 & n.6.
380. *Id.* at 78.
381. *Id.*
382. *Id.* at 78–79 (citation omitted).
383. *See id.* at 80.
384. *Id.* at 80–81 (discussing Enrique Dussel).
385. *Id.* at 84.
386. *See, e.g.*, JOAN C. TRONTO, CARING DEMOCRACY: MARKETS, EQUALITY, AND

notion of "care" in RBFP's "politics of care" has "a deep affinity with the voluminous literature in feminist political theory."[387] M4BL's radical Black feminist pragmatism has some similar features, such as "the centrality of interdependence"; but it also has several distinctive features: "the acknowledgment of oppression as traumatic, . . . the embrace of unapologetic blackness, a focus on accountability, a defense of Black joy, and a commitment to restoration and repair."[388] The "metaphor of mothering" is often found in Black feminist thought about care including practices of "radical mothering" outside "biological ties or sexed roles."[389]

Further, to insist that care is a "*politics*," and "not only an ethic or a set of moral principles" conveys its direct connection to governance; the purpose of politics, Woodly argues, is "to assign responsibilities for care and ensure that people are as capable as possible of participating in this assignments of responsibilities."[390] Here, too, pragmatist elements of "practical imagination and democratic experimentation" aid in answering basic questions about the politics of care, such as: "How can we create institutions and routines that understand care for all kinds of bodies, abilities, and levels of health to be a basic, necessary function of governance?"[391] Further, Woodly emphasizes that in this politics of care,

> the first premise of political engagement is that trauma and healing must be considered not only personal but also political issues, because the ways those facts shape our experience of the world and our motivation and ability to organize and become mobilized are considered indispensable information for any political project,

particularly those that aim at justice.[392] "[H]ealing justice" is required for individuals as well as for society, showing RBFP's focus on the "individual-in-context."[393] Solving public problems requires attending to "[s]tructural conditions and interpersonal interdependence."[394]

JUSTICE (N.Y. Univ. Press 2013); NEL NODDINGS, CARING: A FEMININE APPROACH TO ETHICS AND MORAL EDUCATION (Univ. of Cal. Press 1984).

387. WOODLY, *supra* note 8, at 91 (discussing TRONTO, *supra* note 386, at x).

388. *Id.* at 84–85.

389. *Id.* at 85.

390. *Id.* at 94 (paraphrasing TRONTO, *supra* note 386, at 30).

391. *Id.* at 101 (drawing on feminist care theory as refined in disability justice movement) (citing LEAH LAKSHMI PIEPZNA-SAMARASINHA, CARE WORK (2019)).

392. *Id.* at 85.

393. *Id.* at 84–86.

394. *Id.* at 86.

Professor Woodly explains the focus on "restoration and repair" as growing out of "abolitionist politics," which does not divide people into good and evil, but recognizes "that all people both experience harm and are capable of doing harm" and seeks "to craft methods of both redress and prevention of future harm" other than jails and prisons.[395] Abolitionism, Woodly argues, is "pragmatic, not utopian," since it does not believe that "the American polity is close to shutting down prisons and completely defunding police forces"; instead, abolitionists do "practical political work" to move toward these ends incrementally.[396]

Finally, "unapologetic Blackness" and the "defense of Black joy" both are key parts of the task of transforming understandings "about what Blackness is and means" and "what Black people deserve and demand as Black people."[397]

In concluding her analysis of the elements of RBFP, Professor Woodly describes the popular call and response at protests of: "I love Black people! You don't love Black people? What's wrong with you?"[398] In conclusion, she notes the genius of the movement: "[B]y embracing that love of Black people as whole, unapologetic selves, they *made it popular* to be involved and invested in a disruptive, Black-led, political movement."[399] For example, Woodly argues that the unprecedented number of protests over the summer of 2020 over systemic racism and police violence against Black people grew out of M4BL's exertion of effort over "the last years helping people to connect the dots between the symptoms of anti-Black racism and their overarching and interconnected structural causes."[400] Further, these protests

395. *Id.* at 87–88.

396. *Id.* at 115-16. Abolitionist legal scholars confirm this pragmatic combination of incrementalism and transformative vision in M4BL and other groups working toward abolition. *See* Allegra M. McLeod, *Envisioning Abolition Democracy*, 132 HARV. L. REV. 1613, 1623 (2019) (arguing that M4BL and other groups have a "prefigurative" quest for justice, which includes pursuing "immediately practicable and largely local" projects "as ways to prefigure and thereby begin to realize incrementally the sort of changed world we would want to live in"); Dorothy Roberts, *Foreword: Abolition Constitutionalism*, 133 HARV. L. REV. 1, 10, 108 (2019) (articulating need to develop a "theoretically and pragmatically useful legal framework to advance prison abolition" and observing that "prison abolitionists acknowledge that building a prisonless society is a long-term project involving incremental achievements").

397. WOODLY, *supra* note 8, at 86–87.

398. *Id.* at 87.

399. *Id.*

400. *Id.* at 212–13.

had dramatic impact on the political environment that M4BL "could not have foreseen," making it possible to introduce, in 2020—with Senators Ayanna Pressley and Rashida Tlaib as congressional partners—the BREATHE Act (with proposals for defunding police agencies and reinvesting resources in programs and institutions to help "Black, brown, and poor communities").[401]

IV. CONCLUSIONS ABOUT FEMINIST ENGAGEMENTS WITH PRAGMATISM: FROM THE "DOUBLE BIND" TO "FUTURITY" AND DEMOCRATIC REPAIR

There are some commonalities in the feminist legal theory and radical/visionary Black feminist pragmatism explored in this Article. These include recognizing problems of domination and oppression, aiming for justice and liberation, valuing situated knowledge and experience, a margin-to-center ethic, expanding which voices are included, disrupting the status quo, and the dual commitment to making incremental progress on the way to realizing a vision of more radical transformation. There are also some significant differences, not the least of which is the historical context and the focus of theorizing. In the early 1990s, when Professor Margaret Radin explored "doing" feminism and pragmatism, she identified the dilemma of the "double bind" arising from feminist legal theorists attempting to prescribe law and policy under oppressive social conditions. Framing this as the tension between nonideal and ideal justice, Radin's pragmatism recognized the need to seek the best resolution under current conditions while trying "to make progress . . . toward our vision of the good world," including creating a "new vision" of gender.[402] That so many other feminist legal theorists found resonant Radin's notion of the double bind suggests the difficulty of making such incremental progress amidst conditions of domination while also doing that visionary work. Radin herself insightfully recognized that "the primary problem of politics is how to get from here . . . to there."[403]

Feminist legal theorists found value in pragmatism's experimentalism and incrementalism, its antifoundational and contextual approach, and its conviction (as Professor Bartlett recognized) that the reconstructive vision of a better world may change in light of new experience and knowledge and

401. *Id.* at 214.
402. Radin, *supra* note 46, at 1701, 1704.
403. *Id.* at 413.

engagement with community.[404] Even so, as Professor Mari Matsuda engaged with and "modified" pragmatism, while humility requires treating truth as provisional, pragmatism did not demand relativism as to a core commitment to justice and to dismantling structures of subordination.[405] As part of realizing a normative vision of justice, Matsuda also asserted that pragmatism was compatible with the method of retrieving and giving priority to "subordinated voices."[406]

While visionary and radical Black feminist pragmatism also draw on some of these pragmatic methods and normative commitments, they center the problem of "how to get from here . . . to there." As Woodly persuasively argues, "Radical Black feminist pragmatism gives us conceptual tools and practical strategies to both imagine and make the way."[407] M4BL has shown that protest spurred by social movements is one powerful tool for making the way. The concept of "futurity" well captures the distinctive contribution in these various strands of radical and visionary Black feminist pragmatism.[408] To return to Stanlie James's account from the early 1990s, "Black feminists are simultaneously envisioning incremental changes and radical transformations not only within Black communities but throughout the broader society as well."[409] V. Denise James articulates this dual focus in terms of how the "social hope" characteristic of visionary Black feminist pragmatism finds expression in a "working program of action."[410] The simultaneous focus on the incremental and radical, or visionary, is evident in the "purposive pragmatism" in RBFP and social movements like M4BL, which do not "pantomime a utopia," but instead seek to "build a bridge from current conditions to ones that offer us all more safety, more freedom, more pleasure, and more capacity to develop ourselves and determine the world we share."[411] This vision—and the politics of care that it entails— has much to offer those concerned with ending anti-Black racism and renewing constitutional democracy.

404. Bartlett, *supra* note 46, at 887-88.
405. *See* Matsuda, *supra* note 46, at 1764–71.
406. *Id.* at 1765–66, 1768.
407. WOODLY, *supra* note 8, at 215.
408. *Id.* at 207.
409. THEORIZING BLACK FEMINISMS, *supra* note 29, at 3.
410. *Theorizing Black Feminist Pragmatism*, supra note 3, at 93, 97.
411. WOODLY, *supra* note 8, at 208.