

## JACK JOHNSON: RELUCTANT HERO OF THE BLACK COMMUNITY

by

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Asserting a strong sense of individuality - by exercising the right to excel at what, to live where, and to love whom one desires - has been a punishable offense for Black Americans for most of United States history.<sup>1</sup> Even after the abolition of race-based slavery, Jim Crow laws constrained the ability of Black Americans to act upon their individual desires by limiting their social, political and economic mobility. In addition to legal impediments, White Americans also used the threat of lynching and rape to deter such assertive behavior.<sup>2</sup> The system of racial segregation and subordination that prevailed in this country from the end of the Civil War through the middle of the twentieth century was maintained by the ever present threat and the consistent reality of violence.<sup>3</sup> Thus, men and women who have had the courage or the audacity to act

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<sup>1</sup> Limiting someone's ability to express or to act upon their true desires is often referred to as depriving someone of their "manhood." See, e.g., PAULA GIDDINGS, *WHEN AND WHERE I ENTER: THE IMPACT OF BLACK WOMEN ON RACE AND SEX IN AMERICA* 315 (1984) ("The theme of the late sixties was 'Black Power' punctuated by a knotted fist. Although it may not have been consciously conceived out of the need to affirm *manhood*, it became a metaphor for the male consciousness of the era.") (emphasis added). However, as racial subordination deprives both Black men *and* Black women of this ability, it is more appropriate to describe the phenomenon as depriving someone of their individuality. Other terms have also been used to describe this phenomenon: as Toni Morrison's character Paul D., a formerly enslaved man, explained, "to get to a place where you could love anything you chose -- not to need permission for desire -- well now, *that* was freedom." TONI MORRISON, *BELLOVED* 162 (1987).

<sup>2</sup> See Jennifer Wriggins, *Rape, Racism, and the Law*, 6 HARV. WOMEN'S L.J. 103, 118-21 (1983); GIDDINGS, *supra* note 1, at 26-31, 43-44; Emily Field Van Tassel, "Only the Law Would Rule Between Us": *Anti-Miscegenation, the Economy of Dependency, and the Debate over Rights after the Civil War*, 70 CHI-KENT L. REV. 873, 914-18 (1995); Barbara Holden-Smith, *Lynching, Federalism, and the Intersection of Race and Gender in the Progressive Era*, 8 YALE J.L. & FEMINISM 31, 35-38 (1996).

<sup>3</sup> See generally HERBERT SHAPIRO, *WHITE VIOLENCE AND BLACK RESPONSE: FROM RECONSTRUCTION TO MONTGOMERY* (1988); Robert J. Kaczorowski, *Federal Enforcement of Civil Rights During the First Reconstruction*, 23 FORDHAM URB. L.J. 155, 157 (1995). "After [1868] Klan terrorism became more pervasive, more systematic and more effective in terrorizing black and white Republicans in the South. The Klan overwhelmed civil government and the administration of civil and criminal justice in portions of the Southern states. Southern Republicans were at the mercy of roving bands of Klansmen who attacked them with virtual impunity. Klan violence took the forms of beatings, whippings, lynchings,

upon their strong sense of individuality have been seen as heroes in the Black community. They have offered reassurance that the human spirit can overcome adversity and have helped to dispel the myth of Black inferiority.

But, all heroes are not the same. Those heroes who have simultaneously exposed the fallacy of the American racial hierarchy of White over Black and have embraced their connection to other Black Americans have inspired particular pride in the Black community.<sup>4</sup> Rather than using their individual success to argue that race does not matter, those men and women have acknowledged the continuing social and political significance of race in the United States. They have recognized that their individual success or failure affects the strength of the Black community, and correspondingly, that the strength of the Black community affects the opportunities available to all Black Americans. Michael Dawson uses the term “linked fate” to refer to the notion that Black Americans have a responsibility to one another because their shared racial identity can be both an excuse for their political and economic subordination, as well as a source of political and economic power.<sup>5</sup> The Black community has responded especially warmly to its heroes whose actions have reflected a belief in “linked fate.”

In contrast, reluctant heroes - those who have difficulty reconciling their sense of individuality with membership in a subordinated community - have tended to have more complex relationships with the Black community.<sup>6</sup> Those men and women also have

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shootings, rapes and torture.” *Id.*

<sup>4</sup> Martin Luther King, Jr. and Muhammad Ali are quintessential examples of this first category of Black heroes. Much popular writing about Jack Johnson also classifies him in this category. See LAWRENCE W. LEVINE, *BLACK CULTURE AND BLACK CONSCIOUSNESS: AFRO-AMERICAN FOLK THOUGHT FROM SLAVERY TO FREEDOM* 420-433 (1977). In fact, in an effort to portray Johnson as a traditional Black hero, the Hollywood version of his life story, *The Great White Hope* (Twentieth Century Fox 1970), ignored Johnson’s troubled relationship with the Black community, collapsed his first two marriages and his adulterous relationship with Belle Schreiber into one, and depicted that relationship as a classic story of star-crossed lovers. Compare *infra* note 46 and accompanying text.

<sup>5</sup> See MICHAEL C. DAWSON, *BEHIND THE MULE: RACE AND CLASS IN AFRICAN AMERICAN POLITICS* 75-84 (1994).

[U]ntil at least the late 1960s, individual African Americans’ life chances were overdetermined by the ascriptive feature of race. Because being black did much to determine one’s place in the world, determining what political and social policies would provide the most utility for each individual African American by calculating the benefits for the group was more cost-effective than the calculation of individual utility. *Id.* at 57.

<sup>6</sup> Numerous contemporary public figures, such as Justice Clarence Thomas and O.J. Simpson, have been cast as reluctant heroes in the popular press. See Valerie Burgher, *Praying for Justice: Reverend Sharpton Heads South to Save Clarence Thomas’s Soul*, *THE VILLAGE VOICE*, Oct. 3, 1995, at 31 (describing a prayer vigil at Justice Thomas’s house “to shake the justice into remembering that he was still a black man in America.”); Jeffrey Rosen,

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helped to dispel the myth of Black inferiority by excelling in their respective fields, but they have simultaneously reinforced that myth by renouncing their connections to other Black people. Indeed, the efforts of reluctant heroes to prove the insignificance of race have most often created the impression that Blackness is something to be avoided. In addition, their assertion of their individual desires irrespective of the impact of their behavior on the rest of the Black community has ignored the central premise of “linked fate”: that “the historical experiences of [Black] Americans have resulted in a situation in which group interests have served as a useful proxy for self-interest.”<sup>7</sup> While Black Americans have cheered the individual successes of their reluctant heroes, they have also resented the extent to which their actions appeared to reflect a desire to distance themselves from other Black people and have been angered by their lack of a sense of responsibility to the Black community.

The difficulties which both White and Black Americans had with Jack Johnson, the first Black man to win the world heavyweight boxing championship, resulted from his status as a reluctant hero. Johnson was hated by White Americans for exhibiting a strong sense of individuality, for excelling in a sport that had previously been closed to men of his race, and for asserting his right to love the three White women whom he married. And although Black Americans admired his courage and felt vindicated by his success in the ring, they were troubled by the ways that Johnson’s uncompromising individuality distanced him from the Black community, and by the fact that White Americans used his behavior as an excuse to seek reprisals against that community.

In particular, Black Americans were angered by Johnson’s relationships with White women. That anger was motivated, in part, by the same race prejudice that moved the White community to object to Johnson’s romantic and sexual preference for White women. However, the anger of the Black community was also a product of their fear that Johnson’s objective was to associate himself with those on the upper rungs of the racial hierarchy rather than to dismantle that hierarchy. Just as Albert Memmi warned that “[t]he first ambition of the colonized is to become equal to that splendid model [of the colonizer] and to resemble him to the point of disappearing in him. . . . [and that a] mixed marriage is the extreme expression of this audacious leap,”<sup>8</sup> the Black community suspected that Johnson’s first allegiance was not to the oppressed racial community whose fortunes were significantly impacted by his behavior, but to himself - irrespective of how his individual desires affected that community.

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*The Bloods and the Crits: O.J. Simpson, Critical Race Theory, the Law, and the Triumph of Color in America*, THE NEW REPUBLIC, Dec. 9, 1996 (describing the efforts of Simpson’s lawyers to cure the fact that “nobody thought of [O.J.] as black” by redecorating Simpson’s house to down-play his White girlfriends and to highlight his Black family members). See e.g. RACE-ING JUSTICE, EN-GENDERING POWER: ESSAYS ON ANITA HILL, CLARENCE THOMAS, AND THE CONSTRUCTION OF SOCIAL REALITY (Toni Morrison ed., 1992).

<sup>7</sup> DAWSON, *supra* note 5, at 77.

<sup>8</sup> ALBERT MEMMI, THE COLONIZER AND THE COLONIZED 120-121 (1965).

Despite those ambivalent feelings, Black Americans joined together in support of Johnson when he became the target of a racially motivated criminal investigation. The display of solidarity by the Black community was, on one level, merely an indication of the depth of Black Americans' distrust of the racially-biased criminal justice system.<sup>9</sup> But, more significantly, their response shows the affirmative significance of race to Black Americans. In its effort to dislodge the American racial hierarchy and to disprove the myth of Black *biological* inferiority, the Black community has consistently appealed to race as a basis of *social and political* solidarity. Thus, although Jack Johnson spent his life working to prove the insignificance of race - his story also serves to highlight the ways that race continues to matter.

*A. Fighting the Myth of Black Biological Inferiority*

During the early years of Jack Johnson's boxing career, at the turn of the century, practitioners of anthropometry worked to find scientific evidence of biological differences between people of different races. Implicit in their search was "the preordained conclusion that, in virtually all ways that mattered to a civilized world, 'the Negro' was inferior to whites and so were his mulatto offspring."<sup>10</sup> In 1906, just two years before Johnson's championship fight against Tommy Burns, Dr. Robert Bennett Bean published a study in the popular press which purported to show that the frontal lobes of the brains of White people were larger than those of Blacks.<sup>11</sup> From this evidence, Bean concluded that Whites were inherently better suited to tasks involving higher mental functions. Similar claims of racial difference were routinely used to justify excluding people of color from access to opportunity and privilege, and to explain inequalities in the political and economic power of different racial communities.

The myth of Black biological inferiority substantially affected all areas of life - including sports. In boxing, it was widely accepted that Black men made poor fighters because they were cowardly and had weak stomachs which made them susceptible to body blows.<sup>12</sup> In addition, it was believed that "[o]nly athletes from the colder Northern latitudes had enough stamina to remain strong during the course of a long

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<sup>9</sup> See, e.g., Angela J. Davis, *Benign Neglect of Racism in the Criminal Justice System*, 94 MICH. L. REV. 1660 (1996) (describing racial bias in the criminal justice system); Paul Butler, *(Color) Blind Faith: The Tragedy of Race, Crime, and the Law*, 111 HARV. L. REV. 1270 (1998) (discussing racially motivated jury nullification).

<sup>10</sup> AUDREY SMEDLEY, *RACE IN NORTH AMERICA: ORIGIN AND EVOLUTION OF A WORLDVIEW* 262 (1993).

<sup>11</sup> See STEPHEN JAY GOULD, *THE MISMEASURE OF MAN* 109-12 (1996). Bean's data, which also showed that within each race men had larger frontal lobes than did women, were subsequently disproved. *Id.*

<sup>12</sup> See FINIS FARR, *BLACK CHAMPION: THE LIFE AND TIMES OF JACK JOHNSON* 26 (1964).

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boxing match.”<sup>13</sup> Race was also used to justify the denial of opportunities to Blacks. Despite the supposed existence of biological impediments to the success of Black fighters - or perhaps because on some level of consciousness White fighters knew that their claim to racial superiority was unfounded - the color line was frequently invoked to stop interracial matches. Indeed, Jack Johnson’s fight against Tommy Burns on December 26, 1908 marked “the first time in modern history that a heavyweight titleholder [met] a negro on equal footing in a battle for premier honors.”<sup>14</sup> To Black Americans the match was about much more than one man’s shot at the heavyweight title, it was an opportunity to disprove the myths of biological inferiority which worked to disempower the entire Black community.

1. Round One: Tommy Burns

Like many Black “firsts,” Johnson’s place as the first Black man to win the world heavyweight boxing championship would likely have been filled at an earlier date and by another man, but for the myths of racial inferiority that naturalized the denial of opportunities to people of color in the United States.<sup>15</sup> Indeed, it was not Johnson’s bravery in the ring or his strong stomach that earned him the opportunity to fight Burns for the title, but his ability to disguise his boxing talent:

Knowing that his color would be a barrier to him in reaching the coveted goal of his ambition, if he performed too brilliantly, hence he fought his battles systematically. Johnson, being a past master of feints and guards, his exceptional cleverness, great speed and almost impenetrable defense, enabled him to wage battle the full limit of schedule[d] rounds, winning by a narrow margin, whereas a quick victory over his opponents would have put his future interests in jeopardy.<sup>16</sup>

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<sup>13</sup> RANDY ROBERTS, PAPA JACK: JACK JOHNSON AND THE ERA OF WHITE HOPES 62 (1983).

<sup>14</sup> *Burns Favorite over Negro Fighter*, N.Y. TIMES, Dec. 25, 1908, at 5.

<sup>15</sup> In the first decade of the nineteenth century, two Black Americans, Bill Richmond and Tom Molineaux, had successful boxing careers in England. Each man fought, but was beaten by Tom Cribb, the White British boxing champion. NAT FLEISCHER AND SAM ANDRE, AN ILLUSTRATED HISTORY OF BOXING 26-27 (5th ed., 1997); Arthur Krystal, *Requiem for a Heavyweight*, THE NEW YORKER, July 20, 1998, at 74 (describing the career of Tom Molineaux). Peter Jackson, a Black boxer from St. Croix, became the heavyweight champion of England and Australia in 1892, but the White American champion, John L. Sullivan, refused to fight him. The Chicago Defender contended that “[b]y showing his real form Jackson robbed himself of the opportunity to become the champion of the world.” Jackson J. Stovall, *Jack Johnson and James Jeffries*, CHICAGO DEFENDER, July 2, 1910, at 1. Three other contemporaries of Jack Johnson -- Sam Langford, Joe Jeanette and Sam McVey -- were also denied the opportunity to fight for the American heavyweight title because of the color line.

<sup>16</sup> Stovall, *supra* note 15, at 1. See also FARR, *supra* note 12, at 33 (a referee commented on Johnson’s fighting style that “Jack gave you the impression of never extending himself to the limit.”).

In order to appear less threatening to White boxing fans, Johnson employed a defensive boxing style, sometimes carrying his opponent to make the fight seem more evenly matched: “[t]he ring, like the world, was assumed to be the white man’s territory, and the black fighter’s object was to yield it without suffering physical punishment, allowing his opponent to defeat himself.”<sup>17</sup> As a result of this defensive style, most of the successful Black boxers of Johnson’s era had significantly lower knock out percentages than did their White counterparts.<sup>18</sup>

Nevertheless, it took several years - during which time he followed the champion from the United States to England and finally to Australia - for Johnson to convince Burns to agree to fight him for the title. Even then, Johnson received only \$5,000 of the \$35,000 purse and was forced to allow the fight promoter, who was Burns’ good friend, to referee the fight. Despite those handicaps, Johnson beat the White man easily - subjecting him to a first round knock down and fourteen punishing rounds before the police intervened to stop the fight. Johnson later joked that “Burns had something coming to him, and I proposed to extend his punishment over a considerable length of time. I certainly wished to give him his \$35,000 worth.”<sup>19</sup> Just one generation away from slavery, the myth of Black biological inferiority had been publicly embarrassed.

In Johnson’s mind, his defeat of Burns was a personal achievement: “I did not gloat over the fact that a White man had fallen. My satisfaction was only in the fact that one man had conquered another, and that I had been the conqueror. To me, it was not a racial triumph . . .”<sup>20</sup> However, the Black community took the outcome of the fight as a victory for the entire race. Black newspapers proclaimed that “no event in forty years has given more genuine satisfaction to the colored people of this country than has the single victory of Jack Johnson.”<sup>21</sup> In contrast, while White Americans were stunned

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<sup>17</sup> ROBERTS, *supra* note 13, at 26.

<sup>18</sup> *See id.*

Three of the great white heavyweights of the late nineteenth and early twentieth centuries were Sullivan, Sharkey, and Jeffries. Sullivan’s knockout percentage was 71 percent, Sharkey’s 68, and Jeffries’s 71. For the same period the best Black heavyweights were Jack Johnson, Sam Langford, Peter Jackson, Joe Jeannette, and Sam McVey. Johnson’s knockout percentage was 40 percent, Langford’s 39, Jackson’s 44, Jeanette’s 36, and McVey’s 41.

*Id.*

<sup>19</sup> JACK JOHNSON, THE AUTOBIOGRAPHY OF JACK JOHNSON -- IN THE RING AND OUT 165 (1992) (hereinafter THE AUTOBIOGRAPHY OF JACK JOHNSON).

<sup>20</sup> *Id.* at 58.

<sup>21</sup> ROBERTS, *supra* note 13, at 55. (quoting the RICHMOND PLANET). *But see* JOHN HOBERMAN, DARWIN’S ATHLETES: HOW SPORT HAS DAMAGED BLACK AMERICA AND PRESERVED THE MYTH OF RACE xiv (1997) (“Such ideas about the ‘natural’ physical talents of dark-skinned peoples, and the media-generated images that sustain them, probably do more than anything else in our public life to encourage the idea that blacks and whites are biologically different in a meaningful way.”).

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by Johnson's victory, they were also quick to deny its importance. They argued that Johnson's claim to the heavyweight championship was illegitimate because Burns had never defeated Jim Jeffries, the former titleholder; he had merely won the title from the man Jeffries tapped as his successor when he retired.

Even if Johnson's claim to the championship was disputable, the fact that a Black man had been crowned heavyweight champion of the world gnawed at White Americans. It was simply inconsistent with the myth of Black biological inferiority for Johnson to excel in a sport requiring physical endurance and mental agility. For the next two years, White Americans clamored for an opportunity to reclaim the heavyweight title - and the ability to reassert unquestioned racial supremacy.

#### 2. Round Two: Jim Jeffries

By the time Jim Jeffries could be lured out of retirement in 1910, Johnson had already successfully defended his title against White opponents on at least four occasions. However, Jeffries still boasted that "one punch to the belly will knock Johnson out,"<sup>22</sup> and an unflagging faith in the myth of racial difference kept the odds on the fight at better than two to one in favor of the White man.<sup>23</sup> The Johnson-Jeffries fight was also eagerly anticipated by Black Americans. Black churches held prayer vigils for the champion and individual Blacks journeyed long distances to visit his training camp. Whether Johnson liked it or not, in the eyes of Black Americans, his fight against Jeffries was more than a contest between two individuals. A cartoon in the *Chicago Defender*, the most prominent Black newspaper at the time, portrayed the contest as Johnson fighting Negro persecution, race hatred, prejudice, and public sentiment - in addition to Jeffries.<sup>24</sup>

Considering the tremendous pre-fight excitement, the fight itself was anti-climactic. The *New York Times* reported that:

Perhaps never before was a championship so easily won as Johnson's victory to-day. He never showed the slightest concern during the fifteen rounds and from the fourth round on his confidence was the most glaring thing I ever saw in any fighter. . . . Jeffries didn't miss so many blows, because he hardly started any. Johnson was on top of him all the time, and he scarcely attempted a blow that didn't land.<sup>25</sup>

Still, the crowd of 20,000 that watched as Johnson knocked Jeffries down three times

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<sup>22</sup> *Former Champ Dixie Auto Victim*, CHICAGO DEFENDER, June 15, 1946, at 1.

<sup>23</sup> See THE AUTOBIOGRAPHY OF JACK JOHNSON, *supra* note 19, at 184; FARR, *supra* note 12, at 81.

<sup>24</sup> See *The Fourth of July, 1910-1776*, CHICAGO DEFENDER, July 2, 1910, at 1.

<sup>25</sup> John L. Sullivan, *Johnson Wins in 15 Rounds; Jeffries Weak*, N.Y. TIMES, July 5, 1910, at 1.

in the course of the fight was surprised when the referee declared the Black man the victor. “[T]here was very little cheering; Jeffries had been such a decided favorite they could hardly believe that he was beaten and that there wouldn’t still be a chance for him to reclaim his lost laurels.”<sup>26</sup> The search for “The Great White Hope” - a White man who could vindicate the myths supporting the American racial hierarchy by defeating Johnson in the boxing ring - had been a failure. Jack Johnson, “a Texas negro, the son of an American slave, [was] the undisputed heavyweight champion of the world.”<sup>27</sup>

Johnson was characteristically race-neutral after the fight: “Whatever possible doubt may have existed and did exist as to my claim to the championship was wiped out. I had demonstrated the material of which I was made and I had conclusively vanquished one of the world’s greatest boxers.”<sup>28</sup> But, White Americans responded to his victory with violence directed at the entire Black community. Riots and lynchings occurred all across the United States in the days after the fight.

[I]n Little Rock, two blacks were killed by a group of whites after an argument about the fight on a streetcar; in Roanoke, Virginia, six blacks were critically beaten by a white mob; in Norfolk, Virginia, a gang of white sailors injured scores of blacks; . . . in Washington, D.C., two whites were fatally stabbed by blacks; in New York City, one black was beaten to death and scores were injured; in Shreveport, Louisiana, three blacks were killed by white assailants.<sup>29</sup>

Perhaps, the members of the lynch mobs hoped that the Black community might be intimidated into remaining in a subordinated position even if White supremacy could not be vindicated in the boxing ring.

Black Americans also understood that Johnson’s boxing success had greater ramifications for American race relations. The Chicago Defender wrote that “we shall not conceal the fact of our satisfaction at having these homilies and editorials [written by White newspaper editors in anticipation of a Jeffries’ victory] all knocked into the waste basket by the big fist of Jack Johnson. In this, he did missionary work.”<sup>30</sup> To the Black community, Johnson was an ambassador representing and vindicating all Black Americans. Because they saw Johnson’s boxing successes in this light, Black Americans were willing to endure the White reprisals that followed his victory. Indeed, the Chicago Defender declared that:

it was a good deal better for Johnson to win and a few Negroes to have been killed in

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<sup>26</sup> *Id.*

<sup>27</sup> *Sad Crowd at Ringside*, N.Y. TIMES, July 5, 1910, at 2.

<sup>28</sup> THE AUTOBIOGRAPHY OF JACK JOHNSON, *supra* note 19, at 63.

<sup>29</sup> ROBERTS, *supra* note 13, at 109; FARR, *supra* note 12, at 93-94.

<sup>30</sup> William Pickens, *Talladega College Professor Speaks on Reno Fight*, CHICAGO DEFENDER, July 30, 1910, at 1.



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body for it, than for Johnson to have lost and all Negroes to have been killed in spirit by the preachments of inferiority from the combined white press. The fact of this fight will outdo a mountain peak of theory about the Negro as a physical man, - and as a man of self-control and courage.<sup>31</sup>

Each generation of Black Americans has paid a price to bring the next generation a step closer to experiencing full equality. By that measure, the human and political cost to the Black community of Jack Johnson's victory over Jim Jeffries was seen as well worth it.

### 3. The Black Community's Response to its Reluctant Hero

The Black community's response to Jack Johnson's personal life was far more ambivalent than was its response to his boxing career. Although Johnson's accomplishments deeply challenged the myths upon which the American racial hierarchy was based, he was hardly the "Race Man" that the Black community wanted him to be. "Race Men," like Johnson's contemporaries, Booker T. Washington and W.E.B. DuBois, were well-educated people with genteel manners and an unflagging commitment to uplifting their race. In contrast, Johnson owned a popular nightclub in Chicago, drove expensive cars recklessly, kept the company of a bevy of prostitutes,<sup>32</sup> and was always willing to "take a chance on [his] pleasures."<sup>33</sup> His hedonistic lifestyle conflicted with the Victorian moralities of the Black middle class and his excesses earned him their scorn. Fearful that Johnson's behavior would be taken as representative of the entire Black community, the Conference of Representative Chicago Colored Citizens issued a resolution "pledg[ing themselves] to use [their] highest endeavors to blot out any negro or set of negroes whose immoral conduct tends to lower the moral standard or bring into disrepute the entire negro race."<sup>34</sup> Johnson was also publicly denounced by other prominent Black Americans, including Booker T. Washington who said that:

It is unfortunate that a man with money should use it in a way to injure his own people in the eyes of those who are seeking to uplift his race and improve its conditions. . . . In misrepresenting the colored people of the country this man is harming himself the least. I wish to say emphatically that his actions do not meet my personal approval, and I am sure that they do not meet with the approval of the colored race.<sup>35</sup>

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<sup>31</sup> Pickens, *supra* note 30 at 1.

<sup>32</sup> At least nine White prostitutes were dismissed from the Everleigh Club, an exclusive brothel in Chicago, because they were involved in sexual relationships with Johnson. ROBERTS, *supra* note 13, at 73. Indeed, Lucille Cameron, Johnson's second wife, had worked in brothels in both Minneapolis and Chicago prior to their marriage. *Id.* at 143.

<sup>33</sup> *Id.* at 81.

<sup>34</sup> *Jack Johnson Meeting*, CHICAGO DEFENDER, Oct. 26, 1912, at 6.

<sup>35</sup> THE AFRO-AMERICAN LEDGER, Oct. 26, 1912, at 4.

Those few members of the Black community who defended Johnson's lifestyle could only argue weakly that his behavior was to be expected of a "sport," and was no worse than that of White boxers.<sup>36</sup>

Johnson also distinguished himself from the "Race Men" by staunchly maintaining his independence from the Black community. In contrast to men like W.E.B. DuBois, who wrote that "the history of the world is the history, not of individuals, but of groups, not of nations, but of races, and he who ignores or seeks to override the race idea in human history ignores and overrides the central thought of all history,"<sup>37</sup> Johnson had no patience for the concept of "linked fate." Johnson thought of himself as an individual unconstrained by race. Indeed, the fighter showed little loyalty to other Blacks and "had neither faith, confidence nor respect for colored professional men."<sup>38</sup> After winning the heavyweight title, he refused to fight any of the other men who had been denied the chance to contend for the championship because of the color line, saying, "I won't box any of these colored boys now. . . . I'll retire still the only colored heavyweight champ."<sup>39</sup> Even after retiring, he resented the success of Joe Louis and other Black boxers.<sup>40</sup> The Black press disapproved of Johnson's independence and criticized the fact that most of his friends and boxing associates were White men, commenting that "when [Johnson] turned away from his own people to seek associates among whites and found them frequently among the most disreputable, there was a natural revulsion on the part of colored men."<sup>41</sup> Johnson simply found the need to express his individuality incompatible with the demands of racial solidarity.

However, it was Johnson's relationships with White women that most deeply troubled the Black community. Johnson saw his choice of sexual partners as a matter of asserting and satisfying his individual desires completely divorced from racial politics. When his marriage to Lucille Cameron, a White woman, was questioned by both Blacks and Whites, he defended his decision in race-neutral terms:

I am not a slave and . . . I have the right to choose who my mate shall be without the dictation of any man. I have eyes and I have a heart, and when they fail to tell me who I shall have for mine I want to be put away in a lunatic asylum. So long as I do not

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<sup>36</sup> See Billy Lewis, *He Said He Would Do It*, THE FREEMAN, Dec. 14, 1912, at 7; Luna M. Scott, *Justice for Jack Johnson*, CHICAGO DEFENDER, Nov. 16, 1912, at 4 ("[Johnson] is not the worst person on earth . . . . He represents the race more nearly than the so-called self-respectful ones.").

<sup>37</sup> W.E. Burghardt DuBois, *The Conservation of Races*, reprinted in WHAT COUNTRY HAVE I? POLITICAL WRITINGS BY BLACK AMERICANS 78 (Herbert J. Storrings, ed., 1970).

<sup>38</sup> Cary B. Lewis, *Johnson is Liberated*, THE FREEMAN, Nov. 23, 1912, at 1.

<sup>39</sup> THE AUTOBIOGRAPHY OF JACK JOHNSON, *supra* note 19, at 13.

<sup>40</sup> See ROBERTS, *supra* note 13, at 223-24.

<sup>41</sup> *Negro Repudiation of Johnson*, THE AFRO-AMERICAN LEDGER, Nov. 2, 1912, at 4.

interfere with any other man's wife I shall claim the right to select the woman of my own choice. Nobody else can do that for me.<sup>42</sup>

However, Johnson was hardly race-blind in his relationships with women. Not only did he express a strong *preference* for White women as romantic and sexual partners, he also explicitly *renounced* Black women. Early in his boxing career, Johnson chose to “forswear colored women and to determine that [his] lot henceforth would be cast only with white women.”<sup>43</sup> Johnson attempted to justify his decision by claiming that the Black women with whom he had been involved had been unfaithful to him.<sup>44</sup> But, as many of Johnson's White girlfriends worked as prostitutes, the Black community did not accept Johnson's explanation that he preferred White women because they were more likely to be monogamous. Nor did it appear to the Black community that Johnson's interest in White women was driven by romantic love. While genuine affection and friendship undoubtedly motivated him to keep the company of the White women with whom he was sexually involved, Johnson's choice to seek loving relationships among women whom he paid to serve him and to whom he owed no reciprocal duty was more consistent with self-absorption than it was with romantic devotion.<sup>45</sup> Accordingly, Johnson's affirmative decision to renounce all Black women was difficult to interpret as anything other than an attempt to distance himself from the Black community and to partake of White racial privilege. This angered Black Americans.<sup>46</sup>

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<sup>42</sup> *Champion Jack Johnson Denies Charges Against him in the Daily Newspapers*, CHICAGO DEFENDER, Oct. 26, 1912, at 1. Cameron, who was Johnson's second White wife, made a similar defense of their marriage: “I am a free woman and have a perfect right to marry whom I please.” *Jack Johnson Bridal Party*, CHICAGO DEFENDER, Dec. 14, 1912, at 1. Unfortunately, the views of the White women with whom Jack Johnson was involved were infrequently recorded by the press. Thus, there is little direct evidence of their opinions about those relationships.

<sup>43</sup> THE AUTOBIOGRAPHY OF JACK JOHNSON, *supra* note 19, at 76.

<sup>44</sup> See FARR, *supra* note 12, at 107 (Johnson “said he ‘couldn't get along’ with Negro women because he ‘couldn't trust them.’ ”); ROBERTS, *supra* note 13, at 75 (Johnson said, “I never had a colored girl that didn't two-time me.”).

<sup>45</sup> Some feminists argue that classic notions of romantic love are misleading because “the only difference between a prostitute and a wife is that the wife has sold herself to only one man. . . .” Dianne Post, *Why Marriage Should Be Abolished*, 18 WOMEN'S RTS. L. RPT. 283, 283 (1997).

<sup>46</sup> Indeed, the response of the Black community to Johnson's relationships with White women was sufficiently hostile that the day after Etta Duryea, Johnson's first White wife, committed suicide, the headline of the Chicago Defender defensively proclaimed: “Mrs. Johnson Was Not Hated By Negroes.” CHICAGO DEFENDER, Sept. 14, 1912, at 1. Duryea disagreed. As she told her maid shortly before she shot herself, “I am a white woman and tired of being a social outcast. All my misery comes through marrying a black man. Even the negroes don't respect me. They hate me.” ROBERTS, *supra* note 13, at 141.

Of course, some members of the Black community defended Johnson's interest in White women by arguing that his preferences were unexceptional: "[m]ost men like fair women; if you don't believe it just go into the best Negro homes amid the blackest of the most prosperous Negro families and you will find a yellow or almost white woman occupying the leading place of wife."<sup>47</sup> Others refused to ascribe any political meaning to his choice of romantic interests, characterizing "his marriage to a white woman as a mere chance affair and not a thing studied out by the champion in the sense of a demand, owing to his superior position, and apparently meaning the inferiority of his own race women."<sup>48</sup> However, for many others Johnson's choice to value White women more highly than Black women validated the White supremacy that his boxing successes called into question.

The response of most of the Black press was to denounce him. The Newport News Star declared that:

No Negro, who has any spark of manhood, and who prayed and hoped that Jack Johnson would win his battle with Jim Jeffries, and clearly establish his title to the championship of pugilists, in his class, now feels that he did himself the slightest tinge of honor. They would gladly recall that prayer and that hope, when they read of his fool infatuation for white women.<sup>49</sup>

The New York Amsterdam News argued that Johnson's choice of White partners indicated that he had forsaken his race and decried the fact that "[w]hite men of standing . . . conceitedly point to the example as an evidence of the black man's lack of race pride, his desire to be white and the general unworthiness of his race."<sup>50</sup> The Reverend Adam Clayton Powell, Sr., pastor of the Abyssinian Baptist Church in Harlem, confirmed that "[t]he overwhelming majority of colored people have no sympathy whatever with Johnson in his inordinate and persistent desire to seek female companionship with the whites."<sup>51</sup>

Given that Black men were routinely terrorized and lynched on the strength of any hint that they had intimate associations with White women, the Black community was correct in assuming that Johnson's unapologetic romantic and sexual interest in women of that race would be taken as an audacious act of rebellion against the constraints of the American racial caste system.<sup>52</sup> White Americans feared the threat that interracial

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<sup>47</sup> *Opposes Negro Press Criticisms of Jack Johnson*, THE FREEMAN, Nov. 23, 1912, at 6.

<sup>48</sup> *Jack Johnson in Bad*, THE FREEMAN, Oct. 26, 1912, at 4.

<sup>49</sup> *Reprinted in* THE CRISIS, Dec. 1912, at 72-73 (reprinted from THE STAR, Newport News Va.).

<sup>50</sup> THE FREEMAN, Nov. 9, 1912, at 7 (reprinted from THE AMSTERDAM, N. Y. NEWS).

<sup>51</sup> Al-Tony Gilmore, *Jack Johnson and White Women: The National Impact, 1912-1913*, 58 J. OF NEGRO HIST. 18, 23 (1973).

<sup>52</sup> Eldridge Cleaver was explicit about the political significance of his sexual relationships

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sex posed to the racial hierarchy for several reasons. First, intimate interracial relationships could undermine the myth of biological racial difference by affording people of different races greater opportunity to recognize their equal humanity and to forge bonds of trust and understanding. Second, mixed-race children could challenge the established hierarchy by making more difficult the line-drawing necessary to maintain racial segregation and by weakening the familial boundaries that kept social and economic capital within the White community from one generation to the next.<sup>53</sup> But, perhaps most immediately, there were also matters of ego - White men feared competition from Black men for the attention of women.<sup>54</sup>

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with White women:

Every time I embrace a black woman I'm embracing slavery, and when I put my arms about a white woman, well, I'm hugging freedom. The white man forbade me to have the white woman on pain of death. Literally, if I touched a white woman it would cost me my life. Men die for freedom, but black men die for white women, who are the symbol of freedom. . . . I will not be free until the day I can have a white woman in my bed and a white man minds his own business.

ELDRIDGE CLEAVER, *SOUL ON ICE* 149-150 (1968).

<sup>53</sup> Of course, the mere existence of mixed-race people does not automatically dismantle racial hierarchy because "[t]he advantages of being white were so obvious that race prejudice against Negroes permeated the minds of the Mulattoes who so bitterly resented the same thing from the whites." C.L.R. JAMES, *THE BLACK JACOBINS: TOUSSAINT L'OUVERTURE AND THE SAN DOMINGO REVOLUTION* 42-43 (2d ed. 1989). Indeed, "[h]istory demonstrates that . . . those who are mixed-race will . . . assert their White ancestry, while downplaying their African ancestry, in order to further themselves in the social structure and flee repression." Tanya Kateri Hernandez, "*Multiracial*" *Discourse: Racial Classifications in an Era of Colorblind Jurisprudence*, 57 MD. L. REV. 97, 119 (1998). This is not to say that the decision to pass for White is one that is easily made, "[i]t . . . require[s] so much severing and forgetting, so much disowning and distancing, not simply from one's shared past, but from ones' former self - as though one had cauterized one's long-term memory at the moment of entry into the white community." Adrian Piper, *Passing for White, Passing for Black*, in *PASSING AND THE FICTIONS OF IDENTITY* 244 (Elaine K. Ginsberg, ed., 1996).

<sup>54</sup> W.E.B. DuBois contended that for most White men "the race question at bottom is simply a matter of ownership of women; white men want the right to use all women, colored and white, and they resent the intrusion of colored men in this domain." GIDDINGS, *supra* note 1, at 61 (quoting Irene Diggs, *DuBois and Women: A Short Story of Black Women, 1910-34*, in *CURRENT BIBLIOGRAPHY OF AFRICAN AFFAIRS* 260 (1974)); Barbara K. Kopytoff and Leon Higginbotham, *Racial Purity and Interracial Sex in the Law of Colonial and Antebellum Virginia*, 77 GEO. L.J. 1967, 1997 (1989) (suggesting that 18th century anti-miscegenation laws were adopted because "legislators and their white male constituents may have wanted to save for themselves the white women, who were in short supply in the early years."); CHARLES HERBERT STEMBER, *SEXUAL RACISM: THE EMOTIONAL BARRIER TO AN INTEGRATED SOCIETY* (1976) (arguing that sex plays a significant factor in racial hostility).

Of course, the "ownership" of women by men of any race fails to appreciate women's individuality and sexual agency. See Linda C. Powell, *Black Macho and Black Feminism*, in *HOME GIRLS: A BLACK FEMINIST ANTHOLOGY* 283, 287 (Barbara Smith ed., 1983) ("Black men,

Thus, although interracial pairings have always been a part of the American scene, the White majority has consistently discouraged them - by social pressure, legal restrictions and violence. For example, in colonial Virginia the legislature tried to prevent marriage between White indentured servants and enslaved Blacks by providing that the White party would be banished from the colony.<sup>55</sup> And in spite of the fact that White plantation owners took advantage of their unimpeded sexual access to enslaved Black women frequently enough that it was said that “[the] men [lived] all in one house with their wives and their concubines; and the mulattoes one sees in every family partly resemble the white children,”<sup>56</sup> there were strong social sanctions against interracial sex in the antebellum south. After the Civil War, deprived of the mechanisms of social control which slavery provided,<sup>57</sup> Southern Whites were forced to find some other means to shore up the American racial hierarchy.

[A]ntimiscegenation rules . . . were revived after the war, given new, independent emphasis, and put in service as a symbol of White resistance to ‘social equality’ with former slaves. Miscegenation restrictions, while on one level directed . . . towards control of sexuality and maintenance of racial boundaries, were on another level used to redefine White households as racially impregnable institutions, most particularly in terms of regulations of marriage.<sup>58</sup>

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like white men, share a special kind of freedom with regard to women. Men, as a class, have the power to ‘choose’ women that is related to our status as reactive, not proactive, partner.”).

<sup>55</sup> Paul Finkelman, *The Crime of Color*, 67 TUL. L. REV. 2063, 2085 (1993) (describing Virginia laws criminalizing interracial marriage).

<sup>56</sup> GERDA LERNER, *BLACK WOMEN IN WHITE AMERICA: A DOCUMENTARY HISTORY* 51-52 (1973); see also ANNETTE GORDON-REED, *THOMAS JEFFERSON AND SALLY HEMINGS: AN AMERICAN CONTROVERSY* 167 (1997) (acknowledging the complicated interpersonal politics of sexual relationships between enslaved Black women and their White masters, but arguing that “some version of romantic love could exist even in a system where whites militantly asserted their superiority and treated most blacks with open contempt. . .”).

<sup>57</sup> After the war, sexual relationships between Black men and poorer White women became more common due to the shortage of White men in the South. See JOEL WILLIAMSON, *NEW PEOPLE: MISCEGENATION AND MULATTOES IN THE UNITED STATES* 89-90 (1995); see also NICHOLAS LEMANN, *THE PROMISED LAND: THE GREAT BLACK MIGRATION AND HOW IT CHANGED AMERICA* 35 (1992) (recognizing that the interpersonal politics of sexual relationships between White women and Black men were complicated by the American racial hierarchy).

Everybody knew that if a black man refused a white woman’s advances, it was quite likely that she would accuse him of rape and he would be lynched. If he didn’t refuse, and an affair began, and it was found out, an accusation of rape followed by a lynching was, again, the likely result. The woman could hardly afford to admit the truth, because if she did she would be banished from the community.

*Id.*

<sup>58</sup> Field Van Tassel, *supra* note 2, at 896.

The threat of violence was always lurking behind these legal restrictions. Although the incidence of lynching peaked in 1892, the practice - which was often directed at Black men who expressed sexual interest in White women - continued well into the twentieth century.<sup>59</sup>

Thus, it is not surprising that few Black Americans applauded Johnson's open defiance of the taboos against interracial love and sex. Johnson's choice of sexual partners had negative ramifications for the entire Black community. Black Americans were punished physically and economically as a result of White anger over Johnson's liaisons with White women. "[M]any colored waiters, porters, in white barbershops, and colored men employed in various capacities were dismissed from their employment.

Even Black professional men suffered reprisals as a result of the bitter agitation stemming from the . . . controversy."<sup>60</sup> Indeed, the Black press was consumed with the fear that Johnson's behavior would result in retaliation by White Americans against the entire Black community. The Indianapolis Freeman wrote that:

the persistent pursuing of his course will cause a wide-spread feeling of opposition to Negroes. He has no right to anything that promises so much mischief. He's free and all that, as he says, but there are 'invisible' laws to which he must subscribe - the agreements of society - if he would enjoy a large measure of that freedom of which he boasts.<sup>61</sup>

Unlike his victory in the fight against Jeffries, Johnson's freedom to pursue his sexual and romantic interests was not seen as worth the sacrifice of human and political capital by Black Americans. While Johnson incited the wrath of White Americans by challenging the American racial hierarchy in both situations, his relationships with White women were taken as a rejection of his own race and as an affront to the social and

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Laws prohibiting interracial marriage remained in effect until 1967, when the Supreme Court held that they violated the Fourteenth Amendment of the United States Constitution. *Loving v. Virginia*, 388 U.S. 1 (1967). See Peter Wallenstein, *Race, Marriage, and the Law of Freedom: Alabama and Virginia, 1860s-1960s*, 70 CHI-KENT L. REV. 371 (1994) (discussing the Loving litigation); Peggy Pascoe, *Miscegenation Law, Court Cases, and Ideologies of 'Race' in Twentieth Century America*, 83 J. AM. HIST. 44 (June 1996) (discussing the Loving litigation); Reva Siegel, *Why Equal Protection No Longer Protects: The Evolving Forms of Status-Enforcing State Action*, 49 STAN. L. REV. 1111, 1121-23 (1997) (discussing anti-miscegenation laws). The states which had anti-miscegenation laws as recently as 1967 included: Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia and West Virginia. Wallenstein, *supra*, at 436 n.318.

<sup>59</sup> Martha Hodes, *The Sexuality of Reconstruction Politics: White Women and Black Men in the South after the Civil War*, 3 J. HIST. SEXUALITY 402, 415 (1993).

<sup>60</sup> Gilmore, *supra* note 51, at 23.

<sup>61</sup> *Jack Johnson in Bad*, *supra* note 48, at 4.

political cohesiveness of the Black community.<sup>62</sup>

Thus, despite his success in challenging the myths of racial difference which maintained and perpetuated the subordination of all Black Americans, Jack Johnson did not enjoy an unproblematic relationship with the Black community. As the strength of that community lay in group solidarity, Black Americans did not appreciate what Johnson would probably have described as his individualistic color-blind approach to life. Johnson contended that, “[he had] found no better way of avoiding racial prejudice than to act in [his] relations with people of other races as if prejudice did not exist.”<sup>63</sup> However, in acting as if racial prejudice did not exist, Johnson both flouted the conventions of the American racial caste system and rejected the concept of “linked fate.” In so doing, he ignored the ways that race has been affirmatively used by Black Americans to forge a sense of common identity, to carve out a zone of safety from the violence of White Americans, and to fashion an agenda for unified action.

#### *B. Confronting the Social and Political Significance of Race*

Just as surely as Jack Johnson’s boxing successes disproved the myth of Black biological inferiority, the federal government’s decision to aggressively prosecute him for having consensual sexual relationships with White women and the Black community’s response to his prosecution highlighted the social and political significance of race. The primary functions of law are to protect social order and to control those who would disturb that order. Because the assertion of strong Black individuality is incompatible with a social order premised on White supremacy, law in the United States has also functioned to control Black Americans who exhibit that trait. This bias has been evident both in the government’s failure to protect members of the Black community from violence and intimidation, and in the government’s zealous prosecution of members of the Black community for real and imagined infractions of the law.<sup>64</sup>

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<sup>62</sup> It makes intuitive sense that interracial relationships might weaken the political cohesiveness of the Black community because appeals to racial solidarity would be less persuasive when directed at Blacks who have familial ties to both Black and White people. However, historically it has been more common for the White partner in such relationships to be adopted into the Black community than for the Black partner to be accepted by his/her White relatives or to abandon the Black community. See LISA JONES, *BULLETPROOF DIVA: TALES OF RACE, SEX, AND HAIR* 31-32 (1994) (her father’s African American family embraced her as a member of their community, whereas her “mother’s parents, first-generation American Jews, disowned [her mother] for marrying black. When she announced she was pregnant, they begged her to have an abortion.”); JANE LAZARRE, *BEYOND THE WHITENESS OF WHITENESS: MEMOIR OF A WHITE MOTHER OF BLACK SONS 2* (1996) (describing herself as living in a Black family); JAMES MCBRIDE, *THE COLOR OF WATER: A BLACK MAN’S TRIBUTE TO HIS WHITE MOTHER* 23 (1996) (describing his mother’s refusal to acknowledge her whiteness).

<sup>63</sup> THE AUTOBIOGRAPHY OF JACK JOHNSON, *supra* note 19, at 239.

<sup>64</sup> See generally ERIC FONER, *RECONSTRUCTION: AMERICAN’S UNFINISHED REVOLUTION 1863-1877* (1988); Shapiro, *supra* note 3; WARD CHURCHILL AND JIM VANDER WALL, *AGENTS OF*



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Unable to find a Great White Hope to defeat him, White Americans turned to the law to punish Johnson for his flagrant violations of the American racial caste system. Believing the interests of the group to be linked to his individual fate, Black Americans rallied to Johnson's defense.

1. Round One: Lucille Cameron

On October 18, 1912, Jack Johnson was arrested and charged with the abduction of Lucille Cameron, an eighteen year old White woman. His arrest was cause for celebration among Whites, "[e]ffigies of Johnson were burned in white sections of Chicago, and crowds followed him when he was released on bail, shouting 'Lynch him! Lynch the nigger!'"<sup>65</sup> Johnson was arrested on a warrant sworn by Mrs. Cameron-Falconet, Cameron's mother, who disapproved of the sexual relationship between her daughter and the Black boxer. Johnson claimed that Cameron worked as a secretary in his nightclub, the Café de Champion, and that "[h]er association with [him] was purely of a business nature and devoid of undue intimacy."<sup>66</sup> However, Mrs. Cameron-Falconet was correct in her assessment that her daughter was romantically interested in the champion. When the young woman was taken into custody by the police, she told them that "she loved Johnson and expected to become his wife."<sup>67</sup> Neither her mother nor federal officials could understand Cameron's expressed desires as anything but lunacy.<sup>68</sup> Any sexual involvement between Johnson and Cameron had to be nonconsensual in order to be consistent with the popular narrative of Black male rape of White women. Accordingly, the government charged Johnson with violating the Mann Act (also known as the White Slave Traffic Act), a federal statute enacted in 1910 to combat the sexual exploitation of White women.<sup>69</sup>

The Mann Act was the product of the moral panic that swept the nation at the turn of the century. Americans were troubled by the challenge that increased immigration, increased migration to urban areas, and the early suffragist movement posed to

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REPRESSION: THE FBI'S SECRET WARS AGAINST THE BLACK PANTHER PARTY AND THE AMERICAN INDIAN MOVEMENT (1990).

<sup>65</sup> DAVID J. LANGUM, *CROSSING OVER THE LINE: LEGISLATING MORALITY AND THE MANN ACT* 181 (1994).

<sup>66</sup> THE AUTOBIOGRAPHY OF JACK JOHNSON, *supra* note 19, at 80-81.

<sup>67</sup> THE FREEMAN, Oct. 26, 1912, at 7.

<sup>68</sup> Mrs. Cameron-Falconet claimed that "Jack Johnson has hypnotic powers . . . and he has exercised them on my little girl." FARR, *supra* note 12, at 122; *see also Champion Jack Johnson Denies Charges Against Him*, *supra* note 42, at 6 (Mrs. Cameron-Falconet is reported to have said, "I would rather see my daughter spend the rest of her life in an insane asylum than see her the plaything of a nigger.").

<sup>69</sup> The White Slave Traffic Act of 1910, 18 U.S.C. §§ 397, 398, 401, 404 (1910) (current version at 18 U.S.C.A. §2421-24 (West 1970)).

traditional sexual mores.<sup>70</sup> In addition, movies, newspapers, and novels repeated and exaggerated claims that large numbers of young White women were being lured to big cities from Europe and small towns in the United States, held captive, and forced into “White slavery.” Congress responded by making it a felony to knowingly

transport or cause to be transported, or aid or assist in obtaining transportation for, or in transporting, in interstate or foreign commerce, any woman or girl for the purpose of prostitution or debauchery or any other immoral purpose.<sup>71</sup>

The primary objective of the statute was to allow for the prosecution of those who profited from the exchange of sex for money or who coerced women into sexual activity. Indeed, the vast majority of prosecutions brought under the Mann Act between 1910 and 1914 involved women involved in commercial prostitution.<sup>72</sup> However, the broad wording of the statute - neither “debauchery” nor “immoral purpose” was defined - left room for it to be used in cases involving consensual sex in the context of romantic relationships.<sup>73</sup> Given Johnson’s fast-paced nomadic lifestyle and the number of women with whom he was sexually involved, the Assistant U.S. Attorney prosecuting his case was certain that Johnson had violated the letter, if not the spirit of the statute.

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<sup>70</sup> See LANGUM, *supra* note 65, at 15-34.

<sup>71</sup> 18 U.S.C. §397.

<sup>72</sup> See LANGUM, *supra* note 65, at 42, 75.

<sup>73</sup> The Supreme Court has upheld the constitutionality of the statute as applied in such cases. *Caminetti v. United States*, 242 U.S. 470, 485 (1917).

While immoral purpose [transporting a woman across state lines to have sex with her] would be more culpable in morals and attributed to baser motives if accompanied with the expectation of pecuniary gain, such considerations do not prevent the lesser offense against morals of furnishing transportation in order that a woman may be debauched, or become a mistress or a concubine, from being the execution of purposes within the meaning of this law.

*Id.* at 486.

In recent years the Mann Act has been rewritten to be sex neutral and to strip federal authorities of the power to define what constitutes an immoral sexual purpose. In 1978, the Act was amended to prohibit the transportation of any minor -- either male or female -- across state lines “with the intent that such minor engage in, any sexually explicit conduct for the purpose of producing any visual depiction of such conduct.” Protection of Children Against Sexual Exploitation Act of 1977, 18 U.S.C. §2251. Revisions enacted in 1986 prohibit the transportation of adults or children of either sex in interstate or foreign commerce “with intent that such individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense.” Child Sexual Abuse and Pornography Act of 1986, 18 U.S.C. §2421. This amendment gives states the authority to define what sexual conduct can trigger a violation of the Mann Act because there are no federal laws criminalizing sexual activity.

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The only difficulty was Cameron. Despite the fact that federal prosecutors held her in jail to intimidate her and to prevent her from communicating with Johnson, she was uncooperative when brought before the grand jury to testify. Cameron refused to substantiate the allegation that Johnson operated an interstate prostitution ring and denied that he had lured her to Chicago to work as a prostitute. Not only was the government forced to dismiss the abduction charges, but as soon as Cameron was released from police custody, she and Johnson were married. At the time, “[s]ome writers speculated that Johnson wished to marry Lucille to prevent her from testifying against him. Others held that Lucille used the threat of her testimony to force the champion to wed her. Few journalists considered that love might actually be involved.”<sup>74</sup> Whatever were their motivations, the marriage of Jack Johnson and Lucille Cameron scandalized the country.<sup>75</sup>

The response of most White Americans to the Johnson-Cameron wedding was swift and hostile. Many of the officials attending the Annual Governor’s Conference that took place the same week as the wedding agreed that interracial marriage should be legally prohibited:

“That Johnson wedding,” spoke Governor John Dix of New York, “is a blot on our civilization. Such desecration of the marriage tie should never be allowed.” Governor John Tener of Pennsylvania commented that “any law to prevent the mixture of bloods of different colors” had his hearty approval. Stating remorsefully that his state had no law to prohibit such alliances, Governor Hudson Harmon of Ohio placed his sympathies with those who agitated for an anti-intermarriage law.<sup>76</sup>

In the year after Johnson and Cameron were married, anti-miscegenation bills were introduced in ten of the twenty states that allowed interracial marriages, and at least twenty-one such bills were introduced in Congress.<sup>77</sup>

Indeed, the thought of “a brutal African prizefighter [joining] to his name that of even a fallen American woman” so enraged Congressman Seaborn Roddenberry of Georgia that he proposed a constitutional amendment prohibiting interracial marriages.<sup>78</sup>

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<sup>74</sup> ROBERTS, *supra* note 13, at 158.

<sup>75</sup> Johnson’s first marriage to a White woman, Etta Duryea, which took place on January 18, 1911, was not widely publicized and did not generate much White backlash. In contrast, his second marriage, following closely on the heels of the suicide of his first wife and his arrest on charges of violating the Mann Act, was born in controversy.

<sup>76</sup> Gilmore, *supra* note 51, at 30-32.

<sup>77</sup> ROBERTS, *supra* note 13, at 159.

<sup>78</sup> CONG. REC., 62d Cong., Dec. 11, 1912, at 503 (statement of Rep. Roddenberry). The proposed amendment provided :

That intermarriage between negroes or persons of color and Caucasians or any other character of persons within the United States or any territory under their jurisdiction, is forever prohibited; and the term ‘negro or person of color,’ as here employed, shall

Roddenberry styled his proposed amendment as necessary to protect White women because “[n]o more voracious parasite ever sucked at the heart of pure society, innocent girlhood, or Caucasian motherhood than the one which welcomes and recognizes the sacred ties of wedlock between Africa and America.”<sup>79</sup> However, as the amendment would have prohibited voluntary interracial relationships as well as coercive ones, its actual effect would have been to constrain White women’s free choice of sexual partners, thus protecting White men’s exclusive right of access to them. The fact that Roddenberry did not express any concern about relationships between White men and Black women also supports the notion that his intent was to control the sexual expression of Black men and that of their White female lovers, not to prohibit all interracial sex or to protect women from the real threat of male violence.<sup>80</sup> Indeed, by arguing that his proposed amendment would show that the “government and the administration of law properly belong to the white people . . . and [that the Black man] has acquiesced,”<sup>81</sup> the Congressman made plain that his primary objective was to reinforce the American racial hierarchy under which Black Americans were not permitted to assert any individual desires that conflicted with that hierarchy, sexual or otherwise.

Black Americans may have had ambivalent feelings about interracial marriage in general and about Johnson’s involvement with White women in particular, but they were united in their opposition to laws prohibiting such unions. This position is not as inconsistent as it seems at first blush; it stems from their belief in “linked fate.” At the same time as Black Americans feared that mixed-race marriages would weaken the racial solidarity which bound their community together and gave it some safety and political clout, they also wanted to be free to express their individual sexual and romantic desires. In addition, they abhorred any laws which implied the inferiority of people of their race. The response of the editor of the Washington Bee was typical: “we are unalterably opposed to intermarriages, but we are just as unalterably opposed to the enactment of any statute, state or national to prohibit them.”<sup>82</sup> The Chicago

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be held to mean any and all persons of African descent or having any trace of African or negro blood.

*Id.* at 502.

<sup>79</sup> *Id.* at 504 (statement of Rep. Roddenberry).

<sup>80</sup> See Wriggins, *supra* note 2, at 116.

[S]ince tolerance of coerced sex has been the rule rather than the exception, it is clear that the rape of white women by Black men has been treated seriously not because it is coerced sex and thus damaging to women, but because it is threatening to white men’s power over both ‘their’ women and Black men.

*Id.* See also RICHARD DYER, WHITE 26 (1997) (arguing that the recurrent motif of the rape of White women by non-White men “displaces attention from the routinised misuse of non-white women by white men.”).

<sup>81</sup> CONG. REC., 62d Cong., Dec. 12, 1912, at 503 (statement of Rep. Roddenberry).

<sup>82</sup> ROBERTS, *supra* note 13, at 160.

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Defender took a similar position, arguing that “[i]t is not that we care to intermarry, but we demand the privileges accorded any other citizen, and we propose to fight to the bitter end any infringement of our rights.”<sup>83</sup>

Black women opposed anti-miscegenation legislation on the grounds that by making it impossible to legitimate interracial unions, such laws made them more vulnerable to sexual exploitation by White men.<sup>84</sup> Those laws would provide an excuse to White men who were reluctant to legitimate their sexual relationships with Black women through marriage by denying that option to the couple. The Black press was more concerned that any law prohibiting interracial marriage equally inhibit the sexual expression of men of both races. An open letter to Congressman Roddenberry, suggested that “[by] all means let us have your resolution, but amend it so that if it is a crime for Negro men to marry white women legally in the north; it be a misdemeanor for white men to mate with Negro women illegally in the south.”<sup>85</sup> Summarizing the opinions of the Black community, W.E.B. DuBois wrote that anti-miscegenation legislation should be opposed, not because race had no significance, but because such laws treated blackness as if it were a physical taint, because sex out of wedlock was morally repugnant, and because such laws “leave the colored girl absolutely helpless before the lust of white men.”<sup>86</sup> Due to the lack of enthusiasm of White Americans and the opposition of Black Americans, none of the bills which were proposed that year to ban interracial marriage were enacted into law.<sup>87</sup>

## 2. Round Two: Belle Schreiber

Embarrassed by the failure of their first effort to prosecute Johnson, federal investigators redoubled their efforts “to secure evidence as to illegal transportation by Johnson of any other women for an immoral purpose.”<sup>88</sup> Their exhaustive investigation located Belle Schreiber, a White prostitute who was one of Johnson’s former girlfriends. In the years immediately after Johnson won the heavyweight championship, Schreiber had been one of a number of White women who traveled with him while he was on the road. Based on her testimony about their relationship, the government was finally able to obtain an indictment against Johnson for violations of the Mann Act. Johnson was charged with the crimes of transporting Schreiber across state lines for

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<sup>83</sup> *Miscegenation*, CHICAGO DEFENDER, May 24, 1913, at 4.

<sup>84</sup> See GIDDINGS, *supra* note 1, at 105.

<sup>85</sup> Bob Teatowles, “Bob” Teatowles After Congressman, CHICAGO DEFENDER, Dec. 21, 1912, at 1.

<sup>86</sup> THE CRISIS, Feb. 1913, at 180.

<sup>87</sup> See ROBERTS, *supra* note 13, at 159-60; see also DAVID H. FOWLER, NORTHERN ATTITUDES TOWARDS INTERRACIAL MARRIAGE: LEGISLATION AND PUBLIC OPINION IN THE MIDDLE ATLANTIC AND THE STATES OF THE OLD NORTHWEST, 1780-1930, at 302-314 (1987) (describing Black political organizing against anti-miscegenation laws).

<sup>88</sup> ROBERTS, *supra* note 13, at 148.

his personal sexual use, for the purpose of engaging her in prostitution, and with sexual perversions (i.e. physical abuse). And although he correctly argued that “there [were] thousands of others who could be prosecuted on similar reasons,” and twice offered to plea bargain, the government refused to negotiate with Johnson for fear of disappointing the White American public which wanted to see him behind bars.<sup>89</sup>

The government faced a difficult burden of proof at trial. In order to prevail, the prosecution had to show beyond a reasonable doubt, not only that Johnson had sex with Schreiber, but that he had transported her across state lines *for the express purpose of doing so* - a charge which Johnson adamantly denied. When the case went to trial on May 7, 1913, the government only had circumstantial evidence to support their case. It was undisputed that Johnson had wired \$75 to Schreiber in Pittsburgh in response to her request for money. Witnesses also testified that Schreiber had worked as a prostitute and had provided sexual services to Johnson in the past. However, Johnson denied that he told her to use the money he sent to travel to Chicago and claimed that the additional \$1500 which he gave to her upon her arrival in that city was to help furnish an apartment for herself, her sister and her mother.<sup>90</sup> The prosecution countered that Johnson’s intent to have sex with Schreiber upon her arrival in Chicago was clear from the fact that they had had sex on previous occasions. Although the government was aware that the relationship between Johnson and Schreiber “was emotional and sexual - not commercial,”<sup>91</sup> the prosecution argued that Johnson gave Schreiber the additional \$1500 to open a brothel.<sup>92</sup>

The all-White, all-male jury convicted Johnson after deliberating for an hour and a half. They found him guilty on both the sexual intercourse counts and on the prostitution counts (the government had been forced to drop the sexual perversion charges for lack of evidence). After the verdict was announced, the federal prosecutor bragged that the charges against Johnson had, in fact, been motivated by racial politics and a desire to control the sexual expression of Black Americans:

This verdict will go around the world. It is the forerunner of laws to be passed in the United States . . . forbidding miscegenation. This Negro, in the eyes of many, has been persecuted. Perhaps as an individual he was. But his misfortune is to be the foremost example of the evil in permitting the intermarriage of whites and blacks. He has violated the law. Now it is his function to teach others the law must be respected.<sup>93</sup>

United States District Court Judge George Carpenter sentenced Johnson to one year and

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<sup>89</sup> *Id.* at 157, 167.

<sup>90</sup> See *Johnson Convicted as a White Slaver*, N.Y. TIMES, May 14, 1913, at 1.

<sup>91</sup> ROBERTS, *supra* note 13, at 151.

<sup>92</sup> See *Johnson v. United States*, 215 F. 679, 682 (7th Cir. 1914).

<sup>93</sup> Billy Lewis, *Champ Jack Struck Below the Belt*, THE FREEMAN, May 24, 1913, at 7.

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a day in prison.<sup>94</sup>

On appeal, the Seventh Circuit criticized the prosecution for failing to withdraw the sexual perversion charges in a timely fashion despite knowing that they could not be substantiated, for introducing testimony that Johnson had assaulted his first wife despite the fact that the testimony lacking relevance to the Mann Act charges, for repeating insinuating questions “with the obvious object of having . . . innuendoes taken in preference to the sworn answer,” and for generally creating an “atmosphere of prejudice.”<sup>95</sup> Further, the Court of Appeals reversed Johnson’s conviction on the prostitution counts on the grounds that there was “no proof that [Johnson] had ever been connected with or interested in brothels, or that prior to the act in Chicago he had ever aided this or any girl to engage in prostitution.”<sup>96</sup> However, by the time his case was remanded for resentencing on the charge of transporting Schreiber across state lines to have sex with her, Johnson had already fled the country.

### 3. The Black Community and Race on Trial

Black Americans rallied to Johnson’s side when they came to see his prosecution as racially motivated. Whether or not Johnson saw himself as part of the Black community, that community understood that his prosecution was intended to reinforce the racial hierarchy that oppressed all Black Americans. The Chicago Defender was among the early papers to portray the charges against Johnson as “an out-burst of race prejudice.”<sup>97</sup> In October 1912, one week after he was first arrested, the Defender took the position that Johnson was not guilty of abducting Cameron or of claiming that he could “get any white woman [he] wanted,” and accused the White press of sensationalizing the story in an attempt to inflame passions against Black Americans.<sup>98</sup> The Defender also characterized the reluctance of the district court to release Johnson on bail, despite the bonds offered by his lawyers, as an indication that the United States legal system discriminated on the basis of race,<sup>99</sup> and urged that “[i]t is high time the

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<sup>94</sup> See *Champion Jack Johnson is Sentenced to Year in Prison*, CHICAGO DEFENDER, June 7, 1913, at 1.

<sup>95</sup> Johnson v. United States, 215 F. at 685-86.

<sup>96</sup> *Id.* at 682.

<sup>97</sup> *Champion Jack Johnson Denies Charges Against Him in the Daily Newspapers*, *supra* note 42, at 6.

<sup>98</sup> *Id.* at 1 (the headline read: “Daily Newspapers Try to Incite Riot”).

<sup>99</sup> See CHICAGO DEFENDER, Nov. 16, 1912, at 1 (the headline read: “All White People Up, All Black People Down, Policy of U.S. Government”). Johnson was represented by both White and Black lawyers. The Chicago Defender proudly noted that his Black attorneys, W.G. Anderson and Edward H. Wright, were able to get Johnson released on bail even though his White attorney, Benjamin C. Bachrach had previously failed to do so. See *Jack Johnson Wins Abduction Suit -- L. Cameron Would Not Appear Against Him*, CHICAGO DEFENDER, Nov. 23, 1912, at 1.

race throughout the United States should raise their voices in unison and protest the treatment that is accorded Jack Johnson.”<sup>100</sup> Moved by the notion of “linked fate,” the Defender strongly supported the champion.

Soon other Black newspapers joined the Defender in condemning what was described as an effort “to persecute, rather than to prosecute, and beneath it all courses the vein of animus against the Negro himself and against his association with white women.”<sup>101</sup> The editors of the Indianapolis Freeman confessed that they had “opposed and abused Jack Johnson quite as much as anyone else as it concerns his relation with white women. But at that we have not forgotten that the baffled and beaten champion has some rights; not more than other men, but as many.”<sup>102</sup> The Afro-American Ledger was more forthright about the racial bias inherent in the prosecution, reporting that Johnson was a victim of “Race Prejudice,” because “such reprehensible doings as are charged against him are of frequent occurrence, and excite but passing notice.”<sup>103</sup> Similarly, the New York Amsterdam news wrote:

The relentless persecution of Jack Johnson in Chicago by the State and Federal authorities is nothing less than a reproach to the American people and nothing more than a bald revelation of the prejudice regnant in American jurisprudence. The legal inquisitioners of the State of Illinois and of the nation are madly bent upon making a scapegoat of Johnson thus venting the vengeance of the Caucasian upon the [B]lack race because one of its members happens to be pugilism’s champion.<sup>104</sup>

In spite of his unpopularity, most of the Black community agreed with Johnson’s assessment that his trial “was a rank frame-up” by the time he was sentenced to jail.<sup>105</sup> The Chicago Defender confirmed that “[p]ublic sentiment is largely in favor of the

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<sup>100</sup> Scott, *supra* note 36, at 4.

<sup>101</sup> *Slavery -- Black and White*, CHICAGO DEFENDER, Dec. 14, 1912, at 3; *see also New York World, reprinted in THE CRISIS*, Jan. 1913, at 124 (“[t]here is a growing suspicion that no matter how bad a man Johnson may be -- and he is bad undoubtedly -- popular clamor and race prejudice are making him blacker than he is. Whatever he may be, he is entitled to his rights under laws impartially administered.”).

<sup>102</sup> *Jack Johnson and the Courts*, THE FREEMAN, Nov. 16, 1912, at 4.

<sup>103</sup> *A Victim of Race Prejudice*, THE AFRO-AMERICAN LEDGER, Nov. 2, 1912, at 4. *See also No Evidence Against Jack Johnson*, THE AFRO-AMERICAN LEDGER, Nov. 30, 1912, at 1.

[T]here is not a scintilla of evidence upon which to base the prosecution much less the persecution of Jack Johnson, except that he has committed certain offences against established codes of morality -- for which half of the men in New York or Chicago or elsewhere could just as well be indicted and railroaded to the penitentiary.

*Id.*

<sup>104</sup> NEW YORK AMSTERDAM NEWS, *reprinted in* Billy Lewis, *The Jack Johnson Case*, THE FREEMAN, Nov. 30, 1912, at 7.

<sup>105</sup> THE AUTOBIOGRAPHY OF JACK JOHNSON, *supra* note 19, at 83.



champion, many persons believing that he had not received a 'square deal.'"<sup>106</sup>

Despite the threat which many Black Americans believed Johnson's transgressive behavior posed to the political strength of their community, they championed his cause.

Indeed, because they believed that the fate of the entire Black community was significantly linked to that of Jack Johnson, they understood group solidarity to be a matter of political necessity. To remain silent as White Americans enforced the boundaries of the racial hierarchy against any individual Black person - even one who had intentionally distanced himself from other Blacks - would be to tacitly validate that hierarchy. Thus, although the Black community consistently rejected the notion of Black biological difference or inferiority, it embraced the political salience of shared racial identity and used race as a catalyst for unified opposition to the bias in the criminal justice system.

### C. Conclusion

After his conviction, Johnson remained in self-imposed exile, traveling with his wife throughout Europe and South America for seven years. During this time, he lost the heavyweight title to Jess Willard, a White boxer, in a fight in Cuba.<sup>107</sup> Johnson later said that he threw the Willard fight in an effort "to wipe out prejudices against [him] and to still criticism of [his] conduct."<sup>108</sup> However, even after voluntarily surrendering himself to U.S. authorities in July, 1920, he was resentenced to serve his original term of one year and a day in Leavenworth.

Upon his release from prison in 1921, Johnson was almost as warmly received by Black Americans as he had been after his victory in the heavyweight championship fight against Jeffries:

In Chicago a large crowd of blacks greeted Johnson and welcomed him home. But this was only the beginning. When the Twentieth Century Limited carrying Johnson arrived in New York, it was met by a small contingent of admirers. Then at 125th Street the real festivities began. Thousands of residents of Harlem celebrated his release and treated him like a "conquering hero." There was even a parade, with Johnson leading the way in a flashy black suit with broad white stripes.<sup>109</sup>

Black Americans welcomed Johnson as a member of their community because they believed in "linked fate" - and because, like them, he had suffered injustice on account of his race. Indeed, they celebrated him despite his reluctance to embrace them in return because of his ability to persevere in the face of American racial politics.

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<sup>106</sup> *Jack Johnson on Trial; Great Interest*, CHICAGO DEFENDER, May 10, 1913, at 1.

<sup>107</sup> *See Willard Victor; Johnson Retires from Prize Ring*, N.Y. TIMES, April 6, 1915, at 1.

<sup>108</sup> THE AUTOBIOGRAPHY OF JACK JOHNSON, *supra* note 19, at 24, 197-203.

<sup>109</sup> ROBERTS, *supra* note 13, at 218-19.

However, the significance of the Black community's response to him seems to have been lost on Johnson. Even after his release from jail, he continued to hold himself apart from that community and exempt from the demands of race politics. In addition to marrying a third White woman after Lucille Cameron divorced him in 1924, "[h]is mannerisms became not only more white, but absolutely European. In later years he always wore a beret, carried a cane, and spoke with a rich British accent."<sup>110</sup> The life of Jack Johnson and the consistent choice of the Black community to rally around even its most reluctant heroes shows that although "color is not a human or personal reality, it is a political reality."<sup>112</sup>

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<sup>110</sup> *Id.* at 224.

<sup>112</sup> JAMES BALDWIN, *THE FIRE NEXT TIME* 139 (1962).