

2018

Foreword

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Recommended Citation

Robin A. Lenhardt, Tanya K. Hernandez, and Kimani Paul-Emile, *Foreword*, 86 Fordham L. Rev. 2625 (2018).

Available at: <https://ir.lawnet.fordham.edu/flr/vol86/iss6/1>

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SYMPOSIUM

FIFTY YEARS OF *LOVING V. VIRGINIA* AND THE CONTINUED PURSUIT OF RACIAL EQUALITY

FOREWORD

R.A. Lenhardt,* Tanya K. Hernández**
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INTRODUCTION

It has been ten years since this journal last published a volume exploring *Loving v. Virginia*,¹ the U.S. Supreme Court's 1967 decision invalidating antimiscegenation laws on equal protection and due process grounds.² In that time, the American public has been treated to a virtual smorgasbord of new opportunities to love *Loving*. First, in a way few could have imagined fifty years ago when seventeen states criminalized interracial marriages,³ that decision has provided the impetus for a "global network" of celebrations designed to praise interracial relationships and families and to combat discrimination.⁴ Families and couples now gather annually in communities

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*** Associate Professor Law, Fordham University School of Law. This conference would not have been possible without the assistance of a network of people. We are very grateful to Amanda Gottlieb, Julia MacAllister, Adam Minchew, Catherine Tremble, and others at the *Fordham Law Review* for their hard work in connection with this Symposium. We also extend special thanks to Tomas Barron for excellent research assistance and to Carrie Johnson, Shanelle Holley, and Rob Yasharian for their hard work in publicizing and handling the many details involved in making an event of this sort successful. Finally, we express our gratitude to Dean Matthew Diller for his support and, of course, extend thanks to the talented scholars who, by participating in the conversations facilitated by this conference, deepened our collective understanding of *Loving v. Virginia* and its meaning in the twenty-first century.

1. 388 U.S. 1 (1967).

2. See Symposium, *Forty Years of Loving: Confronting Issues of Race, Sexuality, and the Family in the Twenty-First Century*, 76 *FORDHAM L. REV.* 2669 (2008).

3. PETER WALLENSTEIN, *TELL THE COURT I LOVE MY WIFE: RACE, MARRIAGE, AND LAW—AN AMERICAN HISTORY* 137 (2002).

4. See, e.g., *LOVINGDAY*, <http://www.lovingday.org> [<https://perma.cc/RQ28-Z5L5>] (last visited Apr. 13, 2018) (discussing the day and providing suggestions for how it might be celebrated); see also Tanya K. Hernández, *What the "Loving Day" 50th Anniversary Celebrations of the Loving v. Virginia Court Decision Really Need—a Challenge to Ongoing White Supremacy*, *HUFFINGTON POST* (June 11, 2017, 12:36 AM),

across the country to celebrate “*Loving Day*” on June 12,⁵ the date that the Court handed down its landmark decision. For those seeking information about how to join in the celebration, a *Loving Day* website—replete with party suggestions, background information about the case, and personal histories of interracial couples—now exists.⁶

Loving has also been the inspiration for not just one, but two critically acclaimed films.⁷ Albeit in different ways, these films explore the facts underlying the case and the determined couple—Mildred and Richard Loving—who set off a legal case that struck at the very heart of the Jim Crow system when they refused to endure twenty-five years of court-mandated exile from the community in which they grew up and fell in love as punishment for marrying across race lines.⁸ The 2012 HBO documentary, *The Loving Story*, shown as part of this Symposium’s opening session, and the 2016 feature film *Loving* have provided the public with important details about the intimate lives and challenges of the Lovings and their children previously not known outside their family, others directly involved in the case, or others exploring it in academic circles.⁹

Finally, *Loving*, and the right to marry it identified, was at the forefront of the national litigation strategy to secure the ability of gay and lesbian couples to enter into marital unions that concerned not only states but also the federal government.¹⁰ Advocates for equal marriage rights repeatedly invoked the *Loving Court*’s language recognizing marriage as “one of the ‘basic civil rights of man,’ fundamental to our very existence and survival,” in challenging legal provisions that limited marriage to individuals of the opposite sex.¹¹ Unsurprisingly, *Loving* subsequently figured prominently in

<https://www.huffingtonpost.com/entry/593b4961e4b094fa859f1878>

[<https://perma.cc/W9ZR-B46T>].

5. LOVINGDAY, *supra* note 4.

6. *Id.*

7. See LOVING (Raindog Films & Big Beach Films 2016); THE LOVING STORY (Augusta Films 2011).

8. For sources exploring the circumstances that led to *Loving*, see generally SHERYLL CASHIN, *LOVING: INTERRACIAL INTIMACY IN AMERICA AND THE THREAT TO WHITE SUPREMACY* (2017); RANDALL KENNEDY, *INTERRACIAL INTIMACIES: SEX, MARRIAGE, IDENTITY, AND ADOPTION* (2003); KEVIN NOBLE MAILLARD & ROSE CUISON VILLAZOR, *LOVING v. VIRGINIA IN A POST-RACIAL WORLD: RETHINKING RACE, SEX AND MARRIAGE* (2012); RACHEL F. MORAN, *INTERRACIAL INTIMACY: THE REGULATION OF RACE AND ROMANCE* (2001). For other sources on interracial intimacy generally, see Angela Onwuachi-Willig, *What Would Be the Story of Alice and Leonard Reinelder Today?*, 46 U.C. DAVIS L. REV. 939 (2013).

9. See Regina Austin, *Thoughts on “The Loving Story,”* DOCS & L. BLOG (Nov. 16, 2013), <https://www.law.upenn.edu/live/news/2917-thoughts-on-the-loving-story/news/documentaries-news.php> [<https://perma.cc/S2S2-NU6A>].

10. See, e.g., *United States v. Windsor*, 133 S. Ct. 2675, 2691 (2013); *Latta v. Otter*, 771 F.3d 456, 474, 476 (9th Cir. 2014); *Bostic v. Schaefer*, 760 F.3d 352, 376–77 (4th Cir. 2014); *Kitchen v. Herbert*, 755 F.3d 1193, 1209–10 (10th Cir. 2014); *Kerrigan v. Comm’r of Pub. Health*, 957 A.2d 407, 416 (Conn. 2008); *Goodridge v. Dep’t of Pub. Health*, 798 N.E.2d 941, 957 (Mass. 2003); *Griego v. Oliver*, 316 P.3d 865, 886 (N.M. 2013).

11. *Loving v. Virginia*, 388 U.S. 1, 12 (1967) (quoting *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942)). For examples of *Loving*’s use in recent litigation, see Brief for Petitioners at 33, *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015) (No. 14-556); Brief for Respondent at 37–38, *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015) (No. 14-556); R.A. Lenhardt, *Beyond*

the Court's 2015 decision in *Obergefell v. Hodges*,¹² which finally settled legal debates about the right of LGBTQ couples to marry.¹³ The Court held that states may not deny same-sex couples the opportunity to formalize their intimate relationships through legal marriage without violating the Fourteenth Amendment's guarantee of equal treatment and dignity under the law.¹⁴

These developments have only further endeared *Loving*—already among the best known of any case in the constitutional law canon—to the general populace to an extent few other court decisions claim.¹⁵ Whether because of its brave and aptly named plaintiffs, because of the increase in interracial intimacy, however slow, that followed the case's definitive invalidation of state antimiscegenation laws,¹⁶ or because of the expansion of constitutional rights it later served to facilitate, *Loving* is part of mainstream culture. Curiously, however, its integration into popular thought has not promoted a uniform understanding of its meaning and overall significance.¹⁷ Indeed, if anything, the opposite is true. In many ways, *Loving* has come to mean a wide variety of things to an ever-growing number of people.¹⁸ It functions as a kind of Rorschach test for race and family.¹⁹

The majority opinion in *Obergefell* underscores this point in striking terms, bending *Loving*'s meaning so far in recognizing LGBTQ marriage rights that the precedent becomes virtually unmoored from the thoroughly racialized

Analogy: Perez v. Sharp, Antimiscegenation Law, and the Fight for Same-Sex Marriage, 96 CALIF. L. REV. 839, 865 (2008) (discussing the reliance on *Loving* in equal marriage litigation efforts). In addition to centering *Loving* in their litigation strategy, advocates also drew heavily on the California Supreme Court's 1948 decision in *Perez v. Sharp*, 198 P.2d 17 (1948), in seeking marriage rights for LGBTQ couples, see *id.* at 854–55.

12. 135 S. Ct. 2584 (2015).

13. *Id.* at 2598–99.

14. See *id.* at 2060 (“A ruling against same-sex couples . . . would be unjustified under the Fourteenth Amendment.”).

15. Richard Wolf, *The 21 Most Famous Supreme Court Decisions*, USA TODAY (June 26, 2015, 4:11 PM), <https://www.usatoday.com/story/news/politics/2015/06/26/supreme-court-cases-history/29185891/> [<https://perma.cc/4BU5-DP2C>].

16. Hansi Lo Wang, *Steep Rise in Interracial Marriages Among Newlyweds 50 Years After They Became Legal*, NPR (May 18, 2017, 2:08 PM), <https://www.npr.org/sections/codeswitch/2017/05/18/528939766/five-fold-increase-in-interracial-marriages-50-years-after-they-became-legal> [<https://perma.cc/2NNK-LMMS>].

17. See Osagie K. Obasogie, *Was Loving v. Virginia Really About Love?*, ATLANTIC (June 12, 2017), <https://www.theatlantic.com/politics/archive/2017/06/loving-v-virginia-marks-its-fiftieth-anniversary/529929/> [<https://perma.cc/X9KH-GQZ8>] (“The *Loving* decision instead responded to the eugenic aspect of Virginia’s Racial Integrity Act and how it was designed to prevent the perceived dilution of white racial purity. Rather than celebrating love, the Court’s opinion states that laws against interracial marriage are unconstitutional because they are ‘measures designed to maintain White Supremacy.’” (quoting *Loving v. Virginia*, 388 U.S. 1, 11 (1967))).

18. See Regina Austin, *The Loving Story: Using a Documentary to Portray an Iconic Interracial Married Couple*, 86 FORDHAM L. REV. 2635, 2635 (2018) (discussing the “equivocalness of the Lovings’ iconic status”).

19. Multiracialism itself broadly functions as a national Rorschach test. See HEATHER M. DALMAGE, TRIPPING ON THE COLOR LINE: BLACK-WHITE MULTIRACIAL FAMILIES IN A RACIALLY DIVIDED WORLD 106 (2000) (“When people encounter a racially ambiguous person, they conduct a flurry of analyses to determine how the individual should be categorized. This is a racial Rorschach test, taken in a society that creates and accepts racial stereotypes.”).

context from which it sprang.²⁰ In his opinion for the *Obergefell* majority affirming an individual's right to marry the person of one's choice, Justice Kennedy thoroughly decontextualized *Loving*, going so far as to suggest that, at its core, it was ultimately not a case about race and interracial marriage at all.²¹ On this account, the oft-noted rejection of Virginia's Racial Integrity Act and antimiscegenation provisions as "measures designed to maintain White Supremacy" were mere surplusage.²² In Kennedy's estimation, race was a marginal consideration in *Loving*, one incidental to the case's central concern: the scope of the right to marry.²³ For him, the question posed was not fundamentally different from that put in issue by regulations on marriage later reviewed by the Court.²⁴ He saw the constitutional issues presented to the Warren Court by the Lovings' convictions and forced exile for marrying across race lines as essentially indistinguishable from barriers to legal marriage that, for example, turned on poverty²⁵ or incarceration.²⁶

Ten years ago, amidst ongoing public debate about sexual orientation-based marriage regulations, the *Fordham Law Review's* symposium marking *Loving's* fortieth anniversary focused on "explor[ing] in depth the modern implications of . . . *Loving*—what it says about the state's role in intimate relationships, as well as what it might explain about race, family, and the place of marriage in modern society."²⁷ Now, with the predominant constitutional questions animating *Obergefell* itself resolved, we turn to focus intently on the questions of race that Justice Kennedy tried to quiet in his opinion.²⁸ While Chief Justice Earl Warren's opinion certainly provides the Court's first articulation of the importance of marriage in the constitutional canon,²⁹ it clearly also addresses the "scar of race" and its enduring impact.³⁰ So, putting race at the center of our inquiry, we ask: What can *Loving* tell us about the ongoing salience of race in twenty-first century America? What should we make of the growth, albeit modest, in interracial relationships since 1967? How should we think about the multiracial children of interracial

20. See R.A. Lenhardt, *Race, Dignity, and the Right to Marry*, 84 FORDHAM L. REV. 53, 55–56 (2015).

21. *Obergefell v. Hodges*, 135 S. Ct. 2584, 2589 (2015).

22. *Loving*, 388 U.S. at 11.

23. *Obergefell*, 135 S. Ct. at 2599.

24. *Id.*

25. See generally *Zablocki v. Redhail*, 434 U.S. 374 (1978).

26. See generally *Turner v. Safley*, 482 U.S. 78 (1987).

27. Symposium, *supra* note 2, at 2675.

28. Cf. *Grutter v. Bollinger*, 539 U.S. 306, 395 (2003) (Kennedy, J., dissenting); Pamela S. Karlan, *The Law of Small Numbers: Gonzales v. Carhart, Parents Involved in Community Schools, and Some Themes from the First Full Term of the Roberts Court*, 86 N.C. L. REV. 1369, 1376–77 (2008). It bears noting, however, that *Obergefell's* affirmation of equal marriage rights for LGBT couples left open a number of important constitutional questions. The Court will decide one of them—whether public accommodation laws prohibiting discrimination on the basis of sexual orientation violate First Amendment rights of expression and religion where same-sex marriage is concerned—in *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*, No. 16-111 (U.S. argued Dec. 5, 2017).

29. R.A. Lenhardt, *Forgotten Lessons on Race, Law, and Marriage: The Story of Perez v. Sharp*, in RACE LAW STORIES 343, 366 (Rachel F. Moran & Devon W. Carbado eds., 2008) (discussing the effects of antimiscegenation law provisions).

30. See generally PAUL M. SNIDERMAN & THOMAS PIAZZA, THE SCAR OF RACE (1995).

marriages? What is the purpose of Chief Justice Warren’s conclusion in his *Loving* opinion that the fact that Virginia’s antimiscegenation law “prohibits only interracial marriages involving white persons demonstrates that the racial classifications must stand on their own justification, as measures designed to maintain White Supremacy”³¹? What accounts for the failure of the term “White Supremacy” to surface meaningfully in other cases?

We begin from the position that, even fifty years later, *Loving* provides ample foundation for an inquiry into the operation of race and racial inequality in the United States, which touches on the queries outlined above, as well as many others. In our view, a symposium focused on *Loving* makes a significant contribution by deepening scholarly analysis of that decision and by explicating the kinds of issues and concerns that should be at the heart of research concerning racial equality today. The searing image of violence erupting as avowed white nationalists and supremacists marched through the streets of Charlottesville, Virginia, this past summer—little more than 100 miles from Central Point, the small town where Mildred and Richard grew up and later raised their own family,³² and only months after the fiftieth anniversary of the *Loving* decision itself—provides a strong rejoinder to those who would contend otherwise.³³ The turmoil, hatred, and the senseless loss of life that marked that day only underscored how far our country remains from the postracial future imagined by so many following Barack Obama’s assumption of the American presidency and how great the need to think seriously and deeply about race continues to be.³⁴ Sadly, the words of our current President in the wake of the day’s events also underscore this priority.³⁵ President Donald Trump’s comments insisting that the blame for the “hatred, bigotry and violence” that unfolded that day fell on “many sides” was rightly rejected by commentators of both sides of the aisle as wrongheaded and solicitous of the very racist elements responsible for the tragedy.³⁶

Our goal in organizing this Symposium was to explore how *Loving* has influenced U.S. society institutionally, demographically, and relationally. Doing so obviously required a focus on the present, where the disruptive effects of the interracial “mixing” and racial inclusion *Loving* endorsed can be seen in the growth of marriages and dating across racial lines. Nearly 15 percent, or one in seven, of all new marriages in 2008 were between people

31. *Loving v. Virginia*, 388 U.S. 1, 11 (1967).

32. Robert A. Pratt, *Crossing the Color Line: A Historical Assessment and Personal Narrative of Loving v. Virginia*, 41 *HOW. L.J.* 229, 234 (1998).

33. Joe Heim, *Recounting a Day of Rage, Hate, Violence and Death*, *WASH. POST* (Aug. 14, 2017), <https://www.washingtonpost.com/graphics/2017/local/charlottesville-timeline> [<https://perma.cc/FY4S-QYNY>].

34. See, e.g., Mario Barnes et al., *A Post-Race Equal Protection?*, 98 *GEO. L.J.* 967, 967–71 (2010).

35. Glenn Thrush & Maggie Haberman, *Trump Is Criticized for Not Calling Out White Supremacists*, *N.Y. TIMES* (Aug. 12, 2017), <https://www.nytimes.com/2017/08/12/us/trump-charlottesville-protest-nationalist-riot.html> [<https://perma.cc/G9L8-K4EX>].

36. *Id.*

of different races or ethnicities.³⁷ This said, a focus on the present alone would be a woefully insufficient lens through which to interrogate this crucial precedent. To comprehend *Loving*'s impact fully, we understood that both its past and its future must be matters of concern as well. The former has relevance because, historically, race in the United States has been socially constructed through interlocking narratives including law, cultural practice, and institutions. Understanding the edifice for that racial hierarchy and how it was constituted ensures not only deeper comprehension of Mildred and Richard Loving's particular travails but also the structural racism and inequality still operating today, which affect areas such as employment discrimination, housing segregation, and school segregation—all of which contrain people's ability to meet and form relationships.³⁸

Finally, keeping an eye on the future created opportunities to deepen understanding of the current effects of systemic racism and to develop systems-based strategies for continuing the struggle for social justice at a time when U.S. demographics are shifting away from a white majority.³⁹ It also enabled an exploration of interracial marriages beyond those who are themselves married. More than one-third of all adults surveyed in 2009 reported having a family member whose spouse is of a different race or ethnicity—up from less than a quarter in 2005.⁴⁰ Since *Loving*, the proportion of the U.S. population with multiple racial heritages has grown dramatically.⁴¹ Moreover, the children born in the aftermath of *Loving* also have disrupted the social construction of race itself, with more people self-identifying as biracial, multiracial, or mixed race. Yet current research suggests that mixed-race persons continue to experience discrimination that targets them as nonwhites rather than as uniquely mixed race.⁴²

The four roundtable discussions and two keynote addresses that constituted this Symposium were designed to advance the multicontextual

37. PEW RESEARCH CTR., MULTIRACIAL IN AMERICA: PROUD, DIVERSE AND GROWING IN NUMBERS 11 (2015), http://assets.pewresearch.org/wp-content/uploads/sites/3/2015/06/2015-06-11_multiracial-in-america_final-updated.pdf [<https://perma.cc/6AX9-JYA3>] (noting that “since 1980 the share of marriages between spouses of different races has increased almost fourfold (from 1.6% to 6.3% in 2013)”).

38. R.A. Lenhardt, *According to Our Hearts and Location: Toward a Structuralist Approach to the Study of Interracial Families*, 16 J. GENDER RACE & JUST. 741, 743 (2013).

39. Associated Press, *Census: Whites No Longer a Majority in U.S. by 2043*, CBS NEWS (Dec. 12, 2012, 4:13 PM), <https://www.cbsnews.com/news/census-whites-no-longer-a-majority-in-us-by-2043/> [<https://perma.cc/78UD-5YHZ>].

40. Compare PEW RESEARCH CTR., MARRYING OUT: ONE-IN-SEVEN NEW U.S. MARRIAGES IS INTERRACIAL OR INTERETHNIC, at iii (2010), <http://www.pewsocialtrends.org/files/2010/10/755-marrying-out.pdf> [<https://perma.cc/Q5F4-YS3J>] (reporting that 35 percent of adults “say they have a family member who is married someone of a different race”), with 22% of Americans Have a Relative in a Mixed-Race Marriage, PEW. RES. CTR. (Mar. 14, 2006), <http://www.pewsocialtrends.org/2006/03/14/guess-whos-coming-to-dinner/> [<https://perma.cc/7F8K-HEGT>] (reporting that 22 percent of American adults “say that they have a close relative who is married to someone of a different race”).

41. See PEW RESEARCH CTR., *supra* note 37, at 6.

42. See TANYA KATERÍ HERNÁNDEZ, MULTIRACIALS AND CIVIL RIGHTS: MIXED-RACE STORIES OF DISCRIMINATION (forthcoming Aug. 2018).

program of study just described through robust and wide-ranging conversation about *Loving* and the challenges to equality that attend racial mixture today. While legal issues figured prominently, we fostered a truly interdisciplinary discourse about interracial relationships and racial mixture, which drew on the insights of scholars from a variety of academic backgrounds. The first panel, “A Focus on Loving in Law and Film,” set the stage for this success by locating our academic engagement with *Loving* in a documentary film that toggles between “black and white footage of the Lovings produced by Hope Ryden and shot by Abbot Mills”;⁴³ “artistic documentary images . . . shot by photographer Grey Villet”; and “voice-over [of the Lovings], their [lawyers], friends[,] and witnesses.”⁴⁴ As Nancy Buirski—the director of the film whom we were very fortunate to be able to include as a panelist—once explained, the incredible images used to make this film, especially those captured in the “luminous vérité footage,” function to create “not only a narrative sensibility but also a time capsule of life in the [sixties]” for the Lovings, as well as others.⁴⁵

This engagement with the everyday lives of Mildred and Richard—something that cases themselves rarely provide—made for a rich discussion of topics ranging from documentary film to religion. Two panelists, Regina Austin and Kevin Noble Maillard, presented essays that consider more deeply the utility of documentary film and law in constructing the narratives of plaintiffs and people of color.⁴⁶ Solangel Maldonado and Leora Eisenstadt each used aspects of the documentary to focus on key issues raised by *Loving*. For example, Maldonado, who is currently working on a book on interracial intimacy, trained her attention on the children of interracial unions. Eisenstadt focused on issues of religion. Using the *Loving* district court’s infamous statement—“Almighty God created the races . . . and he placed them on separate continents. And but for the interference with his arrangement there would be no cause for such marriages”⁴⁷—as a jumping-off point, Eisenstadt’s essay in this Symposium considers the extent to which “America’s progression toward equal treatment regardless of race, gender, and sexual orientation is inherently intertwined with religion.”⁴⁸

The second day of the symposium began with two keynote addresses that anchored panelists and participants alike. William Zabel, a partner at Schulte, Roth & Zabel LLP, kept the *Loving* plaintiffs forefront in the minds of those gathered by detailing his experiences as a young lawyer assigned to assist in drafting the briefs in the case. Zabel—who wrote a 1965 article in the *Atlantic Monthly* arguing that antimiscegenation laws had their roots in

43. *In Her Own Words: Nancy Buirski Shares a Scene from The Loving Story*, INDIEWIRE (Feb. 12, 2012, 10:55 AM), <http://www.indiewire.com/2012/02/in-her-own-words-nancy-buirski-shares-a-scene-from-the-loving-story-242421/> [<https://perma.cc/42B6-BMPV>].

44. *Id.*

45. *Id.*

46. See generally Austin, *supra* note 18; Kevin Noble Maillard, *Hollywood Loving*, 86 FORDHAM L. REV. 2647 (2018).

47. *Loving v. Virginia*, 388 U.S. 1, 2 (1967).

48. Leora F. Eisenstadt, *Enemy and Ally: Religion in Loving v. Virginia and Beyond*, 86 FORDHAM L. REV. 2659, 2660 (2018).

slavery and, accordingly, could not be deemed constitutional⁴⁹—played an instrumental role in developing the arguments and theories that led to the decriminalization of interracial marriage.⁵⁰ Professor Melissa Murray’s keynote built nicely on this foundation. It considered decriminalization and the impact of making interracial relationships lawful after *Loving*.⁵¹ In particular, Murray observed that instead of introducing broadscale change in the treatment of interracial couples and families, *Loving* merely led to punishment and the application of different regulatory tools in areas such as child custody, where white women intimately involved with black men frequently lost custody of their biological children.⁵² This observation, Murray argued, has serious implications for decriminalization and the regulation of family units more generally.⁵³

The remaining conference panels created opportunities to explore specific dimensions of the *Loving* case. For example, “*Loving v. Virginia*’s Battle Against ‘White Supremacy’ and Segregation Today” grappled with the meaning of the Court’s reference to white supremacy, an undertheorized concept whose impact on intimate relationships and family has yet to be fully understood. Linda McClain and Robin Lenhardt together considered notions of bigotry, further discussed in McClain’s article,⁵⁴ as well as the value of the Court’s reliance on white supremacy.

Rose Cuison Villazor went on to explore ways of combatting lingering “barriers to the establishment of racially integrated neighborhoods and communities” for interracial couples and others.⁵⁵ Among other things, she imagines providing incentives to real estate developers to employ innovative methods of integrating neighborhoods.⁵⁶ Similarly, Leah Hill looked back at the antimiscegenation laws that were at the center of the *Loving* decision to reveal what they can teach us about the overrepresentation of black children in the child welfare system today.⁵⁷ Russell Robinson and David Frost looked “to make manifest the tension between the public posture of LGBT-rights litigants and the practices of some LGBT people who discriminate

49. See generally William D. Zabel, *Interracial Marriage and the Law*, ATLANTIC MONTHLY, Oct. 1965, at 75, reprinted in *INTERRACIALISM: BLACK-WHITE INTERMARRIAGE IN AMERICAN HISTORY, LITERATURE, AND LAW* 54 (Werner Sollors ed., 2000).

50. Stephanie Russell-Kraft, *Lion of the Bar Recalls 1967 Interracial Marriage Case Depicted in Loving*, BLOOMBERG (Nov. 15, 2016), <https://biglawbusiness.com/lion-of-the-bar-recalls-1967-interracial-marriage-case-depicted-in-loving/> [https://perma.cc/JA39-MGFK].

51. See generally Melissa Murray, *Loving’s Legacy: Decriminalization and the Regulation of Sex and Sexuality*, 86 FORDHAM L. REV. 2671 (2018).

52. *Id.* at 2693.

53. *Id.* at 2693–94.

54. See generally Linda C. McClain, *Prejudice, Constitutional Moral Progress, and Being “on the Right Side of History”*: Reflections on *Loving v. Virginia at Fifty*, 86 FORDHAM L. REV. 2701 (2018).

55. Rose Cuison Villazor, *Residential Segregation and Interracial Marriages*, 86 FORDHAM L. REV. 2717, 2718, 2722 (2018).

56. *Id.* at 2724–26.

57. Leah A. Hill, *Loving Lessons: White Supremacy, Loving v. Virginia, and Disproportionality in the Child Welfare System*, 86 FORDHAM L. REV. 2727, 2728 (2018).

based on race in selecting partners.”⁵⁸ Their contribution is part of a larger study on race and sexual orientation. Finally, Chinyere Osuji provided a comparative context by describing her research of the common discrimination that interracial couples confront in Brazil and the United States.⁵⁹

Similarly, the third panel considered the “Children of *Loving*,” individuals whose very existence, as an historical matter, served implicitly to contest the presumed legitimacy of racial categories like those formerly utilized under Virginia law. The members of this panel’s collective view was that, “[a]lthough there are certainly many wonderful things about intermarriage, to say that intermarriage is the solution to the problem of racism is not a whole lot more logical than saying that heterosexual marriage is the route out of sexism.”⁶⁰ Accordingly, submissions by these individuals work to problematize some of the thinking about the status of multiracial individuals in the United States.

Jasmine Mitchell and Reginald Oh both addressed the role of racial oppression and bias in how interracial children have been situated,⁶¹ while Taunya Banks and Kevin Brown considered questions about how multiracial individuals are categorized and understood. Brown offers a moving essay detailing his experience as the father of “two black-white biracial children.”⁶² Banks, for her part, argues that multiracial individuals should have the freedom to identify themselves as they see fit where race is concerned. She contends, however, that the need to create special categories to capture their multiracial status would be problematic.⁶³ To this extent, Banks’s position resonates with Professor Tanya Hernández’s observation that antidiscrimination law is not structured around specific racial categories. In an upcoming book, Hernández provides an exhaustive review of multiracial discrimination cases in a variety of contexts, including the workplace, educational settings, housing, public accommodations, jury service, and the criminal justice system. She argues that those cases demonstrate that multiracial claimants face standard discrimination that targets them as nonwhites rather than as uniquely mixed race.⁶⁴

58. Russell K. Robinson & David M. Frost, *LGBT Equality and Sexual Racism*, 86 *FORDHAM L. REV.* 2739, 2741 (2018).

59. See generally CHINYERE OSUJI, *BOUNDARIES OF LOVE: INTERRACIAL MARRIAGE FROM THE UNITED STATES TO BRAZIL* (forthcoming 2019).

60. Laura Desfor Edles, “Race,” “Ethnicity,” and “Culture” in Hawai‘i: *The Myth of the “Model Minority” State*, in *NEW FACES IN A CHANGING AMERICA: MULTIRACIAL IDENTITY IN THE 21ST CENTURY* 222, 225 (Loretta I. Winters & Herman L. DeBose eds., 2003).

61. Jasmine Mitchell, *The Hope of Loving and Warping Racial Progress Narratives*, 86 *FORDHAM L. REV.* 2755, 2758 (2018); Reginald Oh, *Fear of a Multiracial Planet: Loving’s Children and the Genocide of the White Race*, 86 *FORDHAM L. REV.* 2761, 2761–62 (2018).

62. Kevin Brown, *Evolution of the Racial Identity of Children of Loving: Has Our Thinking About Race and Racial Issues Become Obsolete?*, 86 *FORDHAM L. REV.* 2773, 2773 (2018).

63. Taunya Lovell Banks, *Multiracial Malaise: Multiracial as a Legal Racial Category*, 86 *FORDHAM L. REV.* 2783, 2788–92 (2018).

64. See HERNÁNDEZ, *supra* note 42.

Panel four, “*Loving v. Virginia*, Twenty-First Century Science, and the Ethics of Biologizing Race,” moderated by Jonathan Kahn, brought the Symposium to a close by providing an opportunity to disrupt and rethink popular perceptions of race, biology, and technology. Osagie Obasogie considered the antieugenic rather than romantic premise of the *Loving* decision in order to reorient our understanding of the case.⁶⁵ Terence Keel examined how Euro-American ideas about God, nature, and race contributed to the development of antimiscegenation laws in the early colonies and later the United States.

Two other panelists discussed the ways in which notions of biologized race inform modern assisted reproductive techniques (ART), as well as the choices made by the people seeking to utilize them in becoming parents. Aziza Ahmed addressed the need to “interrogate the regulation of race in the context of family”⁶⁶ and to attend to the “diffuse regulatory environment”⁶⁷ in which doctors and patients made choices about assisted reproduction.⁶⁸ Kimani Paul-Emile, using a recent complaint from *Cramblett v. Midwest Sperm Bank, LLC*⁶⁹ as a point of departure, troubled the common presumption in ART that race concordance between parents and their children is a neutral and natural biological imperative.⁷⁰ She uses *Cramblett*—a case in which a white mother brings a wrongful birth suit because her doctor wrongly impregnates her with the sperm of a black man⁷¹—to examine the stigma and disabling condition that blackness still constitutes in the United States.⁷² This inquiry serves to bolster an argument that Paul-Emile makes about race and disability status in the *Georgetown Law Journal*.⁷³

As a whole, this Symposium makes a significant contribution by deepening scholarly analysis of the *Loving* decision and explicating the kinds of issues and concerns that should be at the heart of research concerning racial equality today. Fifty years after *Loving*’s breathtaking condemnation of racial hierarchy and inequality, this research is even more important than ever.

65. See generally Osagie K. Obasogie, *More Than Love: Eugenics and the Future of Loving v. Virginia*, 86 FORDHAM L. REV. 2795 (2018).

66. Aziza Ahmed, *Race and Assisted Reproduction: Implications for Population Health*, 86 FORDHAM L. REV. 2801, 2801 (2018).

67. *Id.*

68. See generally *id.*

69. No. 2014-L-010159 (Ill. Cir. Ct. Sept. 3, 2015); see also Complaint for Wrongful Birth and Breach of Warranty, *Cramblett*, No. 2014-L-010159 (Ill. Cir. Ct. Sept. 3, 2015), 2014 WL 4853400.

70. See generally Kimani Paul-Emile, *When a Wrongful Birth Claim May Not Be Wrong: Race, Inequality, and the Cost of Blackness*, 86 FORDHAM L. REV. 2811 (2018).

71. See *id.* at 2813–14.

72. *Id.* at 2817–20.

73. See generally Kimani Paul-Emile, *Blackness as Disability?*, 106 GEO. L.J. 293 (2018).