



TOURO COLLEGE
JACOB D. FUCHSBERG LAW CENTER
Where Knowledge and Values Meet

**Digital Commons @ Touro Law
Center**

Scholarly Works

Faculty Scholarship

2009

Cultural Inversion and the One-Drop Rule: An Essay on Biology, Racial Classification, and the Rhetoric of Racial Transcendence

Deborah W. Post
Touro Law Center, dpost@tourolaw.edu

Follow this and additional works at: <https://digitalcommons.tourolaw.edu/scholarlyworks>



Part of the [Law and Society Commons](#)

Recommended Citation

72 Alb. L. Rev. 909 (2009)

This Article is brought to you for free and open access by the Faculty Scholarship at Digital Commons @ Touro Law Center. It has been accepted for inclusion in Scholarly Works by an authorized administrator of Digital Commons @ Touro Law Center. For more information, please contact lross@tourolaw.edu.

CULTURAL INVERSION AND THE ONE-DROP RULE: AN ESSAY ON BIOLOGY, RACIAL CLASSIFICATION, AND THE RHETORIC OF RACIAL TRANSCENDENCE

Deborah W. Post

The great paradox in contemporary race politics is exemplified in the narrative constructed by and about President Barack Obama. This narrative is all about race even as it makes various claims about the diminished significance of race: the prospect of racial healing, the ability of a new generation of Americans to transcend race or to choose their own identity, and the emergence of a post-racial society.¹ While I do not subscribe to the post-racial theories

¹ I tried to find the source of the claims that Obama “transcends” race. There are two possibilities: that Obama is not identified or chooses not to identify as a black man but as someone not “raced” and/or that Obama is simply able to overcome the resistance of white voters who ordinarily would not be inclined to vote for a black man. While these sound as if they are the same, they are actually different. If the entire community, including both whites and blacks, no longer see race as relevant, then the reference to “transcendence” or to a “post-racial” moment in history is probably appropriate. If, however, the phenomenon we are considering is simply the fact that some whites no longer consider race relevant in judging who is qualified, if racial bias or animus has lost some of its force, then race may still be relevant in a multitude of ways important to both whites and blacks. In his speech at the Democratic National Convention in July 2004, Obama described a national identity that was inclusive, referencing not only ideology but ethnicity and race. Barack Obama, Ill. Senate Candidate, Address at the Democratic National Convention (July 27, 2004), available at <http://americanradioworks.publicradio.org/features/sayitplain/bobama.html>. Before this speech, stories about Obama reflected both approaches to racial transcendence. He was described as “the embodiment of the multicultural society . . . because he himself is multicultural.” Jonathan Tilove, *Senate Candidate Embodies Diversity: Chicago Democrat Takes Politics Beyond Race*, ST. PAUL PIONEER PRESS, Mar. 21, 2004, at A3. The article continues by noting that Obama was “a harbinger of a politics beyond race.” *Id.* After the speech, a different journalist used the more limited notion of transcendence. See Faye Fiore, *He’s the Hill’s King for a Day, but Senate Has Other Plans*, L.A. TIMES, Jan. 5, 2005, at A16 (“His appeal transcends race . . . he did as well among voters in the white suburbs of Chicago as he did in its inner city.”). In some instances this notion of transcendence is accompanied by some reference to an attempt by Obama to avoid being labeled as a black politician. David Mendell, *Ryan, Obama Enter New Ring*, CHI. TRIB., Mar. 18, 2004, at C1 (“Before Tuesday’s primary, Obama, whose appeal in the Democratic primary clearly transcended race, tried to downplay his role as a budding black leader, saying that he was ‘of the African-American community, but not limited by it.’”). As for the theme of racial healing and redemption, this theme arose after the victory by Obama in the presidential primaries or the general election in 2008. There were stories about voters who apparently felt that voting for Obama was redemptive, a sentiment that conservatives attempted to turn to their advantage. “[S]ome whites regard a vote for Obama as a victory for diversity, atonement for past sins and a

that have been floated in the press and other media,² I do believe that something of great cultural significance occurred which made the candidacy and the election of Barack Obama possible. This essay is an attempt on my part to consider what that change might have been by examining the relationship between science and social change, language and cultural categories, and the role law has played, if any, in dismantling the structures of racism.

What I have to say has very little to do with biology, except to the extent that racial classification is a cultural practice that sometimes deploys biological arguments strategically. Early in the Twentieth century sociologists and anthropologists noted that in the United States, race was more a matter of caste than class and that, unlike other caste systems, it is not cultural, but “biological.”³ In a racial caste, one sociologist argued, “the criterion is primarily physiognomic, usually chromatic, with socio-economic differences implied.”⁴ Another noted that “American caste is pinned not to cultural but to biological features—to color, features, hair form, and the like.”⁵ Biology was used in this early sociological literature on race in a way that made it synonymous with physical appearance or physical characteristics. In politics and legal discourse at the time, racial purity was about “blood” and rules of descent.

Caste has been described as a “categorical barrier to social mobility”⁶ but it is much more than that. It is a hierarchical structure supported by law and a system of taboos, the violation of

catalyst for racial healing,” while conservatives countered that this was a “betrayal of the ideals of a colorblind society.” Richard Fausset, *Obama's Race is Seen As a 'Bonus'*, L.A. TIMES, Nov. 3, 2008, at A8. Marion Wright Edelman was the most eloquent in discussing the election of Obama as a “catalyst for racial healing.” Interview by Charlie Rose with Marian Wright Edelman, President, Children's Defense Fund, on the Charlie Rose Show (Nov. 3, 2008) (“[A]nd what has been so marvelous is to see old and young and every race and every place coming together to say, we want to look ahead and look forward and to close that gap between rich and poor, to really show that racial healing is possible . . .”).

² See Charles Lawrence III, *Unconscious Racism Revisited: Reflections on the Impact and Origins of "The Id, the Ego, and Equal Protection"*, 40 CONN. L. REV. 931, 973 (2008) (“The Media has dubbed [Barack Obama] a ‘post-racial’ candidate.”) (citations omitted).

³ See generally JOHN DOLLARD, *CASTE AND CLASS IN A SOUTHERN TOWN* 61–96 (3d ed. 1949) (discussing racial caste in “Southerntown”). For a discussion of racial castes and exogamous rules, see Kingsley Davis, *Intermarriage in Caste Societies*, 43 AM. ANTHRO. 376, 386–90 (1941) (analyzing caste cross culturally). For a criticism of Boas and the cultural anthropologists whose work undermined the argument that race explained all human difference while reducing race to simple biology, see generally Kamala Visweswaran, *Race and the Culture of Anthropology*, 100 AM. ANTHRO. 70 (1998).

⁴ Davis, *supra* note 3, at 387.

⁵ DOLLARD, *supra* note 3, at 63.

⁶ DOLLARD, *supra* note 3, at 440.

which evokes horror, not simply anger or outrage.⁷ The obvious example was the “taboo placed on the sexual contact of Negro men and white women.”⁸

A caste system is rigid and the social consequences extreme. The existence of a caste system depends not only on a denial of the complete humanity of the members of the lower class but also the existence of prejudice as an “emotional fact connected to the emotional life of each person who experiences it.”⁹ W.E.B DuBois explained racial caste using the metaphor of a glass tomb where, if one of those entombed were to break through the glass “in blood and disfigurement” he would find himself “faced by a horrified, implacable and quite overwhelming mob of people frightened for their own existence.”¹⁰

That was seventy years ago, before legal reform dismantled the prescription of racial endogamy or, rather the proscription of racial exogamy, eroding the very foundations of racial caste in the United States. Structural support for racial caste—the laws that made interracial marriage illegal and void and the rule of descent that we know as the “one drop rule”—has been dismantled. The structural integrity of racial caste may have been compromised by this development, but a caste system cannot be completely eradicated if racial prejudice continues as a social fact, as a part of the ‘emotional life’ of a people. The question then is whether the mental and emotional tenacity of the caste system persists.

In this article, my thesis is simple. If racial caste has been upended by changes in legal rules that created a hierarchical racial structure, its demise also has been hastened by the use of symbols, a strategy of cultural inversion with respect to the meaning of race. The operative terms of a centuries-old debate have been inverted. Instead of policing racial purity with arguments about blood and biology or the modern version of them, DNA and genes, these instruments of exclusion, the tools of white supremacists and segregationists, have been used effectively, most recently by Barack Obama, to demonstrate the physical connection between groups that are still treated discursively, politically and socially, as racially

⁷ *Id.*

⁸ DOLLARD, *supra* note 3, at 438–439.

⁹ *Id.*

¹⁰ W.E.B. DuBois, *DUSK OF DAWN: AN ESSAY TOWARD AN AUTOBIOGRAPHY OF A RACE CONCEPT* 131 (1970). This book is autobiographical but is also a discussion of the experience of and the meaning of race. Written by DuBois in 1940, the book has been discussed and criticized by K. Anthony Appiah and Amy Gutmann. See K. ANTHONY APPIAH & AMY GUTMANN, *COLOR CONSCIOUS, THE POLITICAL MORALITY OF RACE* (1998).

distinct.

I. MARRIAGE RULES, HYPODESCENT AND THE BIOLOGY OF RACIAL PURITY

Barack Obama refers to himself as a black man who is the son of a white woman from Kansas and an African man from Kenya.¹¹ He is able, as he said in his speech in Selma, Alabama, to lay claim to the civil rights struggle in the United States simply because his parents' marriage would not have been possible but for the fight to end de jure segregation and the anti-miscegenation laws.¹² Though he has been faulted for the chronological inconsistencies in his metaphor,¹³ he is also incorrect in assuming that anti-miscegenation laws were anathema to blacks in the same way as de jure segregation of public accommodations and education. Blacks resented anti-miscegenation laws, but with some notable exceptions, they did not embrace the idea of marriage with whites.¹⁴ It may be that the elimination of anti-miscegenation laws, the rules forbidding racial exogamy, liberated both blacks and whites from a legal system that ensured the continued existence of a formal racial hierarchy.

I was born in 1949 to a black man, the grandson of a runaway

¹¹ See Senator Barack Obama, Remarks at the Selma Voting Rights March Commemoration (Mar. 4, 2007), available at http://www.barackobama.com/2007/03/04/selma_voting_rights_march_comm.php.

¹² See *id.*

¹³ Those who found fault with Obama's speech were quick to point out that his premise—that the march in Selma led to outreach to Africa, which brought his father to the U.S., and the march was, therefore, causally connected to his parents' decision to marry and to his birth—was misleading. His debt to the civil rights movement, and his challenge to those who raised a question as to his authenticity as a black leader, was the following:

There was something stirring across the country because of what happened in Selma, Alabama, because some folks were willing to march across a bridge. So [Obama's parents] got together and Barack Obama Jr. was born. So don't tell me I don't have a claim on Selma, Alabama. Don't tell me I am not coming home to Selma, Alabama. I'm here because somebody marched. I'm here because you all sacrificed for me. I stand on the shoulders of giants.

Id.

Barack Obama was born in 1961 and the march in Selma occurred in 1965. There is no way his birth can be credited to the march in Selma unless Selma is a placeholder for the entire civil rights movement.

¹⁴ The historian, Peggy Pascoe, has written extensively about the anti-miscegenation laws in the United States. She concludes that "[t]he right to marry across racial lines rarely seemed as important as challenging racial discrimination in jobs, housing and political rights. Consciously or unconsciously most Blacks preferred to marry among themselves. Like Whites, many Blacks, including NAACP." PEGGY PASCOE, WHAT COMES NATURALLY: MISCEGENATION LAW AND THE MAKING OF RACE IN AMERICA 173–80 (2009)

slave who took the Underground Railroad to Auburn, New York,¹⁵ and a white woman who was born in Canada and moved to Rochester, New York when she was a child. I was born one year after the decision in *Perez v. Sharp*.¹⁶ *Perez* was a decision of the Supreme Court of California invalidating that state's anti-miscegenation law.¹⁷ President Obama was born twelve years later, in 1961, before the Supreme Court of the United States declared anti-miscegenation laws unconstitutional in *Loving v. Virginia*.¹⁸ In 1948 there were thirty states that had anti-miscegenation laws and California was one of them.¹⁹ In 1967 there were only sixteen or so states with anti-miscegenation statutes.²⁰

The distance between *Perez* and *Loving* is more than a matter of time. It is a yardstick that measures the ascent and decline of intellectual theories, the "scientific" theory of race, the oppositional ideas advanced by cultural anthropologists, and the contest between the two, and the persistence of the resistance, over decades, of the of African Americans, principally through the work of the NAACP, to anti-miscegenation laws.²¹ It is a measure of the progress of the

¹⁵ My great grandfather, John H. Waire, was a partner in a barbershop located on the corner of Genesee and State Streets in Auburn. According to a recent history: "John Waire (elsewhere referred to as a 'freedom seeker' which I think means a runaway slave) quickly became part of the of the local and regional African American community. In 1870, he was appointed, along with Zadoc Bell and Nelson Davis (Harriet Tubman's husband) as trustee for the property of the short-lived AME Church of Auburn (known also as St. Mark's Methodist Episcopal Church). He became a hostler and barber in the firm of Horbeck and Waire." Underground Railroad, Abolitionism, African American Life, Sponsored by the Auburn Historic Resources Review Board, Cayuga County Historian's Office (2004-05), <http://www.co.cayuga.ny.us/history/ugrr/report/PDF/5a.pdf>

¹⁶ 198 P.2d 17 (Cal. 1948).

¹⁷ *Id.* at 29.

¹⁸ 388 U.S. 1, 12 (1967).

¹⁹ See *Perez*, 198 P.2d at 35 (Carter, J., concurring) (noting that in eighteen of the then forty-eight states, no such laws existed). I am pleased to say that New York was not one of the states that had an anti-miscegenation law. *Id.* The explanation offered by one scholar was simple demographics:

The nineteen states which have no such laws can neither be commended for lack of prejudice nor condemned for laxity in dealing with social problems, since in no one of these states do the Negroes comprise more than five, while in seven of these states they actually form less than one per cent of the total population.

Comment, *Intermarriage With Negroes—A Survey of State Statutes*, 36 YALE L.J. 858, 859 (1927). New York fell into the category in which one to five percent of the population was black. *Id.* at n.3. One interesting fact that I learned about New York, however, was that in the seventeenth century it had a law outlawing interracial sex, but not interracial marriage. Peggy Pascoe, *Miscegenation Law, Court Cases, and Ideologies of "Race" in Twentieth-Century America*, 83 J. AM. HIST. 44, 50 n.15 (1996).

²⁰ *Loving*, 388 U.S. at 6.

²¹ See PASCOE, *supra* note 13, at 173–80 (describing the tactics repeatedly used by the NAACP in its opposition to such laws dating as far back as 1910). When state legislatures across the country, responding to the racial hysteria surrounding Jack Johnson's marriage to

civil rights movement and the ideological distance covered in two decades.

Ms. Perez, who was Chicana, attempted to get a marriage license to marry Mr. Davis, who was Black, and they were denied the marriage license because the marriage was prohibited by statute.²² It is best to start with the concurring opinion of Judge Jesse Washington Carter rather than Judge Traynor's very wonderful majority opinion. In his concurring opinion, Judge Carter appears to scold the Petitioners, Perez and Davis, or their attorney, for citing to *Mein Kampf*:

To bring into issue the correctness of the writings of a madman, a rabble-rouser, a mass-murderer [Adolph Hitler], would be to clothe his utterances with an undeserved aura of respectability and authoritativeness. Let us not forget that this was the man who plunged the world into a war in which, for the third time, Americans fought, bled, and died for the truth of the proposition that all men are created equal.²³

But Judge Carter was not angry at the Petitioners but at the State, and perhaps the dissent, whose arguments about racial superiority and inferiority were, as Petitioner's attorney pointed out, uncomfortably similar to those of Hitler. There can be no doubt that the Petitioner's strategy, at a time when the revelations of the genocide committed by the Nazi's was fresh in the minds of most Americans, was most effective.

While Judge Carter cited the Declaration of Independence and the 14th Amendment, the Charter of the United Nations, Jefferson, Lincoln and the Apostle Paul, Justice Traynor, in the majority opinion, took on the medico-eugenics arguments that were advanced by the state of California and the dissent. Traynor challenged the factual basis for anti-miscegenation legislation, weighing in with emerging scholarship debunking the very idea of race and racial inferiority. He did not address—he did not need to address—the extensive citations by the dissent to precedent, including decisions of the United States Supreme Court and the highest courts in other jurisdictions, because these cases relied on the ideas and the scholarship he discredited. While the characterization of marriage as a fundamental right in *Perez* has been emphasized in recent

two white women, seemed intent on passing anti-miscegenation statutes in every jurisdiction, the NAACP was mobilized by W.E.B DuBois to go against these laws. *Id.*

²² *Perez*, 198 P.2d at 18.

²³ *Id.* at 34.

scholarship, particularly as the debate rages over same sex marriage, Judge Traynor framed the issue as one which examined whether there was a “social evil” that anti-miscegenation statutes were designed to address.²⁴ If the eugenics arguments were discredited, if the theories about the medical and physical risks of intermarriage were unfounded, the statute could not be justified.

As the dissenting judge pointed out, these beliefs about the mental, moral, and physical inferiority of non-white races, especially Blacks, were pervasive in the United States and had been in place for over one hundred years.²⁵ In the national debate about biological fitness, blood and its purity was invoked, repeatedly. What Traynor and this court did was, according to the dissent, to usurp the legislative function in determining what the facts were and whether they justified the policy expressed in the statute. After this case was decided, however, there were still twenty-nine states with anti-miscegenation laws. There was no stampede to invalidate similar statutes in other jurisdictions.

Barack Obama was six years old when the Supreme Court decided the *Loving* case. The *Loving* case did not revisit the debate about the significance of race. *Loving* states clearly and unequivocally that the statute in Virginia was intended to maintain white supremacy.²⁶ Invidious discrimination of that kind was a violation of the Equal Protection Clause. The advocates for strict construction at the time of *Loving*, concerned with the need for fidelity to the intent of the drafters, would have disagreed, but that argument proved impotent in the face of the moral imperatives operating at that moment in history.²⁷

Robin Lenhardt has discussed why it is that *Loving* is part of the legal canon and *Perez* is not.²⁸ For my part, I am pleased to see this preference questioned. Both *Perez* and *Loving* have value for the

²⁴ “If the miscegenation law under attack in the present proceeding is directed at a social evil and employs a reasonable means to prevent that evil, it is valid regardless of its incidental effect upon the conduct of particular religious groups.” *Id.* at 18.

²⁵ *Id.* at 35 (Shenk, J., dissenting).

²⁶ *Loving*, 388 U.S. at 11.

²⁷ See e.g., Alfred Avins, *Anti-Miscegenation Laws and the Fourteenth Amendment: The Original Intent*, 52 VA. L. REV. 1224 (1966) (predicting “the demise . . . of state laws forbidding interracial marriage”). The author discusses the speeches made in Congress and the committee reports and concludes that the framers of the Fourteenth Amendment never meant to abrogate the power of the states to outlaw interracial marriage. “No Republican member of Congress advocated miscegenation, and the Negroes said they did not desire it. It was not treated like the right to vote or other rights which should be encouraged.” *Id.* at 1253.

²⁸ R. A. Lenhardt, *Forgotten Lessons on Race, Law, and Marriage: The Story of Perez v. Sharp*, in RACE LAW STORIES 343, 344 (Rachel F. Moran & Devon Wayne Carbado eds., 2008).

student of Constitutional Law. *Loving* is an acknowledgment of racial oppression; *Perez* illustrates how that oppression operated—the political and social currency of theories of racial inferiority and superiority that justified the racial segregation and exclusion that was going on in the country up until the time of *Loving v. Virginia*. Together they prove that Constitutional Law is deeply contextual. The moral imagination of the Justices can be enlarged by revelations which prove the need for principles that restrain the ideology of racial supremacy. Unfortunately, the moment of clarity is often short lived.

II. HYPODESCENT AND COMMUNITY: THE “CIRCLE OF WE”²⁹

The rules that police our ability to marry across racial lines are no longer formal and legal, but it was never simply legal sanctions that deterred those who might have considered interracial marriage.³⁰ Informal sanctions can be quite effective as a form of social control. The most powerful of these are threats of violence, shunning or ostracism, but individuals also are disciplined quite effectively through the use of ridicule and gossip.³¹

When I sat down to write this piece, I thought about interracial

²⁹ The “circle of we” comes from several articles by historian David A. Hollinger, a historian who has been thinking about a “post-racial” United States for some time. His theory, a critique of multiculturalism, is hopeful. “[T]he history of the United States shows that even a nation carrying a heavy load of racism can incorporate individuals from an imposing variety of communities of descent on terms of considerable intimacy” but it accepts as a starting point the idea that solidarity, a sense of community or nationality, requires “exclusions as well as inclusions.” David A. Hollinger, *Amalgamation and Hypodescent: The Question of Ethnoracial Mixture in the History of the United States*, 108 AM. HIST. R. ¶ 58–59 (2003), <http://www.historycooperative.org/journals/ahr/108.5/hollinger.html>.

³⁰ By the time the issue of interracial marriage made it into popular culture, the sentiment that repudiated white prejudice was obvious. See, e.g., HARPER LEE, *TO KILL A MOCKINGBIRD* (J.B. Lippincott Company 1960) (marriage of white man to a black woman required subterfuge); *ONE POTATO, TWO POTATO* (Bawalco Picture Company 1964) (custody battle by white father when his former wife marries a black man); *GUESS WHO’S COMING TO DINNER* (Columbia Pictures Company 1967); *FAR FROM HEAVEN* (Clear Blue Sky Productions 2002).

³¹ In 1958, one researcher reported that several of his informants, white women who married black men, “never informed their parents of the marriage.” Joseph Golden, *Social Control of Negro-White Inter-marriage*, 36 SOC. FORCES 267, 268 (1958). Fear, on the part of the family of the white partner, of reputational injury or ostracism created schisms between families. See *id.* In terms of the current informal sanctions, see generally Derek A. Kreager, *Guarded Borders: Adolescent Interracial Romance and Peer Trouble at School*, 87 SOC. FORCES 887, 888–91, 902–05 (2008). In fact, one of the things that makes interracial marriage possible is disconnection from family and friends and from existing social networks. In other words, it is easier to marry across a racial line if the people involved leave their own communities and move to “communities . . . that are relatively tolerant.” M. Belinda Tucker & Claudia Mitchell-Kernan, *New Trends in Black American Interracial Marriage: The Social Structural Context*, 52 J. MARRIAGE & FAM. 209, 209 (1990).

marriage, the communities to which interracial couples belong and the racial categories to which the children of interracial marriage are assigned. I thought about my experience, the experience of people of my generation, the experiences of our first African American President, Barack Obama, and his generation, and the interracial families that exist today.

When I first read *To Kill a Mockingbird*³², a novel that is as popular today with high school teachers as it was when I was in school, the character most of my classmates overlooked, but who caught my attention, was Dolphus Raymond. Dolphus Raymond was a curiosity because he sat with the black people at the trial of Tom Robinson and lived with a black woman.³³ He pretended to be a drunk in public simply to provide whites with some explanation they could understand for his aberrant behavior. Most of my classmates focused on his behavior, but I focused on his geography. He lived as my mother lived: a white person assimilated to, or absorbed, incompletely, into a black family and a black community.

When my mother married my father, there was no question about where we were going to live. We were part of the African American community; we were raised as black children. I never really thought about it in terms of the consequences for my mother, the choice that she made when she decided to marry my father. One measure of the emotional and psychic cost to her might have been the fiction she sometimes employed. My mother, whose maiden name was Ogden, told us she was German Dutch but occasionally she would claim that she was an octoroon.³⁴ I realize now that this deception, which no one really took seriously, was an expression of

³² LEE, *supra* note 29.

³³ *Id.*

³⁴ I did not originally intend to offer up a definition of octoroon, assuming it would be self evident to everyone. I changed my mind, however, because this article is, after all, a meditation on the differences in the way race is perceived today as compared to the way it was understood in the past. I have concluded that the quantification of one's blackness is something that might not be familiar to the readers. An octoroon is a person who is 1/8 black. That means, in simple terms, that one of his or her parents was 1/4 black and that parent had a parent who was 1/2 black, who then had one white and one black parent. Octoroon is an archaic term, and probably was when my mother was alive. As historian David Hollinger has explained:

Some slave-era and Jim Crow governments did employ fractional classifications, providing distinctive rights and privileges for 'octoroons,' 'quadroons,' and 'mulattoes,' but this fractional approach was hard to administer, invited litigation, and blurred lines that many whites preferred to keep clear. 'Mulatto' was dropped from the federal census after 1920, and more and more state governments went the way of Virginia, whose miscegenation statute as revised in 1924 classified as white only a person "who has no trace whatsoever of blood other than Caucasian."

David A. Hollinger, *The One Drop Rule & the One Hate Rule*, 134 DAEDALUS 18, 20–21 (2005).

desire. She did not want to simply be *in* the black community, she wanted to be *of* the black community.³⁵

The data on current attitudes towards racial exogamy are mixed. Local government clerks no longer refuse to issue marriage licenses because the applicants come from different races or because the color differences between the couple suggest they must be from different races.³⁶ The news media now reports that the interracial marriage rate has “soared.”³⁷ The latest polling data indicates a “sea change in public attitudes about interracial marriage” because seventy-five percent of whites and eighty-five percent of blacks approve of interracial marriage.³⁸ Whites are no longer preoccupied with the motives of “Negro pressure groups” that are alleged to have miscegenation as a “major goal.”³⁹

It is self-evident that opposition or resistance by whites to the idea of intermarriage has declined over two decades. In 1998, however, the Constitution of South Carolina still had an anti-miscegenation provision in it.⁴⁰ When the removal of this provision from the State Constitution was placed before the people in the form of a referendum, most people voted in favor of the excision of this relic of *de jure* segregation, but a significant minority—thirty-

³⁵ I have not read it, but I understand that the same immersion in the African American community was described in the book, *The Color of Water*, by James McBride. One reviewer describes what McBride's mother did as a “reverse racial pass” and quotes the passage from the book when the author describes his mother's response when, as a child, he asked her if she was white. She answered: “No. I'm light skinned.” Phillip Brian Harper, *Passing for What? Racial Masquerade and the Demands of Upward Mobility*, 21 CALLALOO 381, 384 (1998).

³⁶ Peggy Pascoe highlights the role that minor functionaries played in policing the anti-miscegenation laws in a section of her book entitled “The Significance of Marriage Licenses”. PASCOE, *supra* note 14, at 138. This could just as well have been titled “Significance of County Clerks or Marriage License Clerks.”

During the first three decades of the twentieth century, eugenicists, vital statisticians, and white supremacists threw themselves into the development of marriage license procedures . . . with remarkably similar results. Displaying considerable faith in the modern administrative state, they assigned marriage license officials the task of sorting applicants into a wide, and increasing, number of categories, some racial, others physical or mental.

Id.

According to Pascoe, “[a]s the legal authority of *Loving* took hold, marriage clerks gradually began to change their practices.” *Id.* at 289.

³⁷ David Crary, *U.S. Interracial Marriage Rate Soars*, TIME, Apr. 12, 2007, available at <http://multiracial.com/site/content/view/1247/2/>.

³⁸ Joseph Carroll, *Most Americans Approve of Interracial Marriages*, GALLUP, Aug. 16, 2007, available at <http://www.gallupoll.com/poll/28417/Most-Americans-Approve-Interracial-Marriages.aspx>.

³⁹ TAYLOR BRANCH, PILLAR OF FIRE: AMERICA IN THE KING YEARS 1963–65 166 (1998).

⁴⁰ See George A. Yancey, *An Analysis of Resistance to Racial Exogamy: The 1998 South Carolina Referendum*, 31 J. BLACK STUD. 635, 636 (2001).

eight percent of the population—thought that the anti-miscegenation rule should be maintained.⁴¹ In 2000, the voters in Alabama voted to repeal the anti-miscegenation statute in that state, but the amendment was either defeated or passed narrowly in rural white counties. Organized opposition came from the Southern Party and Michael Chappell, the leader of the Confederate heritage group who brought suit to remove the amendment from the ballot. When asked, he stated that “Interracial marriage is bad for our Southern culture.”⁴²

After Alabama removed its anti-miscegenation law, there were no formal legal rules anywhere in the United States expressly prohibiting interracial marriage, but according to some sociologists, black/white marriages still represent only a tiny fraction of the marriages in the United States. Sociologists have concluded that the fact that the rate of interracial marriage is lower than “random mixing expectations” means there are “symbolic and social barriers” that prevent such marriages.⁴³

Disapproval of intermarriage has always been something felt more strongly by whites than blacks.⁴⁴ The ambivalence that blacks

⁴¹ *Id.* at 637, 641.

⁴² *Alabama Removes Ban on Interracial Marriage*, USA TODAY, Nov. 11, 2000, available at <http://www.usatoday.com/news/vote2000/al/main03.htm>.

⁴³ Kreager, *supra* note 23, at 887.

⁴⁴ When *Daedalus*, the Journal of the American Academy of Arts and Sciences, published a two volume issue on “The Negro American” in 1965, one contributor noted “[t]he family remains the most racially homogeneous institution in American life.” Thomas F. Pettigrew, *Complexity and Change in American Racial Patterns: A Social Psychological View*, 94 *DAEDALUS* 974, 979 (1965). The rates of intermarriage in the thirty states in which it was legal (Oklahoma and Virginia statutes were being challenged at that time), remained very low, except for Hawaii. *Id.* A poll conducted by Newsweek magazine in 1963 found that ninety percent of whites would object to their daughters dating a Negro. *Id.* Apparently no one asked if they would object to their sons dating Negro women. More interestingly, whites at that time who were “overwhelmingly accepting of Negroes in other institutional realms” also overwhelmingly disapproved of dating or marriage across racial lines. *Id.* Eighty percent would object to their daughter dating a Negro and seventy percent objected to a close friend or relative marrying a Negro. *Id.* By the 1970s, not much had changed. An article euphemistically titled “The Polls: Interracial Socializing” collected opinion polls from Gallup, the National Opinion Research Center, and even Time Magazine. Hazel Erskine, *The Polls: Interracial Socializing* 37 *PUB. OPINION Q.* 283, 283, 290–94 (1973). The data in 1972 showed that sixty-five percent of the Southern whites surveyed disapproved of marriage between whites and blacks. *Id.* at 292. Only twenty-one percent of blacks disapproved. *Id.* Time Magazine reported that sixty-one percent of the blacks who were polled reported that they were “[b]othered [n]ot at [a]ll” when a black man married a white woman. *Id.* at 294. Since the 1970s the rate of interracial marriage has continued to climb. The percentage of couples in interracial marriages has increased from 2.9% in 2002 to 7% in 2008. See, e.g., Susan S. Lang, *Interracial Relationships are on the Increase in U.S., but Decline with Age*, *Cornell Study Finds*, *CHRON. ONLINE*, Nov. 2, 2005, <http://www.news.cornell.edu/stories/nov05/interracial.couples.ssl.html>; Todd Lewan, *Nation Sees View Changing on Mixed Race Families*, *PITTSBURGH POST-GAZETTE*, June 15, 2008, at

felt about interracial marriage in the past was as understandable as the opposition to anti-miscegenation laws was predictable.⁴⁵ When states that had no anti-miscegenation laws seemed inclined to adopt them because of Jack Johnson's marriage to Lucille Cameron, DuBois, writing for the *Crisis*, made clear the connection between the politics of racial subordination and black opposition to anti-miscegenation statutes. The idea that one could endorse a law that was predicated on the notion that "black blood is a physical taint" was something "no . . . self-respecting black man can be asked to admit."⁴⁶ DuBois was also clear about the effect of anti-miscegenation laws on black women: "I believe that the so called 'laws against intermarriage' are simply wicked devices to make the seduction of (black) women easy and without penalty."⁴⁷

The black community opposed interracial marriage for reasons that were self-protective—real and imagined interracial relationships between black men and white women provoked physical retaliation in the form of lynching—but also because the belief in, or preference for, racial endogamy existed in both white and black communities.⁴⁸

In my own experience, none of the informal sanctions in the black community come close to the sanctions imposed by the white community on those who cross racial lines. There may be some who call the children of interracial marriage "high yellow" or who grumble that the reason why they have achieved some measure of success is that they "act white", or are "light", or have "good" hair. Generally speaking, the criticism of interracial marriage in the black community is political, especially the preference of black men for white women. This preference, or this aesthetic, if you like, is criticized as a form of self-loathing or justified as an expression of political resistance or the kind of pragmatism that makes

A6, available at 2008 WLNR 11291549. In 2001, Rachel Moran explored the complexities of "interracial intimacy" in her book by the same name. She used a statistic from the *Economist* which places the rate of interracial marriage at three percent and correctly characterized the rate as extremely low. RACHEL F. MORAN, *INTERRACIAL INTIMACY: THE REGULATION OF RACE AND ROMANCE* 121 (The University of Chicago Press 2001). What is most interesting about Moran's theory is her exploration of the cultural 'distraction' or myth she calls "romantic individualism" which she says obscures or disguises the systemic or structural impediments to interracial marriage. *Id.* at 119.

⁴⁵ See PASCOE, *supra* note 14, at 168–76.

⁴⁶ *Id.* at 173 (quoting W.E.B. DuBois, Editorial, *Intermarriage*, THE CRISIS, Feb. 13, 1913, at 180).

⁴⁷ *Id.* at 169 (quoting W.E.B. DuBois, Extract from *Marrying of Black Folks*)

⁴⁸ According to historian Peggy Pascoe, "the NAACP linked its firm opposition to miscegenation law to a cautious refusal to endorse the practice of interracial marriage." PASCOE, *supra* note 14, at 176.

“whitening” an explicit or explicit imperative for those who aspire to upward mobility.⁴⁹ If there is still resistance to interracial marriage in the black community, it has been widely reputed, since the 1960s or so, to reside in and among angry black women.⁵⁰

For all of this, in my life there never has been any suggestion by anyone in the black community that I do not belong. Acceptance in the black community is certain if you identify as black. While the criticism of some blacks is often described as an issue of authenticity, the real issue always is loyalty.⁵¹ Selling out is about compromising your beliefs, your self respect. One way that can be done is to deny one’s own identity in order to get ahead.⁵² Selling out is not the same as selling someone else “down the river.”⁵³ Betrayal puts others at risk. Blacks who act in ways which are thought to jeopardize the livelihood, the careers, the very safety of other blacks, are not just guilty of selling out. When Barack Obama is criticized for “acting white” it is usually on those occasions when

⁴⁹ See *id.* For a discussion of the class implications of color within the black community, see generally Taunya Lovell Banks, *Colorism: A Darker Shade of Pale*, 47 U.C.L.A. L. REV. 1705 (2000); Trina Jones, *Shades of Brown: The Law of Skin Color*, 49 DUKE L.J. 1487 (2000). To really understand the significance of color in the Black community, it is probably best to go back to the original source, E. FRANKLIN FRAZIER, *BLACK BOURGEOISIE* (Free Press Paperbacks 1997) (1957).

⁵⁰ See, e.g., Erica Chito Childs, *Looking Behind the Stereotypes of the “Angry Black Woman”*: An Exploration of Black Women’s Responses to Interracial Relationships, 19 GEN. & SOC., 544, 546 (2005) (Black college women interviewed opposed interracial dating by black men because it introduced competition by white women into the market for eligible black men and because it was perceived or felt as a rejection and betrayal by black men).

⁵¹ See, e.g., Brent Staples, *Decoding the Debate Over the Blackness of Barack Obama*, N.Y. TIMES, Feb. 11, 2007, § 4. The author indicts the “race police,” whom he characterizes as “60s era ideologues.” *Id.* These ideologues “characterized blackness not as a matter of individual interpretation or choice, but as a narrow set of attitudes and experiences that were said to make up the [black experience].” *Id.* While I don’t know that I agree with this characterization, Angela Onwuachi-Willig has argued that the pressure to conform creates a psychic need to “pass” within the black community, a need to “perform” blackness in a way that establishes authenticity. This might be a way of compensating for an interracial marriage. See Angela Onwuachi-Willig, *Undercover Other*, 94 CAL. L. REV. 873, 873–74, 885–86 (2006). See also Kimberly J. Norwood, *The Virulence of Blackthink & How Its Threat of Ostracism Shackles Those Deemed Not Black Enough*, 93 KY. L.J. 143, 146–47 (2005).

⁵² See Deborah Waire Post, *Reflections on Identity, Diversity and Morality*, 6 BERKELEY WOMEN’S L.J. 136 (1991) (discussing Anthony Appiah’s essay on the ethics of identity), available at http://www.tourolaw.edu/about/faculty_administration_and_students/Faculty/Post/Reflections.pdf.

⁵³ Selling someone down the river is an expression that probably gained popularity during the late nineteenth century. Its entrance into the popular vernacular has been traced to Harriett Beecher Stowe, author of *Uncle Tom’s Cabin*. Selling someone down the river refers to the practice of selling slaves from the upper South to plantations and owners in the lower South, by way of the Mississippi River, to work at hard labor in the fields.

he is addressing a white audience in a way that is perceived as shifting responsibility for the racial inequities that exist in the United States from whites to blacks.⁵⁴

On the other hand, my exclusion from the white community and from full citizenship in the United States has been communicated by members of the white community. It has been suggested more than once and by more than one person that I am not a “real” American. Many, many years ago a landlord, a recent immigrant to the United States told me that she only rented to “real Americans.” I might have pointed out that my family had been in Auburn at least since 1870 and that I was a fourth generation Auburnian, but what would have been the point? It is easy enough to understand why recent immigrants to this country might believe that acculturation and eventual assimilation, becoming a “real American”, requires not only the internalization of racial attitudes but the creation of social distance between themselves and African Americans.

The act of social exclusion was no easier to accept when I lived outside the United States briefly as a teen-age exchange student in Chitré, Panama, it was a fellow exchange student, a white woman, who told our Panamanian family that they should not take comfort in my support for their claim to the Canal Zone because I was not a “real American.”

That was too many years ago and perhaps, as President Obama has reminded us so many times, we are now “one America.” Still it is not easy to overlook the incidents that occurred before and after

⁵⁴ See RANDALL KENNEDY, *SELL OUT: THE POLITICS OF RACIAL BETRAYAL* 5 (2008). Like his “More Perfect Union” speech, Obama’s speech on race, where he referred to the anger of the black community and the resentment of the white community, Obama’s speech on Father’s Day provoked criticism within the black community. There was a suspicion that Obama was not talking to blacks, but to whites. One example was the exhortation that Blacks need to “instill [an] ethic of excellence in our children”; to nurture aspirations that include higher education, college and post graduate degrees. See Senator Barack Obama, Remarks at the Apostolic Church of God (June 15, 2008), available at http://barackobama.com/2008/06/15/remarks_of_senator_barack_obam_78.php.

Self criticism is part of a long tradition in the Black community. It is part of the “uplift” movement, which has always been a double-edged sword. Uplift meant many things, including adoption of an extreme version of white cultural practices—being more “white” than white people – and it often included a demand that whites recognize the differences in the black community and differentiate between lower class and middle class or professional blacks. See VICTORIA W. WOLCOTT, *REMAKING RESPECTABILITY: AFRICAN AMERICAN WOMEN IN INTERWAR DETROIT* 11–48 (Thadius M. Davis & Linda K. Kerber eds., 2001). Such self-criticism is generally not shared with whites because of the confusion it might engender. Self-help is necessary in the black community but it does not absolve whites of responsibility for the discriminatory policies and exclusion that have disadvantaged blacks and thwarted their aspirations.

the campaign: a media obsessed over the flag pin that Obama was *not* wearing,⁵⁵ uproar over the statement by Michelle Obama that she was proud of her country “for the first time in her adult lifetime,”⁵⁶ the infamous *New Yorker* cover which portrayed Barack Obama in Middle Eastern garb and Michelle Obama as a Black Panther. Even if this caricature was an effort to lampoon the right wing of the Republican Party, it is disturbing. It captures so perfectly the suspicion and the sentiment that the Obamas, and probably all black people, were not real Americans.⁵⁷ The use of race to determine who belongs to the community we call the United States or, inaccurately, America, still has salience, even if it did not derail Obama’s presidential campaign or prevent the election of the first African American president. The question remains: who belongs in the “circle of we”?

III. BLOOD OR COLOR: THE POLITICS OF MULTI-RACIAL IDENTITY

My mother did not want her children to be white. She wanted the future Frederick Douglass predicted: a future in which there would be an “amalgamation” of the races, a utopian world in which everyone would be coffee colored.⁵⁸ If there is a difference between me and Barack Obama, who was quite public about his white mother and maternal relatives throughout his campaign, it is not in the misfit between his mother and her Midwestern origins, her choice of profession and husbands, or his self-identification as a black person, but his relationship with his maternal relatives and the multi-cultural ethos in the place where he was raised.⁵⁹

The legalization of interracial marriage was important, but the

⁵⁵ See, e.g., Linda Chavez, *Liberal Patriotism*, HUMAN EVENTS.COM, Feb. 22, 2008, <http://www.humanevents.com/article.php?id=25155> (describing Obama’s remark as characteristic of liberals who do not love their country unconditionally as conservatives do).

⁵⁶ I am not sure why Michelle Obama chose to limit her reference to her “adult lifetime.” In any event, conservative bloggers and commentators used this line to prove that Michelle Obama was both unpatriotic and a hypocrite. See *The Right Takes Aim at Mrs. Obama*, THE STAR LEDGER (Newark, N.J.), Feb. 21, 2008, at 3; William Kristol, *It’s All About Him*, N.Y. TIMES, FEB.25, 2008, at A17.

⁵⁷ The title of the article, “The Politics of Fear” made the intent of the writers and the cartoonist clear. They were ridiculing the Right and the cover was meant to be satirical. Elizabeth Moore, *Obama Campaign, Democrats Slam New Yorker Obama Cartoon*, NEWSDAY, July 15, 2008. The reaction to the cover was a reaction to the message, whatever the source, that African Americans are “other” and dangerous revolutionaries.

⁵⁸ See, e.g., PETER C. MYERS, FREDERICK DOUGLASS: RACE AND THE REBIRTH OF AMERICAN LIBERALISM 167 (2008).

⁵⁹ BARACK OBAMA, DREAMS FROM MY FATHER: A STORY OF RACE AND INHERITANCE (Crown Publishers, 2007) (2004).

erosion of white resistance to interracial marriage and to the claims that multiracial children might make to whiteness is a more complicated matter.⁶⁰ There has been a gradual erosion of the mores with respect to racial endogamy, and a social movement that has arisen with respect to the racial classification of the children of those who marry interracially may have some significance in understanding the persistence of a conception of race that is biological. It has happened in a way my mother would have never expected.

Pat Williams speculates that the term “biracial” is “emerging as a term reserved for those who are the product of recent rather than historical unions between one socially “black” parent and one socially “white” parent, *and* where the white parent acknowledges the child, either by marriage or—as with the Thurmond family—by admission.”⁶¹ It is interesting to contemplate what this means, considering the fact that we started with rules of hypo-descent, tracing a person’s lineage back as far as needed to make sure there was no black ancestor, which would invalidate a claim to the privileges of whiteness, including the privilege of marrying someone classified as white.

The movement to escape the one-drop rule, the rule that examines blood lines as far back as five generations or more, if that is what the multiracial movement is all about, is not, as far as I know, a movement that began in the black community. A major proponent is a white woman, Susan Graham, founder of “Project Race,” which is the acronym for Reclassify All Children Equally.⁶² What Susan Graham demands is that the children of parents who come from different races be acknowledged as the product of both groups.⁶³ In other words, this white mother of a child or children whose father is a black man demands that the public, the discourse, the political instrumentalities, the private institutions, acknowledge the status of her child as white as well as black.

⁶⁰ One possibility is suggested by recent research. David L. Brunnsma, *Interracial Families and the Racial Identification of Mixed-Race Children: Evidence from the Early Childhood Longitudinal Study*, 84 *SOCIAL FORCES* 1131, 1148–51 (2005) (Hispanic/white and Asian/white parents move their children towards the “neutral or unmarked” categories of multiracial or white. But results also suggest that children of black/white interracial marriages do not show the same movement, which suggested to the author that the general trend might be away from a white/non-white racial system to a black/non-black racial system.).

⁶¹ Patricia J. Williams, *Uncommon Ground*, *THE NATION*, Apr. 5, 2004, at 10.

⁶² Project RACE Home Page, <http://www.projectrace.com> (last visited June 20, 2009).

⁶³ Project RACE: About Project RACE, <http://www.projectrace.com/aboutprojectrace> (last visited June 20, 2009).

In the early anthropological literature on caste and interracial marriage, there was some discussion of the relationship between interracial marriage and status. The theory supposed that a higher status white woman would only marry a black man if he was better educated and wealthier than she. The earliest theories of racial caste in the United States posited that the children of an interracial marriage would either be members of the lower caste or members of an intermediate group that existed between the two castes.⁶⁴

The personal experience of some of us, as well as the stories of the parties to the most famous cases of interracial marriage, *Perez* and *Loving*, do not bear out the theory of status exchange, at least in terms of the greater earning power or education of the black spouse. Davis and Perez met on the assembly line at a Lockheed plant, the Lovings met because their families were friends and Richard Loving was a bricklayer. My mother worked with my father's sister in a donut shop while my father was a steel worker at Crucible Steel. Obviously the sociologists who study this issue work with a much larger sample, but, as one researcher from Princeton notes, there may be a need for more qualitative research to explore the motives of those who marry interracially.⁶⁵ Maybe it is proximity, cultural similarity, or maybe it is simply affection and love.⁶⁶

The demand for multiracial identity for the children of interracial marriage, however, may be explained in terms of a desire for status as long as we live in a society in which there is still a clear racial hierarchy. The demand that multiracial children be recognized as partly white did not come from blacks.⁶⁷ Nor is it surprising that Susan Graham, a major advocate for the multiracial category on the United States Census found an ally in Newt Gingrich, who opined

⁶⁴ See Davis, *supra* note 3, at 387, 390. For other discussions of status exchange theory, see Aaron Gullickson, *Education and Black-White Interracial Marriage*, 43 DEMOGRAPHY 673, 673–75 (2006) (comparing the status exchange theory to the assimilationist school of thought); David M. Heer, *The Prevalence of Black-White Marriage in the United States, 1960 and 1970*, 36 J. MARRIAGE & FAM. 246, 252–56 (1974) (testing Davis-Merton theory of marriage exchange, hypogamy—exchange of racial status for educational status—against data which disproved the theory); Matthijs Kalmijn, *Trends in Black/White Inter-marriage*, 72 SOC. FORCES 119, 139 (1993) (analysis of data confirms status exchange theory).

⁶⁵ See Kalmijn, *supra* note 55, at 140.

⁶⁶ See *id.*

⁶⁷ Eduardo Bonilla-Silva, Book Note, 81 SOC. FORCES 674 (2002) (reviewing G. REGINALD DANIEL, *MORE THAN BLACK? MULTIRACIAL IDENTITY AND THE NEW RACIAL ORDER* (2002)). In critiquing this book, Bonilla-Silva states, “I found little analysis of important matters, such as why certain multiracial people (mostly white women married to black men) are central to the various organizations attempting to change the way we classify people in the U.S., or why certain political actors (the Republican Party) have supported the efforts of these organizations . . .” *Id.*

that such a category might “be an important step toward transcending racial division.”⁶⁸ The enthusiasm for such alternative classifications leads skeptics to believe that this system of reclassification and the rhetoric of transcendence will make it easy to ignore the reality and the structure of racism.⁶⁹

It may be that the promotion of a multiracial identity provides some white parents with the assurance that they have not been rejected by their own children. Their children are part of them and, therefore, partly white.⁷⁰ People who cross racial lines to marry do not leave behind all of their attitudes towards race; their internalized assumptions about racial characteristics and racial hierarchy can be a source of misunderstanding, a vulnerability that at the very worst can injure or divide family members.

There is a moment in Barack Obama’s autobiography that I recognize. It is the moment when a biracial child, a child of a black/white union, realizes that his or her white mother, the person most loved and most loving, has a separate existence that race makes socially and experientially remote. For Obama, according to his autobiography, it was the moment he witnessed his mother’s enjoyment of Black Orpheus:

At that moment, I felt as if I were being given a window into her heart, the unreflective heart of her youth. I suddenly realized that the depiction of childlike blacks I was now seeing on the screen, the reverse image of Conrad’s dark savages, was what my mother had carried with her to Hawaii all those years before, a reflection of the simple fantasies that had been forbidden to a white middle class girl from Kansas, the promise of another life: warm, sensual, exotic, different. I [was] embarrassed for her.⁷¹

Multiracial identity could be an expression of individual identity, emancipatory for those who chafe at the conformity demanded of those who share a collective identity. It could also be a campaign informed by self-interest, a demand that the identity of one’s child be something other than that of the lowest group in the racial

⁶⁸ Rachel F. Moran, *Mixed Promise of Multiracialism*, 17 HARV. BLACKLETTER L.J. 47, 48 (2001). Ninety-three percent of the interracial marriages are between whites and Asians, Latinos or Native Americans, and those most likely to choose the multiracial category were Asian. *Id.* at 39.

⁶⁹ See generally EDUARDO BONILLA-SILVA, *RACISM WITHOUT RACISTS: COLORBLIND RACISM AND THE PERSISTENCE OF RACIAL INEQUALITY IN THE UNITED STATES* (2006).

⁷⁰ Post, *supra* note 43, at 138.

⁷¹ Obama, *supra* note 50, at 124.

hierarchy.⁷² It could be that the official recognition of multiracial identity on census forms is the last step in erasing the stigma anti-miscegenation laws placed on racially mixed marriages and the children born to those couples.

If we think in terms of this discourse on multiracial identity, the speeches that Barack Obama made during his campaign, his frequent invocations of his mother and his grandmother, are intriguing. If we credit theories of hybridity, Obama should be able to cross racial boundaries.⁷³ It is not so much a matter of transcending race as moving between races.

Endless and passionate debate on how to situate black/white interraciality has penetrated the realms of legal classification, census taking, and grassroots movements, as well as the domains this essay mainly concerns itself with, the discursive, the ideological, and the popular When there is black/white mixing involved, the dominant classificatory arguments posit that interracial subjects are essentially black; essentially mixed; essentially code switchers, chameleons, who are able to crisscross extant color lines at whim; and a fairly rare position that considers mixed-race subjects essentially white, whether literally or figuratively.⁷⁴

In his major speech on race, Obama did not begin by saying “I’m a black man.” What he said initially was that “I am the son of a black man from [Africa] and a white woman from Kansas.”⁷⁵ Later on in the speech, I heard him say that his wife, Michelle, was a “black [woman] who carries within her the blood of slaves and slave [masters].”⁷⁶ Barack Obama lays claim to whiteness not only on his own part but also, from a more remote source, for his wife and children. I am not sure what this means.

Yet, Barack Obama is emphatic in his identification as a black or African American man. This is something that gives Susan Graham fits. She has written on her website that Barack Obama “[is free to identify as] black, white[,] magenta, green, or whatever he wants” because it’s all about self expression, “[but] *genes are*

⁷² Bonilla-Silva, *supra* note 58, at 675.

⁷³ See Naomi Pabst, *Blackness/Mixedness: Contestations Over Crossing Signs*, 54 CULTURAL CRITIQUE 178, 178–80 (2003).

⁷⁴ *Id.* at 179–80.

⁷⁵ Senator Barack Obama, Remarks: “A More Perfect Union” (Mar. 18, 2008), available at <http://www.barackobama.com/page/content/hisownwords/>.

⁷⁶ *Id.*

genes and his genes are multiracial."⁷⁷

This nation began with a notion that biology mattered; that blood and descent or genetic inheritance were critical in establishing the clear lines of demarcation needed for claims of racial superiority and inferiority. Now we seem to be at a place where blood and biology have become a way of challenging theories of racial superiority, of challenging the divisions based on race without erasing or ignoring the importance of race as a question of identity, solidarity, and shared history.

All this talk about blood and biology is not consistent with the argument that Obama has transcended race. Blood and genes and biology, especially appearance, are the stuff used in the past to decide racial classifications and to protect the privileges of the white race. Now they may be used to gain, however contingently, some of the privileges of whiteness. This is not passing; this is not "honorary whiteness."⁷⁸ This is a claim of kinship, a claim that places someone squarely within a community now expanded to include a "black/white interraciality . . . situated within a framework of black difference . . ."⁷⁹

I remain skeptical. Barack Obama is a traditionalist in his choice of marital partner, a pragmatist with respect to racial identity, but unlike me, he is an idealist in his belief that a claim of connection or a demand for inclusion can be made in the white community on the basis of blood or descent more distant than that of one's own mother. For my part, I will believe in racial transcendence when we can talk about racial oppression in a way that signals a true commitment to the eradication of residential racial segregation; when local school boards are free to adopt programs that promote integration of our schools, when affirmative action is no longer anathema to whites and when the prospect of an apology and reparations for slavery is not dismissed out of hand by the public and the courts.

⁷⁷ Susan Graham, *The Obama Racial Identity Factor and Saving Multiracial Lives*, PROJECT RACE, (June 7, 2008), http://www.projectrace.com/fromthedirector/archive/060708_obama_racial_identity_saving_multiracial_lives.php (emphasis added).

⁷⁸ Onwuachi-Willig, *supra* note 42, at 886–87

⁷⁹ Pabst, *supra* note 63, at 180.