

# RACE AS FICTION: HOW FILM AND LITERARY FICTIONS OF 'MULATTO' IDENTITY HAVE BOTH FOSTERED AND CHALLENGED SOCIAL AND LEGAL FICTIONS REGARDING RACE IN AMERICA

*Bridget K. Smith\**

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\* J.D., University of California, Berkeley (Boalt Hall), 2005.

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## I. INTRODUCTION

In 2003, Philip Roth's book *The Human Stain* was made into a motion picture. The film, like the book, is set in the late 1990's during the height of the Clinton sex scandal. Anthony Hopkins stars as the lead character, Coleman Silk, a respected professor at a New England college, who suddenly finds his life unraveling after a comment he makes about some African-American students is misinterpreted as a racial slur. For Silk, it is more than a slip of the tongue because he has a secret he has been trying to hide for the majority of his life. He has been “passing” as Jewish, when in fact he is a light-skinned black. The concept of racial passing has been a prominent story line in both film and literature. Woody Allen

famously satirized the idea in his 1983 film *Zelig*.<sup>1</sup> Roth's novel and its film adaptation are just the most recent installments in a long line of film and literary fictions on the issue of "mulatto"<sup>2</sup> identity.

Literary works and films about mulatto identity serve as invaluable historical documentation of the evolving cultural understanding of law, race and identity in the United States, especially when viewed in the context of shifting conceptions of the law and demographics of identity from the 19th to the 21st Century. Roth's work is not only significant for the prominence of a mulatto character and its storyline of racial passing, but also for its representation of the pre-Civil Rights Movement mulatto experience in a post-Civil Rights era. Later films in this genre reflect the demographic shift in the mulatto population from one that is largely descended from the light-skinned mulatto slave population, who for a time continued to inter-marry based on skin-color, to those who

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1. In the film, Leonard Zelig—played by Woody Allen—has an inexplicable condition which causes him to physically take on the characteristics of other men around him. He passes as Chinese, black, Italian, Irish and even an Aryan in the Nazi party. The diagnosis is psychological instead of physical. His desire for safety and acceptance is attributed to Zelig's amazing ability to morph his identity. Allen's film is just one of a number of films—largely comedies—dealing with a form of passing known as racial morphing. Films like *WHITE CHICKS* (2004)(black FBI agents impersonate wealthy white daughters to catch a criminal); *THE PEST* (1997)(Hispanic man disguises himself as several different races to evade a racist and annoy others); *THE ASSOCIATE* (1996)(black woman disguises herself as a white man to get ahead on Wall Street); *TRUE IDENTITY* (1991)(black actor disguises himself as a white man to evade the mafia); *SOUL MAN* (1986) (white student passes as black so that he can get a scholarship to go to Harvard Law School); *Dr. black and Mr. Hyde* (1976)(black doctor turns into an albino monster after taking an experimental formula); *The Watermelon Man* (1970)(rude white insurance salesman becomes black overnight); Macunaima (1969)(brazilian "magic realist" story of an Indian who lives as other races); *Finian's Rainbow* (1968)(a musical—directed by Francis Ford Coppola—about a leprechaun who changes a racist Tennessee senator into a black man); and *Black Like Me* (1964)(white journalist darkens his skin and passes for black while in the deep south) satirize the line between black and white America.

2. The term "mulatto" is a pejorative term used to describe an individual of mixed European and African ancestry. See Judy Scales-Trent, *On Being Like a Mule*, in *THE SOCIAL CONSTRUCTION OF RACE AND IDENTITY IN THE UNITED STATES* 287 (Joan Ferrante & Prince Brown, Jr. eds., 1998). Today it is less commonly used to describe offspring from such unions but has not entirely disappeared from usage. It is still used today to distinguish individuals and specifically identify—those who may self-identify as bi-racial or multi-racial black-white identity—from individuals of other mixed-race heritages in United States. In effort to speak candidly and specifically on this issue, it seems most appropriate to use a term that remains as a vestige of an outdated mind set regarding the coupling of blacks and whites.

were born on the cusp of and after the Civil Rights movement to one white and one black parent. This important demographic shift went unacknowledged during the campaign to introduce a multiracial category to the US Census in 2000. Instead, images of the black color-caste system reemerged within the black community. This Article will, among other things, highlight why this fear was unwarranted and based on historical conditions that no longer exist.

This Article intends to examine the way film and literary fiction have both fostered and challenged social and legal fictions over time with regard to race in America, specifically in the black-white context, through the depiction of mulatto characters. Part I of the Article provides a historical overview of the demographic, social and legal context of mulatto identity and racial passing in the United States. Part II explores the development of the literary tropes regarding mulatto identity and passing beginning in the 19th Century. These literary tropes continue to shape representations of mulatto identity, even today, through their continued influence on literature adapted to film. Parts III, IV, V and VI trace the evolving dialogue on mulatto identity from early silent films to the present. These films illustrate how we have moved away from blaming the passer to blaming the institutions, situation or environment for the deception and more recently towards an emerging space for the dual black/white identity. At least in contemporary cultural productions, there is now room for a “nonracial” or “ambiguous” racial identity for visibly non-white characters. In the end, this Article argues that the mulatto in literature and film has served as a cultural site for the performance of anxieties about “blackness” and “whiteness” and their relationships to one another—anxieties that change from one decade to the next and may be different for white audiences and black audiences. The films discussed in the later sections of this Article were chosen for the prominence of the mulatto characters’ story, and also for the films’ depiction of either the present day (or recent past), or of an existing zeitgeist within society upon the films’ release.

## II. SOCIAL AND LEGAL COMMENTARY ON MULATTO IDENTITY

### A. Race and Racial Categorization

#### 1. Race and Society

In order to understand the complexities of mulatto identity, one must examine the evolution of race and racial categorization in the United States.

As Ian F. Haney López's 1994 article, *The Social Construction of Race*, points out, "[r]ace may be America's single most confounding problem, but the confounding problem of race is that few people seem to know what race is."<sup>3</sup> A discussion of mulatto or mixed-race identity presupposes the existence of discrete genetically determinable racial groups, despite little scientific basis for such belief.<sup>4</sup> Professor Lopez suggests:

[R]ace must be understood as a *sui generis* social phenomenon in which contested systems of meaning serve as the connections between physical features, races, and personal characteristics. In other words, social meanings connect our faces to our souls. Race is neither an essence nor an illusion, but rather an ongoing, contradictory, self-reinforcing process subject to the macro forces of social and political struggle and the micro effects of daily decisions.<sup>5</sup>

Phenotype (e.g., skin color, hair texture, and lip, nose, and eye shapes) and cultural markers (e.g., manners of speech, dress, and outlook) are assigned social meaning and are used in the decision of which racial category to apply to a person.<sup>6</sup>

Assignment of racial identity is important because from its beginning, American society has been structured on a racial

3. Daniel J. Sharfstein, *The Secret History of Race in the United States*, 112 YALE L.J. 1473, 1478 (2003).

4. See Kenneth E. Payson, *Check One Box: Reconsidering Directive No. 15 And The Classification Of Mixed-Race People*, 84 CAL. L. REV. 1233, 1240-41 (1996); See, e.g., M. BANTON & J. HARWOOD, *THE RACE CONCEPT* (1975); S. GOULD, *THE MISMEASURE OF MAN* (1981); STEPHEN MOLNAR, *HUMAN VARIATION: RACES, TYPES, AND ETHNIC GROUPS* (2d ed. 1983).

5. Ian F. Haney-López, *The Social Construction of Race: Some Observations on Illusion, Fabrication, and Choice*, 29 HARV. C.R.-C.L. L. REV. 1 (1994).

6. Payson, *supra* note 4, at 1242.

continuum from white to non-white with whites receiving legal privileges not afforded to non-white groups.<sup>7</sup> As Cheryl Harris observed in her study of the legal history of racial identity in the United States:

By the 1660's, the especially degraded status of blacks as chattel slaves was recognized by law. Between 1680 and 1682, the first slave codes appeared, codifying the extreme deprivations of liberty already existing in social practice. . . . Racial identity was further merged with stratified social and legal status: "black" racial identity marked who was subject to enslavement; "white" racial identity marked who was "free" or, at minimum, not a slave. The ideological and rhetorical move from "slave" and "free" to "black" and "white" as polar constructs marked an important step in the social construction of race.<sup>8</sup>

The legal subordination of blackness continued well into the middle of the twentieth century. As a result, even today, whiteness continues to be viewed as an object of significant value.<sup>9</sup> As Daniel Bernardi states:

Whether there are biological 'races' or not (and I would argue there are none), there are historical "races"—or groups of individuals who share past and continuing experiences: from group solidarity and expression to forms of oppression and privilege. Even if race is merely a fiction, it is a powerful fiction in that it systematically affects how we see the world, how we present ourselves to the world, who we associate with, and how we are conversely treated by people and institution.<sup>10</sup>

Identity, how one sees oneself within society, is an essential element in the construction of race.<sup>11</sup> As Stuart Hall, a pioneer in theorizing the relationship between race and identity posits: "identities come from somewhere, have histories. But like everything that is historical, they undergo constant transformations."<sup>12</sup> Mulatto identity has had the peculiar characteristic of being a temporary, transitory identity group residing in a vanishing space between the two

7. Tanya Katerí Hernández, *"Multiracial" Discourse: Racial Classifications In An Era Of Color-Blind Jurisprudence*, 57 MD. L. REV. 97, 116 (1998).

8. Cheryl Harris, *Whiteness as Property*, 106 HARV. L. REV. 1709, 1737 (1993).

9. *Id.*; see also STEPHANIE M. WILDMAN, ET AL., *PRIVILEGE REVEALED: HOW INVISIBLE PREFERENCES UNDERMINES AMERICA* (1996).

10. DANIEL BERNARDI, *THE BIRTH OF WHITENESS: RACE AND THE EMERGENCE OF US CINEMA 2* (1996).

11. *Id.* at 3.

12. Stuart Hall, *Cultural Identity and Cinematic Representation*, 36 *Framework* 70 (1989).

polar racial identities of black and white. Even though “mulatto” was a census category, socially and often legally, both before and after the Civil War, people with mixed black/white ancestry were under intense pressure to be either black or white.<sup>13</sup> As a small sub-group, mulattoes have historically been absorbed into either the black or white identity within a generation of the initial miscegenation due to their small numbers in comparison to other racial groups. The identity group by which one was absorbed depended largely on whether one phenotypically could pass for white or not. When there were larger numbers of mulattoes who could inter-marry (i.e. slavery and reconstruction), or when there was an increase in interracial black and white marriages (i.e. post-Civil Rights era), there was less pressure on mulattoes to choose.

The following is a brief discussion of the development of racial categorization in the United States. Although in the United States, the “mulatto” category never became a “buffer” racial category in and of itself as it did in other countries (e.g. some Latin American countries and South Africa), the Census provides an interesting historical timeline of the expansions and contractions of this identity group within American society. In addition, this timeline serves as a useful backdrop on which to map our later discussion of mulatto literature and film.

## 2. The US Census and Racial Categorization

In conjunction with slavery laws and miscegenation laws, the United States Census played an integral role in the development of a black identity definition through its institutional assignment of racial categories in the United States.<sup>14</sup> This is not to give the census a kind of artificial pride of place by focusing on it to the exclusion of other legal developments that certainly affected representations of

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13. Louisiana Creoles who stubbornly refused to socially mix into either black or white; today Creoles themselves are divided into “white” and “black” Creoles, though many of them still refuse to claim either whiteness or blackness. See Donna Maeda, *Remembering Plessy’s Race and Place: Haitian Diaspora, U.S. Colonization and Transnational Racial Regulation*, 66-68(unpublished paper on file with author) (2002).

14. See generally MELISSA NOBLE, *SHADES OF CITIZENSHIP: RACE AND THE CENSUS IN MODERN POLITICS* (2000).

mulatto identity. From *Plessy v. Ferguson*<sup>15</sup> to *Brown v. Board of Education*,<sup>16</sup> from *Loving v. Virginia*<sup>17</sup> to the racially restrictive covenant cases;<sup>18</sup> from anti-lynching legislation<sup>19</sup> to the "Scottsboro" trial,<sup>20</sup> even affirmative action cases;<sup>21</sup> all have played a significant role in the way we view the racial lines between black and white. The U.S. Census, however, unlike the above-mentioned legal developments, is unique because it has been viewed as an objective or neutral bureaucratic system of categorization. Also key is its continued influence on how all Americans identify themselves, as well as others.

Article I, Section 2 of the Constitution sets forth the principles for apportioning taxation and political representation.<sup>22</sup> In this article, racial considerations are stipulated twice. In 1790, the first census of the United States was carried out. As dictated by the Constitution, the enumeration excluded Indians exempt from taxes and counted the number of slaves in fractions of three fifths.<sup>23</sup> For government purposes, unassimilated Native Americans and African slaves were political categories in which phenotypical and cultural traits may have been implied but were not explicitly acknowledged or defined in statute.<sup>24</sup> Free blacks and assimilated Indians whose physical appearances contradicted their social status were pushed to the margins of society, often in segregated quarters.<sup>25</sup> At the dawn of the United States, the habits of culture and physical appearances

15. 163 U.S. 537 (1896).

16. 347 U.S. 483 (1954).

17. 388 U.S. 1 (1967).

18. *Shelley v. Kramer*, 334 U.S. 1 (1948); *Barrows v. Jackson*, 346 U.S. 249 (1953).

19. See Barbara Holden-Smith, *Lynching, Federalism, and the Intersection of Race and Gender in the Progressive Era*, 8 YALE J.L. & FEMINISM 31, 44 (1996) (arguing that anti-lynching legislation was not passed during the progressive era because of the fear of interracial sexual relationships).

20. *Powell v. Alabama*, 287 U.S. 45, 49 (1932) (arose from the infamous 1931 "Scottsboro" trial, in which nine African-American young men were prosecuted for allegedly raping two white Alabama women).

21. See *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265 (1978); *Grutter v. Bolinger*, 539 U.S. 306 (2003).

22. U.S. CONST. art. I, § 2.

23. J.T. Lott, *Policy Purposes of Race and Ethnicity: An Assessment of Federal Racial and Ethnic Categories*, 3 ETHN. DIS. 221-28 (1993).

24. C. Matthew Snipp, *Racial Measurement in the American Census: Past Practices and Implications for The Future*, 29 ANNU. REV. SOCIOLOGY 565 (2003).

25. *Id.*; see generally C.V. WOODWARD, *THE STRANGE CAREER OF JIM CROW* (1955).



of those who occupied subordinate political and legal statuses in the new nation were not well defined.<sup>26</sup> These qualities would not be clearly articulated until the development of the racial sciences—eugenics and ethnology—in the nineteenth century.<sup>27</sup>

The Constitution further mandated that the census should be conducted every ten years for the purposes of allocating political representation in Congress.<sup>28</sup> From 1790 to 1840, the census distinguished only white and Negro.<sup>29</sup> A recognized mulatto population had existed since colonial times<sup>30</sup> but a “one-drop” rule was established throughout the upper-south<sup>31</sup> as a form of social control on the large free black and mulatto population.<sup>32</sup> The “one-drop” rule lumped mulattoes and blacks together into one racial category by defining Negro as anyone with traceable or visual black ancestry. There was not as much of a need to police the color-line in the lower-South because of the ubiquitous institution of slavery and the small number of free blacks and mulattoes.<sup>33</sup>

Two approaches taken specifically in the lower-South represent a rejection of the “one-drop” rule that had developed in the upper South. Some parts of the lower South rejected attempts to adopt a fractional definition of blackness until the 1850s, preferring instead to rely on the character and reputation of the mulatto to resolve any questions of whether that person should be considered black or white.<sup>34</sup> In other

26. Snipp, *supra* note 24.

27. Snipp, *supra* note 24; see also M. Harris, *Race*, in INTERNATIONAL ENCYCLOPEDIA OF THE SOCIAL SCIENCES, 263–68 (D.L. Sills ed., 1968).

28. U.S. CONST. art. I, § 2, cl.3.

29. *Id.*

30. For example, the Virginia assembly declared in 1662 that the mulatto children of slave mothers would be slaves. Mulatto children of this time period are believed to be largely the offspring of indentured white servants and blacks. See JOEL WILLIAMSON, *NEW PEOPLE: MISCEGENATION AND MULATTOES IN THE UNITED STATES* 8 (1980).

31. The upper-south included North Carolina, Tennessee, Kentucky, Virginia, and West Virginia where the bulk of the black population resided. See *id.* at 14.

32. *Id.* at 13.

33. Snipp, *supra* note 24, at 1246.

34. *Id.* For example, a judge in South Carolina in 1835 refused to rule on the whiteness or blackness of a free mulatto based on his fractional descent, stating that: “We cannot say what admixture of negro blood will make a colored person. ... [I]t may be well and proper, that a man of worth, honesty, industry, and respectability, should have the rank of a white man, while a vagabond of the same degree of blood should be confined to the inferior caste.” WILLIAMSON, *supra* note 30, at 18; see also *infra* Section I.B.

areas, classification systems arose that were based on minute differences in blood quanta.<sup>35</sup> Racial characteristics per se were not explicitly introduced into these systems until 1820 when the term "color" was added to the census,<sup>36</sup> which eventually resulted in changes in census categorization.

In 1850, the "one-drop" rule was effectively rejected at the federal level as census takers began counting mulattoes. In terms of racial measurement, the 1850 census divided Negro into mulatto and black to acknowledge the existence of black-white and black-Indian relations.<sup>37</sup> Also during this period ethnology and eugenics—scientific racism—exerted an enormous influence on ideas about racial differences.<sup>38</sup> Due to the growing interest in the "science of race," racial measurement and the collection of data on race became more significant. As a result, the 1850 census was more detailed; information was being collected on an individual basis instead of a household basis, assigning every American counted with an official racial classification.<sup>39</sup> Furthermore, like previous censuses, the 1850 enumeration continued to take note of the "color" of respondents and their "civil condition," whether free or slave.<sup>40</sup>

Black-white mixing began to decline after 1850, although the categories describing such mixtures began to increase.<sup>41</sup> The 1860 census form followed the format of the 1850 census but added categories for Chinese and Indian, with Japanese added in 1870.<sup>42</sup> The census also continued to enumerate mulattoes.<sup>43</sup> The 1880 census represented a departure from previous censuses in terms of the racial measurement of the

35. Snipp, *supra* note 24, at 1246. For example, Louisiana Creoles recognized distinct categories for those persons as little as one-sixty-fourth black. WILLIAMSON, *supra* note 18, at 24. For a detailed discussion of the unique race classification scheme of Louisiana, see generally VIRGINIA R. DOMINQUEZ, *WHITE BY DEFINITION: SOCIAL CLASSIFICATION IN CREOLE LOUISIANA* (1986).

36. Snipp, *supra* note 24, at 566

37. Snipp, *supra* note 24, at 1246. This was not the first time the term mulatto appeared in America. "The designation of 'mulatto' first appeared in a legal document in colonial America in 1644." Robinson and Cabral, *The mulatta on film: from Hollywood to the Mexican revolution*, 2003 RACE & CLASS 45(2), 1.

38. Snipp, *supra* note 24, at 1246.; see also G.M. FREDRICKSON, *RACISM: A SHORT HISTORY* (2002).

39. Snipp, *supra* note 24, at 566.

40. *Id.*

41. WILLIAMSON, *supra* note 30, at 33, 89.

42. Snipp, *supra* note 24, at 566.

43. *Id.*

mulatto population. It subdivided the mulatto population into "Quadroons" and "Octoroons."<sup>44</sup> This subdivision of mulattoes into Quadroon and Octoroon reflected the further mixing of mulattoes with whites.

The 1900 census did not attempt to subdivide the black population as had been done in the previous census. The Bureau abandoned the designations of Octoroon and Quadroon,<sup>45</sup> likely upon the realization that the racial mixing between blacks and white had declined.<sup>46</sup> The cessation of black-white mixing should be viewed in terms of opportunity and inclination. At the turn of the century, the white middle and upper classes in the United States began to retreat to exclusive suburbs, indulge in a fetish of genealogy, and invent a comforting history of Anglo-Saxonism.<sup>47</sup> Legal segregation limited opportunities for mixing as blacks and whites went to different schools, held different jobs, and lived in different neighborhoods.<sup>48</sup> With emancipation, anti-miscegenation sentiments reached a fever pitch, leaving both blacks and whites disinclined to cross the color line.<sup>49</sup> The new white orthodoxy depicted mixed-race people as "degenerate and racial amalgamation as a prescription for national suicide."<sup>50</sup> Still, the census retained the practice of enumerating mulattoes.<sup>51</sup> Racial mixing between blacks and whites was no longer the threat to racial purity it once was when blacks and whites lived and worked closely with one another. In addition, the principle of hypodescent as practiced in Jim Crow legislation made such distinctions superfluous—black was black, regardless of how much or how little ancestry was involved.<sup>52</sup> According to Kim Williams, a professor of public

44. *Id.* at 567; see also Sharon M. Lee, *Racial classifications in the US census, 1890 to 1990*, 16 *ETHN. RACIAL STUD.* 75–94 (1993); C. Bennett, *Racial Categories Used in the Census, 1790 to the Present*, *GOV. INF. Q.* (2000). "Quadroons" are individuals with one black grandparent and "Octoroons" are individuals with one black great-grandparent.

45. Snipp, *supra* note 24, at 567.

46. Also, it may have reflected a desire to allow those mulattoes who could pass as white a form of racial amnesty.

47. Gary B. Nash, *The Hidden History of Mestizo America*, in *SEX, LOVE, RACE: CROSSING BOUNDARIES IN NORTH AMERICAN HISTORY* 22 (Martha Hodes ed., 1999).

48. WILLIAMSON, *supra* note 30, at 33, 89.

49. *Id.*

50. Nash, *supra* note 47.

51. *Id.*

52. *Id.*; see also generally F.J. DAVIS, *WHO IS BLACK: ONE NATION'S DEFINITION* (1991); According to Madison Grant, who Gunnar Myrdal called "the high priest of

policy at Harvard University, the introduction of a “mulatto” category was implemented in part as a test to see whether people who were not of “pure race” would die out faster.<sup>53</sup>

The growing segregation of blacks and whites following emancipation and Reconstruction had significantly curtailed black-white interracial mixing. Blacks and mulattoes, however, began mixing at a high rate, as both groups were legally prohibited from inter-marrying or inter-mixing with whites. Despite this, mulattoes continued to be counted in the 1910 census.<sup>54</sup> By the 1920’s, blacks and mulattoes were melding into a single people.<sup>55</sup> As a result, the “one drop” rule was officially instituted in 1920 when the census counted mulattoes for the last time.<sup>56</sup> After 1920, as far as the federal government was concerned, due to the societal changes that had occurred, people of any African ancestry were singularly black.<sup>57</sup> Even though the census ceased being interested in mulattoes, social scientists began investigating black admixture society in earnest in the 1930s and 1940s.<sup>58</sup> These early sociologists were interested in who was mixing with whom. Their research confirmed that black-white mixing was virtually nonexistent.<sup>59</sup> While black-white mixing had largely ceased, “internal miscegenation”—mixing across the color spectrum within the black community—regularly occurred. In this same period, sociologist Gustavas Steward concluded that very dark and very light blacks were disappearing so that “brown [was] the predominating hue.”<sup>60</sup> This

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racialism in America,” the white race would be destroyed by racial intermixing. The children of such unions would inevitably favor the lower type. The cross between white man and a Negro is a Negro; the cross between a white man and a Hindu is a Hindu; the cross between any of the three European races and a Jew is a Jew.” Nash, *supra* note 47, at 23; see generally MADISON GRANT, *THE PASSING OF THE GREAT RACE* (1916).

53. Interview with Kim Williams, December 8, 2005, <http://www.ksg.harvard.edu/ksgnews/KSGInsight/williams.htm>.

54. Snipp, *supra* note 24, at 567.

55. Payson, *supra* note 4, at 1248.

56. *Id.*

57. *Id.* In contrast to the classification of mixed black/white persons, non-black mixed-race persons have never been subject to the “one-drop” rule. *Id.* at 1249–50.

58. *Id.* at 1249; see, e.g., EDWIN R. EMBREE, *BROWN AMERICA: THE STORY OF A NEW RACE* 1931); E. FRANKLIN FRAZIER, *THE NEGRO FAMILY IN CHICAGO* (1932); GUNNER MYRDAL, *AN AMERICAN DILEMMA: THE NEGRO PROBLEM AND MODERN DEMOCRACY* (1944). For the classic, early sociological study of this emerging African American people, see W.E.B. DUBOIS, *THE PHILADELPHIA NEGRO: A SOCIAL STUDY* (1899).

59. Payson, *supra* note 4, at 1248–49; see also WILLIAMSON, *supra* note 30, at 116.

60. WILLIAMSON, *supra* note 30, at 127 (quoting Gustavas Steward, *The Black Girl*

observation is important because the broad redistribution of the European gene pool among the black population, in the absence of significant new mixing with whites, reduced—though certainly did not eliminate—the numbers of blacks who appeared to be white.<sup>61</sup> While the “one-drop” rule was firmly entrenched by this time, it was being applied less frequently to blacks who appeared to be white.<sup>62</sup> Despite the clear legal lines drawn between blacks and whites and the decreased opportunities for social interaction due to Jim Crow laws, concerns in the white community shifted from those who could easily be identified as blacks to those who could pass for white and evade segregation laws. Mulattoes who could “pass” became a great threat to segregationists. As a result, passers increasingly became the subject of high profile legal cases, literature and film of this period.

By the end of World War II, the country had become more diverse due to the relaxing of immigration restrictions on non-European nations.<sup>63</sup> In addition, the civil rights era of the 1950s and 1960s contributed to a dramatic increase in black-white mixing with the end of legalized segregation and miscegenation laws.<sup>64</sup> By the 1970s, there was a push for broader racial categories on the census. The Federal Interagency Committee on Education (FICE) formed an ad hoc committee that recommended that federal agencies

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*Passes*, 6 SOC. FORCES 99, 99 (1927)).

61. Payson, *supra* note 4, at 1249.

62. *Id.*

63. The Immigration Act of 1965 (also known as the Hart-Cellar Act) abolished the national-origin quotas that had been in place in the United States since 1882. Immigrants were to be admitted by their skills and professions rather than by their nationality.

64. See generally RENEE C. ROMANO, RACE MIXING: BLACK-WHITE MARRIAGE IN POSTWAR AMERICA (2003). It was not until 1967 that the Supreme Court held anti-miscegenation laws unconstitutional in *Loving v. Virginia*, 388 US 1, and removed the final formal barrier to interracial unions. Sixteen states had anti-miscegenation laws: Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia. In the previous fifteen years, fourteen states had repealed anti-miscegenation laws: Arizona, California, Colorado, Idaho, Indiana, Maryland, Montana, Nebraska, Nevada, North Dakota, Oregon, South Dakota, Utah, and Wyoming. See Neil Gotanda, *A Critique of “Our Constitution is Color-Blind”*, 44 STAN. L. REV. 1 (1991); All these states forbade marriages between blacks and whites, and many forbade other intermarriages including those with Mongolians, Indians, Chinese, Japanese, and Maylay. PAUL R. SPICKARD, MIXED BLOOD: INTERMARRIAGE AND ETHNIC IDENTITY IN TWENTIETH-CENTURY AMERICA 374-75 (1989); see also M. Kalmijn, *Trends in Black/White Intermarriage*, 72 SOCIAL FORCES 119-146, (1993).

should collect data for at least five more or less distinct groups: (a) American Indians and Alaska Natives, (b) Asians and Pacific Islanders, (c) Non-Hispanic blacks, (d) Non-Hispanic whites, (e) Hispanics.<sup>65</sup> The recommendation was adopted in September of 1976.<sup>66</sup> However, this recommendation did not become the official policy of the federal government until May 12, 1977, when the Office of Management and Budget (OMB) issued a document it designated OMB Directive No. 15.<sup>67</sup> OMB Directive No. 15 instituted the five categories recommended by the ad hoc committee.<sup>68</sup> It further explained that "these classifications should not be interpreted as being scientific or anthropological in nature," but merely as an instrument of social policy.<sup>69</sup> In a sense, Directive No. 15 established an official standardized racial makeup for the United States beginning with the 1980 census.<sup>70</sup> Consistent with Directive No. 15, the same categories were used in the 1990 census.<sup>71</sup>

However, in 1997, due to the lobbying by multiracial interest groups and others, Directive No. 15 was revised to allow for individuals to check multiple boxes to describe their racial identity in the 2000 census.<sup>72</sup> It was believed that

65. Snipp, *supra* note 24, at 572; see also Lott, *supra* note 23, at 221-28.

66. Snipp, *supra* note 24, at 572.

67. *Id.*; see Directive No. 15, Race and Ethnic Standards for Federal Statistics and Administrative Reporting, 43 Fed. Reg. 19,260, 19,269 (1978).

68. Directive No. 15, *supra* note 35, at 19,269. The categories are defined as follows:

American Indian or Alaskan Native. A person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliations or community recognition.

Asian or Pacific Islander. A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands. This area includes, for example, China, India, Japan, Korea, the Philippine Islands, and Samoa.

Black. A person having origins in any of the black racial groups of Africa.

Hispanic. A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.

White. A person having origins in any of the original peoples of Europe, North Africa, or the Middle East.

69. *Id.*

70. Snipp, *supra* note 24, at 573.

71. *Id.*

72. "These organizations consisted mostly of families in which one spouse was white and the other was black. One of the larger and better known of these organizations was based in Atlanta, Georgia and was known as RACE (Reclassify All Children Equally). The instructions on the 1990 (and earlier) census required respondents to mark one race only for each member in the household. The child of a

allowing people to self-identify in this way would not skew the racial profile of the United States. The tests conducted in the review of Directive No. 15 indicated that only approximately 2 percent or 3 percent of the total population would select a multiracial response if given this option.<sup>73</sup> According to the actual 2000 Census results, 2.42 percent of the population self-identified as two or more races.<sup>74</sup> Of that 2.42 percent, 0.28 percent (or 11.5 percent of the multiracial population) self-identified as black and white. An additional 0.02 percent (or 0.635 of the multiracial population) self-identified as black, white and some other race.<sup>75</sup> Thus, in the 2000 census, a total of 827,936 Americans self-identified as mixed black-white heritage.<sup>76</sup> Despite this movement towards acknowledging a dual black-white identity, a recent study of the 2000 census suggests that a self-perpetuating form of the “one-drop” rule still remains in use.<sup>77</sup>

### *B. Passing as a Legal Matter*

In American law, probably the two most famous racial passing cases are *Plessy v. Ferguson*<sup>78</sup> and *In Re Rhinelander*.<sup>79</sup> We begin the Article by highlighting these two

black mother and a white father, for example, could be identified as white or as black but not as both. In cases where a respondent neglected to read these directions, or purposefully wrote two or more responses, the Census Bureau implemented a complicated series of “editing” rules that reassigned multiracial responses one race and one race only.” *Id.* at 575–76.

73. *Id.* at 577.

74. US Census 2000, Multiracial Profile, <http://www.census.gov>.

75. *Id.*

76. *Id.*

77. A 2004 study of the 2000 census found that only 49 percent of black–white couples report their children as multiracial. Among black-white couples, most who do not report their children as multiracial report them as black. Couples most likely to identify their children as multiracial are those in which both parents are multiracial: 83 percent of such couples report their children to be more than one race. Although such couples are a small share of all married couples, their children represent a substantial share of all multiracial children. Indeed, 25 percent of multiracial children in the United States have parents that both identify as multiracial. In contrast, only 1 percent of all children in married–couple households have two multiracial parents. Even having only one multiracial parent leads to a relatively high probability of a child being identified as multiracial. Altogether, over half of multiracial children have at least one multiracial parent. See Sonya M. Tafoya, Hans Johnson, et. al., *U.S. Census 2000: Multiracial Identity of Children of Mixed–Race Couples*, Sage Foundation and the Population Reference Bureau (June 2004).

78. 163 U.S. 537 (1896).

79. *In re Rhinelander's Will*, 36 N.Y.S. 2d 105 (1942).

cases because the facts of these two cases are recycled, referenced and are present—in one form or another—in films on mulatto identity.

Prior to Directive No. 15, racial categorization in the United States was accomplished on a rather ad hoc basis through state statutes and case law, developed largely through state actions brought against individuals accused of “passing” for white.<sup>80</sup> In some states, a black person was defined as anyone who had a black grandparent.<sup>81</sup> In others, a black person was anyone who had a black great-grandparent.<sup>82</sup> And in still others, a black person was anyone who was visibly black.<sup>83</sup> Studies of legal decisions on the issue of racial identity have shown that scientific notions of race such as genealogy or physical appearance were never the courts’ sole evidence for determining race.<sup>84</sup> For some courts, whiteness could not be gleaned from external attributes alone but had to be also further affirmed by a person’s actions and standing within the community.<sup>85</sup> The court’s construction of “passing” as transgression and its bestowal of purity and privilege on whiteness depended on the concept of the “black within.”<sup>86</sup> Although not explicitly acknowledged by courts, the idea of discovering the “black within” informed much of these proceedings, since it was believed in society at large and legal circles that blackness (like whiteness) was as much an internal condition as an external one.<sup>87</sup>

Generally, passing tended to occur most frequently among mulatto males as opposed to mulatto females due to the males’ ability to move more freely through society because of

80. See, IAN F. HANEY LOPEZ, *WHITE BY LAW* (1996).

81. Daniel J. Sharfstein, Essay: *The Secret History Of Race In The United States*, 112 *YALE L.J.* 1473, 1478 (2003).

82. *Id.*

83. *Id.*; see also GILBERT THOMAS STEPHENSON, *RACE DISTINCTIONS IN AMERICAN LAW* 15–16 (1910).

84. Sharfstein, *supra* note 81, at 1479.

85. Ariela Gross examined dozens of cases that were appealed to southern state supreme courts in the nineteenth century and was able to document the development of extensive evidentiary records regarding people’s reputation and the “‘performance’ of whiteness”—the way a man exercised the rights and privileges of white citizenship or a woman showed “white” purity and moral virtue. Ariela J. Gross, *Litigating Whiteness: Trials of Racial Determination in the Nineteenth-Century South*, 108 *YALE L.J.* 109, 156–57 (1998).

86. Robert Westley, *First-Time Encounters: “Passing” Revisited And Demystification As A Critical Practice*, 18 *YALE L. & POL’Y REV.* 297, 310–11 (2000).

87. *Id.*



their gender.<sup>88</sup> In addition, there were different kinds of passing. There were “complete passers” and “partial passers.” Partial passers would utilize their ability to pass for white only in particular public areas of the passer’s daily existence, for example, a segregated train coach, educational institution or military unit.<sup>89</sup> These themes and distinctions will be discussed in more detail in latter sections of this Article because of their emergence and significance in both film and literature describing passing.

### 1. *Plessy v. Furgeson*

The *Plessy* decision was the result of a legal challenge brought by Homer Plessy, an Octoroon, who was ejected from a whites-only railroad coach.<sup>90</sup> In 1890, the Louisiana legislature passed a “separate railroad cars” law stating that “no person or persons shall be permitted to occupy seats in coaches, other than the ones assigned to them on account of the race they belong to.”<sup>91</sup> The law required railroads to provide “equal but separate” facilities to those of different races, but it did not define “race” and left to the conductors the job of assigning passengers to the proper cars.<sup>92</sup> Plessy’s arrest in 1892 was part of a legal strategy by New Orleans Creoles to expose the absurdity of a law that made a railroad

88. JUDITH R. BERZON, NEITHER WHITE NOR BLACK 57, 142 (1978).

89. *Id.*

90. According to Randall Kennedy:

Some commentators maintain, erroneously, that Homer Plessy was trying to pass and that what he objected to was not so much racial segregation per se but restrictions that ensnared him and others like him who were “almost white.” It is true that Plessy’s attorney, Albion Tourgee, complained that the segregation statute unfairly deprived his client of a valuable right—the reputation of belonging to the white race—and that one could reasonably infer from this complaint a desire on Plessy’s part to be recognized as white. But this argument was inconsistent with the overall thrust of Tourgee’s brief, which comprehensively attacked racial segregation per se and not merely as applied in any given case. It should be noted, moreover, that *Plessy v. Ferguson* represented an instance of carefully choreographed test litigation. The suit was initiated and supported by a group of light-skinned men of color who eschewed and abhorred all racial distinctions. Far from seeking to pass, Plessy made it known that he was a man of color sitting in a railroad car reserved only for whites. One reason for using Plessy, a man seven-eighths white, to challenge the law, was to highlight the statute’s arbitrariness.

Randall Kennedy, *Racial Passing*, 62 OHIO ST. L.J. 1145, FN 153 (2001).

91. *Plessy v. Ferguson*, 163 U.S. 537, 540 (1896).

92. PETER IRONS, *JIM CROWS’S CHILDREN* 24 (2002).

conductor “the autocrat of Caste, armed with the power of the State” to decide which travelers were white and which were not, using only his eyes to measure racial purity.<sup>93</sup>

Plessy claimed both a denial of equal protection and a denial of property—whiteness—without due process.<sup>94</sup> According to his brief, the “reputation” of being white “has an actual pecuniary value,” of which he would be deprived without due process of law if a train employee could arbitrarily refuse to seat him in the whites-only train car.<sup>95</sup> The Supreme Court rejected Plessy’s claim that the Louisiana law branded blacks as inferior.<sup>96</sup> Since the segregation law formally applied to whites as well as blacks, the Court ruled that the state was meeting its obligation under the Fourteenth Amendment to provide to all persons the equal protection of the laws.<sup>97</sup> With regard to Plessy’s second claim, the Court asserted that the issue of Plessy’s race did not “properly arise upon the record.”<sup>98</sup> But then, the Court went on to conclude that, “[i]f he be a white man and assigned to a colored coach, he may have his action for damages against the company for being deprived of his so-called property.”<sup>99</sup> In his article, *First Time Encounters*, Robert Westley points out that *Plessy*, “[is] a case laden with irony, the greatest irony may be that white authority sought to adjudicate the exclusion from society of absent blacks through the medium of the figurative black within the white body of Homer Plessy.”<sup>100</sup>

## 2. *In re Rhinelanders*

The most sensational case arising from an alleged effort to pass was the lawsuit of Alice Jones against Leonard Kip Rhinelanders.<sup>101</sup> Jones was the daughter of a white mother and a black father, a couple of modest means.<sup>102</sup> The Rhinelanders, by contrast, traveled in the highest circles of white, wealthy New York Society; Kip stood to inherit

93. *Id.* at 25.

94. See *Plessy*, 163 U.S. at 542; see also Westley, *supra* note 86, at 297.

95. *Plessy*, 163 US at 549.

96. *Id.* at 551.

97. *Id.* at 550–51.

98. *Id.* at 549.

99. *Plessy*, 163 U.S. at 549.

100. Westley, *supra* note 86, at 315.

101. Kennedy, *supra* note 90, at 1155.

102. *Id.*

millions from his parents' estate.<sup>103</sup> When they learned that their son had married a colored waitress, they insisted that he put an end to the relationship.<sup>104</sup> Buckling to their demands six weeks into his marriage, he sought an annulment on November 27, 1924, claiming that Alice had deceived him about her race.<sup>105</sup> Initially he alleged that she had tricked him by stating falsely that she was white.<sup>106</sup> Later he alleged that she had tricked him not by outright falsehood but, more subtly, by silently but knowingly taking advantage of his mistaken belief that she was white.<sup>107</sup>

Alice Jones's defense put the legal proceedings on the front pages of the New York dailies and the black press for weeks.<sup>108</sup> Her defense was that he could not have been ignorant about her racial identity because, in terms of her physiognomy, he knew everything there was to know about her.<sup>109</sup> It was reported in the black press that Kip was well aware of her ancestry. The *Chicago Defender* reported that he had repeatedly called upon her at her parent's home and knew her sister was married to a colored butler.<sup>110</sup> Jones argued at trial that he could not rightly claim to have been hoodwinked because he had, so to speak, been under the hood.<sup>111</sup> To support this argument, Alice's attorneys put into evidence two dramatic items. The first was correspondence that clearly indicated that she and Kip had had extensive sexual relations prior to their marriage.<sup>112</sup> The other was Alice herself: her attorney obtained permission for Alice to disrobe and show herself behind closed doors to the all-male, all-white jury.<sup>113</sup> The purpose of the skin test was to show the jurors that there were aspects of her physiognomy, including her nipples, which would have put Rhinelander on notice about her race.<sup>114</sup>

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103. *Id.*

104. *Id.*

105. Kennedy, *supra* note 90, at 1155.

106. *Id.*

107. *Id.*

108. See Charlene Regester, *Headlines to Highlights: Oscar Micheaux's Exploitation of the Rhinelander Case*, 22 W. J. OF BLACK STUD. 195 (1998).

109. Kennedy, *supra* note 90, 1155-56.

110. Regester, *supra* note 108, at 197.

111. Kennedy, *supra* note 90, at 1156.

112. *Id.*

113. *Id.*

114. *Id.* It was reported that part of the skin test was to show that "her back was

In his summation to the jury, Jones's attorney stressed that Rhinelander had had "unlimited opportunities to look [at her body]." <sup>115</sup> The lawyer went on to say: "I let you gentlemen look at a portion of what he saw. You saw Alice's back above the bust. You saw her breast. You saw a portion of her upper leg. He saw all of her body. And you are going to tell me that he never suspected that she had colored blood! . . . You saw that with your own eyes . . . that colored blood was coursing through her veins." <sup>116</sup> The attorney for Rhinelander made an all-out plea for the jury simply to register its disgust with inter-racial marriage. "There isn't a father among you," he declared, "who would not rather see his son in his casket than to see him wedded to a mulatto woman." <sup>117</sup>

The jury found in Jones's favor. <sup>118</sup> The black press reported the decision as a victory for race relations and that the jury's action was even more commendable considering, "[t]welve white men have decided that Alice is Kip's legal wife. They decided that he knew for many years before marrying her that she was colored. Even though this born aristocrat married a girl who was not white, he was indeed happy—happy in the humble homes of Negroes." <sup>119</sup>

These cases are not only significant because of the precedent they set regarding mulatto identity and passing in the United States. They are also significant because of the cultural implications and impact of each case on both literature and film featuring mulatto characters. The remainder of this Article will first begin by examining the major storylines of mulatto characters in literature prior to the advent of film, showing how these early storylines, much like the *Plessy* and *Rhinelander* cases, reemerge, influence and are the basis for the depiction of mulattoes in film. The evolution of film on the subject matter of the mulatto, the Article argues, reflects at times a fostering and at other times

much darker than her face and that her husband knew it." Regester, *supra* note 108, at 198.

115. Kennedy, *supra* note 90, at 1156 (citing Jamie L. Wacks, *Reading Race, Rhetoric, and the Female Body: The Rhinelander Case and 1920s American Culture* 1, 174 (1995) (unpublished thesis, Harvard University)).

116. *Id.*

117. *Id.* (citing Wacks).

118. *Id.*

119. Regester, *supra* note 108, at 199.

a challenging of legal and cultural fictions regarding race in America.

### III. PRE-FILM ERA: EARLY LITERATURE ON MULATTO IDENTITY

#### A. *Early Literature on Mulatto Identity*

It has been suggested that the mulatto entered fiction "at his disadvantage. . .at the pen of the advocate of Abolition, as an instrument of propaganda."<sup>120</sup> As a result, a "series of types emerged" and these "patterns of portrayal developed into stereotypes" of mulatto.<sup>121</sup> Unfortunately, these stereotypes were carried not only over to 20th Century literature but also into a new medium called film.

Sterling Brown identifies seven stereotypes, which are not mutually exclusive, of Negroes in white authored fiction: (1) The Contented Slave; (2) The Wretched Freeman; (3) The Comic Negro; (4) The Brute Negro; (5) The Tragic Mulatto; (6) The Local Color Negro, and (7) The Exotic Primitive.<sup>122</sup> These stereotypes were used by both pro-slavery and anti-slavery authors, and also perpetuated by some black authors.<sup>123</sup> According to Brown in regards to the "Tragic mulatto" stereotype:

The stereotype that demands attention, however, is the notion of the mulatto character, whether shown in male or female. This character works itself out with mathematical symmetry. The older theses ran: First, the mulatto inherits the vices of both races and

120. Penelope Bullock, *The Mulatto in American Fiction*, in 6 *PHYLON* 78, 82 (1945).

121. *Id.*

122. Sterling Brown, *Negro Character as Seen by White Authors*, 2 *J. OF NEGRO ED.* 179, 180 (1933). Brown describing the "Contented Slave" as the paternal ideal of a slave that is happier with their master than free. *See id.* at 180-86. The "Wretched Freeman" was used by authors to show the Negro's incapacity to function in freedom. *Id.* at 187. The "Comic Negro" is the image of the forever smiling and mirthful Negro. *See id.* at 188-91. The "Brute Negro" is the view of the Negro as animal like or savage in their appearance and/or behavior, often linked to criminality generally and raping specifically. *See id.* 191-92. The "Local Color Negro" was used by authors to convey peculiarity of a locality by the "speech, garb and customs" of the local Negroes. *See id.* at 196-97. Lastly, the "Exotic Primitive" is a more romantic view of the "natural" Negro, who expresses their innate tendencies through "savage rhythm" and "living a life of ecstasy." But, the "Exotic Primitive" is a more "jazzed up" stereotype that appears in early 20th Century fiction. *See id.* 197-200.

123. *Id.* at 203.

none of the virtues; second, any achievement of the Negro is to be attributed to the white blood in his veins. The logic runs that even inheriting the worst from whites is sufficient to for achieving among Negroes. The present theses are based upon these: The mulatto is the victim of a divided inheritance; from his white blood come his intellectual strivings, his unwillingness to be a slave; from his Negro blood come his baser emotional urges, his indolence, his savagery.<sup>124</sup>

Beauty and sexuality are also characteristics attributed to mulattoes. As Brown points out, there is the common idea that “the white blood means asceticism and Negro blood means unbridled lust.”<sup>125</sup> It was a common theme for a female mulatto to be incapable of repressing “the lust inherited from her people; the environment of debauchery, violence and rapine in exchange for concubinage with a white paragon, which ends, of course, in the inevitable tragedy.”<sup>126</sup> According to historian Patricia Morton, “In the turn of the century literature, the mulatto woman emerged as a figure as menacing as the stereotypical black male threat to white ‘purity.’”<sup>127</sup> Both Brown and Morton’s observations about stereotypes serve as useful frameworks for analyzing subsequent plot-summaries. These stereotypes of blacks and mulattoes develop in early literary fiction and are carried-over to influence their early depictions in film as well.

Through the 19th Century, passing developed into a literary trope. These early fictions were full of both positive and negative stereotypes. Abolitionist writers tended to “elevate the Negro, and especially the mixed-blood character, to the role of heroic victim who would be free or die.”<sup>128</sup> Early mulatto identity fictions depict mulatto characters as being all-but-white, beautiful, virtuous, extremely intelligent, sensitive, proud, upright, and respectable.<sup>129</sup> Abolitionist authors relied upon mulatto characters as a means of generating a greater sense of identification between their white audience and the subject of the black condition.<sup>130</sup> In

124. *Id.* at 194–95.

125. *Id.* at 196.

126. Brown, *Negro Character as Seen by White Authors*, 2 J. OF NEGRO ED. at 195.

127. BARBARA TEPA LUPACK, *LITERARY ADAPTATIONS IN BLACK AMERICAN CINEMA: FROM MICHEAUX TO MORRISON* 61 n.54 (2002).

128. BERZON, *supra* note 88, at 59.

129. *Id.* at 54–55.

130. *Id.* at 53.

the film industry, as we will see later in the Article, studios used white actors to serve a similar purpose in terms of connecting and enabling white audiences to identify mulatto characters.<sup>131</sup> As one author points out, “the mulatto is the only-too-obvious badge of white abuse of the Negro, of the hidden anguish of the system of slavery, of the continuing hypocrisy in racial attitudes.”<sup>132</sup>

The following early fictions provide not only insight into the perception of mulatto identity, race and law in the 19<sup>th</sup> Century, but these story-lines are recycled and shape the portrayal of the mulatto in the 21<sup>st</sup> Century. Just as with the legal text of *Plessy* and *In re Rhineland*, the story-lines and literary tropes developed in this early period of American literature, will be recycled and revisited in different iterations throughout the film era. In addition, the treatment of mulatto identity by black and white authors in literature is mirrored in films produced for the white mainstream audience versus those produced for mainly black audiences. These reoccurring themes in literature will inform later discussions of cultural depictions of mulattoes in film.

### 1. Abolitionist Fictions

Lydia Maria Child wrote some of the earliest American fiction about mulattoes. Two short stories called *The Quadroons* (1842) and *Slavery's Pleasant Homes* (1843) are most notable. *The Quadroons* is the story of Rosalie, a beautiful light skinned mulatto whose white lover, Edward, leaves her for a white woman in the pursuit of his ambitions but not before begetting a child, Xarifa. Rosalie dies heart broken a year after Edward's marriage. Upon Rosalie's death, Edward reconnects with his young beautiful daughter, whom he spoils. However, he dies in a tragic accident without making any provisions for Xarifa in his will. Xarifa falls in love with a white man but before they can be together, a horrible twist of fate occurs. It turns out that her father never freed Rosalie and therefore Xarifa was the property of poor relations of her slaveholding grandfather. As a result, Xarifa is reduced to slavery and sold essentially as a

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131. See Section VI.

132. NANCY TISCHLER, BLACK MASKS: NEGRO CHARACTERS IN MODERN SOUTHERN FICTION 102 (1969).

concubine to the highest bidder. She is kept from her true love, who is killed in an attempt to rescue her. Her misery from her love's death overwhelms her. "In a few months," the author quickly concludes, "poor Xarifa was a raving maniac. That pure temple was desecrated, that loving heart was broken, and that beautiful head fractured against the wall in a frenzy of despair."<sup>133</sup> Child's other work, *Slavery's Pleasant Homes* is the story of George, a quadroon who falls in love with a beautiful dark skin slave, Rosa. His master, also his half brother, has his way with Rosa and whips her for her obstinance. She dies from the cruel treatment and George wants revenge. He murders his brother and frames his rival, a mulatto slave who had attempted to sabotage his relationship with Rosa early on. Right before they are about to hang his rival, George confesses to the murder and is kicked and hung like a dog.

Probably the best known of the abolitionist fictions is *Uncle Tom's Cabin* (1852) by Harriet Beecher Stowe. The mulattoes, George Harris, his "wife" Eliza and their young son Harry are central characters in the novel. Early in the novel, Stowe introduces the reader to George and Eliza who have established an almost domestic routine of visits between their respective plantations despite their enslaved condition. George is hired out to work in a bagging factory; he is highly intelligent and he creates a machine for cleaning hemp. However, when his jealous master learns of his slave's aptitude and success at the factory, he relegates George to a field laborer where his intellect cannot be seen and his position as inferior to his master can be affirmed. George is beaten and tormented by his master. He is even ordered to marry a girl on his master's plantation, Mina, as a means of preventing George from ever seeing Eliza again. George tells Eliza of his plan to run away to Canada. However, Eliza is very content on her master's plantation and is reluctant to leave with him, until she finds out that her master has agreed to sell off his trusted slave Tom as well as Harry to a slave trader. She decides to escape with her child in the hopes of meeting up with her husband, who has already escaped for Canada. George later jeopardizes himself in order to reunite with his wife and child by passing for white. Cassy, a mulatto

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133. Lydia Maria Childs, *The Quadroons*, in *FACT AND FICTION: A COLLECTION OF STORIES* 76 (C.S. Francis ed., 1847).



sold to pay for her father's debts, is introduced to the reader when Tom is "sold down the river" to a harsh plantation. She is depicted as defiant and strong willed. While clearly a concubine for her master, Simon Legree, Cassy uses her position to effectuate an escape for her and Emmeline, a young mulatto woman taken on as an additional mistress to Legree. In freedom, Cassy is reunited coincidentally with her long-lost daughter Eliza.

## 2. Black Abolitionist Fictions

Like in Beecher Stowe's classic, a similar heroic portrayal of the near-white mulatto appeared in *Clotel* (1853), a novel written by black abolitionist William Wells Brown. The author published the novel *Clotel* in four different versions between 1853 and 1867. Printed in England, where Brown was spending a forced exile due to the Fugitive Slave Act of 1850,<sup>134</sup> the first version appeared in 1853 as *Clotel; or the President's Daughter: A Narrative of Slave Life in the United States*.<sup>135</sup> This edition is the most politically explicit, because Brown makes Thomas Jefferson the heroine's father. Later versions make the heroine merely the daughter of a Southern senator, however, with only some minor plot changes; the basic story line is the same.<sup>136</sup> The original version is a story of a slave mother, Clotel, who is separated from her daughter, Mary, when her politically ambitious white lover, Horatio, marries the daughter of a prominent white family. Clotel is sold down south and Horatio's wife keeps Mary as a house servant. Both Clotel and Mary pass for white at different times and for different purposes. Clotel ultimately escapes from her southern master with the help of William (a fellow slave), by disguising herself as an invalid white man traveling along with his black slave, William. When they reach the free states, Clotel tells William to proceed to Canada while she

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134. M. Giulia Fabi, *The "Unguarded Expressions of the Feelings of the Negroes": Gender, Slave Resistance, and William Wells Brown's Revisions of 'Clotel'*, 27 AF. AM. REV. 639, 641 (Winter 1993). The Fugitive Slave Act demanded that if an escaped slave was sighted, he or she should be apprehended and turned in to the authorities for deportation back to their "rightful" owner.

135. Subsequent editions appeared as *Miralda, or The Beautiful Quadroon: A Romance of American Slavery Founded on Fact* (1860); *Clotelle: A Tale of the Southern States* (1864); *Clotelle* (1867); or *the Colored Heroine: A Tale of the Southern States* (1867).

136. Fabi, *supra* note 134, at 644.

goes in search of her daughter in Richmond. Clotel is soon apprehended, and finding her last attempt to escape thwarted, she commits suicide.

Following her mother's death, Mary helps her lover, George Green, also a mulatto, escape from prison to avoid hanging for his participation in a slave revolt. He escapes by wearing Clotel's clothes. For aiding George, Mary is sold down south where she eventually escapes with the help of a Frenchman, M. Devenant, whom she marries out of gratitude. The Devenants settle in France. George reaches Canada with the aid of Quakers, and works hard for six months to hire someone to free Mary. When he learns she has been sold south, he despairs and sails for England. In England, he gradually rises (after ten years) to the level of a partner in a good law firm but never discloses his African heritage. One day, ten years after his escape, George and Mary meet in a French graveyard. The two are reunited, and after George learns Mary is widowed and Mary learns that George never married (in hopes of finding her again), the two are married and remain in Europe.

Another notable early novel about mulatto identity by a black author is Frank J. Webb's *The Garies and Their Friends* (1857). Webb's novel recounts the story of two families: the Ellises, a black middle-class Philadelphia family, and the Garies, a family that moves from the South to Philadelphia, where Mr. Garie, a white man, marries his mulatto mistress Emily and emancipates her and their children. In Philadelphia, the Garies enjoy the society of the Ellises (a black family Mrs. Garie knew in the South) and Mr. Walters, a wealthy black self-made man. After experiencing in various instances the racial prejudice pervasive in the "free" North, the Garies eventually fall victim to the greediness of a long-lost relative (Mr. Stevens, a middle class lawyer) who instigates a riotous mob against the free blacks of Philadelphia. During the riot, Mr. Garie is shot to death, Mrs. Garie dies after giving premature birth to a stillborn child in the cold shed where she has taken refuge, and Mr. Ellis is made an invalid for life. Also as a consequence of the riot, the two orphaned Garie children are separated: Clarence leaves Philadelphia and passes to enter an all white boys' school, and Emily is raised by the Ellises.

### 3. Post-Reconstruction and the Turn of the Century Fiction

After the Emancipation, white pro-slavery writers who had been silent on the issue of mulattoes began to write about the encroachment of the freed black.<sup>137</sup> Authors like Thomas Nelson Page and Thomas Dixon portrayed mulattoes as dangerous elements among the freed blacks. Mulattoes were seen as “the despoiler of white womanhood, the corruptor of the white gentleman, and the usurper of political power.”<sup>138</sup> It was a response, in some ways, to the idea that the mulatto’s duty was to ally with the Negro group and “sincerely and unselfishly aid in the fight for race betterment.”<sup>139</sup>

Early abolitionist stories involved mulatto characters continuously aware of their status. There were however, a number of books in this era that dealt with the issue of a mulatto who only discovers his “Negro blood” after becoming an adult.<sup>140</sup> The most notable of these books is Mark Twain’s *Pudd’nhead Wilson* (1893). Pudd’nhead Wilson is a Northerner who comes to a small Missouri town to build a career as a lawyer but is alienated from the community, attaining the unflattering nickname of “Pudd’nhead.” He scrapes by on odd work and spends most of his time dabbling in scientific hobbies, most notably, fingerprinting. Roxana, or Roxy, is a beautiful slave who can pass for white, though she is one-sixteenth black. To save her infant son from ever being sold away from her, she switches him with the child of her white master, who looks just like her son and was born on the same day but not before Pudd’nhead takes the two children’s

137. Bullock, *supra* note 120, at 79.

138. *Id.* For example, Thomas Dixon’s books *Leopard’s Spots* (1902) and *The Clansman* (1903) portray three mulatto characters: George Harris, a Harvard graduate who wished to woo a white woman, Lydia Brown, the housekeeper and mistress of a radical Reconstruction leader in Congress, whose sinister influence over the congressman threatens the nation, and Silas Lynch, a conniving power hungry mulatto.

139. See also, FRANCES E. W. HARPER, *Iola Leroy; or Shadows Uplifted* (1892) (all the mulatto characters are presented with the question: To pass or not to pass? Each character eventually decides to remain black thus upholding the thesis of the novel: “The mulatto is a tragic person only because and only so long as he fails to cast his lot with the minority group. But once the shadows are uplifted, once he proudly admits that he is a Negro, he rises above his tragedy and dedicates himself to the cause of the dark America”. *Id.* at 80.)

140. Such books include VAN BUREAN DENSLOW, *OWNED and DISOWNED* (1857); MARY PIKE, *CASTE* (1856); H.L. HOSMER, *DISOWNED* (1857); KATE CHOPIN, *DESIREE’S BABY* (1899).

fingerprints. Her son Chambers, now called "Tom" grows up as a white man and heir to an estate. Her master's child Tom, now called "Chambers," grows up a slave. "Tom" grows into a cruel, cowardly man. Roxy eventually tells "Tom" that he is one-thirty second black and "Tom" begins to distance himself from his white friends and family, and interprets his own behavior in terms of "racial atavistic theories."<sup>141</sup> He attributes this distancing to "the nigger in him asserting his humility. . . . He found the 'nigger' in him involuntarily giving the road. . . .The 'nigger' in him went shrinking and skulking here and there and yonder."<sup>142</sup> This internal conflict in "Tom's" mind harkens back to the idea present in law that blackness was an internal condition as much as a physical characteristic.<sup>143</sup> So even though "Tom" and his mother Roxy were externally white, their deviant behavior was attributable to their blackness, which made them dangerous.

"Tom's" gambling debts lead him, under Roxy's guidance, to rob houses, sell the now-freed Roxy as a slave, and finally to murder his uncle, Judge Driscoll, in a botched robbery attempt. "Tom" frames twin brothers Luigi and Angelo, sideshow performers, passing through town with the murder of his uncle. "Tom" escapes town disguised as a woman. Pudd'nhead (who is the twins' attorney) uses his fingerprint collection and discovers that not only is "Tom" the real murderer, he is also the real Chambers. "Tom" is thrown in jail and then, since it is now known he is a slave, sold "down the river" to pay debts to the real Tom's father. "Chambers," who really is Tom, is restored back to his place as a white man and heir, but, raised as a black man and marked by his black speech patterns, he now fits into society nowhere.<sup>144</sup>

At the turn of the century, Charles W. Chesnutt, a light-skin mulatto lawyer and writer, authored a number of stories

141. *Id.* at 42.

142. MARK TWAIN, PUDD'NHEAD WILSON, 97 (1922).

143. *See supra* Part III.B.

144. Speech patterns as an indicator of race show up regularly throughout mulatto identity literature, as well as in film. *See* Hernández, *supra* note 7; *see also infra* Part VI.B. Also, the mulatto characters in fiction tend to be depicted as speaking a more proper form of English versus the general black population who are depicted as speaking broken-English. Broken-English with mulatto characters in literary fiction tends to show proximity to blackness. For example, Rena and John's mother in *THE HOUSE BEHIND THE CEDARS* speaks a broken-English compared to her two lighter-skinned children. *See infra* text accompanying note 147.

that sympathetically portrayed passers.<sup>145</sup> According to Chesnutt, who wrote extensively on the subject of race, "It is only a social fiction, indeed, which makes of a person seven-eighths white a Negro; he is really much more a white man."<sup>146</sup> His most notable book on the subject, *The House Behind the Cedars* (1900), set in the post-reconstruction era, tells the story of John and Rena Walden, the children of a white man and his mulatto mistress. Young John shows interest early on in becoming a lawyer and expresses this interest to the local judge, Judge Straight. The judge allows John to help out around his law office. As a young adult, John leaves his mother's home in North Carolina and moves to South Carolina, where he passes for white, becomes a lawyer, and marries the widow of a Confederate officer. When John's wife passes away and leaves him with an infant, he comes back home to visit his mother and his sister. Upon seeing the beauty and lightness of his sister, he convinces his mother to allow Rena to move to South Carolina where she can pass for white.

It is clear that once Rena passes she cannot freely associate with her mulatto mother because of her darker skin and manner of speech.<sup>147</sup> Frank, a black neighbor who grew up with Rena and cares for her deeply, serves as her distant protector never divulging his knowledge that she was passing. Upon her presentation into white society in South Carolina, Rena's beauty attracts considerable attention. George Tyron, one of South Carolina's most eligible elite men, falls in love with Rena and asks for her hand in marriage. However, Rena's inability to fully cut ties with her mulatto mother threatens to expose her and her brother's secret. On a trip back to her hometown, George discovers her racial heritage while coincidentally in town to handle family business.

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145. Chesnutt wrote a number of stories featuring mulattoes, such as *THE WIFE OF HIS YOUTH* (1897) and *THE SHERIFF'S CHILDREN* (1897). *THE WIFE OF HIS YOUTH* tells the story of a mulatto man, who passed as white to escape slavery and now moves in the highest circles of mulatto society, having his now elderly black wife he married as a slave find him after years of looking. *The Sheriff's Children* tells the story of a mulatto accused of murder and the Sheriff attempting to protect from the lynch mob. It turns out the mulatto is the Sheriff's son who was sold, along with his mother, as slaves. See also Kennedy, *supra* note 90, at 1177.

146. Charles W. Chesnutt, *The Future American: A Complete Race-Amalgamation Likely To Occur*, *Boston Evening Transcript*, Sept. 1, 1900, in CHARLES W. CHESNUTT: *ESSAYS AND SPEECHES* 131, 134 (Joseph R. McElrath, Jr., et al. eds., 1999).

147. See *supra* note 135.

George withdraws his marriage proposal but does not expose John and Rena as black. George Tyron instead spends the remainder of the book wrestling with the reality of still loving someone with black blood. Rena, heartbroken because George did not love her enough to look past her heritage, decides to rejoin the colored community. She agrees to teach at an all black school outside of town at the urging of Jeff Wain, a fellow mulatto "who leaned toward the broad mulatto type . . . more than compensated in her eyes by very straight black hair."<sup>148</sup> However, Jeff Wain's intentions are impure and he pursues Rena sexually. She tragically dies as a result of efforts to evade him. Frank, her faithful black companion finds her and brings her home to her mother. During this period George has worked through his bigotry and decided he wants to be with Rena. But he is too late.

Above, the Article provides a brief synopsis of the plot summaries of some of the more notable fictions featuring mulatto characters. The following section takes the aforementioned storylines and attempts to highlight the role law and legal instruments play in these early fictions.

### *B. Linking Passing and the Law in Early Fiction*

As demonstrated above, the passing mulatto did not always exist but was someone that gradually developed in the early fiction. As time went on, increasingly, these fictions portrayed the "passing" person in more negative terms, such as a runaway slave, a cross-dresser, a parvenu or emigrant, a spy, a trickster or rebel, a victim or coward, a self-serving opportunist, a traitor to kin, and a criminal.<sup>149</sup> The sudden appearance of the passing theme in these fictions reflects an anxiety about the permeability of the boundary between black and white. This is true even in abolitionist fiction, although anti-slavery in nature; these fictions are still very conscious of blurring the racial line, suggesting that slavery itself is the cause of transgressions of the "natural" boundary between the races. In addition, interestingly, we also see the bundling of law and passing in these narratives, mainly through the

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148. Chesnutt, *supra* note 146 at 137.

149. Westley, *supra* note 86, at 325; see also Kennedy, *supra* note 90, 1155–56; Regester, *supra* note 108.

introduction of instruments or characters of law. As will be discussed further below, the appearance of the law in these stories ties in with the important role that law played in the subjugation of blacks and in defining one's racial status in the society.

Beginning with Child's short-stories, we see that neither in *The Quadroons* nor in *Slavery's Pleasant Homes* does Child portray the mulatto characters as attempting to pass; in fact, they are resigned to their legal status as Negroes. In *The Quadroons* this lack of desire to pass is interestingly bound up in a discussion of Rosalie's inability to validate her relationship with Edward under the law:

The tenderness of Rosalie's conscience required an outward form of marriage; though she well knew that a union with her proscribed race was unrecognised by law, and therefore the ceremony gave her no legal hold on Edward's constancy. But her high, poetic nature regarded the reality rather than the semblance of things; and when he playfully asked how she could keep him if he wished to run away, she replied, "Let the church that my mother loved sanction our union, and my own soul will be satisfied, without the protection of the state. If your affections fall from me, I would not, if I could, hold you by a legal fetter."<sup>150</sup>

Child uses the virtuousness of Rosalie and Xarifa and their resignation to elicit pity from the reader for the events that will befall these tragic oppressed figures. In *Slavery's Pleasant Homes*, the law appears in the form of a lynch mob that comes to hang George's mulatto rival but turns on him when he reveals he is the true murderer. Child emphasizes the injustice and anonymity of George's suffering at the hands of the lynch mob:

Not one was found to tell how the slave's young wife had been torn from him by his own brother, and murdered with slow tortures. Not one recorded the heroism that would not purchase life by another's death, and though the victim was his enemy. His very name and left unmentioned; he was only Mr. Dalcho's slave!<sup>151</sup>

It is not until *Uncle Tom's Cabin* that we see a mulatto character actively passing for white. It is the scene where George, not knowing that Eliza has run away on her own with

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150. LYDIA MARIE CHILD, *The Quadroons*, in THE LIBERTY BELL 118-19 (1842).

151. LYDIA MARIE CHILD, *Slavery's Pleasant Homes*, in THE LIBERTY BELL 160 (1842).

Harry, returns to the area as a white gentleman with his black valet, Jim. George is introduced to the reader as a stranger with “a dark, Spanish complexion” but clearly Caucasian.<sup>152</sup> Jim has already escaped from slavery to the freedom of Canada but has returned to rescue his aged mother, who is being punished for his flight. As Julia Stern points out, Stowe’s use of Jim in George’s masquerade exposes a “fantastic nature of a system that operates by ‘a fiction of law.’”<sup>153</sup> Jim is a free Negro pretending to be a slave so that the fugitive slave, George, can pretend to be white.<sup>154</sup> However, it is not until George is confronted at the Tavern by his former factory employer that we learn who this mysterious gentleman and valet are. Through an elegant speech and an appeal to his former employer’s humanity, George is able to convince him not to report this transgression of the racial law despite his social responsibility as a white man to police the color-line. Still, the passing here is limited. It is defensive in nature and not permanent. Once the characters reach Canada, it is clear that the characters mean to discontinue their charade.

We find the first true passers in Brown’s book, *Clotel*. In this work, mulattoes are depicted to be at odds with the law due to their intent to permanently pass into white society. This is a key development in the passing narrative. *Clotel*’s plot was heavily influenced by Child’s short story *The Quadroons*; however, *Clotel* is a deliberate departure from Child’s portrayal of tragic mulatto stereotype.<sup>155</sup> Unlike *Clotel*, Rosalie wastes away in the privacy of her home pining for Edward,<sup>156</sup> never attempting to leave the South or create any public disturbance comparable to *Clotel*’s effort to rescue her daughter.<sup>157</sup> Xarifa is an “equally defenseless, pathetic, and utterly tragic figure.”<sup>158</sup> Brown instead portrays *Clotel* and Mary not as tragic figures, but as passers.<sup>159</sup> This empowers them “as the potentially undetectable link between

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152. JULIA STERN, *Spanish Masquerade in Uncle Tom’s Cabin*, in *PASSING AND THE FICTIONS OF IDENTITY* 111 (Elaine K. Ginsburg ed., 1996).

153. *Id.* at 111.

154. *Id.* at 112.

155. Fabi, *supra* note 134, at 644.

156. *Id.*

157. *Id.*

158. *Id.*

159. Fabi, *supra* note 134, at 644.



the enslaving and the enslaved,” and positions them as a threat both to white property and to the “whiteness” that legitimizes the ownership of human chattel.”<sup>160</sup>

Clotel passes as an elderly white man to escape slavery. A necessary subterfuge that reflects the socially acceptable gender limitations placed on white women’s travel at this time. Passing as white man allows her much more freedom of movement through society. In addition, Mary passes as George and George passes as Mary to effectuate George’s escape from prison. The mulatto is depicted as being able to transcend not only race, but gender as well. They are portrayed as genderless and raceless individuals able to morph their identities in any given circumstance.<sup>161</sup> Finally George sails to England and becomes a lawyer never disclosing his black ancestry. As one scholar points out regarding Clotel, “passing also gives them a strategy to assert their identity in ways that are discontinuous with their status as property.”<sup>162</sup> This makes the mulattoes in *Clotel* rebels, dissatisfied with their legal status within society, just as the white abolitionist writers had been portraying them up until this point, and as active challengers of their status through the act of passing.

Webb’s novel *The Garies and Their Friends* is probably the first of the early fictions to enter the psyche of the passer. This is unusual in 19<sup>th</sup> Century fiction, given that mulattoes were mainly used as an instrument for a cause, such as “the abolition of slavery, a lily-white South, an equality and opportunity of rights for the Negro and white citizens alike.”<sup>163</sup> *The Garies and Their Friends* makes use of characters affiliated with the law, which is typical of many literary fictions about mulatto identity. Clarence Garie, the Garies’ son who passes, is our first tragic mulatto passer. Clarence passes for white but because he is never free of his secret and lives in a state of constant anxiety, he is never comfortable with either whites or blacks. Unlike Clarence, his sister, “Em,” stays black (by remaining with the Ellises) and attains happiness.<sup>164</sup> Notably, Clarence and Em’s orphaned

160. *Id.*

161. The film *THE CRYING GAME* depicts a male mulatto character as being both racially ambiguous as well as being able to morph his gender.

162. Fabi, *supra* note 134.

163. Bullock, *supra* note 120, at 80.

164. Kennedy, *supra* note 90, at 1178.

state is caused by a lawyer, Mr. Stevens, who instigates lawlessness in the form of a riot that leads to the death of Clarence and Em's parents. Webb's use of a lawyer as downfall of an upstanding family is a direct commentary on the destructive and intrusive nature of the laws governing racial identity.

Mark Twain's *Pudd'nhead Wilson* provides an interesting twist on the "passer" thematic that characterized earlier books. Twain deals with the issue of inadvertent passing in the switching of Tom and Chambers. Here too, the law and the instruments of law play an important role in this story. First, there is the irony of the passing because it is not only "Tom" who passes for white but it is also "Chambers" who passes for black. Second, we have Pudd'nhead, an unsuccessful lawyer, who has taken up fingerprinting as a hobby. Fingerprinting at the time *Pudd'nhead Wilson* was published was just gaining acceptance as an evidentiary instrument for the law.<sup>165</sup> Ironically, it is the use of fingerprinting (or a legal instrument) that uncovers "Tom's" true identity and is the means by which his identity is legally fixed. Not to mention, "Tom" solidifies his transgression against the law by killing his uncle, the local judge. Twain's book has been described as an examination of how "social environment can discount parentage and legal edict in determining one's 'racial allegiance.'"<sup>166</sup> Twain, much like Webb, also departs from the wholly propagandistic use of the mulatto character to examine the mentality of the mulatto.

And, it is in Charles Chesnutt's *House Behind the Cedars* that upon young John's first encounter with the appropriately named, Judge Straight, that the judge explains to John, "the law does not permit men of color to practice the law."<sup>167</sup> In response, John says "I had thought that I might pass for white. There are white people darker than I am."<sup>168</sup> The judge, instead of bouncing John out of his office for even suggesting such an act, instead looks into his law books.

165. Just a year before *Pudd'nhead Wilson* was published, Sir Francis Galton, a British anthropologist and a cousin of Charles Darwin, published his book *FINGERPRINTS* (1892) reporting his observations of fingerprints as a means of identification and establishing the individuality and permanence of fingerprints.

166. Bullock, *supra* note 120.

167. CHARLES W. CHESNUTT, *THE HOUSE BEHIND THE CEDARS* 118 (Modern Library 2003).

168. *Id.*

According to him “liberty is sweeter when founded securely in the law.”<sup>169</sup> He finds that the law in South Carolina is more favorable to John than North Carolina’s law that draws the color-line at one-fourth black, John’s mixture. Judge Straight reads the law to John:

‘The term mulatto,’ he read, ‘is not invariably applicable to the admixture of African blood with European, not is one having all the features of a white to be ranked with the degraded class designated by the laws of this State as persons of color, because of some remote taint of the negro race. Juries would probably be justified in holding a person to be white in whom the admixture of African blood did not exceed one eight. And even where color or feature are doubtful, it is a question for the jury to decide by reputation, by reception into society, and by their exercise of the privileges of the white man, as well as by admixture of blood.’

‘Then I need not be black?’ the boy cried, with sparkling eyes.

‘No,’ replied the lawyer, ‘you need not be black, away from Patesville. You have the somewhat unusual privilege, it seems, of choosing between two races. . .’<sup>170</sup>

Unlike earlier writers, Chesnutt, a mulatto, saw the plight of the mulatto as a cause unto itself.<sup>171</sup> He was concerned with the pressures exerted upon them as human beings living in a paradoxical environment.<sup>172</sup> This concern was reflected in his more sympathetic portrayal of passers, which may be due to his own ability to pass for white.<sup>173</sup> Chesnutt and a couple of other writers were the exception rather than the rule in this regard.<sup>174</sup> This exchange between young John and Judge Straight articulates not only an affirmative attempt to pass by young John but also a legal right to do so. Chesnutt in this scene highlights inconsistency in the law guarding the color-line. Chesnutt, a lawyer, accurately represents the

169. *Id.*

170. *Id.* at 118–19.

171. Bullock, *supra* note 120.

172. *Id.*

173. See Kennedy, *supra* note 90 and accompanying text.

174. A. W. Tourgee, a white Northerner and the author of *Royal Gentleman* (1881) and *Pactulos Prime* (1890) and George W. Cable, a white Southerner and author of *Granddissimes* (1880), like Chesnutt, “brought keen analysis, sympathetic interpretation, and sometimes literary artistry” to their portrayals of mulatto characters. Bullock, *supra* note 120, at 80.

mutability of the mulatto identity within the eyes of the law.<sup>175</sup>

The use of law or legal instruments in these narratives of passing further demonstrates how race was a product of the law. While the law plays an almost self-conscious role in many of the early fictions of mulatto identity, the law in film plays a much subtler role through the maintenance of certain visual boundaries between blacks and whites in terms of social interaction.

### C. *The Transfer of Stereotypes from Literary Fiction to Film*

In 1903, America's first black film character made his appearance in a twelve-minute motion picture called *Uncle Tom's Cabin*.<sup>176</sup> Early silent motion pictures first introduced the five basic black characters that would be the dominant popular images of blacks in film for the next half century.<sup>177</sup> Unfortunately, the stereotypes already developed in literature were directly transplanted into this new medium that would reach an even broader audience in the 20th Century than the popular literary fictions of the 19th Century had. These five types mirror and encapsulate what Brown described as the seven stereotypes in literature. According to film historian Donald Bogle, the five types in film include: (1) Toms; (2) Coons; (3) The Brutal black Buck; (4) The Mammy; and (5) The Tragic mulatto. "Toms" were the "good Negro" characters in films and served the same purpose as the "Contented Slave" stereotype in literature.<sup>178</sup> "Coons" were objects of amusement and buffoonery and are the equivalent to the "Comic Negro."<sup>179</sup> With regards to "Coons," Bogle points out that there was the "pure coon" and two variants of the type: the "pickaninny" and the "uncle Remus."<sup>180</sup> The "Brutal black

175. See *supra* Part II.B.

176. DONALD BOGLE, TOMS, COONS, MULATTOES, MAMMIES, & BUCKS: AN INTERPRETIVE HISTORY OF BLACKS IN AMERICAN FILMS 3 (3<sup>rd</sup> ed. 1996).

177. *Id.* at 4.

178. Bogle, *supra* note 176 at 4–5; see also Stern, *supra* note 152.

179. Bogle, *supra* note 176 at 7–8; see also Stern, *supra* note 152.

180. "Pickaninny" was the black child whose "eyes popped, whose hair stood on end with the least bit of excitement, and whose antics were pleasant and diverting." Bogle, *supra* note 176 at 7. "Uncle Remus" character was "harmless and cogenial, he is a first cousin to the tom, yet distinguishes himself by his quaint, naïve and comic philosophizing." *Id.* at 8.

Buck” is the same fearsome character as the “Brute Negro” described by Brown.<sup>181</sup> “The Mammy” straddles the line between the characteristics of a Tom and Coon but was distinguished by her sex and large size.<sup>182</sup> But, it was “The Tragic mulatto” who turned out to be the movie industry’s darling of the black pantheon and who was portrayed consistently with the themes that had pervaded literary fiction.<sup>183</sup> The Mammy and the Tragic mulatto were often paired together in films for purposes of introducing visual blackness to a scene in order to “racially out” the passing person.<sup>184</sup>

The connection between prevailing stereotypes in literary fiction and stereotypes that appear on film is no accident. Many films featuring mulatto characters are themselves either direct adaptations of either historical or contemporary literary fiction, or closely influenced by existing plot lines of such fictions.

#### IV. EARLY FILMS: 1900–1927

##### A. *The Appearance of the Mulatto in Film*

Film has greatly influenced mass culture’s images and ideas regarding race, largely through racist images and narratives regarding “manifest destiny of white civilization.”<sup>185</sup> As discussed earlier, mulattoes were still counted separately from blacks on the U.S. Census until 1920 and conceived of as a separate threat. Especially in white studio productions, mulattoes were typically portrayed as “malicious, duplicitous, and conniving figures whose only

181. BOGLE, *supra* note 176 at 10; *see also* Stern, *supra* note 152.

182. BOGLE, *supra* note 176; *see also* Stern, *supra* note 152.

183. BOGLE, *supra* note 176 at 9.

184. In films like *IMITATION OF LIFE* (1934); *PINKY* (1948) and the remake of *IMITATION OF LIFE* (1959), discussed *infra* Parts VI and VII, we see Mammies and Tragic Mulatto paired. According to Robert Westley, “however, when the “passing” narrative is submitted to the cinematic codes of film representation, its reliance on visible blackness as its epistemological guarantee, easily unmarked and elided in literary treatments, is forced to the surface. In order to see and thus know the “passing” person, the audience must see blackness.” Westley, *supra* note 86, at 328. The mammy is representative of the “all-black woman, overweight, middle-aged, and so dark, so thoroughly black, that it is preposterous even to suggest that she be a sex object. Instead she was desexed.” BOGLE, *supra* note 176, at 14–15.

185. *See* Bernardi, *supra* note 10, at 7.

concern was to better their status.”<sup>186</sup> There was really very little difference in the treatment of the mulatto as passer by blacks and whites, in either film or literature, except for the emphasis in black novels and films on racial pride.<sup>187</sup>

Among the early films with major mulatto characters, the plot lines represent a range of moral and racial assumptions within the “tragic mulatto” motif. One of the first mulatto characters to appear in motion pictures was Zoe, the Octoroon of the title of the film, *The Octoroon* (1911).<sup>188</sup> *The Octoroon* is based on a play by Dion Boucicault and tells the story of an octoroon, who brings sorrow to everyone she associates with.<sup>189</sup> By the end of the film, Zoe’s former mistress is impoverished; her mistress’ son is broken hearted over Zoe’s loss; a young boy is murdered and Zoe herself has committed suicide rather than be enslaved by a cruel new master.<sup>190</sup> Zoe represents the prototypical tragic mulatto female, who is a seductress of white men and a danger to everyone around her.<sup>191</sup>

The following year, *The Debt* (1912) was released. It told the story of a white man who fathers children by both his wife and his Octoroon mistress. The children by the two women grow up, meet, and fall in love.<sup>192</sup> They melodramatically find out that they are brother and sister on the eve of their marriage.<sup>193</sup> *The Debt* not only represents the tragic repercussions of the father’s transgression, but the near double tragedy of incest and miscegenation. *In Slavery Days* (1913) takes a page from Mark Twain’s *Pudd’nhead Wilson*. Carlotta, an Octoroon switched in childhood with the daughter of a white family, whose real daughter is named Tennessee, sells Tennessee into slavery out of jealousy over a suitor. Tennessee is rescued out of slavery, while both Carlotta and her mother—who switched the two girls—burn to death in a cabin set on fire during a quarrel.<sup>194</sup> Once again, we see a tragic mulatto female, Carlotta, motivated by her

186. LUPACK, *supra* note 127, at 34.

187. See BERZON, *supra* note 88, at 159.

188. LUPACK, *supra* note 127, at 36.

189. *Id.*

190. *Id.*

191. See *supra* Part III.C.

192. LUPACK, *supra* note 127, at 36.

193. *Id.*

194. *Id.* at 35.

sexual desires to victimize others. These female characters are portrayed as being inherently cruel and wicked. In the end, all is set right and the two mulattos are burnt alive like witches.

Other films of this period dealt with variants on the "Tragic Mulatto" thematic but did not have "true mulatto" characters. These films dealt with the idea of contaminated whiteness or mixed-blood of pure whites.<sup>195</sup> However, it is David Wark Griffith's epic silent film *The Birth of a Nation* (1915), with its record-breaking budget and racially charged subject matter, that both raised the bar for filmmaking and lowered it in terms of blatant racial bigotry on screen.

### *B. Early Big Budget Hollywood*

*The Birth of a Nation* is based on Thomas Dixon's novel about the Reconstruction and the rise of Ku Klux Klan called *The Clansman* (1903). The film was originally released as *The Clansman* but after seeing the film in a private screening, Dixon suggested it be renamed *The Birth of a Nation*.<sup>196</sup> Griffith's adaptation of Dixon's novel tells the story of the Cameron family of South Carolina, who live an idyllic existence with their happy and devoted slaves until the Civil War breaks out. Throughout the war, black raiders terrorize the Cameron family. During Reconstruction, carpetbaggers and Northern blacks move into the area and disrupt the entire social order. Under black rule, whites are pushed off the walkways, prevented from voting, and are governed by a legislature full of whiskey drinking, barefoot, chicken eating blacks—whose first item of business is to repeal the law banning the intermarriage of blacks and whites.

The three black villains of the film are: Silas Lynch, the power hungry mulatto protégé of the radical Congressman Austin Stoneman; Lydia Brown, the scheming and hissing mulatto mistress of Stoneman; and Gus, a full-black former

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195. See, e.g., *IN HUMANITY'S CAUSE* (1911) (Confederate soldier gets blood transfusion from a black man, the officer now a man of mixed-blood, changes from a caring and loving fellow, into a brute so disgusting that he offends even his sweetheart); *THE BAR SINISTER* (1917) (woman convinced that a drop of black blood made her "a Negress!" but is overjoyed when she finds out that she is pure white after all); see also *Id.* at 36-37.

196. Arthur Lennig, *Myth and Fact: The Reception of Birth of a Nation*, 16 *FILM HISTORY* 117, 119 (2004).

slave of the Cameron family whose menacing chase of Flora Cameron leads to her death.<sup>197</sup> Stoneman sends Silas down south “to aid the carpetbaggers in organizing and wielding the power of the Negro vote” (according to the title card). Stoneman’s determination to enfranchise blacks in the south is influenced by his “passionate alliance with the scheming ‘leopardess’ Lydia (so described in Thomas Dixon’s novel about Stevens’ affair with his black housekeeper).”<sup>198</sup> In fact the title card preceding the scene showing Stoneman touching his mistress states: “[t]he great leader’s weakness that is to blight a nation.” Lydia is also Silas’ lover. His job was to “Africanise” the South.<sup>199</sup> According to one film scholar, the fact that two of the three villains “were mulatto indicates that Griffith’s main target was not blacks but miscegenation.”<sup>200</sup> This line of argument has been rebutted as white-washing the film’s blatant bigotry against blacks.<sup>201</sup> From any viewpoint, Griffith’s major villains are either the byproduct of miscegenation or pose the threat of rape and miscegenation. One cannot separate the fear of miscegenation between blacks and whites from bigotry against blacks, as the former is a direct product of the latter.

Like many of the black characters in the film, white actors also played the roles of most of the mulatto characters.<sup>202</sup> Using white actors in blackface, especially in scenes that are meant to evoke outrage in the film audience, made those scenes a lot more tolerable to view than they would have been if an actual black actor had played the role. The blackface representation also adds to the exaggerated minstrel-style stereotyping of blacks in film. In later films, we see that

197. The character of Congressman Austin Stoneman is modeled after Congressman Thaddeus Stevens, leader of the Radical Republicans in the US Congress during Reconstruction. See Clyde Taylor, *The Re-birth of the Aesthetic in Cinema*, in *THE BIRTH OF WHITENESS: RACE AND THE EMERGENCE OF U.S. CINEMA* 21 (Daniel Bernardi ed., 1996). Much has been written on the complexity and ambiguity of the scene where Gus chases Flora to her death. It is not clear whether Gus intends to rape Flora or if it is a tragic misunderstanding that leads Flora to jump to her death. See Russell Merritt, *D.W. Griffith’s The Birth of a Nation: Going After Little Sister*, in *CLOSE VIEWING* 215–237 (Peter Lehman ed., 1990).

198. Taylor, *supra* note 197.

199. Everette Carter, *Cultural History Written with Lightning: The Significance of The Birth of a Nation (1915)*, in *HOLLYWOOD AS HISTORIAN* 14 (Peter C. Rollins ed., 1983).

200. Taylor, *supra* note 197, at 18.

201. *Id.*

202. BOGLE, *supra* note 176, at 14.



white actors are used to create sympathy for mulattoes among the predominantly white mainstream audience, as opposed to showing their deplorability.<sup>203</sup>

As a mulatto character, Lydia represents the "dark, sinister, half-breed as a tragic leading lady."<sup>204</sup> Although she is just a supporting character in the film, she is the "only black role to suggest even remotely genuine mental anguish. She hates whites. She refuses to be treated as an inferior. She wants power. Throughout, she anguishes over her predicament as a black woman in a hostile white world."<sup>205</sup> Lydia is visually portrayed as constantly hissing, tearing at her clothes, throwing herself on the ground and eavesdropping on Stoneman. Silas is shown as brutish, arrogant, conniving, power-hungry and sexually-predatory—such as when he leers at Stoneman's beautiful daughter, Elsie. It has been suggested that the lack of physical subtlety of the mulatto actions exhibited in the film are meant, "obviously as a physical correlative of their crude mental functions."<sup>206</sup>

However, Lydia and Silas are not the only mulattoes who appear in the film. In the scene where Silas has imprisoned Elsie in his headquarters, you see Silas fraternizing with mulatto women in an adjoining room. Interestingly, these women are not played by white actresses but are light-skinned black women. Silas makes his impure intentions clear in the scene where he chases Elsie around the room in an attempted sexual assault. He drunkenly proclaims, "I shall build a black empire and as my queen [you] will rule by my side."

Of course, Elsie is freed in the end as the Clan brings order and the North and South are reunited in their fight against the mistake of racial equality.

As one scholar points out: "Griffith's stories of whiteness eventually come to a moral resolution with non-whites serving the white society, white society safely segregated, white families secure in their homes, and white males atop

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203. See *infra* Part VI.

204. BOGGLE, *supra* note 176, at 14.

205. *Id.*

206. Brian Gallagher, *Racist Ideology and Black Abnormality in the Birth of a Nation*, 42 *PHYLON* 68, 73 (1982).

the sexual and moral ladder.”<sup>207</sup> Thus, the Clan is portrayed as reestablishing the “rule of law” of the white community.

*The Birth of a Nation* was not without controversy upon its release. The National Association for the Advancement of Colored People (NAACP), formed in 1909, wanted the film banned for its racist depiction of blacks.<sup>208</sup> The NAACP staged a number of protests to prevent it from being shown, and made efforts to have excessively offensive scenes censored to prevent inciting white audiences who might lynch blacks.<sup>209</sup> The film’s premiere was delayed in cities like Boston and New York.<sup>210</sup> It was also out right banned in West Virginia, Ohio and Kansas.<sup>211</sup> However, the organization’s censorship campaign was labeled as being anti-freedom of expression and also inadvertently gave free press to the film.<sup>212</sup> Despite these efforts, *The Birth of a Nation* remained one of the longest running films in movie history.<sup>213</sup>

In 1927 Hollywood offered another big budget film featuring mulatto characters. The film was Universal Picture’s \$2,000,000 remake of *Uncle Tom’s Cabin* (1927).<sup>214</sup> Unlike *The Birth of a Nation*, the mulatto characters in *Uncle Tom’s Cabin* are depicted as heroic and virtuous. The film, however, is not without its racial stereotypes. The first scene shows Eliza, played by a white actress, encircled by a group of dancing “pickaninny” children celebrating her impending nuptials to George, played by a white actor. George and Eliza’s marriage does not appear in Stowe’s original novel. Black children are shown stealing watermelons and during the post-nuptial celebration the black slaves are shown imitating white dancing and fighting. A substantial part of the film is devoted to Topsy, “a lively pickaninny, used solely

207. Taylor, *supra* note 197.

208. See THOMAS CRIPPS, SLOW FADE TO BLACK: THE NEGRO IN AMERICAN FILM 1900–1942, 41–69 (1993); see also Lennig, *supra* note 196, 117–149.

209. *Id.*

210. Scott Heller, *A Pioneering Black Film Maker*, 41 THE CHRONICLE OF HIGHER EDUCATION (Mar 3, 1995) at A6-A7.

211. *Id.*

212. CRIPPS, *supra* note 208, at 66–67.

213. *Id.*

214. Several low-budget film versions of *Uncle Tom’s Cabin* predate Universal’s 1927 remake: Edwin Porter’s *Uncle Tom’s or Slavery’s Days* (1903); Thanhouser’s *Uncle Tom’s Cabin* (1910); Vitagraph’s *Uncle Tom’s Cabin* (1910); American Studio’s *Uncle Tom’s Cabin* (1913); Kalem’s *Uncle Tom’s Cabin* (1913); World Film Corporation’s *Uncle Tom’s Cabin* (1914); and Players-Lasky Corporation’s *Uncle Tom’s Cabin* (1918).

for comic relief,” who is featured prominently in Stowe’s novel and juxtaposed with the young angelic Miss Eva.

The film takes great liberties with the plot of Stowe’s novel in other ways. The film, for example, does not depict George as attempting to pass as a white gentleman, but instead depicts him as passing as a deck hand on a riverboat. In addition, Eliza in the film is separated from Harry and is substituted for the mulatto Emmeline on Simon Legree’s plantation. Both in the book and film, the initial interaction between the two mulatto females is sexually competitive and strained. In the film version, Cassy and Eliza do not get along until Cassy realizes Eliza is her daughter. They stage an elaborate fight to cover this truth and their planned escape. The film ends with George, Eliza and Harry reunited by Union Soldiers triumphantly marching onto the recently deceased Legree’s plantation to “Glory, Glory, Hallelujah.” This scene is greatly out of synch with Stowe’s novel written almost a decade and half before the Civil War. The scene likely serves a symbolic purpose, as well as simplifying the plot for a viewing audience. *Uncle Tom’s Cabin’s* treatment of the mulatto characters, although mostly positive, still leaves the characters passive and void of much of the independence and strength depicted in Stowe’s original work. But the film ends positively with a united nuclear family. The viewer is left with a sense of national pride in the emancipation of the mulatto characters and a historically idealized reunification of a black-family.

As in early literary fiction, the issue of passing does not come up in either film. It is unclear in Universal’s version of *Uncle Tom’s Cabin* whether or not George was passing when he was working as a menial laborer on the riverboat, because he could have acquired that position as a freeman. At a minimum, we know that he is not attempting to break into the aristocratic white society of his former owners. Depicting such passing would have been perceived as incompatible with the more sympathetic and less threatening image the film set out to portray. White audiences would have viewed the portrayal of upward social mobility through passing as a threat to the “purity” of white society. As a whole, the film sought to replicate the positive motive behind the original abolitionist work by Stowe without challenging the existing racial norms.

### C. Emergence of Black Independent Films

After *The Birth of a Nation*, many looked for ways to respond to negative images of blacks in white studio productions. An initial collaboration between the NAACP and Universal Studios to produce a film in response to *The Birth of a Nation* resulted in the flop, *The Birth of a Race* (1918).<sup>215</sup> The film, originally intended to show the advancement and achievement of blacks, lost focus during the production period as the film moved from the hands of its originators to the producers. The film ended up being a patchwork of anti-black images.<sup>216</sup> It was Oscar Micheaux's film *Within Our Gates* (1919), the following year, that is thought to be the true response to *The Birth of a Nation*. Micheaux's film features, very intentionally, a prominent mulatto character. In Micheaux's work, unlike *The Birth of a Nation* or *Uncle Tom's Cabin*, we see the issue of "passing" taken head on.

Like Griffith's film, Oscar Micheaux's *Within Our Gates* was also the object of censorship campaigns.<sup>217</sup> Micheaux, an important player in the development of black film, made 40 films, crossing over into the sound era, between 1918 and 1948.<sup>218</sup> He originally started off as a self-publishing author but eventually formed his own film company, Micheaux Film Corporation, when he was approached with regard to adapting one of his own novels, *The Homesteader* (1919), to film.<sup>219</sup> Only a fraction of Micheaux's films have survived, which is unfortunate, because a number of films dealt with the issue of miscegenation from the point of view of the black community.<sup>220</sup> Many of these films dealt with the plight of

215. See LUPACK, *supra* note 127, at 72-73.

216. See *id.* at 74-75.

217. Heller, *infra* note 210, at A6-A7.

218. *Id.*

219. *Id.*

220. Micheaux's films THE HOMESTEADER (1919), WITHIN OUR GATES (1919), THE SYMBOL OF THE UNCONQUERED (1920), A SON OF SATAN (1924), THE HOUSE BEHIND THE CEDARS (1925), BIRTHRIGHT (1924/1925), THIRTY YEARS LATER (1928), THE EXILE (1931), VEILED ARISTOCRATS (1932), GOD'S STEPCHILDREN (1938) and THE BETRAYAL (1948) all dealt with miscegenation. Pearl Bowser & Louise Spense, *Identity and Betrayal: The Symbol of the Unconquered and Oscar Micheaux, Biographical Legend, in THE BIRTH OF WHITENESS: RACE AND THE EMERGENCE OF U.S. CINEMA* 56, 65 (Daniel Bernardi ed., 1996). Of these films, only WITHIN OUR GATES, VEILED ARISTOCRATS and GOD'S STEPCHILDREN survive today. WITHIN OUR GATES was thought lost but was found in Spain in the late 1980s, under the title LA NEGRA. Its title cards were translated back into English and the film was digitally restored in 1993 by the Library

the light skinned person, whose “black identities seethed below a lifelong camouflage of white skin.”<sup>221</sup> In *The Homesteader*, for example, Baptiste, the hero of the film, wins the heart of a “Scottish” girl only to learn in the last reel that she is a Negro.<sup>222</sup> Similar plot twists occur in his films *Symbol of the Unconquered*, *Birthright*, *The House Behind the Cedars*<sup>223</sup> and *Thirty Years Later*.<sup>224</sup> The moral of these stories was that although it was easier to be white, “claiming one’s black manhood meant choosing a more difficult path in life but it also meant being true to one’s self.”<sup>225</sup> This message is consistent with the arguments made by black abolitionist authors in the 19th century, that mulattoes should ally themselves with the Negro group.<sup>226</sup>

*Within Our Gates* is the story of Sylvia Landry, a schoolteacher in the South. The opening title card of the film describes her as “typical of the intelligent Negro of our times.”

of Congress.

221. Thomas Cripps, “Race Movies” as Voices of the Black Bourgeoisie: The Scar of Shame, in REPRESENTING BLACKNESS ISSUES IN FILM AND VIDEO 47, 53 (Valerie Smith ed., 1995).

222. *Id.* at 52.

223. Micheaux was a great self-promoter and he intentionally linked his films that dealt with passing with the highly sensational Rhinelander case. This is significant because it the first time we see the recycling of legal text about passing into film. It is a first step away from fictionally based adaptations of 19th Century literature and an attempt to address the contemporary legal and cultural realities of race in America. Micheaux also relied on early literary fiction of mulatto identity. The first film he is known to have done this with was his 1925 film, *The House Behind the Cedars*. Register, *supra* note 108, at 200. It seemed a perfect marketing opportunity given the film adaptation of Chesnut’s novel similarly told the story of a mulatto passing for white, who falls in love with a wealthy aristocratic white man who later finds out her true identity. For example, one such advertisement that appeared in the Baltimore Afro-American read: “The House Behind the Cedars is an remarkable parallel to the famous Rhinelander case....It tells the story of a beautiful mulatto girl who poses as white, and is wooed by a young white millionaire. Although worried, she does not betray her secret. Then comes the discovery as in the Rhinelander case.” *Id.* Micheaux also linked the Rhinelander case with his 1928 film *Thirty Years Later*. One ad described the film as “A dramatic story of a mysterious birthmark and man who thought he was white. This story is similar to the Rhinelander case.” *Id.* at 201. Both of these films were directly taking on the issues of intentional and inadvertent passing. Micheaux’s films are meant to represent contemporary society, not historical epic melodramas. Also, he used both black and white actors in his films, which was unusual for films intended for an all black audience. Jane Gaines, *The Birth of a Nation and Within Our Gates: Two Tales of the American South*, in DIXIE DEBATES: PERSPECTIVES ON SOUTHERN CULTURES 177, 178 (Richard King and Helen Taylor eds., 1996).

224. *Id.*

225. GERALD R. BUTTERS, JR., BLACK MANHOOD ON THE SILENT SCREEN 144 (2002).

226. See *supra* note 119 and accompanying text.

Sylvia teaches at a poor black rural school that is out of money. Our heroine tries unsuccessfully to raise money for the school until Mrs. Elena Warwick, a wealthy white philanthropist, hits Sylvia with her car. The film's second storyline shows a lengthy flashback of Sylvia's upbringing as told by her cousin Alma to Dr. Vivian, Sylvia's fiancée. Sylvia is the adopted daughter of the Landrys, a black sharecropper and his wife. Jasper Landry is described as "typical of the thousands of poor Negro laborers in the Great Delta, lacking education and the vote, but in whose heart burned an eternal hope." Sylvia was able to be educated because of her adoptive father's hard work. She decides to manage her adoptive father's accounts with the white landowner, Philip Gridlestone, who routinely takes advantage of his sharecroppers' ignorance regarding finances. One afternoon, Jasper goes to settle his account with Gridlestone, who says to Jasper: "You're getting mighty smart, eh. I'm on to you. And remember the white man makes the law in this country." At this point a poor white comes in to settle his account and is called "white trash" by Gridlestone. The poor white shoots Gridlestone and leaves Jasper with the body. Eph, a despicable black character, believes he saw Jasper kill Gridlestone and runs around town telling all the whites what happened. Jasper and his wife are beaten, lynched and the bodies are burned for the crime. Eph is also lynched despite his "good" deed.

Micheaux crosscuts this flashback scene between the lynching of the Landrys and an attempted rape of Sylvia. This technique seems to suggest that these two events are happening simultaneously.<sup>227</sup> Some have argued that cross cutting these two scenes, "suggests the historical correlation between these two white acts of reprisal against black men and women."<sup>228</sup> Gridlestone's brother, Armand, goes after Sylvia. The scene between Sylvia and Armand is an inverted version of the attempted sexual assault of Elsie by Silas.<sup>229</sup> Instead of the mulatto Silas attempting to ravish a white woman, it is a white man attempting to ravish Sylvia. As in the chase scene between Silas and Elsie, Sylvia puts on a

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227. BUTTERS, *supra* note 225, at 158.

228. Jane Gaines, *The Scar of Shame: Skin Color and Caste in Black Melodrama*, in REPRESENTING BLACKNESS ISSUES IN FILM AND VIDEO 61, 62 (Valerie Smith ed., 1995).

229. *Id.* at 187.

tough fight against her attacker. She throws a chair, grabs a knife, climbs upon a table and throws a large book at her attacker. Unlike Elsie, who will be saved by a “the horde of white fathers in the robes of the Ku Klux Klan”, Sylvia’s adopted father is burning and the man who is presently accosting her is none other than her own father.<sup>230</sup>

The only thing that saves Sylvia from the rape is a scar on Sylvia’s chest that identifies her as Armand’s mulatto daughter. Armand reaches to rip Sylvia’s dress from her bosom but stops upon seeing a mark upon her body. As Jane Gaines explains:

Although it is sealed rather than a gaping wound, it is yet an ineradicable sign of ‘sexed’ and ‘raced’ identity. Located close to Sylvia’s breast and covered by her dress, it is secret and suspect. This scar, modestly concealed, tells much more than that her flesh has been seared just above the breast. Such a wound on a young woman is always past that will not stay buried, an identity that cannot remain concealed, a traumatic event that will not stay repressed.<sup>231</sup>

The use of a traumatic past is a common metaphor in these films in terms of informing and threatening exposure of identity.<sup>232</sup>

In these scenes, Michaeux makes a statement about the rape of black women, rebutting the notion that they were willing and ready sexual partners. It also goes further to say “black women have been raped by their white fathers.”<sup>233</sup> Jane Gaines also argues that this scene:

reverses the old white supremacy logic underpinning *The Birth of a Nation*, that is, if the child of a white parent is black and blood related, he or she is not family. This logic is stood on its head by Micheaux: if the child of a white parent is black and blood-related, he or she is family.<sup>234</sup>

However, like *Birth of a Nation* and the 1927 film version of *Uncle Tom’s Cabin*, the issue of “passing” does not surface in

230. *Id.* at 188.

231. *Id.*

232. The film *THE SCAR OF SHAME* (1926), *THIRTY YEARS LATER* (1928) and *RAINTREE COUNTRY* (1957) are other examples of the use of a scar as bodily sign of the black heroine’s true racial identity. *Id.* at 186. In fact, Michaeux uses it again in his 1928 film *Thirty Years Later*.

233. *Id.*

234. *Id.*

*Within Our Gates*, which is a film more about racial and national identity.<sup>235</sup>

#### D. "Race Films:" Colored Players—Scar of Shame

The period following *The Birth of a Nation* and *Within Our Gates* has been characterized as a time when "racial identity was effectively functioning as cultural identity and enjoying a heyday as a concept."<sup>236</sup> This is illustrated through the development of "race movies," films produced for all black audiences in segregated theaters in the first few decades of the 20<sup>th</sup> Century in the United States.<sup>237</sup> These films' development coincided with the growth of northern black urban ghettos following World War I.<sup>238</sup> The black bourgeoisie, who were largely mulatto, often collaborated with white production companies to use these films for both the "entertainment and edification" of lower class blacks.<sup>239</sup> The black elite viewed this as a necessary task to acculturate the new southern black migrants to the North.<sup>240</sup> The Northern black elite of the time were often the second or third generation descendents of mulattoes born during slavery. As a group, these early mulattoes had intermarried mainly with other mulattoes. Thus, there was a perpetuation of the color caste system, which remained in these expanding Northern black communities and is present in film.<sup>241</sup> The "race films" reflected this conflict between the upwardly mobile light skinned black and the increasingly poor uneducated blacks migrants from the South. These films tend to have a Horatio Alger theme of pulling oneself up by the bootstraps and not falling into the traps of crime and dependency.<sup>242</sup>

In 1926, *The Scar of Shame* was released. The film was produced by a white-owned Philadelphia studio called the Colored Players. The film tells the story of Louise Howard, a

235. The film also has an alternative message involving Sylvia's fiancée as a soldier in the Spanish American War and anti-immigrant sentiment. See *id.* at 189–190.

236. *Id.* at 186.

237. *Id.* at 178.

238. CRIPPS, *supra* note 208, at 47.

239. Gaines, *supra* note 228, at 62.

240. See *id.*

241. See *infra* notes 242–43 and accompanying text.

242. See CRIPPS, *supra* note 221, at 49–50.



poor mulatto woman, and her ill-fated marriage to Alvin Hillyard, a promising light-skinned black composer. Alvin marries Louise to protect her from her abusive, alcoholic, "ne'er do well" step father, and in so doing lifts her from the lower class. We do not see Louise's birth parents, which is a common situation in films about mulatto identity.<sup>243</sup> But three months after her marriage to Alvin, her father hatches a plan with a gambling friend, Eddie Blake, to kidnap Louise and put her to work as a lure in a speakeasy. They decide to send Alvin a fake telegram regarding his mother's health. Louise begins packing her things to come along with Alvin but she finds out that Alvin has not told his mother about Louise yet. Louise comes across a letter written by Alvin's mother prior to the telegram speaking of an "awfully attractive girl" that is "one of our set." Upon reading the letter, Louise tears it up, as well as her marriage certificate.

When Alvin arrives at his home in the suburbs, a dark-skinned black butler greets him at the door and explains that his mother is in good health and that she sent no such telegram. The scene shows light-skinned blacks emulating wealthy white society. Louise is convinced by Blake to pack her things and come with him. Upon his return home, Alvin gets into a confrontation with Blake, and Louise is wounded by a bullet from Blake's gun that goes off while he and Alvin struggle with each other. Alvin is convicted and goes to jail for the shooting, but he escapes after a few years and assumes a new identity. He falls in love with the very light skinned daughter of a lawyer, named Alice, whose father frequents speakeasies. There he runs into Louise, who wears a scarf around her neck to cover the scar from the bullet wound. Louise attempts to blackmail Alvin, whom she wants back. Instead she commits suicide after admitting that it was Blake who shot her not Alvin, leaving a note exonerating Alvin. Thus, Alvin is free to marry Alice.

Jane Gaines argues that "woman's virtue" was an important part of the racial uplift strategy of films like *The Scar of Shame*.<sup>244</sup> Louise's character deviates from the tragic mulatto fiction of the 19th Century in that she "wastes her color" and fulfills the prophecy of the poor (black) rather than

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243. See *infra* notes 319-20 and accompanying text.

244. Gaines, *supra* note 228, at 64.

the fine (white) ingredient in her paternity.<sup>245</sup> She is in fact a combination of the tragic mulatto and the “exotic primitive” described by Brown.<sup>246</sup> *The Scar of Shame* gives the audience a view inside the caste and class bias within Northern urban black communities of the 1920s. Gaines also argues that, during the 1920s, there was an internal struggle within the black community between the values and preferences of the “blue vein” blacks, differentiated by their percentage of white blood, and the newcomers that are being played out in the film.<sup>247</sup> Gaines suggests that the scar represents not only “interracial sexuality but intraracial conflict, specifically, class distinctions that threaten to divide the black community.”<sup>248</sup> However, by 1930 the US Census essentially put an end to any legal distinction between dark-skinned blacks and light-skinned blacks with the removal of the divisive category of mulatto as a racial identity.<sup>249</sup> The dropping of the mulatto category was a defacto reinstitution of the “one-drop rule.”

After *The Scar of Shame*, more films and literary works focus on the issue of crossing over or passing, which was not addressed in this film or other films predating it.

### E. Literature of the Period

From 1900-1927, a number of books were written on the subject of mulatto identity, which added to the existing body of literary fiction and potential sources for screen adaptations. The following is not an exhaustive list but are among the more prominent and esteemed texts on the issue during this period. These included Sarah Gertrude Millin’s *God’s Stepchildren* (1924) and Gertrude Stein’s *Melanctha* (1927).

Millin’s popular novel is a recordation of four generations of mixed blood, originating from one English missionary and his Hottentot wife, in Africa. The tragic mulatto figure in Millin’s book is Elmira, a fair skinned and attractive third generation of mixed-blood, who attempts to pass for white at her boarding school, only to be outed as black when her parents come and visit her as she lay ill in the school

245. *Id.* at 65.

246. *See supra* note 157 and accompanying text.

247. Gaines, *supra* note 228, at 72.

248. *Id.* at 186.

249. *See supra* notes 51-53 and accompanying text.

infirmary with scarlet fever. She is only happy when she is away from her parents and her darker skinned siblings. Because of her beauty, she ends up in a series of unhappy relationships with white men. Millin is relentless with her stereotypes of physical and mental capabilities of the characters. For example, Elmira is described as “not as clever as she promised to be when a child. It was as if her brain, running a race against the brains of white children, was very quick at starting but tired and lagged behind, so that the time came when it fell altogether out of the running.”<sup>250</sup> This tragic storyline and stereotypes are reflected in later films.

Stein’s book *Melanctha*, first published in 1909, is an unconventional story of a sexually liberated mulatto woman who wants more than marriage, children and a middle class lifestyle. Stein’s book is innovative not only in its reworking of the tragic mulatto thematic, but also in its non-standard use of words and sentence structure. According to Judith Berzon, “Stein is working with a different stereotype—the mulatto as ‘exotic’...She goes with many men; she is restless, yet quiet and intensely sensuous; she is ‘mysterious’... her ultimate death by consumption combines traits of the exotic with those of the tragic mulatto.”<sup>251</sup> The character of *Melanctha* is very similar to Louise in *The Scar of Shame*; both intentionally blow up the stereotype in this way.

Langston Hughes, a mulatto himself, also authored a number of poems on mulatto identity during the 1920s, which include a twelve line poem in his first publication *The Weary Blues* (1925) called “Crossed” and a poem called “Mulatto” in *Fine Clothes for a Jew* (1927).<sup>252</sup> Hughes would be among the authors to play an influential role in the Harlem Renaissance in terms of mainstreaming black literature in the 1930s. Other works by Harlem Renaissance writers, like Nella Larson and Zora Neale Hurston, were greatly influential on the issue of mulatto identity.<sup>253</sup>

250. SARAH GERTRUDE MILLIN, GOD’S STEPCHILDREN 132 (1924).

251. BERZON, *supra* note 88, at 63–64.

252. Arthur P. Davis, *The Tragic Mulatto Theme in Six Works of Langston Hughes*, 16 *PHYLON* 195 (1955).

253. See *infra* Part V.C.

## V. DEPRESSION AND WWII ERA FILMS 1928–1945: BLAMING THE PASSER

At the end of the 1920s, “talkies” were replacing silent films, and the movie industry entered the sound era. The first full-length talkie was a film called *The Jazz Singer* (1927), ironically, a film about a white entertainer who sings in black face, a form of passing.<sup>254</sup> The practice of having white actors play black roles almost completely dies out in this period, although later there is a reemergence of white actors playing mulatto roles.<sup>255</sup> The mainstreaming of black culture and the emergence of a black cinema market leads to the emergence of black actors. Films in this era begin to focus less on the identifiable mulattoes and more on the mulattoes who could pass for white. This shift in focus makes sense given the abandonment of the mulatto category in the 1930 Census, and the institutionalization of a defacto “one drop rule” for the black population. Those who were light enough to pass took their chances by escaping into the white community. During this period, there also remained the continuing problems of intraracial conflict within the black community. Thus, in films aimed at both black and mainstream white audiences, the passer is blamed for crossing the racial line, but for two very different reasons. Blacks saw it as disloyalty or shame of one’s race, and whites saw it as a potential threat to white purity and order.

Film historians have observed, in the period between the Great Depression and the end of World War II, that the image of blacks in Hollywood underwent a number of changes. In the 1930s “toms, coons, mulattoes, mammies, and bucks. . . had become respectable domestics.”<sup>256</sup> This change is attributed to the “new social consciousness” and growing liberalism in Hollywood at the time.<sup>257</sup> It is aptly demonstrated in John Stahl’s 1934 version of Fannie Hurst’s

254. A discussion of black face minstrelcy as a form of passing can be found in a conference paper by Renée D’Elia–Zunino at the 2003 Hawaii International Conference on Arts and Humanities entitled *Passing. Its evolution from the act of crossing the socially constructed “color line”, to its inversion into a cultural gesture, after the Second World War*. See also Rogin, *infra* note 282, at 13–14.

255. DANIEL J. LEAB, *FROM SAMBO TO SUPERSPADE: THE BLACK EXPERIENCE IN MOTION PICTURES* 116 (1975); see also *infra* Part VI.

256. BOGLE, *supra* note 176, at 35–6.

257. *Id.* at 57.

novel *Imitation of Life* (1933). Hurst's novel tells the story of two Atlantic City widows, one white and one black, who join forces to raise their daughters and run a successful business. In *Imitation of Life*, a major Hollywood studio broached the subject of racial passing for the first time.<sup>258</sup>

#### *A. Imitation of Life: Hollywood Takes On Passing*

Hurst's novel and Stahl's film version tell the story of a young white widow, Bea Pullman, who is struggling to support her young daughter selling pancake syrup to Atlantic City hotels as her late husband had done prior to his tragic accident. Stahl's film version is true to Hurst's novel, except that we meet Bea long before she is married and has a child. Bea hires Delilah, a widowed buxom black woman with a near-white daughter named Peola, as a live-in domestic. In the book Delilah describes Peola as "the purfectest white nigger baby that God ever dropped in the lap of a black woman from Virginie."<sup>259</sup> Using Delilah's family recipe for waffles (in the film version, it is a recipe for pancakes) Bea starts a business and becomes very wealthy. Delilah remains a devoted servant to Bea, not showing any interest in the monetary success of the business beyond wishing for an elaborate funeral service. But Delilah's daughter Peola, is not so easily satisfied.

As the two young girls grow up, their mothers discuss their progress in school. Bea says to Delilah, "Peola is smarter than Jessie." Delilah laughs at this remark and says, "We all start out that way. We don't get dumb until later." This is the same stereotype about black intelligence that was made in Millin's *God's Stepchildren*. Peola, a young child, runs into the room upset and crying, saying "I am not black. It's because you're black. You made me black." Jessie apparently pointed the fact out to Peola, which caused her to become upset. Just as Bea is about to make Jessie apologize, Delilah says, "Don't make Jessie apologize. She, [Peola] might as well get use to it." It is not until Delilah goes to drop off a raincoat and rubbers for her daughter on a stormy day that she discovers that Peola has been passing for white at school. Peola runs out of the classroom ashamed, exclaiming

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258. LEAB, *supra* note 255, at 106.

259. FANNIE HURST, *IMITATION OF LIFE* 92 (1933).

"I hate you, I hate you," as her fellow classmates and teacher watch stunned at the revelation.

We next see Peola as a young woman. Bea has moved them all to a townhouse in the city. During a dinner party, from which Peola and Delilah appear to be excluded beyond a servant capacity, Peola stands before a mirror and says "I am sick and tired of it...I want to be white like I look. Isn't that a white girl there?"<sup>260</sup> Delilah is grief-stricken that her daughter will not accept her racial identity and suggests Peola attend one of the "high toned colleges." The older Peola is not played by a white actress but by a light-skinned black actress, which will not be the norm in later films. Peola agrees to attend such a school but leaves after only a few days to pass for white. Eventually her mother and Bea find her working a cash register at a restaurant. Delilah pleads with Peola to return home with her, saying "I am your mammy." Peola pretends she does not recognize Delilah and says to her boss, "Do I look like I could be her daughter?" Mammy characters were relied upon to anchor the mulatto in blackness, as the mammy character was unmistakable blackness.

Peola does return home only to explain to her mother that she must go away. She warns her mother that "you musn't see me or own me." She explains to her mother that "you don't know how it is to look white but be black." She acknowledges that she is asking a lot of her mother but she "can't help" hurting her. In the novel, Peola passes, meets a white engineer, has herself sterilized, marries him, and goes of with him to South Africa. In the film, Peola leaves her mother to pass for white. Her mother dies grief-stricken, calling for her daughter. Peola returns repentant at her mother's extravagant funeral procession, weeping profusely, proclaiming "I didn't mean it mother. Can you forgive me?"

*Imitation of Life* can be viewed as nothing more than the "stereotype of the contented mammy, and the tragic mulatto" and the edification of "ancient ideas about the mixing of the races."<sup>261</sup> Hence, Peola's request that her mother neither sees nor owns her, serves her need to disassociate herself in order

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260. They reside downstairs in what would be the house servants' quarters.

261. Sterling Brown, *Imitation of Life: Once a Pancake*, 13 OPPORTUNITY 87-8 (1935).

to pass.<sup>262</sup> The film can also be viewed as “simply an updated version of the tragic mulatto of the nineteenth century melodrama and early silent films. As was the case of its predecessor text, mixed-blood can bring nothing but sorrow.”<sup>263</sup> Peola clearly fits the tragic mulatto stereotype. Her return for her mother’s funeral was “Hollywood’s slick way of finally humiliating her, its way of finally making the character who had run away with herself conform to the remorseful mulatto type.”<sup>264</sup> It is not clear what the future holds for Peola, whether she will “stay” black or pass. When Peola did pass, she passed for a mere cashier girl at a modest restaurant, a great contrast from the lifestyle of wealth and opportunity for education she left. It suggests that being an “ordinary” white girl is more preferable to her than being black and wealthy. At the end of the film, it is obvious that the death of Peola’s mother is punishment for her passing.

This is a rather heavy-handed lesson to those in the viewing audience who may have either considered passing or may conspire to aid passers. Either way, the film sent a two-fold message to black and white audiences. To black audiences, it portrayed light-skinned mulattos as racially disloyal, social-climbers who aspire to be disassociated from blackness. For whites, as blacks began to encompass mulattoes, it called their attention to the possibility of very light-skinned blacks dissatisfied with their black status attempting to pass for white.

### *B. Michaeux’s Continuing Dialogue on Passing*

In the 1930s, Michaeux released two films that dealt with passing, the *Veiled Aristocrat* (1933) and *God’s Step Children* (1938). *The Veiled Aristocrat* is a sound remake of his lost film *The House Behind the Cedars* (1924/1925).<sup>265</sup> Both films are adaptations of Chesnutt’s novel. *The Veiled Aristocrat* starts off much as Chesnutt’s novel does, except in present day 1930s North Carolina, with John noticing a very attractive white young lady walking down the street. He

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262. “...the sign of blackness is contracted, as it were, through proximity, where ‘race’ itself is figured as a contagion transmissible through proximity.” JUDITH BUTLER, BODIES THAT MATTER: ON THE DISCURSIVE LIMITS OF “SEX” 171 (1993).

263. LEAB, *supra* note 255, at 108.

264. BOGLE, *supra* note 176, at 60.

265. LUPACK, *supra* note 127, at 35.

follows her to his mother's home, only to find out that it is his sister he has not seen in twenty years (in the book it was ten years). There is an inexplicable sexual tension in the scene where his mother introduces him to his baby sister, in the form of kisses and hugs. He finds that his twenty-year old sister is engaged to Frank Fowler, a dark skinned local man. He convinces his mother to let him take Rena to the city so he can introduce her to white society.

Although the film was produced with sound, title cards are still used as a narration tool. One such title card says, "it was silently understood that she, as had he, was to forget that she had a mother—or had belonged to the Negro race at all." One of John's wealthy white friends, George Tyron, falls in love with Rena, but Rena has continued to stay in contact with Frank through notes and phone calls. She tells her brother "I am not a white girl but a Negress." Consistent with Michaux's belief in racial pride and uplift, she returns to Frank, who is now a successful builder and contractor, and who is waiting to drive her to see her sick mother and then drive her off to be married. Michaux deviates in some important ways from Chesnut's work, which did not make Frank a viable love interest for Rena given his color and position.<sup>266</sup> Thus, Rena is rewarded for staying black and does not suffer the same fate (death) as she did in Chesnut's book. The film version is less preoccupied with class; in comparison to the Chesnut novel, there is no mulatto enclave depicted separate from the general black population. In line with Michaux's view of black solidarity, his films depicted a black society ranging in color from the very light to the very dark, but strangely still skin-color conscious.

In *God's Step Children* (1938), based on a story of unknown origin, "Naomi Negress," tells the story of a light skinned girl, Naomi, abandoned by her mother to be raised by a foster mother, Mrs. Saunders. Naomi is sent to colored school, which she sneaks out of to attend a white school. Once this is discovered, she is sent back to the colored school, where she begins spreading lies and abusing the other children. She plays on people's emotions and is mean and unruly. Naomi is sent to a convent where she remains until she is eighteen. Her true nature, however, has not changed. Her stepbrother Jimmy wants to start a farm and derides another black

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266. See *supra* Part V.B.3.



character for trying to talk him into running numbers. Naomi attempts to seduce her stepbrother, who already has a sweetheart named Eva. Her stepbrother introduces her to a dark skinned friend, Clyde, whom she is repulsed by. She says to her stepbrother, "I don't want anyone who looks like him." She agrees to marry Clyde but says to Jimmy, "I will marry him but to marry a man I do not love is like suicide."

One year later, we see Naomi with a dark skinned baby. She decides to leave her husband in order to pass for white. She tells her husband, "[i]f I take my baby with me, I'll be branded." Naomi returns home from passing, peering into the window of Jimmy's house, sees Jimmy is happily married with a large family. One child exclaims that he saw a woman at the window. In the next scene we see that Naomi has committed suicide by jumping into the river. Naomi's return suggests that passing was not the answer. Her suicide is attributed to her "guilt and shame over her conduct and realizing that she has lost the chance for black middle-class respectability."<sup>267</sup> It is likely the film's title was directly lifted from Millin's popular 1924 novel of the same name, likely for marketing purposes, as Michaeux had previously done with the *Rhineland* case.<sup>268</sup> Naomi does display many of the same faults as the character Elmira in Millin's work.

Both *Imitation of Life* and Michaeux's films, discussed above, show that the treatments of passing in the 1930s films were extremely diverse and served differing agendas. *Imitation of Life* took up the increasingly popular storyline of the passing mulatto, made popular by recent works of white authors like Sarah Gertrude Millin, and the emerging black authors of the Harlem Renaissance. *Imitation of Life* recycled the old 19<sup>th</sup> Century melodrama of the tragic mulatto figure imbued with the same racial stereotyping found in Millin's work. The film repackages the tragic mulatto passer and presents her as a modern day threat to whiteness, as well as a trader to the thriving and emerging black community. Michaeux, who was also influenced by the popularity of literary works of the time, also presents the mulatto as an essential part of the black community, albeit a potentially disloyal and weak link within the community.

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267. LUPACK, *supra* note 127, at 146.

268. See *supra* Part I.B.2.

VI. POST WWII AND CIVIL RIGHTS FILMS 1945–1969:  
BLAMING THE SYSTEM FOR PASSING BUT LIMITING  
THE MULATTO TO WORK WITHIN THE SYSTEM

In the period following World War II, the movie industry and the American audience was more willing to accept controversy, especially on matters of race.<sup>269</sup> President Truman had desegregated the armed services and blacks began migrating westward. There was a confluence of the Popular Front, Civil Rights and Cold War liberalism that worked together to produce what have been termed “problem films” or “civil rights films” by film historians.<sup>270</sup> During this period, a number of notable films were made regarding mulatto identity that dealt with the psychology of the mulatto. These films move away from blaming the passer to blaming the “system” or society for the need or the desire to pass. The genre of the “‘Negro problem’ film” quickly “emerged as an all embracing social film vehicle which derived its effectiveness (‘meaning’) from the genre’s modification of racial image conventions...[and marked] probably the first time when cinematic racial developments more or less coincided with social racial developments.”<sup>271</sup>

Despite this, films relating to mulatto characters continued to deny the duality of the mulatto identity, and required their mulatto characters to come to terms with their blackness and accept the limitations (sexually, socially and legally) placed on them because of it. By the end of the period, we see the fruits of the civil rights movement and the growth of the black power movement. Even with the assertion of black pride, the growing mulatto population demographically changed. There was a gradual shift from mulattoes descended from original miscegenation to the children of the civil rights generation, who were the product of mixed-race couples who met during the mainstreaming of black music and literature, student activism and the sexual revolution of the 1960s.

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269. BOGLE, *supra* note 176, at 143.

270. Michael Rogin, “*Democracy and Burnt Cork*”: *End of black Face, the Beginning of Civil Rights*, 46 REPRESENTATIONS 1, 5 (1994).

271. LUPACK, *supra* note 127, at 254.

*A. Lost Boundaries: The Passer as Good Neighbor*

*Lost Boundaries* (1949), based on a book by W.L. White, retells the true story of the Johnson family, light skinned blacks who passed for white in New Hampshire in the 1930s and 1940s. The book begins with the ideal white New England family as seen through the eyes of the oldest son, Albert Johnson, Jr. The father, Albert Johnson, Sr., is a distinguished country doctor with a thriving business. It is wartime and Albert Johnson Sr. volunteers to serve in the Navy, however, there was hitch with his commission. When his commission is finally denied on the basis of his race, he and his wife decide to tell their children that they are both colored; they are from a long line of mulattoes who could pass. The Johnson's explain to their son what passing was and that "Dad had to do it, not because he was ashamed of being colored, but only to make their living."<sup>272</sup> The bulk of the book documents the downward spiral of Albert Johnson Jr., whose self-confidence is damaged with the knowledge that he is colored. He drops out of college and decides to hitchhike across country with one of his white friends who does not care that he is colored. We follow Albert Jr. and his white friend through Albert's exploration of the black community, which he had not grown up in. He goes out to Los Angeles, attends school for a brief period and dates a colored girl. He even passes his white friend off as black in order to make their stay in the black community easier. Albert eventually returns home with a new outlook and decides to study music at the University of New Hampshire. During a seminar discussing the "Negro question" he volunteers to talk and give the perspective of "crossbred people," thus outing himself. He is happily surprised that very little changes as a result of his proclamation, thus lifting a weighty psychological burden.

The film, on the other hand, begins not with the revealing of the passing of the Carter family,<sup>273</sup> but with Dr. Carter's commencement from medical school. We see the happy marriage of Dr. and Mrs. Carter before they head to his residency at a black hospital down south. However, when he reports to work, the staff is surprised by his appearance. One black nurse says, "since when are we having white doctors

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272. W.L. WHITE, *LOST BOUNDARIES* 9 (1947).

273. The name Johnson was changed to Carter in the film.

here?" He is told he does not have the residency that he was promised by the black doctor on staff, showing that there is not always acceptance or a place in the black community for those who are light enough to pass for white. The Carters return to Boston and stay with Mrs. Carter's parents, who do not want their now pregnant daughter to be identified in the area as Negro. It is clear that this family has intermarried based on skin color for generations and has been passing. Dr. Carter points out to her father, "when she married me, she agreed to be a Negro." Dr. Carter does not wish to pass because he believes that the best way to "help the Negro is to stand up and say you are one." He ends up working in a shoe factory unable to find a medical residency. Dr. Carter ultimately decides, given his wife's pregnancy, that he will pass for white for one year in order to complete his residency. The Carters contemplate having their first child at home over concerns that the child would be born dark and expose them as a colored couple, but they risk it. They have their child in a hospital and the child is born light skinned. Soon after, Dr. Carter is offered the opportunity to take over a prosperous private country medical practice by Dr. Brackett, whose life Carter saves. Dr. Carter confesses that he cannot: "in my case, it is impossible. I am a Negro." Dr. Brackett encourages Dr. Carter to continue his charade and to accept the position. He decides to accept the position and slowly gains the trust and respect of the small New England town.

Twenty years pass and the Carter's oldest child, Howard, is a music student at the University of New Hampshire. Dr. Carter has been secretly taking trips to work in the black community where he builds a clinic in the name of his black mentor from medical school. Both father and son have volunteered for the service, but Dr. Carter is denied on the grounds that he is a Negro. Dr. Carter feels he must tell his son before he finds out through the military. When Howard is told, he begins to cry: "But I am white. It isn't true. I don't believe it." Instead of going cross-country hitchhiking as he does in White's novel, Howard heads to Harlem.

The film ends with the family united against a town that is reluctant to accept them. Their new reality is depicted in a scene showing their attendance to church services as a family and a sermon against hatred by the pastor. Upon its release,

*Lost Boundaries* was a critical success.<sup>274</sup> Although provocative in many ways, the film skims over many issues raised in the book. These changes give great insight into what the filmmakers thought American moviegoers would accept. For example, we do not see Howard hitchhiking cross-country with a white friend; instead he goes alone to Harlem. In Los Angeles he finds a thriving black middle class community. In Harlem, Howard comes upon a fight between two young black men in a tenement and ends up arrested for attempting to break up the fight. One scholar suggests “when the film moves away from the subject of ‘passing’ it seems only able to deal with aspects of the Negro problem in caricature or by stereotype extreme.”<sup>275</sup> This may be true, but this also allows the film to address some issues not broached in the book. As pointed out by the black officer to Howard, there are serious problems of crime and poverty in the urban black neighborhoods that people who pass may be attempting to escape from for the benefit of their children. Passing to get away from a middle class black community may seem a less sympathetic excuse in the eyes of both the white and black community. Even though Dr. Carter and his wife both come from middle class mulatto families, the film attempts to show the larger disadvantaged black community, in order to convey the need to pass.

In addition, the officers comment that Howard was neither black nor white, but a Negro, is very interesting because it suggests that the American Negro is an amalgam of both the white and black race. It also acknowledges the peculiar predicament of third and fourth generation mulattoes who, despite being able to pass, were in large part disconnected from the original whiteness and blackness due to social practices of marrying only others with light skin.

Although the narration at the end of film suggests that Dr. Carter stays on as doctor, the romances of the young children are “left up in the air” and the “possibility of miscegenation is determinedly ignored.”<sup>276</sup> Unlike in *Imitation of Life*, none of the main characters of the film are played by light skinned black actors. According to Randall Kennedy, this can be attributed to the producer’s belief that white audiences would

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274. LEAB, *supra* note 255, at 152.

275. *Id.*

276. *Id.* at 152–53.

“more easily accept criticism of white racism if it came from the mouths of other whites—even if these whites were portraying characters who were ‘really’ black.”<sup>277</sup> This became a common practice of Hollywood in casting lead mulatto character roles in this period.<sup>278</sup> These films allowed certain lines to be crossed between the characters that would otherwise be unsettling to a mainstream 1950s white audience. Despite the use of white actors to deliver its message, *Lost Boundaries* was not without controversy; the film was banned in Atlanta, Georgia when it was first released.<sup>279</sup>

### *B. Acknowledging Inequality but Keeping the Female Passer in her Place*

In this period, there are a number of films dealing with the archetype of the tragic mulatto woman. Unlike earlier films, these films were dramas involving white male love interests. In many ways, these films fall back on the melodramatic storylines of 19th Century literature focusing on female mulatto characters. But, just like the films that predate them, the heroines of this period get a reality check with regard to the inescapability of their black identity.<sup>280</sup> The following three films best illustrate the new archetype: *Pinky* (1949), *Kings Go Forth* (1958) and Douglas Sirk’s remake of *Imitation of Life* (1959).

In these films, the “‘miscegenated’ blackness remains ‘black’ (the one drop rule) despite the evidence of the visual idiom.”<sup>281</sup> Although the arbitrariness of the system that imposes such discriminatory constraints on an individual is highlighted, in all three films, the character’s blackness “exercises and establishes its limit upon the subject as it transgresses its boundaries.”<sup>282</sup> The lesson learned by all three main characters is clear: “although her appearance and upbringing may give her the desire and ability to pass for

277. Kennedy, *supra* note 90, at n.126; see also GAYLE WALD, *CROSSING THE LINE: RACIAL PASSING IN TWENTIETH-CENTURY U.S. LITERATURE AND CULTURE*. (2000).

278. BOGLE, *supra* note 176, at 150.

279. *They All Censor Your Movies*, 5 *CHANGING TIMES* 18, 18 (Feb. 1951).

280. Rogin, *supra* note 270, at 15.

281. Westley, *supra* note 86, at 339.

282. *Id.*

white, she must not forget who and what she is.”<sup>283</sup> The increased attention to the psychology of the passer acts as a tool to introduce the viewing audience to the internal conflict experienced by the mulatto. It validates the unfortunate nature of the mulatto’s predicament but at the same time resolves the mulatto’s conflict by forcing her to see through loss and pain that the presence of any black blood will limit her ability to live happily as white.

### 1. Pinky

*Pinky* is the story of a light-skinned Negro, Pinky, who returns home to the South after becoming a nurse and passing for white up North. She is staying with her large dark skinned grandmother who cared for her as a young girl and did laundry in order to put Pinky through nursing school. Pinky’s passing was inadvertent at first. When her grandmother originally dropped her off at the station, she told the conductor who Pinky was but the conductor placed her in a white car anyway. This is an interesting use of the conductor, who in *Plessy* was given the authority to determine who was white and who was black.<sup>284</sup> From then on, Pinky decided to pass. Pinky’s grandmother, very poor and living in a shack in a rural black area, tends to an older white lady, Miss Em, who lives in an old plantation home nearby. Pinky despises the old woman and the fact that her grandmother tends to the white woman like she is a slave. Her grandmother, a “God-fearing . . . mammy type that thinks that Pinky was wrong to have passed,” plays an essential role in the film.<sup>285</sup>

At various points early on in the film, we hear the mournful whistle of the train going to the North, and in Pinky’s mind the name “Tom” being called. Pinky wants to return North to her love named Tom. But who is Tom? We find out later that Tom is a white doctor who fell in love with her up North, but is unaware of her racial identity. Before Pinky can make her escape again up North, her grandmother convinces her to stay and care for Miss Em to repay Miss Em

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283. Marina Heung, “What’s the Matter with Sarah Jane?”: *Daughters and Mothers in Douglas Sirk’s Imitation of Life*, 26 CINEMA JOURNAL 21, 40 (1987).

284. See *supra* Part III.B.1.

285. LEAB, *supra* note 255, at 153.

for her kindness in caring for Pinky's grandmother when she was ill. Tom finds Pinky and does not care about her racial background. Pinky discourages Tom from pursuing her: "[Race] matters. It makes problems." He responds, "Let's try and face them like rational people," but Pinky wonders what is rational about prejudice. As a doctor, Tom does not believe in inferior races, but Pinky insists that she must stay to care of the old woman.

Miss Em gives Pinky a number of hard-nosed speeches about the need for Pinky to be herself because "nobody deserves respect as long as she pretends she is something she isn't." In the end, Miss Em dies, leaving her mansion and property to Pinky with the requirement that she put it to good use. There is a court battle over accusations by Miss Em's family that Pinky, in caring for Miss Em, had undue influence on the ailing woman. There is such resentment in the town that the local doctor who witnessed the will being written by Miss Em, without Pinky's knowledge of the bequest, does not show up to testify. The resentment appears to stem from the poverty of white community and a desire to maintain their position of racial and social superiority to the black population. The bequeathing of a massive plantation estate, a symbol of slavery and white privilege, to a black person would provide Pinky with not only the physical benefits of whiteness but also its actual pecuniary benefits. If Pinky resides in the plantation house, it would call everyone's identity into question by turning the social-racial order upside down. Because of this, there is considerable fear among the black population in terms of retribution. A prominent retired white judge assists Pinky at trial, and in the end, the trial Judge follows the law by declaring the will a valid document. With the property, Pinky chooses to open a combined clinic and nursing school with a local black doctor, whom she had previously snubbed when approached about staying to use her nursing skills to help the black community. She says to her now ex-fiancé Tom, "I am sick of lying. I am a Negro. I cannot deny it. I don't want to be anything else." She believes that this is what Miss Em had intended for her to do with the estate.

As in *Lost Boundaries*, the actress that plays Pinky is white, which "allows white viewers to share the suffering she



endures as [a] black.”<sup>286</sup> The entire film is set in the South, so we never view Pinky as passing for white in the North. We only see her “suffering as a black in the South.”<sup>287</sup> Notably, Pinky was the first Hollywood movie to portray an interracial romance.<sup>288</sup>

Like earlier films, *Pinky* is based on a novel, which is called *Quality*.<sup>289</sup> In the novel, Pinky wins her courtroom case, however, the Ku Klux Klan burns down Ms. Em’s plantation home rather than allow Pinky to own it.<sup>290</sup> This is a far more searing, but also a more likely, ending than that which takes place in the film. Pinky only comes to terms with blackness through the generosity and benevolence of Miss Em, a paternalistic resolution that pushes the boundary but reaffirms racial segregation and the need for light skin blacks to remain with their “own kind.”<sup>291</sup>

## 2. Kings Go Forth

*King’s Go Forth* is an adaptation of a novel by Joe David Brown of the same name. The film stars Frank Sinatra and Tony Curtis as a tough army lieutenant and a cocky playboy radio operator, respectively. Serving in Southern France during World War II, Sinatra and Curtis vie for the affections of Monique Blair (played by Natalie Wood) a beautiful expatriot of the United States. Sinatra’s character, Sam Loggins, meets Monique first and falls deeply in love with her, even though we come to learn she does not love him back. Monique tells Sam her racial background after he tells her how he feels. She says, “I didn’t tell you because I know how Americans feel about some things.” In referring to her father, who passed away two years earlier, Monique says: “He was a great man, he was also a Negro. I guess Nigger is one of the first words you learn in America.” Monique’s white mother explains that she and her deceased husband would walk the streets defiant and proud in the States, but when they found out they were having a child, they decided to leave for her sake. At the end of the scene, Sam looks at a picture of

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286. Rogin, *supra* note 270, at 13.

287. *Id.* at 14.

288. *Id.* at 17.

289. BOGLE, *supra* note 176, at 152.

290. *Id.*

291. See LUPACK, *supra* note 127, at 263-64.

Monique's father, but the audience is not shown his face. Sam has been silent the entire time.

Sam remains protective of Monique and manages to overcome his latent bigotry. As Sam reflects, "It is not true [nigger] is not the first word we use. Some never use it. I used it a lot. Showed how tough I was."<sup>292</sup> Monique finally meets Tony Curtis' character, Britt Harris, whom she falls in love with immediately. Sam warns Monique about Britt, who proclaims his love for her but has no intention of marrying her because of her race. Curtis' character dies in the end and Sinatra's character, loses an arm. Monique attempts suicide after her abandonment by Britt but recovers and transforms her posh villa into a hostel for war orphans. The film ends rather ambiguously with Monique having the children sing to Sam, with Sam standing in the door way and them both smiling knowingly at one other.

As in *Pinky*, the character of Monique in *Kings Go Forth*, realizes that refraining from interracial relationships and devoting oneself to betterment of the community and is allowed to be happy in the end.

### 3. Remake of *Imitation of Life*

Douglas Sirk's 1959 version of *Imitation of Life* is a remake of Hurst's novel and Stahl's 1934 film version with a couple of important changes for the 1950s audience. For one, the names are changed. Delilah becomes Annie, Peola becomes Sarah Jane, Bea becomes Lora and Jessie becomes Susie. Also, Annie is an actual black female domestic in Sirk's version. There is no joint business that Annie and Lora become partners in. The director attributed the change of Annie into an authentic domestic to the fact that "Nowadays, a Negro woman who got rich could buy a house, and wouldn't be dependent to such a degree on the white woman . . . So I had to change the axis of the film and make the Negro woman just the typical Negro, a servant, without much she could call

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292. The connection between racism and masculinity is a strong one. White men are the protectors of white women's virtue and of racial purity. Countless books and films have dealt with the issue of white manhood and racism. One such example can be found in the film *A BRONX TALE* (1993), which tells the story of a young Italian teen who falls in love with a black girl in the South Bronx in the 1960s and his struggle to break away from his bigoted neighborhood friends.

her own but the friendship, love and charity of a white mistress.”<sup>293</sup>

In Sirk’s version, Lora is a successful actress played by Lana Turner. In Stahl’s version, Delilah and Peola reside downstairs while Bea and Jessie reside upstairs in the opulent Manhattan town house. In contrast, Sirk’s version has Sarah Jane, Susie (played by Sandra Dee) and Lora all reside upstairs together while Annie resides downstairs displaying a further disassociation between Annie and Sarah Jane. Most of the changes in the plot from the original version involve the character of Sarah Jane. For example, when Sarah Jane runs away it is to become a chorus girl instead of a cashier. Once again, as in the original, the film highlights the “social position of an individual who is able to pass for white that seems to bear most interest for filmmakers.”<sup>294</sup> She acquires a rich white boyfriend who beats her upon discovering she is part black. This is no accident, as it shows Sarah Jane aspires too high in terms of both race and class. She may be able to fool lower-class whites but she will never scheme her way into upper-class white society. The basic story remains consistent with the earlier film and novel; Sarah Jane will simply not accept her blackness.

It has been argued that Sirk’s film is regressive compared to the 1934 original.<sup>295</sup> However, Sirk’s version offers a greater focus on the psychology of the passer, Sarah Jane. Sarah Jane will not play with a black doll that Susie offers her. Instead, she prefers only to play with the white doll. This scene not only displays Sarah Jane’s self-perception but it also serves as a direct reference to psychological damage suffered by black children in a society that values whiteness over blackness. The film is clearly acknowledging the doll-study that was presented as part of the evidence in *Brown v. Board of Education* decided five years earlier by the Supreme Court.<sup>296</sup> This scene foreshadows Sarah Jane’s attempts to

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293. LEAB, *supra* note 255, at 213.

294. Albert Johnson, *Beige, Black or Brown*, 13 FILM QUARTERLY 38, 42 (1959).

295. See LUPACK, *supra* note 127, at 259.

296. *Brown v. Board of Ed.*, 347 U.S. 483 (1954). *Brown* consisted of four other cases: *Briggs v. Elliott*; *Davis v. County School Board of Prince Edward County, Virginia*; *Gebhart v. Belton et al.*; and *Bolling v. Sharpe*, 347 U.S. 497 (1954). Lawyers representing the families in the *Briggs* case employed Professor Kenneth B. Clark and his wife, Mamie Clark, whose now famous study placed identical dolls differing only in

leave her blackness and Annie's policing of the racial-line. This short sequence also articulates the film's symbolic racial and property relations.<sup>297</sup> The white doll is symbolic of whiteness as an object that one can possess.<sup>298</sup> Just as in the doll scene, it is not any of the white characters who insist that Sarah Jane return the property of whiteness. It is Annie who insists that Sarah Jane stop passing and return home.<sup>299</sup> In a sense, the racial-line has become self-policed by blacks; so much so, whites are absolved of any responsibility and are the unsuspecting victims of the passers transgression

Although, Sarah Jane's father is only mentioned once and never seen in the film, Annie describes him as "practically white." Throughout the film, Sarah Jane repeatedly invokes her bond with her father, while in contrast she directs all her anger over her identity at her mother. One author points out the ambiguity of Sarah Jane's father's identity:

Annie's explanation that 'he was practically white' could mean his ancestry was predominantly white, or that he was a black man with very light skin. It is this ambiguity in his racial identity that gives Sarah Jane's father his symbolic power in the film. Portrayed as individual with no name, no history and no fixed racial identity, he can be seen as a man that passes a tragic flaw down to his daughter, or alternatively, as a man can resist social categorization and therefore social control.<sup>300</sup>

From this description, we know that Sarah Jane's whiteness is not the direct product of miscegenation. Her father was either a first generation mulatto or more likely descended from the product of several generations of color-caste marriages of mulattos in the decades following slavery.

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skin color in front of black children. Clark's conclusion in the Clarendon County tests, which were consistent with the results of the same test he had previously given to over 300 children, was that the "Negro child accepts as early as six, seven or eight the negative stereotypes about his own group and that a fundamental effect of segregation is basic confusion in the individuals and their concepts about themselves conflicting in their self-images. [The child has] basic feelings of inferiority, conflict, confusion in his self image, resentment, hostility towards himself, hostility towards whites, intensification of sometimes a desire to resolve his basic conflict by . . . escaping or withdrawing." JACK GREENBERG, *CRUSADERS IN THE COURTS: HOW A DEDICATED BAND OF LAWYERS FOUGHT FOR THE CIVIL RIGHTS REVOLUTION* 119, 124 (New York: Basic Books, 1994); see also Westley, *supra* note 86, at 332.

297. Westley, *supra* note 86, at 332-333.

298. *Id.* at 333.

299. *Id.* at 338.

300. Heung, *supra* note 283, at 34.

A similar ambiguity exists in the original version of *Imitation of Life* and *Pinky* with regards to Peola's father and the origins of Pinky's appearance. This contrasts with *Lost Boundaries* where it is clear that the Carters are third and fourth generation mulattos who have been intermarrying based on skin-color and passing as white. It is also contrasts with *Kings Go Forth* where we, for the first time, know that Monique is the direct product of miscegenation between her black father and white mother. Still, we do not see Monique's father in the film. It is unclear if he was dark-skinned or light-skinned. We only know that when Monique's mother walked down the street with him, they were easily identified as an interracial couple. The only time we see a complete nuclear family is when the entire family has been identified as mulattoes, as is the case in *Lost Boundaries*.

In another scene, Sarah Jane is asked to serve Lora, who is meeting with her agent and an Italian director in the living room. Sarah Jane mocks Lora by carrying the tray of food into the living room on her head and announcing, "I fetched you all a mess o' crawdads." When Lora asks her where she learned this, Sarah Jane replies, "Ah I'arned it from my mammy . . . and she I'arned it from Massa fo' she belonged to you." Although done out of spite by Sarah Jane to show her disdain for having blackness imposed upon her by making her into a servant, Sarah Jane's mocking and manner of speech identifies blackness.<sup>301</sup>

As in the original film, Sarah Jane only recognizes her mother upon her death—Annie's "annihilation is the prerequisite for recognition."<sup>302</sup>

### C. Tragic mulatto as Disaffected Youth

In late 1959, John Cassavetes created an improvisational film called *Shadows*, which "pick[ed] up on the old tragic

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301. See Westley, *supra* note 86, at 333. Judith Butler suggests in her analysis of Nella Larsen's novel, *Passing*, that the protagonist, Clare Kendry, "passes not only because she is light-skinned, but because she refuses to introduce her blackness into conversation, and so withholds the conversational marker which would counter the hegemonic presumption that she is white." See Butler, *supra* note 262, at 171. We also see this with John and Rena's mother in Chesnutt's *House Behind the Cedars*, who cannot pass because her speech pattern. See *supra* Part III.A.3.

302. Heung, *supra* note 283, at 36.

mulatto theme and turned it inside out.”<sup>303</sup> Cassavetes’ film shows the Beatnik culture in Greenwich Village in the late 1950s and the social freedom it provides for the mulatto characters. The film “is an improvisation on life and emotional disturbances among a certain milieu of city strugglers. . .the so called ‘bohemian’ strata of society.”<sup>304</sup> *Shadows* tells the story of two black brothers (one dark skinned and one light) and their light skinned sister. The oldest brother is named Hugh, a struggling dark-skinned Jazz musician.”<sup>305</sup> Hugh’s younger brother and sister, Ben and Leila are “white skinned mulattoes who are deeply ambivalent regarding their racial allegiances.”<sup>306</sup> The three siblings live together, parentless, in a sparse but intellectually furnished abode. Like the earlier films, the racial identity of Ben, Leila and Hugh’s parents is unknown, making it unclear if they are full siblings or half-siblings.

The film begins with Ben standing alone at a crowded integrated rock n’ roll party listening to Elvis’ “Jail House Rock.” The scene portrays Ben as a disaffected youth in his black leather jacket. Ben, with his two (white male) friends, Tom and Dennis, frequent local hangouts, pick up women and get into fights. Ben is very confident and does not disclose or worry about his race with regard to picking up women because of the transitory nature of his encounters with them. Ben, played by a mulatto actor, is “one of the great portrayals of a ‘Negro-white man’ played by a mulatto.”<sup>307</sup> Ben aspires to be a jazz musician like his older brother but it seems he is “drowned in the mysterious and terrible conflict of one who suspects that society has no place for them.”<sup>308</sup> Hugh is concerned about his brother’s temperamental and reckless behavior.

For instance, at a house party hosted by the three siblings, a dark skinned black woman sits next to Ben and encourages him to enjoy himself at the party. He says, “Don’t touch me” and smacks her. She throws a drink in his face. The fight is broken up and Ben leaves the party angry. The violent outburst is unexpected and interestingly directed at a black

303. BOGLE, *supra* note 176, at 200.

304. Albert Johnson, *Shadows*, 13 FILM QUARTERLY 32, 32 (1960).

305. *Id.* at 33.

306. *Id.*

307. *Id.*

308. Albert Johnson, *Shadows*, 13 FILM QUARTERLY 32, 32 (1960).

woman. Ben leaves the party and ends up at a nightclub. Before entering a downstairs club with rock n' roll music blaring, Ben mutters to himself "Mary had a little lamb, whose fleece is white as snow." The statement is symbolic of Ben's outer whiteness. The fact that he makes this statement before entering the club suggests his preparation to pass for white while at the club. It also has a menacing air to it as the scene directly following the slapping of the black female guest. Ben is really a "wolf in sheep's clothing." Either interpretation works, as he is both vulnerable, as an individual whose race may be discovered at any moment, and dangerous, as a masculine sexually predatory being indifferent to racial lines between black men and white women. His statement also has a tone of shame and self-mocking, as if he acknowledges his own weakness as he enters the club.

We are introduced to Leila as she leaves her brother Hugh at the train station where he is leaving to play a gig in Philadelphia. Upon leaving Hugh, Leila walks through Times Square at night looking in the windows of the girlie shows that line the street. A white man accosts her but he is quickly pushed away by another white man. This comparable to a scene in *Pinky*, where two white men accost Pinky when she walked alone in her poor black community. Both female characters are approached based on the assumption that they are white. These scenes reinforce the purity of white womanhood and the vulnerability of black women because a respectable white girl would not be walking through a poor black community nor strolling down 42nd Street at night. One is left to wonder if Leila would have been saved if she were visibly black. Unlike her brother Ben, Leila is out on her own, her only companion besides her brother and their friends is an older white man, David, who cares about her and takes her to literary parties.

Leila wants to be a writer. In particular, she wants to write a story of a girl who kisses a perfect stranger on a Sunday afternoon but continues on as if it were nothing. In this scene, she points out that "if you are yourself, you will not get hurt." It foreshadows Leila's story in the film. At a party, she meets Tony, a young man who one afternoon seduces her into sleeping with him. Tony takes Leila in a taxi back to her place and insists on accompanying her upstairs. She introduces Tony to her brother Hugh, and Tony is in shock

when he realizes Leila is black. He quickly makes up an excuse to leave. Leila realizes the problem and says "I love you does that not mean anything?"

In the end, Tony works through his initial bigotry but Leila refuses to accept his apology. She has reluctantly accepted a date with a dark skinned black man, following the advice from a light skinned black female friend that Leila "needs a guy to protect [her] and [her] values." That evening as Leila and her date are leaving; Tony appears at Leila's apartment in attempt to win her back. But when Tony sees Leila and her date together, it is clear that Tony and Leila will not get together.

Despite the groundbreaking performances by mulatto actors and the showing of sexual intimacy between Leila and Tony, we are still left with tragic figures. This is because "none of the protagonist[s] [find] happiness or security on any level."<sup>309</sup> Hugh stays with his manager despite playing third-rate gigs; Leila has resigned herself to the black man she does not appear to care for; and Ben appears to be stuck in a cycle of antisocial isolationist behavior.<sup>310</sup> In the end, Leila's attempt to be herself and not get hurt is impossible without first disclosing her blackness. Ben, because of his gender, is able to avoid being hurt in ways that Leila cannot. For example, Ben never has to disclose his blackness because he never needs to be escorted home. Both Ben and Leila are tacit passers. They do not actively present themselves as white nor do they choose to racially out themselves upon first-time encounters with whites.<sup>311</sup> To them, it seems like it should not matter, but the film unmistakably suggests that it does matter and bears a great psychological cost to the two mulatto characters.

In the 1960s, films about passing fell out of fashion, given the civil rights movement and the eventual black power

309. *Id.* at 34.

310. *Id.*

311. According to Robert Westley: "This transposition of subjectivity and identity points to another peculiar feature of the racial condition of the 'passing' person, namely the necessity of proclaiming one's blackness in the context of first-time encounters in order to correct the mistaken assumption of whiteness. Whereas the common subjective experience of blackness is visually overdetermined—to be black by popular demand—the "passing" person only becomes black in such contexts by proclamation, which is considered a revelation of the true self." Westley, *supra* note 86, at 327; see also Adrian Piper, *Passing for White, Passing for Black*, 58 *TRANSITION* 4 (1993).



movement at the close of the decade, as well as Hollywood's willingness to begin depicting the issue of interracial relationships and miscegenation without the question of passing. Films like *One Potato, Two Potato* (1964), *A Patch of Blue* (1965) and *Guess Who's Coming to Dinner* (1967) broached the subject of interracial relationships for American audiences. One of the few films in the 1960s to introduce a mulatto character is *To Sir with Love* (1967). Although it is a British film adapted from a 1959 novel by E.R. Braithwaite of the same name, it was widely seen in the United States. It depicts a black teacher, Mark Thackeray (Sydney Poitier) who teaches in a London slum neighborhood school in the late 1960s.

The mulatto character is one of *Sir's* male students named Seales, played by a mulatto actor. The novel the film is based upon deals with the issue of a new multiracial Britain. In order to Americanize the film and take it out of its British context, Seales' role in the film is marginalized as compared to his role in the novel. Seales resents his low class mixed race identity and wishes to be more like *Sir*, dark skinned and educated. At the end of the film, after the death of Seales' mother, his classmates overcome their own racial bigotry and come together to comfort Seales and his family. Even so, Seales is still a tragic figure because although he accepts his mulatto identity, he wishes he were not of both races. Seales also embodies the new generation of mulattoes born of one white and one black parent in the civil rights era. The film is deceptively progressive. It clearly articulates what had become a common argument against the growing number of black-white relationships in the period. The children will be confused about their identity and they will be out of place in society. The misery of Seales foreshadows the potential outcome of *Sir's* relationship with a white female teacher, which would be the psychological confusion brought upon the offspring of such a union.

## VII. 1970s "BLAXPLOITATION" AND HYPERRACIALISM

The 1970s brought an explosion of black films. The early 1970s was a period where the Black Nationalist movement had struck a chord with poor urban blacks.<sup>312</sup> Movies

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312. BOGLE, *supra* note 176, at 231.

reflected this shift by featuring the dark-skinned Afro-wearing urban black. It was a return of films made primarily for black audiences with all black casts. But, unlike the “race films” of the earlier half of the century, blaxploitation did not attempt to preach to or acculturate the black underclass. Instead, it validated their experiences of crime and urban decay on film. These films showed “aggressive, pistol packing, sexually charged urban cowboys set off on a heady rampage, out to topple the system and to right the past wrong.”<sup>313</sup> This is the era of the black “buck” as urban American hero. Films like *Sweetback’s Baadasssss Song* (1971), *Shaft* (1971) and *Super Fly* (1972) kicked off the “blaxploitation film” era. These movies “played on the needs of black audiences for heroic figures without answering those needs in realistic terms.”<sup>314</sup> These characters were a radical departure from the “passive” and “conciliatory” black types of the past.<sup>315</sup> It was also the era of “black superwoman,” in films like *Cleopatra Jones* (1973), *Coffy* (1973), *Foxy Brown* (1974) and *Friday Foster* (1975).<sup>316</sup> These women were a “hybrid of stereotypes, part buck, part Mammy and part mulatto.”<sup>317</sup> Blaxploitation attempted to deconstruct the stereotypes of blacks in Hollywood and create characters that urban blacks could idolize. In a period of black pride, there was no room for revisiting the tragic-mulatto who was plagued by self-hatred and resentment of their black identity. Toward the end of the decade, blaxploitation had lost its Black Nationalist roots and degenerated into even lower-budget ghetto-fabulous caricatures of the genre’s classics. By the end of the decade, we see a reemergence of the mulatto in one of the few films of the 1970s that indirectly portrays mulattoes, which is the low-budget cult-classic *Sparkle* (1976).<sup>318</sup>

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313. *Id.*

314. *Id.* at 242.

315. *Id.*

316. BOGLE, *supra* note 176, at 251.

317. *Id.*

318. *Sparkle*, a low-budget film, tells the story of three sisters living in Harlem with their single mother in the 1950s, who enter show business as singing trio and whose lives get caught up in the underworld of drugs, crime and violence in pursuit of stardom. The film focuses on the two lighter skinned sisters, the “troubled high-yellers,” played by Irene Cara and Lonette McKee. *Id.* at 255-6.

## VIII. POST CIVIL RIGHTS AND POST BLACKPLOITATION FILMS 1980–2004: EMERGENCE OF A DUAL BLACK–WHITE IDENTITY OR NON-RACIAL IDENTITY

### A. From “Blaxploitation” to Racial Ambiguity

In the 1980s, we begin to see a number of mulatto female ingénue roles emerge. The controversial and sexually charged film *Angel Heart* (1987) with Mickey Rourke, who plays a white man who unknowingly sleeps with his mulatto daughter, brought the tragic mulatto back to the big screen. Also, actresses like Rae Dawn Chong and Jennifer Beals enjoyed a racial flexibility in their roles. These actresses represent the coming of age of the civil rights generation of mulatto children, who were born to one white and one black parent. Many black actors viewed this reemergence of the mulatto in Hollywood as regressive and as a return to the practice of casting light-skinned actresses in black roles, as was done in the 1930s-1950s with actresses like Lena Horne and Dorothy Dandridge.<sup>319</sup>

Indeed, there was a certain amount of usurping of black roles by these racially mixed actresses. For example, Chong played black characters in *Beat Street* (1984), *The Color Purple* (1985) and *Soul Man* (1986); but in films like *Quest for Fire* (1981), *Commando* (1985) and *American Flyers* (1985) Chong is cast as a “multinational:’ a woman who seems a mix but basically is colorless, with no strongly defined racial/cultural identity.”<sup>320</sup> However, these actresses also were trailblazers in terms of their embodiment of racial ambiguity or of a dual black-white identity. Beals, with the exception of *Devil in a Blue Dress* (1995),<sup>321</sup> has often gone without any racial identity. In *Flashdance* (1984), Beals plays a struggling dancer who makes her living as a welder in Pittsburgh. She lives alone and has no family beyond an

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319. Documentary: *VH1 Blacks in the 80s: Color in Film* (2005) (originally aired February 3, 2005).

320. *Id.* at 291.

321. *DEVIL IN A BLUE DRESS* is a “neoniroe” story about a mulatto woman, played by Jennifer Beals, who is being hunted by criminal elements in an effort to disclose her true racial identity and link her with a wealthy white man running for elected office in Los Angeles.

older “white mother surrogate” who encourages her to pursue her dreams.<sup>322</sup>

In *Flashdance*, one of Beals dark-skinned black female exotic dancer friends refers to Beals and her blonde girl friend as “white girls” during one of many gratuitous work-out scenes in the film. Beals and her friend both laugh at the remark. This scene suggests that Beal’s character is white or at least perceived to be white by blacks, although the film remains incredibly ambiguous on Beals’ racial identity. As Donald Bogle suggests, “had *Flashdance* fully established her as a white character—with a white family—one might have respected its courage. But Beals plays a woman cut off completely from any kind of roots.”<sup>323</sup> This is also the case in her film *The Bride* (1985) co-starring Sting, a remake of *The Bride of Frankenstein*, where she is a woman “coming out of nowhere with no cultural or racial links or traditions.”<sup>324</sup>

The film *Sparkle* was clearly an influence on the plot of the 2001 box-office flop *Glitter*, starring mulatto pop-diva Mariah Carey. The film is set in the early 1980s. Carey’s character, Billie Frank, is a young racially ambiguous woman with star-potential in the music industry. Like earlier mulatto actresses, Carey’s character is cut-off from her family roots. Billie has been orphaned by her alcoholic mother, whom she is unable to locate as an adult. Despite the raceless nature of these characters, these movie roles show that there was increasingly an identity that existed between black and white, which could not be denied.

This trend of racelessness has not been limited to mulatto female actresses. There are also male corollaries to this phenomenon.<sup>325</sup> The racelessness of these roles, despite its side-stepping of interracial black-white identity, allowed these actors and actresses the ability to appear in films and play roles not meant to address or confine them to the black-white racial divide.

In this period, the issue of passing was mainly relegated to films set in a more historical context. *Biloxi Blues* (1988), starring Matthew Broderick, briefly deals with the issue

322. BOGLE, *supra* note 176, at 291.

323. *Id.*

324. *Id.* at 292.

325. Today, mulatto action stars like Vin Diesel are able to take-on certain roles and remain racially ambiguous. For example, Vin Diesel plays an Italian American in *SAVING PRIVATE RYAN* (1998).

passing during World War II, when a blonde blue-eyed fellow soldier, named James Hennesy, is identified as mulatto. He is quickly picked out of the drill line-up and arrested by the military police.<sup>326</sup> *Devil in a Blue Dress* (1995), a film by a black director, revisits the tragic mulatto and the white rich millionaire a la the Rhinelander case.<sup>327</sup> The one exception to the historicizing of passing is the British film the *Crying Game* (1994), where Dil, a transvestite played by a mulatto actor, combines the issues of racial and sexual ambiguity and passing in a contemporary context.<sup>328</sup>

### B. Dual Black/White Identity in Film

There are three films from the post-civil rights era, *Purple Rain* (1984), *Mixing Nia* (1996), and *The Human Stain* (2003), which offer a unique approach to exploring the voice of the "other" and depicting a present day reality of mulatto identity.<sup>329</sup> Neither *Purple Rain* nor *Mixing Nia* depicts their main character as passing but instead shows them attempting to fully inhabit and come to terms with their dual black-white identities. These films appeared as the movement developed to allow self-identification of multiple races on the U.S. Census, and as the children of black-white relationships of the civil rights era were coming of age.

326. There is also the black ensemble cast film *A SOLDIER'S STORY* (1984) which was based on a book of the same name, which featured a light-skinned mulatto Sergeant who resents and punishes his dark-skinned blacks who he feels perpetuate stereotypes of blacks among whites, thus have held him back in proving himself in the eyes of whites.

327. See generally Mark L. Berritinni, *Private Knowledge, Public Space: Investigation and Navigation in "Devil in a Blue Dress"*, 39 *CINEMA JOURNAL* 74, (1999).

328. According to Eila Rantonen:

*The Crying Game* is emblemized by another nonfixed position, the mixed race person, the mulatto. [citation omitted] Dil passes as woman and almost as white, too. It is important to note that the theme of "passing" (meaning the position of mulatta in between white and black culture) has also been adapted to transsexuality. Similarly, transsexual can be characterized by the term "passing", in between feminine and masculine cultures.

Eila Rantonen, *A Game of Chess: Race, Gender and Nation in Neil Jordan's The Crying Game*, in *POSTCOLONIALISM AND CULTURAL RESISTANCE* 192, 198 (1999); see also Kristin Handler, *Sexing "The Crying Game": Difference, Identity, Ethics*, 47 *FILM QUARTERLY* 31 (1994).

329. Another notable film is *The Nephew* (1998), a film about a half-black and half-Irish teenager from America who returns to his mother's small Irish village after her death.

## 1. Purple Rain

In *Purple Rain*, a semi-biographical musical starring Prince, the main character, the Kid, is an up and coming musician of mixed race heritage. The Kid's black father is a failed musician who is physically abusive to the Kid's white mother. The depiction of an interracial family unit, albeit a dysfunctional one, makes the film unique. In none of the films discussed in previous sections do we see both the black and white parent of the mulatto. The dysfunction of the Kid's family may explain the appearance of both parents. Although the film is progressive in showing the original miscegenating couple, it simultaneously reaffirms the white mainstream audiences' perception of black males as threats to white women, and the inevitable chaos of such unions. One can also argue that, unlike earlier generations of mulattoes, the children of the civil rights generation were more likely to have contact with both parents. The earlier films may have excluded a parent to represent this disconnect from one racial group, which was usually the white side of the family, due to segregation or distance from the original miscegenation.

The Kid has a love interest in the film named Apollonia. Apollonia, herself, is a racially ambiguous character. She is made more so by her lack of family in the film, much like Jennifer Beals' character in *Flashdance*. The only thing we do know is that she is from New Orleans, suggesting she, herself, may be a mulatto. The Kid also has a rival, light skinned freckled faced, Morris Day, another musician at the club. As Donald Bogle points out, Prince's Kid is "of course, a lavish update of the old tragic mulatto."<sup>330</sup> The Kid is portrayed in the film as "tormented and troubled, as restless and searching."<sup>331</sup> He is in a constant battle to prove himself and avoid the failure that befell his father. As a musician, the Kid is able to create his own unique identity and voice through his music, however, this new voice he creates is not understood by others. The club manager says to him after his "Darling Niki" routine, "your music makes no sense to no one but yourself." This highlights not only the Kid's position as an artist but as an individual who is racially different from those around him.

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330. BOGLE, *supra* note 176, at 289.

331. *Id.*

This point is further illustrated by the disconnect between the Kid and his parents. The Kid is basically a spectator in their relationship. The fact that he does not appear to connect with either one of his parents more than the other implies that he is neither black nor white.

## 2. Mixing Nia

The 1998 low budget comedy drama called *Mixing Nia* takes a look at racial identities through the eyes of an upwardly mobile advertising copywriter name Nia, who is a child of divorced parents who originally met during their time in Greenwich Village as college civil rights activists. As in *Purple Rain*, we also get to meet Nia's parents. However, instead of being in a violent relationship, they are divorced. Also, as in *Purple Rain*, the actress who plays Nia is of mulatto identity.

The film begins with Nia becoming irritated by an ad campaign to encourage poor urban blacks to consume alcohol. She quits her job with plans to write a book about her racial identity. In the course of writing the book she develops a serious case of writers block. In an effort to get past this, she attends a writing workshop at a local community college, where she meets a black literature professor named Lewis who encourages her to connect more to her black identity. With the help of her new boyfriend, Lewis, she begins to immerse herself in black intellectual culture. Nia realizes that in so doing she is being pulled away from her white friends and her own father. She is also conflicted between Lewis and a former white co-worker who is actively pursuing her romantically. She decides to leave Lewis, who says to her "you can't handle being with a real brother." She responds with "I looked at your photo album. You only date light skinned women," pointing out Lewis' own hypocrisy. Nia ends up with a white musician, Joe, who one afternoon helps her find a unique musical instrument to reflect her personality and identity. In so doing, he helps her find her own unique voice as a biracial writer. What is most interesting about *Mixing Nia* is not so much the story line, which is weak and full of cliché melodrama, but rather, it is the analogy that

Lewis makes between Nia and a story written by Henry Louise Gates called "The Passing of Anatole Broyard."<sup>332</sup>

Anatole Broyard was a very successful book review writer for the *New York Times*, who had been passing for white since he was a young man. After many years as a successful reviewer of fiction and as a professor, he begins to get writer's block upon commencement of his own "magnum opus" of a novel.<sup>333</sup> One of his friends, who read the drafts of his work, said to him, "You're not telling the truth, and if you try to write lies or evade the truth this is what you get. What is the real story?" Anatole took a deep breath and said, "The real story is that I am not who I seem. I am black."<sup>334</sup> His friend responds, "Well, Anatole, it's no great shock, because the rumor has been around for years and years and years, and everyone assumes there's a small percentage of you that's black, if that's what you're trying to say."<sup>335</sup> Anatole explains, "No, that's not what I'm trying to say. My father could pass, but in fact my mother's black, too. We're black as far back as I know. We never said a word of it to anybody, because he asked us not to."<sup>336</sup> According to Henry Louis Gates, "here is a man who passed for white because he wanted to be a writer and he did not want to be a negro writer. . . he did not want to write about black love, black passion, black suffering and joy; he wanted to write about love, passion, suffering and joy."<sup>337</sup> Lewis believes that the reason Nia has writer's block is because she, like Broyard, has not come to terms with her blackness.

*Mixing Nia* provides an interesting twist not only in terms of representing the emergence of a dual black-white identity but also in its self-conscious referencing of literature on passing and mulatto identity. In addition, it is one of the few counter-responses to the theme, especially in early black literature and films on mulatto identity, that mulattoes are no longer tragic when they ally themselves more closely with blacks. One need only look back to the black abolitionist

332. Henry Louise Gates, *The Passing of Anatole Broyard, in Thirteen Ways of Looking at a Black Man* (1997).

333. *Id.* at 198.

334. *Id.* at 202.

335. *Id.* at 202-3.

336. Henry Louise Gates, *The Passing of Anatole Broyard, in Thirteen Ways of Looking at a Black Man* at 203.

337. *Id.* at 208.



novels of the 19th Century and the works of Oscar Micheaux to see this line of argument. It turns out that Nia is most out-of-control and confused when she attempts to immerse herself in the afro-centric neo-black nationalist culture. Unlike Broyard, Nia is not black as far back as she knows and she has not been running away from her black identity by passing. Nia grew up in a mixed-race household. She realizes that she has to acknowledge her entire racial background to be happy.

### 3. The Return of the Tragic Mulatto Passer: *The Human Stain*

Philip Roth's book *The Human Stain* (2000) is the most recent installment in what we have seen in a long line of films dealing with mulatto identity and passing. *The Human Stain* is a part of a trilogy by Roth "satirizing the post-WWII society."<sup>338</sup> It has been suggested that the inspiration for Roth's book is the story of Anatole Broyard.<sup>339</sup> Both in the novel and film *The Human Stain* (2003), we are introduced to Coleman Silk, vital but elderly, at the height of his power and influence at a small New England liberal arts college, and at the height of the Clinton sex scandal.<sup>340</sup> When Coleman, who has been passing as Jewish since age twenty-six, uses the term "spooks" to describe two students who he had not seen all semester, things begin to fall apart. It turns out that the students he was referring to are black and his comment was viewed as a "racial slur." Although Coleman could easily defend himself by exposing his own blackness, he does not. Instead he resigns, bitter over the experience and the loss of his wife Iris who was Jewish and never knew Coleman's secret, which he blames on the stress of the scandal surrounding him.

The book and the film diverge in some interesting ways. For one, the film does not depict Coleman as having any children. In the book, he and Iris have four children together,

338. Elaine B. Safer, *Tragedy and Farce in Roth's Human Stain*, 43 CRITIQUE 211, 212-13 (2002).

339. *Id.* at 213.

340. Roth's novel makes parallels throughout between the political correctness and furor over Silk's alleged racial slur as a microcosm of the nation's outrage over the Clinton sex-scandal. *See id.* at 211-12.

as well as a couple of grandchildren. As Coleman's sister, Ernestine points out towards the end of the novel, "He was testing fate with so many kids. Because they were genetically linked to the past he had repudiated, there was always a chance, you see, that they might be a throwback in some distinguishing way."<sup>341</sup> In fact, Coleman married Iris, in part, because of her coarse dark hair and the "explanation her appearance could provide for the texture of their children's hair."<sup>342</sup> We see Iris very briefly in the film, at the very beginning when she passes away, and through the doorway in one of the flashback scenes when she and Coleman are first married. The film also has a number of explicit sex scenes between the young Coleman and a Midwestern blonde beauty, as well as the older Coleman and a younger illiterate janitor named Faunia at the college.<sup>343</sup> However, once Coleman's secret is revealed, there is no more sexual activity shown between him and any of the white female characters. For example, when Coleman resolves to tell Faunia his secret, the film immediately cuts away to the scene where they are driving down a snow covered road right before their fatal car crash. This is the ultimate tragic mulatto ending, death. Unlike *The Human Stain*, *Purple Rain* and *Mixing Nia* represent the experience of the post-civil rights era mulatto, with one black and one white parent, attempting to inhabit both their black and white identity. *The Human Stain* is more of a retrospective of the impossibility of that black-white duality in the pre-Civil Rights era. Since Coleman cannot reside in racial duality he "seeks neither to be black nor white, Coleman shrewdly elects a third possibility—the equivalent form of whiteness that is postwar American Jewishness."<sup>344</sup> Roth is careful to specify the historical moment in which he decides to pass. It is in 1953, in Greenwich Village, the hotbed of the "rising cultural significance of Jewish intellectuals, writers who challenged

341. PHILIP ROTH, *THE HUMAN STAIN* 320 (2000).

342. *Id.* at 136.

343. A number of reviewers have said that the film was miscast. See Mark Sells, *The Human Stain*, available at <http://www.filmthreat.com/Reviews.asp?Id=5132>; Duane Dudek, *Out-Of-Character Flaws Leave Mark On 'Stain'*, available at <http://www.onwisconsin.com/movies/movie.asp?id=947>; Robin Clifford, *The Human Stain*, available at <http://www.rottentomatoes.com/click/movie-1125977/reviews.php?critic=columns&sortby=default&page=16&rid=1219198>.

344. Ross Posnock, *Purity and Danger: On Philip Roth*, 21 RARITAN 85, 94 (2001).

genteel decorum,” that Coleman decides to pass as Jewish while a student at NYU.<sup>345</sup>

There is a common theme in our post-civil rights era films that addresses the voiceless mulatto caught between a black and white world. The search for a dual black-white identity is demonstrated in the characters preoccupations. Coleman is unable to write the novel “Spooks” based on his experience at Athena College. The writers block theme is present in *Purple Rain*, *Mixing Nia* and *The Human Stain* and invokes the idea of the search for the emerging voice of the “other” through these mulatto characters struggles with self-expression. Coleman is the only one of the three characters in these films, who is unable to get past his writers block. He also is the only one who tragically dies and is unable to ever reside in his mulatto identity. But most importantly, Coleman is a representation of a prior generation of mulattoes that existed in the pre-civil rights era, tenuously connected to “original” blackness and whiteness due to generations of inter-mixing between mulattoes based on skin-color. This is in contrast to the mulatto children in the post-civil rights era who have a direct connection with one black and one white parent, as represented in *Purple Rain* and *Mixing Nia*.

## IX. CONCLUSION

Films like *Purple Rain* and *Mixing Nia*, as problematic and as flawed as they are, provide a rare presentation of a possible existence of a dual black-white identity in a post-civil rights era. This might be because, unlike other films discussed, *Purple Rain* and *Mixing Nia* are not adaptations of literary fiction and were thus not as limited or influenced by literary motifs of 19th Century. Despite the work of these two films, the trend in Hollywood films starring well-known mulatto actors, or featuring a mulatto character continues to present mulattoes as disconnected from an extended family and a place of origin.<sup>346</sup> This suggests a continued discomfort

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345. *Id.*

346. Films like *MONSTER'S BALL* (2001) starring Halle Berry, a well-known mulatto actress, plays the role of Leticia. The dark-skinned black father of her overweight son is put to death in the electric chair and she soon loses her son in a tragic hit-and-run accident. It is not until both black male characters are dead that Leticia, who had been anchored in blackness by these two characters, is able to pursue a sexual relationship with Hank an embittered and a reformed racist prison guard. Throughout the film, she

with the idea of inter-mixing between blacks and whites. The specter of passing has all but disappeared in film and literature. As Coleman Silk's sister, Ernestine, states in Roth's novel regarding her brother's passing as Jewish, "see him historically."<sup>347</sup> She points out to Walter, a friend of her brother, that as light-skinned as one might be today, a middle class intelligent black would not dream of passing because of the perceived benefits derived from Affirmative Action type programs.<sup>348</sup> According to Ernestine, "white as your skin might be, now it's advantageous *not* to do it, just as then it was advantageous *to* do it."<sup>349</sup>

It is with the shift in law as seen through the legalization of interracial marriages, the upholding of Affirmative Action programs, and the changes to the U.S. Census, that many of the vestiges of 19th Century cultural understandings of mixed-race identity, as depicted in literary fiction and film, have begun a process of upheaval. It is, in a sense, the first time in our society that the law is no longer lagging behind artistic depictions of the dual black white identity. In some ways, today, art is lagging behind the law as demonstrated by films like *The Human Stain* and *Monster's Ball*,<sup>350</sup> whose filmic representations of mixed race identity remain tied to dated conceptions regarding the depiction of dual black-white identity.

Still, the issue of dual identity has gotten much traction in the past decade as evidenced by a 1993 Time magazine issue providing a computer created chart of racial intermixing.<sup>351</sup> Those who self-identify as being of a dual black-white identity are a growing population, given the rise in black and white intermixing, and mulatto's propensity to identify their children as of a mixed heritage.<sup>352</sup> Additionally, support networks such as the Interracial, Intercultural Pride in Berkeley, Multiracial Americans of Southern California in Los Angeles, and the Biracial Family Network in Chicago have sprung up to support this growing identity. They consist of

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is depicted as an outsider to the present community in which she resides and without an extended family. See also *supra* Section VII.A.

347. ROTH, *supra* note 341, at 327.

348. See *id.* at 326.

349. *Id.*

350. See *infra* note 366.

351. See generally, *New Face of America*, special issue TIME (Fall 1993).

352. See *supra* note 78.

young people and their families who are resisting racial reductionism and advocating a more complex acknowledgment of identity.<sup>353</sup>

Much concern was voiced by black interest organizations regarding the move to allow individuals of mixed race identity to self-identify on the 2000 Census. The political and economic concern was that it would decrease federal funding provided to state governments to fund programs beneficial to the black community.<sup>354</sup> From a social standpoint, some also expressed concern over the reemergence of a mulatto identity given the historical biases that existed between light and dark skinned blacks, mainly concerns of creating a "colored" caste that always occupies a status above the common other of blackness.<sup>355</sup> Jesse Jackson made the statement that the multiracial category proposal was "a diversion, designed to undermine affirmative action" and it could be a "plot to create a 'colored' buffer race in America."<sup>356</sup> According to Kim M. Williams, the message from black civil rights advocates "at worst" was that "people championing multiracialism were racial defectors who wanted to be white, or at least, escape blackness."<sup>357</sup>

As some of the later films reflect, the present day mulatto's desire to acknowledge their two heritages is not an affront to or a rejection of blackness, as it sometimes has been in the past. If anything, it is a direct attack on whiteness and a system of racial categorization that has historically, legally, socially and economically penalized those who could not identify as white.<sup>358</sup> This Article challenges this fear of what it would mean, for both the black and white community, to

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353. Nash, *supra* note 47, at 25.

354. L.J. Townsel, 'Neither Black Nor White': *Would a New Census Category Be a Dangerous Diversion or a Step Forward?*, 52 EBONY 44 (1996).

355. *Id.*; see also Michael Lind, *The Beige and the Black*, NEW YORK TIMES MAGAZINE, August 16, 1998, at 38-39.

356. See Kim M. Williams, *Multiracialism & Civil Rights Future*, 134 Daedalus 53-60 (2005); see also Jerelyn Eddings and Kenneth T. Walsh, *Counting a 'New' Type of American*, U.S. NEWS AND WORLD REPORT, June 14, 1997, at 22; Lynn Norment, *Am I Black White, or In Between?* EBONY, August 1995, at 110.

357. Williams, *supra* note 356, at 395.

358. Alex M. Johnson, Jr., Symposium: *Race-Based Remedy: Destabilizing Racial Classifications Based on Insights Gleaned from Trademark Law*, 84 CAL. L. REV. 887 (1996)(arguing that if one views whiteness in terms of trademark law that forcing the acknowledgment of mixed black-white identity could do much to destabilize the "brand name" of whiteness and breakdown the color-line between blacks and whites).

eviscerate the self-imposed “one drop rule” and make it feasible for a dual black-white identity to exist within modern day America.

Today, the issue of multiracial identity in the United States has moved beyond just the black and white context, in film particularly, to include an endless combination of racial mixtures. Despite great gains made politically and culturally in dealing with issues of racial identity, many of the taboos and vestiges still remain.<sup>359</sup> Still, representations of identity in literature and film are useful yardsticks to continue to measure how far we have come in our society, as well as how far we have to go. In many ways, both literature and film have brought these often-abstract policy and legal debates to the masses in neatly packaged stories, although often with their own biases and hidden agendas attached. They still, however, reflect the subtle differences in the era they were made. In the future, literature, film and the law will continue to be forums in which to measure and observe the changing ideas in this ongoing dialogue of racial identity.

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359. An unpublished student paper by Nancy Spence, examines thirteen films featuring non-Caucasian bi-racial characters, including: *Posse* (1993)(film chronicling black cowboys in the Wild West, the character Lana is half black and half Native American.); *Rising Sun* (1993) (featured a half Japanese half black character Jingo Asakuma); *Good Day to Die* (1995)(the character Gypsy Smith, a bounty hunter, is half black and half Cherokee); *The Delta* (1996)(Minh, the gay lover of a closeted white teen in Memphis, is half black and half Vietnamese); *Our Song* (2000)(the main character Lanisha is half black and half Latina); *Atlantis: The Lost Empire* (2001) (Disney animated film features a character named Doctor Strongbear Sweet who is half Native American and half black); *Bones* (2001)(character of Maurice is racially ambiguous and when another character states “I don’t know exactly what [race] you are, but you damn sure ain’t no black man.” Maurice responds, “I am the future...I am the melting pot...I am Martin Luther King’s dream. I am post-racial.”); *The Hot Chick* (2002)(Keecia “Ling Ling” Jackson is half black and half Korean); *Mexican Blow* (2002)(half black and half Asian character named Dreadmon is featured); *Anne B. Real* (2003)(the main character Anne is half black and half Latina); *Kill Bill Volume 1* (2003)(although not multi-racial, in this case multi-ethnic serves as a proxy in a largely homogenous society, one of the assassins O-Ren Ishii is half Japanese and half Chinese) and found that the films either depicted physical violence against the bi-racial character, negatives racial stereotypes and/or portrayed these individuals as tragic outcasts unable to reconcile themselves within their two identities. The two films that she found to be exceptions to this negative depiction of non-Caucasian bi-racial characters were the films *The Rebel Breed* (1960)(follows two detectives, one of whom, Frank, is half black and half Mexican as they infiltrate race based gangs in high schools suffering from racial tension) and *Be Cool* (2004)(The biracial character in Be Cool, a film that follows a former gangsters attempt to gain a foothold in the music industry, unlike any of the other movies analyzed, reflects the actual biracial background of the actor, Dwayne Johnson (“The Rock”), who is half Samoan and half black). (paper on file with author.)