

FROM *LOVING V. VIRGINIA* TO BARACK OBAMA: THE SYMBOLIC TIE THAT BINDS¹

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I. INTRODUCTION

The year 2017 marks the fiftieth anniversary of the 1967 United States Supreme Court decision in *Loving v. Virginia*,² which declared anti-miscegenation laws to be unconstitutional. For many, the *Loving* decision represents a symbolic turning point in the history of United States racial politics. Some even celebrate the *Loving* decision and the argued subsequent “biracial baby boom” as the beginning of a post-racial United States. Indeed, statistics indicating that fifteen percent of all new marriages are interracial and polls suggesting that a majority of Americans today approve of interracial marriage are cited as evidence of the erosion of racial boundaries and tensions. For many, the 2008 election of Barack Hussein Obama, the offspring of an Afri-

1. This article borrows from material in RACE AND THE OBAMA PHENOMENON: THE VISION OF A MORE PERFECT MULTIRACIAL UNION 1-40 (Reginald Daniel & Hettie Williams eds., 2015).

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2. 388 U.S. 1 (1967).

can father and European American mother, as the forty-fourth President—and the first Black President—of the United States similarly marked a symbolic victory affirming that racism has finally been overcome and the United States is a truly post-racial society. However, the year 2017 also marks the end of Obama’s presidency and—importantly—the inauguration of Donald J. Trump as President of the United States. Consequently, we are not only forced to examine this critical juncture in the history of United States racial politics, but are also required to critically examine the past fifty years and ask the following question: to what extent have the symbolic victories of *Loving* and the election of Obama been imbued with aspirations that have yet to be fully actualized? *Loving* and the election of President Obama are undoubtedly important milestones in the history of United States jurisprudence and racial politics. Yet a careful analysis of interracial marriage trends, the politics of mixed race identity, and the waves of backlash against Obama’s presidency—which range from contesting his legitimacy and opposing his political efforts to explicitly racist rhetoric and the recent election of Donald Trump as President—suggest that the post-racial potential promised by *Loving* has remained more aspirational than actualized. Accordingly, in order to understand the legacy of *Loving*, we must think critically about interracial intimacy and contemporary United States race relations, taking into account the persistent inequities imbedded in the United States racial order and the continued relevance of anti-Blackness in the struggles for a more egalitarian society.

II. HYPODESCENT AND THE MONORACIAL IMPERATIVE

The rule of hypodescent is a social code designating racial group membership of first-generation offspring of unions between White Americans and Americans of color exclusively based on their background of color. Successive generations of individuals who have White American ancestry combined with a background of color have more flexibility in terms of self-identification. The one-drop rule of hypodescent designates as Black everyone with any African ancestry (“one-drop of blood”). It precludes any choice in self-identification and ensures that all future offspring of African American ancestry are socially designated and self-identified as Black.³ Beginning in the late sixteenth century, the dominant Whites began enforcing rules of hypodescent as part of anti-miscegenation statutes aimed at punishing and eventually prohibiting interracial intimacy, as well as defining

3. REGINALD DANIEL, MORE THAN BLACK? MULTIRACIAL IDENTITY AND THE NEW RACIAL ORDER ix–xi, 16–17, 37 (2002); F. JAMES DAVIS, WHO IS BLACK? ONE NATION’S DEFINITION 9, 15, 118 (1991).

multiracial offspring as Black in an attempt to preserve White racial “purity” and privilege. By the middle of the eighteenth century, interracial marriages in the Southern and some Northern colonies (and eventually states) in Anglo-North America were proscribed and stigmatized where they were not legally prohibited.⁴

During the early seventeenth century, African Americans were comparatively small in numbers and the social distinction between the White indentured servant and the Black slave was less precise than the legal distinction between bonded and free. There were no laws against miscegenation despite strong prejudice against interracial intimacy.⁵ Consequently, a small, but not insignificant, number of indentured Europeans and enslaved Africans intermarried or formed common-law unions. They had legitimate offspring, alongside more widespread clandestine and fleeting liaisons involving births outside of wedlock. Most of the latter were between White masters and indentured or enslaved women of African descent and involved coercive sexual relations as in extended concubinage or rape. The offspring of these unions were considered slaves contingent upon the slave status of the mother, not the rule of hypodescent. Accordingly, the rule did not increase the numbers of slaves, but rather, the number of Blacks whether enslaved or free. Still the rule of hypodescent conveniently functioned to exempt White landowners (particularly slaveholders) from the legal obligation of passing on inheritance and other benefits of paternity to their multiracial progeny.⁶

The ancestral quanta defining legal Blackness have varied over time and according to locale. Informal social perceptions and practices of hypodescent were normative long before they were formalized in law. Statutes and court decisions were inevitably more precise than social custom.⁷ The one-drop rule gained currency as the informal or

4. Darryl G. Barthe, Jr., *Racial Revisionism, Caste Revisited: Whiteness, Blackness, and Barack Obama*, in *OBAMA AND THE BIRACIAL FACTOR: THE BATTLE FOR A NEW AMERICAN MAJORITY* 83-85 (Andrew J. Jolivette ed., 2012); REGINALD DANIEL, *RACE AND MULTIRACIALITY IN BRAZIL AND THE UNITED STATES: CONVERGING PATHS?* 89-92 (2006); PEGGY PASCOE, *WHAT COMES NATURALLY: MISCEGENATION LAW AND THE MAKING OF RACE IN AMERICA* 19-29 (2009); RANDALL KENNEDY, *INTERRACIAL INTIMACIES: SEX, MARRIAGE, IDENTITY, AND ADOPTION* 41-69 (2003).

5. DANIEL, *supra* note 3, at 87; MARTHA HODES, *WHITE WOMEN, BLACK MEN: IL-LICIT SEX IN THE NINETEENTH-CENTURY SOUTH* 1-15 (1997); PAUL SPICKARD, *MIXED BLOOD: INTERMARRIAGE AND ETHNIC IDENTITY IN TWENTIETH-CENTURY AMERICA* 237 (1989); LAURENCE TENZER, *A COMPLETELY NEW LOOK AT INTERRACIAL SEXUALITY: PUBLIC OPINIONS AND SELECT COMMENTARIES* 56-68 (1990).

6. DAVIS, *supra* note 3, at 9, 15 n.8.

7. Winthrop Jordan, *Historical Origins of the One-Drop Racial Rule in the United States*, 1 *J. CRITICAL MIXED RACE STUD.* 98, 113-14 (2014); Daniel J. Sharfstein, *Secret History of Race in the United States*, 112 *YALE L.J.* 1473, 1476-79 (2003).

“commonsense”⁸ definition of Blackness between the seventeenth and nineteenth centuries, but did not become a customary part of the legal apparatus until the early twentieth century (circa 1915).⁹ The rule of hypodescent has supported legal and informal barriers to racial equality in most aspects of social life. At the turn of the twentieth century, in *Plessy v. Ferguson*,¹⁰ these restrictions culminated with the institutionalization of Jim Crow segregation.¹¹

Beginning in the mid-1950s, those proscriptions began to be dismantled. They were accompanied by the passage of historic civil rights legislation in the 1960s, including the landmark 1967 *Loving v. Virginia*¹² decision, which removed the last laws prohibiting interracial marriage.¹³ In the aftermath of *Loving*, notions of racial purity that supported the ideology of White supremacy were increasingly repudiated. Rules of hypodescent have since been removed from all state statutes. European Americans, nevertheless, maintain identities and privileges based on White racial exclusivity originating in hypodescent. According to Lipsitz, European Americans continue to uphold a “possessive investment in Whiteness.”¹⁴ This manifests itself by means of a matrix of practices that leads to significantly different life chances along racial lines. These outcomes are not merely the byproducts of benign neglect. They are also the cumulation of the purposeful designs of Whites that assign people of different racial groups to different social spaces. This, in turn, results in grossly inequitable access to education, employment, transportation, and housing.¹⁵

8. MICHAEL OMI & HOWARD WINANT, *RACIAL FORMATION: FROM THE 1960S TO THE 1990S* 106 (2d ed. 1994).

9. DANIEL, *supra* note 3, at 34-42; DANIEL, *supra* note 4 at viii-ix; DAVIS, *supra* note 3, at 9-11, 55-58.

10. 163 U.S. 537 (1896).

11. *Plessy v. Ferguson*, 163 U.S. 537 (1896). See generally Mark Golub, *Plessy as “Passing”: Judicial Responses to Ambiguously Raced Bodies in Plessy v. Ferguson*, 39 L. & SOC’Y REV. 563 (2005); Rebecca J. Scott, *Public Rights, Social Equality, and the Conceptual Roots of the Plessy Challenge*, 106 MICH. L. REV. 777, 782 (2008).

12. 388 U.S. 1 (1967).

13. There were several judicial antecedents, if not precedents, to *Loving*. The legal antecedents included *Perez v. Sharp*, 198 P.2d 17 (Cal. 1948), which removed anti-miscegenation statutes in California, and *McLaughlin v. Florida*, 379 U.S. 184 (1964), in which the United States Supreme Court unanimously ruled against the constitutionality of Florida’s cohabitation statute, which prohibited habitual cohabitation between two unmarried individuals of the opposite sex if one was Black, and the other, White. The decision overturned *Pace v. Alabama*, 106 U.S. 583 (1883), which had declared such statutes constitutional. The *McLaughlin* decision did not, however, overturn the other part of Florida’s anti-miscegenation law prohibiting racial intermarriage between Whites and Blacks. Such statutes were only declared unconstitutional in *Loving v. Virginia*. RACHEL MORAN, *INTERRACIAL INTIMACY: THE REGULATION OF RACE AND ROMANCE* 79-81, 92-96 (2001).

14. GEORGE LIPSITZ, *THE POSSESSIVE INVESTMENT IN WHITENESS: HOW WHITE PEOPLE PROFIT FROM IDENTITY POLITICS* 2 (1998).

15. GEORGE LIPSITZ, *HOW RACISM TAKES PLACE* 6 (2011).

Hypodescent also had unintended consequences for groups of color, especially Blacks. By drawing boundaries that excluded Blacks from having contact as equals with Whites, it legitimated and forged group identities among the former. Consequently, Blacks hold on tenaciously to the one-drop rule. It is considered a necessary, if originally oppressive, means of maintaining the integrity of the Black community and mobilizing in the continuing struggle against racial inequality. Yet, an African American identity is not a mindless embrace of “the Blackness that Whiteness created,” and thus an indication that individuals have been duped by hypodescent. Rather, African Americans *rearticulate*, rather than *reproduce*, rules of hypodescent. This involves repetition of hypodescent with a difference in support of racial difference without hierarchy, that is, difference based on equality.¹⁶

III. RESISTING HYPODESCENT AND THE MONORACIAL IMPERATIVE

The rule of hypodescent has become so accepted in the United States that its oppressive origins are largely obscured and its logic never questioned. Individuals reinforce, if only unwittingly, racial designations as if they were mutually exclusive and singular (monoracial), if not hierarchical categories of experience, as well as objective phenomena with an independent existence of their own. Hypodescent is also the basis of associated advantages that accrue to Whites as well as groups of color (“monoracial privilege”).¹⁷ Consequently, monoraciality has been internalized as the normative pattern of identification, which deems a multiracial identity as illegitimate.¹⁸ Since the late 1960s, however, growing numbers of people have challenged hypodescent and its proscriptions. This is related to the dismantling of Jim Crow segregation and implementation of civil rights legislation during the 1950s and 1960s.

More specifically, it is attributable to the 1967 *Loving v. Virginia*¹⁹ decision, which overturned statutes in the remaining sixteen states prohibiting racial intermarriage. Previously, the racial state regarded interracial intimacy as a private rather than public matter. This was part of the state’s tactic of deflecting attention away from the

16. DANIEL, *supra* note 4, at 217.

17. Kevin L. Nadal, *Microaggressions and the Multiracial Experience*, 1 INT’L J. HUMAN. & SOC. SCI. 36, 43 (2011).

18. REGINALD DANIEL, MACHADO DE ASSIS: MULTIRACIAL IDENTITY AND THE BRAZILIAN NOVELIST 244 (2012); Marc P. Johnston & Kevin L. Nadal, *Multiracial Microaggressions: Exposing Monoracism*, in MICROAGGRESSIONS AND MARGINALITY: MANIFESTATION, DYNAMICS, AND IMPACT 123-44 (Derald Wing Sue ed., 2010).

19. 388 U.S. 1 (1967).

contradictions between its espousal of freedom and justice and the empirical realities of Jim Crow segregation, including anti-miscegenation statutes. Interracial intimacy thus became central to the debate on the relationship of private matters to the public sphere of civil rights activism. Many activists wanted interracial intimacy to be considered a public matter as part of the promotion of equal rights and social justice, particularly in terms of Black-White relations. They endeavored to achieve this primarily through popular culture, but also through litigation. Activists hoped to expose the pervasive racism in the legal system of a nation that trumpeted itself as the arsenal of democracy to the rest of the world.²⁰

The *Loving* decision did not, however, derive from the civil rights movement itself, although the changing climate engendered by the movement paved the way. It originated in a lawsuit filed by an interracial couple, Richard Loving, who was European American, and his wife Mildred Jeter, who was an African-descent American. They took their case all the way to the Supreme Court, which ruled that anti-miscegenation laws violated the Equal Protection Clause of the Fourteenth Amendment and were thus unconstitutional.²¹ This process began with the *Brown v. Board of Education*²² decision in 1954, which reversed the 1896 case of *Plessy v. Ferguson*²³ that legalized Jim Crow segregation.²⁴ It culminated in the passage of the Civil Rights Act of 1964²⁵ and the Voting Rights Act of 1965,²⁶ as well as the Immigration and Nationality Act (or Hart-Celler Act),²⁷ which removed legal restrictions on immigration. Along with the Fair Housing Act of 1968,²⁸ *Loving* was part of the dismantling of segregation in the private sphere and followed the elimination of all other forms of legalized racial discrimination and segregation in the public sphere.

20. ALEX LUBIN, ROMANCE AND RIGHTS: THE POLITICS OF INTERRACIAL INTIMACY, 1945–1954 ix-xxi, 66-95, 151-59 (2005); Rachel F. Moran, *Loving and the Legacy of Unintended Consequences*, 2007 WIS. L. REV. 239, 249-50 (2007); PEGGY PASCOE, WHAT COMES NATURALLY: MISCEGENATION LAW AND THE MAKING OF RACE IN AMERICA 164-204, 246-90 (2009); KENNEDY, *supra* note 4, at 23-26; Dorothy E. Roberts, *Loving v. Virginia as a Civil Rights Decision*, 59 N.Y.L. SCH. L. REV. 175 (2014–2015).

21. DANIEL, *supra* note 3, at 97; Kevin N. Maillard & Rose C. Villazor, *Introduction: Loving v. Virginia in a Post-Racial World: Rethinking Race, Sex, and Marriage*, in *LOVING V. VIRGINIA IN A POST-RACIAL WORLD 2* (Kevin N. Maillard & Rose C. Villazor eds., 2012).

22. 347 U.S. 483 (1954).

23. 163 U.S. 537 (1896).

24. Roberts, *supra* note 20, at 175.

25. 28 U.S.C. § 1447 (2012); 42 U.S.C. §§ 1971, 2000a-2000h-6 (2012).

26. 42 U.S.C. §§ 1971, 1973d, 1973e, 1973g, (2012); 52 U.S.C. §§ 10301-10313, 10501-10508, 10701-10702 (2012).

27. 8 U.S.C. §§ 1101, 1181-1182, 1151-1156, 1201-1202, 1204, 1251, 1253-1255, 1259, 1322, 1351 (2012).

28. 42 U.S.C. §§ 3601-3619 (2012).

Importantly, however, *Loving* was most relevant in the Southern states where anti-miscegenation laws primarily targeted interracial marriages between Blacks and Whites, which have historically been the most taboo relationships.²⁹ Yet Black-White intermarriages have composed a relatively small percentage of the nation's interracial married couples. Consequently, the *Loving* decision did not result in a significant growth in intermarriages.³⁰ According to census data, in 1960 there were 51,000 Black-White marriages of the nation's 157,000 interracial marriages; in 1970 there were 65,000 Black-White marriages out of a national total of 321,000 interracial marriages.³¹ By 1980, the number of interracial couples approached one million, including 599,000 White-other race unions and some 167,000 Black-White unions.³² The number of interracial couples continued to increase steadily until by 1990 there were 1.5 million interracial unions, of which 883,000 were White-other race unions and 246,000 Black-White unions.³³ Notwithstanding *Loving's* limited significance in terms of increased racial intermarriage, it was a symbolic victory that removed the legal sanction against interracial marriage and some of

29. This has particularly been true historically of marriages between Black men and White women although Black men are more likely to outmarry than Black women. See HODES, *supra* note 5, at 44-46; Jeffrey S. Passel, Wendy Wang & Paul Taylor, *Marrying Out: One-in-Seven New U.S. Marriages is Interracial or Interethnic*, PEW RES. CTR. (June 4, 2010), <http://www.pewsocialtrends.org/2010/06/04/marrying-out/> [hereinafter *Marrying Out*].

30. The 1965 Immigration and Nationality Act was more important in this regard given that it increased immigration of populations from Latin America as well as Asia, which have a higher percentage of interracial marriages. In terms of the latter, the missionary history, commerce, militarization, and United States wars in Asia and the Pacific have also played a significant role.

31. ANDREW BILLINGSLEY, *CLIMBING JACOB'S LADDER: THE ENDURING LEGACY OF AFRICAN AMERICAN FAMILIES* 247 (1993); Jennifer Lee & Frank A. Bean, *America's Changing Color Lines: Immigration, Race/Ethnicity, and Multiracial Identification*, 30 ANN. REV. SOC. 221, 228 (2004); PASCOE, *supra* note 20, at 295-96; RENEE C. ROMANO, *RACE MIXING: BLACK-WHITE MARRIAGE IN POSTWAR AMERICA* 3 (2003); MARIA P. P. ROOT, *LOVE'S REVOLUTION: INTERRACIAL MARRIAGE* 179-88 (2001); Roger Sanjek, *Intermarriage and the Future of Races*, in *RACE* 105 (Steven Gregory & Roger Sanjek eds., 1994); U.S. CENSUS BUREAU, <https://www.census.gov/> (last visited Mar. 25, 2017).

32. BILLINGSLEY, *supra* note 31, at 247; Sanjek, *supra* note 31; *MS-3. Interracial Married Couples: 1960 to Present*, U.S. CENSUS BUREAU (Jan. 7, 1999), <https://www.census.gov/population/socdemo/ms-la/tabms-3.txt> [hereinafter *MS-3*]; *Table 1: Race of Wife by Race of Husband: 1960, 1970, 1980, 1991, and 1992*, U.S. CENSUS BUREAU (June 10, 1998), <https://www.census.gov/population/socdemo/race/interractab1.txt> [hereinafter *Table 1*].

33. Tim Bovee, *Interracial Couples Have Doubled in 12 Years*, BUFFALO NEWS, Feb. 12, 1993, at A2; GIGI KAESER & PEGGY GILLESPIE, *OF MANY COLORS: PORTRAITS OF MULTIRACIAL FAMILIES* xi (1997); ROOT, *supra* note 31, at 179; *MS-3, supra* note 32; *Table 1, supra* note 32.

the negative social stigma associated with these unions, thus legitimizing marriages that had previously been proscribed.³⁴

Since the late 1980s, discussions on race in the United States have increasingly included references to a multiracial identity, which is an additional interrogation of the one-drop rule. The resistance to the rule of hypodescent as indicated by increased racial intermarriage in the post-*Loving* era was not, however, accompanied by any notable equivalent resistance to the one-drop rule, and hypodescent more generally, in terms of identity formation of the offspring of these unions. Increasing numbers, however, embrace more than one racial background.³⁵ This multiracial identity manifests itself “betwixt and between” the boundaries of traditional United States racial groups.³⁶ It extends outward from this liminal location depending upon individuals’ orientation toward the groups that compose their background.³⁷ Despite myriad backgrounds, experiences, and identities, the shared liminality based on identification with more than one racial background becomes an integral part of the self-conception of multiracial-identified individuals, and a defining component of the multiracial experience.³⁸ This identity interrogates the “either/or” monoracial imperative that underpins United States racial formation and seeks to shift to a “both/neither” mindset.³⁹

34. This has particularly been true historically of marriages between Black men and White women although Black men are more likely to outmarry than Black women. See HODES, *supra* note 5, at 44-46; *Marrying Out*, *supra* note 29; Kevin Noble Maillard, *The Multiracial Epiphany of Loving*, 76 *FORDHAM L. REV.* 2709, 2709-13 (2008).

35. Kevin R. Binning, Miguel Y. Unzueta, Yuen J. Huo, & Ludwin E. Molina, *The Interpretation of Multiracial Status and Its Relation to Social Engagement and Psychological Well-being*, 65 *J. SOC. ISSUES* 35, 36, 44-46 (2009); KATHLEEN O. KORGAN, FROM BLACK TO BIRACIAL: TRANSFORMING RACIAL IDENTITY AMONG AMERICANS 9-56 (1998); KRISTIN A. RENN, MIXED RACE STUDENTS IN COLLEGE: THE ECOLOGY OF RACE, IDENTITY, AND COMMUNITY ON CAMPUS 64-67 (2004); KERRY A. ROCKQUEMORE & DAVID BRUNSMA, BEYOND BLACK: BIRACIAL IDENTITY IN AMERICA 21, 41-48 (2002); Scot Rives, *Multiracial Work: Handing over the Discretionary Judicial Tool of Multiracialism*, 58 *UCLA L. REV.* 1303, 1314 (2011).

36. VICTOR W. TURNER, *THE RITUAL PROCESS: STRUCTURE AND ANTI-STRUCTURE* 97 (1969).

37. GLORIA ANZALDÚA, *BORDERLANDS: LA FRONTERA—THE NEW MESTIZA* 77-91 (1987); DANIEL, *supra* note 3, at 93-113; RENN, *supra* note 35, at 67-93; ROCKQUEMORE & BRUNSMA, *supra* note 35, at 40-52; Kerry A. Rockquemore, David L. Brunsma & Daniel J. Delgado, *Racing to Theory or Rethorizing Race? Understanding the Struggle to Build a Multiracial Identity Theory*, 65 *J. SOC. ISSUES* 13 (2009); KENDRA R. WALLACE, *RELATIVE/OUTSIDER: THE ART AND POLITICS OF IDENTITY AMONG MIXED HERITAGE STUDENTS* 121-25, 147-52 (2001).

38. STEPHEN CORNELL & DOUGLAS HARTMANN, *ETHNICITY AND RACE: MAKING IDENTITIES IN A CHANGING WORLD* 86, 96 (1998).

39. DANIEL, *supra* note 3, at 3, 10, 173; Reginald Leamon Robinson, *The Shifting Race-Consciousness Matrix and the Multiracial Category Movement: A Critical Reply to Professor Hernandez*, 20 *B.C. THIRD WORLD L. J.* 231, 238, 247 (2000).

It was not until the late 1970s that increased mobilization emerged around a multiracial identity.⁴⁰ By the 1980s, a nascent multiracial movement composed of a growing number of local support groups for interracial families and multiracially-identified people lobbied for changes in official data collection in the 1990 census. The goal was to make possible a multiracial identification. In the 1990s, this racial project expanded to include more than fifty support groups and educational organizations, including two national organizations, the Association of MultiEthnic Americans and Project RACE (Reclassify All Children Equally). This led to a full-scale social movement whose constituents, along with other supporters, began pressuring for changes in the collecting of data on race, particularly on the decennial census, so that multiracial individuals could be enumerated.⁴¹

While activists were unsuccessful in bringing about changes on the 1990 census, their efforts intensified in the wake of the census. Their success at marshaling various advocacy groups and supporters was instrumental in prompting federal officials to convene the Congressional Hearings on Racial Census Categories (1993–1997) to discuss any potential changes on the 2000 census. By the 2000 census, this movement succeeded in making it possible for individuals to express a multiracial identity by checking more than one box in the race question.⁴² Consequently, many scholars argue that the rule of hypodescent, and specifically the one-drop rule, today has less impact on identity formation of multiracials of partial African descent. Others contend it still influences identity formation through external imposition as well as self-ascription.⁴³

40. KIMBERLY McCLAIN DaCOSTA, MAKING MULTIRACIALS: STATE, FAMILY, AND MARKET IN THE REDRAWING OF THE COLOR LINE 21-46 (2007); DANIEL, *supra* note 3, at 125-54; KIMBERLY M. WILLIAMS, MARK ONE OF MORE: CIVIL RIGHTS IN MULTIRACIAL AMERICA 1-64 (2008).

41. GARGI BHATTACHARYYA, JOHN GABRIEL & STEPHEN SMALL, RACE AND POWER: GLOBAL RACISM IN THE TWENTY-FIRST CENTURY 60-87 (2002); Nancy Brown & Ramona Douglass, *Making the Invisible Visible: The Growth of Community Network Organizations*, in THE MULTIRACIAL EXPERIENCE: RACIAL BORDERS AS THE NEW FRONTIER 323-40 (Maria P. P. Root ed., 1996); GABE GROSZ, *From Sea to Shining . . . : A Current Listing of Interracial Organizations and Support Groups Across the Nation*, in INTERRACE 24-29 (1989); GREG CARTER, THE UNITED STATES OF UNITED RACES: A UTOPIAN HISTORY OF RACIAL MIXING 164-68 (2013).

42. DaCOSTA, *supra* note 40, at 2-4, 21-46; DANIEL, *supra* note 3, at 125-51; KIM M. WILLIAMS, MARK ONE OR MORE: CIVIL RIGHTS IN MULTIRACIAL AMERICA 39-84 (2006); CARTER, *supra* note 41, at 170-72, 186-91; Trina Jones, *Shades of Brown: The Law of Skin Color*, 49 DUKE L. J. 1487, 1521-22 (2000).

43. MICHAEL P. JEFFRIES, PAINT THE WHITE HOUSE BLACK: BARACK OBAMA AND THE MEANING OF RACE IN AMERICA 64-70 (2013); Nikki Khanna, "If You're Half Black, You're Just Black": Reflected Appraisals and the Persistence of the One-drop Rule, 51 SOC. Q. 96-121 (2010); ROCKQUEMORE & BRUNSMA, *supra* note 35, at 45-46.

IV. THE OBAMA PHENOMENON AND THE POST-RACIAL IDEAL

Although Barack Obama does not identify as multiracial, the immediacy of his interracial parentage as the son of a White mother from Kansas, in the heartland of the United States, and Black father from Kenya, in the African homeland of humanity, as well as his rearing outside the continental United States, in Hawai'i and Indonesia, by his White mother and her relatives, along with his Indonesian stepfather,⁴⁴ has imbued his consciousness with a broader vision and wider ranging sympathies in forming an identity. This enhanced his image as the physical embodiment of the principles of inclusiveness and equity. Yet in 1961, when Barack Obama was born, twenty-one states still maintained anti-miscegenation laws, largely targeting marriages involving Blacks, particularly Black-White unions, the majority of Whites disapproved of racial intermarriage (96% according to survey research), and individuals who dared cross the racial divide were considered deviants.⁴⁵ Moreover, Obama grew up in an era when a multiracial identity was not an option. Indeed, he has never said he *identifies* as multiracial.⁴⁶ This was underscored when Obama checked only the "Black, African American, or Negro" box on the 2010 census race question even though, since 2000, respondents have been allowed to check more than one box.⁴⁷ For all his hybridity, Obama's identity is situated in the Black community and extends outward from that location.⁴⁸

44. BARACK OBAMA, *DREAMS FROM MY FATHER: A STORY OF RACE AND INHERITANCE* xv, 23-25, 30-33 (1995).

45. Micah Altman and Philip A. Klinkner, *Measuring the Difference between White Voting and Polling on Interracial Marriage*, 3 DU BOIS REV. 299 (2006); Bill Dedman, *Historians write 1st draft on Obama victory*, MSNBC (Nov. 5, 2008 3:35 PM ET), <http://www.msnbc.msn.com/id/27539416/from/ET>; *Legal Map*, LOVING DAY, <http://www.lovingday.org/legal-map> (last visited Apr. 6, 2017); ROCKQUEMORE & BRUNSMA, *supra* note 35, at 21.

46. JEFFRIES, *supra* note 43, at 64-70; Rebecca Chiyoko King-O'Riain, *Is No One as Irish as Barack O'Bama?*, in OBAMA AND THE BIRACIAL FACTOR: THE BATTLE FOR A NEW AMERICAN MAJORITY 114 (Andrew Jolivéte ed., 2012); Zebulon Vance Miletsky, *Mutt Like Me: Barack Obama and the Mixed Race Experience in Historical Perspective*, in OBAMA AND THE BIRACIAL FACTOR: THE BATTLE FOR A NEW AMERICAN MAJORITY 141-68 (Andrew J. Jolivéte ed., 2012); Justin Ponder, *A Patchwork Heritage: Multiracial Citation in Barack Obama's Dreams from My Father*, in OBAMA AND THE BIRACIAL FACTOR: THE BATTLE FOR A NEW AMERICAN MAJORITY 76 (Andrew Jolivéte ed., 2012).

47. Sam Roberts & Peter Baker, *Asked to Declare His Race, Obama Checks 'Black'*, N.Y. TIMES (Apr. 2, 2010), http://www.nytimes.com/2010/04/03/us/politics/03census.html?_r=0.

48. Robert Keith Collins, *A Different Kind of Blackness: The Question of Obama's Blackness & Intra-racial Variation Among African Americans*, in OBAMA AND THE BIRACIAL FACTOR: THE BATTLE FOR A NEW AMERICAN MAJORITY 169-90 (Andrew Jolivéte ed., 2012).

That said, Obama's public success, a loving extended interracial family, and comfort as an African American who acknowledges his multiracial background indicates how much things have changed since he was born.⁴⁹ In his first news conference as President-elect, Obama conveyed this comfort with the throwaway response "mutts like me"⁵⁰ when asked by reporters what types of puppies he would consider getting for his daughters. This was a more personalized reference to Obama's multiracial background than his typically more oblique reference to it by mentioning his parents.

In the media, Obama has generally been referred to as Black or African American, less frequently as multiracial or biracial. Yet people have displayed varying responses in terms of how he is viewed racially. Data on these attitudes were collected for Mark Williams by Zogby International in a November 2006 Internet poll of 2,155 people. People were told Obama's parents' background, and then were asked to identify Obama's race. Obama was identified as Black by 66% of African Americans, 9% of Latinas/os, 8% of Whites, and 8% of Asian Americans. He was designated with multiracial-identifiers by 88% of Latinas/os, 80% of Whites, 77% of Asian Americans, and 34% of African Americans.

Young people of all racial groups born roughly between 1982 and 2003—the "Millennial generation"⁵¹—have been among Obama's most ardent supporters. This population is the most racially diverse cohort in United States history and has been exposed to a comparatively more racially diverse society than any previous generation. According to figures from the 2008 Current Population Survey, slightly more than half of Millennials—56%—are European American. The remaining 44% are Latina/o (20%), African American (15%), Asian American (5%), multiracial (3%), and Native American (1%), with a significantly larger share of Blacks and multiracials than previous generations.⁵² If Obama has significance for Blacks, he has special meaning for the growing population of multiracial-identified individu-

49. Dedman, *supra* note 45.

50. Alan Fram, 'Mutts like me' shows Obama's racial comfort, NBC NEWS (Nov. 8, 2008 2:51 PM ET), http://www.nbcnews.com/id/27606637/ns/politics-decision_08/t/mutts-me-shows-obamas-racial-comfort/#.WM2ua6K1uUk.

51. Dominique Apollon, *Don't Call Them "Post-Racial": Millennials' Attitudes on Race, Racism and Key Systems in Our Society*, APPLIED RES. CTR. (June 2011) [hereinafter *Don't Call Them Post-Racial*], http://www.racialequitytools.org/resourcefiles/ARC_Millennials_Report_June_2011.pdf; MORLEY WINOGRAD & MICHAEL D. HAIS, *MILLENNIAL MAKEOVER: MYSPACE, YOUTUBE, AND THE FUTURE OF AMERICAN POLITICS* 66-67 (2008).

52. *Don't Call Them Post-Racial*, *supra* note 51, at 3-28; Thomas Tseng, *Millennials: Key to Post-ethnic America?*, NEW GEOGRAPHY (July 30, 2008), <http://www.newgeography.com/content/00137-millennials-key-post-ethnic-america>; JONATHAN CHAIT, *AUDACITY: HOW BARACK OBAMA DEFIED HIS CRITICS AND CREATED A LEGACY THAT WILL PREVAIL* 215 (2017).

als.⁵³ Multiracials totaled seven million on the 2000 census.⁵⁴ Based on 2010 census data, their numbers increased to 9 million—or 2.9 percent of the population. Although they still make up only a fraction of the total population, this is a growth rate of about 32% since 2000, when multiracials composed 2.4% of the population.⁵⁵

Obama's multiracial background allowed a wide range of people to feel comfortable with him, which was instrumental in building an impressive voter coalition in 2008. According to election polls, this included 95% of Blacks and a two-to-one advantage among all other communities of color. In addition, Obama carried every age group other than those sixty-five and older.⁵⁶ That said, Senator John McCain led Obama by twelve points among White voters. Obama won decisively in the electoral vote (Obama 365, McCain 173). The popular vote was considerably closer (Obama 66,882,230, McCain, 58,343,671). Obama garnered 53% and McCain 46% of the popular vote.⁵⁷ In the 2012 election, Obama's showing of 93% among Blacks, who turned out in record numbers, was all but guaranteed.⁵⁸ The true game changer involved garnering 73% of the Asian American vote and 71% of the Latina/o vote. Asian Americans in particular have remained an elusive voter bloc. Support from these communities is attributable in part to massive organizing in response to voter suppression efforts in more than a dozen states. Republicans passed restrictions aimed at reducing the turnout of Obama's "coalition of the ascendant"—young voters, African Americans, and Latinas/os.⁵⁹ According to 2012 exit polls, nationally Romney won 60% of the White vote; Obama garnered 40%.⁶⁰ However, 60% of Obama's supporters were eighteen to twenty-nine years of age, and 54% of females voted

53. JEFFRIES, *supra* note 43, at 64-70.

54. Mike Stuckey, *Multiracial Americans surge in number, voice: Obama candidacy focuses new attention on their quest for understanding*, MSNBC (May 28, 2008 5:46 AM ET), <http://www.msnbc.msn.com/id/24542138/>; Nicholas A. Jones, *We the People of More Than One Race in the United States*, U.S. CENSUS BUREAU (April 2005), <http://www.census.gov/prod/2005pubs/censr-22.pdf>.

55. Karen R. Humes, Nicholas A. Jones & Roberto R. Ramirez, *Overview of Race and Hispanic Origin: 2010*, U.S. CENSUS BUREAU 6-7 (Mar. 2011), <http://www.census.gov/prod/cen2010/briefs/c2010br-02.pdf>.

56. John Mercurio, *The final surprise: Obama's key groups*, MSNBC (Nov. 5, 2008 1:17 PM ET), <http://www.msnbc.msn.com/id/27557327/>.

57. *Election Center 2008, President Full Results*, CNN (Nov. 17, 2008 5:13 PM EST), <http://www.cnn.com/ELECTION/2008/results/president/>.

58. KEEANGA-YAMAHATTA TAYLOR, *FROM #BLACK LIVES MATTER TO BLACK LIBERATION* 140-41 (2016).

59. Ari Berman, *How the GOP's War on Voting Backfired*, NATION (Nov. 8, 2012), <https://www.thenation.com/article/how-gops-war-voting-backfired/>.

60. Tom Scocca, *Eighty-Eight Percent of Romney Voters Were White: The GOP candidate's race-based, monochromatic campaign made him a loser*, SALON (Nov. 7, 2012 2:31 PM), http://www.slate.com/articles/news_and_politics/scocca/2012/11/mitt_romney_white_voters_the_gop_candidate_s_race_based_monochromatic_campaign.html.

for him.⁶¹ A voter poll found that feminists, not simply women in general, were critical to Obama's 2012 re-election.⁶²

Although Obama sought to be defined by policy positions instead of race,⁶³ the media repeatedly referred to his candidacy and election as a milestone in the nation's racial history. Yet, Obama's ability to draw on his racial Whiteness enhanced his ability to bridge the racial divide. Throughout the 2008 campaign, commentators emphasized the racial, not to mention cultural, capital Obama possessed due to his White mother, lighter skin, and Ivy League credentials. Obama frequently reminded us of his White mother and grandparents who raised him, as well as his White uncle, a World War II veteran. The image of Obama's White relatives sitting in support of him at the 2008 Democratic National Convention was a remarkable moment underscoring his historic significance.⁶⁴

Moreover, the number of Blacks holding public office has increased dramatically over the years. Blacks are included in the economic mainstream in ways that were unheard of half a century ago. Absolute gains in years of formal education are significant.⁶⁵ Yet darker-skinned Blacks generally have lower socioeconomic status, educational attainment, and overall diminished prestige. Indeed, survey research indicates that educational attainment, occupational opportunities, and family income among Blacks increases considerably with lighter skin.⁶⁶ Other research indicates further that darker-skinned Blacks have more punitive relationships with law enforcement.⁶⁷

61. Mark Murray, *One Month Later, Republicans Find Plenty of Blame for Election Loss*, NBC NEWS (Dec. 4, 2012 2:22 PM), http://firstread.nbcnews.com/_news/2012/12/04/15677908-one-month-later-republicans-find-plenty-of-blame-for-election-loss.

62. Elizabeth Plank, *New Study Finds More Than Half of Female Voters Are Feminist*, MIC (Mar. 19, 2013), <https://mic.com/articles/30270/new-study-finds-more-than-half-of-female-voters-are-feminists#.194KzGKOR>.

63. Steve Inskeep, *Obama to Attend Selma March Anniversary*, NAT'L PUB. RADIO (Feb. 28, 2007 6:03 PM ET), <http://www.npr.org/templates/story/story.php?storyId=7630250>; Ronald Walters, *Barack Obama and the Politics of Blackness*, 38 J. BLACK STUD. 7, 13-14 (2007).

64. Dedman, *supra* note 45.

65. DANIEL, *supra* note 3, at 162-63; TAYLOR, *supra* note 58, at 4.

66. Michael Hughes & Bradley R. Hertel, *The Significance of Color Remains: A Study of Life Chances, Mate Selection, and Ethnic Consciousness among Black Americans*, 68 SOC. FORCES 1105 (1990); Verna Keith & Cedric Herring, *Skin Tone and Stratification in the Black Community*, 97 AM. J. SOC. 760 (1991); Maxine S. Thompson & Verna M. Keith, *The Blacker the Berry: Gender, Skin Tone, Self-Esteem, and Self-Efficacy*, 15 GENDER & SOC'Y 336 (2001); Joel T. Wade, Melanie Judkins Romano & Leslie Blue, *The Effect of African American Skin Color on Hiring Preferences*, 34 J. APPLIED SOC. PSYCHOL. 2550 (2004).

67. Jennifer L. Hochschild & Vesla Weaver, *The Skin Color Paradox and the American Racial Order*, 86 SOC. FORCES 643 (2007); Gregory N. Price & Kwabena Gyimah-Brempong, *Black, Dark, Disadvantaged: Crime, Punishment and Skin Hue in Mississippi*, THE MISS. URBAN RES. CTR. DIGEST, April 2006, 1, 2-3; James H. Johnson, Jr. & Walter C. Farrell, Jr., *Race Still Matters*, CHRON. HIGHER EDUC. (July 7, 1995), <http://>

Whites, even if only unconsciously, often favor individuals of color who more closely approximate them in physical appearance, believing they are making impartial decisions based on competence or other criteria.

If the Post-Civil Rights era has provided increased opportunities for some Blacks and other individuals of color to take advantage of the more inclusive social relations, it is also marked by continuing and deep patterns of race-based exclusion and inequality. Yet the belief that the United States has transcended racism, along with the colorblind and more recent post-racial ideology, became the cornerstone of United States race relations beginning in the last two decades of the twentieth century. This colorblind ideology has obscured the selective and inequitable nature of integration in the Post-Civil Rights era where some individuals of color—particularly the more socioeconomically advantaged—have been able to gain increased access to wealth, power, privilege, and prestige. Accordingly, pervasive formal exclusion and coercion have been replaced with more informal dynamics, which are increasingly juxtaposed with patterns of selective inclusion (or inegalitarian integration).

The increase of inegalitarian integration does not preclude the existence of more egalitarian patterns of integration. However, it follows that integration (inclusiveness) would continue to be deeply marked by more inegalitarian dynamics given that the larger social order is still underpinned by racial hierarchy. In terms of Blacks, this has been accompanied by a decrease in the rigid ascription of the one-drop rule in determining their social location. Skin color, along with other phenotypical features, such as hair texture, eye color, and nose and lip shape, etc.,⁶⁸ working in combination with attitudinal, behavioral, and socioeconomic attributes, has increased as a form of “racial capital.”⁶⁹

Gramsci, Omi, and Winant encapsulate the selective nature of this form of integration (or assimilation) with the term “hegemony,” which creates the illusion of equality while effectively allowing dominant groups to maintain power, control, and hierarchy. This also dis-

www.chronicle.com/article/Race-Still-Matters/83847; Jill Viglione, Lance Hannon & Robert DeFina, *The Impact of Light Skin on Prison Time for Black Female Offenders*, 48 *SOC. SCI. J.* 250 (2011).

68. Nao Hagiwara, Deborah A. Kashy & Joseph Cesario, *The Independent Effects of Skin Tone and Facial Features on Whites' Affective Reactions to Blacks*, 48 *J. EXPERIMENTAL PSYCHOL.* 892 (2012).

69. DANIEL, *supra* note 3, at 155-57; MARGARET HUNTER, *RACE, GENDER, AND THE POLITICS OF SKIN TONE* 5, 8, 10, 46 (2005); Margaret Hunter, *Buying Racial Capital: Skin-Bleaching and Cosmetic Surgery in a Globalized World*, 4 *J. PAN AFR. STUD.* 142 (2011); Jones, *supra* note 42, at 1524, 1526.

guises the fact that United States society is still racist to the core.⁷⁰ In 2013, this was evinced in the June 24 and June 25 Supreme Court decisions that undermine, respectively, the enforcement of affirmative action initiatives⁷¹ and sections of the 1965 Voting Rights Act. The latter required federal preapproval for any changes in election procedures and were intended to prevent certain jurisdictions, primarily among the Southern (and some Western) states, from enforcing historical practices (e.g., poll taxes, literacy tests, grandfather clauses, etc.) designed to disenfranchise “racial minorities,” particularly Blacks. Those provisions also targeted contemporary discriminatory practices, including voter identification laws and gerrymandering (or voter redistricting) aimed at minimizing the voter strength of communities of color who tend to be Democrats.⁷² Several states have already enacted new voter identification laws and redistricting since the Supreme Court decision.

V. WHITE ANXIETY, WHITE RESENTMENT, AND WHITE RAGE

Obama is an iconic figure who embodies and at the same time has sought to transcend race and speak to the nation’s common destiny.⁷³ He endeavored to navigate the treacherous waters of the United States racial divide and transform it into a metaphoric bridge that

70. ANTONIO GRAMSCI, SELECTIONS FROM THE PRISON NOTEBOOKS 263 (Quentin Hoare & Geoffrey N. Smith eds., 1971); OMI & WINANT, *supra* note 8, at 66-69, 84, 115, 148.

71. Miranda Leitsinger, *Supreme Court Ruling Encourages Supporters — and Opponents — of Affirmative Action*, NBC NEWS (June 24, 2013 4:02 PM), https://usnews.newsvine.com/_news/2013/06/24/19119553-supreme-court-ruling-encourages-supporters-and-opponents-of-affirmative-action.

72. Adam Liptak, *Supreme Court Invalidates Key Part of Voting Rights Act*, N.Y. TIMES (June 25, 2013), <http://www.nytimes.com/2013/06/26/us/supreme-court-ruling.html?pagewanted=all&r=0>; Sarah Childress, *With Voting Rights Act Out, States Push Voter ID Laws*, PBS (June 26, 2013), <http://www.pbs.org/wgbh/frontline/article/with-voting-rights-act-out-states-push-voter-id-laws/>; Pete Williams, *Holder: Justice Dept. Will Contest Texas Redistricting*, NBC NEWS (July 25, 2013 10:13 AM), http://firstread.nbcnews.com/_news/2013/07/25/19678352-holder-justice-dept-will-contest-texas-redistricting?lite&ocid=msnhp&pos; The Editorial Board, *Racial Gerrymandering in North Carolina*, N.Y. TIMES (Feb. 18, 2016), <https://www.nytimes.com/2016/02/18/opinion/racial-gerrymandering-in-north-carolina.html>; Paul J. Weber, *Federal judges find gerrymandered electoral map along racial lines*, CHI. TRIB. (Mar. 11, 2017 10:24 AM), <http://www.chicagotribune.com/news/nationworld/ct-texas-gerrymandering-20170311-story.html>; Zoltan L. Hajnal, Nazita Lajevardi & Lindsay Nielson, *Do voter identification laws suppress minority voting? Yes. We did the research*, WASH. POST (Feb. 15, 2017), https://www.washingtonpost.com/news/monkey-cage/wp/2017/02/15/do-voter-identification-laws-suppress-minority-voting-yes-we-did-the-research/?utm_term=.c530141b6407.

73. Deborah W. Post, *Cultural Inversion and the One-Drop Rule: An Essay on Biology, Racial Classification, and the Rhetoric of Racial Transcendence*, 72 ALB. L. REV. 909 (2010).

redefined the nation's civic culture and social contract in more inclusive terms.⁷⁴ Notwithstanding Obama's race-neutrality, his campaign and election engendered a sea of White anxiety and in the extreme, White resentment and rage, whether implicitly or explicitly expressed in racial terms.⁷⁵ Stephens-Davidowitz found that a racially charged Google search was a robust negative predictor of Obama's vote share in the 2008 election, estimating that such sentiments cost Obama three to five percentage points of the popular vote. Obama also gained some votes because of race but this effect was comparatively minor. The majority of voters for whom Obama's race was a positive factor were liberals who would have voted for any Democratic presidential candidate. Increased support from Blacks added only about one percentage point to Obama's totals.⁷⁶ However, Obama would not have won the 2008 election without support from Black voters and other voters of color.⁷⁷

During the 2008 election, similar sentiments were expressed in the foiled plot by White supremacists to assassinate Obama, an Obama monkey doll, Obama waffles that parody Aunt Jemima at the Christian Right Voter Summit, and an effigy of Obama hanging from trees at the University of Kentucky and George Fox University in Oregon.⁷⁸ During the 2012 election, a bumper sticker displayed a racist play on words: "Don't Re-Nig in 2012. Stop repeat offenders. Don't re-elect Obama!"⁷⁹ Former Chief Judge Richard Cebull of the United States District Court for the District of Montana even received and forwarded an email comparing Obama's conception to sex with a dog. The email read: "A little boy said to his mother, 'Mommy, how come I'm black and you're white?' His mother replied, 'Don't even go there

74. Dedman, *supra* note 45.

75. CHRISTOPHER PARKER & MATT A. BARRETO, CHANGE THEY CAN'T BELIEVE IN: THE TEA PARTY AND REACTIONARY POLITICS IN AMERICA 1-19, 191-217 (2013); Cynthia Tucker, *Tea Partiers React with Fury to World They Can't Control*, NAT'L MEMO (Oct. 12, 2013 12:00 AM), <http://www.nationalmemo.com/tea-partiers-react-with-fury-to-world-they-cant-control/2/>.

76. Seth Stephens-Davidowitz, *How Racist Are We? Ask Google*, N.Y. TIMES (June 9, 2012 5:46 PM), http://campaignstops.blogs.nytimes.com/2012/06/09/how-racist-are-we-ask-google/?_php=true&_type=blogs&_r=0; JOE FEAGIN, WHITE PARTY, WHITE GOVERNMENT: RACE, CLASS, AND U.S. POLITICS 165 (2012).

77. FEAGIN, *supra* note 76, at 165.

78. Associated Press, *Monkey doll named for Obama called racist*, MSNBC (June 14, 2008 6:54 PM), <http://www.msnbc.msn.com/id/25163827/>; Charles Huckabee, *U. of Kentucky Apologizes after Obama Effigy Is Found on its Campus*, CHRON. HIGHER EDUC. (Oct. 29, 2008), <http://www.chronicle.com/article/U-of-Kentucky-Apologizes/41870>; Adel Stan, *Christian Right Voter Summit Sells Racist 'Obama Waffles'*, ALTERNET (Sept. 15, 2008), http://www.alternet.org/election08/98908/christian_right_voter_summit_sells_racist_obama_waffles/.

79. Alexa Keys, *'Don't Re-Nig in 2012': Maker of Racist Anti-Obama Sticker Shuts Down Site*, ABC NEWS (Mar. 16, 2012), <http://abcnews.go.com/blogs/politics/2012/03/dont-re-nig-in-2012-maker-of-racist-anti-obama-sticker-shuts-down-site/>.

Barack! From what I can remember about that party, you're lucky you don't bark!"⁸⁰ The Kansas-based Patriot Freedom Alliance posted on its website a picture describing Obama as a skunk. The photo included the caption: "The skunk has replaced the eagle as the new symbol for the president. It is half Black, it is half White, and almost everything it does, stinks."⁸¹

These sentiments were also embodied in the Tea Party movement. A key motivation of its agenda, as well as that of conservative Republicans, was an adamant fear of, and contempt for, Obama with the goal of making certain he was not re-elected.⁸² These views were generally framed in supposedly race-neutral protests assailing big government, corporate taxation, and so on, as well as infringements on individual freedom and "traditional values."⁸³ So-called "birthers" claimed Obama was ineligible to be President because there is no proof he was born in the United States. Yet birthers were either ignorant of, or conveniently ignored, United States constitutional law, which automatically makes Obama a United States citizen, even if he was born outside the United States because his mother was a United States citizen. Hawai'i's health director said in 2008 and 2009 she had seen and verified Obama's original vital records, and birth notices in two Honolulu newspapers were published within days of Obama's birth at Kapiolani Maternity and Gynecological Hospital in Honolulu. She confirmed that Obama's name is in its alphabetical list of names of people born in Hawai'i, maintained in bound copies available for public view. At Obama's request, state officials eventually made an exception to a 2001 policy that prohibited anyone from getting a photocopy of an original birth certificate. They usually hand out computer-generated versions.⁸⁴ That said, birthers were less concerned

80. Bill Mears, *Judge apologizes for forwarding a racist e-mail aimed at Obama*, CNN (Mar. 1, 2012 9:18 PM), <http://www.cnn.com/2012/03/01/justice/montana-judge-racist-message>.

81. Alexis G. Stodghill, *Tea Party group makes racially-tinged Obama skunk reference*, GRIIO (Dec. 12, 2012 11:18 AM), <http://thegrio.com/2011/12/12/tea-party-president-skunk-racism/>.

82. Devin Burghart & Leonard Zeskind, *Tea Party Nationalism: A Critical Examination of the Tea Party Movement and the Size, Scope, and Focus of Its National Factions*, INST. RES. & EDUC. HUM. RTS. (Oct. 12, 2010), http://naacp.3cdn.net/36b2014e1dddfe3c81_v7m6bls07.pdf; Eric Dolan, *NAACP Exposes Ties Between Tea Party and Racist Extremist Groups*, ALTERNET (Oct. 21, 2010), http://www.alternet.org/story/148569/naacp_exposes_ties_between_tea_party_and_racist_extremist_groups?paging=off¤t_page=1#bookmark; Andy Ostroy, *The Tea Party Movement Isn't About Racism? Read This . . .*, HUFFINGTON POST: BLOG (June 15, 2010 5:12 AM ET), http://www.huffingtonpost.com/andy-ostroy/the-tea-party-movement-is_b_538750.html.

83. Ostroy, *supra* note 82; PARKER & BARRETO, *supra* note 75, at 102-89; Tucker, *supra* note 75.

84. Mark Niese, *Hawaii government hands over Obama's birth records*, HUFFINGTON POST (Apr. 27, 2011 9:42 PM EST), <http://www.huffingtonpost.com/huff-wires/>

with the legality of Obama's citizenship than with discursively calling his citizenship into question as a means of delegitimizing his presidency because he is Black.

These occurrences were largely reflective of extremist, fringe elements. After the 2008 election, however, authorities noticed increased hate group membership, as well as more threatening writings, Internet postings, and other activity directed at Obama than with any previous President.⁸⁵ Moreover, this White racial hysteria is illustrative of the lack of civility and partisanship endemic to United States society, particularly in the political arena. Notwithstanding Obama's keynote address at the 2004 Democratic National Convention, in which he stated there is only one America,⁸⁶ the 2008, 2012, and 2016 national conventions provided striking portraits of what were clearly two Americas. The Democratic conventions were noticeably more racially diverse. The Republican conventions were largely a sea of White faces. Democrats hold advantages in party identification among Blacks, Asian Americans, and Latinas/os. Republicans have leads among Whites—particularly White men.⁸⁷ Moreover, Tesler argues that since Obama's presidency there has been a renewed alignment between political preference and “old fashioned racism” long thought to have disappeared from United States politics.⁸⁸

20110427/us-obama-birth-hawaii; Beth M. Waggenpack, *Deceptive Narratives in the 2008 Presidential Campaign*, in *STUDIES OF IDENTITY IN THE 2008 PRESIDENTIAL CAMPAIGN* 167-68 (Robert E. Denton, Jr. ed., 2010).

85. Obama was protected by an increasingly over-stretched Secret Service. According to the Secret Service, Obama was the most threatened person in the United States, regardless of political party, and the most threatened president in U.S. history. Nathaniel Patterson, *The Most Threatened President in History*, RSN (Nov. 27, 2012), <http://readersupportednews.org/news-section2/318-66/14744-focus-the-most-threatened-president-in-history>; Eileen Sullivan, *Obama Faces More Personal Threats Than Other Presidents-Elect*, HUFFINGTON POST (Nov. 14, 2008), http://www.huffingtonpost.com/2008/11/14/obama-faces-more-personal_n_144005.html?page=3.

86. Barack Obama, *Democratic National Convention Keynote Address*, AM. RHETORIC ONLINE SPEECH BANK (July 27, 2004), www.americanrhetoric.com/speeches/convention2004/barackobama2004dnc.htm.

87. *Beyond Red vs. Blue Political Typology*, PEW RES. CTR. (Mar. 4, 2011), <http://www.people-press.org/2011/05/04/section-3-demographics-and-news-sources/>; Rakesh Kochhar, Richard Fry & Paul Taylor, *Wealth Gaps Rise to Record Highs Between Whites, Blacks, and Hispanics*, PEW RES. CTR. (July 26, 2011), <http://www.pewsocial-trends.org/2011/07/26/wealth-gaps-rise-to-record-highs-between-whites-blacks-hispanics/>; Russell Heimlich, *Partisan Polarization Surges in Bush, Obama Years*, PEW RES. CTR. (Aug. 13, 2012), <http://www.pewresearch.org/fact-tank/2012/08/13/partisan-polarization-surges-in-bush-obama-years/>; Alec Tyson & Shiva Maniam, *Behind Trump's Victory: Divisions by Race, Gender, Education*, PEW RES. CTR. (Nov. 9, 2016), <http://www.pewresearch.org/fact-tank/2016/11/09/behind-trumps-victory-divisions-by-race-gender-education/>; *A Deep Dive into Party Affiliation: Sharp Differences by Race, Gender, Generation, Education*, PEW RES. CTR. (Apr. 7, 2015), <http://www.people-press.org/2015/04/07/a-deep-dive-into-party-affiliation/>.

88. MICHAEL TESLER & DAVID O. SEARS, *OBAMA'S RACE: THE 2008 ELECTION AND THE DREAM OF A POST-RACIAL AMERICA* 110-23 (2010).

Yet beginning with his 2008 election campaign, Obama and his advisers carefully avoided engaging in racial concerns,⁸⁹ much less making allegations of racism against Obama, to silence charges he was “playing the race card.”⁹⁰ As has been the tradition in other presidential campaigns, Obama’s team deployed surrogates to mediate contentious discussions dealing with racial issues.⁹¹ Yet in David Remnick’s January 27, 2014 article in the *New Yorker*, Obama displayed a surprising and seeming about-face, at least in terms of his public statements, on the topic of race. Obama said he believed race had an impact on his political standing since the beginning of his presidency. Moreover, he contended that racial tensions may have weakened his popularity among White voters during his second administration. Obama stated: “There’s no doubt that there’s some folks who just really dislike me because they don’t like the idea of a Black president.” Conversely, Obama stated: “Now, the flip side of it is there are some Black folks and maybe some White folks who really like me and give me the benefit of the doubt precisely because I’m a Black president.”⁹²

Obama’s initial cautious response to the July 13, 2013 not-guilty verdict in the George Zimmerman⁹³ trial for the February 26, 2012 shooting death of Trayvon Martin was criticized by some commentators as yet another example of his failure to give voice to African American grievances. He acknowledged the tragedy that Trayvon’s death meant for the Martin family and the nation, as well as the strong passions his death and the Zimmerman verdict elicited. But Obama stated that “we are a nation of laws, and a jury has spoken.” He called for a widening of the “circle of compassion and understanding” in the nation’s communities and for national reflection on gun

89. Jeff Zelney, *When it comes to race Obama makes his point—with subtlety*, CHI. TRIB. (June 26, 2005), <http://www.chicagotribune.com/news/nationworld/chi-050626-obama-race-archive-story.html>.

90. Alex Koppelman, *Carter: Animosity towards Obama based mostly on race*, SALON (Sept. 15, 2009 10:30 PM CDT), https://www.salon.com/2009/09/15/carter_race/; Jeff Stein, *Obama, racism, and Jimmy Carter: Nearly 30 years ago, Carter team kept quiet on race and Reagan campaign*, MSNBC (Sept. 17, 2009 5:10 PM), http://www.msnbc.msn.com/id/32895021/ns/politics-cq_politics/.

91. Valeria Sinclair-Chapman & Melanye Price, *Black Politics, the 2008 Election, and the (Im)possibility of Race Transcendence*, 41 POL. SCI. & POL. 739, 740 (2008).

92. David Remnick, *Going the Distance: On and off the road with Barack Obama*, NEW YORKER (Jan. 27, 2014), <http://www.newyorker.com/magazine/2014/01/27/going-the-distance-david-remnick>.

93. Martin, an unarmed seventeen-year-old African American, was fatally shot by George Zimmerman, a neighborhood watch coordinator. Zimmerman’s father, a retired Magistrate Judge, is a White. His mother, a former deputy court clerk, is a Peruvian, who describes herself as African-descended (or Afro-Peruvian). Zimmerman was identified as “White” in the initial police report. Later it was learned he identifies as “Hispanic.”

violence.⁹⁴ Many argued Obama's response was pitched perfectly in terms of content and tone, given the necessity of making a public statement yet also honoring the constraints of his delicate and complicated role as a President who also happens to be Black.⁹⁵

On July 19, in response to public criticism by commentators and urging from some of his supporters,⁹⁶ Obama gave a more forceful and unusually personal, if measured, reply to Zimmerman's acquittal at an impromptu appearance at a White House press briefing.⁹⁷ He stated, "[y]ou know, when Trayvon Martin was first shot, I said that this could have been my son. Another way of saying that is, Trayvon Martin could have been me [thirty-five] years ago."⁹⁸ Obama mentioned further that there are few Blacks, including himself, "who haven't had the experience of being followed when they were shopping in a department store."⁹⁹ Obama also addressed the perils associated with being a Black male in the United States in this regard. He affirmed:

[t]here are very few African-American men who haven't had the experience of walking across the street and hearing the locks click on the doors of cars . . . or getting on an elevator and a woman clutching her purse nervously and holding her breath until she had a chance to get off.

Moreover, Obama said, "[there] is a history of racial disparities in the application of our criminal laws A lot of African-American boys are painted with a broad brush If a White male teen was involved in the same kind of scenario . . . both the outcome and the aftermath might have been different."¹⁰⁰ Obama's press briefing elicited praise from many,¹⁰¹ including Senator John McCain (R-AZ).¹⁰² Others crit-

94. Keli Goff, *Obama Fails Black America and Trayvon*, ROOT (July 14, 2013 6:46 PM), <http://www.theroot.com/obama-fails-black-america-and-trayvon-1790884852>.

95. David Swerdlick, *Obama's Response to the Verdict was Right*, ROOT (July 15, 2013 3:54 PM) <http://www.theroot.com/obamas-response-to-the-verdict-was-right-1790897304>.

96. Richard Prince, *Obama Speech Came After Black Prodding*, ROOT (July 21, 2013 8:17 AM), <http://journalisms.theroot.com/obama-speech-came-after-black-prodding-1790884861>.

97. Rich Benjamin, *Obama's Safe, Overrated, and Airy Comments on the Trayvon Martin Affair*, ALTERNET (July 19, 2013), <http://www.alternet.org/civil-liberties/obamas-safe-overrated-and-airy-comments-trayvon-martin-affair>.

98. Michael O'Brien, *Obama: 'Trayvon Martin could have been me 35 years ago.'* MSNBC (July 19, 2013 3:00 PM), http://nbcpolitics.nbcnews.com/_news/2013/07/19/19563211-obama-trayvon-martin-could-have-been-me-35-years-ago?lite.

99. *Id.*

100. Barack Obama, President of the United States, Remarks by the President on Trayvon Martin (July 19, 2013).

101. Katrina Trinko, *David Brooks Praises Obama's Martin Speech as 'Highlight' of Presidency*, NAT'L REV. (July 21, 2013 11:43 AM), <http://www.nationalreview.com/corner/354014/david-brooks-praises-obamas-martin-speech-highlight-presidency-katrina-trinko>.

icized his briefing as race-baiting;¹⁰³ still others criticized it for not being forceful enough in denouncing White racism.¹⁰⁴

VI. POSTSCRIPT TO THE POST-RACIAL IDEAL

In the 2016 presidential election, Donald Trump was able to take advantage of White anxiety, rage, and resentment to help secure his victory over Hillary Clinton, the nation's first woman presidential nominee from a major party. Trump received a majority of the White vote (58%), which put him 21 percentage points over Clinton (37%).¹⁰⁵ Meanwhile, 88% of Blacks voted for Clinton compared to 8% for Trump.¹⁰⁶ Similarly, 65% of Latinas/os voted for Clinton and 29% voted for Trump. The National Exit Poll, sponsored by major media outlets, reported that 65% of Asian Americans voted for Clinton, 29% for Trump. However, the Asian American National Election Eve Poll concluded that 75% of Asian Americans voted for Clinton, while only 19% voted for Trump.¹⁰⁷

102. Igor Volsky, *McCain Praises Obama's Race Speech: 'We've Still Got a Long Way to Go' on Race Relations*, THINKPROGRESS (July 21, 2013), <http://thinkprogress.org/politics/2013/07/21/2333201/mccain-praises-obamas-race-speech-weve-still-got-a-long-way-to-go-on-race-relations/>.

103. Rebecca Kaplan, *Gingrich Defends Criticism of Obama's Trayvon Martin Comments*, CBS NEWS (July 24, 2013 6:59 PM), http://www.cbsnews.com/8301-503544_162-57404856-503544/gingrich-defends-criticism-of-obamas-trayvon-martin-comments/; Madeleine Morgenstern, *Juan Williams on Obama's Trayvon Martin Remarks: 'The Risk . . . Is That It Will Stoke Racial Tension'*, THEBLAZE (July 19, 2013 2:56 PM), <http://www.theblaze.com/stories/2013/07/19/juan-williams-on-obamas-trayvon-martin-remarks-the-risk-is-that-he-will-stoke-racial-tension/>.

104. Aura Bogado, *Obama, Trayvon and the Problem That Won't Be Named*, COLORLINES (July 22, 2013 8:27 AM EDT), http://colorlines.com/archives/2013/07/obama_and_the_problem_that_cannot_be_named.html; Becky Bratu, *From scorn to gratitude, mixed reactions to Obama's remarks on Zimmerman*, NBC NEWS (July 19, 2013 6:52 PM ET), http://usnews.nbcnews.com/_news/2013/07/19/19564830-from-scorn-to-gratitude-mixed-reactions-to-obamas-remarks-on-zimmerman-verdict; Lynette Holloway, *Cornel West: MSNBC Is a 'Rent-a-Negro' Cable*, ROOR (July 24, 2013 11:20 AM), <http://www.theroot.com/cornel-west-msnbc-is-rent-a-negro-cable-1790897448>.

105. Clinton's decisive popular vote win of 65,853,516 (48.5%) compared to Trump's 62,984,825 (46.4%) votes outpaced Trump by 2,864,974 votes. However, Trump won the electoral count (and thus the presidency) where he garnered 56.9% or 306 of the 538 available electoral votes compared to Clinton's 232 or 48.5%. And Trump's electoral college win was built in large part on his ability to perform well, if only by a narrow margin of 79,316, in the popular vote—particularly among the White electorate—in several previously Democratic Rust Belt states like Pennsylvania, Michigan, and Wisconsin. Tina Nguyen, *You Could Fit All the Voters Who Cost Clinton the Election in a Mid-Size Football Stadium*, VANITY FAIR (Dec. 1, 2016 4:16 PM), <http://www.vanityfair.com/news/2016/12/hillary-clinton-margin-loss-votes>; *Presidential Results*, CNN POL. (Feb. 16, 2017), <http://www.cnn.com/election/results/president>.

106. Kristen Hubby, *How many Americans actually vote*, THE DAILY DOT (Feb. 24, 2016 5:37 AM), <https://www.dailydot.com/layer8/voter-turnout-2016/>.

107. Walbert Castillo & Michael Schramm, *How we voted — by age, education, race, and sexual orientation*, USA TODAY (Nov. 9, 2016 2:25 PM EDT), <http://college.usatoday.com/2016/11/09/how-we-voted-by-age-education>; Alec Tyson & Shiva Maniam, *Behind*

Clinton won 54% of the female vote against Trump, who also lost the female vote by a wide margin among minority voters. According to exit poll data, 94% of Black women voted for Clinton, as did 68% of Latinas. But nearly twice as many White women without college degrees voted for Trump than for Clinton, and among college-educated White women Clinton won by only a narrow margin—51% supported Clinton—compared to 45% who supported Trump. Overall, 53% of White women and 58% of White men voted for Trump.¹⁰⁸

Trump's appeal to White voters has taken various forms. Among other things, Trump's "Make America Great Again" slogan, although typically framed in populist terms, was a dog whistle or code word for "Make America White Again."¹⁰⁹ He stated that "illegal immigrants" from Mexico come to the United States ostensibly to rape and kill Americans, meaning White people.¹¹⁰ Trump promised to build a wall to protect the United States from these foreign "invaders."¹¹¹ During the first two months of his administration, Trump issued an executive order that vastly expanded who is considered a priority for deportation in keeping with his stated goal of deporting millions. Of course, more individuals were deported under Obama than any previous administration, although the State tended to focus on those convicted of violent crimes. Many fear the Trump administration's raid practices may become more draconian.¹¹² Trump also maintained that a judge of Mexican American descent was inherently incapable of treating him

Trump's victory: Divisions by race, gender, education, PEW RES. CTR. (Nov. 9, 2016), <http://www.pewresearch.org/fact-tank/2016/11/09/behind-trumps-victory-divisions-by-race-gender-education/>; Steph Yin, *Exit polls were wrong about how many Asian Americans supported Trump*, FUSION (Nov. 9, 2016 6:47 PM), <http://fusion.net/story/368617/exit-polls-asian-americans-supported-trump/>; Chris Fuchs, *Clinton Won the Asian-American Vote, But Some Swing States Turned Toward Trump: Exit Poll*, NBC NEWS (Nov. 16, 2016 12:30 PM), <http://www.nbcnews.com/news/asian-america/clinton-won-asian-american-vote-some-swing-states-turned-toward-n684716>.

108. Clare Foran, *Women Aren't Responsible for Hillary Clinton's Defeat*, THE ATLANTIC (Nov. 13, 2016), <http://www.theatlantic.com/politics/archive/2016/11/hillary-clinton-white-women-vote/507422/>.

109. This basically taps into a nostalgia for an imagined vanishing world where there was an assumed and unquestioned acceptance of White domination, White male domination in particular, and its associated privileges. IAN HANEY LÓPEZ, *DOG WHISTLE POLITICS: HOW CODED RACIAL APPEALS HAVE REINVENTED RACISM AND WRECKED THE MIDDLE CLASS* ix, 3-5 (2014); OMI & WINANT, *supra* note 8, at 119.

110. Nicholas Confessore, *For Whites Sensing Decline, Donald Trump Unleashes Words of Resistance*, N.Y. TIMES (July 13, 2016), <http://nyti.ms/29WCu5l>.

111. Chauncey DeVega, *A white nationalist fantasy: Donald Trump's America is not 'made for you and me'*, SALON (Feb. 12, 2017 1:00 PM), <http://www.salon.com/2017/02/12/a-white-nationalist-fantasy-donald-trumps-america-is-not-made-for-you-and-me/>.

112. Michael D. Shear & Ron Nixon, *New Trump Deportation Rules Allow Far More Expulsions*, N.Y. TIMES (Feb. 21, 2017), <https://www.nytimes.com/2017/02/21/us/politics/dhs-immigration-trump.html>.

fairly because of the judge's ancestry.¹¹³ On January 27, 2017, Trump issued an executive order attempting to ban admission to the United States of citizens from seven Muslim-majority nations—Iran, Libya, Somalia, Sudan, Syria, Yemen, and Iraq—for 120 days and to suspend entry of all refugees indefinitely (a revised executive order released on March 6, 2017, removed Iraq from the list of banned countries and lifted the indefinite refugee ban for Syrians).¹¹⁴

Trump has publicly disassociated himself from overt White supremacist support, yet during his campaign and early in his administration, his response can be characterized more as a tepid rebuke than a direct and impassioned condemnation as has been the case with other concerns such as widespread voter fraud and fake news.¹¹⁵ Moreover, Trump's rhetoric and agenda, including some of his cabinet appointments and senior advisers, as well as the nomination of other key officials in his administration, has emboldened the White supremacist (and far right) base, which views Trump as emblematic of many of its aspirations. Indeed, Trump has ordered that federal resources be diverted away from tracking White supremacist organizations.¹¹⁶

According to the Southern Poverty Law Center ("SPLC"), in 2016 the number of hate groups in the United States rose for a second year in a row as the radical right was energized by the candidacy and election of Donald Trump. This has brought racism out of the shadows in a manner not seen in over half a century.¹¹⁷ The forces of White anxi-

113. William Saletan, *Donald Trump's Statement About the "Mexican" Judge Is More Damning Than He Realizes*, SLATE: SLATEST (June 7, 2016 7:30 PM), http://www.slate.com/blogs/the_slatest/2016/06/07/donald_trump_s_statement_about_the_mexican_judge_is_more_damning_than_he.html.

114. Alicia A. Caldwell & Jill Colvin, *Trump signs new anti-terror travel ban without new fanfare*, THE BIG STORY (Mar. 6, 2017), <http://bigstory.ap.org/article/7ec1f1fe440c4c3e88e77fda60a3b0bb>; Heather Timmons, *Five Ways Trump's New Travel Order Is Different from the Earlier 'Muslim Ban'*, MSN (Mar. 6, 2017), <http://www.msn.com/en.us/news/politics/five-ways-trump's-new-travel-order-is-different-from-the-earlier-muslim-ban/ar-AAAnTUYT?li-BBnb71ks>; Katie Bo Williams & Jordan Fabian, *Trump signs revised travel ban that excludes Iraq*, THE HILL (Mar. 6, 2017 11:30 AM EST), <http://thehill.com/policy/national-security/322475-trump-issues-new-immigration-order-meant-to-overcome-court>.

115. Chauncey DeVega, *Profile in cowardice: Donald Trump will take no responsibility for the wave of hate crimes he has inspired*, SALON (Feb. 28, 2017 11:00 AM CST), <http://www.salon.com/2017/02/28/profile-in-cowardice-donald-trump-will-take-no-responsibility-for-the-wave-of-hate-crimes-he-has-inspired/>; Confessore, *supra* note 110.

116. Chauncey DeVega, *Signal received: White nationalists ecstatic over Trump's proposed policy change on terrorism*, SALON (Feb. 6, 2017 6:35 PM CST), <http://www.salon.com/2017/02/06/signal-received-white-nationalists-ecstatic-over-trumps-proposed-policy-change-on-terrorism/>; Confessore, *supra* note 110.

117. Steven Rosenfeld, *A United States of Hate Has Exploded Under Trump*, ALTERNET (Feb. 15, 2017), <http://www.alternet.org/election-2016/united-states-hate-has-exploded-under-trump>; *Hate groups increase for second consecutive year as Trump electrifies radical right*, S. POVERTY L. CTR. (Feb. 15, 2017), <https://www.splcenter.org/news/2017/02/15/hate-groups-increase-second-consecutive-year-trump-electrifies-radical>.

ety, rage, and resentment have not only gained momentum but also should signal the deathknell to any lingering notions of the post-racial ideal that the candidacy and election of Obama supposedly symbolized as the beginning of a new era in United States race relations.

For example, since January 2017, the number of bomb threats to Jewish community centers and synagogues across the nation has increased significantly. Two mosques were burned to the ground. The one in Victoria, Texas burned just hours after the Trump administration announced the so-called Muslim ban. Muslims have voiced their support of the Jewish community after the vandalism of cemeteries in St. Louis; many Jewish people have donated funds to help repair a mosque in Tampa.¹¹⁸ In February 2017, and only after coming under considerable pressure, Trump made a belated denunciation of racism and anti-Semitism at the National Museum of African American History and Culture. He also made similar comments in his February 28, 2017 address to a joint session of Congress. Some critics maintained Trump's response was welcome but too little too late. Moreover, Trump earlier cast doubt on these incidents by seeming to suggest that the bomb threats targeting Jewish institutions, along with the recent vandalism of Jewish cemeteries, were done to harm his image or that of his supporters rather than perpetrated by the latter.¹¹⁹ On

right; Confessore, *supra* note 110; Jamelle Bouie, *Government of White Nationalism Is Upon Us*, SALON (Feb. 6, 2017 6:00 AM), http://www.slate.com/articles/news_and_politics/cover_story/2017/02/government_by_white_nationalism_is_upon_us.html.

118. Adrienne Mahsa Varkiani, *Hours after Trump signs Muslim ban, Texas mosque goes up in flames*, THINKPROGRESS (Jan. 28, 2017), <https://thinkprogress.org/islamic-center-of-victoria-fire-8a683f632a7a#.molixtdc7>; Carimah Townes, *Jewish donors raise money to repair Tampa mosque*, THINKPROGRESS (Feb. 28, 2017), <https://thinkprogress.org/jewish-donors-raise-money-to-repair-tampa-mosque-60bff125eabb#.67cy46sh4>.

119. Sean Colarossi, *Attacks on the Jewish Community Spike As Trump Continues Ignoring Anti-Semitism*, POLITICUSUSA (Feb. 21, 2017 7:50 PM), <http://www.politicususa.com/2017/02/20/attacks-jewish-community-spike-trump-continues-ignore-anti-semitism.html>; Rebecca Shabad, *Trump addresses JCC threats, anti-Semitism*, CBS NEWS (Feb. 2, 2017 8:25 AM), <http://www.cbsnews.com/news/hillary-clinton-anti-defamation-league-urges-trump-to-address-jcc-threats-anti-semitism/>; Abby Phillip & John Wagner, *After delay and amid pressure, Trump denounces racism and anti-Semitism*, WASH. POST (Feb. 21, 2017), https://www.washingtonpost.com/politics/after-delay-and-amid-pressure-trump-denounces-racism-and-anti-semitism/2017/02/21/9c0f3508-f859-11e6-bf01-d47f8cf9b643_story.html?utm_term=.18ba182a305f; Jack Jenkins, *Sixth wave of bomb threats strikes Jewish community centers and institutions*, THINKPROGRESS (Mar. 7, 2017), <https://thinkprogress.org/sixth-wave-of-bomb-threats-strikes-jewish-community-centers-and-institutions-9616048612f5>; David Neiwert, *Attacks on Jews — After Earlier Suggesting They Are Meant to Make Him Look Bad*, S. POVERTY L. CTR. (Mar. 1, 2017), <https://www.splcenter.org/hatewatch/2017/03/01/trump-condemns-attacks-jews—after-earlier-suggesting-they-are-meant-make-him-look-bad>; Jaweed Kaleem, *Jewish groups criticize Trump after he reportedly says bomb threats were made to make others look bad*, L.A. TIMES (Feb. 27, 2017 5:01 PM), <http://www.latimes.com/politics/washington/la-na-essential-washington-updates-jewish-groups-criticize-trump-after-he-1488326189.htmlstory.html>.

March 4, 2017, however, supporters at a pro-Trump rally in Phoenix called for the genocide of liberals and deportation of Jewish people.¹²⁰

Notwithstanding these disturbing developments, in the Post-Civil Rights era, Blacks have become more integrated into both the public and private spheres of society. Moreover, the greater frequency of Whites and Blacks living in the same neighborhoods, working in the same offices, and attending the same educational institutions has led to increased friendships, dating, and intermarriage across traditional racial boundaries since the *Loving v. Virginia*¹²¹ decision.¹²² Public attitudes toward interracial marriages, including those involving African Americans, symbolize more receptivity to these marriages, and the numbers of these unions continue to increase.

The 1980–2000 United States censuses, the American Community Survey of 2008–2010, as well as Pew Research Center’s 2009 nationwide telephone surveys exploring public attitudes toward intermarriage, capture these developments. In 2008, 14.6% of all new marriages were interracial, more than double the percentage in 1980 (6.7%). More than a third of adults (35%) said they have a family member who is married to someone from a different racial group. Furthermore, 43% of Americans said the increasing number of interracial marriages has had a positive influence on society, whereas 11% said it has had a negative influence, and 44% said it has made no difference.¹²³

In 1980, 3.2% of currently married adults had a spouse from a different racial group. By 2010, these marriages reached a record 9.5% or 5.4 million of a total of 56,510,377 marriages.¹²⁴ Whites continued to be the least likely to marry interracially (about 4.7%).¹²⁵ However, in absolute terms they were involved in interracial mar-

120. Alexandra Rosenmann, *Trump Supporters Call for Liberal Genocide and Deportation of Jews at Phoenix Rally*, ALTERNET (Mar. 9, 2017), <http://www.alternet.org/right-wing/trump-supporters-call-liberal-genocide-and-deportation-jews-arizona-rally?akid=15285.3701.50-B-k&rd=1&src=newsletter1073601&t=6>.

121. 388 U.S. 1 (1967).

122. DAVIS, *supra* note 3, at 68-73; Robert E.T. Roberts, *Black-White Intermarriage in the United States*, in *INSIDE THE MIXED MARRIAGE: ACCOUNTS OF CHANGING ATTITUDES, PATTERNS, AND PERCEPTIONS OF CROSS CULTURAL AND INTERRACIAL MARRIAGES* 57-74 (Walton R. Johnson & Michael D. Warren eds., 1994); SPICKARD, *supra* note 5, at 278-79; Belinda M. Tucker & Claudia Mitchell-Kernan, *New Trends in Black American Interracial Marriage: The Social Structural Context*, 52 J. MARRIAGE & FAM. 209 (1990).

123. *Marrying Out*, *supra* note 29; PEW RES. CTR., *THE RISE OF INTERMARRIAGE: RATES, CHARACTERISTICS VARY BY RACE AND GENDER* 1-2 (Feb. 16, 2012).

124. Tallese D. Johnson & Rose M. Kreider, *Mapping Interracial/Interethnic Married-Couple Households in the United States: 2010*, U.S. CENSUS BUREAU, https://www.census.gov/hhes/socdemo/marriage/data/census/InterracialMarriages_PAA2013_FINAL.pdf (last visited Apr. 1, 2013); *Marrying Out*, *supra* note 29.

125. WILLIAM FREY, *DIVERSITY EXPLOSION: HOW NEW RACIAL DEMOGRAPHICS ARE REMAKING AMERICA* 195 (2014); *Marrying Out*, *supra* note 29, at 4, 9.

riages more than any other racial group given their demographic majority. Consequently, the overwhelming majority of interracial marriages involve a White American and a person of color.¹²⁶ For all Blacks who were currently married in 2010, 8.9% were interracially married. This included Black-White unions that totaled 7.9%, which has tripled over the last decades.¹²⁷

That said, interracial marriages involving the currently married population of African Americans have remained small in numbers compared to those of other groups such as Latinas/os or Asian Americans. The percentage of interracially married individuals was roughly 30 percent for both groups.¹²⁸ The share of intermarriages among all currently married Latinas/os was 17.4%. For all Asians who were currently married the share of intermarriages was approximately 16%.¹²⁹ If, however, intermarriages reached an all-time high of 9.5% in 2010, these marriages are miniscule in terms of numbers. The overwhelming majority of Americans (90.5%) still married someone of the same racial group. Furthermore, while multiracials of White and Native American or White and Asian American ancestry, for example, overwhelmingly tended to marry White spouses, this effect was not present for White and Black multiracials. This further complicates notions that decreased barriers to interracial relationships can be generalized across populations of color. It also further highlights the continued social distance between White and Black Americans, as well as the continued significance of hypodescent for people with Black ancestry.¹³⁰

Furthermore, the comparatively more egalitarian gains in the private sphere do not necessarily translate into greater equality in the public sphere. Blacks continue to be disproportionately retained at the bottom of society in terms of occupation and income. Blacks overall have higher rates of unemployment, poverty, and incarceration, fewer years of education, shorter life expectancy, and overall lesser wealth and quality of life.¹³¹ Consequently, Obama's significance as the first African American elected to the nation's highest office cannot be underestimated. It symbolically demonstrates the considerable gains some Blacks have made in the Post-Civil Rights era. Obama's

126. FREY, *supra* note 125, at 195, 196.

127. *Marrying Out*, *supra* note 29.

128. FREY, *supra* note 125, at 195, 197.

129. *Marrying Out*, *supra* note 29.

130. Zhenchao Qian & Daniel L. Licther, *Changing Patterns of Interracial Marriage in a Multiracial Society*, 73 J. MARRIAGE & FAM. 1065, 1073 (2011).

131. Dedman, *supra* note 45; Dayna Bowen Matthew & Richard V. Reeves, *Trump Won White Voters, But Serious Inequities Remain for Black Americans*, BROOKINGS (Jan. 13, 2017), <https://www.brookings.edu/blog/social-mobility-memos/2017/01/13/trump-won-white-voters-but-serious-inequities-remain-for-black-americans/>.

election transformed the aesthetic of the nation's political landscape and instilled a sense of pride and optimism in African Americans while inspiring more Black youth to realize their potential for advancement.¹³²

Moreover, the increased public attention to ancestry and racial composition was directly attributable to Obama's open discussion of his own multiracial background.¹³³ That openness, along with heightened interest among lay and professional genealogists, coupled with the ease and increased sophistication of DNA testing—which now makes it possible to verify the centuries of extensive racial intermingling—has provided the United States with an opportunity to embrace itself as a more complex and interconnected racial terrain.¹³⁴ Obama's interracial parentage is thus symbolically important in terms of *Loving's* promise. Yet that promise remains more aspirational than actualized in terms of progress toward a more inclusive and egalitarian society.¹³⁵ In fact, the collateral impact of Obama's multiracial background, along with his hopeful campaign promises, generated unrealistic expectations among voters. Many imbued him with an almost messianic ability to cleanse the nation of its racial sins. Yet racialized patterns in housing and education have made real egalitarianism all but unattainable, despite the grand illusion that egalitarian racial integration was imminent.

Indeed, the United States is integrated only to the extent that White and Black Americans come into contact with each other more frequently in public places and, significantly less often, in the private sphere. If their lives intersect more than previously, most White and Black Americans still tend to live in separate, mistrustful, unequal, and sometimes mutually downright hostile worlds.¹³⁶ Although the relationship between race and opportunity has changed, the status accorded race remains essentially unchanged. For White Americans—regardless of gender, culture, and class—race locates wealth, power, privilege, and prestige; for Black Americans—irrespective of gender,

132. Taylor, *supra* note 58, at 140-41.

133. Dedman, *supra* note 45.

134. If Obama's biography has suggested his background does not include slave ancestors, genealogists of Ancestry.com have discovered marriage and property records, which, along with DNA evidence, challenge that assumption. Their findings indicate Obama's maternal lineage may include an individual of African slave descent in colonial Virginia named John Punch. Sheryl Gay Stolberg, *Obama Has Ties to Slavery Not by His Father but His Mother, Research Suggests*, N.Y. TIMES (July 30, 2012), <http://www.nytimes.com/2012/07/30/us/obamas-mother-had-african-forebear-study-suggests.html?pagewanted=all>; Dedman, *supra* note 45.

135. Maillard & Villazor, *supra* note 21, at 4.

136. ANDREW HACKER, TWO NATIONS: BLACK AND WHITE, SEPARATE, HOSTILE, UNEQUAL ix (1992); LEONARD STEINHORN & BARBARA DIGGS-BROWN, BY THE COLOR OF OUR SKIN: THE ILLUSION OF INTEGRATION AND THE REALITY OF RACE 3-28 (1999).

color, culture, or class—race identifies disadvantages and constraints, however informal, subtle, or elusive they may be. This does not preclude the achievement of a more racially egalitarian society. Yet Steinhorn and Diggs-Brown point out that this requires hard work, risk, sacrifice, and a willingness to take collective responsibility for the necessary “social engineering, constant vigilance, government authority, [and] official attention to racial behavior” for the greater national good.¹³⁷ It also requires a more honest assessment of the factors that continue to keep African Americans in a disadvantaged position, not to mention a more accurate rendering of the historical and cultural forces that put them there in the first place.

137. STEINHORN & DIGGS-BROWN, *supra* note 136, at 222-23.