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Reflection: How Multiracial Lives Matter 50 Years After *Loving*

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REFLECTION: HOW MULTIRACIAL LIVES MATTER 50 YEARS AFTER *LOVING*

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Black Lives Matter. All Lives Matter. These two statements are both true, but connote very different sentiments in our current political reality. To further complicate matters, in this short reflection piece, I query how multiracial lives matter in the context of this heated social and political discussion about race. As a multiracial person committed to racial justice and sympathetic both to those pushing for recognition of multiracial identity and to those who worry such recognition may undermine larger movements, these are questions I have long grappled with both professionally and personally. Of course, multiracial lives matter—but do they constitute a sub-agenda of the Black Lives Matter movement, or is there an independent agenda the moniker "Multiracial Lives Matter" might represent? If the latter, is there a danger that such an agenda might be co-opted by other forces and used to further unintended purposes, such as the advancement of colorblindness?[1] To the extent that agenda demands unique recognition of multiracial identity, how can it co-exist with broader identity-based racial justice movements?

In the political realm, multiracial individuals have the potential to operate as chameleons—negotiating the divide between ever-more polarized views on race. This is not only because they may fall somewhere in the middle of the color spectrum, but because they are often forced to personally navigate this terrain throughout their lives. Many multiracial individuals know intimately what it means to be oppressed on the basis of race but also placed above others in the racial hierarchy.[2] In a world where darkness often represents greater danger,[3] many multiracial individuals are simply less threatening. Under this view, President Obama's rise to power represents not the dawn-

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1. *See* Lauren Sudeall Lucas, *Undoing Race? Reconciling Multiracial Identity with Equal Protection*, 102 CALIF. L. REV. 1243, 1260-61 (2014) (describing the uneasy alliance between multiracial advocacy groups and conservative politicians, who believed creation of a multiracial category on the census would be a step toward the "elimination of racial and ethnic categories" (citation and internal quotation marks omitted)).

2. *See, e.g.*, Lucas, *supra* note 1, at 1270 (describing study showing that multiracial students experience less discrimination than monoracial minority students, but more discrimination than white students).

3. *See, e.g.*, Jennifer L. Eberhardt, P.G. Davies, Valerie J. Purdie-Vaughns & Sheri Lynn Johnson, *Looking Deathworthy: Perceived Stereotypicality of Black Defendants Predicts Capital-Sentencing Outcomes*, 17 PSYCHOL. SCI., 383, 383 (2006).

ing of a post-racial era, but instead evidence of the fact that many multiracial individuals have an easier time navigating the politics of race in America.

With few exceptions,[4] however, the issue of multiracial identity has been largely absent from recent discussions of identity politics. And perhaps for some, that is a necessary or intentional maneuver. One might fear that multiracial identity's fluidity,[5] its evolving views of race (often minimizing its relevance or influence),[6] and its growing influence (particularly among younger generations)[7] might be used to undermine larger identity-based movements. Thus, it is critical to understand the role that identity plays in those movements—and when it is structural rather than personal, or externally rather than internally driven. For example, "Black Lives Matter" might be viewed not primarily as a reflection of the community defining blackness, and who falls in or out of that category, but as a statement regarding the way in which external forces have defined and systematically devalued blackness of all shades (including those of multiracial individuals). Thus, it is not necessarily hostile to the individual's desire to conceive of her own racial identity, but it does deem that conception irrelevant to how society distributes benefits or burdens based on race.

The underlying fear of some racial justice advocates is that the brand of individualism typified by those pushing for a distinct multiracial identity[8] will destroy any sense of collective identity, a critical element of many social movements. Individualism has played a strong role in the Supreme Court's race jurisprudence—embodied by Justice O'Connor's oft-cited declaration in *Adarand Constructors, Inc. v. Pena*[9] that the equal protection guarantees of the Fifth and Fourteenth Amendments "protect *persons*, not *groups*."[10] Another domi-

4. *See, e.g.*, Moises Velasquez-Manoff, *What Biracial People Know*, N.Y. TIMES (Mar. 4. 2017), https://nyti.ms/2lr2DOR.

5. *See* Lucas, *supra* note 1, at 1246 ("Through the lens of multiracial identity . . . race is a fluid and socially constructed concept, capable of changing over time and assuming many different forms."); *id.* at 1263-64 (highlighting the "multiplicity" (manifesting in different ways) and "fluidity" (change over time) of multiracial identity).

6. *Id.* at 1263-71 (describing how multiracials conceive of their racial identity and of race more broadly, including the fact that they "are more likely to view race as a social construct" and less likely to perceive race-based discrimination or to express opposition to symbolic racism).

7. *Id.* at 1255-59 (noting changes in population demographics and the growing group of individuals who identify as mixed-race); *id.* at 1266 (noting that younger people are more likely to categorize themselves as multiracial).

8. *Id.* at 1270 (noting social science studies demonstrating that "mixed-race individuals tend to be more individualistic and disengaged with regard to issues of race").

9. 515 U.S. 200 (1995).

10. Adarand Constructors, Inc. v. Pena, 515 U.S. 200, 227 (1995) (emphasis in original).

nant force in the Court's recent racial discrimination cases is the anti-classification approach toward equal protection, which mandates that race-based distinctions should always be discouraged, regardless of whether such distinctions are invidious or benign.[11] Chief Justice John Roberts's opinion in *Parents Involved in Community Schools v. Seattle School District No. 1*[12] epitomizes this view. There, the Chief Justice famously declared: "The way to stop discrimination on the basis of race is to stop discriminating on the basis of race."[13] In his opinion, Chief Justice Roberts relied on the landmark case, *Brown v. Board of Education*[14] to declare unconstitutional two voluntary school assignment plans adopted by Seattle and Louisville to maintain or increase racial diversity among their schools.[15] Many of the dissenting justices viewed the majority opinion's reasoning as a distortion of *Brown*.[16] Underlying their response is a decades-long debate about whether to interpret cases like *Brown*—or *Loving v. Virginia*,[17] the focus of this Symposium—to discourage any consideration of race (often tied to notions of individualism[18]) or only those uses of race that serve to subordinate or oppress certain racial groups. In my view, the Supreme Court's decision in *Loving* was not only about eliminating distinctions based on race, but also those measures clearly designed to

11. *Adarand Constructors*, 515 U.S. at 222-27 (holding that the same level of scrutiny applies to both "invidious" and "benign" racial classifications).

12. 551 U.S. 701 (2007).

13. Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1, 551 U.S. 701, 748 (2007). In contrast, Justice Sonia Sotomayor used similar language in a more recent case to offer a very different view of how the Court might most effectively address racial discrimination. *See* Schuette v. Coalition to Defend Affirmative Action, Integration and Immigrant Rights and Fight for Equality By Any Means Necessary (BAMN), 134 S. Ct. 1623, 1676 (2014) (Sotomayor, J., dissenting) ("The way to stop discrimination on the basis of race is to speak openly and candidly on the subject of race, and to apply the Constitution with eyes open to the unfortunate effects of centuries of racial discrimination. As members of the judiciary tasked with intervening to carry out the guarantee of equal protection, we ought not sit back and wish away, rather than confront, the racial inequality that exists in our society. It is this view that works harm, by perpetuating the facile notion that what makes race matter is acknowledging the simple truth that race *does* matter.").

14. 347 U.S. 483 (1954) (*Brown I*); 349 U.S. 294 (1955) (*Brown II*).

15. *Parents Involved*, 551 U.S. at 709-11, 746-48.

16. *See id.* at 798-99 (Stevens, J., dissenting) (noting that there was a "cruel irony" in the Chief Justice's reliance on *Brown* and that the opinion "rewrites the history of one of this Court's most important decisions.").

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

18. *See, e.g.*, Gratz v. Bollinger, 539 U.S. 244, 271, 275 (2003) (holding University of Michigan's affirmative action policy unconstitutional and emphasizing the importance of individualized consideration in the admissions process); Regents of Univ. of Cal. v. Bakke, 438 U.S. 265, 318 (1978) (invalidating admissions program of University of California at Davis Medical School based on its use of race and highlighting the importance of treating "each applicant as an individual in the admissions process.").

maintain racial hierarchy.[19] Thus, we should understand *Loving* not as a harbinger of a colorblind society where race is irrelevant, but as a bulwark against uses of race that aim to disparage racial groups or maintain a specific racial order.

Race plays an important organizing function in society, and one over which we have little control as individuals; this can be difficult to reconcile with the self-determination many multiracial individuals possess to control their own racial identity and how it is perceived by others. While some are dismissive of that premise, instead favoring a racial solidarity approach that minimizes the relevance of subcategories, I have contended that it is important to allow multiracial individuals to define their own identity.[20] This is a sentiment that has been echoed by Justice Kennedy's language in several recent opinions discussing racial identity (if not addressing multiracial identity directly).[21] Yet this sentiment need not necessarily be at odds with broader identity-based movements. An individual can remain free to define her own identity under the terms that she desires while simultaneously recognizing that society often does not operate under those same terms and will more likely than not group her with individuals who assume a different racial identity.

Before *Loving*, the very unions that might give rise to multiracial children were illegal.[22] In declaring anti-miscegenation laws unconstitutional, the Supreme Court rejected the argument that such laws served legitimate state interests—including interests in "prevent[ing]

19. Loving v. Virginia, 388 U.S. 1, 11 (1967) ("The fact that Virginia prohibits only interracial marriages involving white persons demonstrates that the racial classifications must stand on their own justification, as measures designed to maintain White Supremacy."). Moreover, the *Loving* Court flatly rejected the state's argument that the miscegenation statute's "equal application" (in quotes, given that the law prohibited whites from marrying nonwhites, but allowed nonwhites to marry any other nonwhite, see *Loving*, 388 U.S. at 11 n.11) to all races could cure its unconstitutionality. *See id.* at 8 ("[W]e reject the notion that the mere 'equal application' of a statute containing racial classifications is enough to remove the classifications from the Fourteenth Amendment's proscription of all invidious racial discriminations . . . .").

20. Lucas, *supra* note 1, at 1267-69 (reviewing the social and psychological consequences of denying multiracial individuals the ability to identify as such).

21. *See* Obergefell v. Hodges, 135 S. Ct. 2584, 2593 (2015) ("The Constitution promises liberty to all within its reach, a liberty that includes certain specific rights that allow persons, within a lawful realm, to define and express their identity."); *Obergefell*, 135 S. Ct. at 2597 (noting that the liberties guaranteed by the Due Process Clause of the Fourteenth Amendment "extend to certain personal choices central to individual dignity and autonomy, including intimate choices that define personal identity and beliefs."); *Parents Involved*, 551 U.S. at 797 (Kennedy, J., concurring in part and concurring in the judgment) ("Under our Constitution the individual, child or adult, can find his own identity, can define her own persona, without state intervention that classifies on the basis of his race or the color of her skin.").

22. This sentiment is reminiscent of the rallying cry often heard in the immigration context: "No human being is illegal."

'the corruption of blood' [and] 'a mongrel breed of citizens.'"[23] Thus, in some sense, the gift *Loving* bestows upon multiracial individuals born of these now lawful interracial relationships is the very freedom of being. Yet we must be mindful of the fact that the freedom to define our own personal identity is rooted in a jurisprudence aimed at eliminating identity-based structural oppression and that identity remains an important tool in counteracting such oppression. While the law provides us with the freedom to define ourselves—to declare that multiracial lives also "matter"—we must not be blind to the ways in which other, more powerful forces continue to define us and the linked fate that exists between black and multiracial lives.

23. *Loving*, 388 U.S. at 7.