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## Evolution of the Racial Identity of Children of Loving: Has Our Thinking About Race and Racial Issues Become Obsolete?

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**EVOLUTION OF THE RACIAL IDENTITY  
OF CHILDREN OF *LOVING*:  
HAS OUR THINKING ABOUT RACE  
AND RACIAL ISSUES BECOME OBSOLETE?**

*Kevin Brown\**

It is a special honor for me to have this opportunity to discuss the U.S. Supreme Court's opinion in *Loving v. Virginia*<sup>1</sup> at a Symposium held in honor of its fiftieth anniversary. I served on the panel entitled "The Children of Loving,"<sup>2</sup> which for me has two connotations. First, as an African American who married a white woman twenty years after the decision, I am a child of *Loving* in the sense that I was in an interracial marriage. But as a father of two black-white biracial children, I am also a father of two *Loving* children. In this Article, I focus on the latter connotation of the "Children of *Loving*." In particular, I discuss the evolution of my children's racial identities. Due to my personal connections, I can share both an academic and personal narrative about this evolution.

Statutes proscribing interracial sexual relationships between blacks and whites first appeared in the English colonies of Maryland and Virginia in the 1660s.<sup>3</sup> At least thirty-eight states eventually enacted antimiscegenation statutes.<sup>4</sup> One of the main purposes of these statutes was the prevention of mixed-race individuals. This was succinctly stated in the preamble of a 1691 Virginia statute that banished from the colony any free English or other white man or woman who married a Negro, mulatto, or Indian man or woman,

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

2. For an overview of the Symposium, see R.A. Lenhardt, Tanya K. Hernández & Kimani Paul-Emile, *Foreword: Fifty Years of Loving v. Virginia and the Continued Pursuit of Racial Equality*, 86 *FORDHAM L. REV.* 2625 (2018).

3. F. JAMES DAVIS, *WHO IS BLACK?: ONE NATION'S DEFINITION* 33 (1991); see also Laurence C. Nolan, *The Meaning of Loving: Marriage, Due Process and Equal Protection (1967–1990) as Equality and Marriage, from Loving to Zablocki*, 41 *HOW. L.J.* 245, 247–48 (1998).

4. RACHEL F. MORAN, *INTERRACIAL INTIMACY: THE REGULATION OF RACE & ROMANCE* 17 (2001). In the West, some of these statutes prohibited whites from intermarrying Native Americans, Chinese, Filipinos, Hawaiians, Hindus, Japanese, and Koreans. But all of them proscribed marriages between blacks and whites.

bound or free,<sup>5</sup> “for the prevention of that abominable mixture and spurious issue which hereafter may increase in this dominion.”<sup>6</sup>

In spite of laws attempting to prohibit interracial sexual conduct between blacks and whites, however, America has always had a significant number of “Black Multiracials.”<sup>7</sup> As the distinguished historian Carter G. Woodson described it, there was extensive miscegenation in the English colonies before the master race realized the apparent need for maintaining its racial integrity.<sup>8</sup> Thus, the question of how to determine the racial identities of Black Multiracials has long vexed American society.

Throughout the twentieth century, the predominant unwritten law for determining a person’s race was the one-drop rule.<sup>9</sup> Under this rule, merely one drop of black blood made a person black.<sup>10</sup> Thomas Dixon Jr., author of *The Clansman*,<sup>11</sup> discussed the accepted dogma of one drop of black blood in his 1902 best-selling fictional novel, *The Leopard’s Spots*.<sup>12</sup> In explicating the convention, he wrote, “One drop of Negro blood . . . kinks the hair, flattens the nose, thickens the lip, puts out the light of intellect, and lights the fires of brutal passions.”<sup>13</sup> Application of the rule meant that there was no such concept of a Black Multiracial but only variations of color and facial features among blacks. Racism was at the core of American society’s embrace of this norm; however, the black community always accepted mixed-race people into its ranks. In fact, many of the black community’s prominent pioneers were biracial, including Crispus Attucks, Josephine Baker, Frederick Douglass, Prince Hall, P.B.S. Pinchback, Robert Smalls, Bishop Henry McNeal Turner, Booker T. Washington, and Walter White.<sup>14</sup>

Before *Loving*, public perceptions about the psychological understandings of the racial identity of Black Multiracials reinforced the notion that they should adopt an exclusively black racial identity. These perceptions were still rooted in the conclusions from the earliest psychological studies of mixed-race persons, which were conducted in the 1920s and 1930s by Robert

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5. 3 WILLIAM WALLER HENING, *THE STATUTES AT LARGE; BEING A COLLECTION OF ALL THE LAWS OF VIRGINIA, FROM THE FIRST SESSION OF THE LEGISLATURE IN THE YEAR 1619*, at 86–87 (1823).

6. Carter G. Woodson, *The Beginnings of Miscegenation of the Whites and Blacks*, 3 J. NEGRO HIST. 335, 343 (1918).

7. I use the term “Black Multiracials” to refer to persons of mixed-race with black blood. This is a matter of convenience for this Article as opposed to a statement about the racial identity of mixed-raced individuals with some black ancestry.

8. Woodson, *supra* note 6, at 339.

9. JOHN G. MENCKE, *MULATTOES AND RACE MIXTURE: AMERICAN ATTITUDES AND IMAGES, 1865–1918*, at 37 (1979).

10. *Id.*

11. See THOMAS DIXON, JR., *THE CLANSMAN: AN HISTORICAL ROMANCE OF THE KU KLUX KLAN* (1905).

12. See THOMAS DIXON, JR., *THE LEOPARD’S SPOTS: A ROMANCE OF THE WHITE MAN’S BURDEN—1865–1900* (1902).

13. *Id.* at 242. In his pathbreaking article, “A Critique of ‘Our Constitution Is Color-Blind,’” Neil Gotanda also ties the one-drop rule to the notion of racial purity of whites. Neil Gotanda, *A Critique of “Our Constitution Is Color-Blind,”* 44 STAN L. REV. 1, 25–27 (1991).

14. KEVIN BROWN, *BECAUSE OF OUR SUCCESS: THE CHANGING RACIAL AND ETHNIC ANCESTRY OF BLACKS ON AFFIRMATIVE ACTION* 22 (2014).

Park and his student, Everett Stonequist.<sup>15</sup> Park developed what he called the “marginal man” hypothesis.<sup>16</sup> He concluded that mixed-race individuals were destined to experience social and psychological stress because they existed between social worlds.<sup>17</sup> For Stonequist, he noted that in some mixed-race individuals the internal conflict of living with this racial marginality “initiates a process of disorganization which finds expression in statistics of delinquency, crime, suicide and mental instability.”<sup>18</sup> To this end, the mixed-race person may need to identify with one social world or racial heritage to the nearly total exclusion of the other. Due to the outward appearance of the overwhelming majority of Black Multiracials, the only real racial identity allowed for them was black.

The above assumptions about racial identity at the time of *Loving* meant that American society’s primary views on the racial identity of Black Multiracials were straightforward. According to the 1960 census, whites constituted 88.6 percent of all Americans, with an additional 10.5 percent classified as black.<sup>19</sup> The one-drop rule, along with this biracial nature of American society, made it easy to determine a person’s race based on the color of his or her skin. Accordingly, an individual’s racial identity was easily ascertainable, socially ascribed, fixed, and permanent. In effect, both black and white communities agreed that any Black Multiracial was black, and those who rejected their single-race black identity exhibited a psychologically troubling mental condition.

Given the understandings about race at the time of *Loving*, progressive American thinking about race was deeply influenced by the color-blind philosophy. In fact, the color-blind philosophy was built upon the liberal beliefs so familiar to us today. Adult individuals are free willed, rational, autonomous, self-determined, and capable of pursuing their self-formulated goals and objectives. They are able to reflect upon and change the opinions they express, the beliefs they hold, the aims they pursue, and the attachments they form. While there is a manifest self with various physical attributes that is present to the outside world, individuals also possess a hidden, deep, and essential self. It is this part of the self that is the source of our motivations

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15. See, e.g., EVERETT V. STONEQUIST, *THE MARGINAL MAN: A STUDY IN PERSONALITY AND CULTURE CONFLICT* 8 (1937); Everett V. Stonequist, *The Problem of the Marginal Man*, 41 AM. J. SOC. 1, 12 (1935). See generally Robert E. Park, *Human Migration and the Marginal Man*, 33 AM. J. SOC. 881 (1928).

16. See generally Park, *supra* note 15.

17. *Id.*

18. See Stonequist, *supra* note 15, at 12.

19. Campbell Gibson & Kay Jung, *Historical Census Statistics on Population Totals by Race, 1790 to 1990, and by Hispanic Origin, 1970 to 1990, for the United States, Regions, Divisions, and States* 108 (U.S. Census Bureau, Working Paper No. 56, 2002), <https://www.census.gov/content/dam/Census/library/working-papers/2002/demo/POP-twps0056.pdf> [<http://perma.cc/5Z4L-V676>]. According to C. Matthew Snipp, the instructions for those enumerators stated, “A person of mixed White and Negro blood was to be returned as Negro, no matter how small the percentage of Negro blood . . .” *Racial Measurement in the American Census: Past Practices and Implications for the Future*, 29 ANN. REV. SOC. 563, 568 (2003) (quoting Claudette Bennett, *Racial Categories Used in the Census, 1790 to Present*, 17 GOV’T INFO. Q. 161, 169–70 (2000)).

and drives. This essential self exists separate from the manifest physical characteristics of the individual, including race, ethnicity, gender, sexual orientation, and socioeconomic class.<sup>20</sup> This part of the self is the “real,” “true,” or “subject” self. Due to the dominant social connotations attached to being black at the time of *Loving*, taking a person’s race into account was considered immoral since it necessarily constrained the ability of an individual to be self-determined. Thus, the appropriate way to deal with racial identities, including those of Black Multiracials, was for everyone to transcend any considerations of race in order to treat people as individuals. In other words, Americans were encouraged to work toward a long-term goal of becoming color blind.

As I write this Article, it is evident that much has changed in American society regarding racial identity since the time of the *Loving* decision—especially for Black Multiracials.<sup>21</sup> For me, as an Indiana native, it is important to note that it was not until 1965, when I was nine years old, that my home state repealed its ban on interracial marriages between whites and blacks.<sup>22</sup> Violating the state antimiscegenation statute could produce a punishment of a fine of up to \$1000 and confinement in jail for up to ten years.<sup>23</sup> This explains why I never met a married interracial couple in my youth. Until the time Indiana repealed this law it was also true that I seldom came into contact with white people. They were not in my neighborhood, local churches, nor the parks where I played baseball, swam, or golfed. Moreover, I had attended all-black grade schools in the Indianapolis Public School District (IPS). By “all-black” schools, I genuinely mean all black. The students were all black, the teachers were all black, the administrators were all black, and the janitors were all black. Furthermore, the federal District Court of the Southern District of Indiana would later agree that at the time I attended schools in IPS it was a de jure segregated school system.<sup>24</sup> But my racially exclusive world changed as I started fifth grade in the fall of 1965 when my parents moved our family out to the suburbs of Indianapolis. From that point until I graduated from Yale Law School, blacks never made up more than 10 percent of the student bodies at my academic institutions and, outside of the Afro Studies Department, I had only three blacks as teachers or faculty members for the remainder of any formal education.

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20. See, e.g., ROBERT N. BELLAH ET AL., *HABITS OF THE HEART: INDIVIDUALISM AND COMMITMENT IN AMERICAN LIFE* 76–77 (2008); MICHAEL J. SANDEL, *LIBERALISM AND THE LIMITS OF JUSTICE* 7–11 (1998).

21. For an extended discussion of the change, see Kevin D. Brown, *The Rise and Fall of the One-Drop Rule: How the Importance of Color Came to Eclipse Race*, in *COLOR MATTERS: SKIN TONE BIAS & THE MYTH OF A POST-RACIAL AMERICA* 44, 44–94 (Kimberly Jade Norwood ed., 2014).

22. Larry D. Barnett, *Anti-Miscegenation Laws*, 13 *FAM. LIFE COORDINATOR* 95, 96 (1964); Charles A. Walton, Letter to the Editor, *EBONY*, Oct. 1965, at 17, [https://books.google.com/books?id=O94DAAAAMBAJ&lpg=PA1&pg=PA14#v\[https://perma.cc/X8VZ-U793\]](https://books.google.com/books?id=O94DAAAAMBAJ&lpg=PA1&pg=PA14#v[https://perma.cc/X8VZ-U793]) (state representative describing legislative repeal of Indiana’s antimiscegenation law).

23. Barnett, *supra* note 22, at 96.

24. See *United States v. Bd. of Sch. Comm’rs*, 332 F. Supp. 655, 670 (S.D. Ind. 1971), *aff’d*, 474 F.2d 81 (7th Cir. 1973).

The Supreme Court announced its decision in *Loving* on June 12, 1967,<sup>25</sup> which was the summer before I started seventh grade. This was also the time when many of my peers and I first started to date. The film *Guess Who's Coming to Dinner* starring big screen movie legends Katharine Hepburn, Sidney Poitier, and Spencer Tracy was released six months later.<sup>26</sup> As notable movie critic Roger Ebert once stated, this was “a film about interracial marriage that ha[d] the audience throwing rice.”<sup>27</sup> My mother took me to see the movie at the local cinema. She called it the first movie celebrating romantic love between a black person and a white person either of us had ever seen. In fact, this was the first time that my mother had made any comment at all to me about interracial marriage.

Up through 1950, when conducting the census, the U.S. Census Bureau employed enumerators to go out to people's homes and fill out the census form. In 1960, the Census Bureau sent the forms beforehand with instructions for the head of the household to fill them out. An enumerator would then come to the home, check the forms, and make any necessary corrections. However, in 1970, the Census Bureau, for the first time, distributed forms designed to be completed solely by respondents and sent back to the Bureau without any assistance from enumerators.<sup>28</sup> While the Census Bureau asserted that the change in households filling out the census forms and identifying the races of household members was intended to improve the accuracy of racial statistics, it also began the process of changing the meaning of racial identification. Instead of a census enumerator imposing a racial identity on the members of a household, the requirement that individuals fill out the forms and send them to the Census Bureau on their own raised the issue of how a person identified his or her own race or that of other members of their household. Thus, rather than race being a socially ascribed identity, these new forms raised the possibility of race being a matter of self-identification. Many mixed-race individuals (or their parents or guardians on their behalf) objected to forms that required them to identify with only one racial or ethnic category.<sup>29</sup>

When I married in 1988, the country had lived with the *Loving* decision for twenty-one years.<sup>30</sup> Interracial marriages—especially black-white ones—were rising but still rare. The percentage of blacks with a spouse of another race increased from 1.1 percent in 1970, to 2.4 percent in 1980, to 4.1 percent in 1990.<sup>31</sup> Despite changes in the process of gathering census

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

26. GUESS WHO'S COMING TO DINNER (Columbia Pictures 1967); see also *Guess Who's Coming to Dinner*, IMDB, <http://www.imdb.com/title/tt0061735/> [<https://perma.cc/EF5K-BNWM>] (last visited Apr. 13, 2018).

27. *Guess Who's Coming to Dinner*, ROGER EBERT (Jan. 25, 1968), <http://www.rogerebert.com/reviews/guess-whos-coming-to-dinner-1968> [<http://perma.cc/UP4E-6LV3>].

28. See Sharon M. Lee & Barry Edmonston, *New Marriages, New Families: U.S. Racial and Hispanic Intermarriage*, POPULATION BULL., June 2005, at 3, 9.

29. See Katherine K. Wallman et al., *Measuring Our Nation's Diversity: Developing a Common Language for Data on Race/Ethnicity*, 90 AM. J. PUB. HEALTH 1704, 1705 (2000).

30. See generally *Loving*, 388 U.S. 1.

31. Lee & Edmonston, *supra* note 28, at 12.

data and increasing interracial marriages involving blacks, the one-drop rule remained the unwritten method to determine a person's racial identity. Consequently, when my white wife and I discussed the upbringing of our children, we understood that American society would label them as black. Although I had no problem accepting this, it was not an understanding my spouse shared. She felt that society denied her heritage in her own children. I tried to assure her that our children could privately embrace whatever heritage they desired, but their racial identification was ultimately imposed by society and was not a matter of personal preference. For our children to publicly proclaim that they were not black would strike others in society as a psychologically unhealthy denial of who they were.

My wife was not alone in her objections to ignoring the multiracial identity of Black Multiracials. Despite the fact that the instructions to individuals filling out 1990 census forms required that they check the one box that best described their race, more than 500,000 people selected more than one racial category.<sup>32</sup> By the late 1980s and early 1990s, individuals in black-white marriages and multiracial groups such as A Place for Us, the Association of MultiEthnic Americans, and Project RACE (Reclassify All Children Equally) spearheaded efforts to add a "multiracial" option to all local, state, and federal governmental forms, but especially for 2000 census forms.<sup>33</sup> At the height of this multiracial movement, these groups had about 3500 adult members (excluding students) throughout the nation, according to Harvard educator Kim Williams.<sup>34</sup> But only about twenty movement leaders were responsible for the effort to add a multiracial category to the 2000 census.<sup>35</sup> In most multiracial organizations, the leadership positions were held by "[w]hite, liberal, and suburban-based middle-class women" married to black men.<sup>36</sup>

Generally, advocates for multiracials argued that mixed-race individuals viewed themselves as multiracial rather than belonging to a single racial or ethnic group. A "multiracial" designation was, therefore, a better reflection of the true understanding of the multiracial person's racial identity. Advocates pointed to the inherent racism of the one-drop rule,<sup>37</sup> and in a total

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32. Wendy D. Roth, *The End of the One-Drop Rule? Labeling of Multiracial Children in Black Intermarriages*, 20 SOC. F. 35, 38 (2005).

33. KERRY ANN ROCKQUEMORE & DAVID L. BRUNSMAN, *BEYOND BLACK: BIRACIAL IDENTITY IN AMERICA* 1–2 (2008); see KIM M. WILLIAMS, *MARK ONE OR MORE: CIVIL RIGHTS IN MULTIRACIAL AMERICA* 7–9 (2006).

34. WILLIAMS, *supra* note 33, at 15.

35. *Id.*

36. *Id.* at 112. Kim M. Williams, who extensively studied the movement to alter the federal forms to allow individuals to mark one or more boxes, stated:

Unexpectedly, I found that white, liberal, and suburban-based middle-class women (married to black men) held the leadership roles in most multiracial organizations. These white women helped to set an optimistic tone for multiracial activism; many believed that American racial polarization could be overcome by their example. Most of these women were looking for community—not for a census designation. Movement spokespeople reversed these priorities somewhat, although they parted ways after the OMB decision of 1997.

*Id.*

37. ROCKQUEMORE & BRUNSMAN, *supra* note 33, at 1–17.

rejection of the marginal man hypothesis, these groups also noted the psychological problems created for biracial children when they are forced to identify with one parent more than the other.

From 1993 to 1997, the federal government conducted an extensive review of the racial and ethnic categories and definitions it used and required for those reporting information.<sup>38</sup> According to the Office of Management and Budget (OMB), the most controversial and sensitive issue during these deliberations dealt with how to address the classifications of individuals with parents of different races.<sup>39</sup> In the end, OMB rejected a “multiracial” category as an option for designating the racial identities of mixed-race individuals. Nonetheless, it decided that self-identification would be the primary method to determine racial and ethnic identity, and when employed, this method would allow individuals to check all racial and ethnic categories that they identified with from an approved list. Thus, with the adoption of these revisions in 1997, the federal government—for the first time ever—allowed individuals to designate more than one racial category. The ripple effect of this change was significant because anytime an institution gathered data to report to the federal government, it had to follow these requirements.<sup>40</sup> This essentially impacted the design of many forms used in America, including employment applications used by employers subject to federal reporting requirements, application forms used by all educational institutions, and even medical admissions forms. The collection and reporting of racial and ethnic data for the 2000 and 2010 censuses, generally, followed these revisions.

The new reporting requirements also allowed the Census Bureau to better record the increasing Black Multiracial population. According to the 2010 census, 7.4 percent of blacks indicated another racial category<sup>41</sup> (up from 4.8 percent in 2000).<sup>42</sup> This was over two-and-a-half times the multiracial rate of the entire American population, which was 2.9 percent in 2010<sup>43</sup> (up from 2.4 percent in 2000).<sup>44</sup> As one might expect, the younger blacks are, the more likely they are to be multiracial. Census figures for 2012 showed that the percentage of mixed-race blacks between the ages of 20 and 24 was only 7.9 percent.<sup>45</sup> However, “the percentage of mixed-race blacks among blacks

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38. For a listing of the steps taken, see Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity, 62 Fed. Reg. 58,782, 58,782–83 (Oct. 30, 1997).

39. *See id.*

40. *See id.*

41. KAREN R. HUMES ET AL., U.S. CENSUS BUREAU, OVERVIEW OF RACE AND HISPANIC ORIGIN: 2010, at 7 (2011), <https://www.census.gov/prod/cen2010/briefs/c2010br-02.pdf> [<https://perma.cc/C6H7-MKP2>].

42. *See* U.S. CENSUS BUREAU, CENSUS 2000 BRIEFS AND SPECIAL REPORTS: RACE AND HISPANIC OR LATINO ORIGIN BY AGE AND SEX FOR THE UNITED STATES tbl.3 (2002), <https://www2.census.gov/programs-surveys/decennial/2000/phc/phc-t-08/tab03.pdf> [<https://perma.cc/XN8K-MDHT>].

43. HUMES ET AL., *supra* note 41, at 4.

44. *See United States Multiracial Profile*, CENSUS SCOPE, [http://www.censusscope.org/us/print\\_chart\\_multi.html](http://www.censusscope.org/us/print_chart_multi.html) [<http://perma.cc/275U-QM2V>] (last visited Apr. 13, 2018).

45. KEVIN D. BROWN, BECAUSE OF OUR SUCCESS: THE CHANGING RACIAL AND ETHNIC ANCESTRY OF BLACKS ON AFFIRMATIVE ACTION 150 (2014).

between the ages of 15 and 19 was 8.9 percent,” between ages “10 and 14 it increased to 10.9 percent, between the ages of 5 and 9 to 15.0 percent, and for those under the age of 5, it was 19.1 percent.”<sup>46</sup>

Though the federal government decided that individuals should be able to self-identify their race and to embrace all of their racial and ethnic identities, this did not mean that American society would reject its assumptions that racial identity was easily identifiable, socially ascribed, fixed, and permanent. As multiracials asserted their displeasure with the inability to acknowledge all of their racial and ethnic ancestries, another development occurring in American society was undercutting all of the former assumptions about racial identity, especially for Black Multiracials.

Since the *Loving* decision, people of color throughout the world have immigrated en masse into the United States. This immigration has not only changed the face of America but it also brought to our shores plenty of people who, by application of the one-drop rule, look black but are from South Asia, Latin America, or the Middle East. According to 2016 Census Bureau population estimates, “not Hispanic or Latino” whites (which includes those from the Middle East and North Africa) made up only 61.3 percent of the population,<sup>47</sup> down from 88.8 percent in 1960.<sup>48</sup> And blacks constituted another 13.3 percent.<sup>49</sup> Thus, those who were not simply black or white have increased from less than 1 percent of the American population around the time of the *Loving* decision to more than 25 percent—almost double the percentage of blacks in the country.<sup>50</sup> This immigration has also meant that blacks with lighter complexions or less visible African facial features are increasingly interacting with people who no longer can assume that they are black based on their physical appearance. Thus, rather than race being a socially ascribed identity, with this immigration and new forms to collect racial information the possibility of considering that race could be a matter of self-identification is greater than ever.

More recent research exploring the identity formation of Black Multiracials, unsurprisingly, suggests that they may understand their racial identity in a variety of ways. In addition to a singular identity (either exclusively black or exclusively white), other racial identity options that a Black Multiracial can choose include a border identity (exclusively biracial),<sup>51</sup> “a protean identity (sometimes black, sometimes white, sometimes biracial), and a transcendent identity (no racial identity).”<sup>52</sup>

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46. *Id.*

47. *Quick Facts*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/US/PST045217#qf-headnote-a> [<http://perma.cc/WMN4-3AMG>] (last visited Apr. 13, 2018).

48. Gibson & Jung, *supra* note 19, at 108.

49. *Quick Facts*, *supra* note 47.

50. *Id.*

51. For example, Tiger Woods is a prominent example of a mixed-race individual with some black ancestry who openly considers himself multiracial as opposed to “black.” See JOHN STREGE, *TIGER: A BIOGRAPHY OF TIGER WOODS* 40 (1997).

52. Kerry Ann Rockquemore & David L. Brunsma, *Socially Embedded Identities: Theories, Typologies, and Processes of Racial Identity Formation Among Black/White Biracials*, 43 *SOC. Q.* 335, 336 (2002).

Research also suggests that individuals choose one identity or several identities based on social networks or appearance.<sup>53</sup> Another probable explanation for this phenomenon is that multiracial people may identify themselves differently in different contexts.<sup>54</sup>

Throughout much of the history of this country, we have thought about racial identity as easily ascertainable, socially ascribed, fixed, and unalterable. Indeed, our race discrimination laws, programs, and policies, intended to attenuate the effects of past and present discrimination, presume such. Even as we think of multiracial identity, we tend to think of a multiracial person as multiracial in all circumstances and situations. However, a Black Multiracial can justifiably claim a number of racial identities at any given time.<sup>55</sup> In other words, the long-presumed notions about racial identity simply do not apply to Black Multiracials. Their racial identity is, or at least can be, fluid. Further, because the physical appearance of so many Black Multiracials is racially ambiguous, they have some autonomy in choosing how to identify themselves.

The reality of increased control over one's racial identity does not only exist for Black Multiracials.<sup>56</sup> Many individuals from Latin America, South Asia, and the Middle East are also racially ambiguous and encounter the question, "What are you?" Due to the vast immigration of people of color from the rest of the world, coupled with an increasingly multiracial population and a preference for self-designation of racial identification, American society is experiencing the dissolution of the basic assumptions about racial identity that all of our thinking about race is built upon. Put another way, thinking about and talking about race and racial issues based upon the assumptions that racial identities are easily ascertainable, socially ascribed, fixed, and permanent is already outdated.

This dissolution of our prior assumptions about racial identity may also suggest an alternative solution to the issue of racial identity that is different from color blindness yet consistent with the belief in individual self-determination. The dominant liberal tradition of the post-*Loving* era was a product of the assumptions that racial identities were easily ascertainable, socially ascribed, fixed, and unalterable. As a result, colorblindness seemed the most logical solution for the constraining impact of race and ethnicity on self-determination. However, the recognition of the fluid nature of racial identities for Black Multiracials and many others in our society today points to a new solution: the view that racial identity is a matter of personal choice. While this is certainly not the case for a large segment of the American

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53. *Id.* at 338–40.

54. See Nancy Leong, *Multiracial Identity and Affirmative Action*, 12 ASIAN PAC. AM. L.J. 1, 7–8 (2006).

55. See, e.g., David Kaufman, *Biracial Experiences in the United States*, INTERRACE, Apr. 1994, at 15, 19.

56. For example, Rachel Dolezal, the former President of the NAACP chapter in Spokane, Washington, was a white woman who claimed to be black. See Kirk Johnson, Richard Pérez-Peña & John Eligon, *Rachel Dolezal, in Center of Storm, Is Defiant: 'I Identify as Black,'* N.Y. TIMES (June 16, 2015), <https://www.nytimes.com/2015/06/17/us/rachel-dolezal-nbc-today-show.html> [<https://perma.cc/9EKV-PB3C>].

population, it is becoming so for an increasing number of Americans. And if racial identity is a matter of personal choice, taking it into account does not restrict, but increases, self-determination.