

## LOVING AND *LOVING*: ERODING THE STANCE OF OTHER

PALMA JOY STRAND†

*we were and by that  
touched “I-ness” to “I-ness,”  
inward, wombed inducement  
arced into “us-ness,”  
otherness, nothingness.  
—Nathaniel Mackey<sup>1</sup>*

### 50 YEARS OF *LOVING*

*Loving v. Virginia*<sup>2</sup> is more than a legal decision to me. *Loving* is my life. I met my husband when I was young. We married across Black-White racial lines. We have three biracial children. Without *Loving*, my life would have unfolded very differently. My *Loving* life has called me to explore race and racism, and it has called me to explore with my heart as well as my head.

Because of *Loving* and my *Loving* family, my life has been an extended immersion experience at and across America’s racial boundaries. Would I, a White woman, have read *Invisible Man*,<sup>3</sup> *Death and the King’s Horseman*,<sup>4</sup> *Beloved*,<sup>5</sup> *Americanah*,<sup>6</sup> and other classics of American and world literature exploring the experiences of Africans and members of the African diaspora? Perhaps. Would I have helped to create “Challenging Racism Through Stories and Conversation” discussion groups that provide an opportunity for people to talk about

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1. See Grant Matthew Jenkins, “*re: Source*”: *African Contexts of Nathaniel Mackey’s Ethics*, 49 AFR. AM. REV. 35, 42 (2016) (quoting NATHANIEL MACKEY, SCHOOL OF UDHRA (1993)).

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

3. RALPH ELLISON, *INVISIBLE MAN* (1952).

4. WOLE SOYINKA, *DEATH AND THE KING’S HORSEMAN* (1975).

5. TONI MORRISON, *BELLOVED* (1987).

6. CHIMAMANDA NGOZI ADICHIE, *AMERICANAH* (2013).

and across race?<sup>7</sup> And would I have focused much of my academic energy on race and racism?<sup>8</sup> Unlikely. Would I have been called to organize this symposium on “50 Years of *Loving*: Seeking Justice Through Love and Relationships?” Probably not.

In writing this essay in preparation for “50 Years of *Loving*,” I was drawn to explore the root of the social construction that we call race—a set of attitudes, norms, and yes laws—that have constructed our social interactions so as to abundantly advantage some of us and profoundly disadvantage others. Beneath those resource, status, and power differentials lies a foundation of psychological and ethical separation of human beings who live and work side by side. *Loving* destabilizes that foundation by eroding the stance of Other on which race is built.

#### THE DISRUPTIVE EFFECTS OF *LOVING*

For much of our nation’s history, cultural norms and formal law actively constructed barriers between people of different races—or funneled permissible relationships into channels with strong power-over currents. People were either separate or locked into patterns of racial hierarchy. Everyone knew the rules of engagement: how to act and how not to act. Richard and Mildred Loving disrupted these rules with a relationship in a different mode. White men and Black women together have a long history in this country—in Virginia and elsewhere. Think Thomas Jefferson and Sally Hemings. But a White man marrying a Black woman—that is a different story.

In the 50 years since *Loving v. Virginia*,<sup>9</sup> the right to marry someone of a different race has put down roots. “Nearly 15 percent, or one in seven, of all new marriages in 2008 were between people of different races or ethnicities.”<sup>10</sup> The effects of these interracial marriages extend out into our families. “[M]ore than a third of all adults surveyed reported having a family member whose spouse is of a different

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7. CHALLENGING RACISM, [www.challengingracism.org](http://www.challengingracism.org) (last visited Mar. 23, 2017). See also Palma Joy Strand, *Fixing the System, Not the Kids*, in TIMOTHY COTMAN JR., ALVIN L. CRAWLEY, CHERYL ROBINSON, ROBERT G. SMITH, MARTY SWAIM & PALMA JOY STRAND, *GAINING ON THE GAP: CHANGING HEARTS, MINDS, AND PRACTICE* 63-84 (2011).

8. See, e.g., Palma Joy Strand, *East Palo Alto: A Community Divided*, 4 STANFORD ENV. L. SOC’Y ANN. 119, 119-29 (1982); Palma Joy Strand, *Inheriting Inequality: Wealth, Race, and the Laws of Succession*, 89 OREGON L. REV. 453, 453-504 (2010); Palma Joy Strand, *Is Brown Holding Us Back? Moving Forward, Six Decades Later: Visionary States, Civic Locals, and Trusted Schools and Teachers*, 23 KANSAS J.L. & PUB. POL’Y 283, 283-344 (2014); Palma Joy Strand, *Racism 4.0, Civility, and Re-Constitution*, 42 HASTINGS CONST. L.Q. 763, 763-98 (2015); Palma Joy Strand, *Mirror, Mirror, on the Wall . . .: Reflections on Fairness and Housing in the Omaha-Council Bluffs Region*, 50 CREIGHTON L. REV. 183, 183-247 (2017).

9. 388 U.S. 1 (1967).

10. JOHN A. POWELL, *RACING TO JUSTICE* 36 (2012).

race or ethnicity—up from less than a quarter of respondents in 2005.”<sup>11</sup> We have moved beyond “Guess Who’s Coming to Dinner?” to many of us having folks of more than one race around our Thanksgiving table.

Along with different-race spouses and extended family members, there have been children. “The share of multiracial babies has risen from 1% in 1970 to 10% in 2013.”<sup>12</sup> This baby boom has translated into a cohort of young multiracial Americans: “Among all multiracial Americans, the median age is 19, compared with 38 for single-race Americans.”<sup>13</sup> Overall, in 2013, approximately nine million Americans—6.9% of the population—identified with more than one race, an option the United States Census Bureau first provided in 2000.<sup>14</sup> When my husband and I filled out the 1990 census, we had to choose between “Black,” “White,” and “Other” for our two daughters born in 1987 and 1989. By the time we filled out the 2000 census, we could check both “Black” and “White” for them as well as for our son born in 1991.<sup>15</sup>

These multiracial babies, children, and young adults have rewired the social equivalent of neural pathways with respect to race. Families of all races and ethnicities have embraced and loved “mixed” kids. Members of the broader community have been open and have made a place for them.

I am thinking here particularly of White families and of members of the broader White community. I am thinking of my father, who grew up in a small community of mostly Swedish ancestry in Iowa in the 1920s and 1930s and did not see a “colored” person until he was in high school. I am thinking of him holding my biracial children on his lap as he read to them, holding them just as he held my sisters and me when we were children. I am thinking of the woman at the National Park Service’s Claude Moore Colonial Farm who eventually welcomed one of my kids into their apprentice program in which children dress in colonial garb and become part of the living history working farm exhibit. Though she initially did not want to deal with the fact of race

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11. *Id.*

12. *Multiracial in America*, PEW RES. CTR. (June 11, 2015), [www.pewsocialtrends.org/2015/06/11/multiracial-in-america/](http://www.pewsocialtrends.org/2015/06/11/multiracial-in-america/).

13. *Chapter 1: Race and Multiracial Americans in the U.S. Census*, PEW RESEARCH CTR. (June 11, 2015), <http://www.pewsocialtrends.org/2015/06/11/chapter-1-race-and-multiracial-americans-in-the-u-s-census/>.

14. *Multiracial in America*, PEW RES. CTR. (June 11, 2015), [www.pewsocialtrends.org/2015/06/11/multiracial-in-america/](http://www.pewsocialtrends.org/2015/06/11/multiracial-in-america/); *Chapter 1: Race and Multiracial Americans in the U.S. Census*, PEW RES. CTR. (June 11, 2015), <http://www.pewsocialtrends.org/2015/06/11/chapter-1-race-and-multiracial-americans-in-the-u-s-census/>.

15. *Major Differences in Subject-Matter Content Between the 1990 and 2000 Census Questionnaires*, U.S. CENSUS BUREAU, <https://www.census.gov/population/www/cen2000/90vs00/> (last visited Mar. 24, 2017).

in 1771, she overcame her reluctance and opened the Farm's free-ranging and barefoot world to my 20th-century daughter.

For White people, Black people have long been Other. *Loving* erodes that Otherness.

#### RACE AS OTHERING

In the United States Supreme Court's *Loving v. Virginia*<sup>16</sup> opinion, Chief Justice Earl Warren speaking for the unanimous Court revealed the wizard standing behind the curtain of Virginia's anti-miscegenation law: "The fact that Virginia prohibits only interracial marriages involving white persons demonstrates that the racial classifications must stand on their own justifications, as measures designed to maintain White Supremacy."<sup>17</sup>

Throughout our history, White advantage and Black disadvantage have both contributed to the racially skewed distribution of resources. White Supremacy and Racial Othering underlie the racial power gradient that privileges and normalizes White while suppressing and marginalizing Black—and other designations deemed non-White.

A generation ago, historian Edmund Morgan traced a sinister connection between Black slavery and the aspirations of equality articulated at the beginning of the nation, especially by the Virginia patriots.<sup>18</sup> White men of property felt comfortable declaring that "all men are created equal" because slavery ensured that a substantial proportion of the population would remain in perpetuity at the bottom of the social and economic pyramid. Because poor Whites could be "equal" racially, they accepted economic inequality. African-Americans were unequal on both fronts.

Writing just a few years later, legal historian and future judge Leon Higginbotham, Jr., transposed this observation from the political to the legal sphere: "[W]hen the legal process establishes a right of one particular person, group, or institution, it simultaneously imposes a restraint on those whose preferences impinge on the right established. Ultimately, the legal process has always acted as an expression of social control."<sup>19</sup> Higginbotham exposed how the juxtaposition of the American ideals of liberty and equality with the American reality of slavery created a dissonance in our political psyche. White colonists

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16. 388 U.S. 1 (1967).

17. *Loving v. Virginia*, 388 U.S. 1, 11 (1967).

18. EDMUND MORGAN, *AMERICAN SLAVERY, AMERICAN FREEDOM* (1975).

19. A. LEON HIGGINBOTHAM, JR., *IN THE MATTER OF COLOR: RACE & THE AMERICAN LEGAL PROCESS: THE COLONIAL PERIOD* 13 (1978).

condemned rule without representation by King George III as “slavery” while excluding Black slavery from their protests.<sup>20</sup>

Yet the Declaration of Independence declared not that “all white men” but that “all men are created equal.” By its very language, the Declaration of Independence introduced to the nation, from its inception, the problem of a “moral overstrain,” a burden from which it has ever since suffered in varying degrees—that “tension caused between high ideals and low achievement, between the American creed including equalitarian individualism and the historical reality of unjust, unequal and class treatment for blacks.”<sup>21</sup>

The bifurcation of rhetoric and reality was not accidental. Historian Robert Parkinson has traced in detail how the founding fathers actively constructed revolutionary unity against Britain by tying Britain to Black slave insurrections in the South and Native resistance on the Western frontier.<sup>22</sup> Political support for independence coalesced around fears of Black revolts against slavery and Native American actions to protect traditional lands. White colonists and settlers banded together in significant part because patriot newspapers highlighted threats of violence from disfavored groups within or on the colonies’ borders and emphasized alliances between those groups and the British. In the face of these intimidating enemies, the colonies drew together and the causes of revolution and independence flourished.<sup>23</sup> The unity of the White patriots was forged in opposition to fear and exclusion of Blacks and Natives.

When Thomas Jefferson, slaveholder and patriot, wrote “We hold these truths to be self-evident” in the Declaration of Independence, the “We” included neither Black persons who were enslaved nor Native Americans resisting the Western colonial expansion. Linda Bolton, professor of American Literature, views the Declaration and other texts of our national founding through the lens of the ethics of Emmanuel Levinas.<sup>24</sup> Levinas’s work centers around the responsibility every person has to the Other, not to confine them by “know”ing but to embrace their unknowable difference or “alterity.”<sup>25</sup> Referring to Jefferson, Bolton frames race in terms of Levinas’s Other: “Here, at the dawn of the American experiment, is the presence of the Other human whose rights to freedom are categorically denied through the laws of

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20. *Id.* at 375-76.

21. *Id.* at 384 (citation omitted).

22. ROBERT G. PARKINSON, COMMON CAUSE: CREATING RACE AND NATION IN THE AMERICAN REVOLUTION (2016).

23. See HIGGINBOTHAM, *supra* note 19, at 9.

24. LINDA BOLTON, FACING THE OTHER: ETHICAL DISRUPTION AND THE AMERICAN MIND (2004).

25. *Id.* at 2-15.

enslavement. This Other is already deprived of the Declaration's explicit promises of freedom."<sup>26</sup>

Bolton views the Levinasian perspective as challenging the asserted individual freedoms of the Declaration and pointing toward an ethics of justice.

If the covenant of the republic is sealed in the name of freedom and not in the prior responsibility and obligation that the possibility of justice entails, it runs the risk of becoming a linguistic promise that permits and, at its worst, sanctions the persecution and death of the Other.<sup>27</sup>

Descriptively, the Declaration formed an essential part of a dominant (White) national identity that has consistently visited disadvantage, including persecution and death, on people who have been Othered through race.

The contemporary conclusion about race is that it is socially constructed. Biological and other criteria that have been advanced over time do not hold up to careful scrutiny of the evidence. But acknowledging that race is a social construction does not explain why it was socially constructed—what purpose race served and serves, what it was socially constructed to accomplish.

Looking at the broad brush of United States history, race has been the social construction that facilitated economic exploitation—first of people of African ancestry and then of Chinese and Mexican workers in the 19th and 20th centuries. Race has been the social construction that justified territorial expansion and dominion—over Native Americans beginning shortly after Europeans arrived on this continent and over Mexicans in the 19th century. By signifying Otherness, race marked off entire groups of people who were socially designated as objects to be used to further the social (White) Us.

White Supremacy, named by Chief Justice Warren in *Loving*, describes a social order in which racial Whiteness is the condition for membership in the Us. And an integral aspect of Whiteness is the Othering of all those who are not raced White. Fundamentally, Whiteness calls for members of the Us to look away from the personhood and humanity of those who are not-Us, those who are Other.

Peggy McIntosh, in her 1988 touchstone essay on White Privilege, identifies myriad important and trivial privileges of Whiteness.<sup>28</sup> I have previously identified number sixteen as core to the phenomenon of White Privilege: "I can remain oblivious of the language and cus-

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26. *Id.* at 1-2. See also HIGGINBOTHAM, *supra* note 19, at 9-10.

27. BOLTON, *supra* note 24, at 123.

28. PEGGY MCINTOSH, WHITE PRIVILEGE: UNPACKING THE INVISIBLE KNAPSACK, <https://www.deanza.edu/faculty/lewisjulie/White%20Privilege%20Unpacking%20the%20Invisible%20Knapsack.pdf> (last visited Mar. 24, 2017).

toms of persons of color who constitute the world's majority without feeling in my culture any penalty for such oblivion."<sup>29</sup> This quality of being oblivious to persons of color—to racial Others—is core to the phenomenon of White Privilege because it describes the essence of race. Race is Othering, and Othering is by definition objectifying people. The quintessence of Whiteness is willful or blithe or careless ignorance and a studied lack of curiosity to address that ignorance. Whiteness goes beyond individual failure to “see”<sup>30</sup> other people as fellow human beings; Whiteness is constituted by the social demand for this failure. The price of being a member of the White Us is practicing the not-seeing of people who are not White.

#### FROM JOHN BROWN TO RICHARD AND MILDRED LOVING

John Brown is an uncomfortable character in our racial history: a White man who not only took up the abolitionist cause but killed and was killed for it. The ill-fated homicidal raid that he led on the United States armory at Harpers Ferry in 1859 and his subsequent trial and execution anticipated and perhaps helped to precipitate the Civil War. Do we today condemn him for his unapologetic violence or do we applaud him for the depth of his commitment to a just crusade?

Bolton brings Levinas's ethics of the Other to the Brown story. Bolton puts to the side Brown's prior bloody history in Kansas, where he murdered pro-slavery settlers;<sup>31</sup> she also brackets accounts of his uncompromising and perhaps unbalanced religious beliefs and insanity.<sup>32</sup> Focusing on the raid at Harpers Ferry and its consequences, she cuts to the core of the convictions that motivated Brown, convictions that he expressed in his answer at his trial for murder and treason to the question “How do you justify your acts?” Brown responded: “I think, my friend, you are guilty of a great wrong against God and humanity—I say it without wishing to be offensive—and it would be perfectly right for any one to interfere with you so far as to free those you willfully and wickedly hold in bondage.”<sup>33</sup>

Bolton portrays John Brown as a free White man who sees the enslaved Black Other. Brown perceives the fundamental violence enacted by the state upon the Other. Acting in solidarity with the Other, he undertakes what might be considered an ethical act of violence<sup>34</sup>

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29. Strand, *Racism 4.0*, *supra* note 8, at 773.

30. “See” in the respect sense. Palma Joy Strand, *The Civic Underpinnings of Legal Change: Gay Rights, Abortion, and Gun Control*, 21 *TEMPLE POL. & CIV. RIGHTS L. REV.* 117, 137-38 (2011).

31. BOLTON, *supra* note 24, at 188-89.

32. *Id.* at 191-92.

33. *Id.* at 177-78.

34. *Id.* at 189.

directed at the state. Though his act is criminal, it is also ethically disruptive of the unjust laws of the state. In his final statement before sentencing, Brown said:

I believe that to have interfered as I have done in behalf of His despised poor, is no wrong, but right. Now, if it is deemed necessary that I should forfeit my life for the furtherance of the ends of justice, and mingle my blood with the blood of millions in this slave country whose rights are disregarded by wicked, cruel, and unjust enactments, I say let it be done.<sup>35</sup>

Bolton frames this declaration in Levinasian terms: “When the state is ‘evil,’ when the state emerges as the ‘executioner’ whose institutional violence persecutes ‘the third party,’ then justice demands my intervention . . . .”<sup>36</sup>

John Brown died in December 1859 at Charles Town, now in the State of West Virginia, but then in the Commonwealth of Virginia. Almost one hundred years later in June 1958, Richard Loving and Mildred Jeter, residents of Virginia, traveled to Washington, D.C. and got married. Brown was a crusader. The Lovings only reluctantly picked up the gauntlet of racial reform. Brown acted with violence. The Lovings acted with love.

And yet, ultimately, Bolton concludes, “The ethical meaning of John Brown stems from his unique willingness to stand against the state and to assert, with the full force of his person, the primacy of justice before the privilege of freedom.”<sup>37</sup> Brown rejected the deal that was cut at the nation’s founding in which the freedom bought for some by the Declaration of Independence was “purchased at the cost of the Other’s persecution.”<sup>38</sup>

Bolton refers to the “hysteria”<sup>39</sup> that surrounds John Brown in the American psyche. How, ultimately, are we to interpret the actions of a White man attempting to lead a (Black) slave revolt? Bolton responds, “[O]ne can argue that he ultimately performs what Derrida calls a ‘strategy of rupture,’ one designed to contest the ‘given order of the law’ (as well as its judicial authority) in order to open the way for the creation of a new and more just law.”<sup>40</sup>

Though the acts of John Brown and the acts of Richard and Mildred Loving are categorically opposite—John Brown’s violence con-

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35. *Id.* at 183. In Bolton’s view, “Brown’s own words transformed him from a failed hero into America’s greatest criminal, into the guilty American. His redefinition of his own guilt—and his embrace of that guilt—turned his violent act from a historical side-light into a culturally significant moment.” *Id.* at 198.

36. *Id.* at 192.

37. *Id.* at 198.

38. *Id.* at 2.

39. *Id.* at 175.

40. *Id.* at 176.

trasts to the Lovings' love—there are fundamental similarities in these two acts of resistance, 100 years apart. Both John Brown and the Lovings, in Bolton's words, stood "against the state," and both "asserted the primacy of justice."<sup>41</sup> And the wellspring of both acts of resistance was rejection and transcendence of the Othering that is race's essential function.

The persistent defense in *Loving v. Virginia*<sup>42</sup> by the Commonwealth of Virginia of its anti-miscegenation law all the way through the appeal to the United States Supreme Court communicates a conviction that the stakes were high. The Supreme Court named those stakes: the maintenance of White Supremacy. Interracial marriage is unlike interracial liaisons and interracial rape in the context of slavery or the culture of racial violence that persisted in the nation following slavery. It is unlike friendship or collegiality or even fellow citizenship across racial lines. Interracial marriage directly confronts and negates racial Othering.

Yet that confrontation is qualitatively different from John Brown's direct attack on the racial Othering of slavery. The interracial marriage of the Lovings offers instead the possibility of transforming the meaning of Othering, of shifting the traditional social practices and norms of Othering.

#### THE *LOVING* TRANSFORMATION OF RACIAL OTHERING— "FIRST GENERATION"

One of my favorite novels is Bessie Head's *When Rain Clouds Gather*.<sup>43</sup> Set in 1960s Botswana, the book tells the story of Makhaya, a South African revolutionary on the run from apartheid who finds sanctuary in the small agricultural village of Golema Mmidi. Makhaya becomes involved in the efforts of European agriculturalist Gilbert to bring more effective farming methods to the village. Makhaya ends up in the middle of a conflict between the traditional tribal chief and the people of Golema Mmidi. And he falls in love with Paulina Sebeso, a leader of the women of the village who do the actual work of farming.

Over the arc of the story, Makhaya evolves from a man motivated by a cause to a man caught up in the web of everyday life and relationship. As the book ends, the omniscient narrator predicts that "Makhaya would find, in spite of himself, that he had to live and give

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41. *Id.* at 198.

42. 388 U.S. 1 (1967).

43. BESSIE HEAD, *WHEN RAIN CLOUDS GATHER* (1995).

up his morbid speculations on oppressors and oppressed.”<sup>44</sup> Looking ahead,

the Good God cast one last look at Makhaya, whom he intended revenging almightily for his silent threat to knock him down. He would so much entangle this stupid young man with marriage and babies and children that he would always have to think, not twice but several hundred times, before he came to knocking anyone down.<sup>45</sup>

Marriage, as Bessie Head wisely observes, consists not only of daily interactions with another person but of days of daily interactions. These interactions, which range from the mundane to the momentous, weave over time a tapestry of many threads. Marriage is entanglement. The repetition and variation involved in marriage create of one’s spouse not simply a three—but a four-dimensional person—a living, breathing human being encountered over time. Marriages, moreover, involve love and trust, relational qualities that grow out of vulnerability and generosity and trustworthiness.

The complex reality of everyday shared lives erodes the foundation for Othering not simply in the John Brown sense of standing with the Other but in the deeper sense of being interconnected with the Other. It is in this latter sense that a marriage such as the Lovings’ transforms not only one’s perceptions of and interactions with an Other but the very experience of Othering itself.

Professor of English Grant Jenkins explores the experience of encountering the Other through the writing of poets and other African and African-American artists and thinkers. According to Jenkins, the Western experience centers on the individual (White) subject, who exists in a long tradition in which Black persons are defined and viewed as the Other. The African and African-American experience rotates this perspective 180 degrees, viewing and understanding the world from a place of Otherness.

Drawing from renowned writers such as W.E.B. DuBois and Frantz Fanon and from less familiar poets such as mid-20th century American writer and educator Melvin Tolson<sup>46</sup> and contemporary National Book Award winner (Poetry) Nathaniel Mackey,<sup>47</sup> Jenkins pieces together a transfigured understanding and experience of Otherness that is grounded in perceptions of the world from the stance of the Othered. “Tolson rejects the position that to be the Other is

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44. *Id.* at 184.

45. *Id.* at 184-85.

46. See Grant Jenkins, *Melvin B. Tolson’s Ethical Experiment and The Philosophy of Otherness*, FLASHPOINT, <http://www.flashpointmag.com/jenktol.htm> (last visited Apr. 5, 2017).

47. See Jenkins (Mackey), *supra* note 1.

anathema; instead he embraces the position of otherness (or alterity) as ethical and welcomes what is other . . . .”<sup>48</sup> For Mackey, “[i]nstead of signifying only a negative and inferior position imposed upon a person from some hegemonic power, ‘Other’ . . . represents an unavoidable absence inherent in the very ‘texture of things’ . . . [which] demands a response, a responsibility, an ‘indebtedness,’” as evoked by the passage with which this essay began:<sup>49</sup>

we were and by that  
touched “I-ness” to “I-ness,”  
inward, wombed inducement  
arced into “us-ness,”  
otherness, nothingness.<sup>50</sup>

Citing Senegalese poet and political figure Leopold Sedar Senghor, Jenkins affirms “that there is not just one kind of otherness . . . based on negativity.”<sup>51</sup> While the European approach to the Other is “cannibalistic,” the “African . . . ‘discovers the Other . . . .’”<sup>52</sup> Otherness and difference invite curiosity rather than conquest. “Mackey,” according to Jenkins, “finds in African sources an alternative way of being a subject in the world, a nonimperial, nonuniversalizing way, and he also finds an oppositional poetics that seeks, rather than rejects or assimilates, the Other.”<sup>53</sup> The African word *ubuntu* captures a world view in which the individual and the community are intertwined: “I am because we are, and since we are, therefore I am.”<sup>54</sup> Otherness is not only “excluding people from power . . . .”<sup>55</sup> Otherness and Othering also offer a stance for a certain kind of disorder that can “disrupt the dominant political order.”<sup>56</sup>

Jenkins grounds the posture of discovery toward Others in an African ethics that recognizes the connectedness of individual humans with the larger community. At the same time, Jenkins recognizes the existence of a European strain of relational ethics. Like Bolton, he highlights the work of Emmanuel Levinas. “[T]he Other takes on a positive valence in the work of these [African and African-American] writers, a valence that resembles Emmanuel Levinas’s ethical notion

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48. Jenkins (Tolson), *supra* note 46.

49. Jenkins (Mackey), *supra* note 1, at 39.

50. Jenkins (Mackey), *supra* note 1, at 42. Jenkins quotes NATHANIEL MACKEY, SCHOOL OF UDHRA (1993).

51. Jenkins (Tolson), *supra* note 46.

52. Jenkins (Tolson), *supra* note 46.

53. Jenkins (Mackey), *supra* note 1, at 36.

54. *Id.* at 40.

55. *Id.* at 39.

56. *Id.* at 40.

of the Other . . . [in which] the Other holds the moral high-ground and demands ethical response, responsibility, from the self.”<sup>57</sup>

This Black or African discovery approach to Others is accessible and workable. And it is, I venture to say, the general attitude toward an individual Other who shares one’s everyday life. But having adopted this attitude toward one racial Other, as happens in an interracial marriage, it is natural to extend that same attitude toward racial Others outside of the marriage. This, as the Commonwealth of Virginia and the United States Supreme Court both recognized in *Loving v. Virginia*,<sup>58</sup> has the potential for destabilizing the foundation of Otherness on which White Supremacy is erected.

#### THE *LOVING* TRANSFORMATION OF RACIAL OTHERING— “SECOND GENERATION”

While the story of Richard and Mildred Loving challenges the White Supremacist narrative of Othering people of color, it also falls within the structure of that narrative. White encounters Black (though Mildred self-identified as Native American<sup>59</sup>). Despite the plot line and denouement departing from the standard template, the protagonists embody familiar identities of Us and racial Other.

*Loving* children, however, create a new narrative. *Loving* children are biracial, multiracial, mixed. People with mixed ancestry have existed since before the founding of the nation, but the logic of race required the creation of categories that separated even the mixtures. Quadroon, octoroon, mulatto, mestizo—these are just some of the pigeonholes that were created to hold distinct individuals who did not fit neatly into the paradigmatic racial constructions.

*Loving* children, in contrast, have moved from being literally labeled “Other” in racial terms to being White and Black, Black and Asian, Asian and Native, Native and White—and more. In the 2010 census there were fifty-seven possible racial combinations along with six single racial categories.<sup>60</sup> The pre-*Loving v. Virginia*<sup>61</sup> pigeonholes of separation have given way to additive and overlapping collages.

Biracial, multiracial, mixed people may identify with one of the traditional solo racial categories. Historically, mixed individuals with

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57. Jenkins (Tolson), *supra* note 46.

58. 388 U.S. 1 (1967).

59. Arica Coleman, *What You Didn’t Know About Loving v. Virginia*, TIME (June 10, 2016), <http://time.com/4362508/loving-v-virginia-personas/>.

60. PEW RES. CTR., MULTIRACIAL IN AMERICA: PROUD, DIVERSE AND GROWING IN NUMBERS 20 (June 11, 2015), [http://www.pewsocialtrends.org/files/2015/06/2015-06-11\\_multiracial-in-america\\_final-updated.pdf](http://www.pewsocialtrends.org/files/2015/06/2015-06-11_multiracial-in-america_final-updated.pdf).

61. 388 U.S. 1 (1967).

Black ancestry experienced life as Black. But many multiracial people feel comfortable with multiple racial identities. *Loving* children, for example, might identify with Black and with White while also identifying as biracial, which is a different racial experience today than either Black or White. Not surprisingly, multiracial people are more likely to cross racial boundaries than single-race people.<sup>62</sup>

The experience of growing up in a multi-racial family has many of the de-Othering effects of an interracial *Loving* marriage. More deeply, mixed racial identity at its core negates racial Othering. Instead of one of Us encountering an Other, one person inhabits both experiences. The straitjacket of a single racial identity opens up into the possibility of multiple racial selves.

People with multiracial identities are effective boundary-crossers, “function[ing] effectively within both minority and majority environments.”<sup>63</sup> People with multiple identities have a greater capacity to build coalitions with others so as to propel social movements forward.<sup>64</sup> “[B]eing mixed makes it harder to fall back on the tribal identities that have guided so much of human history, and that are now resurgent. Your background pushes you to construct a worldview that transcends the tribal.”<sup>65</sup>

In the United States, tribal is racial. Race continues to drive our politics today,<sup>66</sup> which reminds us that racial Othering continues to have powerful effects within the nation.<sup>67</sup> Over the next generation, however, the proportion of the United States population that is multiracial is projected to more than double—from seven percent today to

62. PEW RES. CTR., *MULTIRACIAL IN AMERICA: PROUD, DIVERSE AND GROWING IN NUMBERS 71-73* (June 11, 2015), [http://www.pewsocialtrends.org/files/2015/06/2015-06-11\\_multiracial-in-america\\_final-updated.pdf](http://www.pewsocialtrends.org/files/2015/06/2015-06-11_multiracial-in-america_final-updated.pdf).

63. Sarah Gaither, “Mixed” Results: Multiracial Research and Identity Explorations, 24 *CURRENT DIRECTIONS IN PSYCHOL. SCI.* 114, 115 (2015), <http://journals.sagepub.com/doi/pdf/10.1177/0963721414558115>.

64. See, e.g., Edwina Barvosa-Carter, *Multiple Identity and Coalition Building: How Identity Differences within Us Enable Radical Alliances among Us*, in *FORGING RADICAL ALLIANCES ACROSS DIFFERENCE: COALITION POLITICS FOR THE NEW MILLENNIUM* 21 (Jill M. Bystydzienski & Steven P. Schacht eds., 2001) (stating multiple identities facilitate coalition-building, create synergies between identity formation and community building, and allow for flexibility within coalitions as various identity frames come to the fore or recede into the background).

65. Moises Velasquez-Manoff, *What Biracial People Know*, *N.Y. TIMES* (Mar. 4, 2017).

66. See, e.g., Avidit Archaya et al., *The Political Legacy of American Slavery*, 78 *J. POLS.* 621 (2016).

67. See, e.g., Chris Ladd, *Unspeakable Realities Block Universal Health Coverage in America*, *FORBES* (Mar. 13, 2017), <https://www.forbes.com/sites/chrisladd/2017/03/13/unspeakable-realities-block-universal-health-coverage-in-the-us/#3302148e186a> (referring to broad range of government-supported health and welfare benefits that predominantly benefit White Americans as “white socialism”).

about twenty percent in 2050.<sup>68</sup> This demographic shift and its relational and identity effects offer the potential to diminish the potency of race as an Othering construct. Growing recognition of the value of difference and inclusivity beckon in this direction.<sup>69</sup> Heterogeneous groups and diverse systems are less susceptible to groupthink and have greater potential for creativity than “all on the same page” collectives.<sup>70</sup> At the same time, contemporary calls for suppressing “identity politics”<sup>71</sup> echo discomfort with this evolving sense of a healthy social dynamic grounded in difference. We are at a national inflection point with respect to race.

#### THE NEXT 50 YEARS

The late philosopher-sociologist Zygmunt Bauman wrote of the social dismissal of people that tolerates “wasted lives”<sup>72</sup> in the United States system of mass incarceration,<sup>73</sup> which perpetuates the historical Othering of race,<sup>74</sup> and of the globalizing economy that is less and less invested in the health and well-being of individual communities and the people within them. Pope Francis has invoked Bauman in calling for a “social economy” that invests in people and opens access to ownership and opportunity by spreading work . . . [The Pope] wants a vigorous civil society that holds both state and market to account.”<sup>75</sup> Othering legitimates wasted lives. Eroding the stance of Othering, in contrast, opens the door to social and economic transformation.

In 2008, on the 40th anniversary of Loving, Mildred Loving issued a statement in support of same-sex marriage:

I am still not a political person, but I am proud that Richard’s and my name is on a court case that can help reinforce the love, the commitment, the fairness, and the family that so many people, black or white, young or old, gay or straight

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68. Valasquez-Manoff, *supra* note 65.

69. See, e.g., MARTIN DAVIDSON, *THE END OF DIVERSITY AS WE KNOW IT: WHY DIVERSITY EFFORTS FAIL AND HOW LEVERAGING DIFFERENCE CAN SUCCEED* (2011).

70. See, e.g., KEITH SAWYER, *GROUP GENIUS: THE CREATIVE POWER OF COLLABORATION* (2007); JAMES SUROWIECKI, *THE WISDOM OF CROWDS: WHY THE MANY ARE SMARTER THAN THE FEW AND HOW COLLECTIVE WISDOM SHAPES BUSINESS, ECONOMIES, SOCIETIES, AND NATIONS* (2004).

71. See, e.g., Mark Lilla, *The End of Identity Liberalism*, N.Y. TIMES (Nov. 18, 2016), [https://www.nytimes.com/2016/11/20/opinion/sunday/the-end-of-identity-liberalism.html?\\_r=0](https://www.nytimes.com/2016/11/20/opinion/sunday/the-end-of-identity-liberalism.html?_r=0).

72. ZYGMUNT BAUMAN, *WASTED LIVES: MODERNITY AND ITS OUTCASTS* (2004).

73. Zygmunt Bauman, *Social Uses of Law and Order*, in *CRIMINOLOGY AND SOCIAL THEORY* 23, 39 (David Garland & Richard Sparks eds., 2000).

74. See, e.g., MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (2010).

75. Austen Ivereigh, *Is the Pope the Anti-Trump?*, N.Y. TIMES (Mar. 4, 2017), <https://www.nytimes.com/2017/03/04/opinion/sunday/is-the-pope-the-anti-trump.html>.

seek in life. I support the freedom to marry for all. That's what Loving, and loving, are all about.<sup>76</sup>

We usually think of politics as the affairs or business of government. But as its dictionary definition indicates, politics more broadly involves “the total complex of relations between people living in society.”<sup>77</sup>

In the latter sense, the Lovings were profoundly political people. As are we all. How we are with each other—that is politics. When we accept the social, legal, and institutional structures that perpetuate “wasted lives,” we accept a practice of Othering that releases Us from responsibility by denying the personhood of Others.

The Lovings and *Loving v. Virginia*<sup>78</sup> opened up a path toward a different way of being with Others. We can create a politics of openness and commitment to Others. We can continue to move toward Othering in the *Loving* mode of discovering Others who are different through curiosity, attention, respect, and empathy.

If we choose.

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76. *Mildred Loving, 40 Years Later*, THE ATLANTIC – THE DAILY DISH (June 18, 2007), <https://www.theatlantic.com/daily-dish/archive/2007/06/mildred-loving-40-years-later/227582/>.

77. *Politics*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/politics>.

78. 388 U.S. 1 (1967).

