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All in the Family: Interracial Intimacy, Racial Fictions, and the Law

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As the son of a white American mother and a Kenyan father, President Barack Obama's mixed-race parentage not only sparked a public fascination with his multiracial and multinational family tree¹ but also, for average Americans, an increased interest in their own as well as others' multiracial lineages.² In part, the allure of President Obama's and others' mixed-race, Black-white ancestry derives from the nearly 500 years of American legal, social, and political inventions erected to actively maintain the fictions that whites and Blacks were not intended to procreate and were not capable of establishing families together—fictions to which many Americans continue to adhere in the twenty-first century. Aptly timed, *According to Our Hearts: Rhinelander v. Rhinelander and the Law of the Multiracial Family*³ by Angela Onwuachi-Willig views the ways in which American law and society have defined and shaped the perceptions of multiracial identity—historically and contemporarily—through a multidimensional lens. With a primary emphasis on

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1. See, e.g., *Ancestry.com Discovers President Obama Related to First Documented Slave in America*, ANCESTRY.COM (July 30, 2012), <http://corporate.ancestry.com/press/press-releases/2012/07/ancestry.com-discovers-president-obama-related-to-first-documented-slave-in-america/>.

2. See, e.g., RACHEL L. SWARNS, *AMERICAN TAPESTRY: THE STORY OF THE BLACK, WHITE, AND MULTIRACIAL ANCESTORS OF MICHELLE OBAMA* (2012); DANIEL J. SHARFSTEIN, *THE INVISIBLE LINE: THREE AMERICAN FAMILIES AND THE SECRET JOURNEY FROM BLACK TO WHITE* (2011).

3. ANGELA ONWUACHI-WILLIG, *ACCORDING TO OUR HEARTS: RHINELANDER V. RHINELANDER AND THE LAW OF THE MULTIRACIAL FAMILY* (2013).

the experiences of heterosexual Black-white couples and families, *According to Our Hearts* also investigates those of interracial same-sex couples and their families, presciently appreciating the commonalities and variances between their experiences due to intersecting gender, race, class, and temporal dynamics.

Professor Onwuachi-Willig engages her audience instantly, beginning her exploration of the legal and social exclusion of Black-white unions and families, and the attendant racial fictions created to maintain boundaries between Blacks and whites, with a sensational yet relatively unknown trial to contemporary readers: *Rhineland v. Rhineland*.⁴ Pressured by his family and facing disownment, Leonard Rhineland—one of New York’s social elites—sought an annulment from his wife, Alice, in 1924 after a three-year courtship and a brief marriage. Leonard claimed that Alice, a working class woman of racially ambiguous ancestry, committed an act of fraud by misrepresenting to Leonard that she was white in order to marry. Though New York law did not prohibit interracial marriages, Alice’s alleged misrepresentation served as a sufficient basis for annulment.⁵ Interestingly, in lieu of maintaining her “whiteness,” Alice and Alice’s lawyers assented to the charge that she was in the parlance of the time: “colored or of colored blood.”⁶

Consequently, Alice’s lawyers argued that it was not Alice who committed an act of “racial fraud”⁷ but rather Leonard who committed a punishable, racial transgression. According to Alice’s counsel, Leonard knew prior to marrying Alice that she was not white in light of his personal and intimate interactions with Alice and her family, namely their associations with Blacks, physical appearance, and behaviors. Therefore, by marrying Alice, Leonard knowingly crossed explicit and seemingly impermeable race, gender, and class boundaries, which were very much alive in the birthplace of the Harlem Renaissance and within its midst.⁸ In turn, this trial aimed at invalidating the Rhinelanders’ marriage developed into a nefarious, national spectacle of not only establishing Alice’s racial identity but also nullifying Alice and Leonard’s personhood, their mutual love and affection, and the prospect of a viable, interracial, and interclass family.

Acutely, Professor Onwuachi-Willig demarcates the ways in which Leonard and Alice’s lawyers manipulated race, gender, and class prejudices, stereotypes, and dynamics (which have transcended time and space) to prove their respective legal arguments: Alice misrepresented that she was white and seduced Leonard into marriage; and Leonard had actual or constructive knowledge that Alice was not white, as race was a knowable, transparent,

4. 219 N.Y.S. 548 (N.Y. App. Div. 1927); *see also* 157 N.E. 838 (N.Y. 1927) (affirming jury verdict in favor of Alice Rhineland).

5. ONWUACHI-WILLIG, *supra* note 3, at 36.

6. *Id.* at 54.

7. *Id.* at 113.

8. *See id.* at 42–61.

performative, and fixed aspect of one's identity. With respect to the latter argument, Onwuachi-Willig illustrates how Alice's and Leonard's counsel intently reified pejorative tropes about Black women's physical attributes, moral impropriety, and sexuality⁹ throughout the trial to demonstrate that Alice's behavior conformed to these widely-held racialized and gendered stereotypes and thus did not conform to the socio-legal construction of white womanhood: virtuous, chaste, and beyond reproach. Most notably, Alice's lawyer also proffered Alice's unclothed body before an all-white, all-married male jury as physical evidence in support of the claim that Alice was colored and Leonard unquestionably became aware of Alice's Blackness during intimate, pre-marital encounters. In so doing, Leonard alongside the male jurors, judge, and lawyers examined Alice's torso and legs so that Leonard and the onlookers could "identify the color of her skin."¹⁰ Shocking to contemporary sensibilities as well as early twentieth century spectators, regrettably, the forced exhibition and inspection of women of color's undressed bodies in America's courtrooms was not an anomalous racial determination technique.¹¹

Moreover, though relatively unknown to contemporary audiences, trials of racial determination like the Rhinelanders' annulment trial were also not atypical, which Onwuachi-Willig deftly reveals.¹² These racial determination trials were critical to the paradoxical, socio-legal construction of race—simultaneously discrete and fluid—and *Rhineland v. Rhineland* was no different. Unlike other American nations like Brazil, for example, in the United States, massive social, political, and legal efforts have been devoted to constructing and reproducing a socio-legal fiction of monoraciality in the midst of multiraciality.¹³ Before and after the founding of the United States, numerous campaigns were mounted with the express purpose of obliterating the social, personal, and intimate encounters between races—namely between whites and Blacks—which very much constituted a norm. Though multiracial liaisons and families were not an anomaly,¹⁴ colonial and post-colonial lawmakers (namely white males) manufactured countless racial fictions to

9. See *id.* at 113 (explaining that Alice's lawyer understood the interactive role that race, gender, and class played in the trial; therefore, Alice's lawyer surmised that for greater likelihood of winning, a more effective litigation strategy was not to litigate Alice's whiteness but rather to conform to the jurors raced, classed, and gendered expectations of Alice and thereby depict her as a "stereotypical 'Black Jezebel' and vamp, an oversexed and sexually aggressive black woman with no morals.").

10. *Id.* at 78; see also *id.* at 14–15.

11. See *id.* at 15; see also Walter Johnson, *The Slave Trader, the White Slave, and the Politics of Racial Determination in the 1850s*, 87 J. AM. HIST. 13, 34 (2000) (detailing the public exhibition of Alexina Morrison's bare torso during a trial to determine her status as free or slave, white or Black).

12. See ONWUACHI-WILLIG, *supra* note 3, at 105–10.

13. See D. Wendy Greene, *Determining the (In)Determinable: Race in Brazil and the United States*, 14 MICH. J. RACE & L. 143, 149–58 (2009).

14. See generally, JOEL WILLIAMSON, *NEW PEOPLE: MISCEGENATION AND MULATTOES IN THE UNITED STATES* (1995) (exploring the miscegenation of whites and Blacks in the United States from the colonial period to the present).

evoke a counter-reality to interracial intimacy—racial separation—primarily to preserve a legal, social, and political infrastructure built upon notions of white supremacy, privilege, and racial purity.¹⁵

Indeed, in the very year that the *Rhineland* trial took place, the Virginia legislature codified an “Act to Preserve Racial Integrity”: the infamous statute, later held unconstitutional by the U.S. Supreme Court in *Loving v. Virginia*,¹⁶ which barred whites from marrying non-whites, and in so doing defined a white person as one with “no colored blood” except one who was one-sixteenth Native American and fifteen-sixteenths white.¹⁷ Conversely, the statute classified an individual with a non-white ancestor as non-white (again excepting those with a distant Native American great-grandparent)—marking the first statute to essentially adopt a “one-drop” rule or rule of hypodescent in order to facilitate the illusion of white racial purity. However, Onwuachi-Willig illustrates that Southern lawmakers were not alone in their desire to fortify the fiction of monoraciality in the midst of multiraciality. Their New England brethren—the lawyers and jurors in the *Rhineland* trial—appealed to the prevailing ideology of racial purity and monoraciality despite the living, visual representation of racial fluidity in the courtroom: Alice and Alice’s parents, sisters, and brothers-in-law.

Notably, in his opening statement, Leonard Rhineland’s lawyer made clear his intent to capitalize on the prevailing ideology of racial purity. He would demonstrate the impurity of Alice’s racial whiteness and thus her Blackness. Alice’s mother, an English woman, self-classified (and “appeared”) white yet Alice possessed a “substantial strain of black blood . . . that . . . [came] to her through her father,”¹⁸ whose skin color was of a darker hue than his wife and daughters and whose official governmental documents designated him “colored.”¹⁹ Correspondingly, Leonard’s attorney would confirm the flawlessness of Leonard’s racial whiteness (and social stature) by proving that he was “of pure white stock, and a descendant of one of the original French Huguenot settlers of New Rochelle [New York].”²⁰ Onwuachi-Willig also

15. See Greene, *supra* note 13, at 164–68.

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

17. According to Professor Kevin Maillard:

Despite popular and political discourse surrounding racial intermixture, the absolutism of the Racial Integrity Act threatened to undermine Virginia’s social definition of “White” which allowed for minimal traces of American Indian ancestry. . . . [Therefore,] [s]tate legislators successfully amended the restriction to avoid the reclassification of White elites with remote traces of Indian blood. . . . This exceptionalism extended to Native ancestry only—similar amounts of African ancestry would automatically reclassify the person as irreparably Black. The Racial Integrity Act proclaimed that any trace of African ancestry, regardless of how remote, unquestionably made a person Black.

Kevin Noble Maillard, *The Pocahontas Exception: The Exemption of American Indian Ancestry from Racial Purity Law*, 12 MICH. J. RACE & L. 351, 370–72 (2007).

18. ONWAUCHI-WILLIG, *supra* note 3, at 43–44.

19. *Id.* at 55 (explaining that Alice’s father, George Jones, was classified as “colored” on his naturalization papers).

20. *Id.* at 43.

reveals the myriad ways Leonard's and Alice's lawyers strategically maneuvered Alice's shifting racial identity²¹ in addition to her multi-hued and multi-ethnic²² family dynamic to cabin Alice's identity into a monoracial box: Black. Leonard's lawyer attempted to play on the racial prejudices that the all-white male jury presumably held by demonstrating that Alice and her family members manipulated and defrauded Leonard (as well as others) by "passing as white."²³ Therefore, by ruling in favor of Leonard and annulling the marriage, the jurors would not only be punishing Alice for the act of racial fraud committed against a white man but would also be sending a clear message to other Black women capable of "passing" and "marrying white" that such racial transgression would not be tolerated. Alternatively, Alice's lawyer played on the jurors' racist, classist, and gendered sensitivities, and attempted to persuade them that Leonard (and any other white man in Leonard's position) would undoubtedly know that when he married Alice, he married a Black woman and was becoming a member of a Black family;²⁴ thus, it was Alice for whom they should rule in favor and Leonard whom they should punish for his indiscretions.

Professor Onwuachi-Willig devotes the first half of *According to Our Hearts* to the *Rhinelanders* trial. In so doing, she incisively deconstructs the presumed simplicity and the actual complexity of race in the United States and vividly accounts the sully of Alice's and Leonard's beautiful love affair and its bitter demise due to centuries-old legal and social conventions proscribing interracial (and interclass) love, marriage, and family building. Though denominated a "comprehensive study of . . . the law of the multiracial family,"²⁵ *According to Our Hearts* is not an impassive analysis of historic and contemporary legal cases, like *Rhinelanders v. Rhinelanders*, that have constrained interracial identity, love, marriage, and family. Nor does Onwuachi-Willig confound readers in analysis of legal fictions that have molded the conceptualization of Americans and American families as monoracial. Instead, throughout the second half, *According to Our Hearts* compels a more introspective and nuanced consideration of the Rhinelanders' story of law and love and its import to contemporary times.

Interracial, heterosexual intimacy is no longer legally proscribed and the revelation of one's racial identity would not serve as a sound legal basis for annulment or divorce today as in 1924. What the reader finds, however, is that the monoracial, heterosexual norm encasing love, marriage, family, and

21. On her birth certificate, Alice was classified as Black. *Id.* at 44. However, Alice's marriage affidavit listed Alice as white. *Id.* at 49.

22. Alice's mother was English and her father was allegedly of West Indian ancestry. *Id.* at 54. Alice's younger sister, Grace, married an Italian man. *Id.* Alice's older sister, Emily, married a Black man whom Leonard's lawyer called as a witness to serve as physical evidence that Alice's sisters were Black and thus Alice, too, was Black. *Id.* at 51–52.

23. *Id.* at 52.

24. *See id.* at 57.

25. *Id.* at 19 (internal quotation marks omitted).

identity is deeply embedded and persists in such a way that multiracial individuals and families—especially Black-white mixed-race individuals and families—suffer a “placelessness”²⁶ in American law and society. Professor Onwuachi-Willig emotively captures the ways in which lawmakers and laypersons historically and presently debase, stigmatize, and invalidate multiracial identity and families. She reveals the extent to which modern monoracial families enjoy particular privileges due to the conscious and unconscious role that monoraciality (and its cohorts of racial separation and exclusion) plays in shaping twenty-first century Americans’ (and readers’) understandings and visions of whom one should love, whom one should marry, and with whom one should have a family and establish intimate relationships. In so doing, Professor Onwuachi-Willig masterfully weaves into her legal analysis a collection of interviews, surveys, and anecdotes from pop culture and social media outlets on interracial dating, marriage, and family in addition to personal narratives of modern day Alices and Leonards: individuals who are in heterosexual as well as same-sex interracial relationships; individuals who are the products of interracial unions; and individuals who are members of multiracial families.

Professor Onwuachi-Willig shines a modern light on interracial relationships and families and corresponding beliefs while delineating the pervasiveness of the normative construction of couples and families as not simply heterosexual but also monoracial. Onwuachi-Willig is careful not to essentialize the perspectives on and treatment of interracial intimacy. Insightfully, she acknowledges the divergence in opinions and lived conditions—individually and collectively—of individuals who are a part of interracial relationships in light of their respective races, genders, and sexual orientations. Indeed, one of the distinctive features of *According to Our Hearts* is Onwuachi-Willig’s skillful elucidation of how the racial dynamics of same-sex relationships are shaped by and depart from broader racial and gender stereotypes affixed to interracial, heterosexual relationships. Significantly, however, she places particular emphasis on Black-white, heterosexual relationships in her analysis of multiracial families, recognizing that historically and contemporarily such unions reign as the “greatest taboo of all interracial intimacies.”²⁷

Throughout *According to Our Hearts*, Professor Onwuachi-Willig appropriates Alice and Leonard’s beautiful yet tragic story of race, love, family, and law to contextualize the unique experiences of modern interracial couples and multiracial families in dating, marriage, and family building and to frame the ways in which their identity as a collective triggers particular (in)visibility, discrimination, and exclusion in professional, residential, public, and social settings. However, Professor Onwuachi-Willig emphasizes two important

26. *See id.* at 18.

27. *Id.* at 123.

domains central to full participation and citizenship in American society: housing and employment. To deconstruct the conceptualization of individual identity, love, marriage, and family as monoracial (and quite possibly heterosexual) as well as address the unique marginality, discrimination, and attendant tangible deprivations and microaggressions that multiracial families as a collective suffer while seeking and maintaining housing and employment, Professor Onwuachi-Willig offers a novel yet complex proposition: antidiscrimination laws—namely housing and workplace discrimination statutes—should expressly proscribe discrimination based upon “interraciality.”²⁸

Primarily in her discussion of employment discrimination cases—in which the plaintiffs suffer adverse treatment because of their previous or current romantic, interracial relationship and/or because they are the parents of interracial children—Onwuachi-Willig expounds upon the idea that discrimination based upon “interraciality” should be protected against expressly under the law. While she acknowledges that a jurist’s nuanced legal analysis of race discrimination claims may address the patent injuries that plaintiffs may experience when they are denied housing or employment because of their intimate, interracial relationships, Onwuachi-Willig contends that even such an analysis will not redress the expressive and dignitary harms that plaintiffs suffer due to “the continued assumption of monoraciality among [individuals and] families in [antidiscrimination] statutes.”²⁹ Furthermore, the omission of “interraciality” in laws that simply protect against race discrimination will not attend to the explicit and implicit demands and pressures imposed upon individuals to conform to a monoracial norm in their intimate relationships so that they achieve more full inclusion within myriad spheres like the workplace and home. Accordingly, such an exclusion from the list of proscribed forms of discrimination, per Onwuachi-Willig, will not address the specific prejudice and exclusion that multiracial individuals and family units encounter in these contexts.³⁰ Thus, the omission of “interraciality” in antidiscrimination laws maintains a socio-legal fiction that viable multiracial families are not simply impossible but also nonexistent; perpetuates the legal and social marginalization of multiracial individuals and families; and reifies a normative standard of identity—individual and familial—as monoracial.

Professor Onwuachi-Willig makes plain the need for increased recognition and understanding of “interraciality” so that multiracial individuals and families are afforded more consistent protection against the particular discrimination they encounter in spheres critical to their uninhibited participation and inclusion as citizens. Yet, if lawmakers do not possess (or care to possess) an adept understanding of race, discrimination, and their

28. *See id.* at 22.

29. *Id.* at 198.

30. *See generally id.* at 194–201; *see also id.* at 257–66.

complexities—of the type that Onwuachi-Willig displays throughout *According to Our Hearts*—one must earnestly weigh the express value of including “interraciality” as a protected classification against the potential unintended consequences. These include the reification of race as a discrete, biological construct or alternatively the signaling that race is meaningless in American society, leaving intact the underlying racial stigma, bias, hierarchy, and disadvantage that materially affect individuals and families racialized as non-white. Nonetheless, Professor Onwuachi-Willig’s proposition and justifications for antidiscrimination law to protect against discrimination based upon “interraciality” deserve serious attention and consideration.

Professor Onwuachi-Willig’s multidimensional, historic, and contemporary examination of multiracial identity and families illuminates the defining and influential nature of monoraciality on individual and collective life choices and chances, and thus, on security, visibility, and belonging in American society. As the U.S. Supreme Court continues to consider monumental cases involving marital and racial equality,³¹ *According to Our Hearts* offers a fresh and relevant addition to the literature on race, gender, sexuality, and law, as it cogently reveals the interactive nature of monoraciality and heteronormativity in the construction of the American family and the extent to which notions of intimacy and family undergird the socio-legal invention and reification of monoraciality. In doing so, Onwuachi-Willig integrates a legal historian’s perspective throughout the text; yet, she analyzes not only the law but also the lived experiences, treatment, and perceptions of multiracial partnerships and families through a variety of methodological lenses, making her study of the multiracial family in the United States introspective and relatable for readers of different backgrounds. Accordingly, she motivates the reader to think more critically and holistically about how one currently navigates and negotiates her single and shared identity as a part of a multiracial family in myriad social contexts and how American law obscures this reality. Therefore, in her signature cutting-edge fashion, Professor Angela Onwuachi-Willig delivers a contemporary pulse to a complex and dynamic matter of the heart and the law—interracial intimacy—in *According to Our Hearts*, doing so with extraordinary sensitivity, acuity, and vitality.

31. See, e.g., *Windsor v. United States*, 133 S. Ct. 2675 (2013); *Hollingsworth v. Perry*, 133 S. Ct. 2652 (2013); *Shelby Cnty. v. Holder*, 133 S. Ct. 2612 (2013); *Fisher v. Texas* 133 S. Ct. 2411 (2013); *Mt. Holly Gardens Citizens in Action, Inc. v. Twp. of Mount Holly*, 658 F.3d 375 (3d Cir. 2011), cert. granted in part, 133 S. Ct. 2824 (U.S. June 17, 2013) (No. 11-1507); *Coal. to Defend Affirmative Action v. Regents of the Univ. of Mich.*, 701 F.3d 466 (6th Cir. 2012), cert. granted 133 S. Ct. 1633 (U.S. Mar. 25, 2013) (No. 12-682).