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From Tainted to Sainted: the Interracial Marriage as Cultural Evangelism

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FROM TAINTED TO SAINTED: THE VIEW OF INTERRACIAL RELATIONS AS CULTURAL EVANGELISM

RASHMI GOEL*

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I. INTRODUCTION

Loving v. Virginia is a short opinion—only thirteen pages.¹ It is only one case among hundreds decided in 1967. But *Loving* is the landmark

* Assistant Professor, University of Denver Sturm College of Law. I am indebted to my family, both immediate and extended, who have assisted in ushering this article to completion. My sister and my husband have been particularly helpful. I am thankful for the assistance and encouragement of my colleagues in the formation of these ideas and this Article. I also owe thanks to my copanelists, many of whose work also appears in this issue: Camille Nelson, Angela Onwuachi-Willig, Adele Morrison, Carla Pratt, Jennifer Chacón, Tucker Culbertson, Reggie Oh, Kevin Johnson, Rick Banks, and Rachel Moran. At my home institution, Robert Chang, Roberto Corrada, Nancy Ehrenreich, Ann Scales and Catherine Smith and have all been tremendously helpful. I would be remiss if I did not also mention the excellent work of my former research assistant Julie Sheker, my teaching assistant Kate Black, and my students Justin Curry, Kaitlyn O'Hara, Leah Jensen, Sheena Moran, and Amber Trzinski, who provided invaluable research and editing assistance. Finally, I would like to thank the *Wisconsin Law Review*, the *California Law Review*, and the Thelton E. Henderson Center for Social Justice in Berkeley, California, which hosted symposia highlighting the 40th Anniversary of *Loving v. Virginia*.

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

case of that year. It is *Loving* that we remember, and *Loving* that we commemorate, all because of what it says about racial equality.

Virginia's 1924 antimiscegenation statute, titled "An Act to Preserve Racial Integrity," prohibited marriage between white people and people of color.² For decades, state courts upheld the validity of such laws as legitimately preventing "the corruption of blood" and "the obliteration of racial pride," and even as upholding "good citizenship."³ But in *Loving*, the U.S. Supreme Court found that these statutes violated the Fourteenth Amendment, thus invalidating antimiscegenation laws in no fewer than sixteen states.⁴

The story of the Lovings is not merely the personal story of two people who loved across the color line;⁵ it is the story of the State sanctioning such a union. In dismissing White Supremacy as an insufficient basis on which to make racial classifications,⁶ the Court endorsed racial equality. Quietly and subtly, the Court commended to us Mildred and Richard Loving as the ultimate symbol of equality between the races—as an example of what society can be if we heed the call to abandon racism. To many, therefore, *Loving* represents a milestone,⁷ a

2. Section 20-57 of the Virginia Code provided that "All marriages between a white person and a colored person shall be absolutely void without any decree of divorce or other legal process." VA. CODE ANN. § 20-57 (1960 Repl. Vol.).

Section 20-54 of the Virginia Code provided,

It shall hereafter be unlawful for any white person in this State to marry any save a white person, or a person with no other admixture of blood than white and American Indian. For the purpose of this chapter, the term "white person" shall apply only to such person as has no trace whatever of any blood other than Caucasian; but persons who have one-sixteenth or less of the blood of the American Indian and have no other non-Caucasic blood shall be deemed to be white persons. All laws heretofore passed and now in effect regarding the intermarriage of white and colored persons shall apply to marriages prohibited by this chapter.

Id. § 20-54.

3. See, e.g., *Naim v. Naim*, 87 S.E.2d 749, 756 (1955); *State v. Pass*, 121 P.2d 882, 884 (Ariz. 1942); *Ferrall v. Ferrall*, 69 S.E. 60, 63 (N.C. 1910).

4. When the Court decided *Loving*, Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Missouri, Mississippi, South Carolina, North Carolina, Oklahoma, Tennessee, Texas, Virginia, and West Virginia each had antimiscegenation laws. See Robert A. Destro, *Introduction to Symposium, Law and the Politics of Marriage: Loving v. Virginia After 30 Years*, 47 CATH. U. L. REV. 1207, 1208 (1998).

5. For further information on the personal story of the Lovings, see Robert A. Pratt, *Crossing the Color Line: A Historical Assessment and Personal Narrative of Loving v. Virginia*, 41 HOW. L.J. 229 (1998).

6. See *Loving*, 388 U.S. at 11-12.

7. See, e.g., David Orgon Coolidge, *Playing the Loving Card: Same-Sex Marriage and the Politics of Analogy*, 12 BYU J. PUB. L. 201 (1998).

victory in the ongoing struggle for racial equality and the journey of racial progress.

That journey has been a long one,⁸ extending from the early days of exploration, to the civil rights struggles of the 1950s and 1960s,⁹ to today's debate about the efficacy of affirmative action.¹⁰ We have, however, made some progress. Optimists argue that people of different racial backgrounds are increasingly seeing each other as equals. The best indicator of this, advocates proclaim, is the rise in interracial marriage rates.¹¹ The positive effects of the *Loving* decision appear significant: since the landmark case, rates of interracial marriage have increased more than sixfold¹² and show no signs of slowing.¹³ Interracial marriage—a sign that people of color are increasingly viewed as people “on whom it is worth risking one's future”¹⁴—is the Holy Grail of interracial relations.¹⁵ Like no other act, interracial marriage demonstrates a willingness to embrace the Other¹⁶ as one's own. But while some hopeful scholars claim the increase reflects greater

8. See PAUL GOODMAN, *OF ONE BLOOD: ABOLITIONISM AND THE ORIGINS OF RACIAL EQUALITY* 1-2 (1998); YO JACKSON, *ENCYCLOPEDIA OF MULTICULTURAL PSYCHOLOGY* 328 (2006).

9. See RHODA LOIS BLUMBERG, *CIVIL RIGHTS: THE 1960S FREEDOM STRUGGLE* (1984).

10. See, e.g., *Grutter v. Bollinger*, 539 U.S. 306 (2003); *Gratz v. Bollinger*, 539 U.S. 244 (2003).

11. See, e.g., RANDALL KENNEDY, *INTERRACIAL INTIMACIES: SEX, MARRIAGE, IDENTITY, AND ADOPTION* 36-37 (2003); RENEE CHRISTINE ROMANO, *RACE MIXING: BLACK-WHITE MARRIAGE IN POSTWAR AMERICA* 2-3 (2003).

12. KENNEDY, *supra* note 11, at 126.

13. The most recent census data indicate that biracial unions increased 65 percent between 1990 and 2000. See WILLIAM H. FREY, *THE MILKEN INSTITUTE REVIEW, THIRD QUARTER* 7-10 (2003); see also *After 40 Years, Interracial Marriage Flourishing*, MSNBC.COM, Apr. 15, 2007, <http://www.msnbc.msn.com/id/18090277/>.

14. Randall Kennedy, *How Are We Doing with Loving?: Race, Law, and Intermarriage*, 77 B.U. L. REV. 815, 819 (1997).

15. Recent studies have indicated an increasing social comfort with interracial dating. See, e.g., Alison Stein Wellner, Pop. Ref. Bur., *U.S. Attitudes Toward Interracial Dating Are Liberalizing*, PRB.ORG, June 2005, <http://www.prb.org/Articles/2005/USAAttitudesTowardInterracialDatingAreLiberalizing.aspx>.

16. The concept of the Other, used to refer to the created identity that is antithetical to the Self, yet part of the act in defining the Self, was first posited by the German philosopher G.W.F. Hegel. This concept was built upon and taken up in philosophy by writers such as Jean-Paul Sartre and Jacques Derrida. See JEAN-PAUL SARTRE, *TRANSCENDENCE OF THE EGO* (Farrar Straus & Giroux ed. 1957) (1937); JACQUES DERRIDA, *POSITIONS* (Alan Bass trans. 1981); see also HOMI K. BHABHA, *THE LOCATION OF CULTURE* 44 (1994). Postcolonial theorists then adopted the term and it is used extensively in the dialectic of White Self-Colored Other. See, e.g., FRANTZ FANON, *BLACK SKIN, WHITE MASKS* (C.L. Markham trans., 1986); EDWARD SAID, *ORIENTALISM* (1978).

acceptance of interracial marriages, and evidences progress toward a truly race-equal society,¹⁷ there is a darker side to this story.

To evaluate how far we have truly come on this path, we must examine its historical context. Modern history, at least with respect to race relations, is marked by four distinct institutions:¹⁸ Exploration,¹⁹ European Colonialism and Empire Building,²⁰ the African Slave Trade,²¹ and the Evangelical Mission.²² Each institution has contributed to an overall pattern of racial inequality around the globe. This pattern affects our future as much as it occupies our past. History has given us little option but to see white people on top and people of color on the bottom—because that is the way it is, and always has been and, based on what we know, it appears naturally so. Ultimately, history has left a kind of “cognitive imprint”—a deep-seated psychological certainty—about race and racial inequality. While we may strive for a world with an equal distribution of rights and assets between white people and people of color, our history, and the ingrained viewpoint with which it leaves us, holds us back.

Viewing interracial marriage as the ultimate indicator of racial progress ignores the cognitive imprint that underlies all race relations. Ironically, the Holy Grail of interracial marriage remains shackled to a tradition of racial inequality, because history provides no template of racial equality with which to view it differently. Instead, the cognitive

17. See, e.g., KENNEDY, *supra* note 11, at 37; ROMANO, *supra* note 11, at 2; LORETTA I. WINTERS & HERMAN L. DEBOSE, *NEW FACES IN A CHANGING AMERICA: MULTIRACIAL IDENTITY IN THE 21ST CENTURY* 91 (2003).

18. There are many significant historical events and institutions which have contributed to modern day life. These four are particularly significant because of the ways in which race was used to define relations and further particular agendas on a global scale, the effects of which are still evident today.

19. Although explorers had visited Asia by the 1200s, it was not until the 1400s that “travel was systematized by governments and merchant companies.” GREAT AGES OF MAN: AGE OF EXPLORATION 11-12, 103 (JOHN R. HALE, ED., 1971) [hereinafter AGE OF EXPLORATION]. For further discussion of this era, see JOHN LARNER, *MARCO POLO AND THE DISCOVERY OF THE WORLD* 8-30 (1999); FELIPE FERNÁNDEZ-ARMESTO, *PATHFINDERS: A GLOBAL HISTORY OF EXPLORATION* 153-245 (2006); *THE ENCYCLOPEDIA OF WORLD HISTORY: ANCIENT, MEDIEVAL, AND MODERN* 387, 409 (Peter N. Stearns et al. eds., 6th ed. 2001) [hereinafter ENCYCLOPEDIA OF WORLD HISTORY].

20. See generally 5 *HISTORY OF HUMANITY: SCIENTIFIC AND CULTURAL DEVELOPMENT: FROM THE SIXTEENTH TO THE EIGHTEENTH CENTURY* (P. Burke & H. Inalcik eds., 2005).

21. For a discussion of the slave trade era, see JOHN HOPE FRANKLIN & ALFRED A. MOSS, JR., *FROM SLAVERY TO FREEDOM: A HISTORY OF NEGRO AMERICANS* 27-63 (6th ed. 1988); JAMES A. RAWLEY & STEPHEN D. BEHRENDT, *THE TRANSATLANTIC SLAVE TRADE: A HISTORY* 365 (2005); ENCYCLOPEDIA OF WORLD HISTORY, *supra* note 19, at 390.

22. For a discussion of Christian missions and the era of Western development, see ENCYCLOPEDIA OF WORLD HISTORY, *supra* note 19, at 642.

imprint frames society's view of all interracial relationships. When we examine the experiences of interracial couples and interracial families, we find that others see them,²³ at best, as benevolent alliances in which the white partner is helping or saving the partner of color, and the partner of color is "marrying up."²⁴

At its root, this cognitive imprint is the same White Supremacy²⁵ the Supreme Court denounced in *Loving*.²⁶ It entails inherent inequality, with whites on top and people of color below. If this view controls, then inequality between the races is innate, and the only way to achieve equality is by one group changing to become more like the other. Mutual respect and the exchange of ideas are insufficient to overcome racial inequality because racism does not stem from a failure in perception, but a failure in performance. Racism is not the result of one group failing to understand the other, but rather one group failing to become like the other. In other words, in order to achieve an equal society, people of color must become more like whites. The cognitive imprint not only defines the problem, but determines the only legitimate route to its defeat: it is not a march toward respect for difference,²⁷ but a march toward sameness.

The cognitive imprint continues to operate through well-established models of race relations that presuppose inequality²⁸ and these serve as the lenses through which all interracial relationships are viewed even today. This Article offers the cognitive imprint as a principal reason why, in the 40 years since *Loving*, we have not come further on the path of

23. I am not speaking here of conscious individual viewpoints, but rather the view held subconsciously by the community—particularly the majority community—with respect to people of color generally and interracial relations in particular. This has previously been referred to as "unconscious racism." See, e.g., Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317 (1987); Richard Salgado, *Dan the Xenophobe Rides the A-Train, or the Modern, Unconscious Racist in "Enlightened America,"* 15 AM. U. J. GENDER SOC. POL'Y & L. 69 (2006).

24. The notion of marrying up through color is not a new one. See, e.g., POPULAR EXPRESSION AND NATIONAL IDENTITY IN PUERTO RICO: THE STRUGGLE FOR SELF, COMMUNITY, AND NATION 225 (1998).

25. See Margaret E. Montoya, *Of "Subtle Prejudices," White Supremacy, and Affirmative Action: A Reply to Paul Butler*, 68 U. COLO. L. REV. 891, 906 (1997); Michael Poulshock, *The Struggle Within the Struggle: White Supremacy in the Movement for Racial Justice*, 14 TEMP. POL. & C.R. L. REV. 259, 279-80 (2004).

26. See *Loving v. Virginia*, 388 U.S. 1, 11-12 (1967).

27. A popular view of multiculturalism holds that racial and cultural diversity is an opportunity for cultural exchange and, thus, mutual enrichment. Respect for difference is an essential ingredient in this view. See Ayelet Shachar, *Two Critiques of Multiculturalism*, 23 CARDOZO L. REV. 253, 257-58 (2001).

28. See *infra* Part II.

racial progress,²⁹ and why we still struggle to ascertain exactly how far we have come.³⁰ While one may argue that there is now greater acceptance of interracial marriage, and therefore great progress, such an argument fails to grapple with the underlying view of racial inequality furnished and fostered by history. Despite forty years since the *Loving* decision and the Court's bold condemnation of anti-miscegenation statutes, we have not overcome the insidious message of White Supremacy, we have merely altered its tone. Though the expression may have changed over time, the presumed racial inequality essential to this imprint has remained the same. We can see this by examining the very area with which *Loving* was concerned—the interracial marriage, and by extension the interracial family.

To this end, Part II of this Article introduces four archetypes of interracial relations emanating from the four historical institutions already noted: the Civilized White and Colored Savage, the White Colonizer and Colored Subject, the White Master and Colored Slave, and the White Missionary and Colored Heathen.³¹ Together, these pairings have occupied the historical and psychological landscape for hundreds of

29. Interracial relations in general have not progressed very far. A Department of Justice report revealed that between 1997 and 1999, race motivated 61 percent of hate crimes and that ethnicity motivated an additional 11 percent. The report additionally found that “[y]ounger offenders were responsible for most hate crimes. Thirty-one percent of violent offenders and 46% of property offenders were under age 18.” KEVIN J. STROM, U.S. DEP’T OF JUSTICE, HATE CRIMES REPORTED IN NIBRS, 1997-99, at 1 (2001). These statistics are particularly revealing, as we generally presume that things are getting better and it is the older generation, born prior to 1960, that harbors racist attitudes. *See, e.g., After 40 Years, Interracial Marriage Flourishing, supra* note 18 (asserting that older people are less likely to marry outside of their race).

30. It is difficult for us to assess the level of racism when we are unsure what qualifies as racism. A quick scan of the daily news reveals the brewing controversy over “what is racist?” For example, Senator Joseph Biden’s recent remarks about presidential hopeful Senator Barack Obama being “articulate” were taken by some as racist, and ultimately Biden apologized, but the caveat was always that he did not mean anything by it. Adam Nagourney, *Biden Unwraps '08 Bid With an Oops!*, N.Y. TIMES, Feb. 1, 2007, at A1.

31. Like eras with respect to history, these archetypes represent significant modes of organization with respect to race relations. Accordingly, this Article uses capitalization to demonstrate this importance. Although missionaries are no less a part of American history than the slave trade, the Missionary-Heathen model has not been previously used to analyze race relations. Commentators have used the other archetypes mentioned—Civilized-Savage, Colonizer-Subject, and Master-Slave—in their discussions of race relations. *See, e.g.,* Stephen Slemon, *The Scramble for Post-Colonialism*, in THE POST-COLONIAL STUDIES READER 45 (Bill Ashcroft et al. eds., 1995) (stating that the goal and function of postcolonial theory is to use the colonial relationship to better explain human relations and identity formation); Ariela Gross, “*Like Master, Like Man*”: *Constructing Whiteness in the Commercial Law of Slavery, 1800-1861*, 18 CARDOZO L. REV. 263, 298-99 (1996) (addressing how slavery laws helped to construct the identity of whiteness).

years,³² repeating the tale of racial inequality like a chorus, leaving its echo, the cognitive imprint, on our collective consciousness.³³

Part III examines why the cognitive imprint is so difficult to overcome. Social science reveals that stereotyping is an integral part of how people think and relate to one another.³⁴ Because of this phenomenon, the human mind is more likely to find a way around the Court's opinion prescribing racial equality than to abandon its dependence on stereotypes and racial hierarchy.³⁵ Part IV then demonstrates why the White Missionary-Colored Heathen paradigm, in relation to the other paradigms, is the most appropriate to analyze the modern perception of interracial marriages and our current place in the march of racial progress.

Part V applies this paradigm to demonstrate how external viewers perceive interracial marriages. While the White Missionary-Colored Heathen paradigm could be used to analyze any number of interracial relationships, marriage is especially interesting because it represents the most intimate unit of equal relations.³⁶ Even acknowledging the patriarchal nature of traditional heterosexual marriages,³⁷ the modern ideal of marriage to which most people subscribe is an egalitarian union.³⁸ Indeed, this is why many herald the increase in interracial

32. DAVID C. BERLINER & BRUCE J. BIDDLE, *THE MANUFACTURED CRISIS: MYTHS, FRAUD, AND THE ATTACK ON AMERICA'S PUBLIC SCHOOLS* 230 (1995).

33. See generally ANIA LOOMBIA, *COLONIALISM/POSTCOLONIALISM* 123-32 (1998) (marking on the power of history to create images in our subconscious).

34. SUSAN FISKE & SHELLEY TAYLOR, *SOCIAL COGNITION* 139 (1984) (arguing that assumptions about others allow us all to function).

35. *Id.* at 163-64.

36. RACHEL F. MORAN, *INTERRACIAL INTIMACY: THE REGULATION OF RACE & ROMANCE* 85 (2001); see also Randall Kennedy, *Interracial Intimacies: Sex, Marriage, Identity, Adoption*, 17 *HARV. BLACKLETTER L.J.* 57, 75 (2001) ("Some champions of African American advancement also believed that actively challenging anti-miscegenation laws would be seen as a manifestation of blacks' supposed desire not only to be equal to whites but also to be intimate with whites or actually to become white.").

37. Much has been written about traditional marriage as a tool of patriarchy. See, e.g., Danielle Kie Hart, *Same-Sex Marriage Revisited: Taking a Critical Look at Baehr v. Lewin*, 9 *GEO. MASON U. C.R. L.J.* 1, 74 (1998); JUDITH M. BENNETT, *HISTORY MATTERS: PATRIARCHY AND THE CHALLENGE OF FEMINISM* 54 (2006); STEVEN M. TIPTON & JOHN WITTE, *FAMILY TRANSFORMED: RELIGION, VALUES, AND SOCIETY IN AMERICAN LIFE* 257 (2005).

38. Admittedly, there is a strong body of literature that posits all traditional marriage is a tool of patriarchy, and that gender plays a significant role in division of labor and decision-making in most American families. See, e.g., AUDREY D. SMITH & WILLIAM JAMES REID, *ROLE SHARING MARRIAGE* 2 (1986).

marriage rates as a success.³⁹ An examination of the everyday experiences of interracial couples, however, demonstrates that, at least subconsciously, outsiders generally do not perceive such marriages as partnerships between equals. While we might expect to find an assimilationist bent in politics or immigration law,⁴⁰ finding one in the regard of well-wishing onlookers crosses into intimate space, demonstrates the depth of our views on racial inequality, and reveals the ever-present effect of the cognitive imprint.

Part VI takes this analysis from the social to the legal realm, and from interracial marriages to interracial families. Courts in custody disputes previously awarded children to the morphologically similar parent,⁴¹ based in part on what the child's rightful place in society was perceived to be. Over time, courts moved away from this practice. Some have heralded this as a move toward color blindness⁴²—the great marker of a race-equal society—but such a shift is equally consistent with courts seeing color as something from which a child must be rescued. The message of inherent inequality remains the same, but by virtue of the White Missionary–Colored Heathen archetype, children of color are now saveable.

These views are painfully evident in a recent case from Tennessee, *In re Adoption of A.M.H.*,⁴³ which Part VII explores. This case concerns the custody battle over Anna Mae He between her Chinese parents and her white American foster parents. The case poignantly demonstrates the modern courtroom manifestation of the White Missionary–Colored Heathen archetype, while the surrounding debate evinces the confusion that permeates race talk today.

Part VIII concludes by restating what identifying the White Missionary–Colored Heathen form helps us achieve for an overall examination of racial progress. In short, this aspect is a mere variant of the cognitive imprint; the message of inherent inequality remains constant. Recognizing the White Missionary–Colored Heathen variant helps us recognize the racism in seemingly benign interactions and locate our position on the path of racial progress. We cannot overcome the cognitive imprint without engaging it, and we cannot engage it if we fail to recognize it. If we are aware of the cognitive imprint and the guises it

39. See, e.g., KENNEDY, *supra* note 11, at 37; ROMANO, *supra* note 11, at 2. LORETTA I. WINTERS & HERMAN L. DEBOSE, *NEW FACES IN A CHANGING AMERICA: MULTIRACIAL IDENTITY IN THE 21ST CENTURY* 91 (2003).

40. See, e.g., 8 C.F.R. § 312.1(a) (2007) (requiring the ability to speak English and pass an examination on U.S. history).

41. MORAN, *supra* note 36, at 128.

42. *Reisman v. Tenn. Dep't Human Servs.*, 843 F. Supp. 356, 363-64 (1993).

43. *In re Adoption of A.M.H.*, No. W2004-01225-SC-R11-PT, 2007 WL 160953 (D. Tenn. Jan. 23, 2007).

wears, we are more capable of defeating it. Interracial marriages might be the perfect model for racial equality, but until we come to terms with the power of the archetypes of racial inequality, we will never be able to capitalize on the opportunity those marriages present.

II. ARCHETYPES OF RACE RELATIONS

To gauge the progress of race relations, we must have recourse to history. History provides a framework whereby the numerous factors that affect and reflect race dynamics in America are rendered visible, and otherwise isolated events take on new meaning as part of a pattern of events. Without the historical framework, motifs are largely obscured and progress is even more difficult to track. This section demonstrates that the four archetypes of race relations I posit are well grounded in history.

Within modern history, four institutions contribute to the cognitive imprint and set the tone for our current era: Exploration, Colonialism, Slavery, and the Evangelical Mission.⁴⁴ Though these institutions overlapped temporally, a particular relationship between white people and people of color characterized each, resulting in four distinct archetypes of race relations.

A. *Civilized Whites—Colored Savages*

The first archetype springs from of the experiences of early European explorers who traveled to the shores of Africa and the New World.⁴⁵ The Age of Exploration is usually said to span from the early fifteenth century to the early seventeenth century.⁴⁶ Spurred by curiosity and Europe's growing capitalism, adventurers left European shores in search of new trade routes and new trading partners.⁴⁷ Even though the

44. See *supra* notes 18-22 and accompanying text. Historicity has been omitted except as to the extent necessary to sketch the four archetypes of race relations.

45. AGE OF EXPLORATION, *supra* note 19, at 165-67.

46. Although Marco Polo wrote stories of his early exploration of China in the thirteenth century, see, e.g., LARNER, *supra* note 19, app. at 187-90 (reprinting one of Marco Polo's stories), the Age of Exploration is usually associated with the rise in state organization and sponsorship of the endeavor. See J.H. Parry, *Introduction to AGE OF EXPLORATION*, *supra* note 19; see also WILLIAM BRANDON, *NEW WORLDS FOR OLD: REPORTS FROM THE NEW WORLD AND THEIR EFFECT ON THE DEVELOPMENT OF SOCIAL THOUGHT IN EUROPE, 1500-1800*, at 5-18 (1986).

47. See Richard T. Rapp, *The Unmaking of the Mediterranean Trade Hegemony: International Trade Rivalry and Commercial Revolution*, 35 J. ECON. HIST. 499, 499-505 (1975).

Portuguese led the way in exploration in the early 1400s,⁴⁸ turning out famous explorers like Vasco de Gama and Ferdinand Magellan, they were unable to hold a monopoly.⁴⁹ Spain entered the race with Christopher Columbus and Britain with John Cabot.⁵⁰ By the 1500s, the French and Dutch were also exploiting new trade routes and making headway with new colonies.⁵¹ By the end of the 1500s, these five countries had charted most of the globe, and the power of the Northern European nations was set.⁵² The new Atlantic trade routes, combined with the new people and places to colonize, pushed the European continent into the Commercial Revolution, when traders and merchants displaced land owners as the most important and powerful members of society.⁵³ As a result, those countries with strong trading routes were boosted to global dominance.⁵⁴

During this time, Europeans also encountered people and societies they had never known before. The differences between the white explorers and the new-found peoples were profound and immediately apparent.⁵⁵ Not only were the new-found peoples darker skinned, but they lived as creatures of nature⁵⁶ whereas the civilized explorers were men who had conquered nature. The indigenous people of the Americas⁵⁷ and Africa were portrayed as noble savages or brutal barbarians but, in either case, more wild than civilized.⁵⁸ “Savages” were even put on

48. See NORMAN DAVIES, *EUROPE: A HISTORY* 451 (1996).

49. HISTORICAL DICTIONARY OF EUROPEAN IMPERIALISM 689-94 (James S. Olson et al. eds., 1991).

50. See David B. Quinn, *The Argument for the English Discovery of America Between 1480 and 1494*, 127 *GEOGRAPHIC J.* 277, 283 (1961).

51. HISTORICAL DICTIONARY OF EUROPEAN IMPERIALISM, *supra* note 49, at 689-94; see FERNÁNDEZ-ARMESTO, *supra* note 19, at 193-244.

52. AGE OF EXPLORATION, *supra* note 19, at 70-71.

53. See generally Rapp, *supra* note 47, at 499.

54. See *id.* at 499-500.

55. AGE OF EXPLORATION, *supra* note 19, at 70-71.

56. See, e.g., AMERIGO VESPUCCI, *MONDUS NOVUS* (1504), reprinted in TRAVEL NARRATIVES FROM THE AGE OF DISCOVERY: AN ANTHOLOGY, at 220 (Peter C. Mancall, ed., 2006) [hereinafter TRAVEL NARRATIVES].

57. It should be noted that Native Americans occupy some middle space here by virtue of their “noble savage” status. Native Americans were actually considered unsuitable as slaves. The difference in the way Native American tribes and African tribes were viewed may well be due to the interest of the explorer in the land held by these communities. See NICHOLAS THOMAS, *COLONIALISM’S CULTURE: ANTHROPOLOGY, TRAVEL AND GOVERNMENT* 33-35 (1994).

58. See WILLIAM A. JAMES SR., *THE SKIN COLOR SYNDROME AMONG AFRICAN-AMERICANS* 67-68 (2003). Though these impressions no longer serve as the keystone of race relations, their echoes allow for the fetishization and hypersexualization of the colored body. For an interesting discussion of the fetishization of the black body,

display.⁵⁹ Scientists and sociologists alike depicted indigenous people, particularly those from Africa, as having no civilization of any kind.⁶⁰ Any civilization exhibited was considered merely symptomatic of contact with the West.⁶¹ Whites were presented as the pinnacle of humankind, and coloreds as barely human at all.⁶² The savage communities were, therefore, to be studied as a primitive stage in human evolution, but never emulated.⁶³

While public opinion eventually changed to allow for the humanity of colored peoples, this initial characterization of colored people as savages served as the foundation for successive exploitations of the people and lands of Africa and the New World.⁶⁴ The marked differences between the Europeans and the savages seemed to prove white superiority and consequently, imbue some right or obligation to civilize the savages. These views accompanied the black body to the New World in the slave trade⁶⁵ and remain salient today.⁶⁶

B. White Master–Colored Slave

The Atlantic slave trade was initially used to provide labor for the colonies in South America and the plantations in the Caribbean.⁶⁷ Over time, it became evident that the slave trade would be the most economical way to provide a labor force for the cash crop market of the southern states as well.⁶⁸ This was the case even though the slave trade

especially in its relation to the white body, see Camille Nelson, *Lovin' the Man: Examining the Legal Nexus of Irony, Hypocrisy, and Curiosity*, 2007 WIS. L. REV. 543.

59. See Mitch Keller, *The Scandal at the Zoo*, N.Y. TIMES, Aug. 6, 2006, at 14; "Hottentot Venus" Goes Home, BBC NEWS, Apr. 29, 2002, <http://news.bbc.co.uk/2/hi/europe/1957240.stm> (recounting the story of the Hottentot Venus, an African woman put on display during the nineteenth century).

60. ANNA MEIJKNECHT, TOWARDS PERSONALITY: THE POSITIONS OF MINORITIES AND INDIGENOUS PEOPLES IN INTERNATIONAL LAW 17-18 (2001).

61. *Id.*

62. See JAMES, *supra* note 58, at 68.

63. See TRAVEL NARRATIVES, *supra* note 56, at 33-34; THOMAS, *supra* note 57, at 134.

64. RICHARD H. ROBBINS, GLOBAL PROBLEMS AND THE CULTURE OF CAPITALISM 115 (Jennifer Jacobson ed., 3d ed. 2005).

65. See KENNEDY, *supra* note 11, at 175-76.

66. See generally Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1271 (1991).

67. ROBBINS, *supra* note 64, at 77.

68. *Id.*

was a very costly venture; only one of every three slaves that boarded a slave ship actually survived the perilous journey.⁶⁹

Today, the history of black slavery in America remains the great shame⁷⁰ of the nation, but ultimately the reason for its success.⁷¹ While not unique to America, the race-based slave economy was a hallmark of American society for almost two hundred years. Slavery in America thrived from the early 1600s⁷² until the British banned the slave trade in 1807.⁷³ Yet, slavery remained in effect until the last of the slaves was freed in 1865 pursuant to the Emancipation Proclamation.⁷⁴ Over that period, between 300,000⁷⁵ and 500,000⁷⁶ African slaves were imported from West Africa to work on the plantations in Virginia, Georgia, South Carolina, and other southern colonies.

Initially, the motivations and justifications for slavery were purely economic,⁷⁷ but the biological justifications quickly followed.⁷⁸ Under this model, the colored slave was human, but on a different level than the white man.⁷⁹ The slaves were considered inherently incapable of civilized life.⁸⁰ Their usefulness to the white slaveholders was their ultimate destiny and considered to be in accordance with God's great plan for the various types of man.⁸¹

69. JULIE A. MATTHAEI & TERESA L. AMOTT, RACE, GENDER, AND WORK: A MULTI-CULTURAL ECONOMIC HISTORY OF WOMEN IN THE UNITED STATES 144 (1996).

70. JAMES, *supra* note 58, at 69. Of course, not everyone thinks it is shameful; some wish we could return to these days. *See, e.g.*, BORAT: CULTURAL LEARNINGS OF AMERICA FOR MAKE BENEFIT GLORIOUS NATION OF KAZAKHSTAN (20th Century Fox 2006) (featuring a rodeo patron who took a positive view of slavery).

71. AFRICAN AMERICAN POLITICAL THOUGHT, 1890-1930: WASHINGTON, DU BOIS, GARVEY, AND RANDOLPH 142 (Cary D. Wintz et al. eds., 1996) ("Here for a long time [slavery] was immensely profitable and the whole country, north and south and west, shared in this prosperity built on slavery.").

72. *See* A. LEON HIGGINBOTHAM, JR., IN THE MATTER OF COLOR: RACE AND THE AMERICAN LEGAL PROCESS: THE COLONIAL PERIOD 20 (1978).

73. *See id.* at 314; L. EDWARD PURCELL, IMMIGRATION 8 (1995).

74. CHARLES A. TAYLOR, JUNETEENTH: A CELEBRATION OF FREEDOM 3 (2002).

75. JEREMY BLACK, THE BRITISH SEABORNE EMPIRE 68 (2004).

76. ANNE C. BAILEY, AFRICAN VOICES OF THE ATLANTIC SLAVE TRADE: BEYOND THE SILENCE AND THE SHAME 51 (2005).

77. WINTHROP D. JORDAN, WHITE OVER BLACK, 45, 91 (1995); JACK BEECHING, OPEN PATH: CHRISTIAN MISSIONARIES, 1515-1914, at 145 (1979).

78. JORDAN, *supra* note 77, at 229.

79. *Id.*

80. *Id.* at 305.

81. *Id.* at 307; JAMES, *supra* note 58, at 8.

C. *White Colonizer–Colored Subject*

The era of colonialism closely followed exploration. European colonialism began with the Portuguese and Spanish, who established holdings along the coasts of Africa, the Americas, the Middle East, and Asia.⁸² Eventually, Britain, the Netherlands, France, and Germany joined them.⁸³ By the seventeenth century, these major powers dominated the globe.⁸⁴ At its height, European colonialism covered almost three-fourths of the world and embraced as subjects Native Americans, Arabs, Africans, and Asians.⁸⁵

Because of the significant effect that colonialism had on trade and power in the global marketplace, its legacy remains remarkable. For example, the British Commonwealth still binds together a diverse group of nations with a common history of allegiance to the British Empire.⁸⁶ Similarly, the modern-day State of Israel was only realized through the compromise of colonial powers.⁸⁷ Today the economic divisions of developed and developing countries trace the divisions between colonizer and colonized dependencies.⁸⁸

While other, more ancient forms of imperialism⁸⁹ relied on religion or language to separate the ruler from the subjects,⁹⁰ colonialism depended largely on the color line.⁹¹ Just as colored subjects were

82. GREGORY BLUE ET AL., *COLONIALIZATION AND THE MODERN WORLD: SELECT STUDIES* 5 (2002).

83. *Id.*

84. STEWART C. EASTON, *THE RISE AND FALL OF WESTERN COLONIALISM* 3-5 (1964).

85. EDWARD W. SAID, *CULTURE AND IMPERIALISM* 8 (1994); ELLA SHOHAT & ROBERT STAM, *UNTHINKING EUROCENTRISM: MULTICULTURALISM AND THE MEDIA* 16 (1994). It appears that only a few countries completely escaped European colonial rule: Iran, Japan, Thailand, Turkey, Liberia, Ethiopia, China, and Afghanistan. See Summary of Colonization, [http://mason.gmu.edu/~ssheers/colonized by.htm](http://mason.gmu.edu/~ssheers/colonized%20by.htm) (citing CIA, *THE CIA WORLD FACTBOOK* (2007)) (last visited Sept. 27, 2007).

86. The British Commonwealth of Nations includes countries such as Pakistan, Nigeria, South Africa, Australia and New Zealand. See e.g. EDMUND J. OSMAANCZYK & ANTHONY MANGO, *ENCYCLOPEDIA OF THE UNITED NATIONS AND INTERNATIONAL AGREEMENTS* 418 (2003).

87. See JOHN BRIGHT, *A HISTORY OF ISRAEL* (2000).

88. For a discussion of the political alliances forged among colonized nations, see VIJAY PRASHAD, *THE DARKER NATIONS: A PEOPLE'S HISTORY OF THE THIRD WORLD* (2007).

89. See, e.g., PETER S. WELLS, *THE BARBARIANS SPEAK: HOW THE CONQUERED PEOPLES SHAPED ROMAN EUROPE* 197 (1999). The Roman Empire had as many barbarians—so called because of their inability to speak Latin—as subjects. See *id.* at 100.

90. See *id.* at 100.

91. THOMAS, *supra* note 57, at 13, 37.

destined to be ruled, whites were historically called to the roles of ruler and civilizer to fulfill their destiny as white people.⁹² For instance, Rudyard Kipling's infamous 1899 poem, "The White Man's Burden," was a serious call for Americans to heed their responsibilities after the American takeover of the Philippines:

Take up the White Man's burden —
 Send forth the best ye breed —
 Go bind your sons to exile
 To serve your captives' need;
 To wait in heavy harness,
 On fluttered folk and wild —
 Your new-caught, sullen peoples,
 Half-devil and half-child.⁹³

While some politicians believed their subjects could eventually grow to be capable of self-governance, many others believed that the subjects were innately incapable of ever achieving it. Instead, subjects were viewed as children who must be cared for and governed for their own good. Despite this oft-proffered benevolent justification,⁹⁴ the primary motive behind colonial expansion and empire building was economic and political power, not generosity.⁹⁵

Within the White Colonizer-Colored Subject paradigm, colored subjects are perceived as fully human, but not yet capable of self-governance. They are neither animals nor adults. Negative stereotypes about the colored subject were essential to the white people's understanding of themselves as superior.⁹⁶

This effect of this ideology has not gone unnoticed. Indeed, an entire brand of political and identity epistemology has developed to respond to colonialism and its bequest. French author and psychiatrist Frantz Fanon applied the idea of the Other to explain the feelings of dependency and inadequacy that the colonial subject felt.⁹⁷ Regarded as a founding figure in post-colonial theory, Professor Edward Said built upon Fanon's work to demonstrate the creation of European racial

92. See BHABHA, *supra* note 16, at 59.

93. RUDYARD KIPLING, *The White Man's Burden*, in *SELECTED POETRY* 127 (Craig Raine ed., 1992).

94. See, e.g., SAID, *supra* note 16, at 31-34 (discussing Arthur James Balfour's lecture to the House of Commons detailing similar rationales).

95. ROBBINS, *supra* note 62, at 89.

96. See JOSEPH R. BARNDT, *DISMANTLING RACISM: THE CONTINUING CHALLENGE TO WHITE AMERICA* 63 (1991).

97. See FANON, *supra* note 16, at 17.

superiority.⁹⁸ Professor Gayatri Spivak's work was pivotal in creating new centers of identity discourse, identifying the inherent ethnocentrism of classic works, and laboring to include the excluded voices of the colonial subject.⁹⁹ Finally, post-colonial theorist and Professor Homi K. Bhabha borrowed from all of these authors and incorporated modern expressions of identity in analyzing the power of stereotyping as a strategy of colonialism.¹⁰⁰ Together, these authors have enriched our understanding of the cognitive imprint and its power. Drawing on their work, we can learn something about the power of racial paradigms and our current place in the march of racial progress. Yet, the Colonizer-Subject paradigm about which they wrote is not the most useful model to understand the contemporary view of interracial relations. A more useful model is that of the White Missionary-Colored Heathen, which we will explore next.

D. *White Missionary-Colored Heathen*

Like the power dyads of civilized-savage, master-slave, and ruler-subject, the paradigm of White Missionary-Colored Heathen is firmly rooted in our history and subconscious.¹⁰¹ In fact, the Missionary-Heathen paradigm predates all of the other archetypes by over a thousand years. From the announcement of the Great Commission,¹⁰² missionaries have been part and parcel of Christianity.¹⁰³

The first authority for the missionary comes from the Book of Matthew in the New Testament, when Jesus said to the apostles, "go and make disciples of all the nations."¹⁰⁴ Paul, Mark, and John all preached in

98. EDWARD W. SAID, *HUMANISM AND DEMOCRATIC CRITICISM* (2004); EDWARD W. SAID, *FREUD AND THE NON-EUROPEAN* (2003).

99. STEPHEN MORTON, *GAYATRI SPIVAK: ETHICS, SUBALTERNITY AND THE CRITIQUE OF POSTCOLONIAL REASON* 15 (2007).

100. BHABHA, *supra* note 16 at 95.

101. The history of the missionary is well established, dating from the earliest days of Christianity. *See, e.g.*, HAROLD R. COOK, *MISSIONARY LIFE AND WORK* 162-63 (1959); GERALD A. ARBUCKLE, *EARTHING THE GOSPEL: AN INCULTURATION HANDBOOK FOR PASTORAL WORKERS* 9 (1990) ("Mission connotes a sending of persons, with authority, to preach the salvation of Christ in accordance with the text [in Romans].").

102. For varying accounts of the Great Commission as commanded by Jesus, see Eugene J. Fisher, *Historical Developments in the Theology of Christian Mission*, in *CHRISTIAN MISSION-JEWISH MISSION* 9-10 (Martin A. Cohen & Helga Croner eds., 1982); JULIAN PETTIFER & RICHARD BRADLEY, *MISSIONARIES* 12 (1990).

103. David M. Stowe, *A Contemporary Understanding of Mission from a Protestant Orientation and Tradition*, in *CHRISTIAN MISSION-JEWISH MISSION*, *supra* note 102, at 80; PETTIFER & BRADLEY, *supra* note 102, at 15; CHARLES HENRY ROBINSON, *HISTORY OF CHRISTIAN MISSIONS* I (Charles Scribner's Sons 1915).

104. *Matthew* 28:19; *see also Mark* 16:15.

foreign lands in the first fifty years after Jesus' death.¹⁰⁵ Starting with the apostles, missionaries spread the gospel over Europe, continuing unabated since those early days to spread into every nation in the world.¹⁰⁶ By 1289, missionaries had begun work in China.¹⁰⁷ By the late 1400s, Catholic missionaries from Portugal had established a presence in west-central Africa.¹⁰⁸ By 1493, Christopher Columbus was bringing priests with him on his second trip to the New World.¹⁰⁹ British missionaries were dispatched to India by 1793¹¹⁰ and to Fiji by 1830.¹¹¹

The Evangelical mission found renewed direction with the rise of the Age of Exploration and new strength with the rise of colonialism.¹¹² These institutions worked hand in hand—wherever an explorer went, a missionary was sure to follow.¹¹³ Ultimately, the work of the missionary had reached every corner of the earth, including those areas where even colonialists found it unprofitable to operate.¹¹⁴ In this sense, the missionaries were of great service to the colonialists because they maintained a European presence when the ruling powers did not.¹¹⁵ They executed the obligations of the colonialist power in numerous areas, also

105. Acts 15:36-41; ROBINSON, *supra* note 103, at 17.

106. See, e.g., Ralph D. Winter & Bruce A. Koch, *Finishing the Task: The Unreached Peoples Challenge*, in PERSPECTIVES ON THE WORLD CHRISTIAN MOVEMENT: A READER 509, 509 (Ralph D. Winter & Steven C. Hawthorne eds., 3d ed. 1999) (“The number of believers in what used to be ‘mission fields’ now surpasses the number of believers in the countries from which missionaries were originally sent.”). Some faiths, such as Mormonism, even require adherents to proselytize. See, e.g., Stephanie Conley, *From Myths to Missionaries: Taking a Look at the Truth About Mormonism*, UNIV. OF NEB.-OMAHA GATEWAY, Feb. 2, 2007, available at <http://media.www.unogateway.com/media/storage/paper968/news/2007/02/02/People/From-Myths.To.Missionaries.Taking.A.Look.At.The.Truth.About.Mormonism-2693515.shtml>.

107. See R.J.Z. Werblowsky, *Confucius and Christ*, 27 NUMEN 173, 173 (1980) (noting that Pope Nicolas IV sent Friar John of Montecorvino to China in 1289).

108. See ELIZABETH ISICHEI, A HISTORY OF CHRISTIANITY IN AFRICA: FROM ANTIQUITY TO THE PRESENT 45 (1995).

109. See FERNÁNDEZ-ARMESTO, *supra* note 19, at 153-93 (discussing “the great leap forward of the 1490s”).

110. PETTIFER & BRADLEY, *supra* note 102, at 18.

111. *Id.* at 41.

112. Fisher, *supra* note 102, at 27; PETTIFER & BRADLEY, *supra* note 102, at 17.

113. BEECHING, *supra* note 77, at 9 (“In the long stretch of time between 1492, when Columbus first set foot in the New World, and 1914, when war broke out among those European powers which had managed meanwhile to divide up most of the other continents between them, when a merchant or colonizer went abroad a missionary almost always followed.”). See generally JAMES AXTELL, *Some Thoughts on the Ethnohistory of Missions*, in AFTER COLUMBUS: ESSAYS IN THE ETHNOHISTORY OF COLONIAL NORTH AMERICA 47, 47-57 (1988); PETTIFER & BRADLEY, *supra* note 102, at 19.

114. See EASTON, *supra* note 84, at 56, 85.

115. BEECHING, *supra* note 77, at 239.

much to the delight of the colonialist states. For instance, missionaries often operated schools and hospitals where colonialist governments had promised the provision of such services.¹¹⁶

More so than diplomats, missionaries served as links between the common man and the new lands. Stories of their travels and adventures made it to the bookshelves and were very popular. Moreover, these writings had a significant effect on how the new peoples were seen by Europeans at home.¹¹⁷ Perhaps out of a desire to sell more books, many authored accounts that were exaggerated and unproven,¹¹⁸ yet the public's appetite for such stories was keen¹¹⁹ and publishers did not seem to mind the provision of tall tales. Stories of cannibalism seemed to evoke the greatest support.¹²⁰ The extreme sinfulness of the colored heathen in lands such as Trinidad, India, Africa and the Americas was similarly exaggerated and unproven. Though missionaries appear to have differed to some degree in how they saw their flocks¹²¹—as half devils or as lost children—they all agreed Christ was the great equalizer to raise the heathens up.¹²²

Though their primary mission was to gain converts, Christian missions proved excellent vehicles for the transmission of European cultural values.¹²³ Indeed, it seemed clear from the outset that God was an Englishman¹²⁴ and European culture was synonymous with godliness. As such, promoting values like cleanliness,¹²⁵ a strong work ethic,¹²⁶ and sexual repression,¹²⁷ was part and parcel of promoting Christianity. At least for the colonial era, Christianity, civilization, and European culture were deeply intertwined, if not one and the same.¹²⁸

By virtue of its tenure both temporally and geographically, the relation of the white missionary to the colored heathen is well established in our collective consciousness. The white missionary, whose role and goal is to save, educates and civilizes the colored heathen who, by definition, requires saving. Like the other archetypes, it presupposes

116. See THOMAS, *supra* note 57, at 141; Stowe, *supra* note 103, at 86.

117. See THOMAS, *supra* note 57, at 126.

118. PETTIFER & BRADLEY, *supra* note 102, at 41.

119. *Id.* at 20.

120. THOMAS, *supra* note 57, at 127.

121. BEECHING, *supra* note 77, at 43.

122. See THOMAS, *supra* note 57, at 131, 141; JORDAN, *supra* note 77, at 21; Fisher, *supra* note 102, at 30.

123. See, e.g., Stowe, *supra* note 103, at 82; PETTIFER & BRADLEY, *supra* note 102, at 92.

124. See PETTIFER & BRADLEY, *supra* note 102, at 21, 72.

125. PETTIFER & BRADLEY, *supra* note 102, at 21, 62-63.

126. THOMAS, *supra* note 57, at 137, 139.

127. BEECHING, *supra* note 77, at 11-12.

128. Stowe, *supra* note 103, at 82-84.

racial inequality. The White Missionary–Colored Heathen model is particularly powerful however because, compared to the other models, it appears gentle and compassionate; it incorporates affection¹²⁹ while preserving the hierarchy between the actors. Within this paradigm, the white missionaries, as emissaries of God, minister to the backward heathens of strange and far-away places, often sacrificing their own personal comfort.¹³⁰ The colored heathens are seen as needing—and capable of—redemption.¹³¹ Not only is their essential humanity acknowledged,¹³² they also have the potential to be fully realized human beings.¹³³ Their success, however, depends on God’s providence and the white missionary’s benevolence, both of which give the missionary his authority.¹³⁴

We can readily recognize the missionary philosophy in the work of modern day missionary societies¹³⁵ and the message of evangelical Christians, but the missionary ethos was never limited to its religious message. Beyond modern-day missions and evangelical Christians, people remain engaged in the cultural evangelism that is the modern face of the White Missionary–Colored Heathen paradigm. Just as Christian evangelism brings “the good news” to the uninitiated, cultural evangelism brings civilized culture to the untutored primitive, replacing any conflicting cultural values with those of white America.¹³⁶ Even as

129. The message of “love the sinner but hate the sin,” became consistent with “kill the Indian and save the man,” and both were equally consistent with caring for one’s parishioners. See PETTIFER & BRADLEY, *supra* note 102, at 21, 131.

130. ROLAND ALLEN, *MISSIONARY METHODS: ST. PAUL’S OR OURS?* 120 (1962); PAUL B. BULL, *THE MISSIONER’S HANDBOOK: A GUIDE FOR MISSIONERS, EVANGELISTS, AND PARISH PRIESTS* (1916) (recommending that the missionaries live as their constituents do, even if their lifestyle is meager in luxuries).

131. See BHABHA, *supra* note 16, at 66-84; THOMAS, *supra* note 57, at 132.

132. As Pope John Paul II instructed, “In order to evangelize effectively, it is necessary to adopt resolutely an attitude of exchange and of comprehension in order to sympathize with the cultural identity of nationalities, of ethnic groups, and of varied sectors of modern society.” Pope John Paul II, Discourse to the Plenary Assembly of the Pontifical Council for Culture (Jan. 18, 1983), *available at* http://www.vatican.net/holy_father/john_paul_ii/speeches/1996/documents/hf_jp-ii_spe_18011983_address-to-pc-culture_en.html; *see also* THOMAS, *supra* note 57, at 128, 141.

133. ALBRECHT CLASSEN, *MEETING THE FOREIGN IN THE MIDDLE AGES* 242 (2002).

134. *See, e.g.*, ARUN SHOURIE, *MISSIONARIES IN INDIA: CONTINUITIES, CHANGES, DILEMMAS* 96 (1994).

135. PETTIFER & BRADLEY, *supra* note 102, at 12, 25.

136. Individualism, capitalism, commercialism, democracy, and secularism are values and institutions generally associated with the West and its influence. *See, e.g.*, U.N. ECON. & SOC. COMM’N FOR ASIA & THE PACIFIC, *WHERE WE COME FROM: HISTORICAL PERSPECTIVE AND MAJOR TRENDS* (1998), <http://www.unescap.org/huset/living/index.html>.

its message moves from Christ to culture through the centuries, the essential elements of the paradigm remain the same. Good intentions and higher purpose convey the authority to convert, forcibly or by other means.

Nowadays, some may refer to this operation as cultural imperialism, but this moniker overemphasizes the presumption of racial and cultural inequality that under girds the phenomenon without capturing the good intentions that so often grant impunity in others' eyes. Noam Chomsky,¹³⁷ Edward Said,¹³⁸ and David Rothkop¹³⁹ have all written on U.S. foreign policy and its possible character as cultural imperialism in action. Authors like Max Boot¹⁴⁰ and Professor Niall Ferguson¹⁴¹ have likewise defended U.S. foreign policy based on its benevolent motives. Whether the effects of cultural conversion are good or bad, however, the starting point remains racial and cultural inequality and kind intentions on the part of the white European to rescue the darker races. The debate is equally evident in domestic and interpersonal spheres, where actions declared well-meaning and compassionate by some are simultaneously decried as racist by others.¹⁴² The White Missionary-Colored Heathen paradigm captures both sides of this phenomenon—its imperialist and benevolent aspects—and is the primary archetype in operation today.

With the hierarchical relationship between the races so deeply entrenched, it is easy to see how it must permeate our view of relationships today. The station of the white man and the station of the nonwhite man—whether immigrant or indigenous—have been perpetually locked in a state of inequity. The choice of a marital partner from the “other camp,” then, is certainly significant. It is a determined heaving off of history's shackles, an effort to reorient the people of the world despite what has always been. It is not surprising that the Supreme Court looked approvingly on Richard and Mildred Loving and endorsed their choice to shed the prejudices of their forefathers. Ever optimistic, some scholars claim that the hope embodied in the young bride and

137. See, e.g., NOAM CHOMSKY, *MANUFACTURING CONSENT* (1988) (arguing that the domination and subjugation of foreign lands and people can occur through mass media).

138. See, e.g., SAID, *supra* note 16.

139. See David Rothkop, *In Praise of Cultural Imperialism? Effects of Globalization on Culture*, GLOBAL POL'Y FORUM, June 22, 1997, <http://www.globalpolicy.org/globaliz/cultural/globcult.htm> (characterizing the spread of American cultural values as the voluntary adoption of these values due to globalization).

140. See, e.g. Max Boot, *The Case for American Empire*, WEEKLY STANDARD, Oct. 15, 2001, <http://www.weeklystandard.com/Content/Public/Articles/000/000/000/318qpvmc.asp>.

141. See, e.g., NIALL FERGUSON, *COLOSSUS: THE PRICE OF AMERICA'S EMPIRE* (2004).

142. See *infra* Part VII (discussing the *He* case).

groom is, for everyone, the hope of a world where differences are tolerated, embraced, and even celebrated.¹⁴³ As Professor Derrick Bell suggests, however, it is important to examine the racism lurking everywhere—even in progress, even in hope, and even in a kind face.¹⁴⁴

III. THE COGNITIVE IMPRINT AND SOCIAL PSYCHOLOGY

Having now presented four archetypes of race relations that have dominated the last 500 years, it remains to establish why we remain subject to them, especially in the face of cases like *Loving* and liberal values that profess racial equality. In this section I demonstrate that the cognitive imprint hypothesis is congruent with social science theory.

No doubt, Exploration, Colonialism, Slavery and the Evangelical Mission had profound consequences. We can observe these institutions' legacies in two ways: (1) the material—evidenced by disparities between racial groups in income and wealth, education, and mortality and morbidity rates;¹⁴⁵ and (2) the psychological—evidenced by the persistence of stereotypes about racial groups, disparities in self-esteem, self-degradation, and general views about the people and suffering in different racial communities.¹⁴⁶

The material aspects are easy to spot; birth rates, life expectancy, income levels, and education levels all provide concrete benchmarks for progress. The psychological aspects are more difficult to measure; it is impossible to get inside people's heads and determine what they think and feel with respect to other races. Because it is so challenging to measure psychological progress empirically, we often use evidence of progress in the material realm as an indicator of racial progress in the psychological realm. We are frequently confronted with hopeful statistics on the reduction in hate crimes,¹⁴⁷ increased integration in affluent neighborhoods¹⁴⁸ and new faces of color among CEOs and politicians.¹⁴⁹

143. See, e.g., KENNEDY, *supra* note 11, at 519 (“[There] is an optimistic tradition that affirms both the wisdom and the possibility of bringing into being a racially egalitarian society in which individuals may enjoy their freedoms without racial constraint.”).

144. See, e.g., DERRICK BELL, *The Real Cost of Racial Equality*, in THE DERRICK BELL READER 223 (Richard Delgado & Jean Stefancic eds., 2005).

145. See NAACP, AFRICAN AMERICANS: THE STATE OF DISPARITY (2007) (detailing the impact of race on education, poverty and health).

146. ETHNICITY, IMMIGRATION, AND PSYCHOPATHOLOGY 26 (Michel Tousignant & Ihsan Al-Issa eds., 1997).

147. See, e.g., FEDERAL BUREAU OF INVESTIGATION, UNIFORM CRIME REPORTS (2007), available at <http://www.fbi.gov/ucr/ucr.htm#hate> (indicating nearly 500 fewer hate crimes from 2004 to 2005).

148. Sheryll D. Cashin, *Civil Rights in the New Decade: The Geography of Opportunity*, 31 CUMB. L. REV. 467, 468 (2001).

Some commentators suggest that these statistics are clear indicators of racial progress on the psychological front.¹⁵⁰ Coupled with other factors that may reflect public opinion—such as national political movements, notable events in politics or show business, and legal victories like *Brown v. Board of Education*¹⁵¹ and *Loving*—the material indicators might allow us to track our psychological progress. And yet, stories of racial animus persist,¹⁵² intimating that—despite our efforts and earnest hopes—little has really changed. Something besides time must be causing these historical archetypes to continue their powerful hold. An examination of social psychology helps account for the intractability of the cognitive imprint.

The cognitive-miser model offers one explanation for the persistence of racism and the resilient stereotypes that give it power.¹⁵³ According to this model, human beings have limited processing capacity to deal with an infinitely complex and ever-changing environment.¹⁵⁴ As a result, humans must make the best possible use of their processing capacities.¹⁵⁵ Consequently, people use shortcuts in cognitive processing to help sort through all the information they see and hear.¹⁵⁶ People, therefore, tend to perceive others as members of groups or classes rather than as individual entities.¹⁵⁷ These shortcuts, which consist of stereotypes and schema, serve a useful function—helping people to group members and classes and fill in the gaps where information on

149. Baodong Liu & Robert Darcy, *The Rising Power of Minorities and Deracialization of American Politics*, in 5 DEVELOPMENTS IN AMERICAN POLITICS (Gillian Peele et al. eds. 2006).

150. DINESH D'SOUZA, *THE END OF RACISM* (1995) (arguing that racism is essentially gone); see also Stephen Feldman, *Whose Common Good?*, 80 GEO. L.J. 1835, 1837 (1992).

151. 347 U.S. 483 (1954).

152. For example, a black Columbia University professor recently found a noose hanging from her office door, Elissa Gootman & Al Baker, *Noose on Door at Columbia Prompts Campus Protest*, Oct. 11, 2007, <http://www.nytimes.com/2007/10/11/education/11columbia.html?ref=education>, and antisemitic graffiti was found later on the same campus. See Elissa Gootman, *Noose Case Puts Focus on a Scholar of Race*, Oct. 12, 2007, <http://www.nytimes.com/2007/10/12/education/12columbia.html>.

153. Pamela Johnston Conover & Stanley Feldman, *Group Identification, Values, and the Nature of Political Beliefs*, 12 AM. POL. Q. 151 (1984); Jon Hurwitz & Mark Peffley, *Public Perceptions of Race and Crime: The Role of Racial Stereotypes*, 41 AM. J. POL. SCI. 375, 377, 381, 387 (1997) (showing that racial stereotypes affect people's views on criminality and punishment); FISKE & TAYLOR, *supra* note 34, at 414.

154. FISKE & TAYLOR, *supra* note 34, at 11-12.

155. *Id.*

156. See Hurwitz & Peffley, *supra* note 153, at 377; FISKE & TAYLOR, *supra* note 34, at 160-61, 164-65.

157. FISKE & TAYLOR, *supra* note 34, at 160-61, 164-65.

individuals is missing.¹⁵⁸ While this may help people function in society, it renders stereotypes almost impossible to eliminate.¹⁵⁹ Because the stereotype is such an important tool, information that does not accord with the stereotype is merely discarded or categorized as an exception.¹⁶⁰

Sociology might provide a method of overcoming these stereotypes. According to the intergroup-contact theory, ignorance creates hostility.¹⁶¹ Essentially, we learn to fear and hate what we do not know.¹⁶² Consequently, “the trend of evidence favors the conclusion that knowledge about and acquaintance with members of minority groups make for tolerant and friendly attitudes.”¹⁶³ This theory was a significant motivator in *Brown*,¹⁶⁴ and is a common factor in many diversity programs.¹⁶⁵ Despite overwhelming popular support however, “evidence . . . indicates that [casual] contact does *not* dispel prejudice.”¹⁶⁶ The fact that white plantation owners and black slaves lived on the same plantations without rising above racist stereotypes demonstrates that mere access to more people of different colors will not reduce racism.

Acknowledging this, a modified version of contact theory known as the equal-status-contact theory hypothesizes that contact and communication can reduce prejudice and conflict when the members of the two groups are of equal status and have regular, voluntary, and intimate contact with one another.¹⁶⁷ If these theories are correct, then, in order to overcome racism, we must somehow foster equal status and sustained, voluntary, and intimate contact among people of different races. Even assuming this is possible, the evidence is lacking; despite the fifty years since the *Brown* decision, desegregation has not eliminated racism within the public schools.¹⁶⁸ Although *Brown* may have had some positive effect, if equal-status-contact theory were correct we would have

158. *Id.*

159. *Id.*

160. FISKE & TAYLOR, *supra* note 34, at 162-63.

161. See Geoffrey Short, *Prejudice Reduction in Schools: The Value of Inter-Racial Contact* 14 BRIT. J. SOC. ED. 159, 161 (1993).

162. GORDON W. ALLPORT, *THE NATURE OF PREJUDICE* 42 (1954).

163. *Id.* at 266.

164. See *Brown v. Bd. of Educ.*, 347 U.S. 483, 494 (1954).

165. For a discussion of the use of diversity programs in education, see Patricia Gurin et al., *The Benefits of Diversity in Education for Democratic Citizenship*, 60 J. SOC. ISSUES 17 (2004).

166. ALLPORT, *supra* note 162, at 263.

167. *Id.* at 276.

168. The Civil Rights Movement did demonstrate the willingness of people to act for social change, but it is difficult to say whether it effected a change more in social attitudes or in conditions.

observed a significant change in social attitudes toward race following integration.

These theories' common shortcoming is that they address only half of the problem. Racism can only be eliminated if some paradigm of racial equality is presented as an alternative to the stereotypes of racial inequality we already know. Yet history provides no such model for racial equality. Instead, though the four archetypes of racial relations span hundreds of years of history, they share one common element—economically, socially, and politically, the power structure in each of the models is the same: whites are on top and colored people are on the bottom. This power structure is the cognitive imprint, one of inherent and experienced racial inequality, set into our collective psyche by the unyielding hand of history.

The cognitive imprint serves as a constant backdrop. We act either in accordance with it or against it, but never in a vacuum. Whether manifested in the blatantly racist outbursts of Hollywood stars,¹⁶⁹ or in the sidestepping of savvy politicians in an effort to distance themselves from the insensitive attitudes of history,¹⁷⁰ the cognitive imprint of racial inequality is one that continues to control our lives.

The power of the cognitive imprint lies partly in its temporal and geographic influence, but primarily in its ability to adapt. Through the four archetypes, the characteristics and station of people of color have changed, but ultimately never enough to gain equality with whites. Previously, racial hierarchy wore the face of exploitation; its current iteration assumes the guise of benevolence. The cognitive imprint of racial inequality, however, remains constant. It continues to taint everything we do today, including how we see interracial marriages.

IV. CULTURAL EVANGELISM AND THE INTERRACIAL MARRIAGE

In our constant search for markers of racial progress, many legal scholars regard the rise in interracial marriage rates as a sign the nation is becoming more accepting of such unions, and consequently that people today are more committed to racial equality. Professor Randall Kennedy posits that “the American public accepts interracial intimacy as it never

169. For example, Michael Richards, known for his role in the hit television comedy *Seinfeld*, made nationwide news after hurling racial epithets at African American audience members at a comedy club in Los Angeles. See Bill Carter, *Richards Tries to Explain His Rant at Comedy Club*, N.Y. TIMES, Nov. 22, 2006, at E1.

170. Senator Joseph R. Biden's recent statement regarding presidential hopeful Senator Barack Obama was tinged with racial stereotypes. See Mireya Navarro, *My Big Bad Mouth*, N.Y. TIMES, Feb. 8, 2007, at G1.

has before,”¹⁷¹ and “openness to interracial marriage has been a good barometer of racial enlightenment in thought and practice.”¹⁷² He argues that barriers to interracial relationships of all kinds should be eradicated to achieve a more race-equal society.¹⁷³

Kennedy cites three reasons interracial marriage should be encouraged. First, he states that “[i]nter-marriage is good because it signals that newcomers or outsiders are gaining acceptance in the eyes of those in the dominant population and are perceived by them as persons of value on whom it is worth risking one’s future.”¹⁷⁴ Assuming that marriages are premised on equality, Kennedy sees the increase in interracial marriages as evidence of increased racial equality.

Second, he claims that interracial marriage breaks down the psychological barriers that “separate and distance people on racial grounds, opening up new expectations and experiences that would otherwise remain hidden.”¹⁷⁵ In other words, interracial marriages help dispel racial stereotypes by fostering contact between peoples of different backgrounds, and providing access to different experiences.

Third, Kennedy argues that interracial marriages encourage “transracial empathy”—helping people see through the eyes of those of different races.¹⁷⁶ Close contact and affection between family members of different races, he argues, will allow some family members to feel the slights of racial injustice other family members experience.¹⁷⁷ Because of the cross-racial affiliations, majority members will feel that they too have been slighted and harmed when a loved one is affected by racism and will therefore become more committed to correcting racial wrongs.¹⁷⁸

Kennedy’s interracial utopia—spurred on and exemplified by the increase in acceptance of interracial marriages—is a pluralistic type of multiculturalism. He believes in mosaic or “tossed salad” multiculturalism, which sees racial and ethnic diversity as assets to be embraced.¹⁷⁹ This is in contrast to assimilative or “melting pot” multiculturalism, which seeks to erase the racial and ethnic differences

171. Randall Kennedy, *Interracial Intimacy*, ATLANTIC MONTHLY, Dec. 2002, 103, 103.

172. KENNEDY, *supra* note 11, at 161.

173. *Id.* at 35-37.

174. *Id.* at 819.

175. *Id.*

176. *Id.*

177. *See id.*

178. *See id.*

179. *See generally* James E. Bond, *Multiculturalism: America’s Enduring Challenge*, 1 SEATTLE J. SOC. JUST. 59, 60 (2002) (“Tossed salad multiculturalists . . . view diversity idealistically. They celebrate the richness of difference and insist on protecting and preserving it.”).

between people to create unity.¹⁸⁰ As such, Kennedy's argument reveals an attachment to intergroup contact theory, which, for reasons noted above, is insufficient to overcome racism.

Kennedy is correct that interracial marriages are desirable. He goes astray, however, when he asserts that the acceptance of interracial marriages is born of a desire to accept—on an equal basis—the partners of color whom some white people choose. Although, according to intergroup contact theory, contact leads to understanding and harmony, the cognitive miser theory reminds us that stereotypes constrain even this state of affairs.¹⁸¹

In interracial marriages, the contrast of darker bodies against white bodies causes viewers to sort mixed-race partners into separate groups instead of a single unit. Such comparison alone is sufficient to invoke stereotypes. Thus, racialized cultural ranking automatically occurs when others view an interracial couple. The institution of marriage, however, demands that couples—even interracial ones—be viewed as a unit. The brain, searching for the applicable model, recalls the time-worn archetype of White Self-Colored Other. We remain bound by deeply entrenched racial paradigms that control how all interracial couplings are viewed. Despite our desire that intimate relations be free of this phenomenon, America's mixed marriages must also fit into this time-tested array.

I submit that, faced with this constraint, people actually view—and subconsciously perceive—interracial marriages through the White Missionary-Colored Heathen paradigm. There are three main reasons this is the case. First, this model better comports with modern ideals about marital partnership and equality.¹⁸² The other archetypes, civilized-

180. See *id.* at 59-60. It is noteworthy that assimilative multiculturalism is just what the cognitive imprint would prescribe.

181. Several other authors have opined as to the existence of implicit bias, as evidenced by the Implicit Association Test. Similar to this Article's theory of the cognitive imprint, these works consider the existence of implicit and unconscious bias against minorities and other historically disadvantaged groups. See, e.g., Christine Jolls & Cass R. Sunstein, *The Law of Implicit Bias*, 94 CAL. L. REV. 969 (2006); R. Richard Banks et al., *Discrimination and Implicit Bias in a Racially Unequal Society*, 94 CAL. L. REV. 1169 (2006); Anthony Greenwald & Linda Hamilton Kreiger, *Implicit Bias: Scientific Foundations*, 94 CAL. L. REV. 945 (2006); see also Linda Hamilton Kreiger, *The Content of Our Categories: A Cognitive Bias Approach to Discrimination and Equal Employment Opportunity*, 47 STAN. L. REV. 1161 (1995) (relating cognitive bias to Labor and Employment Anti-Discrimination Law).

182. One cannot deny that there is a gendered element to interracial marriages. Generally, one might presume men to hold the power because of their gender, and that this would be so regardless of their race or culture, but this need not be controlling. Under the Missionary-Heathen paradigm, white women can save men of color. Of course, there are historical accounts of nuns and female missionaries, also traveling to save souls, but this dynamic is evident even today. For instance, a short internet search for "interracial

savage, master-slave and colonizer-subject, presume no potential for equality, because they provide no opportunity for evolution. Under those archetypes, the colored subject is doomed to a lower status forever because there he or she lacks the capacity to change. The Missionary-Heathen paradigm recognizes the full humanity of the colored subject, while offering the potential to be greater, and on an equal footing with whites.¹⁸³

Second, the other three paradigms all have self-interest as their genesis. In contrast, the missionary's impetus is compassion and generosity. The Missionary-Heathen paradigm incorporates affection while preserving hierarchy, requiring that the missionaries care for their constituents, since the love of God and all of God's people is what compels the missionaries to their task.¹⁸⁴ While the other paradigms stress the differences between the white Self and the colored Other, the Missionary-Heathen paradigm stresses their common humanity.¹⁸⁵ Because affection is a necessary ingredient in our modern conception of marriage, and because each of the other three archetypes considered in this Article lacks that necessary ingredient, the Missionary-Heathen paradigm is the most natural application.

Third, even if we recognize elements of exploitation in interracial marriage, the discomfort evinced by any of the other paradigms is too acute to bear. Each of the other paradigms offends contemporary racial sensibilities and our professed liberal ideals. While the Missionary-Heathen paradigm still presumes racial inequality, it does not offend modern sensibilities as blatantly and is thus the easiest to apply.

marriage." reveals several sites relating to marriages between Christians and members of other religions. (In other words, race has been equated with religion.) Searching then for intercultural and interfaith marriages, one finds several sites regarding marriages between white Christians and Arab Muslims. In turn, most of these sites are dedicated to marriages between white Christian women and Arab Muslim men. The sites generally house three categories of information: (1) warnings from professionals against getting seriously involved with a person from another race, faith, and culture; (2) stories by women who are currently unhappy in such relationships or who have escaped from such relationships and their supporters; and finally (3) testimonials by women whose husbands have now converted to Christianity and whose marriages are now happy ones. These sites encourage religious and proselytization by the white wife toward the husband of color to achieve marital happiness, an example of the missionary-heathen paradigm at work.

183. PETTIFER & BRADLEY, *supra* note 102, at 21; ROBINSON, *supra* note 103, at 46.

184. See, e.g., CHRISTIAN MISSION—JEWISH MISSION, *supra* note 102, at 122; GAILYN V. RHEENEN, MISSIONS: BIBLICAL FOUNDATIONS AND CONTEMPORARY STRATEGIES 39 (1996); COOK, *supra* note 101, at 16-17.

185. See, e.g., JORDAN, *supra* note 77, at 21; MARJORY F. FOYLE, HONORABLY WOUNDED: STRESS AMONG CHRISTIAN WORKERS 245 (2001); PAUL G. HIEBERT, ANTHROPOLOGICAL INSIGHTS FOR MISSIONARIES 23 (1985).

Under the White Missionary–Colored Heathen paradigm, one can accept the validity of interracial marriage without ever accepting that whites and people of color are equal. Instead of being equal, whites in these relationships are responsible for culturally converting their colored partners in order to “lift them up.” Viewed through the White Missionary–Colored Heathen lens, interracial marriage can actually entrench the view of the white American as savior and evangelist, and the colored Other as the heathen subject in need of redemption. Such an understanding recasts the role of the intermarrying white spouse—from deviant¹⁸⁶ to kind Christian, from “race traitor” to savior, from polluted to purifying—while comfortably maintaining a clear racial hierarchy.

We need only replace religious conversion¹⁸⁷ with cultural conversion to see how interracial marriages can reflect an assimilative process rather than a newfound respect for people of all races. Slowly, the culturally backward is replaced with the culturally progressive as initiates are educated in the catechism of white America. Traditional cultural values are abandoned, and American cultural values are adopted. If this is true, even the rise in interracial marriage rates is, at best, a pyrrhic victory. One can applaud the interracial marriage for its assimilative effect without accepting the equality of the colored partner within the marriage. So long as the marriage appears to conform to this paradigm, it is not threatening to the white majority. The rising acceptance of interracial marriages, seemingly indicative of a rising belief in racial equality, is equally consistent with an intractable belief in racial inequality.

V. JUST BETWEEN US: THE POWER OF THE PARADIGM IN THE PRIVATE SPHERE

The historical evolution of racial inequality and the paradigms through which interracial relationships are viewed suggest that, regardless of what interracial marriages represent to those within the marriage, outsiders view them differently. Because of the cognitive imprint, external viewers are more likely to see interracial marriages based on assimilative principles and the quest of one partner to be more like the other. There is a longstanding belief that people of color want to

186. Prior to *Loving*, at least, interracial sex and marriage were considered irrational, and as “driven by pathological impulses, usually sexual . . . [the] defiance of conventional norms was necessarily a deviant and dangerous act.” See MORAN, *supra* note 36, at 112.

187. I do not posit that the interracial marriage is an exercise in religious conversion. American society, despite the rapid rise in the Christian right, is too secular and liberal to tolerate this. Rather, I argue that, the culture war having supplanted the religious campaign for souls, the interracial marriage is a fitting battlefield.

become white.¹⁸⁸ To outsiders, interracial marriages accord with these common myths.¹⁸⁹ The personal experiences of interracial couples are illustrative in this regard. They provide an opportunity to look past the inception of the marriage contract—with which *Loving* was concerned—to the interracial experience of married life. Statements and actions by outsiders towards interracial couples expose the belief in inherent racial and cultural inequality; they do not evince an underlying belief that such marriages are alliances between equals.

For her book *Navigating Interracial Borders: Black-White Couples and Their Social World*, Professor Erica Chito Childs drew on her doctoral work from 1967 and then interviewed fifteen black-white heterosexual couples between 1999 and 2001.¹⁹⁰ Similar interviews appear in separate study of interracial couples, *Multiracial Couples: Black & White Voices*.¹⁹¹ The stories and commentary in these texts reveal the experiences and feelings of interracial couples.

First, outsiders appear to struggle with the mere existence of interracial couples. People seem determined to separate the partners because of their race, even when numerous signals demonstrate that they are a unit. For example, several couples in the study recounted how others frequently did not see them as couples, even when it should be obvious—for example, sales clerks would attempt to wait on each of them separately.¹⁹² Recently, a young Indian medical-school graduate relayed an illustration of such treatment when she, her immediate family, and her fiancée had gone out to dinner.¹⁹³ Despite the fact that her white fiancée and she were talking while waiting to be seated, the hostess perceived them to be two separate parties, and actually separated them by bringing her arm down in between the young graduate and her fiancée, asking if the fiancée was still waiting for someone or would like a table for one.¹⁹⁴ When faced with a mixed-race couple, people seem to ignore or disbelieve activity that—for a same-race couple—would be indicative

188. See THOMAS, *supra* note 57, at 133. The work of Frantz Fanon is highly informative in this area. His work on the psychology of the Other rests on this finding. Fanon posits that, as a result of Colonialism, what the black man wants is to become respected by the white man and that he understands in order to do so he must become like the white man. See generally FANON, *supra* note 16.

189. Professor Rachel Moran seems to agree with this as a historical fact. See MORAN, *supra* note 36, at 112.

190. See ERICA CHITO CHILDS, NAVIGATING INTERRACIAL BORDERS: BLACK-WHITE COUPLES AND THEIR SOCIAL WORLDS 136-37 (2005);

191. PAUL C. ROSENBLATT ET AL., MULTIRACIAL COUPLES: BLACK AND WHITE VOICES (1995).

192. See *id.* at 127; CHILDS, *supra* note 190, at 40.

193. Interview with Amita Kumar in Houston, Tex. (Oct. 15, 2006).

194. *Id.*

of a relationship. People often express surprise at the existence of an interracial couple,¹⁹⁵ asking in dumbfounded tones, “Are you two . . . together?”

Second, interracial couples often face opposition from friends, family members, and even strangers.¹⁹⁶ Experiences can include shocking hostility which seems precipitated by the couple’s mere presence.¹⁹⁷ While there is little doubt that racism—or interracialism—is the cause of such verbal and physical attacks, and these experiences are not uncommon,¹⁹⁸ the experiences of interracial couples are not always so one-dimensional.¹⁹⁹ Reactions to interracial couples are often more subtle, but nonetheless racist. For instance, an immigration officer kept one mixed-race couple returning to Canada from a visit to the United States from approaching the counter as a family.²⁰⁰ When they protested that they were married, the immigration officer countered, “Really married or common law?”²⁰¹

Finally, even in cases where outsiders appear supportive, there are numerous examples of the ways outsiders seek to other, order, and alter²⁰² the partner of color in the relationship,²⁰³ epitomizing a sort of conversion process. Experiences from my own life can help demonstrate this desired evolution. The effort to “other” me and my cultural background sometimes begins even before I am introduced. Though born and raised in Canada, I am usually perceived foremost as a woman of East Indian origin. “She’s so exotic,” my husband’s former colleagues in San Francisco have commented after seeing my picture on his desk.²⁰⁴ This comment is not as innocuous as it may seem. The term arises first because, in contrast to my white husband, I appear different. But “exotic”

195. Cf. ROSENBLATT ET AL., *supra* note 191, at 134 (discussing the implausibility of interracial marriages).

196. See, e.g., CHILDS, *supra* note 190, at 136-37; ROSENBLATT ET AL., *supra* note 191, at 65-67, 128-29.

197. See ROSENBLATT ET AL., *supra* note 191, at 128-29.

198. THOMAS VOLKER ET AL., CLINICAL ISSUES WITH INTERRACIAL COUPLES: THEORIES AND RESEARCH 5 (2003).

199. See e.g., CHILDS, *supra* note 190, at 77, 134.

200. Telephone Interview with Professor Stephen Kirkland, Univ. of Regina (Sept. 19, 2006).

201. *Id.*

202. I developed this terminology to identify the missionary process. If one examines the numerous incidents and interactions which colored partners in interracial relationships face, they can be separated into these three phases: “To other” is to recognize the differences between you. “To order” is to determine that the other occupies a lower status and you a higher one. “To alter” is to then attempt to convert the other into a more acceptable form.

203. See CHILDS, *supra* note 190, at 40, 66.

204. Interview with Michael Alper in San Francisco, Cal. (1999).

is a loaded term; although they are marking distance, they are also congratulating my husband in a way. Exotic does mean foreign, alien, not indigenous, strikingly different, but also erotic (as in exotic dancers).²⁰⁵ The pairing itself is titillating to others. Thus, a white person telling a brown man that his brown wife is exotic is suggestive and therefore out-of-bounds. A white man telling a white man that his brown wife is exotic is congratulatory, and somehow acceptable.

The view of me as firmly bounded by my exoticism, regardless of my career choice, education, skills, or even my Canadian upbringing, inspires others to impose an ordering of sorts. When people learn my mother was murdered while visiting India, and that it was not a robbery, I often receive this kind of response: "How sad this kind of thing happens in your culture. Women have such a low place in that society." This remark reveals so much. After all, murder is a distinctly human phenomenon, not limited to any one race or ethnicity. The speaker simultaneously demonstrates a view of my culture as misogynistic and backward and a lack of self-awareness. Without knowing more, the speaker assumes that (1) my mother's gender motivated her murderer, (2) that this gendered motivation is authentically culturally based, and (3) that misogyny and patriarchy are not equally part of their own world. Though they sympathize with my predicament, they perceive it not as one of a grieving child who has lost her mother, but as a woman trapped in an oppressive, woman-hating culture. Their world, they believe, is much more egalitarian. These statements capture their belief that, whatever else my culture may be, it is essentially backward and in need of reform.

Finally, people expect me to be altered, to adopt the culture of my white husband rather than the other way around. Cultural exchange must give way to cultural evangelism. Evidence that I am acculturating him, or that he is adopting my ways, is received with surprise or disdain. This expectation is quite prevalent at Indian functions²⁰⁶ where attendees express surprise that my husband eats spicy food, wears Indian clothing, and speaks a few words of Hindi. "You are so lucky," they tell me, "that he is so accommodating." Their reaction exposes their belief that I should have no expectations at all as to his "accommodation."

The white community has similar expectations. My family was recently invited to a colleague's house for dinner. This colleague has known my family for almost five years. I was teaching that evening, so I

205. See NEW SHORTER OXFORD ENGLISH DICTIONARY 81 (5th ed. 2002)

206. This is not to say that all minority communities perceive the "white culture" to be superior, but they certainly recognize its status in society. Thus, they too see the interracial marriage as functioning to convert one of their own to the "white ways" and are pleasantly surprised if it turns out not to be the case.

informed my colleague that I would join them for dessert, but meanwhile my husband and children would arrive in time for dinner. When I arrived later that night, the first words our hostess said were, "You never told me your husband and the boys were vegetarian too! I made a roast!" I was surprised. Her memory lapse of the many stories I had shared about my family's vegetarianism was less surprising than her presumption that my husband and children would eat meat. This discounted any influence I, as a vegetarian Hindu, might have over my life partner and our decisions in child rearing. Though I felt bad for her frustrated embarrassment, surprisingly, I was also hurt; the dinner she prepared revealed that she saw my family as a white family with one brown outlier, instead of a brown family with a possible white outlier. With respect to cultural evolution, it was clearly my job to change.

The White Missionary-Colored Heathen paradigm posits that the heathen subject is someone in need of saving, a backward or primitive being whose ignorance and paganism engender pity and invoke the missionary's solemn obligation. This ranking renders the subject a disciple, and the missionary a purveyor of truth. By convincing the disciple to abandon backwards practices and beliefs in favor of new ones, the missionary converts the disciple through voluntary association. When confronted with an interracial marriage, outsiders imagine that this conversion is taking place. Perhaps emboldened by the perception of a common enterprise, they take this conversion up.

VI. THE COGNITIVE IMPRINT IN THE COURTROOM: THE POWER OF THE PARADIGM IN THE PUBLIC SPHERE

While the presence of the cognitive imprint and its assimilationist message certainly affect interracial couples in their daily lives, the impact is not so limited. Just as the cognitive imprint affects the most well-meaning of strangers and acquaintances, it also affects the most dedicated and principled of judges, lawyers and litigants. As a result, it affects legal actors and legal outcomes.

The social interactions reported by interracial couples are particularly useful because their stories are not always told in courts. To examine the operation of the Missionary-Heathen archetype in the public sphere, however, it is natural to move beyond the interracial marriage to the creation of the interracial family. Not only because children, and thus family, are the natural byproduct and the tangible, irrevocable proof of such unions, but because families represent our own personal spheres of influence, one in which our power to educate, indoctrinate and recreate goes largely unquestioned. This is the arena of intergenerational transfer, where we decide whether to transmit our own cultural practices or adopt new ones. Interracial custody cases and transracial adoption cases thus

provide unique opportunities to study the impact of the White Missionary-Colored Heathen on the view of the interracial family. The court's role in determining which cultural values are to be transmitted, through the creation or dissolution of interracial families is significant. Whether the court sees a child as innately and irretrievably bound to his/her "rightful place in society" or capable of rising above that place is significant.

Prior to the civil rights movement and *Loving*, race-matching in interracial custody battles and adoptions was the norm. Courts openly considered the phenotype of the child in determining which of the parents in an interracial marriage should get custody. For example, in the 1950 Washington custody case *Ward v. Ward*, involving a white mother and a black father, the court stated that the biracial children were "colored" and would "have a much better opportunity to take their rightful place in society if they [were] brought up among their own people."²⁰⁷

Twenty-seven years later, it seemed that not much had changed. In the 1977 New York case of *In re B.*, the Family Court of New York decided to return a black child to his black parents after the child had spent years with a white foster mother.²⁰⁸ The court ruled that the child's best interests would be served if he were returned to his natural parents so that he could come to terms with who he was in the context of his own black identity.²⁰⁹ The court stated that this was "crucial to [the child's] adjustment in life and his place in the world."²¹⁰

It was not until *Palmore v. Sidoti* in 1984 that the notion of race-matching was officially rejected as a permissible main factor in custody and adoption cases.²¹¹ *Palmore* concerned a white mother with custody and her subsequent remarriage to a black man.²¹² Accordingly, *Palmore* considered the impact that an interracial home might have on a white child's well-being.²¹³ The *Palmore* Court rejected the consideration of an interracial relationship as a factor.²¹⁴ Commentators interpreted this

207. See 216 P.2d 755, 755-56 (Wash. 1950).

208. 391 N.Y.S.2d 812 (N.Y. Fam. Ct. 1977).

209. *Id.* at 814.

210. *Id.*

211. 466 U.S. 429 (1984).

212. See *id.* at 430.

213. See *id.* at 431-32.

214. See *id.* at 434 ("The effects of racial prejudice, however real, cannot justify a racial classification removing an infant child from the custody of its natural mother found to be an appropriate person to have such custody.").

holding as a rejection of race as the sole factor in resolving custody and adoption cases.²¹⁵

Consequently, the use of race as a dispositive factor seems to have fallen by the wayside. Instead, it remains one of many factors for courts to consider when weighing the child's best interests.²¹⁶ Scholars, however, have expressed concern that the explicit race test has merely been hidden within the "best interests of the child" test. Gayle Pollack observes,

the best interests test does not specify the relevance of race. Thus, judges have ample opportunity to overlook, under-consider, or affirmatively hide the role of race in their custody decisions.²¹⁷

Further,

[r]ace inadvertently informs judicial decisions, even if judges attempt to be colorblind in their decisions. Judges have preconceived "value systems, cultural biases, and stereotypical beliefs" that can influence their judgment, particularly if judges are not vigilant in their self-awareness of possible biases they harbor. Such unconscious and uncountered racism in custody determinations can skew placements so that race becomes determinative and other factors relevant to the child's best interests remain unexplored.²¹⁸

Courts have tried to adopt a color-blind posture, but due to individual prejudices and biases, color-blind may not be racially neutral. The black and biracial children began as race-limited—matched with the same-race parent because they needed to learn their place in society.²¹⁹ Currently, with the role of race limited to "a factor," these children are

215. See, e.g., Noel Myricks & Donna L. Ferullo, *Race and Child Custody Disputes*, 35 FAM. REL. 325, 328 (1986); Twila L. Perry, *Race and Child Placement: The Best Interests Test and the Cost of Discretion*, 29 J. FAM. L. 51 (1990).

216. *In re Davis*, 465 A.2d 614, 622 (Pa. 1983); *Tucker v. Tucker*, 542 P.2d 789 (Wash Ct. App. 1975).

217. Gayle Pollack, *The Role of Race in Child Custody Decisions Between Natural Parents Over Biracial Children*, 23 N.Y.U. REV. L. & SOC. CHANGE 603, 611-12 (1997).

218. *Id.* at 614-15 (citing Colleen McKinley, *Custody Disputes Following the Dissolution of Interracial Marriages: Best Interests of the Child or Judicial Racism?*, 19 J. FAM. L. 97, 122 (1980)); see also Perry, *supra* note 215, at 51-52 (arguing that the ambiguity of the best interests test often allows race to take an "inappropriately . . . dominant position").

219. See, e.g., *Ward v. Ward*, 216 P.2d 755, 756 (Wash. 1950).

saveable;²²⁰ their color no longer limits them. The cognitive imprint may operate here to find black parents unsuitable as custodial parents purely because the white home is considered to be in the best interests of the child. While individually these observations may include prejudiced responses to black parents, the overall evolution of jurisprudence in interracial custody battles comports with the White Missionary–Colored Heathen paradigm because it re-classifies children of color. Once powerless to escape their race, children are reformed through color blindness to be capable of transcending their race, with the right help.

VII. THE *HE* CASE

The *He* case moves us beyond the black-white dynamic to other white-nonwhite relationships where notions of foreignness and exoticism may be more prevalent. Like the interracial custody cases, the *He* case is a story of the effort to form a family. However, unlike the custody cases, which involve choosing between two natural parents, the *He* case involves a choice between the natural and the adoptive parents. As such, *He* entails consideration of two competing interests: family unity and the desire consistent with the Missionary-Heathen paradigm, to save children of color. This case provides a view of that conflict in both the legal and the social realm.

The case of Anna Mae He has garnered international attention over the last six years.²²¹ The case involves a battle between white foster

220. See, e.g., Lynette Clemetson & Ron Nixon, *Breaking Through Adoption's Racial Barriers*, N.Y. TIMES, Aug. 17, 2006, at A1 (indicating a concern that moving black children to white families will result in a loss of black culture and a loss of identity for said children). Similar concerns arise with regard to Native American children. Contemporary studies attempt to document the impact of the Indian Child Welfare Act, which was implemented in an attempt to reverse the culture loss occurring for American Indian children placed in non-Indian families. See, e.g., Gordon E. Limb et al., *An Empirical Examination of the Indian Child Welfare Act and its Impact on Cultural and Familial Preservation for American Indian Children*, 28 CHILD ABUSE & NEGLECT 1279 (2004). But see Solangel Maldonado, *Discouraging Racial Preferences in Adoptions*, 39 U.C. DAVIS L. REV. 1415, 1415 (2006) (arguing for transracial adoption and revealing the cognitive bias which causes families to seek race-matching and racial similarity in adoptions); KENNEDY, *supra* note 11, at 403-15 (making the case for transracial adoption and arguing that opposition to it is the last vestige of racial discrimination in the context of the family).

221. See, e.g., Robert Lackman, *Move the Bus*, SHANGHAI STAR, June 23, 2005; Robert Lackman, *Once Upon a Time there were 2 Good Americans*, SHANGHAI STAR, July 22, 2004; Robert Lackman, Letter to the Editor, *Judge Childers Seems to Think Chinese Tears Cannot Be Genuine*, CHINA DAILY, Aug. 30, 2004. The Chinese Embassy wrote letters to the appellate court as to the enforcement of the "One Child Policy." *In Re Adoption of A.M.H.*, No. W2004-01225-COA-R3-PT, 2005 WL 3132353, at 83 (Tenn. Ct. App. Nov. 23, 2005).

parents and Chinese birth parents over a little girl²²² and has generated significant controversy for two reasons: (1) the lengthy delay in achieving a final judgment on the matter; and (2) allegations of cultural and racial bias in the decisions rendered to date,²²³ particularly the Chancery Court's May 2004 judgment that terminated the Hes' parental rights.²²⁴

The facts of this case were somewhat complicated and hotly disputed. The following summary is gleaned from the judicial opinions rendered at the Chancery Court, the Tennessee Court of Appeals and the Tennessee Supreme Court.²²⁵

Shaio-Qiang (Jack) He and his wife, Qin (Casey) Luo (He), were in the United States on graduate-student and student-spouse visas.²²⁶ In 1998, another graduate student accused Mr. He of sexual assault,²²⁷ which led the university to terminate his graduate stipend and position,²²⁸ invalidating the Hes' visas.²²⁹ Mrs. He was pregnant at the time.²³⁰ Their daughter, Anna Mae, was born on January 28, 1999.²³¹ Suffering financial difficulties, the Hes approached Mid-South Christian Services

222. Jared Allen, *Anna Mae's Feuding Families Turn Back to Their Lawyers*, CITY PAPER ONLINE (Nashville, Tenn.), Jan. 30, 2007, http://www.nashvillecitypaper.com/index.cfm?section=9&screen=news&news_id=54349.

223. I do not wish to suggest that this case is typical of the interracial battles that occur in courts all over the country. I believe, however, that the delay in reaching the final resolution and the voices inside and outside the courtroom regarding this case reveal a pervasive view of racial and cultural inequality that demonstrates the paradigm I propose.

224. See *In re Adoption of A.M.H.*, No. CH-01-1302-3 (Tenn. Ch. 2004), <http://www.tsc.state.tn.us/GENINFO/PRESSREL/2004/HEfinal.pdf>; see also Joyce Nishioka, *The Hes vs. the Bakers*, ASIANWEEK, May 28, 2004, http://news.asianweek.com/news/view_article.html?article_id=48e07c0407023978d0b2da8f798ad431; Shirley Downing, *Childers Ruling Insensitive to China Culture, Group Says*, COM. APPEAL (Memphis), May 25, 2004, at B6; Wendi C. Thomas, *Anna Mae Decision Botched by Judge*, COM. APPEAL (Memphis), May 20, 2004, at B1. Shirley Downs, *No Bias, Says Anna Mae Judge*, COM. APPEAL (Memphis), May 15, 2004, at A1.

225. *In re Adoption of A.M.H.*, No. W2004-01225-SC-R11-PT, 2007 WL 160953 (Tenn. 2007).

226. *In re Adoption of A.M.H.*, No. CH-01-1302-3, at 5-6.

227. *In re Adoption of A.M.H.*, 2007 WL 160953, at *1.

228. *Id.*

229. See *In re Adoption of A.M.H.*, No. CH-01-1302-3, at 6-7; *In re Adoption of A.M.H.*, No. W2004-01225-COA-R3-PT, 2005 WL 3132353, *5 (Tenn. Ct. App. Nov. 23, 2005).

230. *In re Adoption of A.M.H.*, 2007 WL 160953, at *1.

231. *In re Adoption of A.M.H.*, 2005 WL 3132353, at *2.

for assistance.²³² Mid-South agreed to place Anna Mae in foster care for ninety days.²³³

Jerry and Louise Baker, experienced foster parents with several children of their own, became the foster family.²³⁴ In the three months that followed, the Hes visited their daughter weekly under a verbal agreement.²³⁵ At the end of a three month agreement, the Hes requested Anna Mae be returned, but said that, due to financial constraints, they intended to send her to China to live with relatives.²³⁶ Concerned, Jerry Baker offered to keep Anna Mae beyond the ninety day agreement.²³⁷

The parties then came to an informal agreement. The Bakers insist the Hes asked them to care for Anna Mae until she reached eighteen, but wanted continued visitation.²³⁸ The Hes insist that the agreement was to continue the current arrangement and merely transfer legal custody to the Bakers so that Anna Mae could receive coverage under the Bakers' health insurance,²³⁹ and that they could change their minds at any time.²⁴⁰ In June 1999 the court transferred temporary legal custody of Anna Mae to the Bakers.²⁴¹

The Hes continued to visit Anna Mae,²⁴² but on Anna Mae's second birthday, a dispute over the Hes taking Anna Mae out prompted the Bakers to call the police who told the Hes to leave.²⁴³

Subsequently, the Hes filed papers for Anna Mae's return, stating their desire to return to China with their whole family.²⁴⁴ Prior to the hearing to terminate the temporary custody arrangement, the Bakers filed an application to terminate the Hes' parental rights on the grounds that four months had elapsed since the Hes had last seen Anna Mae,²⁴⁵ which effectively stopped the other proceedings. The matter was finally tried in

232. *See In re Adoption of A.M.H.*, 2007 WL 160953, at *1 (listing financial difficulties, including medical bills related to Mrs. He's difficult pregnancy and childbirth and Mr. He's loss of his stipend).

233. *Id.* at *2.

234. *In re Adoption of A.M.H.*, No. CH-01-1302-3, at 26.

235. *In re Adoption of A.M.H.*, 2005 WL 3132353, at 9.

236. *See In re Adoption of A.M.H.*, 2007 WL 160953, at *2.

237. *See id.*

238. *See id.* at *3.

239. *See id.*

240. *See id.*

241. *See In re Adoption of A.M.H.*, No. CH-01-1302-3, at 35 (Tenn. Ch. 2004), <http://www.tsc.state.tn.us/GENINFO/PRESSREL/2004/HEfinal.pdf>.

242. *See In re Adoption of A.M.H.*, No. W2004-01225-COA-R3-PT, 2005 WL 3132353, at *1 (Tenn. Ct. App. 2005).

243. *In re Adoption of A.M.H.*, No. CH-01-1302-3, at 41.

244. *See In re Adoption of A.M.H.*, No. W2004-01225-SC-R11-PT, 2007 WL 160953, at *6 (Tenn. 2007).

245. *See id.*

February 2004. After a ten-day trial, Judge Robert Childers terminated the Hes' parental rights, citing abandonment pursuant to a willful failure to visit and a willful failure to provide support for the statutory period of four months.²⁴⁶ The Tennessee Court of Appeals affirmed Judge Childers's ruling in 2005.²⁴⁷ It was only recently, in 2007, that the Tennessee Supreme Court reversed the lower court's decision, and ordered that Anna Mae be returned to her biological parents.²⁴⁸

The *He* case demonstrates not only that the Missionary-Heathen paradigm is pervasive and robust in America but that (1) its presence can have an impact on significant decisions—like custody—in the court system; and that (2) there is significant disagreement, even among “good people” both inside and outside the courtroom, as to what “racist” means.

From the outset, the Bakers assumed the savior's role in this case. As foster parents, the Bakers agreed to care for Anna Mae until her parents were better able to do so. Initially, the Hes, newly converted Christians, clearly took this to be an example of brotherly Christian love. Mr. He testified “Mr. Baker told me very clearly that they are Christian families generation after generation. We are just like brothers and sisters, and that's God's will, for him to get to know me. So I was very moved to tears by Mr. Baker's remarks.”²⁴⁹ Just as the missionary might emphasize the humanity shared with the disciple in order to overcome barriers in the conversion process,²⁵⁰ the Bakers emphasized their common faith with the Hes. But while the families were linked by a common faith, that fait

246. See *In re* Adoption of A.M.H., No. CH-01-1302-3, at 68-69 (Tenn. Ch. 2004), <http://www.tsc.state.tn.us/GENINFO/PRESSREL/2004/HEfinal.pdf>.

247. See *In re* Adoption of A.M.H., No. W2004-01225-COA-R3-PT, 2005 WL 3132353, at *90 (Tenn. Ct. App. 2005).

248. See *In re* Adoption of A.M.H., No. W2004-01225-SC-R11-PT, 2007 WL 160953, at *1 (Tenn. 2007).

249. *In re* Adoption of A.M.H., No. W2004-01225-SC-R11-PT, 2007 WL 160953, at *2 (Tenn. 2007). It is interesting to note that Jack He sought help from his religious community in the United States, as opposed to his racial community. This may have something to do with the fact that he came from China, which is significantly more racially homogeneous than the United States. See Ethnicity and Race by Countries, INFOPLEASE.COM, <http://www.infoplease.com/ipa/A0855617.html> (last visited Sept. 27, 2007) (providing information on racial homogeneity in the United States and China). Jack He's first contact with the Bakers was based upon their common bond as Christians, but as tensions developed, he appeared to distance himself from this alliance, stating that his daughter was kidnapped by white Christians, thus choosing the racial alliance. See Andrew Jacobs, *Chinese and American Cultures Clash in Custody Battle for Girl*, N.Y. TIMES, March 2, 2004, at A14. This is exactly how the media cast the roles—Chinese baby with Christian foster parents—but this casting of faith vs. race further demonstrates how race was equated with culture for the Hes and contrasted with Christian ideals.

250. For additional information on the conversion process see THOMAS, *supra* note 57, at 142.

could not overcome their conflict, which had little to do with religion and everything to do with race and culture.

No one disputes the Bakers' love for Anna Mae, but their concern for Anna Mae is inextricably tied to their belief that she would be better off with them than with her biological parents because of the Hes' culture, not because of their child-rearing abilities. Recall that it was the Hes' intention to send Anna Mae to China that prompted the Bakers to seek to extend and formalize the foster-care arrangement. Because of their own bias against the culture and way of life in China, the Bakers felt the need to rescue Anna Mae from a life there.²⁵¹

In a 2004 CNN interview, Louise Baker stated, "We just feel like the culture is against little girls in China."²⁵² And Jerry Baker stated that "[one consequence] of the one child rule was forced abortions. And that forced IUD implants for 12 and 13 years old. And she doesn't deserve to have to go through that."²⁵³ Similarly, a newspaper reported that Louise stated, "To me, if Casey truly loved her daughter, she would leave her with us' She added that a life in China, where female babies are sometimes deemed inferior to males, would be a hardship."²⁵⁴ The Bakers were determined to keep Anna Mae, not just because they loved her, but because they believed that returning her to her biological parents would force her to be Chinese, when she had the opportunity to be American.

This feeling was not limited to the Bakers; media reports, legal decisions, and public opinion reflected its pervasiveness. For instance, early media reports cast the Bakers in religious terms (Christian) and the Hes in racial terms (Chinese).²⁵⁵ Even Mr. He echoed this view of the conflict, stating that his daughter had been kidnapped by "white Christians."²⁵⁶ Pretrial assessments followed a similar line. For instance, the Tennessee Court of Appeals decision indicated that the guardian ad litem

251. See, e.g., Shirley Downing, *Hes Lose Appeal for Anna Mae—Parental Rights Remain Revoked*, COM. APPEAL (Memphis), Nov. 24, 2005, at A1.

252. *Paula Zahn Now* (CNN television broadcast Apr. 12, 2004), transcript available at <http://transcripts.cnn.com/TRANSCRIPTS/0404/12/pzn.00.html>.

253. *Id.*

254. Jacobs, *supra* note 255.

255. See, e.g., Shirley Downing, *Baker Family—Custodial Parents Fear Loss to a Culture Hostile to Girls*, COM. APPEAL (Memphis), Feb. 19, 2004, at A2. It is possible that the newspaper articles were attempting only to refer to Mr. and Mrs. He's citizenship, but the cultural and racial associations of "Chinese" are intimately linked in any event.

256. Jacobs, *supra* note 255.

stated that she had read a book about Chinese girls being placed in orphanages and consequently was concerned that the parents wanted to return to China:

From the very beginning of the case, it was very clear to me that [the parents'] intention was that if the child were returned to them, that they wanted to go back to China. They have never said anything different than that. They have always said that when this case is over they would like to take her back I honestly can't tell the court today I know to an absolute certainty what kind of life she would have there. This book that I read caused me some concerns.²⁵⁷

Therefore, she stated, she could not find it was in the best interests of the child to be returned to China.²⁵⁸

Clearly, in light of these concerns, Judge Childers believed Anna Mae would be better off in America. He did not, however, describe in detail the factual basis for his ruling. He did not rely on the Chinese culture expert, Dr. John Copper, instead finding that Copper was of no assistance to the court,²⁵⁹ nor did he cite any written authority for his statements. In particular, Judge Childers stated, "There is a 'one-child-per-family' policy in the People's Republic of China. Families with more than one child are subject to financial penalties [or] the loss of government services and benefits, including medical care and educational benefits."²⁶⁰ Judge Childers also pointed out that "Mr. He fears returning [Anna Mae] to the People's Republic of China because the death rate for children of [Anna Mae]'s gender is fifty (50%) percent in that country."²⁶¹ Judge Childers appears to have taken judicial notice of these assertions without debate or evidence. In addition, Judge Childers speculated that, were the Hes to return to China, there would be no certainty that Jack He would find employment.²⁶² These presumptions

257. *In re* Adoption of A.M.H., No. W2004-01225-SC-R11-PT, 2007 WL 160953, at *9 (Tenn. 2007). It is interesting that the social worker looks beyond the parenting skills of Jack and Casey He to examine the social and political climate in China, as though Anna Mae has applied for amnesty!

258. *See id.*

259. *See id.* at 14-15.

260. *In re* Adoption of A.M.H., No. CH-01-1302-3, at 58 (Tenn. Ch. 2004), <http://www.tsc.state.tn.us/GENINFO/PRESSREL/2004/HEfinal.pdf>.

261. *Id.*

262. *See id.* at 57 (although Mr. He had previously been employed as a full-tended professor in China and possessed three masters degrees)

strongly suggest that the court felt it was better for Anna Mae to be American than to be Chinese.

Most surprising is the court's simultaneous reliance on two contradictory assertions to arrive at its decision terminating the Hes' parental rights. Judge Childers found that "the Hes only sought custody of AMH to prevent the Hes' deportation."²⁶³ But at the same time, Childers faulted the Hes for wanting to return to China, claiming that it would jeopardize Anna Mae's welfare.²⁶⁴ This finding is particularly telling because it relies on two pillars of the Missionary–Heathen paradigm—that persons from other cultures are backward and in need of saving, and such persons should prefer to be saved. In the *He* case, Judge Childers found that life in China would constitute a hardship and, therefore, that it was wrong for the parents to want to return to China.²⁶⁵ He simultaneously found that the Hes only sought custody to avoid returning to China. Remarkably, Childers did not see these two statements as contradictory.

The judgment generated significant comment. Newspapers published numerous letters from readers. Numerous people, from both white and minority communities, cried foul at Childers's judgment, claiming cultural and racial bias.²⁶⁶ Some even called the Bakers racist because of their belief that Anna Mae would not be well taken care of by the Hes.²⁶⁷ Others commended the decision for standing up to "the liberals" to ensure the best interests of the child.²⁶⁸ In some of these letters, the Hes were called racist because they wanted their child to grow up around faces similar to hers, so she would know where she

263. *Id.* at 2.

264. *Id.* at 69, 70.

265. *Id.*

266. *See, e.g., Allegations of Judicial Bias Don't Fit Anna Mae Case*, COM. APPEAL (Memphis), May 24, 2004, at B4; Shirley Downing, *Childers Ruling Insensitive to China Culture, Group Says*, COM. APPEAL (Memphis), May 25, 2004, at B6.

267. Posting by Ruby Agnes to *Tennessee Court Rules in Anna Mae He Custody Battle*, http://www.associatedcontent.com/article/134733/tennessee_supreme_court_rules_in_anna.html (Feb. 27, 2007); *Tennessee Girl Returned to Biological Parents After Six-Year Fight*, ABC NEWS, Jan. 24, 2007, <http://abcnews.go.com/GMA/AmericanFamily/story?id=2818818&page=1>; Wendi C. Thomas, *Anna Mae Decision Botched by Judge*, COM. APPEAL (Memphis), May 20, 2004, at B1.

268. *See, e.g.,* David C. Nanney, Letter to the Editor, in *Allegations of Judicial Bias Don't Fit Anna Mae Case*, *supra* note 272; Michelle Howard, Letter to the Editor, in *Allegations of Judicial Bias Don't Fit Anna Mae Case*, *supra* note 272; James W. Cook, Letter to the Editor, in *Allegations of Judicial Bias Don't Fit Anna Mae Case*, *supra* note 272.

belonged.²⁶⁹ These accusations of racism reflect the notion that Anna Mae can transcend her race; she need not be doomed to being Chinese just because she was born into a Chinese family.

The flurry of public opinion plainly illustrates the two paths perceived in our march of racial progress. On the one hand are those who believe we need not be bound by our race and cultural background, and that color-blind adjudication is the best way to achieve a fair outcome. These individuals might argue that without racial motive, good or bad, no racist outcome is possible. The kindheartedness of the Bakers clearly betrays no racist motive, they only love the child. In this way, the benevolent motive immunizes the actor against criticism, because racism is not merely an experience, it is an intentional expression.

On the other hand are those who struggle to expose the presumptions of inequality that under gird the stated goal of color-blindness. They argue that color-blindness ignores the legacy of racism we still suffer, and that the legacy cannot be undone without race-conscious adjudication. Even though the Bakers intended to do a kind thing, their actions were tainted, and the ultimate effect only contributed to racism's legacy; they should not be excused from the effects of their wrongdoing merely because they meant no harm.

These discordant views are at the heart of so many other struggles today. The media constantly confronts us with the same question—is it racist?—applied to different actions and events. It appears we are at a fork in the road. But these paths can be brought together under the Missionary-Heathen paradigm, in which racist undertones can coexist with good intentions. In the frenzied conversation that continues to take place in the context of race, this paradigm should help us to find a common understanding of what actually is racist.

VIII. CONCLUSION

Despite our best efforts to achieve racial equality, this Article posits that the cognitive imprint cannot be easily overcome—in part because it is so deeply ingrained, and in part because it functions with the aid of stereotyping. The Missionary-Heathen paradigm is merely its current iteration. The good intentions at the heart of this model have prevented many from recognizing its bigoted underpinnings. Despite its benevolent motivations, the model ultimately rests on the desire to change, convert, rehabilitate, and rescue colored people from their history and their fate,

269. Lesley Hartney, Letter to the Editor, in *Allegations of Judicial Bias Don't Fit Anna Mae Case*, *supra* note 272.

and from their coloredness.²⁷⁰ The fact that some people focus on the benevolence, viewing it as inconsistent with racism, while others focus on the racial and cultural inequality the view presupposes, has only confused the discussion.

The *He* case poignantly demonstrates this confusion. The Baker family, a white family, wanted to save Anna Mae from her Chinese family because they did not want her to be constrained or prejudiced by that identity. They saw her only as another child of God. To them, this represents true racial equality: Anna Mae was entitled to, and would receive, all the things the other Baker children would. But this does not give Anna Mae the one thing that is uniquely hers in the Baker household—a rich background and ancient heritage to which she is also entitled. In rescuing Anna Mae, they deny her the indisputable complexity of her identity.

Interracial custody cases involving biracial children previously tethered children to the parent they most resembled, but *Palmore* changed this trend. Moving toward color-blindness, *Palmore* declared that children subject to custody battles could not be bound by their race. Race was reduced to a mere factor in the best-interests-of-the-child test; it was no longer dispositive. And yet, if this test is itself racially and culturally biased, this move toward color-blindness is merely another excuse to implement the latest iteration of the cognitive imprint.

The social experiences of interracial couples indicate that most people are engaged in the assimilationist project of racial equality that marches toward color-blindness. Thus, the effects of *Loving* are found both in small personal interactions and in cases like *He*, because of what *Loving* fails to do.

Loving may indeed be a milestone, but because the Court never fully explored the nature of racism, this case could not propel us much further down the path of racial progress. While the Court properly dismissed White Supremacy as an inadequate basis for racial classification, it never explored its roots or legacy. In the face of hundreds of years in which racism was fostered, its denunciation, without more, will not lead to its defeat, especially where confusion over the real characteristics of racism remains.

Despite this critique, I still believe *Loving* is the key. If we are ever to unseat the cognitive imprint of racial inequality, we must create a new paradigm, a model of relationships where racial difference and equality coexist, one to which our minds have ready recourse. Interracial families

270. See, e.g., SHOURIE, *supra* note 134, at 111. There is also a very active Jewish antimissionary network which recognizes this aspect of the missionary agenda. See, e.g., <http://www.beingjewish.com/toshuv/>; Jews for Judaism, <http://www.jewsforjudaism.org/>.

can be this new paradigm. As more people love across the color line, braving prejudice and scorn to create families and new traditions, as more people walk the path of racial progress to defy the cognitive imprint, there is hope. We might just get there.

* * *