"Bad" Mothers

The Politics of Blame in Twentieth-Century America

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Chapter 12

"Immoral Conduct"

White Women, Racial Transgressions, and Custody Disputes

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In August 1950, Bernice Beckman, a white New York woman, divorced her white husband Eugene and was granted full custody of their five-year-old son, Eric. A little over a year later, she remarried and her ex-husband immediately kidnapped Eric and secured an ex parte order from a New York judge granting him full custody of the child. Why was Eugene Beckman so upset about his ex-wife's second marriage? Because Bernice Beckman's new husband was black. Beckman sued for custody on the grounds that his ex-wife had engaged in "immoral conduct," and the sympathetic judge not only took Eric away but in order to "protect" the child from his mother, denied Bernice all visitation privileges and issued a restraining order preventing her from ever seeing her son again. Eight years later, Bernice Beckman Riggins was still fighting to regain the right to see her son, if not to be his custodial parent.[1]

The judgment against Bernice Beckman, while severe, was not unique. In the forty years after World War II, white women who married black men were repeatedly labeled as "unfit" mothers for their white children and were sometimes punished by the courts by having custody of these children revoked. Between 1945 and 1985, approximately twenty-five child custody disputes arose on the state appeals court level after local trial courts had denied white women who had married black men custody of their white children from previous marriages. In making these custody dispositions, courts pondered whether white children should be removed from their mother's care because she had married a black man, or whether a mother's special relationship with her children should override

the desire to keep white children in an all-white environment. In short, courts weighed a woman's racial transgressions against their traditional preference for maternal custody.[2]

These cases demonstrate, first, that local trial courts throughout this forty-year period proved willing to remove white children from the custody of their interracially married white mothers. Although state appeals courts sometimes overruled these decisions, it was not uncommon for a woman who married a black man to lose custody of her white children, particularly in the period from 1945 to 1965. Second, the cases illustrate the construction of both racial and gender identities. Courts and the white relatives who sued for a change in custody feared that children forced to live in interracial homes would be stigmatized; white mothers were expected to protect and maintain their white children's racial identity. Courts in many instances linked a woman's racial transgression to a gender transgression. Thus, women were denied custody not just because they had married black men but because, by marrying black men, they had demonstrated that they were not good mothers. By marrying interracially, these white women "selfishly" placed their own personal gratification over concern for their children's future welfare as white people in America. A woman's willingness to transgress America's racial boundary, moreover, was often viewed by her relatives and by the courts as a moral fault which called her fitness as mother into question. Many women suffered at least the threat of losing their children after they married interracially. Many, like Bernice Beckman, found the courts willing to do whatever necessary to "protect" white children from their "immoral," racially transgressive mothers.

Finally, the regional variations in these decisions demonstrate the use of the custody issue to punish white women who intermarried. In 1945, thirty states had laws criminalizing interracial marriage, and thus the custody cases from the early period nearly all took place in a limited number of northern and midwestern states.[3] In 1967, when the Supreme Court finally declared all antimiscegenation laws to be unconstitutional in *Loving v. Virginia,* seventeen states (almost all of them in the South) still forbade interracial marriage. Many of the custody cases after 1967 occurred in the southern states which had outlawed interracial marriage before *Loving.* While lower courts in both the North and the South throughout this period proved reluctant to allow white children to grow up in interracial homes with black stepfathers, after 1967 northern appeals courts were far less likely to uphold these rulings than southern appeals

courts were. Furthermore, courts in both the North and the South would deny custody to women they considered immoral, but courts in states that had criminalized interracial marriage prior to 1967 were likely to define immorality very broadly. Thus, even though interracial marriage had been decriminalized, southern courts still managed to punish white women who dared to cross the color line, by taking away their white children.[4]

Lower Courts and the Removal of White Children

Throughout the period from 1945 to 1985, lower courts proved sympathetic to relatives who were seeking to have a child removed from the care of an interracially married white mother. Even when courts claimed that their decisions were based on "nonracial issues," they often ignored evidence that white ex-husbands and grandparents were motivated to seek custody primarily because of a woman's relationship with a black man. Most of these cases, for example, were filed immediately after the woman remarried, and even though plaintiffs might cite a variety of reasons to justify a change in custody, their racial concerns were often clearly expressed.

By challenging a woman's right to care for her children, relatives could try to deter a woman from marrying a black man, could punish the mother for her racial transgression, and could reassert their authority over her. The 1952 case of *Portnoy v. Strasser* clearly illustrates this point.[5] On February 2, 1951, a New York county court ordered that the custody of five-year-old Robin Strasser be transferred from her mother to her maternal grandmother. Ann Strasser divorced her white husband in 1945, when their daughter was only a year old. In May 1949, she married a black man. Ann's mother, Mollie Portnoy, sued for custody on the grounds that Ann was a communist who was unconcerned with the child's religious upbringing and that her second husband was of a different race and religion from herself. The referee of the court awarded custody to the grandmother on nonracial grounds.[6] The Appellate Division upheld the decision.

In their appeal to the Supreme Court of New York, Strasser's lawyers emphasized that Portnoy's reasons for seeking custody were all pretenses; the only reason she wanted custody was because Ann's husband was black. Portnoy did not institute custody proceedings until her efforts to break

up the marriage had failed, and she threatened her daughter, telling her that, "I want you to leave him . . . or I shall take your children away from you." The lower court, Portnoy's lawyers argued, had practiced a "subtle and serious social prejudice" in awarding the child to the grandmother; they were biased against the child living in a racially mixed neighborhood and receiving paternal care from a black stepfather. Portnoy was obviously using the custody issue as a way to punish her daughter for her interracial marriage. In an amicus curiae brief in the case, the National Lawyers Guild concurred that Portnoy's attempt to take the child away was calculated to serve both "the purpose of chastisement" and "as a weapon to compel her daughter to leave the husband she loves." In this case, the grandmother's efforts to control her daughter were unsuccessful. The Court of Appeals of New York ultimately reversed the custody ruling and gave the child back to her mother.[7]

Other courts also revoked a woman's custody for what were purportedly nonracial issues. A Connecticut court in 1965 took away a white woman's child after her marriage to a black man on the grounds that she had made no provision for the boy's religious education: she had been excommunicated from the Catholic church after remarrying, and since her relationship with a black man had alienated her parents, the boy would no longer see his grandparents.[8] Other courts revoked custody after a subsequent interracial marriage for vague "social and economic reasons," because a mother was "immature," or on even more questionable grounds. In a 1975 Pennsylvania case, a local court ruled that while both parents seemed fit, custody of the children should be changed to the father because he lived in a rural area rather than a suburban one, as the mother did. In another Pennsylvania case, a judge transferred custody of two little girls from their mother to their white father because he wanted to give the mother and her black fiancée time to get acquainted with each other without being "distracted by other obligations."[9]

These legal arguments seem even weaker when compared to those employed in custody cases where race was not a factor. While a court might claim that children were removed from their interracially married mother's care because she no longer provided them with a proper religious upbringing, interreligious marriages did not seem to generate similar custody battles on the state appeals court level. In a 1944 case, for example, the ex-husband of a Christian woman remarried to a Jewish man argued that his ex-wife's marriage to a Jew rendered her "unfit or unsuitable" for the care and custody of their child. The Alabama Supreme

Court, however, ruled that there was no grounds for removing the daughter from her mother. Marriages which were not "forbidden by statute, or violative of social morality" could not in and of themselves render a parent unfit for custody, the Alabama Court declared. "In our opinion," they ruled, "no greater calamity can befall an infant daughter than to deprive her of a mother's care, vigilance and understanding."[10]

The willingness of local courts to remove young children from their mother's care is particularly striking given that interracial marriages were not forbidden by statute in the states where these cases were heard, and that, as the Alabama ruling suggested, legal precedent held that a child should only be removed from its mother's care under exceptional circumstances.[11] Most courts in the 1940s, 50s, 60s, and 70s awarded custody of minor children to their mother after a divorce unless there was extensive evidence that the mother was an unfit parent. The standard rule in custody cases, to do what was in the "best interests of the child," was almost always taken to mean that children of "tender years" should be awarded to their mothers. As a Pennsylvania court explained, this philosophy was "supported by the wisdom of the ages": "It has long been the rule that in the absence of compelling reasons to the contrary, a mother has the right to custody of her children over any other persons, particularly so where the children are of tender years."[12]

The presumption in favor of the mother, however, did not automatically apply when a white mother chose a black man as her second husband. In these cases, concerns about race and gender clearly came into conflict. And despite the common belief that mothers should raise their own children, a subsequent interracial marriage often generated successful suits to change custody dispositions, particularly in the lower courts. Thus lower courts, even when they claimed to be acting in the child's "best interest," cooperated with plaintiffs' attempts to punish white women for their racial transgressions.

Issues of Racial and Gender Identity

Punishment, however, was not the only motivation for taking away the white children of interracially married white women. These cases also reveal the ways in which both the white public and the courts constructed and understood race. During these custody battles, litigants frequently invoked the desire to "protect" white children from the "stigma" of

growing up in an interracial home. In doing so, they pointed to the importance, and ultimately, though inadvertently, to the fluidity of "whiteness."[13]

The experience of white women who intermarried in the postwar era demonstrates the fluidity of white racial identity. White women in the 1940s, 50s, and 60s who associated with blacks were often forced down to the status of blacks. Whites who married blacks were "symbolically unwhitened" in the larger white community.[14] First, white women who married blacks usually moved into the black world. As a black photographer married to a white woman told *Ebony* magazine, "When a colored man marries a white woman, she comes to him. He doesn't go to her."[15] Nearly all studies done of interracial marriage before the 1970s found that the white wives in these marriages assumed the status of their black husbands. "In every instance of intermarriage with the Negro," Sister Annella Lynn concluded in her 1953 study, "the conjugal pair have the social status of the Negro." White spouses in interracial marriages, especially white women, "became Negroes socially."[16] According to a 1955 *Ebony* exposé on where mixed couples lived, white women who married blacks frequently found themselves "for the first time denied the right to live in a white neighborhood." Interracial couples, like blacks, were often forced to pay higher prices for inferior living quarters. And having the "wrong address" could affect other aspects of living as well. Michelle Ross, an Atlantic City woman who married a black man in the early 1950s, lost several jobs once her employers realized her address was in the black section of town. In order to get a job at a black business, she pretended to be black. Tellingly, when four American women tried to dissuade Hazel Byrne Simpkins, an Englishwoman, from coming to the States to marry her black fiancé, their final argument was, "But my dear, you'll have to live with them all your life!"[17]

Since becoming romantically involved with a black man could compromise a white woman's racial identity, families often worried that interracial marriage would ruin their daughters' lives. Hettie Cohen, a white Jewish woman who married the black beat poet Leroi Jones, remembered her mother telling her that she would "suffer and pay every minute of [her] life" for her choice of spouse.[18] These parental objections reflected the serious negative consequences of losing the privileges of whiteness. Parents feared, moreover, that this loss of status would be permanent.[19]

If an interracial marriage could ruin a white woman's life, relatives were particularly concerned that her white children would be perma-

nently harmed by being raised in an interracial home. White children with black stepfathers might face social stigmatization, they might be shunned at school, and worst of all, they might lose their own status as white from their close association with blacks. In many of these cases, both the relatives who sued for custody and the courts who made the custody dispositions expressed concern that living with a black parent would have a negative effect on a white child's racial identity.

In the 1962 battle between Sandra Potter Baugh and her ex-husband for custody of their daughter, the father stated his concerns clearly. If his daughter were brought up in an interracial home, she "will not grow up and mature as a normal white child should but rather will be rejected, shunned and avoided by children of both races and as a result her entire life could, and unavoidably would, be adversely affected." No white child who was forced to grow up in an interracial home could be "normal," the father claimed. While the judge in the case admitted that there was no evidence that a happy interracial home would hurt a white child, he ruled for the father. "None of us can anticipate what problems, if any, would develop as the child became older, particularly during puberty, when she, in school and other activities, becomes aware of the opposite sex." By focusing on the daughter's sexual development, the judge's reasoning suggested that an anomaly in the racial order might repeat itself in the next generation; Sandra Baugh's white child would be more likely to marry interracially if she were brought up in an interracial home.[20]

Other courts also cited racial reasons for changing custody. In 1971, the Illinois Circuit Court refused to give a white mother who had married a black man custody of her three children because it feared the children would be traumatized if they had to move to a strange place and live in a racially mixed family.[21] Similarly, a district court in New Mexico advocated a change in custody on the grounds that the children involved would be "better reared with members of their own race."[22]

White children forced to live in interracial homes, courts and relatives feared, might lose their position in the community as white. Thus the U.S. Court for the District of Columbia denied a black stepfather's petition to adopt the illegitimate white son of his wife, even though the courts normally encouraged the adoption of children born out of wedlock. In this case, however, the fact that the boy and his mother were white and his stepfather black, created a "difficult social problem," the court ruled. "The boy when he grows up might lose the social status of a white man by reason of the fact that by record his father will be a negro if this adoption is approved. . . . I feel the court should not fashion the child's future in this manner."[23] In another case, a white father won custody of his two young daughters after his ex-wife moved in with her black boyfriend. The father told the court that while he was away from home, "My children were very seldom around white people at all. The only time I even see them they was all around black people and they have no confirmation of what white is, really, I don't think."[24] In other words, white children raised in interracial homes would not understand the meanings of whiteness and the privileges accorded to whites. In the racial landscape of American society, not understanding what it meant to be white, or being associated with blacks, was viewed as potentially stifling and harmful to a child's development.

If, as many argued, being raised in an interracial home could be permanently damaging to a white child, then mothers who decided to subject their children to the potential harm of living among blacks could only be described as selfish and as more interested in their own personal and sexual gratification than in the well-being of their children. Both relatives and courts in the postwar period suggested that "good" white mothers would not force their children to live among blacks. Thus women who sought to keep their white children after they intermarried were stereotypical "bad" mothers in that they were perceived as unwilling to sacrifice their own desires in order to protect their children.

By "forcing" their children to live with their black husbands, these mothers essentially proved that they did not have the best interests of their children at heart. When, in 1949, Poppy Cannon, an upper-class food editor, married Walter White, the black head of the NAACP, her ex-husband asked for full custody of their daughter. Charles Claudius Philippe had originally agreed that their daughter, Claudia, should live with her mother. When Cannon remarried, however, Philippe objected on the grounds that there had never been "the slightest hint that you would marry a negro" and that Claudia would be forced to "live in a household with a negro step-father." Philippe asked Cannon to put aside "any personal feelings or selfish considerations" and to give up Claudia "before irreparable damage is done her." He was certain that their daughter would be the target of insults and nasty gossip once other children found out that her mother had married a black man, and he could not believe that Cannon "would thrust this terrible onus upon her."[25] An innocent white child, Philippe argued, should not be made to suffer for the sins of her mother.

Sometimes a court even ruled that while race should not be considered a factor in custody cases, a mother's decision to subject her children to an interracial relationship was evidence that she was not concerned about their welfare and should therefore forfeit custody. In 1980, the Supreme Court in Iowa simultaneously declared that they could not consider the fact that a white mother's boyfriend was black in making their custody decision while maintaining that "the subjecting [of] the children to a biracial relationship and allowing such a relationship to exist in the presence of the children is not in their best interest and is going to make their lives in the future more difficult." Thus, the Supreme Court of Iowa affirmed a decision changing custody from Sandra Ann Kramer to her ex-husband, despite the fact that he had devoted more attention to gambling, bowling, golf, and poker than to his children during their marriage, that he had gambled away the three thousand dollars set aside for the downpayment on the family's new home, and that he continued to have a gambling problem. The district court, and later the Iowa Supreme Court, decided that Sandra was emotionally unstable, that she had behaved immorally in the presence of her children, and that she seemed to want a more "carefree life-style" than was consistent with the proper care of children. All of these terms, of course, were a coded means of condemning Sandra's choice to have an interracial sexual relationship.[26]

Regional Variations

The connections between transgressing racial mores and being considered a "bad" mother are even clearer in southern court decisions after 1967. In the 1967 decision of *Loving v. Virginia,* the United States Supreme Court decriminalized interracial marriage. Couples could no longer be punished for marrying across the color line. The *Loving* case reflected the larger changes in the Supreme Court's rulings on race. Beginning with the 1954 school desegregation decision *Brown v. Board of Education,* the Supreme Court began to articulate the doctrine of "strict scrutiny" of any racial classifications. In a series of cases which dismantled legal segregation in the South, the Supreme Court ruled that any law which made a classification based on race was subject to the most stringent judicial scrutiny. The *Loving* decision applied this rule to the arena of marriage, finding that state antimiscegenation laws violated the Fourteenth Amendment and were therefore unconstitutional.[27]

The *Loving* decision created a new legal context for these custody cases. After 1967, most state appeals courts recognized that the rule of strict scrutiny of racial classifications made it more difficult to deny a woman custody solely because of the race of her husband or lover. In the North, as a result, most appeals courts overturned local custody decisions that seemed to punish a white mother for intermarrying. In states where interracial marriage had been illegal before 1967, however, appeals courts continued to find ways to deny white women custody of their children even after *Loving.*

Given the new legal context, courts had to cloak their custody decisions in "nonracial" terms. Southern courts effectively denied white women who crossed the racial line custody of their children in two ways. First, while northern courts often carefully scrutinized lower court decisions for racial bias, southern courts often refused to question a local court's decision. Second, southern courts often focused on a woman's alleged immorality rather than her racial transgression. In other words, southern courts drew on the established belief that white women who intermarried were "bad" mothers to deny these women custody of their children without focusing on the racial issues.

Most appeals courts in the North after *Loving* agreed that race could not be the determinative or, in some states, even an evaluative issue in child custody disputes. Northern courts even proved willing to challenge what seemed to be "nonracial" decisions that removed white children from their interracially married white mothers.[28] Some also explicitly recognized that taking a woman's children away from her because of a subsequent interracial marriage would undermine the *Loving* decision by infringing upon the right of white women to marry an individual of another race.[29] As a Pennsylvania judge argued in a 1972 case, a judicial policy of removing the white children of interracially married white women would serve to deter women from marrying outside their race.[30] Northern appeals courts like these thus proved willing to overturn lower court custody placements when it seemed that the lower court had put too much emphasis on race.[31]

In states where interracial marriage had been illegal prior to *Loving,* however, the situation was often more complex. Southern courts, like northern ones, had to operate within a legal context that made it more difficult for courts to openly base their decisions on racial grounds. In child custody cases, southern courts tried to walk a fine line: they aimed to protect the racial status of white children and punish women who

transgressed the color line, while denying that their custody decisions were racially motivated. Southern courts developed two methods for denying white women custody of their children. First, by deferring to local trial courts' expertise, southern appeals courts tacitly upheld rulings based on race. Second, southern courts often justified their rulings by claiming that the white women who intermarried were immoral, and that they placed their own gratification ahead of concerns for their children; in short, that they were "bad" mothers.

Southern appeals courts were far less concerned than their northern counterparts about examining trial court decisions for racial bias. *Ethridge v. Ethridge,* a 1978 Alabama case, illustrates this deference to the trial court. Carolyn Sue Ethridge gained custody of her three children after she and Emmitt Ethridge were divorced in 1972. Emmitt failed to pay child support and was convicted of assaulting his ex-wife with a gun. Furthermore, Carolyn Sue lost her job because her ex-husband harassed her at work and she was forced to leave the state to find employment. In 1974, she took her children to Ohio, and in 1976, she married a black dentist. When her ex-husband took her to court, he was awarded full custody of the children. Carolyn Ethridge charged that the court only transferred custody because of her interracial marriage, but the appeals court found no "overt evidence" that the charge was true. While the ex-husband had exhibited racial bias during the trial, the trial court had treated the black husband "courteously." The appeals court felt that the question of whether the trial court would have denied the mother custody if she had married a white dentist rather than a black one could only be answered through "surmise and speculation": "For this court to speculate affirmatively would be contrary to our duty of review and dishonor the trial court without specific proof. . . . This court is not at liberty to set aside the judgment of the trial court merely because we might have decided differently had we been sitting as the trial judge."[32] The appeals court in Alabama thus refused to question the trial court's decision for fear of "dishonoring" the trial court judge.[33]

Southern appeals courts also decided these cases on "nonracial" grounds by questioning the morality and respectability of the white mother. In both the North and South, courts were willing to deny custody to women they considered "immoral." But southern appeals courts defined immorality very broadly, often characterizing having sex with a black man as a moral lapse that in itself called a woman's fitness as a mother into question, as the 1978 Louisiana case *Schexnayder v. Schexnayder* suggests. Sheila Schexnayder had an affair with a black man that lasted for five months. When her ex-husband sought custody of the couple's two young children, the lower courts in Louisiana reluctantly awarded custody to Sheila because of a State Supreme Court precedent that a brief affair was not due cause to deny a mother custody. Although the court found that "the mother's conduct here was particularly scandalous and offensive to the sensibilities of the local community in that her lover was of another race," they felt that they had to uphold the maternal preference rule since Louisiana's antimiscegenation laws had been ruled unconstitutional.[34] The Supreme Court of Louisiana, however, decided that Sheila should lose custody of her children, because in the words of one judge, her behavior during the affair had been "flagrant, even open and notorious." By having an affair with a black man, Schexnayder had shown a "lack of love and consideration for her children," as well as a disregard for generally accepted moral principles. The Supreme Court argued that Sheila's insensitivity to the pain her affair would inflict on her children was grounds for revoking her custody privileges.[35] Thus, she lost custody not because she had an affair with a black man but because her willingness to have an affair with a black man without thinking about how it would affect her children made her qualifications as a mother suspect.

In another Alabama case, *White v. Appleton* (1974), custody of the white child of a young white woman was awarded to her parents after she married a black man on the grounds that the mother was too "immature" to raise her child. Loretta Appleton White had dropped out of high school to get married, given birth at age seventeen, and then divorced her husband that same year. White moved back into the home of her mother and stepfather, who cared for her child while she worked. She held a steady job, however, and always made an effort to care for her son. In August 1973, White found a job in Houston and left her child in the care of her mother, sending for her son in November. But when her mother and stepfather found out that White planned to marry a black man and was living in an apartment with her black fiancée, they sued for permanent custody of the child. The trial court in Alabama, and later the appeals court, upheld the change in custody on the ground that Loretta had not demonstrated that she was responsible and mature enough to care for her child. The appeals court discounted the possibility that the ruling was based on racial considerations. As the appeals court judge ruled,

> The conduct of Loretta in first cohabiting with a negro without marriage and subsequently marrying him probably entered into the consideration of the court. Such consideration does not require a conclusion that the decree of the court was founded upon a racial prejudice. To remove a three-year-old child from the only home it has known, place it in a home far removed with a mother who has spent little time with it and with a strange male and stepfather of a different race, could prove to be a traumatic experience indeed.[36]

White allegedly lost custody of her child because she was "immature," but the court based its determination of her maturity on the fact that she had lived with, and then married, a black man.

The actions of southern courts, particularly their desire to punish interracially married white women, calls into question the traditional historical view of southern attitudes about interracial sex. For the most part, historians have focused on the black-rapist myth, a myth which suggested that southerners viewed all interracial sex as coercive. Any act of interracial sex became a rape, even if the woman had supposedly consented.[37] As Martha Hodes has demonstrated, however, this racial ideology was never completely dominant or monolithic. Some white women, particularly those in the lower classes, were held responsible for their relationships with black men. The belief in black male bestiality did not absolve all white women of their sexual transgressions.[38] In these cases, furthermore, white women actually decided to *marry* black men, which further undermined the belief that their interracial relationships were coerced. By choosing to marry interracially, a white woman demonstrated her own immorality.

The ability of southern courts to punish white women who married black men by taking away their children finally drew the attention of the Supreme Court in 1984 in the case of *Palmore v. Sidoti.* In this Florida case, both the trial court and the Florida appeals court held that Anthony Sidoti should be awarded sole custody of his young white daughter. Anthony Sidoti and Linda Sidoti Palmore divorced in 1980, and Linda was awarded custody of the child. But when she began living with, and then married, a black man, her ex-husband sued for custody. While the court ruled that the father's openly stated prejudice against his ex-wife's interracial relationship was not sufficient cause to remove the child from her mother's custody, they drew on both moral and racial arguments to support their decision. The court found it significant that the mother saw fit "to bring a man into her home and carry on a sexual relationship with

him without being married to him. Such action tended to place gratification of her own desires ahead of her concern for the child's future welfare." Even though she and Clarence Palmore eventually married, the court reasoned that their premarital sexual relationship was adequate grounds on which to deny her custody. Furthermore, the Florida court ruled that if the child were raised in an interracial home, she would inevitably face future prejudice and bias, and thus it was in the best interest of the child to remove her from this situation.[39]

This case, with its flagrant recourse to racial reasoning, eventually compelled the Supreme Court of the United States to regulate the custody decisions of state courts. In 1984 the Supreme Court overturned the *Palmore* decision, ruling that "the reality of private biases and the possible injury that they might inflict were not permissible considerations for removing an infant child from its natural mother."[40] In other words, judges could not consider the potential effects of racial prejudice in making their custody decisions. The Supreme Court's ruling in *Palmore v. Sidoti,* however, was quite narrow: the Court did not preclude the consideration of *actual* effects of racial prejudice in deciding custody. Furthermore, their decision was made easier because the Florida court had been "candid" and had made "no effort to place its holding on any ground other than race." If the Florida court had focused solely on Linda Palmore's qualifications as a mother and her supposed immorality in living with her black boyfriend rather than on what her child might suffer from being reared in an interracial household, the case would probably never have reached the Supreme Court. While the case thus limited the ability of state courts to make custody decisions openly based on race, it did not call into question the indirect devices southern courts had used to deny custody to mothers who had married black men.[41] Courts could still identify women who intermarried as bad mothers and rule against them on that basis.

The unique interaction of race and gender in these cases becomes even clearer when compared with custody disputes involving children of black-white couples. While associating with blacks could call a white woman's fitness as a mother of white children into question, courts have consistently upheld the right of white mothers to raise their own biracial children. Presumably, if it was considered "dangerous" for white children to be raised in interracial homes, then courts might have viewed it as equally damaging for children born of interracial couples to be raised exclusively by their white mothers following the dissolution of an interra-

cial marriage. This reasoning, for example, was evident in the earliest case of this sort, a 1950 case in Washington state, in which the court decided that it was in the best interests of the children of James and Marylynn Ward to be awarded to their black father rather than their white mother. "They will have a much better opportunity to take their rightful place in society if they are brought up among their own people," the judge ruled, although he was conscious enough of gender norms that he decided the children should be raised in the home of their paternal grandmother rather than in their father's home.[42] Yet while black fathers since 1950 have repeatedly tried to win custody of their biracial children on the basis of the logic in *Ward,* no court since has upheld this reasoning. Six years later, in 1956, an Illinois man claimed that he should be awarded custody of his two biracial children because they had the "outstanding basic racial characteristics of the Negro race." The children would be healthier and better adjusted if allowed to remain "identified, reared and educated with" blacks, he asserted. The appeals court, however, awarded custody to the white mother, ruling that the trial court had placed too much consideration on race. Likewise, when a trial court in Nevada awarded custody of an interracial couple's two children to the black father because the children clearly showed "Negroid physical characteristics," the state supreme court overturned the ruling on the grounds that it denied the white mother equal protection of the laws under the Fourteenth Amendment. Thus the courts implied that, while white children needed to be protected from growing up among blacks, a biracial child would not be harmed by living with its white mother, even if she had subsequently married a white man and reentered the white community. In these cases, the traditional view that children should be raised by their mothers overrode racial considerations.[43]

Decisions allowing white mothers to retain custody of their biracial children might also have reflected the assumption that raising biracial children could in itself serve as punishment for a white woman who had dared to cross the color line. While a woman might be able to redeem herself from an interracial marriage by divorcing her black husband, the presence of a biracial child in her life could permanently mark her as associated with the black community. Thus, one woman who left her black husband after a short marriage in the 1940s expressed relief that their daughter had been born light-skinned. If she had been born with a dark skin, "[S]he would then have been regarded by everyone as a negro and would have to live under the handicaps that confront all Negroes.

Suppose I had left my husband with a dark-skinned child. What would have happened? Would my parents and friends have accepted her? Would they have accepted me? Frankly, I think not." Similarly, a poem written by a white supremacist in the 1960s described the birth of a biracial child as a permanent tragedy for a white woman. As the poem's protagonist laments, "[A]ll my prayers can never clear my baby's mongrel skin, nor make him white as driven snow, nor cleanse my soul of sin."[44]

The custody disputes that arose when white mothers married black men reveal the race and gender ideologies prevalent in post–World War II America. Courts in the postwar period held that growing up among blacks could harm a white child, and that the racial identity of children of interracially remarried white mothers had to be protected. Since subjection to an interracial home so endangered white children, women who intermarried were viewed as selfish and self-centered. Especially after 1967, when courts could no longer be as open about the racial basis for their rulings, women who married interracially were said to have acted immorally, without open reference to the racial component of their transgression. Seeking nonracial grounds on which to decide these custody cases, courts explained their decisions with reference to the prevailing gender ideology: These women lost custody, not because they married black men, but because they were "bad" mothers.

NOTES

1. "White Woman Marries Negro, Loses Her Child," *Jet,* 10 April 1952, 22; "A Lonely Mother Waits and Waits," *Pittsburgh Courier,* 11 July 1959, 9.

2. I would like to thank Rachel Moran of the New York University School of Law and Peter Bardaglio of Goucher College for their comments on an earlier version of this work presented at the 1996 Berkshire Conference on the History of Women.

3. Some states, like California, had laws that forbade interracial marriage within their own borders but recognized marriages that had taken place elsewhere. Thus, conceivably a woman from California could travel to another state to wed and then return to California to find her custody challenged in that state. However, all of the early cases that reached the state appeals court level occurred in states where interracial marriage was legal.

4. While these state court decisions provide a wealth of information to the historian, they are not without their limitations. Most cases never reach the

appeals court level, and state appeals courts selectively choose which cases to hear. Mothers who did not expect the state appeals court to be sympathetic might not bother with an appeal. Court decisions, moreover, do not send a consistent or monolithic message. A single ruling might be overturned by a higher court; rulings often contain more than opinion. Nevertheless, these twenty-five appeals court cases reveal important patterns which are historically significant.

5. *People ex rel. Portnoy v. Strasser,* 104 N.E. 2d 895 (New York, 1952); *People ex rel. Portnoy v. Strasser,* 195 N.Y.S. 2d 905 (New York, 1951). In the case of *Potter v. Potter,* for example, Sandra Baugh, who married a black surgeon, was denied custody of her children on the grounds that she was "a picture of a young woman who has been in serious rebellion." The appeals court upheld the ruling, saying that the circuit court had not been influenced by the race issue and had not considered racial differences in its decision. *Potter v. Potter,* 127 N.W. 2d 320 (Michigan, 1964).

6. The referee based his decision on the grounds that the mother was engaged in communist activities (an allegation she denied) and that she worked and put her little girl in day care.

7. *People ex rel. Portnoy v. Strasser,* 104 N.E. 2d 895 (New York 1952); "Brief for Defendant-Appellant, Court of Appeals of the State of New York," and "Brief of the New York City Chapter of the National Lawyers Guild as Amicus Curiae," National Association for the Advancement of Colored People Papers, group 2, Legal Files (1940–55), box B82, folder: Intermarriage, *People of New York ex rel. Mollie Portnoy v. Ann Strasser,* Court of Appeals, 1951–52, Manuscript Division, Library of Congress, Washington, D.C.; William Hopper, "Void Ruling Taking Girl from Mother in Mixed Marriage," *New York Daily Compass,* 14 March 1952.

8. *Murphy v. Murphy,* 124 A. 2d 891 (Connecticut, 1956).

9. *Commonwealth ex rel. Lucas v. Kreischer,* 209 A. 2d 243 (Pennsylvania, 1973); *Commonwealth ex rel. Myers v. Myers,* 360 A. 2d 587 (Pennsylvania, 1975).

10. *Goldman v. Hicks,* 1 So. 2d 18 (Alabama, 1941).

11. For more on the general issue of child custody, see Mary Ann Mason, *From Father's Property to Children's Rights: The History of Child Custody in the United States* (New York: Columbia University Press, 1994). For a legal view of custody cases involving interracial couples, see Susan Grossman, "A Child of a Different Color: Race as a Factor in Adoption and Custody Proceedings," *Buffalo Law Review* 17 (1967–68): 303–47.

12. *Commonwealth ex rel. Lucas v. Kreischer,* 209 A. 2d 243 (Pennsylvania, 1973), 245.

13. A growing historical literature addresses the cultural and societal significance of whiteness in the United States. David Roediger has described how the benefit of being white served as a symbolic "wage" for the white working class, while Ruth Frankenberg has described whiteness as an unmarked location of

structural advantage. Although many whites remain unaware and unconscious of the privileges they gain solely because of the color of their skin, historians have now begun to explore how those privileges have operated. For works on whiteness, see David Roediger, *Wages of Whiteness* (London: Verso Press, 1991); Ruth Frankenberg, *White Women, Race Matters: The Social Construction of Whiteness* (Minneapolis: University of Minnesota Press, 1993). See also Ian Haney Lopez, "The Social Construction of Race: Some Observations on Illusion, Fabrication and Choice," *Harvard Civil Rights–Civil Liberties Law Review* 29 (Winter 1994): 1–62; Cheryl I. Harris, "Whiteness as Property," *Harvard Law Review* 196 (June 1993): 1709–91. Furthermore, the social definition of blackness in American society, that anyone with any black ancestry is black, is an indicator of the importance of whiteness. This construction of black racial identity was necessary to the functioning of a biracial caste system. Historian Joel Williamson and sociologist F. James Davis have detailed the development of this "one-drop rule" in the United States. Joel Williamson, *New People: Miscegenation and Mulattoes in the United States* (New York: Free Press, 1980); F. James Davis, *Who Is Black?* (University Park: Pennsylvania State University Press, 1991).

14. It seems that associating with blacks was more threatening to a white woman's racial status than it was to a white man's. There are several reasons for this difference. First, women more than men achieve social status through marriage. Thus it is more damaging for a woman to "marry down" than for a man. Second, white women had long been given the primary responsibility for preserving the purity of the white race. While white men could father biracial children without serious social stigma, white women who gave birth to biracial children were degrading their race and themselves. For more on this issue, see Renee Romano, "Crossing the Line: Black-White Interracial Marriage in the United States, 1945–1990" (Ph.D. diss., Stanford University, 1996), chap. 2.

15. "Where Mixed Couples Live: Finding a Home is Trying Problem for Bi-Racial Families throughout the Entire Country," *Ebony,* May 1955, 61.

16. Sister Annella Lynn, "Interracial Marriages in Washington, D.C., 1940–1947" (Ph.D. diss., Catholic University, 1953), 70. Joseph Golden, "Patterns of Negro-White Intermarriage," *American Sociological Review* 19 (April 1954): 14. Other sociologists have reached the same conclusion. Ernest Porterfield found that the gender of the white partner determined where the couple lived; if the husband was white, the couple lived in a white neighborhood; if black, they lived in a black neighborhood. Porterfield, "Mixed Marriage," *Psychology Today,* January 1973, 71–78. Todd Pavela found that particularly in intermarriages at the lower economic and cultural levels, "the white wife became a Negro socially." Todd Pavela, "An Exploratory Study of Negro-White Intermarriage in Indiana," *Journal of Marriage and the Family* 26 (May 1964): 210.

17. "Where Mixed Couples Live," 62; Michelle Ross, "Is Mixed Marriage Jinxed?" *Ebony,* August 1953, 34–42; Hazel Byrne Simpkins, "I Married a Tan

Yank," *Tan Magazine,* March 1951, reprinted in Cloyte M. Larsson, ed., *Marriage across the Color Line* (Chicago: Johnsons Publishing Co., 1965), 104.

18. Hettie Jones, *How I Became Hettie Jones* (New York: E.P. Dutton, 1990), 190.

19. Parents sometimes claimed that their children and grandchildren would be lost to them forever if they married interracially. When one white woman with a small child married a black man, her mother asked the black husband, "Why do you do it like this? Why do you take away by me two children? There is plenty of colored people; why you took away, two children from one mother?" Mollie Portnoy in "Brief for Defendant-Appellant, Court of Appeals of the State of New York."

20. "Are Interracial Homes Bad for Children?" *Ebony,* March 1963, 135. The fear that children in interracial homes would be more likely to transgress the racial order was also expressed in a 1954 policy statement of a Georgia adoption agency, which forbade parents of one race to adopt children of another. "Our laws prohibit interracial marriage," the agency stated. "A child reared in a home with parents of a different race will be apt to meet and want to marry a person of his or her parents' background, not his own." Quoted in *In the Matter of the Petition of R.M.G. and E.M.G.,* 454 A. 2d 766 (D.C. App., 1982).

21. *Stingley v. Wesch,* 222 N.E. 2d 505 (Illinois, 1966); *Langin v. Langin,* 276 N.E. 2d 822 (Illinois, 1971).

22. *Boone v. Boone,* 565 P. 2d 337 (New Mexico, 1977), 338.

23. This decision was eventually reversed by a higher court. *In re Adoption of a Minor,* 228 F. 2d 446 (Washington, D.C., 1955). The appeals court ruled that it was clear that the boy was going to continue living with his white mother and black stepfather whether he was adopted or not, so denying adoption "could only serve the harsh and unjust end of depriving the child of a legitimized status in that home."

24. *Commonwealth ex rel. Myers v. Myers,* 360 A. 2d 587 (Pennsylvania, 1975).

25. Charles Claudius Philippe to Poppy Cannon, 28 July 1949, Walter White-Poppy Cannon White Papers, sec. 2, ser. 1, box 11, folder 77, Beinecke Library, Yale University, New Haven, Conn. Cannon was clearly worried about the possibility that Philippe would sue for custody, although there is no evidence that he ever actually did. Her lawyer wrote the law firm that handled her divorce to find out how her remarriage to a black man could affect child custody proceedings. The firm replied that custody would not be determined solely on the basis of the stepfather's race but also on evidence of his character, education, and ability to provide. Curtin, Brinckerhoff, and Barrett to H. Lee Lurie, Esq., 12 April 1949, Walter White-Poppy Cannon White Papers, sec. 2, ser. 1, box 11, folder 77.

26. *In re the Marriage of Sandra Ann Kramer and Gerald Kramer,* 297 N.W. 2d 359 (Iowa, 1980).

27. The best and most comprehensive study of the *Brown* decision is Richard Kluger's *Simple Justice* (New York: Vintage Books, 1975). For more on the antimiscegenation rulings, see Walter Wadlington, "The Loving Case: Virginia's Anti-Miscegenation Statute in Historical Perspective," *Virginia Law Review* 52 (October 1966): 1189–223; "Anti-Miscegenation Statutes Repugnant Indeed," *Time,* 23 June 1967, 45–46; Andrew D. Weinberger, "A Reappraisal of the Constitutionality of Miscegenation Statutes," *Journal of Negro Education* 26 (Fall 1957): 438–39; Harvey Applebaum, "Miscegenation Statutes: A Constitutional and Social Problem," *Georgetown Law Journal* 53 (Fall 1964): 70; Anthony Lewis, "Race, Sex and the Supreme Court," *New York Times Magazine,* 22 November 1964, 132; Robert Sickels, *Race, Marriage and the Law* (Albuquerque: University of New Mexico Press, 1972); *Loving v. Virginia,* 388 U.S. 1 (1967).

28. In the 1973 Ohio case *In re Matter of Brenda H.,* for example, the appeals court addressed the issue of race when it could easily have sidestepped it. The case involved a dispute over Brenda, the illegitimate child of Carol and Clifford. Brenda had lived with her mother, Carol, for most of her life, but when Carol's parents threw her out of their house because she had begun dating a black man, she temporarily gave Brenda to Clifford to care for. Clifford, with the encouragement of Carol's parents, sued for permanent custody of Brenda after Carol married her black boyfriend. Although Clifford's counsel never directly raised the issue of the interracial marriage, Carol's lawyers insisted that her interracial marriage was the only motivation for the custody suit. Despite the lack of overt evidence, the court was "completely persuaded that had Carol married a white man there would have been no rallying point for Clifford and Carol's parents for this action of custody would never have been initiated." *In re Matter of Brenda H.,* 305 N.E. 2d 815 (Ohio, 1973).

29. *Langin v. Langin,* 276 N.E. 2d 822 (Illinois, 1971).

30. See *Lucas v. Kreischer,* 289 A. 2d 202 (Pa. Super, 1972); and *Lucas v. Kreischer,* 209 A. 2d 243 (Pennsylvania, 1973). In *Kreischer,* both a trial court and the Pennsylvania superior court awarded custody of three children to Zane Kreischer after his ex-wife married a black man. The trial court openly based its decision on race, ruling that although both parents were suitable and had similar economic circumstances, the mother's interracial marriage put the children at risk of future harm. "[T]he almost universal prejudice and intolerance of interracial marriage is real and undeniable," the superior court agreed. In 1973, however, the Supreme Court of Pennsylvania ruled that there was no compelling reason to deny custody to the mother in this case and awarded her custody of her three children. "The real issue posed by the appeal," the Pennsylvania Supreme Court contended, "is whether a subsequent interracial marriage by the mother, in and of itself, is such a compelling reason as will warrant a court in denying her the custody of her children. We rule it is not."

31. For other instances of this, see *Edel v. Edel,* 293 N.W. 2d 792 (Michigan, 1980), in which the Michigan Court of Appeals remanded a decision where a

judge had taken a white child away from her mother because he felt that the mother and her black fiancée would face societal problems. The appeals court held that "the trial judge committed a 'clear legal error on a major issue' in considering a parent's association with another race" and remanded the case for a rehearing with a different judge.

32. *Ethridge v. Ethridge,* 360 So. 2d 1005 (Alabama, 1978), 1008.

33. Likewise, in the 1974 Florida case, *Niles v. Niles,* the appeals court ruled that the trial judge had "broad discretion" in making child custody placement decisions. In *Niles,* the trial court denied a white mother custody of her children because she had "chosen for herself, and therefore for herself and children, a life style unacceptable to the father of the children and the society in which we live." Yet despite this language, the appeals court refused to explore the mother's charge that she had been denied custody because of her impending marriage to a black man. *Niles v. Niles,* 299 So. 2d 162 (Florida, 1974).

34. *Schexnayder v. Schexnayder,* 364 So. 2d 1318 (Louisiana, 1978), 1318.

35. These were the words of a dissenting opinion by Judge C. J. Samuel in the state appeals court case, but the Supreme Court followed similar reasoning. See *Schexnayder v. Schexnayder,* 364 So. 2d 1318, p. 1321; *Schexnayder v. Schexnayder,* 371 So. 2d 769 (Supreme Court of Louisiana, 1979).

36. *White v. Appleton,* 304 So. 2d 206 (Alabama, 1974), 209. For another case of this type, see *Niles v. Niles.*

37. For more on the myth of the black rapist, see Jacquelyn Dowd Hall, *Revolt against Chivalry* (New York: Columbia University Press, 1979); Joel Williamson, *A Rage for Order* (New York: Oxford University Press, 1986); Gail Bederman, *Manliness and Civilization: A Cultural History of Gender and Race in the United States, 1880–1917* (Chicago: University of Chicago Press, 1995); Stephen Whitfield, *A Death in the Delta: The Story of Emmett Till* (New York: Free Press, 1988).

38. Martha Hodes, "Sex across the Color Line: White Women and Black Men in the Nineteenth Century American South" (Ph.D. diss., Princeton University, 1991).

39. *Palmore v. Sidoti,* 426 So. 2d (Florida, 1981); *Palmore v. Sidoti,* 472 So. 2d 843 (Florida, 1982).

40. *Palmore v. Sidoti,* 104 Sup. Ct. 1879 (1984).

41. For more on this case see, Eileen Blackwood, "Race as a Factor in Custody and Adoption Disputes: *Palmore v. Sidoti,*" *Cornell Law Review* 71 (November 1985): 209–26; Robert Weinstock, "*Palmore v. Sidoti:* Color-Blind Custody," *American University Law Review* 34 (Fall 1984): 245–69.

42. *Ward v. Ward,* 216 P. 2d 755 (Washington, 1950).

43. *Fountaine v. Fountaine,* 133 N.E. 2d 532 (Illinois, 1956); *Beazley v. Davis,* 545 P. 2d 206 (Nevada, 1976). For other cases of this type, see *Tucker v. Tucker,* 542 P. 2d 789 (Washington, 1975); *Farmer v. Farmer,* 329 N.Y.S. 2d 584 (1981). Interestingly, courts drew the distinction between a biracial child being raised by a white biological mother and being raised by white foster or adoptive parents. Since the mid-1970s, there has been an intense debate about whether it is harmful for a black child to be adopted by a white couple and raised in an all-white environment. Yet while transracial adoption is seen as harmful to a black child, courts regularly allowed biracial children to be raised by a white biological parent.

44. Ruth, quoted in Albert Gordon, "Negro-Jewish Marriages," *Judaism* 3 (Spring 1964): 184; poem reprinted in David Harrell, *White Sects and Black Men in the Recent South* (Nashville: Vanderbilt University Press, 1971), 64–65.