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Book Review

Interracial Intimacy and the Potential for Social Change

INTERRACIAL INTIMACY: THE REGULATION OF RACE AND ROMANCE
by Rachel F. Moran. Chicago: University of Chicago Press, 2001.
271 pp. \$ 30.00 cloth.

Reviewed by Stephanie M. Wildman†

For those interested in fighting bias and discrimination and in thinking about how changes in our legal treatment of race has evolved, Rachel F. Moran's *Interracial Intimacy: The Regulation of Race and Romance*, is required reading. As we examine the historic struggle against bias and discrimination, we perceive issues from the past and often find it surprising that these issues could have been contested, let alone decided, as they were.¹ *Plessy v. Ferguson*,² proclaiming in 1896 that separate but equal accommodations were constitutional, is often cited as an example of a case that was wrong "the day it was decided."³ I do think *Plessy* was wrong, but we modern-day critics have the benefit of hindsight as we view these past decisions. How will our decisions of today look from the vantage point of 100 years in the future?⁴ As warriors in the fight against bias and discrimination, we must consider how our actions will fare when viewed in the pages of history. We

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† Professor of Law and Director, Center for Social Justice and Public Service, Santa Clara University School of Law. My thanks to Angela Harris, Joan Howarth, Marnie Mahoney, and Lee Ryan for collegial conversations and commentary. Special thanks to Eva Margaret Raczkowski Coleman for outstanding research assistance and to Lauren Sorrentino for superlative editing.

1. Reva Siegel, *Why Equal Protection No Longer Protects: The Evolving Forms of Status-Enforcing State Action*, 49 STAN. L. REV. 1111, 1112 (1997) (citing the Supreme Court's assertion in *Brown v. Bd. of Education*, 347 U.S. 483 (1954) that "*Plessy* was wrong the day it was decided."). See also Angela P. Harris, *Equality Trouble: Sameness and Difference in Twentieth-Century Race Law*, 88 CAL. L. REV. 1923 (2000) (describing U.S. racial history).
2. 163 U.S. 537 (1896), overruled by *Brown*, 347 U.S. 483.
3. Siegel, *supra* note 1, at 1112.
4. *Id.* at 1146.

may take a position, trying to fight discrimination today, that is unpopular, but will be vindicated with the passage of time.

In 1948 one warrior against bias, Justice Roger Traynor, wrote the California Supreme Court decision in *Perez v. Lippold*.⁵ Try to imagine the world in the 1940s when the petitioners in this case sought to compel the county of Los Angeles to issue them a marriage license. The county refused Ms. Perez, a white woman, and Mr. Davis, an African-American man, a license because of a California Civil Code section prohibiting interracial marriage.⁶ The petitioners brought their challenge not on equal protection grounds, but on grounds of religious freedom. The 1940s preceded the rise of public and judicial consciousness about the equal protection clause and the notion of equal treatment which was to become the cornerstone of modern civil rights law.

In his opinion, Justice Traynor acknowledged the sometimes pernicious history of judicial decisions on race. He wrote: "Many courts in this country have assumed that human beings can be judged by race and that other races are inferior to the Caucasian."⁷ He also noted that "[t]he effect of race prejudice upon any community is unquestionably detrimental both to the minority that is singled out for discrimination and to the dominant group that would perpetuate the prejudice."⁸ Justice Traynor understood that the case raised an equal protection issue. He recognized that as a country, we have had a history of supporting white supremacy. He also understood that both the victim and perpetrator are hurt by discriminatory beliefs, albeit in different ways. Justice Traynor was truly ahead of his time.

The *Perez* decision held that the California law sections at issue violated the equal protection clause of the U.S. Constitution "by impairing the right of individuals to marry on the basis of race alone and by arbitrarily and unreasonably discriminating against certain racial groups."⁹ This decision was a difficult one for the court, which voted by a bare majority, 4-3, to strike down the statutes. Justice Traynor had no guidance from a higher court when he cast his deciding vote and authored the opinion. It was not until 1967, almost two decades later, that the U.S. Supreme Court would decide *Loving v. Virginia*,¹⁰ declaring similar statutes unconstitutional. Yet a different decision by the California court would be unthinkable today.

We can only imagine what combination of intellect, judicial integrity, and sensibility enabled Justice Traynor to be the visionary that he was. We can only wonder what empowered him to provide leadership and the deciding vote so that the eyes of history would judge this case as the obvious and correct

5. 32 Cal.2d 711 (1948).

6. Cal. Civ. Code §§60, 69 (1933).

7. *Perez*, 32 Cal.2d at 720.

8. *Id.* at 725.

9. *Id.* at 731-2.

10. 388 U.S. 1 (1967).

decision. In the pre-*Brown v. Board of Education*¹¹ era, legalized racial segregation was still the norm. In this period, the dawning of the civil rights movement, modern debates about racial justice were just beginning. It must have been difficult for progressive judges to author decisions about racial equality when so much of the public still actively endorsed racial segregation. Decisions condoning interracial marriage and intimacy, though clearly the right decisions in retrospect, must have risked public outcry. Tackling the private sphere certainly must have been difficult in terms of potential public resistance. Judges who made such decisions must have realized the profound connection between private intimate relationships and the goal of wider social and legal equality.

Much writing about racial bias and discrimination continues to focus on the public sphere, where policy debates affect education, voting, housing, and employment. Feminist scholars have long recognized the poverty of this public/private distinction, because the personal is political.¹² In her penetrating and well-researched book, Moran examines the so-called private landscape of race in the context of interracial intimacy. She urges the connection between our personal, private views of race and racial issues and the policy decisions society makes in the public realm. Moran notes that the colorblind rhetoric that finds increasing popularity in the “public debate” about race contrasts sharply with the accepted color consciousness that accompanies decisions about intimacy and love in the “private sphere.” The fusion of these public and private worlds demonstrates the need for more thoughtful analysis on racial issues. Moran’s insights are critically important to a democracy based on diversity.

One common thread throughout the book, initially exposed by Moran’s examination of antimiscegenation ideology, is that the law historically has preserved white privilege by regulating intimate relationships. Whites were stripped of white racial privilege following intimacy with African Americans. (p. 20) Antimiscegenation laws served to reinforce a system of white racial superiority. The power to ignore this systematic privileging of whiteness and to ignore whiteness as a race in discussions of race marks an important characteristic of white racial privilege.¹³

This privileging of whiteness continues even as modern demographics suggest that racial debates must no longer be conducted in black-white terms as the United States becomes a nation of minorities. As John Calmore has

11. 347 U.S. 483 (1954).

12. See generally Martha A. Fineman, *Cracking the Foundational Myths: Independence, Autonomy, and Self-Sufficiency*, 8 AM. U. J. GENDER, SOC. POL’Y, & L. 13 (1999); Martha Fineman, *The Inevitability of Dependency and the Politics of Subsidy*, 9 STAN. L. & POL’Y REV. 89 (1998); Frances Olsen, *The Family & The Market: A Study of Ideology and Legal Reform*, 96 HARV. L. REV. 1497 (1983); Elizabeth M. Schneider, *The Dialectic of Rights and Politics: Perspectives from the Women’s Movement*, 61 N.Y.U. L. REV. 589 (1986).

13. STEPHANIE M. WILDMAN WITH CONTRIBUTIONS BY MARGALYNNE ARMSTRONG, ADRIENNE D. DAVIS, & TRINA GRILLO, PRIVILEGE REVEALED: HOW INVISIBLE PREFERENCE UNDERMINES AMERICA 20 (1996).

explained, “the new demography could represent a complex development wherein new people of color will consolidate white rule over black. At the heart of that assumption is the idea that to be like white is important, of course, but not as important as to be unlike black.”¹⁴ The root of this push “to be unlike black” begins with antimiscegenation laws and the regulation of interracial intimacy.

In the first part of the book, Moran establishes the importance of her subject, explaining that race and the meaning of race have been contested throughout American history. (p. 3-4) We live in an era where noticing race remains an issue fraught with political tension. Does the mere act of noticing race equate with racism? If we fail to notice race, how can we end the effects of segregation that still remain in our schools, colleges, and other institutions that are essential to ensuring the population participates in democratic government?

By turning the lens to interracial intimacy, Moran brings a fresh perspective to these questions. Rather than focusing on the arena of public life, where battles about race are usually waged, the lens of interracial intimacy provides insights into this public dimension through an exploration of private relationships. As Moran observes in the first chapter: “[D]ilemmas of interracial intimacy demonstrate that the freedom to marry and build families is not independent of race but instead is integral to defining it.” (p. 15) Moran examines interracial intimacy in the context of heterosexual partner relationships, particularly marriage, and in the area of placement of children in families through custody and adoption. These examples of “love across the color line” (p. 16) help us to investigate the meaning of race and racial equality.

After introducing her central project, Moran explores historic antimiscegenation laws in relation to the major racialized groups. Antimiscegenation typically conjures images of black-white sex and marriage, where, particularly in the South, these laws had their longest history. (p. 17) But antimiscegenation laws and sentiment also applied to Chinese, Japanese, Filipino, and other Asians in the United States. As Moran explains, antimiscegenation laws “served different functions at different times for different groups.” (p. 39)

Chapter Three explores the “central significance of race” (p. 43) in daily life, describing the different role race played in the lives of racialized groups. While African Americans could only achieve white status through the phenomenon of passing (pp. 43-48), Native Americans and Latinos could assimilate as whites. Antimiscegenation law in Virginia contained the “Pochahontas exception,” allowing those with Native American blood to be classified as white. (p. 49) Native Americans and Mexicans “could use their social ties to whites to identify their offspring as white.” (p. 52) The Treaty of Guadalupe Hidalgo provided that Mexican citizens in the territories an-

14. John O. Calmore, *Race-Conscious Voting Rights and the New Demography in a Multiracial America*, 79 N.C. L. REV. 1253, 1258 (2001).

nexed by the United States would “enjoy the full privileges of American citizenship” at least as a matter of formal law. (p. 56) This formal promise led to racial confusion as racial boundaries blurred. (pp. 56-59)

Chapter Four considers the role of antimiscegenation laws in establishing societal norms in sexual and marital customs. In addition to reinforcing white racial superiority, antimiscegenation laws placed “middle-class aspirations for love and marriage at the pinnacle of respectability.” (p. 75) This respectability valued the white, heterosexual nuclear family. The resulting increased pressure for assimilation denied the value of alternative cultural practices relating to sex, marriage, and child rearing, such as cohabitation and kinship network support. Antimiscegenation laws resulted in differential impact on the major racialized groups with respect to the construction and destruction of their families. (p. 75)

In Chapter Five, the heart of the book for those interested in the change in law and its implication for societal practice, Moran describes the series of antimiscegenation decisions that led to the U.S. Supreme Court’s famous decision, *Loving v. Virginia*.¹⁵ Here Moran introduces *Perez v. Lippold*,¹⁶ Justice Traynor’s landmark opinion and “the first and only state high court [decision] since Reconstruction to declare a ban on interracial marriage unconstitutional.” (p. 84) Moran describes the U.S. Supreme Court’s reticence to address antimiscegenation statutory reform, from denials of certiorari (pp. 89-90) through recasting the issue as one of racial equality in the criminal justice system. (pp. 93-94) Through the evolution of these cases, the Court became the reluctant champion of legal change with *Loving*.

The Court relied upon “principles of both liberty and equality in striking down the statute.” (p. 98) The majority characterized the racial classifications made by the statute as “measures designed to maintain white supremacy.” *Id.* It is worth noting the Supreme Court’s historic first use of the phrase “white supremacy” in the text of the *Loving* opinion.¹⁷ Thus it was in the so-called private context of interracial intimacy that the Court spoke with the boldest truth, naming the maintenance of white supremacy as the evil result of segregationist practice that noticed race. The Court did not deplore all racial classification, but rather its use in this harmful context, where the custom of noticing race violated the nation’s most sacred democratic principles.

As Moran notes, before the *Loving* decision, choice of a marital partner was dictated by laws on race. Moran continues by exploring race and romanticism in the post-*Loving* era, detailing the persistence of same-race marriage even after the legal ban on interracial relationships was lifted. Heterosexual marriage thus remains an area where noticing race and making racialized choices is an accepted practice, under the guise of romanticism and

15. 388 U.S. 1 (1967).

16. 32 Cal.2d 711 (1948). See also *supra* text accompanying notes 5-9.

17. 388 U.S. at 7, 11.

personal choice.¹⁸ In contrast, in the public sphere, increasingly, pressures to be colorblind and not to notice race have predominated.¹⁹

Moran explains how racial intermarriage is usually explained by exceptionalism and exoticism. (p. 114)²⁰ She observes:

The most striking feature of the aftermath of *Loving v. Virginia* is how readily people have accepted segregation in marriage, so long as it is not officially mandated. Despite compelling evidence that race continues to matter in affairs of the heart, Americans embrace a colorblind ideal. Same-race marriages are not considered evidence of racism, nor are they seen as a barrier to racial equality. (p. 124)

This comment highlights the importance of Moran's work. The powerful ideal of colorblindness underlies any contemporary discussion of race. Moran shows that in our most intimate choices we do not act as though we are colorblind. Yet the connection between that racialized selection and public sector policy choices is ignored by decisionmakers. Moran urges them to make that connection, since our intimate lives form the basis for our experience of the world.

The idea that the Constitution is colorblind harkens back to Justice Harlan's dissent in *Plessy v. Ferguson*, the case that elevated "separate but equal" accommodations to a legal principle.²¹ Harlan stated, "Our constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law."²² However, the preceding passage from his famous dissent is rarely quoted. Harlan prefaced his colorblind assertion with these words:

The white race deems itself to be the dominant race in this country. And so it is, in prestige, in achievements, in education, in wealth, and in power. So, I doubt not, it will continue to be for all time, if it remains true to its great heritage²³

This passage illustrates the poverty of colorblindness as a racial mantra.²⁴ Even its most-cited proponent supported the idea of white racial privilege.

18. Reva Siegel names the phenomenon that perpetuates racial hierarchies, even while society undergoes change, "preservation through transformation." Siegel, *supra* note 1, at 1113.

19. Morris B. Abram, *Affirmative Action: Fair Shakers and Social Engineers*, 99 HARV. L. REV. 1312, 1318 (1986) (describing affirmative action as social engineering or, in reality, a quota system, that is a "result-oriented conception of racial justice [that] is both destructive of true racial equality and potentially harmful to society.").

20. See generally Sumi K. Cho, *Converging Stereotypes in Racialized Sexual Harassment: Where the Model Minority Meets Suzi Wong*, 1 J. GENDER RACE & JUST. 177 (1997) (discussing how race and gender stereotypes of Asian Pacific American women as submissive may converge, making them targets for racialized sexual harassment by white men who may be titillated by such stereotypes).

21. 163 U.S. 537, 552 (1896).

22. *Id.* at 556.

23. *Id.* at 559.

24. On the poverty of colorblindness, see also Neil Gotanda, *A Critique of "Our Constitution Is Color-blind,"* 44 STAN. L. REV. 1 (1991).

The fact that citation to this white racial superiority passage is rarely made to accompany advocacy in support of the colorblind ideal demonstrates the continued lack of recognition of the white privilege dynamic in racial discourse.²⁵

At this point the book shifts emphasis from romantic love to familial love, exploring the role of race in custody and adoption decisions. The relevance of race to child placement determinations has been “hotly debated.” (p. 127) Policy inconsistencies, again with different treatment for racialized groups, have emerged. For example, the Indian Child Welfare Act (ICWA), preserves tribal leaders’ desires to keep Indian children in the tribal community and confers “jurisdiction on tribal courts to decide placement cases involving Indian children.” (p. 135) The Act’s passage responded to child welfare authorities’ disproportionate removal of Indian children from their families. *Id.* Although ICWA and the parameters of its application remain contested, the mere existence of the Act demonstrates that policy makers do not consistently embrace notions of colorblindness.

One U.S. Supreme Court decision specifically acknowledged that a child’s life within an interracial family might in fact be detrimental to the child’s best interests precisely because we live in a world where people are not colorblind.²⁶ The case involved the placement of a child following divorce. The child’s white father sued to take custody away from the child’s white mother because the mother was living with a Black man. When reversing the Florida state court decisions awarding custody to the father, Chief Justice Burger, speaking for the Court, wrote, “private biases may be outside the reach of the law, but the law cannot, directly or indirectly, give them effect.”²⁷ As this chapter shows, “simplistic norms of either colorblindness or color consciousness” (p. 152) do not offer answers for child placement decisions. Societal segregation is a reality, even as some families seek to transcend the color line.

Moran continues to examine the intersection of families and romantic love through the lens of race, considering the relation of race and identity in the context of the movement toward a new multiracialism. Some have urged intermarriage as a solution to racial problems. (p. 171-72) For example, Ward Connerly, architect of California’s ban on affirmative action, said, “[i]n 10 to 15 years, inter-marriage will make this entire debate [over racial and ethnic preferences] a moot one.” (p. 171) Moran, however, disagrees, and in some of her most articulate and passionate prose criticizes the marital melting pot solution as “misplaced optimism and dangerous complacency.” (p. 178) As Moran’s book explains, the option of intermarriage is not equally available to

25. See WILDMAN, *supra* note 13 at 87. For further elaboration of privilege, see generally RUTH FRANKENBERG, *WHITE WOMEN, RACE MATTERS: THE SOCIAL CONSTRUCTION OF WHITENESS* (1993); Barbara J. Flagg, “Was Blind, But Now I See.” *White Race Consciousness and the Requirement of Discriminatory Intent*, 91 MICH. L. REV. 953 (1993); Martha R. Mahoney, *Segregation, Whiteness, and Transformation*, 143 U. PA. L. REV. 1659 (1995).

26. *Palmore v. Sidoti*, 466 U.S. 429, 433 (1984).

27. *Id.*

all racialized groups. Blacks have the least "opportunity," if one believes intermarriage is a positive racial policy event, to avail themselves of the chance.

Considering, in the final chapter, the lessons of interracial intimacy, Moran acknowledges that "[i]nterracial relationships today are more widely accepted . . . [b]ut they remain anomalous and in need of explanation." (p. 179) "When 95 percent of all marriages in America take place between people of the same race, race shapes marital choice; but just as importantly, marriage shapes racial identity The freedom to select our intimates is also the power to define racial difference." (p. 191) While the government can no longer dictate personal choices about our closest relationships, we make those personal choices in the context of segregated residential, educational, and employment environments. The end to government regulation of interracial marriage has not resulted in an integrated society; racial segregation remains the reality in most of our private lives.

As Moran notes, "[z]oning policy, home loan programs, integration of schools, and affirmative action in workplaces—all of these can help individuals to rethink their assumptions about a good place to live, good working conditions, and a quality learning environment." (p. 194) We all continue to make racialized choices in our daily lives. Moran concludes, fittingly, with an exhortation for us all to act affirmatively to undo societal segregation and remake our notion of race. The segregated status quo, though no longer legally mandated, will govern racial views and reinforce societal segregation. Thus she urges: "We can undo race before it undoes us." (p. 196)

Undoing race necessarily involves undoing the system of white racial privileging embodied in the antimiscegenation laws that regulated interracial intimacy, as well as systems of privilege based on gender and sexual orientation. The strength of Moran's exploration of interracial intimacy lies in its illumination of the part of race privileging that usually remains veiled as private conduct. Yet, as Moran compellingly shows, the "private" implicates public policy.

While her book does not explore explicitly interracial intimacy in the context of same-sex relationships, Moran's compelling coverage of heterosexual interracial intimacy highlights the absences and the silences that mark interracial gay and lesbian relationships. Interracial gay and lesbian relationships represent another area usually viewed as a private one, yet societal implications stem from the so-called private landscape. Given the taboos long associated with interracial intimacy that Moran describes and the lack of legal sanction granted to gay and lesbian relationships, it is not surprising that this topic appears invisible in legal literature. As Mary Becker notes:

In only three states, Hawaii, Alaska, and most recently, Vermont, have judges been able to imagine same-sex marriage In *Baehr v. Lewin*, the Supreme Court of Hawaii held that the denial of a marriage license to lesbian and gay couples violated the Equal Rights Amendment to the Hawaiian Constitution. The court reasoned that if a statute banning interracial marriage discriminated on the basis of race, as the United States Supreme Court had held in *Loving v.*

Virginia, then a statute banning same-sex marriage discriminated on the basis of sex in violation of the provision against sex discrimination in the Hawaiian Constitution.²⁸

A number of articles have examined the analogical reasoning exemplified by the *Baehr* court. These scholars consider whether this reasoning, urging parallels between equal protection as used in *Loving* and the prohibition against same-sex marriage, helps the debate about legitimating gay and lesbian intimacy, and scholars critique the use of analogies in this setting.²⁹

Legal scholars have noted the tendency to assume whiteness as a race for gays and lesbians, rendering lesbians and gay men of color invisible. This whiteness presumption impedes the deconstruction of racial meaning necessary to advancing equality. Darren Hutchinson explains:

[P]ro- and anti-gay discourses and antiracist theory collectively contribute to a white-normative construction of gay, lesbian, bisexual, and transgendered identity—a narrow, racialized construct that hinders gay and lesbian equality efforts. . . . [L]aw and sexuality scholars should adopt a multidimensional lens to analyze sexual subordination claims and to portray gay and lesbian experience. A multidimensional analysis of heterosexism and homophobia—one that examines the various racial, class, gender, and other dimensions of gay, lesbian, bisexual, and transgendered identity and the diverse effects of heterosexism—can destabilize the "gay as white and privileged" stereotype.³⁰

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28. Mary Becker, *Family Law in the Secular State and Restrictions on Same-Sex Marriage: Two are Better than One*, 2001 U. ILL. L. REV. 1, 4 (2001). See also *Baehr v. Lewin*, 852 P.2d 44, 57 (Haw. 1993) (stating that the right to same sex marriage is not "so rooted in the traditions and collective conscience of our people that failure to recognize it would violate the fundamental principles of liberty and justice that lie at the base of all our civil and political institutions."); *Baker v. State*, 744 A.2d 864 (Vt. 1999) (creating domestic partnerships to provide same-sex couples with common benefits equivalent to those enjoyed by married couples, but still not permitting same-sex marriage). Preceding both *Baker* and *Baehr*, the U.S. Supreme Court chose to view the issue of same-sex relationships in light of criminal activity, rather than as an issue of privacy and fundamental rights. *Bowers v. Hardwick*, 478 U.S. 186 (1984) (upholding the constitutionality of Georgia's sodomy statute).
29. Becker, *supra* note 27, at 3-4. See also William N. Eskridge, Jr., *Law and the Construction of the Closet: American Regulation of Same-Sex Intimacy, 1880-1946*, 82 IOWA L. REV. 1007 (1997) (paralleling the development of anti-homosexual mores to tacit acceptance of discrimination on the basis of race and gender); Darren Lenard Hutchinson, *Identity Crisis "Intersectionality," "Multidimensionality," and the Development of an Adequate Theory of Subordination*, 6 MICH. J. RACE & L. 285 (2001) (criticizing the use of analogy as essentialist); Sandra L. Rierson, *Race and Gender Discrimination: A Historical Case for Equal Treatment Under the Fourteenth Amendment*, 1 DUKE J. GENDER L. & POL'Y 89 (1994) (identifying the steps of progress under Fourteenth Amendment jurisprudence and arguing that Blacks have progressed more rapidly than women through those steps); Sharon Elizabeth Rush, *Equal Protection Analogies—Identity and "Passing": Race and Sexual Orientation*, 13 HARV. BLACKLETTER L.J. 65 (1997) (considering the importance and dangers of using analogy).
30. Darren Lenard Hutchinson, "Gay Rights" for "Gay Whites"?: *Race, Sexual Identity, and Equal Protection Discourse*, 85 CORNELL L. REV. 1358, 1361 (2000). See also Devon W. Carbado, *Black Rights, Gay Rights, Civil Rights*, 47 UCLA L. REV. 1467, 1474 (2000) (The idea "that homosexuality is something that white people 'do' [and something that Black people should not 'do'] has been circulated and reified in black communities at least since the 1960s."). See also, Peter Kwan, *Complicity and Complexity: Cosynthesis and Praxis*,

Furthermore, the failure to use a multidimensional perspective, a perspective that resists essentializing identity categories, renders invisible the daily choices we make to sustain systems of subordination. As Devon Carbado observes:

All of us make choices every day that legitimize certain discriminatory practices. . . . Many of us get married and/or attend weddings, even as lesbian and gay marriages are not legally recognized. Others of us have racially monolithic social encounters, live in de facto white only (or predominantly white) neighborhoods, or send our kids to white only (or predominantly white) schools. Still others of us have "straight only" associations—that is, our friends are all heterosexuals and our children's friends all have mommies and daddies. These choices are not just personal; they are political. And the cumulative effect of these micro-political choices is the entrenchment of the very social practices—racism, sexism, classism, and homophobia—we profess to abhor.³¹

The politically cumulative effect of these choices is an important thesis in Moran's book as well, although not addressed with regard to sexual orientation.

Nevertheless, *Interracial Intimacy* serves as a powerful reminder of the force of categories and the categorical thinking that makes our brains essentialize. Our minds need categories in order to think,³² so we think of race, gender, sexual orientation, and wealth as defining.³³ But, as important scholarship on subordination has emphasized, these categories are not mutually exclusive.³⁴ So when the topic is interracial intimacy, it is important to remember that gay, lesbian, bisexual, and transgendered interracial relationships will add another dimension of understanding to the dynamic of change.³⁵

Insights from gay and lesbian relationships across racial lines can contribute to an understanding and ending of subordinating social practices. As Dorain Leslie and Lauren Mac Neill observe:

49 DEPAUL L. REV. 673, 688 (2000) (raising the idea that "we can afford to rethink the notion of ethnic identity in terms of cultural, class, and gender differences, rather than presuming similarities and making the erasure of particularity the basis of unity.").

31. Devon W. Carbado, *Straight Out of the Closet*, 15 BERKELEY WOMEN'S L.J. 76, 78 (2000).
32. Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 581-2, 585 (1990) (describing Funes, whose life of infinite unique experiences leaves him unable to categorize. "To think is to forget differences, generalize, make abstractions. In the teeming world of Funes, there were only details, almost immediate in their presence.").
33. See WILDMAN, *supra* note 13, at 9 (describing the need to know whether someone is a boy or a girl in order to know how to relate to them).
34. See, e.g., Carbado, *supra* note 30; Kimberlè Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139 (1989); Harris, *supra* note 31; Clark Freshman, *Whatever Happened to Anti-Semitism? How Social Science Theories Identify Discrimination and Promote Coalitions Between "Different" Minorities*, 85 CORNELL L. REV. 313 (2000); Darren Lenard Hutchinson, *Identity Crisis: "Intersectionality," "Multidimensionality," and the Development of an Adequate Theory of Subordination*, 6 MICH. J. RACE & L. 285 (2001).
35. See Francisco Valdes, *Queers, Sissies, Dykes and Tomboys: Deconstructing the Conflation of "Sex," "Gender," and "Sexual Orientation" in Euro-American Law and Society*, 83 CAL. L. REV. 1 (1995).

Lesbians in interracial relationships challenge and confront racism in themselves and in the other, in perhaps more active, overt ways than those in same-race relationships. . . . Lesbians in interracial relationships confront differences in culture and values in areas such as the role of family, the role of the individual, money and economic issues, food, religion, childrearing behavior, and homosexuality. Recognition of the differences is essential. Sometimes the couple will find that the differences are destructive or divisive; other times, the partners will find them strengthening and enriching.³⁶

The micro-political choice to fail to see interracial gay and lesbian relations contributes to the cumulative invisibility of gay and lesbian relations, generally and the racing of these relationships as white. Interestingly, three of the couples in *Baehr v. Lewin*, the historic Hawaii case interpreting the state's marriage law to allow gay and lesbian relations were mixed racially.³⁷ Yet the opinion does not mention that fact and news coverage has been scarce. In the modern political context that supports colorblindness, the automatic reaction seems to be that noticing race is bad. Yet, as Moran teaches, the failure to notice race and to observe that most intimate choices are made on same-race lines does not serve equality goals. Roger Traynor understood that it was not the act of noticing race, but rather its use to perpetuate white supremacy, that was the constitutionally objectionable practice. Noticing race and other identity categories can promote the education of all citizens for the practice of democracy. Noticing race need not equate with using race for the purpose of subordination. Noticing race across these identity categories is necessary to dismantle the systems of privilege that led to the world where interracial intimacy was prohibited.

With *Interracial Intimacy: The Regulation of Race and Romance*, Rachel F. Moran makes an meaningful contribution to the literature on race and races in the United States and confirms her place as a significant scholar in contemporary America. *Interracial Intimacy* is an interesting and consequential book on several levels. A major strength of the book lies in its recognition that the role of race as to the major racialized groups has not been uniform, but rather has been historic, contingent, and evolving.³⁸ The book's exposition of the role that the so-called personal sphere plays in the determination of public policy is another significant contribution. Most importantly, it is a book about social change. From rigid rules prohibiting marriage across the color line, the human spirit has evolved so that those marriages are no longer prohibited. Perhaps the next evolution will accept marriages and part-

36. Dorain Leslie and Lauren Mac Neill, *Double Positive: Lesbians and Race*, in *RACISM IN THE LIVES OF WOMEN: TESTIMONY, THEORY, AND GUIDES TO ANTIRACIST PRACTICE* 168 (Jeanne Adleman & Gloria Enguñdanos, eds. 1995).

37. Myron Dean Quon, *What Asian Americans Have in Common with Same-Sex Marriages*, available at <http://www.lambdalegal.org/cgi-bin/iowa/documents/record?record=326> (last visited Feb. 3, 2002).

38. See also JUAN F. PEREA, RICHARD DELGADO, ANGELA P. HARRIS, & STEPHANIE M. WILDMAN, *RACE AND RACES: CASES AND RESOURCES FOR A DIVERSE AMERICA* (2000) (examining the histories of major racialized groups).

nerships that transcend gendered heterosexual boundaries. Moran's book gives cause for optimism that while systems of privilege do exist and the status quo perpetuates subordination, real social change can and has occurred in the sphere of interracial intimacy.