Mixed Identity in the Courtroom: A Challenge to Race-Neutral Frameworks

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Introduction

The most recent data from 2013 shows 87% approval of Black-white marriage, which is a significant contrast from 4% approval in 1958. These numbers would suggest that the legal standing around this issue would not be in contention today.

However, *Loving* and other cases have only gone so far in protecting and understanding the best interest of multiracial families and children in the courtroom.

This essay will consider how the courts consider race explicitly and implicitly in cases of adoption and custody.

Historical Review

Loving v. Virginia and *Palmore v. Sidoti* both created race-neutral frameworks for the courts in cases of custody and marriage in the United States.

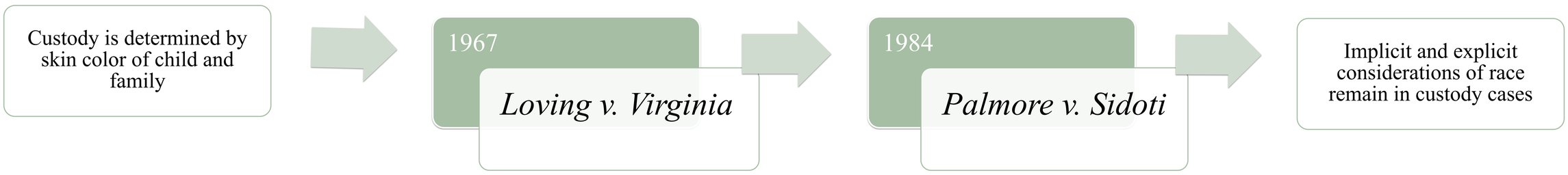
In *Loving v. Virginia* (1967), the Supreme Court struck down Virginia's statutes that prevented marriage between persons on the basis of race as it violated the Equal Protection and Due Process Clauses of the Fourteenth Amendment.

In *Palmore v. Sidoti*, the court ruled that racial prejudice could not be considered in child custody cases. In this case, Linda Sidoti Palmore was sued by her ex-husband for custody of their daughter after Palmore moved in with her Black partner.

Literature Review

The first section of the literature review is on the legacy of *Palmore* today and recent cases that do consider race. The shortcomings that legal scholars have found in *Palmore* are explored, and then the considerations of race in the courts will be split into implicit and explicit considerations of race.

The second section covers psychological and sociological research on mixed-race individuals, which is critical in how the courts can determine the best interest of mixed-race families and race children, especially when the child is too young to do so on their own.



Central Question

How do considerations of "race" continue to shape courts' decisions about custody and adoption in cases with children or families of mixed heritage in the US?

Explicit Considerations of Race

Case: *In Re Marriage of Gambla and Woodson*

Summary: In 2006, Christopher Gambla appealed the circuit court decision where his ex-wife, Kimberly Woodson, was awarded custody of their daughter, Kira. Kimberly's testimony focused on her ability to "teach Kira a lot about African-American culture … and to help Kira learn to cope with being a woman of color." Racial and cultural education was permitted as a component of Kimberly's testimony, whereas Christopher did not address the topic. Second, race was considered when interpreting the Minnesota Multiphasic Personality Inventory-2 (MMPI-2) results which were meant to measure the emotional functioning of both parents.

Analysis:

In these cases, it is important to center the mixed heritage of the child instead of the parent's ability to only educate the child to be a person of color or their minority heritage. Because parents and children can vary in their views of mixed heritage, it is important to center the child's perspectives and challenges of growing up split between two worlds.

The second explicit consideration of race refers to the consideration of race within the tests that both parents took. The tests appear to be a consideration of race that systematically works against people of color. If Black parents continuously score worse than their white counterparts because of systemic racism, the tests should be better designed. Race would not need to be considered in these cases if the tests themselves were not racially skewed.

Implicit Considerations of Race

Case: *Parker v. Parker*

Summary: The white father was granted a modification of custody of their son, Dylan, after the white mother began an interracial relationship with Black man. The trial court admitted what was later decided by the Tennessee Supreme Court to be improper testimony about the interracial household. A nurse practitioner explained that "it may be harmful for a child 'to be raised in an interracial household because of small town views.'" While the higher court called the consideration of race-based testimony "troubling," it did not reverse the decision as they argued that the decision did not rely solely on racial considerations, but based the decision on the 'relevant factors.'

Analysis:

The assumption underlying this case, and others like it, is not only that the mother is a "bad mother," but that an interracial environment is not a suitable environment for the white child. I believe that the best interest of mixed families is one where mothers have a fair shot at being granted custody no matter the race of their new partners. Interracial environments, and furthermore, what others will say are not legitimate threats to the well-being of monoracial children. When the courts take these concerns into account, they legitimize a casting of interracial households has inferior to monoracial households. *Parker v. Parker* and similar court cases perpetuate anti-Blackness and white supremacy while continuing to add barriers to the lives of interracial families.

Solutions

1. Improve data and data collection to better understand the needs and experiences of mixed-race families and individuals.

2. Create and validate mixed identity in the courts by allowing individuals to identify with all aspects of their heritage.

3. Provide judges an actual structure to examine race and implement structural anti-bias reforms so race is not considered when it does not need to be.

Conclusions

Mixed-race identity is an ever-growing and changing legal and social classification. It is important that these court cases understand identities that are not rooted in the children's minority or white racial identity, but rather their mixed identity.

The cases of mixed-race children and families also emphasize a troubling historical and current issue of anti-Blackness and bias in the courts, which needs to be addressed.

While *Loving* and *Palmore* attempted to outlaw considerations of race, this paper demonstrates a variety of considerations of race that currently do not serve the best interest of mixed-race children or mixed families.