

UNCOVERING RACE IN FAMILY LAW

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Uncovering Race → The Fluid Family Theory

Recognition of Complexity

- Family History
 - Inclusive vs. Exclusive
- Family Structure
 - Expanded vs. Constricted
- Family Identity
 - Multifaceted vs. One dimensional

Everchanging; Generational Span

- Entrances & Exits
 - Coupling - Decoupling
 - Marriage – Divorce
 - Extramarital affairs
 - Birth-Termination-Adoption
 - Remarriage – Stepparents & Half siblings
- Functions and Expectations
 - Caretaking
 - Emotional support
- Legal Ties
 - Ongoing Recognition or Severe Break?

INTRODUCING THE COMPLEXITIES OF RACE IN FAMILY LAW

What defines a family?

An extended family of shades as colorful as TV's

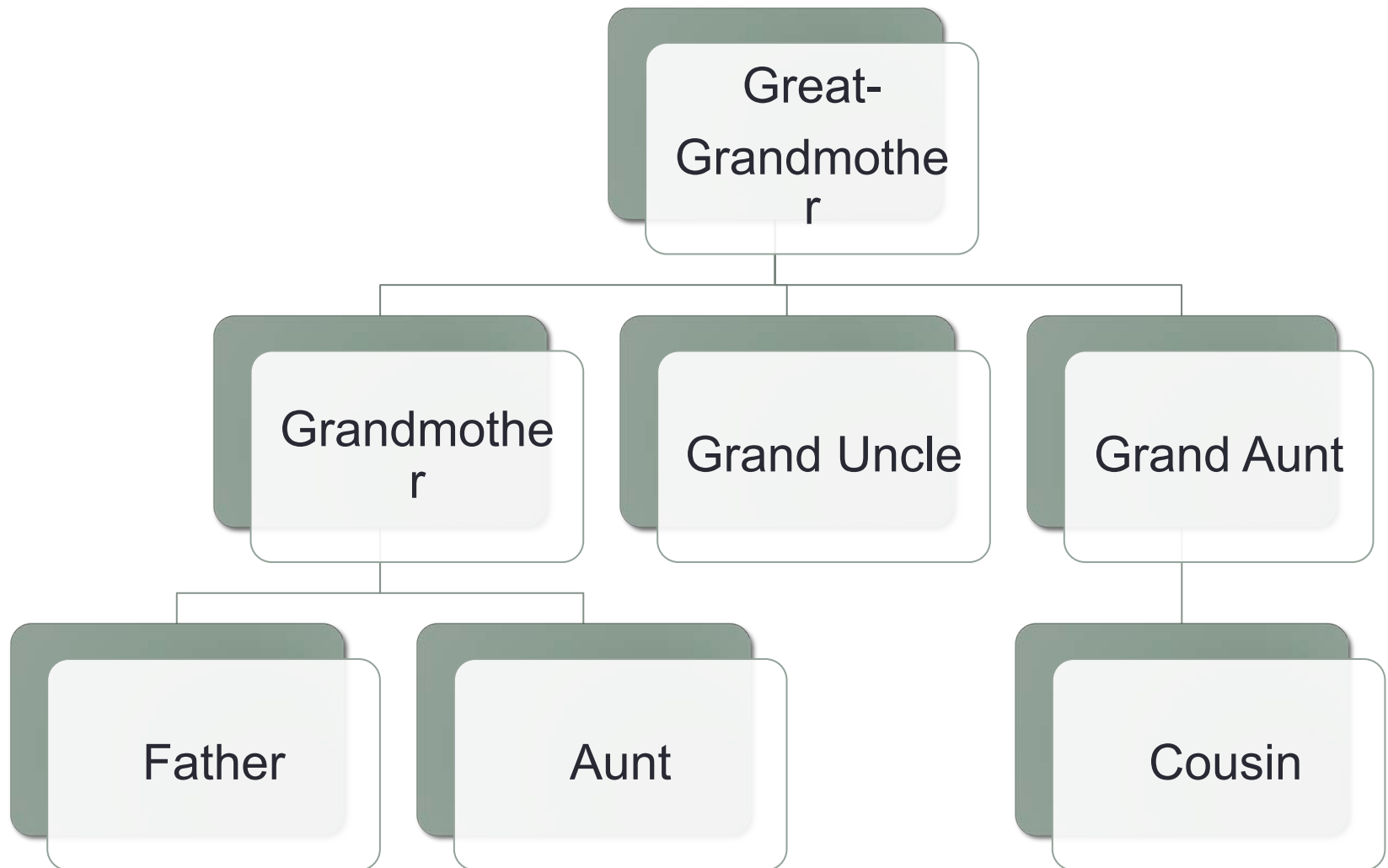
modern *family*™



Characteristics that make a group of people a family

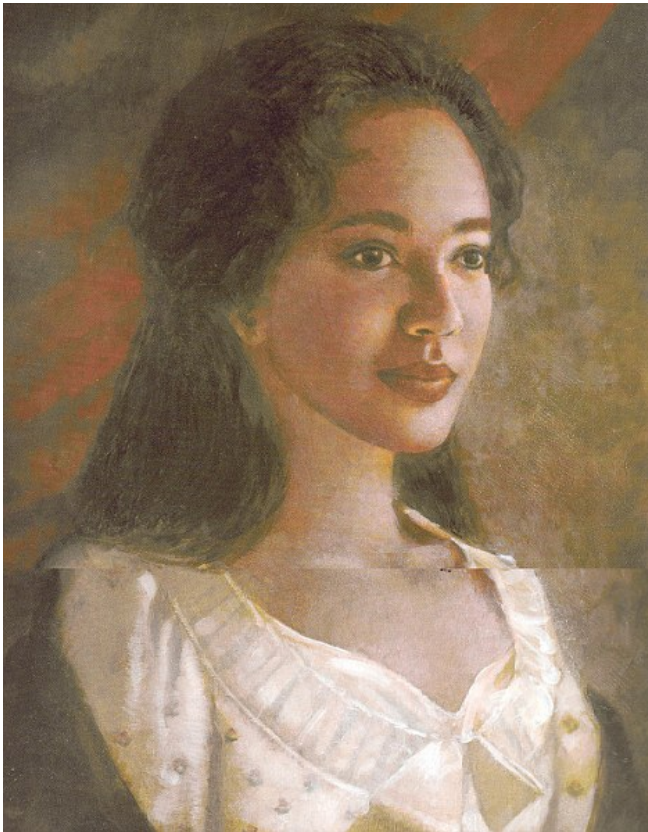
- Marriage or legal connections
- Living together for a long time
- Emotional Bonds
- Caretaking responsibilities (children, elderly)
- Economic interdependence
- Biological/Blood ties (physical features)
- Sexual relations
- Religious beliefs/Ethnic culture
- Current societal/political framework

What does your family tree look like?

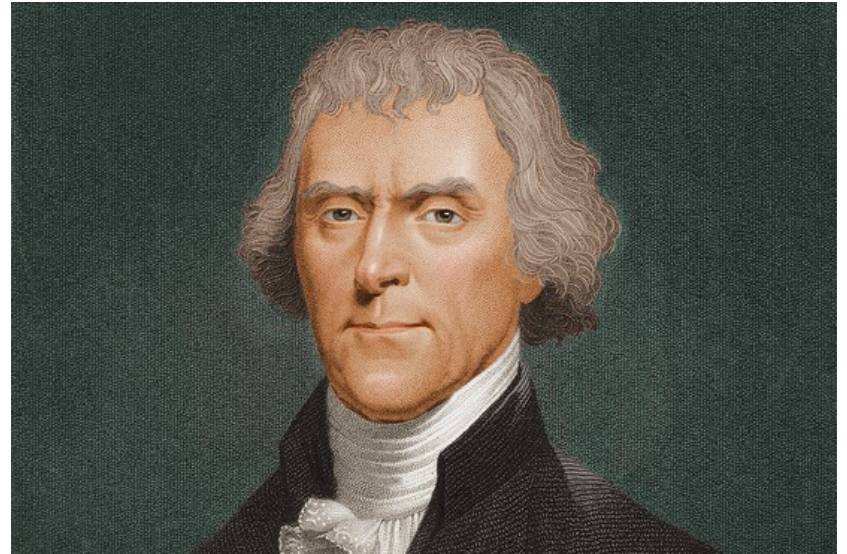


Legally Unrecognized Family

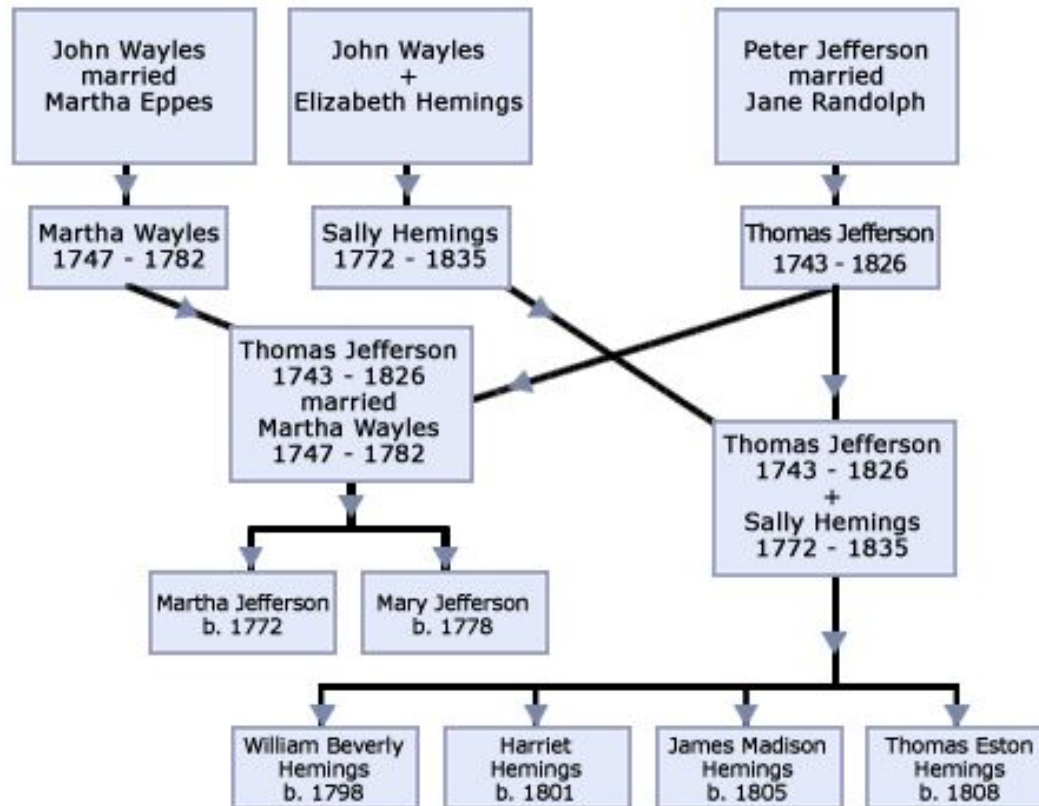
Slave Sally Hemings



President Thomas Jefferson



The Thomas Jefferson and Sally Hemings Story



Sally Hemings was the daughter of a slave, Elizabeth Hemings and an English sea captain John Wayles. John Wayles was married to Martha Eppes Wayles and fathered Martha Wayles, Jefferson's wife. Sally Hemings and Jefferson's wife Martha were half-sisters.

Family Identity

Slave-Master Families

Hemings-Jefferson Descendants



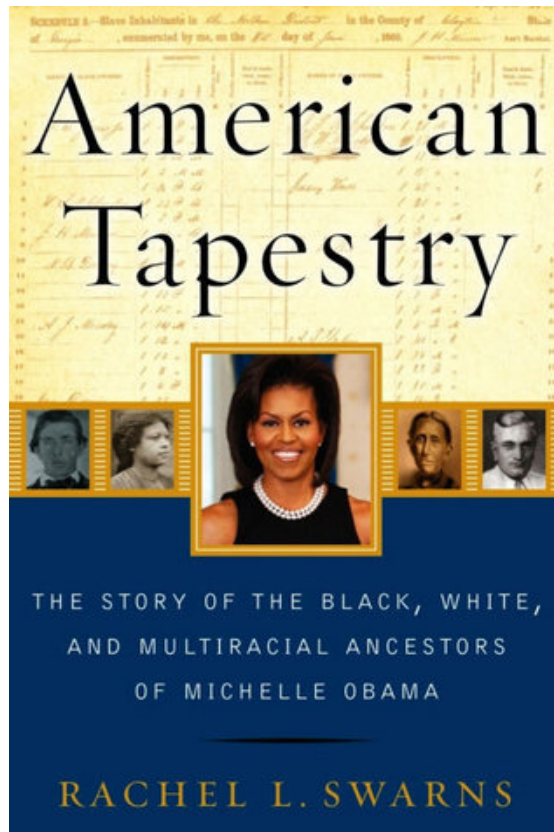
Hemings-Jefferson descendants, including Shay Banks and Julia Westirnen Jefferson, with Sandra Seaton

Photo by Robert Barclay

Legal Exclusion of Family

- No traditional coupling & parent-child relationship
- No protection of family integrity
- No parental rights superior to all other rights
- Children most affected by exclusivity – no legal tie

Former First Lady Michelle Obama's Multiracial Ancestry in America

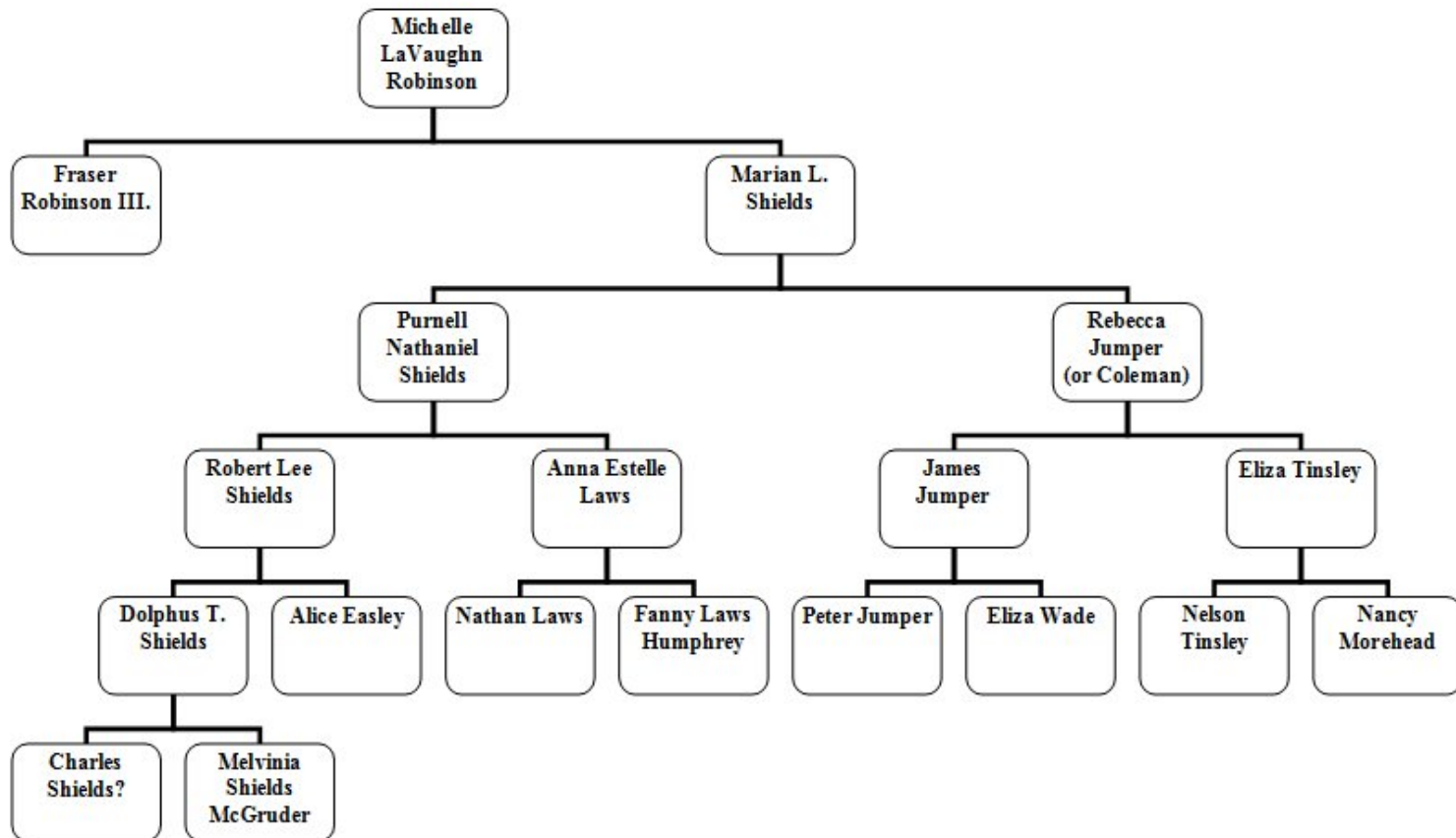


Dolphus Shields, Great-Great
Grandfather, son of slave &
slaveowner



Shields Family Tree

The Shields Family Tree



Generational Impact of Race on Legal Treatment of Families

- **Highlights from “Finding Your Roots” with Harvard Prof. Henry Louis Gates**
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- <https://www.youtube.com/watch?v=TbWWW32qFvo>
-
- **DNA proves many African Americans are white ancestrally**
-
- <https://www.youtube.com/watch?v=CRcex9NEJZE>
-
- **Wanda Sykes on Conan O’Brien - on “Finding Your Roots”**
-
- <https://www.youtube.com/watch?v=SvUupEQ5Hkc>
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CONTEXTUALIZING CASE LAW

Federal Family Law Cases Involving Race or Ethnicity

- *Moore v. City of East Cleveland*
- *Loving v. Virginia*
- *Lawrence v. Texas*
- *Palmore v. Sidoti*
- ***Mississippi Band of Choctaw Indians v. Holyfield*
- ***Adoptive Couple v. Baby Girl*

** Legal cases involving Native Americans in family law are involve principles of sovereignty vs. race jurisprudence, although recent federal court cases attempt to re-categorize child welfare issues.

MARRIAGE

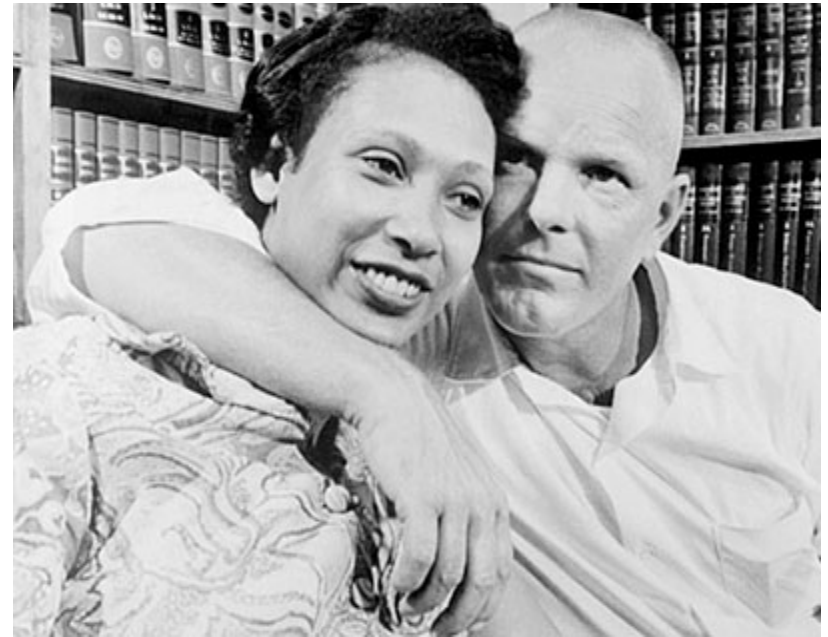
Loving v. Virginia

Marriage as an Institution

- Marriage is...
 - Both a legal and social construct.
 - Like a contract → needs consensual parties.
 - Governed by state statutes (legislature).
 - Details of marriage
 - Governed by federal law (Congress, Fed. Cts)
 - Constitutional rights w/in family structure
 - Set parameters for state's rel'ship w/family

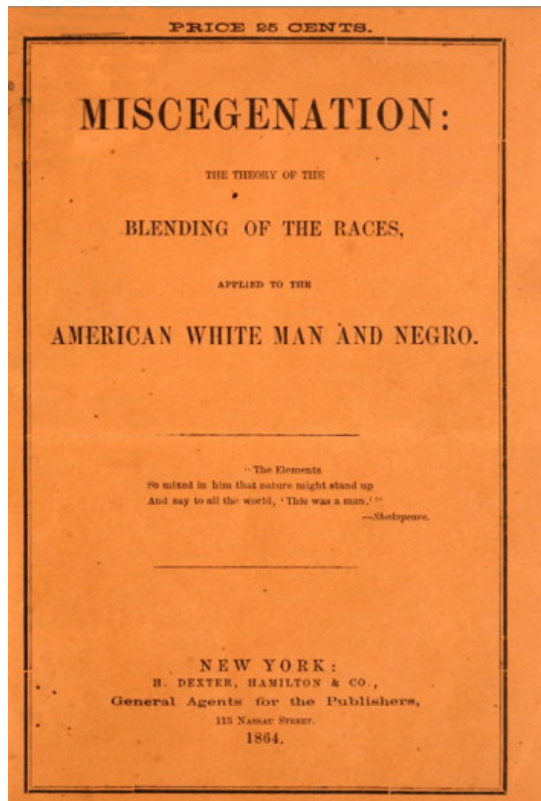
Loving v. Virginia

388 U.S. 1 (1967)



Law & Society Loop - *Loving v. Virginia*

1864 Presidential Reelection
campaign



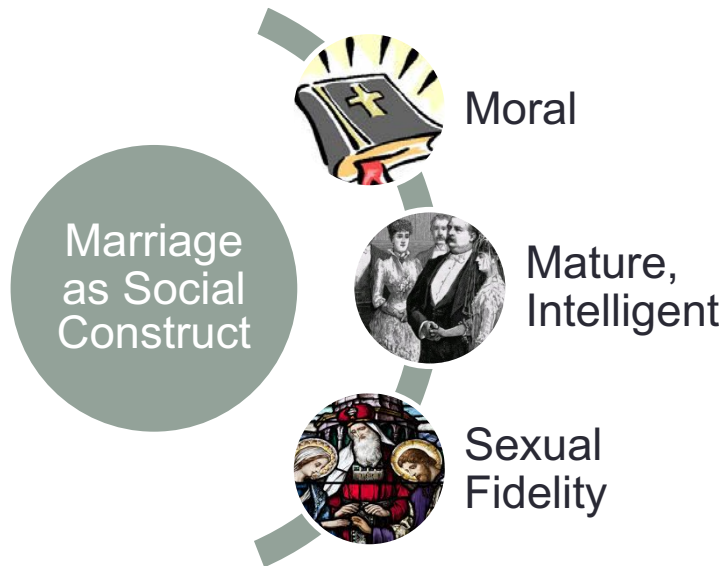
How would blacks & whites live
together after abolishment of
slavery?



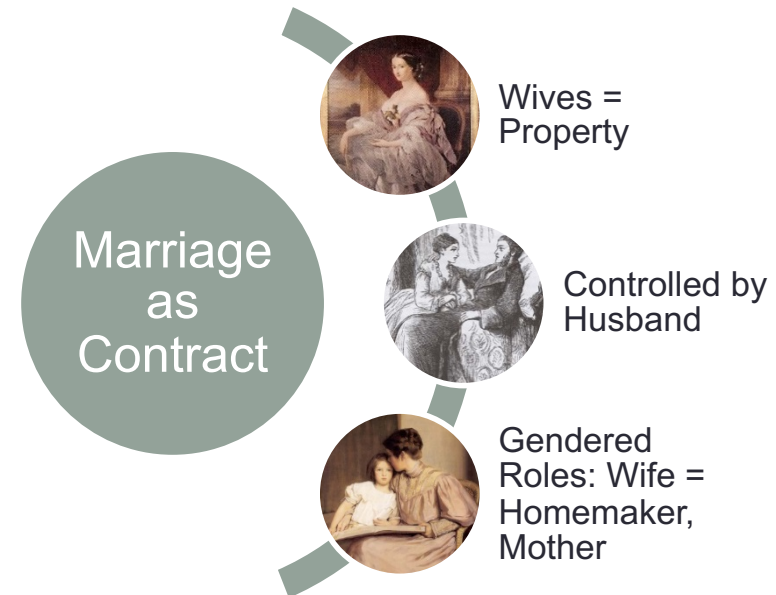
Historical View of Marriage

Man + Woman

Social Construction



Legal Construction

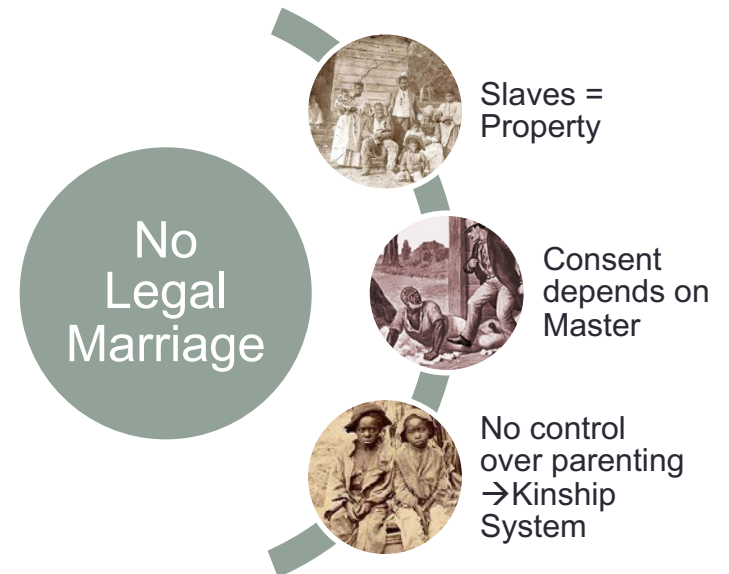


Historical View of Race & Family

Social Construction of Race



Legal Construction of Slave Family



Loving v. Virginia 50 years later

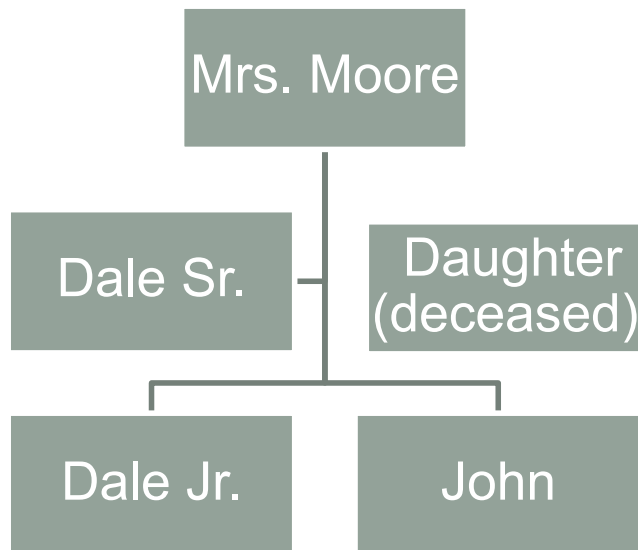
- Loving v Virginia - original news coverage by ABC in 1967.
- <https://www.youtube.com/watch?v=FaHhZ4IbVYY>
- Loving v. Virginia – 50 years later
- <https://www.youtube.com/watch?v=RseBL4eC0ok>

DEFINITION OF FAMILY

Moore v. City of East Cleveland

Moore v. City of East Cleveland

431 U.S. 494 (1977)



- Why didn't Mrs. Moore's family meet the definition of family by the local statute?
- She had 2 grandchildren from 2 different adult children living with her.

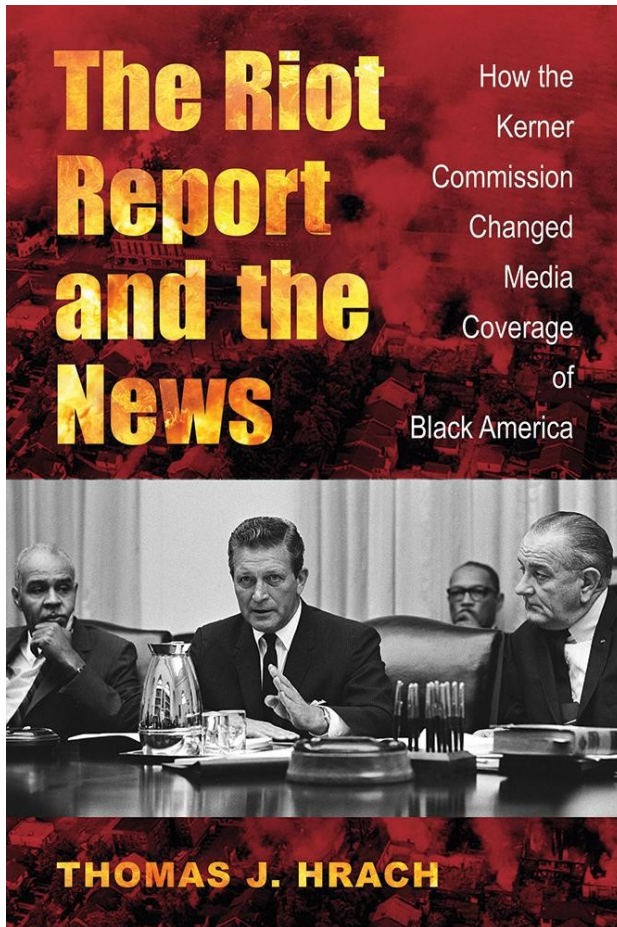
Ohio Housing Ordinance

Section 1341.08 – Family Defined

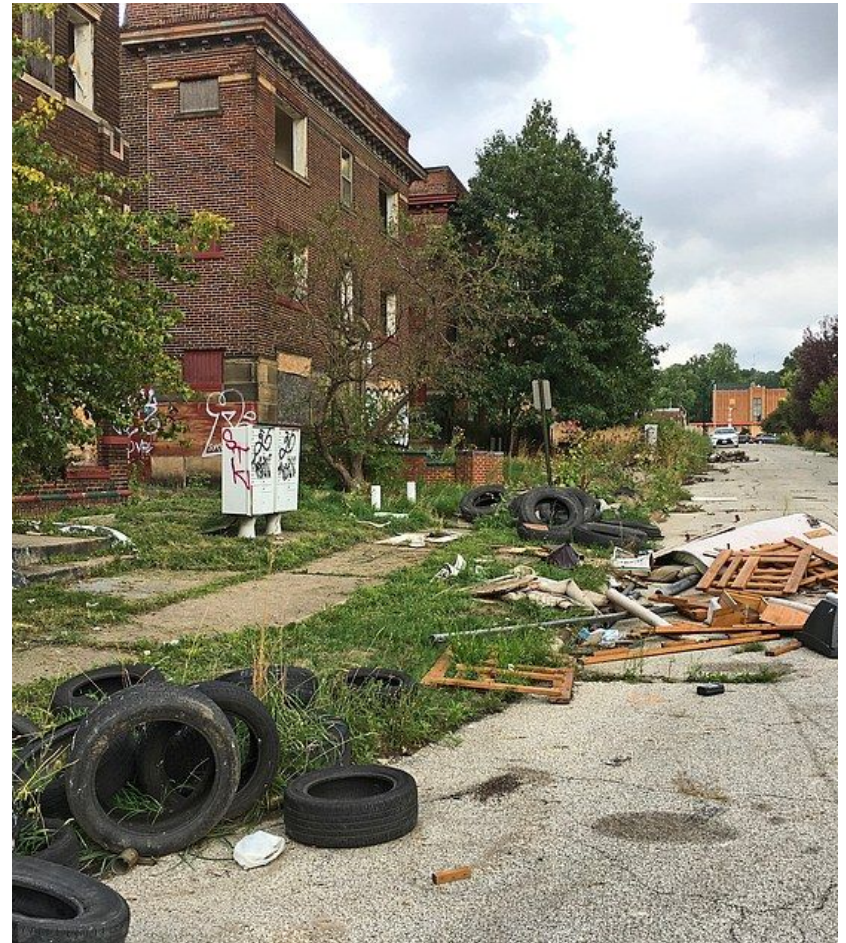
- Head of household (HH) + heterosexual spouse (HS)
- Unmarried children of HH or HS (no grandchildren)
- Parent(s) of HH or HS
- 1 dependent married (+HS)/unmarried child + their dependent children
- One Individual

Criminal Penalty for Civil (Zoning) Statute – Why?

Social Context of Case



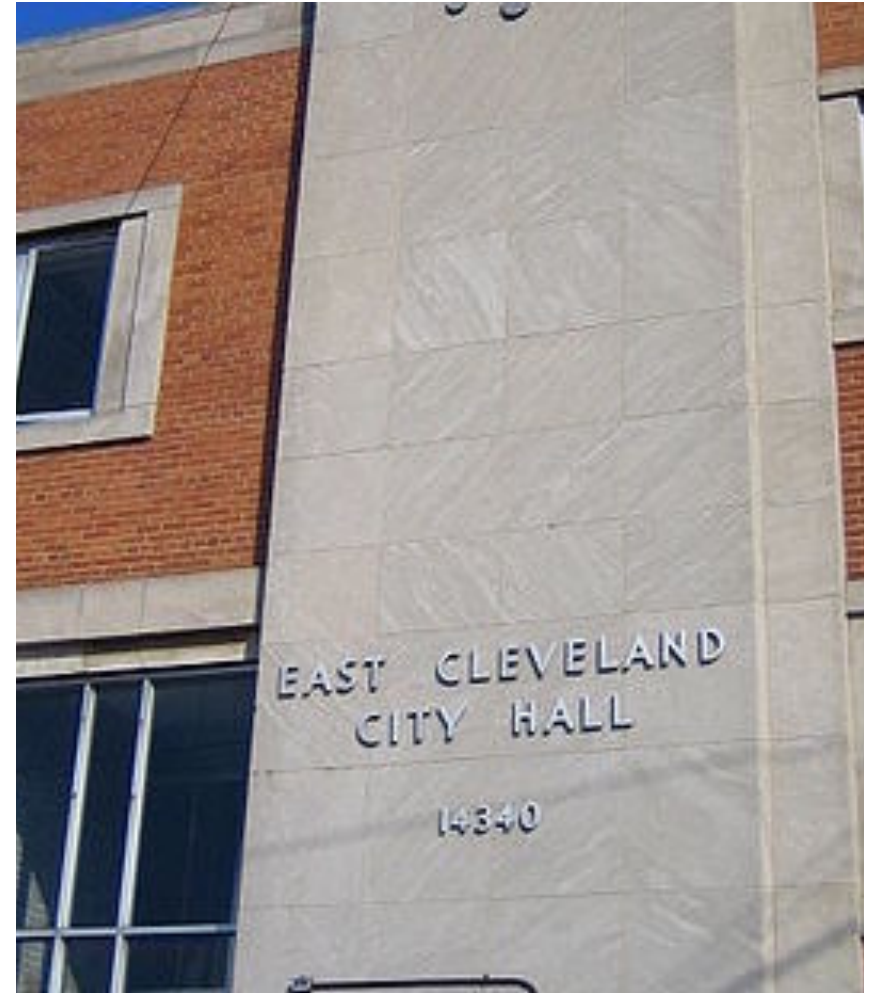
Racial Context of Case



Constructing the Suburban Family – Ideal Life in America



Effort to Integrate City of East Cleveland “Quality Citizenship”

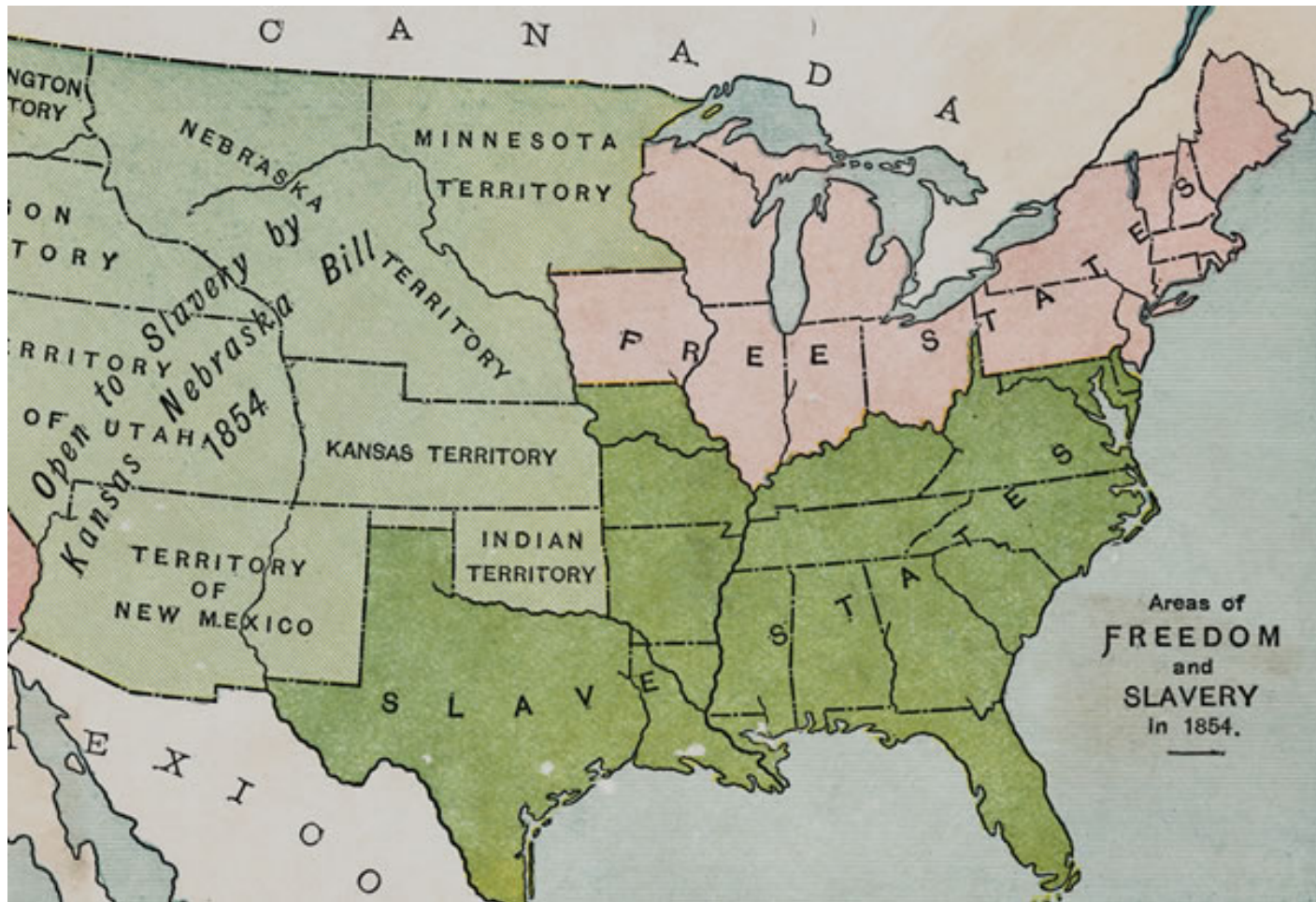


14th Amendment – Equality for former slaves

All persons born or naturalized in the United States, and subject to the jurisdiction, thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; **nor shall any State deprive any person of life, liberty or property, without due process of the law;** nor deny to any person within its jurisdiction the equal protection of the laws.



State Action Doctrine



Lochner Era & Family Rights under the Constitution



- Lochner found that substantive rights are protected under 14th A. → SDP limits type of activities a state may regulate.
- Overturned in 1937 by *West Coast Hotel v. Parrish*.
- While no right to SDP in economic sphere → right to SDP in social sphere.

Moore v. City of East Cleveland

- What standard of review did the Court use?
 - **Heightened** test → Court examined importance of governmental interests advanced & extent to which they are served by regulation.
 - **Govt. interests were legitimate, BUT ordinance was not strongly related to serve those interests.**
 - What were the govt. interests? To prevent overcrowding, noise, congestion, etc.
 - *Moore v. City of East Cleveland* decided in 1977 → used heightened level of scrutiny – not quite strict, but more than rational basis.
 - Intermediate scrutiny established in 1976 → language in *Moore* is most similar to this level without stating that it used this level.

Extended Family = Family Survival

Justices Brennan and Marshall's Concurrence



Moore v. City of East Cleveland

- *“The institution of the family is deeply rooted in this Nation’s history and tradition. It is through family that we inculcate and pass down many of our most cherished values, moral and cultural.”*

Complicated Case Codas

- *The Court was right to protect John, Jr.'s bond of confidence and love.*
- *The city was right to take a stand against poverty and deterioration.*
- *The law cannot enforce tolerance.*
- *White flight is complicated.*
- *Integration is a futile course. African-Americans should concentrate on building strength in our own communities.*
- *Perhaps the Court got in the way of a plan that could have saved East Cleveland.*

ALTERNATIVE SLIDES FOR DEFINITION OF FAMILY

Moore v. City of East Cleveland

GRANDMA IN THE WHITE HOUSE

Legal Support for Intergenerational Caregiving

Multigenerational living



Marian Robinson

Live-in Grandmother for the Obamas



Retribing



Retribing

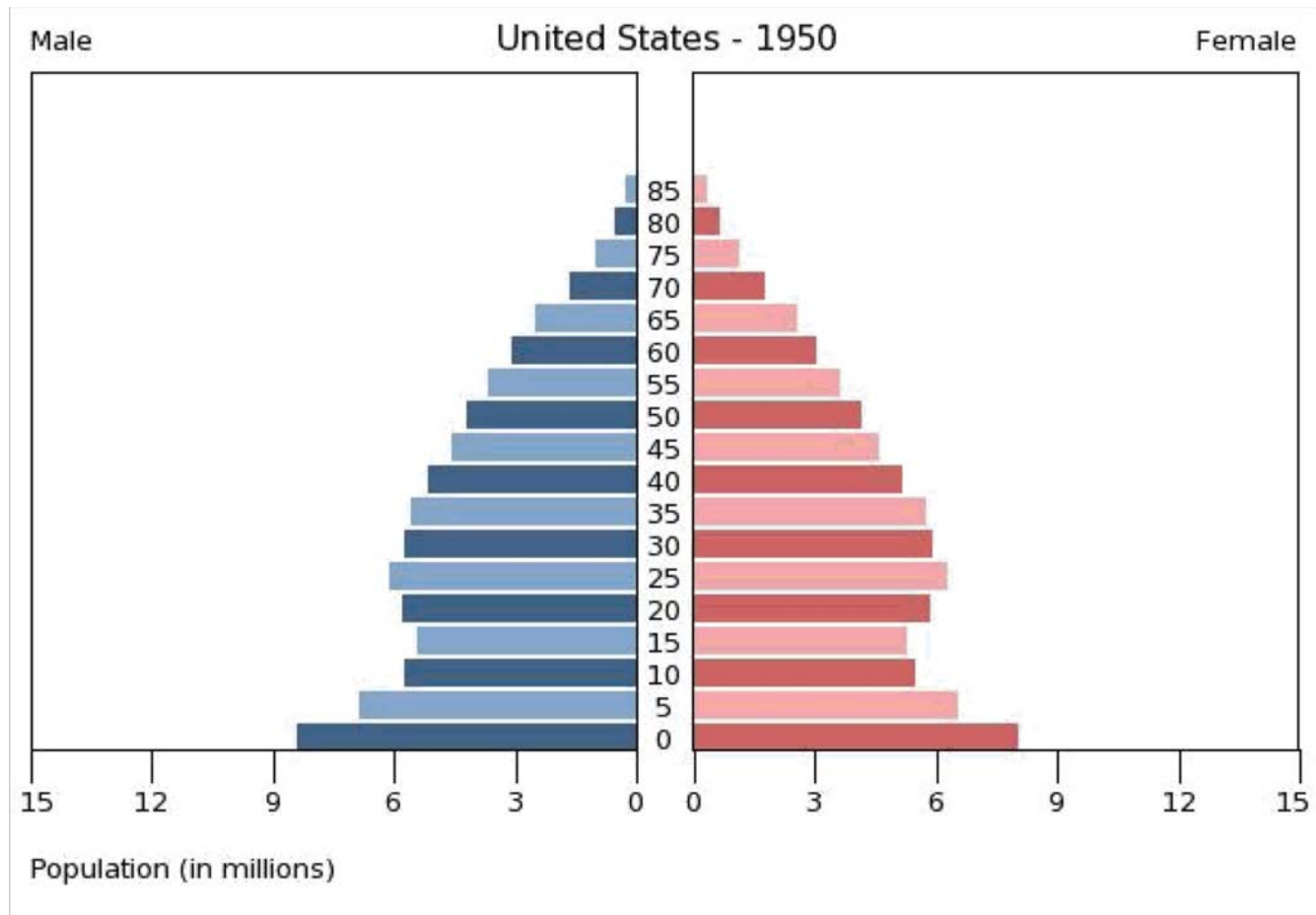


Shift in cultural norms

- “Grandparent caregiving stretches, reorganizes, and redefines the relationships between family members; redraws the boundaries of family and, often, of household units; and redirects the transfer of resources within the family.”

- B. Hirshorn

Rapidly aging population



Babes & Elders



Caregiving Tensions

Child Care



Elder Care

