Supplementary Material

Chapter 8: The New Deal/Great Society Era—Individual Rights/Personal Freedom and Public Morality

Loving v. Virginia, 388 U.S. 1 (1967)

Richard Perry Loving and Mildred Dolores Jeter, two citizens of Virginia, were married in Washington, D.C., on June 2, 1958. When they returned to Virginia, they were arrested for violating a Virginia law that banned state residents from evading prohibitions on miscegenation by obtaining marriage licenses in other states. Loving was white. Jeter was part African-American and part Native-American. At their state trial, both were sentenced to a year in prison, but the judge suspended the sentence if the Lovings agreed to leave the state for twenty-five years.[1] *After living in Washington for five years, the Lovings, assisted by the American Civil Liberties Union, decided to contest that decision. The Lovings claimed their sentence was cruel and unusual punishment, that the Virginia ban on miscegenation violated their right to marriage, and that the refusal to recognize out-of-state marriages violated the commerce clause. The local state court refused to vacate their 1958 conviction. After that decision was affirmed by the Supreme Court of Virginia, the Lovings appealed to the Supreme Court of the United States. The NAACP Legal Defense Fund and Japanese American Citizens League filed amicus briefs on behalf of the Lovings. The Lovings were also supported by prominent southern Catholic leaders. Their brief, which insisted that bans on interracial marriage violated the free exercise clause of the First Amendment and the due process right to have children, declared,*

> *Marriage is an exercise of religion protected by the First and Fourteenth Amendments to the United States Constitution; that, as such, marriage can be restrained only upon a showing that it constitutes a grave and immediate danger to interests which the state may lawfully protect; and that interracial marriages do not constitute any danger to any interest which the state may lawfully protect.*

The Supreme Court by a 9-0 vote reversed the Virginia Court. Chief Justice Warren's opinion that the Lovings had a fundamental right to marriage and that miscegenation laws violated the equal protection clause. Were the justices correct to rely on both constitutional claims or should Warren have relied only on one? Which one? If the Court was going to rely on multiple grounds for striking down Virginia's law, why not also note the free exercise claim emphasized in Perez v. Sharp *(CA 1947) and the brief of the Catholic bishops?*

CHIEF JUSTICE WARREN delivered the opinion of the Court.

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. . . [T]he State argues that the meaning of the Equal Protection Clause, as illuminated by the statements of the Framers, is only that state penal laws containing an interracial element as part of the definition of the offense must apply equally to whites and Negroes in the sense that members of each race are punished to the same degree. Thus, the State contends that, because its miscegenation statutes punish equally both the white and the Negro participants in an interracial marriage, these statutes, despite their reliance on racial classifications, do not constitute an invidious discrimination based upon race. . . .

[1] The Lovings were allowed to visit family in Virginia as individuals, but not as a couple.

Because we reject the notion that the mere "equal application" of a statute containing racial classifications is enough to remove the classifications from the Fourteenth Amendment's proscription of all invidious racial discriminations, we do not accept the State's contention that these statutes should be upheld if there is any possible basis for concluding that they serve a rational purpose. . . . [T]he fact of equal application does not immunize the statute from the very heavy burden of justification which the Fourteenth Amendment has traditionally required of state statutes drawn according to race.

The State argues that statements in the Thirty-ninth Congress about the time of the passage of the Fourteenth Amendment indicate that the Framers did not intend the Amendment to make unconstitutional state miscegenation laws. . . . As for the various statements directly concerning the Fourteenth Amendment, we have said in connection with a related problem, that although these historical sources "cast some light" they are not sufficient to resolve the problem; "[a]t best, they are inconclusive. The most avid proponents of the post-War Amendments undoubtedly intended them to remove all legal distinctions among `all persons born or naturalized in the United States.' Their opponents, just as certainly, were antagonistic to both the letter and the spirit of the Amendments and wished them to have the most limited effect." *Brown v. Board of Education*. . . . We have rejected the proposition that the debates in the Thirty-ninth Congress or in the state legislatures which ratified the Fourteenth Amendment supported the theory advanced by the State, that the requirement of equal protection of the laws is satisfied by penal laws defining offenses based on racial classifications so long as white and Negro participants in the offense were similarly punished. *McLaughlin v. Florida*, . . . (1964).

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There can be no question but that Virginia's miscegenation statutes rest solely upon distinctions drawn according to race. The statutes proscribe generally accepted conduct if engaged in by members of different races. Over the years, this Court has consistently repudiated "[d]istinctions between citizens solely because of their ancestry" as being "odious to a free people whose institutions are founded upon the doctrine of equality." *Hirabayashi v. United States* . . . (1943). At the very least, the Equal Protection Clause demands that racial classifications, especially suspect in criminal statutes, be subjected to the "most rigid scrutiny," *Korematsu v. United States* (1944), and, if they are ever to be upheld, they must be shown to be necessary to the accomplishment of some permissible state objective, independent of the racial discrimination which it was the object of the Fourteenth Amendment to eliminate. . . .

There is patently no legitimate overriding purpose independent of invidious racial discrimination which justifies this classification. The fact that Virginia prohibits only interracial marriages involving white persons demonstrates that the racial classifications must stand on their own justification, as measures designed to maintain White Supremacy. . . . There can be no doubt that restricting the freedom to marry solely because of racial classifications violates the central meaning of the Equal Protection Clause.

These statutes also deprive the Lovings of liberty without due process of law in violation of the Due Process Clause of the Fourteenth Amendment. The freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men.

Marriage is one of the "basic civil rights of man," fundamental to our very existence and survival. *Skinner v. Oklahoma* . . . (1942) . . . To deny this fundamental freedom on so unsupportable a basis as the racial classifications embodied in these statutes, classifications so directly subversive of the principle of equality at the heart of the Fourteenth Amendment, is surely to deprive all the State's citizens of liberty without due process of law. The Fourteenth Amendment requires that the freedom of choice to marry not be restricted by invidious racial discriminations. Under our Constitution, the freedom to marry, or not marry, a person of another race resides with the individual and cannot be infringed by the State.

JUSTICE STEWART, concurring.

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