Supplementary Material

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

Naim v. Naim, 197 Va. 80 (1955)

Ham Say Naim, an immigrant from China, married Ruby Elaine Lamberth, a white woman, in North Carolina on June 26, 1952. The next year, Ruby Lamberth Naim brought an action in Virginia courts for an annulment and a divorce on the ground of adultery. Her petition for annulment claimed that both she and Ham Say Naim were residents of Virginia, who had left Virginia solely to evade that state's Racial Integrity Law. That measure proclaimed:

> *It shall hereafter be unlawful for any white person in this State to marry any save a white person, or a person with no other admixture of blood than white and American Indian. For the purpose of this chapter, the term 'white person' shall apply only to such person as has no trace whatever of any blood other than Caucasian; but persons who have one-sixteenth or less of the blood of the American Indian and have no other non-Caucasic blood shall be deemed to be white persons.*

Shortly after a local court in Virginia granted the annulment, the Supreme Court of the United States handed down Brown v. Board of Education *(1954). With the assistance of an attorney from the American Civil Liberties Union, Naim appealed that annulment to the Supreme Court of Virginia. He claimed that, under* Brown, *the Virginia law violated both the due process and equal protection clause of the Constitution. The attorney general of Virginia, J. Lindsay Almond, Jr., responded that marriage was a state prerogative and that the Virginia law was a legitimate means for preventing inferior offspring.*

The Supreme Court of Virginia unanimously upheld the lower state court. Justice Buchanan's majority opinion held that marriage was subject only to state regulation. Does Buchanan's opinion make any effort to distinguish Naim's case from Brown*? Is any distinction possible?*

Naim ran into several difficulties when he appealed to the Supreme Court after having his appeal denied in Virginia. While the ACLU remained supportive, the NAACP Legal Defense Fund did not want to participate. Thurgood Marshall believed the energies of the campaign against race discrimination should focus entirely on the school desegregation litigation. The justices were also badly divided over whether they should resolve questions about bans on interracial marriage at a time when the justices were taking substantial heat for their decision in Brown. "One bombshell at a time is enough" one Justice allegedly said in conference. On March 12, 1956, the justices by a 5–4 vote decided that they would not hear Naim's appeal. In your opinion are these decisions outrageous or a wise tactical husbanding of judicial capital?

JUSTICE BUCHANAN, delivered the opinion of the court.

Marriage, the appellant concedes, is subject to the control of the States. . . .

. . . More recently, in *Wood v. Commonwealth* . . . this court said 'that the preservation of racial integrity is the unquestioned policy of this State, and that it is sound and wholesome, cannot be gainsaid. ' . . .

. . .

More than half of the States of the Union have miscegenation statutes. With only one exception they have been upheld in an unbroken line of decisions in every State in which it has been charged that they violate the Fourteenth Amendment; *State v. Pass*, 59 Ariz. 16 (1942); *Dodson v. State*, 61 Ark. 57 (1895);

Jackson v. Denver, 109 Colo. 196 (1942); *Scott v. Georgia*, 39 Ga. 321 (1869); *State v. Jackson*, 80 Mo. 175 (1883); *State v. Kennedy*, 76 N.C. 251 (1877); *In Re Shun T. Takahashi's Estate*, 113 Mont. 490 (1942); *In Re Paquet's Estate*, 101 Ore. 393 (1921); *Lonas v. State*, (3 *Heiskell)* 50 Tenn. 287 (1871); *Frasher v. State*, 3 Tex. App. 263 (1877). . . .

. . .

The institution of marriage has from time immemorial been considered a proper subject for State regulation in the interest of the public health, morals and welfare, to the end that family life, a relation basic and vital to the permanence of the State, may be maintained in accordance with established tradition and culture and in furtherance of the physical, moral and spiritual well-being of its citizens.

We are unable to read in the Fourteenth Amendment to the Constitution, or in any other provision of that great document, any words or any intendment which prohibit the State from enacting legislation to preserve the racial integrity of its citizens, or which denies the power of the State to regulate the marriage relation so that it shall not have a mongrel breed of citizens. We find there no requirement that the State shall not legislate to prevent the obliteration of racial pride, but must permit the corruption of blood even though it weaken or destroy the quality of its citizenship. Both sacred and secular history teach that nations and races have better advanced in human progress when they cultivated their own distinctive characteristics and culture and developed their own peculiar genius.

Regulation of the marriage relation is, we think, distinctly one of the rights guaranteed to the States and safeguarded by that bastion of States' rights, somewhat battered perhaps but still a sturdy fortress in our fundamental law, the tenth section of the Bill of Rights, which declares: 'The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.'