Reviewing Racism and the Right to Marry

An Analysis of *Loving v. Virginia*

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Abstract

Prior to the 1967 United States Supreme Court case of *Loving v. Virginia,* many states had laws that banned the intermarriage of whites with black or other minorities. Since then, the number of interracial marriages has increased and the attitudes of society have shifted. This thesis uses *Loving* as basis to explore the ways in which societal views have changed since the overruling of the anti-miscegenation statutes. It first discusses the culture in America before *Loving* and then, explains the details of the *Loving* case. This is then followed by a synopsis of how the culture changed after *Loving.* After discussing the biblical perspective on interracial marriage, the thesis explains how the use of *Loving* in the battle for same-sex marriage is an improper analogy. The conclusion asserts that the ways in which racism is manifested are different today than before *Loving* because of the implication of the case and similar cases that came after it.

Reviewing Racism and the Right to Marry: An Analysis of *Loving v. Virginia*

Introduction

This paper will examine the 1967 landmark court case of *Loving v. Virginia*[1] and how the faces of racism and views on interracial marriage have changed since the overruling of anti-miscegenation laws. One could expect that almost fifty years after the *Loving* case that the overall acceptance of interracial marriage has increased.

The first main section of this paper will focus on the cultural climate prior to *Loving*, through a brief history of the cultural and political events that contributed to the views on race, marriage, and interracial marriage. The second main section will focus on the *Loving* case. This section will begin with the facts of the case, and follow with an outline of the procedural history and a discussion of the ruling. The third main section of this paper will discuss how social and political views on race, marriage, and interracial marriage have changed after *Loving*. The fourth section of this paper will discuss the biblical perspective on interracial marriage. The final main section will discuss the potential for the *Loving* case to be used as precedent in the legal battle for same-sex marriage.

Cultural Climate before *Loving*

Views on Race before *Loving*

The views and beliefs on race were a large component of the cultural climate in mainstream America before *Loving*. However, these views did not come from nowhere, but were based on a long history of racism beginning with the subjugation of Native

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

Americans,[2] the forced migration and captivity of slaves from Africa,[3] through the maltreatment of immigrants,[4] the Jim Crow laws, and racial segregation of society.[5]

President Abraham Lincoln issued the Emancipation Proclamation in 1863[6] and by 1865, the 13th Amendment was ratified and officially outlawed slavery within the United States jurisdiction.[7] However, there was still forced labor that was "compensated" in the form of indentured servitude to pay off the debt of being freed from slavery.[8] Furthermore, the "outlawing" of slavery did not clarify what rights individuals would have after their release from slavery and the separatist views took over in the form of segregation and Jim Crow laws, creating a second class citizenship.[9] The racist sentiments of the mainstream society in early America additionally reverberated into the immigration policies by dictating who belongs where according to the color of one's skin.[10] The year after the 13th Amendment was ratified, Congress passed the 1866 Civil Rights Act to guarantee equal rights for all those that were born on U.S. soil. However

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2. Susan Shown Harjo, *The American Indian Experience*, Family Ethnicity 63, (Harriette Pipes Mcadoo Ed., 2d ed. 1999).

3. Rhonda Magee, *Slavery as Immigration?* (2009).

4. *Korematsu v. U.S.*, 319 U.S. 432 (1944).

5. Stetson Kennedy, *Jim Crow Guide to the U.S.A.* (1959).

6. Proclamation No. 95, 12 Stat. 1268 (Jan. 1, 1863) (Emancipation Proclamation).

7. U.S. Const. amend. XIII.

8. Kennedy, *supra* note 5.

9. Thomas J. Davis, *Race, Identity, and the Law* 62 (2002).

10. Kennedy, *supra* note 5, at 41 (1959); Magee, *supra* note 3.

civil rights were not granted for all because the Act did not extend to Native Americans or other individuals that were not seen as citizens of the United States.[11]

After seeing continued discrimination, Congress felt that the Civil Rights Act was insufficient at granting protection to Native Americans and other immigrants, and in 1868 they ratified the Fourteenth Amendment thereby granting citizenship to anyone born or naturalized into the U.S. and establishing the doctrines of due process and equal protection.[12] Two years later, the 15th Amendment was ratified to further establish the right to vote through prohibiting each government in the United States from denying a citizen the right to vote based on that citizen's "race, color, or previous condition of servitude."[13]

However, long after the official abolition of slavery, the South still held strong racial prejudices that sustained the Jim Crow laws that controlled the South.[14] In 1882, Congress passed the Chinese Exclusion Act, which banned Chinese immigration.[15] As well in the 1896 case of Plessy v. Ferguson, the Supreme Court upheld the constitutionality of state laws requiring racial segregation in private businesses, such as railroads, under the doctrine of "separate but equal."[16] Into the twentieth century the

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11. Civil Rights Act of 1866, 14 Stat. 27 (1866).

12. U.S. Const. amend. XIV § 1.

13. U.S. Const. amend. XV.

14. Kennedy, *supra* note 5.

15. Chinese Exclusion Act, 22 Stat.L. 58 (1882), rev'd, Magnuson Act 57 Stat. 600 (1943).

16. *Plessy v. Ferguson*, 163 U.S. 537 (1896).

racist attitudes held strong; this can be seen in the success of the 1915 silent film *The Birth of a Nation.* Although the film was controversial and rejected by the NAACP for its racist portrayals of blacks, it was the highest-grossing film of its time in the United States.[17]

With the 1920s a new perspective was born as the Harlem Renaissance placed black culture in a positive light through expression in the arts with authors such as W. E. B. Du Bois, and Langston Hughes and the growing popularity of Jazz music.[18] However, the structures of racism were still evident as the Great Depression highlighted the economic discrepancies between blacks and whites; blacks were often the first to be laid off and the last to be hired, leaving many unemployed.[19] As the United States moved into World War II, the "separate but equal" doctrine was yet again applied to the 2.5 million African Americans who served in the segregated armed forces.[20] As the war continued, so did the racism. In 1943, the *Chinese Exclusion Act* was finally repealed by the *Magnuson Act*; however, the racism toward Asians grew stronger.[21] In the 1944 Supreme Court Decision on *Korematsu v. United States,* it was found that the United States had the authority to deny the rights of citizens of Japanese ancestry for the sake of national

17. Melvyn Stokes, *D.W. Griffith's the Birth of a Nation*, 125 (2007).

18. David Levering Lewis, *The Portable Harlem Renaissance Reader,* (2008).

19. William Baumol, Robert Litan, & Carl Schramn, *Good Capitalism, Bad Capitalism, and the Economics of Growth and Prosperity*, 32-33 (2007).

20. Editorial, *Military Desegregation*, Christian Science Monitor, November 8, 1988, at 15.

21. Magnuson Act 57 Stat. 600 (1943).

security and thousands of Japanese Americans were placed in internment camps during World War II.[22]

Signs of integration began two years after the war had ended when Jackie Robinson became the first black Major League Baseball player of the modern era in 1947.[23] The following year the integration of the armed forces "officially" occurred on July 26, 1948, with an Executive Order by President Harry S. Truman.[24] This executive order mandated equal treatment and opportunity, as well made it illegal, according to military law, to make a racist remark.[25] However, complete desegregation of the armed forces did not happen until 1954.[26]

In that year, the Supreme Court yielded the "death-knell for all forms of state-maintained racial separation"[27] in the case *Brown v. Board of Education.* The doctrine of Separate yet Equal established in the *Plessy* case[28] was overturned, and it was ruled that "Separate but equal is inherently unequal in the context of public education."[29] Although *Brown* set precedent, segregation continued until the specific laws were either challenged

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22. *Korematsu v. United States*, 323 U.S. 214 (1944).

23. Shirley Povich, *The Ball Stayed White, but the Game Did Not* Washington Post, March 28, 1997 at E03.

24. Exec. Order No. 9981(July 26, 1948).

25. Id.

26. Editorial, *Military Desegregation,* Christian Science Monitor, November 8, 1988, at 15.

27. *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954).

28. *Plessy v. Ferguson,* 163 U.S. 537 (1896).

29. *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954).

or not enforced.[30] As segregation continued, protest grew, and in December 1955, Rosa Parks began what was termed the Montgomery Bus Boycott as she refused to give up her seat at the front of the bus for a white person.[31]

In June of 1958 during the midst of the changing culture, two residents of Virginia, Mildred Jeter and Richard Loving, a white man and a black woman, were married in the District of Columbia to avoid Virginia's anti-miscegenation statutes.[32] Although this is just one example of the Jim Crow laws that were still active in the South, Stetson Kennedy wrote in 1959 that, "Nearly a third of all Americans have been relegated in some degree as second-class citizenship because of their race, color, nationality, religion, or politics, and are treated accordingly."[33] This culture of racism was not confined only to Blacks but also Asians and Hispanics and even toward whites that were seen as race traitors.[34]

During the time between the initial incident with the Lovings and before the *Loving* case was brought to the Supreme Court, there were a number of alterations to the cultural climate concerning race. One such example is Freedom Rides of 1961, which continued in the legacy of Rosa Parks to challenge the racist policies and racist views that were still evident in America.[35] On August 29, 1963 at the March on Washington, Martin

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

31. Robert C. Smith, *Encyclopedia of African-American politics*, (2003).

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

33. Stetson Kennedy, *Jim Crow Guide to the U.S.A.* 4 (1959).

34. Id. at 41.

35. Smith, *supra* note 31.

Luther King, Jr. gave his famous proclamation that he had dream of a different culture than the one in which they were living in.[36] An example of the racial inequalities that still existed are depicted in the quote from his speech below:

> "There are those who are asking the devotees of civil rights, 'When will you be satisfied?' We can never be satisfied as long as the Negro is the victim of the unspeakable horrors of police brutality. We can never be satisfied as long as our bodies, heavy with the fatigue of travel, cannot gain lodging in the motels of the highways and the hotels of the cities. We cannot be satisfied as long as the Negro's basic mobility is from a smaller ghetto to a larger one. We can never be satisfied as long as our children are stripped of their self-hood and robbed of their dignity by signs stating: 'For Whites Only.' We cannot be satisfied as long as a Negro in Mississippi cannot vote and a Negro in New York believes he has nothing for which to vote. No, no, we are not satisfied, and we will not be satisfied until 'justice rolls down like waters, and righteousness like a mighty stream.'"[37]

The following year Congress passed the *1964 Civil Rights Act* that prohibited racial segregation and discrimination in public accommodations.[38] Martin Luther King, Jr.'s words were yet again partially fulfilled with the *1965 Voting Rights Act*; as will be shown through the *Loving* case,[39] the culture of racism was still evident.

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36. Martin Luther King, Jr., "I Have a Dream" speech at the March on Washington (August 28, 1963).

37. Id.

38. Civil Rights Act of 1964, 78 Stat. 241 (1964).

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

Views on Marriage before Loving

The *Loving* case was not only a case about views on race, but also a case on the right to marry.[40] At that time, the right to marry was not fully established in the law and was generally left as a decision for the states and local governing bodies to handle.[41] Before *Loving,*[42] the justifications for marriage were primarily the economic and societal implications.[43] According to Stephanie Coontz in the Journal of Marriage and Family, "love was considered a very poor reason to get married." [44] While it was often desired for love, or at least affection, to develop after marriage, it was not the primary consideration in deciding when and whom to marry or divorce.[45]

The federal government took control of marriage in 1862 with the *Morrill Anti-Bigamy Act* and subsequent legislation that outlawed bigamy.[46] Another instance in which the federal government addresses the issue of marriage was in the 1873 Supreme Court case of *Bradwell v. Illinois* where the majority opinion relied upon the doctrine of coverture for the basis of its decision.[47] The issue of polygamy was again addressed in

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

41. Id.

42. Id.

43. Stephanie Coontz, *The World Historical Transformation of Marriage,* 66:4 J. Marriage & Fam. (2004).

44. Id.

45. Id.

46. Morrill Anti-Bigamy Act, 12 Stat. 501 (1862).

47. *Bradwell v. Illinois,* 83 U.S. 130 (1873).

1878, this time by the Supreme Court in case of *Reynolds v. United States*, in which it was ruled that the First Amendment protected religious beliefs, but it did not protect religious practices that were judged criminal such as bigamy.[48]

In 1888, *Maynard v. Hill*, the Supreme Court then held that, "Marriage, as creating the most important relation in life, as having more to do with the morals and civilization of a people than any other institution, has always been subject to the control of the Legislature."[49] This, however, was not necessarily referring to the federal legislature, since the case in question was deferring to the state legislature.[50]

In 1907 Congress passed the *Expatriation Act*, which indicated that if a woman were to marry a man from another country, she would then be forfeiting her citizenship and take on her husband's nationality.[51] In 1911 the Supreme Court ruled in *Thomson v. Thomson*, that a wife may not sue her husband because it would impair coverture and bring marital issues into the public domain where they "did not belong."[52] In 1922 the *Cable Act* was passed by Congress that allowed for American women that married a foreigner to retain their citizenship on the condition that her residence remained in the U.S.[53]

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48. *Reynolds v. United States*, 98 U.S. 145 (1878).

49. *Naim v. Naim*, 87 S.E.2d 749 (1955), citing *Maynard v. Hill*, 125 U.S.190 (1888).

50. *Maynard v. Hill*, 125 U.S.190 (1888).

51. Lee Walzer, *Marriage on Trial*, (2005).

52. Id.

53. Id.

Even with these decisions, the primary powers of controlling marriage were still in the hands of the states; if the laws of the state where the marriage took place were satisfied, then the marriage was generally considered valid in other jurisdictions.[54] While there were exceptions[55] to this norm, the Supreme Court ruled in 1942 that divorce, but not necessarily marriage, required full faith and credit according to the Constitution.[56]

The legal view of marriage began to shift with the unanimous Supreme Court decision of *Skinner v. Oklahoma* in 1942.[57] In dealing with the sterilization of habitual criminals, this case declared that it "involves one of the basic civil rights of man. Marriage and procreation are fundamental to the very existence and survival."[58] Before this ruling, marriage was generally seen more as a privilege and not a right.[59]

During the initial incident with the Lovings and the time the Supreme Court heard their case, the Supreme Court decided another case on the question of marriage.[60] In the 1965 case of *Griswold v. Connecticut*, it was decided that through the penumbras of the Bill of Rights, there existed a right to privacy within marital relations.[61] However, this

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54. First Restatement of Conflicts on Marriage & Legitimacy § 121 (1934).

55. Morrill Anti-Bigamy Act, 12 Stat. 501 (1862).

56. *Williams v. North Carolina*, 317 U.S.287 (1942)., U.S Const. art. IV, § 1.

57. *Skinner v. Oklahoma*, 316 U.S.535 (1942).

58. Id.

59. Erica Chito Childs, *Navigating Interracial Borders: Black-White Couples and the Social Worlds*, in Race, Class, & Gender 335 (Margret L. Anderson & Patricia Hill Collins eds., Thompson-Wadsworth) (2007).

60. *Griswold v. Connecticut*, 381 U.S. 479 (1965).

61. Id.

right to privacy did not extend to the choice of whom one could choose to marry until *Loving*.[62]

Views on Interracial Marriage before *Loving*

While the cultural views on miscegenation cannot be discussed without also discussing the views on race or marriage, it is its own entity. Prohibitions against interracial marriage in America, as a primary form of racial segregation,[63] date back to 1664 when the Maryland colony became the first to penalize relationships between blacks and whites.[64] Before too long, all southern and many northern states passed anti-miscegenation statutes.[65] The statutes' justifications were primarily based on racist or economic concerns; it was often feared that a marriage between a white woman and a black slave would produce legally free children and deprive the slave owner of potential slaves.[66] However, white men were not punished for engaging in sex with black women because of the economic gain for slave owners. The children of miscegenation would become the additional "property" for the white father.

The Supreme Court first ruled on miscegenation laws in the 1883 case of *Pace v. Alabama*,[67] which held Alabama's miscegenation laws as unconstitutional under the 14th amendment as it gave different punishment to the individuals in the relationship

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

63. Kennedy *supra* note 5 at 58.

64. Walzer, *supra* note 51.

65. Kevin R. Johnson, *Mixed Race America and the Law*, (2003).

66. Id.

67. *Pace v. Alabama*, 106 U.S. 583 (1883).

according to their race, not because it punished interracial marriage.[68] In 1912 the issue was brought to the federal level with a proposed constitutional amendment that would have prohibited the intermarriage of anyone with a traceable African or black lineage from marrying outside of his or her race.[69] When the Amendment failed, it spurred on several states that drafted and passed laws similar to the proposed amendment.[70]

After World War II, Japanese war brides soon became central figures in the racial integration and cultural pluralism discourse, as they provided an occurrence that stabilized racial relations rather than disrupted them.[71] With this, many states had begun to repeal their anti-miscegenation laws in the years prior to the *Loving* case.[72] The first state to successfully strike down its anti-miscegenation law and the only one before *Loving* was heard at the trial level[73] was the California Supreme Court in the 1948 case of *Perez v. Sharp*, citing that it violated the Equal Protection Clause.[74] The United States Supreme Court was not ready to address the question of interracial marriage, and in 1954, just six months after *Brown*; the United States Supreme Court denied certiorari in the

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68. *Pace v. Alabama*, 106 U.S. 583 (1883).

69. Proposed Const. amend., 49 Congressional Record, 62nd Cong., 3rd Sess., 502 (Dec. 11, 1912).

70. Johnson, *supra* note 65.

71. Caroline Chung Simpson, *Out of an Obscure Place: Japanese War Brides and Cultural Pluralism in the 1950's*, 10.3 Differences: a J. of Feminist Cultural Stud. 49-50 (1998).

72. Randall Kennedy, *Interracial Intimacies* (2004). Also see *Perez v. Sharp*, 198 P.2d 17 (Cal. 1948), *Loving v. Virginia*, 388 U.S. 1 (1967).

73. *Loving v. Virginia*, 147 S.E.2d 78 (1966), rev'd, 388 U.S. 1 (1967).

74. *Perez v. Sharp*, 198 P.2d 17 (Cal. 1948).

case of *Jackson v. State,* in which Alabama's anti-miscegenation statute had been upheld.[75]

Further proof of the negative attitudes in society toward interracial relationships is shown in the 1955 murder of a 14-year-old African American. Emmett Till was from Chicago, but then visited family in Mississippi. He was unaware of Mississippi's strict legal code of racial conduct that was enforced both legally and through vigilante action.[76] Attempting to impress local youth, Till approached a white woman, supposedly propositioning her.[77] Not long after, the woman's husband, Roy Bryant, and his half-brother J. W. Milam kidnapped, tortured, and eventually drowned the boy, tying him with barbed wire to a cotton gin fan.[78] At the trial level, Till's murderers were acquitted with the justification that life in prison was too harsh punishment for killing only a black man.[79] From the murder through the trial, Till's case generated anger and added fuel for the civil rights movement.[80]

In1955 the Supreme Court of Virginia heard the case of *Naim v. Naim* and ruled Virginia's anti-miscegenation statute as constitutional.[81] This case is different from

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75. *Jackson v. State*, 72 So.2d 114, 116, cert. denied 348 U.S.888 (Ala. 1954).

76. A. Walker, *The Violent Bear it Away: Emmett Till and the Modernization of Law Enforcement In Mississippi*, 46:2 San Diego L. Rev. 459, 459-503 (2009).

77. Id.

78. Id.

79. Id.

80. Id.

81. *Naim v. Naim,* 87 S.E.2d 749 (Va. 1955).

Loving in that the appellee was seeking annulment with the justification that their marriage violated Virginia law. This case was later used as justification at the trial level of the *Loving* case.[82]

The United States Supreme Court again addressed the issue of interracial relationships in the 1964 case of *McLaughlin v. Florida*.[83] At that time, the court ruled that Florida's ban on interracial cohabitation was discrimination forbidden by the fourteenth amendment.[84] The court did not express views on the validity of the laws that banned interracial marriage but rejected the argument that the interracial cohabitation law was valid because it was supplementary to and served the same purpose as the state's law against interracial marriage.[85]

Before the *Loving* case, those that engaged in an interracial marriage, in states where it was prohibited, had their marriage automatically viewed as void and any children from such marriage could be legally taken from them.[86] Individuals could be charged with lewd and lascivious conduct, a misdemeanor, a felony, or an infamous crime, fined, and/or imprisoned for up to ten years for their relationship.[87] The *Loving* decision cited that in the fifteen years prior, fourteen states had already repealed their laws that outlawed interracial marriages, with the Supreme Court of California case of

82. *Naim v. Naim*, 87 S.E.2d 749 (Va. 1955).

83. *McLaughlin v. Florida*, 379 U.S.184 (1964).

84. Id.

85. Id.

86. Kennedy *supra* note 5.

87. Id.

Perez v. Sharp, as the first.[88] Even in these states, interracial students in school systems would often be branded as illegitimate and might be denied inheritance as punishment for their parents' sin of miscegenation.[89] There were several attempts to do away with the racist policies, but none were effective at overturning the anti-miscegenation statutes at a nationwide level until *Loving*.[90]

The Case: *Loving v. Virginia*

Facts of the Case

In 1958, Mildred Jeter, a black woman, and Richard Loving, a white man, were married in the District of Columbia in an attempt to circumvent Virginia's anti-miscegenation statute and then returned to their home in Caroline County, Virginia.[91] One night that July, the newlyweds were awakened in their home by three intruders demanding to know who they were and why they were in bed together.[92] Mildred answered that she was Richard's wife and Mr. Loving pointed to the marriage certificate hanging on the wall.[93] The leader of the intruders, Sheriff R. Brooks, said that it was not

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

89. Kennedy *supra* note 5.

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

91. Id.

92. Peter Wallenstein, *Interracial Marriage on Trial*, in Race on Trial 177 (Annette Gordon-Reed ed., 2002).

93. Id.

good and arrested the young couple and took them to jail.[94] The couple was then charged with violating the state's anti-miscegenation statute.[95]

Procedural History

In October of 1958, a grand jury of the Circuit Court of Caroline County indicted the Lovings for violating Virginia's ban on interracial marriage.[96] The Lovings then pleaded guilty to the charge and were sentenced to a year in jail on January 6, 1959.[97] The trial judge agreed to set aside the sentence if the Lovings would leave Virginia and not return together for 25 years.[98] In his decision the trial judge stated,

> Almighty God created the races white, black, yellow, Malay and red, and he placed them on separate continents. And, but for the interference with his arrangement, there would be no cause for such marriage. The fact that he separated the races shows that he did not intend for the races to mix.[99]

The Lovings were issued their convictions, and in accordance with judgment rendered, they returned to District of Columbia to reside. [100]

For four years, only one of the Lovings was able to be in the state of Virginia at a time. The Lovings then filed a motion in the Virginia state trial court to vacate the

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94. Wallenstein, *supra* note 92.

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

96. Id.

97. Id.

98. Id.

99. *Loving v. Virginia*, 147 S.E.2d 78 (1966), rev'd, 388 U.S. 1 (1967).

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

judgment and set aside the sentence on the ground that Virginia's anti-miscegenation statutes violated the Fourteenth Amendment.[101] They waited almost a year for the motion to be decided, and then the Lovings filed a class action in the United States District Court for the Eastern District of Virginia requesting that a three-judge court be convened to declare the Virginia anti-miscegenation statutes unconstitutional and to prohibit the enforcement of their convictions.[102] Not long after the class action was filed, the state trial judge denied the motion to vacate the sentences, giving the Lovings an opportunity to appeal to the Supreme Court of Virginia.[103] On February 11, 1965, the United States District Court issued a continuance in the case to allow the Lovings to present their constitutional claims to the Virginia Supreme Court of Appeals.[104]

At the appeal, the Lovings contended that their sentencing denied them due process and equal protection of the law and that the trial case should be overturned because it was based upon the decision in *Naim*[105] which foundation was overturned in *Brown*[106] and *McLaughlin.*[107] The Supreme Court of Appeals for Virginia upheld the constitutionality of the anti-miscegenation statutes on the basis that they did not see a

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

102. Id.

103. Id.

104. Id.

105. *Naim v. Naim*, 87 S.E.2d 749 (1955).

106. *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954).

107. *McLaughlin v. Florida*, 379 U.S.184 (1964).

reason to depart from the ruling in *Naim* and reversed the conditioning of the sentencing, and remanded further proceedings.[108]

The Lovings then appealed the decision, and the United States Supreme Court noted probable jurisdiction on December 12, 1966.[109] On Monday, April 10, 1967 the Lovings' case was argued before the United States Supreme Court and was then decided on Monday, June 12, 1967.

Discussion of the Ruling

Two months after the *Loving* case was argued before the United States Supreme Court, the justices issued their ruling. In a unanimous decision, they overturned Virginia's anti-miscegenation statutes on the ground that the statutes violated both the Equal Protection and Due Process Clauses of the Fourteenth Amendment.[110] In the majority opinion Chief Justice Warren expressed,

> 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.

While this statement speaks mainly to the racism evident in Virginia's anti-miscegenation statutes, it also speaks to the issue of the right to marry. The issues of racism had been addressed on several occasions by the Supreme Court,[111] but they had not concretely

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108. *Loving v. Virginia*, 147 S.E.2d 78 (1966), rev'd, 388 U.S. 1 (1967).

109. *Loving v. Virginia*, 385 U.S. 986 (1966) (probable jurisdiction noted).

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

111. See *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954).

addressed the right to marry before *Loving*. In his decision, Chief Justice Warner extended the principles found in the case of *Skinner v. Oklahoma*[112] and in *Maynard v. Hill,*[113] to show that "Marriage is one of the 'basic civil rights of man,' fundamental to our very existence and survival."

He contended that this right to marry was protected by the Constitution and said that, "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." With this, he was denying the validity of the claim of the state that its miscegenation statutes did not violate the Equal Protection because they punished both parties in the marriage equally regardless of race.[114] The decision did not stop at equal protection, but also extended to due process. The decision continued,

> 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.

In a concurrent opinion, Justice Stewart wrote that a "state law making the criminality of an act depend upon the race of the actor is invalid." With this ruling, the legal assumptions shifted; no longer was there a presumption of illegitimacy for interracial couples.

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112. *Skinner v. Oklahoma,* 316 U.S. 535, 316 U.S. 541 (1942).

113. *Maynard v. Hill,* 125 U.S. 190 (1888).

114. *Loving v. Virginia,* 388 U.S. 1, 8 (1967).

How View Changed after *Loving*

Views on Race after *Loving*

Shortly after the Supreme Court handed down its decision in *Loving* in 1967, Thurgood Marshall was appointed as the first African American to be appointed to the U.S. Supreme Court.[115] The flowing year Dr. King was assassinated, inciting race riots as racial tensions rose.[116]

While state-sanctioned racism no longer exist in the form of chattel slavery or forced segregation, there are still structural forms of racism that exist that work to disadvantage the minority.[117] Affirmative action was set in place to counter the effects of those social barriers but has not always proven successful.[118] In 1978 the issue of race was on trial again before the Supreme Court with the case of *U. of Cal. Regents v. Bakke.*[119] In this case, the Supreme Court ruled that universities can use race as a factor in admissions but cannot impose quotas, thus beginning what is now known as Affirmative Action. In 2003 the Supreme Court ruled again to uphold the University of Michigan's qualified use of race as a factor in admissions.[120]

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115. Smith, *supra* note 32.

116. Id.

117. Cornel West, *Hope on A Tightrope* 59 (2008).

118. William M. Chace, *Affirmative Inaction*. 80 (1) American Scholar 20-3 (2011).

119. *U. of Cal Regents v. Bakke,* 438 U.S. 265 (1978).

120. *Grutter v. Bollinger,* 539 U.S. 306 (2003).

Since the Loving ruling the face of racism has changed—if someone commits an act of violence toward another person for racist reasons, then it is considered a hate crime.[121] As well, for the majority of Americans, racial heritage is not an issue they are concerned with, and many of them do not know the origins of their ancestry.[122] Today racial identity in America deals more with the cultural context in which one was raised and to a lesser degree the color of one's skin.[123] Today race and culture are very much interrelated, and are no longer clear distinctions but a blurring line.[124] This is seen throughout America, as it is not uncommon to see a couple adopt a child of another race and as the number of interracial couples increase steadily.[125]

Views on Marriage after *Loving*

Four years after *Loving*'s Supreme Court verdict, the Restatement of Conflict of laws declared that, "a state can refuse to recognize a marriage if the marriage violates a strong public policy of the state, even if the marriage was legal in the state where it was performed."[126] In application of *Loving,* if the only justification for a state to refuse to recognize a marriage is because of an individual's race, then the state does not have the right to refuse to recognize that marriage.

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121. 1964 Federal Civil Rights Law, 18 U.S.C. § 245 (1964).

122. Sharon Jayson, *New Generation Doesn't Blink at Interracial Relationships*, U.S.A Today, Feb. 8, 2006 at Nation.

123. Matthew Ashimolowo, *What is Wrong with Being Black?* (2007).

124. Id.

125. Barbra B. Woodhouse & Kelly Reese, *Reflections on Loving and Children's Rights*, 20(1) U. Fla.J.L. & Pub. Pol'y 11-32 (2009).

126. Restatement (Second) Of Conflict of Laws § 283(2) (1971).

The view on marriage changed in more ways than just in the recognition of marriage but also in the recognition of divorce. In 1969 California was the first in the nation to adopt a "no fault" divorce law, allowing divorce by mutual consent.[127] Evidence that the views on marriage were further shifting is the 1976 case of *Marvin v. Marvin* where a California court ruled in that common law marriages disserved legal protection the same as other marriages and that they may bring claims for property division based on both express and implied contracts.[128]

In 1981 the Supreme Court ruled in *Kirchberg v. Feenstra* that state laws designating a husband head and master with unilateral control of property owned jointly with his wife, violated the Equal Protection Clause.[129] Women continued to gain rights within marriage and by 1993, all fifty states had revised their laws to include punishment of marital rape.[130]

The same year the Hawaii Supreme Court ruled that prohibiting same-sex couples from marrying may violate Hawaii Constitution's ban on sex discrimination, and can only be upheld if prohibition is justified by a compelling reason. By 1996 no compelling reason was found. [131] In 1996 President Clinton signed into law the Defense of Marriage Act (DOMA), which defined marriage as exclusively between one man and one woman

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127. California's Family Law Act of 1969, 1969 Cal. Stat. 3324 (1969).

128. *Marvin v. Marvin*, 557 P.2d 106 (Cal. 1976).

129. *Kirchberg v. Feenstra,* 50 U.S. 455 (1981).

130. Raquel Kennedy Bergen, "*Marital Rape*" National Electronic Network on Violence Against Women (1999).

131. Id.

and declares that states are not required to recognize same sex marriages performed in other states.[132] Soon after the proposal of the national DOMA, many states have also drafted and passed mini DOMA's.[133] In 2000 as a response to the national DOMA, Vermont began to giving martial rights to its citizens through "civil unions."[134]

In 2003 the Supreme Court heard the case of *Lawrence v. Texas* in which the respondents' claim partially relied upon the *Loving* decision.[135] The final decision in Lawrence was not based upon the Equal Protection Clause and the *Loving* case, but with Due Process.[136] The same year the *Loving* case was again cited in the debate over homosexual rights in the case of *Goodridge v. Department of Health.*[137] In this case, the highest court in Massachusetts held that same-sex couples had the right to marry.[138] In attempt to put an end to the debate over the legality of same-sex marriage, a constitutional amendment was proposed in 2003 as the Federal Marriage Amendment Act (FMA).[139] The FMA would have denied marriage rights to same-sex couples by stating that not only was marriage only between a man and a woman, but that no state or federal

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132. Defense of Marriage Act, 28 U.S.C. § 1738C (2011).

133. Danielle O'Connell, Legislative Fellow, *Federal and State DOMA Language* OLR Report 2002-R-0957 (Dec. 6, 2002) available at http://www.cga.ct.gov/2002/olrdata/jud/rpt/ 2002-R-0957.htm.

134. *Baker v. Vermont*, 744 A.2d 864 (Vt. 1999).

135. *Lawrence v. Texas*, 539 U.S. 558 (2003).

136. *Lawrence v. Texas*, 539 U.S. 558 (2003).

137. *Goodridge v. Dep't. Health*, 798 N.E.2d 941 (Mass. 2003).

138. Id.

139. Federal Marriage Amendment Act H.J. Res. 56 (2003).

law or constitution could be interpreted to require that marital status or the legal right be given to unmarried couples; however FMA was defeated in Congress.[140] Similar amendments have been added to, and proposed for, state constitutions around the country.[141]

It is clear that the views on marriage have changed since the *Loving* case—while the divorce rates have risen, the marriage rates have decreased. For some, they no longer see personal value in marriage because they feel that it is no different than living with the person they love, but for others that are still fighting to have their relationship recognized marriage is the goal they wish to attain.[142]

Views on Interracial Marriage after *Loving*

Loving v. Virginia was the last major court case dealing with the issues surrounding interracial marriage and while it clarified that laws that banned interracial marriage were unconstitutional, many states still left those laws on the books and some continued to enforce them until they were specifically overturned.[143] As the laws against interracial marriage were overturned, the views on interracial marriage have also shifted.[144]

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140. Federal Marriage Amendment Act H.J. Res. 56 (2003).

141. O'Connell, *supra* note 133.

142. Evan Gerstman, *Same-Sex Marriage and the Constitution*, (2008).

143. Associated Press, *Alabama Removes Ban on Interracial Marriage,* U.S.A Today, (November 7, 2000).

144. Woodhouse & Reese, *supra* note 125.

Today interracial marriage is much more widely accepted than it was in early America.[145] The U.S. Census Bureau estimates that while there were only 157,000 interracial marriages in 1960, there were over 3,000,000 in 2000.[146] As well a Gallup poll reported that "white approval of interracial marriage has increased from 4 percent in 1958 to 75 percent in 2007."[147] While fewer than 5 percent of all marriages are interracial in nature, it should be noted that focusing only on interracial marriage fails to account for interracial relationships among individuals that are not married.[148]

Individuals today are looking for relationships with common interests and perspectives and are putting aside issues of race.[149] For some this may be because they have taken on a colorblind perspective; while there are others that criticize color-blindness because it overlooks the racism that still exists today.[150] Cornel West says it best in his book, *Hope on a Tightrope*:

> There is an element of truth in terms of being not so much post-race, but just being in a moment in which white fellow citizens are willing to look at qualifications and vision as opposed to pigmentation and color. That's a breakthrough. To be anti-racist is not to be colorblind but color-embracing—even love struck with each other![151]

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145. Woodhouse & Reese, *supra* note 125.

146. Kevin Noble Maillard, *Miscegenation an American Leviathan*, 36:3 Hum. Rts.: J. Sec. Individual Rts. & Resp. 15 (2009).

147. Id.

148. Id.

149. Jayson, *supra* note 122.

150. Id.

151. Cornel West, *supra* note 117.

It is evident that this generation is more accepting of interracial relationships than the generations before.[152] For many of those that were raised in the era before Loving, interracial relationships are still considered taboo.[153] Many of their children, the baby-boomers, have taken on the perspective that you just do not talk about race.[154] Luckily for younger Americans, this means that the racism their parents were ingrained with will not be passed on to them. This generation is being educated in diversity and multiculturalism in place of the racism and hatred that came before.[155]

Almost fifty years after the Supreme Court's ruling in *Loving,* one would think that there would no longer be objections to interracial marriage. However, just as there were objections to interracial marriage in the *Loving* case, there are still those that object to such interracial relationships.[156] While those individuals are in the minority, it is still worth addressing some of their concerns.[157]

The most obvious objection to interracial marriage comes from those that feel that the races need to be kept separate.[158] This separatist perspective is not confined to remnants of groups of white supremacist, such as the KKK, but is also present in black

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152. Jayson, *supra* note 122.

153. Coontz, *supra* note 43.

154. Jayson, *supra* note 122.

155. Id.

156. Woodhouse & Reese, *supra* note 125.

157. Id.

158. Andre Akil, *From Niggas to Gods*, Vol. II (1996); Kennedy, *supra* note 72.

supremacist groups, such as the Nation of Islam.[159] This is seen in the book *From Niggas to Gods Vol. II,* Akil makes the claim that for someone to engage in an interracial relationship, he or she must be mentally ill.[160] Not only is Akil's claim unwarranted, but it is also racist to say that the only reason a couple should not marry is because the races need to be kept separate.

A similar but more warranted objection is that the differences in racialized culture will ultimately lead to the dissolution of the relationship.[161] Differences in culture can manifest themselves though miscommunication, and conflicts over family structure and parenting, such as how children will be disciplined, the racial and cultural identification of the child, and/or the appropriate age of individuation.[162] While these differences in racial culture can create strain in a relationship by causing conflict, there are other factors of culture besides race, such as differences in religion, which can create the same types of strain that interracial couples face. Studies have failed to show that interracial relationships are at a higher risk for divorce than mono-racial relationships.[163]

Some individuals may claim that their objection to interracial marriage stem from their religious commitments, such as The Nation of Islam,[164] the Jewish,[165] and some

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159. Akil, *supra* note 158.

160. Id.

161. Kennedy, *supra* note 72.

162. Paul C. Rosenblatt, Terri A. Karis, and Richard Powell. *Multiracial Couples: Black and White Voices,* (1995).

163. Yuanting Zhang and Jennifer Van Hook, *Marital Dissolution Among Interracial Couples.* 71:1 J. Marriage & Fam. 95, 95-107 (2009).

164. Akil, *supra* note 158.

sects of Christianity.[166] Even the trial judge in the *Loving* case based his decision on what he felt was the will of God.[167] The foundation for the majority of these views is ultimately founded in racism; however, the biblical perspective will be further addressed in the following section.

Other may object to interracial marriage because of how they perceive that others will potentially view it. This paper previous discussed how the views on interracial relationships have changed and that most Americans are accepting of interracial families today;[168] however, disapproval by family and friends can cause heartache and a loss of a support system. Each family will have its own set of unique challenges but at some point in the past, all challenges associated with interracial relationships, have been overcome and can be overcome in the future as well.[169]

Some may not object to the interracial relationship on face value but claim that it is not right because of the potential impact on children. Despite the fact that some individuals simply pass as being from one race and others are outspoken to the role that being of mixed race played in their life, there are individuals throughout history that were not without setback due to their race, but they were able to overcome the challenges that

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165. Jonathan Cook, *Israeli Drive to Prevent Jewish Girls Dating Arabs*, The National (Sept. 25, 2009).

166. Exodus 34:11-17.

167. *Loving v. Virginia*, 147 S.E.2d 78 (1966), rev'd, 388 U.S. 1 (1967).

168. Jayson, *supra* note 122.

169. Kennedy, *supra* note 72.

they were faced with.[170] A hundred years ago, not many would think that there would ever be a possibility for the President of the United States of America to be biracial, but today he is. Even though race is still a major factor in the way ones identity is shaped, financial status of the family is often cited as a larger contributor than any racial or ethnic classification.[171]

The claims that interracial relationships impact children are not completely without warrant, but not all of these impacts are necessarily negative. While it is often difficult for the white parent to educate their biracial child about his/her White heritage in a way that is not tied to the history of an oppressor and it is particularly difficult to prepare their children for potential disappointments, while teaching self-esteem, racial/ethnic awareness and pride when they did not have to experience a lot of what the child will be going through, it is possible with the help of the other parent.[172]
Some say that this process may be comparable to that experienced by white people who adopt children of a different race than the parents.[173] In the same way that often many interracially adopted children of color are uncomfortable with their physical appearance or lack pride in their own racial or cultural heritage, biracial children may find difficultly identifying in their own culture or race.[174] Identity issues that may arise can be handled

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170. Kennedy, *supra* note 72.

171. O'Donoghue, *White Mothers Negotiating Race and Ethnicity in the Mothering of Biracial, Black-White Adolescents,* J. of Ethnic & Cultural Diversity in Soc. Work (2005).

172. Id.

173. Id.

174. Id.

differently than with adoption, since each parent understands at least some of the cultural issues the child may face.[175] Children can learn to identify with both racial groups and use their heritage to show that race does not have to be as divisive as some once thought.[176]

While the challenges exist, there are also blessings that are unique to interracial families.[177] With the union of two individuals comes the blending of family traditions and culture.[178] Families can take the strengths and best parts of each culture to raise their children in a new culture that make the individuals proud of who they are.[179] Diversity among art, literature, academics, dance, and, music can lead to enriched lives.[180] As well, family experiences from both families can be passed down for a fuller understanding of history.[181]

Inter-racial Marriage: What is the Biblical Perspective?

Regardless of the societal and legal implications of one's beliefs and actions, there comes a day when everyone will be held accountable by a higher judge for his or her beliefs and actions.[182] It is for this reason that we must look to scripture as our

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175. H. P. McAdoo, *Family Ethnicity* (1999).

176. Id.

177. M. L. Barron, *The Blending America* (1972).

178. O'Donoghue, *supra* note 171.

179. Barren, *supra* note 177.

180. Id.

181. Id.

182. Romans 14:12.

ultimate source of authority on the issue of interracial marriage.[183] Although the trial judge in the *Loving* case contended, "God separated the races" and "did not intend for them to mix,"[184] this is not an accurate reading of scripture.

It is clear in scripture that God created us, as children of God, in his image.[185] According to Galatians 3:28, because we are one in Christ, "there is neither Jew nor Greek, there is neither slave nor free, there is neither male nor female."[186] The innate equality of the races is further shown by Paul in Acts 17:25-28 when he says:

> God gives to all life, breath, and all things. And He has made from *one blood* every nation of men to dwell on all the face of the earth… …so that they should seek the Lord, in the hope that they might grope for Him and find Him, though He is not far from each one of us; for in Him we live and move and have our being, as also some of your own poets have said, "For we are also His offspring."[187]

There is no clearer biblical example of interracial marriage than in the life of Moses.[188] The life of Moses shows that God can use any family for His glory, and that it is wrong to judge someone based solely on the color of their skin.[189]As a Hebrew, when Moses married a Cushite[190] wife, it enraged his siblings.[191] When Merriam and Aaron

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183. 2 Timothy 3:16.

184. *Loving v. Virginia*, 147 S.E.2d 78 (1966), rev'd, 388 U.S. 1 (1967).

185. Genesis 1:27.

186. Galatians 3:28.

187. Acts 17:25-28.

188. Exodus 2, Numbers 12.

189. Number 12.

190. Often translated as Ethiopian; see King James Version.

condemned Moses for his decision on his wife, God came down in a pillar of cloud and audibly spoke to them saying that they should not be judging Moses because he is a servant of the Lord.[192] The Lord then left in anger and turned Miriam's skin leprous for the sin they had committed for unjustly judging Moses.[193] Therefore, according to scripture the color of one's skin is not a matter to be judged.

This principle can also be found in 1 Samuel 16:7 when the Lord says to Samuel, "Do not look at his appearance or at his physical stature. The Lord does not see as man sees; for man looks at the outward appearance, but the Lord looks at the heart."[194] As Christians, we are called to love not hate.[195]

Future Implications: How *Loving* Is Twisted to Fit the Gay Agenda

While the race issue seemed to be the primary concern at the time the *Loving* case was decided, its doctrine on marriage may be more relevant to the future. *Loving* established the right to marry regardless of race.[196] At the time it was decided, the Justices could not have known how pivotal their decision would be in the debate over same-sex marriage. Just at *Loving* was used in the cases of *Lawrence v. Texas*[197] and

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191. Numbers 12:1.

192. Numbers 12:6-8.

193. Numbers 12:10.

194. 1 Samuel 16:7.

195. 2 Samuel 19:6.

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

197. *Lawrence v. Texas*, 539 U.S. 558 (2003).

Goodridge v. Department of Health,[198] same-sex marriage advocates will continue to use *Loving* as an analogy for their cause.[199]

While the Lawrence case was careful not to rule on the legality of same-sex marriage or the application of the Equal Protection Clause and sexuality, in Justice O'Connor's concurring opinion she stated,

> While it is true that the law applies only to conduct, the conduct targeted by this law is conduct that is closely correlated with being homosexual. Under such circumstances, Texas' sodomy law is targeted at more than conduct. It is instead directed toward gay persons as a class.[200]

Therefore, under O'Connor's opinion if same sex marriage is "conduct closely correlated with being homosexual," then, it can be said that the laws that ban same-sex marriage are a "directed toward gay persons as a class." However, Justice Scalia's dissenting opinion shows the danger of applying *Loving*'s use of the Equal Protection Clause to the issue of same-sex marriage in the way that O'Connor did. Scalia asserted:

> Of course the same could be said of any law. A law against public nudity targets "the conduct that is closely correlated with being a nudist," and hence "is targeted at more than conduct"; it is "directed toward nudists as a class."[201]

According to Scalia, under an Equal Protection Clause application theory, any class of people, nudist, polygamist, pedophiles, etc. could rightfully challenge the laws that

198. *Goodridge v. Dep't of Health*, 98 N.E.2d 941 (Mass. 2003).

199. Monte Neil Stewart and William C. Duncan, *Marriage and the Betrayal of Perez and Loving*, 2005 B.Y.U.L. Rev. 555 (2005).

200. *Lawrence v. Texas*, 539 U.S. 558 (2003).

201. Id.

prohibit conduct closely correlated with being in a particular class, thereby unraveling the very basis of law.

Conclusion

Racism does still exist, and there are those who still look down upon interracial marriage; however, this paper has shown that since *Loving v. Virginia*[202] the overall acceptance of interracial marriage has increased. With this, the ways in which racism is present today differs from the way it was a fact of life before *Loving*. This paper has also shown that some may attempt to cite the Bible to justify their racist views, and that it is a wrongful interpretation of scripture to do so. Lastly, this paper has shown that while proponents of same-sex marriage may attempt to use *Loving* for their cause, it is not as fitting as some may contend.

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

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