Long Time *Loving*

An analysis of anti-miscegenation laws in the U.S. South

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Introduction

In 1967 the United States Supreme Court declared in *Loving v. Virginia* that laws prohibiting interracial marriages were unconstitutional. In the wake of the success of the Civil Rights Movement in the mid-1960s, miscegenation laws formed a critical obstacle to fully ending segregation and achieving equality before the law for African Americans. Striking such laws down was no easy task. Especially in the US South, white segregationists had subscribed to the belief that that African Americans were physically and genetically inferior to whites. Mixing the genes of white and black Americans could only be detrimental to the "purity" of the white race.[1] The institution of slavery had long upheld an artificial boundary between white and black people in ways that made the subordinate group and the superior group clear to all parties involved. With the abolition of slavery, the legal boundaries between white and black began to blur. Black people were now deemed citizens and legally permitted to occupy spaces and use facilities that were previously off limits to them, further deepening the white segregationist's fear of racial intermixing. A white backlash ensued in the second half of the nineteenth century, ultimately leading to cultural and legal segregation of the races in an effort to preserve white privilege and underscore white superiority.

As part of this post-abolition backlash, laws were enacted to preserve "white purity" by prohibiting African Americans from marrying or engaging in sexual relations with white Americans.

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[1] To read more on the topic of anti-miscegenation attitudes and laws see: hooks, *Ain't I A Woman*; Richter; Pratt, *Crossing the Color Line*; Robinson II, *Dangerous Liaisons: Sex and Love in the Segregated South*; *Former President Harry S. Truman Cites Bible as Proof That Interracial Marriage Is Miscegenation*; Oh, I*nterracial Marriage in the Shadows of Jim Crow*; Sollors, *Interracialism*; Wallenstein, R*ace, Marriage, and the Law of Freedom*; Novkov, *Racial Union*; Tsesis, *Review of What Comes Naturally*; Stember, *Sexual Racism*; Davis and Cross, *Sexual Stereotyping of Black Males in Interracial Sex*; Myrdal, *An American Dilemma*; Ritterhouse, *Growing up Jim Crow How Black and White Southern Children Learned Race*; Kennedy, *Interracial Intimacies*; Driskell, *Schooling Jim Crow*; Cole, *The Folly of Jim Crow Rethinking the Segregated South*; Woodward, *The Strange Career of Jim Crow*; Dorr, *Principled Expediency*; Oh, *Regulating White Desire*; Livesay, *Emerging from the Shadows*; Godfrey, *'Sweet Little (White) Girls'?*; Sealing, *Blood Will Tel*l; Oh, I*nterracial Marriage in the Shadows of Jim Crow*.

However, this was not deemed a sufficient strategy to keep the races from meeting each other. The perceived dangers of race mixing were further reinforced by a wider policy of segregation of the races in virtually all educational, social and public facilities.[2] It is important to underscore that the Jim Crow segregation of education and public facilities was very much intertwined with the anti-miscegenation laws—all were aimed at preventing race-mixing and the separation of white and black bodies from physical contact, even indirectly. Up until halfway of the twentieth century, these segregation laws were effective. During the 1950s, racial segregation in public facilities was combatted on a larger scale, and during the 1960s civil rights activists began to set their sights on anti-miscegenation laws.

This thesis examines how and why anti-miscegenation[3] laws were abolished in 1967. It explores the long history of anti-miscegenation laws in the U.S. South, initially introduced during slavery and subsequently expanded during the Jim Crow era. This thesis also discusses the factors that ultimately led to the decision in *Loving v. Virginia*. This research will draw an explicit link between the *Brown v. Board of Education* decision of 1954, in which segregation in public education was declared unconstitutional, and the rising fears of race mixing that led many southern segregationists to make desperate (and ultimately unsuccessful) attempts to keep their anti-miscegenation laws on the books.

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[2] To read more on segregation in educational facilities, see: Turner, *Both Victors and Victims*; Tobias, Brown *and the Desegregation of Virginia Law Schools*; Brown, Brown v. Board of Education - *Reexamination of the Desegregration of Public Education from the Perspective of the Post-Desegregation Era*; Russo, ~~Iii~~ Harris, and Sandidge, Brown v. Board of Education *at 40*; Brown v. Board of Education of Topeka 347 U.S. 483 (1954); Doyle, *From Desegregation to Resegregation*; Tobias, *Public School Desegregation in Virginia during the Post*-Brown *Decade*; *Silent Covenants*; Pratt, *Simple Justice Denied*; Anderson, *The Education of Blacks in the South, 1860-1935*.

[3] James Lay explains in his article *Sexual Racism* that the word miscegenation comes from the Latin word *miscere*, to mix, and *genus*, race. The term miscegenation can therefore be literally translated as mixing of the races.

~~The majority of this research relies on the analysis and on secondary literature of court cases. A large body of information will be drawn from the primary case used, *Loving v. Virginia*. Additionally, some smaller court cases will be discussed as well. *Naim v. Naim* and *Rice v. Gong Lum* and *Jackson v. State* will also be discussed since the analysis of these cases prove that both anti-miscegenation laws and racial segregation laws have stood trial before, albeit unsuccessful. Nevertheless, in order to respect the depth and the meaning of anti-miscegenation laws, we need to examine racial segregation and laws concerning these topics.~~

Commented [PD1]: More explanation of methodology needed here.

Historiography

Many scholars have examined the rise and fall of racial segregation in the US South, especially as it relates to education and public facilities in the 1950s and early 1960s. There are numerous studies that discuss *Brown v. Board of Education*, its implications, and white responses to the federal government's mandate for desegregation in public education, for example ~~(noem auteurs hier).~~ Derrick Bell; Plummer; Pratt; Russo, Harris and Sandidge and Turner. There is also a wealth of scholarship that focuses on the subsequent push for desegregation in public facilities—the sit-ins, bus boycotts, and Freedom Rides, for example Pratt; Robinson II; Davis and Coss; hooks; Oh; Wallenstein; Woodward and Richter.. ~~(Noem auteurs hier.)~~ Nevertheless, relatively few studies have focused on the third and final phase of the civil rights movement—the fight to desegregate the bedroom. This thesis argues that the push to overturn anti-miscegenation laws after the passage of the Civil Rights Act of 1964 was very much related to racial attitudes regarding the meeting of white and black bodies in public schools and public facilities. In other words, the legal battle that resulted in Loving in 1967 cannot be understood without understanding it as a part of the anti-Jim Crow system. tries to prove that laws and attitudes pertaining racial segregation and anti-miscegenation are intertwined and that one cannot respect the meaning and effects of the one

without understanding the other. This thesis builds a bridge between scholarship on the civil rights campaigns in education and public facilities on the one hand, and the battle against anti-miscegenation laws on the other.

The scholar bell hooks, who prefers her name to be written without capitals, provides a comprehensive narrative on the birth of anti-miscegenation attitudes.[4] She writes a narrative on how the first interracial liaisons came into existence through the relation between black slaves and their white owners. Furthermore, she clarifies how the image of the "black sexual beast/temptress" found its birth. White segregationists used this image to their advantage and to prove their point that one should not socialize or procreate with black people. Although hook's story is a comprehensive one that provides the basis for understanding the basics of interracial relations in the early English colonies, she does not link the development of such relations and the negative attitude towards these relations to the advance and expansion of anti-miscegenation laws.

Gunnar Myrdall and his far-reaching study into racial segregation and segregationist attitudes provide a link between these attitudes and how they were codified.[5] Nevertheless, the study also lacks an explanation on interracial relationships in the eye of the law. The same argument ca be made for Woodward and Ritterhouse. Both write on racial desegregation replacing the status quo during slavery.[6] During that time, both black and white Americans were segregated due to the power balance of slave/slaver. However, the authors fail to mention that these methods of segregation also served the purpose of keeping white and black people from forming social bonds, which in their turn could lead to more intimate social and romantic relations.

Driskell analyses the growing number of laws mandating segregation, but this researcher also overlooks the important motivation of preventing racial mixing from happening.[7] Charles F.

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4 hooks, Ain't I A Woman.
5 *Myrdal, An American Dilemma: The Negro Problem and Modern Democracy. Vol. II.*.
6 Woodward, The Strange Career of Jim Crow.
7 *Driskell, Schooling Jim Crow: The Fight for Atlanta's Booker T. Washington High School and the Roots of Black Protest Politics.*

Robinson does highlight the link between law and anti-miscegenation attitudes, but his work focuses on relatively small, local court cases involving mixed-race couples and he explains how these laws developed on a smaller geographical level.[8] Robinsons's work provides observation on the frequency of appeals to anti-miscegenation laws at the local level, but does not approach the subject from a broader temporal or geographic scope.

All these afore-mentioned researches are of immeasurable value, but none of them pay attention to the interconnectedness between the two topics of anti-miscegenation and racial segregation. Taking a broad approach, this thesis reveals the origins of anti-miscegenation laws and subsequent interconnectedness between the post-emancipation evolution of segregation laws with the simultaneous expansion of anti-miscegenation laws, as well as explain how the decline of segregation ultimately resulted in a death blow to anti-miscegenation laws in the United States.

Methodology

This thesis is a qualitative research based on literature review of secondary sources. The first chapter consists mainly of the discussion of historiography and historical context, whereas the following two chapters discuss more legal aspects of anti-miscegenation attitudes and racial segregation. Furthermore, I attempt to analyze a few court cases in order to establish a bridge in the literature regarding the concepts of racial segregation and anti-miscegenation attitudes. A large body of information is drawn from the primary case used, *Loving v. Virginia.* Since I attempt to fill a gap in the discussion of anti-miscegenation attitudes and racial segregation as being intertwined, I also discuss the Supreme Court Case *Brow v. Board of Education* in depth. One important aspect of the analysis of *Brown* is also the analysis of the composition of the Supreme Court of the United States during the 1950s. *Brown* started of with a Chief Justice, Vinson, that leaded a divided court on civil rights issues. With the passing of Chief Justice Vinson, Chief Justice Earl Warren took the lead as head of the Supreme Court. Under his tenure, the Court formed a unanimous and united front in

[8] Robinson II, Dangerous Liaisons: Sex and Love in the Segregated South.

favor of the advancement of civil rights for African American citizens. One can wonder if a case such as *Loving* had been possible if it happened with Justice Vinson's court.

Naim v. Naim and *Rice v. Gong Lum* and *Jackson v. State* are also discussed since the analysis of these cases prove that both anti-miscegenation laws and racial segregation laws have stood trial before, albeit unsuccessful. These three court cases were discussed in light of their precedents in which both anti-miscegenation laws and racial segregation laws were upheld. The main point of contention often was the race of the defendant and how their race influenced the decision in prohibiting them from marrying white Americans, or attending white school. These arguments fit the narrative that has been long standing and that has been extended to halfway the twentieth century: black Americans should in no way intermix, not socially and not romantically, with white Americans.

In this research I only discuss court cases that are of federal interest. The focus on only federal court cases, as opposed to discussion and analysis of local court cases, is needed order to establish why a federal law has been stricken in a certain period of time. Nevertheless, in order to respect the depth and the meaning of anti-miscegenation laws, we need to examine racial segregation and laws concerning these topics.

Overview

This research consists of three parts.

The first chapter provides necessary context for understanding the origins of anti-miscegenation attitudes by analyzing the evolution of anti-miscegenation laws in American history, starting with slavery and reaching its peak in the 1920s. The chapter discusses the development of anti-miscegenation laws during slavery. It explains how the white colonists created an image of the

black men being ‘rapists’ and ‘sexual savages’ and black women as ‘sexual temptresses’, while simultaneously overprotecting ‘their’ white women. I continue to discuss the development of anti-miscegenation laws and attitudes during Reconstruction and the Jim Crow era, when racial segregation started to play an even larger role in enforcing anti-miscegenation laws and sentiments.

As has been said, in order to appreciate the depth and the gravity of anti-miscegenation beliefs, one needs to also examine racial segregation and vice versa. Therefore, the second chapter discusses in greater detail the topic of racial segregation from the end of the nineteenth century well into the twentieth century. We start off by explaining the birth of the “*separate but equal”*-doctrine and how this affected public lives for black Americans. Furthermore, this chapter discusses the most important United States Supreme Court cases regarding racial segregation: *Brown v. Board of Education.* The analysis of *Brown v. Board* clarifies how deeply rooted the sentiments and the doctrine of “white supremacy” were for white segregationists, especially in the U.S. South. The chapter also discusses how racial desegregation under *Brown* affected the white segregationist’s subsequent attempts to prevent “race mixing” as they perceived it.

The third and final chapter consists of two parts. The first part sheds light on the state of the Supreme Court during the 1950s and the 1960s, thus providing context in which *Loving v. Virginia* can be placed. It discusses how the Court dealt with and argued three relevant cases related to racial segregation and race mixing. The second part of the chapter discusses the Supreme Court case *Loving v. Virginia*, which declared that any form of anti-miscegenation law was unconstitutional under the Equal Protection Clause of the Fourteenth Amendment.

Chapter 1: The History of Anti-Miscegenation Laws

Anti-miscegenation attitudes existed since colonial times.[9] When interracial progeny proved to cause more serious problems in identifying one's race due to their ambiguous skin color and overall appearance, anti-miscegenation attitudes were slowly but steadily codified into law.[10] This chapter provides a historical context that explains why segregationists deemed anti-miscegenation laws necessary. Furthermore the chapter discusses the development of anti-miscegenation laws in the southern states. By providing a context, we can prove that the fear white segregationists held for a possibility of racial intermixing was so deeply rooted, they decided that racial segregation was the best solution to prevent miscegenation..

This chapter discusses two arguments: 1) anti-miscegenation laws were put in place to maintain the doctrine of "white supremacy" and 2) anti-miscegenation laws provided a means to sustain the subordinate position of the black population. The first part discusses the rise of anti-miscegenation laws in the South. We discover where these negative attitudes towards interracial intimate relationships originated from and this discussion also sheds light on the historical context in which these attitudes were codified into laws and why racial intermixing was seen as such a divisive issue. The second part of the chapter discusses the Jim Crow era and it goes into depth of white backlash to racial intermixing.

Rise of anti-miscegenation attitudes in the South

As bell hooks has made clear, the history of anti-miscegenation laws finds its origins at the same time as the birth of the colonies.[11] From the time the first black slaves were brought onto the American mainland, interracial intercourse between black and white people was commonplace and

[9] hooks, Ain't I A Woman, 15.
[10] Lay, Sexual Racism: A Legacy of Slavery, 167.
[11] hooks, Ain't I A Woman.

anti-miscegenation attitudes exist ever since.[12] As time advanced, people formed outspoken opinions on interracial relations, regardless of the significance of the relationship. Yet, attitudes alone do not change the ongoings in a society. In pursuit of avoiding interracial relations, a number of Southern states' legislatures decided to codify anti-miscegenation attitudes into law.

From the foundation of the British colonies, the British colonists held specific moral beliefs regarding sex and intimacy that were heavily influenced by the Church of England. A person was allowed to act on their carnal desires, as long as this desire served the purpose of reproduction. Furthermore, the church dictated that intercourse only took place between a husband and a wife. Upon their arrival to the British colonies in North America, the colonists established laws regarding for example fornication and adultery to uphold these specific beliefs. There were strict sanctions to breaking these laws, but transgressors could virtually always find redemption in publicly admitting their guilt. However, this sentiment of forgiveness was not extended to those who were not of English descent. Africans were more disadvantaged in such situations: they were seen as "sexual beasts"[13] and were therefore inherently sinful. Cruz and Berrson claim that "sexuality is at the core of racism".[14] For this reason, redemption was not an option for African American men. Despite that attitude towards Africans, violations of the sex-laws by interracial couples were not punished any differently than same-race sexual violations, such as fornication.[15]

Up until the 1660s there were no anti-miscegenation laws. However, there was an increase in the birth of mixed race children. Since the appearances of these children often did not clearly reveal their racial origin, the carefully laid out color line was threatened and white elites started realizing this was becoming a problem. These children threatened the stability of the existing racial hierarchical system, because these children were not easily categorized as either black or white.

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12 Lay, Sexual Racism: A Legacy of Slavery, 165; Cruz and Berson, The American Melting Pot? Miscegenation Laws in the United States, 80.
13 Lay, Sexual Racism: A Legacy of Slavery, 166.
14 Cruz and Berson, The American Melting Pot?, 80.
15 Rothman, "Notorious in the Neighborhood": An Interracial Family in Early National and Antebellum Virginia, 74.

Other than the ambiguity of these children's race, anti-segregationists found another 'problem'.[16] Divisive beliefs based on misguided studies of genetics and ancestry fed the fear in white Southerners that mixing races would eventually lead to 'racial degeneration' or it could lead to health problems and infertility.[17]

From "illicit sex" to "illicit marriage"

As hostile attitudes by Southern whites against interracial relations started to grow, local legislatures gradually enacted laws prohibiting such relationships. The first step was to only prohibit sexual relationships. In 1662, Virginia was one of the first states to implement any form of anti-miscegenation law. The Virginia colonial Assembly mandated fines to be doubled for white people if they were found to have committed any "interracial fornication".[18] This was especially true in the case of a relation between a Christian and a black person. Furthermore, the Assembly decided that the status of children born from an interracial couple would follow the slave status of their black parent.[19] Not only did this highlight the disparity between interracial children and the "pure-blooded" children more, it also increased the number of slaves without having to spend money on acquiring them.[20] This provided a huge advantage for slave-owners.

In 1691, Virginia prohibited all white people from engaging in intimate relationships with other races than their own. Nonetheless, whereas the white offenders had to suffer punishments such as banishment from the state, the black offenders usually got a much lower sentence.[21] This was a result of the fact that most of the black offenders were slaves who could not be missed.

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16 Oh, Interracial Marriage in the Shadows of Jim Crow: Racial Segregation as a System of Racial and Gender Subordination Defining the Voices of Critical Race Feminism, 1329.
17 Oh, Interracial Marriage in the Shadows of Jim Crow: Racial Segregation as a System of Racial and Gender Subordination Defining the Voices of Critical Race Feminism, 1330.
18 Robinson II, Dangerous Liaisons: Sex and Love in the Segregated South, 3.
19 Ball, The Blurring of the Lines: Children and Bans on Interracial Unions and Same-Sex Marriages, 2737.
20 Pratt, Crossing the Color Line: A Historical Assessment and Personal Narrative of Loving v. Virginia, 231, 232.
21 Roberts, Loving v. Virginia as a Civil Rights Decision, 179.

Sentencing them harshly would mean the loss of a slave to the slaveowner.[22] Perhaps this also indicates the power balance between black people and white people. White people were held to a higher standard due to their supposed 'superiority' while black people were held to a lower standard due to the convenience of their subordination as slaves. bell hooks states there was a scarcity of workers at some point and a small group of white plantation owners encouraged white female immigrants, usually indentured servants, to have sexual relationships with the black male slaves in order to reproduce and thus deliver more workers.[23] Millward confirms this by writing that "enslaved women's reproductive capacities were critical to sustaining the U.S. slave system".[24]

Moreover, relations took place between white elite men and freed black women and sometimes also with black enslaved women. Lockley writes that in the case of Savannah, Georgia, the elite responded subtly to interracial relations. According to the author, the white elite realized that a white man from the elite class exploiting his black female slaves or engaging in sexual relations did not threaten the social structure and neither did it threaten the institution of slavery. Forcing sexual relations on black female slaves was merely another form of expressing dominance and control.[25] Furthermore, Lay explains that it was argued that black women "were used for the pleasure of the white man".[26]

It is clear that upholding slavery by ensuring the children of female slaves remained slaves played an important role when assessing interracial intercourse. Another important factor was the white male's claim on the white woman's body. As attitudes against interracial relations grew more hostile, white female servants were punished harshly under laws prohibiting interracial unions. The graver punishments were due to the fact that the colonies tried to enforce racial exclusivity on the white woman's sexuality. It means that some white men were of the opinion that they were the only

[22] Robinson II, Dangerous Liaisons: Sex and Love in the Segregated South, 4.
[23] hooks, Ain't I A Woman, 15.
[24] Millward, 'The Relics of Slavery": Interracial Sex and Manumission in the American South, 23.
[25] Lockley, Crossing the Race Divide: Interracial Sex in Antebellum Savannah, 164
[26] Lay, Sexual Racism: A Legacy of Slavery, 167.

ones who had a right to the white female body. For that reason, the black man was punished more severely for the rape of a white woman than a white man would be punished for raping a black woman. This further enforced the commonly held view white colonialists had of black men: they are 'sexual savages' that prey on 'white fragile women'. Creating this image of the black 'sexual savage' then provided a justification for keeping black men away from white women.

Laws

In 1662, the colonial assembly of Virginia was increasingly confronted with biracial children. They answered to this by deciding that any child born from a slave mother would follow the status of their mother.[27] In 1664, Maryland passed its own anti-miscegenation laws that curtailed sexual relations between white women and black male slaves.[28] The preamble of this law specified that if a freeborn woman would marry a black slave, she would have to serve the masters of the slave as long as her husband would be alive.[29] This particular Maryland law was different from the 1662 Virginia law in the sense that the 1662 law upheld the right of the white slaver to have sexual relations with his black slaves, whereas the 1664 Maryland law banned interracial relations in their entirety.[30] Massachusetts, North Carolina and Pennsylvania followed suit in implementing anti-miscegenation laws at the start of the 18th century. Despite the law, miscegenation continued, so a solution had to be found to this "problem". The Maryland legislature responded by instating laws in 1715 and 1717 that punished white people cohabiting with a black person, regardless of their slave status. The status of the white person would be reduced to that of servant for seven years, their children for 31 years and the black person in question would lead their entire life in servitude.[31]

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27 Wallenstein, Race, Marriage, and the Law of Freedom: Alabama and Virginia 1860s-1960s Symposium on the Law of Freedom Part I: Freedom: Personal Liberty and Private Law, 389.
28 hooks, Ain't I A Woman, 15.
29 Ibid., 16.
30 Millward, "The Relics of Slavery": Interracial Sex and Manumission in the American South, 24.
31 Sollors, Interracialism: Black-White Intermarriage in American History, Literature, and Law, 46.

Other methods of punishment were fines that had to be paid by the white woman to the ward where she delivered her child. Other times, the white person was to be imprisoned.[32]

With the reintroduction of slavery in Georgia in 1751, there was no real consideration of implications it had on interpersonal relations. In the new situation, white people would be in close proximity with black people. In the eyes of the colonists, the economic benefit far outweighed the threat of miscegenation. Nonetheless, pastor John Martin Bolzius spoke out on his concerns: introducing black laborers would be the cause of intermixing, such as had happened in other slave colonies.[33] However, he did not have many supporters on this stance and when drawing up the final draft legislation, Bolzius insisted on a clause prohibiting intermarriage. This slave regulation did not last long and a new one that was passed in 1795 did not include anything on intermarriage either. Yet, intermixing was not fully allowed. Colony leaders adopted a wide variety of statutes that regulated "public decency" and the statutes had very much to do with discretion of interracial relations. White slave owners could engage sexually with their slaves behind closed doors. According to Lockley, this caused miscegenation to become more of a class issue.[34]

The aforementioned laws were common among the Southern colonies, but they were different per colony. When colonialism ended in the 19th century, 38 states continued to uphold anti-miscegenation laws.[35]

Reconstruction and the Jim Crow Era

After the Civil War, the state of affairs of interracial marriage did not change. During the Reconstruction era, most Southern anti-miscegenation laws were strengthened. This was due to a heightened fear that former slaves would mix with the white Southerners. As a result of this fear,

32 Ibid., 48.
33 Lockley, Crossing the Race Divide, 160.
34 Ibid., 161.
35 Lay, Sexual Racism, 166.

state constitutions were amended to reflect these fears.[36] President Abraham Lincoln required each state to create their own constitution. He had one requirement: there had to be a stipulation in each state's constitutions prohibiting slavery. In the context of that era, this was a very progressive idea, but it did not ensure any other legal rights for African Americans: there was no other requirement to uphold any additional civil rights for African Americans. Lincoln's successor President Andrew Johnson did not require any specific rules or laws on civil rights for African-Americans either. The fact that both presidents did not command such provisions made it very easy for the new states in the former Southern Confederacy to enshrine values held about blacks during slavery into their society, without actually forcing African Americans back into slavery. The black population in Southern states had little to no rights at all.[37] In 1865, after the Civil War, new states created 'Black Codes' to handle the social order with the abolishment of slavery. The black code of Alabama did not prohibit intermarrying, but they did mandate to impose penalties on judges not adhering to these laws.[38] By 1890, all Southern states, except for Louisiana, had anti-miscegenation laws in their civil code and their respective state Supreme Courts agreed on the constitutionality of these laws.[39]

During the second half of the nineteenth century, Southern white segregationists started to express their concerns and anxiety in response to the increasing civil rights African Americans acquired. Loevy reports that lynching, which describes a wide variety of physical violence against African Americans, became commonplace.[40] Although there were various motivations for lynching, the perpetrators had one fundamental reason for their actions: first and foremost, Robinson[41], as well as David and Cross[42], argue that the goal of those partaking in the lynching was to take control of the sexual savagery they assigned to black men. According to Robinson, ascribing this image to

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36 Brattain, Miscegenation and Competing Definitions of Race in Twentieth-Century Louisiana, 630.
37 Robinson II, Dangerous Liaisons: Sex and Love in the Segregated South, 23.
38 Wallenstein, Race, Marriage, and the Law of Freedom, 375.
39 Robinson II, Dangerous Liaisons: Sex and Love in the Segregated South, 49.
40 Loevy, The Civil Rights Act of 1964: The Passage of the Law That Ended Racial Segregation, 8.
41 Robinson II, Dangerous Liaisons: Sex and Love in the Segregated South, 75.
42 Davis and Cross, Sexual Stereotyping of Black Males in Interracial Sex, 270.

black men served several purposes. First of all, white women in this era also started acquiring more (civil) rights. This threatened the position of the white men in the domestic environment. As women started growing more independent and vocal, their husbands exercised less influence over their wives.[43] By portraying black men as 'evil rapists', white Southerners could enforce the idea that their white women still needed protection and thus said men could still fulfill the role of the strong patriarch. Secondly, by portraying black men as savages, the white Southerners could elevate their own position as being more 'civilized and pure'. And thirdly, if black men were seen as the sole rapists, white men could divert the attention from their own sexual escapades.[44]

Anti-miscegenation laws in the twentieth century

The start of the twentieth century marked the coming of the *Progressive Era*. This period is characterized by the efforts of the middle-class workers to address the challenges of urbanization and industrialization and thus their growing concern for their decreasing control in society. Furthermore, the beginning of the century was also marked by a growing white effort to counter the growing black political influence.[45] During Alabama's constitutional convention of 1901 the President of the convention, corporate lawyer John Knox said: "If we would have white supremacy, we must establish it by law".[46]

Another issue discussed at the convention was a legislation conveying that the state would never allow any law to pass that would legalize marriage between a white person and a black person. Participants of the convention wanted even stricter laws.[47] The proposed law defined a black person as someone having at least one great-grand parent of color. Eventually, the delegates opted for a version of the legislation that did not detail any ancestry, so they would be able to exclude all people of color. During the first few years of President Wilson's tenure, Congressional

[43] Brattain, Miscegenation and Competing Definitions of Race in Twentieth-Century Louisiana, 627.
[44] Robinson II, Dangerous Liaisons: Sex and Love in the Segregated South, 76.
[45] *Novkov, Racial Union: Law, Intimacy, and the White State in Alabama, 55.*
[46] Novkov, 56.
[47] Ibid., 57.

Democrats made efforts to further curtail the civil rights of African Americans. Most notable was their effort to ratify new anti-miscegenation laws. In December of 1912, Democratic Congressman Seaborn Rodenberry of Washington DC proposed a constitutional amendment that would prohibit intermarriage.[48] This attempt failed, but a year later, Congressman Thomas Hardwick, representing D.C., introduced a bill that criminalized intermarriage.[49] This bill was swiftly passed in the House of Representatives, but was never ratified.[50]

Over the next years such bills were proposed again, but they never became laws. In order to execute an anti-miscegenation law, it was important to devise a system of classification of the races. Between 1785 and 1910 a person in Virginia was regarded "of color" when one had at least one-fourth "Negro blood". Chapter 17 of the *Act of General Assembly of the State of Virginia* of 1866 stated: "[E]very person having one-fourth of [N]egro blood, shall be deemed a colored person, and every person…having one-fourth or more of Indian blood, shall be deemed Indian".[51] In 1910, Tennessee and a few other states followed Virginia by declaring "every person having one-sixteenth or more of Negro blood shall be deemed a colored person".[52] Virginians were of opinion this rule was not strict enough and devised a stricter categorization, which came into being in 1924 as will be further explained below.

Alongside the attempts at new anti-miscegenation laws in Washington D.C., the quest for a new categorization of race still continued in Virginia in particular. The Racial Integrity Act of 1924 criminalized marriage between a white person and a black person. The act specified a white person as "having no trace whatever of any blood other than Caucasian".[53] This was the strictest legislation in existence for the purpose of categorizing races. The act also prevented officials from issuing

48 Wallenstein, Identity, Marriage, and Schools: Life along the Color Lines in the Era of Plessy v. Ferguson, 23.
49 Jenkins, Peck, and Weaver, Between Reconstructions: Congressional Action on Civil Rights, 1891–1940, 63.
50 Ibid., 64.
51 Chapter 17 of Acts of the General Assembly of the State of Virginia (1866)
52 Pratt, Crossing the Color Line, 233.
53 Roberts, Loving v. Virginia as a Civil Rights Decision, 181.

marriage licenses until said officials were satisfied with the correct registered race of both participants in the requested marriage. Therefore, the Act also stipulated that Virginians register their race with a local registrar as well as with a state registrar.[54] Virginia enforced the Act by arguing the act did not infringe upon the Equal Protection Clause of the Fourteenth Amendment because both black and white people were punished equally.[55] However, the problem persisted that anti-miscegenation laws were racist in the sense that a certain act was forbidden due to one's race or color. The discussion Fourteenth Amendment would also play a bigger role in the Supreme Court Case *Brown v. Board of Education* that declared racial segregation unconstitutional. This will be discussed in the following chapter.

Conclusion

Miscegenation and laws prohibiting thereof were in existence since the early English colonizers settled in North America. The first and foremost motivation for creating such laws was to maintain white supremacy. This doctrine is not only maintained by keeping African Americans submissive, but also by making sure the races would not be mixed and the white race would not be "tainted". This became a greater threat when interracial children were born and when their race was not as easily seen in their skin color as was the case with their parents. Therefore, starting with Virginia, states prohibited people of color to intermix with white people. States such as Virginia also made up requirements for how to categorize someone as either black or white. This made it easier to enforce laws to hold up anti-miscegenation attitudes.

[54] Pratt, Crossing the Color Line, 233.
[55] Roberts, Loving v. Virginia as a Civil Rights Decision, 190.

Chapter 2: From *Plessy* to *Brown*

The previous chapter provided a historical narrative and delivered a context for anti-miscegenation laws that existed in the South of the United States. Through the analysis of this framework, it has become clear that the reason for banning interracial relations was to (artificially) divide the "superior whites" and the "inferior blacks".

After the abolition of slavery, the white segregationists had to come up with a new system to keep the racial divide in effect. Ritterhouse[56] and C. Vann Woordward[57] wrote about the novelty of racial segregation after slavery. Segregation and its rules became much more rigid after slavery was abolished. During the first half of the twentieth century, laws were in place that allowed segregation of the races in public facilities. As we have seen, the reason behind this came forth out of the idea that even friendly and platonic relationships between white Americans and black Americans could lead to both sexual and romantic relations. A testament to this attitude can be seen in the opposition to the Civil Rights Bill of 1875. According to Francois, the opposition feared that desegregation in public facilities would lead to black people to "have free and unrestrained social intercourse with your unmarried sons and daughters".[58] In other words, interracial relations formed a fundamental aspect of why segregation laws were enforced. The fear of intermixing was so deep for Souther segregationists that merely instating laws to prohibit interracial liaisons was not sufficient. Both races needed to be kept entirely separate in every aspect of daily life to prevent any mixing from happening at all.[59] This chapter discusses how laws pertaining racial segregation are closely intertwined with laws prohibiting interracial relations.

In this chapter we explore the ways anti-miscegenation laws were enforced and how miscegenation was prevented, other than laws preventing interracial intercourse and relations. In the

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56 Ritterhouse, Growing up Jim Crow How Black and White Southern Children Learned Race, 27.
57 Woodward, The Strange Career of Jim Crow, 13.
58 McPherson, Abolitionists and the Civil Rights Act of 1875, 582.
59 Antonio T. Bly, "The Thunder during the Storm--School Desegregation in Norfolk, Virginia, 1957-59: A Local History.," Journal of Negro Education 67, no. 2 (1999): 108.

first part, we discuss the era of segregation between *Plessy* and *Brown*. We continue discussing the Supreme Court case *Plessy v. Ferguson*. It builds the basis for the discussion of racial segregation in the remainder of the subchapter. Lastly, this sub-chapter discusses the 1957 Supreme Court Case *Brown v. Board of Education.* The second part of the chapter analyzes the motivations and attitudes behind laws mandating segregation. The following analysis demonstrates the 'rationale' held by white Southern segregationists was upheld by their [fear] that desegregation would lead to miscegenation. In short, laws dictating racial segregation were necessary in order to be able to adequately maintain the prohibition of racial intermixing.

Civil Rights Bill of 1875

As discussed in chapter 1, anti-miscegenation laws strengthened during the Reconstruction era. Towards the end of this era, the Civil Rights Bill of 1875 was passed.[60] This act was intended to be beneficial for the recently freed slaves and it prohibited racial discrimination in public accommodations such as hotels and attractions, with restaurants as only exception. The Act also mandated desegregation in educational facilities.[61] Eventually this aspect was stricken from the Act at the last minute due to the divisiveness and sensitivity of the topic.

White segregationists were opposed to the Bill. They brought forward the argument that the Act infringed upon the state's right. Loevy adds to this that Congress found the act unconstitutional because it was affecting private behavior.[62] Furthermore, the Reconstruction amendments were intended to provide freed slaves political and civil equality, but not social equality.[63] Therefore, in 1883 in *Civil Rights Cases*, the United State Supreme Court declared the Civil Rights Bill of 1875

[60] Gerber, The Civil Rights Act of 1875: A Reexamination, 1.
[61] McPherson, Abolitionists and the Civil Rights Act of 1875, 493.
[62] Loevy, The Civil Rights Act of 1964, 6.
[63] McPherson, Abolitionists and the Civil Rights Act of 1875, 581.

unconstitutional.[64] From this point onward, the "white supremacy doctrine" as Myrdal calls it, deepened and made its way through legislation.[65]

Plessy v. Ferguson **(1896)**

According to Woodward, the era of segregation started with the United States Supreme Court Case *Plessy v. Ferguson*. This subchapter discusses and analyzes the ruling in *Plessy*.

Homer A. Plessy was of mixed descent (he was seven-eighths white and one eighth black) and he had paid for a first class ticket on the East Louisiana Railway that reached from New Orleans to Covington.[66] Upon entering the carriage on June 7, 1892, Plessy took a vacant seat in a compartment filled with white Americans. The conductor required Plessy to leave his seat and take place in the compartment designated for non-whites.[67] As Plessy refused, he was removed from the train by a police officer and he was jailed. He subsequently was found guilty of violating the following statute which was enacted by the General Assembly of Louisiana in 1890. The statute indicated, "All railway companies carrying passengers in their coaches in this State, shall provide equal but separate accommodations for the white, and colored races."[68] However, Plessy argued that the act was unconstitutional and he was of opinion that due to his non-discernible white race, he should be afforded "every recognition, right, privilege and immunity secured to the citizens of the United States of the white race by its Constitution and law". The state overruled this argument. The case was ultimately put before the United States Supreme Court and the Court decided in favor of the 'separate but equal' provision on May 18, 1896. The essence of the Court's conclusion is that

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64 Davis, More Than Segregation, Racial Identity: The Neglected Question in Plessy v. Ferguson, 24.

65 Myrdal, An American Dilemma, 579.

66 Plessy v. Ferguson 163 U.S. 537 (1896).

67 Keith, One Hundred Years after Plessy v. Ferguson Symposium on Race, Gender, and Economic Justice: Speech, 5.: The law imposing racial segregation in trains in Louisiana came into effect in July 1890. The law stated that "all railway companies carrying passengers in their coaches in this state shall provide equal but separate accomodations for the white, and colored races".

68 Plessy v. Ferguson 163 U.S. 537 (1896).

Plessy is considered a black man and. Therefore he can be mandated to occupy seats and places designated for black people only.[69]

Several arguments have been made by Plessy's defense against the Louisiana General Assembly act. The first argument against the act is on grounds of the Thirteenth Amendment, which prohibited slavery.[70] Yet, the Supreme Court stated in *Plessy* that the act of an individual organization or person refusing to accommodate people of color is not equal to subjecting them to servitude.[71] Therefore, the GA act cannot be scrapped based on the Thirteenth amendment, nor could it be scrapped based on the Fourteenth Amendment. This amendment ensured protection of and equal protection by the law for all American citizens.[72] The Court concluded that separating the races did not impose on the privileges or immunities of minorities and they decided that the Act did not deny Plessy the privileges of the Fourteenth Amendment.

"When the government...has secured to each of its citizens equal rights before the law and equal opportunities for improvement and progress, it has accomplished the end for which it was organized and performed all of the functions respecting social advantages with which it is endowed."[73]

The Supreme Court decided in *Plessy v. Ferguson* that 'separate but equal' was constitutional.[74] In conclusion, the Court argued that offering segregated facilities to different races is lawful. The Court also analyzed the intention of the framers of the Constitution at the time of its writing. Although the Court did not make clear what the intention of the framers was regarding racial

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69 Sadler, The Federal Parliament's Power to Make Laws with Respect to...the People of Any Race..., 608.
70 13th Amendment
71 Hoffer, Plessy v. Ferguson: The Effects of Lawyering on a Challenge to Jim Crow, 10.
72 14th Amendment.
73 Plessy v. Ferguson 163 U.S. 537 (1896).
74 Keith, One Hundred Years after Plessy v. Ferguson Symposium on Race, Gender, and Economic Justice, 855.

segregation, they were of opinion that the framers' intention was not to prohibit any racial segregation. Additionally, Justice Harlan claimed the constitution to be "color-blind" and for that reason, it cannot be racist or discriminatory.[75] Consequently, *Plessy* became the basis and the justification for any following cases of racial segregation, thus setting an often referred to precedence. Once more, as happened in *Civil Rights Cases* in 1883, the 'separate but equal'-doctrine was maintained and deemed constitutional.

By doing so, it can be argued that the Court indirectly condoned the doctrine of 'white supremacy'. Hoffer agrees with this point of view and writes that laws such as the onde under attack in *Plessy* and laws prohibiting interracial marriage mainly serve the purpose of "raising [the] white race to an elevated level".[76] According to C. Vann Woodward, this new system of segregation was seen by white Southern segregationists to be the "final settlement" and the "return to sanity".[77] After the emancipation of slaves, a segregated community seemed, to white segregationists, an appropriate way of maintaining the racial order that was in place during slavery. This practice remained legally permissible up until 1954 when segregation was declared unconstitutional in *Brown v. Board*. Though *Brown* specifically aimed at desegregation in public education, it de facto prohibited segregation in all public spaces.

Segregation in public facilities

The last decade of the nineteenth century marked the increasing effort of white Americans to take away from the citizenship rights of black Americans.[78] A growing amount of states enacted laws to extract citizens of color from the public sphere.[79] During this time, more laws concerning segregation in public facilities were instated. One example is the Atlanta law that dictated streetcars

[75] Hoffer, Plessy v. Ferguson, 1.
[76] Ibid., 12.
[77] Woodward, The Strange Career of Jim Crow, 7.
[78] Loevy, The Civil Rights Act of 1964, 5.
[79] Driskell, Schooling Jim Crow, 24.

to be segregated in order to "avoid racial clashes and preserve public order."[80] This implied that having African Americans in the same car as white Americans in itself leads to unrest.

At the turn of the century, contact between black men and white women had also become strained due to the perceived need of white women to be protected from sexual assault by black men. Avins mentions a Maryland Democrat in a debate on integrated streetcars in Washington D.C.. Senator Reverdy Johnson was of opinion that if it was agreed upon that marriage between a white woman and a black man was undesirable, both had no business in sitting next to each other in a street car.[81] This proves the argument that racial segregation in public life was largely motivated by the desire to prevent any form of relation and/or procreation by a black man and a white woman. It was this exact mentality that was used as a justification for public lynching and disenfranchisement.[82] White segregationists were of opinion that segregation would prevent the need for such protection. Racial segregation was by this time proving to be a tool for white segregationists to shield themselves from having to associate with anyone they considered racially inferior.[83]

Georgia was not the only state with laws concerning segregation in streetcars. Streetcars had become more common in cities in the South since the 1880s.[84] Virginia followed in 1902.[85] Louisiana, Arkansas, South Carolina, Tennessee, Mississippi, Maryland and Oklahoma followed respectively. Nonetheless, racial segregation was not unique to streetcars. A group of people also started to grow concerned with labor conditions and the segregation of employees. For instance, North Carolina prohibited their factory workers to work in the same room or even enter through the

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80 Ibid., 41.
81 Avins, Anti-Miscegenation Laws and the Fourteenth Amendment: The Original Intent, 1299.
82 Ritterhouse, Growing up Jim Crow How Black and White Southern Children Learned Race, 41.
83 Kennedy, Interracial Intimacies: Sex, Marriage, Identity, Adoption, 74.
84 Bay, From the 'Ladies'' Car" to the "Colord Car":Black Female Travelers in the Segregated South, 161.
85 Wynes, The Evolution of Jim Crow Laws in Twentieth Century Virginia, 418.

same door if the workers were of different racial background.[86] One much greater concern were spaces of leisure. Leisure and recreation would involve social interaction and therefore, white segregationists were strongly against the idea of mixed recreational facilities.[87] For that reason, most of the amusement parks, sport halls and other places of recreation in the South of the United States were racially segregated. For example, one swimming pool in Jackson, Mississipi decided to close their doors, rather than have the public pool desegregate.[88] In spaces of leisure, it would be easier to establish social bonds between people of different races. Since it was feared that such situations would then lead to intermixing, these situations should be prevented. In the end, the same standard was held for interracial relationships as was held for diseases: it should be prevented rather than cured. Since white supremacists were of opinion that intermixing would lead to the "dilution of white superiority", a logical analogy can be made between preventing a disease and preventing intermixing of races.

There was no sign of relaxation of these segregation laws until well into the 1930s.[89]

Segregation in public education

Segregation in public education deserves to be mentioned separately due to the additional vulnerability of the subjects, children, involved. It is natural that children, the weaker participants of a community, hold a special place in society and therefore, a society feels the need to protect this particular group. The responses to desegregation in public education were therefore more intense than any other response to any other events concerning the amelioration of civil rights for African Americans.

Education was not available for enslaved children. With the emancipation of slaves, African American children started to participate in basic education more freely. This usually meant that

[86] Woodward, The Strange Career of Jim Crow, 98.
[87] Myrdal, An American Dilemma, 1996, 347.
[88] SBender, From Slavery to the New Jim Crow of Mass Incarceration: The Ongoing Dehumanization of African Americans, 137.
[89] Woodward, The Strange Career of Jim Crow, 116.

black children would have to attend the same schools as white children since there were no facilities aimed at educating black children in particular. This eventually became problematic for white Southern segregationists. Around 1870, every single one of the Southern states had some form of ban on integration in public education. Said states also added a stipulation in their respective state constitutions to mandate racial segregation.[90] One example is the 1870 Virginia law that established a statewide system for public schools. The act stated that "[w]hite and colored children shall not be taught in the same school."[91] 30 years later, Virginia added this verbatim to their 1902 state constitution. Through the first half of the twentieth century, racial segregation in public education remained commonplace.

Brown v. Board

The resistance shown towards *Brown*, both before as well as after the Supreme Court ruling, also shows how much racial segregation and anti-miscegenation are intertwined. This in turn proves why a case such as *Loving* could only lead to a positive outcome at the end of the 1960s and not earlier. To support this claim, it is necessary to analyze this landmark case and the run-up to it.

At the start of the twentieth century, Jim Crow was already well on its way in the southern states of the United States. A recently graduated Baltimore lawyer named Thurgood Marshall took lead in the legal defense-branch of the National Association for the Advancement of Colored People (NAACP).[92] At the end of the 1930s, defense attorney Marshall started the NAACP Legal Defense and Educational Fund, or "Fund" for short.[93] With the Fund, Marshall had targeted the application of the "separate but equal" provision in public education. According to Jonas, Thurgood Marshall

[90] Morris, A Chink in the Armor: The Black-Led Struggle for School Desegregation in Arlington, Virginia, and the End of Massive Resistance, 333.
[91] Cole, The Folly of Jim Crow Rethinking the Segregated South, 26.
[92] Jonas, Freedom's Sword the NAACP and the Struggle against Racism in America, 1909-1969, 9. The NAACP was born in 1909 out of the need for the protection of black human rights due to the increased violence against black people.
[93] Patterson, Brown v. Board of Education: A Civil Rights Milestone and Its Troubled Legacy, 12.

was of opinion that segregation was upholding a racial caste system.[94] Marshall and his team immediately recognized that facilities offered to black students were not on par with those offered to their white counterparts and that separate can never be equal.

Marshall and the lawyers working for him were putting in the effort to come up with arguments against the constitutionality of racially segregated schools. In order to make more sense of this, they had to delve into the intent of the framers of the Fourteenth Amendment.[95] The question was whether the Fourteenth Amendment was really intended to keep schools segregated. However, the team working on this case found this difficult to establish due to the framers' ambiguity and their broad generalities. Additionally, the same Congress that ratified the Fourteenth Amendment had ratified laws that subscribed segregating education. In the end, Marshall and his lawyers argued that the framers did intend to stop all forms of state-imposed racism, but subsequent efforts to segregate made this impossible.

In December 1952, the United States Supreme Court, under Chief Justice Fred Vinson, heard five cases that became *Brown*. Marshall argued that segregation imposed by the state was, "inherently discriminatory and therefore a denial of the equal protection clause of the Fourteenth Amendment".[96] Under Vinson, the Supreme Court was heavily divided, but Vinson's death in September 1953 ultimately opened the path for a new dynamic in the form of the newly minted Chief Justice, former California Governor Earl Warren.[97] The case *Brown* continued under his supervision.

On March 17 of 1954, Chief Justice Earl Warren delivered the United States Supreme Court's unanimous ruling in *Brown v. Board of Education of Topeka, Kansas*.[98] The Court held in

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94 Jonas, Freedom's Sword the NAACP and the Struggle against Racism in America, 1909-1969, 481.
95 Patterson, Brown v. Board of Education, 39.
96 DeMatthews, Community Engaged Leadership for Social Justice: A Critical Approach in Urban Schools, 61.
97 Patterson, Brown v. Board of Education, 57.
98 Woodward, The Strange Career of Jim Crow, 146.

the unanimous opinion that in all of the *Brown*-cases, except for one, a state court had already decided that racial segregation was not unconstitutional under the Fourteenth Amendment with *Plessy* as its precedent. The Supreme Court had originally decided in *Plessy* that "separate but equal" was constitutional to uphold. However, the plaintiffs in *Brown* argued that separate can never be equal. Racial segregation violates the Equal Protection Clause of the Fourteenth Amendment.

Warren explained that the Supreme Court was of opinion that the intention of the framers of the Fourteenth Amendment was inconclusive on their stance on racial segregation and it cannot be certain what Congress and state legislation had in mind at that time. Warren also pointed out that at the time of the framing of the Constitution, a public education system such as the one that existed in 1954 did not yet exist during the framing of the Constitution. Education was primarily in private hands and education of African Americans was in some states forbidden. To then claim that the framers were not against racial segregation (in public education), as has happened in *Plessy* is baseless, since there was no case of mixed classes and mixed education in the first place.

Furthermore, Chief Justice Warren spoke: "[t]o separate them from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community."[99] This feeling of inferiority was precisely the goal of white supremacists: all non-whites are inferior to whites according to them.[100] The Supreme Court invalidated the "white supremacy doctrine". The opinion concluded by acknowledging the *Brown* plaintiffs that separate can indeed, never be equal.[101]

Not everybody was content with the outcome of *Brown*. In response to this judgment by the Supreme Court, a Mississippi judge named Tom Brady claimed that white and black children

[99] Brown v. Board of Education of Topeka, 347 U.S. 483 (1954).
[100] Brown-Nagin, Courage to Dissent Atlanta and the Long History of the Civil Rights Movement, 84.
[101] Loevy, The Civil Rights Act of 1964, 17.

attending school in the same class would then lead to miscegenation.[102] Phoebe Godfrey writes in her article that one of the largest oppositions against desegregation in public education came mostly from the fear of whites that their white daughter would procreate with black males.[103] She writes that letting black youth enter the social and educational realms of white people sparked the fear of interracial dating, since it would be easier to forge social relationships within the classroom. This is a very strong argument and it provided continual reason for whites to oppose desegregation in public education. Keeping black Americans in an inferior position compared to white Americans was perhaps the all-encompassing reason for the resistance to *Brown*. Reginald Oh argues in his article *Interracial Marriage in the Shadows of Jim Crow:* "The systematic physical and social separation of the white and black races was fundamental to maintaining a social system of white supremacy and black inferiority".[104] This enforces the argument that separation and segregation were instrumental and deliberate in the goal of maintaining white superiority and black inferiority. As Charles Herbert Stember argued: "the key to the schoolroom door is the key to the bedroom door".[105] Thus, Southern whites believed that physically separating the races would not only prevent intermixing, but it would also keep black Americans in a place of inferiority in terms of education, which in turn would lead them to keep the subservient position relative to the white race.

Although the case makes no explicit mention of the original reasons behind installing segregation laws, the Court did make clear their understanding of the implications of inferiority caused by these respective laws. Schwartz asserts that this was the Supreme Court's way of telling they no longer condoned racial segregation.[106] It was therefore ordered that such segregation laws were unconstitutional. Although this seemed a big step in the Civil Rights Movement, many white Southern segregationists met the decision with anger and offense.

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[102] Godfrey, "Sweet Little (White) Girls"? Sex and Fantasy Across the Color Line and the Contestation of Patriarchal White Supremacy, 205.
[103] Ibid., 205.
[104] Oh, Interracial Marriage in the Shadows of Jim Crow, 1324.
[105] Oh, Regulating White Desire, 168.
[106] Schwartz, The Warren Court a Retrospective, 24.

Support of Segregation

The previous part of the chapter discussed the facts of an era of desegregation of public facilities and in particular public education. Why is it so important to analyze racial segregation in the debate on anti-miscegenation laws and attitudes? There are two major reasons the literature points to for these white Americans supporting segregation of the races: first that the "black race" should be kept in their subservient place and secondly, social intermixing would lead to miscegenation. Especially this last argument is important to look into.

Gunnar Myrdal argues that the attitudes held by white Americans towards African Americans can be compared to a caste-system. Byrd also uses the term 'racial caste' to describe racial segregation.[107] Myrdal calls this system 'the white man's theory of color caste.'[108] He explains this theory as having three basic tenets: 1) the overall concern is "racial purity" and whites are determined to use every means available to maintain white racial purity. In addition, Menchaca writes that Southern segregationists were of opinion that racial mixing would lead to 'feeble-minded half-breeds'.[109] Once racial purity was lost, it could never be regained[110]. In short, preventing it from happening was paramount; 2) the rejection of the concept of 'social equality' is renounced due to fear of and in order to prevent miscegenation and 3) the fear, or in the segregationists' eyes: the danger, of miscegenation is so deep-rooted that racial segregation should be pushed in all spheres of life.[111]

No other argument is as fundamental as the following: "sociable relations on an equal basis between members of the two races *may possibly* [emphasis by author] lead to intermarriage".[112]

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[107] Byrd - Chichester, The Federal Courts and Claims of Racial Discrimination in Higher Education.(Kocking at Freedom's Door: Race, Equity, and Affirmative Action in U.S. Higher Education), 15.
[108] Myrdal, An American Dilemma, 58.
[109] Menchaca, The Anti-Miscegenation History of the American Southwest, 1837 To 1970: Transforming Racial Ideology into Law, 296.
[110] Cole, The Folly of Jim Crow Rethinking the Segregated South, 38.
[111] Myrdal, An American Dilemma, 1996, 58.
[112] Ibid., 606.

Patterson explains that the feeling of white supremacy was so durable and they were so deeply rooted that whites openly admitted that they were afraid that not only would "aggressive black males" now have free reign, they were afraid their own white children would come to enjoy the company of African Americans.[113] In the view of the white supremacists, this in turn would lead their children to see African Americans as social equals and it would possibly lead to dating and procreation among the races. On top of this, segregation of the races, and specifically in public education ensures the subordination position of black Americans.[114] So it once again becomes clear with this theory that segregation begins and ends with the fear of racial intermixing.

White Southern segregationists, according to Myrdal's studies, place the most emphasis on segregating social situations and on preventing racial intermixing both in the social as well as the romantic sphere. Sharing places of leisure and spending time socially would blur the rigid lines between the races and would then open up friendships between people of different races. This in turn would then remove boundaries in existence that held people from intermarrying. In conclusion; to prevent intermixing, one should also prevent social association. Legislation prohibiting intermixing was not sufficient.[115]

Myrdal continues to claim the entire concept of segregation, including disenfranchisement and economic segregation is based on sexual relations. Randall Kennedy makes the same claim: segregationists made a perpetual link between sex, marriage and race.[116] This argument seems to make sense if we take into account the following quote by a white Southerner as documented:

"Do away with the social and political distinctions now existing," he warned, "and you immediately turn all the blacks and mulattoes into citizens, co-governors, and acquaintances: and

[113] Patterson, Brown v. Board of Education, 88.
[114] Byrd - Chichester, The Federal Courts and Claims of Racial Discrimination in Higher Education, 15.
[115] Myrdal, An American Dilemma, 1996, 587.
[116] Kennedy, Interracial Intimacies, 75.

acquaintances... are the raw material from which are manufactured friends, husbands, and wives. The man whom you associate with is next invited to your house, and the man whom you invited to your house is the possible husband of your daughter, whether he be black or white."[117]

The fear of racial intermixing was so deep that merely being in the presence of an African American was seen as a dangerous event. White segregationists feared that being friendly to black Americans would be some sort of gateway to letting them into the "pure white families".

After *Brown*, during an anti-desegregation rally in September 1954, the leader of the National Association for the Advancement of White people proclaimed that the one and only goal of "the Negro" was to move "into the front bedroom of the white man's home".[118] A reader of the New York Times Magazine wrote: "Miscegenation, NOT interaction, is the correct term used in describing the sinister scheme [of desegregation]".[119] This again enforces the idea of the male black aggressor tainting and hunting for the white woman's 'purity'. However, anti-miscegenation attitudes and the desire to keep public spaces racially segregated was not only an issue present at the end of the Second World War. As previously explained, miscegenation has been considered an issue since the era of slavery, and the issue continued after *Brown*.

Conclusion

The end of the nineteenth century indicated a better future for African Americans. With their emancipation and the Civil Rights Bill of 1875, it seemed like more civil rights were in store for the recently freed slaves. Nonetheless, white segregationists were not yet ready for such a change. Despite the efforts to improve the situations for African Americans, states increasingly adopted legislation that would maintain some form of the status quo in which African Americans were "put

[117] Cole, The Folly of Jim Crow Rethinking the Segregated South, 183.
[118] Patterson, Brown v. Board of Education, 47.
[119] Schoff, Deciding on Doctrine: Anti-Miscegenation Statutes and the Development of Equal Protection Analysis, 633.

in their place". The most important of these legislations came out of *Plessy v. Ferguson*, which established that public facilities could be "separate but equal". In this way, white segregationists had a legal excuse to ban colored people from their "white" facilities so that any social intermixing was prevented and by doing so, miscegenation was avoided as well. It was only in 1954 that the United States Supreme Court rendered the decision in *Plessy v. Ferguson* unconstitutional. Yet, this did not mean that white Southerners were now prepared to let African Americans in their social sphere. Fear was still looming of their white children making friends with black children and eventually procreating with these black children. Segregation had been the biggest weapon in the white's defense against miscegenation, but the defense was not yet over once segregation was delegalized.

Chapter 3: *Loving v. Virginia* and the end of anti-miscegenation

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The start of the twentieth century marked the beginning of the Supreme Court's effort to grant more constitutional rights and improve the legal standing of African Americans.[120] We have established this in previous chapters. However, Michael Klarman argues that these doctrines that would supposedly improve the situation of African Americans had only little impact in the 'real world'. This can also clearly be seen in the fact that only halfway through the century African Americans were allowed to attend white schools and white facilities. And despite the legally binding decisions from the Supreme Court, it did not stop state legislatures from executing their own ideology. An example of such ideologies are illustrated by the Virginia Massive Resistance in response to *Brown v. Board of Education*.[121] Although we will not discuss this 'massive resistance' in great depth, the resistance does give exceptional insight into the mindset of white segregationists. Since the Supreme Court decided in *Brown* that schools had to be desegregated in 'due time', the board of education of Virginia tried to find ways to circumvent this ruling. They did so by for example stretching the interpretation of 'due time'. Other examples of this are the denial of African American children based on false reasons such as administrative difficulties, or student's grades not being on par. Additionally, schools claimed 'attempts' at preventing African American children from feeling isolation in a large group of white pupils and therefore denying them access.[122] This chapter will be an analysis of the judicial decisions made preceding and during *Loving*.

[120] Wiecek, Synoptic of United States Supreme Court Decisions Affecting the Rights of African-Americans, 1873-1940 Symposium: Civil Rights: Looking Back - Looking Forward, 29.

[121] Morris, A Chink in the Armor; Heise, Assessing the Efficacy of School Desegregation, 1093; Tobias, Brown and the Desegregation of Virginia Law Schools, 39; Picott, Desegregation of Public Education in Virginia--One Year Afterward.; Doyle, From Desegregation to Resegregation: Public Schools in Norfolk, Virginia 1954-2002, 64-83; Hershman, Public School Bonds and Virginia's Massive Resistance, 398–409.; Tobias, Public School Desegregation in Virginia during the Post-Brown Decade, 1261; Pratt, Simple Justice Denied: The Supreme Court's Retreat from School Desegregation in Richmond, Virginia, 709; Waugh, "The Issue Is the Control of Public Schools": The Politics of Desegregation in Prince Edward County, Virginia, 76–94.

[122] Virginia's 'Massive Resistance' Laws Declared Unconstitutional, 163.

This chapter is divided into two parts. The first part discusses anti-miscegenation laws and the courts; specifically state Supreme Courts and the Federal Supreme Court. We will discuss three two Supreme Court Cases that are relevant to the argument that racial segregation laws and laws prohibiting intermarriage are intertwined. The analysis of these cases will support the analysis of the *Loving* case itself. This will be discussed in the second part of the chapter. We will first discuss how the Loving-family came to appeal their case before the Supreme Court and we will then continue analyzing the opinion of the Court in this landmark case.

Anti-miscegenation laws and the Courts

Loving v. Virginia can be called one of the most important Supreme Court Cases in the civil rights movement, next to *Brown v. Board of Education.* What is remarkable about both cases it that they almost seem intertwined when comparing the Courts' judgments and when analyzing the white segregationists that kept segregation and anti-miscegenation laws in place before these landmark cases were handled. This sub-chapter will go into more depth on the role of the Supreme Court in terms of anti-miscegenation laws in the decades preceding *Loving*.

According to Gregory and Grossman, the United States Supreme Court had a limited role with respect to marriages before *Loving.* Dailey calls this "the Supreme Court's studied willingness to ignore [anti-miscegenation laws]".[123] State Supreme Courts did have experience with cases revolving marriage, but these had mostly to do with financial matters rather than matters of race or romance.[124] The Supreme Court only interfered or assisted in conflicts between states regarding marriage and divorce laws.[125] For that reason there was no federal norm or legal procedure that effectively regulated marriages and divorces.[126] The Supreme Court held the opinion that marriage

[123] Dailey, Race, Marriage, and Sovereignty in the New World Order, 512.
[124] Grossberg, Governing the Hearth Law and the Family in Nineteenth-Century America, 36.
[125] Gregory and Grossman, The Legacy of Loving, 19.
[126] Ibid., 20.

was the domain of the state and that it was not a federal issue.[127] *Loving* completely changed this, thus likely explaining why it took a few decades before such a case was put in front of the Supreme Court: there was no precedents the Court could refer to yet. It is worth mentioning that the ruling in *Loving v. Virginia* has played an enormous role in the path to achieve complete marriage equality by allowing people of the same gender to marry.[128] So this case not only changed the lives of many Americans that were in an interracial relation and wanted to put the seal of the state on it, it also assisted in the improvement of marriage rights for same-sex couples. This signifies the importance of *Loving* as precedent. As has been mentioned, there was no precedence for *Loving* before the Supreme Court. The next subchapter will explore relevant precedents in the lower courts.

Race and the Courts

Although the U.S Supreme Court did not have significant experience with cases appealing anti-miscegenation laws, state Supreme Courts have seen a few repeals against anti-miscegenation laws. These cases prove that racial segregation and anti-miscegenation laws go hand in hand.. Furthermore, cases regarding racial desegregation in public education can also give more insight into the topic of anti-miscegenation laws. The analysis of *Brown* has already shed some light on segregation, but the Court had not mentioned any anti-miscegenation motivations behind segregation. We will discuss three influential cases that came before their states' Supreme Courts. The first one, *Gong Lum v. Rice*[129] highlighted that a primary reason behind keeping public schools segregated is to keep children from mixing in the social sphere. The following two cases, *Jackson v. State* and *Naim v. Naim* both discuss the prohibition on intermarrying.

Gong Lum v. Rice (1927)

Martha Lum, a Mississippi child of Chinese background who was born in the United States attended the school she desired, Rosedale Consolidated High School. However, at the end of her

[127] Wallenstein, Race, Marriage, and the Law of Freedom, 63.
[128] Gregory and Grossman, The Legacy of Loving, 27.
[129] Gong Lum v. Rice, 275 U.S. 78 (1927).

first day at that school, the superintendent notified her that she was not allowed to attend said school, due to her Chinese descent.[130] She was then sent to the state Superintendent of Education, she requested to end the discrimination against her and to let her attend her school of choice. The case was brought before the Mississippi Supreme Court in 1925. The ruling was not in Lum's favor, with the court citing an anti-miscegenation statute that prohibited a white person to marry anyone from the 'Mongolian race'.[131] In the context of an adolescent attending school, citing laws concerning marriage seems odd. The Court continued to explain that the purpose of maintaining schools and public spheres segregated was to prevent amalgamation from happening.[132] According to Oh, white segregationists were afraid that children were not old enough to develop a preference for their own race yet. Building this preference was important in order remain 'white purity'.[133] Thus supposedly mixing races within a classroom, the children would not be able to develop this preference for their own race in a racially mixed environment.[134] Once again it is proven that racial segregation merely seres the purpose of preventing miscegenation.

Additionally, the Court decided that it was up to the state to decide how they regulate public schools.[135] The Lum family decided to appeal this decision and in November 1927, the United States Supreme Court decided to hear *Gong Lum v. Rice*.[136] This was also the U.S. Supreme Court's first case regarding segregation in a public school.[137] The Court ultimately considered whether Lum ought to be attending an all-black school.[138] The ruling therefore relied on Mississippi's anti-miscegenation statute in their state constitution which divided school-age children in two groups:

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[130] Wallenstein, Identity, Marriage, and Schools: Life along the Color Lines in the Era of Plessy v. Ferguson, 33.
[131] Oh, Regulating White Desire, 479.
[132] Wallenstein, Race, Marriage, and the Law of Freedom, 69.
[133] Lusky, Minority Rights and the Public Interest, 31.
[134] Oh, Regulating White Desire, 80.
[135] Wiecek, Synoptic of United States Supreme Court Decisions Affecting the Rights of African-Americans, 1873-1940 Symposium, 33.
[136] Gong Lum v. Rice, 275 U.S. 78 (1927).
[137] Kaplan, Segregation Litigation and the Schools-Part II: The General Northern Problem, 166.
[138] Oh, Regulating White Desire, 478.

Caucasians and non-Caucasians. Since Martha belonged to the latter, the Court ruled that she should not attend a school for Caucasians. In short, Martha's appeal was denied, and she was prohibited from attending the school.

Jackson v. State (1984)

The second case to be discussed is the one of Linnie Jackson in Alabama. On March 9, 1954, Linnie Jackson, an African American woman stood before the state Supreme Court of Alabama. She was convicted of engaging in miscegenation, prohibited by Section 102, Article 4 of the State Constitution of Alabama of 1901. This statute states the following: "The legislature shall never pass any law to authorize or legalize any marriage between any white person and a [n]egro, or descendant of a negro."[139] It further elaborated that any white person and African American engaging in adultery or fornication with each other, or if they intermarry, would face conviction resulting in either imprisonment or forced labor for between two to seven years.[140]

Jackson appealed the conviction on the basis of the violation of the 5th and the 14th amendment. Both of these amendments concern a 'due process' clause with the Fifth Amendment applying to the federal government and the Fourteenth Amendment to state governments. However, the appeal was denied, citing *Wilson v. State* and the Alabama Supreme Court thus ruled that said statute was not in violation of the federal Constitution.[141] The Supreme Court of the United States also deemed the original indictment to not be in violation of the Constitution.[142] Although this case is not of much significance, it does posit that even state Supreme Courts were not ready or inclined to eliminate anti-miscegenation laws. Additionally, although this case merely represents one state, it also indicates the attitudes the courts, an institution that is supposed to be objective, held towards miscegenation. It is interesting to note that this case was decided two months before the national

[139] Jackson v. State, 37 Ala. App. 519
[140] Wadlington, The Loving Case: Virginia's Anti-Miscegenation Statute in Historical Perspective, 1577.
[141] Wilson v. State, 20 Ala. App. 137.
[142] Richter, Alabama's Anti-Miscegenation Statutes, 345–365.

Supreme Court decided *Brown v. Board of Education.* According to Levinson, the Supreme Court feared that striking down the Alabama statute would threaten the efforts made to enforce *Brown*.[143] While in this situation the federal court was ready to hear cases about racial desegregation on a national level, it can be argued that cases involving the perceived personal realm of marriage could not yet be received. However, there is no clear proof that this is applicable to the federal Supreme Court. It is remarkable however that it took thirteen more years before interracial couples were legally allowed to marry or procreate.

Naim v. Naim (1955)

The third and last case to be discussed is an anti-miscegenation case that took place in the state of Virginia, like the *Loving* case did. On June 1952, Ham Say Naim who is a Chinese immigrant married the white Ruby Elaine Lamberth. Because their home state of Virginia prohibited interracial marriages, they drove to North Carolina to get their marriage certificate, thereby evading the Virginia's 1924 Racial Integrity Act.[144] The marriage did not work out and in 1953, Ruby Elaine now Naim wanted a divorce.[145] The marriage was then rendered void under the Racial Integrity Act, which dictated the prohibition of intermarriage and marriage licenses obtained in another state would be rendered void.. Ham Say Naim himself contested this claim. He argues that his marriage was, "improperly annulled solely on the basis that it was between a white person and a Chinese person..."[146] Naim's lawyer Carliner also disagreed with the annulment on the basis of the "full faith and credit" provision of the Constitution.[147] This clause dictates that all lawfully performed acts should be recognized by other states as well, such as the recognition of a validated marriage should then be valid in every other state. The annulment was to the benefit of the lawyer, because now he was able to go for an appeal against the Virginia Supreme Court of Appeals.

[143] Levinson, Compromise and Constitutionalism Compromise and Constitutionalism, 833.
[144] Dorr, Principled Expediency: Eugenics, Naim v. Naim, and the Supreme Court, 129.
[145] Ibid., 130.
[146] Oh, Regulating White Desire, 465.
[147] Dorr, Principled Expediency, 132.

Carliner appealed the case on the basis of the Fourteenth Amendment. He tried to argue that the courts do not have the power to annul marriages based on the race of both parties. Furthermore, they are also not allowed to annul marriages because this impedes on personal liberty.[148] The Court responded that the equal protection clause of the 14th Amendment was not applicable in this case: both parties would be punished equally for intermarrying. The Court of Appeals also declined to interpret the 14th Amendment in such a way that it would constrain them from enforcing laws 'preserving racial purity'.[149] Moreover, they stated that, "the right to marry is… a fundamental liberty; a right to fornicate is not".[150] However, this argument is illogical. With regards to *Naim v. Naim*, as well as *Lovings*, the couples involved were married, so there was no fornication. It is only due to the state itself that these marriage licenses were not recognized. The Virginia Act almost forces these interracial couples into their definition of fornication by rendering the marriage officiated in other states as void. Without this Act, there would be no fornication in the aforementioned cases at all. The Court of appeals argued that marriage falls within the power of the state. On top of that, they declared that the classification of race in this case was valid.[151]

In 1955, Carliner repeated his argument in a United States Supreme Court brief against the Virginia Supreme Court of Appeals: the state cannot enact or enforce statutes based on racial classifications due to the Fourteenth Amendment.[152] Nonetheless, we need to take into account the context of that decade, which was one of unrest in terms of racial desegregation. *Brown v. Board of Education* was decided a year before *Naim v. Naim* came before the Supreme Court and the Court did not want to risk such a controversial case again.[153] Such a short time after *Brown*, the U.S. Supreme Court considered *Naim v. Naim* too controversial. The Supreme Court feared they would cause more trouble by allowing interracial relations short after *Brown*. By doing so, they would

[148] Ibid., 136.
[149] Leslie, Justice Alito's Dissent in Loving v. Virginia, 1594.
[150] Dorr, Principled Expediency, 139.
[151] Wadlington, The Loving Case, 1208.
[152] Dorr, Principled Expediency, 146.
[153] Leslie, Justice Alito's Dissent in Loving v. Virginia, 1578.

confirm the segregationists's fear that desegregation in public accomodations would lead to interracial mixing.[154] They dismissed the case on the basis of "jurisdictional grounds".[155] The Supreme Court was of opinion that *Naim v. Naim* lacked a federal question.[156]

Naim v. Naim did not bring a step forward in the appeal against anti-miscegenation laws. This proves the point that the Court needed time after *Brown* before they took any steps in making decisions on a personal liberty such as a marriage. Notwithstanding, *Naim* did introduce the Supreme Court to such large anti-miscegenation cases before the law. It took the U.S. Supreme Court another twelve years before changing anything in the way interracial marriages were handled.

The Civil Rights Act of 1964

Despite Brown prohibiting racial segregation in public education, and thereby de facto prohibiting racial segregation in all public accommodation, discriminatory practices persisted throughout the United States.[157] Although several Civil Rights Acts have been put in place during the 1950s, none of them were successful. Hersch and Shinall claim this was due to the fact that the then serving president Eisenhower did not want his support of Civil Rights to threaten his relation with Southern Democrats.[158] However, the new president John F. Kennedy was already rallying for a broader civil rights legislation during his election campaign. In November 1963, President Kennedy introduced the Act.[159] Before he could sign the Act himself, Kennedy was assassinated.

In July 1964, the Civil Rights Act of 1964 was signed by Lyndon B. Johnson. According to Aiken, Salmon en Hanges "its passage summarily outlawed the systematic, far-raching, and in some cases, legally sanctioned discrimination that had prevailed for decades.."[160] The Act includes 11 titles serving the goal of improving the status of individuals that have been discriminated based

[154] Levinson, Compromise and Constitutionalism Compromise and Constitutionalism, 833.
[155] Oh, Regulating White Desire, 466.
[156] Levinson, Compromise and Constitutionalism Compromise and Constitutionalism, 833.
[157] Aiken, Salmon and Hanges, The Origins and Legacy of the Civil Rights Act of 1964, 386.
[158] Hersch and Shinall, Fifty Years Later: The Legacy of the Civil Rights Act of 1964, 428.
[159] Bent-Goodley, Social Work and the Civil Rights Act of 1964., 293.
[160] Aiken, Salmon, and Hanges, The Origins and Legacy of the Civil Rights Act of 1964, 383.

upon race, religion, gender, color and origin. It involves discrimination in voting, housing and public facilities. The Civil Rights Act of 1964 included many of the provisions of the failed Civil Rights Act of 1875.[161] Nonetheless, the Civil Rights Act did not mention anything about marriage or the existing anti-miscegenation laws. *Loving* was about to fill that gap.

Loving v. Virginia

The previously cited cases highlighted the stance taken by Courts when it comes to racial intermixing: facilities should be segregated to prevent such intermixing, even when it involves young children; couples that got married anyway could be convicted for unlawful cohabitation or fornication during the 1950s and; the Supreme Court was too afraid to burn its hands on any anti-miscegenation cases. The Supreme Court landmark case *Loving v. Virginia* can be regarded as the culmination point of the struggle to disband anti-miscegenation laws. At this point, the Civil Rights Movement was past its peak already. Civil rights advocates were afraid that if they tried to challenge anti-miscegenation laws earlier, it would lead to a failure of other civil rights landmark cases such as *Brown*.[162] Dorothy Roberts, an American scholar on race, gender and law, explained this phenomenon by saying that the white Southerner's loathing of the black race was the basis of their segregation efforts.[163] Having their children intermixing with black children in the classroom was an outright nightmare for some whites, but at least intermarrying at that point was still illegal. Getting schools desegregated when intermarrying was a legal right would have been even more difficult. Roberts claims *Loving* to be an extension of *Brown*. She acknowledges that the key purpose of segregation in public schools was to prevent miscegenation and she explains that therefore both *Brown* and *Loving* struck down anti-miscegenation.[164]

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[161] Finkelman, The Long Road to Dignity: The Wrong of Segregation and What the Civil Rights Act of 1964 Had to Change, 1051.
[162] Wardle, Loving v. Virginia and the Constitutional Right to Marry, 1970-1990, 306.
[163] Roberts, Loving v. Virginia as a Civil Rights Decision, 176.
[164] Ibid., 192.

The Virginia Courts

On June 2, 1958, the white Richard Loving (twenty-four years old) and the black, part African-American and part Cherokee, Mildred Jeter (nineteen years old) took their car from Caroline County in Virginia, where they were living, to Washington D.C. to get married. Since they were not allowed to marry in their home state of Virginia because of both their races, they decided to travel to circumvent that law. After their wedding, the couple went back to their home state of Virginia, to live together, as a married couple, at Mildred's parents' house.[165] Only five weeks after obtaining their marriage license, the young newlyweds were lifted from their bed by the county sheriff: they were arrested on charges of unlawful cohabitation.[166] Upon being shown the Washington D.C. issued marriage license, the sheriff stated that the Loving's license was not recognized in Virginia.[167]

In 1959, a Virginia grand jury indicted the Lovings for violating the 1924 Racial Integrity Act.[168] This Act prohibited white people to marry any person of color. Any of such marriage would be rendered void under this Act. Furthermore, the Act also prohibited racially mixed couples to marry in another state and return to Virginia as a married couple.[169] Their marriage would not be valid in Virginia in such a case. The Lovings waived their right to a jury trial and pleaded guilty to the charges.[170] On January 6, 1959, the judge suspended the one-year sentence the Lovings had received if they agreed to leave the State of Virginia to not return for 25 years.[171] After this sentencing of the Lovings, the couple moved their family to Washington D.C. where they initially obtained their marriage license.[172] They attempted to live a calm, happy family life after this blow.

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[165] Wardle, Loving v. Virginia and the Constitutional Right to Marry, 1970-1990, 303.
[166] Roberts, Loving v. Virginia as a Civil Rights Decision, 178.
[167] Gregory and Grossman, The Legacy of Loving, 21.
[168] Villazor and Maillard, Loving vs. Virginia in a Post-Racial World Rethinking Race, Sex, and Marriage, 2.
[169] Oh, Regulating White Desire, 465.
[170] Pratt, Crossing the Color Line, 236.
[171] Roberts, Loving v. Virginia as a Civil Rights Decision, 179.
[172] Wardle, Loving v. Virginia and the Constitutional Right to Marry, 1970-1990, 302.

Mildred and Richard were never much interested in participating in civil rights movement, but in 1963 the debate of a major civil rights bill sparked Mildred's decision to write to the Attorney General of the United States, Robert Kennedy.[173] Mildred wanted their sentence, the banishment from Virginia, to be suspended on the ground that the decision of Judge Bazile opposed the equal rights provided by the Fourteenth Amendment.[174] Upon receiving Mildred's request, the Department of Justice on their part decided to refer Mildred's letter to the American Civil Liberties Union where the young Bernard. S. Cohen took on the case *pro bono*. Attorney Philip J. Hirschkop was added to the team later.[175] With the assistance of the ACLU, the Lovings wanted to challenge the Virginia Racial Integrity Act.[176] At the end of 1964, Cohen and Hirschkop were finally able to file a class action suit in the U.S. District Court for the Eastern District of Virginia.[177] The following January, Judge Bazile from the original trial declared:

"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 marriages. The fact that He separated the races shows that He did not intend for the races to mix."[178]

In earlier court cases we analyzed, the court did not yet specifically mention segregation out of religious motivations. Judge Bazil brought a new dimension to the anti-miscegenation legislation by using this argument. Although this quote does not directly indicate a deeper motivation to preserve white supremacy per se, it does show that there was great dissatisfaction with racial mixing and thus losing racial purity. With this opinion from Judge Bazile, the Virginia Court decided to

[173] Pratt, Crossing the Color Line, 238.
[174] Wardle, Loving v. Virginia and the Constitutional Right to Marry, 1970-1990, 302.
[175] Pratt, Crossing the Color Line, 238.
[176] Villazor and Maillard, Loving vs. Virginia in a Post-Racial World Rethinking Race, Sex, and Marriage, 2.
[177] Pratt, Crossing the Color Line, 238.
[178] "Judge Leon M. Bazile, Indictment for Felony."

uphold their ruling and the Virginia Supreme Court of Appeals responded by supporting the constitutionality of Judge Bazile's ruling.[179] At the end of May 1966, Hirschkop and Cohen appealed to the United States Supreme Court.[180] In December of 1966, the U.S. Supreme Court approved hearing the case.

Chief Justice Earl Warren

In order to understand why *Loving* was successful before the Supreme Court, it is also important to shortly discuss the chief justice presiding the case. As has been mentioned, Chief Justice Earl Warren also led the Supreme Court of the United States to enforce *Brown v. Board of Education* in 1954. In 1953, the former chief Justice Fred M. Vinson died of a heart attack.[181] At that point, the Court was still discussing *Brown*. Vinson already admitted not to be ready yet to overrule *Plessy v. Ferguson*. In his view, racial segregation was constitutional.[182] Chief Justice Warren held a different opinion. During the late 1930s and the 1940s, he already attempted to work towards more equal legislation, by for example proposing a Fair Employment Practices Commission.[183] He was also in complete disagreement with *Plessy*:

"I don't see how in this day and age we can set any group apart from the rest and say that they are not entitled to exactly the same treatment as all others. To do so would be contrary to the Thirteenth, Fourteenth, and Fifteenth Amendments."[184]

Consequently, as the Chief Justice of the Supreme Court that had made the success in *Brown* possible, Warren was now widely "identified with American libertarianism on racial matters".[185] If former Chief Justice Vinson had still been in place, *Loving* might have had an entirely different outcome. According to Roberts, the central question in the *Loving* case was whether the Court

[179] Wardle, Loving v. Virginia and the Constitutional Right to Marry, 1970-1990, 302.
[180] Robinson II, Dangerous Liaisons: Sex and Love in the Segregated South, 140.
[181] Schwartz, The Warren Court a Retrospective, 112.
[182] Ibid., 114.
[183] White, The Crucible of Brown v. Board of Education, 162.
[184] Schwartz, The Warren Court a Retrospective, 116.
[185] Vestal, Public Diplomacy in the U.S. Supreme Court: The Warren Years - Part II, 374.

would make the same arguments against anti-miscegenation laws as they did against racial segregation in *Brown*.[186]

The Court's Ruling

In June the following year, Chief Justice Earl Warren brought forth the unanimous decision of the Supreme Court. According to Wardle, the Supreme Court of the United States was more unanimous in this decision than the court had ever been in any other marriage case that century.[187] The Court was ready to struck down the last piece of segregation laws.

Chief Warren discussed a few points. Firstly, for a 'suspect racial classification'[188] to be upheld, it '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'.[189] The Supreme Court ultimately considered Virginia's interests in prohibiting interracial marriages.[190] The Supreme Court in *Loving* cited *Naim v. Naim* where Virginia's interest was to preserve and protect the racial integrity of its citizens and to keep the purity of white blood from being corrupted. The Court in *Loving* found this to be the proof of the endorsement of the doctrine of white supremacy. The support of this doctrine did not prove a substantial interest to the state, according to the Supreme Court. It did not serve any other purpose than preserving 'white purity'.[191] Therefore, to prohibit the freedom to marry based on someone's racial classification is in violation of the Equal Protection Clause.[192] On top of that, Warren pronounced that marriage is a basic human right.[193]

[186] Roberts, Loving v. Virginia as a Civil Rights Decision, 191.
[187] Wardle, Loving v. Virginia and the Constitutional Right to Marry, 1970-1990, 305.
[188] Oh, Regulating White Desire, 466.
[189] Loving v. Virginia.
[190] Oh, Regulating White Desire, 466.
[191] Roberts, Loving v. Virginia as a Civil Rights Decision, 176.
[192] Oh, Regulating White Desire, 467.
[193] Gregory and Grossman, The Legacy of Loving, 23.

Secondly, the Supreme Court agreed that to a certain extent marriage falls under a state right, but this right is not unlimited. Anti-miscegenation laws impose on "preferentially protected relationships".[194] Aditionally, the Court decided that the Equal Protection Clause also applied to eradicate state discrimination in domestic issues such as marriage.[195] They also pointedly rejected the idea that because both races were punished equally, it was not a violation of the Fourteenth Amendment. Simply because both sides were punished equally, the Court ruled that it does not make these laws non-discriminatory. Since these laws still make use of a racial classification, they can be considered suspect.[196] The Court asserted that the racial classification in the Racial Integrity Act is "repugnant".[197]

Lastly, the Court pointed out the inconclusiveness of the Congress debates on the Fourteenth Amendment on what was intended in terms of interracial marriage.[198z] Conclusively, the Court agreed that the Racial Integrity Act of 1924 was made to maintain and carry on the white supremacy. Arguments by stats that anti-miscegenation laws are in place in order to promote citizen's welfare merely serve the purpose of upholding a racist doctrine.[199]

The Court concluded:

"To deny this fundamental freedom [to marry] on so unsupportable [sic] a basis as the racial classifications embodied in these statutes... 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 … These convictions must be reversed".[200]

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[194] Wardle, Loving v. Virginia and the Constitutional Right to Marry, 1970-1990, 303.
[195] Roberts, Loving v. Virginia as a Civil Rights Decision, 194.
[196] Oh, Regulating White Desire, 467.
[197] Villazor and Maillard, Loving vs. Virginia in a Post-Racial World Rethinking Race, Sex, and Marriage, 2.
[198] Lay, Sexual Racism, 177.
[199] Wadlington, The Loving Case, 1218.
[200] Loving v. Virginia.

With that, the Supreme Court made an end to the federal endorsement of the last existing segregation laws.

After *Loving*

In 1967, many states did not have any anti-miscegenation laws in place anymore. Gregory and Grossman analyzed that the "criminalization of interracial marriage had already suffered a cultural blow that was more wounding than the constitutional one".[201] The fact that the federal government of the United States now decided that anti-miscegenation laws were unconstitutional sent out the signal that the government also disapproved of the underlying attitudes that made these laws possible. The Supreme Court had been very clear on its stance in *Loving*. The promotion of "white supremacy" had no place in American culture and law.

Novkov presents a similar argument, acknowledging that anti-miscegenation statutes were of such an important symbolic meaning that she deemed their repeal not likely. Even when these statutes would not lead to conviction, they were used to bar interracial marriages from taking place, so the only way to eradicate anti-miscegenation laws was to take it to the national level.[202] This proved to be an impossible task in itself. The Supreme Court hid behind a curtain of 'states rights'. They did not recognize the importance of addressing such issues regarding race on a federal level. The Supreme Court of the United States decided to maintain the status quo rather than seek improvement and equality for all its citizens. This was probably also the safest choice, as they also wanted to prevent racial unrest and violence. It was judge Warren's leadership that brought a divided Supreme Court together, thereby putting his name on one of the most important civil rights cases of the twentieth century.

Loving v. Virginia was of great importance to the struggle for other equal marriage rights issues. Murray writes that although Loving did achieve and overrode some legal impediments to

[201] Gregory and Grossman, The Legacy of Loving, 16.
[202] Novkov, Racial Union.

interracial marriage, it did not change much for social taboos regarding this topic.[203] On the one hand, this argument makes sense. Feelings of 'white supremacy' were deeply rooted in the white segregationist mind. Yet, at the same time, Murray highlights Loving's importance in *Obergefell v. Hodges.*[204] This was a United States Supreme Court decision made in 2015 that legally allowed marriage between parties of the same gender. Even though these cases were many years apart, the decision the Supreme Court made in *Loving* freed the path for other issues in terms of marriage equality to be tackled.

Conclusion

The 1950s and the 1960s proved to be important decades for the Supreme Court in regards to racial equality. In 1954, the Court decided that public education should be desegregated. White segregationist Southerners decided to take action against this decision through administrative action. It proved that these segregationists were not ready at all to accept the intermixing of the races in the social sphere. In such a context, it was not surprising that the U.S. Supreme Court decided not to hear *Naim* in 1955. A year after *Brown*, the Court decided to refrain from making another major decision that would change a century-old status quo of 'black inferiority', although they would not admit it in these words.

The Supreme Court of Virginia did show in *Naim v. Naim* that they wanted to hold on to the 1924 Racial Integrity Act. This Act stated that interracial marriage between a white person and a person of color was not valid. Would these marriage licenses be provided in another state, they would neither be valid, nor would the resulting marriage licenses be recognized. In this way, the Courts knew to put the label of "fornication" on interracial couples, which provided the Courts an extra reason to persecute. In short, *Naim v. Naim* was unsuccessful in having the Racial Integrity Act repealed.

[203] Murray, Loving's Legacy Decriminalization and the Regulation of Sex and Sexuality, 2672.
[204] Murray, 2675.

Mildred and Richard Loving were forced to move to Washington D.C. after they were convicted of breaking the law by marrying in another state. According to the Virginia Court, the races were put on separate continents for a reason: to not intermix. In 1967, the United States Supreme Court appealed this opinion of Virginia Judge Bazile, stating that such a treatment violated the Equal Protection Clause and the Due Process Clause of the Fourteenth Amendment of the United States. They considered the proliferation of the doctrine of 'white supremacy' as an invalid reason for impeding on the civil liberty of American citizens to marry their person of choice. For the first time, the Supreme Court made a big decision in the field of marriage law, after many years of what seemed like actively avoiding doing so.

Conclusion

During the twentieth century, the United States of America has played a large role in global history. A military and economic superpower, the world looked up to the 'beacon of freedom' that was the United States. However, when looking inwards, one can see that the tag line 'beacon of freedom' was not applicable to all and that the sentence 'all men are created equal' did also not apply to an important portion of the American population. This realization is what makes African American history so interesting: the paradox of a state claiming to put personal liberty on the first place, but at the same time taking away so much personal liberty from its own citizens. It all seemed to change mid-twentieth century when segregation in public education was found unconstitutional. Nevertheless, African Americans and Caucasian Americans were still not allowed to marry each other, one of the most important personal rights one can have.

Why did it take so long before an end was made to anti-miscegenation laws in the Old South, or even on a federal level? There are two answers to this question and these answers are profoundly intertwined. As we have seen, white Southern segregationists held the deeply rooted opinions that African Americans were of less value than Caucasian Americans. When slavery was still commonplace in the Old South, the relation between black and white Americans was clear-cut. The emancipation of slaves blurred these lines. African Americans were no longer forced into a role of submission and this was a huge threat to the status quo. So white Southern segregationists saw it as their task and their responsibility to keep the existing state of affairs intact. Although the Supreme Court tried to improve the situation of African Americans through the Civil Rights Act of 1875, this bill was quickly annulled. Additionally, states tried to circumvent laws that were already in place that would provide more civil rights for African Americans. These laws all came down to one objective: keep the races segregated. To justify this segregation, *Plessy v. Ferguson* was raised. The 1896 Supreme Court case stated that it was legal to offer segregated public facilities as long as these facilities were equal in quality. The ruling validated what was already customary: segregated

public facilities. The first effective attack on *Plessy* was in 1954 in the Supreme Court case *Brown v. Board of Education of Topeka, Kansas*. *Brown*, a combination of five cases, claimed 'separate but equal' to be unconstitutional under the Equal Protection Clause and the Due Process Clause of the Fourteenth Amendment. The Supreme Court agreed unanimously and Chief Justice Warren stated: separate can never be equal. However, offering equal facilities was, to white Southern segregationists, not the aim of racial segregation. This is where the second argument and answer to the question appears.

Due to the supposed inferiority of African Americans, in the eyes of white Southern segregationists, racial segregation went much further than just separating the races in the most literal sense. These segregationists did not only want to dictate public life for African Americans, they also wanted to dictate private lives. From the moment the first slaves set foot on U.S. mainland, white men have engaged in sexual relationships, voluntary or involuntary, with black women. Out of these liaisons came a number of interracial children and these children also blurred the lines of the strict racial boundaries in existence. This was again a threat to white dominance. Furthermore, the general consensus among the white Southern segregationist was that interracial children were 'mongrels' and diluted or even spoiled the superiority of white blood. This gave extra dimension to the motivation to keep the races segregated. Having white Americans interact on a social level with black Americans was considered equal to opening up white women's bedrooms to black men. Therefore, shock set in when the Supreme Court decided in *Brown* that public schools had to be desegregated. Since children are seen as vulnerable and moldable, desegregation in public education was a nightmare for white segregationist parents. In this manner, children were not able to develop a preference for their own race, when they would be confronted with children from other races and when they would start to consider children of other races to be their equal. This in turn proves that in 1954, the Old South was not inclined to accept interracial relationships. Not by a long shot. This resistance, to put it lightly, is without a doubt the main reason that it was only 1967 the

Supreme Court decided to take a position in marriage laws and the controversy of interracial relations.

The conclusion is not necessarily a surprising one. It is common knowledge that the Old South struggled with issues of racism and discrimination. Nevertheless, there is value in proving this conclusion. As has been mentioned, *Loving* has been used as precedence in cases advocating for equal marriage rights for couples of the same sex. The conclusion that racism played the biggest role in revoking anti-miscegenation laws proves that the issue is mainly man-made. This also means that the issue is easily solved by not having personal views and attitudes dictate federal or even state laws. Unfortunately, the answer to racism and discrimination is not as easy as this, but as the age-old adage sets forth: “Those who do not learn history are doomed to repeat it”.

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