

# The Lessons from *Loving v. Virginia* Still Resonate 50 Years Later

Jason Gillmer

One afternoon, Bernard Cohen, an ACLU attorney, left Washington, D.C. and drove to a rural community in Virginia about 100 miles south of the nation's capital. Cohen was meeting with his clients, Richard and Mildred Loving, to talk about their pending appeal before the U.S. Supreme Court. Oral arguments were scheduled for April 10, 1967. At issue was the constitutionality of Virginia's ban on interracial marriages. Richard, who was white, and Mildred, who was black and Native American, had married in 1958 in violation of the law and were now hoping to have the statute and their conviction struck down. As Cohen started to explain some of the legal nuances to the couple, the normally reserved Richard spoke up and offered a simple observation. "Mr. Cohen," he said, "tell the Court I love my wife, and it is just unfair that I can't live with her in Virginia."

The year 2017 marks the 50th anniversary of one of the Supreme Court's most important decisions on race, justice, and equality. In 1967, the Court in *Loving v. Virginia* held that states could no longer prevent people of different races from falling in love and building a family together. The decision had been a long time coming. For over 300 years, colonial and state legislatures had prohibited whites and non-whites from engaging in sexually intimate conduct and from getting married. In a decision that reverberated across the country, the Court in *Loving* rejected the long-held justifications for these bans, finding that efforts to deny interracial couples the ability to marry violated the 14th Amendment's guarantees of Due Process and Equal Protection.

The 50th anniversary of *Loving* provides a valuable opportunity to look back at the history of the laws prohibiting interracial relationships in this coun-

try, examine the environment in which *Loving* was decided, and measure how far we have come since the Court handed down its decision. Now the subject of a movie by the same name, the Court's opinion in *Loving* has emerged as a key decision in furthering marriage equality and protecting the rights of traditionally marginalized and disfavored groups against overreaching majorities.

## The Laws against Interracial Relationships

"Hybridism is heinous," the proslavery theorist Henry Hughes of Mississippi roared in 1854. "Impurity of races is against the law of nature. Mulattoes are monsters. The law of nature is the law of God. The same law which forbids consanguineous amalgamation forbids ethnical amalgamation. Both are incestuous. Amalgamation is incest."

Henry Hughes's tirade against interracial relationships reflected a view that

was commonly held by many in our nation's history, in large part because of the implication interracial sex and marriage had for slavery. At its core, slavery in the United States was an institution based on race, and interracial relationships blurred the distinctions policymakers attempted to draw between black and white. Not only did children of interracial unions create perplexing anomalies—were they slave or free, black or white?—but the intimate act of consensual sex also exposed the hypocrisy of an ideology that labeled one race as inferior to the other.

It is difficult to estimate the extent to which interracial relationships took place in the years before the Civil War. If the number of people identified as mixed-race can offer even a semblance of a guide, however, it is clear that the virulent language coming from Henry Hughes and others never matched actual practices.<sup>1</sup> Tragically, many of the individuals born to black-white unions during slavery times were the product of rape. Indeed, no one who spends much time with the materials from this era can fail to appreciate the amount of sexual exploitation that took place under slavery.

Recent work, however, has begun to uncover the complexity of some of these unions. In one case, court records tell the story of a man named John Clark who lived on a plantation in frontier Texas,

for 30 years, with an enslaved woman named Sobrina. After John died, and questions arose about rightful heirs, a jury found that John and Sobrina were husband and wife and awarded his massive estate to their children.<sup>2</sup>

How often relationships based on mutual affections occurred is not known, but the statutory record indicates that they happened often enough that colonial and state legislators felt the need to act. In 1662—three hundred years before *Loving*—the Virginia legislature passed the first law criminalizing interracial sex, doubling the usual fine for fornication when one of the parties was black and the other white. Two years later, Maryland banned interracial marriages, making clear its disdain for those white women who, “forgetful of their free condition, and to the disgrace of our nation,” married black men.

Other colonies and states followed this early lead and banned interracial sex and marriage. Up and down the East Coast, and across the Midwest and Deep South, legislators passed so-called “anti-miscegenation” laws, imposing fines and imprisonment on interracial couples seeking to live together as husband and wife. As the country expanded west, California, Oregon, Utah, and other areas lashed out at interracial marriages with the same vigor as older states in the Union. Taking into account different demographics, western states did not limit themselves to black-white couplings, but also prohibited whites from marrying Native Americans, Asians, Filipinos, Pacific Islanders, and others. Only a handful of states never had a ban.

As the country transitioned from the nineteenth to the twentieth century, attitudes against interracial sex and marriage hardened in many areas, with black male and white female relationships drawing the strongest condemnation. Thousands of black men were lynched between the 1880s and 1950, and the most common justification given was rape of a white woman. Many of these alleged crimes did not occur, and just as many were likely consensual relationships that were

discovered by a disapproving populace. The Scottsboro Boys and Emmett Till stand as stark reminders of white society’s obsession with keeping the races apart.

By the time the Supreme Court heard Richard and Mildred Loving’s case, 16 states still had laws barring persons of different races from marrying.

### The Lovings

Richard and Mildred Loving never wanted to go through the ordeal of bringing a challenge to the state’s law. Unlike some cases in the civil rights era, theirs was not a test case—a deliberate attempt to violate an unjust law in an effort to raise a constitutional challenge. Richard and Mildred were simply neighborhood sweethearts who wished to spend the rest of their lives together.

The families of both Richard and Mildred had lived in Caroline County, Virginia, for generations. It was a small rural community, made up of hardworking people who generally got along with each other, despite differences in race and appearance. Richard attended high school for a year and then started working construction. He knew Mildred’s family, and the two started spending time together when he was 17 and she was 11. Their relationship blossomed over several years, and Mildred became pregnant when she was 18. At that point, they decided to marry.

Richard and Mildred were aware they could not have a wedding in Virginia. So, instead, they drove to Washington, D.C., in June 1958, had their ceremony, and then returned home to live with Mildred’s parents. A short while later, in the early morning hours of July 11, 1958, the county sheriff and two deputies burst into the Loving’s bedroom and placed them under arrest. Richard pointed to their marriage certificate, framed on the wall, but the sheriff told them it was “no good here.”

Six months later, in January 1959, the Lovings were brought before Judge Leon Bazile, where they pleaded guilty to the crime of marriage. Judge Bazile sentenced them to one year in jail, and

then suspended the sentence on the condition that the Lovings leave the state and not return to Virginia together for 25 years—until 1984. Later, as the case wound its way through the court, Judge Bazile pointed to natural law as justification for the ban and his sentence:

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.

After they pleaded guilty, the Lovings left Virginia and moved to Washington, D.C. They returned home on occasion—Mildred had her three children there—but any trip they took together would have been a violation of the judge’s order, exposing them to re-arrest and reinstatement of the jail sentence. After four years in exile, in 1963, the family had reached their limit. Inspired by events unfolding in the civil rights movement, Mildred wrote to Attorney General Robert F. Kennedy and asked the Justice Department for help. The Department referred her to the ACLU, where Bernard Cohen and Philip Hirschkop agreed to represent them.

Cohen and Hirschkop pressed two arguments before the Supreme Court, the first alleging that the state’s ban violated the Equal Protection Clause of the 14th Amendment and the second alleging that it violated the Due Process Clause. The equal protection argument focused on the promise that similarly situated people have the right to be treated the same, absent sufficient reason. Virginia’s marriage ban, the lawyers argued, drew impermissible distinctions based on race—whites could marry whites, but they couldn’t marry persons of color.

The Supreme Court agreed. In doing so, it rejected the state’s suggestion that

the statute did not discriminate on the basis of race because it punished equally both whites and persons of color. Noting how the ban had been justified as an effort “to preserve the racial integrity of its citizens,” and to prevent “the corruption of blood,” “a mongrel breed of citizens,” and “the obliteration of racial pride,” the Court shut down the state’s position as being “odious to a free people whose institutions are founded upon the doctrine of equality.” The state’s justification for banning interracial mar-

riages was “obviously an endorsement of the doctrine of White Supremacy,” the Court said, in clear violation of the Equal Protection Clause.

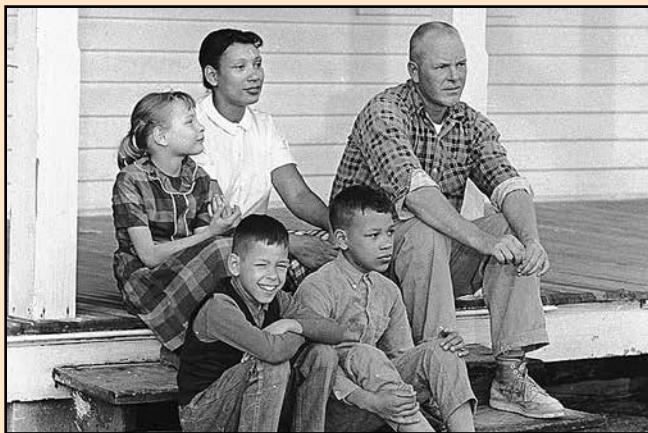
Cohen and Hirschkop also argued that the ban deprived the Lovings of liberty without due process of law in violation of the Due Process Clause. It was an aggressive argument—turning marriage, which had traditionally been left to the states, into a constitutional matter—but it was one the Court found convincing. “Marriage,” it said, “is one of the ‘basic

civil rights of man,’ fundamental to our very existence and survival. To deny this fundamental freedom on so unsupportable 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.”

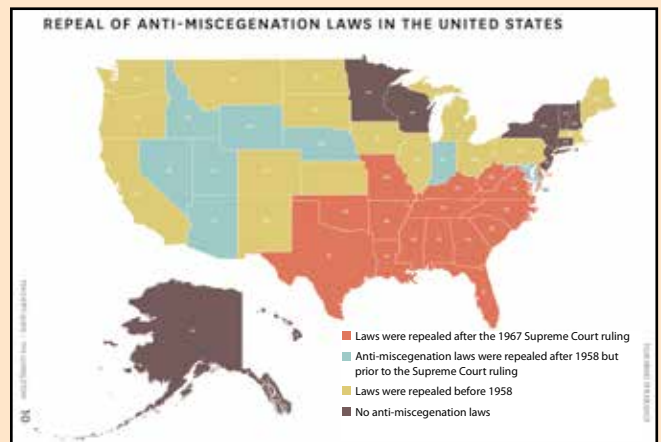
The Court’s decision was unanimous, and it affected not just Virginia’s ban but also the remaining bans in the other 15 states. Henceforth, everywhere in the country, interracial couples would have their marriages recognized by law.

## Loving v. Virginia: Analyzing Three Ways

The following three discussion starters all relate to the Loving story, and the 1966 U.S. Supreme Court decision, *Loving v. Virginia*. The three encourage analysis in three ways: image, text, and map.



- What do you see in the photo?
- What are some observations that you make about the Loving family?



- What story is the map telling? Does anything about the story surprise you?
- How do you think the law in Virginia, as shown on the map, affected the Lovings?

### Excerpt from the U.S. Supreme Court decision in *Loving v. Virginia*:

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

- Why do you think the Court recognized marriage as a fundamental right?
- How did the Court ground its ruling in the Fourteenth Amendment?

1. Richard and Mildred Loving are shown at their Central Point home with their children, Peggy, Donald and Sidney, in 1967. (The Free Lance-Star via AP)  
 2. Reprinted with permission of Teaching Tolerance, a project of the Southern Poverty Law Center, [www.tolerance.org/sites/default/files/general/The%20Loving%20Story%20Study%20Guide\\_0.pdf](http://www.tolerance.org/sites/default/files/general/The%20Loving%20Story%20Study%20Guide_0.pdf)

## The Impact of *Loving*

*Loving's* impact has been far-reaching. Most notably, it has helped break down barriers between the races as it rejected, firmly and finally, all laws and actions rooted in the doctrine of white supremacy. Until *Loving*, notions of white superiority had been used—often explicitly—to justify everything from slavery, to Jim Crow, to Chinese exclusion, to the conquest of Native populations. Together with *Brown v. Board of Education*, however, *Loving* made clear that the government could no longer make decisions based on invidious racial discrimination. The Equal Protection Clause—long relegated to unimportance until this era—took on new life, and it is now one of the most potent weapons of any civil rights lawyer.

After *Loving*, couples crossing the color line have also increasingly found acceptance. In 2014, according to the Pew Research Center, 37% of Americans said having more people of different

racers marrying each other was a good thing for society, up from 24% in 2010. Only 9% said it was a bad thing. The growing acceptance coincides with a growing number of interracial marriages. In 1970, three years after *Loving*, less than 1% of marriages were between spouses of different races. By 2013, the number of interracial marriages had grown to 6.3%. Twelve percent of all new marriages, moreover, were interracial. According to the Pew study, some racial groups are more likely to marry outside their race than others. Of the 3.6 million adults who got married in 2013, 58% of Native Americans married someone of a different race, compared to 28% of Asians, 19% of blacks, and 7% of whites.<sup>3</sup>

With the number of interracial marriages increasing, the children from these unions have also pushed for recognition of their diverse identities. Before the Civil War, white lawmakers jealously guarded the privileges that came from

having white skin, and declared that anyone with as little as one-eighth African ancestry—that is, one great grandparent—was not white, but black. Some even found this too generous, leading to the infamous “one drop” rule that held sway at the end of the nineteenth century. Even in the decades after *Loving*, by custom and culture even if not by law, children of interracial marriages were generally identified by the race of the non-white parent. Barack Obama was our first black president, not our first biracial one.

The tide against multiracial designations has begun to shift in recent years, largely as a result of a new generation of children seeking to celebrate their own diverse backgrounds. The first federal census in 1790 had only three racial categories: free whites, all other free persons, and slaves. In 1850, the term “mulatto” was added, and other racial categories were included in subsequent counts. It was not until 2000, however, that persons were able to identify as more than one race. For the 2010 Census, in a sign of the growing number of people who identify as biracial or multiracial, 2.9% of all Americans, or 9 million people, chose more than one racial category to describe themselves, a trend that will no doubt continue.<sup>4</sup>

*Loving's* impact can be felt in areas outside of race. The most notable has been the pursuit of marriage equality and equal dignity for same-sex couples. *Loving's* embrace of a right to privacy protected by the Due Process Clause sent a clear message that there are certain fundamental rights which cannot be infringed absent a sufficient reason. These liberties include the rights found in the Bill of Rights, but they also extend to certain personal choices central to individual dignity and autonomy, including the right to make decisions about family, about intimacy, and about marriage. “Under our Constitution,” the Court said, “the freedom to marry or not marry, a person of another race resides with the individual and cannot be infringed by the State.”

Forty-eight years after *Loving*, the

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Court in *Obergefell v. Hodges* cited *Loving* when it struck down state laws banning same-sex marriage. As in *Loving*, the Court in *Obergefell* found that “the right to marry is fundamental under the Due Process Clause.” It said, “Like choices concerning contraception, family relationships, procreation, and childrearing, all of which are protected by the Constitution, decisions concerning marriage are among the most intimate that an individual can make.” Denying James Obergefell and John Arthur the right to marry infringed upon their rights just as laws banning interracial marriage infringed upon the rights of Richard and Mildred Loving. Neither ban could be justified. Both were unconstitutional.

## Conclusion

The movie *Loving* (2016), about the now-famous couple, was released last year to critical acclaim, including a best actress Academy Award nomination for Ruth Negga, who plays Mildred Loving.

The movie hues faithfully to the general storyline, ending with the Supreme Court’s decision in 1967. Eight years later, in 1975, Richard was killed in a tragic car accident. Following his death, Mildred continued to live on the family homestead in Caroline County, uninterested in remarrying or starting over. She passed away in 2008 at the age of 68.

Mildred and Richard never sought fame or attention. They lived their lives after the case the same way they lived before it: uncomplicated, in private, close to family and friends. One of the few times Mildred spoke out was in 2007, when a gay rights group approached and asked her to make a statement in favor of same-sex marriage. After some discussion, Mildred agreed to do it. One of the persons involved asked if she understood the significance of putting her name behind the idea that same-sex couples should be able to marry. “I understand it,” Mildred reportedly said, “and I believe it.”

## Notes

1. In 1860, the U.S. Census Bureau counted 588,352 “mulattoes,” which represented just over 1 in 8 persons of color. Bureau of the Census, *Negro Population, 1790–1915* (Washington: Government Printing Office, 1918), 220.
2. *Honey v. Clark*, 37 Tex. 686 (1872); see Jason A. Gillmer, *Slavery and Freedom in Texas: Stories from the Courtroom, 1821–1871* (Athens: University of Georgia Press, forthcoming 2017).
3. Wendy Wang, “Interracial Marriage: Who is ‘Marrying Out?’”, *Pew Research Center*, June 12, 2015.
4. “Multiracial in America: Proud, Diverse and Growing in Numbers,” *Pew Research Center*, June 11, 2015.

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## A POET’S LETTER HOME

from page 132

“battle of Fredericksburg” in historic newspapers available from *Chronicling America* ([chroniclingamerica.loc.gov](http://chroniclingamerica.loc.gov)), narrowed by date to the days after the battle, can offer insights into how the battle was reported at the time. For differing perspectives, students might compare a report from a paper sympathetic to the Union side to one representing the Confederacy. Students might use advanced search tools in the database to locate the December 16, 1862, *New York Herald* that mapped and reported on the battle (page 1) and reported George’s injury (page 8), misspelling his name as “G.W. Whitmore.” Encourage students to imagine reading the descriptions of the battle and then finding a family member listed among the wounded in the same paper.

Inform students that the collection has been digitized and is available from the Library of Congress at [www.loc.gov](http://www.loc.gov)



If you try these suggestions, or a variation of them, with your students, tell us about your experience! During the last week of June, the Teaching with the Library of Congress Blog at [blogs.loc.gov/teachers/](http://blogs.loc.gov/teachers/) will feature a post tied to this article and we invite you to comment and share your teaching strategies.

[collections/feinberg-whitman/about-this-collection/](http://www.loc.gov/collections/feinberg-whitman/about-this-collection/). Browsing the collection might raise other questions and suggest other avenues for research.

Also, let students know that the Library of Congress holds Walt Whitman’s notebooks, available at [www.loc.gov/collections/harned-whitman-collection/about-this-collection/](http://www.loc.gov/collections/harned-whitman-collection/about-this-collection/). These notebooks include diary entries, poetry drafts, and notes on the needs of Civil War hospital patients. Exploring these practical and poetic notes offers an intimate view into his life and thoughts across time. “Notebook LC #94,” for example, overlaps with the time of the letter. Page

58, dated December 20th, is headed “Light at the Lacy house” and includes a more detailed and gruesomely graphic description of the scene at the hospital, as well as a description of the town visible across the river from the front of the house. Preceding and subsequent pages describe other aspects of life in camp, and offer contrasts and comparisons to what Whitman wrote to his mother.

## About the Featured Source

The 4-page letter that Walt Whitman wrote to his mother on December 29, 1862, is in the Charles E. Feinberg Collection: Family Papers, 1852–1892; in the Manuscript Division at the Library of Congress. It is available online at [www.loc.gov/resource/mss18630.00328/?sp=2](http://www.loc.gov/resource/mss18630.00328/?sp=2). See side bar for additional information about this collection.

CHERYL LEDERLE is an Educational Resources Specialist at the Library of Congress. For more information on the education programs of the Library of Congress, please visit [www.loc.gov/teachers](http://www.loc.gov/teachers).