

The Rhetoric of Racism and Anti-Miscegenation Laws in the United States

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Abstract

Systemic discrimination against minority groups in the United States' justice system has been unremitting, abetted by a veil of rhetoric that demands a closer look at the stark social and historical realities that produced it. State anti-miscegenation laws were the product of entrenched beliefs born of white supremacist notions. Such legislation endured because the Constitution of the United States left the regulation of marriage under the jurisdiction of individual states. In this muddled scenario, state laws differed substantially concerning the severity of the punishment for interracial couples. In the present article, I review some cases and questions that predated the Supreme Court ruling on this matter (1967), discuss the rationale for the creation of anti-miscegenation legislation along with the effects of anti-miscegenation laws on the couples, and suggest new approaches in the struggle against racism. Herein, I propose to analyze just how these state anti-miscegenation laws contributed to the social exclusion of minority groups, how their design furthered the preservation of the “purity and superiority” of whites, and how they ultimately guaranteed the whites' privileged access to financial matters.

Keywords: race, racism, anti-miscegenation, justice system

Introduction

The white-dominated American legal system has consistently discriminated against minority groups in differing ways. State anti-miscegenation laws were the product of a belief born from white supremacist ideas. The Constitution of the United States left the regulation of marriage under the jurisdiction of individual states, which accounts for the fact that state laws greatly differed concerning the severity of the punishment for interracial couples. Two types of arguments were introduced when dealing with the issue of interracial marriage. Interracial married couples made arguments that the Fourteenth Amendment's due process in addition to its equal protection clauses allowed them to get married, while opposing parties, especially state courts, held that the states' anti-miscegenation laws did not violate the equal protection clause or the due process clause. In this article, I review some cases and questions which predated the Supreme Court ruling on this matter, discuss the rationale for the creation of anti-miscegenation legislation and the effects of anti-miscegenation laws on the couples, and suggest ways to combat racism. I argue that these state anti-miscegenation laws, which further contributed to the social exclusion of minority groups, were carefully designed for the express purpose of maintaining the purity, superiority, and high access to financial matters of the white (Caucasian) race. Interracial couples fought a long time for their marriage rights. In order to fairly address the issue of interracial marriages, the whole country had to wait for the United State Supreme Court's ruling in *Loving v. Virginia* (1967): to forbid marriages between persons solely on racial classification violated due process and the Fourteenth Amendment's equal protection clauses.

Anti-Miscegenation Laws and Racism

In "The Miscegenation Issue in the Election of 1864," Kaplan (1949) explains the term *miscegenation*. Miscegenation is the mixing of two or more races. Miscegenation came from the Latin *miscere*, to mix and *genus*, race. The term was first coined in 1863 in a seventy-two-page pamphlet entitled "Miscegenation: The Theory of the Blending of the Races, Applied to the American White Man and Negro," published during President Lincoln's reelection (Kaplan, 1949). The idea of creating anti-miscegenation laws is born during the early colonial period: "The Maryland and Virginia assemblies led the way in legislating against miscegenation, beginning in the 1660s" (Bardaglio, 1995, p. 51). During the years following the U.S. Civil War, state and federal courts upheld that anti-miscegenation laws were not discriminatory to minority groups, and that those laws those laws violated neither due process nor the Constitution's equal protection clauses.

Pace v. Alabama (1883) was a case in which the US Supreme Court ruled that the anti-miscegenation laws were constitutional and established unequivocally that, since anti-miscegenation laws apply equally to both races (whites and nonwhites), these laws are not discriminatory against any particular race. A black man, Tony Pace and a white woman, Mary J. Cox, residents of Alabama were arrested for their sexual activities, which showed contempt for the Alabama statute. The court ruled that "whatever discrimination is made in the punishment prescribed in the two sections is directed against the offense designated and not against the person of any particular color or race. The punishment of each offending person, whether white or black is the same" (*Pace*).

McLaughlin v. Florida (1964) overturned an interracial cohabitation law in Florida that ruled that "any negro man and white woman, or any white man and negro woman, who are not married to each other, who shall habitually live in and occupy in the nighttime the same room,

shall each be punished by imprisonment not exceeding twelve months, or by fine not exceeding five hundred dollars" (*McLaughlin*). The ruling in *McLaughlin v. Florida* also overturned the Supreme Court's earlier decision in *Pace v. Alabama*. Though this case was one step further to providing rights to interracial couples, it did not invalidate the law against interracial marriages.

In *Loving v. Virginia* (1967), Mildred Loving, a black woman, and Richard Loving, a white man, were sentenced to prison for a year for their interracial marriage. Their marriage violated the anti-miscegenation law of the state, the Racial Integrity Act of 1924. Mildred had become pregnant in June 1958, and the couple went to Washington DC from Virginia to marry. After their marriage, they returned to Virginia. Mildred Loving thought that showing the police, who had burst into their home when they were sleeping in bed, the certificate that declared her marriage to Richard Loving official would be enough to deter legal proceedings. She was wrong. The case was filed against them because they violated the Virginia code, which restricted racially mixed couples from entering marriage contracts in other states and coming back to Virginia. The punishment was a sentence of from one to five years' incarceration.

Loving v. Virginia came after some positive developments for minority groups in different spheres of life. *Brown v. Board of Education* (1954) affirmed that the "separate but equal" principle does not apply in the field of education. In "The right to marry: *Loving v. Virginia*," Wallenstein (1995) observes that at the time of *Brown v. Board of Education*, the Supreme Court was ruling on various issues of privacy. He discusses some cases and affirms that some questions of privacy were seriously discussed before *Loving v. Virginia* (1967). What degree of control should a person have over his or her life? What are the boundaries of the state's jurisdiction over a person's life? Which "fundamental rights" (p. 39) does a person possess? As a result of these deliberations, some problems were solved. Rights improved after the Supreme Court ruled that people have the right to teach a foreign language to their children (*Meyer v. Nebraska*, 1923). In the 1925 case *Pierce v. Society of Sisters*, the Supreme Court declared that all people have the right to choose to allow their children to attend private school. Similarly, the court outlawed the provision of sterilizing people convicted of certain categories of crimes. Likewise, Wallenstein notes that in *Griswold v. Connecticut* (1965), the Court declared that married people have a right to use or not to use birth control devices to prevent pregnancy. In the wake of all of these achievements, the Supreme Court of the United States, in *Loving v. Virginia*, declared the Virginia anti-miscegenation law unconstitutional, and with this ruling all race-based legal constraints on marriage ended throughout the country.

Chief Justice Warren very clearly said that the purpose of the Fourteenth Amendment is to "eliminate all official state sources of invidious racial discrimination" (*Loving vs.*). He was well aware of the cases of civil rights. He states: "We have consistently denied the constitutionality of measures which restrict the rights of citizens on account of race. There can be no doubt that restricting the freedom to marry solely because of racial classifications violates the central meaning of the Equal Protection Clause" (*Loving vs.*). Chief Justice Warren very powerfully noted: "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" (*Loving vs.*). Finally, the discriminatory laws were scrapped when rights were given to people who had interracial marriages and to those who would like to have interracial relationships.

Laws regarding relations between blacks and whites have been chiefly discussed here because a larger number of cases were filed regarding black-and-white couples. However, anti-

miscegenation laws also discriminated against other groups of people, including Native Americans, Asians, and other non-Caucasian groups. Sohoni (2007), in “Unsuitable Suitors: Anti-Miscegenation Laws, Naturalization Laws and the Construction of Asian Identities,” examines how state-level anti-miscegenation laws affected Asian Americans in the period between the Civil War and the civil rights movement of the 1960s. He mentions that Nevada was the first state to prohibit interracial marriage between Asians and whites. He points out that one reason Asians were discriminated against was to problematize their competition with whites in the job market.

The Yale Law Journal Co., Inc. (1949), without mention of the author, published an article, “Constitutionality of anti-miscegenation statutes” that explains that the belief by whites in nonwhite inferiority and inability was the broad and largely uncontested rationale used to justify discrimination. Legislative prohibitions against intermarriage were the result of the myth of white superiority and provided a legal framework for the preferential treatment of whites in the economic sphere. “Evidence” drawn in support of anti-miscegenation laws concluded that blacks are physically and mentally inferior and that children of mixed races are less intelligent. The idea of blacks being intellectually inferior was based on blacks’ low intelligence-test scores when compared with the scores of whites from the same geographical area. This article emphasizes that it is not because of their lack of potential that blacks performed poorly on the intelligence tests, but rather that the scores are a result of environmental factors. To make this point, it should be noted that the World War I era Alpha Test discovered that the median score of blacks was higher than that of southern whites, and the same kinds of results were shown in other geographical areas. Black children in Los Angeles who were educated with white children had slightly higher intelligence test scores than the white children. Similarly, the widespread myth that blacks are more susceptible than whites to diseases such as pneumonia-influenza and tuberculosis has no basis in fact. Interestingly, while tuberculosis rates at the time were greater among blacks than whites, tuberculosis had been more prevalent among whites than among blacks before the Civil War. The belief in “Negro inferiority” has been described as a reason for anti-miscegenation laws. The abovementioned Yale article states that some whites believe that miscegenation occurs among “the dregs of society” and that their offspring are more likely to be burdens on society. However, the research shows that miscegenation occurs among people at all educational levels, and especially among people at higher educational levels.

Due to discriminatory laws, interracial couples faced different kinds of punishment. States varied regarding the severity of the punishment inflicted on interracial couples. Barnett (1994) provides a list of states and their provisions regarding the punishment of interracial couples. Some states voided marriages and also imposed fines and penalties, and other states only charged fines and penalties. Alabama, Louisiana, Oklahoma, and West Virginia, for example, voided interracial marriages and charged fines and penalties. The punishment ranged from a \$100 fine in Delaware to ten years of imprisonment in several other states.

There were some hidden reasons behind the restrictions on interracial marriages. One main reason was that, through the anti-miscegenation laws, whites wanted to preserve racial purity, as Sohoni (2007), in “Anti-Miscegenation Laws, Naturalization Laws, and the Construction of Asian Identities,” has highlighted. The second reason was that racial mixing would give social and economic privileges to minority groups, and whites did not want to lose the privileges they had enjoyed for so long. On the other hand, Sohoni points out that in some cases, in order to have access to economic opportunities, white men have married Native American and Mexican women.

Ways to Combat Racism

Many scholars have focused on the importance of personal narratives to help the dominant group realize the negative effects of their racism. Lawrence III (2012), in “Listening for Stories in All the Right Places: Narrative and Racial Formation Theory,” states that “race is constructed for a political purpose” (p. 248). Since the dominant group formed the prevailing concepts that formed our ideas of race, it is the responsibility of minorities to challenge the status quo, to create opportunities to share their voices, and to open venues to express solidarity with other minorities in order to begin to expunge such ideas. Further, they must challenge the political motives of the dominant group. Lawrence firmly believes that minorities must come together to fight racism and white supremacy. He asserts that minorities should know what to study, what stories and data to gather, and how to interpret those stories. He adds that “The meanings of Black, White, Asian, Latino, or biracial may change, but they change within a history and politics of competing struggles to maintain or resist racial subordination” (p. 249). What we can deduce from Lawrence’s argument is that to combat racism successfully, we have to actively take part in sharing our stories in order to highlight the injustices of racism and promote the call for equality.

Education also plays a vital role in changing society. Payne (1984) argues that since racism in American education has had a horrifying effect on Americans, “its results cannot be removed simply busing or by providing so-called equal opportunity” (p. 124). The writer adds that theoretically, the legal system might provide equal opportunities to all people regardless of color, but, in reality, it might not provide equal chances to people of color. Payne asserts that multicultural education can be one of the means towards eradicating racism. However, as the author indicates, there is insufficient research on how multicultural education and racism are interconnected. There is, therefore, a challenge for scholars to design the appropriate curriculum that is supportive of creating reciprocity among all racial and cultural groups. If a possible avenue towards a solution lies in multicultural education, the question becomes: is multicultural education needed in high school or only in universities? Is multicultural education required in each department or only in certain departments? These might be research questions for future scholars.

The first phase of racial history was very painful for minorities, as the court cases and the Constitution itself did not safeguard the rights of all people equally. Racism has been abolished legally but still exists in practice. Although Bell (2005), a key figure in critical race theory, believes that racism is “permanent” (p. 309), we still must strive to find the means to foster respect for every race and culture and to weaken discriminatory practices. Bell saw the horrible effects of racism in the twentieth century and believed that racism would continue to be a problem in the twenty-first. Today, it is the task of critical race theory students to combat racism in this twenty-first century by helping empower the downtrodden by insisting that their voices be heard. Accordingly, African Americans, Mexican Americans, Asian Americans, Native Americans, and other racial groups must express themselves through their narratives. There is also a need for all minorities to join for the greater purpose: to fight against racism and white supremacy. Gómez (2012), in her “Looking for Race in All the Wrong Places,” encourages her colleagues to center race and racism in their research in response to the rapidly increasing population of nonwhites. She points out the necessity of doing more comparative research on race. She urges researchers to design more studies that compare how race and racism among racial groups align with whites and subgroups of whites.

Though Critical Race theorists like Bell, Lawrence, Gómez, and others have tried to address the problem of racism in the United States, all those writers believed that there is not enough research done on the interconnectedness between race, racism, and law. Though we can readily understand Bell's frustration, the results of his protests against racist practices in academia have given Gómez optimism about uplifting the condition of racial minorities. If we compare today's world to the world of one hundred years ago, we see many improvements in terms of the respect shown for people of differing races in the United States. What is necessary at this point is, with the tools offered in critical race theory, is to complete a deeper study of minorities and bring their stories, their voices, into academic scholarship. Using personal (counter) narratives, increasing exposure to multicultural education, and incorporating the study of all minorities in critical race theory may prove to be effective practices in the effort to overcome the racism that many say is still prevalent in American society.

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