

The lessons of Loving for same-sex marriage - AvvoStories

Wednesday, June 1 2016, 11:45 AM



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Jun 1, 2016

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The tourist brochures say “Virginia is for lovers,” but it wasn’t always so. Forty-nine years ago, the state of Virginia went to court in the landmark Supreme Court case *Loving v Virginia* and lost, thus unanimously overturning state anti-miscegenation laws in June 1967. It almost seemed like history repeating itself when, in June 2015, the Supreme Court again [took a stand for marriage](#) in *Obergefell v Hodges*, confirming once more that, in the words of [Mildred Loving](#), “Marrying who you want to is a God-given right.”

What does America’s reaction to the legality of interracial marriage tell us about the future of same-sex unions?

America's response to interracial marriage

The anniversary of the Loving decision, June 12, is known as Loving Day, an unofficial holiday marked around the country. But before World War II, 30 of the then 48 states had some form of anti-miscegenation law on the books. These laws varied with the demographics of the states; all banned marriage between blacks and whites, but more diverse states also banned marriage between whites and Asians, Latinos, and/or Native Americans as well.

The tide began to turn in 1948, when California became the first state to repeal their anti-miscegenation law. When Richard Loving and Mildred Jeter married in 1958, 24 states still had anti-miscegenation laws. When they finally won their case on June 12, 1967, that number had already dropped to 16. The conclusion of *Loving v Virginia* was met with relief nationwide, and in most of the affected states, remaining laws were quietly discarded. Only six states required court intervention to implement the ruling.

Substantial legal parallels

There's poetic justice in the legalization of same-sex marriage during the tenure of President Obama, whose own parents would have been unable to legally marry in 22 states at the time of his birth. But marriage laws are about more than just poetry.

Loving v Virginia and *Obergefell v Hodges* both hinged on the Equal Protection and Due Process clauses of the Fourteenth Amendment. Chief Justice Earl Warren wrote in the unanimous Loving decision:

“Over the years, this Court has consistently repudiated ‘[d]istinctions between citizens solely because of their ancestry’ as being ‘odious to a free people whose institutions are founded upon the doctrine of equality.’ . . . At the very least, the Equal Protection Clause demands that racial classifications, especially suspect in criminal statutes, be subjected to the “most rigid scrutiny,” . . . and, if they are ever to be upheld, they 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.”

By the time of *Obergefell*, sexual preference had come to be understood as a protected class, like race, such that it could be substituted for “race” in a reading of the Loving decision. Obergefell won by a much narrower 5-4 margin than *Loving*, but with similar arguments. Echoing Mrs. Loving’s statement from 1967, Justice Anthony Kennedy wrote, “A first premise of the Court’s relevant precedents is that the right to personal choice regarding marriage is inherent in the concept of individual autonomy.”

Culture moves forward

Now a [new movie](#) based on the Lovings is scheduled for November release and it feels so relevant to contemporary issues that it’s already the subject of Oscar speculation (*Mr. & Mrs. Loving*, another film treatment of the Lovings’ battle against the state of Virginia, was released in 1996). In the United States in 2015, [12 percent](#) of all new marriages were interracial and the percentage of cohabiting [same-sex couples who were married](#) jumped from 38 percent to 45 percent in six months.

Just as legalization helped shift public opinion in favor of interracial marriage, attitudes toward same-sex marriage seem to be shifting as well. One month before the Obergefell decision, 43% of Americans believed same-sex marriage should be legal, compared to [48% today in Avvo’s study of modern attitudes towards relationships](#). It seems that America is ready not only to accept that love always wins, but to celebrate it.

This year, in honor of Loving Day, visit [this map](#) to learn where your state stood on interracial marriage in the 20th century. How does that history compare to its performance on same-sex marriage in this [one](#)?

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