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Prop 8, Jim Crow, Nuremberg and Other Unjust Laws Color of Law By David A. Love, JD BlackCommentator.com Editorial Board

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Forty years ago, in many states, my marriage to my wife would have been illegal. In fact, we would have been regarded as criminals and locked up for miscegenation, or "race-mixing" as they called it.

In 1967, the U.S. Supreme Court handed down its decision in *Loving v. Virginia*, 388 U.S. 1, which found that Virginia's Racial Integrity Act, a law banning interracial marriage was unconstitutional in violation of the Equal Protection and Due Process Clauses of the Fourteenth Amendment. At the time of the *Loving* decision, 16 states still had anti-miscegenation laws on the books.

Racist origins of laws restricting marriage

Today's laws banning same-sex marriage - including California's Proposition 8, a ballot measure which passed in the November 2008 election - are the descendants of these pernicious Jim Crow laws and the Nuremberg laws enacted in Nazi Germany. All of these forms of codified intolerance are promulgated for the same reasons: to justify and perpetuate a regime of supremacy, hatred and violence against a group of people, end of story. And the stated rationale for these restrictions, these human rights violations, is always couched in terms of the need to protect tradition, custom, the family or social integrity. Such laws are cloaked in self-righteous, sanctimonious religious ideology, completely reflecting the obsessions and hang-ups of those who

write and support them. So, in the case of invalidating same-sex marriages, those who subscribe to that proposition say that they seek to protect the institution of heterosexual marriage, whatever that means.

Similarly, the Supreme Court of Appeals of Virginia had concluded in a 1955 decision that the state's anti-miscegenation laws had legitimate purposes, which were "to preserve the racial integrity of its citizens," as well as to prevent "the corruption of blood," "a mongrel breed of citizens," and "the obliteration of racial pride," a not-so-subtle endorsement of White Supremacy.

In 1958, Mildred Jeter (Black) and Richard Loving (White), residents of Virginia, were married in the District of Columbia. When they returned to Virginia, they were sentenced to a year in jail for violating Virginia's ban on leaving the state to evade the law (Section 20-58 of the Virginia Code), and the ban on interracial marriages (Section 20-59):

- "Leaving State to evade law. If any white person and colored person shall go out of this State, for the purpose of being married, and with the intention of returning, and be married out of it, and afterwards return to and reside in it, cohabiting as man and wife, they shall be punished as provided in 20-59, and the marriage shall be governed by the same law as if it had been solemnized in this State. The fact of their cohabitation here as man and wife shall be evidence of their marriage." (Section 20-58)
- "If any white person intermarry with a colored person, or any colored person intermarry with a white person, he shall be guilty of a felony and shall be punished by confinement in the penitentiary for not less than one nor more than five years."(Section 20-59)

The Lovings pleaded guilty, and the judge suspended the sentence if the couple agreed not to return to the state for 25 years. "Almighty God created the races white, black, yellow, malay and red, and he placed them on separate continents," the judge wrote in an opinion. "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."

How sweetly ironic that the first African-American president, himself a self-described "mutt," won three Southern states in the Electoral College, including Virginia, the cradle of the Confederacy, which would have criminalized the union of Obama's parents at the time of his birth.

Southern obsession with race-mixing becomes law

The anti-miscegenation laws represented a convergence of issues of sex, race and power. The Southern preoccupation with race-mixing can be explained to some extent by the need to protect the purity of the White woman. Although White men often fathered children of color, the thought of a White woman mating with a Black man was worse than murder. Blacks were regarded as dirty and subhuman, and the psychological basis of the notion of White female purity has been deep-seated. The regulations served to maintain the racial boundaries that had been established in the antebellum years, and uphold the White family as an impregnable institution. This

became particularly important in a new context where Black men were now free, with the potential to express themselves in society as actual men and not slaves. The institution of racial slavery had helped to define a caste system where social equality was implausible. But in the absence of slavery, there was a risk that White Supremacy would be exposed for the farce it is.

The lynching of black men was part and parcel of the anti-miscegenation regime. Relationships between black men and white women, which became the very definition of rape in the Jim Crow context, would result in dead Black men. Thus, White men could maintain their sexual dominance over Black women and not run afoul of the law, yet control Black men and prohibit their contact with White women through anti-miscegenation and lynch laws.

The U.S. Information Agency noted that "As to mixed marriages, the most delicate question of all, it is to be noted that 29 states - all those of the South and many in the Southwest - forbid it. In the North, such marriages are frowned upon, and represent an almost insignificant percentage." Alabama law, for example, declared that "the state legislature shall never pass any law to legalize any marriage between any white person and a negro, or a descendant of a negro," with a penalty of two to seven years' imprisonment for anyone choosing to intermarry or "live in adultery and fornication with each other." Arizona prohibited marriage between whites and anyone with Negro blood, or between whites and Hindus. Arkansas prohibited the concubinage of a Negro with a white, yet allowed marriage provided the Negro blood was not "visible and distinct," under penalty of one month to one year of hard labor. North Dakota prohibited sexual relations, cohabitation and marriage between whites and anyone having 1/8th or more Negro or "Mongolian" blood.

Oregon forbade unions between whites and anyone with one-quarter or more Negro, Chinese or Malay blood, or one-half or more American Indian blood. The state provided penalties for the marriage partners as well as the persons issuing the license and performing the ceremony. In an interesting twist, South Carolina expressly forbade the adoption of a white child by a Negro. The South Carolina state constitution stated that

- "It shall be unlawful for any white man to intermarry with any woman of wither Indian or negro races, or any mulatto, *mestizo*, or half-breed, or for any white woman to intermarry with any person, other than a white man, or for any mulatto, half-breed, Indian, negro or *mestizo* to intermarry with a white woman."

The Texas anti-miscegenation statutes are a conspicuous example of the arbitrary, irrational, and cruelly intrusive nature of the Jim Crow laws:

- "If any white person and negro shall knowingly intermarry with each other on this state, or having so intermarried in or out of the state shall continue to live together as man and wife within this state, they shall be confined in the penitentiary not less than two nor more than five years."

All interracial marriages in Texas were void, but punishment was not imposed unless the amount of Negro blood was one-eighth or more. Further, a municipal ordinance prohibited sexual relations between whites and blacks in the city of Fort Worth.

Jim Crow gives birth to Nuremberg Laws

The Jim Crow legal regime - which embraced not only anti-miscegenation laws but also labor exploitation, political disenfranchisement, segregation in public accommodations, housing and education, not to mention rigid definitions of who was "colored," hence the "one-drop" rule - informed and inspired Hitler's promulgation of the Nuremberg laws in 1935.

The Nuremberg laws, like the Jim Crow laws, were designed to strip a targeted minority group (in this case the Jewish people) of all of their rights. The preamble of the Law for the Protection of German Blood and German Honor stated that "purity of the German Blood is the essential condition for the continued existence of the German people." Not surprisingly, and eerily similar to the Virginia law at issue in *Loving*, section 1 forbade marriage between Jews and Germans, with a penalty of hard labor:

- "Marriages between Jews and subjects of the state of German or related blood are forbidden. Marriages nevertheless concluded are invalid, even if concluded abroad to circumvent this law." (§ 1(1))

Meanwhile, section 2 stated that "Extramarital intercourse between Jews and subjects of the state of German or related blood is forbidden." (§ 2) Under the Reich Citizenship Law, Jews lost their German citizenship. This was part of a legal regime that had begun to dismiss Jews from government jobs, prohibit them from taking state professional exams or joining professional organizations, severely restrict their numbers in public schools and universities, and criminalize their religious and dietary practices. In the coming years, the laws became harsher, with Jewish exclusion from the social welfare system, expulsion from public schools and complete segregation in education and housing. Jews could not hold driver's licenses, were banned from resorts, beaches and swimming pools, barred from sleeping and dining cars on trains, and made to register for forced labor. Jews were forbidden to walk in certain places at certain times of the day. Non-Jewish women married to Jewish man were urged to divorce or suffer the disadvantages suffered by Jews. Nazi law defined children as "persons who are not Jews." Being Jewish, in essence, became illegal. (Source: Midwest Center for Holocaust Education)

Dr. King on unjust laws

One should be suspicious of laws which, whether through edict, legislation or ballot measure, allows the majority to strip the minority of its rights in a wholesale manner. Such laws are immoral and invalid. And as Dr. Martin Luther King noted in his April 16, 1963 *Letter from Birmingham Jail*, unjust laws are made to be broken:

- "You express a great deal of anxiety over our willingness to break laws. This is certainly a legitimate concern. Since we so diligently urge people to obey the Supreme Court's decision of 1954 outlawing segregation in the public schools, at first glance it may seem rather paradoxical for us consciously to break laws. One may well ask: 'How can you advocate breaking some laws and obeying others?' The answer lies in the fact that there are two types of laws: just and unjust.... One has not only a legal but a moral responsibility to obey just laws. Conversely, one has a moral responsibility to disobey unjust laws. I would agree with St. Augustine that 'an unjust law is no law at all'.... An unjust law is a code that a numerical or power majority group compels a minority group to obey but does not make

binding on itself. This is difference made legal. By the same token, a just law is a code that a majority compels a minority to follow and that it is willing to follow itself. This is sameness made legal."

So, fast forward to today, and California's Proposition 8, which restricts the definition of marriage to a union between a man and a woman, and prohibits same-sex couples from marrying. It is necessary to ask whose interests are served from the law, who is behind the law, and who paid for the law. Right-wing Christianity tends to be the usual suspect in such matters. For example, Focus on the Family, a group which opposes abortion and gay rights, and advocates for abstinence-only education, [spent \\$539,000 in cash and \\$83,000 in nonmonetary support](#) to pass Prop 8. As a result, the evangelical Christian group had to cut its workforce by 20 percent, which is a good thing.

Mormon Church

But the bulk of the money for Prop 8 came from [The Church of Jesus Christ of Latter-Day Saints](#) (LDS), the Mormon Church. LDS church leadership supported the ballot initiative, and urged their members to contribute to the effort, to the tune of [\\$20 million, or as much as 70 percent](#) of total funds raised by Protectmarriage.com. This has caused protests by some Mormons, [resignations](#) from the church, and has led to [an effort to strip the religious organization of its 501\(c\)\(3\) tax-exempt status](#). The LDS church, it should be noted, once embraced polygamy, and excluded Blacks until 1978 on the grounds that dark skinned people bore the Curse of Cain and were inferior. And now, apparently, they have given themselves authority as moral arbiters to decide what consenting adults should or should not do in the privacy of their own household, who they should or should not love, and who they can or cannot marry.

Nothing good can come from unjust laws that treat one group as less than human and deny them their full civil and human rights. Jim Crow laws, Nuremberg laws, Prop 8 - different names, but they're all one in the same. Like Virginia's Racial Integrity Act, today's anti-gay marriage laws must be abolished.

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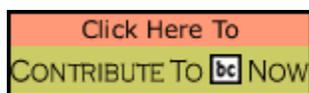
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