

Cite as 87 S.Ct. 1817 (1967)

ity of an arbitration agreement—failure to make the Act

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applicable in state courts would give rise to “forum shopping” and an unconstitutional discrimination that both *Erie* and *Bernhardt* were designed to eliminate. These problems are greatly reduced if the Act is limited, as it should be, to its proper scope: the mere enforcement in federal courts of valid arbitration agreements.

IV.

The Court’s summary treatment of these issues has made it necessary for me to express my views at length. The plain purpose of the Act as written by Congress was this and no more: Congress wanted federal courts to enforce contracts to arbitrate and plainly said so in the Act. But Congress also plainly said that whether a contract containing an arbitration clause can be rescinded on the ground of fraud is to be decided by the courts and not by the arbitrators. Prima here challenged in the courts the validity of its alleged contract with F & C as a whole, not in fragments. If there has never been any valid contract, then there is not now and never has been anything to arbitrate. If Prima’s allegations are true, the sum total of what the Court does here is to force Prima to arbitrate a contract which is void and unenforceable before arbitrators who are given the power to make final legal determinations of their own jurisdiction, not even subject to effective review by the highest court in the land. That is not what Congress said Prima must do. It seems to be what the Court thinks would promote the policy of arbitration. I am completely unable to agree to this new version of the Arbitration Act, a version which its own creator in *Robert Lawrence* practically admitted was judicial legislation. Congress might possibly have enacted such a version into law had it been able to foresee subsequent legal events, but I do not think this Court should do so.

I would reverse this case.

87 S.Ct.—114½

388 U.S. 1

Richard Perry LOVING et ux.,
Appellants,

v.

COMMONWEALTH OF VIRGINIA.

No. 395.

Argued April 10, 1967.

Decided June 12, 1967.

Proceeding on motion to vacate sentences for violating state ban on interracial marriages. The Circuit Court of Caroline County, Virginia, denied motion, and writ of error was granted. The Virginia Supreme Court of Appeals, 206 Va. 924, 147 S.E.2d 78, affirmed the convictions, and probable jurisdiction was noted. The United States Supreme Court, Mr. Chief Justice Warren, held that miscegenation statutes adopted by Virginia to prevent marriages between persons solely on basis of racial classification violate equal protection and due process clauses of Fourteenth Amendment.

Convictions reversed.

1. Marriage ⇌2

Marriage is social relation subject to state’s police power.

2. Marriage ⇌2

Under Fourteenth Amendment, power of state to regulate marriage is not unlimited. U.S.C.A.Const. Amend. 14.

3. Constitutional Law ⇌215

Mere equal application of statute containing racial classifications is not sufficient to remove classifications from Fourteenth Amendment’s proscription of all invidious racial discriminations. U.S. C.A.Const. Amend. 14.

4. Constitutional Law ⇌215

Fact of equal application of statutes containing racial classifications does not immunize statutes from heavy burden of

justification which Fourteenth Amendment requires of state statutes drawn according to race. U.S.C.A.Const. Amend. 14.

5. Constitutional Law ⇌211

Equal protection clause of Fourteenth Amendment requires consideration of whether classifications drawn by any statute constitute arbitrary and invidious discrimination. U.S.C.A.Const. Amend. 14.

6. Constitutional Law ⇌215

Clear and central purpose of Fourteenth Amendment was to eliminate all official state sources of invidious racial discrimination in states. U.S.C.A.Const. Amend. 14.

7. Constitutional Law ⇌215, 223

At very least, equal protection clause of Fourteenth Amendment demands that racial classifications, especially suspect in criminal statutes, be subjected to most rigid scrutiny, and, if they are to be upheld, they must be shown to be necessary to accomplishment of some permissible state objective, independent of racial discrimination which it was object of Fourteenth Amendment to eliminate. U.S.C.A.Const. Amend. 14; Code Va.1950, §§ 1-14, 20-50, 20-53, 20-54, 20-57 to 20-59.

8. Constitutional Law ⇌215

Restricting freedom to marry solely because of racial classifications violates central meaning of equal protection clause. U.S.C.A.Const. Amend. 14.

9. Constitutional Law ⇌223, 258

Miscegenation ⇌1

Miscegenation statutes adopted by Virginia to prevent marriages between persons solely on basis of racial classifi-

1. Section 1 of the Fourteenth Amendment provides:

"All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any

law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

10. Marriage ⇌1

Marriage is one of basic civil rights of man.

11. Constitutional Law ⇌215

Fourteenth Amendment requires that freedom of choice to marry not be restricted by invidious racial discrimination. U.S.C.A.Const. Amend. 14.

12. Marriage ⇌8

Freedom to marry, or not marry, person of another race resides with individual and cannot be infringed by state. U.S.C.A.Const. Amend. 14.

Philip J. Hirschkop, pro hac vice, by special leave of Court, Bernard S. Cohen, Alexandria, Va., for appellants.

R. D. McIlwaine, III, Richmond, Va., for appellee.

William M. Marutani, Philadelphia, Pa., for Japanese American Citizens League, as amicus curiae, by special leave of Court.

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Mr. Chief Justice WARREN delivered the opinion of the Court.

This case presents a constitutional question never addressed by this Court: whether a statutory scheme adopted by the State of Virginia to prevent marriages between persons solely on the basis of racial classifications violates the Equal Protection and Due Process Clauses of the Fourteenth Amendment.¹ For rea-

sons which seem to us to reflect the central meaning of those constitutional commands, we conclude that these statutes cannot stand consistently with the Fourteenth Amendment.

In June 1958, two residents of Virginia, Mildred Jeter, a Negro woman, and Richard Loving, a white man, were married in the District of Columbia pursuant to its laws. Shortly after their marriage, the Lovings returned to Virginia and established their marital abode in Caroline County. At the October Term, 1958, of the Circuit Court

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of Caroline County, a grand jury issued an indictment charging the Lovings with violating Virginia's ban on interracial marriages. On January 6, 1959, the Lovings pleaded guilty to the charge and were sentenced to one year in jail; however, the trial judge suspended the sentence for a period of 25 years on the condition that the Lovings leave the State and not return to Virginia together for 25 years. He stated in an opinion that:

"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 their convictions, the Lovings took up residence in the District of Columbia. On November 6, 1963, they filed a motion in the state trial court to vacate the judgment and set aside the sentence on the ground that the statutes which they had violated were repugnant to the Fourteenth Amendment. The motion not having been decided by October 28, 1964, the Lovings instituted a class action in the United States District Court for the Eastern District of Virginia requesting that a three-judge court be convened to declare the Virginia antimiscegenation statutes unconstitutional and to enjoin

state officials from enforcing their convictions. On January 22, 1965, the state trial judge denied the motion to vacate the sentences, and the Lovings perfected an appeal to the Supreme Court of Appeals of Virginia. On February 11, 1965, the three-judge District Court continued the case to allow the Lovings to present their constitutional claims to the highest state court.

The Supreme Court of Appeals upheld the constitutionality of the antimiscegenation statutes and, after

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modifying the sentence, affirmed the convictions.² The Lovings appealed this decision, and we noted probable jurisdiction on December 12, 1966, 385 U.S. 986, 87 S.Ct. 595, 17 L.Ed.2d 448.

The two statutes under which appellants were convicted and sentenced are part of a comprehensive statutory scheme aimed at prohibiting and punishing interracial marriages. The Lovings were convicted of violating § 20-58 of the Virginia Code:

"*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 20-59, which defines the penalty for miscegenation, provides:

"*Punishment for marriage.*—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 peniten-

2. 206 Va. 924, 147 S.E.2d 78 (1966).

tiary for not less than one nor more than five years."

Other central provisions in the Virginia statutory scheme are § 20-57, which automatically voids all marriages between "a white person and a colored person" without any judicial proceeding,³ and §§ 20-54 and 1-14 which,

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respectively, define "white persons" and "colored per-

sons and Indians" for purposes of the statutory prohibitions.⁴ The Lovings have never disputed in the course of this litigation that Mrs. Loving is a "colored person" or that Mr. Loving is a "white person" within the meanings given those terms by the Virginia statutes.

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Virginia is now one of 16 States which prohibit and punish marriages on the basis of racial classifications.⁵ Penalties

3. Section 20-57 of the Virginia Code provides:

"Marriages void without decree.—All marriages between a white person and a colored person shall be absolutely void without any decree of divorce or other legal process." Va.Code Ann. § 20-57 (1960 Repl.Vol.).

4. Section 20-54 of the Virginia Code provides:

"Intermarriage prohibited; meaning of term 'white persons.'—It shall hereafter be unlawful for any white person in this State to marry any save a white person, or a person with no other admixture of blood than white and American Indian. For the purpose of this chapter, the term 'white person' shall apply only to such person as has no trace whatever of any blood other than Caucasian; but persons who have one-sixteenth or less of the blood of the American Indian and have no other non-Caucasic blood shall be deemed to be white persons. All laws heretofore passed and now in effect regarding the intermarriage of white and colored persons shall apply to marriages prohibited by this chapter." Va.Code Ann. § 20-54 (1960 Repl.Vol.).

The exception for persons with less than one-sixteenth "of the blood of the American Indian" is apparently accounted for, in the words of a tract issued by the Registrar of the State Bureau of Vital Statistics, by "the desire of all to recognize as an integral and honored part of the white race the descendants of John Rolfe and Pocahontas * * *." Plecker, *The New Family and Race Improvement*, 17 Va.Health Bull., Extra No. 12, at 25-26 (New Family Series No. 5, 1925), cited in Wadlington, *The Loving Case; Virginia's Anti-Miscegenation Statute in Historical Perspective*, 52 Va. L.Rev. 1189, 1202, n. 93 (1966).

Section 1-14 of the Virginia Code provides:

Colored persons and Indians defined.

—Every person in whom there is ascertainable any Negro blood shall be deemed and taken to be a colored person, and every person not a colored person having one fourth or more of American Indian blood shall be deemed an American Indian; except that members of Indian tribes existing in this Commonwealth having one fourth or more of Indian blood and less than one sixteenth of Negro blood shall be deemed tribal Indians." Va.Code Ann. § 1-14 (1960 Repl.Vol.).

5. After the initiation of this litigation, Maryland repealed its prohibitions against interracial marriage, Md.Laws 1967, c. 6, leaving Virginia and 15 other States with statutes outlawing interracial marriage: Alabama, Ala.Const., Art. 4, § 102, Ala. Code, Tit. 14, § 360 (1958); Arkansas, Ark.Stat. Ann. § 55-104 (1947); Delaware, Del.Code Ann., Tit. 13, § 101 (1953); Florida, Fla.Const., Art. 16, § 24, F.S.A., Fla.Stat. § 741.11 (1965) F.S.A.; Georgia, Ga.Code Ann. § 53-106 (1961); Kentucky, Ky.Rev.Stat. Ann. § 402.020 (Supp.1966); Louisiana, La.Rev.Stat. § 14:79 (1950); Mississippi, Miss.Const., Art. 14, § 263, Miss. Code Ann. § 459 (1956); Missouri, Mo. Rev.Stat. § 451.020 (Supp.1966), V.A. M.S.; North Carolina, N.C.Const., Art. XIV, § 8, N.C.Gen.Stat. § 14-181 (1953); Oklahoma, Okla.Stat., Tit. 43, § 12 (Supp. 1965); South Carolina, S.C.Const., Art. 3, § 33, S.C.Code Ann. § 20-7 (1962); Tennessee, Tenn.Const., Art. 11, § 14, Tenn.Code Ann. § 36-402 (1955); Vernon's Ann.Texas, Tex.Pen.Code, Art. 492 (1952); West Virginia, W.Va.Code Ann. § 4697 (1961).

Over the past 15 years, 14 States have repealed laws outlawing interracial marriages: Arizona, California, Colorado, Idaho, Indiana, Maryland, Montana, Nebraska, Nevada, North Dakota, Oregon, South Dakota, Utah, and Wyoming.

The first state court to recognize that miscegenation statutes violate the Equal

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for miscegenation arose as an incident to slavery and have been common in Virginia since the colonial period.⁶ The present statutory scheme dates from the adoption of the Racial Integrity Act of 1924, passed during the period of extreme nativism which followed the end of the First World War. The central features of this Act, and current Virginia law, are the absolute prohibition of a "white person" marrying other than another "white person,"⁷ a prohibition against issuing marriage licenses until the issuing official is satisfied that

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the applicants' statements as to their race are correct,⁸ certificates of "racial composition" to be kept by both local and state registrars,⁹ and the carrying forward of earlier prohibitions against racial intermarriage.¹⁰

I.

In upholding the constitutionality of these provisions in the decision below, the Supreme Court of Appeals of Virginia referred to its 1955 decision in *Naim v. Naim*, 197 Va. 80, 87 S.E.2d 749, as stating the reasons supporting the validity of these laws. In *Naim*, the state court concluded that the State's legitimate purposes were "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," obviously an endorsement of the doctrine of White Supremacy. *Id.*, at 90, 87 S.E.2d, at 756. The court also reasoned that marriage has traditionally been subject to state regulation without federal intervention, and, consequently, the regulation of marriage should be left to exclusive state control by the Tenth Amendment.

[1, 2] While the state court is no doubt correct in asserting that marriage

Protection Clause was the Supreme Court of California. *Perez v. Sharp*, 32 Cal.2d 711, 198 P.2d 17 (1948).

6. For a historical discussion of Virginia's miscegenation statutes, see *Wadlington*, *supra*, n. 4.

is a social relation subject to the State's police power, *Maynard v. Hill*, 125 U.S. 190, 8 S.Ct. 723, 31 L.Ed. 654 (1888), the State does not contend in its argument before this Court that its powers to regulate marriage are unlimited notwithstanding the commands of the Fourteenth Amendment. Nor could it do so in light of *Meyer v. State of Nebraska*, 262 U.S. 390, 43 S.Ct. 625, 67 L.Ed. 1042 (1923), and *Skinner v. State of Oklahoma*, 316 U.S. 535, 62 S.Ct. 1110, 86 L.Ed. 1655 (1942). Instead, the State argues that the meaning of the Equal Protection Clause, as illuminated by the statements of the Framers, is only that state penal laws containing an interracial element

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as part of the definition of the offense must apply equally to whites and Negroes in the sense that members of each race are punished to the same degree. Thus, the State contends that, because its miscegenation statutes punish equally both the white and the Negro participants in an interracial marriage, these statutes, despite their reliance on racial classifications do not constitute an invidious discrimination based upon race. The second argument advanced by the State assumes the validity of its equal application theory. The argument is that, if the Equal Protection Clause does not outlaw miscegenation statutes because of their reliance on racial classifications, the question of constitutionality would thus become whether there was any rational basis for a State to treat interracial marriages differently from other marriages. On this question, the State argues, the scientific evidence is substantially in doubt and, consequently, this Court should defer to the wisdom of the state legislature in adopting its policy of discouraging interracial marriages.

7. Va.Code Ann. § 20-54 (1960 Repl. Vol.).

8. Va.Code Ann. § 20-53 (1960 Repl.Vol.).

9. Va.Code Ann. § 20-50 (1960 Repl.Vol.).

10. Va.Code Ann. § 20-54 (1960 Repl.Vol.).

[3, 4] Because we reject the notion that the mere "equal application" of a statute containing racial classifications is enough to remove the classifications from the Fourteenth Amendment's proscription of all invidious racial discriminations, we do not accept the State's contention that these statutes should be upheld if there is any possible basis for concluding that they serve a rational purpose. The mere fact of equal application does not mean that our analysis of these statutes should follow the approach we have taken in cases involving no racial discrimination where the Equal Protection Clause has been arrayed against a statute discriminating between the kinds of advertising which may be displayed on trucks in New York City, *Railway Express Agency, Inc. v. People of State of New York*, 336 U.S. 106, 69 S.Ct. 463, 93 L.Ed. 533 (1949), or an exemption in Ohio's ad valorem tax for merchandise owned by a non-resident in a storage warehouse, *Allied Stores of Ohio,*

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Inc. v. Bowers, 358 U.S. 522, 79 S.Ct. 437, 3 L.Ed.2d 480 (1959). In these cases, involving distinctions not drawn according to race, the Court has merely asked whether there is any rational foundation for the discriminations, and has deferred to the wisdom of the state legislatures. In the case at bar, however, we deal with statutes containing racial classifications, and the fact of equal application does not immunize the statute from the very heavy burden of justification which the Fourteenth Amendment has traditionally required of state statutes drawn according to race.

The State argues that statements in the Thirty-ninth Congress about the time of the passage of the Fourteenth Amendment indicate that the Framers did not intend the Amendment to make unconstitutional state miscegenation laws. Many of the statements alluded to by the State concern the debates over the Freedmen's Bureau Bill, which President Johnson vetoed, and the Civil Rights Act of 1866, 14 Stat. 27, enacted over his

veto. While these statements have some relevance to the intention of Congress in submitting the Fourteenth Amendment, it must be understood that they pertained to the passage of specific statutes and not to the broader, organic purpose of a constitutional amendment. As for the various statements directly concerning the Fourteenth Amendment, we have said in connection with a related problem, that although these historical sources "cast some light" they are not sufficient to resolve the problem; "[a]t best, they are inconclusive. The most avid proponents of the post-War Amendments undoubtedly intended them to remove all legal distinctions among 'all persons born or naturalized in the United States.' Their opponents, just as certainly, were antagonistic to both the letter and the spirit of the Amendments and wished them to have the most limited effect." *Brown v. Board of Education of Topeka*, 347 U.S. 483, 489, 74 S.Ct. 686, 689, 98 L.Ed. 873 (1954). See also *Strauder*

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v. State of West Virginia, 100 U.S. 303, 310, 25 L.Ed. 664 (1880). We have rejected the proposition that the debates in the Thirty-ninth Congress or in the state legislatures which ratified the Fourteenth Amendment supported the theory advanced by the State, that the requirement of equal protection of the laws is satisfied by penal laws defining offenses based on racial classifications so long as white and Negro participants in the offense were similarly punished. *McLaughlin v. State of Florida*, 379 U.S. 184, 85 S.Ct. 283, 13 L.Ed.2d 222 (1964).

[5, 6] The State finds support for its "equal application" theory in the decision of the Court in *Pace v. State of Alabama*, 106 U.S. 583, 1 S.Ct. 637, 27 L.Ed. 207 (1883). In that case, the Court upheld a conviction under an Alabama statute forbidding adultery or fornication between a white person and a Negro which imposed a greater penalty than that of a statute proscribing similar conduct by members of the same race. The Court reasoned

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that the statute could not be said to discriminate against Negroes because the punishment for each participant in the offense was the same. However, as recently as the 1964 Term, in rejecting the reasoning of that case, we stated "*Pace* represents a limited view of the Equal Protection Clause which has not withstood analysis in the subsequent decisions of this Court." *McLaughlin v. Florida*, supra, 379 U.S. at 188, 85 S.Ct. at 286. As we there demonstrated, the Equal Protection Clause requires the consideration of whether the classifications drawn by any statute constitute an arbitrary and invidious discrimination. The clear and central purpose of the Fourteenth Amendment was to eliminate all official state sources of invidious racial discrimination in the States. *Slaughterhouse Cases*, 16 Wall. 36, 71, 21 L.Ed. 394 (1873); *Strauder v. State of West Virginia*, 100 U.S. 303, 307-308, 25 L.Ed. 664 (1880); *Ex parte Virginia*, 100 U.S. 339, 344-345, 25 L.Ed. 676 (1880); *Shelley v. Kraemer*, 334 U.S. 1, 68 S.Ct. 836, 92 L.Ed. 1161 (1948); *Burton v. Wilmington Parking Authority*, 365 U.S. 715, 81 S.Ct. 856, 6 L.Ed.2d 45 (1961).

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There can be no question but that Virginia's miscegenation statutes rest solely upon distinctions drawn according to race. The statutes proscribe generally accepted conduct if engaged in by members of different races. 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

11. Appellants point out that the State's concern in these statutes, as expressed in the words of the 1924 Act's title, "An Act to Preserve Racial Integrity," extends only to the integrity of the white race. While Virginia prohibits whites from marrying any nonwhite (subject to the exception for the descendants of Pocahontas), Negroes, Orientals, and any other racial class may intermarry without statutory interference. Appellants

equality." *Hirabayashi v. United States*, 320 U.S. 81, 100, 63 S.Ct. 1375, 1385, 87 L.Ed. 1774 (1943). At the very least, the Equal Protection Clause demands that racial classifications, especially suspect in criminal statutes, be subjected to the "most rigid scrutiny," *Korematsu v. United States*, 323 U.S. 214, 216, 65 S.Ct. 193, 194, 89 L.Ed. 194 (1944), and, if they are ever to be upheld, they must be shown to be necessary to the accomplishment of some permissible staté objective, independent of the racial discrimination which it was the object of the Fourteenth Amendment to eliminate. Indeed, two members of this Court have already stated that they "cannot conceive of a valid legislative purpose * * which makes the color of a person's skin the test of whether his conduct is a criminal offense." *McLaughlin v. Florida*, supra, 379 U.S. at 198, 85 S.Ct. at 292, (Stewart, J., joined by Douglas, J., concurring).

[8] There is patently no legitimate overriding purpose independent of invidious racial discrimination which justifies this classification. The fact that Virginia prohibits only interracial marriages involving white persons demonstrates that the racial classifications must stand on their own justification, as measures designed to maintain White Supremacy.¹¹ We have consistently denied

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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.

contend that this distinction renders Virginia's miscegenation statutes arbitrary and unreasonable even assuming the constitutional validity of an official purpose to preserve "racial integrity." We need not reach this contention because we find the racial classifications in these statutes repugnant to the Fourteenth Amendment, even assuming an even-handed state purpose to protect the "integrity" of all races.

II.

[9] These statutes also deprive the Lovings of liberty without due process of law in violation of the Due Process Clause of the Fourteenth Amendment. The freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men.

[10-12] Marriage is one of the "basic civil rights of man," fundamental to our very existence and survival. *Skinner v. State of Oklahoma*, 316 U.S. 535, 541, 62 S.Ct. 1110, 1113, 86 L.Ed. 1655 (1942). See also *Maynard v. Hill*, 125 U.S. 190, 8 S.Ct. 723, 31 L.Ed. 654 (1888). To deny this fundamental freedom on so unsupported 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.

These convictions must be reversed. It is so ordered.

Reversed.

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Mr. Justice STEWART, concurring.

I have previously expressed the belief that "it is simply not possible for a state law to be valid under our Constitution which makes the criminality of an act depend upon the race of the actor." *McLaughlin v. State of Florida*, 379 U.S. 184, 198, 85 S.Ct. 283, 292, 13 L.Ed.2d 222 (concurring opinion). Because I adhere to that belief, I concur in the judgment of the Court.

388 U.S. 307

Wyatt Tee WALKER et al., Petitioners,
v.

CITY OF BIRMINGHAM.

No. 249.

Argued March 13 and 14, 1967.

Decided June 12, 1967.

Proceeding to review criminal contempt convictions for violating temporary injunction issued by Circuit Court, Jefferson County, Alabama. The Supreme Court of Alabama, 279 Ala. 53, 181 So.2d 493, affirmed in part and quashed in part and certiorari was granted. The Supreme Court, Mr. Justice Stewart, held that, even though substantial constitutional questions could be raised in view of generality of language contained in city parade ordinance and vagueness of temporary injunction restraining petitioners from participating in or encouraging mass street parades or processions without a permit as required by the ordinance, petitioners who did not attempt to have injunction dissolved or modified or to secure parade permit and who deliberately violated injunction with expectation of going to jail were not entitled to have the constitutional issues considered and were properly convicted of criminal contempt.

Affirmed.

Mr. Chief Justice Warren, Mr. Justice Douglas, Mr. Justice Brennan and Mr. Justice Fortas dissented.

1. Contempt ⇐60(3)

Elements of criminal contempt may be established by circumstantial evidence.

2. Injunction ⇐110

Alabama circuit court, as court of equity, had jurisdiction over petitioners and over subject of controversy when it issued injunction restraining petitioners from participating in mass street parades without permit required by city