

Reading *Loving* Into *Brown*: Racial Segregation, Interracial Marriage & the Anti-Supremacy Principle

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My article seeks to re-envision equal protection doctrine by re-envisioning *Brown v. Board of Education*, the school segregation case.

In the first part of my paper, I ask and answer a fundamental, basic question that the *Brown* Court never raised and therefore did not address. That question is, *what purpose did racial segregation serve?* Why did Jim Crow states segregate its schools? What was the point? The answer to that question is in *Loving v. Virginia*, the 1967 case striking down bans on interracial marriage. Why? Because segregation of schools was about preventing the formation of interracial relationships and interracial marriages. And because the *Loving* Court held that bans on interracial marriage violated equal protection by reinforcing White Supremacy, that means racial segregation also violated equal protection for the same reason.

Loving is Brown, Brown is Loving.

In the second part of my paper, I explain how racial segregation reinforced White Supremacy. I contend that a system of racial supremacy is about social status on the basis of race, or what I call racial status. Racial supremacy reinforces the superior racial status of the dominant racial group and the inferior racial status of subordinate racial groups. Because the main purpose of segregation was to separate and keep whites from blacks so that whites would not lose their high racial status by associating with low status blacks, segregation reinforced White Supremacy. For that reason, separate was inherently unequal.

I conclude my paper by articulating the concept of anti-supremacy, and argue that anti-supremacy should be the animating principle for equal protection doctrine. I explore the implications of an anti-supremacy equal protection doctrine for current issues of racial equality.

Bio

Reginald Oh is professor of law at Cleveland-Marshall College of Law at Cleveland State University. He teaches Constitutional Law and Legal Ethics. His scholarship focuses on Fourteenth Amendment doctrine on race and rights. His articles have been published in the U.C. Davis Law Review, Wisconsin Law Review, and American University Law Review.

Key Terms

Equal Protection, Race, Racial Segregation