Virginia 'Biology' Based on Delusion

The State's Law Against Miscegenation Presumes That the Race of Humans Is Readily Decidable

By Joshua Lederberg

Science and Man

LOVING AND LOVING, man and wife, have appealed to the Supreme Court to reaffirm the brotherhood of man in its most fundamental aspects. They ask that Virginia's miscegenation statute be declared an unconstitutional and discriminatory invasion of human rights. Their appeal, supported by the American Civil Liberties Union, is based mainly on the 14th Amendment's guarantee of equal protection under the law.

Virginia, like many other Southern states, forbids the marriage of "Caucasians" with other races. Richard and Mildred Loving, who have not denied that they match the stereotypes of white and Negro and who are legally married under the laws of the District of Columbia, ask for the right to re-enter Virginia as man and wife, an act for which they are under suspended sentence of a year's imprisonment.

The 14th Amendment may already invalidate the statute, particularly in the light of the odious theory of genetic contamination that must underly it. It would be regrettable, however, if this obscured the absurdity of the Virginia statute in the light of human biology. The application of a racial criterion to an individual act is not merely pernicious; it is also founded on the delusion that the race of any human is a readily decidable fact. This issue not having been reviewed in the Virginia courts, it is probably immaterial to the Supreme Court's current consideration.

THE LEADING case on miscegenation in California, Perez v. Sharp, 1948, gives legal precedent for this argument. "The requirement that a law be definite and its meaning ascertainable by those whose rights and duties are governed thereby applies not only to penal statutes but also to laws governing fundamental rights and liberties," said the California Supreme Court, referring to the difficulty a person of mixed ancestry would have in deciding whom, if anyone, he was qualified to marry.

Virginia law makes it a crime "for any white person in this state to marry any save a white person." "The term 'white person' shall apply only to such person as has no trace whatever of any blood other than Caucasian"; and "Every person in whom there is ascertainable any Negro blood shall be deemed and taken to be a colored person."

The term "blood" already creates a grave difficulty, since the attribution of heredity to blood is an old wives' tale. No test on blood can distinguish the vast majority of ethnic whites from ethnic Negroes in this country, much less indicate some trace of ancestral mixture. It would be an amusing defense against the law if prospective spouses took care to exchange microscopic traces of the blood in their veins by transfusion.

ALLEGORICALLY (a strange idea for law), "blood" could be translated as "ancestral heredity." Now we have an entrancing dilemma: who is certainly "white" as defined by Virginia? There is good reason to doubt that Adam and Eve were both Caucasian, particularly as an overwhelming majority of their contemporary descendants have obvious non-Caucasian attributes. Other theories of human evolution are no more reassuring to the seeker of absolute classifications.

The history of Eurasia and the Mediterranean basin is full of explorations, migrations, invasions, crusades, wars, barter of slaves and princesses—all of which have tended to scramble the major sets of genes. The external characteristic of skin color, which is biologically superficial but obvious, has been subject to caste discrimination for centuries and conceals wide variations in personality and achievement.

In any case, very few citizens can have more than a tentative guess of their ancestry for as many as ten generations, hardly enough to qualify against "any trace" of a disparate color.

Social acceptance is a more honest definition of race than pseudo-biology. Missouri forbids a "white person" to marry anyone who is "one-eighth" or more Negro or Mongolian" and leaves it to the trial jury to make the determination by inspection. Many couples may then be liable to challenge throughout their lives, not knowing the rules by which any jury can make such a determination.

Again, even if the intention could be permitted to stand, the administration of a law founded on subjective prejudice is inconsistent with due process in our constitutional system. A broadside aimed at an ethnic group must eventually be analyzed for its impact on individuals. Human beings have a happy facility for evading simple-minded classifications.

FEW SCIENTISTS would quarrel with these difficulties of individual definition. This has not deterred the Census Bureau, the Civil Service Commission, the Office of Educational Statistics and other Federal agencies from insisting on questions about the "race" of individuals. While the term is not defined, this tendency appears to give the weight of Federal acquiescence to a spurious theory of human classification. Better to replace "race" by ethnic affiliation and strive for a society where this affiliation is an individual choice.

This discussion does not reach the question of inherent differences in social performance between the races at large. It need not, since democratic society is founded on the premise of individual, not racial, values. Nor could it, except on faith, since the existing factual evidence is altogether too flimsy to support any other conclusion than "we don't know." It certainly is clear that the known progeny of interracial marriages are ordinary human beings. Why should the state take any special interest in race as a factor in marriage any more than it does in linguistic background?