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A History of California Anti-Miscegenation Law: Legalizing White Supremacy

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ABSTRACT OF THE THESIS

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California has often been viewed as a rather lenient and progressive state in terms of being accepting of people and beliefs. However, the exclusionary and restrictive legal history of California has also been around since the addition of California into the Union. These laws were used to exclude and restrict non-white racialized people in a multitude of ways. Some of these included laws about citizenship, property, immigration, and marriage. All of these restrictive laws support and influence each other by being focused on one main goal, upholding white supremacy through the legal system. These laws all worked together and were important parts of supporting white supremacy but the focus of this thesis will be on anti-miscegenation laws in California from the beginning of California to the mid-twentieth century. Anti-miscegenation laws in California were both similar and different from the typical law found in the United States. The laws were more restrictive than many anti-miscegenation laws found throughout the United States as they

excluded more groups; however, California was also less restrictive in terms of the punishments and voiding of marriages. Since California was both more restrictive and less restrictive than many states it makes for an interesting case study. Yet, there has not been much focus on California except for the groundbreaking court case of *Perez v. Sharp* (1948). So, this thesis focuses on not only the court case but also how California gained their anti-miscegenation law in the first place and how there was a struggle over its support even after the laws were declared unconstitutional within the state.

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Introduction

California is a state that has been and continues to be thought of as a diverse place with progressive ideologies. However, California has a long history of laws of exclusion and violence towards marginalized groups. California's anti-miscegenation law is one example that shows California's history with racist, sexist, and xenophobic ideas. California was not so different from places like the South that may be thought of as much more restrictive and racist in terms of laws, in fact California may be even stricter, at least in terms of anti-miscegenation laws, because their laws included many more groups that places in other parts of the United States ignored. Anti-miscegenation laws have been studied in-depth in past literature; however, important parts of the United States, like California are left out of the study of these laws or are only discussed in terms of the end of this state's laws on anti-miscegenation. When California is discussed in terms of the history of restrictive laws like this in a limited manner it completely fogs the true racist and restrictive history of California.

Anti-miscegenation laws were prevalent throughout the United States for over a century. There were several different types of anti-miscegenation laws since laws about miscegenation were never federally regulated. The lack of federal regulation often led to a large variation in terms of anti-miscegenation laws throughout the United States. Thus, depending on the state, laws were changed multiple times based often on the fact that different races were gaining in population at different times in different parts of the United States. Some laws were even repealed during the nineteenth century and

reinstated in the twentieth century.[1] The states in the western part of the United States, like California, that were added to the Union later than others implemented laws that were sometimes even more strict than some that existed in other states. Since states were able to create their own laws in terms of miscegenation, there were states that were implementing anti-miscegenation laws while other states were repealing their own anti-miscegenation laws.[2] California's anti-miscegenation law was instituted when the state was added to the United States and this law expanded over time to include different groups of people that were gaining in population within the state. California barred the marriage of whites with Black people, mixed people ("mulattoes"), and Asians by 1933.[3] Even when changes to federal law like the Fourteenth Amendment and the Civil Rights Acts were implemented states simply found ways to continue to uphold anti-miscegenation laws despite these more inclusive federal laws being put in place.[4]

California anti-miscegenation laws have had a complicated history and they have often been dealt with differently than many other states during the twentieth century. Even though there had been other states that had enacted and then repealed their laws pertaining to miscegenation prior to 1948, California is important in that it was the first state to repeal its law in the twentieth century. In addition, the way California repealed its

[1] Peggy Pascoe, *What Comes Naturally: Miscegenation Law and the Making of Race in America*, paperback (Oxford: Oxford Univ. Press, 2009), 40–46.
[2] Peter Wallenstein, *Tell the Court I Love My Wife: Race, Marriage, and Law: An American History*, 1st Palgrave Macmillan pbk. ed (New York: Palgrave Macmillan, 2004), 49.
[3] Native people were not barred from marriage in the law's wording but there is a possible understanding that they fit underneath the "Mongolian" category because of precedence in a different court case in CA but this is not verified. Shown in Irving Tragen, "Statutory Prohibitions against Interracial Marriage," *California Law Review* 32, no. 3 (September 1944): 271.
[4] Wallenstein, *Tell the Court I Love My Wife*, 95.

miscegenation laws is significant. California's laws were declared unconstitutional by the Supreme Court of California and were repealed on these grounds. Many states that had repealed their laws prior to the twentieth century oftentimes simply repealed their laws quietly or simply left those statutes out when new constitutions were drawn up. For example, Illinois repealed its state's law in 1874 and Maine repealed theirs in 1883 without it going to the courts. California's laws were declared unconstitutional in 1948 after a court case, *Perez v. Sharp* was decided by the California Supreme Court.[5]

Black people were barred from marriage to white people in every state that had laws about miscegenation. Thus, Black and white intermarriages have been covered extensively in other literature on anti-miscegenation laws. So, while I include them here, my focus is primarily on other ethnicities and races and their intermarriages with white people. The ban on various Asian-white marriages are important parts of California's anti-miscegenation laws yet they are often completely overlooked in the scholarly literature.[6] Additionally, although Indigenous people were not barred from marrying whites in California, they too are often left out of many discussions on anti-miscegenation laws. Another important group that is often overlooked in discussions on

[5] Perez v. Sharp, 32 Cal.2d711 (Supreme Court of California 1948). also known in other forms such as *Perez v. Lippolod* or *Perez v. Moroney*

[6] Peggy Pascoe touches on Asian-white intermarriages in *What Comes Naturally* but most of the conversation about Asian-white intermarriages is discussed in articles like Deenesh Sohoni, "Unsuitable Suitors: Anti-Miscegenation Laws, Naturalization Laws, and the Construction of Asian Identities," *Law & Society Review* 41, no. 3 (September 2007): 587–618, https://doi.org/10.1111/j.1540-5893.2007.00315.x; Shauna Lo and Laura Wai Ng, "Beyond Bachelorhood: Chinese American Interracial Marriage in Massachusetts during the Exclusion Era," *Chinese America: History and Perspectives*, 2013, 27–37; Tomoko Tsuchiya, "Cold War Love: Producing American Liberalism in Interracial Marriages between American Soldiers and Japanese Women" (Phd Diss, San Diego, CA, University of California, San Diego, 2011), Escholarship, https://escholarship.org/uc/item/1z7699pn.Even these references to Asian-white marriages do not focus on California itself.

interracial relationships is the Latine community.[7] This is especially true in terms of discussion about California because of the large population and the popular and legal understanding that at least Mexicans specifically are white. There was never a law that barred people of color from marrying each other in California. Anti-miscegenation laws were created and used to protect white supremacy not overall racial purity like it was often advertised.

There have been multiple works written on anti-miscegenation law mainly prior to about 2010. Historian Rachel F. Moran's book and article on anti-miscegenation laws in the United States focus on the construct of race and identity in reference to the different state laws about miscegenation.[8] In *Tell The Court I Love My Wife: Race, Marriage, and Law- An American* History, historian, Peter Wallenstein tells a general history of anti-miscegenation laws in the United States with a focus on the changing of the laws between seventeenth century to 1967.[9] Peggy Pascoe over her career wrote multiple articles and a book about anti-miscegenation laws throughout the United States.[10] Pascoe connected these laws to gender, property rights, and sexuality in terms of

[7] I choose to categorize the group commonly known as "Latinos" as "Latine" instead in this paper to be more inclusive of all people that consider themselves a part of this community. I do want to note as well that I am choosing "Latine" as my name for this group though there is a lot of disagreement within the community about even this term. Other ways this community is described include "Latinx," "Latino/a," and more. This is a discussion that continues and is very complicated among those within the community. I am using "Latine" over a term like "Latinx" which may be more well-known because it is more conscious of the community that I am trying to represent within this paper.

[8] Rachel F Moran, "Love with a Proper Stranger: What Anti-Miscegenation Laws Can Tell Us About the Meaning of Race, Sex, and Marriage," *Hofstra Law Review* 32, no. 4 (2004): 1663–79; Rachel F. Moran, *Interracial Intimacy: The Regulation of Race & Romance*, Paperback ed (Chicago: Univ. of Chicago Press, 2003).

[9] Wallenstein, *Tell the Court I Love My Wife*.

[10] Peggy Pascoe, "Miscegenation Law, Court Cases, and Ideologies of 'Race' in Twentieth-Century America," *The Journal of American History* 83, no. 1 (June 1996): 44–69; Peggy Pascoe, "Race, Gender, and Intercultural Relations: The Case of Interracial Marriage," *Frontiers: A Journal of Women Studies* 12, no. 1 (1991): 5–18, https://doi.org/10.2307/3346572; Peggy Pascoe, "Why the Ugly Rhetoric Against Gay

same-sex marriage in multiple articles and ultimately her work culminated to her book *What Comes Naturally: Miscegenation Law and the Making of Race in America* which gives a general history of United States anti-miscegenation laws with a focus on gender and the construction of race through these laws.[11] These works discuss California in a limited way but do mention it in terms of the court case, *Perez v. Sharp* (1948). In historian Dara Orenstein's article, *Void for Vagueness: Mexicans and the Collapse of Miscegenation Law in California*, she gives and in-depth history of the California court case that ultimately ended in the repeal of the California anti-miscegenation law, *Perez v. Sharp*.[12] The past literature has done an extensive study of anti-miscegenation laws throughout the United States but places like California need more attention than they have been paid as it shows a different story than is typically told.

California's multiethnic and immigrant history has often led to an idea that California is a more accepting state than others within the United States; however, this state has an extensive exclusionary history. This exclusionary history included laws about race, citizenship, property, immigration, marriage, and more. All these laws were working in service of each other and to ultimately legalize and fortify white supremacy within California but also in the United States in general. Anti-miscegenation laws were passed and ultimately undone in California during a time when the concern was about exclusion of those deemed harmful to white supremacy. In the past, the literature that

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Marriage Is Familiar to This Historian of Miscegenation," History News Network, accessed October 16, 2021, https://historynewsnetwork.org/article/4708.

[11] Pascoe, *What Comes Naturally*.

[12] Dara Orenstein, "Void for Vagueness: Mexicans and the Collapse of Miscegenation Law in California," *Pacific Historical Review* 74, no. 3 (August 2005): 367–408, https://doi.org/10.1525/phr.2005.74.3.367.

discussed laws about interracial relationships have talked about California in a limited way, often only focusing on the court case, *Perez v. Sharp* (1948), that found these laws unconstitutional. Yet, simply focusing on this instrumental case diminishes how California's exclusionary laws and beliefs that were meant to fortify white supremacy happened both before and after 1948.

To give a full history of California's anti-miscegenation laws it is important to look at California's history even before the state was added to the United States after the land was taken after the Mexican American War. In the first section of this paper the period of California before the year 1900 will be covered which includes multiple topics. Understanding who exactly was living in California at the time of the first discussion of laws about miscegenation is important as this was typically the deciding factor for states as to who would be included in these laws banning miscegenation. Other important points to discuss are how other exclusionary laws were created and enforced that were influential and helpful to creating and upholding anti-miscegenation laws. These laws mainly have to do with the topic of immigration, but they ultimately influence how people in the United States, and specifically California, would view and support the creation of legislation that would restrict people of color's rights overall.

The second section of the thesis will discuss the years between 1900 and 1948. Once the first anti-miscegenation law was implemented in California there were a couple more amendments that were made to the law over time during this almost 50-year period. This section will also cover how California's laws about miscegenation were different from other parts of the United States. The differences include punishments and races that

were banned from intermarrying with white people. Also, how in California the laws stated that these marriages would be voided if a couple somehow did obtain a marriage license within California but were not illegal if the couple was married in a state where miscegenation was legal.

The third section of this thesis discusses the court case, *Perez v. Sharp (1948)*, which ultimately declared California's anti-miscegenation laws unconstitutional. I discuss how this case was argued by both sides and how the California Supreme Court saw this case. Finally, this section shows why this case was different from others around the country and how it was the first state to overturn their anti-miscegenation law because it was found to be unconstitutional through the courts.

The fourth section discusses how people in California felt about and lived without the laws that had formerly banned miscegenation. There was still a lack of acceptance for interracial and interethnic couples after 1948 even though the law banning their relationships was declared unconstitutional. There were also still laws that made it difficult to gain a marriage license for interracial couples in California that are discussed in this section as well.

The final section of this paper discusses the effect that repealing of California's anti-miscegenation laws had on other parts of the United States and ultimately the United States in its entirety. This includes the repealing of other states' laws and the fight over whether banning marriage based on the race of couples was unconstitutional or not.

Part 1: The 1800s

California was and remains rather racially diverse as people of different races have called California their native land or immigrated here over time. Understanding how different races and ethnicities came to be in California is important to be able to understand why California lawmakers often had to deal with different circumstances compared to other places in the United States when legislation about marriage was created by state lawmakers. California became a part of the United States on September 9, 1850, after the Mexican-American War.[13] Originally, thousands of California Natives owned the land and lived in California successfully for thousands of years. Prior to the land that we now call California officially becoming a state many people of different races travelled to California.

The Gold Rush defined a great deal about California's population demographics as many people of different races and ethnicities moved to California in the mid to late 1800s. Chinese immigrants arrived in California in the mid-nineteenth century to join in on the Gold Rush. Many other Asian immigrants emigrated to the United States at the turn of the century to places where labor was needed often as contract workers in different parts of the United States. Mexicans and Chileans were other ethnicities that took part in the Gold Rush as well.[14] Black people both free and enslaved arrived in California to take part in mining and other labor that was needed during the middle to end

[13] "The Treaty of Guadalupe Hidalgo" (1848).
[14] Susan Lee Johnson, *Roaring Camp: The Social World of the California Gold Rush*, 1st ed (New York: W.W. Norton, 2000), 186–87.

of the nineteenth century. Native people in what is now called California continued to live there as many new populations travelled to California.

In terms of other groups who were residing in California, Black people in California were around before the state was added to the Union. There is little known about Black people in California in the time before California was annexed; however, it is known that a town named "Nuestra Senora la Reina de Los Angeles de Porciuncula," now known as Los Angeles was founded by people from Mexico who were of African descent in 1780.[15] There was also an understanding that Mexico had abolished slavery and the importation of slaves in 1829 once they gained their independence from Spain which made this an at least semi-safe place for Black people to live while the United States still supported slavery.[16] Slavery in what is now known as California was a very complicated issue despite the agreements made when the Treaty of Guadalupe Hidalgo was signed. An important part of the Treaty of Guadalupe Hidalgo was that the United States agreed to follow Mexico's abolition of the enslavement of Black people when California was turned over to U.S. control.[17] After this promise was made during the signing of the treaty Californians were not fully willing to free slaves who were already in California as well as fully give up free labor, so efforts were made to modify types of labor that allowed for slavery without necessarily it explicitly looking like slavery.[18]

[15] John M Weatherwax, "Los Angeles, 1781," *Negro History Bulletin* 18, no. 1 (October 1954): 9.
[16] Robert Bruce Blake, "TSHA | Guerrero Decree," Texas State Historical Association: Guerrero Decree, accessed July 17, 2021, https://www.tshaonline.org/handbook/entries/guerrero-decree.
[17] Johnson, *Roaring Camp*, 69–70.
[18] Johnson, 69–70 and 189–93; Lisa Lowe, *The Intimacies of Four Continents* (Durham: Duke University Press, 2015), 38–40.

The removal and murder of Native people had been happening for centuries in the place that we now know as the United States. When it came to the Dawes Act of 1887 this was just another time that Native people were being removed from their land forcefully. This act was meant to allot land to certain Native people that followed specific guidelines by breaking up reservation land.[19] Some Native people were exempt from this law at first but eventually this act included all Native people and groups. So, some Native people did remain in California but they were being restricted and often forced out with violence.

Many other groups were also present in California in the mid-nineteenth century. Mexican people who had been living in Mexico and what is now known as California experienced an entire life shift as the Mexican-American War ended. After the Mexican-American War, the United States and Mexico signed the Treaty of Guadalupe Hidalgo on February 2, 1848.[20] That treaty, among other things, gave land to the United States including part of what is now known as California. There were many important impacts with the treaty; however, one important one regarding this thesis is that it gave United States' citizenship to Mexicans who desired it if they wanted to stay in what was now U.S. territory.[21] The Treaty of Guadalupe Hidalgo also gave citizenship to Native people who were citizens of Mexico, but the United States did not honor this part of the Treaty.

[19] "An Act to Provide for the Allotment of Lands in Severalty to Indians on the Various Reservations (General Allotment Act or Dawes Act)," 388–91 Statutes at Large 24 § (1887), https://www.ourdocuments.gov/doc.php?flash=false&doc=50.
[20] The Treaty of Guadalupe Hidalgo.
[21] The Treaty of Guadalupe Hidalgo.

Giving citizenship to people who were not considered to be white or Black went against citizenship laws so people had to think about how this would work in terms of legality. At this time, by giving Mexican people citizenship, the United States either had to change the language of their laws to expand who was eligible for citizenship or redefine whiteness in terms of the law. This is because the laws regarding naturalization only allowed the naturalization of "white persons" and "aliens of African descent."[22] The federal government chose to categorize Mexicans as white. This impacted many aspects of life for Mexican people in the U.S. for decades later, including the fact that they would be white within anti-miscegenation laws. However, it is also important to remember that even though Mexicans were categorized as white by law, they were not considered white by some societal standards, which was most important for everyday life. Other Latine ethnicities also were living in California at this time like Chileans mentioned before and others from Latin America. However, the relationship between whiteness and non-Mexican Latine ethnicities would become much more complex for decades to come. Later, anti-miscegenation laws would require people to state their race to apply for marriage licenses, however nationalities who are not Mexican may struggle to know what to label themselves as they may not consider themselves white racially.

The concept of race was created rather than being a natural phenomenon that had always existed. In Ariela Gross' book, *What Blood Won't Tell: A History of Race on Trial*, she discusses how race was constructed to justify the atrocities that Europeans were

[22] Ian Haney-López, *White by Law: The Legal Construction of Race*, Rev. and updated, 10th anniversary ed, Critical America (New York: New York University Press, 2006), 42–43.

inflicting upon different groups like Indigenous people and Africans.[23] In this same book Gross shows how the concept of race was constructed, changed, and expanded over time through law to benefit certain groups of people. This is shown in multiple different types of legal cases like citizenship cases, marriage cases, and property cases for example. The concept of race and thus racial categories were used to restrict and exclude people that white society deemed to not belong. These restrictions were reflected in not only the beliefs of people living in California but also in laws that restricted the rights of many groups.

Not only were there legal restrictions against many groups of color in terms of immigration, property, and marriage there was also versions of slavery that were used against people of color. In *The Other Slavery: The Uncovered Story of Indian Enslavement in America* by Andrés Reséndez, these other types of slavery are discussed in depth. Even though California was a "free state" there was a continued buying and selling of people to do different types of labor happened continuously.[24] Slavery was even upheld by legislation in California. An example of this is the Indian Act of 1850 which allowed the arrest of some Native people who could then be bought by "the highest bidder" for labor purposes.[25] The wordings of certain laws or forms of labor were crafted very specifically to not make it sound like slavery outright. There was also slavery that was framed as debt peonage that affected many people.[26] It was common in

[23] Ariela Julie Gross, *What Blood Won't Tell: A History of Race on Trial in America*, 1. Harvard paperback ed (Cambridge, Mass. London: Harvard University Press, 2010), 16–30.
[24] Andrés Reséndez, *The Other Slavery: The Uncovered Story of Indian Enslavement in America* (Boston: Houghton Mifflin Harcourt, 2016).
[25] Reséndez, 2.
[26] Reséndez, 8.

California that richer families would have Native people as servants in whatever ways they were able to obtain Native labor.[27]

During the Gold Rush era many white people and the California government especially were worried about how the diversity would affect life within the new state. This caused the creation of laws that targeted non-white racialized beings in many different ways. Oftentimes, white society justified racism by stating that certain races and ethnicities posed a real threat to all people through a multitude of ways including the bringing of vices, interracial relationships resulting in mixed children, and taking of jobs from white workers.[28] Miscegenation laws are a good example of this as many groups of color justified restrictions in terms of miscegenation because they wanted to protect their own racial purity and white supremacy.[29]

A major worry that existed beginning during the Gold Rush period and continuing for years after revolved around activities that were deemed to be vices.[30] These vices during this period were often, by white society, linked to Chinese people. This ultimately caused many fears among white society that if these vices were to affect white people their lives would hurt in some way. Gambling, drinking, and sex were the main vices that men were able to take part in at this time that were worries for some.[31] The fear was that

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[27] Reséndez, 246–52.
[28] "Miscegenation: Repugnance to It Is Not Prejudice, but a Proper Concern for Racial Purity," *San Francisco Chronicle*, July 24, 1920, ProQuest Historical Newspapers; Erika Lee, *At America's Gates: Chinese Immigration during the Exclusion Era, 1882-1943*, 1st paperback edition (Chapel Hill: University of North Carolina Press, 2003), 26.
[29] "Miscegenation: Repugnance to It Is Not Prejudice, but a Proper Concern for Racial Purity."
[30] Johnson, *Roaring Camp*, 156–57; Nayan Shah, *Stranger Intimacy: Contesting Race, Sexuality, and the Law in the North American West*, American Crossroads 31 (Berkeley: University of California Press, 2011), 53–54; Lee, *At America's Gates*, 24–26.
[31] Peter Boag, *Re-Dressing America's Frontier Past* (Berkeley: University of California Press, 2011), 147–48; Johnson, *Roaring Camp*, 157–73.

these vices would spread to white men as white men were often left alone because they were either bachelors or their family did not follow them to the West. White women were generally absent from the West during the Gold Rush, and they were the ones supposedly capable and responsible for controlling and subduing white men and ultimately society.[32] With the lack of white women, it often allowed white men to feel a sense of freedom as they no longer had a moral compass following them around.[33]

These concern from white leaders, whether government or societal, began to expand to a worry about if extra-marital sex was so prevalent, interracial sex was also happening. Many white men, supposedly because of a shortage of white women, engaged in sexual encounters with Native, Mexican, Chinese, and Black women in California.[34] These interracial relationships were not yet illegal, but they were widely frowned upon. Another example of not necessarily a vice but something viewed as wrong that was pinned on people of color was cross-dressing. Men cross-dressing as women was look down on because it was going against what many viewed as masculine which was seen as really important in the West at this time. Mexican American men were accused of cross-dressing when they were labeled as bandits even though it was more common for white men to take part in this.[35]

These ideas about certain races ran rampant and were fueled by what would be soon understood as Social Darwinism and eugenics in the late nineteenth century. Social Darwinism was a created theory by Herbert Spencer and was based on Charles Darwin's

[32] Johnson, *Roaring Camp*, 141–42 and 152–53.
[33] Johnson, 152–53.
[34] Johnson, 157–63.
[35] Boag, *Re-Dressing America's Frontier Past*, 146–48.

concepts of natural selection and evolution. However, Social Darwinism is not scientific though it is supposedly based on biological ideas. The Social Darwinist ideas created this idea that some races are biologically inferior. So, the thoughts of white people were that non-whites were considered inferior and thus white people should not have been mixing with them because it would ultimately lead to the impurity of the white race through children born from these relations.

Interracial relationships that were taking place in the mid-nineteenth century during and after the Gold Rush were not always consensual. White men at this time were also taking part in slavery by taking Native and Chinese women as domestic servants but these women were expected to be sexual servants as well.[36] There were also Native American women and children being bought and sold as slaves at this time.[37] There were many people and groups who attempted to stop these forms of "unfreedoms;" however, the way this type of slavery was supposed to be stopped was not by blaming the white men but in fact by blaming and restricting people of color.[38] Ultimately these restrictions ranged from simple vocal blame to actual legislation that hurt the immigration of Asian immigrants wishing to come to or stay in the United States. So, immigration acts were proposed and put in place to keep Chinese people, but women especially, out of the

[36] Stacey L. Smith, *Freedom's Frontier: California and the Struggle over Unfree Labor, Emancipation, and Reconstruction* (Chapel Hill, NC: Univ. of North Carolina Press, 2013), 154–57.
[37] Clifford E. Trafzer and Joel R. Hyer, eds., *Exterminate Them: Written Accounts of the Murder, Rape, and Slavery of Native Americans during the California Gold Rush, 1848-1868* (East Lansing: Michigan State University Press, 1999), 18.
[38] Stacey L. Smith, *Freedom's Frontier: California and the Struggle over Unfree Labor, Emancipation, and Reconstruction* (Chapel Hill, NC: Univ. of North Carolina Press, 2013), 12–14 and 143–51; Lowe, *The Intimacies of Four Continents*, 38–40. Lowe uses the word "unfreedom" to talk about different forms of life or struggles. It is not always as clear as just slavery or not slavery. There is freedom and thus unfreedom.

United States, which will be discussed below.[39] At this same time Californian officials also spouted how important it was to control and restrict interracial intimacy as this would be the only way to stop men from taking part in these types of relationships.[40] This would lead to legislation to be put into place regarding miscegenation.

Asians and Asian Americans living in the United States have been historically discriminated against through not only public opinion but also laws. Immigration laws hurt and directly affected different Asian American and Pacific Islanders at different historical moments as each group's population rose at different times within the United States. These immigration laws would ultimately also help with the creation of anti-miscegenation laws in California as many Asian people struggled to find companionship within their own race or ethnicity as immigration laws limited the number or completely excluded groups from entering the United States. In the nineteenth century many Chinese immigrants were specifically targeted as undesirable immigrants like those supposedly influencing white men and thus destroying society. Chinese women were banned from immigrating to the United States through the first exclusion act, the Page Act of 1875, which was enacted seven years before the Chinese Exclusion Act.[41] The Chinese Exclusion Act of 1882 restricted Chinese immigration and life in the United States even more. This act mainly focused on stopping the flow of Chinese immigrants into the United States.[42] Chinese people who were already living within the United States faced

[39] Lee, *At America's Gates*, 92–93.
[40] Smith, *Freedom's Frontier*, 156.
[41] Sucheng Chan, ed., *Entry Denied: Exclusion and the Chinese Community in America, 1882-1943*, Asian American History and Culture Series (Philadelphia: Temple University Press, 1991), 105.
[42] Lee, *At America's Gates*, 24–26.

discrimination and even deportation because of their lack of citizenship and race after this act was enacted. This affected Chinese people as they were unable to have the families they wanted and different lifestyles were created as a result of the restrictions they faced.

The Chinese Exclusion Act put Chinese people at risk of deportation or restricted them from immigrating which meant that many Chinese men who wished to bring over their wives and children could not. This was because Chinese women especially were not being allowed to immigrate to the United States for quite a while because of both exclusion acts.[43] In Sucheng Chan's book *Entry Denied: Exclusion and the Chinese Community in America, 1882-1943*, it is discussed how families continued and were strained by the different exclusion acts. Many women were staying behind in China as their husbands came to the United States to work because their culture stated that this was their moral duty.[44] The United States government was actively trying to restrict the immigration of Chinese women because there was a popular belief that all Chinese women were prostitutes and the belief that there was also a connection between Chinese people and contagious diseases.[45] The Page Act's restriction against women was meant to specifically prohibit the immigration of women for the purpose of prostitution but ultimately the law was effective in restricting all Chinese women from immigrating to the United States.[46] These exclusion laws show how white society was willing to supposedly protect people from vices but were only punishing people of color for these so-called

[43] Lo and Wai Ng, "Beyond Bachelorhood: Chinese American Interracial Marriage in Massachusetts during the Exclusion Era," 29.
[44] Sucheng Chan, "The Exclusion of Chinese Women, 1870-1943," in *Entry Denied: Exclusion and the Chinese Community in America, 1882-1943* (Philadelphia: Temple University Press, 1991), 95.
[45] Chan, 95 and 101.
[46] Chan, 105 and 109.

vices. White supremacy had to be upheld at any cost even if that meant excluding entire groups from the United States.

In Rachel Moran's book, *Interracial Intimacy: The Regulation of Race and* Romance, there is a lot of discussion on why exactly different groups were focused on overtime in terms of anti-miscegenation laws. During the exclusion era Chinese people faced so many exclusions and the "restrictive immigration policies and state bans on intermarriage had particularly harsh consequences."[47] The consequences were so harsh because Chinese men in the United States were ultimately denied wives of any race as Chinese women were not allowed to immigrate to the United States and miscegenation was frowned upon until it was finally restricted by law. In this way Chinese men were emasculated as they were left to be forever childless bachelors.[48]

California anti-miscegenation laws were first discussed alongside the exclusion laws. These laws were another way to limit the spread of other races throughout California especially during a time where many across the United States felt that white people were in danger in a multitude of ways because of people of color becoming more common. California's first statute pertaining to miscegenation was enacted in 1850.[49] The anti-miscegenation law emerged with the statehood of California. This particular law only affected the marriages between whites and "negroes" or "mulattoes."[50] This law was a very common first draft of an anti-miscegenation laws throughout the United States.

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[47] Moran, *Interracial Intimacy*, 32.
[48] Moran, "Love with a Proper Stranger: What Anti-Miscegenation Laws Can Tell Us About the Meaning of Race, Sex, and Marriage," 1667.
[49] Tragen, "Statutory Prohibitions against Interracial Marriage," 272.
[50] Pascoe, *What Comes Naturally*, 84.

However, California had to deal with many racial and ethnic groups that lawmakers in other parts of the United States did not. Thus, lawmakers in California had to constantly amend the anti-miscegenation laws to address changing populations and the diversity of these changing populations. The anti-miscegenation laws in California were thus constantly questioned and amended to keep up with this rise and diversification of the state. The next amendment to the anti-miscegenation law was discussed at the 1878 California constitutional convention.[51] At this time the main focus was on Chinese immigrants as this seemed to be the most "dangerous" ethnicity to whites in California. So, in 1880 the California Civil Code was amended to include the restriction of marriages between white people and "a negro, mulatto, or Mongolian."[52] Although there were many other races and ethnicities living in California during the annexation, Chinese immigrants supposedly posed the largest threat to whiteness along with the already barred black and mixed people. More amendments would take place but not until the early twentieth century.

It was not Chinese people that were affected by anti-miscegenation laws. In the article, "Unsuitable Suitors: Anti-Miscegenation Laws, Naturalization Laws, and the Construction of Asian Identities," Deenesh Sohoni focuses on a lot of different Asian ethnicities including Japanese people and their struggles with restricting laws.[53] At the end of the nineteenth century, Japanese immigration was insignificant. By 1870 only

[51] Pascoe, 82–85.
[52] Moran, *Interracial Intimacy*, 31–32; Pascoe, *What Comes Naturally*, 82–85.
[53] Sohoni, "Unsuitable Suitors."

fifty-five Japanese immigrants lived in the United States.[54] By 1890, Japanese immigration began to rise, especially as the Chinese population was declining because of the tough exclusion act.[55] Japanese people did not start immigrating to California more significantly until the turn of the century. When Japanese people started immigrating, they tried to separate themselves from Chinese people and Japan made a large effort to get the people that were immigrating to the United States through properly. They were even screening people that were attempting to immigrate to the United States; however, Japanese people were still considered unassimilable foreigners.[56] Immigration laws and anti-miscegenation laws started to affect them and apply to them. When Japanese people were starting to gain more size as a population, they began to be seen as a threat to white people and thus they were slipped into the current laws by California lawmakers silently in order to not get kickback from Japanese people within the United States.[57] The wording of the anti-miscegenation laws then were amended to include Japanese people by state lawmakers or the states simply started to stop allowing Japanese people who wanted to marry white people from doing so by stating that the current language of the laws already included Japanese people.[58] This was all decided on a state by state basis and only dealt with states like California that already had the restrictions on Chinese people.

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[54] Masakazu Iwata, "The Japanese Immigrants in California Agriculture," *Agricultural History* 36, no. 1 (January 1962): 26.
[55] Moran, "Love with a Proper Stranger: What Anti-Miscegenation Laws Can Tell Us About the Meaning of Race, Sex, and Marriage," 1667.
[56] Moran, 1667.
[57] Sohoni, "Unsuitable Suitors," 589.
[58] Sohoni, 598.

California was entering the United States and implementing their first anti-miscegenation law in the 1850s when many states were amending and repealing their anti-miscegenation laws completely. However, by the late nineteenth century justifications for anti-miscegenation laws started to arise and states began to hold on to their laws. There had been no miscegenation laws repealed in the United States since Ohio repealed their anti-miscegenation law in 1887.[59] In fact, anti-miscegenation laws were upheld by court cases like *State v. Gibson* (1871), *Pace v. Alabama* (1883) and *Maynard v. Hill* (1888) in the late nineteenth century. The court case, *State v. Gibson* (1871), was decided by the Supreme Court of Indiana. The lower courts had decided that Thomas Gibson, a mixed man, and Jennie Williams, a white woman, had the right to marry because the Civil Rights Act of 1866 nullified Indiana's anti-miscegenation law. However, when this case was ultimately appealed to the Supreme Court of Indiana it was decided that the anti-miscegenation law would be upheld in Indiana and Thomas Gibson would receive his criminal punishment but Jennie Williams was not punished.[60] The court case of *Pace v. Alabama* (1883), which was decided by the United States' Supreme Court, is known for justifying anti-miscegenation laws at it states that the anti-miscegenation laws apply equally to all people. If the laws affect whites' ability to marry who they want as well as Black people's rights to marry whites, then there is no violation to the equal protections' clause of the Fourteenth Amendment according to many lawmakers.[61] This court case also ultimately categorized all interracial relationships as

[59] Wallenstein, *Tell the Court I Love My Wife*, 189.
[60] State v. Gibson, 36 Ind. 389 (Supreme Court of Indiana 1871); Pascoe, *What Comes Naturally*, 47–56.
[61] Pace v. Alabama, 106 U.S. 583 (Supreme Court of the United States 1883); Wallenstein, *Tell the Court I Love My Wife*, 189.

"illicit sex" since these couples were not allowed to marry any relationships they had would fall under these laws about illicit sex and cohabitation.[62]

The court case of *Maynard v. Hill* (1888), which was decided by the United States' Supreme Court, justified that the right to regulate marriage was up to the individuals states and not the federal government.[63] These cases were used as important precedents in terms of anti-miscegenation laws throughout the United States throughout the end of the nineteenth century and into the twentieth century. They could be responsible for the lack of repealing and strengthening of anti-miscegenation laws in the early twentieth century.

Part 2: 1900-1947

In terms of the constitutionality of California anti-miscegenation law, there were many different reworkings of this law as amendments had to be added to include more and more races.[64] The amendments to the anti-miscegenation law happened in 1872, 1905, and 1933. The second amendment made to the California anti-miscegenation law in 1905 was used to add the term "Mongolian" to the list that were illegal and void if they married a white person.[65] Much of this reworking came down to the fact that California started off by simply following along with other states who had created anti-miscegenation laws by only banning the mixing of Black and white people. Unlike in places in the South where laws about miscegenation really began, the West was finding

[62] Pascoe, *What Comes Naturally*, 249.
[63] Maynard v. Hill, 125 U.S. 190 (Supreme Court of the United States 1888); Peter Wallenstein, *Tell the Court I Love My Wife: Race, Marriage, and Law: An American History*, 1st Palgrave Macmillan pbk. ed (New York: Palgrave Macmillan, 2004), 189.
[64] Tragen, "Statutory Prohibitions against Interracial Marriage," 272.
[65] Tragen, 272.

that they also had to worry about groups other than Black people affecting the "purity of the white race." Other states throughout the United States may have other races living within them but the size of the populations especially in southern states were simply not large enough to worry about. So, it seems that only states that saw their different racial populations get to a certain size enacted laws specific to each race or ethnicity.[66]

Some acts in California did not always successfully get enacted. There was an act that was introduced to the California legislature, but it never was made a law that would have banned Hindu and white marriages in 1921.[67] These marriage laws were using specific language to describe races. This often caused problems if people could not agree upon a definition for a racial category. Race is something that is constructed just like these titles for different races. Oftentimes these racial categories that were being used in the language of the laws were difficult to understand and it was often assumed that people simply understood what these racial categories were. However, this eventually does become a problem as new racial categories had to be added over time when certain people did not agree that they fit the racial category that some put them in.

As anti-miscegenation laws expanded so did the other exclusionary laws about immigration and more. In 1924 the Johnson Reed Act was enacted, and this came with a lot of new restrictions in terms of immigration and the borders of the United States. The Johnson Reed Act of 1924 restricted many groups from immigrating for the first time, but

[66] This mainly happened in the western United States but sometimes places like Mississippi and Missouri enacted laws against Asian groups. States like South Carolina and Georgia had laws that included Native Americans as well.
[67] "Ban on Inter-Racial Marriages Proposed," *Hanford Morning Journal*, February 3, 1921.

an important part of this Act was the establishment of the United States Border Patrol.[68] The creation of the U.S. Border Patrol affected many groups but it immensely affected Latine people as the regulation of the United States' southern border was focused on as many white people feared the immigration of Latine people into the United States. There was so much fear that white supremacists took control of the Border Control and hired people as Border Patrol agents that would uphold white supremacist thoughts.[69]

In the beginning of the twentieth century Asian ethnicities were facing continued discrimination across the United States. This continued discrimination ultimately resulted in different laws based on race to be created to restrict equality and freedom for Asian ethnic groups living in the United States. Many of these laws were created because of the ideas that were continuing since the late nineteenth century. Ideas like the fact that they would bring "their Oriental habits, vices, prejudices, and general mode of life" which supposedly did not assimilate well in the culture of the United States.[70] The biggest objection though is in terms of economics. There was a story being told that Asian ethnicities, specifically Chinese people at this time, would come in direct competition with white workers ultimately "degrading" white labor to "the Asiatic level."[71] There multiple layers to people objecting to not only the immigration of people but also the mixing of people once people immigrated. At this same time there was also a law being

[68] Greg Grandin, *The End of the Myth: From the Frontier to the Border Wall in the Mind of America*, First paperback edition (New York: Metropolitan Books, Henry Holt and Company, 2020), 162–68.
[69] Grandin, 163–64.
[70] "The True Objections to Asiatics," *San Francisco Chronicle*, May 21, 1903, ProQuest Historical Newspapers.
[71] "The True Objections to Asiatics."

created in California about restricting property rights of Asian people.[72] Now exclusionary laws were reaching into the private lives of people rather than simply focusing on immigration.

There were also ideas about miscegenation that continued into the twentieth century about how these types of relationships went against natural ways of life. Some people believed that "inherent and instinctive prejudices are manifestly designed for the protection of the beings who experience them."[73] So, discriminatory ideas and ultimately laws were being created and justified through racial bias and Social Darwinist ideas. Stemming from the discriminatory immigration laws that started in the nineteenth century, Asian groups were also barred from gaining citizenship within the United States. At times Asian ethnicity groups' ability to gain equality through citizenship was directly challenged in courts.

Two individuals of Asian descent attempted to gain citizenship access despite the ban because they believed they had found loopholes in the laws. There are two main cases that involve discussions about this attempt to gain citizenship for different Asian groups in the United States. Despite these not taking place within California, it is important to note how whiteness affected all aspects of life and that the distinctions between races were adamantly protected by the United States government or individual

[72] California's Alien Land Law of 1913 and 1920 affected mainly Japanese people in California from leasing or own property. These laws were another way to push Asian groups from the state and to restrict their rights in as many ways as possible.
[73] "Race Antipathy: Nature Has Some Good Reason for Implanting This Sentiment," *San Francisco Chronicle*, September 1, 1907, ProQuest Historical Newspapers.

states. Whiteness was seemingly defined in vague terms in United States laws and with these cases the attempt was made to include certain Asian groups as white.[74]

In 1914 Takao Ozawa applied for citizenship as he was a Japanese immigrant who had been living in the United States for at least 20 years. He had raised children in the United States, he was educated at the college level in the United States, his family maintained the use of the English language in their home, and they attended church consistently. He was supposedly the perfect candidate for citizenship.[75] However, he was denied citizenship due to his race. When the case was brought to the Supreme Court, they discussed the definition of "white." According to the court in 1922 Ozawa was denied as "white" as the category was interpreted as meaning people who were considered part of the Caucasian race, and he was not considered white under these definitions.[76] However, this argument would come back the next year when Bhagat Singh Thind applied for citizenship.

In the court case, *United States v. Bhagat Singh Thind* (1923),Thind claimed that as a "high caste Hindu of full Indian blood, born at Amit Sar, Punjab India" he fell under the category of Caucasian and thus should be considered white.[77] He was originally granted citizenship by the state of Oregon, but the case was brought to the United States' Supreme Court because a naturalization examiner attempted to cancel the certificate granting Thind citizenship. They claimed that he could not obtain citizenship because he

[74] Ozawa v. United States, 260 U.S. 178 (Supreme Court of the United States 1922); United States v. Bhagat Singh Thind, 261 U.S. 204 (Supreme Court of the United States 1923).
[75] Ozawa v. United States, 260 U.S. 178.
[76] Ozawa v. United States, 260 U.S. 178.
[77] United States v. Bhagat Singh Thind, 261 U.S. 204.

was not a white person. Thind and his lawyers even brought up the precedent of *Ozawa v. United States* (1922) because that case had stated that if someone was of the Caucasian race then they could be naturalized.[78] The idea that someone, like Thind was Caucasian by a certain definition was shut down rather quickly as the opposition stated that they wished to use the popular understanding of the word "Caucasian" since that is how statutes are supposed to be understood. According to the United States' Supreme Court, the popular sense of the category "Caucasian" meant "white" racially. The court then decided that he would be denied citizenship based on these definitions of "white" and "Caucasian." Asian groups were not only fighting against discriminatory laws like those that dealt with citizenship as white people were desperately holding onto anyway they could strengthen white supremacy through law.

In *Contagious Divides: Epidemics and Race in San Francisco's* Chinatown, Nayan Shah discusses another worry that arose later in the early twentieth century, involving xenophobia about Chinese people expressed through fears of disease, particularly that which surrounded Chinatowns.[79] Parallel to the fear of vice that spread through growing urban areas of California in the mid-nineteenth century, fears of disease carried by Chinese immigrants also spread. Multiple diseases that ultimately were tied socially to Chinese people inside and outside of the United States. Leprosy was one of the main diseases that health professionals stated they feared were being spread originally by Chinese people.[80] Health officials believed it was spread through interracial sexual

[78] United States v. Bhagat Singh Thind, 261 U.S. 204.
[79] Nayan Shah, *Contagious Divides: Epidemics and Race in San Francisco's Chinatown*, American Crossroads 7 (Berkeley: University of California Press, 2001).
[80] Shah, 7.

encounters, which also fostered the belief that Chinese men and women were responsible for the spread of syphilis as well. The stigma around miscegenation, idea that it was morally suspect, and association with infectious disease added to both fears and prohibitions on interracial relationships.[81]

White elite worried about more than Asian immigrants. They also feared the threats to white employment posed by Mexican and other Latine immigrants. In the early 1920s and during the Great Depression workers from Mexico in particular were voluntarily and involuntarily forced to "repatriate." A euphemism for deportation, repatriation was implemented to make room for "real Americans" to receive welfare and jobs during tough economic times.[82] Some voluntary repatriates left jobs and homes because of threats of violence they were receiving in many different states. There were also many Mexican people that refused to leave the United States even if it meant splitting up their family, as they sought to keep their children safe from events that the parents had experienced in Mexico. There were also families that had U.S. born children who were citizens, who were also forced to leave the country as their parents were being repatriated; others separated from their parents to stay in the United States.[83]

Latine people in California were plentiful but since they were legally considered to be white, they continued to be allowed to mix with white people. They did experience discrimination during the twentieth century, but it was often in other ways that did not

[81] Shah, 7.
[82] Francisco E. Balderrama and Raymond Rodriguez, *Decade of Betrayal: Mexican Repatriation in the 1930s*, Revised (Albuquerque: University of New Mexico Press, 2006), 120–21, https://catalog.hathitrust.org/Record/005147114.
[83] Balderrama and Rodriguez, 126–27.

have to do with miscegenation. Often since it was up to the marriage license clerk to decide who to give or deny a marriage license to appearance often was their main thing to go off of. So, Latine people who may have darker skin tones would find themselves possibly being denied a marriage license or they might have been allowed to obtain a marriage license when they should not have. Native people were never barred from marrying white people in California. However, this did not mean that discrimination did not surround them especially when dealing with miscegenation. For Native people just like Latine people there was a possibility that marriage clerks would stop them from obtaining a marriage license based on skin color.

California changed their laws multiple times as they discovered loopholes within their laws banning the mixing of white people and Asians. As different ethnic groups attempted to marry white people and were denied many times, challenges by people of color to the laws were made as they did not find themselves fitting under the racial/ethnic terms written in the law.[84] Oftentimes even if people were allowed to marry after challenging the laws through loopholes the laws were amended to include new categories.[85] Filipino residents faced a variety of forms of discrimination, exclusionary policies, and miscegenation laws as well. During the early twentieth century some were grouped as "Mongolian" despite also being categorized as "Malay" instead depending on who was categorizing them. These challenges were brought to the attention of California lawmakers through fights in California courts. In California disagreements over how to

[84] Roldan v. Los Angeles County, 129 Cal. App. 267 (Court of Appeal of California, Second Appellate District, Division Two 1933).
[85] Roldan v. Los Angeles County, 129 Cal. App. 267.

classify Filipinos were common during the twentieth century.[86] There were many arguments made to individual marriage license clerks by Filipinos who wished to marry white people.

A specific example of these fights about marriage licenses was the case of *Roldan v. Los Angeles County* (1933). In Los Angeles California, Salvador Roldan stated that as a Filipino man he should be able to marry his white girlfriend because Filipinos are not technically barred from marrying whites.[87] Roldan consulted with a lawyer about this fact. Salvador Roldan wished to marry Marjorie Rogers, a white woman, and they were aware that they would be denied a marriage license, so they brought the case directly to a California court. Both sides knew that the main argument would be surrounding the question about the "Mongolian" category.[88] Ultimately it was argued by Roldan and Rogers' lawyer that the creators of the amendment that added "Mongolian" to the prohibited groups in terms of miscegenation would have been aware of the proper definition of "Mongolian" which only includes Chinese and Japanese people. So, if these lawmakers had wished to include Filipinos in the ban, they would have explicitly put the category of "Malay" into the laws as well.[89] In April of 1932 the case was decided, and Roldan was allowed to marry Marjorie Rogers as it was concluded that as a Filipino, he fit under the category of "Malay" and not "Mongolian."[90] It was decided that technically, Filipinos prior to the addition of "Malays" to the law were not restricted from marrying

[86] Pascoe, *What Comes Naturally*, 131.
[87] Bert Eljera, "Anti-Miscegenation in the '90s," *Asianweek*, December 19, 1996.
[88] Pascoe, *What Comes Naturally*, 154–55; Roldan v. Los Angeles County, 129 Cal. App. 267.
[89] Pascoe, *What Comes Naturally*, 155–56.
[90] Roldan v. Los Angeles County, 129 Cal. App. 267; Pascoe, *What Comes Naturally*, 157–59.

white people.[91] Despite the fact that Californian law makers argued that they should have been barred under the label "Mongolians."

After the Roldan case was decided lawmakers in California expanded the anti-miscegenation laws to include the "Malay" racial category. In 1933, with the third amendment made to the California anti-miscegenation law, the term "Malay" was added.[92] Attempts were made to appeal the Roldan court case to the California Supreme Court but these appeals were ultimately denied and these new amendments to the laws to include "Malays" was allowed.[93] So, after all of the amendments were made to the California anti-miscegenation laws over time, the exact wording of the final statute was "All marriages of white persons with Negroes, Mongolians, members of the Malay race, or mulattoes are illegal and void."[94]

Even though there were constant attempts to justify and expand the ban on miscegenation there was also a lot of rethinking of miscegenation especially after World War II.[95] This was mainly because many white United States' soldiers were coming home from the war with Japanese brides. However, in places like California, these marriages would have been illegal. There were a lot of technicalities at this time that often made it legal for white American soldiers to bring home wives that were not white. The Johnson-

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[91] Eunhye Kwon, "Interracial Marriages Among Asian Americans in the U.S. West, 1880-1954" (Phd Diss, Florida, University of Florida, 2011), 18, University of Florida Digital Collections, https://ufdc.ufl.edu/UFE0042801/00001.
[92] Tragen, "Statutory Prohibitions against Interracial Marriage," 272; W. I. C, "Marriage: Miscegenation: Cal. Civ. Code §§ 60, 69," *California Law Review* 22, no. 1 (November 1933): 116.
[93] Pascoe, *What Comes Naturally*, 159.
[94] Tragen, "Statutory Prohibitions against Interracial Marriage," 272; C, "Marriage: Miscegenation: Cal. Civ. Code §§ 60, 69," 116.
[95] Larry D. Barnett, "Interracial Marriage in California," *Marriage and Family Living* 25, no. 4 (November 1963): 424, https://doi.org/10.2307/349040.

Reed Act of 1924 made it difficult for many people of color, especially of Asian descent, to immigrate to the United States.[96] However, American soldiers were allowed to go around these quotas used in the Johnson-Reed Act of 1924 and bring their wives to the United States despite the national quotas. The War Brides Act in 1947 would allow white American soldiers to bring wives of other races to the United States.[97] Even though anti-miscegenation laws were still in force; white American soldiers were able to marry their Asian spouses and bring them to the United States with no trouble. Of course, Asian wives were still subject to racism and discrimination, especially for being married to a white man, but they were still a part of those in the population that were able to go around the anti-miscegenation laws and engage in an interracial marriage.

Discrimination within the laws themselves were not the only discrimination that interracial couples faced living their daily lives. There was hate, disgust, and more of these couples and the concept of miscegenation in openly among strangers and family members consistently before laws were eventually repealed. Many people voiced their distaste of miscegenation openly in newspapers. Sometimes people provided reasoning for their dislike of interracial couples but often they did not. Some of the reasons that people stated miscegenation was wrong was that social norms would be destroyed, the struggle of mixed children, eugenics, and more. Many people stated that even if it was not immoral to be in an interracial relationship the relationship would always be a struggle and would ultimately likely end because people of different races cannot

[96] Tsuchiya, "Cold War Love," 91.
[97] Tsuchiya, 90–91.

understand each other.[98] Often, the argument against miscegenation that many white people used was that miscegenation was hurtful and dangerous to white women who were getting involved in these types of relationships. These white women were considered "foolish" and would ultimately realize their mistake that led to "misery" and "unhappiness."[99]

Laws were created and upheld by white legislators and many in the general population, but it was also common in the early twentieth century for people of color to find miscegenation immoral and wrong. This could be shown to be the case because of the advertising constantly spread by white people in the United States. Many arguments about why miscegenation laws should be kept in place revolved around the fact that "no one wanted to mess with the purity of their race."[100] People of color were told constantly that in order to protect their own races from disappearing or genetically impure that they should not take part in interracial marriages. The Chinese Chamber of Commerce met and told people that they could not advise people to intermarry.[101] In a newspaper article there were Japanese people and organizations promoting the idea that miscegenation was wrong. They cited Herbert Spencer as an important thinker who is known for creating the idea of Social Darwinism. Spencer had talked a lot about how the mixing of races can only have bad outcomes especially for the children that came out of these relationships.

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[98] "Cynthia Grey's Letters," *The Sacramento Star*, December 14, 1912; "What They Say To Geraldine," *Oakland Tribune*, July 23, 1922; "Interracial Marriage," *The Colton Courier*, October 29, 1948; Estelle Lawton Lindsey, "The Log of the Good Ship Marriage," *Los Angeles Evening Express*, April 16, 1920, sec. Fiction.
[99] "Miscegenation Is but Making a Mockery of the Marriage Relation as It Should Be," *The Fresno Morning Republican*, March 31, 1910.
[100] "Miscegenation: Repugnance to It Is Not Prejudice, but a Proper Concern for Racial Purity."
[101] "Miscegenation: Repugnance to It Is Not Prejudice, but a Proper Concern for Racial Purity."

Children that were products of intermarriage were often viewed as less than all people as they supposedly had the worst features and genes of both parents.[102]

So, there were instances where drastic measures were taken to prevent people from intermarrying even if it was not necessarily against the law because it was between two people of color. A San Francisco newspaper article from 1912 discusses how a Japanese man was very angry that his niece, Taka Muroaka, had run off with her "porto rican" boyfriend, Rigo Custodio, to marry in Washington because it was legal there.[103] Muroaka's uncle called to warn the marriage license bureau that if they came in to not allow them to get a marriage license. He also called the police and persisted that they be arrested even though police were not called on couples like this as it was not a crime to obtain a marriage license. Despite the fact that they should have been allowed to marry especially after they had travelled to Washington, they were arrested by police shortly after arriving in Washington. They were most likely arrested because Muroaka's uncle had claimed that his niece was kidnapped rather than for attempting to violate miscegenation laws, but it is unclear exactly what occurred from this one document.

Black people in California were involved in interracial marriages with white people in California despite the fact that they were illegal. Of course, the laws barred these Black-white marriages but ultimately some interracial couples were able to go outside of California and get married, making these marriages legal because California did not void marriages that took place outside of the state even if couples lived in

[102] "Miscegenation: Repugnance to It Is Not Prejudice, but a Proper Concern for Racial Purity."
[103] "Japanese Opposes His Niece's Marriage to Native of Porto Rico: License Bureau Warned and Couple Held in North," *San Francisco Chronicle*, November 20, 1912, sec. Marriage Announcements, ProQuest Historical Newspapers.

California. An important aspect to understand in terms of Black-white intermarriages is that like other mixed marriages, Black family members were often not fully accepting of these types of marriages but sometimes would eventually come around to accepting these marriages once the white spouse showed that they were accepting and wanted to take part in their culture and family.[104]

In California, the anti-miscegenation laws were more lenient than other states. In some cases, for example, California was one of the only states at the time that allowed and validated interracial marriages of couples if they were married outside of California in a state where their marriage was legal.[105] However, this meant that couples would have to be able to afford to travel to a state such as Washington or New Mexico the closest states that did not ban miscegenation. This aspect of California law also distinguished it from others throughout the United States as most states would not validate marriages that took place across state lines even if miscegenation was legal in the state that a couple married in. California used this part of their law even if a couple was trying to separate. This was tested in October of 1937, when a Black and white couple who had been legally married in New Mexico though they lived in California, sought an annulment since their marriage was illegal in California. The couple's request to receive an annulment was denied and they were told to file for divorce if they wished to separate.[106] This case

[104] Renee Christine Romano, *Race Mixing: Black-White Marriage in Postwar America* (Cambridge, Mass: Harvard University Press, 2003), 105–6.
[105] Tragen, "Statutory Prohibitions against Interracial Marriage," 277; C, "Marriage: Miscegenation: Cal. Civ. Code §§ 60, 69."
[106] "Annulment Plea Denied White Wife of Negro," *California Eagle*, October 28, 1937.

shows one of the important differences about California in comparison to other states, in which void marriages that took place outside of the state even if they were interracial.

Another important variation of law that California had in terms of miscegenation was that it was not considered a crime in the state to take part in miscegenation.[107] All states that had anti-miscegenation laws except for California attached penalties to couples who violated the laws.[108] So, in other states not only was miscegenation illegal and the marriages considered void, but the couples also faced punishment if they were caught. These punishments varied from fines to jail time. In California, the laws simply stated that these marriages were not allowed and would be voided if they somehow did obtain a marriage license within California. Jail time and fines used as a punishment varied by state. For example, in Alabama the anti-miscegenation laws barred the marriage between white and Black people and the couple and the person who performed the marriage could be punished with a jail sentence of anywhere between two to seven years.[109] In South Dakota marriages were barred between whites and "members of the African, Korean, Malayan, or Mongolian races," and these marriages could result in jail time of up to ten years and/or a thousand dollar fine for the couples that violated these laws.[110] These are just two examples of many states in the United States that not only barred interracial

[107] Tragen, "Statutory Prohibitions against Interracial Marriage," 276.
[108] Phyl Newbeck, *Virginia Hasn't Always Been for Lovers: Interracial Marriage Bans and the Case of Richard and Mildred Loving*, 1st ed. (Carbondale: Southern Illinois University Press, 2008), 35.
[109] Larry D. Barnett, "Anti-Miscegenation Laws," *The Family Life Coordinator* 13, no. 4 (August 1964): 95–97.
[110] James R. Browning, "Anti-Miscegenation Laws in the United States," *Duke Bar Journal* 1, no. 1 (March 1951): 29, https://doi.org/10.2307/1370809.

marriages but also applied punishments to couples and sometimes even the person who performed the marriages.

There were also instances when interracial couples in California were able to obtain marriage licenses because the marriage license clerk believed that their marriage was legal. Since the decision to hand out a marriage license often came down to simply a marriage license clerk's personal idea about skin color and race and who belonged in the categories barred from marrying whites, sometimes couples were able to marry when they legally should not have been able to. At the same time, if skin colors seemed to differ too much between a couple even if the two were technically barred from marriage, for example Native Americans-white couples or Punjabi-Mexican couples, could find themselves being denied a marriage license.[111] This decision would be simply based on a marriage clerk's perception of their races based only on skin color.

Over these nearly fifty years the laws about miscegenation in California had expanded multiple times. These laws were also upheld and justified through many other exclusionary laws that were enacted during this time. All of these laws were used to fortify white supremacy throughout the United States but specifically in California as well. However, by the middle of the twentieth century California's laws would begin to change.

Part 3: 1948

Perez v. Sharp (1948) was the court case that ultimately brought attention to the unconstitutionality of anti-miscegenation laws in California. The most in-depth look at

[111] Kwon, "Interracial Marriages Among Asian Americans in the U.S. West, 1880-1954," 18.

this court case was done by Dara Orenstein in the article, "Void for Vagueness: Mexicans and the Collapse of Miscegenation Law in California," in 2005. Orenstein looks at the court case of *Perez v. Sharp* (1948) using documents as well as conducting oral interviews with the people involved in and affected by the case. In the article, Orenstein looks at this court case in a unique way by focusing on Andrea Pérez and her ethnicity specifically.[112]

Andrea Pérez, a white woman, wanted to marry Sylvester Davis, a Black man. However, according to the statute they were not permitted to obtain a marriage license because they saw Pérez as a white person. Pérez's ethnicity was Mexican, and she grew up in the United States but because of how Mexicans were understood racially in the United States Pérez was white. Pérez being considered white under law was typical because Mexicans after the Mexican American War were given citizenship and thus white as stated earlier. However, Mexicans in California were treated as less than white people on a daily basis. Mexicans throughout the United States had violence inflicted upon them and segregation implemented during the early twentieth century despite them being white by law. So, Mexicans in the United States may have been white and citizens legally but in their everyday lives they faced discrimination and violence because they were considered "others" by whites. Pérez's true heritage has been covered up not only by the law with the removal of the accent over her name but also continued by scholars who have written about this case with no mention of Pérez's heritage.[113] So, it is

[112] Orenstein, "Void for Vagueness: Mexicans and the Collapse of Miscegenation Law in California."
[113] Orenstein, 370.

important to note when writing about this case that the couple that was denied a marriage license consisted of a Mexican woman and a Black man.

This case was argued in very different ways than the famous case of *Loving v. Virginia* (1967) will be argued decades later. The case, *Perez v. Sharp* (1948) used the First Amendment as a reason why the anti-miscegenation laws in California were unconstitutional. In cases like *Loving v. Virginia* (1967), many people would use the Fourteenth Amendment to argue unconstitutionality of different state laws by stating that barring marriages based on race violated the Equal Protections Clause in the Fourteenth Amendment. However, during the 1940s and prior to this many people had already discussed the constitutionality of not only California laws but also anti-miscegenation laws in general within the United States. The conclusion that was consistently reached at this time was that these laws do not violate the Fourteenth Amendment as these laws apply equally to all races involved as white people were not allowed to marry people of color just as people of color were barred from marrying white people. Knowing this, in the *Perez v. Sharp* (1948) case lawyers argued based on religious freedom protected by the First Amendment.[114] They argued that their own church, Roman Catholic, were willing to marry Pérez and Davis as their church found no fault in marrying the two of them despite their differing races.[115] If the laws about miscegenation barred them from marrying it would infringe on their religious freedom and in this case their right to marry since a religious union is not legally binding and they wished to have a legal marriage.

[114] Pascoe, *What Comes Naturally*, 212; Orenstein, "Void for Vagueness: Mexicans and the Collapse of Miscegenation Law in California," 387.
[115] Perez v. Sharp, 32 Cal.2d711; Orenstein, "Void for Vagueness: Mexicans and the Collapse of Miscegenation Law in California," 387.

In this case they also argue that marriage is a fundamental right and by barring marriages between people of different races the government was infringing on their fundamental right to marry. The fundamental right to marry includes the right to marry the spouse of a person's own choosing.[116] However, the discriminatory law about miscegenation prevents many people from being able to truly marry anyone of their choice since entire races were off limits. With this court case the typical understanding of miscegenation being "unnatural" was shown to be wrong as the right to marry is a "natural" and a fundamental right even if people wish to marry interracially.[117] This discussion about natural versus unnatural could not have happened if the argument was based on the anti-miscegenation laws violating the Fourteenth Amendment. With court cases in the past like *Pace v. Alabama* (1883), it had already been argued and justified by case decisions that miscegenation was equal to all, and it was unnatural for races to mix.

The lawyers' argument was originally focused on a religious freedom argument, the California Supreme Court Justices shifted the discussion of the laws to discuss the Fourteenth Amendment and the equal protection clause.[118] Justice Roger Traynor really began to argue with the state himself about the unconstitutionality of California's anti-miscegenation laws because he questioned their validity and lack of thoroughness.[119] The decision of California's Supreme Court was reached though it was thoroughly debated,

[116] Perez v. Sharp, 32 Cal.2d711.
[117] Pascoe, *What Comes Naturally*, 213.
[118] Pascoe, 216.
[119] Perez v. Sharp, 32 Cal.2d711; Pascoe, *What Comes Naturally*, 216–17.

and three of the seven judges had dissented.[120] This decision was the first time a state had declared an anti-miscegenation law unconstitutional since the mid 1800s.[121]

The decision by the majority of the California Supreme Court led by Justice Roger J. Traynor ruled that California's anti-miscegenation law was unconstitutional based on the ambiguous racial categories and the fact that the justices in the majority argued that the right to marry was a fundamental right. These beliefs were held strongly by Justice Traynor, who wrote the majority opinion. Justice Traynor believed that the right to marry is both a natural and civic right.[122] In his opinion Justice Traynor states that "marriage is thus something more than a civil contract subject to regulation by the state; it is a fundamental right of free men." He states this because there are no "social objective and reasonable means" that prohibit interracial marriage. [123]

In *Romance and Rights: The Politics of Interracial Intimacy, 1945-1954,* Alex Lubin focuses on a specific part of Justice Traynor's opinion in terms of the case of *Perez v. Sharp (1948)*. This major argument that Justice Traynor made in his opinion was that "race should not shape public policy except in cases of national security." Lubin argues that this opinion that Justice Traynor states shows the effect that wars going on at the time had on the United States thoughts and eventually laws.[124] There had been a shift in the way that some people in the United States between the pre-war and the post-war eras started to feel and think about race. With race and ethnicity being a large focus in

[120] Perez v. Sharp, 32 Cal.2d711.
[121] Moran, *Interracial Intimacy*, 6 and 84.
[122] Alex Lubin, *Romance and Rights: The Politics of Interracial Intimacy, 1945-1954.* (Jackson: Univ Pr Of Mississippi, 2009), 18.
[123] Perez v. Sharp, 32 Cal.2d711.
[124] Lubin, *Romance and Rights*, 18–19.

especially WWII and a rise in eugenics and scientific racism to justify how certain groups are treated there was a more attention being paid to how race can affect a lot of life. Lubin focuses on how the politics of World War II were starting to affect racial ideologies in terms of laws within the United States.[125] This court case brought out many ideas about laws revolving race as many discussions began to happen as the Civil Rights Movement began to form. The decision that California's anti-miscegenation was unconstitutional caused a lot of fear in some groups of people and legislators who brought up the topic of states' rights being hurt by a fight for civil rights. One of these people was Justice John Shenk who wrote the dissent in *Perez v. Sharp (1948)*.[126] Justice Shenk discussed in his dissent how marriage is something that should be controlled by federal oversight and said, "it affects in a vital manner public welfare, and its control and regulation is a matter of domestic concern within each state."[127]

Another major focus of the majority opinion of the *Perez v. Sharp* case was the idea that the eugenic beliefs that surrounded laws like segregation and miscegenation. Many scientists and people in general were finding that these ideas about eugenics had no true scientific backing. Justice Traynor was one of these people and he stated these ideas against eugenics outright in his opinion.[128] These eugenics beliefs were some of the mainly stated reasons that states, and people gave for the upholding of these laws about miscegenation. Eugenic beliefs did continue even though they were being discounted by many scientists. However, more people began to see that eugenic ideas were troubling

[125] Lubin, 19.
[126] Lubin, 19–20.
[127] Lubin, 20.
[128] Moran, *Interracial Intimacy*, 85–87.

and could cause major problems on a mass scale. This is mainly because of what happened during WWII. There was a lot of connection to eugenics and Nazism during the war and that let a certain group justify committing a genocide against other groups of people because they were seen as inferior. There began to be groups that felt it was better to start to reverse eugenic ideas and thus laws that were based on these ideas to avoid what had just taken place. Marriage was declared a fundamental right because the Supreme Court Justices found that restricting marriages takes away people's rights to take part in any contract that they want to.[129] If the eugenic beliefs about race are no longer seen as scientific then the segregation of marriage based on race has no validity legally according to many justices including Justice Traynor.

After the court decision was made, Pérez and Davis stated that they were going to wait for a couple weeks before asking for a marriage license again as some decisions were still to be made on both sides about appeals.[130] There was also a separate problem that happened after the official court decision was made. A marriage bureau head, Rosamond Rice, who had originally denied the couple their marriage license still refused to grant interracial couples marriage licenses in California until the County Attorney ordered them to. The Court Attorney did order marriage license clerks to ignore the law banning interracial marriages after the *Perez v. Sharp* decision.[131] So, in December of

[129] "Interracial Marriages Ruled Legal: State Supreme Court Voids California Ban Dating to 1850," *Oakland Tribune*, October 1, 1948; Perez v. Sharp, 32 Cal.2d711.
[130] "Couple in LA Will Delay Request on Marriage License," *The Californian*, October 4, 1948.
[131] "Obeys Court Order: County Attorney Wipes Out Ban on Racial Marriages," *California Eagle*, November 4, 1948.

1948 Andrea Pérez and Sylvester Davis applied for and were issued a marriage license.[132] Once they were issued their marriage license, they were married shortly in 1949.[133] The instant resistance of some despite the overturning of California's anti-miscegenation law shows that there were people who did not agree with this law ending. California's racist ideas did not disappear with the law and some people would continue to state their opinions for decades to come.

After the decision, Pérez and Davis were allowed to marry, and California anti-miscegenation laws were declared unconstitutional. Although, Pérez and Davis' lawyers argued the law to be unconstitutional based on the First Amendment, ultimately the miscegenation ban in California was overturned because The Court was unsure how to deal with the fact that Mexicans were white.[134] This is one of the reasons why California was such an important part of the ultimate overturning of all United States miscegenation bans. When the laws were vague, it was more difficult to tell people, they could not marry. The racial definitions that were chosen and created to categorize people were found to be too vague at least in California as is shown with the case of *Perez v. Sharp*. The constant amendments and questioning of laws and racial categories led to the repeal of anti-miscegenation laws in California because the laws were found to be too vague.

California became the first state to repeal an anti-miscegenation law in the twentieth century because of its unconstitutionality.[135] This win in the courts was a

[132] "License Issued to Pair For Interracial Marriage," *Los Angeles Evening Citizen News*, December 14, 1948.
[133] "Couple to Marry As Court Voids Interracial Ban," *The Tidings*, December 17, 1948.
[134] Orenstein, "Void for Vagueness: Mexicans and the Collapse of Miscegenation Law in California," 371.
[135] Pascoe, *What Comes Naturally*, 206.

turning point for interracial couples. However, this did not immediately mean that the entire population of California was happy or accepting of the repeal of the ban on interracial marriage.[136] Although California's Supreme Court did not expect that this decision would influence other states because "a state court decision could not overturn the precedents established by the Supreme Court."[137] Before this case was decided in 1948, couples across the United States had been fighting individually for the right to marry; however, now there was a precedent on record that stated the unconstitutionality of anti-miscegenation laws. Now people could move forward and begin to advocate and win cases in other states that continued to have anti-miscegenation laws on the books in their state. This is what will be discussed in the following sections especially because racism in California and other states did not disappear simply because the racist laws were repealed.

Part 4: Life in California Post-1948

In the years following the ruling of the California Supreme Court about miscegenation laws, interracial couples began to marry throughout California. Laws banning the mixing of races in terms of marriage were now considered to be unconstitutional but this did not always mean that individual feelings and thoughts about miscegenation changed automatically for all. Many people still viewed miscegenation as wrong for decades and made that very clear to those who took part in those relationships, especially if it was their own family members.

[136] "High Courts' Split Rulings Criticized," *Los Angeles Evening Citizen News*, November 19, 1948.
[137] Romano, *Race Mixing*, 40–41.

People took to not only personal conversations to discuss their distaste of miscegenation but also took to a more public format often found in many different newspapers throughout California. Some of the people who were upset about the California Supreme Court's ruling were lawyers, officials, but also everyday people. Some of these opinions were put in newspapers as simple announcements of certain people's feelings about the ban on miscegenation being struck down.[138] Others were told through question-and-answer sections of newspapers as many people were asking or explain how they should feel about miscegenation being legal in California.[139] The same beliefs that were discussed prior to the Court's decision about protecting white supremacy fueled by eugenic ideas were used after the lifting of the ban on miscegenation.

In California after the repeal of anti-miscegenation laws, interracial couples still faced discrimination. Even though it was now legal to intermarry, people continued to face discrimination from their family members, people in general, and marriage license clerks. This is especially true until laws were created to stop marriage clerks from asking for people to state their race before they were allowed to obtain a marriage license. Even though the laws on miscegenation were declared unconstitutional there were still possible barriers to interracial marriage in California. On September 18th, 1959, it finally became illegal to ask for a person's race or color to name on a marriage license.[140] Prior to this,

[138] "High Courts' Split Rulings Criticized."
[139] Richmond Barbour, "The Parents' Corner," *The Whittier News*, January 30, 1952; "Camera Quizzer," *Mirror News*, September 2, 1949.
[140] John H Burma, "Interethnic Marriage in Los Angeles, 1948-1959," *Social Forces* 42, no. 2 (December 1963): 157.

marriage license clerks were still able to deny people a marriage license if, based on their own judgment, they felt that the couple had lied about the races they had stated on their paperwork for the marriage license. There was a bill that was introduced by California Assemblyman, Robert L. Condon, in January of 1949.[141] However, this attempt failed and a bill similar to this was not introduced again until early 1955 by California Assemblymen and then approved in 1959.

This 1959 bill proposed multiple things including officially removing the California anti-miscegenation from law since that had not been done yet even though it was declared unconstitutional in 1948. This bill also eliminated the part of a marriage license application that asked the applicant to state their race.[142] Once it becomes illegal to ask for race when applying for a marriage license gathering data about interracial marriages became very difficult.[143] As couples continued to face discrimination when they wanted to intermarry the numbers of interracial couples remained low. Over the following decade or so, as the numbers of interracial marriages continued to rise, along with greater assimilation, so did the tolerance of mixed marriages slowly over time.[144]

Many people continued to express their fear and hatred of miscegenation and these beliefs continued to be upheld as other states throughout the United States held onto their own laws banning miscegenation. After miscegenation was legal in California the

[141] "Introduces Bill," *Hanford Morning Journal*, January 15, 1949.
[142] "Assembly OK's Repeal of Interracial Marriage Ban," *The Californian*, February 19, 1959; "Interracial Marriages Approved in Measure," *The Chico Enterprise-Record*, March 23, 1955.
[143] John H Burma, "Interethnic Marriage in Los Angeles, 1948-1959," *Social Forces* 42, no. 2 (December 1963): 157–58.
[144] Burma, "Interethnic Marriage in Los Angeles, 1948-1959," 160.

number of interracial marriages slowly did rise.[145] However, as stated previously, discrimination continued. Studies done in the latter half of the twentieth century show that discrimination continued for interracial couples. Sociologist Samuel Perry, in his study, "Religion and Whites' Attitudes Toward Interracial Marriage with African Americans, Asians, and Latinos," shows that religion continued to be an important factor in whether white people were accepting of miscegenation. If white people were more religiously devout, they were more likely to disagree with interracial marriage.[146] However, in this same study, Perry also discusses how diversity in the church may change these assumptions and ideas. Since more churches were gaining in multiracial attendance it is shown that white people who attend a church where there is more racial diversity have "more positive attitudes toward interracial marriage in general and for their family members."[147] These beliefs about miscegenation continued to be stemming from these eugenic ideas that started at the creation of what we know as California.

The fear surrounding miscegenation continued strongly in the white community as keeping purity a priority continued. These thoughts continued to come up in conversation as more and more states repealed their own anti-miscegenation laws over the almost two decades between 1948 and 1967 when the United States Supreme Court declared anti-miscegenation laws unconstitutional. Many people even continued to hold

[145] "Nearly 1.2 Million American Marriages Are Now Interracial," *The Napa Valley Register*, February 12, 1993; "1970 Census Report Finding: Interracial Marriages on Rise in'60s," *Press-Telegram*, February 15, 1973.
[146] Samuel L. Perry, "Religion and Whites' Attitudes Toward Interracial Marriage with African Americans, Asians, and Latinos," *Journal for the Scientific Study of Religion* 52, no. 2 (June 2013): 426, https://doi.org/10.1111/jssr.12020.
[147] Perry, 427–28.

these beliefs after 1967 strongly but those numbers slowly dropped as interracial marriages continued to rise throughout the rest of the twentieth century.[148] These thoughts were always linked to upholding white supremacy and finding ways to exclude many different groups.

Part 5: The Effect of California

After *Perez v. Sharp* was decided, lawmakers and state leaders began to discuss the constitutionality of anti-miscegenation laws even more than they had before and more people were becoming more accepting of the idea that anti-miscegenation laws were unconstitutional.[149] These discussions were focused not just on California but also on a large part of the United States who after 1948 still had anti-miscegenation laws.[150] Many states that had anti-miscegenation laws held on to the fact that they said that their laws were not unconstitutional because the laws did not violate the equal protections clause of the fourteenth amendment.[151] After *Perez v. Sharp* was decided by the Supreme Court of California, there was a case that now existed on the record that other couples in different states could point to when arguing that their own state's laws were unconstitutional. Slowly, the states mainly in the West overturned their laws following in California's

[148] Larry Meeks, "Don't Jump to Conclusions on Who Is Racist," *The Californian*, April 16, 1994, sec. Living; Larry Meeks, "Bad Choices the Reason Mixed-Marriages Failed," *The Californian*, March 4, 1995, sec. Living; Harry Ferguson, "White Objections to Interracial Marriages Are Still Very Strong," *The Chico Enterprise-Record*, February 15, 1968; Carl Yetzer, "S.B Cal State Panel: Interracial Marriage Pitfalls Told," *The San Bernardino County Sun*, November 13, 1968; Mary Haworth, "Racial Problem Is Difficult to Brook," *Los Angeles Evening Citizen News*, December 19, 1961.
[149] Roger D. Hardaway, "Unlawful Love: A History of Arizona's Miscegenation Law," *The Journal of Arizona History* 27, no. 4 (Winter 1986): 386.
[150] Robert R. Hurwitz, "Constitutional Law: Equal Protection of the Laws: California Anti-Miscegenation Laws Declared Unconstitutional," *California Law Review* 37, no. 1 (March 1949): 123, https://doi.org/10.2307/3477823.
[151] "Constitutionality of Anti-Miscegenation Statutes," *The Yale Law Journal* 58, no. 3 (February 1949): 472–82.

footsteps. Although the repeal of California's anti-miscegenation laws created a ripple effect for some other states to overturn their laws, the South was much more reluctant in doing the same. However, it would only take one more case to officially declare all laws regarding miscegenation to be unconstitutional in 1967.[152]

Alex Lubin in *Romance and Rights: The Politics of Interracial Intimacy, 1945-1954*, argues that the dissenting opinion of the court case, *Perez v. Sharp (1948)* was more influential than the majority opinion for other states (the southern states) and ultimately the United States Supreme Court.[153] Lubin's argument is based on the belief that the United States Supreme Court did not want to be viewed as "overly liberal" after the decision of *Brown v. Board of Education (1954)*.[154] Even though the United States Supreme Court used the same argument that the California case of *Perez v. Sharp (1948)* did, ultimately the United States Supreme Court barely even referenced California's case in *Loving v. Virginia* (1967).[155]

Nevada is a specific example of a ripple effect that happened at times from what happened in California. In Nevada, Harry Bridges, a white man, and Noriko Sawada, a Japanese woman, were forbidden from marrying each other because of their races but the Nevada law was immediately struck down in December of 1958 when the California case of *Perez v. Sharp* was cited.[156] Sawada and Bridges tried desperately to obtain a marriage license and when they were not allowed to obtain one because of the anti-miscegenation

[152] Loving v. Virginia, 388 U.S. 1 (Supreme Court of the United States 1967).
[153] Lubin, *Romance and Rights*, 20.
[154] Lubin, 20–21.
[155] Moran, *Interracial Intimacy*, 98.
[156] "Guilty of Miscegenation (Nevada)," *The World*, December 11, 1958.

law in Nevada they found a lawyer, Samuel Francovich, to force the marriage license clerk to give the couple a marriage license. The next day, December 11, 1958, the issue was taken to District Judge Taylor Wines and Judge Wines ultimately asserted "a right to marry is the right of the individual, not of the race."[157] This ultimately ended Nevada's anti-miscegenation laws. Multiple other states repealed their laws in the almost two decades that separated the case of *Perez v. Sharp* and the case of *Loving v. Virginia*. These states included Oregon (1951), Montana (1953), North Dakota (1955), Colorado (1957), South Dakota (1957), Idaho (1959), Nevada (1959), Arizona (1962), Nebraska (1963), Utah (1963), Indiana (1965), Wyoming (1965), and Maryland (1967).

Concepts of interracial marriage in the United States have had a very mixed understanding and acceptance throughout the United States even into the present. Some people in the United States have looked down upon interracial relationships, and several states made interracial marriage and relationships illegal. Courts upheld anti-miscegenation laws, even after many civil rights laws were put in place and people of color were gaining equality in other aspects of life throughout the country. However, the banning of interracial relationships often was left out of important discussions in the twentieth century during the era of the Civil Rights Movement. Anti-miscegenation laws that continued in some states until 1967 outlasted many other previous laws like them. For example, laws about segregation were repealed nationwide by 1964, but anti-miscegenation laws were not repealed. It is important to note that although federal anti-miscegenation laws were never put in place, the federal government of the United States

[157] "Guilty of Miscegenation (Nevada)."

did get involved in justifying these laws at times though mainly through Supreme Court cases. An early case of this was the Supreme Court case, *Pace v. Alabama* (1883), which upheld the constitutionality of anti-miscegenation laws.[158] The Court did not make another ruling specifically about miscegenation since 1883 until 1964 in the case, *McLaughlin v. Florida*. This court case did not deal with marriage specifically, but it did deal with cohabitation among people of different races. Ultimately the United States Supreme Court found that these cohabitation laws were unconstitutional because they discriminated based on race, yet the Court refused to relate this case to marriage laws even though they had been appealed to do so.[159] Anti-miscegenation laws are important to look at in terms of understanding different states' beliefs in terms of segregation and racial mixing since they were implemented on a state-by-state basis. This is especially true in reference to the understanding of the West.

As of 1966, seventeen states still had some type of anti-miscegenation law in place.[160] At this time in the United States many moves had been made for people of color to gain equality, segregation was no longer legal, yet miscegenation was still outlawed in many places. These states were mainly in the southern part of the United States, and they continued to hold on to ideas that anti-miscegenation laws did not violate the Fourteenth

[158] Pace v. Alabama, 106 U.S. 583.
[159] McLaughlin v. Florida, 379 U.S. 184 (Supreme Court of the United States 1964).
[160] These states were Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia. Andrew D. Weinberger, "Interracial Marriage—Its Statutory Prohibition, Genetic Import, and Incidence," *Journal of Sex Research* 2, no. 3 (September 1966): 157–59, https://doi.org/10.1080/00224499.1966.10749561.

Amendment. These states' laws were also overturned along with Virginia's laws after the case of *Loving v. Virginia*.

Loving v. Virginia was decided by the United States' Supreme Court in 1967.[161] Mildred Jeter, a Black and Native woman,[162] and Richard Loving, a white man, wished to marry in Virginia. They ultimately got married in Washington D.C. after it was clear that they would not be allowed to marry in Virginia.[163] Although when they came back to Virginia where they lived, they were charged with violating the miscegenation laws as according to Virginia's laws marriages were voided even if they took place somewhere else. Ultimately their case was taken all the way to the United States' Supreme Court and their case showed that anti-miscegenation laws were unconstitutional.

Many of the states whose bans were ruled unconstitutional by the decision struggled with the overturning of these laws for decades to come. Some of these states like Alabama and South Carolina even held onto the laws as parts of their state constitutions despite the laws being declared unconstitutional by the United States' Supreme Court in 1967. Ultimately, the laws were removed from their state constitutions, but it took Alabama, for example, until 2000 to do this and even when they did it was a very close vote and debated discussion. Discussion on the morality or rightness of interracial marriage may seem like a thing of the past to many people but in many places

[161] Loving v. Virginia, 388 U.S. 1.
[162]The understanding of Mildred Jeter's ethnicity and race is complex and often changing. At times she is known to have identified as mainly Native specifically Rappahannock, but other times she identifies as Black solely. There was also a lot of speculation especially during the trial and afterwards about her race. In most of the discussion of the trial she was only discussed in terms of her Blackness. Pascoe, *What Comes Naturally*, 271–72.
[163] Loving v. Virginia, 388 U.S. 1.

the number of couples who decide to intermarry are rather low. So, it is important to discuss in legal histories the effects of these laws in the long run rather than just focusing on the cold hard facts of the cases themselves.

Conclusion

California anti-miscegenation laws have a complicated history. These laws are well known for being progressive in the sense that they had a huge part in ultimately ending anti-miscegenation laws throughout the nation, yet they also have a history of restrictiveness and intense racism. Discussing the end of California's anti-miscegenation laws of course is important but if the entire story is not told then the story of California laws becomes skewed. California may have been extremely important in terms of ultimately overturning racist and sexist laws such as anti-miscegenation laws, yet it has been shown that even if the laws disappeared the ideas that put those laws in place did not disappear as fast for many Californians. California was and continues to be a place of racism, xenophobia, and more. Just because restrictive and racist laws are repealed does not mean that societal racism does not continue as well. After anti-miscegenation laws in California were repealed, interracial couples continued to face discrimination and hatred all around them. So, in histories of law it is important to show and tell the effects of the laws that have been ended. Often times law histories seem to end with the repeal of laws but stories and histories of the long-lasting effects of laws matter just as much.

Anti-miscegenation laws are just one example of restrictive laws in California that affected people simply because of their race. Exclusionary laws around citizenship, property, immigration, and marriage are linked because they were about excluding

certain racialized people. By excluding and restricting certain groups of people white people were able to use the legal system to uphold white supremacy. There were always beliefs surrounding race and certain groups of people supposedly being less than others simply because of their race within society. However, by legalizing white supremacy white people were able to strengthen the support in these beliefs and often justify the ways that certain groups would be treated.

This thesis gives a general history of California's anti-miscegenation laws. It focused on how restrictive and exclusionary laws work together to serve one goal of upholding and ultimately legalizing white supremacy. This general history needed to be told in order to move forward as I begin to think about a more specific case study of interracial marriage in California. The story of California's groundbreaking case, *Perez v. Sharp* (1948), has been told as well as stories of interracial marriage in California after 1948. However, the stories of interracial intimacy in the years of restriction need more attention. As I move to think about these stories of love within restriction I have to continue to think about the exclusionary and restrictive history of California overall and how upholding white supremacy through legislation was popular not just in places like the South but in the West as well.

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