



Touchy Topics

Here's a question: What is the true test of one's commitment to freedom of expression? Is it when one permits others to express ideas with which he agrees? Or is it when he permits others to express ideas he finds deeply offensive? I'm betting that most people would wisely answer that it's the latter, and I'd agree. How about this question: What is the true test of one's commitment to freedom of association? Is it when people permit others to freely associate in ways of which they approve? Or is it when they permit others to freely associate in ways they deem despicable? I'm sure that might be a considerable dispute about freedom of association compared with the one over freedom of expression. To be for freedom in either case requires that one be brave enough to accept the fact that some people will make offensive expressions and associate in offensive ways. Let's explore this with an example from the past.



In 1958, Richard Loving, a white man, and Mildred Jeter, a black woman, two Virginia residents, traveled to Washington, D.C., to marry. Upon their return to Virginia, they were charged with and found guilty of violation of Virginia's anti-miscegenation laws. In 1967, the U.S. Supreme Court, in *Loving v. Virginia*, held that laws banning interracial marriages violated the equal protection and due process clauses of the 14th Amendment. The couple's conviction was reversed. Thus, Virginia's anti-miscegenation laws not only violated the U.S. Constitution but also violated the basic human right of freedom of association.

Now let's ask ourselves: Would Virginia's laws have been more acceptable if, instead of banning interracial marriages, they had mandated interracial marriages? Any decent person would find such a law just as offensive — and for the same reason: It would violate freedom of association. Forced association is not freedom of association.

Before you say, "Williams, where you're going with this discussion isn't very good," there's another case from our past. Henry Louis Mencken, writing in *The Baltimore Evening Sun* (11/9/48), brought to light that the city's parks board had a regulation forbidding white and black citizens from playing tennis with each other in public parks. Today most Americans would find such a regulation an offensive attack on freedom of association. I imagine that most would find it just as offensive if the regulation had required blacks and whites to play tennis with each other. Both would violate freedom of association.

Most Americans probably agree there should be freedom of association in the cases of marriage and tennis, but what about freedom of association as a general principle? Suppose white men formed a club,



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a professional association or any other private association and blacks and women wanted to be members. Is there any case for forcing them to admit blacks and women? What if it were women or blacks who formed an association? Should they be forced to admit men or whites? Wouldn't forced membership in either case violate freedom of association?

What if you wanted to deal with me but I didn't want to deal with you? To be more concrete, suppose I own a private company and I'm looking to hire an employee. You want to deal with me, but I don't want to deal with you. My reasons might be that you're white or a Catholic or ugly or a woman or anything else that I find objectionable. Should I be forced to hire you? You say, "Williams, that's illegal employment discrimination." You're absolutely right, but it still violates peaceable freedom of association.

Much of the racial discrimination in our history was a result of legal or extralegal measures to prevent freedom of association. That was the essence of Jim Crow laws, which often prevented blacks from being served in restaurants, admitted into theaters, allowed on public conveyances and given certain employment. Whenever one sees laws or other measures taken to prevent economic transactions, you have to guess that the reason there's a law is that if there were no law, not everyone would behave according to the specifications of the law.

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