

forbid them, should be prohibited by positive law, and be subject to no
version.²⁵

"The Southern states typically went far beyond the recent legislation prohibiting same-sex marriage, by making interracial marriage a felony...It would, in short, be hard to argue that the Southern states' public policy against miscegenation was less strong than modern public policies against same-sex marriage." Koppelman continues.²⁶

Judicial opposition to same-sex marriage has typically invoked the same kind of reference to religion, "the Almighty," and what is natural (or unnatural) as the court in *Kimsey* above. See, e.g., *Baker v. Nelson*²⁷ ("The institution of marriage as a union of a man and a woman...is as old as the book of Genesis") and *Nguyen v. Harvard*²⁸ ("Marriage exists as a protected legal institution primarily because of societal values associated with the propagation of the human race," presumably a natural consequence of marriages between people of different sexes exclusively).

SEPARATE BUT EQUAL

The phrase, "separate but equal" refers to a legal concept which emerged after the Civil War to officially sanction the southern system of Jim Crow and to perpetuate, on the other side of the debunked system of slavery, the second-class citizenship status of those Americans whose race had been designated as other than that of the ruling class.

The concept came into full flower, or at least acquired the legitimacy attendant to federal governmental endorsement, with the now infamous case of *Plessy v. Ferguson*²⁹, in

²⁵ 71 Va. (30 Grant) 858, 869 (1878).

²⁶ *Op. cit.*, p. 115.

²⁷ *Op. cit.*

²⁸ 522 F.2d 1187 (Wash. C. App. 1974)

²⁹ 163 U.S. 537 (1896).