

California Law Review
Comment
Statutory Prohibitions against Interracial Marriage

Introduction

California like many other states has many intricate problems which have grown out of the fact that people of different races are living side by side. One major problem is miscegenation, which in its broad meaning is racial admixture and in its more restricted sense is interracial marriage; for the purposes of this article, miscegenation will be used in its specific meaning, interracial marriage. In trying to formulate a solution to this problem, California has by statute declared that such attempts at marriage are illegal and void. The purpose of this article is to survey the present states of California's miscegenation law and to examine generally like interracial marriage statutes in other states of the Union.

In viewing the existing law, it is well to note that at common law there was no ban on interracial marriage. However, early in history of the colonies, in 1661, the first definite legislative prohibition was passed in the Colony of Maryland. Before the American Revolution, at least five states had established legislative bans and penalties against interracial marriage and/or cohabitation. Since the Revolutionary War, this prohibition has been extended fairly steadily by state legislation. This is true up to the present time. However, in recent years a few states have repealed previously enacted miscegenation laws, and a few state legislatures have refused to adopt such legislation when it was proposed. Nevertheless, thirty states have statutes which prohibit the intermarriage of specified racial groups.

Although originally the statutes were directed wholly against Negro-Caucasian unions, the scope of the legislation now extends to interdictions against marriage between white men and Mongolians, Malaysians, mulatto, or even American Indians. The ban on marriages between negroes and whites is still the most common one: the unions are banned throughout the South, the Southeast, and the West except for Washington and New Mexico; the interdictions are non-existent in New England, and the Middle Atlantic States outside of Delaware, and in the North Central States except Indiana; and in the "great farm belt," typical is the situation of states like Nebraska and Iowa, living side by side with one a miscegenation statute, and one without. Mongolian-Caucasian marriages are prohibited in fourteen states.

To repeat, thirty states have statutes banning interracial marriage. As already noted, California is one of those states. Although the original miscegenation statute was enacted by the California legislature in 1850, it is not the basis of present law. That basis was created in 1872 when the California Civil Code was adopted. Section 60 of the Civil Code has been amended twice since 1872 so that now the clear words of the statute read: "All marriages of white persons with Negroes, Mongolians, members of the Malay race, or mulattoes are illegal and void." The prohibitions thus stated are explicit.

-Irving G. Tragen, "Statutory Prohibitions against interracial Marriage" (1944) excerpt.