Interracial Marriage Laws

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Centuries before the same-sex marriage movement, the U.S. government, its constituent states, and their colonial predecessors tackled the controversial issue of "miscegenation": race-mixing. It's widely known that the Deep South banned interracial marriages until 1967, but less widely known that many other states did the same (California until 1948, for example) - or that three brazen attempts were made to ban interracial marriages nationally by amending the U.S. Constitution.

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1664

Maryland passes the first British colonial law banning marriage between whites and slaves - a law that, among other things, orders the enslavement of white women who have married black men:

> "[F]orasmuch as diverse freeborn English women forgetful of their free condition and to the disgrace of our Nation do intermarry with Negro slaves by which also diverse suits may arise touching the [children] of such women and a great damage doth befall the Masters of such Negroes for prevention whereof for deterring such freeborn women from such shameful matches,
>
> "Be it further enacted by the authority advice and consent aforesaid that whatsoever freeborn woman shall intermarry with any slave from and after the last day of this present Assembly shall serve the master of such slave during the life of her husband, and that the [children] of such freeborn women so married shall be slaves as their fathers were. And be it further enacted that all the [children] of English or other freeborn women that have already married Negroes shall serve the masters of their parents til they be thirty years of age and no longer."

This leaves unaddressed two important questions:

1. This law draws no distinction between slaves and free blacks, and
2. This law doesn't say what happens to white men who marry black women, rather than vice versa.

As you might imagine, the white nationalist colonial governments did not leave these questions unanswered for long.

1691

The Commonwealth of Virginia bans all interracial marriages, threatening to exile whites who marry people of color. In the 17th century, exile usually functioned as a death sentence:

> "For prevention of that abominable mixture and spurious [children] which hereafter may increase in this dominion, as well as by negroes, mulattos, and Indians intermarrying with English, or other white women, as by their unlawful accompanying with one another,
>
> "Be it enacted ... that ... whatsoever English or other white man or woman being free, shall intermarry with a negro, mulatto or Indian man or woman bond or free shall within three months after such marriage be banished and removed from this dominion forever ...
>
> "And be it further enacted ... that if any English woman being free shall have a bastard child by any negro or mulatto, she pay the sum of fifteen pounds sterling, within one month after such bastard child shall be born, to the Church wardens of the parish ... and in default of such payment she shall be taken into the possession of the said Church wardens and disposed of for five years, and the said fine of fifteen pounds, or whatever the woman shall be disposed of for, shall be paid, one third part to their majesties ... and one other third part to the use of the parish ... and the other third part to the informer, and that such bastard child be bound out as a servant by the said Church wardens until he or she shall attain the age of thirty yeares, and in case such English woman that shall have such bastard child be a servant, she shall be sold by the said church wardens (after her time is expired that she ought by law serve her master), for five years, and the money she shall be sold for divided as if before appointed, and the child to serve as aforesaid."

Leaders in Maryland's colonial government liked this idea so much that they implemented a similar policy a year later. And in 1705, Virginia expanded the policy to impose massive fines on any minister who performs a marriage between a person of color and a white person - with half the amount (ten thousand pounds) to be paid to the informant.

1780

Pennsylvania, which had passed a law banning interracial marriage in 1725, repeals it as part of a series of reforms intended to gradually abolish slavery within the state and grant free blacks equal legal status.

1843

Massachusetts becomes the second state to repeal its anti-miscegenation law, further cementing the distinction between Northern and Southern states on slavery and civil rights. The original 1705 ban, the third such law following those of Maryland and Virginia, prohibited both marriage and sexual relations between people of color (specifically, African Americans and American Indians) and whites.

1871

Rep. Andrew King (D-MO) proposes a U.S. constitutional amendment banning all marriage between whites and people of color in every state throughout the country. It will be the first of three such attempts.

1883

In *Pace v. Alabama*, the U.S. Supreme Court unanimously rules that state-level bans on interracial marriage do not violate the Fourteenth Amendment of the U.S. Constitution. The ruling will hold for more than 80 years.

The plaintiffs, Tony Pace and Mary Cox, were arrested under Alabama's Section 4189, which read:

> "[I]f any white person and any negro, or the descendant of any negro to the third generation, inclusive, though one ancestor of each generation was a white person, intermarry or live in adultery or fornication with each other, each of them must, on conviction, be imprisoned in the penitentiary or sentenced to hard labor for the county for not less than two nor more than seven years."

They challenged the conviction all the way to the U.S. Supreme Court. Justice Stephen Johnson Field wrote for the Court:

> "The counsel is undoubtedly correct in his view of the purpose of the clause of the amendment in question, that it was to prevent hostile and discriminating state legislation against any person or class of persons. Equality of protection under the laws implies not only accessibility by each one, whatever his race, on the same terms with others to the courts of the country for the security of his person and property, but that in the administration of criminal justice he shall not be subjected, for the same offense, to any greater or different punishment ...
>
> "The defect in the argument of counsel consists in his assumption that any discrimination is made by the laws of Alabama in the punishment provided for the offense for which the plaintiff in error was indicted when committed by a person of the African race and when committed by a white person ... Section 4189 applies the same punishment to both offenders, the white and the black. Indeed, the offense against which this latter section is aimed cannot be committed without involving the persons of both races in the same punishment. Whatever discrimination is made in the punishment prescribed in the two sections is directed against the offense designated and not against the person of any particular color or race. The punishment of each offending person, whether white or black, is the same."

More than a century later, opponents of same-sex marriage will resurrect the same argument in claiming that heterosexual-only marriage laws don't discriminate on the basis of sex, since they technically punish men and women on equal terms.

1912

Rep. Seaborn Roddenbery (D-GA) makes a second attempt to revise the U.S. Constitution in order to ban interracial marriage in all 50 states.

Roddenbery's proposed amendment read as follows:

> "That intermarriage between negroes or persons of color and Caucasians or any other character of persons within the United States or any territory under their jurisdiction, is forever prohibited; and the term 'negro or person of color,' as here employed, shall be held to mean any and all persons of African descent or having any trace of African or negro blood."

Later theories of physical anthropology will suggest that every human being has some African ancestry, which could have rendered this amendment unenforceable had it passed. In any case, it didn't pass.

1922

Congress passes the Cable Act.

While most anti-miscegenation laws primarily targeted interracial marriages between whites and African Americans or whites and American Indians, the climate of anti-Asian xenophobia that defined the early decades of the 20th century meant that Asian Americans were also targeted. In this case, the Cable Act retroactively stripped the citizenship of any U.S. citizen who married "an alien ineligible for citizenship," which - under the racial quota system of the time - primarily meant Asian Americans.

The impact of this law was not merely theoretical. Following the U.S. Supreme Court's ruling in *United States v. Thind* that Asian Americans are not white and therefore cannot legally become citizens, the U.S. government revoked the citizenship of natural-born U.S. citizens such as Mary Keatinge Das, wife of the Pakistani-American activist Taraknath Das, and Emily Chinn, mother of four and wife of a Chinese-American immigrant.

Traces of anti-Asian immigration law remained until the passage of the Immigration and Nationality Act of 1965, though some Republican politicians, most famously Michele Bachmann, have suggested a return to the earlier racial quota standard.

1928

Sen. Coleman Blease (D-SC), a Ku Klux Klan supporter who had previously served as South Carolina's governor, makes a third and final serious attempt to revise the U.S. Constitution in order to ban interracial marriage in every state. Like its predecessors, it fails.

1964

In *McLaughlin v. Florida*, the U.S. Supreme Court unanimously rules that laws banning interracial sex violate the Fourteenth Amendment to the U.S. Constitution.

McLaughlin struck down Florida Statute 798.05, which read:

> "Any negro man and white woman, or any white man and negro woman, who are not married to each other, who shall habitually live in and occupy in the nighttime the same room shall each be punished by imprisonment not exceeding twelve months, or by fine not exceeding five hundred dollars."

While the ruling did not directly address laws banning interracial *marriage*, it laid down the groundwork for a ruling that definitively did.

1967

The U.S. Supreme Court unanimously overturns *Pace v. Alabama* (1883), ruling in *Loving v. Virginia* that state bans on interracial marriage violate the Fourteenth Amendment of the U.S. Constitution.

As Chief Justice Earl Warren wrote for the Court:

> "There is patently no legitimate overriding purpose independent of invidious racial discrimination which justifies this classification. The fact that Virginia prohibits only interracial marriages involving white persons demonstrates that the racial classifications must stand on their own justification, as measures designed to maintain White Supremacy ...
>
> "The freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men ... To deny this fundamental freedom on so unsupportable a basis as the racial classifications embodied in these statutes, classifications so directly subversive of the principle of equality at the heart of the Fourteenth Amendment, is surely to deprive all the State's citizens of liberty without due process of law. The Fourteenth Amendment requires that the freedom of choice to marry not be restricted by invidious racial discriminations. Under our Constitution, the freedom to marry, or not marry, a person of another race resides with the individual and cannot be infringed by the State."

From this point on, interracial marriage is legal throughout the United States.

2000

Following a November 7th ballot referendum, Alabama becomes the last state to officially legalize interracial marriage.

By November 2000, interracial marriage had been legal in every state for more than three decades thanks to the U.S. Supreme Court's ruling in *Loving v. Virginia* (1967) - but the

Alabama State Constitution still contained an unenforceable ban in Section 102:

> "The legislature shall never pass any law to authorise or legalise any marriage between any white person and a Negro or descendant of a Negro."

The Alabama State Legislature stubbornly clung to the old language as a symbolic statement of the state's views on interracial marriage; as recently as 1998, House leaders successfully killed attempts to remove Section 102.

When voters finally had the opportunity to remove the language, the outcome was surprisingly close: although 59% of voters supported removing the language, 41% favored keeping it. Interracial marriage remains controversial in the Deep South, where a 2011 poll found that a plurality of Mississippi Republicans still support anti-miscegenation laws.
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