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tent. As a result, most state efforts to control or prosecute this type of conduct are now mere history. In Florida, for instance, the whole chapter of sedition laws, with the exception of the loyalty oath requirement, in all probability is unenforceable.

Many advantages, some of which were mentioned by the Court in the *Nelson* decision, will flow from a single administration of subversion laws. Justice will undoubtedly replace, in many instances, local hysteria; varying and excessive penalties will be curbed, and very possibly a smoother law enforcement will result. The sacrifice will involve a greater centralization of operations and a lessening of state authority in the field.

The prospect of an unvaried law enforcement is indeed attractive, but it is questionable whether a nation that is becoming more and more conscious of centralism wanted to make this choice. The next move, at any rate, is up to Congress.

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WHO IS A NEGRO?

Miscegenation is marriage between persons of different races, and in the absence of statutory or constitutional prohibition, it is permissible and lawful. Although there may be some doubt as to the validity of such provisions,[1] the Southern and border states of the United States do prohibit certain miscegenetic marriages—usually those between white persons and Negroes.[2] The enforcement of these provisions creates the necessity of determining who falls within the prohibition. The usual statutory definition of such terms as *Negro* can hardly be said to conform to society's concept of them, for society regards as Negro one whose physical appearance is Negroid. For example, in some states a person whose sole Negroid ancestry was a one-half Negro great-grandmother could not legally marry a person whose only Negro blood came from a full-blooded Negro great-grandmother. The former would be classified as white and the latter as Negroid, despite the fact that society might regard both as white or both as Negro.

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[1]See Perez v. Sharp, 32 Cal. App.2d 711, 198 P.2d 17 (1948), 2 U. FLA. L. REV. 283 (1949).

[2]35 AM. JUR., *Marriage* §146 (1941).

Aside from the dichotomy of social-legal definitions, which certainly presents the need for reconsideration of the statutes, there remains the serious problem of conflicts of definitions among the various states.

A comparison of Southern and border states' miscegenation statutes reveals considerable diversity among them as to the legal definition of *Negro*. This could result in the regrettable situation of a person being a white person today, and after a short migration, a Negro tomorrow. Situations may be supposed in which a person could be prosecuted for a miscegenetic marriage in one state, while in a neighboring state with a similar statute the marriage would not be classified as miscegenetic, simply because of the difference in racial definition.

Four jurisdictions prohibit marriages between white persons and persons of Negro blood to the third generation.[3] The North Carolina statute is typical:[4]

> "All marriages between a white person and a negro, or between a white person and a person of negro descent to the third generation inclusive, are forever prohibited, and shall be void."

Other states prohibit marriages between white persons and persons of more than one-eighth Negro blood.[5] For example, Florida prohibits marriages between white and Negro persons[6] and provides the following statutory definitions:[7]

> "The word 'negro', 'colored', 'colored persons', 'mulatto' or 'persons of color', when applied to persons, include every person having one-eighth or more of African or negro blood."

The more elaborate Missouri statute provides:[8]

> "No person having one-eighth part or more of negro blood shall be permitted to marry any white person, nor shall any

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[3]Md., N.C., Tenn., Tex.

[4]N.C. GEN. STAT. §14-181 (1953). See also MD. ANN. CODE art. 27, §398 (1957); TENN. CODE ANN. §36-402 (1955); TEX. PEN. CODE ANN. art. 492-93 (1952).

[5]Fla., Miss., Mo., S.C.

[6]FLA. STAT. §741.11 (1957).

[7]*Id.* §1.01 (6). See also MISS. CONST. art. 14, §263; S.C. CONST. art. 3, §33.

[8]MO. ANN. STAT. §563.240 (1953).

> white person be permitted to marry any negro or person having one-eighth part or more of negro blood; and . . . the jury trying any such case may determine the proportion of negro blood in any party to such marriage from the appearance of such person."

A third group of states has statutes that in more general terms prohibit marriages between white persons and Negroes, mulattoes, or persons with any ascertainable trace of Negro blood.[9] In Alabama a white person and a Negro, or the descendant of any Negro, may not marry.[10] There the word *Negro* includes *mulatto* and *person of color,* which are defined as "a person of mixed blood descended on the part of the father or mother from Negro ancestors, without reference to or limit of time or number of generations removed."[11] In Arkansas a general statutory provision forbids whites and Negroes or mulattoes to marry,[12] with no specific definitions given. This state, however, does have a law against "concubinage,"[13] and the words *person of Negro race* as used therein include any person who has in his or her veins any Negro blood whatever.[14] It is possible that legislative intent requires application of the same definition to the miscegenation law also. Louisiana prohibits marriage between white persons and persons of color,[15] and the word *color* is defined to mean any traceable Negro blood.[16] Georgia permits a white person to marry a white person only,[17] and defines persons of color:[18]

> "All Negroes, mulattoes, mestizos, and their descendants, having any ascertainable trace of either Negro or African, West Indian, or Asiatic Indian blood in their veins, and all descendants of any person having either Negro or African, West Indian, or Asiatic Indian blood in his or her veins, shall be known in this State as persons of color."

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[9]Ala., Ark., Ga., La., Va.

[10]ALA. CONST. art. 4, §102; ALA. CODE tit. 14, §360 (1940).

[11]ALA. CODE tit. 1, §2 (1940).

[12]ARK. STAT. ANN. §55-104 (1947).

[13]*Id.* §41-807 ("unlawful cohabitation of persons of the Caucasian race and of the negro race").

[14]*Id.* §41-808.

[15]LA. CIV. CODE ANN. art. 94 (West 1952).

[16]Lee v. New Orleans G.N.R.R., 125 La. 236, 51 So. 182 (1910).

[17]GA. CODE ANN. §53-106 (1937).

[18]*Id.* §79-103.

A further variation in definition is found in the Oklahoma miscegenation statute,[19] which prohibits the marriage of any person of African descent, as defined by the constitution of that state, to any person not of African descent. That constitution defines persons of African descent as follows:[20]

> "Wherever in this Constitution and laws of this State, the word or words, 'colored' or 'colored race,' 'Negro' or 'Negro race,' are used, the same shall be construed to mean or apply to all persons of African descent. The term 'white race' shall include all other persons."

In Virginia it is unlawful for any white person to marry anyone except a white person or a person with no other admixture of blood than white and American Indian.[21] Colored persons and Indians are defined:[22]

> "Every person in whom there is ascertainable any Negro blood shall be deemed and taken to be a colored person, and every person not a colored person having one-fourth or more of American Indian blood shall be deemed an American Indian; except that members of Indian tribes existing in this Commonwealth having one-fourth or more of Indian blood and less than one-sixteenth of Negro blood shall be deemed tribal Indians."

Kentucky, which prohibits marriages between a white person and a Negro or mulatto,[23] and West Virginia, which declares marriages between white persons and Negroes void,[24] have no definitions of the terminology used in their statutes.

Georgia is one of the few states that defines a "white person."[25] The definition includes only persons of the white or Caucasian races who have no ascertainable trace of Negro, African, West Indian, Asiatic Indian, Mongolian, Japanese, or Chinese blood in their veins.

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[19]OKLA. STAT. ANN. tit. 43, §12 (1954).
[20]OKLA. CONST. art. 23, §11.
[21]VA. CODE ANN. §20-54 (1950).
[22]*Id.* §1-14.
[23]KY. REV. STAT. ANN. §402.020 (1) (1955).
[24]W. VA. CODE ANN. §4701 (1955).
[25]GA. CODE ANN. §53-312 (1937).

It further adds that if a person has one ancestor who has been registered with the State Bureau of Vital Statistics as a colored person or person of color, that person shall not be deemed to be white. Only three other states[26] define the term *white person,* and these do not spell it out adequately. The vagueness and uncertainty of these laws could be stressed as an argument against their enforcement. Many other terms mentioned are not defined: *mulatto, mestizos, African, Mongolian.*

Several states have conflicting definitions. The Tennessee statute provides: " 'Negro' includes mulattoes, mestizos, and their descendants, having any blood of the African race in their veins."[27] Its miscegenation statute, however, is limited to Negroes to the third generation.[28] It is interesting to note that the constitutional provision[29] and the miscegenation statute are identical. Texas is another state with surplus definitions. A civil statute prohibits intermarriage between persons of Caucasian blood and Africans or descendants of Africans,[30] while the penal code defines a Negro as a "person of mixed blood descended from Negro ancestry from the third generation."[31]

It is clear that substantial differences appear in the definitions. Assuming that miscegenation laws are still constitutional, although some doubt has arisen as the result of a recent California decision striking down a similar law of that state,[32] an effort among these states to standardize terminology is in order. It may seem that the uniformity of social classifications and the strength of the states' policy behind the miscegenation laws would preclude any strong resistance to attempts at uniformity, but certain problems that would be presented by any proposed standardization indicate that it would be difficult to accomplish. Would "white" Florida citizens suddenly be classified as Negroes? Would Georgia and Alabama be willing to accept a more liberal definition, making certain groups white that were previously classified as colored? Would the standardization have retroactive force? The economic consequences of reclassification would necessarily have to be considered, particularly the ownership

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[26]Okla., Tex., Va.

[27]TENN. CODE ANN. §1-305 (1955).

[28]*Id.* §36-402.

[29]TENN. CONST. art. 11, §14.

[30]TEX. REV. CIV. STAT. ANN. art. 4607 (1951).

[31]TEX. PEN. CODE ANN. art. 493 (1952).

[32]Perez v. Sharp, 32 Cal. App.2d 711, 198 P.2d 17 (1948), 2 U. FLA. L. REV. 283 (1949).