

# Understanding & Dismantling Privilege

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## **Birth of a White Nation**

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### **Abstract**

There is a specific time, identifiable in law, when a group of humanity called “white people” became a common reference. This keynote addresses how, when, where, and why this category of humanity was created and examines the meanings assigned to the group through U.S. law and policy.

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## Introduction

I have been conducting White awareness trainings since the 1990s. I learned early on that the general public, including the college-educated public, know very little of the U.S. legal history that gave privilege and advantage to “White” people from the very founding of the country. People tend to understand that enslavement of persons of African descent was legal as a matter of federal law and pervasive in parts of the country, but beyond race-based slavery that advantaged White slave holders, very little is known. Even less is known about the invention and imposition of the human category “White.” Without a basic understanding of this history, the advancement of White racial awareness is limited and extremely challenging.

In my experience, conversations about race in the present more often than not spiral into any number of directions guided by dominant ideas, stereotypes, and beliefs with little positive outcome. What is necessary to advance productive conversations about racial topics in the present is to have that conversation guided by historical fact. There are many different approaches to such a historical foundation. I have found that the history of the invention of “White” people is a powerful historical foundation not merely because it roots a conversation in facts rather than ideas and stereotypes but also because it exposes the “White” race as having nothing to do with biology and everything to do with the actions of humans and, more specifically, with power. This history is also helpful for an exploration of race because it makes clear that whiteness was not only something invented but was a label and package of ideas imposed upon people including those

called “Whites.” Finally, the history of the invention of the human category “White” is so valuable because it reveals what Kimberley Crenshaw (1991) termed *intersectionality* at work. In other words, it shows how oppressive structures such as class hierarchy and gender oppression worked to constitute whiteness and conversely to locate patriarchal and economic power within it. For all these reasons, a historical foundation covering the invention of the “White” race is a powerful tool for understanding not only how “White” people came to be, but also why.

A historical foundation is also advanced by factual information about the ways in which “White” people have been conferred privilege and advantage as a matter of law and policy since the founding of the United States. There are numerous possible approaches. I like to examine the experience of a variety of groups in the United States in relation to whiteness. In *Birth of a White Nation* (Battalora, 2013), I look at the experience of Mexicans after the Treaty of Guadalupe Hidalgo in 1848, Chinese following the discovery of gold in the same year in California, and Irish Catholics in the East from 1840 into the turn of the century. I look to these groups because their experience highlights the value that attached to whiteness, some ways in which whiteness was used to confer or deny rights and privileges, and the fact that having little melanin in the skin (i.e., very light skin) was not what it meant to be “White.”

This article will briefly explore when, how, and why “White” as a category of humanity was invented. Next, the influence that this category of humanity

wielded in the new republic is examined through U.S. naturalization law.

### **The Context That Gave Rise to the Invention**

“White” as a designation for a group of humanity did not appear in law until 1681. The first appearance of this designation was in an amendment by the Colonial Assembly of Maryland to what can best be described as the precursor to antimiscegenation laws. These were laws that made it illegal for “White” people to marry various categories of “non-Whites.” Prior to 1681 those who became “White” were referred to first as “British and other Christians” then “British and other freeborns.”

The question is why was the human category “White” invented, and how did it become such a success? Clues to the answer can be found down the road in Colonial Virginia. Before getting to the events in Virginia that gave rise to the invention of “White” people, there are some noteworthy similarities between Maryland and Virginia. First, both colonies developed an economy dependent upon growing tobacco. Because tobacco farming required tremendous human labor, large landholders kept the demand for laborers high. England provided a ready supply until the 1660s. The population in England experienced an increase in the early part of the seventeenth century that resulted in larger numbers of unemployed in need of assistance (Wells, 1975). The Crown was happy to have their numbers reduced by having them shipped off to the colonies.

The Virginia and Maryland colonies shared another similarity. Both had a severe shortage of women, about one female for

every seven males (Guttentag & Secord, 1983). This may help explain the creation of antimiscegenation law, which imposed years of servitude upon “British and other white” females who married a person of African descent or member of a native tribe. The law worked to make such women available for marriage only to “British and other white” men.

While the Virginia and Maryland colonies shared some important features, they were not identical, having been founded at different times and with different predominant religious influences. However, their economic similarities, particularly their continual need for a renewed labor force in the tobacco fields, influenced lawmakers in both colonies to craft laws in similar ways.

Between 1607 and 1682, roughly 92,000 immigrants were brought to the Virginia and Maryland colonies from Europe, and more than three-quarters, or 69,000, were chattel bond laborers. The masses of laborers in these colonies were largely British men, but there were also laborers of African, Portuguese, Spanish, French, Turkish, Dutch, and Irish descent. Significant numbers of European laborers were regularly bought and sold in the colonies, and their treatment by landholders was viewed as shocking to other Englishmen. Most came to these colonies with varying degrees of freedom or only future promises of it (Allen, 1997; Morgan, 1975; Smith, 1947).

There is ample historical evidence that those who labored for the same landholder worked, slept, and lived together in the same conditions. Within colonial North America, laborers of African or British descent experienced daily life on an equal basis. There was no conception of Africans as “Blacks” and Europeans as

“Whites” at this time, and the idea of “race” as applicable to humans did not exist (Allen, 1997; Smedley, 2007). Because conceptions of race are so powerful within the current social context in the United States, and because the organization of society and thinking about humans was dramatically different at this colonial North American juncture, I will draw upon ethnographic information to highlight the texture of social relations among the masses within the colonies.

Being free was what determined rights and privileges received in law. Therefore, persons of African descent who held this status received all such rights, including the right to vote. Some free Africans held bond laborers (Jordan, 1968). Among the masses, Africans were not treated as degraded beings.

Marriages among those of African descent, mostly men, and those of European descent, mostly British women, were not uncommon. Furthermore, the evidence suggests that such marriages were met with acceptance within the larger community. Recalling that a woman in these colonies could likely have her pick of men, a European female servant told her European master that she would rather marry an African slave on a nearby plantation than marry him, despite his wealth, and that is what she did (Morgan, 1975). A European widow of an African planter next married a European farmer without issue (Morgan, 1998). In another example, a woman of African descent successfully sued for her freedom and married the European lawyer who represented her in court (Allen, 1997; Smedley, 2007). Records from the 1660s in one county show that one-fourth of all children born to European female servants were of both African and European ancestry. Records from a colony along the eastern

shore showed that five of the ten free African men were married to European women (Parent, 2003).

Evidence of behavior on the part of European and African laborers and small farmers reveals an expectation of treatment on the same terms. Resistance to governmental authority was common among the British and was shared by at least some African men in the colonies. In a particularly descriptive court document, we learn of an African property owner who was approached by a European messenger of the court. The messenger was delivering a subpoena. The property owner responded with contempt, informing the messenger that he would appear when he pleased, after his corn was harvested (Morgan, 1975). Court records from this period reveal that Africans and Europeans worked together to escape servitude and in pursuit of criminal endeavors. These joint ventures suggest trust and cooperation. In addition, court records reveal that Africans and Europeans of the same class behaved similarly and were treated similarly by courts (Rowe, 1989).

Finally, numerous wills reveal that masters sought to set slaves free under terms that indicate an expectation that these Africans would become regular members of the free colonial community. Social relations of equality among those of the same class were the general rule of the day during this part of the North American colonial period (Morgan, 1975). Where exceptions arose, they were imposed by the elite lawmakers upon the masses and only sometimes were these efforts successful (Battalora, 2013).

Maryland lawmakers were more than troubled by a rebellion that embroiled Virginia for more than a year. The rebellion is named after the man who led it, Nathaniel Bacon. Bacon’s Rebellion raged from 1676

to 1677 in Colonial Virginia and was widely supported. The rebellion had two facets. One was directed against native tribes and the other was directed against the ruling elite of the colony.

The social factors that contributed to wide support of the rebellion were many. First, the numbers of available laborers from England declined significantly, while demand remained high (Wells, 1975). Landholders turned to the African slave trade to fill the deficit. Laborers who completed their terms of service and sought to farm grew tobacco, adding to the supply and depressing prices. Many, however, found it increasingly difficult to find land available for farming. In 1670 a law was passed stripping the vote from those freedmen who did not own property. Those still completing terms of service confronted harsher treatment and extensions of their terms.

Servants and slaves faced harsh conditions, while freed ones faced narrowing opportunities for financial independence. The numbers of discontented colonists were many. In 1676 the discontented people of Virginia erupted, with laborers of European and African descent—servant and free—united in a fight against native tribes, unpaid labor, the plantation elite, and those governing the colony. Those supporting the rebellion sought greater opportunities and independence. British troops arrived in the colony and the rebellion was quashed, but not without having made a significant impression upon lawmakers. Bacon's Rebellion represents the unification of laborers, freed servants, and small landowners. The rebellion signaled the threat of a united labor force to the capitalist plantation system that was the economic and

political foundation of the Virginia and Maryland colonies.

### **The Invention of White People**

Lawmakers responded with a divide-and-conquer approach. They passed laws that created a difference among and between laborers that did not previously exist in colonial North America, that of "British and other whites" and those who fell outside—namely, laborers of African descent and members of native tribes. At the same time, lawmakers succeeded in creating a link between some of these laborers, the "British or other whites," and the plantation elite. It was the response of lawmakers to Bacon's Rebellion within which White people were invented, constructed, and imposed. These laws emerged in the decades following the rebellion and continued through the first quarter of the eighteenth century, creating consequences that were dramatically different for those seen as White and those who were not (Allen, 1997; Battalora, 2013; Smedley, 2007).

The package of laws enacted included the prohibition of setting slaves of African descent free. In contrast, the conditions of European labor arrangements of limited bond-servitude were framed by contract law within a corporate context that ensured an agreed-upon termination date extendable only for cause. Together these laws combine to link African-ness with servitude and Whites with a more valuable status. The prior worked to make African-ness more and more synonymous with enslavement, the rendering of a human into property. Taken together, the laws gave meaning to this new group called White people by aligning them with a claim to

liberty and freedom that would be denied to others (Battalora, 2013).

Another law imposed a prohibition against free Blacks holding public office. Through such an enactment, those of African descent who were established as free members of the colonial community were rendered inferior to both an indentured and nonindentured White person, since an indentured White man held the legal potential of a future position in public office. Through such a law, free people of African descent began to be stripped of the full range of liberty and freedom within colonial society. The message promulgated by the law was that a person of African descent was incapable of being in a decision-making position relative to White people. The laws that prohibited manumission or the freeing of a slave of African descent, and that excluded free men of African descent from holding public office, promoted the message that African-ness was positioned, within a social hierarchy being constructed in law, somewhere below that of this newly invented group called Whites.

Virginia lawmakers enacted a prohibition against the beating or whipping of a Christian White servant while naked without an order from the justice of the peace (Hening 1705, 3:448). This law contrasted with the exclusion of members of native tribes and those of African descent from such requirements and rendered White a special status deserving of protection from humiliation associated with public nakedness and physical punishment. It worked to link White with a claim to due process while denying it to those outside its parameters (Battalora, 2013).

The laws below also contributed to this larger message that White people were a special, more deserving group relative to

those of African descent. However, the laws that follow had an additional sinister affect. The Virginia lawmakers passed an enactment blocking a person of African descent from testifying against a White person and another that prohibited free Blacks from possessing *any* weapon including a club, gun, powder, or shot, and yet another that subjected a person of African descent to a public lashing for raising a hand against any White person. These laws combined to render persons of African descent all but completely self-defenseless, especially against violence inflicted by a White person. Not only do these laws enforce a human hierarchy that places White people at the top, they render the lives of those of African descent less valuable than the most depraved and inhumane White person (Battalora, 2013).

Through law, free people of African descent were stripped of the freedoms enjoyed in their status as “free” members of the colonial society. No matter how loyal to the British crown, no matter how faithful to Christianity, no matter how valuable their contribution to the colonial community, people of African descent were severely restricted. They were limited not only in their legal standing within the community, but by virtue of their very ability to preserve and protect their bodily integrity and that of family members. These laws not only exposed free people of African descent to physical harm, but they worked to exclude African men and African families from the full patriarchal authority afforded under the common law of marriage (Battalora, 2013).

Under common law the male head of the household was assumed to represent the interests of the family and expected to provide materially and to *protect* all women, children, and other dependents within the household (Blood & Wolf, 1960; Salmon,

1979). The ability of free men of African descent to protect their family members, much less themselves, was severely narrowed by Virginia lawmakers. These laws largely removed these men and their family members from the rights and privileges of patriarchal authority. The inclusion of antimiscegenation laws among the series of enactments that created benefits and privileges for Whites, suggests that the law was less of a control mechanism to restrict Whites than a benefit to advance the interests of some. Patriarchal authority for White men was expanded through antimiscegenation laws and through greater control over persons of African descent with little regard for civil or criminal punishment.

The law that prohibited a free person of African descent from being in possession of a gun and gunpowder, viewed alongside the enactment that listed the required dues owed to a limited-term White bond laborer that included payment of a gun to men, created value that attached to human bodies. These laws combined to render White people more valuable relative to those of African descent, whether slave or free. This value or worth attached through judicial action, enforcement, and punishment structures.

Taken as a whole, the laws completely restructured colonial society. The laws combined to constitute the scaffolding of a legal structure that served to devalue the dignity and humanity of those seen as other than White, in this case, those of African descent and members of native tribes, while inflating that of those seen as White. It is worth noting that the laws gave European laborers little more than they had before they were White. In other words, the post-Bacon’s Rebellion enactments did not advance the living conditions or economic standing of those laborers who became White closer to those of the landholding elite. A big change that the numerous enactments did create was that White people were made better off, not so much than they were prior to the rebellion but rather in relation to those of African descent and members of native tribes, who were made far worse off. While the laws did little to raise Whites from their standing prior to Bacon’s Rebellion, what they did do was dramatically lower the social bottom through worse conditions and treatment of non-Whites. White laborers were given little more than the authority to rule over their fellow laborers of African descent on the premise that they share a superior status with elites—whiteness.

<b>Rights</b>	<b>1619→ Bacon’s Rebellion</b>	<b>Post-Bacon’s Rebellion Legal Enactments</b>
<b>Voting</b>	any male colonist free of servitude / (later property ownership requirement)	denied to persons of African descent and members of native tribes
<b>Hold public Office</b>	any male free of servitude /	denied to persons of African descent
<b>Marriage</b>	any opposite-sex couple /	White people prohibited from marrying a person of African descent or member of a native tribe
<b>Gun possession</b>	no restriction enforced* /	prohibited by persons of African descent
<b>Testify in Court of law</b>	no restriction /	persons of African descent prohibited from testifying against a White person
<b>Having servants or slaves</b>	no restriction /	persons of African descent prohibited from owning White servants

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This is how White people came into being—through legal imposition and enforcement.

If anyone failed to be aware of the new social order brought about through the various enactments, the laws were required to be read aloud two times a year at church on Sunday and on the courthouse steps. British and European colonists did not experience a genetic transformation within this period that united them biologically as White people. Instead, those who were threatened by a unified labor force invented

an entirely new group of humanity to divide laborers and unite some of them with the landholding elite with a thread of superiority.

### **The Americanization of White People**

Above, we saw something of when, why, and how White people were invented. Now we move from the colonial era into the newly formed United States of America. This section will explore the role of White people in organizing the new republic and shaping its citizenry. Foundational U.S. law and policy regarding immigration and naturalization are considered. These areas of law are important because they shed light upon those who have been welcomed into the United States and permitted by virtue of federal law to become full participants and those who have not. This history continues to influence social interactions in the twenty-first century United States that cause some but not others to be seen as American.

The presumption of superiority that attached to “British and other whites” and the invention of White people was a process with a multitude of influences. The invention was the means by which to divide laborers in the service of a very exploitative capitalism. We also learn from those first laws that White people were presumed to be like the British: Christian and deserving of rights and privileges from which others could be excluded. The package of post-Bacon's Rebellion laws conferred both material and symbolic advantage to Whites. Included as part of the value of whiteness for White men was exclusive marital access to White women via antimiscegenation laws.

What became racial restrictions on marriage for Whites did not end with the



Colonial Era and the American Revolution in 1776. Generally, restrictions (marriage, voting, segregation in schools, work, and the military) upon those seen as non-White became more numerous as the United States expanded. Antimiscegenation laws became more numerous still after the abolition of slavery in the mid 1860s (Sickels, 1972).

Here, naturalization law and immigration policy are explored in relation to antimiscegenation laws for what they provide to an understanding of whiteness. Racial restrictions on marriage created all sorts of challenges for immigrants who were classified as other than White. Antimiscegenation law, naturalization law, and immigration policy combined to severely restrict legitimate relationality and economic advancement for those excluded from whiteness.

### **Naturalization Law – Patterns and Commitments**

In 1790, when the Congress of the United States met for the first time to establish the rules and requirements for immigration and naturalization, the human category White had had some 100 years to spread from Virginia and Maryland and become imbedded within law and society throughout the new republic. Immigration law addresses those persons who seek to come legally into the United States from another country. Naturalization law provides the process and guidelines by which one who is not born in the United States can become a citizen. Congress in 1790 determined that to become a naturalized citizen, one had to be White.

The requirement of establishing that one was White for the purpose of

naturalization was the law of the land until its repeal in 1952. It literally did not matter that one loved the United States, knew its history, spoke its language, or even fought its wars, if the individual seeking to naturalize could not establish that he or she was White. The case of Mr. Knight is one such example. Discussing the *Knight* case, Ian F. Haney Lopez (1996) in his study of U.S. Naturalization Law prerequisite cases, provides:

*In 1909, at the age of forty-three, Knight applied for naturalization. He had served in the U.S. Navy for more than a quarter century, receiving a medal in the battle of Manila Bay. Despite his long service to this country ... Knight's eligibility to naturalize turned on whether he was a "white person" (p. 59).*

Because he had a British father and a mother who was half Chinese and half Japanese, it was determined that Knight was a "half-breed" and therefore not White.

Naturalization law, with its requirement that one be White in order to naturalize as a U.S. citizen, was in force for more than 150 years. Following the Civil War, those born in the United States and not subject to a foreign power, excluding Indians, were declared to be citizens of the United States via the Civil Rights Act of 1866. The requirement that one be White in order to naturalize remained unchanged but the new law conferred citizenship upon those of African descent born in the United States. United States naturalization law faced little serious challenge until World War II, when it was highlighted that the only other country in the world that restricted citizenship on the basis of race was Nazi Germany, limiting it only to those of the Aryan race. However, the fact that the

United States and Germany were the *only* countries with racial restrictions failed to end the requirement of establishing that one was White in order to naturalize as a U.S. citizen (Gordon, 1945).

United States naturalization law impacted women differently than men and represents a break from British common law. In England a woman's nationality was unaffected by marriage, despite that country's commitment to the common law of coverture. In stark contrast, U.S. law stripped women of their citizenship when they married noncitizen men. This termination of women's citizenship was modified in 1922 so that a woman's U.S. citizenship was stripped if she married a noncitizen barred from citizenship because of his race (i.e., not White). These laws that stripped women of their U.S. citizenship were in force until 1931.

A consideration of naturalization law in relation to antimiscegenation law reveals the ways in which they combined to work as social control mechanisms and tools of capitalists. This group called "capitalists" is like the plantation elite of the southern colonies in that they represent the wealthy who exert significant influence over the production and distribution of resources. Naturalization and antimiscegenation law are examined below with an eye toward the patterns that emerge and the commitments that the patterns reveal.

As noted above, antimiscegenation laws blocked the social and legal legitimization of a heterosexual relationship between a White and a non-White person; worked to direct White women's relationality away from prohibited men and toward White men; and, while the law restricted both White men and White women, enforcement was rarely directed

toward White men and their non-White partners. On the other hand, naturalization law blocked full inclusion of non-Whites into the national and local community while it, like antimiscegenation law, directed women's relational interests away from some men, specifically those who were noncitizens and those excluded from citizenship (i.e., not White)), while rendering them more available to others. Antimiscegenation law enforced human difference through the constitution of families made separate and distinct, while naturalization law worked to make communities of people separate and distinct. These laws in combination with immigration policy interacted to direct and severely restrict inclusion within the economic, familial, social, and political life of the new republic.

Like antimiscegenation law, women and non-White men were the targets of control via naturalization law. Rather than facing fines, extended years of service, or banishment, non-White men and women faced exclusion from full participation in the country and local community via the denial of citizenship and the rights and privileges it confers. Women who were U.S. citizens faced the termination of their citizenship if they did not make a careful marital choice.

Those denied citizenship via naturalization law faced tremendous disadvantages. For instance, the lack of citizenship rights created limitations for some groups to organize as laborers, to own property, to compete for jobs, to obtain public services, and to attain the education and training required to advance in the workplace (Glenn, 2002; Marshall, 1964). Noncitizens excluded from citizenship (i.e., non-Whites) were prohibited in 11 states from owning land via the so-called Alien

Land Acts, beginning with California in 1913.

Because establishing one's status as White was a prerequisite for citizenship, whiteness was given symbolic and material value as synonymous with U.S. citizenship. While exclusion from citizenship created incredible hardship for the non-White noncitizens, it worked to increase the value of whiteness beyond the White-equals-American framework. Noncitizens excluded from citizenship (i.e., non-White) were denied all but low-wage jobs and difficult conditions. Each exclusion and limitation placed upon non-Whites via the White-only requirement in naturalization law, created value for Whites – White men in particular – including access to more land at better prices (via the exclusion of large populations of potential buyers); less competition for skilled jobs; generally more desirable jobs; less competition for advancement within all levels of society; greater access to education and training; and a more influential voice in the body politic.

Much like antimiscegenation law, U.S. naturalization law influenced women's relationality by rendering White male citizens of the United States the most "desirable." The 1790 Naturalization Act gave both symbolic and material value to White people. This value was most available to White men and only made secure for White women through White men, in this case, White men who were citizens. In this way the 1790 Naturalization Act served to advance the commitment to a distinctly White patriarchy.

### **Law and Whiteness**

Immigration and naturalization law deployed whiteness as the means to more sharply define who was American and who

was a "real American." At the same time they advanced this invented group of humanity called "Whites" by asserting them in law and, as a result, assigning significant meaning and value to whiteness as a matter of national law and policy. This value manifested within the social structure not only in access to formal citizenship and greater ability to immigrate to the United States but through greater access to the political, civil, and social rights of citizenship.

White ideology was built from the idea of those deemed sufficiently like the British and has shaped U.S. history in profound ways. It has constructed "American" as consistent with White. It has worked to commodify women's bodies in racialized ways and has centered patriarchal authority and economic power in the hands of White men.

This brief review of the invention of White people and the imposition of White people as preferred within the United States as a matter of foundational law, helps expose advantage to Whites as deeply historical and intricately structural.

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