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Policing the Races: Attempts to Enforce Racial Purity in Virginia
(1630-1930)

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ABSTRACT

This paper examines Virginia's "Racial Purity Laws" enacted to deny equal opportunity to black men and women who could "pass" as whites from the early 1600s to the U. S. Supreme Court decision (*Loving v. Virginia*) in 1967. When physical characteristics failed to match the legal definition of race, the state used records of vital statistics for boundary maintenance. Birth certificates, in particular, served as "internal passports" to school assignments, work eligibility, and marriage, denying citizens defined as "Negro" life chances available to whites. It was also found that over time the definition of "Negro" was expanded to include citizens with smaller proportions of African or even Native American blood in their ancestry. An example is presented illustrating how racial identity was defined and enforced.

The Concept of "Race"

Modern writers in the latter half of this century have shed considerable light explaining how the paradigm of race developed in western society. The concept itself, once held to be a physiological, empirically verifiable fact of life just 50 years ago, is now rejected "as a useful biological concept" by most scientists (Smedley, 1993, p. 6). Furthermore, once under the domain of anthropology, "race" is no longer considered to be a core concept by most anthropologists (Lieberman, 1989). Many scholars including van den Berghe, 1967; and Montague 1974; have long critiqued the notion of biologically based racial differences in the public forum. In academia, this transformation of race from hard biological fact to social construct and product of culture represents nothing less than a major paradigmatic shift. However, it is difficult to claim that this shift is mirrored by American society in general. One Newsweek poll indicated that both blacks and whites were almost evenly divided as to whether or not they favored the U. S. Census stopping collection of information on race and ethnicity with slight majorities of both favoring (Newsweek, 1995).

Most scholars agree that the concept of "race" is relatively new to western thought, first developing during the

age of European exploration and colonization in the sixteenth and seventeenth centuries (Parillo, 1994; Smedley, 1993; Puzzo, 1964). Arguments vary as to the source of North American racism. Thompson concluded from his extensive examination of southern plantation societies that the idea of "race" was not brought to America by its colonists, but rather that it evolved from the social conditions in the new frontier.

The evidence indicates that blacks in Virginia and in the South were not originally identified as racially different from the European settlers, but as religiously different. They were 'Moors' or at least non-Christians... In North America the idea that people could be divided into various races emerged out of slavery and the plantation economy of the south. (Thompson, 1975, pp. 288-289; 116)

To some, racism in the United States emerged as a justification of slavery and the brutally inhumane treatment of blacks by denying their equal status as "real men." (DuBois, 1965, p. 20) But others (Smedley, 1993; Liggio, 1976) have argued that the seeds of racism had already been planted in the minds of English colonizers from their nation's earlier experiences in subjugating the Irish-- "set[ting] the stage for a racial world view in America." Whatever its source, once established, the notion of race became reified as men of science, politics, and industry from the late 18th to early 19th

centuries, proposed various schemes of ranking people by race ranging from craniometry to I.Q. testing (Gould, 1981).

This paper is not concerned with debates over the biological or social grounds for determining race-- rather it focuses on Kovel's claim that "race" belongs to "the regulative aspects of our culture" (Smedley, 1993, p. 19; Kovel, 1970. p. 26). It examines how society limits opportunities for people who are defined by law to be racially different even when there is no evidence of physical differences, i.e., skin color, hair texture, etc. It seeks to demonstrate patterns of outgroup classification that emerge whenever powerful groups in society limit access to life chances for certain segments of the population. In doing this, it examines "racial integrity legislation" enacted in Virginia from the early 1600's to the mid 19th century to separate blacks and whites.

Race and the Emergence of a Slave Code in Virginia:

Virginia's racial integrity laws did not emerge in a social vacuum, and it will be helpful to address the emergence of legal slavery in the colony before examining racial integrity legislation. Twelve years after the English colony at Jamestown was founded in 1607, a Dutch trading ship arrived carrying Africans

to work as indentured servants in the colony. It would take approximately 50 years for legal slavery to develop from legal indenture (Stonequist, 1939).

Furthermore, slavery in Virginia legislation was not initially linked with Africans. The first mention of the word "slave" occurred in 1655 with the passage of an act specifying that "Indian children brought in as hostages are not to be treated as slaves" (Guild, 1969, p. 38).¹ During the next three decades a variety of slave laws were enacted-- e.g.; the status of the mother (bound or free) determined the status of the child (1662); baptism did not free slaves from bondage (1667); whether or not Indians could be held as slaves (1665, 1661, 1670, 1676); and the circumstances under which Indians and Negroes could themselves, purchase slaves (1670), (Guild, 1969, pp. 23-45).

Thus, the legal status of blacks in the colony steadily declined during these years. Stonequist argues that a 1662 law prohibiting miscegenation while defining two categories of blacks (bound or free) depending on the mother's status, should be considered "as the first act in the slave code" (Stonequist,

¹The first mention of the term "Negro slave" in Virginia legislation appears to have been in 1657 with the passage of Act XVI which taxed Dutch (and other) slave traders "two shillings per hogshead" of tobacco produced by the sale of Negroes.

1939, p. 252). But it wasn't until 1682 that specific legislation appeared automatically associating color with slave status.

Act I. It is enacted that all servants... which shall be imported into this country either by sea or by land, whether Negroes, Moors, mulattoes or Indians... are hereby adjudged deemed and taken to be slaves for all intents and purposes any law, usage, or custom to the contrary notwithstanding...(Guild, 1969, p. 46).

There were exceptions to this law. It did not apply to Turks and Moors who were regarded "in amity with his majesty" (in other words, could prove that they were free in England or some other Christian country); nor did it apply to those whose parentage and native countries were Christian. Toward the end of the 17th century in Virginia, the "slave status" of blacks was further solidified by additional legislation such as the example cited below:

A great inconvenience may happen to this country by the setting of Negroes and mulattoes free... it is enacted that no Negroes, or mulattoes be set free by any person whatsoever, unless such person pay for the transportation of such Negro out of the country within six months after such setting free... (Guild, 1969, p. 47)²

²The degree to which this legislation was enforced is questionable. At the beginning of the Civil War nearly one third of Virginia's population was black (548,907) and of the black population, 58,042 (approximately 10.5 percent) were free men and women (Guild, 1969, introduction).

Guild points out that Virginia laws passed before 1680 consistently used the term, "Negro" to refer to people of African descent and that the term "mulatto" began to appear afterward. It is widely acknowledged that the mixing of English and African settlers occurred shortly after the colony was founded as will be seen in the next section. The word "mulatto" began to appear in Virginia legislation after 1680, perhaps reflecting the need for a term to describe the growing number of people of mixed parentage. As this trend continued over the next two centuries, "mulatto" ceased to be used as a legal concept (Guild, 1969) and in keeping with the strict "color line" typical of North America, the terms, "Negro" and "mulatto" were afforded the same status.³

Attempts to Regulate Interracial Marriage:

The earliest surviving recorded attempt by Virginia to regulate interracial breeding and marriage appears in September 17, 1630, eleven years after the first Africans arrived at the colony (Stonequist, 1939 p. 252). In the minutes of the

³In 1860, Virginia passed legislation specifying that the word, "Negro... shall be construed to mean mulatto as well as Negro." (Guild, 1969, p. 30).

judicial proceedings of the governor and the council of Virginia is this often-cited entry:

Hugh Davis to be soundly whipped, before an assembly of Negroes and others for abusing himself to the dishonor of God and shame of Christians by defiling his body in lying with a Negro, which fault he is to acknowledge next Sabbath day (Guild, 1969, p. 21).

A similar case was recorded in 1640 where a white man was sentenced to "do penance in church according to the laws of England, for getting a Negro woman with a child..." -- The woman was to be "whipt" (Guild, 1969, p. 22). Throughout the remainder of the 1600s Virginia legislation reflects a growing concern over abuses against the "law of God," secret marriages, fornication, adultery, whoredom, blasphemous cursing and swearing, and racial intermarriage. The punishment for these offenses ranged from fines (usually specified in pounds of tobacco) and increased terms of indenture, to whippings, the stocks, and banishment. In 1691, the Virginia Assembly passed an act that specifically forbade racial intermarriage:⁴

⁴The earliest Virginia legislation prohibiting sexual relations between blacks and whites appears to have been passed in 1662 as a part of ACT XII. In addition to defining the status of children from mixed unions (following that of the mother) it states, "...and if any Christian shall commit fornication with a Negro man or woman, he shall pay double the fines of a former act." (Stonequist, 1939, p. 252; Guild, 1969, pp. 23-24)

...And for the prevention of that abominable mixture and spurious issue which hereafter may increase as well by Negroes, mulattoes and Indians intermarrying with English, or other white women, it is enacted that for the time to come, that whatsoever English or other white man or woman, bond or free, shall intermarry with a Negro, mulatto, or Indian man or woman, bond or free, he shall within three months be banished from this dominion forever...

It has been observed by Stonequist and others that as "slavery became defined in law as well as in custom the community attitude toward intermarriage and to some extent toward illicit relationships became more hostile" (Stonequist, 1939, p. 253). Table 1 summarizes racial purity legislation from 1662 through 1932. While it is true that the severity of laws prohibiting intermarriage increased with the institutionalization of slavery in Virginia, it is evident that they continued to increase in severity especially after the repeal of slavery. Clearly, once slavery had been removed as one boundary between the races, Virginia legislators sought new ways to enforce racial segregation as well as reinforcing existing mechanisms.⁵

Defining Race:

⁵The last law cited in Table 1 (VA Acts, 1932 Chapter 78) was overturned by the U.S. Supreme Court in 1967 in the case of Loving vs the State of Virginia.

Apparently, one's physical appearance was sufficient for racial classification in Virginia at least until 1785 when the first formal definition was enacted by the legislature. (See Table 2). It is noteworthy that the first "proactive" legislation prohibiting sexual relations between blacks and whites was enacted in 1662, over 120 years before the appearance of the first laws defining race. Reasons for the structural lag between legal proscriptions and definitions are fairly evident.

First, while the English in colonial Virginia may have demonstrated some internal variability, they were a homogeneous lot, easily distinguishable from Native Americans and Africans by physical appearance. Anyone "of color"-- whether black, brown or tan-- would automatically be assumed "Negro" unless they could produce papers proving otherwise. Second, even after several generations of interbreeding (which would diminish physical differences) Virginia was, and would remain through the end of the 19th century, a folk society where people's ancestral lines were known to the community. Finally, movement of blacks was severely restricted-- slaves could not travel in the community without written authorization; freedmen (and women) required special licenses to prove their status. In summary, the adoption of a formal definition of race probably reflected

white Virginia's desire for a legal system readily available to classify the ever increasing number of people of mixed parentage whenever the need arose.

Returning to Table 2, it is seen that for over one hundred years, from 1785 to 1910, the legal "color line" was drawn at a person with at least a quarter "Negro blood." But there were shifts in terminology beginning with "mulatto" in 1785; moving to the legal use of "mulatto" and "Negro" interchangeably in 1860; and finally a new term, "colored person" in 1866. In 1910, the criteria defining "colored person" were tightened to one-sixteenth "Negro blood." Also in 1910, "Indians" were legally defined as "every person, not a colored person having one-fourth or more Indian blood." Finally, the "one drop rule" appeared in 1924 with the passage of legislation that defined a "white person" as someone with "no trace whatsoever of any blood other than Caucasian"-- but, Caucasians with one-sixteenth or less Indian blood were also defined to be Caucasian. (The Virginia Bureau of Vital Statistics later considered all Indians to contain Negro blood as will be shown in the next section). This was reaffirmed and elaborated upon in 1930 legislation. One wonders about the plight of those Virginians with one-

sixteenth Negro blood in 1909; or those with any ascertainable Negro blood in 1923. How did their impending racial reclassification from white to "colored" affect their future lives?⁶

The evolution of these laws reflects changes in Virginia's social environment during the period. Initially African indentured servants were clearly discernible from English settlers by color. In the frontier environment where race mixing continued, some marginality was tolerated-- the "one-quarter rule"-- as boundary maintenance functions were reinforced by the institutionalization of slavery. However, the legislation of 1860 equating the terms "mulatto" and "Negro" suggests a tightening of racial definitions before the Civil War. (In this case, a person with one Negro grandparent-- a "mulatto" was legally defined to be the same as a person with four Negro grandparents. While, this was already the customary practice in Virginia, the legislation technically erased whatever marginal status that may have been allowed by law).

By 1910, with Jim Crow laws and de jure segregation in full force, the legal boundary was drawn even tighter. At this time,

⁶The answer to this question is that they were already defined as "colored" by social custom and practice in the communities where they lived.

if one out of sixteen great-great grandparents were a Negro or mulatto, a person was legally "colored." Actually, with the terms "mulatto" and "Negro" codified as equivalent, this had already been the case because a person's grandparent would be considered "mulatto" (or "Negro") if one of that grandparent's grandparents were mulatto or Negro-- going back a total of 4 generations to sixteen great-grand parents. (See Figure 1). In this sense, the 1924 "one drop rule" was the legal culmination of a trend that had begun in 1785.⁷

Records and Documentation:

The powerful mechanisms of informal social control afforded white Virginians in the 17- and 1800's were weakened by industrialization and the gradual transition from folk to urban society. Legislation strictly prohibiting sexual relations

⁷Even the "one-quarter" rule was less flexible than legislature enacted by Nazi Germany on November 14, 1935 (The First Supplementary Decree on the Reich Citizenship Law). This law defined a Jew as anyone "descended from at least three grandparents who are racially full Jews..." The law also defined as a Jew, "any half-caste Jewish subject of the state... descended from two full Jewish grandparents" and was still connected to the Jewish community through religious affiliation or marriage-- referred to as "half-castes of the first degree." However, "half-castes of the second degree" (also referred to as "quarter-Jews") were "collectively and categorically placed with 'Aryans'" although never accorded full equality with Aryans (Graml, 1992, p. 122).

between the races seemed to lack the desired effect. The country was experiencing record levels of immigration especially from southern and eastern Europe where people did not harbor the same antagonisms against blacks as Virginia's white (primarily English) population. Also, innovations in transportation produced higher geographic mobility-- the community's control over its residents was weakening. Perhaps in response to these trends, a formally institutionalized, state-wide system of tracing the population's racial heritage was implemented in 1853. Table 3 summarizes the key legislation designed to track peoples' ancestry.

Just as there was a structural lag (123 years) between the earliest laws prohibiting interracial marriage and legislation defining who was a Negro, another structural lag (68 years) occurred before there was a legal state-wide requirement for birth certificates to include the race of the child in 1853. This suggests a growing concern in the mid 1800s over the need for a formal system to classify people who could "pass" as white. Shortly after the Civil War, the state began tracking marriages by requiring the ministers to submit forms to local governments stating the race of those whom they married. One year later, Virginia also sought federal statistics on marriages

between "colored persons." Finally, in 1924, "for the preservation of racial integrity," the legislature directed that "registration certificates" be filled out for people who did not have birth certificates on file. The "registration certificates" were to indicate the "racial mixture" for each person in question. Falsifying a person's race on the form was a penitentiary offense.

The Virginia Bureau of Vital Statistics provided a statement to serve as guidance to state and local clerks who recorded births and deaths and found the need to adjudicate individual cases. This entire statement was to be attached to birth certificates of people whose ancestry was in question with regard to color or race. (See Appendix II). The first part of the statement discusses various Native American tribes of Virginia in detail, providing source material for the following conclusion:

Therefore:- In consideration of the above and other similar evidence relating to all or practically all groups claiming to be "Indians," The Virginia Bureau of Vital Statistics accepts the belief that there are no descendants of Virginia Indians claiming or reputed to be Indians, who are unmixed with Negro blood, and in accordance with the requirements of the Vital Statistics and Racial Integrity laws that births and deaths be correctly recorded as to race, classifies as Negro or colored, persons either or both of whose parents are recorded on the birth or death certificate or marriage license, or who are themselves recorded as

Indian, Mixed Indian, Mixed, Melungeon, Issue, Free Issue, or similar non-white terms...

Example-- A Case Study:

Examining Virginia legislation intended to separate the races reveals three basic trends. First, there was strong opposition to racial mixing and interracial marriage from the very beginning (even when it must have been relatively common). Second, under the background of this constant strong opposition, definitions of race became increasingly tight. (Although, in practice, anyone of color must have been considered a Negro). Third, it wasn't until relatively late that a formal registration system emerged as a tool to separate the races. The following case (on file in the Virginia Bureau of Vital Statistics) illustrates how thoroughly these rules and regulations were used when needed:

The case in question spanned a period of approximately 10 months beginning in May, 1929. A woman died leaving seven children as orphans since the father either could not (or would not) care for them. One of the seven children appeared to be of mixed blood. The case begins with an undated note found with a birth certificate:

This child with the brothers and sisters was turned over to the State Department of Public Welfare in May,

1929 soon after the death of the mother. The other children in the family appear to be white, but this child is said by persons who have seen it to be distinctly Negroid in appearance. No statement could be secured from the mother as to the father of this child...

Apparently, there were no relatives with whom the children could be placed and the State Department of Public Welfare was charged with finding homes for them. Concerned that it might place a black child in a white foster home, The Department of Public Health asked the Bureau of Vital Statistics to certify the race of the child in question by checking its birth certificate. When the Bureau of Vital Statistics found that the father was listed as "white" it wrote to the doctor who performed the delivery:

Dear Doctor _____:

In our volume _____ is your certificate for the birth of _____ [date]. You give the parents of this child as white.

We have a communication from the Department of Public Welfare who have the responsibility of placing this child in a home. They say that they are unable to do it because the child is of decidedly dark complexion and cannot be placed in a white home.

Will you kindly advise as to the situation and as to whether you had any reason at the time to suspect that either parent was colored, or whether you have now.

Kindly reply on this letter in the enclosed stamped addressed envelope.

Yours very truly,

State Registrar.

The doctor's handwritten reply is given below: (At the time it was a penitentiary offense in Virginia to knowingly make a false statement as to the race of the child on a birth certificate).

Sir:

In reply of yours of the 21st. I delivered this woman of three previous white girls and since that birth of this [child] in question, a white boy, and in April this mother was delivered of white twin girls. At the birth of this child I was impressed with marked Negroid characteristics of this baby but outside of appearances had no reason to doubt its parentage. Made inquiry through acquaintances if this woman and could get no history of mixed blood. Of course appearance of baby roused neighborhood gossip and since death of mother the child's father disowns it.

Have no legal evidence that it is other than white, but appearances are certainly of a marked Negroid character.

Sincerely,

The matter was pursued over the next six months with inquiries made to another state in the South. It appeared to be resolved with the following letter from the "Board of Charities and Public Welfare" in a small town outside Virginia:

To Whom it may concern:

This is to confirm that _____, child of _____, had a Negro for his father. I have personally

interviewed this man and secured acknowledgment from him of the above facts.

Have also made a very thorough investigation of the family of the above woman for several generations, back to civil war period, and find that there is no Negro blood in the family but that they were all white.

Welfare Supt.

However, it seems that the above letter was not sufficient for Virginia's record keeping purposes and a more detailed statement was requested. A second letter from the same source followed a month later:

Gentlemen:

I have been instructed to send you a statement concerning the above child in regard to his parentage, so that it could be attached to your birth certificates. I am enclosing what I suppose is necessary, but if it does not answer the purpose, please give me further directions about what you wish and I will be glad to furnish you. I have investigated this case most thoroughly (sic), and I am satisfied that this child alone of this family had a Negro father.

Assuring you of my cooperation at all times, I am

Yours very truly,

Supt. Public Welfare.

The above example demonstrates the extraordinary amount of time and resources that could be spent on just one case while policing the races to enforce "racial integrity." At this time

it is not known how many similar files exist in Virginia' Bureau of Vital Statistics.

Summary-- Virginia's System for "Racial Integrity":

The status of free blacks in Virginia had steadily eroded since their arrival at Jamestown. Legislation enacted in 1639 ordered that "All persons except Negroes are to be provided with arms and ammunition..." (Guild, 1969, p. 37). By 1860, a wide variety of legislation had passed with controls ranging from restrictions on geographic mobility to prohibitions against the purchase of liquor. Free Negroes were not allowed to attend school, carry guns, serve on juries, vote in public elections, or preach. (See Table 4 for selected examples). Thus, the slave era in Virginia witnessed the diminishing civil rights of free blacks. Even if a slave were freed by the owner, special permission was required from the authorities to remain in the state. The preference of the state government clearly was for freed blacks to leave and settle elsewhere. The increasingly harsh legislation against them served as encouragement to do so.

After the Civil War, Virginia legislators were faced with a new dilemma-- how to continue the subjugation of the black population under the guise of freedom and equality. The era of

"separate but equal" was born. This doctrine first appeared in public education in 1870 with the passage of an act providing...

a system of free public schools for persons between five and twenty-one years, that white and colored persons shall not be taught in the same school but in separate schools, under the same general regulations as to management, usefulness and efficiency...(Guild, 1969, p. 180)

Separate schools were repeatedly mandated by additional legislation passed in 1902, 1906, 1908, 1920, and 1928 (Guild, 1969 pp. 180-184).

In 1912, the state passed legislation that supported the establishment of "segregation districts." The tone of this legislation is such that it is worth repeating in its entirety:

Whereas, the preservation of the public morals, public health and public order in the cities and towns of this Commonwealth is endangered by the residence of white and colored people in close proximity to one another, it is enacted that in cities and towns where this act is adopted, the entire area within the corporate limits shall be divided into 'segregation districts.' It shall be unlawful for any colored person to move into a white district, or a white person to move into a colored district. This act does not preclude persons of either race employed by persons of the other race from residing on the premises of the employer (Guild, 1969, p. 148).

The state passed legislation permitting segregation ordinances again in 1936-- after a Supreme Court ruling declaring such legislation unconstitutional (Guild, 1969, p. 148).

Even before the passage of legislation allowing for residential segregation, segregation of public facilities was well underway-- passenger rail, steamships plying the Commonwealth's waters (1900); trolley lines (1901); state penitentiaries (1908); places of public entertainment (theaters, motion picture shows, etc.) 1926; passenger motor vehicles (busses) (1930). In the political area, voting was controlled through capitation taxes (1876); Poll taxes and literacy tests (1902; 1904; 1928) (Guild, 1969, pp. 144-150).

Two "structural lags" have been described in Virginia's attempt to enforce racial integrity: The first, between the earliest attempts to prohibit interracial marriage and definitions of race (who was a Negro and who was not). The second occurred between the state's definition of "Negro" and its mandate to record a person's color on birth and marriage certificates. But by 1930, everything was in place to ensure that life chances of Virginia's blacks did not approach (or threaten) those of whites. Most major social institutions-- family, education, economy, and politics were directly touched

by racial purity legislation. (It is significant that religion was not).

The question of defining white and "colored" had been settled. De jure segregation was in place and wouldn't be challenged effectively for many years. Equally important, a large bureaucracy charged with maintaining the Commonwealth's vital statistics had been established. Whenever necessary, it could be relied upon by the authorities to check a person's racial ancestry. Without this institutionalized system tracking racial heritage, it would not have been possible for the state to police the races as effectively as it did.

APPENDIX I

1785. Chapter LXXVIII. Every person of whose grandfather or grandmothers anyone is or shall have been a Negro, although all his other progenitors, except that descending from the Negro shall have been white persons, shall be deemed a mulatto, and so every person who shall have one fourth or more Negro blood shall in like manner be deemed a mulatto. This act is to be in force from January 1, 1787. (Guild, 1969, p. 29)

1792. Chapter 41. It is provided that every person other than a Negro, although all his other progenitors except that descending from the Negro shall have been white persons shall be deemed a mulatto; so every such person who shall have one-fourth part or more of Negro Blood, shall in like manner be deemed a mulatto.

[Footnote follows:] The code of 1860, Chap. 103, reads: Every person who has one-fourth or more of Negro blood shall be deemed a mulatto, and the word

Negro in any section shall be construed to mean mulatto as well as Negro. (Guild, 1969, p. 30)

1833. Chapter 80. A court, upon satisfactory proof, by a white person of the fact, may grant to any free person of mixed blood a certificate that he is not a Negro, which certificate shall protect such a person against the penalties and disabilities to which free Negroes are subject. (Guild, 1969, p. 32)

1866. Chapter 17. Every person having one-fourth or more Negro blood shall be deemed a colored person, and every person not a colored person having one-fourth or more Indian blood shall be deemed an Indian. (Guild, 1969, p. 33)

1910. Chapter 357. Every person having one-sixteenth or more Negro blood shall be deemed a colored person, and every person not a colored person having one-fourth or more Indian blood shall be deemed an Indian. (Guild, 1969, p. 35)

1924. Chapter 371. For the preservation of racial integrity, registration certificates shall be made out and filed for those persons born before June 14, 1912, showing the racial mixture for whom a birth certificate is not on file. It is a penitentiary offense to make a registration certificate false as to race or color. No marriage license shall be granted unless the clerk has reasonable assurance that the statements as to color are correct.

It shall be unlawful for any white person to marry any save a white person, or a person with no other admixture of blood than white and American Indian. The term 'white person' shall apply only to the person who has no trace whatsoever of any blood other than Caucasian, but persons who have one-sixteenth or less of the blood of the American Indian, and no other non-Caucasic blood shall be deemed white persons. All laws heretofore passed and in effect regarding the intermarriage of white and colored persons shall apply to marriages prohibited by this act. (Guild, 1969, p. 35)

1930. Chapter 85. Every person in whom there is ascertainable any Negro blood shall be deemed a colored person, and every person not a colored person having one-fourth or more American Indian blood shall be deemed an American Indian; except that members of Indian tribes living on reservations allotted them by Virginia, having one-fourth or more of Indian blood and less than one-sixteenth of Negro blood shall be deemed tribal Indians so long as they are domiciled on reservations.

APPENDIX II

(The following statement was provided to state and local workers who maintained records of vital statistics on Virginians in the 1930's). It was to be attached to birth and death certificates of people whose racial heritage was in question).

"Howe in his History of Virginia, 1845, Pages 349-350 says of the Mattapine and Pamunkey Indians of King William County: 'Their Indian character is nearly extinct by intermixture with the whites and Negroes.'

Encyclopaedia Britannica, Eleventh Edition, Volume 14, Pages 460 and 464 says of Chickahominy Indians, 'No pure bloods left, considerable Negro admixture,' and of the Pamunkeys, 'All mixed-bloods; some Negro mixture.'

The Handbook of American Indians (Bulletin 30), Bureau of American Ethnology, under the heading 'Croatan Indians,' says: 'The theory of descent from the colony may be regarded as baseless, but the name itself serves as a convenient label for a people who combine in themselves the blood of wasted native tribes, the early colonists or forest rovers, the runaway slaves or other Negroes, and probably also of stray seamen of the Latin

racess from coasting vessels in the West Indian or Brazilian trade.

'Across the line in South Carolina are found a people, evidently of similar origins, designated 'Redbones.' In portions of western North Carolina and eastern Tennessee are found the so-called 'Melungeons" (probably from the French melange, 'mixed') or 'Portuguese," apparently an offshoot from Croatan proper, and in Delaware are found the 'Moors.' All of these are local designations for people of mixed race with an Indian nucleus differing in no way from the present mixed-blood remnants known as Pamunkey, Chickahominy, and Nansemond Indians in Virginia, excepting in the more complete loss of their identity. In general, the physical features and complexion of the persons of this mixed stock incline more to the Indian than to the white or Negro.'

The same, under 'Mixed-bloods,' says; 'The Pamunkey, Chickahominy, Marshpee, Naraganset, and Gay Head remnants have much Negro blood, and conversely there is no doubt that many of the broken coast tribes have been completely absorbed into the Negro race.'

In 1943, 144 freeholders of King William County in a petition to the legislature to abolish the two Indian reservations

of that county, B. 1207, State Library, say: 'There are two parcels or tracts of land situated within the said County, on which a number of persons are now living, all of whom by the laws of Virginia would be deemed and taken to be free mulattos, in any court of justice; as it is believed they all have one-fourth or more Negro blood; and as proof of this, they would rely on the generally admitted fact, that not one individual can be found among them, of whose grandfathers and grandmothers, one or more is or was not a Negro; which portion of Negro blood constitutes a free mulatto--see R.C. Vol. 1st page.' These conclusions are confirmed by responsible citizens now living in that county December 1927.

A. H. Estabrook and Ivan E. McDougale in their book, 'Mongrel Virginians,' 1926, describe a group of mixed breeds centering in Amherst County and extending to the Irish Creek Valley in Rockbridge, and to other surrounding counties, known locally as "Issue" or "Free Issue." They say, Page 15: 'These freed Negroes mated with themselves or the half-breed Indians in the County.'

Therefore:- In consideration of the above and other similar evidence relating to all or practically all groups claiming to be "Indians," The Virginia Bureau of Vital Statistics accepts

the belief that there are no descendants of Virginia Indians claiming or reputed to be Indians, who are unmixed with Negro blood, and in accordance with the requirements of the Vital Statistics and Racial Integrity laws that births and deaths be correctly recorded as to race, classifies as Negro or colored, persons either or both of whose parents are recorded on the birth or death certificate or marriage license, or who are themselves recorded as Indian, Mixed Indian, Mixed, Melungeon, Issue, Free Issue, or similar non-white terms.

The Bureau of Vital Statistics has consented to accept an interrogation mark (?) (sic) as indication that the writer of the certificate considered the individual as probably of colored origin, but preferred not stating the fact, to appear in the local record.

This warning will apply also to any who may be incorrectly recorded as white, when known to be of Negro, Malay, Mongolian, West Indian, East Indian, Mexican, Filipino or other non-white mixture.

The above statement of information now available, is given for the guidance of those to follow us in this work, and is intended to apply to the individual whose birth is reported on

the certificate Vol. _____ No. _____ to
which this is attached.

Table 1: The Evolution of Miscegenation Laws in Virginia
(Compiled from Guild, 1969)

YEAR	OFFENSE	PUNISHMENT
1662	Any Christian committing fornication with a Negro man or woman	"double the fines of a former act" (In 1657, ACT XIV was passed imposing a fine of 500 pounds of tobacco (or whipping) for fornication).
1691	Racial intermarriage between whites, (bond or free) with a Negro, mulatto or Indian (bond or free)	banishment from Virginia forever
1705	Racial intermarriage between white christian and any of following; Negro, mulatto, Indian, Jew, Moor, Mohammedan or other infidel	All white (indentured) servants belonging to the white christian are to be set free
1705	Racial intermarriage between free white man or woman with a Negro	6 months in prison without bail; fine of 10 pounds to the parish; ministers performing marriage fined 10,000 pounds of tobacco
1753	Racial intermarriage between a free English or white man or woman and a Negro or mulatto man or woman, bond or free	6 months in prison without bail; fine of ten pounds to the parish
1792	Racial intermarriage between free white men and white women with Negroes or mulattoes bond or free	6 months in prison; fine of \$30.00 for the use of the parish; ministers who marry Negroes and whites fined \$250.00 per marriage
1818	Leaving the state to avoid certain sections of the marriage law of 1792	punishment to be the same as if the offense were committed in the Commonwealth
1848	Any white persons who	up to 12 months in jail; up

	shall intermarry with a Negro	to \$100.00 fine; person performing the ceremony to be fined not less than \$200.00
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Table 1: Evolution of Miscegenation Laws in Virginia (Continued)

YEAR	OFFENSE	PUNISHMENT
1878	Any white person who shall intermarry with a Negro, or any Negro who shall intermarry with a white person	confinement in the penitentiary from 2 to 5 years;
1879	Marriage between a white person and a Negro	all marriages between a white person and a Negro shall be absolutely void without any decree of divorce or other legal process
1932	Any white person intermarrying with a colored person or any colored person intermarrying with a white person	felony conviction; confinement in penitentiary from 1 to 5 years

Table 2: The Definition of "Negro" in Virginia Legislation; 1785-1930 (Compiled from Guild, 1969)

Year	Legal Definition
1785	1/4 Every person of whose grandfather or grandmothers anyone is or shall have been a Negro, although all his other progenitors, except that descending from the Negro shall have been white persons, shall be deemed a mulatto, and so every person who shall have one fourth or more Negro blood shall in like manner be deemed a mulatto.
1792	1/4 It is provided that every person other than a Negro, although all his other progenitors except that descending from the Negro shall have been white persons shall be deemed a mulatto; so every such person who shall have one-fourth part or more of Negro Blood, shall in like manner be deemed a mulatto.
1833	n/a A court upon satisfactory proof, by a white person of the fact, may grant to any free person of mixed blood a certificate that he is not a Negro, which certificate shall protect such person against the penalties and disabilities to which Negroes are subject.
1860	1/4 Every person who has one-fourth or more of Negro blood shall be deemed a mulatto, and the word Negro in any section shall be construed to mean mulatto as well as Negro.
1866	1/4 Every person having one-fourth or more Negro blood shall be deemed a colored person, and every person not a colored person having one-fourth or more Indian blood shall be deemed an Indian.
1910	1/16 Every person having one-sixteenth or more Negro blood shall be deemed a colored person, and every person not a colored person having one-fourth or more Indian blood shall be deemed an Indian.
1924	any The term 'white person' shall apply only to the person who has no trace whatsoever of any blood other than Caucasian, but persons who

	have one-sixteenth or less of the blood of the American Indian, and no other non-Caucasic blood shall be deemed white persons.
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Table 2: The Definition of "Negro" in Virginia Legislation; 1785-1930 (Continued)

Year	Legal Definition
1930	any Every person in whom there is ascertainable any Negro blood shall be deemed a colored person, and every person not a colored person having one-fourth or more American Indian blood shall be deemed an American Indian; except that members of Indian tribes living on reservations allotted them by Virginia, having one-fourth or more of Indian blood and less than one-sixteenth of Negro blood shall be deemed tribal Indians so long as they are domiciled on reservations.

Table 3: Legislation Defining Records-Keeping Practices to Track Racial Ancestry (Compiled from Guild, 1969)

Year	Legislation
1833	A court upon satisfactory proof, by a white person of the fact, may grant to any free person of mixed blood a certificate that he is not a Negro, which certificate shall protect such person against the penalties and disabilities to which free Negroes are subject.
1853	Every commissioner of the revenue shall make an annual registration of the births and deaths in his district. He shall record the date and place of every birth, the full name of the child, the sex and color, and if colored whether free or slave, the full name of the mother, and if the child be free and born in wedlock the full name, occupation and residence of the father, if the child be a slave, the name of the owner, etc.
1866	It shall be the duty of every minister celebrating a marriage and of the keeper of the records of any religious society which solemnizes marriages, by the consent of the parties in open congregation at once to make a record of every marriage between white persons, or between colored persons, stating in such record whether the persons are white or colored, and return a copy to the clerk of the county or corporation in which the marriage is solemnized.
1867	It having been represented to the assembly that the United States authorities have collected statistics exhibiting the marriages heretofore solemnized between colored persons which ought to be preserved, and the Assembly being solicitous to preserve evidences for legitimizing the offspring of such marriages, the governor is instructed to obtain from the United States authorities registers of marriages between persons and have copies deposited with clerks of courts.
1924	For the preservation of racial integrity, registration certificates shall be made out and filed for those persons born before June 14, 1912, showing the racial mixture for whom the birth certificate is not on file. It is a penitentiary

	offense to make a registration certificate false as to race or color. No marriage license shall be granted unless the clerk has reasonable assurance that the statements as to color are correct.
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Table 4: Selected Legislation Enacted against Free Blacks in Virginia, 1801-1858

Date	Legislation Enacted Against Free Blacks
1801	forbidden to leave their city or county of residence without permission-- (Rosters posted at courthouse door)
1806	forbidden to carry a firearm without a license
1811	(In Portsmouth) forbidden to wander about the streets at night or on Sundays and holidays
1823	could be sold into slavery if convicted of an offense punished by imprisonment for over 2 years
1826	prohibited from piloting a vessel on the Rappahannock River
1831	meetings of free Negroes or mulattoes (at any location) for teaching them reading or writing defined as "unlawful assembly"
1832	prohibited from preaching or holding religious meetings, carrying firearms under any circumstances, distributing liquor at public assemblies
1836	required to have a "respectable white person" certify their manifests when transporting material by boat
1838	could not return to the commonwealth if they had gone outside the state to be educated
1843	prohibited from selling, preparing, or administering medications without permission
1851	(In Middlesex County) prohibited from keeping a dog without a license
1858	prohibited from purchasing "wine or ardent spirits" without written certificate from three or more justices of the peace

(Compiled from Guild, 1969)

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