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REDEFINING RACE: VIRGINIA'S RACIAL INTEGRITY ACT OF 1924 AND AMERICAN INDIAN IDENTIFICATION

by

Mika Endo

A Dissertation
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Redefining Race: Virginia's Racial Integrity Act of 1924 and American Indian Identification

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by

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DEDICATION

To Jim Glanville and Chief Lee Vest.

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TABLE OF CONTENTS

ABSTRACT

REDEFINING RACE: VIRGINIA'S RACIAL INTEGRITY ACT OF 1924 AND AMERICAN INDIAN IDENTIFICATION

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George Mason University, 2022

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This dissertation explores the Virginia Racial Integrity Act of 1924 and the fight of American Indian against this act. It examines how the Anglo-Saxon Clubs of America, a Virginia-based white supremacist organization, succeeded in enacting the Racial Integrity Act of 1924 and thus revised the definition of "race" to maintain white supremacy. This law, for the first time, established a legal definition of a white person as one "who has no trace whatsoever of any blood other than Caucasian." The purpose of the law was to prohibit intermarriage between whites and non-whites and to protect the "whiteness" of the race. I focus on how a law created primarily to maintain white supremacy over African Americans unexpectedly created a controversy about how to racially categorize Native Americans. A third racial category presented white supremacists with a difficult challenge in a society that, under the law, was strictly biracial: white and Black. I am interested in seeing how the white supremacists advanced

their views and implemented the law, as well as how Indians reacted against the 1924 law and fought to claim their racial identity as Indians.

While I examine the implementation of the law and the damage to Native communities, this dissertation also explores how Virginia Indians regained their racial status after the law was overturned. White supremacists' racial campaign to eliminate Indians in Virginia made it difficult for many tribes to achieve tribal recognition and claim their independent racial status. The dissertation shows the current issues and impacts the Racial Integrity Act had on the tribes. Examining Virginia tribes' decisions and their strategies for recognition helps illuminate the situation American Indians faced.

Drawing on a variety of primary sources from the viewpoints of both white supremacists and those who challenged them, this dissertation helps develop a new interpretation of white supremacists' racial campaign against non-whites and a discussion about racial identification of American Indians and their struggles navigating the biracial society. White supremacists' ideology of racial purity persisted and pervaded into indigenous communities, which further escalated racial divisions inside the tribes. Indians were also compelled to redefine "race" within their tribal communities. Studying the Racial Integrity Act allows us to see how "race" has been made and "remade" in the Old Dominion in the twentieth century.

INTRODUCTION

In July 1940, Virginia resident Henry King, who claimed to be a "Black Hark Indian," sent a copy of his birth certificate to the state Bureau of Vital Statistics to request a duplicate copy. Instead, King received a letter stating that his birth certificate was denied. The letter stated, **"**We are returning the certificate in duplicate for your birth of June 15, 1906" because "we accept only such certificates as reach us in a satisfactory manner and that we believe to be accurate." According to the sender of this letter, "none of the native-born individuals in Virginia claiming to be Indian are free from negro mixture," and "under the law of Virginia every person with any ascertainable degree of negro blood is to be classed as a negro or colored person, not as an Indian." "If you desire to make out a new certificate," the sender suggested, "in which you give your race as colored or negro, the certificate will otherwise be acceptable."[1]

[1] Walter Plecker to Henry King, July 13, 1940, John Powell Collection, Albert and Shirley Small Special Collections Library, University of Virginia. Susan J. Pearson explains that people requested birth certificates as it became requirements for proof of age for school enrollment or applying for employment and social security. Additionally, federal government required all workers in defense industries to provide proof of their citizenship during the World War II. See, Susan J. Pearson, "'Age Ought to Be a Fact': The Campaign against Child Labor and the Rise of the Birth Certificate," *The Journal of American History* 101, no. 4 (2015): 1144–65, https://doi.org/10.1093/jahist/jav120. Also, see Susan J. Pearson, "We Are Simply All Americans," in *The Birth Certificate*: *An American History* (Chapel Hill: University of North Carolina Press, 2021), 251–288, http://www.jstor.org/stable/10.5149/9781469665719_pearson.12.

A similar letter was sent to another resident in Virginia. In 1942 William E. Bradby received a letter stating, "We are returning your dollar fee and are holding your birth certificates for future reference." Bradby's birth certificate was rejected because his parents were listed as "Half Breed Indian." This letter used language similar to Henry King's letter, reminding him that the Bureau of Vital Statistics does "not recognize any native-born Indians as of pure Indian descent unmixed with negro blood." Under "the law of Virginia," Bradby was not an "Indian" because "any ascertainable degree of negro blood constitutes the individual a colored person."[2]

Both letters were written by Walter Ashby Plecker, a physician and Virginia's first state registrar at the Virginia Bureau of Vital Statistics, where he served from 1912, when it was established, to 1946, when he retired. Plecker monitored the race of Virginians on their birth, marriage, and death certificates that came into his office. The law that Plecker was referring to in his letters was the Racial Integrity Act of 1924. This act for the first time made a clear legal definition of a white person as one "who has no trace whatsoever of any blood other than Caucasian." The 1924 law, however, also provided the "Pocahontas exception," a special exemption that defined as white "persons who have one-sixteenth or less American Indian blood and have no other non-Caucasic blood."[3] This provision was included to protect the racial status of Virginia's white elite families who believed they were the descendants of Pocahontas and John Rolfe and other

[2] Walter Plecker to William E. Bradby, February 2, 1942, John Powell Collection, Albert and Shirley Small Special Collections Library, University of Virginia.

[3] The New Virginia Law to Preserve Racial Integrity, March 1924, Virginia Health Bulletin, Rockbridge County Court Records, Clerk's Correspondence [W. A. Plecker to A.T. Shields], 1912-1943, Library of Virginia.

early settler-Indian marriages and who would otherwise have been categorized as Blacks. Plecker had opposed the inclusion of the Pocahontas exception and believed Indians in Virginia were using it as a way to pass as white despite what he considered their interracial mixture with Blacks. He rejected many of the certificates submitted or requested by Indians like King and Bradby.

In the two decades after the 1924 law was passed, Virginia's leading white supremacists found that it took more than the Racial Integrity Act to enforce their racial views. Plecker challenged Indians who claimed to be white or Indian under the special exception, and the General Assembly revised the 1924 law several times to redefine "race." Through his office Plecker ignored the provision of the law that allowed individuals to have some Indian blood and still be considered white, and he ultimately denied Indians the right to claim their own independent racial status.

Indian Tribes in Virginia

Prior to the European arrival in North America, Native Americans lived in the area we now call Virginia – the land called Tsenacomoco by the Powhatan people – for thousands of years. The contact with Europeans led to "a devastating impact on the indigenous people of this land." Creek Indian Rhyannon Berkowitz explains that "This came not just in the form of physical and overt violence: often it was much more subtle," and "Perhaps the most appalling was the attempt to write American Indians out of

existence."[4] Virginia Indians experienced both physical violence and subtle harm from the consequence of European colonization that impacts to the present, especially when their race was erased on official records after the Racial Integrity Act of 1924 was enacted.

Virginia Indians living in the coastal area first encountered Europeans in 1525. The Spanish explored the land of present-day Virginia by the 1530s. In the 1560s the Spanish took one of their chiefs to Spain and returned him in 1570 for a Jesuit mission. The mission failed as Indians destroyed it in 1571, and Spain sent a military force the following year to rescue the survivors. The first English colonists arrived in North America in 1584 at Roanoke Island, North Carolina, and explored southeastern Virginia the following year. English colonists violently attacked Indian villages and beheaded a chief on the rumor of an Indian attack. The Roanoke colony failed, and their second settlement in 1587 also did not survive, known as the "lost colony," due to the unknown reason of the disappearance of the English population.[5]

By the early 1600s, three cultural groups of Indian peoples based on the language they spoke lived in Virginia: the Algonquian-speaking Powhatan tribes in eastern Virginia in the Tidewater, Iroquoian-speaking Nottoway and Meherrin in the south along the upper James River, and the Siouan-speaking tribes in the Piedmont. Chief Powhatan

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[4] Karenne Wood, *The Virginia Indian Heritage Trail* (Charlottesville, Virginia Foundation for the Humanities, 2007), 6.

[5] Frederic W. Gleach, *Powhatan's World and Colonial Virginia: A Conflict of Cultures* (Lincoln: University of Nebraska Press, 1997), 2; Keith Egloff and Deborah Woodward, *First People: The Early Indians of Virginia* (Charlottesville: University of Virginia Press, 2006), 47-48.

had controlled most of the Algonquian tribes in the Tidewater and had formed a confederacy of Powhatan paramount chiefdom consisting of over thirty-two sub chiefdoms or tribes under his rule.[6]

In 1607 the English came to eastern Virginia to establish their first permanent settlement in Jamestown. Under Captain John Smith the colony survived with the help from Indians who taught them to raise crops, such as corn, and the English obtained food by "trade or use of force." The English traded and negotiated with Indians to gain more resources, such as wood and fur, and exported back to their country for wealth.[7] The early years of relation between the Powhatans and English were "mutual attempts to civilize each other," says anthropologist Frederic Gleach. Although both groups misunderstood the other group, they attempted to impose superiority to each other and "persuade to adopt 'appropriate' ways of living."[8] For instance, the English had different religious belief and felt the need to convert Indians to Christianity. Indians accepted the idea of

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[6] Helen C. Rountree, "The Indians of Virginia: A Third Race in a Biracial State," in *Southeastern Indians Since the Removal Era*, ed. Walter L. Williams (Athens: University of Georgia Press, 1979), 27; Egloff and Woodward, *First People*, 53; "Indians in Virginia," Encyclopedia Virginia, last modified February 21, 2020, https://www.encyclopediavirginia.org/Indians_in_Virginia. For more about Powhatan people's lives prior European arrival and Virginia Indians in the seventeenth century, see Keith Egloff and Deborah Woodward, *First People: The Early Indians of Virginia* (Charlottesville: University of Virginia Press, 2006); Frederic W. Gleach, *Powhatan's World and Colonial Virginia: A Conflict of Cultures* (Lincoln: University of Nebraska Press, 1997); Ben C. McCary, *Indians in Seventeenth-Century Virginia* (Charlottesville: University Press of Virginia, 1992); and Camilla Townsend, *Pocahontas and the Powhatan Dilemma* (New York: Hill and Wang, 2004).

[7] Egloff and Woodward, *First People*, 52; McCary, *Indians in Seventeenth-Century Virginia*, 73. For more about trade between the colonists and Indians, see the section on "Trade" in McCary's *Indians in Seventeenth-Century Virginia*, pp.70-77.

[8] Gleach, *Powhatan's World and Colonial Virginia*, 3.

Christianity, but also believed in more than one God, which conflicted the views of English's worship in one God. Other views such as land and nature, family, and marriage customs differed among the two groups. As the English colonizers began to expand into the Powhatan territory, violence and killing of Powhatans occurred more frequently.[9]

After the Anglo-Powhatan Wars (1609-1646) and Bacon's Rebellion (1676-1677), the Articles of Peace were signed by several tribes of the Algonquians under the authority of the Pamunkey chief, Cockacoeske. The Articles became known as the Treaty of Middle Plantation by the British government. In the treaty, Virginia Algonquians promised loyalty to the Crown in exchange for its protection and it placed them under control of the English colonial government.[10] Through warfare and diseases brought by the Europeans, Indians confronted loss of population and their lands. By the end of the seventeenth century, "only about a thousand Powhatans were left, on and off reservations." By the 1800s, only four reservations existed in Virginia: the Pamunkey and Mattaponi of King William County, the Gingaskins in Northampton County, and the Nottaway Indians in Southampton County. Their reservations, however, decreased in size. The Gingaskin Reservation sold all their land by 1850, and the Nottaway Reservation was divided in 1878 with some families holding on to their land until the twentieth century. Several other groups of Indians lived without reservation.[11]

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[9] Egloff and Woodward, *First People*, 52.

[10] "Indians in Virginia," Encyclopedia Virginia, last modified February 21, 2020, https://www.encyclopediavirginia.org/Indians_in_Virginia.

[11] Wood, *The Virginia Indian Heritage Trail*, 10; Egloff and Woodward, *First People*, 55, 67; Rountree, "The Indians of Virginia," 27.

When many southeastern Indians were forced to leave their lands during the removal and relocated to other states for education opportunities, Virginia Indians were no exception. Virginia Indians, however, experienced westward removal differently. Many tribal groups in Virginia had adopted Anglo culture and Indians followed a lifestyle similar to their neighbors, who operated small farms. Those Indians who remained in the state were "too few in number and too similar to their rural neighbors in lifestyle, however, to warrant much attention." As the tribe of Chickahominy Indians Eastern Division stated, the remnants of Virginia Indians "had lost their land, their language, and their lifeways, and most Virginians did not even realize their neighbors *were* Indians." Furthermore, intermarriage between Indians and non-Indians had occurred since white settlers arrived, and some tribes welcomed Blacks or non-Indian members as their tribal members. As a result of interracial mixing, white Virginians believed that Indians were mixed with African ancestry, and no longer full-blooded Indians or "real Indians."[12]

In the early twentieth century, scholars began to study about Indians in Virginia. Anthropologists such as Frank G. Speck visited tribal communities and encouraged Indian revival through tribal organization and cultural and political activism. At the same time, the state passed the Racial Integrity Act of 1924. Convinced that there are no "pure" Indians unmixed with "colored" persons, Walter Plecker categorized Virginia Indians as

[12] Elaine and Ray Adkins, *Chickahominy Indians-Eastern Division: A Brief Ethnohistory* (Xlibris Corporation, 2007), 106-107; Mikaëla M. Adams, *Who Belongs?: Race, Resources, and Tribal Citizenship in the Native South* (New York : Oxford University Press, 2016), 27; Rountree, "The Indians of Virginia: A Third Race in a Biracial State," 29.

"colored" on birth and marriage certificates that came through his office at the Bureau of Vital Statistics. Not only did Plecker deny their Indian identity, but he also tried to eliminate their existence on state records. As Rhyannon Berkowitz states, through passage of the Racial Integrity Act and centuries of mistreatment of the Native people, "the effect has been to exclude Virginia Indians from history and confine them to the distant past."[13] Virginia Indians, however, were not simply victims of Plecker's attack. Although small in numbers, Indians were strategic in fighting back against Plecker to maintain their racial status. Virginia Indians, like many other indigenous peoples of North America, protected their heritage. Each tribe has its own unique culture and traditions that they carried down to subsequent generations.

The Indian tribes in Virginia that I introduce in my dissertation do not represent all Virginia tribes. There are tribes that I have not mentioned, who were also Plecker's target. Many tribes in Virginia are still unrecognized by the state and federal government even today. Other tribes were forced to relocate from Virginia to different states to escape from Plecker's attack. In my dissertation, I will not be discussing every tribal group, but will instead focus on the major tribes, with the emphasis on tribes that pursued recognition. I have also selected the tribes that have appeared frequently in the sources and the tribes that have been federally recognized to demonstrate the impacts of the Racial Integrity Act on them.

The Chickahominy Indian Tribe is located in Charles City County. The Chickahominy Indian Tribe was among those that witnessed the British settlers arrive in

[13] Wood, *The Virginia Indian Heritage Trail*, 6.

1607. During the early contact with the English colonists, the tribe helped them survive their first few winters by trading food and by teaching them how to grow and preserve food. As settlers began to expand their settlement, the Chickahominy were driven out of their homeland. In a treaty of 1646, the tribe was granted reservation land in the Pamunkey Neck, which is now in King William County. After 1718, however, the Chickahominy Indians were forced to leave their reservation and the tribal families migrated to the area called the Chickahominy Ridge. By 1820, the tribal families moved back to present-day Charles City. In 1908, the Chickahominy reorganized themselves as a tribe, led by a chief, assistant chief, and tribal council. The tribal members began to purchase their land back and they established Samaria Indian Baptist Church in 1901, which was their former school, Samaria Indian School. Their remodeled church in 1962 became the Samaria Baptist Church and is now a tribal center.[14]

The Chickahominy Tribe split into two divisions after the death of Chief William Henry Adkins II in 1921. Located in New Kent County, the Chickahominy Indians-Eastern Division was formed in 1925 with Chief Edward Pemberton Bradby as the new chief. According to the Chickahominy Tribe Eastern Division, the reason they split was "travel inconvenience to tribal meetings."[15] The Chickahominy Tribe Eastern Division

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[14] Karenne Wood, ed., *The Virginia Indian Heritage Trail* (Charlottesville: Virginia Foundation for the Humanities, 2007), 24-25; Egloff and Woodward, *First People*, 73; Paul T. Murray, "Who Is an Indian? Who Is a Negro? Virginia Indians in the World War II Draft," *The Virginia Magazine of History and Biography* 95, no. 2 (1987): 219; "Chickahominy Tribe," Encyclopedia Virginia, last modified March 11, 2019, https://www.encyclopediavirginia.org/Chickahominy_Tribe; "Post-Contact Era (1500-1900)," Chickahominy Tribe, accessed July 24, 2022, https://www.chickahominytribe.org/tribal-history/post-contact-era-1500-1900.

[15] Adkins, *Chickahominy Indians-Eastern Division*, 74. Anthropologist Helen Rountree explains that the Chickahominy Tribe split because "Some tribal members even wanted the group to buy a tract of

started their own school from grades one through eight in 1910, and the school building was also used for church services. At the same time, when the tribe was formally organizing, they built their own church, named Tsena Commocko Indian Baptist Church in 1922. The tribe has twenty-six veterans who have served in the U.S. Armed Forces since World War I. In 2000, the Council began planning to purchase land to build a Tribal complex. They purchased the land in April 2002 and construction began on their Tribal Government in August 2008, which continues today.[16]

The Mattaponi Indian Tribe lives on reservation land along the Mattaponi River in King William County. Their reservation was acknowledged by an act of the Virginia General Assembly in 1658, being known as one of the oldest reservations in the country. Since a peace treaty was established after the Third Powhatan-Anglo War in 1646, the Mattaponi Tribe began paying tribute to the Virginia governor, presenting game or fish to the governor at the State Capitol or Executive Mansion in Richmond. This tradition continues today every year on the fourth Wednesday of November. During 1890 to 1932, the Mattaponi Indian Reservation School building was used as a school and church. The school closed in the 1960s when Mattaponi children began attending public schools. The tribe has a small church, a museum, a Fish Hatchery and Marine Science Facility, and a community tribal building that was formerly used as a school. The tribe's mission is to

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land and get the state to recognize it as a reservation." They also disagreed within their tribal members about the pastor at Samaria Baptist Church and decided to establish their own church. See Rountree, *Pocahontas's People*, 218. See also, Rountree, "The Indians of Virginia," 40.

[16] Wood, *The Virginia Indian Heritage Trail*, 27; "Tribal Land," Chickahominy Indian Tribe Eastern Division, accessed July 24, 2022, https://www.cied.org/tribal-land.

"maintain a sustainable community on the Mattaponi River," and they have been demonstrating the importance of living in harmony with the land and the river.[17]

In the Piedmont region, the Monacan Indian Nation is located near Bear Mountain in Amherst County. While the Powhatan Indians, who spoke Algonquian languages, lived on the Eastern shore of Virginia, the Monacan Indians and other Siouan-speaking tribes such as the Saponi, Tutelo, and Mannahoac, lived in the Piedmont and mountain regions. Their territory occupied most of the western half of present-day Virginia, including parts of the Blue Ridge Mountains.[18] According to the tribe, the Monacans wanted little contact with the English settlers. When a number of explorers visited their towns, the Monacans explained that "none remained to learn Monacan languages, and thus the historical record of these people is poor in contrast to Powhatan history."[19] As the settlers encroached on Indian lands, Monacans gradually moved westward and eventually to places outside Virginia including Pennsylvania and Canada. Some Monacan Indians, however, stayed in Virginia in the mountain area, which became Amherst County. Those Indians who remained in Amherst County built a log cabin circa 1868 for a meeting place and church services. Later, the log cabin was turned into the Indian Mission School. The school taught students until seventh grade and operated until 1964 when public schools

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[17] Wood, *The Virginia Indian Heritage Trail*, 28-29; Egloff, *First People*, 74; "Mattaponi Tribe," Encyclopedia Virginia, last modified May 30, 2014, https://www.encyclopediavirginia.org/Mattaponi_Tribe; "Mattaponi History," Mattaponi Indian Tribe and Reservation, accessed July 24, 2022, https://www.mattaponination.com/history.html.

[18] Wood, *The Virginia Indian Heritage Trail*, 30; Egloff, *First People*, 75.

[19] "Our History," Monacan Indian Nation, accessed August 16, 2020, https://www.monacannation.com/our-history.html.

were desegregated. This Bear Mountain log building was registered as a National Historical Landmark building in 1996. In 1993 the tribe planned to develop a museum and the Monacan Ancestral Museum was built on the site. The tribe holds their annual Powwow every May and Homecoming Festival on the first Saturday in October.[20]

The Nansemond Tribe was located along the Nansemond River near Chuckatuck, the current city of Suffolk, Virginia. Their chief lived near Dumpling Island, where they had their temple and kept their sacred items. The Nansemond Indians had a hostile relationship with the English colonists from the moment that the settlers arrived in Jamestown. In 1608 white settlers suffered from a severe food shortage and forced the Nansemond to give up their corn. When the Indians refused the trade, the colonists attempted to bargain for their island and later raided the Nansemond town. After the Anglo-Powhatan Wars (1609-1646), the Nansemond Indians lived on the northwest and south of the Nansemond River. Some Nansemond Indians adopted English lifestyles and converted to Christianity, while others continued to live their traditional lifestyle. In 1638, the daughter of a Nansemond chief, Elizabeth, married John Bass, an English minister, beginning intermarriage with the English men. Several members of the Christian Nansemond migrated to Norfolk County near the Great Dismal Swamp, and even further to North Carolina. The Nansemond who remained resisted assimilation and lived along the Nansemond River but relocated their reservation several times as the

[20] "Our History," Monacan Indian Nation; Wood, *The Virginia Indian Heritage Trail*, 30; "Monacan Indian Nation," Encyclopedia Virginia, last modified March 11, 2019, https://www.encyclopediavirginia.org/Monacan_Indian_Nation

numbers of European settlers moved near them. The last surviving members of the non-Christianized Nansemond tribe finally sold 300 acres of their last known reservation land on the Nottoway River in Southampton County in 1792. The current members of the tribe are mostly descendants from the Christianized Nansemond Indians. They continue to live in the Suffolk and Chesapeake area and hold their monthly tribal meetings at the Indiana United Methodist Church, founded in 1850, built on a land owned by the Bass family. In 2013, the tribe created its own museum in Chuckatuck. The tribe co-hosts the American Indian Festival with the city of Chesapeake in June and celebrates their annual powwow in August.[21]

The Pamunkey Indian reservation is located on the Pamunkey River in King William County. The Pamunkey Indians signed treaties with the King of England that established their legal acknowledgement in 1646, making theirs one of the oldest reservations in the United States. The Pamunkey Indians had been one of the powerful tribes of the Powhatan confederation but they were defeated by the British colonists in 1676 and lost nearly all of their land. In 1677, the tribe established Articles of Peace, known as the Treaty of Middle Plantation, with the English that promised the Pamunkey's access to the land and their legal acknowledgement. Although the Pamunkey Indians have been recognized since the seventeenth century and remained in their reservation, the tribe was not granted state recognition until 1983. They received federal recognition in 2015. The tribe established the Pamunkey Indian Baptist Church in 1865,

[21] Wood, *The Virginia Indian Heritage Trail*, 32; Egloff, *First People*, 75-76; "History," Nansemond Indian Nation, accessed December 2, 2020, https://nansemond.org/history/.

known to be the oldest Indian church in Virginia. In 1979, the tribe began constructing their museum on their reservation and opened the Pamunkey Indian Museum and Culture Center in 1980.[22]

In Kings and Queens County, the Rappahannock Indian Tribe resides in Indian Neck, Virginia. The Rappahannock Indians were probably the first to encounter the English settlers in 1603 when Captain Samuel Mace sailed to the Rappahannock River. Records show that the captain killed the chief of Rappahannock and kidnapped a group of Rappahannock men to England. In 1607, Opechancanough brought his prisoner, John Smith, to the Rappahannock town to verify if he was the Englishman who had murdered their chief four years earlier. Smith was found innocent because, according to the Rappahannocks, the murderer was a tall man but Smith was "too short and too fat." Smith later mapped Rappahannock towns including fourteen villages on the north side of the river. After Bacon's Rebellion, the English settlement expanded and the Rappahannocks were driven from their village sites along the Rappahannock River Valley. In November 1682, the Virginia Council ordered 3,474 acres of land laid out for the Rappahannock Indians. The next year, the tribe was threatened by the Iroquois Indians, who attacked the English settlement and frontier expansion. After relocating several times, the tribe settled in King and Queen and Essex counties. The tribe created the Rappahannock Indian Baptist Church for their tribal community in 1964. In 1997, the

[22] Wood, *The Virginia Indian Heritage Trail*, 34; Egloff, *First People*, 76; Rountree, *Pocahontas's People*, 200; "Museum & Culture Center," Pamunkey Indian Tribe and Reservation, accessed July 22, 2022, https://pamunkey.org/museum-cultural-center.

Rappahannocks built their cultural center in Indian Neck, where the tribe hosts their annual Harvest Festival and Powwow on the second Saturday in October. In 1998, Chief G. Anne Richardson was elected as the first woman chief to lead the tribe since the 1700s.[23]

The Upper Mattaponi Indian Tribe was named after the Indians who were known as the Adamstown Indians in King William County. During the late seventeenth century, the Mattaponi Tribe was divided into two reservations after the Peace Treaty of 1677. A reservation near Passaunkack was established in 1695 for the Mattaponi and Chickahominy tribes, who signed the treaty. In the 1700s, the Chickahominy moved back to their homeland, but some members remained near Passaunkack. Those Indian members who remained were known as the Adamstown band. The name came from a British official interpreter named James Adams, who visited the tribe from 1702 until the Virginia colony stopped funding interpreters to Indians in 1726. Local Indians adopted his surname in honor of James Adams, and he was elected to remain within the tribe. In 1921 the Adamstown Indians renamed their tribe to the Upper Mattaponi Indian Tribe. The Upper Mattaponi built a school during the 1880s. The school building lasted for a short period of time and the tribe rebuilt a one-room structure, the Sharon Indian School, in 1919. The tribe once again replaced the building with a modern brick structure in 1952, but the school was closed in 1965 to follow the desegregation policy. The Sharon Indian School is registered in the National Register of Historic Buildings. Today, the

[23] "A Brief History of the Rappahannocks," The Rappahannock Tribe, accessed August 18, 2020, https://www.rappahannocktribe.org/tribal-history/; Wood, *The Virginia Indian Heritage Trail*, 36-37; Egloff, *First People*, 77.

building serves as the tribal center. Next to the school is the Indian View Baptist Church, built in 1942. The tribe holds an annual Memorial Day Weekend Powwow on their tribal ground.[24]

On March 25, 1983, Virginia Joint Resolution 54 officially recognized six tribes as Indian tribes of the Commonwealth of Virginia: the Chickahominy Tribe, Eastern Chickahominy Tribe, Mattaponi Tribe, Pamunkey Tribe, Rappahannock Tribe, and the Upper Mattaponi Tribe. The Pamunkey and Mattaponi tribes had been recognized since colonial times, but the resolution acknowledged the past recognition. The following year, the Nansemond Tribe received state recognition. In 1989, the Monacan Indians were recognized as a tribe by the Commonwealth. Contrastingly, the federal recognition process was not available until recently. The Pamunkey Indians had pursued federal recognition with help from white allies during the Plecker era but were not successful.[25] Finally, the U.S. Department of the Interior granted official federal recognition to the Pamunkey Tribe on July 2, 2015. A few years later, other Virginia tribes followed the path of federal recognition. The Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act was signed into law on January 29, 2018, and the Chickahominy, Eastern Chickahominy, Monacan, Nansemond, Rappahannock, and Upper Mattaponi

[24] Wood, *The Virginia Indian Heritage Trail*, 38-39; Egloff, *First People*, 77-78; "Upper Mattaponi Tribe," Encyclopedia Virginia, last modified March 11, 2019, https://www.encyclopediavirginia.org/Upper_Mattaponi_Tribe; "The Upper Mattaponi Tribe," The Upper Mattaponi Tribe, accessed August 20, 2020, https://umitribe.org/.

[25] Mikaëla M. Adams, *Who Belongs?: Race, Resources, and Tribal Citizenship in the Native South* (New York : Oxford University Press, 2016), 47-48.

tribes received official federal recognition.[26] Prior to recognition, the chief of the Upper Mattaponi Tribe, Kenneth Adams, pointed out that "Virginia Indians were the first in America to have permanent and sustained contact with English settlers and still are not properly recognized as those 562 other tribes are."[27] Indeed, Virginia tribes were the first to encounter the English colonists, but they were not federally recognized until most recently.

According to the tribe of Chickahominy Indians Eastern Division, Indians did not talk about Plecker prior to 2000. It was when the eight state-recognized tribes at that time applied for federal recognition in 2000 that Virginia tribes began to discuss Plecker and the damage he had done to their tribes. "Younger tribal members, who always knew that something was wrong, now knew the 'something' was Plecker," said Elaine and Ray Adkins of the tribe of Chickahominy Indians Eastern Division.[28] Sources on the Racial Integrity Act and the Anglo-Saxon Clubs became available, and Plecker's letters proved his attempts to eliminate the race of Indian on records. Soon, journalists covered stories in local newspapers.[29] Most importantly, many chiefs of Virginia tribes have been

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[26] Brendan Wolfe, "Indians in Virginia," Encyclopedia Virginia, last modified February 21, 2020, https://www.encyclopediavirginia.org/Indians_in_Virginia.

[27] Denise E. Bates, *We Will Always Be Here: Native Peoples on Living and Thriving in the South* (Gainesville: University Press of Florida, 2016), 80.

[28] Adkins, *Chickahominy Indians-Eastern Division*, 122.

[29] Peter Hardin, "Documentary Genocide," *Richmond Times-Dispatch*, May 9, 2007, http://www.richmond.com/news/documentary-genocide/article_23e615d7-5fbf-52b0-a8c9-f8cb13729487.html. The original article was published in 2000; Warren Fiske, "The Black-and-White World of Walter Ashby Plecker: How an Obscure Bureaucrat Tried to Eradicate Virginia's 'Third Race,'" *The Virginian-Pilot*, August 18, 2004, https://www.pilotonline.com/history/article_654a811f-213f-5d97-a469-51cc43b1a77f.html.

interviewed for those articles, and Virginia Indians have begun writing books about their experiences.[30] They have spoken out and shared their stories, contributing to the history on race and American Indian in the south. Once their untold stories came to light, viewpoints from the Virginia Indians began to be told in a wide range of books on the Racial Integrity Act and race relations in the twentieth century Virginia.

Historiography

Scholarship on the Anglo-Saxon Clubs of America and the Racial Integrity Act emerged in the late 1980s as part of historians' study of the South and race, as well as the eugenics movement in the United States. The two pioneers in this field, Paul A. Lombardo and Richard B. Sherman, focus on the political and legal background of the Racial Integrity Act and how the Anglo-Saxon Clubs of America used the "scientific" idea of eugenics to support the enactment of the law. Reevaluating the Supreme Court case of *Loving v. Virginia* in 1967, which declared the ban on interracial marriage in Virginia's Racial Integrity Act to be unconstitutional, Lombardo provides an overview of how the Anglo-Saxon Clubs of America lobbied for the law, looking at both their success and the struggles they faced. The Clubs borrowed ideas of eugenics from the eugenicists from the North in enacting the Racial Integrity Act. The network of the Clubs with the different eugenics organizations and prominent eugenicists outside Virginia helped the

[30] Adkins, *Chickahominy Indians-Eastern Division*; Bates, *We Will Always Be Here*; Rosemary Clark Whitlock, J Anthony Paredes, and Thomas John Blumer, *The Monacan Indian Nation of Virginia: The Drums of Life*, Contemporary American Indians (Tuscaloosa: The University of Alabama Press, University of Alabama Press, 2008).

Clubs promote and pass the law. Sherman's work also focuses on the rise and fall of the Anglo-Saxon Clubs of America and background of the 1924 law. Furthermore, Sherman helps us understand the several revisions made in the Racial Integrity Act, which are mostly ignored by many historians. By providing the background of the law and the decline of the organization, Sherman shows the motivations behind the main leaders of the organization and their racial views on white purity. [31]

After Sherman's study, the Racial Integrity Act and the Anglo-Saxon Clubs of America did not receive much attention again for another decade until the late 1990s and early 2000s when historians began to focus on race relations in the South.[32] J. Douglas Smith explores the political and legislative histories to examine Virginian white elites' attempts to maintain white supremacy and their efforts to reinforce the segregation of Blacks and whites in public spaces. Smith demonstrates that the founder of the clubs, John Powell, and his white allies "pursued legislative agendas" to perpetuate white

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[31] Paul A. Lombardo, "Miscegenation, Eugenics, and Racism: Historical Footnotes to Loving v. Virginia Essay," *U.C. Davis Law Review* 21 (1988 1987): 421–52; Richard B. Sherman, "'The Last Stand': The Fight for Racial Integrity in Virginia in the 1920s," *The Journal of Southern History* 54, no. 1 (1988): 69–92. See also, A. Leon Higginbotham and Barbara K. Kopytoff, "Racial Purity and Interracial Sex in the Law of Colonial and Antebellum Virginia," *Georgetown Law Journal* 77, no. 6 (1989): 1967–2029. Other historians have focused on the Racial Integrity Act of 1924 as part of the history of anti-miscegenation laws. See, Peter Wallenstein, *Tell the Court I Love My Wife: Race, Marriage, and Law* (New York: Palgrave Macmillan, 2002); Peter Wallenstein, *Race, Sex, and the Freedom to Marry: Loving v. Virginia* (Lawrence: University Press of Kansas, 2014); Pascoe, *What Comes Naturally*; Shiro Yamada, *Amerikashi no naka no Jinnshu* (Tokyo: Yamakawa Shuppan, 2006). English translation: Shiro Yamada, *Race in American History* (Tokyo: Yamakawa Shuppan, 2006).

[32] J. Douglas Smith, *Managing White Supremacy: Race, Politics, and Citizenship in Jim Crow Virginia* (Chapel Hill: University of North Carolina Press, 2002); Pippa Holloway, *Sexuality, Politics, and Social Control in Virginia, 1920-1945* (Chapel Hill: The University of North Carolina Press, 2006); Elizabeth Gillespie McRae, *Mothers of Massive Resistance: White Women and the Politics of White Supremacy* (New York, NY: Oxford University Press, 2018).

supremacy in a non-violent and "civilized" way compared to the brutal tactics of white supremacist groups such as the Ku Klux Klan.[33] As long as whites remained secure at the top of the racial hierarchy, they advocated interracial dialogue and the improvement of Black lives. But when Black leaders became more vocal and active in seeking equality, white elites controlled black advancement and kept Blacks as second-class citizens.[34] In other words, white southerners promoted Black uplift but continued to envision paternalism. White elite Virginians employed their own "Virginian approach," or "moderate" racism with an emphasis on "harmonious race relations," to preserve white supremacy in the South.[35]

The history of the Racial Integrity Act once again began to be examined as part of the eugenics movement after the sterilization law in Virginia, especially the infamous U.S. Supreme Court case of *Buck vs. Bell*, became revealed by two historians. Paul Lombardo and Gregory Michael Dorr reexamined the Anglo-Saxon Clubs and their campaign for racial integrity as a part of the eugenics movement.[36]

Gregory Michael Dorr, for instance, focuses on intellectual history to examine how national-level eugenicists and Virginia's leading white supremacists maintained superiority against minorities using eugenics. Focusing in Virginia, the movement of

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[33] Smith, *Managing White Supremacy*, 12.

[34] *Ibid*., 15.

[35] *Ibid*., 4.

[36] Paul A. Lombardo, *Three Generations, No Imbeciles: Eugenics, the Supreme Court, and Buck v. Bell* (Baltimore: Johns Hopkins University Press, 2010); Gregory Michael Dorr, *Segregation's Science: Eugenics and Society in Virginia* (Charlottesville: University of Virginia Press, 2008).

eugenics led by white elites tried to prevent the damage from "racial suicide" of the white race through spreading eugenics in higher education and passing legislation in Virginia. More importantly, eugenics was used to justify the enactment of sterilization laws in the U.S., the idea of limiting or controlling the reproduction of the "feebleminded" or the people who were believed to be socially unfit. Eugenicists advocated racial purity and used "race" as a marker to measure genetic fitness in response to miscegenation.[37] The enactment of the Racial Integrity Act and sterilization law were additional tools to prevent "racial suicide." Dorr, furthermore, argues that eugenicists and elite Virginians "used eugenics to navigate between the extremes of New South 'modernism' and Old South 'traditionalism.'" The practice of eugenics provided a "modern solution for traditional southern racial problems." Virginia appeared "modern" and "progressive," but white southerners embraced eugenics as a "scientific" justification to maintain traditional hierarchies in the South.[38]

Most historiography followed a biracial structure of Black-white issues until Peggy Pascoe analyzed the impact of anti-miscegenation laws on other racial groups such as Asians, American Indians, native Hawaiians, and South Asians as well as Blacks and whites. Pascoe examines how whites had been dominant in legal and private areas of life in states that enforced anti-miscegenation laws.[39] Pascoe examines a case study of

[37] Dorr, *Segregation's Science*, 10-11.

[38] *Ibid*., 7-11.

[39] Peggy Pascoe, *What Comes Naturally: Miscegenation Law and the Making of Race in America*. (New York: Oxford University Press, 2009).

Virginia history, specifically, about Walter Plecker's bureaucratic practices using state legislation to create binary racial categories. Southern states have also been a popular area of research among many historians when exploring interracial marriage and sex, but Pascoe looks beyond the South and explores the western and the northern states. Pascoe's work proves that anti-miscegenation law was a national and multiracial project and her work shows how people like Plecker "laid the foundation for the projects of white supremacy and white purity in bureaucratic practices as well as in courts and state legislatures."[40]

While historians of the South and those focused on eugenics have documented whites' efforts to establish and maintain racial hierarchies, scholarship on Native Americans has revealed how contested those efforts were. This scholarship has especially challenged historians' understanding of racial hierarchies and segregation in the biracial model.[41] Historians and anthropologists began focusing on the history of the Native American groups remaining in the southeastern United States. Walter L. Williams states that these Native groups have also "not only managed to survive as a distinct ethnic group, they have retained an Indian identity" in a Black-white dichotomy. Thus, those

[40] *Ibid*., 14.

[41] Helen C. Rountree, "The Indians of Virginia: A Third Race in a Biracial State," in Southeastern Indians since the Removal Era, ed. Walter L. Williams (Athens: University of Georgia Press, 1979), 27-48; Helen C. Rountree, *Pocahontas's People: The Powhatan Indians of Virginia Through Four Centuries* (Norman: University of Oklahoma Press, 1996); J. David Smith, *The Eugenic Assault on America: Scenes in Red, White, and Black* (Fairfax: George Mason University Press, 1993).

remnant groups of Indians "provide a different perspective for analyzing southern race relations outside its biracial context."[42]

Scholars such as Helen C. Rountree emphasized the remnant groups of Native people in the South. Rountree traces the history of Powhatan Indians in Virginia over 400 years since the English colonists arrived in North America to the late 1980s, and the Powhatan people's relations with the English colonists, the white supremacists, the state of Virginia, and the federal government. Rountree demonstrates how Powhatans struggled to remain *unique*, and maintain their Indian identity, especially at the turn of the twentieth century. She shows that Virginia Indians had been distinguishing themselves from African Americans prior to the passage of the Racial Integrity Act of 1924. When Virginia whites wanted to assimilate the Powhatans with the non-white category, the Powhatans became "more anxious to separate themselves from 'any' persons of color."[43] Jim Crow legislation further escalated the Black and white divisions in the South. As more white Virginians valued their "pure whiteness," Indians would avoid associations with Blacks and claim that they had no African ancestry. For instance, the Pamunkey Indians segregated their church and school from Blacks, and non-reservation Powhatan tribes were also forming their own churches and schools. While Plecker was unleashing his power using his position to eliminate the Indians, white allies of Indians were encouraging Virginia Indians to organize their tribes, establishing their identity as

[42] Walter L. Williams, *Southeastern Indians since the Removal Era* (Athens: University of Georgia Press, 1979), 4.

[43] Rountree, *Pocahontas's People*, 187.

"Indians." Powhatan Indians were "caught in the middle" between the Black and white society. In fact, Rountree says that these Indians were in "a lonely position" to maintain their unique Indian identity.[44] Rountree's work shows that segregating themselves from Blacks defined their "Indianness" in the Powhatan tribe.[45]

Similarly, Theda Perdue demonstrates that Indians, especially the remnants of removed Indians, were put in a unique position as a third racial category that struggled to navigate through the biracial system in the New South. Many Indians "feared losing their identity as Indians," and as a result, they "supported segregation—as long as it made room for them as Indians—and used it to legally establish their identity as Indian." Perdue also points out that Indians have been left out in the history after the removal in the 1830s, but she demonstrates the impacts removal had on the southern tribes. For instance, the "subsequent efforts to remove them or deny their ethnicity served the interests of white supremacy." Indians "complicate the narrative of southern history," Perdue says, because they "provide us with an opportunity to examine different experiences and perspectives in the history of the South, ones that do not follow the standard narrative but instead promise both to challenge and to enrich it."[46]

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[44] *Ibid*., 200-201, 212.

[45] *Ibid*., 275.

[46] Theda Perdue, "The Legacy of Indian Removal," *The Journal of Southern History* 78, no. 1 (2012): 10, 35-36.

Many historians build on Rountree and Perdue's work but focus on the Black-Indian relations in the South in more depth.[47] Gabrielle Tayac has pointed out that earlier research had focused on "separate experiences of African Americans and Native Americans, and educational efforts have taught about Indian-white relations and Black-white relations."[48] However, the African-Native American experiences that had been left out until recently are now getting attention among historians. Claudio Saunt, for instance, explores a family story of the Grayson family and their Indian communities in the Creek Nation between the 1700s and the early 1900s. Saunt examines "how and why race was such a powerful force in Indian lives." Saunt argues that adopting racial hierarchy was the tribe's survival strategy to maintain their sovereignty. [49] Malinda Lowery focuses on the Lumbee Indians of Robeson County, North Carolina, and how they created their own unique identity. Her stories of the Lumbee Indians tell us that Lumbee Indians adapted racial segregation to pursue government recognition and created political and social institutions based on racial hierarchy to protect their distinct identity.[50] Lowery argues

[47] Claudio Saunt, *Black, White, and Indian: Race and the Unmaking of an American Family* (New York: Oxford University, 2005); Gabrielle Tayac, ed., *IndiVisible: African-Native American Lives in the Americas* (Washington, D.C: Smithsonian Institution's National Museum of the American Indian, 2009); Malinda Lowery, *Lumbee Indians in the Jim Crow South: Race, Identity, and Making of a Nation* (Chapel Hill: University of North Carolina Press, 2010).

[48] Tayac, *IndiVisible*, 15.

[49] Saunt, *Black, White, and Indian*, 4.

[50] Lowery, *Lumbee Indians in the Jim Crow South*, xii.

that race is "not merely ascribed by dominant groups but also claimed for strategic purposes."[51]

Recent scholarship continues to follow a similar structure of previous works on Black-Indian relationships and looks at the formation of racial identity and preservation of racialized thinking in tribal communities. Arica Coleman examines the impact of Virginia's racial purity campaign on African American-Native American relationships and their family ties from the colonial period to the present.[52] Indians resisted being classified as Blacks so that they could maintain their separate racial identity. We come to understand that the preservation of "racial purity ideology" was not only within the white society but spread to Indian communities that adapted to white society. Coleman also examines the racial purity campaign from the perspective of tribal communities who were excluded due to their affiliation or mixture of Black descendants. Her focus on contemporary issues among Indian tribes in their "efforts to maintain the racial integrity of tribal communities" demonstrates that anti-Black racism is clear among many tribes in Virginia even today.[53] While Coleman focuses more on Indians' attempts to deny Black heritage and distance themselves from Blacks, authors such as Rountree, Saunt, Lowery, and Perdue look as the same dynamic but feel more sympathetic to the dilemma that

[51] *Ibid.*, xv.

[52] Arica L. Coleman, *That the Blood Stay Pure: African Americans, Native Americans, and the Predicament of Race and Identity in Virginia* (Bloomington: Indiana University Press, 2013).

[53] *Ibid.*, xv.

Indians faced under difficult circumstances. The anti-Black racism that was adopted by the Indians was a strategy to survive the Black and white racial division.

Mikaela Adams also shows how some tribes excluded their Black members in the history of tribal citizenship. Adams explores how tribes decided who belonged to their communities in the six southeastern tribes: the Pamunkey Indians of Virginia, the Catawba Indian Nation of South Carolina, the Mississippi Band of Choctaw Indians, the Eastern Band of Cherokee Indians of North Carolina, the Seminole Tribe of Florida, and the Miccosukee Tribe of Indians of Florida. By focusing on the southeastern Indian tribes, Adams examines the changes in the definition of tribal citizenship and the relationship between the tribal nations and the state and the federal government. Adams also explores the decisions each tribe made for their tribal citizenship criteria to preserve their Indian identity.

The definition of Indian identity modified as tribal citizenship went through major transformations after the Civil War. The Jim Crow era was particularly threatening to Indian identity and challenged them to racially distinguish themselves from the Black and white races. In the twentieth century, tribes redefined the racial criteria for tribal citizenship in ways that they could fit to white Americans' racial ideology. When making their citizenship criteria for federal recognition, tribes borrowed racial concepts and created criteria that reflected the politics of the federal government. Indians adapted to the changes during challenging times and searched for ways to preserve their Indian identity.[54] Indians, however, were not "simply the victims of federal Indian policy or

[54] Adams, *Who Belongs?*, 12-16.

American racial ideologies." Tribes were strategic in the decision-making process on their citizenship criteria at a tribal level. Adams demonstrates that Indians "actively worked within the constraints they faced to create citizenship criteria that they believed best reflected their community values while protecting their economic resources and political status."[55] The racial legislation during Jim Crow and the relationship with the federal government in the late nineteenth and twentieth centuries influenced tribal citizenship. Native people formed criteria for tribal citizenship that reflected the views of white America. At the same time, Indians were "strategic and resourceful" when deciding citizenship criteria within their tribe.[56]

The question of racial identity of Indians has been widely discussed among historians. Another method to determine who was an "Indian" was by blood. Katherine Ellinghaus's work explores why and how blood was used as a tool to measure Indian status and how the idea of blood changed under assimilation policy in the late nineteenth century to early twentieth centuries. Ellinghuas argues, "Blood was part of a broader strategy of elimination, a tool used to efface Native American history, identity, and geography." When Indians were questioned about their identity, Native Americans emphasized their Indian blood to avoid being labeled "colored."[57]

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[55] *Ibid*., 3.

[56] *Ibid.*, 19.

[57] Katherine Ellinghaus. *Blood Will Tell: Native Americans and Assimilation Policy*. New Visions in Native American and Indigenous Studies (Lincoln, NE: The University of Nebraska Press and The American Philosophical Society, 2017), xxi.

During the assimilation period, the U.S. government used blood to determine who was a "real" Indian. Terms such as "full-blood," half-blood," and "mixed-blood" were used to describe Indians in certificates, documents, and laws. Native Americans themselves used blood and recorded blood quantum in tribal rolls, which was one of the important criteria to define tribal membership.[58] These terms were racial indicators of Indians connected with stereotypes. White Americans considered "mixed-blood" Indians with a mixture of white blood *better* and more civilized than full-blooded Indians. The addition of white blood and the connection with the white community became advantages for a better life. Mixed-race Indians, however, were not considered "real" Indians by the federal government. Another myth that developed in the discourse of blood was that "full-blood" Indians were considered "pure" and the "real" Indians. Blood was used to determine the authenticity of Native American people in the white community. Finally, Native Americans with African American ancestry were treated with a stigma as "'savage' rather than 'noble savage.'"[59] "One-drop" of African American blood was enough to categorize a person as "colored." As the definitions of blood transformed, blood became not just an informal marker, but a formal and official "indicator of Indian status."[60] It became the criterion to determine who an Indian was or was not.

While recent scholarship focuses on the Black-Indian relationships and Native identity, there is less scholarship about the policy effect on the Virginia Indians caused by

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[58] *Ibid.*, xi.

[59] *Ibid.*, xii-xxiii, 92-94.

[60] *Ibid.*, xviii-xix.

the Racial Integrity Act. Following the current historiography that highlights the anti-Black aspect of Indian identity during the Plecker era, my dissertation shows Plecker's influence and his impacts on Indians not only during the Plecker era but up to the present. Moreover, this dissertation contributes by showing the magnitude of the challenges Indians faced as they made choices about racial ideology. Virginia Indians fought against the Racial Integrity Act and Plecker's attacks, while adopting the white supremacists' view of racial integrity and anti-Black sentiments within the tribes. They are continuing to fight against the legacy of Plecker.

Chapter Outline

The dissertation is divided in two parts. The first part, consisting of three chapters, examines the views from the white elites and how they used their political influence to maintain white supremacy through creating and amending laws. The second part of the dissertation, containing two chapters, examines Indians' resistance to their racial classification. It examines damage to the Native community and how Indians fought against the law that categorized Indians as "colored" people.

The first section explores the Anglo-Saxon Clubs of America, a Richmond-based white supremacist organization formed by a group of Virginian white elites, and their struggles in passing and amending the Racial Integrity Act of 1924. Chapter One, "Establishing the Race Line in Virginia," begins with background prior to the Racial Integrity Act. It traces the history of anti-miscegenation laws, which culminated in the passage of the Racial Integrity Act of 1924, known to be the nation's strictest anti-

miscegenation law. The purpose of the law was to prohibit intermarriage between whites and non-whites and to protect the "whiteness" of the race. The drive towards increasingly particular racial definitions in the Racial Integrity Act received much of its energy from the Anglo-Saxon Clubs of America This chapter focuses how the Anglo-Saxon Clubs of America used their political influence with the support of eugenicists to create the Racial Integrity Act of 1924 and spread its message of white supremacy not only in Virginia but across the nation.

In Chapter Two, "Revising the Racial Integrity Law," white supremacists disagreed during debates over revising the law to categorize the "non-whites," especially Indians in Virginia. The chapter examines the arguments in each court case and the debates in the legislature over how to amend the law. The 1924 law included the Pocahontas exception, a special exemption that defined as "white" anyone with only white and up to one-sixteenth Indian blood. This provision was included to protect the white elites who believed they were descendants of Indian-settler marriages of the colonial era from being categorized as "colored" persons under the new law. The Pocahontas exception became an issue when two court cases were brought by two mixed-race Indians only a few months after the law was passed. Walter Plecker believed Indians were using the Pocahontas exception as a way to pass as white despite what he considered their interracial mixture with Blacks. Thus, the clubs attempted to revise the provision on the Pocahontas exception, particularly the definition of "Indians," in the 1924 law. The two court cases and the several revisions made in the 1924 law

demonstrate the difficulties to secure a legal structure for Virginia that only allowed for two races, white and Black.

Chapter Three, "Enforcing the Integrity of Races," demonstrates Plecker's attempts to eliminate the racial category of Indians by using the law and the power of his office to deny the existence of Indians in Virginia. Because Plecker believed that all Virginia Indians were heavily mixed with Black people, he categorized Indians as "colored" on their birth and marriage records. He applied the "one-drop rule," meaning one-drop of "Black" blood automatically made an Indian a "colored" person. Plecker enforced his own interpretation of the law and imposed his racial views on all Virginians. Through his office Plecker ignored Indians and other white elites and eugenicists who disagreed with his arbitrary method in categorizing Virginians. Ultimately, he possessed the power to legally redefine "race" in Virginia through bureaucratic means.

Virginia Indians were not silent or passive against Plecker's attacks. Indians worked to preserve their identity and sense of community. They also protested categorization with "colored" when circumstances warranted, like during the World War II draft. The second part of the dissertation examines Virginia Indian tribes' protest for their racial category. The fourth chapter, "Challenging the Racial Classification," examines the debates on the racial designation of Indians and the challenges Native Americans faced to protect their Indian identity in the military draft during World War II. The crucial roles and experiences of Native Americans during wartime are highlighted by historians, but there have been few studies that explore the racial categorization of

Indians in the military draft.[61] Paul Murray has argued that the "inability to accept more than two racial categories was the primary cause of this prolonged bureaucratic and legal controversy."[62]

As interest in America's multicultural heritage grew in the 1940s, allies of Native American emerged. Some whites felt sympathetic toward their Indian neighbors and supported their claims. White advocates collaborated with tribes and promoted racial segregation within Indian tribes as a survival strategy to protect their distinct identity. Indians who wanted to be accepted as "Indians" would avoid associations with Blacks and claim that they had no African ancestry. Chapter Four highlights this anti-Black aspect of Indian identity during the Plecker era. This chapter also demonstrates how Indians and their white allies protested the 1924 law and fought to claim their racial identity as Indians rather than merely non-white and presumptively "Negro." The ideology of racial purity was not only within the white society, but spread to Native communities and became a method to determine who could or could not be an "Indian."

The Racial Integrity Act and the damage it caused to Virginia Indians lives on. This dissertation concludes with a fifth chapter, "Fighting for Indian Identity and Recognition," examining Plecker's legacy and Virginia Indians' recent fight towards state and federal recognitions. The Supreme Court decision of *Loving v. Virginia* declared

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[61] Paul T. Murray, "Who Is an Indian? Who Is a Negro? Virginia Indians in the World War II Draft." *The Virginia Magazine of History and Biography* 95, no. 2 (1987); T Kenneth William Townsend, *World War II and the American Indian* (Albuquerque: University of New Mexico Press, 2000); Thomas A. Guglielmo, *Divisions: A New History of Racism and Resistance in America's World War II Military* (Oxford University Press, 2021).

[62] Murray, "Who Is an Indian? Who Is a Negro?," 230.

the state's law against interracial marriage in the Racial Integrity Act to be unconstitutional. Many historians have highlighted the *Loving* case as the end of the state's long history of anti-miscegenation laws that concluded the Plecker era. For Virginia Indians, however, their fight for Indian identity and tribal recognition continued after the *Loving* case. While I examine the initial damage to Native communities, this section also describes how Virginia Indians regained their racial status after the law was overturned.

As Virginia Indians gradually became visible to the public, they sought for state and federal recognition. Virginia Indians took two different paths to pursue federal recognition. Pamunkey Indians went through the Office of Federal Acknowledgement (OFA), while other Virginia tribes worked through congressional recognition. The Chickahominy, Eastern Chickahominy, Monacan, Nansemond, Rappahannock, and Upper Mattaponi tribes joined as a group to pursue this process. Plecker's impact hit this group of tribes hard, because their race on the records was altered to "colored," and as a result, they faced a documentary problem to prove their Indian status. The six tribes received official federal recognition through the Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2017. This final chapter explores the current issues and impacts that Plecker had on the tribes. Plecker's attack was the primary factor that affected and delayed the federal recognition for Virginia tribes.

This dissertation focuses on the time period from 1922 to 1946, when Plecker retired, and extends to Virginia Indians' recent fight towards state and federal recognition in the 1980s to the present. White supremacists' racial campaign to eliminate Indians in

Virginia made it difficult for many tribes to achieve tribal recognitions and claim their independent racial status. Examining Virginia tribes' decisions and strategies for recognition helps illuminate the situation American Indians faced. Moreover, this dissertation focuses on Walter Plecker, the comparatively little-known state registrar, because he had tremendous influence in redefining "race" for each racial group. Studying Plecker allow us to explore in depth how one committed white supremacist managed to create his own standards of race in the biracial division of Virginia society. Through Plecker's influence, Indian tribes and their white allies were compelled to redefine "race" within their tribal communities. His legacy continues to impact Indians today.

CHAPTER ONE: ESTABLISHING THE RACE LINE IN VIRGINIA

During the 1920s, a group of Virginian white supremacists believed that white purity and civilization was in danger. Their goal was to spread the message of white supremacy and racial eugenics. Through this movement, two white supremacists, John Powell and Earnest S. Cox, founded the Anglo-Saxon Clubs of America in Richmond, Virginia, in September 1922. Walter Plecker joined the clubs and became a prominent member promoting the racial views of the Anglo-Saxon ideals. Their greatest success came in 1924 when the Virginia State Legislature passed the Racial Integrity Act, which was known to be the nation's strictest anti-miscegenation law. Earlier laws had made a distinction between the races by defining who a colored person was but the new act for the first time created a clear definition of a white person as one "who has no trace whatsoever of any blood other than Caucasian."[63] The clubs believed in eugenics, a popular scientific belief that the human race can be improved by maintaining the "purity" of the "superior race." They used this idea as a new "scientific" evidence to support the law and legally justify their act upon measures against "colored" persons. Using the new racial concepts in eugenics and the new Racial Integrity Act as powerful tools, the members of the clubs fought to prevent the mixing of white and colored races.

[63] Paul A. Lombardo, "Miscegenation, Eugenics, and Racism: Historical Footnotes to *Loving v. Virginia*," *U. C. Davis Law Review* 21, no. 2 (Winter 1988), 434.

1. Anti-Miscegenation Laws Before Virginia's Racial Integrity Act of 1924

The Racial Integrity Act of 1924 was not the first time Virginians had attempted to define "race" and regulate marriage across the racial divide. As early as 1630 rules and punishments against people who engaged in interracial sex existed. Maryland and Virginia acted first among the British colonies to regulate interracial sex and marriage. In September 1630, the Virginia Assembly punished Hugh Davis, a white man, to be "soundly whipped" in public before an "assembly of Negroes" and whites for engaging in a relationship with a black woman. The Virginia Assembly stated that Davis "abus[ed] himself to the dishonor of God and shame of Christians, by defiling his body in lying with a negro." Ten years later, in 1640, Robert Sweatt was punished for getting a "Negro" woman with a child. Sweatt was punished to perform penance at a parish and the "Negro" woman was whipped. Records shows that a similar case occurred in 1649 and both the man and woman were flogged for having an interracial relationship.[64]

In December 1662 Virginia's colonial assembly addressed the racial status of the mixed-race children between Englishmen and black women. The 1662 Act declared that "all children borne in this country shalbe held bond or free only according to the condition of the mother, And that if any christian shall committ fornication with a negro man or woman, hee or shee soe offending shall pay double the fines imposed by the former act." This act defined that the slave or free status of the mixed-race children born

[64] Kevin Mumford, "After Hugh: Statutory Race Segregation in Colonial America, 1630-1725," *The American Journal of Legal History* 43, no. 3 (1999): 280–283, https://doi.org/10.2307/846160; Alan Scot Willis, "Abusing Hugh Davis: Determining the Crime in a Seventeenth-Century American Morality Case," *Journal of the History of Sexuality* 28, no. 1 (January 2019): 117–147; Shiro Yamada, *Amerikashi no naka no Jinnshu* (Tokyo: Yamakawa Shuppan, 2006), 11-12.

by the interracial couples should be determined by the mother's race. The double fine imposed on the white person as the punishment for fornication with a black person indicate that blackness was being vilified.[65]

During the 1680s, the number of slaves from Africa increased as tobacco plantations developed in the Chesapeake region. African slaves replaced the labor of English indentured servants and slavery became established as an institution. In addition, disputes between white settlers and Indians occurred as white settlers expanded their frontier settlement, leading to revolts such as the Bacon's Rebellion in 1676. As slavery developed in Virginia and Maryland, regulation against interracial sex and marriage seemed necessary for the English men to exert control over their labor force and to protect their property.[66]

The Virginia colony officially enacted the first law against intermarriage in "An act suppressing outlying Slaves" in 1691. The 1691 statute punished any English white man or woman who intermarried with "a negroe, mulatto, or Indian man or woman bond or free" to "be banished and removed from this dominion forever" within three months after the marriage. The purpose of this law was to prevent the "abominable mixture and spurious issue which hereafter may increase in this dominion, as well by negroes, mulattoes, and Indians intermarrying with English, or other white women, as by their

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[65] Peter Wallenstein, *Tell the Court I Love My Wife: Race, Marriage, and Law* (New York: Palgrave Macmillan, 2002), 15; "Laws Pertaining to Slaves and Servants, Virginia 1629-1672," Cengage, accessed September 10, 2020, https://college.cengage.com/history/ayers_primary_sources/laws_slaves_servants.htm.

[66] Yamada, *Amerikashi no naka no Jinnshu*, 13.

unlawfull accompanying with one another." The 1691 law also punished any free white woman who gave birth to a child of a black or "mulatto" man by paying a fine of fifteen pounds sterling within a month after the child was born or serving as an indentured servant for five years. If the white woman was already a servant, she would serve an additional five years after she had completed her current indenture. Moreover, the mixed-raced child born between a free white woman and a nonwhite man was punished to serve as an indentured servant until he or she was 30 years old. If a slave woman bore a child with a white man, however, neither the slave woman nor the white man was punished for interracial sex. While the law targeted white women and their mixed-race children, interracial sex between white men and slave women was not illegal under both the 1662 law and the 1691 law because their mixed-race children automatically became slaves and were thus an economical benefit for white slave owners. The mixed-race children born from slave mothers were considered as an important labor force that contributed to the economic growth of the plantation in the colony.[67]

Historian Peter Wallenstein explains that the seventeenth-century laws of race and marriage in the Chesapeake region were "designed to generate and reinforce a system of designated candidates" including black men and women, white women, and Indians, "to hold positions of social subordination and economic dependency." The laws, on the other hand, admitted "sexual access to all women" for white men. While white men created and

[67] Wallenstein, *Tell the Court I Love My Wife*, 15-16; Yamada, *Amerikashi no naka no Jinnshu*, 14-15; "Primary Resource 'An act for suppressing outlying slaves' (1691)," Encyclopedia Virginia, last modified July 23, 2020, https://www.encyclopediavirginia.org/_An_act_for_suppressing_outlying_slaves_1691.

enforced the law, white women were targeted and responsible to give birth to white children for protecting the purity of white race. Wallenstein argues that these earlier anti-miscegenation laws enhanced the power of white men, rather than restricting their power. Not only white supremacy but "a system of privileged white adult male supremacy" was structured into the laws to restrict races other than white.[68]

Virginia modified its racial legislation in the eighteenth-century. As laws restricted interracial marriages and sex across race lines, the racial category of a "mulatto" was mentioned in laws. A statute in 1705, for example, "declaring who shall not bear office in this country" excluded "any negro, mulatto, or Indian." The same law included a definition of a "mulatto" as "the child, grand child, or great grand child, of a negro." The 1705 legislation prevented any mixed-race Virginian who has at least one-eighth African ancestry from being categorized as whites. To further prevent the "abominable mixture and spurious issue," any white Virginian who married a "negro" or "mulatto" man or woman, regardless of free or slave status, was fined and imprisoned for six months. Any preacher who officiated the marriage between a white and nonwhite couple was fined with 10,000 pounds of tobacco. Additionally, the law amended the section on the mixed-race child between a white mother and a nonwhite man to serve as an indentured servant until 31 years old instead of 30 years old.[69] The 1705 law, therefore, made multiple changes to the previous laws: It defined the racial category of

[68] Peter Wallenstein, *Race, Sex, and the Freedom to Marry: Loving v. Virginia* (Lawrence: University Press of Kansas, 2014), 24 ; Yamada, *Amerikashi no naka no Jinnshu*, 15.

[69] Wallenstein, *Tell the Court I Love My Wife*, 17-18; Yamada, *Amerikashi no Naka no Jinnshu*, 16.

"mulatto," punished both white men and women who had interracial marriage and the preacher who performed their marriage, and imposed a harsher penalty on the mixed-race children born from interracial couples.

The Virginia assembly amended the legislation again in 1723. The 1723 law prohibited slave owners to free any "negro," "mulatto," or Indian slaves. Moreover, free "negro," "mulatto," or Indian persons were excluded to vote in any election. In terms of regulation on interracial sex and marriage, the punishment of the mixed-race children was extended to three generations. For example, if the mixed-race daughter born between a white woman and nonwhite man gave birth to a child during her indentured servitude, her child also became an indentured servant for 30 or 31 years. The 1723 law stated: "where any female mullatto, or indian, by law obliged to serve 'til the age of thirty or thirty-one years, shall during the time of her servitude, have any child born of her body, every such child shall serve the master or mistress of such mullatto or Indian, until it shall attain the same age the mother of such child was by law obliged to serve unto." The law continued to discourage white women from having interracial relation with non-white men. At the same time, the law focused on white male supremacy and men's prerogative of access to all women.[70]

During the outbreak of the American Revolution, emerging ideas of freedom and human liberty, which contradicted to slavery, influenced Virginia to consider revising its punitive laws on race and slavery. In 1765 the Virginia legislature considered the

[70] Wallenstein, *Tell the Court I Love My Wife*, 18; Yamada, *Amerikashi no Naka no Jinnshu*, 16-17.

punishment of mixed-race descendants of white women and nonwhite men in the previous law to be "an unreasonable severity to such children." The 1765 law reduced the terms of indentured servitude to 18 years for females and 21 years for males.[71] In 1782, the Virginia assembly passed "An Act to Authorize the Manumissions of Slaves" that allowed slaveholders to free their slaves by their last wills and testaments or writings that were approved by the county court.[72] Furthermore, after the colonies became an united independent nation, "An act declaring what a person shall be deemed mulattoes" redefined the definition of "mulatto" in 1787 to "every person who shall have one-fourth part or more of negro blood" instead of any mixed-race Virginian who has at least one-eighth African ancestry in the previous 1705 law. The 1787 law further stated, "every person of whose grandfathers or grandmothers any one 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."[73] Although some punishments were loosened during the late eighteenth century, marriage and sex across the racial lines were considered as taboo throughout the colonial period and American Revolution.

Laws against interracial sex and marriage spread to other colonies and then to other states. They were enacted in states in the South and even in the North, where

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[71] Wallenstein, *Tell the Court I Love My Wife*, 18-19; Yamada, *Amerikashi no Naka no Jinnshu*, 18.

[72] Wallenstein, *Tell the Court I Love My Wife*, 20-21; Yamada, *Amerikashi no Naka no Jinnshu*, 18; "Primary Resource, An act to authorize the manumission of slaves (1782)," Encyclopedia Virginia, last modified August 13, 2015, https://www.encyclopediavirginia.org/_An_act_for_suppressing_outlying_slaves_1691.

[73] Walter Wadlington, "The Loving Case: Virginia's Anti-Miscegenation Statute in Historical Perspective," *Virginia Law Review* 52, no. 7 (1966): 1189–1223, https://doi.org/10.2307/1071447.

slavery did not exist or where the Black population was few in numbers. After Virginia and Maryland, Massachusetts enacted its law in 1705, followed by North Carolina (1715), South Carolina (1717), Pennsylvania (1725-1726), Delaware (1726), and Georgia (1750). Some colonies borrowed language similar to Virginia's 1691 law. For instance, Massachusetts used the term, "Better Preventing of a Spurious and Mixt Issue" in its 1705 law. Similarly, North Carolina's 1741 law was amended to mimic Virginia's earlier statute for the prevention of "abominable Mixture and spurious issue." By 1800, ten states out of sixteen states had their own miscegenation law. This spread of anti-miscegenation laws shows the spread of racism, while earlier laws protected economics of keeping people enslaved or indentured.[74]

As the idea of prohibiting interracial sex and marriage gradually spread across the new nation, white settlers took their anti-miscegenation laws with them into the western territories. Free territories became new states and the western states adopted anti-miscegenation laws. When Indiana joined as a new state in 1816, it attempted to enact anti-miscegenation laws several times. In 1842 Indiana finally settled on imposing punishment of a fine between $1,000 and $5,000 and imprisonment for more than a year to ten years. California enacted its anti-miscegenation law in the same year it joined the union in 1850 with a fine between $100 to $10,000 and more than three months to ten years in prison.[75]

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[74] Wallenstein, *Tell the Court I Love My Wife*, 41-42; Yamada, *Amerikashi no Naka no Jinnshu*, 20-21.

[75] Wallenstein, *Tell the Court I Love My Wife*, 42; Yamada, *Amerikashi no Naka no Jinnshu*, 21-22.

While new states passed new regulations and punishments against interracial marriage, other states repealed their anti-miscegenation laws. Pennsylvania, for instance, was the first among the thirteen original states to permanently repeal anti-miscegenation laws in 1780 "for gradual emancipation and an eventual end to slavery." Massachusetts then banned its law on interracial marriage in 1843 and was followed by Iowa in 1851.[76] Anti-miscegenation laws expanded, and were sometimes repealed, across the country. The continuing changes seen in the anti-miscegenation laws demonstrates the instability and uncertainty of the laws in the nineteenth century, which continued to the Civil War and beyond.

The term "miscegenation" was coined during the Civil War. "Miscegenation" originated from two Latin words *miscere* (meaning "to mix") and *gene* (meaning "race") replacing the term for "amalgamation." Two northern Democratic newspapermen, David Goodman Croly and his coauthor, George Wakeman, working for the *New York World*, invented the term in a pamphlet published in 1863, titled, *Miscegenation: The Theory of the Blending of the Races, Applied to the American White Man and Negro*. The pamphlet was a hoax used by the Democrats to smear the Republicans in the presidential campaign of 1864. The two authors, who were anonymous on the pamphlet and pretended to be pro-Republicans, claimed that "science has demonstrated that the intermarriage of diverse

[76] Wallenstein, *Tell the Court I Love My Wife*, 40-41. Yamada, *Amerikashi no Naka no Jinnshu*, 22. Pennsylvania repealed its anti-miscegenation law, but the state legislature considered to introduce the bill again in 1814. Though Pennsylvania did not pass its anti-miscegenation law, Wallenstein explains that "The fact that a state had repealed its miscegenation law did not mean that it never considered adopting a new one, just as states that never actually passed such laws might nonetheless considered doing so."

race is indispensable to a progressive humanity." Croly and Wakeman ironically argued that racial mixing produces "the more perfect race that is yet to appear upon this continent." Before the pamphlet was published, the president had issued the Emancipation Proclamation, which caused the Democrats to believe that the Republicans were promoting interracial marriage. Democrats spread the fear to the voters that if Lincoln was reelected the country would experience further racial mixing. As historian David Roediger explains, the Democrats implied that voting for the Republican Party would lead to a "'miscegen' nation."[77]

The fears of "miscegenation" were reflected in state laws during and after the Civil War. Anti-miscegenation laws were passed in new territories and states in Nevada (1861), Oregon (1862), Idaho (1864), Colorado (1864) and Arizona (1865). West Virginia joined the Union as a new state in 1863 when the western region of Virginia refused to join the Confederacy but still adopted Virginia's anti-miscegenation law. Two slave states, South Carolina and Mississippi, did not have an official law against interracial marriage but passed anti-miscegenation laws in 1865. By 1866, twenty-five out of thirty-six states had some version of an anti-miscegenation law; only eight states – New Hampshire, Vermont, Connecticut, New York, New Jersey, Wisconsin, Minnesota and Kansas – did not pass anti-miscegenation laws during the post-Civil War period.

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[77] David Goodman Croly and George Wakeman, *Miscegenation : The Theory of the Blending of the Races, Applied to the American White Man and Negro* (New York: H. Dexter, Hamilton & co., 1864), 1-2, http://link.gale.com/apps/doc/CY0100773795/SABN?u=viva_gmu&sid=zotero&xid=86334f2b; David R. Roediger, *The Wages of Whiteness: Race and the Making of the American Working Class*, rev. ed., (London: Verso, 2007), xxiii, 155-156; Peggy Pascoe, *What Comes Naturally: Miscegenation Law and the Making of Race in America* (New York: Oxford University Press, 2009), 28; Wallenstein, *Tell the Court I Love My Wife*, 51-52.

Only nine states, Alaska, Connecticut, Hawaii, New Hampshire, New Jersey, Vermont, Wisconsin, and the District of Columbia, never enacted such a law.[78]

After the war ended, slavery was abolished with the ratification of the Thirteenth Amendment in 1865. Congress passed the Civil Rights Acts of 1866 over President Andrew Jackson's veto that guaranteed civil rights of African Americans including "the right to make contracts, own land, and testify in court, as well as black southerners' right to be free of criminal penalties that applied only to them." Former Confederate states, however, started to enact a series of laws known as the Black Codes that limited the rights of freed people to keep them in a status similar to slavery after the war. To protect the African Americans from discriminatory state laws such as the Black Codes and to prevent the court from declaring the Civil Rights Act of 1866 unconstitutional, the Congress subsequently passed the Fourteenth Amendment, ratified in 1868, to ensure the African Americans with citizenship rights and "the equal protection under the laws."[79]

Democratic senators were concerned that the passage of the Civil Rights Act of 1866 and the Fourteenth Amendment could nullify state anti-miscegenation laws. A few Radical Republicans expressed opposition against anti-miscegenation laws. But not surprisingly, the senators including the framers of the Reconstruction amendments stated that the equal protection in the Reconstruction civil rights legislation could not override states' anti-miscegenation laws. Republican Senator Lyman Trumbull of Illinois, for

[78] Pascoe, *What Comes Naturally*, 28-29; Yamada, *Amerikashi no Naka no Jinnshu*, 23, 26-27.

[79] Wallenstein, *Tell the Court I Love My Wife*, 58-60; Yamada, *Amerikashi no Naka no Jinnshu*, 26.

instance, who introduced the bill and the chairman of the Senate Judiciary Committee, reassured that there was no intention to nullify the anti-miscegenation laws. Trumbull further stated that the anti-miscegenation law "operates alike on both races" and both white and black races are prohibited from intermarrying one another. "If the negro is denied the right to marry a white person, the white person is equally denied the right to marry the negro," Trumbull said. Moreover, the same penalty applied to both races if one violated the law, and therefore, neither the civil rights legislation nor the Fourteenth Amendment could overturn the anti-miscegenation statutes. As Alfred Avins argues, "the Republicans were as much opposed to miscegenation as the Democrats" and "[t]his attitude persisted throughout Reconstruction." Historian Shiro Yamada adds to the argument that if Reconstruction amendments could overturn the anti-miscegenation statutes, the Congress would probably not have gained the votes to pass the bill over president's veto.[80]

With a new political leadership in the states as Blacks and Republicans gained power, states particularly in the South, repealed or revised their old anti-miscegenation statutes. Three former Confederate states, Louisiana (1868), South Carolina (1868), and Mississippi (1870), repealed their laws. Supreme courts of Texas, Alabama, and Louisiana ruled against the anti-miscegenation law in *Bonds v. Foster* (1871-1872),

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[80] Yamada, *Amerikashi no Naka no Jinnshu*, 30-31; Alfred Avins, "Anti-Miscegenation Laws and the Fourteenth Amendment: The Original Intent," *Virginia Law Review* 52, no. 7 (1966): 1230–1232, 1253, https://doi.org/10.2307/1071448. For article similar to Avins on the debates on the Fourteenth Amendment and anti-miscegenation laws, see R. Carter Pittman, "The Fourteenth Amendment: Its Intended Effect on Anti-Miscegenation Laws," *North Carolina Law Review* 43, no. 1 (December 1964): 92–109.

Burns v. State (1872), and *Hart v. Hoss and Elder* (1874), respectively. New Mexico (1866) and Washington (1868) repealed their laws before reaching statehood. In the early 1870s, three more states, Florida (1872), Arkansas (1874), and Illinois (1874), excluded the provisions against intermarriage from their state laws. In the 1880s, four states in the North and Midwest repealed their laws: Rhode Island (1881), Maine (1883), Michigan (1883), and Ohio (1887). Conversely, four former confederate states – Virginia, North Carolina, Tennessee, and Georgia – and five southern border states – Delaware, Maryland, West Virginia, Kentucky, and Missouri – never repealed their anti-miscegenation statutes.[81]

Although some states repealed their anti-miscegenation laws during Reconstruction, it was only temporarily, and states restored their laws gradually after the Democrats regained control in the South during "Redemption." Mississippi and South Carolina, for instance, reinstated their statues in 1879. Similarly, Florida and Arkansas omitted the provision from their state law in the early 1870s but their anti-miscegenation law reappeared again in 1881 and 1884. Louisiana's anti-miscegenation statute was restored in 1894, which was two years before the Supreme Court ruled on the racial segregation laws for public facilities in *Plessy v. Ferguson*. Finally, Oklahoma included a provision on banning interracial marriage in their statute in 1908, which was immediately

[81] Pascoe, *What Comes Naturally*, 40; Wallenstein, *Tell the Court I Love My Wife*, 80, 93, 104; Wallenstein, *Race, Sex, and the Freedom to Marry*, 35; Yamada, *Amerikashi no Naka no Jinnshu*, 32.

after Oklahoma became a state in 1907. Between 1913 to 1948, thirty states out of a total of forty-eight states maintained anti-miscegenation laws.[82]

The passage of the Civil Rights Act of 1866 and the Fourteenth Amendment provided a legal basis to challenge the laws against miscegenation in the South. Interracial couples demanded the right to marry across racial lines, claiming that the anti-miscegenation statute was a violation of the Fourteenth Amendment. Court cases where interracial partners or their mixed-race children fought for their freedom, racial identity, the inheritance of property, or both, already existed during the antebellum period but it appeared increasingly during the Reconstruction era. Alabama, for instance, had various court cases debating whether the anti-miscegenation law was a violation of the federal amendments.[83]

James Burns was accused of presiding over the marriage of an interracial couple in Mobile, Alabama. Alabama enacted the Black Codes immediately after the war, including penalties to any persons of both races who violated the state's anti-miscegenation law. In the decisions of *Burns v. State* (1872), the Alabama Supreme Court temporarily admitted that the anti-miscegenation statue violated the state constitution, the Civil Rights Act of 1866, and the Fourteenth Amendment. During this time, Republican judges controlled the court and "offered possibility" for interracial partners. However, the Alabama Supreme Court ruled against various miscegenation cases after the *Burns* case.

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[82] Yamada, *Amerikashi no Naka no Jinnshu*, 39, 58; Wallenstein, *Tell the Court I Love My Wife*, 104; Wallenstein, *Race, Sex, and the Freedom to Marry*, 35.

[83] Yamada, *Amerikashi no Naka no Jinnshu*, 31-32.

In *Green v. State* (1878), the court concluded that all marriages between white and black persons were void. Justice Amos R. Manning declared that there is no discrimination in the state law because the law applied "equal protection" to both Black and white races and similar penalties were imposed on both races. Justice Manning, furthermore, pointed out that many northern states already had anti-miscegenation laws when the Congress passed the Civil Rights Act of 1866, and the framers of the Act did not mention about the anti-miscegenation laws nor repealed the law during the debate on the bill in Congress. Justice Manning said that marriage is not merely a "civil contract" guaranteed by the Civil Rights Act or the Fourteenth Amendment but should be regulated and overseen by the state. The *Burns* case was overruled, and anti-miscegenation law continued to remain in postwar Alabama.[84]

Another important case that influenced the course of history on anti-miscegenation law occurred in Alabama. All of the Alabama cases were decided at the state level but *Pace v. Alabama* (1883) reached the U.S. Supreme Court and became a precedent for future decisions. Tony Pace, a Black man, and Mary Jane Cox, a white woman, did not marry or live together for fear of violating the state's anti-miscegenation law. The couple visited each other near their homes in Clarke County to avoid getting arrested. Nonetheless, the couple was found guilty of "adultery" and "fornication" in

[84] Wallenstein, *Tell the Court I Love My Wife*, 69-80; Yamada, *Amerikashi no Naka no Jinnshu*, 32-34, 41-44. For example, multiple court cases appeared across the states, especially in Alabama: *Ellis v. State* (1868), *Burns v. State* (1872), *Ford v. State* (1875), *Green v. State* (1878), *Hoover v. State* (1878). Similar cases appeared in other states such as Mississippi and Texas, though Texas did not repeal its statute until after the *Loving* case. Wallenstein traces these court cases during the Reconstruction era in Alabama in *Tell the Court I Love My Wife*, on pp. 69-80.

1881. The local court sentenced both Pace and Cox to two years in the penitentiary, which was a heavier punishment compared to a couple of the same race. Same-race couples, Black or white, who were unmarried but lived together would typically be charged with a misdemeanor crime with "a minimum fine of $100 and a possible term of six months in jail." Interracial couples, on the other hand, were subjected to prison with a term minimum of two years up to seven years.[85]

The couple appealed to the Alabama Supreme Court. They claimed that imposing heavier punishment to the interracial couple than the couple of the same race was a violation of the Fourteenth Amendment. Justice Henderson M. Somerville, however, rejected their appeals, stating that both partners of the interracial couples were sentenced with the same punishment and they were equally treated under the law. Moreover, the court justified that interracial couples were imposed with heavier punishment than the same-race couples because cohabitation and fornication by interracial couples could result in "the amalgamation of the two races, producing a mongrel population and a degraded civilization." During the trial, the court brought up precedent cases to support laws banning interracial sex and marriage including the recent series of cases in the Alabama Supreme Court, but they ignored the decision of the *Burns* case.[86]

Pace appealed the decision to the U.S. Supreme Court in 1883. The couple's attorney, John R. Tompkins, admitted that he favored the anti-miscegenation statute;

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[85] Wallenstein, *Tell the Court I Love My Wife*, 111; Wallenstein, *Race, Sex, and the Freedom to Marry*, 37; Yamada, *Amerikashi no Naka no Jinnshu*, 46-47.

[86] Wallenstein, *Tell the Court I Love My Wife*, 111-112; Yamada, *Amerikashi no Naka no Jinnshu*, 47.

however, he opposed the "unequal punishments measured against different races according to color." Tompkins argued that the state statute violated the Fourteenth Amendment because it could impose different penalties to a Black and white couple who offended the law than to other races such as Indian, Chinese, and Koreans.[87] On the other hand, Alabama attorney general, Henry Clay Tompkins, argued that the state had the power to regulate marriage over its citizens and its "power to forbid marriages between persons of different races carries with it the power to impose a greater punishment for acts of criminal intimacy between such persons." The state attorney also emphasized the equal protection of the law explaining it "punishes persons of each race in the same manner and to the same extent for its violation is not a discrimination against either race, nor does it deny to any person the equal protection of the laws." It is interesting to note that neither side mentioned the *Burns* case. Henry Clay Tompkins further stated that "the right of the State" to regulate and ban interracial marriage "has been exercised and sustained," and "in every instance" at lower courts and state courts, "the validity of such laws has been upheld." The *Burns* case was forgotten at the highest court.[88]

The Supreme Court's decision followed the state supreme court's decision. Justice Stephen J. Field ruled that Alabama's anti-miscegenation did not violate the Fourteenth Amendment because the punishment applied equally to both races and thus the law did not discriminate against either race. *Pace v. Alabama* justified the

[87] Wallenstein, *Tell the Court I Love My Wife*, 112; Yamada, *Amerikashi no Naka no Jinnshu*, 48.

[88] Wallenstein, *Tell the Court I Love My Wife*, 113.

constitutionality of states' anti-miscegenation laws. This judgement was not overturned until 1967 in the Supreme Court decision in *Loving v. Virginia*.[89]

In Virginia, the state law continued to strictly prohibit interracial marriages with the growing number of freed Blacks even before the Civil War. The Virginia Code of 1860 stated that it was a crime for a white person to intermarry with a "negro" (who at the time was defined as anyone who has at least one-fourth of African ancestry) and only the white partner was to be fined up to $100 and confined "in jail not more than one year"; any clerk who "knowingly" issued a marriage license was to be fined up to $500 and imprisoned for up to a year; and finally, anyone who "perform[ed] the ceremony of marriage between a white person and a negro" was fined $200. In addition, the 1860 code extended penalties on the white partner who lived with a black person outside marriage. "[A]ny 'free person' who committed 'adultery or fornication'" was fined a minimum of $20, and a minimum of $50 for "any white persons, not married to each other" but who "lewdly and lasciviously associate and cohabit together." Before the war, the penalty was imposed only on the white partner.[90]

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[89] Wallenstein, *Tell the Court I Love My Wife*, 114; Yamada, *Amerikashi no Naka no Jinnshu*, 48-49. Peggy Pascoe argues that through these court cases, "southern judges tried to reconstruct White male privilege in a world without slavery." Before the Civil War, interracial sex between white men and Black women was not prohibited because the mixed-race children would automatically become slaves and thus the slaveowners' property. In the post-Civil War period, however, white men could no longer maintain the system of slavery and Black men claimed the same privilege of marriage as white men. "No longer justifiable as a necessary part of the system of slavery," Pascoe argues, "they were increasingly vulnerable to challenge as unjustifiable restrictions on the rights of White men." See, Pascoe, *What Comes Naturally*, 42.

[90] Wallenstein, *Tell the Court I Love My Wife*, 99-100; Yamada, *Amerikashi no Naka no Jinnshu*, 50.

Virginia's anti-miscegenation laws were revised as well as the definition of each racial group in the postwar period. Immediately after the war, the statute defining race in 1866 declared that "every person having one-fourth or more of negro blood shall be deemed a colored person." In this statute, the term "mulatto" that was previously used to refer any mixed-race persons was no longer indicated, and instead it categorized both "negro" and "mulatto" in the same category of "colored" people. The 1866 statute also defined Indian for the first time as a "person not a colored person having one-fourth or more of Indian blood."[91]

The Virginia Code of 1878 revised and extended its penalties banning interracial marriage prior to the 1860 statute. The revised law eliminated the cash fine but it imposed penalties on both white and Black partners to "be confined in the penitentiary not less than two nor more than five years." The penalties on ministers who presided over the marriage and the clerks who issued marriage licenses remained the same as in the 1860 law. "Equal protection" was applied on both Black and white citizens. Blacks could not marry whites, nor whites marry Blacks, and any violators were subject to equal punishment. In addition, the 1878 law prohibited any couples made up of a "white person and negro" that "go out of state for the purpose of being married" and "afterwards return to and reside in, cohabiting as man and wife." Those couples who tried to escape from the Virginia law against interracial marriage "shall be as guilty" and punished under state law.[92]

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[91] Sherman, "The Last Stand," 70; Yamada, *Amerikashi no Naka no Jinnshu*, 50-51.

[92] Wallenstein, *Tell the Court I Love My Wife*, 100-101.

The addition of the provision prohibiting mixed-race couples marrying outside Virginia was largely influenced by the decision in the Virginia Supreme Court of *Kinney v. Commonwealth* (1878). Andrew Kinney, a Black man, and Mahala Miller, a white woman, had lived together with their two sons, William and James, in Augusta County, Virginia, since 1867. In November 1874 the couple decided to travel to Washington, D.C. to get married, where mixed-race marriage was legal. After ten days of honeymoon, the married couple returned to their home in Augusta County, lived as husband and wife, and had four more sons – John, Alonzo (who passed away after birth), Tom and Harrison. However, the couple's life was interrupted in September 1877 when they were charged with violating Virginia's anti-miscegenation law and summoned to Augusta County Court. Kinney protested that they were an official married couple because their marriage was valid and accepted in Washington, D. C. The judge, however, declared that the couple's marriage was "a vain and futile attempt to evade the laws of Virginia." In February 1878, Kinney and Miller were found guilty and fined $500. Kinney appealed to the Virginia Supreme Court but the Virginia Supreme Court ruled the couple's marriage void for "lewdly and lasciviously associating and cohabitating together" on October 3, 1878. Judge Joseph Christian declared that the state had the authority in regulating and controlling its marriage law. The judge continued:

> The purity of public morals, the moral and physical development of both races, and the highest advancement of our cherished southern civilization, under which two distinct races are to work out and accomplish the destiny to which the Almighty has assigned them on this continent—all require that they should be kept distinct and separate, and that

> connections and alliances so unnatural that God and nature seem to forbid them, should be prohibited by positive law, and be subject to no evasion.

Unless the couple changed their residence to a state or country "where the laws recognize the validity of such marriage," the couple were found to be guilty. Kinney and Miller did not move to a different state. Instead they chose to pay the fine and remained in their home with their five children in Augusta County.[93]

A similar case to *Kinney v. Commonwealth* was *Ex Parte Kinney* (1879). Edmund Kinney, a Black man, and Mary S. Hall, a white woman, went to Washington, D.C. for their wedding ceremony in October 1878, and returned to their home in Hanover County, Virginia. The couple were charged with violating the 1878 law and sentenced with the penalty of five years in the state penitentiary. Kinney and Hall appealed to the federal court but Judge Robert W. Hughes rejected the intervention in the case of *Ex Parte Kinney*. Judge Hughes declared that Kinney was "a citizen of Virginia amenable to her laws," and therefore, he "cannot bring the marriage privileges of a citizen of the District of Columbia any more than he could those of a citizen of Utah, into Virginia, in violation of her laws." Furthermore, the equal protection clause of the Fourteenth Amendment did not give the Congress the power "to interfere with the right of a state to regulate the domestic relations of its own citizen." The judge also did not see "any discrimination

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[93] Yamada, *Amerikashi no Naka no Jinnshu*, 51-52; Wallenstein, *Race, Sex, and the Freedom to Marry*, 32-33; "Primary Resource, *Kinney v. the Commonwealth* (October 3, 1878)," Encyclopedia Virginia, last modified April 25, 2014, https://www.encyclopediavirginia.org/Kinney_v_The_Commonwealth_October_3_1878; Dale M. Brumfield, "Before Loving, There Was Kinney in Augusta County," *The News Leader*, January 8, 2017, https://www.newsleader.com/story/news/local/history/2017/01/08/loving-kinney/96331176/.

against either race" in the Virginia law that forbids both parties of "colored" and white person from marrying "the opposite color of skin." "I think it clear, therefore," the judge concluded, "that no provision of the fourteenth amendment has been violated by the state of Virginia in its prosecution of this petitioner." Kinney and Hall served in the state penitentiary.[94]

The definitions of racial groups changed again in Virginia's statutes in the early twentieth century. Previously, the 1866 statute defined a "colored" person as anyone with "one-fourth or more of negro blood." The 1910 Virginia statute prohibiting interracial marriage of white and "colored" redefined the category to "Every person having one-sixteenth or more of negro blood shall be deemed a colored person," while the definition of Indian remained the same.[95] Since the early stage of creating the anti-miscegenation laws, the process of legal categorization was aimed at African Americans and little at Native Americans, even though it eventually affected both. The decisions in courts were also solely about Blacks and whites even though Indians were a presence in Virginia.

The redefinition of "colored" person in the 1910 law, which intended to narrow down the definition of a "colored" person, however, caused confusion. Any mixed-race person with less than one-fourth of "negro blood" could marry a white person under the law before 1910, but the new 1910 statute prevented this person from marrying a white person because he or she was no longer considered "white." For example, a mixed-race

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[94] Wallenstein, *Race, Sex, and the Freedom to Marry*, 33; Wallenstein, *Tell the Court I Love My Wife*, 109-110.

[95] Wallenstein, *Tell the Court I Love My Wife*, 137; Yamada, *Amerikashi no Naka no Jinnshu*, 55.

couple with a partner of "one-sixteenth or more of negro blood," who married a white person would now be violating Virginia's 1910 law. Moreover, some couples who were considered as white persons under the previous law, could marry each other but they would be considered as "colored" persons in the 1910 law.[96]

The confusion was demonstrated in the state supreme court case of *Moon v. Children's Home Society* in November 1911. A white woman named Lucy May married I. B. Grasty, a white man, and had two children, Madeline and Ruby. Later her husband died, and she remarried to John Moon in Washington, D.C. After their marriage, Lucy Moon had two more children, Clyde and Rex, with John Moon. John Moon was a "white" person when they married but under the new 1910 law he was considered as a "colored" person. Authorities challenged Lucy Moon at the circuit court of Albemarle County on the custody of her two "white" children with the former husband. Moon was ordered to give the custody of the two daughters to the Children's Home Society of Virginia because the mother of the children married a "person with colored blood," and her children, "who were of pure blood and gentle ancestors would be with persons of mixed blood, and that they would be deterred from association with gentle people of white blood."[97]

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[96] Wallenstein, *Tell the Court I Love My Wife*, 138.

[97] "*Moon et al. v. Children's Home Society of Virginia*. Nov. 16, 1911. [72 S. E. 707.]," *The Virginia Law Register* 17, no. 9 (January 1912): 691, https://doi.org/10.2307/1104349; Wallenstein, *Tell the Court I Love My Wife*, 138; Lucy May (1870-1963), Ancestry, accessed October 22, 2020, https://www.ancestry.co.uk/genealogy/records/lucy-may-24-1bsq0f?geo_a=r&geo_s=uk&geo_t=uk&geo_v=2.0.0&o_iid=41012&o_lid=41012&o_sch=Web+Property.

Judge John Alexander Buchanan in Virginia's Supreme Court, however, ruled in favor of Moon. Lucy Moon's "present husband, John Moon," has "comfortably provided for her and her two children by her former husband," and "these two infant defendants are not neglected as far as physical comforts are concerned, and no drunkenness or vice of their adults was proven." Judge Buchanan added that the act of assembly has "no authority for depriving a mother of the care and custody of her children merely because she has married into a family lower in the social scale than that in which she was reared." The only issue was that John Moon had a "negro blood in his veins," which was insufficient for their children to be taken to the custody of the society "unless he has one-fourth or more of such blood" that defined as a "colored" person under the previous act. In his opinion, "It is not pretended in this case that the step-father was a colored person within the meaning of our statute, or that he and the mother of the children were guilty of any crime in intermarrying, or were not persons of good character." The mother, "being of good moral character," and the stepfather, "also of good moral character," who is "so supporting and caring for them," said Judge Buchanan, "cannot be deprived of that privilege by the defendant in error under the provision of its charter." The judge, therefore, concluded "to reverse the order of the circuit court," and "restoring the said children to the custody of their mother, the plaintiff in error."[98]

After the case, two Virginian lawyers, James F. Minor and Minor Bronaugh, objected to the state supreme court's decision. They argued that the court of appeals

[98] "*Moon et al. v. Children's Home Society of Virginia*," 690-692.

"should have remanded the case to the Circuit Court of Albemarle" to appoint the guardian of the children, and in this case, to place "the custody of the children with the Children's Home Society or other proper and fit custodian." In their view, the circuit court had the right to appoint a guardian for the children considering that their mother was "remarried under such conditions, and then by the very terms of the statute, such guardian would have the custody of the children in preference to the mother."[99]

The lawyers, furthermore, believed that the new 1910 law should be applied to this case in defining a "colored" person. Although the stepfather of the child was "legally white people, having less than one-fourth negro blood" at the time the couple were married, the two lawyers stated that "the legislature had changed this law since June 15, 1910 and since that date these persons, if they have one-sixteenth or more of negro blood are to be deemed colored persons." However, "the court of appeals," they explained, "restored these children to the control of their mother, whose husband, although legally white when she married him is now a negro under the law," and therefore, "these children are thus condemned for the future to associate with persons who are in the eyes of the law negroes."[100]

In addition to the custody of the children, Minor and Bronaugh displayed their concerns with the racial status of the Moons:

> Although the power of the legislature to make this legislation retroactive so as to affect the validity of a marriage such as that of the defendant to Moon may well be doubted, it can hardly be doubted that,

[99] "*Moon et al. v. Children's Home Society of Virginia*," 697; Wallenstein, *Tell the Court I Love My Wife*, 138-139.
[100] "*Moon et al. v. Children's Home Society of Virginia*," 698.

> with reference to how these people are to be regarded now and in future, whether as legally white or as negroes, it is valid and effectual legislation, and changed the status of these Moons since June 15, 1910 from white to colored, and that in determining the future associations of these children these Moons and the second husband of Lucy Moon are to be regarded as negroes or colored persons under the law. It would seem that the court did not take cognizance of this most important change in the law.[101]

The two lawyers acknowledged the difficulty the court of appeals had to confront in the decision of the case that "the legislature has attempted to establish a dividing line between white and colored persons which does not coincide with that established by the universal consensus of the public opinion of the state," and therefore, "there is a considerable class of citizens who are in the eye of the law white, but by the judgment of society are colored." Minor and Bronaugh believed that "this difficulty will continue to exist until the legislature adopts the rule enforced by public sentiment and recognizes and declares to be members of the colored race all having an appreciable amount of negro blood." Even before the Racial Integrity Act was passed, white public opinion was in favor of the one-drop rule.[102]

Finally, the Virginia Legislature passed the Racial Integrity Act of 1924 with its very narrow definition of whiteness. This 1924 law, entitled "Act to Preserve Racial Integrity," was an extension and a revision of the previous anti-miscegenation laws that strictly prohibited interracial marriage. The legal definition of "whiteness" became more exclusive, narrowing it down to any person who has no non-Caucasian ancestry

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[101] *Ibid*.

[102] "*Moon et al. v. Children's Home Society of Virginia*," 692; Wallenstein, *Tell the Court I Love My Wife*, 139.

whatsoever. Anti-miscegenation laws were originally intended to regulate marriage across racial lines, but it also functioned as a role in defining "race" and protecting white supremacy.

2. The Anglo-Saxon Clubs of America

In September 1922, the Anglo-Saxon Clubs of America was formed by a group of Virginia white supremacists, who had rallied in response to their belief that white purity and civilization were in danger. The founder of the Anglo-Saxon Clubs was John Powell, who was born in Richmond from a distinguished Virginia family and was a famous pianist and a composer of international reputation. Powell traveled to Europe to study piano and music composition after he graduated at the University of Virginia in 1901. He received recognition as a performer and composer in the United States and abroad for his composition called *Rhapsodie Negre* in 1918, which was a piece on nostalgic themes of black life. Although Powell praised music by African Americans in his early career, he began to reject their music as "meager and monotonous" and denied the contributions of black culture to American music in his musical writings and lectures.[103] Aside from his musical career, Powell focused on miscegenation. Powell commented in "Music and the Nation," published by Rice University, that miscegenation of Black and white could

[103] Arica L. Coleman, *That the Blood Stay Pure: African Americans, Native Americans, and the Predicament of Race and Identity in Virginia* (Bloomington: Indiana University Press, 2013), 91; J. David Smith, *The Eugenic Assault on America: Scenes in Red, White, and Black* (Fairfax: George Mason University Press, 1993), 16-17. For more on how Powell's political views shaped his musical career, see Stephanie Delane Doktor, "How a White Supremacist Became Famous for His Black Music: John Powell and Rhapsodie Nègre (1918)," *American Music* 38, no. 4 (2020): 395–427.

"lead to eventual degeneration of the whole Caucasian race and thereby to the annihilation of white civilization."[104] As a native-born Richmonder and a supporter of the Anglo-Saxon ideal, Powell adored Anglo-Saxon culture and devoted himself to maintaining white purity.

The co-founder of the Anglo-Saxon Clubs of America was Earnest Sevier Cox, a Tennessee native, who described himself as an ethnographer and expert on world-wide racial matters. Cox had taken interest in studying law, becoming a schoolteacher, loan officer, and reporter. He attended the Moody Bible Institute in Chicago, to be trained as a public speaker and preacher, but then, moved to Tennessee to learn theology at Vanderbilt University. Cox left Vanderbilt University without a degree and returned to Chicago, where he studied sociology in a graduate course at the University of Chicago. While Cox was in Chicago, he began to develop racial views that Blacks are inferior to whites and the two races could not coexist. He left the university without receiving his degree again in 1909. The following year Cox decided to visit to Black societies all over the world including Africa, Asia, and Central and South America. After a five-year trip, Cox was convinced that racial intermixing would lead to destruction of the white civilization and the white race. He advocated racial separatism between Black and white races and repatriation of African Americans to Africa. Cox wrote numerous articles and books about his perspective on race based on his travels including *White America*, published in 1923, which was endorsed by the members of the clubs and other white

[104] Smith, *The Eugenic Assault on America*, 17.

elites. He later published more books on his racial views and colonization of African Americans such as *Let My People Go* (1925), *The South's Part in Mongrelizing the Nation* (1926), and *Lincoln's Negro Policy* (1938). In January 1920 Cox settled in Richmond, Virginia, where he was welcomed by Virginia's white community. He worked as a real estate agent while promoting his views on the race issues. Cox's acquaintances introduced him to Powell, who was already interest in Cox's *White America*, and the two shared their racial views. Together they founded the Anglo-Saxon Clubs of America in the fall of 1922.[105]

In July 1923 Powell and Cox's article titled "Is White America to Become a Negroid Nation?" was published in the *Richmond Times-Dispatch*. They argued that the current Jim Crow laws in the South were insufficient. It "is not enough to segregate the Negro on railway trains and street cars, in schools and theaters; it is not enough to restrict his exercise of franchise, so long as the possibility remains of the absorption of Negro blood into our white population," they wrote. Moreover, the "present marriage laws prevent the intermarriage of whites and blacks, but they do not prevent intermixtures." To strengthen the current intermarriage law, they proposed that the General Assembly of Virginia prohibit "intermarriage of whites with individuals having any ascertainable trace of Negro blood." In addition to banning interracial marriages, Powell believed that

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[105] Smith, *The Eugenic Assault on America*, 16; Jason Ward, "'A Richmond Institution': Earnest Sevier Cox, Racial Propaganda, and White Resistance to the Civil Rights Movement," *Virginia Magazine of History & Biography* 116, no. 3 (June 2008): 262–93. Douglas Smith and Dictionary of Virginia Biography, "Earnest Sevier Cox (1880-1966)," Encyclopedia of Virginia, last modified December 22, 2021, https://encyclopediavirginia.org/entries/cox-earnest-sevier-1880-1966/. In *Lincoln's Negro Policy* on pp.16-17, Cox explains how he met with Powell who became his friend and ally to implement and force their racial ideals.

registration and birth certificates describing racial composition would enable them to identify "who is or who is not tainted."[106]

The *Richmond Times-Dispatch* published an editorial along with Powell and Cox's article, supporting their cause. The newspaper commented that all Virginian men and women should give a "serious consideration" on the article. The Anglo-Saxon Clubs of America, could not solve the so-called "negro problem" but the editorial suggested that they "will at least express an ideal, and throw every possible safeguard around racial purity." Giving Powell a public platform to voice his views on racial issues, the *Richmond Times-Dispatch* endorsed the position of the Anglo-Saxon Clubs of America.[107]

Two weeks after Powell and Cox's article was published, Walter Ashby Plecker showed interest in the clubs' plan to create a new law. Plecker was a physician and Virginia's state registrar at the Bureau of Vital Statistics. He responded to the article that his position at the bureau is "perhaps the greatest force in the state today combating this condition" because his office received the certificates that indicated the race of Virginians.[108]

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[106] Earnest Cox and John Powell, "Is White America to Become a Negroid Nation?," *Richmond Times-Dispatch*, July 22, 1923; J. Douglas Smith, *Managing White Supremacy: Race, Politics, and Citizenship in Jim Crow Virginia* (Chapel Hill: University of North Carolina Press, 2002), 80; Gregory Michael Dorr, *Segregation's Science: Eugenics and Society in Virginia* (Charlottesville: University of Virginia Press, 2008), 144.

[107] Smith, *Managing White Supremacy*, 83; Smith, *The Eugenic Assault on America*, 19.

[108] Smith, *Managing White Supremacy*, 83-84; Sherman, "Last Stand," 75-76; Walter Plecker to the local registrars, July 28, 1923, Box 41, John Powell Collection, Albert and Shirley Small Special Collections Library, University of Virginia.

Born in Augusta County, Plecker graduated from Hoover Military Academy in Staunton, Virginia, in 1880 and earned his medical degree from the University of Maryland in 1892. Plecker moved to western Virginia and then Alabama to work as a country doctor. In 1892, he settled in Elizabeth City County, which is now Hampton, Virginia, where he became the public health officer for the county. When the Bureau of Vital Statistics was established in 1912, Plecker was promoted as Virginia's first state registrar at the bureau. Outside his career as a physician and state registrar, Plekcer was married to Kate Houston, but his wife passed away in 1932. He had no children. Plecker "did not seek friendship" and his hobbies were "books and birds." Plecker's personal life is little-known; as journalist Warren Fiske described, "Plecker was all work."[109]

Prior to joining the Anglo-Saxon Clubs of America, Plecker's career as a physician was viewed as successful, contributing to the poor and Black communities. He was concerned about the high death rate among poor mothers and babies. To prevent the high mortality rate during delivery, Plecker recorded numbers of births and deaths. In his own words, Plecker made a remarkable statement about his success: "In order to study the reasons for a colored death rate double that of the white, I determined to spare no effort to secure as near 100% registration of births and deaths, with causes, as possible and believe that it reached not less than 98% completeness."[110] Under Plecker's guidance, the Bureau of Vital Statistics recorded "the births of 1,5000,000 Virginians and the

[109] Warren Fiske, "The Black-and-White World of Walter Ashby Plecker: How an Obscure Bureaucrat Tried to Eradicate Virginia's 'Third Race,'" *The Virginian-Pilot*, August 18, 2004, https://www.pilotonline.com/history/article_654a811f-213f-5d97-a469-51cc43b1a77f.html.

[110] Smith, *The Eugenic Assault on America*, 60.

deaths of almost a million." Not only birth and death records, but the records expanded to marriage and divorce. Plecker's work at the Bureau of Vital Statistics and their reputation spread outside the state to the New York Bureau of Municipal Research and was praised that the system applied at Virginia's bureau "'might well be emulated' by other departments in the nation."[111]

Plecker's work on modern medical practices was groundbreaking at the time. To reduce the number of deaths of premature babies, Plecker invented an incubator made of everyday items using "a laundry basket, dirt, a thermometer and a kerosene lamp," and to decrease the "high incidence of syphilitic blindness in black and Indian babies," he resolved the problem by "distribut[ing] silver nitrate to be put in the eyes of newborns."[112] Plecker's contributions drew the attention to Dr. Ennion G. Williams, the State Health Commissioner, and he was appointed as a first state registrar at the Bureau of Vital Statistics in 1912.[113] The bureau started to issue birth certificates to all newborn babies and designate the racial status on their certificates. As a state registrar Plecker trained local clerks and midwives to make sure Virginia residents were classified to the "correct" race since 1912. He carefully monitored the race of Virginians on their birth, marriage, and death certificates that came into his office, and served as a "gatekeeper" at the Bureau of Vital Statistics until he retired in 1946.[114]

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[111] "Dr. W. A. Plecker Dies After Being Hit by Car," *Richmond Times-Dispatch*, August 3, 1947.

[112] Fiske, "The Black-and-White World of Walter Ashby Plecker."

[113] Smith, *The Eugenic Assault on America*, 60.

[114] Tori Talbot, "Walter Ashby Plecker (1861-1947)," Encyclopedia Virginia, last modified December 22, 2021, https://www.encyclopediavirginia.org/Plecker_Walter_Ashby_1861-1947.

During his career as a state registrar, Plecker wrote numerous articles and pamphlets on eugenics and racial issues, including "Virginia's Effort to Preserve Racial Integrity" in 1923. In the same year when the Racial Integrity Act of 1924 was enacted, Plecker wrote an article titled "Virginia's Attempt to Adjust to the Color Problem" and published a booklet, "Help for Midwives," sponsored by the Virginia Department of Health's Bureau of Child Welfare. This booklet informed midwives to register newborn babies accurately regarding to their race.[115] He educated midwives regardless of their race on modern birth techniques and succeeded to "cut the 5 percent death rate for black mothers almost in half."[116] But his interest shifted in properly registering the newborns to the "correct" race so he could prevent the racial mixing. Plecker published more pamphlets such as *Eugenics Relation to the New Family* and *Racial Improvement* in 1925, and *Virginia's Vanished Race* in 1947. The last piece about Virginia's Indians was published after his death in 1947. His reputation as an expert on racial matters grew as his publications influenced readers outside Virginia.[117]

Plecker's correspondence with the editor of *Survey Graphic* in 1925 shows a glimpse of his views on Black people.[118] Plecker wrote to the editor about a March 13,

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[115] "Help for Midwives," Encyclopedia Virginia, accessed April 26, 2021, https://encyclopediavirginia.org/341hpr-157d16ff61b82f4/.

[116] Fiske, "The Black-and-White World of Walter Ashby Plecker."

[117] Smith, *The Eugenic Assault on America*, 65.

[118] Plecker responded to the editor of *Survey Graphic* on an article on March 13, 1925, which he considered the editor was promoting interracial marriages.

1925 article because he thought the editor was promoting interracial marriages. In his letter, Plecker included an episode of his childhood being raised by a Black woman named Delia, who was his mother's "personal maid." Plecker became "largely under the control" of this "faithful servant." His family was so fond of her that when Delia got married, "[Plecker's] young sister broke forth into an outburst of sobbing and was joined by Delia, almost breaking up the wedding." During the last illness of Plecker's mother, Delia nursed her, and "it was she who closed her eyes after death." Delia was remembered in his mother's will and Plecker mentioned that "as executor the first check I drew was for her." The episode of his family's Black maid was used to show how Plecker had no hatred or ill feelings against Black people, and in fact, he may have believed that he was working for the best interest of the white and Black people. As J. David Smith explains, Plecker viewed Delia as "his romanticized image of a 'good negroe,'"[119] Plecker considered that he had no problems with the Black race as long as they were kept under the control of the white race. His biggest fear was when racial mixing occurred, and the white race became tainted with Black blood and their supposedly "white civilization" declined. When John Powell and Earnest Cox founded the Anglo-Saxon Clubs of America, Plecker joined the clubs' crusade in protecting the integrity of the white race. The Racial Integrity Act of 1924 became his lifelong mission to protect "whiteness." Working closely with John Powell and Earnest Sevier Cox, Plecker became one of the prominent members of the clubs. He drafted and lobbied for the Racial

[119] Smith, *The Eugenic Assault on America*, 60-61.

Integrity Act and passed documents from his office to Powell to use as evidence on Virginia's mixed-race groups whom he thought were passing as whites.[120]

The clubs' purpose was "the preservation and maintenance of Anglo-Saxon ideals and civilization in America." In order to accomplish this purpose they pledged themselves to "strengthening the Anglo-Saxon instincts, traditions and principles," promoting the "intelligent selection and exclusion of immigrants," and dealing with the "Negro problem," which was believed to be the "fundamental and final solutions of our race problems."[121] The Anglo-Saxon Clubs of America especially focused their attention on passing a new and tougher anti-miscegenation law. According to the censuses from 1890 and 1910, the population of mulattoes in Virginia had increased and the clubs believed that mixed-race people were "passing," which they considered a serious threat to white racial purity. Powell and his colleagues believed the previous statute in 1910 that defined a colored person as having one-sixteenth or more of "Negro" blood was not enough to protect white integrity. In order to prevent the intermixture of colored and white people and their white civilization from declining, they desired a stricter law that prevented the intermixture of races.[122]

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[120] Sherman, "The Last Stand," 72-73.

[121] Constitution of The Anglo-Saxon Club of America, John Powell Collection, Albert and Shirley Small Special Collections Library, University of Virginia; Sherman, "The Last Stand," 70-72; Smith, *The Eugenic Assault on America*, 17; Smith, *Managing White Supremacy*, 80. J. Douglas Smith mentions in *Managing White Supremacy* that the clubs began to focus more on solving the "Negro problem" than demanding immigrant restriction.

[122] Sherman, "The Last Stand," 74-75; Smith, *Managing White Supremacy*, 81; Dorr, *Segregation's Science*, 140.

Another reason they urged for a stricter law was that the clubs followed the latest in eugenics —a popular scientific belief that the human race could be improved by maintaining the supposed purity of the "superior race." From the early 1900s to its peak in the mid-1920s, the eugenics movement was a nationwide movement supported by numerous scientists, anthropologists, biologists, and psychologists. Many medical schools and universities had developed a curriculum on eugenics, particularly the University of Virginia in Charlottesville by a biology professor, Ivey Foreman Lewis, and other eugenicists. White supremacists in many states used the idea of eugenics as scientific evidence to legally prohibit interracial marriage or to sterilize people, white and Black, whom they considered inferior. The Anglo-Saxon Clubs of America, convinced that the white race needed to preserve itself against the degradation that supposedly occurred after racial mixing, supported eugenics as an ideal way to preserve "the Anglo-Saxon ideals and civilization" in America.[123]

The clubs appealed to many white Virginians. They created several posts across the cities in Virginia. Post No. 1 of the Anglo-Saxon Clubs of America in Richmond had about 400 memberships in 1923. In addition to Richmond, the organization had twelve local posts in Virginia, including the University of Virginia, Newport News, and the College of William and Mary. "A promising group already exists in Petersburg," said Lawrence T. Price, a Richmond physician, who was selected as chairman of the National Executive Committee. He proudly announced that the University of Richmond had

[123] Sherman, "The Last Stand," 70-75; Yamada, *Amerikashi no Naka no Jinnshu*, 55-57; Wallenstein, *Tell the Court I Love My Wife*, 137-140; Smith, *Managing White Supremacy*, 81-82.

established a provisional organization and Washington and Lee University had also requested an organization. He, furthermore, stated that Hampden-Sydney, Virginia Polytechnic Institute, and possibly Randolph and Macon were completing their arrangements to create their organizations. By the time the Anglo-Saxon Clubs gathered for their first statewide convention in October 1923, the organization had expanded to twenty-four posts, including eight colleges, within their state.[124]

During the convention, the clubs created their constitution and opened their membership to "all native-born, white, male American citizens, over the age of eighteen years, temperate habits and good moral character, who are qualified to vote or who will pledge themselves to qualify at the earliest opportunity." Because the clubs considered their organization as a group of elites that maintained white purity in a civilized method, the clubs distanced themselves from the Ku Klux Klan's advocacy of lynching and killing and terror. "The Anglo-Saxon Clubs of America," Powell stated, "is a non-secret, non-fraternal and non-sectarian organization; it has no connection with the Ku Klux Klan, nor with the White American Society." Powell added that the clubs demand "justice and generosity" for the Black people and that their movement was done in a rational way, "in a spirit of a good sportsmanship and fair play." Powell's claim earned support from many elite Virginians who denounced the Klan. But it is also interesting to note that many Klan members rushed to join the local chapter of Anglo-Saxon Clubs after the Richmond Klan

[124] Lawrence T. Price, *Anglo-Saxon Clubs of America*, [1923], John Powell Collection, Albert and Shirley Small Special Collections Library, University of Virginia; Addresses and newsletters for Anglo-Saxon members, [1925], John Powell Collection, Albert and Shirley Small Special Collections Library, University of Virginia; Smith, *Managing White Supremacy*, 84.

left the national organization based in Atlanta in 1922. Although Powell showed that the clubs had no connections with the Klan, main members of the clubs such as Lawrence T. Price, W.C. Maddox, and W. I. Stockton Jr., who were the chairman, president, and secretary of the Anglo-Saxon Clubs, had all appeared in a notarized list of former Richmond Klansmen.[125] J. David Smith, an expert on the history of eugenics in Virginia, describes the clubs as "the Klan of the aristocracy—the real gentleman's Klan." Indeed, the Anglo-Saxon Clubs was an "upscale" version of the Klan.[126]

In addition to the Anglo-Saxon Clubs of America, the Women's Racial Integrity Club of Richmond was established. Lead by John Powell's wife, Louise Burleigh Powell, the club encouraged Richmond's white women from prominent families to join. By 1926 nearly forty members joined the Women's Racial Integrity Club of Richmond. Burleigh's role expanded as she made connections with the white supremacist community and lobbied for the 1924 act. When Powell was traveling, Burleigh corresponded with other white elites and sent numerous letters to Powell updating him about the Racial Integrity Act. She was also a ghost writer for Earnest Cox's books on eugenics. White women protected the racial lines as significant roles from working as midwives to lobbying for

[125] John Powell to the Editor of *The Negro World*, August 22, 1925, John Powell Collection, Albert and Shirley Small Special Collections Library, University of Virginia; J. Douglas Smith, "The Campaign for Racial Purity and the Erosion of Paternalism in Virginia, 1922-1930: 'Nominally White, Biologically Mixed, and Legally Negro'." *The Journal of Southern History* LXVIII, No. 1 (February 2002), 70-71; Smith, *Managing White Supremacy*, 78-80.

[126] Peter Hardin, "Documentary Genocide: Families Surname on Racial Hit List," March 5, 2000, https://richmond.com/news/documentary-genocide/article_23e615d7-5fbf-52b0-a8c9-f8cb13729487.html; Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2005, S. 480, 109 Cong. (2005).

the Racial Integrity Act as grassroot supporters. Historian Elizabeth Gillespie McRae describes that their roles varied "from recording identities on state documents to propagating the intellectual justification for racial separation." While men appeared in public, women worked behind the scenes.[127]

Although the clubs attracted many white Virginians, the organization was not effective in every local chapter. M. O. Williams, the president of the Virginia Polytechnic Institute Chapter in Blacksburg, mentioned to Powell that they were unable to organize an Anglo-Saxon Club due to a lack of support and few people and speakers. "We who remain are so few," Williams worried that "we feel it unwise to build from about ten to fifty members without having the purpose and plan of the organization explained by some competent speaker."[128] Williams later resigned the position as the president of his local chapter. He was "in accord with the aims of the Clubs" and understood "the seriousness of the racial problem" but felt that "the method followed by the Anglo-Saxon Clubs does not lead to a solution as I see it."[129] Francis Warrington Dawson was also interested in the clubs' activities but suggested that the "Anglo-Saxon" name would turn

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[127] "Addresses of Women's Racial Integrity Club of Richmond, Virginia, 1926," John Powell Collection, Albert and Shirley Small Special Collections Library, University of Virginia; Elizabeth Gillespie McRae, *Mothers of Massive Resistance: White Women and the Politics of White Supremacy* (New York: Oxford University Press, 2018), 30-31; Smith, *Managing White Supremacy*, 84-85; Dorr, *Segregation's Science*, 145.

[128] M. O. Williams, Jr to John Powell, November 1, 1923, John Powell Collection, Albert and Shirley Small Special Collections Library, University of Virginia.

[129] M. O. Williams to Dr. Lawrence Price, February 2, 1924, John Powell Collection, Albert and Shirley Small Special Collections Library, University of Virginia.

off some people who could be supporters.[130] Outside of Virginia, *The Nation*, a weekly magazine, mocked the Anglo-Saxon Clubs of America in their editorial titled, "Fellow-Caucasians!":

> Well fellow Caucasians, how about it? Are you willing to admit that all the blood of your race cannot absorb, and dissolve and obliterate a single drop from another racial stock? Are you willing to believe on the contrary that that single drop will absorb, dissolve, and obliterate all the white blood that flows in your veins? Is Caucasian blood no thicker than water? Indignantly we turn to the legislators of the State of Virginia to inquire: Is one Negro or Chinese or Melanesian more potent than 16 or 32 or 4,096 white men? Is one pure white man not equal to the smallest imaginable fraction of any other kind if man?[131]

Despite some opposition, the Anglo-Saxon Clubs continued to expand, reaching their peak in 1925 with thirty-one posts in Virginia and three posts in the North including the University of Pennsylvania, Columbia University, and Staten Island.[132] In fact, some of the early strong supporters of the clubs were from the eugenics community from northern states. A few days before the petition was presented to the General Assembly of Virginia, Powell reached out to prominent eugenicists asking support for the proposed bill. Perhaps the most notable figure was Madison Grant, a lawyer of New York and

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[130] Francis Warrington Dawson to John Powell, January 24, 1924, John Powell Collection, Albert and Shirley Small Special Collections Library, University of Virginia.

[131] Coleman, *That the Blood Stay Pure*, 96.

[132] Smith, *Managing White Supremacy*, 84-85. Dorr, *Segregation's Science*, 156-158, 164-165. Dorr's work further shows the unpopularity of the Anglo-Saxon Clubs of America. He emphasizes that Powell, Cox, and Plecker received oppositions among white scientists and the medical community. But these science experts only attacked the clubs' tactics and they did not abandon the ideas on eugenics or disagree with the Racial Integrity Act.

officer of the American Eugenics Society. Grant was known for his book, *Passing of the Great Race or The Racial Basis of European History*, published in 1916. His book and his thoughts on eugenics became an influence in shaping laws for immigration restriction and anti-miscegenation laws including the Racial Integrity Act of 1924.[133] Grant expressed his longtime concerns for white men's struggle of maintaining the supremacy their race. He promised to support the new legislation and believed that the enactment of the Racial Integrity Act "would immediately place Virginia in the lead in this [racial] matter" and that "her example would be followed by her immediate neighbors" including the northern and western states.[134]

Another prominent eugenicist, Lothrop Stoddard, an author of *The Rising Tide of Color Against White World-Supremacy*, published in 1920, was in favor of the new bill. Stoddard expressed his "warmest approval" of the 1924 Act, saying that the new legislation with rules including mandatory registration of race, a registration to grant marriage licenses, and for white persons "to be permitted to marry only similarly attested white persons" will be "the highest value and the greatest necessity, in order that the purity of the white race be safeguarded from possibility of contamination with non-white blood." He believed that "this is a matter of both national and racial life and death" and advised Powell that "no efforts should be spared to guard against the greatest of all perils— the peril of miscegenation." Stoddard hoped that the provisions would be

[133] Lombardo, "Miscegenation, Eugenics, and Racism," 431.

[134] Madison Grant to John Powell, February 1, 1924, John Powell Collection, Albert and Shirley Small Special Collections Library, University of Virginia.

enacted into law for "the great good of the Commonwealth of Virginia and the whole United States."[135] In addition, Powell reached out to Franklin Giddings, a professor of sociology at Columbia University. Giddings also expressed his interest in the law saying it was of "the utmost importance that we should have in every state in the Union an exact record of facts pertaining to matters of race." Giddings further stated that he was "deeply interested in the possibility that the Commonwealth of Virginia may by statute order the registration of all residents according to race and that marriage licenses be not issued except to parties so registered." Giddings believed that "Virginia by this measure would initiate a policy that should and would be followed by other states."[136]

The clubs' influence appealed to white elites outside of Virginia. White supremacists not only hoped for the strictest anti-miscegenation law to be passed but also believed that Virginia should be the leading state to protect the supremacy of the white race and would eventually become a model for other states across the nation. The support from the eugenics community and white supremacists across the nation gave Powell and other members of the clubs the confidence to promote the 1924 act in their home state and their surrounding states.

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[135] Lothrop Stoddard to John Powell, February 1, 1924, John Powell Collection, Albert and Shirley Small Special Collections Library, University of Virginia.

[136] Franklin Giddings to John Powell, January 3, 1924, John Powell Collection, Albert and Shirley Small Special Collections Library, University of Virginia. Although Giddings showed his interest in passing the 1924 Act, he mentioned to Powell that he could not agree entirely with Cox's ideas in his book, *White America*. Giddings said that evidence must be provided to prove that inferior stock would survive in Mendelian law. He was also skeptical of Cox's plan on deporting the Black population of the United States.

3. The Racial Integrity Act of 1924

The proposed Racial Integrity Act was first introduced to the General Assembly as Senate Bill No. 219 when they convened on February 1, 1924, and later the bill was introduced to the House as Bill No. 311 on February 15. Three days before the debate in the House, Powell was invited to the Virginia House of Delegates to present the proposal of the law, titled the "Bill to Preserve the Integrity of the White Race." Reading letters by the northern white supporters whom he described as "the greatest authorities on ethnology and sociology in America," Powell argued that the Racial Integrity Act would prevent further interracial marriage and the destruction of the white race and protect "Virginia's traditions of honor."[137]

Powell's proposed bill included many new features. First, it required all Virginia residents to have a registration certificate filed at the Bureau of Vital Statistics indicating their *correct* race. An applicant who gave a false statement of racial status would be punished with a year in prison. Second, registration certificates had to be shown to the local clerk before clerks could issue any certificates or marriage licenses, and it would be "unlawful for any white person in this State to marry any save a white person." The third and the most important feature was the definition of a white person as one "who has no trace whatsoever of any blood other than Caucasian."[138] Earlier laws had made

[137] Lombardo, "Miscegenation, Eugenics, and Racism," 433.

[138] The New Virginia Law to Preserve Racial Integrity, March 1924, Virginia Health Bulletin, Rockbridge County Court Records, Clerk's Correspondence [W. A. Plecker to A.T. Shields], 1912-1943, Library of Virginia; Walter Plecker to F. M. Register (State Registrar, North Carolina), August 9, 1924, John Powell Collection, Albert and Shirley Small Special Collections Library, University of Virginia; Paul A. Lombardo, "Miscegenation, Eugenics, and Racism," 434; Sherman, "The Last

distinctions among races by defining a "colored" person. For the first time, this new act attempted to create a clear definition of a white person. After the law passed, Walter Plecker boasted that the "definition of white person contained in the law was one of the most important of the enactments of the recent legislature," and he expected "to see a real start made in stopping race amalgamation."[139]

In addition to more carefully defining a white person, the 1924 law included a special exemption, the so-called "Pocahontas exception," that stated that "persons who have less than one sixty-fourth of the blood of an American Indian and have no other non-Caucasic blood" shall be deemed to be white persons. This exemption was made for white elites who were descendants of Indian-settler marriages of the colonial era. In particular, the provision was created to protect the whiteness of Virginia's leading families who claimed to be descendants from Pocahontas, known as the First Families of Virginia (FFV).[140]

Several members of the House agreed with the passage of the Racial Integrity Act but the House voted it down because of the mandatory registration requirements and the provision excluding persons with Indian heritage.[141] Virginia did not often record Blacks' vital statistics during the antebellum period nor did it require the registration of births and

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Stand," 77-79; Wallenstein, *Tell the Court I Love My Wife*, 137-140; Smith, *Eugenics Assault on America*, 19.

[139] Walter Plecker to E. Lee Trinkle, April 19, 1924, Executive Papers, 1922-1926, Library of Virginia.

[140] Sherman, "The Last Stand," 77.

[141] Lombardo, "Miscegenation, Eugenics, and Racism," 432-433; Sherman, "The Last Stand," 77.

deaths for any of its citizens until 1853. From 1853 until 1896, the Commonwealth started to collect all birth and marriages certificates, which indicated the race of all parties listed. The records were discontinued again until the Virginia Bureau of Vital Statistics was established by the General Assembly in 1912. The bureau resumed the practice under the State Board of Health. Local registrars were responsible for obtaining information from the residents of the county and reporting all births, marriages, and death certificates to the state registrar, which enabled Plecker to be in charge of certificates that were reported to his office. Mandatory registration in the new bill was thought to be necessary to track accurate racial composition.

But some state senators such as Holman Willis of Roanoke considered the compulsory registration to be an "insult to the white people of the state."[142] Others were concerned that the section of the bill that required mandatory registration for all Virginian residents was "obnoxious" and "a bureaucratic meddlesome[ness]."[143] Virginia newspapers covered stories about the new bill. The *Richmond Times-Dispatch* supported the bill stating, "[I]f this bill is passed, it may presage a national movement in behalf of racial integrity." On the other hand, the *Virginia Pilot-News Leader*, mocked the new measure as "pestiferous… and utterly without value," for composing "'racial passports' for the state's population." It pointed out the "administrative difficulty and expense of

[142] Sherman, "The Last Stand," 78; Holloway, *Sexuality, Politics, and Social Control in Virginia*, 35. See also Smith, *Managing White Supremacy*, 89.

[143] Coleman, *That the Blood Stay Pure*, 98. For more details about mandatory registration in the proposed bill, see Coleman's *That the Blood Stay Pure*, 96-98; Sherman, "The Last Stand," 78.

implementing and maintaining the registration scheme."[144] Desperate to see the bill pass, Plecker wrote a letter to a member of the Senate before Powell's appearance. Plecker explained the seriousness of the racial matter in Virginia that he has to change the race on some birth certificates from "white to negro" in his office. He enclosed his "evidence" in the letter to prove that the law was necessary "for the purpose of defining colored race."[145]

When the Senate debated the features that the House opposed, they decided to revise the bill with a few amendments. Mandatory registration was deleted from the original bill in favor of voluntarily registration. The residents were able to voluntarily obtain certificates from their local registrars with a fee of twenty-five cents. The *Times-Dispatch* regretted the move away from compulsory registration, stating that the Senate had "cut the heart out" of the bill as the registration provision would have clarified "once and for all who is a Caucasian and who is not."[146] Another revision from the first draft was the definition of a white person in the "Pocahontas exception." The proposed bill defined a white person in the "Pocahontas exception" as "persons who have less than one sixty-fourth of the blood of an American Indian and have no other non-Caucasic blood" but the revision changed the blood quantum to "one-sixteenth Indian blood and no other mixture than white." The Senate passed the amended bill into the law by a vote of 23 to 4 on February 27, 1924. The House followed the Senate and accepted the amended bill by a

[144] Lombardo, "Miscegenation, Eugenics, and Racism," 434.

[145] *Ibid.*, 433-34.

[146] *Ibid.*, 435.

vote of 72 to 9 on March 8, 1924. Governor E. Lee Trinkle signed the Racial Integrity Act on March 20, 1924, and the new law, entitled "Act to Preserve Racial Integrity," officially became a law of the Commonwealth of Virginia.[147]

After the Racial Integrity Act was enacted, Trinkle wrote to other governors outside of Virginia about the new law and enclosed a copy of the law "calling attention to the importance of the matter." The Anglo-Saxon Clubs of America offered "congratulations on [the Governor's] statesmanlike intention to send copies of the bill to every other Governor in the United States with a personal letter urging the adoption of similar legislation in all other States."[148] Largely through the efforts of the clubs, the Racial Integrity Act was enacted in their home state, and it was now being prepared to spread across the nation. The success of the Anglo-Saxon Clubs of America in enacting the Racial Integrity Act put them in a strong position to promote their own racial views and to protect their goal in preserving the integrity of the white race in Virginia.

[147] *Ibid*., 434-35. The Senate changed the provision of the law to exempt one-sixteenth or less Indian blood from the prohibition from marrying a white person, and "the registration was made optional for person born before 1912, the date when mandatory registration began under the Vital Statistics in 1912."

[148] E. H. Anderson to E. Lee Trinkle, April 17, 1924, Executive Papers, 1922-1926, Library of Virginia.

CHAPTER TWO: REVISING THE RACIAL INTEGRITY LAW

The Anglo-Saxon Clubs of America faced several obstacles to control the racial designation of Virginians under the new act. A few months after the new Racial Integrity Act was passed, two similar court cases were brought up by two mixed-race women who challenged the law in the Circuit Court. Walter Plecker appeared in court with his records to prove their Black ancestry. John Powell wrote to the judge and published a pamphlet to support Plecker's evidence. Despite their efforts, the judge claimed these court cases proved that the Racial Integrity Act was weak and ineffective unless changes were made in the law. The clubs, therefore, believed that the 1924 act was not strong enough to prevent the mixing of white and colored races and started to lobby for a revision of the Racial Integrity Act of 1924 to a stricter law. After several attempts to amend the 1924 law, the General Assembly finally agreed to amend the law in 1930. Introducing the "one-drop rule," the new Racial Integrity law in 1930 included a definition of a Black person as one who has any trace of African American ancestry.[149]

During the debates on revising the Racial Integrity Act, the core members of the club, John Powell and Earnest Cox, had an alliance with Marcus Garvey and his Universal Negro Improvement Association (UNIA). A Black nationalist organization reacted favorably towards the Anglo-Saxon Clubs of America, and the two organizations aimed for a society of racial separatism between Black and white. Their alliance,

[149] J. Douglas Smith, *Managing White Supremacy: Race, Politics, and Citizenship in Jim Crow Virginia* (Chapel Hill: The University of North Carolina Press, 2002), 223.

however, did not last long. At the same time, the popularity of the clubs declined after the 1930s. The clubs were no longer influential yet their idea on racial integrity persisted.

1. Court Cases by Two Mixed-Race Indians

The 1924 law was challenged in two court cases a few months after it was passed. Two mixed-race Indian women who claimed to be white under the Pocahontas exception were both rejected in their attempts to marry white men because the applicants were believed to have a triple mixture of white, Indian, and Black. Both cases appeared before the same court in Rockbridge County and were heard by the same judge, Judge Henry W. Holt. Contrary to what Plecker hoped, the court cases proved that the Racial Integrity Act, which was designed to be the nation's strictest law to prohibit racial mixing, had several weaknesses within the law.

The first case was brought in September 1924, just six months after the law was enacted, by a woman named Dorothy Johns. A. T. Shields, the clerk in Rockbridge County, refused to issue a marriage license to Johns and her fiancé, James Conner, because Shields believed that Johns had a triple mixture of white, Indian, and Black ancestry. Johns sought a writ of mandamus to force the clerk to issue their marriage license and the case was heard at the Circuit Court in Rockbridge County. Plecker made a request to A. Willis Robertson, a Rockbridge commonwealth attorney and a former state senator, to assist in the case against Johns. Plecker considered this first case to be important because "[i]t will mean very much to us in the future enforcement of the

law."[150] Plecker then wrote to clerks to find evidence and acquaintances of Johns who would prove that she had a Black ancestor. A. T. Shields did not provide information about Johns's ancestors but W. E. Sandidge, the clerk of Amherst County, recommended that Plecker summon Silas Coleman, a resident of Amherst County who knew the Johns family, as a witness. Plecker believed that "losing the first case when we doubtless have the evidence available to defend it would be a bad precedent for our future efforts to control this situation."[151]

On the day of the case, Plecker appeared in court with all the birth records of Johns's family prepared and with his witness. Using birth records from Amherst County, he showed that her family was listed as "colored" in old family records. In response, Johns's attorney claimed that the term "colored" used in Plecker's evidence was meant to indicate Indian blood rather than Black. But Silas Coleman claimed that he had known Johns's family for years and testified that she also had Black ancestry. Johns could not

[150] Walter Plecker to A.W. Robertson, August 29, 1924, Rockbridge County (Va.) Clerk's Correspondence (Walter A. Plecker to A. T. Shields), 1912-1943, Library of Virginia.

[151] Walter Plecker to A. T. Shields, September 2, 1924, Clerk's Correspondence (Walter A. Plecker to A. T. Shields), 1912-1943, Library of Virginia; Walter Plecker to A.W. Robertson, September 2, 1924, Clerk's Correspondence (Walter A. Plecker to A. T. Shields), 1912-1943, Library of Virginia. Plecker was unsatisfied with Shields for not providing information about Johns's family. He complained about Shields in his letter to Robertson on September 2, 1924, stating: "I have a short note from Mr. Shields in which he simply says that he knows nothing about her parents or grand-parents. He does not even give us information as to the status of the case, as to why he held it up and what he expects to do." Plecker, however, was able to receive information from W. E. Sandidge. Sandidge informed Plecker that "he has no personal knowledge of Dorothy Johns, but the Johns family belongs to the so-called 'Issues' and in his opinion are all mixed." The "issue" settlement was considered as a group of Indians, who were racially mixed with Blacks, living near the Blue Ridge Mountains in Amherst County. In addition, Sandidge recommended Silas Coleman, who "lives near the 'issue' settlement and is well informed" that "whom we can get valuable information about these people."

prove that she only had white and Indian blood and therefore Judge Holt refused to order the clerk to issue a marriage license to the couple.[152]

A few weeks later another court case occurred similar to the Johns case. It was also heard by Judge Holt at the Circuit Court of Rockbridge County, and tested the same claim, but ended with an opposite result. Atha Sorrells and Robert Painter were denied their marriage license by the same clerk, A. T. Shields, because Painter was a white man and Sorrells was believed to have a Black ancestor. The clerk rejected the couple's marriage license because it would violate the Racial Integrity Act.[153] Plecker requested A. Willis Robertson to represent the State again in the Sorrells case. Worrying that the payment was not enough, Plecker said, "If your charge is not too great, and the Governor will pay the bill."[154] Governor Trinkle also considered the "vital importance" of the new law that "There are a great many of our real substantial white people who fought hard for the Bill and are doing all they can to help out in the situation over the State." Trinkle said, "I have no funds set aside for matters of this kind," but asked Robertson to represent Virginia in the case asking, "What would you charge if you represented the State in this

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[152] Walter Plecker to W. E. Sandidge, October 4, 1924, John Powell Collection, Albert and Shirley Small Special Collections Library, University of Virginia; J. David Smith, *The Eugenic Assault on America: Scenes in Red, White, and Black* (Fairfax: George Mason University Press, 1993), 71.; J. Douglas Smith, "The Campaign for Racial Purity and the Erosion of Paternalism in Virginia, 1922-1930: 'Nominally White, Biologically Mixed, and Legally Negro,'" *The Journal of Southern History* 68, no. 1 (February 2002), 82-83.

[153] Paul A. Lombardo, "Miscegenation, Eugenics, and Racism: Historical Footnotes to *Loving v. Virginia*," *U. C. Davis Law Review* 21, no. 2 (Winter 1988), 440.

[154] Peter Hardin, "Documentary Genocide: Families Surname on Racial Hit List," Richmond Times-Dispatch, May 9, 2007, http://www.richmond.com/news/documentary-genocide/article_23e615d7-5fbf-52b0-a8c9-f8cb13729487.html.

case?"[155] In the meantime, Plecker contacted Silas Coleman, the witness who had appeared at the Johns case, to appear as a witness again in this case.[156] But Coleman refused to show up again because "he [was] afraid that his barn will be burned or other injury done to him or his property." Moreover, Plecker asked William E. Sandige, the clerk of Amherst County, if he knew any person whom he recommended as a witness. But Plecker was not able to find a witness to testify before the day of court. [157]

While Plecker was gathering other evidence for the case, he came across unexpected evidence about Sorrells's family. Plecker discovered that Sorrells's grandmother, Ida Lee Wood, was actually registered as white in birth records in 1885, and that she and William Sorrells, Atha Sorrells's grandfather, were married as white. "There is where our trouble will come in proving their color," Plecker said.[158] Plecker explained to Robertson about his plans to win the case: "It seems to me that we ought to make our fight in the beginning to have them prove their standing and not us. They seem to have gotten us on that point the other time." He continued, "It may be that if Judge

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[155] E. Lee Trinkle to A.W. Robertson, October 6, 1924, Executive Papers, 1922-1926, Library of Virginia.

[156] Walter Plecker to Silas Coleman, November 7, 1924, Executive Papers, 1922-1926, Library of Virginia. In his letter, Plecker said, "We will need your help very badly but I told Mr. Robertson you hesitated about coming and why, because you are afraid they will burn your barn and do you other injury. We particularly need your help in establishing the color of William Sorrell." William Sorrell was Atha Sorrells's grandfather.

[157] Walter Plecker to W. E. Sandidge, the Clerk in Amherst County, October 4, 1924, John Powell Collection, Albert and Shirley Small Special Collections Library, University of Virginia; Smith, *The Eugenic Assault on America*, 72.

[158] Walter Plecker to Silas Coleman, November 7, 1924, Executive Papers, 1922-1926, Library of Virginia.

accepts their evidence that they are white, from the birth or marriage record of their mother, we can prove that Painter is colored. I would suggest that you make free use of the old birth and marriage records in the Clerk's office in advance."[159] Plecker suggested his tactics to prove Painter was Black. Plecker wanted to uphold the clerk's refusal of the license at all costs.[160] Plecker was confident that they would win this case again but "[s]hould the Judge decide against us," Plecker planned, "to carry in to a higher Court if possible."[161]

The Sorrells case was brought on November 14, 1924. Plecker showed records that stated Atha Sorrells's grandmother was a free colored woman.[162] Sorrells's attorney explained that "colored" used in her family records referred to Indian and not Black ancestry, which was the same defense used the Johns case. This time, however, Judge Holt favored Sorrells's position, because there was no witness to claim that Sorrells had

[159] Walter Plecker to A. W. Robertson, November 7, 1924, Executive Papers, 1922-1926, Library of Virginia.

[160] Plecker passed the letters that he sent to Coleman and Robertson to A. T. Shields. He instructed Shields to "guard these records very carefully and that you do not permit them to be handled by anyone except under your eye. It would be a very easy thing to erase a mark indicating color and substitute the one in the other line. That would at least enable them to raise question of doubt." See, Walter Plecker to A. T. Shields, November 7, 1924, Executive Papers, 1922-1926, Library of Virginia.

[161] Walter Plecker to E. Lee Trinkle, November 7, 1924, Executive Papers, 1922-1926, Library of Virginia.

[162] Local newspaper wrote after the Sorrells's case that "Dr. Plecker presented birth records to show, he said, that the grandmother of Atha Sorrells was born in December, 1856, and registered with the bureau as a free colored person." See newsclip, "Woman, Listed Negroid, Wins Right to be Called 'White,'" n.d., Executive Papers, 1922-1926, Library of Virginia.

Black ancestry. Despite Plecker's records of Atha Sorrells's grandmother, Judge Holt decided that the marriage license should be issued to the Sorrells couple.[163]

More importantly, Judge Holt argued that there were significant flaws in the Racial Integrity Act. First, he noted that the new law violated guarantees of due process. Under the Virginia law, the accused person was considered guilty until they were proved innocent. Secondly, Judge Holt argued that it was impossible to prove "no trace" of African American ancestry. It was difficult and sometimes even impossible to gather all the documents and the evidence necessary to prove or deny a claim of Black ancestry. He observed that people could be charged inaccurately because it was difficult to provide evidence that he or she was *not* Black. Finally, Judge Holt criticized the new law's definition of a white person as one with "pure Caucasian blood," arguing that it was effectively useless because it failed to give a clear definition of the term "Caucasian." Therefore, Judge Holt agreed with the principle of the law and he favored keeping it, but strongly suggested that for the Racial Integrity Act to be truly effective, it needed to be changed.[164]

Local newspapers supported Judge Holt's decision in the Sorrells case. The *Richmond Times-Dispatch*, which previously supported the position of the Anglo-Saxon Clubs of America, praised Judge Holt, saying that he is "recognized as an able, upright

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[163] Smith, *The Eugenic Assault on America*, 72; Lombardo, "Miscegenation, Eugenics, and Racism," 440.

[164] *Atha Sorrels v. A. T. Shields*, Clerk, Circuit Court of Rockbridge County, 1925, John Powell Collection, Albert and Shirley Small Special Collections Library, University of Virginia; Sherman, "The Last Stand," 81; Smith, *The Eugenic Assault on America*, 72-73; Smith, "The Campaign for Racial Purity and the Erosion of Paternalism in Virginia, 1922-1930," 83-84.

jurist whose decisions are respected for their clarity and the evident intention of the court to act in accordance with the law and the dictates of justice." Regarding Judge Holt's decision, it was an "obvious fact that there is no authentic definition of 'pure Caucasian blood,'" and that an "'appreciable amount' of foreign blood must be established" in the law. It concluded that "if Judge Holt's ruling in this particular case was correct, an important State law had been rendered practically null and void."[165]

The *Richmond Times-Dispatch* also further examined the decision of the case:

> The essential feature of the vital statistics is that she had "colored" blood, and other evidence indicated that ths[sic] colored blood was Indian. Just how, according to this law, different kinds of colored blood can be differentiated does not seem clear, and Judge Holt would welcome an appeal to settle the point…
>
> The statute does not seem to show that there shall be no marriage between whites and negroes, but that there shall be no marriage between whites and non-Caucasians—something entirely different. Hungarians, the citizens of Lapland and the citizens of Finland are pure non-Caucasian stock. Apparently the statute was not intended to exclude people of that kind. …it is almost impossible for anybody to prove that there is no trace whatsoever of any of these strains coming remotely into his blood.[166]

In response to the Sorrells case, Powell wrote a pamphlet titled, *The Breach in the Dyke: An Analysis of the Sorrels Case Showing the Danger to Racial Integrity from Intermarriage of Whites with So-Called Indians*, which was published and distributed by the Anglo-Saxon Clubs. The purpose of the publication of this pamphlet was "to cover

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[165] *Editorial Times-Dispatch*, November 20, 1924, Rockbridge County (Va.) Clerk's Correspondence (Walter A. Plecker to A. T. Shields), 1912-1943, Library of Virginia. The following day, the *Times-Dispatch* continued to support Judge Holt's decision stating, "He is particularly desirous of perpetuating the spirit of the recent law to preserve racial purity, but in this case he acted as any other intelligent, conscientious judge would under similar circumstances."

[166] *Richmond Times-Dispatch*, November 21, 1924, Rockbridge County (Va.) Clerk's Correspondence (Walter A. Plecker to A. T. Shields), 1912-1943, Library of Virginia.

our temporary retreat, and to consolidate our position to resist the next attack."[167] In his rough draft of this pamphlet, Powell wrote:

> Many negroes are already attempting to claim the status of Indians, as Dr. Plecker pointed out. Indians are springing up all over the state as if by spontaneous generation. We cannot suffer this outrage to continue. If we are to preserve our civilization, our ideals, the soul of our race, we must call a halt...
> Sorrels case must be appealed![168]

Plecker responded to the outcome of the Sorrells case by refusing to accept Judge Holt's decision and demanded to classify her as "negroid" in his office.[169] "Lawyers with whom, I have conversed, agree that the case was not decided according to the law and evidence and that we should certainly win in an appeal," Plecker said.[170] Plecker informed the governor that he will "[take] the case to the Supreme Court of Appeals."[171] Together Powell and Plecker were preparing to appeal the Sorrells case.

The clubs members' plan to appeal the Sorrells case, however, was discouraged by advice from Leon Bazile, Virginia's Assistant Attorney General. He warned that if the Sorrells case was appealed, the Virginia Supreme Court would likely declare the Racial

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[167] John Powell, *The Breach in the Dyke: An Analysis of the Sorrels Case Showing the Danger to Racial Integrity from Intermarriage of Whites with So-Called Indians*, 13; John Powell to Judge Holt, April 6, 1925, John Powell Collection, Albert and Shirley Small Special Collections Library, University of Virginia; Smith, *The Eugenic Assault on America*, 73.

[168] John Powell, "The Sorrels Case," (n.p., [1924?]), John Powell Collection, Albert and Shirley Small Special Collections Library, University of Virginia.

[169] Sherman, "The Last Stand," 81.

[170] Walter Plecker to A. T. Shields, November 20, 1924, Rockbridge County (Va.) Clerk's Correspondence (Walter A. Plecker to A. T. Shields), 1912-1943, Library of Virginia.

[171] Walter Plecker to E. Lee Trinkle, November 20, 1924, Executive Papers, 1922-1926, Library of Virginia.

Integrity Act to be unconstitutional. Bazile advised Powell that "inasmuch as the law seems to be working all right outside of Judge Holt's circuit, we would run the risk of losing a great deal on the chance of reversing him in one case."[172] A few months later, Powell wrote a letter to Judge Holt again and included his pamphlet, *The Breach in the Dyke*. "After mature consideration," Powell wrote, I have "decided not to appeal the Sorrels case, feeling that the failure of the record to identify Dr. Plecker's evidence as read from official state records would make the issue too dubious to justify the risk." At the end of this letter, Powell said to Judge Holt, "Please read the paper carefully and let me hear from you."[173] Judge Holt wrote back three days later, telling Powell again that he favored the intent of the law, but that the law must be improved in order to be effective. "So far as I am advised, there is no white man in Virginia who does does[sic] not wish to see it preserved," he wrote, and he promised that "The difficulties presented in the statute" could be easily fixed by simply amending the law.[174]

Fearing that the judicial review of these cases might prove the Racial Integrity Act unconstitutional, Powell and Plecker did not appeal the Sorrells case. They worried too much that court cases would undo all the success they had in writing the Racial Integrity Law. The clubs eventually stopped using the courts when a mixed-blood Indian

[172] Leon M. Bazille to John Powell, November 26, 1924, John Powell Collection, Albert and Shirley Small Special Collections Library, University of Virginia.

[173] John Powell to Henry Holt, April 6, 1925, John Powell Collection, Albert and Shirley Small Special Collections Library, University of Virginia; Smith, *The Eugenic Assault on America*, 75.

[174] Henry Holt to John Powell, April 9, 1925, John Powell Collection, Albert and Shirley Small Special Collections Library, University of Virginia.

claimed their status under the Racial Integrity Law. Instead, Powell and Plecker started to redefine "race" and revise the law as Judge Holt suggested. Plecker also decided to shift his target to Indians in Virginia. He believed that there were no "pure" Indians in Virginia because they had all been intermixed with Blacks, and he feared that these mixed-race Indians would use the law's "Pocahontas exception" as way to claim status as white, or as Plecker would say, "as a stepping-stone to being classed as white."[175] Plecker considered the special exception created for the Indians to be the "chief trouble" in Virginia, and therefore, argued for an even stricter law, possibly excluding the "Pocahontas exception" altogether, so he could prevent Indians from being classified as either Indian or white.[176] "If the next legislature will repeal the one-sixteenth Indian clause from our law," he said, "I will greatly relax my efforts to prevent their classification as Indians, even though I may know the truth."[177]

2. Remaking the Racial Integrity Law

A year after the two court cases, Walter Plecker started revising the Racial Integrity Act. "If we desire to enforce our Racial Integrity law," Plecker said, "it will be necessary for us to repeal section 67 of the Code and eliminate the special privilege

[175] Walter Plecker to Samuel L. Adams, December 11, 1924, John Powell Collection, Albert and Shirley Small Special Collections Library, University of Virginia.

[176] Walter Plecker to C. W. Garrison, January 5, 1925, John Powell Collection, Albert and Shirley Small Special Collections Library, University of Virginia.

[177] Walter Plecker to D. E. Harrower, April 27, 1925, John Powell Collection, Albert and Shirley Small Special Collections Library, University of Virginia.

conferred upon Indians by the law." He stated his concerns about the mixed-blood Indians to Governor E. Lee Trinkle stating, "There are perhaps three thousands of these people who have sprung up all over the State claiming to be pure Indian and white with no negro admixture, which is contrary to the facts of history, the U.S. Bureau of Ethnology, and other leading investigators." Plecker understood that he must gain Trinkle's support to succeed in amending the law because a recommendation from the governor would "have a great weight with Legislature."[178] Trinkle allowed Plecker to propose amendments of the law and "prepared in such shape as you think it should be" before the first day of the next session of the General Assembly.[179]

After giving Plecker control of shaping the law, however, Trinkle became concerned with Plecker's attitude against the Indians. In early December 1925, Trinkle received a letter from E. P. Bradley, a chief of the Chickahominy Tribe, concerning the new law and the tribe's racial classification. Upon receiving the letter, Trinkle reassured Bradley that "no one would want to do the Indians of this state an injustice," but "on the contrary would incline to the reverse position." He added, "The Indians have certainly given me no trouble since I have been Governor and I hope they will continue to follow this course."[180] On the same day, Trinkle warned Plecker, stating, "I am sure you are going to be conservative and reasonable and not create any ill feeling if it can be avoided

[178] Walter Plecker to E. Lee Trinkle, October 5, 1925, Executive Papers, 1922-1926, Library of Virginia.

[179] E. Lee Trinkle to Walter Plecker, October 5, 1925, Executive Papers, 1922-1926, Library of Virginia.

[180] Trinkle to E. P. Bradley, December 1, 1925, Executive Papers, 1922-1926, Library of Virginia.

between the Indians of Virginia and the State government." "From reports that come to me," Trinkle continued, "I am afraid sentiment is moulding[sic] itself along the line that you are too hard on those people and pushing matters too fast."[181] Trinkle sent another letter warning to Plecker only three days later. "Now Doctor," Trinkle said, "please understand this is a situation I am not informed about and it is not my purpose to in any way interfere with the righteous and just enforcement of the law and it is your privilege to present to the General Assembly such bills as you think wise and proper."

Governor Trinkle who sided to some extent with Native Americans, however, did not support the Indians. Instead, Trinkle was concerned that Plecker's attitude towards Indians would create negative views in newspapers "as if we are probably working on them pretty hard and continually exposing their misfortune of having colored blood." He warned that Plecker's mistreatment of Indians is a humiliation to his office and hoped "this could be handled in a quiet way so as not to emphasize and embarrass them any more than possible." Trinkle suggested that Indians should be "given a fair opportunity to be heard as to their side of the case," and to leave the rest to the General Assembly to solve the matter in a "right and proper" way. Trinkle thought Plecker was going too far. He feared the humiliation and the possible negative impacts on the Governor's office. The governor believed that "movements of this kind cannot always be perfectly accomplished in this short period and that often times the best results can be reached by

[181] E. Lee Trinkle to Walter Plecker, December 1, 1925, Executive Papers, 1922-1926, Library of Virginia.

extreme caution and careful advancement."[182] Trinkle wanted to maintain racial peace and handle in a typical Virginia conservative fashion.

Plecker replied back to Trinkle saying that "[Bradley] and all of this Chickahominy group are already thoroughly familiar with the ruling of our office," and therefore, he is "unable to see how it is working any injustice upon them or humiliation for our office to take a firm stand against their intermarriage with white people, or to the preliminary steps of recognition as Indians with permission to attend white schools and to ride in white coaches." Plecker hoped "the next Legislature will give me relief from this acute and trying position in which our office is placed."[183]

Troubled by Plecker's response, Trinkle probably passed Plecker's letters to Plecker's supervisor, Ennion G. Williams, the State Health Commissioner. After receiving a note from Trinkle, Williams reminded Plecker that "The administration of the racial integrity law is definitely placed in [Plecker's] hands, without any reference to the State Board of Health; but the State Registrar is elected by the executive officer of the Board, I am responsible for the acts of all officials and employeos[sic] of the Board." The letter continued:

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[182] E. Lee Trinkle to Walter Plecker, December 4, 1925, Executive Papers, 1922-1926, Library of Virginia.

[183] Walter Plecker to E. Lee Trinkle, December 5, 1925, Executive Papers, 1922-1926, Library of Virginia. Trinkle sent this copy of Plecker's letter to Bradley on December 7, 1925, because he "ought to have this information before you[Bradley] so that you can thoroughly understand the situation." Trinkle stated, "I certainly do not want to see any injustice done the Indians or any one else in the State. You will appreciate that I am powerless in matters of this kind as I have no jurisdiction or authority in it but I want to do all I can to see that no mistake is made which will bring an injustice to anyone and I thought this date will be of value to you and you may keep this for your information." See, E. Lee Trinkle to Bradley, December 7, 1925, Executive Papers, 1922-1926, Library of Virginia.

> I think it exceedingly undesirable that our department or any of its officials should be accused of criticising[sic], directly or indirectly, high State officials with whom we must work in harmony, and it is peculiarly unfortunate in this case when the official criticised[sic] is a Governor, who has uniformly and consistently exhibited the greatest interest in our work. This incident is consequently greatly to be regretted.
>
> In the course of your administration of the law, please do not criticise[sic] the State administration and particularly the Governor of the State. Furthermore, I would like to have you submit to me for approval any circular letters that you may desire to issue or any pamphlets that you may wish to print, or any interviews that you expect to have published in the newspapers.[184]

Despite these warnings from the governor and the State Health Commissioner, Plecker and his allies continued to revise the Racial Integrity Act. In January 1926, the amended bill was ready to be reviewed. The purpose of the new law was to "regulate and prohibit certain marriages" and "to provide that the definitions of white and colored persons contained in this act shall be for all purposes under the laws of this State which make any distinction on account of race or color." For instance, the proposed bill stated that it was a felony for any white person, as redefined in this act, "to intermarry, or attempt to intermarry, with a person of any race except the white race." The law applied likewise "a felony for any person not of the white race to intermarry, or attempt to intermarry, with a person of the white race, as defined in this act." The definition of white person was one who is "not of another race, or a person having no known, demonstrable or ascertainable admixture of the blood of another race" and any person "not a white person shall be deemed to be a colored person." Finally, the new proposed bill revised the

[184] Ennion G. Williams to Walter Plecker, December 10, 1925, Executive Papers, 1922-1926, Library of Virginia.

clause on "Pocahontas exception" to "persons whose non-white blood, if exclusively North American Indian, originated prior to the year sixteen hundred and nineteen, shall be deemed to be white persons, and that persons living in Virginia when this act becomes effective who are descended from one or more members of one or more of the Five Civilized Tribes of Oklahoma whose blood admixture does not include other than white and one-fourth or less Indian blood, shall be deemed to be white persons."[185] Notably, the year sixteen hundred and nineteen was when the first Africans were brought into Virginia.

In a letter sent to Trinkle on January 2, 1926, Plecker added a note with a copy of the revised bill, saying that "There are enough of the near whites and 'Indians' for them to intermarry amongst themselves, and there is no reason at all to admit into the white race any of those people, even enough they call themselves Indians." The new amended bill "will give relief by forbidding white persons to marry any of mixed blood," Plecker believed.[186]

Plecker also sent letters to governors, legislators, and state registrars across the states promoting Virginia's new Racial Integrity Act. Those states included Tennessee, South Carolina, the District of Columbia, Louisiana, Ohio, and Mississippi. He pointed out the flaws within the law so that other states could avoid making the same mistakes as Virginia. In a letter written to H.D. Kissenger from Missouri, for instance, Plecker said

[185] Walter Plecker to E. Lee Trinkle, January 2, 1926, Executive Papers, 1922-1926, Library of Virginia.

[186] *Ibid.*

that mixed-blooded people were "trying to enter the white race through the 'Indian route.'" Plecker explained that "we had to consider the Pocahontas descendants and other white people with slight admixture of Indian blood." Plecker lamented that the revised definition of a "colored" person made the law weaker. "In the first section where the word *may* now appears *shall* was included originally," Plecker said referring to the statement on the definition of "colored" person. "For that reason the bill was about to be lost in the last reading. I quickly suggested to the patron of it that he substitute the word *may* for *shall*, and with that change the bill passed," Plecker said.[187] He explained the struggles Virginia went through in redefining "race" and advised other states to create a stronger law than the Racial Integrity Act.

On January 14, 1926, this proposed revision of the Racial Integrity Act was introduced by Robert O. Norris, Jr., Delegate of Lancaster County. The drafted bill redefined a white person as one "whose blood is entirely white, having no known demonstrable or ascertainable admixture of the blood of another race." The redefinition of a white person in this bill was to avoid Judge Holt's interpretation of "no trace" in Sorrells case.[188] The proposed revision, however, met with opposition again about the Indian clause. Among some distinguished Virginian families, it was "known" or "ascertainable" that some of their Indian ancestors were married after 1619. They claimed that this new definition of a white person would mean redefinition as a "colored"

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[187] Walter Plecker to H.D. Kissenger, May 17, 1939, John Powell Collection, Albert and Shirley Small Special Collections Library, University of Virginia.

[188] Sherman, "The Last Stand," 85.

person, which would affect more than twenty thousand people to be categorized as "colored." The *Richmond News Leader* argued that such a bill shows "an amazing ignorance of Virginia history and works the most cruel sort of injustices."[189] To avoid the rage from their opponents, the House announced a significantly amended bill on February 12. It revised the definition of white person to anyone "whose blood admixture does not include other than white and North American Indian blood" and modified the Indian clause to a person with one-eighth or less Indian blood to be defined as white, which was less strict compared to the one-sixteenth in the 1924 act. On March 5, this amended bill was passed by a vote of 50 to 18.[190]

Before the amended bill reached the Senate, the *Richmond Times-Dispatch* wrote an editorial titled, "Know the Facts," published on February 16. The editorial explained about the dangers of racial amalgamation in Virginia based on research conducted by Arthur Estabrook and Ivan E. McDougle and their book titled, *Mongrel Virginians: The Win Tribes*. The Win Tribes was an acronym for "White, Indian, Negro" Indian groups with tri-racial blood, that mostly referred to the Monacan Indians who lived near the Blue Ridge Mountains of Virginia. The authors of the book concluded that these groups were "below the average, mentally and socially." Powell not only supported their studies but used their book to claim the dangers of racial amalgamation hidden in their state. "If a solution be not found by the present generation," Powell claimed, "it will never be found, and our civilization and our race will be swallowed up in the quagmire of

[189] Sherman, "The Last Stand," 85.

[190] *Ibid*., 85-86.

mongrelization." He alarmed, "Virginians, awaken from your lethargy of pleasure and prosperity! The call has pealed forth for the last stand." Powell's zealous racial campaign, on the other hand, had turned away the elite white men in the Virginia Senate. Powell was considered too much of an extremist, which was believed to be the reason a majority of members in the Senate decided to reconsider the bill. On March 12, the Senate voted 20 to 9 to postpone the bill. Legislators decided to postpone the amendment process because Powell was too outspoken and extreme in his racism.[191]

A second attempt to revise the Racial Integrity Act was held before the opening of the 1928 General Assembly. This time, Powell reviewed the 1910 law and attempted to amend the definition of "colored" in Section 67 of the *Code of Virginia*. The 1910 law defined a "colored" person as having one-sixteenth or more of "Negro" blood, assuming that anyone with less than one-sixteenth of "Negro" blood would be classified as white. But the 1924 act did not define a "colored" person but only a white person as anyone who has no trace of "non-Caucasian blood." The definition of "colored" person in 1910 law was not automatically repealed after the 1924 act was enacted and thus, the definition of white race in the 1924 act contradicted the previous law.[192]

On January 18, 1928, James H. Price from Richmond introduced House Bill No. 2, redefining a "colored" person as one having "any ascertainable degree of negro blood, or who is descended on the part of the father or mother from negro ancestors, without

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[191] Sherman, "The Last Stand," 87; Samuel R. Cook, "The Activist Trajectory and Collaborative Context: Indigenous Peoples in Virginia and the Formation of an Anthropological Tradition," *Collaborative Anthropologies* 7, no. 2 (Spring 2015): 124.

[192] Sherman, "The Last Stand," 88; Dorr, *Segregation's Science*, 161.

reference to or limit of time or number of generations removed…" Rather than defining a white person, the law redefined a "colored" person and introducing the "one-drop rule" to the bill to simplify the definition of race. The definition of Indian blood remained the same as stated in the 1910 act as a person who is not "colored" and has one-fourth or more "Indian blood." The Price Bill was passed by 68 to 9 in the House. But the Senate met with opposition from representatives of Indian tribes fearing the new bill would reclassify them as "colored" under the new definition. Hill Montague, a trustee of the Pamunkey Indians, claimed that "this could involve as many as five thousand citizens of Virginians" who are classified as white to be affected. Powell responded to Montague's claim by saying that "The admissions of my opponents show why this bill should be passed." "Fifty thousand near-white mixed breeds are pressing on the color line," Powell said, "and if we let down the bars our civilizations is doomed."[193]

Another opponent, Sachem Wah-hun-sun-a-cook of the Pamunkey Indians, angrily opposed the bill before the Senate. He cried out, "I will tie a stone around my neck and jump in the James River rather than be classed as a Negro." In response to Wah-hun-sun-a-cook's statement, John Mitchell Jr., editor of Black newspaper, the *Richmond Planet*, asked him to name the time and place of the drowning so "all of the manufacturers and employers of Negroes will be asked to give a holiday in order that they may enjoy one day of complete and Prayerful satisfaction." Mitchell furthermore criticized the Price bill for violating the Fourteenth Amendment "in that it alleges to

[193] Sherman, "The Last Stand," 88-89.

protect the racial integrity of the white person and affords no protection to the racial integrity of the Negro." Mitchell sarcastically recommended the bill to be amended as: "No person, who may have any perceptible trace of white blood in their veins shall be regarded or classified as a Negro." When hearing this, Plecker reacted to Mitchell's comment on race pride without acknowledging his commitment to legal equality and wrote to the editor that he was "glad to know that the true negroes are becoming interested in preserving the purity of their race." After the debate on February 13, the Senate voted the Price bill down by 13 to 26. The reason of the defeat was unclear, but some senators began to feel sympathetic to the Indians. Others were tired of this unrest on the Racial Integrity Act. But it is evident that the Price bill revealed an existing division between Blacks and Indians.[194]

The third and last revision of the law was proposed in 1930. Senator Frank Ball of Arlington introduced a bill simply defining a "colored" person as "any person in whom there is ascertainable any negro blood." In February 1930, the House passed Ball's bill, and the Senate also agreed to pass the revised bill that included a provision that "members of Indian tribes living on reservations allotted them by the Commonwealth of Virginia having one-fourth of more of Indian blood and less than one-sixteenth of Negro blood shall be deemed tribal Indians so long as they are domiciled on said reservations." The act also included a rule that Indians "to marry only with others the same racial and

[194] Sherman, "The Last Stand," 88-89; Dorr, *Segregation's Science*, 161-162; Ann Field Alexander, *Race Man: The Rise and Fall of the "Fighting Editor," John Mitchell Jr* (Charlottesville: University of Virginia Press, 2002), 200.

tribal classification," which aimed to preserve the purity of Indians. This additional provision accommodated Indians who despised being categorized as "colored." Moreover, the new provision redefined who an Indian was by restricting to tribal Indians living on reservation, which narrowed down to Mattaponis and Pamunkeys, the only two tribes that remained on reservations in Virginia. Obviously, the provision would not satisfy all Virginia Indians, especially those who lived outside of the reservation, but it was adequate enough to satisfy all the members of the Senate to pass the bill by 36 to 0. The House also accepted the bill by 81 to 3. On March 4, 1930, Governor John Garland Pollard signed the bill with a new definition of "colored" and Indian races.[195]

The debate over defining "race" in the Racial Integrity Act was finally ended at least in the legislature. "Let us hope," the *Richmond News Leader* wrote, "that this will be the end of the 'continuous agitation of the race question before the General Assembly.'" The long-debated revisions in the Racial Integrity Act were caused by struggles on how to protect the white elites who had proudly claimed their Indian ancestry. The law that originally aimed to preserve the purity of the white race opened a question on how to define "colored" and "Indians." The revisions proposed between 1924 and 1930 did not meet the clubs' initial goals in protecting racial integrity but their legislative campaign ended in 1930.[196]

[195] Sherman, "The Last Stand," 90; Adams, *Who Belongs?*, 46.

[196] Sherman, "The Last Stand," 91.

The Anglo-Saxon Clubs of America succeeded in gaining enough support from prominent white elites and state legislators that allowed them to shape the Racial Integrity Act of 1924 to their goals, regardless of consequences. After the challenges to the law emerged after the Sorrells case, however, they faced struggles in their several attempts to revise the law. During the court cases and the revision process, we see gaps between the white supremacist ideology and the realities in the court and politics. The members of the clubs had to deal with other white elites' perspectives. Facing opposition, the clubs continued to revise the law by changing the definition of "race" until 1930. The 1930 amendment, which coincided with the declining interest in the Anglo-Saxon Clubs of America, seems to have resulted from exhaustion rather than resolution. They could not achieve precisely what they hoped but managed to make and remake "race" in the Old Dominion.

3. Alliance between the Anglo-Saxon Clubs of America and the Universal Negro Improvement Association

Virginia's African American press "remained relatively quiet" on the racial integrity bill. The *Richmond Planet*, an African American newspaper in Richmond, Virginia, commented that "we do not see that it[the Racial Integrity Act] concerns any Negro in this state" because "Every well-thinking colored person who understands existing conditions wants the line of racial demarcation to remain." Furthermore, it stated, "They want the white man to 'stay on his side' of the line and they will do the same on their side." As historian J. Douglas Smith noted, "Aimed at those mixed-race

individuals who were no longer clearly identifiable as blacks, the proposed statute did not directly affect the vast majority of Black Virginians."[197]

Marcus Garvey, a Jamaican-born Black nationalist, and his Universal Negro Improvement Association (UNIA) used the idea of eugenics to promote his movement on racial separation of African Americans. Unlike other Black intellectuals, Garvey worked under the setting of white dominance. He believed that creating a Black nation in Africa and sending the American Blacks far away to Africa could be the solution to maintain their racial purity and independence. As a Black nationalist and racial separatist, Garvey collaborated with the members of the Anglo-Saxon Clubs of America, especially with Powell and Cox, to establish a colonization project of African Americans.[198]

In 1914 Marcus Garvey established the Universal Negro Improvement Association (UNIA) in his home country but his ideas on racial separation and Black individualism did not gain support in Jamaica. Garvey decided to move to the United States in 1916 and created a UNIA branch in New York where he could spread his message of Black empowerment.[199] Garvey believed that Blacks would not be able to achieve the same equality as whites in the United States. Instead of Black people struggling for equality, Garvey believed that the two races should be separated to avoid future economic competition and racial conflicts. He further argued for strict racial separation in inter-racial marriages. "Race amalgamation must cease," he claimed, and

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[197] Smith, *Managing White Supremacy*, 88.

[198] Dorr, *Segregation's Science*, 158.

[199] Smith, *The Eugenic Assault on America*, 23.

prohibited intermarriage within the members of the UNIA stating that "any member of this organization who marries a white woman is summarily expelled."[200]

An article in an American weekly magazine, *The Literary Digest*, published in March 1921, highlighted stories of Garvey's movement. The magazine praised Garvey's plan as a "gorgeous idea" because the "whites are protected all over the world," but "no power stands ready to rescue the negro."[201] The article quoted Garvey's own words:

> In Africa it takes the form of suppression of the right of the African to enjoy the fruits of his ancestral lands. In America it takes the form of lynching, disfranchisement, burnings, and the thousand and one petty insults born of arrogance and prejudice. So now comes the negro through the medium of the Universal Negro Improvement Association demanding the right and taking unto himself the power to control his own destiny. We are too large and great in numbers not to be a great people, a great race, and a great nation. I cannot recall one single race of people as strong numerically as we are who have remained so long under the tutelage of other race. The time has now come when we must seek our place in the sun.[202]

Garvey's ideas about Black repatriation was endorsed by white organizations such as the Ku Klux Klan and the Anglo-Saxon Clubs of America. In his essay, "An Appeal to the Soul of White America," Garvey mentioned that "as black men for three centuries have helped white men build America surely generous and grateful white men will help

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[200] "A Negro Moses and His Plans for an African Exodus," *The Literary Digest for March 19, 1921,* 51, John Powell Collection, Albert and Shirley Small Special Collections Library, University of Virginia.

[201] *Ibid.*, 49.

[202] *Ibid.*, 50.

black men build Africa." As Garvey had hoped, the clubs' members, especially Powell and Cox, assisted Garvey's plan on colonization of African Americans.[203]

Enforcing the Racial Integrity Act in their home state were not enough for the clubs to solve the nation's racial issues. The clubs had long feared racial mixing and interracial marriage, and the outcome of mullatoes "passing" as whites. Since the early 1900s Earnest Cox came to believe that the whites and Blacks could not coexist together. The repatriation of Blacks to Africa was his solution to the so-called "negro problem." But his idea of sending Blacks back to Africa was not new. Cox attested that the idea emerged as early as George Washington announced his colonization plan in "To Return To Africa Her Stolen Children"[204] and several other American leaders such as Thomas Jefferson, Henry Clay, Daniel Webster, and Abraham Lincoln were advocates of repatriation of African Americans. In his book, *White America*, Cox demonstrated how white leaders across the country from the North to the South believed that "separation of the races was the only solution of the race problem."[205] The Anglo-Saxon Clubs of America planned to revive the emigration policy that had ended as a failure in the past. When the clubs met Marcus Garvey, they felt they shared the same goal in Black

[203] Smith, *The Eugenic Assault on America*, 24. Although many African Americans followed Garvey's nationalist movement, several members of the UNIA left the organization after Garvey became involved with the white supremacist organizations like the Anglo-Saxon Clubs of America.

[204] Earnest Cox, "Brief Story of the Negro Race Repatriation Movement," n.d. [1956], John Powell Collection, Albert and Shirley Small Special Collections Library, University of Virginia.

[205] Earnest Cox, *White America* (White America Society: Richmond, 1923), 321-327.

repatriation. Endorsing Garvey's Black repatriation plan, Earnest Cox described Garvey as "the greatest leader and the greatest organizer that the Negro race has produced."[206]

Although Garvey borrowed some ideas of eugenics to promote racial uplift of his people, he did not believe in racial eugenics in the same way as the clubs believed in white supremacy. Instead, Garvey believed that he is "equal of any white man" and that every Black person should "feel the same way." "No one need think," Garvey spoke to his people, that "we are still the servile, bending, crying people we were up to fifty-odd years ago in this country." In fact, he believed that Blacks "are a new people, born out of a new day in this country," and that his people will take risks to "show what negroes can do for themselves."[207] Racial separatism meant racial uplift of his own race, and therefore, Garvey urged African Americans to leave the country to establish their own Black nation in Africa where they can exercise their political and economic independence. To create a new independent nation for Blacks, Garvey founded a company, the *Black Star Line*, and prepared three ships to send Black emigrants to Liberia. Garvey understood that "the majority of us [African Americans] may remain" in the U.S., but he hoped to "send our scientists, our mechanics, and our artizans," and "let them build railroads, let them build the great educational and other institutions necessary." Eventually, fifteen Blacks, who were "surveyors, architects, builders, chemists, and physicians" sailed from New York to Africa in Black Star Line ship.[208]

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[206] Cox, "Brief Story of the Negro Race Repatriation Movement."

[207] "A Negro Moses and His Plans for an African Exodus," 50.

[208] *Ibid*, 50-51.

The *Black Star Line*, however, was not successful and faced financial difficulties. Garvey continued to sell stocks in the *Black Star Line* through the mail while the company was in bankruptcy. In early 1925, Garvey was sent to prison in Atlanta Federal Penitentiary for mail fraud.[209] While Garvey was imprisoned in Atlanta, John Powell attended a meeting at the Harlem chapter of the UNIA to give a congratulatory speech to the Blacks who joined with Garvey's movement. Powell pointed out that neither the Civil War, the Thirteenth Amendment, nor the NAACP had made Blacks free because "the civilization that [Black people] are living under is not your own." Powell, therefore, expressed that he was pleased with the UNIA for understanding that racial separation was their only solution. Powell concluded his speech with praising Garvey who sacrificed himself in the prison for doing what was "right" to both Black race and white race.[210]

After Powell's remarks at the Harlem chapter, Garvey commented that the clubs "represent the clean-cut and honest section of the white race that uncompromisingly stands for the purity of their race, even as we unhesitatingly and determinedly agitate and fight for the purity of the Negro race." "All races should be pure in morals and in outlook," Garvey said, and "for that we, as Negroes, admire the leaders and members of the Anglo-Saxon Clubs." Garvey continued, "They are honest and honorable in their desire to purify and preserve the white race even as we are determined to purify and standardize our race."[211] In fact, Garvey was released from prison in 1927 due to Powell,

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[209] Smith, *The Eugenic Assault on America*, 23-24.

[210] *Ibid*, 27-28.

[211] *Ibid*, 27.

Cox and other white allies who supported him. Walter Plecker particularly wrote to President Calvin Coolidge in March 1927, claiming that Garvey's "violation of the law was an error of judgement rather than deliberate crime." "Believing that he has been imprisoned sufficiently long to serve the ends of justice," Plecker requested to "plead in his[Garvey's] behalf that he may be pardoned, and permitted to continue his work with his race in this country."[212] Soon after Garvey was released from the prison, however, he was deported from the U.S. Garvey returned to Jamaica where he rebuilt a Black nationalist movement similar to the UNIA in his home country, but he failed again. Garvey spent his last years in London until he died in 1934.[213]

The alliance between the UNIA and the clubs ended after Garvey's deportation but the repatriation movement of Black people continued. Despite several failed attempts, the colonization project was not forgotten even after Garvey's death. Cox continued to mention Garvey's name in public speeches and used the UNIA as an example to promote future repatriation plans. Moreover, Cox built an alliance with the Peace Movement of Ethiopia, a small African American group formed in Chicago, Illinois. Cox named their movement the "Abraham Lincoln Plan," and claimed repatriation as "a permanent solution of the race problem." In 1936, the organization introduced the Repatriation Bill, a petition to the federal government to aid funding for Black repatriation to Liberia and

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[212] Walter Plecker to the President of the United States, March 19, 1927, John Powell Collection, Albert and Shirley Small Special Collections Library, University of Virginia.

[213] Dean E. Robinson, Black Nationalism in American Politics and Thoughts (Cambridge: University of Cambridge, 2001), 32-34; Smith, *The Eugenic Assault on America*, 34.

Ethiopia. Cox supported the Black migration movement and continued to seek federal assistance for Black repatriation. He spent the rest of his career as a leader of the repatriation project.[214]

The Anglo-Saxon Clubs of America and the UNIA conflicted in their views of racial equality. The clubs believed in protecting the "Anglo-Saxon" ideals and Black inferiority, and the only way to achieve their goal was to pass a stricter law that would prohibit racial mixing. On the other hand, Garvey believed Blacks could achieve the same as whites in their own nation in Africa where they were separated away from the white society. Yet they both shared the same goals in racial separatism and racial purity of their own race. Their repatriation plan eventually failed, and the coalition lasted for only a short period of time. But the idea of racial separatism continued and was considered as one of the solutions to the "race problem."

By the 1930s, the Anglo-Saxon Clubs of America lost their support and effectiveness. With an emerging field in anthropology, the eugenics movement was taken over by a new anthropological thought to define race. The clubs became influential for a while, yet were a temporary phenomenon and not many Virginians were actively involved in the clubs by then.[215] Despite a small membership of the organization and opposition that the clubs received from Virginian politicians and white elites, the clubs' gained enough support to spread their racial ideas about white supremacy throughout the

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[214] Alberta Spain, The Peace Movement of Ethiopia, [N.D.], John Powell Collection, Albert and Shirley Small Special Collections Library, University of Virginia.

[215] Sherman, "The Last Stand," 91-92.

state. The Racial Integrity Act retained its efficacy by changing its legal definition of race. The law continued to be a powerful method in determining the "race" of Virginians.

Although the Anglo-Saxon Clubs of America lost their influence to attract the white elite audience, the core members of the clubs, John Powell, Earnest Sevier Cox, and Walter Plecker, continued their goals in spreading the Anglo-Saxon ideals and white civilization in their own ways. Powell invested his time on his musical career and did not publish any more articles on racial integrity or racial amalgamation. While he stepped down as a public speaker on racial matters, Powell still corresponded with Cox and Plecker. Cox focused on the colonization project of repatriating African Americans to Africa even after Garvey's deportation, and he published a book in 1963, *Black Belt around the World at the High Noon of Colonialism*, about his early travels in the 1910s.[216] Cox was recognized as the author of *White America* in the white supremacist community. Meanwhile, Plecker used his office to enforce the new law's requirements against miscegenation. The Racial Integrity Act gave Plecker the authority to track down and police those whom he considered to be sending in false reports of their race. Plecker decided to use his position as a state registrar to enforce the law and his racial views on all Virginians, which will be the focus of the next chapter. As Governor Trinkle once worried, Plecker's action against Indians escalated, harming the lives of many individuals.[217]

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[216] See more on Cox's books on colonization published after his activity in the clubs such as *Three Million Negroes Thank the State of Virginia: Letters of Thanks* (1940) and *The Races of Mankind: A Review* (1951).

[217] Walter Plecker, *Virginia's Vanished Race* (n.p., 1947), 4, Albert and Shirley Small Special Collections Library, University of Virginia.

CHAPTER THREE: ENFORCING THE INTEGRITY OF RACES

Walter Plecker's effort to enforce the new Racial Integrity Law on Virginians became even harsher, interfering with many Indian families in Virginia. Plecker spent his lifetime career as a state registrar, enforcing the law against the Indians. Convinced that all Virginia Indians were historically racially mixed with Blacks, Plecker threatened those who requested certificates through his office, whom he considered were falsely claiming to be Indian or white. Plecker became the gatekeeper at his office at the Bureau of Vital Statistics to monitor all birth, marriage, divorce, and death certificates of Virginians. Unleashing his authority as a state registrar, Plecker harassed individual families by sending letters and threatening those who tried to "pass" as whites. Plecker monitored every certificate sent to his office at the Bureau of Vital Statistics and categorized Indians as "colored" on their state records. Walter Plecker had the power to enforce his racial beliefs among Virginians. This chapter explores how Plecker ended up having power and implemented his views and ideas even though other white supremacists disagreed with him or were less extreme than Plecker.

1. Walter Plecker's Attack on Virginia Indians

Walter Plecker unleashed his power in maintaining the racial order through his office at the Bureau of Vital Statistics when the new Racial Integrity Act of 1924 became a state law in Virginia. When the Bureau of Vital Statistics was established in 1912, it originally functioned to certify birth certificate to all babies born in Virginia after 1912.

Plecker, who had worked as a physician and a public health officer, had interest in creating modern birth techniques and had improved the high mortality rate of poor mothers. After his accomplishments, he was assigned as the head of the Bureau to monitor midwives and to make sure they handled the certificates in a proper way. However, after the Racial Integrity Act of 1924 was passed, Plecker decided to turn his focus to his longtime concerns about racial categorizations in Virginia.[218] The Bureau of Vital Statistics was, according to Plecker, "legally responsible for the correct registration of each individual as to race," meaning that he was responsible for categorizing Virginia's registration of births, deaths, marriages, and divorces by race.[219] As state registrar, Plecker believed he was in charge of enforcing the new law's requirements against miscegenation. Plecker decided to use his powerful position to enforce his own interpretation of the law and his racial views on all Virginians.

Plecker had long been concerned by the possibility of race-mixing. When he started his job as the first State Registrar in Virginia in 1912, he assumed that the families of mixed-blood people were giving false information when registering their race in the Vital Statistics records: some families were reporting their children's birth as white and others as colored in the same family. When Plecker discovered this contradiction in the registration, he believed that numerous families were passing as white or Indian even though, according to his categorization, they were really supposed to be registered as

[218] Tori Talbot, "Walter Ashby Plecker (1861-1947)," Encyclopedia Virginia, last modified December 22, 2021, http://www.encyclopediavirginia.org/Plecker_Walter_Ashby_1861-1947#start_entry.

[219] Walter Plecker, *Virginia's Vanished Race* (n.p., 1947), 4, Albert and Shirley Small Special Collections Library, University of Virginia.

colored. Plecker described this situation later saying that many "might have passed, if the Bureau of Vital Statistics had not stood in his way."[220]

The new Racial Integrity Law gave Plecker the authority he had lacked in 1912 to begin tracking down and stopping those whom he considered to be sending in false reports of their race. Once the new law was in effect, Plecker immediately warned clerks, physicians, and midwives to monitor any Virginians who reported as white but whom they suspected were actually mixed-race. He estimated that there were 10,000 to 20,000 or more of these "near white" people in Virginia. Plecker informed about the dangers of rising populations of mixed-race people and its impacts as well as concerns for the future in the March 1924 *Virginia Health Bulletin*. In this newsletter titled "The New Virginia Law To Preserve Racial Integrity," Plecker was concerned that:

> In the past it has been possible for these people to declare themselves as white, or even to have the Court so declare them. Then they have demanded the admittance of their children into the white schools, and in not a few cases have intermarried with white people...
>
> Their children are likely to revert to the distinctly negro type even when all apparent evidence of mixture has disappeared.
>
> The Virginia Bureau of Vital Statistics has been called upon within one month for evidence by two lawyers employed to assist people of this type to force their children into the white public schools, and by another employed by the school trustees of a district to prevent this action."[221]

On April 29, 1924, about a month after the law was passed, he sent to the clerks, school authorities and local registrars in Virginia a letter of notification entitled

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[220] *Ibid.*, 2.

[221] Virginia Health Bulletin, The New Virginia Law To Preserve Racial Integrity, March 1924, Rockbridge County (Va.) Clerk's Correspondence (Walter A. Plecker to A. T. Shields), 1912-1943, Library of Virginia.

"Instructions to Local Registrars and other Agents In Administrations of the Law To Preserve Racial Integrity." This informed them about the new law and provided instructions on how to make sure that colored people were not registered as white. Recording these mixed-race people and using certain terms to categorize these groups were important to Plecker's office. Plecker cautiously instructed that the accurate term would be "Mixed" or "Issue" "to mean a mixture of white and black races, with the white predominating," and the term "Indian" would "no longer be accepted for that class, but must be applied only to those of known pure Indian blood, or those mixed with white." He added, "If there is a mixture of negro they must not be classed as Indians but as 'Negro' or 'Mixed Indian.'"[222] In another letter to all the physicians of Virginia, Plecker reminded, "You are requested to use care not to report births of children of 'Mixed' or 'Issue' parents as white. In some parts of the State this mixture of races is a serious problem, which you can by giving us the exact facts do much to prevent. If uncertain use an interrogation mark (?) and write us privately."[223] At the end of the letter Plecker carefully warned "to use every precaution not to issue marriage licenses for one of these people to intermarry with a person of known pure white blood."[224]

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[222] Walter Plecker to the Clerks of Rockbridge, Amherst, and Augusta Counties, April 29, 1924, John Powell Collection, Albert and Shirley Small Special Collections Library, University of Virginia.

[223] Walter Plecker to Physician of Virginia, June, 1924, Rockbridge County (Va.) Clerk's Correspondence (Walter A. Plecker to A. T. Shields), 1912-1943, Library of Virginia. In a letter to V.W. Davis, May 13, 1924, Plecker similarly instructed: "We suggest the term "Mixed" as a very good one, or even an interrogation mark (?) in place of color. If they contest the point they can fight it out with our office, and we will endeavor to establish their status, if necessary in Court."

[224] Walter Plecker to the Clerks of Rockbridge, Amherst, and Augusta Counties, April 29, 1924, John Powell Collection, Albert and Shirley Small Special Collections Library, University of Virginia.

Plecker was particularly concerned that Indians in Virginia were heavily mixed with Blacks and were therefore "Mongrel Virginians," which meant "a mongrel race of white-black-red mixture."[225] In his 1947 booklet, *Virginia's Vanished Race*, which was published after his death, Plecker tried to demonstrate that because of a long history of Black intermixture there were simply no "pure" Indians remaining. Plecker argued that "In the early days the Indians resisted the whites," but as the Indian population decreased they absorbed the free Black population and intermarried with them. He cited the Pamunkey Indians as an example, declaring that they "welcomed the free negroes and run-away-slaves as they infiltrated into the reservation, and served as mates for their young women."[226] Therefore, Plecker concluded, "historically, there are probably no native Virginia Indians unmixed with negro."[227]

Plecker also claimed that the U.S. Census and many other records provided further evidence that these tribes were no longer pure-blooded Indian. Virginia's Indian population in 1900, for instance, listed no Indians, and in 1910 only seven, but in 1920, he pointed out that there were 304 people claiming to be Indians. Although the Pocahontas exception did not exist in 1920, Plecker asserted that this increase of the Indian population especially in the 1920 census was caused by Black or mixed-blood

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[225] Walter Plecker, *The New Family and Racial Improvement*, (Richmond: State Department of Health, 1928), 17-19, Albert and Shirley Small Special Collections Library, University of Virginia.

[226] Plecker, *Virginia's Vanished Race*, 2-3.

[227] Walter Plecker to D. E. Harrower, April 27, 1925, John Powell Collection, Albert and Shirley Small Special Collections Library, University of Virginia.

people who were claiming to be Indian as a way to eventually use the Pocahontas exception to get into the white race.[228] Moreover, according to Plecker, "the Vital Statistics records of births, deaths, and marriages from 1853 to the present, with a break in births and deaths from 1896 to 1912" and "Early official State, Federal and War records, with other trustworthy information of various kinds, show that there is not now living a person of Virginia ancestry, claiming, or reputed, to be Indian, who is not of negro admixture."[229] He added, "The Bureau has by these records, and by many personal interviews with old citizens, made the most complete statewide study of the race composition of the population of Virginia, ever, it is believed, undertaken anywhere since the beginning of the Christian era."[230] In short, Plecker argued that there simply were no Indians left in Virginia.

At the same time, Plecker prevented the "so-called Indians" from being categorized as white by denying their birth and marriage certificates. He carefully monitored documents that were sent to his office and wrote back directly to many individuals, especially in Amherst, Rockbridge, and King William County, as well as some outside the state, who claimed to be an Indian or white. As early as the summer of 1924, Plecker sent letters to clerks and midwives of these three counties. He warned that

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[228] Walter Plecker, "Shall American Remain White?" (n.p., n.d.), 5-6, John Powell Collection, Albert and Shirley Small Special Collections Library, University of Virginia; "U.S. Census Estimates of Indians in Virginia, Vol. III, 1900-1920," John Powell Collection, Albert and Shirley Small Special Collections Library, University of Virginia.

[229] Plecker, *Virginia's Vanished Race*, 7.

[230] *Ibid.*

his office was investigating the families who fell under the category of "mixed blood" under the new Racial Integrity Act.[231] A letter sent to a midwife in Rockbridge County states:

> We are reliably informed that the mother of this child is from one of those mixed families, and if so cannot be registered as white, nor can the child be considered as white under the new law.
>
> We desire your early reply as to how this woman is considered in the neighborhood, and whether she was classed as white when she was married…[232]

Plecker kept harassing the same midwife and sent another letter about a month later:

> We are warning you of the penalty in connection with making false statements…
>
> We want to again warn you of the trouble you are liable to get yourself into if you do not give the correct color. It is my duty to see that this law is obeyed and I expect to do it. I am waiting for someone who violates this law to have them in Court. If you want to be the first one, we will give you a chance.[233]

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[231] Walter Plecker to the Clerks of Rockbridge, Amherst and Augusta Counties, April 28, 1924, Rockbridge County (Va.) Clerk's Correspondence (Walter A. Plecker to A. T. Shields), 1912-1943, Library of Virginia. Among the three counties, Plecker especially believed the population in Amherst County to be heavily mixed with blacks and an "extremely low type of people." In a letter to Henry M. Rowman, Plecker mentioned that "In Amherst County there are about 500 people of this triple mixture and some have crossed over the mountain and constitute the Irish Creek settlement." Plecker warned those people by listing the last names of those families. See, Walter Plecker to Henry M. Rowman, August 15, 1924, Rockbridge County (Va.) Clerk's Correspondence (Walter A. Plecker to A. T. Shields), 1912-1943, Library of Virginia.

[232] Walter Plecker to Mary Jo Sorrells, July 11, 1924, Rockbridge County (Va.) Clerk's Correspondence (Walter A. Plecker to A. T. Shields), 1912-1943, Library of Virginia. Plecker was also concerned that the midwife's last name was Sorrells, and at the end of the letter, Plecker asked the midwife, "Are you or your husband related to the Sorrells of Alto, Amherst County?"

[233] Walter Plecker to Mary Sorrels, August 15, 1924, Rockbridge County (Va.) Clerk's Correspondence (Walter A. Plecker to A. T. Shields), 1912-1943, Library of Virginia. In another letter to a different person, Plecker wrote similarly: "We are warning you that under the new law it is a penitentiary offense to make a wilfully[sic] false statement as to color. The law has put the duty of enforcing this upon me, and I am endeavoring to see that it is obeyed." See, Walter Plecker to Josie Hartless, August 15, 1924, Rockbridge County (Va.) Clerk's Correspondence (Walter A. Plecker to A. T. Shields), 1912-1943, Library of Virginia.

During his investigation not only did he instruct clerks and midwives but Plecker also wrote directly to applicants that he believed to be giving false statements in their birth, marriage, or death certificates. For instance, a letter sent to a man on July 13, 1940, Plecker stated:

> We are returning the certificate in duplicate for your birth of June 15, 1906. Under this form of registration we accept only such certificates as reach us in a satisfactory manner and that we believe to be accurate.
>
> In giving your race you state that you are a "Black Hark Indian" and that your birthplace was Delaware Water Gap. We have learned that none of the native-born individuals in Virginia claiming to be Indian are free from negro mixture, and under the law of Virginia every person with any ascertainable degree of negro blood is to be classed as a negro or colored person, not as an Indian...
>
> If you desire to make out a new certificate, not necessarily in duplicate, in which you give your race as colored or negro, the certificate will otherwise be acceptable. The fact that your wife is negro would seem to show conclusively that that is the correct classification.[234]

Another example is his letter written on February 2, 1942. Plecker wrote:

> We are returning your dollar fee and are holding your birth certificate for future references.
>
> The certificate states that your parents are "Half Breed Indian." We do not recognize any native-born Indian as of pure Indian descent unmixed with negro blood. According to the law of Virginia any ascertainable degree of negro blood constitutes the individual a colored person...[235]

Plecker's letters were written in an intimidating style, often harassing the individual.

While Plecker returned numerous certificates that were sent to his office, he kept using the same tactics, usually in an arbitrary way and bringing the same evidence.[236] "I

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[234] Walter Plecker to Henry King, July 13, 1940, John Powell Collection, Albert and Shirley Small Special Collections Library, University of Virginia.

[235] Walter Plecker to William E. Bradby, February 2, 1942, John Powell Collection, Albert and Shirley Small Special Collections Library, University of Virginia.

[236] Smith, *The Eugenic Assault on America*, 93.

am reminding you that it is a penitentiary offense to attempt to register a birth falsely as to race," he said in a letter sent in 1946, and he often threatened jail to those he thought were wrongly claiming to be Indian or white. Plecker also kept insisting that he was in charge of classifying the races into the correct categories and he continued to remind Virginians that as State Registrar it was his responsibility to correctly register births, deaths, marriages and divorces under the provisions of the Racial Integrity Act. In one of Plecker's letters to Powell, he wrote, "The more we go in it, the more I am impressed with the immensity and importance of the job which the legislature has given me to do."[237] Plecker used the power given his office by the Racial Integrity Act to enforce his own particular racial theories.

2. The Eugenics Records Office

Since the beginning of enacting the Racial Integrity Act of 1924, the Anglo-Saxon Clubs of America had close relationships with prominent eugenicists. To further strengthen his position and prove that Virginia Indians were racially mixed with Blacks, Walter Plecker reached out to his northern allies in the eugenics community. Charles Davenport, Director of the Eugenics Records Office (ERO) in Cold Springs, New York, and a well-known figure in the American eugenics movement, initially supported Plecker's racial campaign against the Indians in Virginia. The ERO was created as the Department of Genetics for the Carnegie Institution of Washington in 1904 for the

[237] Walter Plecker to John Powell, July 30, 1924, John Powell Collection, Albert and Shirley Small Special Collections Library, University of Virginia.

collection and analysis of eugenics studies on family genetics and traits. From revising the Racial Integrity Act to solving the categorization of Indians in his home state, Plecker relied on Davenport for suggestions. He also shared his racial views that Virginia Indians were racially mixed with Blacks and he, therefore, hoped to create a stronger law that would prevent Indians from marrying white persons. Because Plecker wanted to categorize all Indians as Blacks, he was desperate to receive information from the ERO, especially from Davenport's field worker, Arthur Estabrook, who was the author of *Mongrel Virginians: The Win Tribes*. The correspondence between Plecker and the ERO reveals Plecker's further zealous methods in categorizing Indians as Blacks. Interestingly, the more Plecker sought assistance from the eugenicists, the more his requests were turned down and he eventually lost trust from the eugenics community.

Early correspondences between Davenport and Plecker concerning Indians included topics such as the closing of an Indian reservation on Long Island, New York, in August 1925. Davenport informed Plecker that the closing of the reservation occurred due to the fact that there were no longer "pure" Indians in the area.[238] Plecker was excited to hear the news from Davenport and requested more information on "what steps were necessary" to close the Indian reservation. He was hoping to use the "same action with all of our so-called Indian tribes," particularly the Pamunkey and Mattaponi Indians, who remained their reservations in Virginia.[239] When Plecker contacted the director of the

[238] Charles Davenport to Walter Plecker, August 13, 1925, Folder Plecker, W. A., Charles Benedict Davenport Papers, American Philosophical Society Library.

[239] Walter Plecker to Charles Davenport, August 19, 1925, Folder Plecker, W. A., Charles Benedict Davenport Papers, American Philosophical Society Library.

Museum of the American Indian in New York, however, he heard that they had not received any news about abolishing the Shinnecock Indian Reservation from the Long Island Historical Society. Plecker wrote to Davenport again on this matter and later found out that he received false information.[240]

Despite the misinformation about the closing of the Indian reservation, Plecker continued to request information about the Indians. In another letter to Davenport, Plecker mentioned about preparing a court case against a man named Ray Winn from the Chickahominy Tribe. Winn married a Chickahominy woman in 1911 with status as an Indian, and he was accused of felony when he married his second wife, a white woman, after the death of his first wife in October 1924. The Richmond school board had ordered the superintendent to remove his children from the white school because they were suspicious that the family was Black. During the school board hearing, Plecker attended with a genealogical chart from the nineteenth-century that supposedly proved that Winn has a "negroid" mixture. The chief of the Chickahominy Tribe, however, denied Plecker's claim, and testified that Winn "had only Indian and white blood in his veins and had never known any of his family to have associated with colored people but had either kept to themselves or had white friends and companions." On December 11, 1925, about a year after the Sorrells case, Ray Winn was found innocent of his charges of miscegenation and was "to be considered upon equality with all white men."[241]

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[240] Walter Plecker to Charles Davenport, November 24, 1925, Folder Plecker, W. A., Charles Benedict Davenport Papers, American Philosophical Society Library.

[241] Coleman, *That the Blood Stay Pure*, 108-109.

After being twice defeated, including the Sorrells decision, Plecker came to a conclusion that the people of the Chickahominy Tribe were falsely claiming Indian descent to have access to attend white schools, ride white coaches on trains, and marry white people. To prove his point, Plecker turned to Davenport for assistance. He quoted a statement from the Bureau of Ethnology, of which he believed Davenport was the head, stating that Virginia's Indian tribes were a "negro mixture," and asked Davenport if the statement was accurate and authoritative.[242] A few days later, Plecker wrote again, asking Davenport's opinion, "[a]s an ethnologist," if he would "not consider it proper to add the Indian mixture in that proportion as the equivalent of one-fourth the amount of negro blood?" and he asked if Davenport could appear as a witness.[243] Davenport, however, responded to Plecker that he was unsure "whether the Carnegie Institution of Washington ought to be drawn into the matter of the administration of the law in the state of Virginia." "As a student of eugenics," Davenport was personally interested in the racial matters in Virginia and its racial integrity law, but he believed that he "must not participate in the carrying out that law."[244] Davenport declined Plecker's requests. The

[242] Walter Plecker to Charles Davenport, September 21, 1925, Folder Plecker, W. A., Charles Benedict Davenport Papers, American Philosophical Society Library.

[243] Walter Plecker to Charles Davenport, October 3, 1925, Folder Plecker, W. A., Charles Benedict Davenport Papers, American Philosophical Society Library. Plecker hoped to prove that the Chickahominy Tribes are "one-sixteenths or more negro blood or one-fourth or more Indian blood." He asked the ethnologist's view on the blood quantum on whether the proportion of blood in Indian mixture to be "as the equivalent of one-fourth the amount of negro blood."

[244] Charles Davenport to Walter Plecker, October 5, 1925, Folder Plecker, W. A., Charles Benedict Davenport Papers, American Philosophical Society Library. Regarding Plecker's question on blood quantum of Indian mixture, Davenport responded that "it would be proper to add the intermixture in the proportion of the amount of negro blood."

eugenicists stopped responding to Plecker, presumably because of not wanting to be drawn into legal matters.

While Plecker was trying to prove Black mixture in the Chickahominy Tribe, he was also preparing to revise the 1924 act in the next General Assembly for 1926 to strengthen the bill, especially after the humiliating defeat of Sorrells and Winn's decision. Plecker asked Davenport for advice for the proposed bill, saying "I am particularly asking your judgement as to the interpretation of races… and ask whether you can suggest any improvement upon it."[245] Reviewing the amended bill, Davenport decided to help Plecker this time. Davenport suggested to clarify the term "race," which should mean "a color species or color group of mankind" and "[a]ny person belonging to any race, excepting the white or Caucasian is herein called a colored person."[246] In addition to clarifying the definition of "race," he advised that the bill should provide penalties for "cohabiting or sexual intercourse between the white and colored members" to prevent the "hybrid children" since most of such children were, according to Davenport, produced outside wedlock.[247] Davenport, however, hesitantly responded again in his letters that "[i]t is not appropriate for a Department of the Carnegie Institution of Washington to take part in a matter which has become one of politics and probably one in which there is a difference of opinion in any state." Although he agreed with Plecker's "attempts to keep pure the

[245] Walter Plecker to Charles Davenport, December 30, 1925, Folder Plecker, W. A., Charles Benedict Davenport Papers, American Philosophical Society Library.

[246] Charles Davenport to Walter Plecker, January 13, 1926, Folder Plecker, W. A., Charles Benedict Davenport Papers, American Philosophical Society Library.

[247] *Ibid.*

white population of Virginia," Davenport feared that such efforts would not be successful. Davenport considered that the only way to prevent intermarriage and "passing" for whites was to separate races completely as suggested by Earnest Cox, "but it seems hardly possible that either the white or the colored people of Virginia would consent to such wholesale transportation."[248]

Davenport was more realistic in tackling the race problem than white supremacists such as the Anglo-Saxon Clubs of America. Plecker, on the other hand, believed that it was the duty of the white race to "do what we can to hold off the evil day as long as possible, hoping that some revolution may occur changing the whole situation." Plecker urged Davenport to read the latest book written by Amy Jacques-Garvey, Marcus Garvey's wife, and "arouse the white public to the importance of the situation" so they can "even secure an amendment to the Constitution permitting Congress to appropriate money to return to Africa all negroes who will go." Plecker concluded his letter saying, "Let us, therefore, all join together in our efforts to secure adequate laws forbidding the intermarriage of races and maintain the white race in as great a state of purity as possible." Plecker's unrealistic plan, however, was not convincing to Davenport.[249]

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[248] Charles Davenport to Walter Plecker, December 23, 1925, Folder Plecker, W. A., Charles Benedict Davenport Papers, American Philosophical Society Library.

[249] Walter Plecker to Charles Davenport, December 28, 1925, Folder Plecker, W. A., Charles Benedict Davenport Papers, American Philosophical Society Library. Although Davenport gave some suggestions to the bill as Plecker requested, Plecker did not take his advice. In his letter to Davenport on January 15, 1926, Plecker explained his reasons for not changing the term "race" because the bill had already been sent to the House and Senate, and he believed the definition of race did not differ from the original one they had. Plecker also refused Davenport's advice on including a section about the "hybrid children" because he feared that it may "endanger the passage of the rest of the bill." See,

3. Preserving the Integrity of Indian Race

After Davenport's refusal to get involved in Virginia's political matter, Plecker came across with a supporter to join his cause. Outside Virginia, Plecker shared correspondence with an Indian leader named R. F. St. James (known as "Red Fox" James) from the American Indian Association in Denver, Colorado. The American Indian Association had a similar belief as the Anglo-Saxon Clubs in protecting the integrity of their own blood, except their goal was protecting the integrity of Indian race. R. F. St. James claimed that the American Indian Association believed "that all persons, if it be Indian, or white, with negro blood, we consider them as negro" and "should be classified as negro, no matter what part of the United States they are." He further elaborated: "The Indians in the state of Virginia that are mix with any percentage of negro blood should not be classified as Indians, but classified these Indian-mix-negro as negro, and should be subject to Jim Crow Law of the South. Indians that are real Indians should show evidence on trains that he or she is Indian and not negro. Again no person with negro blood can be entitle to membership of our organization."[250] R. F. St. James believed that the "one-drop" rule as well as Jim Crow laws should also apply to mixed-race Indians. Pleased to hear the statement of the American Indian Association, Plecker hoped to "tie him up with

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Walter Plecker to Charles Davenport, January 15, 1926, Folder Plecker, W. A., Charles Benedict Davenport Papers, American Philosophical Society Library.

[250] American Indian Association Inc., "The Proposed Plan of the Indian Home and Camp," August 26, 1926, Folder Plecker, W. A., Charles Benedict Davenport Papers, American Philosophical Society Library.

our move" and have R. F. St. James collaborate with him "to properly classify out Virginia mixed breeds." Plecker thought that having an Indian leader to properly categorize the Indians in Virginia would create a more accurate and convincing list.[251]

In another letter to Plecker, R. F. St. James explained his views on preventing the Indian race from mixing with Blacks. His explanation for the need for racial purity was based on religious rather than "scientific" like the eugenics community.

> We have a Negro problem on hand, we all must fight, and fight hard, and stirr[sic] up race pride in this respect. They are other Indian Organizations, both in the East and West, we know have in their membership Negro blood, and these organizations are somewhat sore at us, the stand we take, and these with both Indian and negro mixture are the ones causes trouble, because we oppose them, we will not stand for.
>
> …Yes, we are trying to go further and to discourage the mixture of Red and White, not in the same sence[sic] as to the Negro, far from it, but to help, with what little there is left, to preserve the pure native American Race in their purity. We talk about pure blood Horses, Cats, Dogs, and Cattle, why not human being, among the races. Almighty God, never intended the different races to mix by Blood, if such would had been the case, they would had been only one color, each race has a place on earth, and such help to each other, but not by mixture of blood, when this is done we are breaking Natures Law.[252]

A few days later, Plecker responded that he "will be glad to cooperate" with R. F. St. James "to preserve the purity of the races—Indian, Negro, and White." Although Plecker corrected that "pure Indians of Virginia and Indians of white blood only" does not exist, he was delighted to know that St. James was considering a visit to Virginia and warned him to "be sure before you recognize any groups as Indian and white without

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[251] Walter Plecker to Charles Davenport, September 1, 1926, Folder Plecker, W. A., Charles Benedict Davenport Papers, American Philosophical Society Library.

[252] R. F. St. James to Walter Plecker, August 26, 1926, Folder Plecker, W. A., Charles Benedict Davenport Papers, American Philosophical Society Library.

negro mixture that you give it very careful consideration." Plecker advised that "Should you admit any of these, the thinking white people will immediately put you in the same class with them."[253]

Plecker reported to Davenport about his new Indian ally "who seems to be very zealous about protecting the Indian race against intermixture with negroes." "I think, however, that they are rather eager to lose themselves in the white race," Plecker added.[254] Despite their mutual efforts in maintaining racial integrity, their relationships did not last long. Plecker did not mention R. F. St. James in further conversation with Davenport. It is unknown whether R. F. St. James visited Richmond to meet Plecker or created the list of Indians in Virginia. Their correspondence, however, resembles the alliance between the Anglo-Saxon Clubs of American and Marcus Garvey and his UNIA. Racial separatism and the ideology of protecting "racial purity" spread to some Indian groups and expanded outside Virginia. Those Indian groups adopted anti-Black sentiment and the concept of one drop-rule to their tribe. As we will explore more in the next chapter, Indians resisted being classified as Blacks and fought to maintain a separate racial identity.

[253] Walter Plecker to R. F. St. James, September 1, 1926, Folder Plecker, W. A., Charles Benedict Davenport Papers, American Philosophical Society Library.

[254] Walter Plecker to Charles Davenport, September 9, 1926, Folder Plecker, W. A., Charles Benedict Davenport Papers, American Philosophical Society Library.

4. "Mongrel Virginians"

At the Eugenic Records Office of Carnegie Institution, Davenport hired a sociologist and eugenicist named Arthur H. Estabrook to conduct research and report his findings to the ERO. After completing his doctorate from Johns Hopkins University, Estabrook joined the Eugenic Records Office from 1910 to 1929, and had appeared as a witness in the court case in Amherst County, Virginia, favoring the forced sterilization of Carrie E. Buck, who was deemed feebleminded and promiscuous by the state. During his research in Virginia, Estabrook came across a group of Indians living near the Blue Ridge Mountains whom he called, the "Ishes." Estabrook explained that for many generations the group was called the "Ishes" because "during Civil War, they were in a territory neither black nor white and they themselves were not classed as either," and therefore, "they were called the 'issue' people as there was discussion as to how they should be registered, black or white." Estabrook, however, later renamed the group as the "WIN Tribe" because they were considered a tri-racial people, a mixture of white, Indian, and Black. As early as January 1923, Estabrook reported to Davenport about his interest to conduct fieldwork on this group saying that "this Virginia work would interest you as there is the segregation and the intermarriage and the mental defectiveness." Together with Ivan E. McDougle, a sociologist at Sweet Briar College, they prepared a book based on their fieldwork on the "WIN Tribe," which was published in a book titled *Mongrel Virginians* in 1926.[255]

[255] Arthur Estabrook to Charles Davenport, January 28, 1923, Estabrook, Arthur H. Folder 4, 1923-1924, Charles Benedict Davenport Papers, American Philosophical Society Library; Coleman, *That the Blood Stay Pure*, 115.

Walter Plecker immediately showed his interest in Estabrook's research on Virginia Indians. Plecker claimed that these "free issues" are descendants of "free negroes" who are "making great efforts to pass either as Indian or as white" and "They have about to jumped the Indian stage, however, and are making a rush to register in our office as white."[256] Plecker corresponded with Davenport to secure evidence about the research on these "issues" done by Estabrook. He particularly considered that Estabrook and McDougles' work on pedigree charts of Amherst Indians would become useful evidence to back up his argument on Virginia Indians, especially after losing the Sorrells and Winns' cases.[257] Even before any of their report on the "WIN Tribe" was released, Plecker mentioned Estabrook and McDougles' research to prove Black mixture in Indian tribes. In a letter to Robert Glasgow in August 1924, for example, Plecker claimed that he already held evidence on research done by the two researchers at the ERO. "Dr. Arthur Estabrook of the Carnegie Foundation Fund has made a careful study of this tribe," Plecker confidently stated, and that "his report will be published soon."[258] Plecker also wrote to the editorial staff for the National Geographic Society in Washington, D.C.

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[256] Walter Plecker to Algred Powell, March 30, 1943, John Powell Collection, Albert and Shirley Small Special Collections Library, University of Virginia.

[257] Plecker also requested Arthur Estabrook to appear as a witness in the first case of Dorothy Johns. He believed that Estabrook's research on "a comprehensive study of this group of people [Amherst Indians]" "has been able to trace the ancestry of most of the families back to the origin." Plecker requested, "It is a matter of extreme importance as to whether or not we lose or win this case, and I beg you to give me what help you can in the way of information." Estabrook, however, did not show up to the court. See Walter A. Plecker to Arthur H. Estabrook, August 29, 1924, Clerk's Correspondence (Walter A. Plecker to A. T. Shields), 1912-1943, Library of Virginia.

[258] Walter Plecker to Robert Glasgow, August 14, 1924, Rockbridge County (Va.) Clerk's Correspondence (Walter A. Plecker to A. T. Shields), 1912-1943, Library of Virginia.

about their work on Virginia Indians to prove that the tribes "are thoroughly mixed now with negro and white."[259] Plecker now seemed to hold valuable evidence to prove his point. But the truth was that Plecker never received the report from the ERO.

In December 1924, Plecker asked Davenport about the progress on Estrabook and McDougle's book because he was anxious "to secure a copy as soon as it is out."[260] However, Davenport responded to Plecker saying that he had received the report by the two field workers but "it is not at present in shape for publication since the names are given." Davenport added that the report should be rewritten "in shape for publication as soon as Dr. Estabrook returns from the field."[261] While Plecker was waiting for the research to be published, he wrote back again to Davenport a few days later that the report would not be valuable to his office "unless the names were included, or unless we were furnished a key telling us who they are." Plecker wanted the report before any names were modified. He implored for the copy again, "Could you send us the report for our inspection and could we have the privilege of copying it?"[262]

Davenport consulted with Estabrook about Plecker's request. "Now what do you think of our doing this?," Davenport asked, "Do you feel that your understanding with the

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[259] Walter Plecker to Wm. D. Boutwell, November 24, 1925, Folder Plecker, W. A., Charles Benedict Davenport Papers, American Philosophical Society Library.

[260] Walter Plecker to Charles Davenport, December 18, 1924, Folder Plecker, W. A., Charles Benedict Davenport Papers, American Philosophical Society Library.

[261] Charles Davenport to Walter Plecker, December 20, 1924, Folder Plecker, W. A., Charles Benedict Davenport Papers, American Philosophical Society Library.

[262] Walter Plecker to Charles Davenport, December 23, 1924, Folder Plecker, W. A., Charles Benedict Davenport Papers, American Philosophical Society Library.

people (if any) that the information obtained is confidential would prevent copies of your report, with name, being made in this fashion?"[263] Plecker was also willing to make copies of the report on "a several carbon typewritten copies on thin white paper so that it might be distributed to persons who were particularly interested."[264] Estabrook, however, refused Plecker's offer, feeling that allowing Plecker to "have access to these names and data would involve us in a great deal of trouble and I fear publicity that would come back to hurt us." Estabrook believed that Plecker's purpose in offering to make copies of "the Isshy manuscript is due to the fact that he, himself, desires a copy to use, not only checking his own records, but to use in the various cases now appearing in Virginia courts where some of the Isshies are filing suits to compel the county clerk to issue either white or Indian registration cards under the recent Racial Integrity bill…" Estabrook further explained his uneasiness with Plecker's method on racial issues:

> The White America book and the new society started in Richmond "for the purity of the white race" is egging Dr. Plecker on, and while he says this is only "Virginia's attempt to settle the race problem", many people in Virginia feel that he is not attacking the problem correctly.
>
> …The matter of the data being confidential would not enter into this so much if Dr. Plecker did not wish to use this data in court and further, there would be no assurance on his part that his own copy might not become a public record on his own office.[265]

[263] Charles Davenport to Arthur Estabrook, January 14, 1925, Estabrook, Arthur H. Folder 4, 1923-1924, Charles Benedict Davenport Papers, American Philosophical Society Library.

[264] *Ibid.*

[265] Arthur Estabrook to Charles Davenport, January 17, 1925, Estabrook, Arthur H. Folder 4, 1923-1924, Charles Benedict Davenport Papers, American Philosophical Society Library.

In this letter, Estabrook showed Plecker's unfavorable reputation among white allies and the difference between academic and political approaches on how to "settle the race problem." Estabrook also did not want to be responsible for Plecker's misuse of their information at his office or in court cases to attack the mixed-race Virginians. Not trusting Plecker, Estabrook suggested Davenport write to Plecker that "until all the work on the Issies is completed, that nothing can be made public."[266] Davenport explained to Plecker as Estabrook suggested:

> After further consideration of the matter it appears that the studies made by Dr. Estabrook on the "Isshies" were obtained under a pledge of confidence, as indeed most of our work is. We fear, therefore, that we are only justified in continuing our usual practice of declining to give out these confidential records where there is some danger of their getting some publicity.
>
> Of course, we desire to be of use in the advancement of society but if the impression gets around that our promise of confidence is not to be relied upon that will be an end to our power to collect data the way we think is desirable to collect it.[267]

In March 1926, Estabrook and McDougle's report was published under the title *Mongrel Virginians: The WIN Tribe*. The book was a description of a eugenics study of the Indian groups in Amherst County. Estabrook used pseudonyms for the names of persons he interviewed and the location of the place to hide their identity: The "WIN Tribes," living in "Ab County," were socially isolated because of "their dark skin color." "The white folks look down on them" and considered the tribe to be "an inferior set."[268]

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[266] *Ibid.*

[267] Charles Davenport to Walter Plecker, January 19, 1925, Folder Plecker, W. A., Charles Benedict Davenport Papers, American Philosophical Society Library.

[268] Arthur H. Estabrook and Ivan E. McDougle, *Mongrel Virginians; the Win Tribe* (Baltimore: The Williams & Wilkins Company, 1926), 14, https://catalog.hathitrust.org/Record/001133405.

"The WIN Tribes" were described as "'low down' yellow negroes, as Indians, as 'mixed.'" Although the "Wins" claimed themselves as "Indian descent," Estabrook believed that "most of them realize they are 'mixed,' preferring to speak of the 'Indian' rather than of a possibility of a negro mixture in them."[269] Estabrook further degraded their characteristics that the whole "Win" tribe is "below the average, mentally and socially. They are lacking in academic ability, industrious to a very limited degree and capable of taking little training… In their social relationship they represent a very crude type of civilization." The book concluded with a copy of the Racial Integrity Act of 1924.[270]

After the book was published to the public, Plecker wrote directly to Estabrook: "I have been disappointed in not being able to secure from you and Professor McDougle the keys to the names of the families referred to in your book 'Mongrel Virginians.'" He praised the book as "a splendid work" and that it "would be of inestimable value to our office if we knew the real names of individuals referred to."[271] Moreover, Plecker persistently wrote to Davenport to seek permission from McDougle and Estabrook to "furnish us the key to the book, 'Mongrel Virginian', for use in our office."[272] Plecker continued:

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[269] Estabrook and McDougle, *Mongrel Virginians*, 14; Smith, *The Eugenics Assault on America*, 85.

[270] Estabrook and McDougle, *Mongrel Virginians*, 199, 200.

[271] Walter Plecker to Arthur Estabrook, September 9, 1926, Folder Plecker, W. A., Charles Benedict Davenport Papers, American Philosophical Society Library.

[272] Walter Plecker to Charles Davenport, December 21, 1926, Folder Plecker, W. A., Charles Benedict Davenport Papers, American Philosophical Society Library.

> You know, of course, that it is our problem to decide finally as to the racial status of the people of the State for the purpose of marriage and for their birth records. The charts contained in this book would be of inestimable value to us if we have the key as to the family names.
>
> …It would be a great pity for such a valuable piece of work not to be made available and to eventually lose its importance as it will, unless it is known as to the families to which reference is made.[273]

Davenport once again declined Plecker's request. Davenport said: "In view of the fact that the information received by our field workers is obtained under a pledge that it will be held confidential we would seem to be liable to a charge of misplaced confidence if we were to give the names, even to officials of the State of Virginia. Dr. Estabrook indicates that the pledge of confidence was actually given and it would be inappropriate for us to act counter to his pledge."[274] On a letter written by Plecker, Davenport made a handwritten note on the side saying, "No!"

5. Reinforcing Plecker's Power

Not all people trusted Plecker's method. In addition to the lack of trust in Plecker from the Eugenics Records Office, there were also disagreements between Plecker and residents of Virginia. There were, in fact, a few cases in which the Indians fought back against Plecker's methods by consulting private attorneys, and Plecker received some warnings to modify his actions. These warnings, however, did not stop his treatment

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[273] *Ibid.*

[274] Charles Davenport to Walter Plecker, January 4, 1927, Folder Plecker, W. A., Charles Benedict Davenport Papers, American Philosophical Society Library.

against Indians. Eventually, Plecker reinforced his power as state registrar to determine racial categorization.

In September 1942, William Kinckle Allen, an attorney for the Amherst Indians, wrote to Plecker requesting birth certificates for the members of his tribe. Plecker responded back to Allen a few days later saying that the office would send him the photostat copy of the birth certificates that had been requested. However, he added, "As the race is incorrectly stated, we will not issue a certificate without a note on the back showing that it is not accepted for record for race as written."[275] Plecker, as usual, pointed out the supposed Black ancestry in their Indian family and warned that they could not be accepted as Indian or as white but only as Black. He also did not forget to mention that as state registrar he was in charge of making sure all Virginians were recording their race in the correct way. Angered by Plecker's reply, Allen reported the registrar's action to John Randolph Tucker, a prominent attorney in Richmond.[276]

The next month, Tucker sent a warning letter to Plecker concerning the birth certificates of the Amherst Indians. "I find no where [sic] in the law," Tucker said, "any provision which authorizes the registrar to constitute himself judge and jury for the purpose of determining the race of a child born and authorizing him to alter the record as filed in his office by the local registrars." He ordered Plecker to provide a correct copy of the record "without comment from you and without additions or subtractions." Tucker

[275] Walter Plecker to William Kinckle Allen, September 23, 1942, John Powell Collection, Albert and Shirley Small Special Collections Library, University of Virginia.

[276] Smith, *The Eugenic Assault on America*, 95.

also warned Plecker by saying, "I hereby notify you that unless I obtain a prompt compliance with your official duties, as prescribed by law, I shall apply to a proper court for a mandamus to compel you to perform your duty as prescribed by the statute." Tucker continued:

> ...I have also before me a certified copy of the marriage certificate of these people in which their race is shown to be white. It would seem, therefore, that in this particular instance, not only have you gone beyond your duties as prescribed by law, but that the certificate which you have placed on the back of these birth certificates is contrary to the facts, as shown by the official records in Amherst County.[277]

A few days later, Plecker wrote to John Powell explaining what happened: "In reality I have been doing a good deal of bluffing, knowing all the while that it could not be legally sustained." He admitted, "This is the first time my hand has absolutely been called." Plecker described the incident with Allen and Tucker as "the worst backset which we have received since Judge Holt's decision."[278] Plecker followed the same tactics for a long time and without significant changes to them. Although Plecker received "the worst backset," he did not step down. Instead Plecker suggested to Powell that they strengthen their position by introducing legislation to the next General Assembly to allow the State Registrar to make notes on the back of the certificates.

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[277] John Randolph Tucker to W. A. Plecker, October 1, 1942, John Powell Collection, Albert and Shirley Small Special Collections Library, University of Virginia; Smith, *The Eugenic Assault on America*, 95-96.

[278] Walter Plecker to John Powell, October 13, 1942, John Powell Collection, Albert and Shirley Small Special Collections Library, University of Virginia; Smith, *The Eugenic Assault on America*, 98.

Until the new legislation was introduced to the General Assembly, Plecker continued his old tactics. He was unsatisfied by the local clerks on how they were categorizing Virginia residents when he found out that a few local registrars had been "granting them licenses to marry whites, or at least to marry amongst themselves as Indian or white."[279] In January 1943, Plecker sent an instruction to the clerks, midwives, and school authorities on how to ensure that colored people were not registered as white. He not only instructed but warned that those who attempted to grant licenses would be considered guilty of fraud and are "liable to a penalty of one year in the penitentiary."[280] To make the categorization easier for every local clerk at a registrar's office, midwives and doctors at hospitals, and school authorities, Plecker created a list of surnames by counties and cities that are associated with "Indian" or "colored" descendants. This list is now known as "Plecker's hit list" among historians and local residents who were harmed by Plecker's mistreatment.

In many letters written by Plecker, he boasted about the list of racial composition that was created at his office. In a letter written in 1937, he said, "Our office has possibly made a more extensive effort to establish the racial origin of the population of an entire state than any other on this country, or perhaps in the world."[281] Another letter written to

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[279] Walter Plecker to Local Registrars, Physicians, Health Officers, Nurses, School Superintendents, and Clerks of the Courts, January 1943, Rockbridge County Court Records, Clerk's Correspondence [W. A. Plecker to A.T. Shields], 1912-1943, Library of Virginia.

[280] *Ibid.*

[281] Walter Plecker to Mrs. MacLean, February 8, 1937, Folder Plecker, W. A., Charles Benedict Davenport Papers, American Philosophical Society Library.

John Collier as the Commissioner of Indian Affairs in April 1943 shows a disturbing comment by Plecker. A woman who claimed Indian status for her child's birth certificate complained to the Commissioner of Indian Affairs that she had been harassed and dishonored by Plecker. After reviewing her case, a staff member at the Commission mentioned that his list paralleled with the Nazis' racial genocide. Plecker, then, acknowledged the comparison with pride. Plecker said:

> We would be delighted to have you or your representative visit our office and examine the mass of original information and pedigree charts…showing the racial origin of mixed breeds trying to pass as Indian or white.
>
> Our own indexed birth and marriage records, showing race, reach back to 1853. Such a study has probably never been made before. Your staff member is probably correct in his surmise that Hitler's genealogical study of the Jews is not more complete.[282]

On February 22, 1944, the General Assembly approved a new law allowing the state registrar to have control of making decisions about the racial category of Virginians. The amended statement says:

> Whenever the State Registrar is requested to furnish a certified copy of a birth, death, or marriage certificate of a person and the records in his office or other public records concerning such person or his or her parents or forebears are such as to cause the Registrar to doubt the correctness of the racial designation or designations contained in the certificate, copy of which is requested, it shall be the duty of the State Registrar to enter upon the backs of the original certificate and certified copy an abstract of such other certificates or records, showing their contents so far as they are material in determining the true race of the person or persons named in the original certificate and the certified copy, with special reference to the records, indicating where same are to be found open to public inspection.[283]

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[282] Walter Plecker to John Collier, April 6, 1943, John Powell Collection, Albert and Shirley Small Special Collections Library, University of Virginia.

[283] Smith, *The Eugenic Assault on America*, 99.

This revised version of the law, effected on June 24, 1944, extended Plecker's authority. The "worst setback" that prompted Plecker to seek new law gave him authority to continue what he had already been doing for decades. He was now able to write "Classified by the state registrar as colored" on the back of the certificate whenever he believed the applicant was making false claims about their race.[284] The legislature was unable to define race clearly in the laws passed in 1924-1930, yet they empowered Plecker to use his own judgement. Now given the power to make his own independent judgments, Plecker attempted to get rid of all Indians in Virginia by simply erasing their racial category in any certificates that came to his desk. "The Bureau of Vital Statistics is now making a determined effort to eliminate the false 'Indian' term as to race from all of our records," he claimed.[285] Instead Plecker instructed the clerk in Amherst County that "The word 'Mixed' without the 'Indian' would be better, but the term 'Colored' is preferred."[286] Plecker instructed how to categorize the Indians on certificates in a similar letter sent to Algred Powell, on March 30, 1943, explaining, "On your birth certificates, please be careful to indicate the color as colored or 'issue.' …'Mixed' is not a desirable term, but in an emergency it might be accepted with the understanding that it always

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[284] Walter Plecker to M. L. Williams, April 17, 1944, John Powell Collection, Albert and Shirley Small Special Collections Library, University of Virginia.

[285] Walter Plecker to E. C. Lacy, February 3, 1943, John Powell Collection, Albert and Shirley Small Special Collections Library, University of Virginia.

[286] Walter Plecker to William E. Sandidge [Clerk of the Circuit Court, Amherst, Virginia], February 3, 1943, John Powell Collection, Albert and Shirley Small Special Collections Library, University of Virginia.

means colored and cannot be interpreted as 'Mixed Indian,' which they would try to do."[287] The amended law not only gave Plecker control of every registration and certificate that passed through his office, but also strengthened Plecker's position by giving him the power of unilaterally deciding the race of all Virginians. Until he retired in 1946, Plecker continued to refuse any application that listed an applicant as Indian.

"To what racial category do you belong?" This question was repeated in the history of anti-miscegenation law and Virginia's racial regime. In the case of the Racial Integrity Act of 1924, Walter Plecker believed that there were only two racial categories – Black or white. He could not conceive of a society in which there were more than two races. Plecker spent his time as a state registrar asking which race Virginians belonged to and divided people between the only two categories that he thought were appropriate. He decided that anyone claiming white-Indian blood was, in fact, Black because he believed there were no native Indians in Virginia unmixed with Blacks. Although Plecker faced oppositions from other white elites, eugenicists, and the Indigenous community, he did not listen to the claims of those who opposed him and used his power as a state registrar to deny the race on any official certificates that he considered incorrect. He would simplify the problem of categorization of races by making it into a bi-racial issue, saying that there are no Indians in Virginia. He then, rejected the use of the term "Indian." As a result, one law and one man were eliminating the legal existence of Virginia's Indians. They nearly became Virginia's "vanished race."

[287] Walter Plecker to Algred Powell, March 30, 1943, John Powell Collection, Albert and Shirley Small Special Collections Library, University of Virginia.

CHAPTER FOUR: CHALLENGING THE RACIAL CLASSIFICATION

During the Second World War, a group of Virginia Indians challenged their racial identity in military drafts. Indian men registered with local boards to fight the war but their enlistment in the selective service resulted in debates on defining the race of Native Americans. The Selective Service System, unsure how to classify the Indians, decided to follow Virginia's legal definition of race in the Racial Integrity Act of 1924 and ordered local draft boards to prevent Indian men from training or fighting with white men. Virginia's state officials, therefore, listed any persons who claimed themselves as Indian as "Colored" and assigned Virginia Indians with the African American military units. Indians, however, refused to join the military force when they were told to serve in the Black units. Tribal leaders protested against the Selective Service System to claim their racial status as Indian. These protesters' voice reached to the nation's capitol but the federal officials instructed that the local boards should solve the racial designation of American Indians. With the local officials holding authority over determining the race, the local and state officers were put in a position to decide who was white and not white. Many Virginia Indians had to prove their Indian identity to fight in the war. This chapter examines the debates on deciding who is an Indian or white and the challenges Native Americans faced to protect their Indian identity during wartime.

As Indians struggled to maintain their racial status, they gained support from white advocates who supported their Indian identity. This chapter also shows examples of local residents and white allies working with Indians. White advocates argued in the

debates over racial classification of Indians in military draft services to make sure they were not listed as Blacks. Some whites were concerned that Plecker's action had gone too far and his influence was hurting the Indian community. Feeling sympathetic to the Indians, white advocates supported the Indians and fought back against the state registrar who continued to have powerful influence on enforcing the Racial Integrity Act. These white allies strategically planned to protect Indians' identity. A local Virginian, for instance, worked with each Powhatan tribe and suggested they should update their tribal enrollments to list members who are only Indian or Indian-white. Moreover, he often wrote to the governor of Virginia or the editor of a local newspaper to rebuke Plecker's malicious acts on Indians. By arguing that Indians were unfairly mistreated in Virginia, white advocates hoped to rectify the injustice done to their Indian neighbors.

1. American Indians' Enlistment during World War Ⅱ

In September 1940, the U.S. Congress passed the first peacetime military draft and President Franklin D. Roosevelt signed the law two days later under the title of the Selective Training and Service Act of 1940. The following month, all male citizens between the ages 25 to 36 were required to register for the draft and, later, waited for the selection by lottery for military duty. The Selective Service System had been established in 1917, immediately after the U.S. became involved in World War, under the passage of the Selective Service Act of 1917. This statute required racial identity "in the registration process, but it did not influence a registrant's liability for military training and service in any particular." Furthermore, the Selective Service System "placed no restriction upon

racial groups" besides "the legally imposed limitation against the drafting of noncitizen Indians." Noncitizen Indians could join the military only as volunteers because Indian tribes who lived on tribal land were not considered citizens.[288] In addition to the previous statute, the Selective Training and Service Act of 1940 included more "positive" provisions against racial discrimination. For instance, the amended 1940 Act stated, "the obligations and privileges of military training and service should be shared generally in accordance with *a fair and just* system of selective compulsory training and service." Moreover, "any person, regardless of race or color, between the ages of 18 and 36 (later 18 and 45), shall be afforded an opportunity to volunteer for induction into the land or naval forces." And finally, the selection of registrants was to be conducted in "an impartial manner" and the training of those inductees must be done "without discrimination 'on account of race or color.'"[289]

The purpose of the additional provisions in the 1940 Act was to provide legal protection to all racial minority groups, which was supposed to guarantee "protection of the weak as well as the strong." The Selective Service System incorporated the provisions against racial discrimination "as an integral part of the original statute after extended consideration for safeguarding the rights of racial and color minorities in the operation of the program."[290] This provision was included through the efforts of Black organizations

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[288] Selective Service System, *Special Groups: Special Monograph 10* (Washington, U.S. Government Printing Office, 1953), 2.

[289] Selective Service System, *Special Groups*, 3.

[290] Selective Service System, *Special Groups*, 41.

such as the Committee on Participation of Negroes in the National Defense Program, the National Association for the Advancement of Colored People, and the *Pittsburgh Courier*. After several revisions made in the provision, the 1940 Act finally declared: "there shall be no discrimination against any person on account of race or color."[291] Although minority groups were supposed to be legally protected under the 1940 Act, the decision of "separate but equal" ruled in *Plessy v. Ferguson* was applied to public facilities expanding to military units. The Selective Service System did not see a problem that African Americans served in Jim Crow units. As long as Blacks and whites were treated equally, segregation of Blacks from white units was not considered discrimination.[292]

On the other hand, federal law had long prohibited segregation of American Indians from whites in military units. Most Indians were drafted as whites and fought the war with white men during World War I, except for noncitizen Indians. Special arrangements were made during the registration on reservations for the non-citizen Indians. Registration boards were established on each Indian reservation under the direction of the Commissioner of Indian Affairs where noncitizen Indians could register to volunteer. For citizen Indians, they were given registration cards at their local boards

[291] Selective Service System, *Special Groups*, 44.

[292] Paul T. Murray, "Who Is an Indian? Who Is a Negro? Virginia Indians in the World War II Draft," *The Virginia Magazine of History and Biography* 95, no. 2 (1987): 217-218. For more details about African American men and institutional racism in military drafts, see Paul T. Murray's article and his dissertation. Paul T. Murray, "Local Draft Board Composition and Institutional Racism," *Social Problems* 19, no. 1 (1971): 129–37, and Paul T. Murray, "Blacks and the Draft: An Analysis of Institutional Racism, 1917-1971" (PhD diss., The Florida State University, 1972).

and they were classified the same as other citizens of the United States. By the time the drafts for World War II started, Indian tribes had been granted citizenship under the Indian Citizenship Act of 1924, and therefore, all Indians were able to participate in the draft regardless of their tribal land.[293]

Native Americans served in the war and supported the country's involvement in war through many ways despite the oppression they had received from the country. Native people had served in the armed forces for many reasons since the American Revolution: to defend their tribal homelands, keep treaty promises, explore new places, get an education, continue family tradition to serve in the war, or get out from poverty. By World War II Indians heard stories about Nazi Germany and the Japanese military assaults in Europe and Asia, and they related them to their own experiences of oppression and loss of land. Moreover, a sense of national identity as Americans emerged among many Indians, motivating many tribes to join and support the United States in defending the country from foreign attacks. Native people considered themselves as tribal members as well as citizens of the United States. Therefore, despite all the promises broken by the United States and the mistreatment they had received, the country was still their land and it was worth fighting to defend their homelands.[294]

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[293] United States Provost Marshal General's Bureau and United States War Department, *Second Report of the Provost Marshal General to the Secretary of War on the Operations of the Selective Service System to December 20, 1918* (Washington, D.C., Government Printing Office, 1919), 32-33, 197; Kenneth Townsend, *First Americans: A History of Native Peoples* (New York: Routledge, 2018), 479-481; Kenneth William Townsend, *World War II and the American Indian* (Albuquerque: University of New Mexico Press, 2000), 86.

[294] Alexandra N. Harris and Mark G. Hirsch, *Why We Serve: Native Americans in the United States Armed Forces* (Washington, D.C.: Smithsonian Institution, 2020), 1-3, 97; Townsend, *First Americans*, 482. Kenneth Townsend explains the motivation and reasons to understand why Indians

By November 1941, prior to the attack at Pearl Harbor, nearly 42,000 Indian men filed their names with the Selective Service System. But only 4,500 Indian men successfully entered the military service by 1945. The reason behind the lower number of Indian men selected in the draft despite high volunteerism was because many Indian men did not pass educational or physical standards. The Selective Service System considered one-third of the Indians to be "unfit" for military service and rejected their enlistments. The registration rate was still considered high and the number of Indians who voluntarily enlisted in the draft was impressive. John Collier, the Commissioner for the Bureau of Indian Affairs, boasted the number of Indians volunteering for the war. He reported to the press that volunteerism of Native Americans surpassed any other races in the United States, including whites. Another observer mentioned, "if the entire population enlisted in the same proportion as Indians, there would be no need for selective service."[295] However, the exact numbers of Native Americans who were enlisted in the war remains uncertain. The Selective Service System did not create procedures on classifying race. Indians with dark skin were drafted in the African American units, while Indians with lighter skin were enlisted as whites. Moreover, nearly 800 Native women served in the

served the war on chapter, "American Indian Enlist," in his book, *World War II and the American Indian*.

[295] Townsend, *First Americans*, 480; Townsend, *World War II and the American Indian*, 61-66. Townsend explains that medical services had improved on reservations, but disease and malnutrition were still prevailing on reservations and poverty was common among draft registrants.

armed forces but Collier did not keep lists of servicewomen as he did with the list for Native servicemen.[296]

By October 1942, the number of Indian enlistments had increased to 10,000. The Selective Service System published a monograph titled, *Special Groups*, and later reported that by April 1945, "21,767 Indians served as enlisted personnel in the Army, 1,910 in the Navy, 723 in the Marine Corps and 121 in the Coast Guard." More than 24,000 Indians on reservation and 20,000 off-reservation Indians fought during World War II.[297]

The Selective Service System had no national standard definition of race for registering inductees. The local boards were in charge of registering and classifying men into the armed forces. Inside the minute book used by the local boards listed two columns, which indicated only two races: "Colored" and "White." When registering the names of draftees in the two columns, the Selective Service officials at local boards often followed the racial classification defined by their own state.[298] But as soon as the Selective Training and Service Act of 1940 was enacted, Selective Service officials began receiving questions regarding the determination of race. Native Americans along

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[296] Harris and Hirsch, *Why We Serve*, 6-7. For more about Native women and their contributions during the war, see, William C. Meadows, "Native American 'Warriors' in the US Armed Forces," in *Inclusion in the American Military: A Force for Diversity*, ed. David E. Rohall, Morten G. Ender, and Michael D. Matthews (Lanham: Lexington Books, 2017), 93, 98-100.

[297] Selective Service System, *Special Groups*, 8; Meadows, "Native American 'Warriors' in the US Armed Forces," 91.

[298] Lewis B. Hershey to General Richardson, State Director of Selective Service, December 5, 1940, Central Files, 1940-1947, Record Group 147, Decimal File 105.1, National Archives and Records Administration; Murray, "Who Is an Indian? Who Is a Negro?," 217-218.

with Portuguese, Puerto Ricans and "Negro-white" racial mixtures were frequently questioned on how to register their races during military enlistment, while Japanese Americans were questioned on determination of Japanese ancestry.

Several states voiced similar concerns on how to categorize the inductees who claimed their races as other than Black or white. Virginia had the largest number reported in cases involving race determination, and North Carolina reported the second largest number. In Louisiana, the Selective Service System experienced difficulties on how to racially determine the Creole population.[299] In Chicago, for instance, the Selective Service officials questioned whether "Orientals," Filipinos, and Indians should be classified in the minute book as "White" or "Colored." The local officer asked, "I deduce in my own mind that the whites are listed in one column and all other races in the second column, but would like to have your confirmation." Similarly, Colorado's state director asked the Selective Service System because he could not decide how to register the races of Japanese, Indians, and Filipinos. Local and state officials across many states expressed their confusion when registering race within only two racial categories.[300]

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[299] Selective Service System, *Special Groups*, 72. *Special Groups* reported: "Instances also occurred in California, Delaware, Maine, Massachusetts, New York, Ohio, Pennsylvania, and other States. Some reached to the courts, but most were adjusted within the System by the local boards alone or through State and National Headquarters working with the boards."

[300] Stanley R. McNeil to Gareth Brainerd, November 15, 1940, Central Files, 1940-1947, Record Group 147, Decimal File 105.1, National Archives and Records Administration; Harold H. Richardson to C. A. Dykatra, November 25, 1940, Central Files, 1940-1947, Record Group 147, Decimal File 105.1, National Archives and Records Administration.

2. Racial Categorization of Virginia Indians in the Military Selective Service System

Virginia particularly received many reports on determining the race of Indians. When the first draft was issued for World War II in October 1940, Virginia Indians believed they would join the service as "whites" again as they did in the previous war. However, the Racial Integrity Act of 1924 and the amendment in 1930 that redefined the racial categorization of "any person in whom there is ascertainable any negro blood" as a "colored" person, once again blocked the paths of Indians. Because the Selective Service System followed Virginia's legislation and accepted only two racial categories, it turned the racial determination of Native Americans in military drafts into complicated debates.

The first case appeared on December 6, 1940, at a local draft board in King William County. B. C. Garrett, Jr., Secretary of the local draft board, wrote to the State Headquarters for Selective Service in Richmond, Virginia, to clarify the racial status of registrants who claim to be Indians. Mills F. Neal, state director of Selective Service in Virginia, received the letter from Garrett, who believed the Indians in his county were "heavily mixed blood" and "it is the consensus of local opinion that they are more of negro or white blood than any other." Garrett asked whether his local board "has the authority to classify these registrants according to its own judgement or whether we shall take the registrants' racial classification of themselves." He was also aware that "these people were classified as Indians" in the previous war.[301]

[301] B. C. Garrett, Jr. to State Headquarters for Selective Service, December 6, 1940, Central Files, 1940-1947, Record Group 147, Decimal File 105.1, National Archives and Records Administration; Murray, "Who Is an Indian? Who Is a Negro?," 220.

Chickahominy Indians took actions against the local board in King William County for classifying Indians in "Negros" military units. In February 1941, Chickahominy's tribal leader, J. L. Adams, sent a letter to the Selective Service System, Virginia's governor James H. Price, and Secretary Harold Ickes of the Department of Interior. In the letter, Adams denied any past association or intermarriage with African Americans. In addition, Adams stated that their tribe had separated their children from Black schools and had them attend their own tribal school at the Sharon Indian School. Adams also reminded that "the other time our boys registered [during World War I], they registered as Indians and went with the whites." Adams argued, "now, it seems as if they want to send us with the colored. We don't mind our boys going if they can be sent right and not with the colored."[302] Secretary Ickes forwarded Adams's letter to General Lewis B. Hershey, the director of the Selective Service System, with a note saying, the Chickahominy Indians possess "a definite Indian heritage apart from both whites and blacks." After receiving the letter, Hershey returned the issue to where he thought it should belong— back to Mills F. Neal, the director of Virginia's Selective Service.[303]

Neal received a similar letter from Bertha Wailes, a professor at Sweet Briar College in Amherst County. Wailes protested the classification of two Indians whose ancestry she believed to be white, Indian, and "a little Negro" blood. She explained that Amherst Indians have separated their community from the Black population for a

[302] Murray, "Who Is an Indian? Who Is a Negro?," 221; Townsend, *World War II and the American Indian*, 91.

[303] Townsend, *World War II and the American Indian*, 91-92.

hundred years and "have consistently kept to themselves from the Negro race, having their own school and church… They are not negroid in appearance having straight hair and coppery hued skin."[304]

After receiving letters concerning the classification of Indian draftees, Neal asked advice from Walter Plecker. Not surprisingly, Plecker responded that his office at the Virginia Bureau of Vital Statistics had done "years of exhaustive research and study" and they "fail[ed] to find that there is a native born Indian in the State who is unmixed with negro blood." Plecker believed the Virginia Racial Integrity Act was the solution to determine all races, and reminded Neal that under the law "designate anyone as a negro or colored person with any ascertainable degree of negro blood." "We classify all native people in Virginia claiming to be Indian as negro," Plecker answered in his usual tone, and urged Neal to reject their request.

Contrary to Plecker's advice, Neal believed that local draft boards did not have "lawful authority to give any consideration to a registrant's creed or color." Neal, therefore, advised Garrett that the local board at King William County should not follow the position taken by the Virginia Bureau of Vital Statistics. As a temporary solution, Neal issued a memorandum to all local boards on February 1941 to delay the induction of men who claimed to be Indians.[305]

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[304] Murray, "Who Is an Indian? Who Is a Negro?," 220-221.

[305] Mills F. Neal to Chairman, Local Boards, Selective Service, King William County, King William C.H., Virginia, December 19, 1940, Central Files, 1940-1947, Record Group 147, Decimal File 105.1, National Archives and Records Administration; Murray, "Who Is an Indian? Who Is a Negro?," 221-223.

On March 3, 1941, the War Department stepped in to clarify the racial situation in Virginia. The Adjunct General at the War Department, J. W. Boyer, ordered that "Trainees of all races other than negro or part negro will be assigned the same as white trainees." Boyer added, "In questionable cases," however, "the War Department will be guided by the classification given these types by the local boards concerned, since such local boards have the most intimate knowledge of ancestors and associates in communities." Although the War Department was fully aware of the nondiscrimination clause in the 1940 Act, Boyer believed that local boards should clarify any questionable cases after investigation and classify all registrants as white except for those who are considered as "Negro or part Negro." This order instructed by the War Department approved local boards to use physical appearance of registrants and their connection with the African American communities as determining factors of race. Additionally, the local officers at the Selective Service System took full responsibility for determining who was white and who was non-white.[306]

Neal was unsatisfied with the War Department's order. He strongly believed that local boards had no legal authority in determination of the inductees' race. Neal pointed out Paragraph 326 in the Selective Service Act: the duty of the local boards is to classify whether a man "without regard for his race, creed or color, is Class I-A or some other class."[307] When Neal pointed out the non-discriminatory clause in the 1940 Act, Boyer

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[306] Selective Service System, *Special Groups*, 71; Murray, "Who Is an Indian? Who Is a Negro?," 223; Townsend, *World War II and the American Indian*, 92.

[307] *Ibid.*

reiterated that local boards are responsible to determine the racial status of Indians because they "could take into consideration whether their associates are Negroes and whether they are treated as whites." Boyer further clarified that the local boards are responsible to determine the "ethnic origin" of all registrants. "If such men arrived at the reception center without an acceptable racial designation," Boyer ordered to "assign them to units of the all-white Virginia National Guard."[308]

Still unsatisfied with Boyers' order, Neal sought advice from the director of the Selective Service System, General Hershey. Hershey, however, agreed with Boyer's statement on local boards taking authority over determining the registrant's race.[309] On April 29, 1941, Neal received instructions from Hershey:

> Under Army Regulations, a man is considered to be colored who has any ascertainable Negro blood. In order for local board to properly fill out its forms, it is necessary for it to make a finding in connection with each registrant as to whether he is white or colored as specified in the above-mentioned War Department Regulations. Consequently, it is requested that you instruct your local boards to make such determinations."[310]

Responses from these federal officers, instructing Neal and the local boards to solve the racial designation of American Indians, parallels the Virginia legislature's decision to let Plecker handle the issue on his own. Hershey did not specify on how to solve the racial categorization of Virginia Indians. Instead, he suggested that the issue was under the jurisdiction of local boards, and they were responsible in making racial determination.

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[308] Murray, "Who Is an Indian? Who Is a Negro?," 223-224.

[309] *Ibid.*

[310] Selective Service System, *Special Groups*, 72-73.

Hershey's letter, furthermore, implied that Army Regulation follow the similar racial definition used in the Racial Integrity Act. Regardless of the nondiscriminatory provision in the 1940 Act, Hershey acknowledged racial separation within the Army.

Neal continued to oppose his supervisors. After he received orders by Boyer and Hershey, Neal went against the orders and registered seven Virginia Indians who refused to join the Black inductees as "Indian mix." He then sent those Indian inductees as "white recruits" to the white training facility at Fort Meade, Maryland. When the Indian men arrived at the camp, however, they were rejected by the commanding officer and were sent back to the local board for reclassification as Blacks. Neal worked to find solutions for these returning men but the following month, he was still considering the racial status of these Virginia Indians. Neal and his staff worked throughout the entire summer and autumn. But after the Japanese attack on Pearl Harbor, the local board decided to postpone the decision on Indians' racial identity.[311]

The following year, the War Department issued Memo 336 on January 7, 1942, to solve the ongoing issue of racial status of Indians. In addition to the earlier decisions made in March 1941 by Boyer, the memo declared that when the registrant's race and his "Indianess" was unsure, the local boards could delay the induction for investigation not exceeding sixty days for "induction of persons registered as 'Indian' pending the proper determination of classification (White or Colored)."[312] The memo also instructed local

[311] Townsend, *World War II and the American Indian*, 92-93.

[312] Townsend, *World War II and the American Indian*, 93.

boards to classify registrants as "Colored" for Indians with any "ascertainable Negro blood" and to consider "whether their associates are Negro and whether they are treated as Whites in the social patterns of their community and State." Memo 336 was designed to solve the issue of determining racial identity for at least 170 men who currently had claimed as Indians.[313] But instead, the memo simplified the problem of racial classification and admitted the determination of a registrant's racial status to be entirely under the authority of local officials.

After the memo was ordered, Neal abandoned his previous views. Neal released the memorandum to all Virginia draft boards with a note stating, "Due to the wide variation in their ethnic origin, it appears impossible to classify them as a group." And therefore, Neal ordered all local boards that it has been "determined that it is encumbent upon Local Boards—under the law—to make a finding of facts as to the ethnic origin of each individual Registrant, and that he be classified as White or Colored as the result of this individual study." Neal allowed local board officials to be in charge of determining "ethnic origin" of individuals who were unsure of their "Indianess" and admitted the binary racial categorization in the military similar to the Racial Integrity Act.[314]

As soon as Neal announced his orders, the local officials at Amherst County registered several men who claimed themselves as Indians as "Negroes." On January 22, 1942, William Kinckle Allen, an attorney representing the Amherst Indians, wrote to the

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[313] Townsend, *First Americans: A History of Native Peoples*, 485-486.

[314] Murray, "Who Is an Indian? Who Is a Negro?," 224; Memorandum No. 336, from State Headquarters for Selective Service, State Office Building, Richmond, Va. to All Local Boards, January 7, 1942, Frank G. Speck Papers, American Philosophical Society.

Selective Service officials in Virginia and Washington, D.C. to defend their racial identity. His defense was that the local boards at Amherst County classified these men as a group, and did not consider each of them individually. Allen admitted that some Indians may have Black ancestry, but the majority of them were mixed with whites or "kept their own Indian strain pure." Allen also acquired testimony from Isabel Wagner, a teacher at St. Paul Mission in Amherst, who testified that the Amherst Indians did not have association with Blacks and they were drafted with the whites during World War I. But the Amherst County board was not convinced by Allen's protest and the evidence provided by the community members. At the January 30 local board meeting, they classified the Amherst Indians as Blacks. [315]

On March 25, 1942, the director of Selective Service changed the policy regarding race determination. George H. Baker, at the national headquarters of the Selective Service, advised "local boards to list registrants as to race in accordance with their own claims, unless there was definite reasons for not so doing." If the local board "listed a man's race otherwise than he claimed, it was to prepare in writing and place in his file, folder or Cover Sheet (DSS Form 53), the reason for so doing." The new policy further stated: "In the event the registrant protested this designation, his case was to be referred to the State Director. If the State Director was unable to determine race conclusively, he was in turn to refer the case to National Headquarters for final

[315] Murray, "Who Is an Indian? Who Is a Negro?," 224-225.

disposition. The decision was to be made on the individual merits of each case."[316] While Memo 336 and earlier policies placed the responsibility on local boards to identify registrants' race based on physical appearance or how the community treated him, this new policy allowed individuals to protest their racial designation and have their claims heard above the local jurisdiction if their racial status did not satisfy the local officials.

Many local boards did not favor this new policy. F. C. Drummond, chairman of the local board in Amherst County, ignored the new policy and replied that their local board "has gone on record as determined to induct these people as negroes, if they are inducted at all, because all members of the board know that they are mixed breed of people, having perhaps more negro blood than any other strain."[317] Despite the national policy, the local board did not change the racial classification of Amherst Indians.

In the meantime, the Selective Service System conducted the third registration for the draft on February 16, 1942. A group of Chickahominy Indians showed to sign up on the registration day. Both the Eastern Chickahominy and Chickahominy filed their names for the draft and waited their orders for induction. In early summer when they entered the camp, however, the Chickahominy men realized they had joined the Black training camps. For instance, Billy Stewart, a member of the Eastern Chickahominy Tribe, who was drafted with the other Chickahominies in 1942, noticed at the induction center that he was the only Indian surrounded by all Blacks. Stewart assumed that he had arrived at

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[316] Selective Service System, *Special Groups*, 73-74; Murray, "Who Is an Indian? Who Is a Negro?," 226.

[317] Murray, "Who Is an Indian? Who Is a Negro?," 226.

the wrong date and talked to the person who was in charge. But Stewart was told that he came on the right day. At that moment after he had arrived at the induction center, Stewart found out that his birth certificate was crossed out "Indian" to "Colored." All Chickahominy men including Stewart refused to leave their barracks until they were reclassified as "White" or "Indians." Many other tribal members, in fact, later found out that their racial designation on birth records had been altered without noticing when and how Plecker changed it.[318]

The Chickahominy Tribe's chief Oliver Adkins protested to the War Department and Governor Colgate Darden. In his letters, Adkins explained how "Indians are not trying to avoid the draft or serving in the United States Army" but are denying the racial classification his men received. The chief reminded that their tribe had been reorganized in 1893 by the state as "independent Indians," and since then, they had built their own tribal school and church strictly for the tribal members. Adkins also stressed that the tribe had banned intermarriage of their tribal people with African Americans.[319] Adkins questioned, "What have we to fight for, for the individuals who deny us our Birth Rights in a civic way of living, and to classify us to a creed that we do not belong, to which we may be mistreated as Negroes?" "My people are American Indians of the State of Virginia," Adkins claimed, and "The youth is called to serve the country but I am sure they will not go to the Army and fight for those who misrepresent the Government and

[318] Elaine and Ray Adkins, *Chickahominy Indians-Eastern Division: A Brief Ethnohistory* (Xlibris Corporation, 2007), 117.

[319] Townsend, *First Americans*, 486.

take away our rights as American Indian people of this State." Finally, Adkins argued, "They will not go as Colored or as Negroes."[320]

Chief Adkins further explained the reasons why Indians must not be classified with the "Negroes":

> The White people have their place, the Negro have his place but the Virginia Indian has no place or voice in the Government. Therefore I pray to our Great Spirit the Father, and to your society as a sacred Body for assistance to my people to stand again to speak with justice so that dignity should be found within them, and not to be treated as slaves and shall not be classified as Negro as it is not our Creed.[321]

Despite Chief Adkins's plea, Governor Colgate Darden did not take major actions in solving the racial classification. Darden's correspondence with Indian leaders in his home state, in fact, reveals that the governor was not a very enthusiastic supporter of Indians. Not wanting to upset his Indian neighbors, the governor simply replied that he has "nothing to do with the classification of selectees" and suggested Chief Adkins communicate directly to the War Department and Virginia Senators. Governor Darden considered racial designation in the military a federal issue and not a state problem.[322]

Indian leaders reported the issue to the federal offices in Washington, D.C. as Governor Darden had suggested. Chief Adkins's letter was forwarded to the Military Personnel Division. Upon receiving the letter, General Ickes, the Secretary of Interior,

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[320] Oliver Adkins to Colgate Darden, August 28, 1942, Executive Papers, Gov. Colgate Darden, Library of Virginia.

[321] *Ibid.*

[322] Colgate Darden to Oliver Adkins, September 1, 1942, Executive Papers, Gov. Colgate Darden, Library of Virginia.

mentioned to Hershey that the Chickahominy Tribe had no associations with Blacks or whites and the tribe would be "grievously hurt" if they were classified as "Negroes."[323] It remains unclear how the federal offices were involved in the case of Chickahominy Indians, but the tribe did not have any records showing that they were associated with Blacks and won the reclassification with an exceptional case. The local board reclassified the Chickahominy as "Indians," while the Eastern Chickahominy was listed as "nationality unknown" and were sent to the white training facility.[324]

The Chickahominy tribes were not alone in the fight. The chief of the Pamunkey Tribe, Walter S. Bradby, was also alarmed when the Pamunkey Indians noticed the War Department might classify their men as Blacks. Chief Bradby wrote a petition to Governor Darden arguing that being categorized as "Negro" means "taking our Indian race, descent and traditions from us, and from beloved Reservation, destroying that which we hold so dear." The chief protested on behalf of all his tribal men who were sent to the armed forces:

> If any of us should be able to render conspicuous service in the war, or should give his life for his country, can we point with pride that he is one of our Pamunkey Tribe of Indians… Is our pride and happiness to be made a casualty of this war? …Rather would we, that the Government – in its power – kill us one by one.

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[323] Murray, "Who Is an Indian? Who Is a Negro?," 225.

[324] Murray, "Who Is an Indian? Who Is a Negro?," 227; Townsend, *World War II and the American Indian*, 95; Townsend, *First Americans*, 486; Helen C. Rountree, "The Indians of Virginia: A Third Race in a Biracial State," in *Southeastern Indians Since the Removal Era*, ed. Walter L. Williams (Athens: University of Georgia Press, 2009), 44.

Chief Bradby explained their tribal heritage and Pamunkey's traditions saying: "How proud we are of our age-old Reservation, allotted to us by the Commonwealth of Virginia, of our Indian race, descent and traditions, only we can know and feel." Chief Bradby questioned, "Only two classes – white and negro?," and explained that classifying their tribal members as a "colored" would "be an act of death to us – death to what we so value in life – our Indian heritage, race, descent and tribe." Finally, Chief Bradby pleaded, "We beg, we implore, we pray you to use your influence to prevent this death sentence upon us."[325] The Pamunkey Indians wrote their petitions to the Selective Service System, the War Department, the Interior Department, the Bureau of Indian Affairs, War Manpower Commission, and the White House. Pamunkey men eventually won their fight to be recognized as Indians and were drafted with whites. Tribes with reservations such as the Pumankey and Mattaponi were more likely to be approved as Indians than the non-reservation Indians.[326]

3. Trial of a Rappahannock Indian

The Rappahannock Indians faced the most difficult time registering for the military draft. Oliver Fortune and two other men from the Rappahannock Tribe registered with the Selective Service in February 1942. The following month, they volunteered to serve in the United States Army. But instead of joining the training facility for whites,

[325] Pamunkey Indian Reservation to Colgate W. Darden, July 23, 1942, James Coates Paper, Library of Virginia.

[326] Murray, "Who Is an Indian? Who Is a Negro?," 226.

Fortune and his men arrived at the Negro Training Facility at Fort Meade, Maryland. When they noticed that they were assigned as "Negro," all three men refused to join the training. Rappahannock men including Fortune were immediately charged with a federal offense. Oliver Fortune's trial was scheduled on October 30.

Immediately after the Rappahannock men were put on trial, a few white advocates supported the Rappahannock Indians. Outside of Virginia, Lawrence Lindley at the Indian Rights Association in Philadelphia wrote to John Collier, the Commissioner of Indian Affairs, about Plecker's involvement in the state's military registration. Lindley complained that Plecker is attempting "to have all Indians from that state entering military services classified as negroes, with no opportunity of any kind given for establishing their status as Indians." In his letter, Lindley further advocated for Indians stating, "Investigations that we have made in the past convince us that this is a real injustice to many Indians who have worked and sacrificed over many years to maintain their recognition of status." "I hope the Selective Service organization may be convinced of the injustice of such treatment and take action to have it rectified," Lindley pleaded. He also enclosed a reference made to Virginia Indians, which was titled, "INDIAN TRUTH" in his letters. Collier was pleased to hear from Lindley about "their effort to secure recognition as Indians under the Selective Service Act." Collier reassured Lindley that a delegation of these Indians had already visited his office and had written to General Hershey, who had referred the issue to the State Board.[327]

[327] Lawrence Lindley to John Collier, February 26, 1942, Frank G. Speck Papers, American Philosophical Society. Collier also mentioned that he had received a letter testifying the Indian status

Lloyd Carr, a professor at the Department of Botany from the University of Pennsylvania, wrote a letter to the Governor Darden pressuring him to assist the case for the Rappahannock Indians. Carr was a former resident of Virginia and studied traditional medical treatments while living in Virginia with the Indians in the past. He mentioned how he was "impressed to find that the Powhatan Indian spirit is strong and vigorous." Carr explained, "the tribal laws are cherished and upheld today, and that the Indian tribes of the Old Dominion are holding tenaciously to their fine tradition, culture, and honor in spite of adversities." And therefore, Carr mentioned that racially categorizing Oliver Fortune as a Black man "involves and concerns their honor, tradition, and tribal laws" because it threatens "a precious heritage, a grand tradition, as well as a unique and indigenous culture, which our Virginia Indians possess."[328] Carr advocated for the tribe and argued that Virginia should support this case to protect the unique Indian tradition and culture of Virginia. Carr further stated:

> To be classed as a Negro is an obvious shock and blow to their traditions and tribal laws, and is placing them under the creed of an entirely different culture foreign to their tastes and aspirations. All this naturally has a weakening effect on what they are fighting for so courageously – that is, recognition as an American Indian in accordance with their tribal laws and loyalty to this their country.
>
> Thus the opportunity faces us of protecting the identity of American Indians, of strengthening the vigor and courage of a fine tradition. Virginia can be well proud of the tenacity with which they are holding to their traditions, preserving and cherishing their tribal customs and laws. Thus, to permit an "evil" to reduce the vigor of this would be affecting a culture indigenous to the Old Dominion.[329]

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from Frank G. Speck of the University of Pennsylvania, a professor and an advocate for Virginia Indians.

[328] Lloyd G. Carr to Colgate W. Darden, October 27, 1942, Executive Papers, Library of Virginia.

[329] *Ibid.*

Another concern came from a graduate student at the University of Pennsylvania, Robert Reeves Solenberger, who complained that Plecker was categorizing their tribal members who enrolled in the military under the Selective Service Act as "negroes" contrary to the practices during the World War I. Solenberger explained in a letter to James Hoge Ricks, a local judge in Richmond, that "the attitude taken by Dr. Plecker, or by anyone else who insists a priori that all Indians in Virginia be treated as negroes constitutes a nullification of these criteria, and is contrary to the attitude of many other Virginians." In his letter, Solenberger, mentioned that his mentor, Frank Speck, had proved that "if a complete genealogical investigation were made, many families would be found to be completely free from, negro blood, their ancestry being predominately Indian, with some admixture of white blood." In addition, Solenberger attacked Plecker's work that he "seriously questions the validity of Dr. Plecker's contention that there has been a considerable addition of negro blood among these tribes in the last few generations."[330]

With the support from their white advocates, the Rappahannock Tribe asked Dave E. Satterfield Jr., the district's congressional representative, to assist the tribe's case. Satterfield, then, contacted John Collier, hoping for the Bureau of Indian Affairs to intermediate the case. Collier's response, however, disappointed the tribe. Although

[330] Robert Reeves Solenberger to J. Hoge Ricks, February 28, 1942. Frank G. Speck Papers, American Philosophical Society.

Collier believed that "something should be done" about Fortune's case, he believed that the Bureau of Indian Affairs had no authority over draft boards.[331] The Rappahannock's tribal leaders took the next step to Governor Colgate Darden, saying that they were feeling "distress and alarm" that Fortune and other Rappahannock men were enlisted in the Black military unit. The tribal leader claimed that "This action simply blots our Tribe, our race, our descent, and places us as negroes." They strongly argued that being listed as Blacks, "would be an act of death to us—death to what we value in our life, our Indian heritage."[332]

On October 30, 1942, Oliver Fortune's trial was held in Richmond. The prosecutor showed evidence that Fortune attended a segregated Black school and that one of his parents and one of his grandparents were listed as "colored" residents. The prosecutors further showed a reference by anthropologists and ethnologists proving the Rappahannock's history of intermarriage with free Blacks after the Civil War. Finally, a witness appeared at the court with testimony to claim that the tribe had close ties with the African American communities.[333] On the other hand, Fortune's attorney denied his biological connection with African Americans. The attorney explained that his attendance at a "colored" school did not affect his racial identity. Moreover, the attorney argued that only two racial categories existed in official state documents and therefore, Fortune's

[331] Townsend, *World War II and the American Indian*, 97.

[332] Townsend, *First Americans*, 486.

[333] Townsend, *World War II and the American Indian*, 98.

parent listed as "colored" person did not automatically mean that he or his parents were "colored." Being "colored" was not his own choice but rather a decision forced by the state law. His attorney argued that Fortune did not possess a Black racial identity.[334]

Despite the attorney's argument, the Selective Service Court ruled against Oliver Fortune. Fortune was considered as not an "Indian" because he was indeed connected with the African American community. Fortune's case proved that testimonies by local residents or influential whites in the community were more valued as sources of evidence than a logical or coherent argument. Moreover, the court decided to follow the provisions of Memo 336 that determined race based on whether Indians had associations with Blacks or "whether they are treated as Whites in social patterns of their community and State." After the defeat, the Rappahannock Tribe decided to appeal the court's decision. The next hearing was scheduled on January 12, 1943.[335]

Before their second hearing, Chief Otho Nelson wrote directly to the President of the United States regarding Oliver Fortune's case. But President Roosevelt's secretary referred the letter to General Hershey. Hershey, then, forwarded the letter to the state officials in Virginia, which would be Mills F. Neal, the office of the state director of Selective Service in Virginia, to handle the issue. The government officials handed down the responsibility to the local board to figure the racial designation of Indians. The Rappahannock's plea was sent back again to the state boards in Virginia. The second

[334] Townsend, *World War II and the American Indian*, 98-99.

[335] *Ibid.*

hearing repeated similar arguments made in the first hearing. Oliver Fortune lost his case again. Fortune along with two other Rappahannock men were unable to gain their racial classification as Indians and were sent to prison "for refusing to corporate with the draft." Soon after the case, Charles Edgar Gilliam, an attorney in Petersburg, reviewed the case and the Rappahannock men were later released to work at programs in hospitals for conscientious objectors.[336]

4. Revising the Policy on Racial Determination of Indians

Even after Oliver Fortune's cases, the Selective Service System continued to discuss matters on racial determination. On July 26, 1943, Neal wrote to the director regarding the subject of "Classification of Person Registered as Indians" and stated, "At no time during the process of classification does it appear that the race, creed or color of the individual being classified should be considered or be factor in the classification of the registrant." "The sole duty of the local board under the Selective Service Act would appear to be to classify the registrant and induct him under whatever racial grouping he has been registered," Neal declared. And therefore, he believed that "The local board appears to be without lawful authority to give any consideration whatever to a registrant's race, creed or color."[337] Neal maintained his position and believed that it was illegal for the local board to determine a registrant's race.

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[336] Murray, "Who Is an Indian? Who Is a Negro?," 228; Townsend, *World War II and the American Indian*, 101-102, 243; Quote from Arica L. Coleman, "'Tell the Court I Love My [Indian] Wife' Interrogating Race and Self-Identity in Loving v. Virginia," *Souls* 8, no. 1 (2006): 75.

[337] Selective Service System, *Special Groups*, 74.

The following month on August 3, 1943, the Selective Service System reviewed the section on race determination in the memorandum. Campbell C. Johnson, the Executive Assistant, who was "the highest-ranking Black in the Selective Service System," stated that "the point raised by the State Director of Virginia deserves serious consideration" because the Selective Training and Service Act of 1940 stated clearly "that in the selection and training of men under this Act," "there shall be no discrimination against any person on account of race or color." Johnson acknowledged that "This would seem to imply that race and color are important in the operation of the Selective Service System only as a matter of accommodation to the armed forces who consider it necessary to divide men in their services on a basis of race." He raised the difficulty of the problem and the "impossibility in some cases, of determining by visual inspection to what race a registrant belongs." He also pointed out that the current structure of the armed forces put "a definite premium on being a member of any other race than the Negro race."[338] Johnson presented a solution to the problem:

> There might be some merit in the suggestion that the major responsibility determining the race of registrants rests upon the armed forces. I am fully aware of complications which will arise, but I am of the opinion that these complications should rest most heavily upon branches of the Government which consider that they must make racial distinctions in carrying out their functions. When we have cooperated to the extent of getting the man's own word for his race, and in other ways using reasonable diligence in listing the race to which our registrants are presumed to belong, I think we have carried out our full responsibility.[339]

[338] Selective Service System, *Special Groups*, 74; Murray, "Who Is an Indian? Who Is a Negro?," 228.

[339] Selective Service System, *Special Groups*, 74-75, 77.

After reviewing the memorandum on race determination, the Selective Service System decided on August 28, 1943 that it could not make racial determination when the race of a registrant was questionable. In such cases, the man would be sent to the induction station without the indication of their race. The local board would include any "factual information" that they had accumulated on the subject in the file of the registrant. The induction station would then decide the determination of registrant. The "nondetermination of race" became a new policy on September 6, 1943. Local boards were instructed that they were to leave the race blank if they did not agree with the registrant and to include any information or evidence on the ethnic origin of the registrant for the induction station to review and make the final decision. Hershey told Boyer that other states with similar problems should follow the same instructions, and requested the War Department to inform to the heads of all Service Commands of this new policy.[340] With this new policy in effect, Virginia Indians would be sent to the induction station with race undetermined, and their race would be decided by military personnel upon arriving at the induction station. The Selective Service System believed that they had finally figured out the solution to the problem of racial determination, but again, the solution was to pass along the problem to someone else.

Although the "nondetermination of race" policy seemed to solve the ongoing debates on Indians' racial determination, the new policy lasted for only four months. On January 3, 1944, the Selective Service System learned that induction stations were

[340] Selective Service System, *Special Groups*, 75; Murray, "Who Is an Indian? Who Is a Negro?," 228.

"rejecting registrants 'because the local board had failed to complete Line 17, Section I, DSS Form 221,' thereby failing to make a determination of the race of the registrant." To avoid the responsibility, the Adjunct General's office at the War Department issued an instruction to the induction officers to refuse any registrants whose racial determination was not listed on the paper. The inductees were sent back to the local board for incomplete paperwork without the statement on race. The reason for rejecting and returning the underdetermined race was "based on the grounds that the local board by not designating race had failed to complete the selectee's record."[341] Boyer further instructed on a letter dated January 18, 1944, that "registrants reporting to the Armed Forces Induction Station or to a Reception Center for induction whose race has not been determined and so recorded on Line 9, Section I of DSS Form 221 (Revised 9-20-43) and whose race is not readily determinable with the information at hand will be returned to their local board with DSS Form 218 accomplished to show 'Rejected—physically unfit,' if such is the case, or 'Status not determined because of incomplete records.'"[342] The Selective Service System had created a policy that accommodated the War Department and that avoided violating the provision that prohibited any discrimination based on race. But the Army "could not accept the responsibility of making a decision" though they were "the only party interested in the question of race."[343] The "nondetermination of

[341] Selective Service System, *Special Groups*, 76; Murray, "Who Is an Indian? Who Is a Negro?," 228.

[342] Selective Service System, *Special Groups*, 77.

[343] Selective Service System, *Special Groups*, 76.

race" policy once accepted by the Selective Service System was revoked because the War Department neither accepted nor wanted to take responsibility in determining uncertain ethnic origin of inductees at the induction stations.

Hershey took the matter to Henry L. Stimson, the Secretary of War. Hershey remained convinced that it was illegal for the local boards to decide a registrant's race contrary to his own contention. Hershey was doubtful if "the armed forces had the right to reject an otherwise acceptable man merely because the local board had not determined and recorded his race." A precedent case was held at the District Court in Raleigh Division of the Eastern District of North Carolina, which ruled that the local board could not determine contrary to the registrant's claim because "such registrants were discriminated against because of their race." Hershey showed this precedent case as an example to Stimson and requested that the armed force should be responsible in the matter of race determination.[344]

The Secretary of War, however, disagreed with Hershey's argument. Stimson agreed with the War Department that the local board has the best knowledge of "the condition under which the individual lives in his home community," which could be used as "effective criteria for determining race in questionable cases," and therefore, "[t]he local board is best able to determine these conditions."[345] Hershey continued to persuade Stimson that it was illegal for the local boards to make racial

[344] Selective Service System, *Special Groups*, 78; Murray, "Who Is an Indian? Who Is a Negro?," 229.

[345] Murray, "Who Is an Indian? Who Is a Negro?," 229.

determination contrary to the claim of registrant. On August 5, 1944, Hershey concluded:

> …where there is a controversy between the local board and the registrant as to his race, the local board may not determine contrary to the claim of the registrant, and that the local board may not leave the question undetermined but shall, in such cases, resolve the question of race in favor of the claim of the registrant and forward him to the armed forces for induction at the proper time and in accordance with an appropriate call for men.[346]

Although Stimson disagreed with Hershey's solution, he sent a final word to the War Department on August 15, stating, "a man whose racial determination by the local board had been based upon the claim of such registrant, would be found acceptable for military service if otherwise qualified, unless conclusive evidence refuting the claim was submitted." Finally on August 28, 1944, Hershey instructed local boards when completing DSS Form 221, on the section on Report of Physical Examination and Induction, to indicate "the race of registrant as claimed by him" and "to forward the man for induction in the usual manner, transmitting to the induction station all information in the possession of the local board bearing upon his correct race." With Hershey's revised policy in effect, Neal, Virginia's state director, won the argument and the Selective Service System followed this policy until the end of the war.[347]

Despite the State Director's efforts and several protests by Indians leaders and white advocates, only a few Indian tribes, the Chickahominies, Pamunkey and Upper Mattaponi Indians, were classified as Indians or "nationality unknown," and drafted with

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[346] Selective Service System, *Special Groups*, 79.

[347] Selective Service System, *Special Groups*, 79.

whites. The non-reservation Indian tribes were not able to maintain their status as Indian.[348] In 1947, the Virginia World War II History Commission published *The Gold Star Honor Roll of Virginians in the Second World War*, which documented a list of individuals who were killed during combat or who later died from wounds from the war. A few Indian men served in the white units, but only one man was listed as Indian on the document. Others who lost their lives in the war were listed as African Americans.[349] The following year, on July 26, 1948, President Harry S. Truman signed an executive order for desegregation of the U.S. armed forces. The president's executive order stated, "there shall be equality of treatment and opportunity for all persons in the armed forces without regard to race, color, religion, or national origin."[350]

The Selective Service System followed the same pattern of binary racial categorization in Virginia's Racial Integrity Act when determining the race of Indians. Discussions on racial determinations between the tribes and Selective Service officials and federal agencies gave more bureaucratic power to the local and state boards. The Selective Service System, however, indicated the the race of registrant as claimed by the inductee in their final decision, which opposed Walter Plecker's method and his power of deciding the race of all Virginians. But the question on racial identity of Virginia Indians

[348] Murray, "Who Is an Indian? Who Is a Negro?," 226; Helen C. Rountree, "The Indians of Virginia: A Third Race in a Biracial State," in *Southeastern Indians Since the Removal Era*, ed. Walter L. Williams (University of Georgia Press, 2009), 44.

[349] Townsend, *World War II and the American Indian*, 102.

[350] Andrew Glass, "Truman Ends Racial Segregation in Armed Forces, July 26, 1948," *Politico*, July 26, 2018, https://politi.co/2AbsxOl.

remained unsolved. Most Indian groups in Virginia did not succeed in maintaining their Indian identity during wartime but they gained support from sympathetic whites. The cultural idea of race among anthropologist and other white supporters were becoming evident and starting to have an impact in defining race.

5. White Advocates for Indians and the Denial of Black Ancestry

How Americans perceived "race" gradually changed through the work of anthropologists and the new cultural definition in anthropology that developed in the twentieth century. Franz Boas, a leading professor in anthropology, separated the concept of race and culture, and introduced a new anthropological thought to understand the difference and diversity of human race. Born in Germany, Boas emigrated to the U.S. in 1885. He became a curator at the American Museum of Natural History, and then, a professor at the Department of Anthropology at Columbia University in New York. Boas changed the racial discourse of America by arguing that race did not determine the intelligence or behavior of an individual. While eugenicists used "science" to explain that human intelligence was connected to racial difference physically and biologically, anthropologists opposed their racial ideology, arguing that eugenicists' ideology was based on pseudoscience.[351] White supremacists such as Walter Plecker continued to oppose the work of anthropologists but the popularity and the political support of the eugenics movement in the United States declined by the end of 1930s. Finally, by the end

[351] Zoë Burkholder, *Color in the Classroom: How American Schools Taught Race, 1900-1954* (New York: Oxford University Press, 2011), 57.

of the war, the anthropological definition of "race" was largely adopted among many American.

Frank G. Speck, an anthropologist at the University of Pennsylvania, was largely influenced by Boas's new anthropological approach in understanding the race of Native peoples. Speck was trained under Franz Boas at Columbia University and became one of the first graduates under Boas. Speck left Columbia when he received a fellowship at the University Museum at the University of Pennsylvania in 1907, and he eventually founded the Department of Anthropology where he became the chair of the department in 1912 until his retirement in 1949. He visited many Indian tribes in the Southeast United States and Canada and conducted fieldwork to advocate for the Indians.

Speck began visiting the Powhatan tribes in 1919. While other anthropologists at that time were focusing on the Western tribes of American Indians, Speck took interest in the Eastern Indians, who were considered already gone or "vanished." Speck's goal was to preserve their native cultures and to help maintain their tribal identity. He spent several years doing fieldwork in their tribal lands. He learned their language, gathered their artifacts, and wrote several works, published and unpublished, based on his fieldwork. Many of the artifacts acquired by Speck were later donated to museums across the continent, from Canada to the Southeast United States.

Besides gathering Indian artifacts and working on his academic writings, Speck was a political advocate for official recognition of Virginia tribes. Since the early 1920s, Speck encouraged the non-reservation Indian groups to organize into tribes and strengthen their identity. Both the Rappahannock Indians and the Upper Mattaponi

Indians chose their tribal names and formally organized in 1921 and 1923. Some of the tribes also began to hold Powwows.[352] As a result of his fieldwork, Speck published his work on the Rappahannock Indians in 1925, and then, a book on the Powhatan tribes in 1928. According to an interview by Helen Rountree, the Powhatan people "cherished their copies." But Plecker banned Speck's books from public libraries in Virginia, which embarrassed Speck and led him to shift his attention to other areas for his fieldwork. Speck did not return to Virginia until the 1940s when he brought his graduate student to help Indian tribes during the classification in military service.[353]

In late 1939, Speck and his colleague proposed a petition to recognize the Chickahominy Indians of the Eastern Division to the Department of Indian Affairs in Washington, D.C. Speck argued that the tribe had maintained strict restrictions against intermarriage with persons of "non-Indian blood or with less than the minimum quantum required by Chief, Council, and Advisory Board." He further stated that the tribe of Chickahominy Indians of Eastern Division "has defended the integrity of its blood by continuous tradition and internal social control since 1613, at which time they concluded peace and submission to King James in the terms of a treaty entered into with Governor Dale."[354]

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[352] Helen C. Rountree, *Pocahontas's People: The Powhatan Indians of Virginia Through Four Centuries* (Norman: University of Oklahoma Press, 1996), 216; Rountree, "The Indians of Virginia," 44.

[353] Rountree, *Pocahontas's People*, 224.

[354] Elaine and Ray Adkins, *Chickahominy Indians-Eastern Division: A Brief Ethnohistory* (Xlibris Corporation, 2007), 225; Siomonn Pulla, "Anthropological Advocacy?: Frank Speck and the Mapping of Aboriginal Territoriality in Eastern Canada, 1900-1950" (PhD diss., Carleton University, 2006), 280.

The following year, in February 1940, Chief E. P. Bradby, the chief of the Chickahominy Indian of the Eastern Division, initiated the fight for federal recognition for their tribe. When Chief Bradby sought to register the Chickahominy Indian-Eastern Division in the Office of Indian Affairs, Speck instructed the chief to send a letter along with the tribe's charter, Constitution and Bylaws, and tribal roll to F. Zimmerman at the U.S. Department of the Interior. Chief Bradby also included a copy of "some Bradby history" and the tribe's peace treaty. In his letter to Zimmerman, Chief Bradby mentioned that Speck had already submitted "all the facts" about their tribe, but the chief was willing to provide more if any information fails to meet the approval.[355]

With Speck's support, Chief Bradby remained hopeful while waiting to hear from the Department of Indian Affairs. On June 19, 1940, Chief Bradby wrote to Speck: "I really think myself that in the near future something is going to happen in favor of the Indian. While you are trying to take the backseat because you live a little north of the Mason Dixon line, you have sure started the ball rolling in Virginia, and I really feel that a little pressure from you occasionally will help matters to a great extent." Furthermore, Chief Bradby thanked Speck for his assistance saying, "I only wish I could tell you in plain words how much I appreciate all the things you have done to help us." However, the Department of Indian Affairs never responded to Chief Bradby and Speck. The Department likely ignored both of their letters, but they did not step back.[356]

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[355] Adkins, *Chickahominy Indians-Eastern Division*, 88, 227-228.

[356] Adkins, *Chickahominy Indians-Eastern Division*, 88, 90.

Speck continued working on advocacy for Virginia Indians. On April 18, 1940, the Virginia Commission on Inter-racial Cooperation invited Speck to give a talk on his paper under the section of "Race and Cultural Relations" at their 40th annual meeting of the Virginia Conference of Social Work in Roanoke. Speck gave a twenty-minute presentation titled, "Virginia Indian Culture Past and Present."[357] In his paper, Speck explained about the history of the Algonkian people and their continued custom and native traditions from the past. He stated, "Its persistence down to the present day in a group that has known European contact for 300 years is an amazing instance of the tenacity of native tradition among people who as some insist, have lost it all." Speck emphasized the integrity of cultural tradition and racial status of Virginia Indians stating, "The Virginia Indians seem destined to assume a place on the map of American ethnology." Moreover, Speck explained about the increase of Indian population in Virginia in the census for the past two decades, arguing that it was "not through adoption or intermarriage with Aliens" because the "Group solidarity is fostered by the infrequency of marriage with non-Indians, and the expulsion and expatriation of those who violate the tradition against interassociation or marriage with Negroes." As a result, Speck concluded that Virginia Indians are "physically and culturally constituted to thrive and survive" in the Tidewater area.[358]

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[357] Adkins, *Chickahominy Indians-Eastern Division,* 88-89; Pulla, "Anthropological Advocacy?," 280.

[358] Frank G. Speck, "Our Indian is a Quiet Person: Colorful Red Men Thrive in Virginia But Not as a Curiosities," *Richmond Times-Dispatch*, July 7, 1940, 46.

During his presentation, Speck explained that there is "a tendency in some cases to deny the Indian classification of individuals and families by manipulation of records at the hands of those who deliberately 'exterminate' the Indians through use of figures."[359] Referring to Plecker, Speck said that those criticisms come from "the pens and lips of individuals who have not spent a single night in an Indian home," and unlike himself who had conducted definite observation for thirty years, not "as a day visitor but as a dweller, accompanied by many family in their homes of the people." Speck denounced Plecker's method in changing the racial classification of Indians because "Under modern standards of research in ethnology and social science we do not admit the validity of observation or judgments on communities or people made in such fashion."[360]

Speck's paper received support from several Virginia tribes. The Tutelo Indian Tribe's Chief J. H. Johnson, also known as Ga-Yen-Twa-ga, was not able to attend the conference but he was pleased to read Speck's paper. According to Chief Johnson's letter to Speck on May 1, 1940, John Powell had attended Speck's presentation. Chief Johnson was delighted to learn that Speck opposed Powell and Plecker's attacks against Indians. Chief Johnson expressed his gratitude for Speck's efforts on supporting the Indians: "I thank you more than I am able to say for all you've done for us and if there is any thing I can do for you I am at your call." [361]

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[359] *Ibid.*

[360] Speck, "Our Indian is a Quiet Person," 52. Speck's paper presented at the conference was reprinted in the *Richmond Times-Dispatch* on July 7, 1940.

[361] Pulla, "Anthropological Advocacy?," 280.

Another letter thanking Speck for his lecture was written by Otho S. Nelson, the Chief of the Rappahannock Tribe. On May 17, 1940, Chief Nelson thanked Speck for the support of his people and for "clarifying the questions of the Virginia Indians." According to Chief Nelson, a few people questioned Speck's integrity in his work on the history of Virginia Indians. But the Rappahannock Indians believed Speck was "a worthy gentlemen." In a following letter sent to Speck on August 23, 1940, Chief Nelson continued to show appreciation for Speck's support of the Virginia tribes and thanked Speck for the copy of his article stating, "It is so much interest to us, it is so good that we just read and read." Chief Nelson continued, "The Rappk's[sic] always knew and believed good in you. I hope you don't think we doubted the principles in which you stand."[362]

Similarly, the Eastern Chickahominy Tribe's Chief E. P. Bradby praised Speck's paper and believed that there were "high hopes that his speech would be a significant turning point in the public's perception and understanding of his people." In a letter sent to Speck on May 24, 1940, Chief Bradby wrote, "That speech you made in Roanoke has spread like wildfire, and it is in the hearts and minds of many a person."[363]

A few years later, Speck continued to write on behalf of the Virginia tribes. On March 4, 1943, Speck wrote to M. W. Stirling, the director of the Bureau of American Ethnology at the Smithsonian Institution. His letter had two purposes: to denounce

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[362] *Ibid.*, 280-281.

[363] Adkins, *Chickahominy Indians-Eastern Division,* 89.

Plecker's actions and to prove the existence of Indians in Virginia. Using evidence from his twenty-five years of research and contacts with the tribes during fieldwork, Speck claimed that their "Indian blood" is "sufficiently justified historically, ethnologically, and 'racially' to be classed as Indians." In other words, he said, "their historical identity, the ethnic traditions and the social separateness are satisfactorily assured." Speck said that "to demote them to the status of 'colored people'" is "unjust, unnecessary, and deplorable" and therefore, Plecker's evil deed against the Indians is "vicious, smacking of racial agitation and suppression of the liberties of self-determinism of Americans; little short of Hitleresque!"[364]

On December 8, 1944, Speck wrote an official statement titled "Testimonial for Indians of Virginia Approving Their Claim for Indian Classification" to support their federal recognition. In the testimonial, Speck wrote:

> My testimony in regard to the authenticity of the direct Indian descent of the tribal groups surviving in the tidewater area of Virginia is given without hesitation. …The physical types presented by these people would not be differentiated from those of the States and Provinces where Indian classification is never denied to those who are historically entitled to it.[365]

Speck pointed out that this testimony would offer "as the judgement of an anthropologist and ethnologist will accomplish something in the minds of those who seek an estimate from scientific sources towards the recognition of the Eastern Virginia tribes as Indian

[364] Adkins, *Chickahominy Indians-Eastern Division*, 229-230.

[365] Frank Speck, "Testimonial for Indians of Virginia Approving Their Claim for Indian Classification," December 8, 1944, Frank G. Speck Papers, American Philosophical Society.

groups," and "as valid as these which guarantee the classification of Indian groups in other parts of the United States and Canada."[366]

While Speck was advocating for Virginia Indians for several years, he also benefitted from the tribes, and especially, from Chief Bradby at the Chickahominy Indians-Eastern Division. Chief Bradby was an informant for his anthropological work. During the interviews with the chief, Chief Bradby shared many family stories and taught about Indian artifacts including gourds. Gourds were used "to carry fishing worms" and "nearly everything that had to be carried or taken care of in a container." Fascinated by this artifact, Speck visited the tribe many times to learn about gourds, and he later published a book on the topic titled, *Gourds of the Southeastern Indians*.[367] Eastern Chickahominy Indians later explained that Speck was "more interested in the tribe's material culture than its people per se, obsessed with collecting traps, canoes, dolls, and most especially, gourds." But he eventually, built "a more reciprocal relationship" with the tribe.[368]

At another time, Chief Bradby asked Speck if he could send some clothing from the people he knew at the university for the tribe. Chief Bradby said, "You have lots of people around the University there, students that are wealthy I suppose, professor and others, some of them can't afford to wear their suits but so long and then they are thrown

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[366] Speck, "Testimonial for Indians of Virginia Approving Their Claim for Indian Classification"; Coleman, *That the Blood Stay Pure*, 134.

[367] Adkins, *Chickahominy Indians-Eastern Division*, 91-92.

[368] Adkins, *Chickahominy Indians-Eastern Division*, 89.

away." "We could use all of this disregarded wearing apparel here to good advantage," Chief Bradby explained. Chief Bradby reminded Speck not to let this "be a burden to you" but if there were some "leftover clothes," he said, "you will sure do us people here a big as well as kind favor."[369] Speck and the Chickahominy Indians-Eastern Division started building a mutual relationship.

Another example of their friendship was seen when Chief Bradby was caring for an ill family member. Chief Bradby was concerned that they might be turned down from the Memorial Hospital in Richmond, because Plecker had already instructed the hospital to refuse treating Indians. Despite Chief Bradby's concern, "they were all so nice to us" and the hospital took the family member. After examining the patient for six hours, they were told to "come back anytime." Speck sent a check to cover the cost for the operation after receiving the news of the incident. But Chief Bradby wrote to Speck on July 8, 1940, saying, "With all my heart I thank you for your most generous offer," and he returned the check. While Chief Bradby reported the incident about what happened at the hospital to Speck, he stated, "While we have foes here, we have quite a few friends… Plecker lost out on that load of poles."[370]

Virginia Indians had another friend and a supporter who fought against Plecker. James R. Coates, an executive of Norfolk Shipbuilding and Drydock Corporation, who claimed himself as an amateur in archeology in Norfolk, Virginia, was an enthusiastic

[369] Adkins, *Chickahominy Indians-Eastern Division*, 92-93.

[370] Adkins, *Chickahominy Indians-Eastern Division*, 116.

advocate of the Indians. Coates was troubled by Plecker's arbitrary method in carrying out the law on the Indians. Coates "worked tirelessly" in the mid-1940s, visiting Virginia tribes and writing to legislators, editors, and white residents to inform them about the injustices done to Virginia Indians.[371]

While Coates was collecting evidence to prove the existence of Indians in Virginia, he received a copy of Frank Speck's writing, "Powhatan Tribes of Virginia," from a mutual friend at the Heye Foundation in New York. Coates had admired Speck for his academic experience and his collection of Indian artifacts. On December 1944, Coates wrote to Speck for his assistance. In his letter, Coates criticized Plecker, saying that Plecker was "obsessed with the idea that America will be a race of Negroes in a few generations and for years has done everything possible to classify all native Indians in Virginia as Negroes." He was concerned that Plecker's obsession had prevented Indians from attending white schools and being admitted as white patients at hospitals. Plecker, in fact, had sent hospitals a list of surnames of what he considered to be Indian names who are racially mixed with colored persons. Plecker's "injustices" and "malicious" acts against Indian tribes in the southern states troubled Coates. Coates explained to Speck that he wanted to "see justice done where justice is due." With the support from Speck and his expertise in the field of anthropology, Coates hoped they could reclaim the racial identity of Virginia Indians once taken away by Plecker.[372]

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[371] Adkins, *Chickahominy Indians-Eastern Division*, 89.

[372] James Coates to Frank Speck, December 2, 1944, Frank G. Speck Papers, American Philosophical Society.

Speck was "heartily sympathetic" with Coates's effort. In response to Coates's letter, Speck mentioned that he had written to the chiefs of the Chickahominy, Rappahannock, and Pamunkey tribes and had advised these leaders "to hold an emergency meeting to take concerted action as groups united in purpose to meet the emergency." Speck had long believed that the survival strategy for the Virginia Indians was to unite as a Confederacy to fight against the racial issues. Speck further spoke about the "social and political friction" among these tribal groups that comes from "jealousy toward rival bands of Powhatan descendants." He says, "Physiologically and culturally they are local types of one and the same extraction," and therefore, he advised:

> I have long been urging them to forget petty differences and to unite in a Virginia Indian Organization to avail themselves of the strength of numbers and the interests of sympathizers with their cause as a whole. Their persistent disunity has militated against the force of attempted reform for many years. If it continues, I can see little hope for their relief, for what affects one affects all… This would not mean abandonment of their separate statuses as tribes.[373]

Coates agreed with Speck's idea to form a single Confederacy to strengthen the Virginia Indian community. Following Speck's advice, Coates wrote to several Indian tribes in Virginia including Pamunkey, Rappahannock, Mattaponi, Chickahominy, Eastern Chickahominy, and Croatan tribes, and often visited each tribe to persuade them to unite as one Powhatan group. On January 17, 1945, Coates reported to Speck about his visit to Boulevard, Virginia, to meet with Chief Bradby of the Chickahominy Indians-Eastern Division. Coates was pleased with his visit with the tribe and praised Chief

[373] Frank Speck to James Coates, December 7, 1944, Frank G. Speck Papers, American Philosophical Society.

Bradby saying, “Pem Bradby is a real leader with vision and foresight. I can readily see why the fare[fate] of the Chickahominy group has been better in many respects than some of our other Virginia Indians.”[374]

Chief Bradby of the Chickahominy Indians-Eastern Division agreed with Speck and Coates’ advice in uniting Virginian tribes to form a Powhatan Confederacy. “We need to get together and talk matters over and plan for the future,” Chief Bradby said, and he had complained about the lack of cooperation among the Virginia tribes to Speck. Chief Bradby believed that “Indians are just like their brother pale face in the way of being hard headed, block headed, and sap headed when it comes to things for their own good. If we could get that big ‘I’ out of the way and place more emphasis on ‘we,’ then we will get somewhere.” Chief Bradby took a strong leadership in gathering the tribes in Virginia. But not all Indian tribes wanted to form a single coalition and fight together.[375]

During his meetings with the tribes, Coates instructed each tribal group to provide “a complete list of all persons who are members of your tribe in good standing,” by which Coates specifically meant those who were either “pure Indian” or “Indian and white.” When determining who is in “good standing,” Coates added, “You people know who in your tribe is entitled to the distinction of being members in good standing.” His exact words stated:

> Do not include any one who is not entitled to the strict classification of Indian. The purpose of this list is to separate all persons who are members of your tribe in good standing from any and all persons who may claim to be

[374] Adkins, *Chickahominy Indians-Eastern Division*, 89.

[375] Adkins, *Chickahominy Indians-Eastern Division*, 91.

> members of your tribe and who are not entitled to that distinctions. When we have a list that we know is complete in every detail, then we may appear before the proper legal authorities of the State or Federal Government, and show exactly who we are fighting for in our effort to obtain official recognition and proper classification as native Virginia Indians.
>
> I urge you to prepare this list without undue delay and with the greatest of care to see that no one rightfully entitled to the distinction of being on the list is omitted, and to be sure that no one, under any circumstances, be permitted to appear on the list whose good standing and blood relation is other than pure Indian or Indian and white.[376]

Not all Indians, however, followed Coates's advice. When Coates sent his reports to Speck, he often complained about some tribes that did not cooperate with him in compiling their census. The work required "patience and perseverance," Coates said, but he hoped that it would bring "a very high degree of cooperation and mutual confidence among the several groups."[377] Other tribes opposed Coates and Specks' strategy in forming a single Indian Confederacy. Tecumseh Cook, the chief of the Pamunkey Tribe, for instance, disagreed with the idea of formulating a Confederacy of all Indians of Virginia because according to Chief Cook, some tribes were "not even recognized as Indians by the State of Virginia." Chief Cook said: "Jimmie, we feel that it is best to fight for Pamunkey Tribe exclusively and let the other tribes fight for themselves." Instead of forming a single Indian confederacy, the Pamunkey Tribe only wished to receive their birth certificate that was listed as "Indians." The Pamunkey Indians decided to fight on

[376] Notes written by James Coates, James Coates Paper, Library of Virginia.

[377] James Coates to Frank Speck, November 6, 1945, Frank G. Speck Papers, American Philosophical Society.

their own without uniting with other non-reservation tribes whom the state considered as "colored."[378]

Although Coates's advice was not followed by all Virginia tribes, he successfully gained support from white residents who were sympathetic to their Indians neighbors. He asked white residents to sign petitions that certified the native Indians in each vicinity were unmixed with any "negro" element. This strategy related to the importance placed on such testimony in courts and before draft boards. In his letter to Speck, Coates confidently reported that these petitions received "a very positive response form the white neighbors of our native Indian Tribes." Coates further stated that he gathered petitions signed by "respectable" white residents who resided in the vicinities of Virginia Indians.[379] In the James Coates Paper at the Library of Virginia, Coates preserved the letters that he received from white neighbors supporting the Indians. For example, E. D. Gooch, a white preacher at Missionary Baptist, who had preached to his Indian neighbors since 1926, explained the Indians as "good People" and "fine people to work for & with." Gooch further stated that "They are deeply Religious & very Loyal to their Church & Services…." The letter continued:

> I think there is a great future for these good People as they are ambitious & wish to better themselves. I am confident as they become better known they will be granted a privilege & opportunity of which all respecting people derserve[sic.].
>
> One desire of these good people are is that their children will grow up

[378] Tecumseh Cook to James Coates, December 18, 1944, Frank G. Speck Papers, American Philosophical Society; Coleman, *That the Blood Stay Pure*, 136.

[379] James Coates to Frank Speck, January 17, 1945, Frank G. Speck Papers, American Philosophical Society; James Coates to Frank Speck, March 13, 1945, Frank G. Speck Papers, American Philosophical Society.

> to be good Citizens & Loyal Christians. They are also very Loyal to their People they very seldom marry out of their Race. Now & then they will amrry[sic.] in the White Race.
>
> I have very deep respect for these people & will greatly appreciate any favor shown any of them.
>
> They have always had White Preachers & School Teachers, & I think they are the finest young People I ever worked with.[380]

Another letter written by V. W. Fox said:

> I am glad to testify that I have known the Indians of what is known as the Upper Mattaponi tribe for over forty years. I have found them to be peaceful God fearing citizens. These Indians have their own church and school both are and have been served by white preachers of teachers ever since I have known them. I shall be glad to assist as far as possible in securing for these worthy people their legal racial status.[381]

In a similar letter written by the Vice President of Goddin & Cayton Inc., the Indians were described as, "good hard working people and [the Indians] have tried to uphold their race and traditions." The letter concluded by saying, "Any consideration shown these people in trying to uphold their race I am sure would be appreciated by all citizens around their community."[382]

In February 1946, after receiving enough support from the white advocates, Coates asked the governor of Virginia to discuss about "the proper classification" of Virginia Indians. Coates requested the governor to see him for fifteen minutes for him to "present written facts and data bearing on this subject and request your[the governor's] consideration to adjust a great wrong." Governor Darden gladly accepted Coates's

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[380] Rev. E. D. Gooch to Whom It May Concern, April 24, 1945, James Coates Paper, Library of Virginia.

[381] V. W. Fox to Coates, May 28, 1945, James Coates Paper, Library of Virginia.

[382] Vice Pres. of Goddin & Cayton Inc., April, 11, 1945, James Coates Paper, Library of Virginia.

request but he mentioned that the problem could not be solved by solely his executive order. Instead, he recommended Coates seek legislative action, which required Coates to talk with the members of the General Assembly.[383] The following month, Coates reported to Speck about his meeting with the governor, saying that it was "just about everything I could have wished it to be." Seeing that the governor was "extremely sympathetic" with the Indians, Coates believed that Governor Darden will "correct most of the injustices that have in recent years been perpetrated." However, Governor Darden did not decide how to handle the racial classification of Virginia Indians. He only warned Plecker and pushed the issue aside for others to figure it out rather than dealing with it at his office, which was also a similar approach taken by the governor during the World War II military drafts. Nevertheless, Coates informed Speck that he would write a bill to present to the Legislative Advisory Commission of the Virginia State Legislature, and then, hoped that they would gain support for the measure by the members of Virginia State Legislature. His plan was to have the bill prepared for the next session of the General Assembly and to amend "the erroneous classifications of the past."[384]

Coates's work of advocating for Virginia Indians ended when the state registrar retired from his office. For his last contribution, Coates wrote a letter to the editor of the *Virginian Pilot* on May 16, 1946, arguing that "Our native Indian residents are very much

[383] James Coates to Colgate Darden, February 3, 1945, Executive Papers, Gov. Colgate Darden, Library of Virginia; Darden to James Coates, February 6, 1945, Executive Papers, Gov. Colgate Darden, Library of Virginia.

[384] James Coates to Frank Speck, March 13, 1945, Frank G. Speck Papers, American Philosophical Society.

alive" and he had close association with "several recognized, established bands of Virginia native Indians who have retained their racial integrity meticulously." He questioned, "It seems we haven't committed enough sins against these defenseless people already; now must they be robbed of their true racial classification as well?" and attacked Plecker's "so called study" on the "extinction" of Indians:

> …Virginia should be proud to acknowledge the existence of our several gallant bands of native Indians who have retained their identities in the most admirable fashion despite all types of hardships and persecutions.
>
> …I have personally accumulated hundreds of testimonials over a period of several years from white neighbors of our Indian citizens, in addition to photostatic copies of birth certificates issued by this same Dr. Plecker upon the birth of many Indians now living where he registered them as Indians years ago before he became obscessed[sic] with the idea that a course of classifying these people as Negroid was the practical method of treating with the problem.[385]

White residents such as Speck and Coates tried to assist Indians to preserve their own identity in Virginia. But they weren't interested in the injustices Blacks faced and they did not challenge the idea of racial segregation. Speck's main goal to form a single Powhatan Confederacy was expected to strengthen their Indian identity. Moreover, Coates's advice to compile a list of their tribal members, excluding persons who had any ties with Blacks, demonstrated their existence and hoped to prevent Indians from being categorized as Blacks on official records. One of the challenges, however, that Speck and Coates overlooked was that not all Indians thought the same way. Each tribe had different strategies. Some Virginia tribes followed the strategies suggested by these white allies

[385] James Coates to Editor of *Norfolk Virginian Pilot*, May 17, 1946, Frank G. Speck Papers, American Philosophical Society.

while others preferred to fight individually. Speck and Coates failed to understand that each tribe did not share a single strategy.

In addition, the approach of creating an alliance among different tribes and unifying into a single group of Indians further reinforced ideas about racial purity within the tribes. Speck and Coates's strategies inadvertently, and sometimes blatantly, suggested anti-Black racial ideology to the tribes, which encouraged tribes to distance themselves from any tribal members who had Black ancestry. Virginia Indians, especially mixed-race Indians who were associated with Blacks, therefore, remember bitterness and mixed feelings towards Speck and Coates' approach in preserving Indian identity. White advocates such as Speck and Coates, therefore, were influential yet portrayed as controversial figures.

Although Coates's work related to Virginia Indians only lasted for a short period of time, Coates was able to gather support from the local white residents and discuss the matter with the governor. Coates understood that his strategy would "require many years of patient endeavor to accomplish any measurable good," but he felt "determined that eventually the good must overcome the evil involved." In his last letter sent to Speck, Coates wrote, "the whole idea is rather hopeless and then other times encouragement comes up like a beautiful sunshine." Coates continued to believe that "Someday we will have brought the truth to the attention of enough people to be ready to fully correct the

unrestrained injustice of the past."[386] As Coates predicted, Virginia Indians had to endure many years of patience for their past injustices to be rectified.

In the book titled, *Chickahominy Indians Eastern Division: A Brief Ethnohistory*, published in 2007, the authors Elaine and Ray Adkins talk about the artifacts that the members of the tribe had treasured from the past. The artifacts contain items such as a one hundred year old family Bible, a typewriter used by Chief E. P. Bradby, and a class ring owned by one of their tribal members, who graduated from the Indian High School at Bacone College in Muskogee, Oklahoma. That list also includes a copy of Speck's book, *Chapters on the Ethnology of the Powhatan Tribes of Virginia*, published in 1928. Otis Emery, a Chickahominy member, kept the book in a fireproof safe since his mother gave the book to him. She told Otis to "never let anyone take that book away from him." The tribe valued Speck's book because it was the only book that mentioned the history of the Chickahominies in Virginia at that time. Elaine and Ray Adkins explained that, "To that generation, the idea that someone valued their history enough to record it was a powerful boost to their battered self-esteem." The authors stressed the importance of telling their own stories: "If I don't tell my stories to someone or write them myself, they will be lost forever—not only to the world, but to my children, grandchildren, and great-grandchildren." In the book, they further hoped that "in the 21st century, CIED tribal

[386] James Coates to Frank Speck, March 31, 1945, Frank G. Speck Papers, American Philosophical Society; James Coates to Frank Speck, May 28, 1946, Frank G. Speck Papers, American Philosophical Society.

members will not have to depend on others to write their stories for them but will tell and write their own."[387]

Speck's book continues to be an important item to the tribe because it "symbolizes the power of the written word to change perceptions and encourage the disheartened."[388] Indeed, Speck's publications and his other writings left us important evidence showing the hardship and the mistreatment the Indians experienced during the twentieth century. Most importantly, Speck helped raised awareness of their presence to outsiders in Virginia and changed our understanding of Virginia Indians. Plecker once wiped out the race of Indian in Virginia and expunged their history but he could not take away their strength to fight back.

Speck and Coates' strategy was not adopted by the tribes in the mid-twentieth century but it would later become an approach taken by groups of Virginia tribes to fight for state and federal recognition in the late twentieth century to the present day. Indians are now taking initiative in the decision-making process. In the final chapter, we will see how tribes began to unite together for their survival and their fight for official recognition.

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[387] Adkins, *Chickahominy Indians-Eastern Division*, 196.

[388] *Ibid.*

CHAPTER FIVE: FIGHTING FOR INDIAN IDENTITY AND RECOGNITION

Walter Plecker's legacy continued to influence the lives of many Virginia Indians. This final chapter focuses on the post-Plecker era. It begins by exploring how Virginia Indians were involved in the nation-wide Indian movements and pan-Indian organizations that helped strengthen Indian identity in their communities and created visibility to the public. As Frank Speck had suggested and hoped for the tribes in the 1940s, Virginia Indians began to unite as a single coalition, collaborating with members of other tribes. This time, however, Virginia Indians took more initiative in forming their pan-Indian alliances. Their efforts, eventually, directed them to pursue state recognition and then federal recognition.

As we examine Virginia Indians' fight towards federal recognition, Virginia tribes chose different paths for federal acknowledgement. Pamunkey Indians went through the Office of Federal Acknowledgement (OFA), while the Chickahominy, Eastern Chickahominy, Monacan, Nansemond, Rappahannock, and Upper Mattaponi tribes decided to go through the process of Congressional recognition. During the process of seeking federal recognition, Virginia Indians had difficulties proving that they had maintained their tribal community and existed throughout history. Historical documents were eliminated during the Plecker era. In addition, Plecker had separated their tribal members and destroyed their families, and as a result, many tribes had documentation problems. Because Plecker's influence directly harmed these tribes, the six tribes of Chickahominy, Eastern Chickahominy, Monacan, Nansemond, Rappahannock, and

Upper Mattaponi joined as a group and lobbied for the passage of the Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2017. Even years later, Plecker's legacy made it difficult for tribes in Virginia to gain tribal acknowledgement.

1. The Post-Plecker Era

Walter Plecker retired from the Bureau of Vital Statistics in 1946 at the age of eighty-five. For thirty-four years he had been in charge of registering the birth, marriage and death records in Virginia. Even after retirement, Plecker was working on a new pamphlet, titled *Virginia's Vanished Race*. With all the documents and historical evidence that Plecker had collected, he proudly stated that "No state or country probably surpasses Virginia in the variety, completeness, and accessibility of its many forms of demographic records."[389] In the last letter Plecker sent to John Powell, however, he made a remarkable confession. "If you have preserved them," Plecker wrote of the many documents they had shared, "you have a pretty good history of the various racial problems." However, Plecker added, "In some cases no mixture was found. Such letters, if possible, should be eliminated."[390] Plecker admitted that some of his letters sent to the

[389] Walter Plecker, *Virginia's Vanished Race* (n.p., 1947), 4, Albert and Shirley Small Special Collections Library, University of Virginia.

[390] Walter Plecker to John Powell, June 29, 1946, John Powell Collection, Albert and Shirley Small Special Collections Library, University of Virginia; Smith, *The Eugenic Assault on America*, 69.

mixed-blood Indians were inaccurate. As the journalist Warren Friske noted not long ago, "a lot of the time he was just guessing."[391]

Following Plecker's retirement, his assistant took over his position. But his successor was not such an extreme white supremacist as Plecker, nor did she follow Plecker's racial integrity regime. When she retired in 1959, the new registrar destroyed the Racial Integrity File.[392] Plecker's records and the stories about his attacks against the Indians were forgotten for a period of time. The evidence of Plecker's mistreatment and attacks against Indians were also buried for several years. Warren Friske, a journalist for *the Virginian-Pilot*, wrote that Plecker's attack on the indigenous community was a "bureaucratic genocide." Other scholars and Native people described it similarly: Anthropologist Danielle Moretti-Langholtz called it an "administrative genocide" and Virginia Indians have called it a "paper genocide" or "pencil genocide."[393] William P. Miles, the chief of the Pamunkey Tribe, said, "He came very close to committing statistical genocide on Native Americans in Virginia." Anne Richardson, chief of the

[391] Warren Fiske, "The Black-and-White World of Walter Ashby Plecker: How an Obscure Bureaucrat Tried to Eradicate Virginia's 'Third Race,'" *The Virginian-Pilot*, August 18, 2004, https://www.pilotonline.com/history/article_654a811f-213f-5d97-a469-51cc43b1a77f.html.

[392] Fiske, "The Black-and-White World of Walter Ashby Plecker"; Rountree, *Pocahontas's People*, 237.

[393] Fiske, "The Black-and-White World of Walter Ashby Plecker"; Danielle Moretti-Langholtz, "Other Names I Have Been Called: Political Resurgence Among Virginia Indians in the Twentieth Century" (PhD diss, University of Oklahoma, 1998), 73; Arica L. Coleman, "The Hidden Cost of Formal Recognition for American Indian Tribes," *Time*, February 9, 2018, https://time.com/5141434/virginia-indian-recognition-pocahontas-exception/.

Rappahannock Tribe, called it: "Devastation. Holocaust. Genocide."[394] An article written by Peter Hardin, a journalist for *Richmond Times-Dispatch*, quotes Russell E. Booker Jr., who worked in the Bureau of Vital Statistics from 1960 to 1995, including twelve years as state registrar: "For people of Indian heritage, Plecker's name 'bring to mind a feeling that a Jew would have for the name of Hitler.'" Booker called the racial integrity era "ethnic cleansing" and "documentary genocide."[395]

Meanwhile, racial laws were challenged at the national level, which affected Virginia and the local areas in the Indian communities. Virginia slowly began desegregating its public schools after the U.S. Supreme Court's decision in *Brown v. Board of Education of Topeka, Kansas*.[396] But for Virginia Indians, desegregation meant losing their Indian schools. The Upper Mattaponi Tribe had built the Sharon Indian School in either 1917 or 1918. Until 1952, the school only provided education through seventh grade. Many Indian children of the Upper Mattaponi Tribe, including the siblings of Chief Kenneth Adams, left home to attend high school in other states. After the integration of public schools, Sharon Indian School was closed in the 1960s.[397] The

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[394] Peter Hardin, "Documentary Genocide," *Richmond Times-Dispatch*, May 9, 2007, http://www.richmond.com/news/documentary-genocide/article_23e615d7-5fbf-52b0-a8c9-f8cb13729487.html.

[395] Fiske, "The Black-and-White World of Walter Ashby Plecker"; Hardin, "Documentary Genocide."

[396] Brian J. Daugherity, "Desegregation in Public Schools," Encyclopedia Virginia, accessed December 29, 2020, https://www.encyclopediavirginia.org/Desegregation_in_Public_Schools. The desegregation of public schools in Virginia continued until early 1970s because state government resisted the desegregation.

[397] Denise E. Bates, *We Will Always Be Here: Native Peoples on Living and Thriving in the South* (Gainesville: University Press of Florida, 2016), 28-29; Rountree, *Pocahontas's People*, 215.

Mattaponi's reservation school was closed in 1966. The Chickahominy's Samaria School remained mostly for Indians until 1971 when many Blacks started attending their school. Indians feared that integration would put them back into the same category with Blacks, losing their Indian identity.[398]

During the civil rights movement, most Indians did not join the movement. Helen Rountree explains that although Indians were sympathetic to the oppression of Black people, Plecker's attack was still recent to Virginia Indians, and they continued to avoid associations with the Black community. Virginia Indians, including the tribes on reservations, feared that any cooperation with Black activists might endanger their public recognition as Indian.[399] Instead, Indians took advantage of the civil rights movement and used the opportunity to demand "the sovereign right of tribes to be separate." As Theda Perdue states, "Tribes did not seek equal rights for individual Indians; instead, they sought respect for their distinct status as sovereign nations." They relied on unifying Indian organizations such as the Association on American Indian Affairs, the Coalition of Eastern Native Americans, the National Congress of American Indians, and the Native

[398] Rountree, *Pocahontas's People*, 241-242. Prior to integration, Virginia tribes established mission schools that often went up to seventh grade. White schools would not accept Indians and Black schools would be available, but most Indian children refused to attend Black schools because Indians were aware of the Racial Integrity Act and feared that Plecker would eliminate their Indian identity. For more on tribal schools and education in Virginia, see Rountree's *Pocahontas's People*, pp. 200-201, 215-216, 235-237, 240-242, and Elaine and Ray Adkins' *Chickahominy Indians-Eastern Division*, Chapter Six, "Schooling for CIED," pp. 159-182.

[399] Rountree, Pocahontas's People, 241.

American Rights Fund, for protecting their sovereignty, tribal governance, education, economic development, cultural preservation or legal assistance.[400]

At the state level, the legal definition of an "Indian" changed in Virginia. In 1954 the Virginia General Assembly redefined the racial definition so 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."[401] After thirty years of eliminating the racial category of "Indians," the state law now acknowledged some Indians in the Commonwealth. But blood quantum was still used as a criterion to define Indians.

On June 12, 1967, the U.S. Supreme Court declared the state's law on prohibition of interracial marriage under the Racial Integrity Act to be unconstitutional in the case of *Loving v. Virginia*. Richard Loving, a white man, and Mildred Loving, a woman of color, traveled to Washington, D.C., where they could legally marry in June 1958, and the couple was arrested after returning to their home in Caroline County, Virginia. Along with attorneys, Bernard Cohen and Philip Hirschkop, the American Civil Liberties Union (ACLU) and U.S. attorney general, Robert F. Kennedy, intervened the case, and numerous organizations and legal scholars supported them, including the National Association for the Advancement of Colored People (NAACP), the NAACP Legal Defense Fund, the Japanese-American Citizen's League, and consortium of Catholic

[400] Theda Perdue, "The Legacy of Indian Removal," *The Journal of Southern History* 78, no. 1 (2012): 31, 36.

[401] Rountree, *Pocahontas's People*, 239.

bishops. The court proved that Virginia's law prohibiting interracial marriages was a violation of the Equal Protection Clause of the Fourteenth Amendment. Anti-miscegenation laws, going back as far as 1691, were finally overturned.[402]

Following the *Loving* case, sixteen states, including Virginia, ended their laws on banning interracial marriage. Virginia overturned its anti-miscegenation laws after the *Loving* case in 1968. The remaining states, West Virginia, Texas, Florida, Oklahoma, and Missouri, overturned their laws in 1969; North Carolina in 1970; Georgia, Louisiana, and Mississippi in 1972; Arkansas in 1973; Delaware and Kentucky in 1974; Tennessee in 1978. South Carolina finally repealed its law in 1998. Alabama was the last state to maintain such laws until 2000. Although anti-miscegenation laws were not in effect in the last two states by the time, 38 percent of voters in South Carolina wanted to keep the law. In Alabama, 40 percent of voters favored keeping the law.[403]

A few years later, in 1972, the Virginia General Assembly passed a law that "any writing on the backs of birth certificates was not to be copied and included with certified copies of birth certificates issued before July 1, 1960." Plecker's successor had continued to write on the back of Indians' birth certificates until she retired in 1959. Helen Rountree's fieldwork also revealed that a Chickahominy child still received a birth certificate in the 1950s that stated "white" on the front and had a note on the back that her

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[402] Newbeck, Phyl, "*Loving v. Virginia* (1967)," Encyclopedia Virginia, last modified December 7, 2020, https://encyclopediavirginia.org/entries/loving-v-virginia-1967/.

[403] Shiro Yamada, *Amerikashi no naka no Jinnshu* (Tokyo: Yamakawa Shuppan, 2006), 83-86; Peter Wallenstein, *Tell the Court I Love My Wife: Race, Marriage, and Law* (New York: Palgrave Macmillan, 2002), 253-254.

grandparents were married as "colored."[404] Finally, the rest of the articles in the Racial Integrity Act were removed by the General Assembly eight years after the *Loving* case in 1975.[405] However, the *Loving* case or the repeal of the Racial Integrity Act was not enough to restore the tribes. Virginia Indians finally began to speak about Plecker, and it took them nearly two decades to move forward to recognition.

2. Tribal Revival and State Recognition

Virginia Indians slowly began to recover from the damage created by Plecker's paper genocide after the Racial Integrity Act was repealed. During the decades of the 1970s and 1980s, Virginia Indians became more active in the political arena and visible to the public. Virginia tribes were involved in organizations led by Indian groups outside Virginia, and some of the tribal leaders took important roles in leading those organizations. In addition to joining pan-Indian alliances, Virginia Indians began to build organizations for their own tribes. As the members of the Chickahominy Indians of the Eastern Division said, "It was a time of coalition building with other tribes in a quest for recognition and affirmation, not only from the state and federal governments, but also from the people of Virginia."[406] Through their networks with tribes within the state and

[404] Rountree, *Pocahontas's People*, 249, 358.

[405] In 2019, Virginia Governor Ralph Northam assembled a task force to eliminate outdated and racist language on books in Virginia. They recommended to repeal more than one hundred laws, and in those recommendation was the law prohibiting interracial marriage. See, Emily S. Rueb, "Gov. Northam Plans to Purge Racist Language From Virginia Law," *The New York Times*, December 6, 2019, https://www.nytimes.com/2019/12/06/us/politics/virginia-commission-racist-segration-laws.html.

[406] Adkins, *Chickahominy Indians-Eastern Division*, 97; Rountree, *Pocahontas's People*, 243.

outside Virginia, Virginia tribes gradually reconstructed their Indian identity and political power and built a stronger relationship with the state government.

Early efforts of building networks and organizations occurred outside Virginia. In 1971 the Chickahominy Indian Tribes, Eastern Chickahominy Indian Tribe, Mattaponi Indian Tribe, and the Rappahannock Tribe joined the Coalition of Eastern Native Americans (CENA), an organization to assist the Eastern Indians, who are the descendants of Indian groups "who lived east of the Mississippi River prior the American Revolution." Gathering tribal representatives from 18 states and 53 tribes, the CENA promoted the reaffirmation of Indian identity, the economic, cultural and social advancement, and the recognition for tribes that are not officially recognized yet by the federal government or the state. Some Virginia Indians were active members of CENA, including the Chickahominy Tribe's chief, O. Oliver Adkins, as the Vice-President, and the Mattaponi Tribe's chief, Curtis L. Custalow, Sr., as a member of the committee. Custalow also served as a steering committee member for the Native American Rights Fund (NARF) for several years in the early 1970s.[407]

At the same time, Virginia Indians were aware of the nation-wide protest movements for American Indians led by the American Indian Movement (AIM). In 1972 a group of nearly 500 to 800 Native Americans participated in the takeover of the

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[407] *Establishment of the American Indian Policy Review Commission: Hearing Before the Subcommittee on Indian Affairs of the Committee on Interior and Insular Affairs House of Representatives* (Washington, D.C.: U.S. Government Printing Office, 1974), 41-42; Rountree, *Pocahontas's People*, 244-246; Moretti-Langholtz, "Other Names I Have Been Called," 163. Rountree says that the Rappahannock Indians dropped out of the organization in 1976 because the tribe declined CENA's advice on keeping up with their tribal records and tribal rolls.

building at the Bureau of Indian Affairs at Washington, D.C. prior to the election in November. Indians protested to raise issues of poor housing and living standards and failure of the U.S. government to respect treaty rights with tribal government, which Indians called "The Trail of Broken Treaties." Negotiations between Indians and officials at the bureau turned violent. Native Americans barricaded the entrance of the building and created makeshift weapons from furniture to protect themselves against attacks from guards. During the six-day occupation, offices in the building were damaged and historical records were stolen. However, Indians spent time in the building going through files and documents, including treaties, that revealed "unfair deals on land, water, fishing, and mineral rights." Indians also took artifacts and artworks from the building, which initially "belonged to tribes." A day after the election, President Richard Nixon and his council came to an agreement with the Native Americans that the protestors would not be accused of the damage from the occupation as well as travel expenses provided to them to return home. The CENA also assisted in peaceful negotiations during the takeover of the bureau. Many protestors felt that the takeover was a victory. Although many Native Americans did not benefit from the government, they successfully raised the awareness of the Native Americans' condition to the public.[408]

The following year, two Rappahannock Indians from Virginia participated in the occupation of Wounded Knee. Members of AIM seized the town of Wounded Knee,

[408] Dana Hedgpeth, "The Week Hundreds of Native Americans Took over D.C.'s Bureau of Indian Affairs," *The Washington Post*, January 24, 2021, https://www.washingtonpost.com/history/2021/01/24/native-americans-occupied-bureau-indian-afffairs-nixon/.

South Dakota, which resulted in a 71-day siege and the death of two Native activists. One federal agent was paralyzed after being shot during the conflict. The occupation of Wounded Knee began after Oglala Lakota requested AIM investigate the corrupted tribal government at the Pine Ridge Reservation. AIM demanded the federal government investigate Indian reservations and brought public attention to the oppression that American Indians had faced.[409]

While some tribal leaders like Mattaponi's Chief Custalow actively supported AIM and their protests to demand the federal government uphold treaties with Indian nations, those who were more conservative like the chief of the Pamunkey Tribe considered the uprising as "un-Christian."[410] In addition, some Virginia Indians were hesitant about joining political activities and making themselves visible to the public. They had kept quiet for a long period of time, especially during the Plecker era. "With few exceptions," Moretti-Langholtz says, "Virginia Indians had learned to be quiet and avoid calling attention to their communities."[411] Nonetheless, these protests at the national level and pan-Indian alliances prepared Virginia Indians to create a coalition in their own state and prepared them to pursue state recognition.

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[409] Emily Chertoff, "Occupy Wounded Knee: A 71-Day Siege and a Forgotten Civil Rights Movement," *The Atlantic*, October 23, 2012, https://www.theatlantic.com/national/archive/2012/10/occupy-wounded-knee-a-71-day-siege-and-a-forgotten-civil-rights-movement/263998/; Alysa Landry, "Native History: AIM Occupation of Wounded Knee Begins," *Indian Country Today*, September 12, 2018, https://indiancountrytoday.com/archive/native-history-aim-occupation-of-wounded-knee-begins.

[410] Rountree, *Pocahontas's People*, 245-247; Moretti-Langholtz, "Other Names I Have Been Called," 160.

[411] Moretti-Langholtz, "Other Names I Have Been Called," 162.

In 1982 four of the off-reservation tribes, the Chickahominy, Eastern Chickahominy, Rappahannock, and Upper Mattaponi tribes, proceeded for state recognition. The Virginia General Assembly "began a process to study and identify tribal groups that would be formally recognized by the Commonwealth" and established the Virginia Council on Indians, which functioned as "an advisory board to the Governor and the General Assembly of the Commonwealth of Virginia."[412] The Virginia Council on Indians consisted of ten members and a chairperson, all appointed by the governor. Five "citizen" Indians, five non-Indian members, and the chairperson, served for three years.[413] The two reservation tribes, the Pamunkey and Mattaponi, were consulted later, and joined the Council. With the six tribes joining, the Council was given a task to "undertake a comprehensive study of the historic dealings and relationship between the Commonwealth of Virginia and the Virginia Indian Tribes" and "[make] recommendations to the Commonwealth on issues regarding Virginia Indians" based on their research.[414]

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[412] Virginia Council on Indians was originally named the "Commission on Indians." In 2012, the General Assembly eliminated the VCI at the request of tribal leaders and the Secretary of the Commonwealth became the Governor's liaison to the Virginia Indian Tribes, which served as "a new mechanism of communication for the chiefs of Virginia's State Recognized tribes." "Virginia Indians," Secretary of Commonwealth Virginia Indians, last accessed December 16, 2020, https://www.commonwealth.virginia.gov/virginia-indians/; "Virginia Council on Indians," last modified September 13, 2007, https://web.archive.org/web/20091108094850/http://www.indians.vipnet.org/index.cfm.

[413] "Virginia Council on Indians," last modified September 13, 2007, https://web.archive.org/web/20091108094850/http://www.indians.vipnet.org/index.cfm; Rountree, *Pocahontas's People*, 253-254; Moretti-Langholtz, "Other Names I Have Been Called," 153-154.

[414] "Virginia Council on Indians," last modified September 13, 2007, https://web.archive.org/web/20091108094850/http://www.indians.vipnet.org/index.cfm; *Report of the Joint Subcommittee Studying Relationships Between the Commonwealth and Native Indian Tribes to the Governor and the General Assembly of Virginia*, House Document 10, Commonwealth of

Some tribes expressed reluctance in joining the Virginia Council on Indians. Particularly, the two reservation tribes, the Pamunkey Tribe and the Mattaponi Tribe, were cautious toward allying with the organization. The Pamunkey Tribe, for instance, refused to send a representative to serve on the Virginia Council on Indians. According to Danielle Moretti-Langholtz, one of the Virginia Indians said that "the Pamunkey, 'don't want to work with others because they're afraid they'll lose something.'" On the contrary, the off-reservation tribes were willing to unite and combine their strengths as a pan-Indian alliance. The two reservation tribes feared the transfer of power to the Council, unlike other off-reservation tribes that had gained relative political advantage by collaborating with other tribes.[415]

The Pamunkey and Mattaponi tribes also did not appear at the 1983 Joint Subcommittee to discuss the status on the state recognition of Virginia's Indian tribes. While discussing the history of the legal relationships between the Native Indian tribes and the Commonwealth, the Joint Subcommittee acknowledged the two reservation tribes and their treaty status during the colonial period, referring to the Treaty of the Middle Plantation in 1677. According to the subcommittee, they reported that, among the six tribes, "the status of the Mattaponi and Pamunkey tribes is most settled" because they "have retained a recognized status not only in the popular mind but in a legal relationship

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Virginia, Richmond 1983, accessed January 15, 2021, https://rga.lis.virginia.gov/Published/1983/HD10/PDF.

[415] Moretti-Langholtz, "Other Names I Have Been Called," 153, 155-156, 159. For more details about the Virginia Council on Indians, see Moretti-Langholtz's dissertation, "Other Names I Have Been Called," on Chapter Four, pp. 150-289.

with the state due to the fact that they have remained on reservations." The Joint Subcommittee, therefore, considered that their recognition should be approved "to avoid any future confusion or misunderstanding."[416]

In addition to the two reservation tribes, the Joint Subcommittee reported the four tribes who were also signatories of the treaty (the Chickahominy Tribe, Eastern Chickahominy Tribe, Rappahannock Tribe, and Upper Mattaponi Tribe) to be granted recognition. These tribes were considered to have lost their recognition when their reservations were taken away by the early eighteenth century. The Joint Subcommittee concluded that testimony and various documents provided by these tribes "had demonstrated that they have continued to reside roughly in the same area as their ancestral groups, retain a tribal identity, and operate social and religious institutions" and also had "maintained an organized tribal government" since the early twentieth century.[417]

Finally, the Joint Subcommittee recommended that the General Assembly of Virginia officially recognize the six tribes and it was voted at the House Joint Resolution 54.[418] The General Assembly granted state recognition to six tribes in January 1983.

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[416] *Report of the Joint Subcommittee Studying Relationships Between the Commonwealth and Native Indian Tribes to the Governor and the General Assembly of Virginia*, 4-5.

[417] *Ibid*., 5.

[418] *Ibid*., 3.

Later, two more tribes, the Nansemond Tribe and the Monacan Indian Nation, received state recognition in 1985 and 1989.[419]

After state recognition was granted to some tribes, Virginia Indians formed a new organization to further improve their situation. A group of seven tribes founded the United Indians of Virginia (UIV) in 1988, to focus on enhancing education and economic opportunity for Virginia tribes. The mission of the UIV was "to create a unified voice among Virginia Indians that would increase their ability to solve problems common to Virginia tribes." Marvin Strong Oak Bradby, the chief of the Chickahominy Indians-Eastern Division, was elected as the UIV's first permanent chairperson and served on its board for 18 years. The UIV funded scholarships for young adults and expanded their efforts to include "cultural events and economic and social developments."[420]

In 1987 Virginia tribes visited the Bureau of Vital Statistic to see Russell E. Booker Jr., the state registrar at the time, to request that their birth, marriage, and death certificates be changed from "white" or "colored" to "Indian." Booker agreed to their

[419] Moretti-Langholtz, "Other Names I Have Been Called," 151; Egloff, *First People*, 71. The Joint Subcommittee had an intent that the Commission on Indians could further investigate other tribes in Virginia for state recognition in the future. The study of Indians was not limited to the six tribes who were active in the Council. The Joint Committee hoped the Council to investigate tribes and the recognition would further expand to other tribes in Virginia. See, "Report of the Joint Subcommittee Studying Relationships Between the Commonwealth and Native Indian Tribes to the Governor and the General Assembly of Virginia," 5.

[420] Adkins, *Chickahominy Indians-Eastern Division*, 99; Egloff, *First People*, 71. The UIV was originally founded by three chiefs of Indian tribes in Virginia. In 1988, Marvin Strong Oak Bradby, the chief of Chickahominy Indians-Eastern Division, and two other chiefs were waiting at the Mattaponi Reservation for a non-Indian person who had written a grant to help them. But "That person never showed up." Chief Bradby reminded the other chiefs that they could meet on their own, "get together and set up an organization," "do what we need to do for ourselves," and "write our own grants." They met again at Joe's Restaurant in West Point and founded the United Indians of Virginia.

request upon verifying the documentary evidence that they provided. The state also responded to the appeals of Indians and made further amendments to correct Virginia Indians' certificates.[421]

A decade later, in 1997, then Virginia Governor George F. Allen signed legislation to correct the official state records that had been deliberately altered to "colored" during the Plecker era. The law acknowledged the past injustice of "paper genocide" of Virginia Indians. American Indians were allowed to change the vital records of birth, marriage, and death certificates. Although this legislation was a victory to the Indians, as Stephen Adkins, the chief of the Chickahominy Indian Tribe, and James P. Moran, Representative of Virginia, have both commented, the state cannot fix the damage done to their past or "recover documents that were purposely destroyed."[422]

In 2001, the General Assembly officially denounced the Racial Integrity Act of 1924, regretting the law's "uses as a respectable, 'scientific' veneer to cover the activities of those who held blatantly racist views."[423] Past injustices against the Indians by Plecker were finally acknowledged, and the state of Virginia officially apologized. However,

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[421] Rountree, *Pocahontas's People*, 268; *Hearing Before the Committee on Indian Affairs United State Senate*, 110th Cong. 2 (2008) (Statement of Stephen R. Adkins, Chief, Chickahominy Indian Tribe); *Hearing Before the Committee on Indian Affairs United State Senate*, 110th Cong. 2 (2008) (Statement of James P. Moran, Representative, Virginia).

[422] *Hearing Before the Committee on Indian Affairs United State Senate*, 110th Cong. 2 (2008), https://congressional.proquest.com/congressional/result/pqpresultpage.gispdfhitspanel.pdflink/$2fapp-bin$2fgis-hearing$2f6$2fa$2f8$2f1$2fhrg-2008-ias-0023_0001_from_1_to_50.pdf/entitlementkeys=1234%7Capp-gis%7Chearing%7Chrg-2008-ias-0023 .

[423] Brendan Wolfe, "Racial Integrity Laws (1924-1930)," Encyclopedia Virginia, last modified November 4, 2015, https://www.encyclopediavirginia.org/racial_integrity_laws_of_the_1920s.

opposition was met from a representative of Henrico County, Ronald Doggett. Dogget opposed the state's apology, stating that "the resolution will invite an 'avalanche' of similar request for "apologies, regrets, and even reparations." Dogget is known as a white supremacist; he is the president of the Virginia chapter of the European-American Unity and Rights Organization (EURO), previously known as the National Organization for European American Rights (NOFEAR). The state finally condemned Plecker's attack but, as the tribe of Chickahominy Indians-Eastern Division correctly stated, "there are still Plecker supporters alive."[424]

3. Growing Visibility

As Virginia Indians became more visible in the eyes of the public, Virginia tribes were moving forward to pursue federal recognition. When Virginia tribes were informed by the Bureau of Indian Affairs that federal recognition could take decades through the administrative process, the tribes decided to form the Virginia Indian Tribal Alliance for Life (VITAL) in 1999 and go through the process of Congressional recognition. The VITAL was united to support the federal recognition process and to provide its funding for the six Virginia Indian tribes, and to lobby Congress to recognize them. The VITAL's mission expanded not only to seeking federal recognition but also to support education, health care and economic development for the tribes; grow public awareness of "the

[424] Adkins, *Chickahominy Indians-Eastern Division*, 120-121; "Ronald Doggett," Southern Poverty Law Center, accessed December 15, 2020, https://www.splcenter.org/fighting-hate/extremist-files/individual/ronald-doggett.

social, economic and political realities" of Virginia Indians; provide "a wider understanding and appreciation of the ideas and knowledge of indigenous peoples"; and recognize "the right of Indian tribes to self-government" and support "tribal sovereignty and self-determination."[425] The two reservation tribes, the Pamunkey and Mattaponi, did not join the VITAL.

In May 2002, a coalition of Virginia tribes planned the first state-wide powwow at the Chickahominy Tribal Grounds in Charles City. The Virginia Indian Nations Powwow Gathering became a historic gathering of all eight tribes. The VITAL hoped the powwow would draw support from visitors and raise money for the recognition effort. Red-Cloud Owen, a tribal member of the Chickahominy Tribe and a powwow organizer, recalled about the days before the event. Looking at the crews working on a drum arbor, Owen said, "I witnessed seven different tribal members from the eight tribes coming together and working together, laughing and having fun." "This warmed my heart; that our people of different tribes could come and have a good time for a good cause," Owen said.[426]

Tribal members of the VITAL initially hoped to gain federal recognition by 2007, which marked the 400th anniversary of the founding of the first permanent English settlement in Jamestown, Virginia, in 1607.[427] Virginia celebrated the anniversary by

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[425] Egloff, *First People*, 71-72; Adkins, *Chickahominy Indians-Eastern Division*, 97.

[426] Justin Bergman, "Six Indian Tribes to Meet in Virginia," *AP Online*, April 20, 2002, Newspaper Source Plus; Vincent Schilling, "Bringing 25 Years of Experience to the Table," *Indian Country Today*, last modified September 12, 2018, https://indiancountrytoday.com/archive/bringing-25-years-of-experience-to-the-table.

[427] Virginia Indian expressed reluctance in participating the Jamestown commemoration without federal recognition during the initial planning. There was a group that wanted to boycott the commemoration, and other group that "want[ed] to participate no matter what." See, Victor Reklaitis,

holding an 18-month event, "Jamestown Celebration." For many Virginia Indians, however, the "Jamestown Celebration" was not a celebratory event but a controversial and emotional event. Virginia tribes reminded the planning committee that "the First Americans could find little to celebrate in what happened to them in their first 350 years of history." Later, the planning committee renamed the event to Jamestown Commemoration.[428]

The Jamestown Commemoration was celebrated with live performances, forums, festivals, and a special exhibit, discussing historical to modern-day issues and bringing together scholars, students, the governor, politicians, former presidents, and Indian tribes across the country. Its goal was to include narratives from different perspectives from African Americans and Native peoples and to tell the story of the founding of Jamestown during the late sixteenth and early seventeenth century in a global context. For instance, the special exhibit titled "The World of 1607" told "the story of Powhatan Indian, English and western central African cultural origins." The eight state-recognized tribes at the time also supported the commemoration as a Virginia Indian Advisory Council in planning of the event. At the Virginia Indian Heritage Events, for instance, tribes demonstrated cultural experiences and performances to audiences through activities such

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"Virginia Indian Tribes May Boycott Jamestown 2007 Events," *Daily Press*, November 18, 2005, Newspaper Source Plus.

[428] Adkins, *Chickahominy Indians-Eastern Division*, 184. The Jamestown 400th Commemoration has continued to use the term "anniversary," a term with celebratory meaning, on its website. The official website of the commemoration is titled, "America's 400th Anniversary Legacy Site," and the Jamestown Settlement and American Revolution Museum at Yorktown has a webpage titled, "Jamestown 400th Anniversary."

as dancing, craft demonstrations, and storytelling. The Jamestown Commemoration seemed like an improvement compared to the past, especially during the Plecker era. Virginia history was taught with more inclusion of the narratives of African Americans and Indians.[429]

Virginia Indians also participated in a symposium, "Virginia Indians: 400 Years of Survival," with other guest speakers including Robert Duncan, the president of Bacone College in Oklahoma, where many Virginia Indians attended during the Plecker era when Indians could not attend white schools. Kenneth Adams, the chief of the Upper Mattaponi Tribe, commented that the symposium gave "an opportunity to tell our story." "We have never before had an opportunity to tell our own story in our own words on such a comprehensive level," he said. But Adams added: "I have strong feelings of sadness surrounding the Jamestown Anniversary celebration, but yet the opportunity to let Virginia and the world know the whole story about what truly happened to Virginia Indians. I feel sadness because the story for me, and many other Virginia Indians, is a story of sorrow and pain—a story of growing up in a society where Indian culture had almost been completely destroyed."[430]

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[429] "America's 400th Anniversary," Jamestown Settlement & American Revolution Museum at Yorktown, accessed December 18, 2020, https://www.historyisfun.org/about-us/americas-400th-anniversary/; "Official Site of America's 400th Anniversary," America's 400th Anniversary Legacy Website, accessed December 18, 2020, http://www.jamestown2007.org/; Victor Reklaitis, "Brits Honor Indians: While Not Able to Get Federal Recognition, Virginia Indians Will Get a Kind of Recognition at Events in the U.K.," *Daily Press*, April 21, 2006, Newspaper Source Plus.

[430] Bates, *We Will Always Be Here*, 78; "Virginia Indian Heritage Events," America's 400th Anniversary Legacy Website, accessed December 18, 2020, http://www.jamestown2007.org/virginiaindianheritage/.

Another highlight of the Jamestown Commemoration was a trip to the United Kingdom to commemorate the December 1606 sailing of the three ships that arrived at Jamestown and to honor the memory of Pocahontas. In July 2006, about 54 tribal members representing the tribes of Virginia visited England. For Virginia Indians, the trip to England was an opportunity to publicize their appeal for federal recognition. Along with the Virginia Indians, Virginia Governor Timothy M. Kaine visited St. George Parish in Gravesend, where Pocahontas is buried. In 2008, Kaine spoke about the trip during the hearings before the Committee on Indian Affairs at the United States Senate. Kaine described how the English "have taken care of her memory in [an] exquisite way": "There is a beautiful statute of Pocahontas outdoors; the chapel is dedicated to her; there are inscriptions of Pocahontas, she is buried underneath the chapel; and the English have cared for her in amazing ways." Kaine stated that Britain had recognized the Virginia tribes since 1670 and Virginia had finally recognized the tribes in the 1980s, and it was their "earnest hope that the Federal Government will recognize them as well."[431]

Similarly, Stephen R. Adkins, the chief of the Chickahominy Indian Tribe, stated that the "British have paid honor and tribute to her in a manner that no member of her family or her descendants has ever received in this country." The English government reaffirmed the recognition of Virginia tribes at the ceremony. For Virginia Indians, the trip to England gave them "a significant reconciliation and healing" that they had never

[431] In September 2008, Kaine spoke about the trip to England during the hearings before the Committee on Indian Affairs at the United States Senate. *Hearing Before the Committee on Indian Affairs United State Senate*, 110th Cong. 2 (2008) (Statement of Timothy M. Kaine, Governor, Virginia).

experienced in the United States.[432] "Without the hospitality of our people, [Jamestown] wouldn't have been the first permanent English settlement," Chief Adkins stated.[433]

Wayne Adkins, the assistant chief of the Chickahominy Tribe and the president of the VITAL, mentioned the frustration and the irony of their experience: "In some ways, we feel like we're getting better treatment there than we are in this country." "You would expect that you would get more recognition here at home than abroad," Adkins said.[434] Similarly, Kenneth Branham, the chief of the Monacan Indian Nation, questioned: "If they can treat us like sovereign nations, why can't this country do it?"[435] On their way back to Virginia from England, one member of the Indians wore a T-shirt with the words: "England recognized us; now it's your turn."[436] However, it would take nearly a decade after the Jamestown Commemoration for the first Virginia tribe to receive federal recognition.

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[432] *Hearing Before the Committee on Indian Affairs United State Senate*, 110th Cong. 2 (2008) (Statement of Stephen R. Adkins, Chief, Chickahominy Indian Tribe).

[433] David Lerman, "Va. Indians Leave for England: About 54 Members Begin a Weeklong Trip to Promote Tribal Life and Jamestown 2007," *Daily Press*, July 13, 2006, Newspaper Source Plus.

[434] Victor Reklaitis, "Brits Honor Indians: While Not Able to Get Federal Recognition, Virginia Indians Will Get a Kind of Recognition at Events in the U.K.," *Daily Press*, April 21, 2006, Newspaper Source Plus.

[435] Lerman, "Va. Indians Leave for England."

[436] Adkins, *Chickahominy Indians-Eastern Division*, 184.

4. The Path to Federal Recognition Through the Office of Federal Acknowledgement (OFA)

Virginia tribes took two different paths to fight for federal recognition. The Pamunkey Tribe went through the Office of Federal Acknowledgement (OFA) and worked separately from the other Virginia tribes to seek federal recognition.[437] Federally recognized tribes establish "a government-to-government relationship with the United States" and those tribes are "recognized as possessing certain inherent rights of self-government (i.e., tribal sovereignty)." Federal recognition not only acknowledges the status of Indian groups as "Indian or that [their] cultural heritage is Indian," but it also defines the "tribe's status as a government with independent sovereignty derived from [their] historical status as a tribe before European contact and maintenance of [their] government without break since then." In addition to tribal sovereignty, federally recognized tribes are eligible for certain benefits such as housing, education, and health care funding from the Bureau of Indian Affairs (BIA).[438]

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[437] The Pamunkey Indians were able to succeed through the OFA because the tribe had been able to keep the tribe and their tribal members discrete from non-Indians. They had employed strategic methods to protect their Indian identity at the reservation. For more about Pamunkey's tribal rules on reservation and maintaining their Indian identity, see John Garland Pollard, *The Pamunkey Indians of Virginia*, Bureau of American Ethnology, Bulletin 17 (Washington, D.C.: Government Printing Office, 1894); Frank G. Speck, *Chapters on the Ethnology of the Powhatan Tribes of Virginia* (New York: Museum of the American Indian Heye Foundation, 1928), http://hdl.handle.net/2027/uc1.31822017322926; Helen C. Rountree, *Pocahontas's People: The Powhatan Indians of Virginia Through Four Centuries* (Norman: University of Oklahoma Press, 1996); and Mikaëla M. Adams, *Who Belongs?: Race, Resources, and Tribal Citizenship in the Native South* (New York, N.Y: Oxford University Press, 2016).

[438] "Frequently Asked Questions," U.S. Department of Interior Indian Affairs, accessed December 23, 2020, https://www.bia.gov/frequently-asked-questions#:~:text=At%20present%2C%20there%20are%20574,Alaska%20Native%20tribes%20and%20villages; "The Official Guidelines to the Federal Acknowledgement Regulations, 25 CRF Part 83," accessed December 26, 2020, p.17, https://www.bia.gov/sites/bia.gov/files/assets/as-ia/ofa/admindocs/OfficialGuidelines.pdf.

In the past, Indian tribes had received federal recognition status in multiple ways: by treaties, acts of Congress, presidential executive orders, or federal court decisions. In 1987, the Interior Department created the Federal Acknowledgement Process (FAP) as requests for federal acknowledgement increased during the 1970s. The FAP determines tribes that are eligible to meet the federal recognition status according to the federal acknowledgement regulations, Part 54 of Title 25 of the Code of Federal Regulations (25 CFR Part 54). Since 1978, the U.S. presidents have relied on the BIA for tribes to go through the Federal Acknowledgement Process and the federal courts have also directed tribes to go through the FAP before going through courts.[439]

The federal acknowledgement regulation was redesigned in 1982 as Part 83 of Title 25 of the Code of Federal Regulations (25 CFR Part 83), and then, revised again in 1994. In 1994, Congress passed the Public Law 103-454, the Federally Recognized Indian Tribe List Act (108 Stat. 4791, 4792), which established three ways for Indian groups to become federally recognized: by Act of Congress; the administrative procedures under 25 CRF Part 83, *Procedures for Federal Acknowledgement of Indian Tribes*; or a decision made by the United States court.[440]

The Office of Federal Acknowledgement (OFA) within the Department of Interior handles petitions from Indian tribes and reviews the petitions according to the 25 CRF Part 83, *Procedures for Federal Acknowledgement of Indian Tribes*, and evaluates the

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[439] "Frequently Asked Questions," U.S. Department of Interior Indian Affairs; "The Official Guidelines to the Federal Acknowledgement Regulations, 25 CRF Part 83," accessed December 26, 2020, p.5, https://www.bia.gov/sites/bia.gov/files/assets/as-ia/ofa/admindocs/OfficialGuidelines.pdf.

[440] "Frequently Asked Questions," U.S. Department of Interior Indian Affairs.

evidence provided by the petitioners to determine whether they meet the criteria. After evaluating each Indian group's petition, the OFA makes recommendations to the Assistant Secretary-Indian Affairs, where delegated authorities make the final acknowledgement decisions.[441]

For tribes to receive federal recognition through the administrative process, petitioners must meet the seven mandatory criteria indicated on the Official Guidelines, 25 CRF Part 83. One of the criteria requires tribe to be "identified by reliable external sources on a substantially continuous basis as an Indian entity since 1900," meaning there should be "no long interruptions in the tribe's members doing things together such as living together, worshiping together or meeting and making decisions on behalf of the group" and "there should not have been a period when an entire generation lost contact with one another."[442] Other criteria require petitioners to submit a copy of the group's governing document that describes its "membership criteria and how they are applied," and prove that current members are descended from a historic tribe. The OFA advises Indian tribes to provide historical documents that prove that their tribes have *continued to exist*. The federal acknowledgement regulation recommends tribes trace their origins to prove their tribe is a "*historic tribe*." Specifically, the guideline suggests, "Avoid leaving undocumented gaps in time by overlapping your documentation whenever possible."

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[441] "Office of Federal Acknowledgement (OFA)," U.S. Department of the Interior Indian Affairs, accessed December 26, 2020, https://www.bia.gov/as-ia/ofa.

[442] *Ibid.*, 41-42.

Furthermore, the petition documents should include "records from the modern period" and "records from all time periods so that the generations are linked."[443]

On June 29, 2009, the Pamunkey Tribe expressed their intent to submit a petition to pursue federal acknowledgement under 25 CRF Part 83.[444] The Department of the Interior received their petition documents on October 14, 2010. After the OFA reviewed the Pamunkey's petition documents, R. Lee Fleming, the Director of the Office of Federal Acknowledgement, addressed the deficiencies in their documents in April 2011. One of the critical documents missing was the governing document, specifically a statement describing membership criteria. Instead, Pamunkey Indians submitted "Laws of the Pamunkey Indians," written in 1954, as their current governing document. The tribe neither indicated any changes made since 1954 nor submitted a revised copy. The tribe also included the "Pamunkey Indian Tribe Membership Roll," dated October 4, 2010, with a list of 182 tribal members, who were all "descend[ed] from 40 direct lineal ancestors." Fleming wrote that the group's membership requirements as well as how those members are enrolled were not stated in their governing document.[445]

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[443] "The Official Guidelines to the Federal Acknowledgement Regulations, 25 CRF Part 83," U.S. Department of the Interior Indian Affairs, 20, 22, accessed December 26, 2020, https://www.bia.gov/sites/bia.gov/files/assets/as-ia/ofa/admindocs/OfficialGuidelines.pdf.

[444] Kevin Brown, Chief; Robert Gray, Assistant Chief; G. Warren Cook, Councilman; and Gary Miles, Councilman to Assistant Secretary, June 18, 2009, Petitioner #323: Pamunkey Indian Tribe, VA, Department of Interior, Bureau of Indian Affairs, https://www.bia.gov/sites/bia.gov/files/assets/as-ia/ofa/petition/323_pamunk_VA/323_loi.pdf.

[445] R. Lee Fleming to Robert Gray, April 11, 2011, Petitioner #323: Pamunkey Indian Tribe, VA, Department of Interior, Bureau of Indian Affairs, https://www.bia.gov/sites/bia.gov/files/assets/as-ia/ofa/petition/323_pamunk_VA/323_ta_letter.pdf.

The Pamunkey Indians did not meet the membership criteria in their initial review by the OFA, but Fleming recommended the tribe include additional documentation, for instance, interviews that detail "the social relationships between those members who remained on the reservation and those who moved elsewhere to Philadelphia and Richmond." In addition to clarifying the Pamunkey's membership criteria and stating the relationships of members outside the reservation, Fleming pointed out the Pamunkey's tribal law that "the female members of the group cannot vote or hold office, or attend meetings unless at the specific invitation of the council." He suggested the petitioners to describe "how the members of the group responded to the decisions made by the governing body."[446]

After the Pamunkey Tribe revised their petition documents, the Department of the Interior received their additional petition documents and put the group on the "Ready, Waiting for Active Consideration list" on January 3, 2012. The Pamunkey Indians further clarified their governing documents in their petition filed on July 11, 2012. The Department determined the Pamunkey petitioner on "active consideration" on August 21, and officially announced the Proposed Finding for federal acknowledgement of the Pamunkey Indian Tribe on January 23, 2014. After the announcement was released to the public, the Department initiated a 180-day comment period to accept any comments or arguments from third parties.[447]

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[446] *Ibid.*

[447] "Federal Register Notice PF," Vol. 79, No. 15, January 23, 2014, Petitioner #323: Pamunkey Indian Tribe, VA, Department of Interior, Bureau of Indian Affairs, https://www.bia.gov/sites/bia.gov/files/assets/as-ia/ofa/petition/323_pamunk_VA/323_pf_fr.pdf; "Proposed Findings," Petitioner #323: Pamunkey Indian Tribe, VA, Department of Interior, Bureau of

Through the process, the Pamunkey Tribe met opposition from Virginia's oil industry and gas station and convenience store owners at the Virginia Petroleum Convenience and Grocery Association. The Association worried that the tribe could sell gas, alcohol, and cigarettes on their reservation without charging state taxes if full sovereignty was granted. They argued that it would lead to tax evasion and become an economic disruption in Virginia. Outside Virginia, Stand Up for California! (Stand Up!), a non-profit organization focusing on anti-gambling and tribal casinos, teamed up with the MGM Resorts International (MGM) to oppose the recognition of the Pamunkey Tribe as well. Cheryl Schmit, the director of Stand Up!, and Lorenzo D. Creighton, the president of MGM, wrote a lengthy report opposing the Pamunkey Tribe's recognition and explaining why the Department of the Interior had failed their historical analysis and "incorrectly concluded that the Petitioner's evidence satisfied existing regulatory criteria."[448]

Stand Up! pointed out that the petitioner's governing documents included regulations that "[prohibit] marriage and membership on the basis of race" and "limit the

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Indian Affairs, https://www.bia.gov/sites/bia.gov/files/assets/as-ia/ofa/petition/323_pamunk_VA/323_pf.pdf. See, "Administrative History," pp. 2-3, on "Proposed Findings."

[448] "Third Party Comments on PF," Petitioner #323: Pamunkey Indian Tribe, VA, Department of Interior, Bureau of Indian Affairs, https://www.bia.gov/sites/bia.gov/files/assets/as-ia/ofa/petition/323_pamunk_VA/323_pf_third_party_comments.pdf; Joe Heim, "VA. Tribe Pins Hopes on Federal Recognition," *Washington Post*, March 23, 2015, Newspaper Source Plus. Virginia's oil industry companies and the Virginia Petroleum Convenience and Grocery Association insisted that if Pamunkey Tribe were recognized, the law should "include stipulations that require the Pamunkey nation to collect and remit to the Commonwealth all taxes on purchases made by non-tribal members."

right of Pamunkey women to marry outside the group, and to vote and hold office."[449] Although those restrictions in the Pamunkey's tribal law had been necessary for "self-preservation" of their Indian character under Jim Crow, the "gender-based political restrictions" were not removed and the tribe had not indicated if they planned "to remove race-based restrictions on marriage." Furthermore, Stand Up! argued that the Pamunkey Indians "perpetuate some of those laws" that had been declared unconstitutional in 1967 in *Loving v. Virginia* and ignored the equal protection of Indians in the Indian Civil Rights Act in 1968. "The United States cannot acknowledge or expend funds on an entity that retains laws declared unconstitutional decades earlier and continues to deny its members equal protection," Schmit said. Stand Up! and MGM argued that the Pamunkey Tribe's governing documents violated the equal protection clause of the Fourteenth Amendment of the U.S. Constitution, and thus urged the Department to reconsider the acknowledgement of the Pamunkey Indian Tribe.[450] Behind their opposition, MGM was planning to build a casino at the National Harbor in Princes George's County, Maryland, near Washington, D.C., across the Potomac River and about 120 miles north of the

[449] John Garland Pollard wrote in his book, *The Pamunkey Indians of Virginia*, that "They are anxious to keep their blood free from further intermixture with that of other races." Regulations prohibiting intermarriage with anyone of African descent existed in their tribal laws as early as the late nineteenth century. If any of their tribal members married an African American, that person was likely to be shunned by their community, sometimes by their family or relatives, and most likely to leave the reservation. See John Garland Pollard, *The Pamunkey Indians of Virginia*, Bureau of American Ethnology, Bulletin 17 (Washington, D.C.: Government Printing Office, 1894), 11, 16.

[450] Cheryl Schmit and Lorenzo D. Creighton to R. Lee Fleming and Kevin M. Brown, July 22, 2014, "Third Party Comments on PF," Petitioner #323: Pamunkey Indian Tribe, VA, Department of Interior, Bureau of Indian Affairs, https://www.bia.gov/sites/bia.gov/files/assets/as-ia/ofa/petition/323_pamunk_VA/323_pf_third_party_comments.pdf.

Pamunkey Indian reservation. Although the Pamunkey Tribe had not mentioned opening a casino if they were recognized, the potential alarmed the casino giant MGM.[451]

Several members of the Congressional Black Caucus also opposed the past tribal law banning intermarriage with Blacks. Quoting from the Pamunkey's 1886 tribal law, they argued that the tribe had a long history of practicing racial discrimination. Eleven African American legislators denounced the Bureau of Indian Affairs for failing to "express any condemnation," and the "BIA effectively condones the Pamunkey for its discriminatory practices." Black lawmakers requested the Justice Department withhold the federal recognition and investigate discrimination. Pamunkey Tribe Chief Kevin Brown responded that their ban on interracial marriage was an attempt to protect Indian identity under Virginia's Jim Crow laws. Moreover, the Pamunkey Tribe repealed the ban on intermarriage in their tribal law in 2012. Chief Brown explained that the law is "antiquated and now repealed" and the tribe has now admitted members who are married to African Americans. "It was never an attack on, or reflective of, ill will toward African-Americans," Chief Brown said. [452] Further opposition came from five Democratic congresswomen, who wrote in a different letter to the Secretary of the Interior on March 17, to "express concern regarding the history of civil rights violations perpetuated by the

[451] Joe Heim, "VA. Tribe Pins Hopes on Federal Recognition," *Washington Post*, March 23, 2015, Newspaper Source Plus.

[452] Frederic J. Frommer, "Black Lawmakers Against Recognition of Va. Tribe," *AP Top News Package*, November 28, 2014, Newspaper Source Plus; Joe Heim, "VA. Tribe Pins Hopes on Federal Recognition," *Washington Post*, March 23, 2015, Newspaper Source Plus; Adams, *Who Belongs*, 58.

Pamunkey Indian Tribe of Virginia" and the tribe's long history of discrimination against African Americans and women.[453]

With opposition to the Pamunkey's governing document, the final decision determining the recognition of the Pamunkey Tribe was delayed from March 31, 2015 to July 2015. Stand Up for California! wrote another letter to the Bureau of Indian Affairs five days prior to the final decision. In the letter, Cheryl Schmit pointed out that "out of only six historical individuals that the Department was able to identify as Pamunkey Indians having descendants in the petitioner group, at least one, *and likely several*, of these individuals can be demonstrably identified in the historical record as non-Indian."[454] Additional research by Stand Up! included a report stating that one of the Pamunkey ancestors the tribe traced was a free Black or "colored" man, who moved to the reservation only in his late twenties. Using petitions, tax lists, census, and church records, the report asserted that this ancestral member "was not an indigenous tribal Pamunkey Indian by birth, but a demonstrably non-Indian person who became a resident

[453] Elizabeth H. Esty, Louise M. Slaughter, Eddie Bernice Johnson, Rosa L. DeLauro, and Yvette D. Clarke to Sally Jewell, *The Washington Post*, March 17, 2015, http://apps.washingtonpost.com/g/documents/local/letter-in-opposition-of-pamunkey-bid/1495/, accessed February 16, 2021. Reservation policies required Pamunkey women who married white men to leave their reservation permanently. This tribal law was created out of the Pamunkey's fear that white husbands could wield influence over their land and tribal affairs. Specifically, they wanted to prevent intermarried white men from gaining political rights in the tribe and taking control of their reservation. These strict rules were applied to reservation Indians to show outsiders that they were "Indians," and not "colored." See, Adams, *Who Belongs*, 50-54, and Frank G. Speck, *Chapters on the Ethnology of the Powhatan Tribes of Virginia* (New York: Museum of the American Indian Heye Foundation, 1928), 251, http://hdl.handle.net/2027/uc1.31822017322926.

[454] Cheryl Schmit to Kevin K. Washburn and R. Lee Fleming, *The Washington Post*, March 25, 2015, http://apps.washingtonpost.com/g/documents/local/pamunkey-research-cover-letter/1498/, accessed February 16, 2021.

of the Pamunkey reservation and changed his identity to that of an indigenous tribal Pamunkey Indian." Schmit concluded that the tribe's membership roll is not reliable, and thus the historical investigation of the Pamunkey Indians in the Proposed Findings conducted by the BIA has "numerous deficiencies, inconsistencies, omissions, and weakness." [455]

Schmit's argument claiming that several members of the Pamunkey Tribe were not Indians, but descendants of pre-Civil War free African Americans echoes similar arguments that challenged their identity during the Plecker era. Chief Brown opposed their letter, stating "The Stand Up! 'report' is inaccurate and misleading."[456] Virginia Senator Tim Kaine, who was a long-time supporter of federal recognition to Virginia tribes, criticized the organization: "They're building off the back of a horrific eugenicist to try and make their argument," he said.[457]

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[455] Joe Heim, "VA. Tribe Faces More Hurdles to Recognition," *The Washington Post*, April 1, 2015, https://www.washingtonpost.com/local/opposition-to-federal-recognition-of-virginia-tribe-heats-up/2015/03/31/aff6e4f2-d6fb-11e4-b3f2-607bd612aeac_story.html, accessed February 16, 2021; Pamunkey Research Report, Prepared by Stand Up for California, "Historical Pamunkey Indian Ancestor Edward 'Ned' Bradby: An Investigative Commentary," Prepared March 2015, *The Washington Post*, http://apps.washingtonpost.com/g/documents/local/pamunkey-research-report/1496/, accessed February 16, 2021; Pamunkey Research Summary, Prepared by Stand Up for California, *The Washington Post*, http://apps.washingtonpost.com/g/documents/local/pamunkey-research-summary/1497/, accessed February 16, 2021.

[456] Joe Heim, "VA. Tribe Faces More Hurdles to Recognition," *The Washington Post*, April 1, 2015, https://www.washingtonpost.com/local/opposition-to-federal-recognition-of-virginia-tribe-heats-up/2015/03/31/aff6e4f2-d6fb-11e4-b3f2-607bd612aeac_story.html, accessed February 16, 2021.

[457] Joe Heim, "How a Long-Dead White Supremacist Still Threatens the Future of Virginia's Indian Tribes," *The Washington Post*, July 1, 2015, https://www.washingtonpost.com/local/how-a-long-dead-white-supremacist-still-threatens-the-future-of-virginias-indian-tribes/2015/06/30/81be95f8-0fa4-11e5-adec-e82f8395c032_story.html, accessed February 16, 2021.

Despite the opposition, on July 2, 2015, the U.S. Department of the Interior announced the decision to grant federal recognition to the Pamunkey Indian Tribe. The Assistant Secretary- Indian Affairs (AS-IA) had determined that the tribe "has submitted more than sufficient evidence to satisfy each of the seven mandatory criteria for acknowledgment set forth in the regulations under 25 CFR 83.7, and, therefore, meets the requirements for a government-to-government relationship with the United States."[458] On the final day to appeal after the decision, Stand Up for California! filed another request to reconsider the Pamunkey Indians' federal acknowledgement.[459] The Department reviewed Stand Up!'s case but disagreed and rejected their request.[460] On January 28, 2016, the 200-member Pamunkey Tribe became the 567th federally recognized tribe and the first Virginia tribe to receive federal recognition. Since the tribe first began seeking

[458] R. Lee Fleming to Kevin M. Brown, July 2, 2015, "Notification Letter to the Petitioner FD," Petitioner #323: Pamunkey Indian Tribe, VA, Department of Interior, Bureau of Indian Affairs, https://www.bia.gov/sites/bia.gov/files/assets/as-ia/ofa/petition/323_pamunk_VA/323_fd_letter.pdf, accessed February 17, 2021; "Federal Register Notice FD," Petitioner #323: Pamunkey Indian Tribe, VA, Department of Interior, Bureau of Indian Affairs, https://www.bia.gov/sites/bia.gov/files/assets/as-ia/ofa/petition/323_pamunk_VA/323_fd_fr.pdf, accessed February 17, 2021; Joe Heim, "Pamunkey Indians Granted Federal Recognition," *The Washington Post*, July 3, 2015, Newspaper Source Plus.

[459] Robert Brauchle, "Challenge Filed Against Pamunkey's Federal Recognition," *Daily Press*, October 9, 2015, Newspaper Source Plus.

[460] Joe Heim, "Pamunkey Tribe Withstands Challenge to Federal Status," *The Washington Post*, February 2, 2016, Newspaper Source Plus. The Department of Interior dismissed Stand Up for California!'s request because they failed to "explain how acknowledgment of the Tribe, which is located in Virginia, would affect in any way the 'gaming environment[] in California,' or how that in turn would affect Stand Up as an organization, which states its goals as seeking to educate and to develop policy related to gambling issues affecting California." For full document, see, "Interior Board of Indian Appeals: In Re Federal Acknowledgment of the Pamunkey Indian Tribe 62 IBIA 122," January 28, 2018, Petitioner #323: Pamunkey Indian Tribe, VA, Department of Interior, Bureau of Indian Affairs, https://www.bia.gov/sites/bia.gov/files/assets/as-ia/ofa/petition/323_pamunk_VA/323_62ibia122.pdf, accessed February 17, 2021.

federal acknowledgement in 1982, the Pamunkey Tribe had spent more than $2 million. During the 33 years, the tribe's financial backers included "on-and off-reservation Pamunkey, their financially disinterested friends and sympathizers, and nonprofits and such."[461] The Pamunkey Indians' racial identity was questioned until the last minute before the federal acknowledgement.

In the past, the tribe had defined their membership under social circumstances and pressures they experienced during Jim Crow and later, under the attacks of white supremacists. The restrictions in the Pamunkey's tribal laws demonstrate how the tribe adopted Virginia's racial laws and norms as a survival method. This method of excluding non-Indians and maintaining racial purity follows a similar approach by the white supremacist's campaign. Indians, however, learned to avoid Blacks in their community to survive in Virginia's bi-racial society. In fact, denial of Blackness was a strategy to protect their "Indianness." By the time Plecker took office, anti-Black discrimination was deeply rooted in the Pamunkey reservation. Plecker's attack, furthermore, created fear of losing their Indian identity. Ironically, opponents of Pamunkey's recognition used their tribal regulations against Blacks to challenge their recognition. Recent events during their quest for federal recognition reveal that their Indian identity had been influenced by outsiders and challenged by their tribal opponents.[462]

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[461] "Who Supports the Pamunkey?," *The Washington Post*, March 28, 2015, Newspaper Source Plus.

[462] In addition, the Pamunkey Tribe strengthened their Indian identity by continuing cultural traditions in their pottery making, increasing their visibility to white audiences, and protecting their tribal land. See more on Adams, *Who Belongs*, 39-43.

5. Federal Recognition Through Congressional Legislation

Unlike the Pamunkey Tribe, most Virginia Indian tribes were unsuccessful in petitioning federal recognition with the Bureau of Indian Affairs under the Federal Acknowledgement Process. In 1999, the Virginia General Assembly adopted House Joint Resolution 754 to urge the Congress to grant federal recognition to the eight state recognized Virginia tribes.[463] In the same year, the Chickahominy Tribe, the Chickahominy Indian Tribe Eastern Division, the Monacan Tribe, the Nansemond Tribe, the Rappahannock Tribe, and the Upper Mattaponi Tribe attempted to seek official recognition and filed their petitions with the BAR (Bureau of Acknowledgement), now the OFA (Office of Federal Acknowledgement). Virginia Indian tribes, however, could not compile historical data to meet the OFA's guidelines and provide documentation that proved they are *historic* tribes or that they had existed as a tribe since 1900. The official from the Bureau of Indian Affairs advised the tribes that "many of [them] would not live long enough to see our petition go through the administrative process."[464] For Virginia tribes, they had no chance of achieving official recognition through the BIA process.

One of the hurdles the Virginia Indians faced to petition for official recognition through the BIA process was their treaty status with the King of England during the colonial period. The Middle Plantation Treaty of 1677 was signed between the Virginia tribes and King Charles II of England. Since the seventeenth century, Virginia tribes have

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[463] "1999 Session, House Joint Resolution No. 754," Virginia's Legislative Information System, accessed April 3, 2021, https://lis.virginia.gov/cgi-bin/legp604.exe?991+ful+HJ754ER.

[464] *Hearing Before the Committee on Indian Affairs United State Senate*, 110th Cong. 2 (2008) (Statement of Stephen R. Adkins, Chief, Chickahominy Indian Tribe).

been paying annual tribute to the Virginia governor, as is now celebrated in a ceremony at the State Capitol. Historically, Indian tribes that had secured treaties with the United States between 1778 to 1871 were automatically acknowledged as federally recognized tribes. But Virginia tribes were not federally recognized due to their treaty signed before the establishment of the United States. While the Commonwealth of Virginia granted state recognition to eight Virginia tribes between 1983 and 1989, the federal government did not acknowledge the treaty made during the colonial period. Thus, Virginia Indians were not granted official recognition with their proper treaty status established during the colonial period.[465]

Additional reasons that blocked their paths to federal acknowledgement was that many Virginia tribes officially reorganized in the early 1900s. The Chickahominy Indians, for instance, worked toward tribal organization when they started to create their own church. Prior to the Civil War, they had attended Cedar Grove Baptist Church, which was a church for all races but became predominately a "colored" church after the war. As its racial profile changed, the Chickahominy Indians abandoned the Cedar Grove Baptist Church and attended Samaria Baptist Church instead. When the Samaria Baptist Church was disbanded in 1888 and the Chickahominy Indians were left with no church to attend, they created their own church, the Samaria Indian Baptist Church, in 1901.[466] Other tribes such as the Rappahannock Indians took a charter and formed as a tribe in

[465] Adkins, *Chickahominy Indians-Eastern Division*, 185; U.S. Department of Interior Indian Affairs, "Frequently Asked Questions."

[466] Rountree, *Pocahontas's People*, 202.

1921. The Upper Mattaponi organized in 1923 when Frank Speck pressured the tribes to reorganize. The Nansemond Indians also organized informally in 1923.[467] When Rappahannock Chief Otho Nelson and Upper Mattaponi Chief Jasper Adams both passed away in the early 1970s, both of their sons were elected as the new chiefs of their tribes. The new chiefs reorganized their tribes and got new charters again for Rappahannock Indians in 1974 and the Upper Mattaponi Indians in 1976.[468] Tribes that reorganized in the twentieth century did not meet the OFA's criteria to prove that their tribal communities have continued to exist and to recount the social relationships and political influence among their tribal members.

The path towards federal recognition was further prevented because Virginia tribes could not provide physical evidence such as birth and census records that are requirements under the FAP. Many local records in courthouses had been destroyed during the Civil War including tribal records, thus preventing the tribes from tracing their lineage prior to the war. Plus, Virginia's Racial Integrity Act complicated the tribes' efforts to seek acknowledgement. Virginia's tribes faced 34 years of "paper genocide" by Walter Plecker at the Virginia Bureau of Vital Statistic. Their history and their race were erased by state officials like Plecker when the state passed the Racial Integrity Act of 1924 and declared only two races in Virginia, white and "colored." Not only did Plecker alter the race on their documents from "Indian" to "colored," for Indians to claim to be

[467] Helen C. Rountree, "The Indians of Virginia: A Third Race in a Biracial State," in *Southeastern Indians Since the Removal Era*, ed. Walter L. Williams (University of Georgia Press, 2009), 40.

[468] Rountree, *Pocahontas's People*, 250, 359.

"Indian" was a crime in Virginia at the time. Plecker harassed them to such an extent that many Indians moved outside Virginia, making it difficult for tribes to trace back their lineage and show that they are the descendants of Virginia Indians.[469] Because the tribes had documentation problem, it was impossible for them to prove their continuous existence through the BIA process.

After the tribes foresaw that they would not see recognition through the administrative process in their lifetime, the Chickahominy, Chickahominy Indian Eastern Division, Monacan, Nansemond, Rappahannock, and Upper Mattaponi tribes joined together to seek recognition through Congressional action. On July 27, 2000, U.S. Representative James P. Moran Jr. introduced the Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2000, the bill to extend federal recognition to the six tribes, to the House.[470] The recognition of tribal sovereignty under the Thomasina Jordan Act included the understanding that each tribe would determine its membership criteria for itself. The bill was named after a Native American activist, Thomasina E. Jordan, who was a member of the Mashpee Wampanoag Tribe, Massachusetts, and later moved to Alexandria, Virginia. Jordan helped unite Virginia tribes to achieve state recognition in the 1980s. Later, she was assigned by the governor to serve as the chair of the Virginia Council on Indians in 1994 and was reappointed in 1997. The Chickahominy and the

[469] Adkins, *Chickahominy Indians-Eastern Division*, 187; *Hearing Before the Committee on Indian Affairs United State Senate*, 110th Cong. 2 (2008) (Statement of James P. Moran, Representative, Virginia).

[470] Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2000, H.R. 5073, 106th Cong. (2000).

Nansemond tribes appointed Jordan as an honorary tribal member. Jordan continued to advocate for Indians even when she was ill. Before her death on May 23, 1999, she lobbied to introduce a bill that would grant federal recognition to Virginia tribes. James Moran, who represented Northern Virginia, recalled when Jordan visited him: "She had to be carried in because she was so ill. She held my hand and made me promise to do this. And she died the next morning." Since then, Moran made a commitment to support federal acknowledgement of Virginia Indians and named the bill after Jordan.[471]

The following year, Moran introduced the bill and he reintroduced it in 2003.[472] U.S. Senator George F. Allen introduced the Senate bill in 2002 and 2003, and it was reported to the Senate Indian Affairs Committee in 2004.[473] In 2005, Moran and Allen introduced the bill to the House again, as well as to the Senate.[474] Both the House and the Senate, however, did not approve the bill nor take action on it for years.[475]

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[471] Timothy Dwyer, "Forgotten Tribes on Verge of Federal Recognition," *The Washington Post*, May 3, 2007, Newspaper Source Plus; Michael E. Miller, "'400 Years is Long Enough': Virginia's 'first contact' Indian tribes demand federal recognition," *The Washington Post*, May 26, 2017, ProQuest. See Jordan's full biography at "Thomasina Jordan (1940-1999)," Changemakers, Library of Virginia, accessed March 25, 2021, https://edu.lva.virginia.gov/changemakers/items/show/114.

[472] Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2001, H.R. 2345, 107th Cong. (2001); Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2003, H.R. 1938, 108th Cong. (2003).

[473] Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2002, S. 2694, 107 Cong. (2002); Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2003, S. 1423, 108 Cong. (2003).

[474] Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2005, H.R. 3349, 109th Cong. (2005); Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2005, S. 480, 109 Cong. (2005).

[475] Bobbie Whitehead, "Virginia Indians Continue Fight for Federal Recognition," *Indian Country Today*, June 23, 2004, Newspaper Source Plus.

The delay in approving the bill was due to reluctance from the members of Congress. Opponents expressed concerns about tribes opening casinos, which violated Virginia law, and the influence of gaming and gambling. Congress had also been disinclined to grant federal recognition to American Indian tribes through legislative action and preferred tribes to go through Bureau of Indian Affairs rather than the congressional recognition. Therefore, opponents had rejected the bill in the past, and believed Virginia tribes should also be recognized through the BIA's administrative procedure. Further opposition came from convenience storeowners and the Virginia Petroleum, Convenience and Grocery Association, expressing concerns that federally recognized tribes would sell gasoline and tobacco without tax on tribal lands, which was a similar complaint submitted to the Pamunkey's petition.[476]

As the 400th anniversary of Jamestown Commemoration was approaching, the Congress finally started showing interest in the long overdue bill. In May 2007, the Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2007, for the first time, was passed at the House.[477] The House approved the bill to grant federal recognition to six Virginia Indian tribes upon tribal leaders agreeing that they would give up their sovereign rights of owing casinos and gambling on tribal lands. James Moran,

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[476] David Lerman, "VA. Tribes Bill Gets House OK: The Six Indian Nations Still Face a Hurdle in Obtaining Approval From the Senate," *Daily Press*, May 5, 2007, Newspaper Source Plus; Jenna Portnoy, "Senate Sends Bill Recognizing Six Virginia Indian Tribes to President Trump's Desk, *The Washington Post*, January 11, 2018, https://www.washingtonpost.com/local/virginia-politics/senate-sends-bill-recognizing-six-virginia-indian-tribes-to-president-trumps-desk/2018/01/11/80c56260-f6f3-11e7-b34a-b85626af34ef_story.html.

[477] Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2006, H.R. 1294, 110th Cong. (2007).

who had now been a long-time supporter of Virginia Indians, persuaded the six tribes to waive their rights to gambling licenses for the bill to pass through the House.[478] Tribal leaders expressed that they had no problem with giving up their gambling licenses and that they were not interested in establishing casino gambling. Instead, Diane Shields, assistant chief of the Monacan Indian Nation, explained that the tribes decided to pursue federal recognition "to show respect of their elders."[479]

During the Congressional hearing, Moran reassured the members that these "six Virginia tribes are not seeking federal legislation so that they engage in gaming." Virginia Indians were seeking federal recognition because "it is an urgent matter of justice and because elder members of their tribes, who were denied a public education and the economic opportunities available to most Americans, are suffering and should be entitled to the federal health and housing assistance available to federally recognized tribes," Moran stated.[480] In addition, Helen Rountree, an anthropologist and expert on Indians of Virginia, testified as a witness at the hearing, stating that the tribes were not interested in benefitting by gaming and had "waived their rights to gaming." Rountree reiterated that their primary goal for seeking federal recognition was "getting better

[478] Miller, "'400 Years is Long Enough'; Lerman, "VA. Tribes Bill Gets House OK"; Brigid Schulte, "U.S. House Approves Recognition of Va. Tribes," *The Washington Post,* May 09, 2007, Proquest.

[479] Whitehead, "Virginia Indians Continue Fight for Federal Recognition."

[480] *Hearing Before the Committee on Indian Affairs United State Senate*, 110th Cong. 2 (2008) (Statement of James P. Moran, U.S. Representative, Virginia).

access to health programs" for their elders in the community and "to provide better conditions for their people through Federal Indian programs."[481]

The legislation was rewritten with a new provision added that forbade Virginia tribes from operating gambling casinos. With the revised bill, Virginia Indians and their supporters hoped to see the bill reach the president's desk before the Jamestown Commemoration. But the Senate blocked the bill again. Once the Jamestown Commemoration was over, it seemed that the moment had passed, and the bill was inactive for years. As one journalist stated in the *Richmond Times-Dispatch*, the politicians had lost interest in supporting the Indians after the Jamestown Commemoration.[482]

In 2009 a new presidential administration was established. After patiently waiting for ten years, the political shift in Washington brought back hopes to the tribes. Not everyone but many Indians including Wayne Adkins, the president of the VITAL, hoped to stay optimistic with the new session in congress. Moran reintroduced the bill to the House in March 2009, seeking other members of the House to support federally recognizing the tribes.[483] Virginia Governor Tim Kaine further stepped in to support the

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[481] *Hearing Before the Committee on Indian Affairs United State Senate*, 110th Cong. 2 (2008) (Statement of Helen C. Rountree, Professor Emerita, Anthropology, Old Dominion University).

[482] Michael Paul Williams, "Va. Indian Tribes Deserve Federal Recognition," *Richmond Times-Dispatch*, March 12, 2009, Newspaper Source Plus.

[483] Williams, "Va. Indian Tribes Deserve Federal Recognition"; Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2009, H.R. 1385, 111th Cong. (2009).

legislation to grant federal recognition to Virginia's tribes at the House Committee.[484] The House passed the Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2009 in June.[485] Many Virginia Indians as well as their supporters believed that they were a step closer to federal recognition and hoped this year would be the year that Virginia's Indian tribes could achieve recognition from Congress.[486] Senator Jim Webb introduced companion legislation at the hearing of the Committee on Indian Affairs before the final vote at the Senate. The senate, however, blocked the bill again.[487]

Moran continued to introduce the bill in 2011 and 2013, as well as Senator Jim Webb, who introduced the bill to the Senate in 2011 and Senator Tim Kaine, who introduced the bill to the Senate in 2013.[488] In 2015, U.S. Representative, Rob Wittman, who replaced Moran, introduced the Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2015 and Senator Tim Kaine introduced the bill to the

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[484] Jim Nolan, "Kaine, in Washington Urges Federal Recognition of Virginia Tribes," *Richmond Times-Dispatch*, March 18, 2009, Newspaper Source Plus.

[485] Jim Nolan, "U.S. House Votes to Recognize Six Virginia Tribes," *Richmond Times-Dispatch*, June 4, 2009, Newspaper Source Plus.

[486] "Editorial: Another Step to Recognition for Va. Tribes," *The News & Advance*, June 9, 2009, Newspaper Source Plus.

[487] Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2009, S. 1178, 111 Cong. (2009).

[488] Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2011, H.R. 783, 112 Cong. (2011); Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2013, H.R. 2190, 113 Cong. (2013); Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2011, S. 379, 112 Cong. (2011); Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2013, S. 1074, 113 Cong. (2013).

Senate.[489] Meanwhile, the six tribes heard the news of the Pamunkey Tribe's federal recognition in 2015.

Finally, the Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2017 was introduced in the House by U.S. Representative Rob Wittman in February 2017, and it was endorsed by unanimous consent in May.[490] Senator Tim Kaine and Senator Mark Warner sponsored the bill in the Senate in March 2017 and the Senate also passed the bill with unanimous support in January 2018. The Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act was finally passed by both House and Senate.[491] Tribal leaders of all six tribes were on Capitol Hill as the bill was approved by the Senate. Upon returning to his tribal home in King William County from Washington, Frank Adams, chief of the Upper Mattaponi Indians, said, "It's a tremendous battle that we fought and a tremendous victory that we won."[492]

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[489] Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2015, H.R. 872, 114 Cong. (2015); Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2015, S. 456, 114 Cong. (2015).

[490] Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2017, H.R. 984, 115 Cong. (2017).

[491] Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2017, S. 691, 115 Cong. (2017); Jenna Portnoy, "Senate Sends Bill Recognizing Six Virginia Indian Tribes to President Trump's Desk, *Washington Post*, January 11, 2018, https://www.washingtonpost.com/local/virginia-politics/senate-sends-bill-recognizing-six-virginia-indian-tribes-to-president-trumps-desk/2018/01/11/80c56260-f6f3-11e7-b34a-b85626af34ef_story.html; "A Historic Moment as Congress Approves First Tribal Recognition Bill in Decades," *Indianz.Com News*, January 12, 2018, https://www.indianz.com/News/2018/01/12/a-historic-moment-as-congress-approves-f.asp.

[492] Michael Martz, "Senate Sends Bill Recognizing Six Virginia Indian Tribes to President Trump's Desk," *Richmond Times-Dispatch*, January 11, 2018, https://richmond.com/washingtonpost/uncategorized/senate-sends-bill-recognizing-six-virginia-indian-tribes-to-president-trumps-desk/article_e322fb7b-c020-501d-a581-f7641ff4da1c.html.

After nearly two decades of fighting for recognition, the six tribes finally achieved federal recognition. On January 29, 2018, the Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2017 was signed into law by the president, granting official federal recognition to six tribes: the Chickahominy, Eastern Chickahominy, Monacan, Nansemond, Rappahannock, and Upper Mattaponi tribes. Unlike the Pamunkey Indian Tribe, the six tribes were forbidden from pursuing gambling licenses but they were eligible for federal funding on housing and education as well as access to health care benefits.[493] With the federal recognition, Wayne Adkins, a Chickahominy Indian and president of the VITAL, envisioned to build a health care center for the elderly members that would be accessible and a short drive for all the tribes in Tidewater region and to improve their tribal facilities. The tribes also hoped to use the funds for education through scholarships. Additionally, the money from the Congress allowed tribes to retrieve tribal artifacts and repatriate remains of their ancestors from museums and colleges. But most importantly, the reason they fought long to pursue federal recognition was "just for pride," Adkins said, and "to be recognized for who we are."[494]

The six tribes joined together and sought recognition through Congressional legislation because Plecker's influence had a direct impact on these tribes. Plecker's damage separated their members and destroyed their families, and as a result, many tribes

[493] Jenna Portnoy, "Trump Signs Bill Recognizing Virginia Indian Tribes," *The Washington Post*, January 30, 2018, ProQuest; Marie Albiges, "'A Long Time Coming': Virginia's Indian Tribes Celebrate Federal Recognition," *Daily Press*, October 4, 2018, Newspaper Source Plus.

[494] Martz, "Senate Sends Bill Recognizing Six Virginia Indian Tribes to President Trump's Desk."

had documentation problems. The process of going through Congressional recognition, however, was not easy for the tribes, who had to fight for nearly two decades. Since the tribes began seeking federal recognition in 1999, the Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act was introduced to the House several times but was passed only twice in 2007 and 2009, and the bill was stalled in the Senate each time.

On October 3, 2018, the seven federally recognized tribes in Virginia gathered at Werowocomoco in Gloucester County, Virginia, to celebrate their recognition by the federal government. Werowocomoco was a former site of Powhatan Indian town and a home once occupied by Chief Powhatan. Hosted by the U.S. Secretary of the Interior, Ryan Zinke, the event was joined by Rob Wittman, representatives from the Virginia Governor's and U.S. Senate offices, and officials from the National Park Services, who participated in traditional native dances with Virginia Indians. "This is liberty for us. This is justice for us," Anne Richardson, chief of the Rappahannock Tribe, stated, and "we're finally seeing the promises that are inherent in our constitution that we've been left out of all these years."[495]

[495] Albiges, "A Long Time Coming"; U.S. Department of Interior, "Secretary Zinke Joins Tribal Chiefs in Celebrating Federal Recognition for Seven Virginia Tribes at Site of Historic Powhatan Headquarters," press release, last edited October 4, 2018, https://www.doi.gov/pressreleases/secretary-zinke-joins-tribal-chiefs-celebrating-federal-recognition-seven-virginia.

CONCLUSIONS

Voices of Virginia Indians

"I know it's kind of cruel to say this, but I hope the last thing he saw was an Indian driving that bus," a Monacan Indian, Sue Elliot, said about the moment when Plecker was hit by a car. He had crossed the street on the east side of Chamberlayne Avenue in Richmond, Virginia, without looking at the cars, assuming the driver would stop for him. Instead, he suffered a fractured leg and died at a hospital two hours after the accident. Plecker died in 1947, about a year after his retirement as state registrar.[496] Plecker's deplorable and dishonest work ended with his death. But the Racial Integrity Act and the damage it caused to Virginia's Indians lived on. Plecker's attack separated Indian families and divided their communities. Some of them left Virginia and moved to other states where they could marry freely, travel where they wanted to, attend schools in their communities, and where they did not have to hide or deny their identity.

Lacy Branham Hearl was 74 years-old when she was interviewed in 2004 for the *Virginian-Pilot* about her bitter memories during her childhood. Hearl lived in a Monacan Indian settlement near Amherst with all her relatives working in a family business at an apple orchard at Tobacco Row Mountain. Her family included her parents, five siblings, uncles and aunts, and cousins. When she was twelve years-old, however, her uncle and his family left Virginia. Soon, the other relatives followed her uncle's family and left the

[496] "Dr. W. A. Plecker Dies After Being Hit by Car," *Richmond Times-Dispatch*, August 3, 1947; Warren Fiske, "The Black-and-White World of Walter Ashby Plecker: How an Obscure Bureaucrat Tried to Eradicate Virginia's 'Third Race,'" *The Virginian-Pilot*, August 18, 2004, https://www.pilotonline.com/history/article_654a811f-213f-5d97-a469-51cc43b1a77f.html.

orchard behind. Eventually, only her immediate family remained. The family decided to close the orchard because there were not enough workers to continue the business. As the relatives left, they muttered the name "Plecker."[497]

Those who stayed in Virginia felt lonely, including Hearl, who described the situation that "a family has to depart from each other just because of a name." Hearl especially became a target because her maiden name was listed on Plecker's 1943 "hit list." Many of her family members "had light complexions and could move freely." But soon, Hearl could no longer get in the movies or dances or enjoy her daily life. Her freedom was taken away. As Kenneth Adams, the chief of the Upper Mattaponi, says, "The worst thing about Plecker is how he screwed up the community."[498]

While Plecker separated Indian families, the remnant Indians stayed together and built a strong sense of Indian identity. Diane Shields, a tribal activist and researcher for the Monacan Indian Nation, said that "It's a horrible thing, what he did to the Indian people." "But you know what," Shields added, "It gives me a sense of belonging – because I'm grouped with my own people." She explained how "It kind of backfired" because Plecker "pushed the Indian people closer and gave us an identity." Shields's brother, Johnny Johns, who is a tribal leader, had his surname listed on Plecker's "hit list." Johns despises Plecker as "the horror, the terror," but at the same time, he also believed that Plecker "did us a favor, because the list of [Indian] names is there." Plecker's "hit list" changed the lives of many Indians but it indicated the names of

[497] Fiske, "The Black-and-White World of Walter Ashby Plecker."

[498] *Ibid.*

Indians. “We know who we are. It’s a two-edged sword, a duality,” Johns said. Chief of the Monacan Indian Nation, Kenneth Branham, also said that Plecker “kind of drew us together,” and “We were a tightknit group, because there was nobody else we could associate with.”[499] Similarly, Stephen Adkins, chief of the Chickahominy Tribe, said, “We have a bond now.” And “It’s kind of ironic, but Plecker has made us stronger.”[500]

The Racial Integrity Act of 1924

The Racial Integrity Act of 1924 was enacted by a group of white supremacists and for their campaign for preserving white racial purity. The Anglo-Saxon Clubs of America lobbied to enact the law and revised the definition of race to meet their goal in preserving the “whiteness” of the white race. The eugenics movement at the time also persuaded the enactment of the Racial Integrity Act of 1924. With the support of nationally renowned eugenicists, the Anglo-Saxon Clubs of America successfully lobbied for passage of the 1924 Act. The Act replaced the previous anti-miscegenation laws with a narrow legal definition of a white person as one “who has no trace whatsoever of any blood other than Caucasian.” The purpose of the law was to strengthen the restriction of interracial marriage of whites and non-whites and regulate the racial lines between Black and white. To further protect the white elites or the First Families of Virginia (FFV), who claimed to be the descendants of Pocahontas, from being categorized as Blacks, the

[499] Peter Hardin, “Documentary Genocide: Families Surname on Racial Hit List,” Richmond Times-Dispatch, May 9, 2007, http://www.richmond.com/news/documentary-genocide/article_23e615d7-5fbf-52b0-a8c9-f8cb13729487.html.

[500] Fiske, “The Black-and-White World of Walter Ashby Plecker.”

Racial Integrity Act of 1924 included a special exemption called the Pocahontas exception. The Pocahontas exception allowed those with one-sixteenth or less blood of American Indian and no other mixture of white and Indian to be considered as a white person. This provision in the 1924 Act, however, created debates on categorizing Virginia Indians.

Walter Plecker believed that Virginia Indians were using the Pocahontas exception to pass as white persons, while he argued that they were not Indians but racially mixed with Blacks. When Dorothy Johns and Atha Sorrells challenged the clerk of the Rockbridge County to issue their marriage licenses to marry white men at the court, Plecker appeared at the court to prove their Black ancestry. During the Sorrells's case, however, Judge Henry Holt not only favored Sorrells but also pointed out the flaws in the Racial Integrity Act of 1924. The law's definition of a white person as one with "pure Caucasian blood" was ineffective because it failed to give a clear definition of the term "Caucasian." After the judge criticized the 1924 Act, the Anglo-Saxon Clubs revised the Racial Integrity Act of 1924 several times until they finally established the "one-drop rule" in the 1930 law. The revised law, however, compromised on certain members of Indian tribes, allowing anyone who lived on reservations that had one-fourth of more of Indian blood and less than one-sixteenth of blood of African American to claim to be tribal Indians. Despite the exception for tribal Indians, Plecker was convinced that those claiming to be Indians were actually Blacks disguised as Indians trying to enter the white race. The 1924 Act that was aimed to maintain white supremacy over Blacks became an issue on racially classifying Indians.

Not all people agreed with the Anglo-Saxon Clubs and the legal definition of race in the 1924 Act. Except for some organizations such as the UNIA, Marcus Garvey built a unique coalition with the members of the Anglo-Saxon Clubs, sharing a mutual goal in racial separatism. But most often, the clubs faced opposition from other white Virginians, the editor of an African American newspaper, representatives of the Native American groups, and the judge. The two court cases and the several debates during the revision of the Racial Integrity Act, furthermore, showed disagreements between Walter Plecker and the court and politicians. The white supremacists faced several attempts and disagreements in redefining "race" in their campaign for racial purity in the Racial Integrity Laws.

Walter Plecker simplified the classification of race to bi-racial categorization creating only Black or white. Plecker considered Native Americans as a third racial category and could not conceive of a society consisting of racial categorizations of more than two races. Instead of acknowledging their presence, he assumed that all Indians were racially mixed with African Americans, and therefore, categorized Indians as Blacks. To simplify the process of racial categorization even more, Plecker created a "hit list" in 1943, containing a list of last names that he considered to be "Indian." Plecker's hit list was distributed to the clerks, midwives, and school authorities, and he specifically instructed them not to categorize Virginia Indians as "whites." He also threatened those who attempted to grant a license to any one listed on the hit list as a "white" person, saying they would face a penalty of going to prison.

Plecker's arbitrary method in categorizing Virginia Indians met with further opposition by Virginia governors, members in the eugenic community, and American Indians and their allies. Virginia's Governor E. Lee Trinkle, for instance, was concerned about Plecker's despotic approach against the Native people. Despite the warnings from the governor, Plecker ignored the governor's letter and enforced the law to his own interpretation. Plecker was also not trusted in the eugenics community. Charles Davenport, the Director of the Eugenics Records Office, denied Plecker's request to provide their research materials, a draft of their book, written by Davenport's fieldworkers on Amherst Indians in Virginia. Plecker wanted to obtain their research materials containing actual names of Amherst Indians interviewed by Davenport's researchers so he could track the names of Indians. Davenport disagreed as they feared Plecker would misuse it to benefit his office. Once, Plecker came close to violating the law for using his power at his office when his actions were rebuked by William Kinckle Allen, an attorney for the Amherst Indians, and John Randolph Tucker, a prominent attorney in Richmond. Instead, Plecker reinforced his power by introducing a new law that allowed the state registrar to write "Classified by the State Registrar as colored" on the back of the certificates whenever he believed the applicant was "colored." The state registrar won again in this battle. Plecker became in control of making decisions about the racial category of Virginians.

The racial classification of Indians was further discussed during the enlistment for the draft for World War II. Indian men signed up to local boards but only to find that the Selective Service System classified these Indian men according to the state's legal

definition of race. Following the Racial Integrity Act of 1924, the officials assumed and classified the Amherst Indians as Blacks. When Indian men arrived at the training, they refused to join the African American units. Since the first case appeared at a local draft board in King William Country in 1940, Mills F. Neal, state director of Selective Service in Virginia, was troubled by solving the racial designation of Virginia Indians that joined the military force. Virginia Indians did not fit in the Black-white categorization, and thus, complicated the registration process during the enlistment. Neal believed that local boards had no legal authority in determination of the inductees' race and postponed the racial classification of Indians.

In January 1942, the War Department intervened in the ongoing issue of racial categorization of Indians. Memo 336 instructed local boards to classify registrants as "Colored" for Indians with any Black ancestry or association with the African American community. The War Department admitted the determination of a registrant's racial status to be entirely under the authority of local officials, which contradicted to Neal's plan. The memo was designed to solve the determination of racial status for those who identified as Indians, but instead it oversimplified the problem of racial classification.

A few months later, however, Lewis B. Hershey, the director of the Selective Service revised the policy, allowing individuals to claim their own racial status and object against the local boards if they were not satisfied with the racial designation. With this policy in effect, tribal leaders and their attorneys protested the racial classification of their Indian men. The Selective Service System revised its policy again and adopted the "nondetermination of race" policy for categorizing Indians, which instructed the local

boards to leave the section on race blank and allow the induction station to make the final determination on race. However, this policy also lasted for a short time, and after continued disagreements on how to classify Indians, Hershey finalized the policy to determine the race as claimed by the registrant.

After several revisions on the policy and protests by the Indians, both the Chickahominy Indians and the Eastern Chickahominy Indians were sent to the white training facility. The Chickahominy Indians were categorized as "Indians" and the Eastern Chickahominy Indians were listed as "nationality unknown." Pamunkey men were also recognized as Indians and were drafted with whites. The Rappahannock Indian men, however, were unable to train in the white facility, nor did they gain their racial classification as Indians. Oliver Fortune and two other Rappahannock men refused to join the training when they were enlisted in the Black military unit. Despite the tribal leaders' efforts to plead their cases, Fortune was considered to have associations with the African American community, and Fortune along with two other Rappahannock men were sent to prison. While these Native American men fought for their independent racial status as "Indian," they detested being categorized with "colored" as "an act of death" to the Indian people. Additionally, a third racial category was not accepted by the state and the military force, and thus, Indian men were caught in the middle between two racial categories of Black and white. The 1924 Act that targeted people of color from African Americans and American Indians involved many Virginians on the local level from clerks and midwives to eugenicists and military officials who were outside Virginia. Each group of people took different roles in enforcing, redefining, and shaping the law.

White advocates such as Frank Speck and James Coates joined the Virginia Indians to fight for their Indian identity. Speck proposed the tribes unite and form a single Powhatan Confederacy to strengthen the Virginia Indian community. These white allies encouraged their neighbor Indians that they must prove that they did not possess any Black ancestry to survive in Virginia's bi-racial society. Coates advised the tribes to create a tribal roll consisting of members who were only "pure Indian" or "Indian and white." Virginia Indians had understood the implication of being a Black person and had distanced themselves from the Black communities before Speck and Coates visited the tribes. This strategy reinforced Indians to segregate themselves from Blacks and they readopted a racial hierarchy similar to white supremacy. The Chickahominy Indians of the Eastern Division, for instance, became in close relationship with Speck and adopted their strategy. Not all tribes, however, welcomed Speck and Coates' strategy such as the Pamunkey Tribes whom preferred to work independently rather than joining the Powhatan Confederacy. While white allies advocated for Indian identity, their work further promoted racial purity within the Indian tribes. The racial ideology on racial purity persisted and further escalated the racial division inside the tribes. Indian tribes and white allies were also taking initiatives to make and remake "race" in Virginia. Plecker's influence, furthermore, reinforced Indian tribes to redefine their racial identity within their tribes to meet the criteria of whites' definition. This method created racial tensions within the tribes, excluding members who were close to the African American community. Indians were compelled to redefine "race" within their tribal communities.

Walter Plecker remained in his office at the Bureau of Vital Statistics until 1946. The Racial Integrity Act was in effect until the U.S. Supreme Court decision in 1967 in *Loving v. Virginia*, which overturned the state's law against interracial marriage. While some Virginia Indians remained quiet, a few Indians became active in the political scenes in the 1970s. Virginia tribes joined pan-Indian organizations such as the Coalition of Eastern Native Americans (CENA), taking important roles in leading the organizations. In addition, some tribal members participated in the nation-wide protest movements for American Indians led by the American Indian Movement (AIM). Gaining experience from the pan-Indian alliances and nation-wide American Indian movement, Virginia Indians formed the Virginia Council on Indians (VCI) to pursue official recognition for themselves.

In the 1980s, the Chickahominy Tribe, Eastern Chickahominy Tribe, Mattaponi Tribe, Pamunkey Tribe, Rappahannock Tribe, and Upper Mattaponi Tribe, and later, the Nansemond Tribe and Monacan Indian Nation received state recognitions. Virginia Indians continued to establish more tribal organizations such as the United Indians of Virginia (UIV) in 1988 and the Virginia Indian Tribal Alliance for Life (VITAL) in 1999 to improve their social and economic situation and to grow public awareness. As tribes collaborated with one another, they organized their first state-wide powwow in 2002. In 2007, tribal members participated in events, conferences, and talks, such as the Jamestown Commemoration, commemorating the 400th anniversary since the founding of the first permanent English settlement in Jamestown. These Virginia state-wide events

and strong tribal organizations helped strengthen their Indian identity and created visibility to the public.

As Virginia tribes were gradually regaining their identity, Plecker's legacy continued to impact Virginia Indians, blocking their paths from federal recognition. The Pamunkey Tribe sought recognition through the Office of Federal Acknowledgement (OFA). The OFA accepted the Pamunkey Tribe's petition document, including their membership criteria, because Pamunkey Indians had defined their membership exclusively in their tribal laws. Pamunkey Indians were aware of the anti-Black sentiment established in the society and therefore, had excluded any member who intermarried with Blacks to preserve their Indian identity. Ironically, their membership criteria were afterwards used as an attack to prevent their official recognition. Past tribal laws defined Indian identity based on influences by the outsiders or non-Indians. The Pamunkey Tribe incorporated white supremacists' racial ideology into their tribal policies to be accepted as "Indian" and to survive in Virginia's bi-racial society.

In addition to the membership criteria, opponents questioned the Pamunkey's Indian identity, claiming that several members of the Pamunkey Tribe were descendants of pre-Civil War free African Americans. This argument resembles similar methods used by Plecker when he attacked their Indian identity. Despite oppositions, the OFA accepted their petition document and the Pamunkey Tribe became the first Virginia tribe to receive federal recognition in January 2016. The Pamunkey Indians' racial identity, however, was questioned until the final decision.

Other Virginia Indian tribes were unsuccessful in petitioning for federal recognition with the Bureau of Indian Affairs under the Federal Acknowledgement Process. Many official records of the Virginia Indians were destroyed during the Civil War and most importantly, during the thirty-four years of "paper genocide" by Walter Plecker. The documentation problem made it impossible for the tribes to prove their continuous existence, which was one of the criteria under the BIA process. Those tribes that could not preserve their reservations and strict tribal membership decided to go through the process of congressional recognition. Since the Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act was introduced to the Congress for the first time in 2000, several representatives introduced the bill repeatedly to the House and Senate. The Virginia Council on Indians initially aimed for federal recognition by 2007 at the mark of 400th year of Jamestown Commemoration. Congress, however, expressed reluctance in approving the bill through congressional action and concerns about the issues of gambling once the federal recognition was acknowledged. To persuade the congress, tribes included a provision in the bill to give up their gambling license if they were granted recognition. The tribes were, in fact, not concerned about waiving the gambling rights since they had initially pursued recognition for economic opportunities such as health and housing assistance, especially for their elder members of their tribes. In January 2018, the Congress passed the Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act, granting federal recognition to the Chickahominy, Chickahominy Indian Eastern Division, Monacan, Nansemond, Rappahannock, and Upper Mattaponi tribes.

After Plecker's death, Virginia Indians continued to fight back against Plecker's legacy and achieved enough visibility to the public that some tribes gained official recognitions. Plecker denied their existence and erased the category of Indians on official records, but he could not eliminate the Indians. The Racial Integrity Act is not only about the policy framework of the white supremacists, implementing and enforcing the law to the Indigenous community, but a narrative of Virginia Indians and their survival beyond the Plecker era. Virginia Indians slowly regained their racial status after the law was overturned.

EPILOGUE

Walter Plecker enforced the Racial Integrity Law and terrorized the lives of many Indians not only in Virginia but outside the state. The damage Plecker did to individual families continues to haunt them decades later and even today. As we discover more stories from individuals through oral history, it is difficult to comprehend the stories of those who left Virginia. A particular group of Indians, the descendants of the Remnant Yuchi Tribe, had lived in southwest Virginia along the borders of Floyd and Montgomery Counties. When the Racial Integrity Act of 1924 was enforced, some members of the tribe left Virginia and relocated to Kingsport, Tennessee, where the tribe is currently located. Chief Lee Vest, the chief of the Remnant Yuchi Tribe, remembers his childhood memories growing up in southwest Virginia and Plecker's interference during the Racial Integrity Act era.

Chief Lee grew up, living with his siblings, parents, and grandparents, and his relatives lived near their family. Since he was a child, their family would hide their Indian heritage. If you had Indian features, strangers would ask: "You have Indian blood, don't you?" The right answer would be saying, "I don't reckon'," Chief Lee said. Chief Lee had two cousins younger than him who did not want to admit their Indian blood. They remained in Floyd County, Virginia, and still feared showing their Indian identity.[501]

[501] Lee Vest, interview by Mika Endo, March 27, 2013.

Chief Lee's childhood memory shows the fears of growing up in Virginia from an Indian child's perspective. During his childhood, Chief Lee encountered a census taker, who stopped by their home in Virginia. One summertime, Chief Lee and his grandfather were out in the field when they saw a car driving in and stopped in front of their field. A white man with "a white shirt on and a tie" got out of the car and started walking up towards them. Chief Lee still remembers that his "heart actually got hot" because "when you see a white man in white shirt and tie, there's trouble." He held his grandfather's hand tight. Then, his grandfather let go of his hand, patted him on the shoulder, and pulled Chief Lee closer to him. While his grandfather and the man were exchanging words to each other, Chief Lee was "thinking the worst." "We didn't know how Walter Plecker would look like," Chief Lee said, and "of course, Walter Plecker would not come up there, but I mean, we would always think that he maybe he would."[502]

The man stopped at Chief Lee's grandfather, introduced himself as a census taker, and started asking questions about the size of the family and the land they owned. The man asked if they had electricity, running water, and a telephone, which they did not have at the time. The census taker continued asking more questions about their property like how many horses and chickens they owned, and how many cats and dogs they had. But his grandfather did not want to tell how many animals they owned, and replied, "Well, I don't know. Chickens lay eggs and hatch chickens all the time, I don't know how many." Finally, the census taker looked at both Chief Lee and his grandfather, and asked, "What

[502] *Ibid.*

are y'all?," referring to their race. Not fitting in the Black and white categories, his grandfather stated, "We are human beings." And the man checked off in the box as "white."[503]

When the census taker left, Chief Lee saw his grandfather looking up to the sky and praying and giving thanks for no further trouble. Chief Lee found out later that his grandfather did not return to the house when the man approached because he feared getting his wife, Chief Lee's grandmother, involved, and they stayed in the fields far away from the house. After the prayers, his grandfather immediately rode his horse down the road to his neighbor's house. He stopped at a store owned by a man that married one of their relatives and used their telephone to spread the word that a white man was coming to ask questions. Afterwards their neighbors gathered and talked about the census taker. One woman said that she warned her children not to say a word when they heard the knock on the door. But one of the children opened the curtain and looked out the window. The mother rushed to grab her child and pulled the child to the back of the house, but she knew the census taker had seen them.[504]

Chief Lee talked about the recent event when George Allen, a Virginia Governor at the time, passed the bill to correct all state records for Virginia Indians that inaccurately indicated them as "colored." He explained that Indians initially had to pay for the cost to get their birth certificates changed. But some of the Indian leaders of

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[503] *Ibid.*

[504] *Ibid.*

Virginia protested that "this wasn't our fault" to have "colored" on their certificates. Governor Allen, then, got an approval to reclassify all the remaining Indians born in Virginia that had "colored" put on their birth certificates as "American Indian" without a fee. "That has closed the legal side of our dealings with Walter Plecker," Chief Lee said, "but the scars are still there, and it has deeply embedded some of the folks that remained in our particular area where we grew up." Finally, Chief Lee spoke: "I don't know if [the scars] will ever go away. I am not a bitter person, and I don't think any of our tribal people are bitter… [But] I think the Walter Plecker thing is going to be in our hearts and mind and so for many years to come."[505]

This dissertation cannot cover all Indian tribes that were influenced by Plecker. Plecker's attacks caused endless damage to the Indian community. With many Indian families leaving Virginia, their absence makes Plecker's legacy difficult to fully reveal. We have uncovered partial stories of the past in Virginia, but stories like those of the Remnant Yuchi Tribe are still untold. Plecker's influence on Indians and their stories of overcoming the attacks are yet to be discovered.

[505] *Ibid.*

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