

“Of Portuguese Origin”: Litigating Identity and Citizenship among the “Little Races” in Nineteenth-Century America

ARIELA GROSS

ABSTRACT

The history of race in the nineteenth-century United States is often told as a story of black and white in the South, and white and Indian in the West, with little attention to the intersection between black and Indian. This article explores the history of nineteenth-century America’s “little races”—racially ambiguous communities of African, Indian, and European origin up and down the eastern seaboard. These communities came under increasing pressure in the years leading up to the Civil War and in its aftermath to fall on one side or the other of a black-white color line. Drawing on trial records of cases litigating the racial identity of the Melungeons of Tennessee, the Croatans/Lumbee of North Carolina, and the Narragansett of Rhode Island, this article looks at the differing paths these three groups took in the face of Jim Crow: the Melungeons claiming whiteness; the Croatans/Lumbee asserting Indian identity and

Ariela Gross is professor of law and history at the Gould School of Law, University of Southern California <agross@law.usc.edu>. The author would like to thank Bethany Berger, Erika Bsumek, Sally Deutsch, Virginia Dominguez, Rachel Kranz, Tiya Miles, Peggy Pascoe, Theda Perdue, Hilary Schor, Rebecca Scott, Joe Singer, Arwin Smallwood, Nomi Stolzenberg; the participants of law faculty colloquia at Tel Aviv University, the Interdisciplinary Center-Herzliya, Haifa University, Harvard University, Boston College, and the University of Michigan; and audiences at the American Historical Association and Southern Historical Association Annual Meetings for comments, criticism, and suggestions at various stages of this project. Archivists at the Massachusetts Historical Society, the Rhode Island State Archives, the Tennessee State Archives, the North Carolina State Archives, and the Knox County Public Library; and Natalie Ganz provided invaluable research assistance. This research was supported by the generosity of the Guggenheim Foundation, the American Council of Learned Societies, the National Endowment for the Humanities, the Huntington Research Libraries, and the USC Law School.

rejecting association with blacks; the Narragansett asserting Indian identity without rejecting their African origins. Members of these communities found that they could achieve full citizenship in the U.S. polity only to the extent that they abandoned their self-governance and distanced themselves from people of African descent.

Historians have only begun to tell the histories of “red and black” peoples in the United States, and much of their attention has focused on the “Black Indians” of the Five Civilized Tribes of the Southeastern United States.¹ Yet up and down the eastern seaboard, there were clusters of people who shared African, European, and Indian ancestry, many of whom lived as distinct and separate communities into the nineteenth and even the mid-twentieth centuries, some retaining or struggling to retain Indian identities, others becoming known as “free people of color,” and still others claiming whiteness.

These “little races,” as they were sometimes known, in many ways gave the lie to the binary statutory regimes of nineteenth-century America. They came under growing pressure from local officials and neighbors as communities became increasingly preoccupied with racial line drawing. But they followed very different paths. By studying these racially ambiguous communities, it is possible to learn more about the relationship among whiteness, blackness, and citizenship in the United States.

Before the Civil War, what citizenship meant was not a settled question.² Not until the Fourteenth Amendment could one say that there was such a thing as “national citizenship” distinct from citizenship in a state. Some resi-

1. See, e.g., Jack Forbes, *Africans and Native Americans: The Language of Race and the Evolution of Red-Black Peoples* (Urbana: University of Illinois Press, 1993); Gary Nash, *Red, White, and Black: The Peoples of Early North America*, 4th ed. (Upper Saddle River, N.J.: Prentice Hall, 2000); James F. Brooks, ed., *Confounding the Color Line: The Indian-Black Experience in North America* (Lincoln: University of Nebraska Press, 2002); Tiya Miles, *Ties That Bind: The Story of an Afro-Cherokee Family in Slavery and Freedom* (Berkeley: University of California Press, 2005); Circe Sturm, *Blood Politics: Race, Culture and Identity in the Cherokee Nation of Oklahoma* (Berkeley: University of California Press, 2002); Daniel Littlefield, *The Cherokee Freedmen: From Emancipation to American Citizenship* (Westport, Conn.: Greenwood Press, 1978), and *Africans and Seminoles: From Removal to Emancipation* (Westport, Conn.: Greenwood Press, 1977); Katja May, “Collision & Collusion: Native Americans and African Americans in the Cherokee and Creek Nations, 1830s to 1920s” (Ph.D. diss., University of California, 1994).

2. After many years of desuetude, there is now a vibrant history of citizenship in the United States. See, e.g., James Kettner, *The Development of American Citizenship, 1608–1870* (Cha-

dents of the United States were excluded completely from formal citizenship; the Constitution of 1787 created a category of "Indians not taxed" who would not be enumerated in the census or counted for taxation or representation; and slaves would famously be counted as three-fifths of a person for the purposes of representation. The doors were open to immigration without restriction, but only "free white persons" could naturalize to citizenship.³

Nor was it clear what rights went with formal citizenship. While native-born white women were assuredly citizens, in most states they could not vote or hold office, and married women lost many civil rights as well, such as the ability to form contracts or bring suit in court.⁴ Free people of color, despite their free status, faced numerous restrictions on their ability to participate in society: restrictions on freedom of movement, ability to vote, sit on juries or hold public office, and even the right to form contracts or testify in court.⁵

Therefore, it makes sense to think about citizenship in two dimensions: first, formal legal citizenship, and second, full social and political citizenship. Race was central not only to formal legal citizenship—who could naturalize, and who counted in the census—but also to the larger sense of membership in the polity. Women were excluded from citizenship in this second, larger sense, and so were people of color. Only white men were eligible to vote, to sit on juries, or to muster in the militia before the Civil War. Even after the Civil War, when the Reconstruction Amendments guaranteed to freed slaves the right to vote, and the Supreme Court declared that blacks could not be excluded from jury service, people of color were excluded by law from white schools, white primaries, and a host of "public accommodations," including rail cars, hotels, and swimming pools. Furthermore, state officials kept blacks, Mexican Americans, and Asian Americans from voting or sitting on juries even when no state statute or constitutional provision justified their action. In the broad sense

pel Hill: University of North Carolina Press, 1978); Rogers M. Smith, *Civic Ideals: Conflicting Visions of Citizenship in U.S. History* (New Haven: Yale University Press, 1999); Linda Kerber, *"No Constitutional Right to Be Ladies": Women and the Obligations of Citizenship* (New York: Hill & Wang, 1998); Kunal M. Parker, "State, Citizenship, and Territory: The Legal Construction of Immigrants in Antebellum Massachusetts," *Law and History Review* 19 (2001): 583–643; Mae M. Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America* (Princeton: Princeton University Press, 2004). Much of the literature on citizenship, in political theory as well as history, is preoccupied, as I am, with full social and political citizenship, rather than formal citizenship alone. Mae Ngai's work is a rare and wonderful exception.

3. Immigration and Naturalization Act of 1790, 1 Stat. 103 (1790).

4. See, e.g., Kerber, *No Constitutional Right to Be Ladies*; Nancy Cott, *Public Vows: A History of Marriage and the Nation* (Cambridge: Harvard University Press, 2000).

5. See, e.g., Ira Berlin, *Slaves without Masters: The Free Negro in the Antebellum South* (Oxford: Oxford University Press, 1974; rev'd ed. 2007).

of participation in political and social life, only white people could become—and were seen as *capable* of becoming—citizens.

As members of racially ambiguous communities came before courts and legislatures, challenged as “people of color” and claiming white or Indian identities, they and the witnesses in their cases gave evidence equating whiteness with full social and political citizenship and blackness with its denial. Indian identity seemed to hold out the promise of an alternative—being part of a separate nation rather than a degraded race—yet that “national” alternative was always radically curtailed in the American legal system. Repeatedly, Indians were offered full civic rights in the U.S. polity only to the extent that they abandoned their self-governance and distanced themselves from people of African descent.⁶

In an earlier article, “Litigating Whiteness,” I described the rise, in the 1840s, of two ways of understanding race in trials of racial identity: a discourse of race as science and as performance. Medical experts in the courtroom claimed to read signs that ordinary people could not decipher: hollow arches meant whiteness; oval hair follicles meant blackness. Yet as often, trials turned on the testimony of lay witnesses giving evidence of the way people behaved. Doing the things a white man or woman did—attending white churches or dances, sitting on juries and voting (for men), exhibiting sexual purity (for women)—became the law’s working definition of what it meant to be white. After the Civil War and Reconstruction, trials of racial identity continued to center on both medical expertise about race, and community observation and retelling of racial performances. In particular, I demonstrated the way that individuals at trial equated white male identity with the exercise of civic duties and rights. For men, to be white meant to be capable of sitting on a jury, mustering in the militia, and voting. For women, by contrast, the performance of white womanhood meant the performance of moral goodness and sexual virtue. The gendered meanings of honor in white society led to gendered understandings of citizenship, and hence, of white identity itself.⁷

6. All Indians did not become U.S. citizens until 1924, with the Indian Citizenship Act, but individual Indians whose tribal governments were disbanded and who received allotments of land under the 1887 Dawes Act and 1898 Curtis Act became U.S. citizens before that. Likewise, the “de-tribalized” Narragansett gained U.S. citizenship, and members of un-recognized Indian tribes like the Croatan/Lumbee were considered U.S. citizens.

7. See “Litigating Whiteness: Trials of Racial Determination in the Nineteenth-Century South,” *The Yale Law Journal* 108.1 (1998): 109–188. Other important works on law and the construction of race include Peggy Pascoe, “Miscegenation Law, Court Cases, and Ideologies of ‘Race’ in Twentieth-Century America,” *Journal of American History* 83 (1996): 44–69; Ian Haney Lopez, *White By Law* (New York: NYU Press, 1996); Walter Johnson, “The Slave Trader, the White Slave, and the Politics of Racial Determination in the 1850s,” *Journal of American History* 87 (2000): 13–38; and many others too numerous to mention.

This testimonial practice appears circular: in order to exercise certain rights, one must be white, but in order to be (recognized as) white, one must exercise rights. I have argued that this *prescriptive whiteness* operated on several levels. Identity was formed both by the accretion of acceptances and associations by and with other white people over a prescribed period of time, and identity was formed through performance by doing the prescribed things white people do. Law was involved not only in recognizing race, but in creating it; the state itself helped make people white. In allowing men of low social status to perform whiteness by voting, serving on juries, and mustering in the militia, the state welcomed every white man into symbolic equality with the Southern planter. Thus, law helped to constitute white men as citizens, and citizens as white men.

Indian identity was understood differently in the courtroom. First of all, Indians occupied a unique constitutional category: "Indians not taxed" were not part of "We, the People." All Indians did not gain formal U.S. citizenship until the Indian Citizenship Act of 1924, although under the Dawes Act of 1887 and the Curtis Act of 1898, Indians who accepted land allotments and disbanded their tribal governments gained U.S. citizenship, as did Indians who were "de-tribalized." Membership in an Indian tribe or nation was understood as a political, national identity, subject to determination by the nation itself. Yet, from an early stage, Indians outside of recognized tribes had a hybrid legal identity, as both race and nation. For example, in a South Carolina case in 1848, the court decreed that even an individual Indian who was not a member of a tribe counted as a "free Indian in amity with this Government" (a national identity) rather than a "free person of color." But the court based this distinction on the *racial* status of Indians, "the race of Shem," which was higher than Africans, "the [race of] Ham and his offspring."⁸ Indians were both people of an "intermediate or third [racial] class," between whites and blacks, but also had an anomalous status as members of "domestic, dependent nations."⁹ In other words, Indians retained the legal presumption of a *national* identity, based on their status as an intermediate *race*. Furthermore, the borders of Indian nations were determined by race in a way that other nations were not; Indians could not absorb people of other races, the court decreed in *U.S. v. Rogers*. A white man who became a Cherokee citizen was still a white man, not an Indian.¹⁰

The recognition of Indian national identity was a double-edged sword. It

8. *State v. Belmont*, 4 Strob. 445, 447–52 (S.C. 1848).

9. *Ibid.*, at 446. The phrase "domestic dependent nations" is from *Worcester v. Georgia*, 31 U.S. 515 (1832).

10. *U.S. v. Rogers*, 45 U.S. (4 How.) 567, 572–73; Bethany R. Berger, "'Power over This Unfortunate Race': Race, Politics, and Indian Law in *United States v. Rogers*," *William and Mary Law Review* 45 (2003): 1957–2052.

allowed some Indians to escape the second-class citizenship of “free people of color” but also supplied the logic for denying Indians U.S. citizenship, even as it enabled Indian nations to be removed and cheated of their land. As one missionary in Oklahoma exclaimed in 1846, “As tribes and nations the Indians must perish and live only as men!”¹¹ Thus, at the same time that whites, especially in the South, sought to draw the line between black and white to be more congruent with the line between slave and free, Indian identity was increasingly racialized.

Finally, before the Civil War, the question of whether free people of color were citizens was not perfectly settled. Some states, like Georgia, had decreed well before the infamous *Dred Scott* decision that free people of color could not be citizens.¹² But some Northern states allowed free people of color to vote and perform other acts of citizenship. After the Civil War, despite the formal extension of citizenship to former slaves, the Supreme Court made clear that states had the right to reserve full social and political citizenship to whites.¹³ Emergent regimes of Jim Crow in Southern states, including the legal apparatus of black disfranchisement—white primaries, poll taxes, literacy tests, and “grandfather clauses”—as well as segregation of schools and public accommodations, created a form of second-class citizenship for African Americans.

Litigating Identity and Citizenship among the “Little Races”

It is in the context of slavery and Jim Crow that we must understand the legal battles over the identity of the “little races” of the United States. While historians have for the most part ignored them, folklorists, amateur and professional genealogists, and anthropologists have built a cottage industry around the “mysterious origins” of groups like the Melungeons, Lumbee, Goins, Brass Ankles, and “White Negroes.”¹⁴ To anthropologists,

11. Quoted in Robert F. Berkhofer, Jr., *The White Man's Indian: Images of the American Indian from Columbus to the Present* (New York: Vintage Books, 1978), at 151.

12. See, e.g., *Bryan v. Walton*, 14 Ga. 185 (1853); *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1857).

13. See *Slaughterhouse Cases*, 83 U.S. 36 (1873); *Civil Rights Cases*, 109 U.S. 3 (1882).

14. See, e.g., Brewton Berry, *Almost White* (New York: Macmillan, 1963) and Edward T. Price, “A Geographic Analysis of White-Negro-Indian Racial Mixtures in Eastern United States,” *Annals of the Association of American Geographers* 43 (1953): 138–55, for classic accounts of “tri-racial isolates”; Jack Campisi, *The Mashpee Indians: Tribe on Trial* (Syracuse, N.Y.: Syracuse University Press, 1991), and James Clifford, “Identity in Mashpee,” in *The Predicament of Culture: Twentieth-Century Ethnography, Literature and Art* (Cambridge: Harvard University Press, 1990), 277–346 on the Mashpee; Gerald Sider,

they have been known as "tri-racial isolates": tri-racial as the product of white, black and Indian ancestry, and "isolates" because they supposedly lived in separate and distinct communities until well after the Second World War. Popular writers tend to challenge the "tri-racial" part of the designation, arguing in favor of a variety of origins theories, from "lost colony at Roanoke" to "lost tribe of Israel," whereas contemporary scholars suggest that it is the "isolate" part of the equation that needs revision. Racially ambiguous communities never existed in isolation from the surrounding culture or population.

Many nineteenth-century trials in which an individual's racial identity was the central issue trace their roots to these racially ambiguous communities.¹⁵ Not only individuals but entire communities lived on the "middle ground" between black and white in the United States. Over the course of the nineteenth and into the twentieth centuries, continuing battles over the identity of groups in the racial borderlands reveal that neither the legal system nor the communities in which they lived reached a settled understanding of where—or how—racial borders should be drawn. Particularly at moments of retrenchment—during the crackdown on free people of color that preceded the Civil War, and then again, during the entrenchment of Jim Crow—litigation increased. The stakes were high in these cases. For individuals, admission into white schools, rights to property and voting, and status in the community depended on the outcomes of litigation. For groups seeking recognition as Indian tribes, community rights to property, Indian schools, and tax status weighed in the balance.

This article draws on the trial records of cases involving Melungeon, Croatan or Lumbee, and Narragansett identity from Tennessee, North Carolina, and Rhode Island, looking at the ways witnesses, litigants, lawyers, and judges talked about what it meant to be "white," a "person of color," "Melungeon," "Croatan," or "Narragansett," and how they described the overlap or intersections between those categories. The Melungeons strove

Lumbee Indian Histories: Race, Ethnicity, and Indian Identity in the Southern United States (Cambridge: Cambridge University Press, 1993), and Karen Blu, *The Lumbee Problem: The Making of an American Indian People* (Cambridge: Cambridge University Press, 1980), on the Croatan/Lumbee; Henry R. Price, *Melungeons: The Vanishing Colony of Newman's Ridge* (Sneedville, Tenn.: Hancock County Drama Assoc., 1971), on the Melungeons; as well as Helen Rountree, *Pocahontas's People: The Powhatan Indians of Virginia through Four Centuries* (Norman: University of Oklahoma Press, 1990); David Steven Cohen, *The Ramapo Mountain People* (New Brunswick, N.J.: Rutgers University Press, 1974); Gary B. Mills, *The Forgotten People: Cane River's Creoles of Color* (Baton Rouge: Louisiana State University Press, 1977).

15. For example, most of the North Carolina racial determination cases discussed in "Litigating Whiteness" involve individuals with names that are probably Croatan/Lumbee.

to be accepted as white; the Croatan (now known as the Lumbee) took steps to be seen as Indian, in both racial and political terms; while the Narragansett attempted to establish a multiracial but still Indian society in which citizenship rather than race was the operating principle. Still other, smaller, communities appear to have persisted without defining themselves, continuing to be known by their “mysterious” names, treated as white while it was acknowledged that they were not white. For the Melungeons, I was able to draw on extensive trial records from Tennessee of cases both before and after the Civil War; for the Croatans, some trial records, although less extensive, survive. The Narragansett’s records include hearings of the tribe’s encounters with state investigative committees, and other records of efforts to “de-tribalize” the nation, but there were no comparable trials of individuals’ racial identity; that section is necessarily short, but important because the Narragansett were so unusual.

The persistence of these racially ambiguous communities challenges the notion of the U.S. as a binary racial system, but it also undermines the naive belief that the mixing of races will eliminate racial hierarchy or injustice. Indeed, the histories of these in-between peoples suggest that intermediate and hybrid statuses were precarious, bred the tendency to subordinate the next lower group, and increased the pressure on all individuals to perform whiteness in order to maintain one’s place in a community. The only group that refused white imperatives to reject blackness, the Narragansett, suffered de-tribalization and near-extinction as an Indian nation, until they finally won a land claim settlement from the state of Rhode Island in 1978 and Federal recognition as a tribe in 1983.

In all of these cases, law set the boundaries of racial identity. On the one hand, it gave effect to community knowledge, but it also privileged certain kinds of community knowledge and, in doing so, constituted citizens. While it may be a cliché to suggest that law and racial ideology were mutually constitutive, nowhere is this more apparent than in cases involving the borderlands of race. Although law provided an outlet for conflicts brewing in a community, legal battles crystallized conflicts that appeared to have lain dormant for years. Historians of medieval Europe, as well as of colonial America, have demonstrated the power of *fama*, the “common knowledge” or gossip courts drew on as evidence.¹⁶ And they have shown that *fama*, while outside the courtroom, could be merely gossip or reputation, when

16. See, e.g., Thelma Fenster and Daniel Lord Smail, eds., *Fama: The Politics of Talk and Reputation in Medieval Europe* (Ithaca: Cornell University Press, 2003), esp. Chris Wickham, “Fama and the Law in Twelfth Century Tuscany,” and Thomas Kuehn, “Fama as a Legal Status in Renaissance Florence,” 15–46. For colonial America, see Mary Beth Norton, “Gender and Defamation in Seventeenth-Century Maryland,” *William and Mary Quarterly* 44 (1987): 3–39.

mediated by law in the courtroom, could actually constitute the "legal condition or status of a person or even a group."¹⁷ In these cases, legal *fama* constituted heretofore racially ambiguous people as white, Indian, or "people of color," as full citizens or second-class citizens.

The status of individuals and communities on the borderlands became an issue in court as part of the efforts, beginning in the last decades before the Civil War, to draw the line between slave and free as one between black and white. Racially ambiguous communities challenged that effort. In the aftermath of the Civil War, without the institution of slavery to ensure an agricultural labor force and to keep people of color "in their place," other mechanisms emerged: lynching, anti-miscegenation laws, disfranchisement, segregation. Growing demands for separation of the races required the vigilance of neighbors as well as state officials in policing racial boundaries.

Early Origins of Racially Ambiguous Communities

The history of "race mixing" in the United States begins in colonial New England and the Chesapeake Bay area of Maryland and Virginia. English and African servants married one another and also married into various Indian tribes in seventeenth-century Virginia and Massachusetts. Black and Indian slaves worked side by side in the late seventeenth century when it became legal to enslave some Indians in the aftermath of Bacon's Rebellion.¹⁸ By the late eighteenth century, there were a significant number of people, slave and free, who traced their roots to both Indian and African foremothers and fathers. Some of the original colonies—Virginia between 1705 and 1753, North Carolina in 1715 and again in 1741, Massachusetts in 1786—banned intermarriage between whites and "negros," "mulattos," or "Indians," which obviously had the effect of encouraging marriages among blacks and Indians. Other bans against white-Indian intermarriage include Rhode Island in 1798, Maine and Tennessee in 1821. However, most states banned only white/black marriages.

In Virginia, late eighteenth-century newspapers were filled with runaway advertisements for people alleged to be slaves who based their claims to freedom on Indian ancestry. Paul Michaux advertised in October 1772 for "a Mulatto Man named Jim, who is a Slave, but pretends to have a Right to his Freedom." Jim was the son of an Indian man and had "long black hair

17. Kuehn, "Fama as a Legal Status," at 27.

18. Indians could be enslaved "if they committed acts (such as flight) that could be construed by the English as hostile." The law was passed again in 1677 and remained "on the books until 1691 and in practice for decades longer." Rountree, *Pocahontas's People*, 139.

resembling an Indian's"; Michaux suspected that "he was gone to the General Court to seek his freedom." Likewise, William Cuszens complained that his "Mulatto Slave" David, who "sa[id] he [wa]s of the Indian breed," had gone "down to the General Court, as I imagined, to sue for his freedom."¹⁹

Likewise, marriages between Indian women and African American men in New England became significant in number in the mid-eighteenth century, especially after the Revolution. African-Indians worked the whaling boat crews of Nantucket and other ports along the Eastern seaboard.²⁰ By the eighteenth century, certain Indian tribes along the Atlantic, such as the Mashpee and Narragansett, had become well known as "various and mixt."²¹ For example, Gideon Hawley, a white missionary to the Mashpee Tribe on Cape Cod, first noted in a letter in 1776 that the district of Mashpee had "three hundred and twenty seven black inhabitants, 14 of whom are Negroes, the most of whom have married squaws."²² By "black," Hawley seems to have meant both Native American and the African-descended "Negroes," but clearly, the offspring of these dozen or so marriages between "Negroes" and "squaws" would produce "mixed-race" members of the Indian community. Hawley commented in another letter that Mashpee had become "an Asylum for the Indians and their Connections which have now become various & mixed almost beyond conception," including immigrants from India, Mexico, the U.S. Army, and other New England tribes.²³

In early America, despite the relative freedom with which populations did mix, and the extent to which white writers and political leaders seemed to take this mixing in stride, there was also a tendency to re-classify Indians who mixed with other groups, especially Africans, as something other than Indian, and then to find that Indians had disappeared. Indeed, the "vanishing Indian" has been as enduring an image as the "noble savage" in North America.²⁴ Native populations did dwindle as a result of the encounter

19. Quoted in Peter Wallenstein, "Indian Foremothers: Race, Sex, Slavery, and Freedom in Early Virginia," in *The Devil's Lane: Sex and Race in the Early South*, ed. Catherine Clinton and Michele Gillespie (New York: Oxford University Press, 1997), 57–73.

20. Gary B. Nash, "The Hidden History of Mestizo America," *Journal of American History* 82 (Dec. 1995): 948.

21. Daniel R. Mandell, "Shifting Boundaries of Race and Ethnicity: Indian-Black Inter-marriage in Southern New England, 1760–1880," *Journal of American History* 85 (Sept. 1998): 490–91.

22. Letter to Tho. Cushing, Mashpee, 24 June 1776, Gideon Hawley Letters, Folder; Type-scripts, 1772–1776, Massachusetts Historical Society (hereafter cited as MHS), Boston.

23. Letter enclosed in Letter to Wm Toogood, Mashpee, 24 July 1787, Gideon Hawley Letters, MHS, Boston.

24. On the "vanishing Indian," see, e.g., Robert Berkhofer, Jr., *The White Man's Indian: Images of the American Indian from Columbus to the Present* (New York: Random House, 1978); Philip Deloria, *Playing Indian* (New Haven: Yale University Press, 1998); Fergus Bordewich, *Killing the White Man's Indian: Reinventing of Native Americans at the End of*

with Europeans, their foreign diseases, guns, and alcohol, but whites also saw Indians as disappearing whenever they mixed with other populations, especially Africans and African Americans. For example, Gideon Hawley did not appear to think mixture was a bad thing: he wrote to the governor of Massachusetts in 1791 that Mashpee children had grown healthier "since their blood hath been commixed with English, Germans and Negroes" and that most children were now "mongrels."²⁵ He also found that mulattoes "have generally made better husbands than the aboriginals."²⁶

Despite Hawley's generally positive view of racial mixing, however, he did distinguish between "mulattoes" and "aboriginals," and he did refer to Indians as "black," revealing the process by which Indians were made to disappear. Just as Hawley had used "black" to encompass both "Indians" and "Negroes," court documents from the late eighteenth and early nineteenth centuries in Rhode Island described some individuals as both "Black" and "Indian." Rhode Island officials changed individuals' racial designations, first from "Indians" to "mustee" or "mulatto," and then to "Negro" or "black."²⁷ The category "mustee" or "mestee" was often a waystation on the way to disappearance for native tribes, which may explain some of the antagonism some native groups expressed toward African Americans. For example, Benjamin Austin was counted as an "Indian" in East Greenwich, Rhode Island, in 1767, but as a "Malatoo Fellow" in 1768. Numerous other individuals appeared as "Indian or Mustee Woman" in one year, only to be redescribed as "Negro" several years later. Others were described in the alternative as "Molatto or Indian," "Mustee or Mulatto," "Negro, Indian or Molatto."²⁸

In colonial Virginia, as well, Indians were both reclassified as "black" and lumped in with Africans and African Americans as "people of color"

the Twentieth Century (New York: Doubleday, 1996); Brian Dippie, *The Vanishing American: White Attitudes and U.S. Indian Policy* (Middletown, Conn.: Wesleyan University Press, 1982); Jean O'Brien-Kehoe, "'Vanishing' Indians in Nineteenth-Century New England: Local Historians' Erasure of Still-Present Indian People," *New Perspectives on Native North America*, ed. Sergio Kan and Pauline Turner Strong (Lincoln: University of Nebraska Press, 2006).

25. To Governor Hancock. Plantation of Mashpee, County of Barnstable, July 8 1791, p. 6, Gideon Hawley Letters, MHS, Boston.

26. Letter to Shearjashub Bourne from Gideon Hawley, Mashpee, 15 December 1788, Samuel P. Savage Papers: 1703–1848, Folder: S. P. Savage, 1788–1789, MHS, Boston.

27. Ruth Wallis Herndon and Ella Wilcox Sekatau, "The Right to a Name: The Narragansett People and Rhode Island Officials in the Revolutionary Era," *Ethnohistory* 44 (Summer 1997): 444–47. See also Margaret Ellen Newell, "The Changing Nature of Indian Slavery in New England, 1670–1720," in *Reinterpreting New England Indians and the Colonial Experience*, ed. Colin G. Calloway and Neal Salisbury (Boston: Colonial Society of Massachusetts, 2003), 128.

28. Herndon and Sekatau, "Right to a Name," 446.

or even “mulattoes.” The first law to define “mulatto” was a 1705 Virginia statute that deemed a mulatto, “the child of an Indian” as well as “the child, grandchild, or great grandchild of a negro.”²⁹ This statute was not modified until 1785 when a “colored person” was defined as all persons with “one-fourth or more negro blood”; whereas those who had “one-fourth or more Indian blood” and no “negro blood” were Indians. We can see this process taking place in the tax rolls of Charles City County, Virginia, where Indians underwent a variety of classifications. From 1783 to the early 1800s, no race was marked for free persons; all were classified as “white-tithable.” Then, from 1809 to 1812, “free negro” was placed after some names, but Indians and people of mixed blood were apparently treated as white. In 1813, the term “mulatto” appeared and was apparently used to designate mixed-race offspring of various combinations—but also to indicate Chickahominy Indians, even, presumably, “full blood” Chickahominy, exemplifying the way that Indians were so often viewed not in their own terms but in relation to the categories of black and white.

In other Virginia counties, relatives of reservation Indians who had taxable property were classified as “mulatto” or “free colored,” and sometimes even “free negro,” again revealing the extent to which Virginia lawmakers insisted upon viewing Indians in terms of black and white.³⁰ As late as 1818, “mulatto” was applied to white-Indian mixed-blood by Virginia jurists in *Mercer v. Commonwealth*. The judge noted that “the free man sold, was not proved to be either a negro or mulatto, but by one witness, who said he had heard that he was the offspring of a white woman by an Indian.”³¹

Many of these Virginia “free people of color” migrated to North and South Carolina in the eighteenth century, including the Goins, Chavis, Bass, and Bunch families. During the seventeenth century, these families were sometimes counted on tax rolls as “white” and sometimes as “mulatto.”³² In South Carolina, early eighteenth-century legislation distinguished between “negroes, Indians, mulattoes & mestizoes” who were slaves and “free Indians in amity with this government, and negroes, mulattoes, or mestizoes who are now free.”³³

29. Jack D. Forbes, *Africans and Native Americans: The Language of Race and the Evolution of Red-Black Peoples*, 2nd ed. (Urbana: University of Illinois Press, 1993), 195.

30. *Ibid.*, 199.

31. *Ibid.*, 200.

32. Virginia Easley DeMarce, “Very Slitly Mixt: Tri-Racial Isolate Families of the Upper South—A Genealogical Study,” *National Genealogical Society Quarterly* 80 (March 1992): 5–35; Paul Heinegg, *Free African Americans of North Carolina and Virginia*, Forward by Ira Berlin (Genealogical Publishing, 1999), <http://www.freeafricanamericans.com>.

33. *Ibid.*, 252.

Thus while some eighteenth-century observers noted the black-Indian connection dispassionately, or even approvingly, without necessarily casting doubt on the political sovereignty or cultural integrity of the Indian nations, to other whites, black-Indian alliances appeared threatening. White elites also feared that Indians, in charge of their own territories, might offer a haven to runaway slaves, as the Seminoles did in Florida. They feared as well the possibility of alliances among white, black, and Indian servants, such as Bacon's Rebellion in 1676.³⁴ Beyond such specific anxieties lurked an ideological concern: in a society increasingly preoccupied with delineating "white" and "black" as distinctive binary categories separated by an unbridgeable gap—first the legal distinction of slavery, and then the segregation of Jim Crow—the process of defining Indians was integrally related to the need to define the line between whites and blacks (or "people of color"). Whether Indians should be considered "white" (because not black, as was written into the Oklahoma Constitution in 1907); "black" or "of color" (because not white, and having intermarried with blacks); or some third category (neither white nor black, requiring a third set of legal categories) took on enormous ideological significance.

As they settled in the Carolinas, or continued to migrate along the Appalachians into Eastern Tennessee, these people who were classified sometimes as Indians and sometimes as "free people of color" or "mulattoes" formed entire communities of racially ambiguous people who became known in the twentieth century to anthropologists as "racial islands" or "tri-racial isolates." Their neighbors gave them colorful and mysterious names like "Melungeons," "Brass Ankles," and "Red Bones," sometimes meant as racial epithets and other times as affectionate monikers.

Some of these groups always identified as Indian tribes, such as the Pamunkey of Virginia and the Croatans (now Lumbee) of North Carolina. Those who continued to identify as "Indian" made strenuous efforts to avoid being classed as "free people of color."³⁵ Virginia Indians tried to take advantage of the Jeffersonian resurgence of interest in Indian-white marriage and the romantic myth of "Pocahontas" to gain favorable legal treatment.³⁶ Pamunkey Indians in the early nineteenth century obtained "certificates of Indian descent" from local authorities and wore their hair long, despite adopting

34. See William S. Willis, "Divide and Rule: Red, White, and Black in the Southeast," *Journal of Negro History* 48 (July 1963): 157.

35. See Karen M. Woods, "A 'Wicked and Mischievous Connection': The Origins of Indian-White Miscegenation Law," *Legal Studies Forum* 23 (1999): 67.

36. Woods, "Indian-White Miscegenation Law," 54–55; Christian F. Feest, "Pride and Prejudice: The Pocahontas Myth and the Pamunkey," in *The Invented Indian: Cultural Fictions and Government Policies*, ed. James Clifton (New Brunswick, N.J.: Transaction Publishers, 1990).

other aspects of European clothing, in order to demonstrate that they were racially distinct from African Americans.³⁷

It is likely that both the Melungeons and the Croatans/Lumbee migrated along a path from Virginia through North Carolina along the Appalachian Range to eastern Tennessee in the late eighteenth century, according to contemporary genealogical researchers. The genealogist who has studied these groups most exhaustively has traced the earliest identified Melungeons who acquired land in Hawkins County in the first decade of the nineteenth century—Millington Collins, the Gibson, Goins, Bowlin or Bolton, and Bunch families, Denhan or Denman families—back to Virginia.³⁸ It is possible that some of these individuals also intermarried with slaves imported from Portuguese trading posts or Portuguese sailors, some of whom were also of African ancestry. Many of the most common names in the Melungeon and other “tri-racial” communities can be traced back to “free negroes” in seventeenth-century Virginia, such as John Geaween (Gowen), “a negro servant” freed in March 1641. Probably, then, these communities were indeed “tri-racial” amalgamations of Africans, Portuguese (including Portuguese-Africans), Indians, English, and others, who came into the hill country of the Carolinas and Tennessee in the eighteenth century.³⁹

Thus, in Robeson County, North Carolina, there are records of “Indian” or “mulatto” residents as early as the eighteenth century, already speaking English when the first white settlers arrived. A colonial proclamation in 1773 listed the names of people who took part in a “Mob Railously Assembled together,” apparently defying the efforts of colonial officials to collect taxes. The proclamation declared that “[t]he Above list of Rogus,” which included many characteristically Lumbee names, “is all Free Negors and Mullatus living upon the Kings Land.” A colonial military survey described “50 families a mixt crew a lawless People possess the Lands without Patent or paying quit Rents.” Contemporary anthropologists think it likely that the Croatan/Lumbee community grew out of an amalgam of different native peoples, including Siouian, Cherokee, and Tuscarora Indians, who mixed with ex-slaves, free people of color, and whites. Before the Civil War, they were known to their neighbors as a distinct community of free people of color, within which some individuals were designated white, some black, and some mulatto, while some moved between identities from one census to the next. But it was only after the Civil War that they began

37. Feest, “Pride and Prejudice,” 53–54. See also Rountree, *Pocahontas’s People*, 212.

38. Virginia Easley DeMarce, “Looking at Legends—Lumbee and Melungeon: Applied Genealogy and the Origins of Tri-racial Isolate Settlements,” *National Genealogical Society Quarterly* 81 (Mar. 1993): 24–45.

39. Paul Heinegg, “Free African Americans of Virginia, North Carolina, South Carolina, Maryland, and Delaware,” available at www.freeafricanamericans.com.

to claim a specifically Indian identity and to transform "from mulattoes to Indians," as one ethnographer describes it.⁴⁰

Many different people lived on the borderlands between black, white, and Indian in the East for years before the Civil War. From the 1840s on, they found themselves increasingly squeezed, as whites pressed for a single line between black and white. This pressure intensified in the aftermath of war and Reconstruction—even as racially ambiguous groups all reacted differently to this pressure. While the Melungeons sought to fall on the white side of the line, the Croatan/Lumbee and the Narragansett insisted on Indian identity, the first group by denying any African American connection, and the second by embracing it. Each group struggled with the question of what citizenship meant under Jim Crow, and how people who had once been known as "free people of color" could attain the full rights of citizens.

Melungeons: Portuguese As Passing for White?

During the pre-Civil War era, the Melungeons appear to have attained a precarious status, sometimes white and sometimes not white, in part depending on their relations with their neighbors. The first U.S. Census to classify the people of what later became Hancock County, Tennessee tallied the Melungeons as "free people of color" in 1830. That census-taker also noted "melungeon" or "malungeon" in the margins after some of the family names.⁴¹

The new Tennessee Constitution of 1834 imposed additional legal disabilities on free people of color, disqualifying them from voting, sitting on juries, and bearing witness in court against white persons.⁴² It is perhaps not surprising that in the 1840 Census, many of the same families who had been denoted "FPC" in 1830 were re-classified as "white." In the aftermath of Nat Turner's revolt and the rise of Garrisonian abolitionism in the 1830s, many Southern states began to crack down on free people of color, fearing not only that this class of people might incite slaves to rebellion, but also that the very existence of free blacks gave the lie to the new racial justification for slavery as a positive good. If blacks were happiest as slaves, why set them free?

40. Blu, *The Lumbee Problem*, 62.

41. Manuel Mira, *The Portuguese Making of America* (Franklin, N.C.: P.A.H.R. Foundation, 2001).

42. Territorial Act of 1794, chap. 1, sec. 32, Tennessee Public Acts of 1831, chap. 102, Constitution of 1834. See also *Jones v. State*, 19 Tenn. 120 (1838), *State v. Claiborne*, 19 Tenn. 331 (1838).

Thus, communities of free people of color in the 1840s found themselves under increasing scrutiny. While some “Melungeons” apparently passed over to the white side of the color line, others found their whiteness on trial in East Tennessee courtrooms after 1840. At least eight were charged with illegal voting as “free persons of color” in 1846 and 1847, and seven went to trial in 1848. In two of the cases, the juries acquitted the defendant, and following these acquittals, the state attorney general declined to prosecute the remaining cases. Only one defendant entered a guilty plea and served a three-month jail term. According to a local doctor who wrote about Melungeons for the *American Anthropologist* in 1889, “[T]he question was decided by an examination of the feet. One was found sufficiently flat-footed to be regarded ‘a free person of color’ hence not allowed to vote, while the others were determined to have enough white blood to permit them suffrage.” This story has become famous in Melungeon lore and is still quoted today, although no trial records have survived. But what we do know is that Melungeons’ claims to whiteness *were* contested. On the one hand, there is evidence that they continued to own and convey property, vote, and sit on juries. On the other hand, the state did try to prohibit at least some of them from voting.⁴³

By the time of the Civil War, the Melungeons were already facing increasing challenges to their whiteness in the hollows of Hancock and Hawkins counties, Tennessee, where the community was based. But people known as “melungeon” or “Goins” spread beyond Hancock county, across the Appalachians. When they did so, many managed to “pass” in white communities, often by claiming Portuguese origin, so long as they made no enemies. But if a man “of Portuguese origin” angered his neighbor, he might find himself the target of a racial investigation. Trial records of antebellum-era slander suits reveal the lengths to which a neighbor might go to discover another’s “negro blood,” sometimes going so far as to travel hundreds of miles to gather evidence for his vendetta. This neighbor might take his evidence to the school board, to the church, or to other community institutions, trying to have the deceptive “negro” banned—but the dispute entered the courtroom only when his victim fought back. Here was an example of the power of gossip.

This was what happened in 1855 when Jacob Perkins, an East Tennessean of a Melungeon family, attempted to win damages from John White for the accusation that he had “negro blood.” The conflict evoked the hys-

43. Jan. 25 1846, Sept. 29 1846, *State vs. Solomon, Ezekial, Levi, Andrew, Wiatt, Vardy Collins, Zachariah, Lewis Minor*, Hawkins County Circuit Court Minute Book, 1842–48, Hawkins County Circuit Court, Hawkins County Courthouse, Boxes 31, 32. See also Jack H. Goins, *Melungeons and Other Pioneer Families* (2000).

teria of an entire community, including a chilling ceremony to determine whether or not the Perkins family had souls. Yet once the case reached the courtroom, the testimony was all about jury service and militia duty, the two key attributes of white male citizenship.⁴⁴

Perkins v. White ostensibly began when Perkins refused to allow White's slaves on his property—at least, that was how White's wife told it. Angered, she had "said they should come when they please one negrow had previlidges to go where others was and her negrows should come there and she dare him to whip them. . . ." When Perkins ignored her, "White came rushing up with his gun," and Perkins apparently decided to take the matter to court.⁴⁵

Most of Perkins's witnesses testified that members of the Perkins family were "[a]lways called Portuguese"—a "white" nationality that nonetheless could be used to cover a world of racial ambiguity. Portuguese people were understood to be dark, and a man who "looked Portuguese" might easily have some African heritage. Moreover, slaveholders in colonial America commonly held as slaves "Spanish negroes" and "Portuguese negroes"—African sailors on Iberian vessels who claimed to be free in Europe but who appeared as slaves to colonial Americans.

Nevertheless, to call the Perkinses Portuguese in the 1850s was to assert the family's right to be treated as white. Yet some witnesses who testified that they "never heard them called any thing but Portuguese" also remembered rumors and accusations of other origins: "I heard Joshua Perkins' [Jacob's father's] uncle's daughter say they need not throw up negro to them they were Portuguese."⁴⁶

On White's side, witnesses gave depositions testifying to the Perkinses' reputation as "mulatto" or "negro." John Nave testified that "some called Jacob a Portuguese & some a negro."⁴⁷ According to Perkins's lawyer's notes, Dicey Whaley testified that her mother "would not let me go there as they were colored. . . . When people mad, called them Negroes—[when they were] Not mad, [they called them] dark skinned." Indeed, the Perkinses' status to a large extent seemed to depend on whom they had made "mad." Whenever they got on someone's bad side, they became vulnerable to the "negro" accusation.

44. *Jacob F. Perkins vs. John R. White*, Carter County, July 1855, Abstract of Depositions, T. A. R. Nelson Papers, McClung Collection, East Tennessee University, Knoxville. While I was unable to find any record of this case in the few surviving Carter County records, this was one of the rare cases in which the lawyer's extensive notes on testimony and trial strategy survived.

45. *Ibid.*, unmarked page, beginning "White said . . ."

46. *Ibid.*, Testimony of Sarah Kennick, 1; Elizabeth Cook, 2; Nancy Young, 2; Mary Wilson, 3; Bedent [?]Beard, 5; Daniel Stout, 6.

47. *Ibid.*, 10.

The bases for racial determination in *Perkins v. White* included both the Perkinses' bodies and their civic participation. Interestingly, the evidence of physical racial difference that many witnesses considered fundamental seems to have derived from the most intimate shared experiences. For example, Dicey Whaley's mention of the Perkinses' "negro smell" referred to times that she "smelt them by being with their wives in having children. Lay with Evelina & smelt her."⁴⁸ Other defense witnesses' testimony about smell referred to time spent washing clothes together, eating together, or sharing a bed (a common practice in nineteenth-century America).⁴⁹

Several witnesses described the quasi-religious ritual that a man called Jim Dugger created to determine the Perkinses' racial identity. According to Alfred Greenwill, Dugger "intended to put all the Perkins by their oath—and if he succeeded as he wished to he would indict them every court for living with their wives." (Greenwill also made the only mention of Indian identity in the case, reporting that Dugger "said what made their harsate was the Indian in them."⁵⁰) Also referring to the ritual, Isaac Moody testified that Dugger planned "to have a speaking at the forge to see if the Perkins had souls or no and if it was ascertained that they had no souls he would take his gun and go down and asked me if I would go, with my best impression that he said he would go down and kill them. . . ." Dugger further told John Moody that "he intended to put the children by at the next court if he could he said they were going to have a speaking at the forge to see if the Perkins had souls or not if not he allowed to take his gun and go down and kill a passel of them he said they were like mules—mules was don breeding and these molotters when mix that far had no souls."⁵¹

Jim Dugger, who did not appear on Carter County census rolls during this period, seems to have played the role of racial detective in this community, blending religious, legal, and scientific theories of racial determination in one continuous flow of invective. Dugger does not appear to have testified in the case and Perkins chose not to sue Dugger directly (perhaps because he was, as the lawyers say, "judgment-proof"—too poor to pay damages). Yet he was a central figure in the Perkins case who apparently took it upon himself to cast out this deceptive family from enjoying the privileges of whiteness.

But, as in so many cases litigating male whiteness in the antebellum South, most testimony turned on whether Jacob and his father Joshua Perkins had voted, sat on juries, testified in court, acted as a legal administrator of an estate, or overseen slaves. Perkins's lawyer, T. A. R. Nelson, made lists in his notes of the best evidence for his client:

48. *Ibid.*, 7.

49. Testimony of Jane Griffey, Dr. John E. Copen, Nancy Lipps, *ibid.*, 8–9.

50. Testimony of Alfred B. Greenwill, *ibid.*, unmarked page.

51. Testimony of John Moody, *ibid.*

- As to Joshua Perkins Voting
- As to Joshua serving on Juries
- As to Joshua being a judge & clerk at an election
- 4. As to Joshua being a witness
- 5. As to his being an administrator
- 6. As to his being an overseer.⁵²

The lawyer's notes reveal the extent to which even Southern professionals heavily invested in antebellum notions of race understood that color was unreliable: "Color no test because the tawny races fill three fourths of the earth. Shades of color among whites. Impossibility of defining color. Mulattoes whiter than French Spanish or Indian or Chinese." The lawyer's notes reiterate that the Perkins family had a "Portuguese reputation before difficulties," by which he seems to have meant the growing political conflict over secession and the impending sectional battle over slavery. He also attributes the case to "political & personal excitement," suggesting that both personal enmities and sectional conflict had forced the question of the Perkinses' racial identity.⁵³

Certainly the question of slavery was keenly felt on the eve of the Civil War, as was the question of race. It is striking, given the community's poverty, how invested it was in protecting the privileges of whiteness. In Carter County, even the most privileged white person could rarely afford to own slaves. At the time of the lawsuit, fewer than 15 county residents held more than 10 slaves, and most slaveholders held 3 or fewer. Nor was Carter County home to a large "ambiguous" population of free blacks: census-takers counted only 32 "free colored" in 1850 and 22 in 1860.⁵⁴ Apparently, for the non-slaveholding and small slaveholding yeoman farmers of Carter County, whiteness was less about distinguishing themselves from "colored" neighbors than about laying claim to the rights of white male citizens for themselves. Thus Jacob Perkins, in notes to his lawyer, specified what he considered so damaging about the accusation of "negro blood":

1st The words impute that we are liable to be indicted = liable to be whipped = liable to be fined; They bastardize our children; They disqualify us from serving on a jury—from being a witness—from merchandizing; 2. These words worse than theft or murder; 3. They are slander upon the plaintiff and his ancestors who are dead.⁵⁵

Though some plaintiffs in slander suits were primarily concerned with

52. *Ibid.*, unmarked page.

53. *Ibid.*

54. F. Merritt, *Early History of Carter County, 1760–1861* (Knoxville: East Tennessee Historical Society, 1950). Available at Tennessee State Library and Archives. Census of 1850, 1860.

55. *Perkins v. White*, unmarked page.

the economic repercussions of being called a “negro,” Perkins was more upset about the “imputation” that he and his family (including the dead ones!) did not have the legal status of full citizens. Both he and his neighbors seemed to agree that in the antebellum South, full citizenship could belong only to white people. For people who possessed little else, this particular white privilege was particularly important.

The judge seems to have shared the community’s concern. Fearing the logic of prescriptive whiteness, which assigned white privilege to those who might not “really” deserve it, he focused in his instructions to the jury on the meaning of the state’s “one-eighth negro blood” rule. If Joshua Perkins’s great-grandfather, old Jock Perkins, had been a “full-blood” Negro, the judge explained, that would make Joshua one-eighth Negro. However, if Jock Perkins were less than “full-blood,” Joshua would be less than one-eighth “unless he may have derived a sufficiency of indian or negro blood from some of his other ancestors either of the paternal or maternal line to make up the deficit. . . .”⁵⁶

But the judge was not content to rely on the statute regarding ancestry to determine the Perkinses’ race; like his contemporaries, he, too, was concerned with the proper performance of whiteness. So he went on to instruct jurors to consider all the evidence about the “privileges of the citizen which the pl[ainti]ff and his ancestors had enjoyed as voters jurors witnesses, public offices and marrying and giving in marriage with white persons, and the like, and the length of time that these high privileges had been so enjoyed.” Still, these privileges might—for a time, at least—be enjoyed by the wrong people. If the jurors were satisfied by the balance of the evidence that Perkins was indeed a person of color, then “these privileges no matter how long enjoyed by him and his ancestors would not *constitute* him a citizen.”⁵⁷ It is worth noting how easily the judge slipped from the question at issue in the case—“Was Perkins white?”—to the question, “Was Perkins a citizen?” Unfortunately, there is no record of the verdict in this suit, so we do not know how the jury weighed the evidence.⁵⁸

56. Ibid.

57. Ibid.

58. *Perkins v. White* does not appear to be an isolated case. In another racial-slander suit brought by a Melungeon in 1858, Elijah Goin won \$50 damages from Sterling Mayser. Goin’s witness testified that Mayser “had a negro ‘ditty’ which he had sung to Elijah Goin . . . ‘Elijah Goin being a little blacker, he run up and down the creek like a damn mulatto’” and that Mayser had “said his children should call them [mulatto] & he would protect them in it.” As White had done in Perkins’s case, Mayser defended himself with a number of witnesses who testified “that it was generally reported and believed that [Goin] was a man of mixed blood.” Peter Mareum and William Murphy both stated that they were well acquainted with Goin’s grandfather, and “he was reputed to be distantly mixed blooded,” although they also testified “that he voted, served on jurys, and was examined as a witness between white men never heard him questioned or denied.” Goin, by contrast, invoked the

Until the Civil War, it appears that Melungeons and other "mixed" individuals lived a precarious existence in the borderlands between black and white, an existence that seemed to depend on whether they made someone "mad" or not. Their success in surviving in these borderlands depended on the ways they performed whiteness.

The Melungeons' legal tribulations did not end with the Civil War. At the close of Reconstruction, in the city of Chattanooga, a case arose that has become famous in East Tennessee lore as an example of a court putting its imprimatur on the European origins of Melungeon people. The trial became a dramatic confrontation over a pre-Civil War marriage and the status of the mysterious Melungeons of East Tennessee. Melungeon enthusiasts today hearken back to the ruling in *Jack v. Foust* as evidence that Melungeons are free of the taint of "negro blood." The actual records of the case had remained buried for so long that authors relied exclusively on the lawyer Lewis Shepherd's account of the "celebrated Melungeon case" in his 1915 memoirs. Yet the trial record, recently discovered in the Tennessee State Archives, reveals a different picture of the case than the lawyer's memories.⁵⁹

codes for performing white manhood by bringing in evidence that he, his father, and his grandfather had voted, sat on juries, and acted as witnesses in courts of law. *Goin v. Mayser*, available at Tennessee State Archives.

Goin's lawyer, John Netherland, is an interesting figure whose personal history suggests many of the contradictions of the antebellum South. An attorney of some renown, Netherland had won much of his reputation as a defender of the rights of Melungeons and of "free people of color." Some histories report that in 1859 Netherland secured the Melungeons' right to vote in state and Federal elections, although no records remain of such a voting case in that year. Will T. Hale and Dixon L. Merritt, *A History of Tennessee and Tennesseans* (Chicago: Lewis Pub. Co., 1913), 180. A "slaveholder of high social standing," Netherland nonetheless supported the Union before the Civil War; later, he counseled leniency toward ex-Confederates. Henry H. Ingersoll, *Biographical Sketch of Col. John Netherland* (Nashville: Marshall & Bruce Co. 1890), in vol. 9, and Tennessee Bar Association Proceedings, 233-52. McClung Collection, Biography Folder 4-30, T. A. R. Nelson Papers, Knox County Public Library, Knoxville, Tenn [KCPL]. When Tennessee cracked down on "free people of color" in the 1830s, limiting the rights of slaves to be freed and then requiring freed slaves to leave the state, Netherland apparently tried to ameliorate the new laws. A Democratic Party circular from the 1840s excoriated Netherland for his efforts to "repeal so much of the act of 1831, concerning free persons of color, as requires the emancipator of slaves to remove them without the limits of the State." Facts from The Record! Col. Netherland as a Legislator, Democratic State Central Committee Pamphlet 51 of 78 pamphlets bound by T. A. R. Nelson as Speeches, Documents, etc., 1848-60 v. 4, McClung Collection, KCPL.

59. *Jack v. Foust*, Trial Transcript, Chancery Court of Hamilton County no. 1431 (Nov. 1877), East Tennessee Supreme Court Records, Box 1789, available at Tennessee State Archives, Nashville, Tennessee [TSA]. This trial record was found by an archivist in an uncatalogued box; the year of the trial was several years later than Lewis Shepherd had remembered it, and Betsy Bolton, the heir, was not named as a litigant, hence the difficulty finding the case in Hamilton County files. Personal Memoirs of Judge Lewis Shepherd (privately printed, Chattanooga: 1915).

A young man of some estate married a beautiful young woman known as a Melungeon some years before the Civil War. When she died in childbirth, her daughter was sent North to live with an aunt, essentially to pass as white. Several years after the war, at the height of Reconstruction, when many whites felt their world had turned upside down, the girl returned to town. This young girl, raised as white but tainted as black in their eyes, came back to claim her inheritance. Imagine the horror the white family felt. They had opposed the marriage in the first place. And now they brought a lawsuit, arguing that the marriage had never been valid because of the bride's race. The lawsuit became a contest over history, in which the litigants and witnesses told themselves and one another how things really had been before the war. At a time when white Southerners were first putting into place the new order of Jim Crow, they rewrote the past to underwrite the new ways: Would we have allowed such a marriage? No, we would not. Did whites mix with blacks in social and political life? Some said yes, it was different then. The plaintiffs said, No, we did not. And so on, down to the intricacies of daily life, they worked out the new order through telling the story of the old, culminating in the lawyer's romantic speech about shipwrecked sailors long ago who became the mysterious Melungeons. Down to the present day, such stories are the stuff of popular culture, as people reclaim a Melungeon identity for the first time with pride.

The "celebrated Melungeon case" originated when Jerome Simmerman married Jemima Bolton, the daughter of one of his tenants. By the time of the lawsuit, in 1874, Simmerman was considered a "lunatic," and W. H. Foust was his legal guardian. Jemima Bolton had died immediately after the birth of a daughter, Martha, in 1858, and Martha had been sent to live with her aunt, Betsy Bolton, in Illinois. According to Lewis Shepherd, the lawyer for Martha, Jemima Bolton had been "famed for her beauty, her grace of manner and modesty. . . . She was most beautiful of face, and had a rich black eye, in whose depths the sunbeams seemed to gather. When she loosed her locks, they fell almost reaching the ground, and shone in the sunlight, or quivered like the glamour which a full moon throws on the placid water."⁶⁰

In 1874, Jerome's half-sister Elizabeth Jack and other relatives brought suit against Foust for mismanagement of the estate and also asked the court to declare them the heirs apparent of the estate. A friend of the family, Samuel Williams, had kept in touch with Betsy Bolton and maintained an interest in the girl Martha's welfare. He contacted the aunt and arranged for Martha to file a cross-claim to the estate. Thus, the trial proceeded on

60. Personal Memoirs of Judge Lewis Shepherd, 83.

the issue of whether Martha was the rightful heir of Jerome Simmerman. The half-sisters contended that Jerome's marriage to Jemima had been illegitimate because she was a person of color, and therefore Martha could not inherit. Martha, with her lawyer Lewis Shepherd, argued instead that she was a Melungeon, "not even remotely allied to the negroes." There were five hundred pages of testimony in the trial record regarding Jerome's mental state at the time of the marriage, the marital relationship of Jerome and Jemima, and especially the racial identity of Jemima and her father and grandfather, "old man Bolton," in Tennessee and South Carolina.

The trial was one of the first to take place in the new Hamilton County Courthouse in Chattanooga, Tennessee, which had just become the county seat. Chattanooga was a new and growing city, having escaped the worst ravages of war and much of the turmoil of Reconstruction because of its early readmission to the Union. The city was home to a regiment of black soldiers, who became a magnet for runaway slaves in what was known as "Camp Contraband" (for runaways were called "contraband").⁶¹

Although the legitimacy of the marriage depended on Jemima's racial identity, most of the evidence concerned her father, Solomon Bolton, who had lived in South Carolina before moving to Marion County, Tennessee. As in pre-Civil War cases, witnesses disagreed about whether Solomon Bolton had performed white manhood, particularly the civic dimensions of whiteness.

Jemima's sister claimed that Solomon Bolton was of Spanish and German descent, that he was "a citizen and voted in the elections," and that although his hair, eyes, and skin were dark, his skin was only "tolerable dark but not to hurt." On cross-examination, she was pressed: "In what election do you know of your father voting . . . ?" but could not give an example. Yet she insisted that "he voted in all . . . and he always mustered [in the militia] until he got too old."⁶² Other witnesses for Martha claimed that Solomon had voted and testified in court against white men (deposition of Wm. J. Standifer, 96–97; deposition of John Boydston, 101–9; deposition of Benj. Clark, 111–19). Arch Brown remembered a case tried in Marion County, Tennessee in 1849 or 1850 in which Solomon Bolton had prosecuted William Broomley, a white man, charged with child murder. On cross-examination, it came out that Bolton's whiteness had been challenged in that case, but that Bolton's identity as "a Portugese" had been accepted in the case and his testimony had been admitted (deposition of Arch Brown, 89–92).

61. Zella Armstrong, *The History of Hamilton County and Chattanooga, Tennessee* (Johnston City, Tenn.: Overmountain Press, 1931), 1:224–25.

62. *Jack v. Foust*, Deposition of Lucinda Davis, 51, 54–55. Subsequent references in the text to depositions and page numbers are to this trial transcript.

Brown had played the role of racial investigator in the Broomley prosecution, traveling to South Carolina, where Bolton had lived before he moved to Tennessee, to ask his former neighbors “if [Bolton] was not a colored man.” Brown reported that “they told me he was not, but was a Portugese. They told me that he was a member of Baptist Church there in good standing and was received in good society.” On cross-examination Brown gave particulars of the elections in which Bolton voted, including names of the clerks and judges who had presided over them. Another witness testified that Bolton had applied to the pension office for bounty land because he had served in the War of 1812 (90, 92, 94; deposition of Wm. J. Standifer, 96–97).

Other witnesses on behalf of Martha remembered both that the Boltons had lived among whites and exercised the privileges of whiteness—and that they had survived successive challenges to their white status. Mrs. Malinda White remembered that in South Carolina the Boltons “were never called or treated as negroes. They mustered with white people, visited and associated with white people. I have been on the muster ground and have seen the old man mustering with white people. They voted in elections just as other citizens.” She went on to explain, “*They were not white men*, but were never regarded and treated as free negroes. The old man belonged to the church with white people. I have seen him take sacrament in the church with white people” (deposition of Mrs. Malinda White, 259). One interpretation of her testimony is that she considered the Boltons to be members of a non-white but non-negro race, the Melungeons, who were accorded the social and political privileges of white people. Another possibility is that she referred only to the color of their skin when she said they were “not white men”; in other words, they were dark-skinned white men. Mrs. White also remembered Bolton’s children going to school with white people and his daughters marrying white men. She noted that “sometimes children would throw up to old man Bolton’s children about being negroes and it made them very mad to be accused of being negroes” (deposition of Mrs. Malinda White, 259).

A. Kelley testified that Solomon Bolton always voted, until 1840 when his vote was challenged. “My father and I got the law and showed it to the Judges of the election. They decided he was a competent voter, and I never heard his vote questioned after that time.” Kelley also remembered the suit in which Broomley “was sent to the Penitentiary” on Bolton’s testimony, but believed that the records of Marion County Circuit Court were destroyed in the war. Kelley reported that he “was in Jasper during the war and saw court papers scattered about.” On cross-examination, the lawyer for the Jacks tried to insinuate that Bolton had only been admitted to vote because he was a Whig in a strong Whig district in the Harrison election,

but Kelley did not take the bait. He answered that "I have heard [Bolton] brag a heap of times that his father was in the old Revolutionary War, was a Whig, and that he stood in his shoes." He also testified that Broomley was a son-in-law of Bolton, so that the child who had been killed was Bolton's grandchild. When asked about negroes visiting Bolton's house, Kelley answered "Yes, but those times negroes would go to most houses. People were not so particular then as now" (deposition of A. Kelley, 266–69). The tax collector of Spartanburg District, South Carolina, recalled that he had investigated the "blood" of Bolton in order to decide whether to levy the "free negro" tax on him and had decided not to, whereas he had levied it on another person who claimed to be Portuguese (deposition of Rev. D. D. Scruggs, 315, 318).

Jack's witnesses, on the other hand, drew a distinction between "white person" and "Portuguese," arguing that "Solomon Bolton never claimed to be a white person. He claimed to be a Portuguese himself, but his neighbors considered him to be a part negro." Other witnesses testified that Bolton, Perkins, and other people of the same community, called themselves "Portuguese" or "Spaniards" but were considered "free negro." When asked Bolton's racial identity and "with what race of people did he eat, drink and sleep?" W. L. Dugger answered, "He was a mixture. I can't tell what race he was of. He was called part negro. He never denied it to me." As for associations, he only knew about steam boat life, in which "blacks would sometimes eat to themselves and the whites to themselves and sometimes all together" (deposition of Wm. L. Dugger, 307).

As in other post-Civil War racial identity litigation, ex-slaves had a voice in the courtroom for the first time. Former slaves had a chance to testify about their own perceptions of the individual's racial identity and about their own practices of racial knowledge and association. Jefferson Simmerman, an ex-slave of Jerome's brother James Simmerman, testified that "we were slaves and [Bolton] was counted a free negro and we all associated together pretty much. Bolton and family eat with negroes or colored people." Bolton had "dances or frolicks" at his house for "negroes," until "the people put out patrols, and stopped us colored folks going there and that stopped the frolicks at Boltons." He also testified that Jemima Bolton was a "lewd woman" who gave birth to Martha only three or four months after her marriage to Jerome. While other witnesses alluded to this fact, only the ex-slave came out and referred directly to her sexuality. In the context of racial identity litigation, this accusation almost certainly operated to impugn her claim to whiteness (how could a white woman be so impure?), and this witness must have been aware of that association in the jurors' minds (deposition of Jefferson Simmerman, 311–13).

Kittie, the wife of Samuel Williams, also testified to slaves' perceptions

of Bolton. She reported that during the time Solomon Bolton lived in her family's neighborhood, "he was treated and recognized . . . as a Spaniard" and ate at the table with her white family. Her husband owned "a considerable number of negro slaves" and never allowed "a negro or person of mixed negro blood" to eat at the table, she testified, to show that they believed in Bolton's whiteness (deposition of Kittie Williams, 329–30).

However, Kittie Williams also reported that "our negroes complained that we were letting Bolton eat at the table" because he was a negro with kinky hair at the back of his neck. Therefore, she determined to investigate for herself and walked behind him to examine the hair at the back of his neck. She satisfied herself that it was straight but did not satisfy the slaves. On cross-examination, she was asked, "Did you take hold of his hair, and look through it to see whether it kinked or not, or did you just look at it from behind him?" and had to admit that she had not looked at the underside of his hair. The lawyer for Jack thus discredited her testimony by suggesting she was fooled by a man who straightened his hair, whereas the slaves knew his true identity (330–31).

Some of the testimony concerned physical characteristics. John Godsey testified that he knew Solomon Bolton was "not a negro" and was "confident that he was not a mulatto" because "he had none of the negro brogue—had well formed features, a good countenance. His foot had as much hollow as most any white man." Godsey considered him "Spanish" and claimed that Bolton was "always admitted to the table with white families." Bolton's hair was curly but not very curly, "not kinky"; his daughters married white men "and I think certainly I would have heard of it if there had been any talk of that kind." Asked on cross-examination if he had any doubts, Godsey reasserted that he did not believe Bolton "had negro blood in him" but he did have "something in his blood besides white blood." To show his expertise in racial science, Godsey was asked about his acquaintance with "the distinguishing characteristics between negroes or mulattoes and white people" and answered that he had "worked among the negroes all my life" (344–46). John Divine considered Solomon Bolton "Portugese" and compared him to white men in the courtroom for effect: Bolton was "a man of rather medium size—about the size of Samuel Williams" and he had "a large Roman nose—something like Lew Shepherd's. at any rate his nose was not flat." Furthermore, "he was rather a trim made, well formed man physically." T. J. Lattner also thought Bolton's nose "Roman, and almost as large as Lew Shepherd's" (365).

Lewis Shepherd, Martha's attorney, objected to a question asking a witness "What do you know about the blood of Solomon Bolton . . . give your best opinion" because it called for a conclusion on the part of the witness. Yet the objection was overruled: witnesses could give their opinions about

racial identity. This witness gave an opinion that was less than firm: "I cant say that he had negro blood in him but he was pretty dark. . . . I think his hair was a little kinky. I have seen 'kinkier' hair." He had never known Bolton to vote or sit on a jury but, on cross-examination, could not recall ever seeing Bolton "refused a vote" either (deposition of S. G. Thomas, 139–40). Several other witnesses remembered Bolton as a "free negro" who held himself out as a "negro" and was "treated and recognized by his neighbors" as one. These witnesses remembered gatherings and corn shuckings when Bolton associated with people of color (deposition of William Rogers, 152–57; W. H. Warren, 183–85; J. T. Stringer, 211).

Much of the trial turned on memories of these gatherings, because white people, slaves, and free people of color all attended corn shuckings together. This testimony became a focal point of the conflicting histories of race relations being told at this critical moment in Reconstruction. Shepherd tried to elicit testimony that Bolton had associated with people of color only in the manner that all white people did, when shucking corn. Lawyers for the other side tried to portray these gatherings instead as "negro frolics." More profoundly, witnesses for the white family denied that before the war there had been any interracial socializing, whereas Martha's witnesses portrayed a world of relative fluidity.

William Rogers stated that Bolton "was among white folks in shucking corn &c. like other Negroes, but when the eating time came he did not eat with the white folks" (156). By contrast, Augustus Evans, when asked, "Did not colored people both slaves and free persons of color congregate and have their frolics at Bolton's house?" answered, "I have known of negroes having corn shuckings on the place, but in the same way they would have had them at any other white persons house in the country" (236–37). Charley Carroll, the ex-slave who had been sold by Simmerman to A. C. Carroll, reported that he had attended "frolicks and dances" at the Boltons' house, and that although "they said they were Spaniards" they associated "generally with black [people]" (353). Jack Williams, another man of color, also remembered dancing at Bolton's corn shuckings. "Both white and black danced together," he testified. Lewis Shepherd cross-examined him: "Did not all farms in the country have corn shuckins and invite in the negroes from the neighboring farms to assist in shuckings? And did they not generally wind up with dances among the hands?" Williams answered, "They did." Shepherd asked, "Was there any thing about the shuckings at Bolton's which made them peculiar or different from the shuckings at other white farmers?" Williams: "Nothing more than that the women folks would dance, and white women didn't." Shepherd tried to elicit testimony from Williams that all white people had corn shuckings that included people of both races, so that Bolton's gatherings were nothing unusual (379–80).

Shepherd then got Williams to admit that Samuel Bolton sometimes ate meals at his master's table, with the white people, while "negroes" were not allowed to "sit at his table." On re-examination by the lawyer for the other side, Williams clarified that his master did not always allow Bolton "to eat at his table with white folks when company was there." However, at those times, he "generally went back home" rather than eat with the "negroes" (381).

About halfway through the trial, A. B. Beeson was the first witness to refer to the Melungeons. When asked about Solomon Bolton's identity, he answered, "He was called a Malungeon. . . . His general association was with the Malungeons—his own people. I never saw him associate with whites except when he had business." The lawyer asked: "How many different families in this County or adjoining Counties did you know of the same race or character of people—name them?" Beeson named several families, including the Perkinses and the Goinses. He also testified about Bolton's exercise of civic rights, explaining that he had administered the elections for sixteen years and that Bolton "never offered to vote when I held the election." As for testifying in court, the only time he knew of Bolton appearing in court was in a "nigger suit . . . the result of a drunken spree," in which "the parties were all negroes." Bolton was the plaintiff and the Perkinses were defendants. On cross-examination, Shepherd asked Beeson what he understood by "Malungeon," and Beeson answered, "I think it is a term applied to mixed blooded people." (174–76). Other witnesses also referred to the Perkins family as "dark colored people." William McGill characterized Solomon Bolton as "a mixed blooded man in some way, that was his character. We generally called them Malungeons when we talked about the Goins & them—the Goins that were mixed blooded" (402–3).

Elizabeth Bolton, the aunt who had raised Martha Simmerman, testified that her father was of Spanish descent, and that they associated "with the white people—generally poor people"; Jemima's character was "just as good as any other poor girl." The aunt denied that there had been "any frolics where negroes came, except corn shuckings." She was asked to attach to her deposition a lock of her hair, which she did. According to Lewis Shepherd in his memoirs, this piece of physical evidence helped clinch the case.⁶³

No official record of the lawyers' arguments remains. However, Lewis Shepherd details in his memoirs the argument he made to win over the court for Martha Simmerman, persuading the chancellor that her father's marriage was valid and that Jemima Bolton was legally white. Shepherd

63. *Jack v. Foust*, 324–36; Personal Memoirs of Judge Lewis Shepherd.

explained that "these people belonged to a peculiar race, which settled in East Tennessee at an early day . . . known as 'Melungeons.' . . . It was proven by the tradition amongst these people that they were descendants of the ancient Carthaginians; they were Phoenicians, who after Carthage was conquered by the Romans, and became a Roman province, emigrated across the Straits of Gibraltar, and settled in Portugal. . . . About the time of our revolutionary war, a considerable body of these people crossed the Atlantic, and settled on the coast of South Carolina near the North Carolina." He went on to explain that when South Carolinians "began to suspect that they were mulattoes or free negroes, and denied them the privileges usually accorded to white people," the Melungeons left South Carolina and wandered into Tennessee. Shepherd's theory had another unusual dimension: he claimed that Melungeons "do not miscegenate or blend in color," whereas "A mulatto is always half white and half black."⁶⁴

According to Shepherd, writing in 1915, "our Southern high-bred people will never tolerate on equal terms any person who is even remotely tainted with negro blood, but they do not make the same objection to other brown or dark-skinned people, like the Spanish, the Cubans, the Italians, etc."⁶⁵ Looking back from the high point of the Jim Crow era, it seemed impossible even to Shepherd, whose case had depended in its details on portraying an earlier world less organized by separation than by hierarchy, that Solomon and Jemima Bolton could ever have lived among whites were they not recognized as white.

On November 16, 1875, Chancellor Bradford found in favor of W. H. Foust and Martha Simmerman, declaring that Jerome Simmerman and Jemima Bolton were lawfully and legally married on June 14, 1856, and that Martha Simmerman was "entitled to be supported, maintained, and provided for, clothed and educated" out of Jerome's estate. Several months later, Elizabeth Bolton, Martha's aunt, sued W. H. Foust, the guardian of Jerome's estate, for all the expenses of raising her, and won that case as well.⁶⁶

Martha had won her whiteness claim in part by rewriting the past. The testimony revealed a world in which Melungeons lived on the margins of free white and enslaved black societies, as "free people of color"—sometimes admitted into the privileges of whiteness, sometimes associating with other people of color, always precarious and often challenged, but apparently accepted among the "poorer classes" Betsy Bolton referred to. After the war, as the institution of slavery gave way to the institution of Jim Crow, people remade the social order in part through retelling the past in terms

64. Personal Memoirs of Judge Lewis Shepherd, 87–88.

65. *Ibid.*, 88.

66. *Bolton v. Foust*, Hamilton County Court Records, Chattanooga, Tennessee (1872).

of clear lines between separate white and black worlds. Lewis Shepherd argued that Melungeons were white because they had been accepted into the white world; those attacking Martha's claim argued that Melungeons must have been black because they would never have mingled with blacks to the extent they did were they anything else. Evidence about racial performances became a way to create racial identity through the retelling of history.

After the "celebrated Melungeon case," there were no more official encounters between Melungeons and the state. Yet Melungeon identity has continued to be the focus of conflict outside of the courtroom. The mythology of European origins has repeatedly clashed with the efforts of state officials to police "blood" rules strictly against all "tri-racial" or racially ambiguous communities. When Melungeons began to garner attention from journalists, officials, and anthropologists, most of it was negative. Romantic stories, like Lewis Shepherd's tale of the "celebrated Melungeon case" and the Carthaginian origins of the Melungeons, have been repeated and elaborated as a source of pride, because Melungeon identity has continued to be the subject of struggle.

For example, on August 5, 1942, Dr. W. A. Plecker, the State Registrar of the Commonwealth of Virginia, and a leader in the Anglo-Saxon Club movement, wrote to the Secretary of State of Tennessee in Nashville about the classification of Melungeons. Plecker had spent the 1920s and 1930s on a mission to prove that there were no true Indians in Virginia because "no Virginia Indians were free from black blood," and to deprive the Pamunkey, Mattaponi, and Chickahominy of Indian status.⁶⁷ Writing to Tennessee officials in 1942, he explained that there were Melungeons in Virginia who had come from Hancock County, Tennessee who "are classified by us as of negro origin though they make various claims, such as Portuguese, Indians, etc."⁶⁸ Not surprisingly, Plecker was investigating these claims carefully.

Tennessee State Librarian and Archivist Mrs. John Trotwood Moore wrote back to Plecker that "the origin of the Melungeons has been a disputed question in Tennessee ever since we can remember." Moore quoted Capt. L. M. Jarvis who called the Melungeons "friendly Indians" who came to Newman's Ridge in the late eighteenth century and also quoted Lewis Shepherd regarding their Carthaginian origins. She concluded, however, "I imagine if the United States Census listed them as mulattoes [in 1830] their

67. J. Douglas Smith, "The Campaign for Racial Purity and the Erosion of Paternalism in Virginia, 1922–1930: 'Nominally White, Biologically Mixed, and Legally Negro,'" *Journal of Southern History* 68.1 (Feb. 2002): 65–106, at 87.

68. Letter of August 5, 1942, W. A. Plecker, M.D., to Secretary of State, Nashville, Tennessee, available at TSA.

listing will remain. But it is a terrible claim to place on people if they do not have negro blood."⁶⁹ Plecker wrote back to tell Moore that she and other Tennesseans, including the judge in Lewis Shepherd's "celebrated Melungeon case," had been fooled. "All of these groups have the same desire, which Captain L. M. Jarvis says the melungeons have, to become friends of Indians and to be classed as Indians . . . they have always endeavored to tie themselves up as closely as possible either with the whites or Indians and are striving to break away from the true negro type." Plecker noted that many Melungeons were listed in Carter G. Woodson's "Free Negro Heads of Families in the United States in 1830." He dismissed the claims of "Portuguese" or Phoenician origin and concluded that Melungeons were no different from other people "who are now causing trouble in Virginia by their claims of Indian descent. . . . We have found after very laborious and painstaking study of records of various sorts that none of our Virginia people now claiming to be Indian are free from negro admixture, and they are, therefore, according to our law classified as colored. In that class we include the melungeons of Tennessee."⁷⁰

The Melungeons' legal battles faded as they assimilated into the surrounding population, yet the battle over Melungeon identity has taken on new life in recent years as family history and genealogy have become an increasingly important aspect of popular culture, especially in the South. Many Melungeons vigorously endorse theories of European origin against any suggestion of West African descent. Personal narratives by Melungeons who claim to be part-black have stirred great controversy in popular fora, and the most popular narrative of Melungeon origins is a history by Brent Kennedy entitled *The Melungeons: The Resurrection of a Proud People; An Untold Story of Ethnic Cleansing in America*.⁷¹ While Kennedy does not deny the possibility of African American or Indian origins for the Melungeons, he insists on a Mediterranean connection: Melungeons descended from Moors and Turks, perhaps connected with Juan Pardo's expedition to the New World, perhaps brought by Sir Francis Drake in the 1580s. It is striking that today, even as "Melungeon" has become a term of pride and

69. Letter of August 12, 1942, Mrs. John Trotwood Moore to W. A. Plecker, available at TSA.

70. Letter of Aug. 20, 1942, W. A. Plecker to Mrs. John Trotwood Moore. Archivists at the Library of Congress also tried to classify the Melungeons, along with other "Mixed-Blood Racial Islands," in 1946. William Harlen Gilbert, Jr., "Memorandum Concerning the Characteristics of the Larger Mixed-Blood Racial Islands of the Eastern United States," *Social Forces* 24.4 (May 1946): 438-47.

71. N. Brent Kennedy with Robyn Vaughan Kennedy, *The Melungeons: The Resurrection of a Proud People; An Untold Story of Ethnic Cleansing in America* (Macon, Geo.: Mercer University Press, 1998).

self-ascription rather than an epithet of opprobrium, its association with multi-racial identity is still perceived by many as a taint, or at the very least, a source of controversy.

Creating an Indian Identity: The Croatan/Lumbee

The Croatans—today known as the Lumbee—chose another response to the pressure of Jim Crow: they engaged in an elaborate process of self-definition as Native American. Although they probably shared a common “mixed” heritage with Melungeons, and though they were equally concerned to erase all traces of their African heritage, they began to identify not as white but as Indian. As Jim Crow emerged in North Carolina, the Indians of Robeson County sought a third way in a binary system.

In the immediate aftermath of the Civil War, the “free colored” community of Robeson County, North Carolina increasingly came into confrontation with whites in conflicts over land and labor. Indeed, the Croatan/Lumbee today are best known for the famed “outlaw band” led by Henry Berry Lowery, which during this period robbed white plantations, murdered members of the white upper class, and continually escaped arrest. As Robeson County whites struggled to regain control of their communities, they tried to come to terms with the identity of their attackers. Impressed by the bravery and defiance of Lowery’s band, whites began to imagine them less as “mulattos” and more as “Indians,” acknowledging their mixed blood but emphasizing their supposedly Indian qualities as “savage” and “warlike.” Several local whites wrote memoirs of the Lowery band, and several testified about the outlaws and their community before Congressional hearings in 1872; their words reveal their confusion about Croatan/Lumbee racial identity.

For example, some contemporary whites attributed “superhuman qualities” to Lowery’s “mixed blood.” Mary Norment, whose husband was killed by Lowery’s band, wrote a history of Lowery, in which she tried to parse his heritage and his personal attributes, ascribing Lowery’s “love for rude music” to the “negro trace,” his “war and plunder” to his Indian character, and his “scrupulousness” and honor to his “cavalier blood.” The lawyer Giles Leitch, Jr., who had successfully defended the militia members who killed Lowery’s father and brother, went to Washington to testify before a Congressional committee investigating Ku Klux Klan activities in the region. Leitch attempted to identify Lowery’s community in racial terms but eventually gave up: first, he testified that they were “a mixture of Spanish, Portuguese, and Indian” without “much negro blood at all. . . . They are called ‘mulattoes.’” But then, when asked, “The word ‘mulatto’ means a

cross between the white and negro? . . . You do not mean that word to be understood in that sense when applied to these people?" Leitch answered: "I really do not know exactly how to describe these people."⁷² Whites in Robeson County could not decide whether the Croatans/Lumbee were tri-racial or whether they were some other thing entirely, something heretofore unknown and mysterious.

The Croatans/Lumbee themselves began efforts in the late nineteenth century to establish their Indian identity, enlisting the help of state legislator and amateur folklorist Hamilton McMillan. In 1885, McMillan was able to win state legislation changing the Robeson County Indians' legal status from "mulatto" to "Croatan Indian," based on the "lost colony" theory of their origins. Several years later, McMillan published a pamphlet entitled "Sir Walter Raleigh's Last Colony," in which he noted that "[f]ormerly these Indians called themselves 'Melungeons,' and some of their old people still adhere to that name," and traced both the Melungeons of Tennessee and the Croatans of North Carolina to the same roots on Roanoke Island.⁷³ According to this theory, the Croatans were descendants of Sir Walter Raleigh's second group of settlers, who disappeared from Roanoke Island in 1587, leaving only the words "CROATOAN" carved into a tree, and then intermarried with local Indians.

Because of this change in legal status, the newly named Croatans were able in 1885 to establish their own School Committee and a system of separate schools in Robeson County, including a segregated normal school in the town of Pembroke a few years later. Croatans also won separate schools in neighboring Richmond County, and briefly in Sampson County, although the Sampson County school law was repealed as a result of a fracas over allegedly mixed-race children attending the school.⁷⁴ To the Croatans, this was an enormous victory: if they could not be educated alongside whites in the Jim Crow South, at least they did not have to be relegated to the manifestly inferior and stigmatized "negro schools." However, the

72. Quoted in Sider, *Lumbee Indian Histories*, 164–67, and Blu, *The Lumbee Problem*, 57–58.

73. Hamilton McMillan, *Sir Walter Raleigh's Lost Colony: An Historical Sketch of the Attempts of Sir Walter Raleigh to Establish a Colony in Virginia, with the Traditions of an Indian Tribe in North Carolina. Indicating the Fate of the Colony of Englishmen Left on Roanoke Island in 1587* (Wilson, N.C.: Advance Presses, 1888), 41.

74. George E. Butler, *The Croatan Indians of Sampson County: Their Origin and Racial Status; A Plea for Separate Schools* (Clinton, N.C.: s.n., 1916), 31. According to Butler, "The Croatan Indians comprise a body of mixed-blood people residing chiefly in Sampson, Robeson, Bladen, Columbus, Cumberland, Scotland, Richmond and Hoke Counties, in North Carolina; and in Sumpter, Marlboro and Dillon counties, South Carolina. They are called Red Bones in South Carolina, but probably belong to the same class of people as those residing in North Carolina" (9).

establishment of these separate schools provoked anger among some of the African-descended residents of Robeson County, leading to the first legal challenges of Lumbee/Croatan identity to reach the North Carolina Supreme Court.

In 1888, Nathan McMillan of Robeson County (relation to the state legislator unknown) sued the School Committee of the “Croatan Indian” public school district, seeking his own children’s admission to the schools they operated. McMillan sought to draw the color line where white people in the Jim Crow South were increasingly prone to draw it: between white people and everyone else. McMillan claimed that “all children not white” in the district were entitled to the benefits of the Croatan school, and moreover, that his wife and the mother of his children was the sister of Preston Locklear, a member of the defendant School Committee, proving that his children were as Croatan as anyone else and should be allowed to go to school. Preston Locklear, Hector Locklear, and William Sanderson, who constituted the School Committee, did not think so, and wrote to Nathan McMillan that they would not allow his children in school “until the law compels us to do so.”

McMillan did not claim to be a Croatan; he had been a slave, and his master, a white man, was his father. However, he did not think Croatan identity was such a clear-cut affair: as one defense witness admitted on cross-examination, “The people now designated as croatans were called mulattoes up to the passage of the Croatan Act, but were always a separate race to themselves.”⁷⁵ The North Carolina Supreme Court affirmed the jury verdict that McMillan’s children were “negro” and not “Croatan”; at best, according to the judge’s instructions, they were “half-bloods,” but they had not proven that they had no “negro blood” to the “fourth degree,” or in four generations.⁷⁶ In North Carolina, then, white lawmakers at all levels were still committed to distinguishing between people of African descent and everyone else. Even if the Croatan were not white, they were not black—and as such, they had the right to exclude McMillan’s children, just as the white schools had the right to exclude the Croatan.

The North Carolina Croatan clearly considered their own separate school system to be a significant prize, and for the next several decades, they continued to petition Congress for increased appropriations for their school system, and for federal recognition as an Indian tribe. In January 1889, the Indian Commissioner, John H. Oberly, wrote to J. W. Powell, Director

75. Testimony of J. C. M. Eachin, Transcript of Trial, *McMillan v. School Committee*, No. 16,384, 26–27, N.C. Dept. of Archives & History, Raleigh, N.C., Supreme Court Records. Appeal reported in 12 S.E. 330 (N.C. 1890).

76. 12 S.E. 330, 332.

of the Bureau of Ethnology at the Smithsonian Institution, asking about the Croatian Indians, because he had no record of such a tribe. Powell advised Oberly to contact Hamilton McMillan for more information. In 1890, McMillan wrote to the Indian Office describing the Croatians as a branch of the "Melungeons" and recommending support for their petition. But nothing came of this brief show of federal interest.

The Croatians became increasingly unhappy with the designation "Croatian," because local usage shortened the word to "Cro"—which, with its associations with Jim Crow, became a pejorative synonym for "colored." In 1911, they succeeded in changing their official designation in the state legislature from "Croatian" to "Indians of Robeson County," and then in 1913, to "Cherokee Indians of Robeson County." The legislature emphasized that this name gave them none of the benefits that belonged to the "Eastern Cherokee" tribe, but only the benefits that had belonged to the Croatians, namely, the right to run their own schools.

In that same year, at the urging of A.W. McLean, the state legislator to whom the Croatians had turned for support when Hamilton McMillan retired, the U.S. House of Representatives held hearings to discuss the Croatians. For the hearings, the Secretary of the Interior submitted a report to Congress on the Indians of Robeson County. These congressional investigations focused on the race consciousness of the Croatians and on their desire to distance themselves from "negroes." At the House Hearings, Representative Burke and A.W. McLean had an exchange about the tripartite separation of races in North Carolina. Mr. Burke asked, "The Indians are not prohibited from intermarrying with the whites?" McLean answered, "Yes sir. In other words, the Southern States have paid more attention to race distinction than any other States in the Union." Burke then suggested that Croatians should be allowed into white institutions. McLean answered that it would violate the "great feeling on the part of the southern people that there should not be any admixture of races. For instance, the Japanese and Chinese have never been permitted to intermix with the whites down there and, in that way, the segregation of races is complete." Burke agreed that the Croatians should not be allowed to enter Indian schools "because they are not full-blood Indians" and professed his "great sympathy with people in the South in dealing with the negro."⁷⁷

Croatian Indians themselves had very little voice in the hearings. There was only one brief exchange, when the Croatian representatives were presented to the committee for questions. One representative asked a Locklear if he was an Indian; he replied, "Yes sir; not a full blood, I don't suppose."

77. School for Indians of Robeson County, Hearings before the Committee on Indian Affairs, House of Representatives, Feb. 14, 1913, 17–19.

The congressman then asked Preston Lowry if he was a full blood, and he answered, "No sir . . . I attended school at Lynchburg, Va." Another congressman asked if there had been any "objection to [him] at Lynchburg"? He answered, "I did not tell them I was Indian."⁷⁸

While the testimony before Congress focused on the resemblance between Croatans and other non-black people of color (such as the Japanese and Chinese) and stressed the importance of segregating them from whites, the Secretary of the Interior's Report on the Indians of North Carolina suggested that the boundaries between white and Indian were rather blurred: "[i]t is in no way surprising that enumerators should return so few Indians [in the Census of 1890], as many of them are not distinguishable from whites except on special investigation as to their racial relations. . . . A body of people residing chiefly in Robeson County, N.C., known as the Croatan Indians, are generally white, showing the Indian mostly in actions and habits. They were enumerated by the regular census enumerator in part as whites."⁷⁹

The report also offered evidence that the Croatan were indeed Indian, reprinting an August 1914 letter from Hamilton McMillan, which observed, "Tradition is the Indian's history. . . . These Indians call themselves Cherokees. During past 30 years I have interviewed hundreds of them, and the inquiry as to their origin was, without an exception, in favor of their being Cherokees. . . . Since their recognition as a separate race they have made wonderful progress. Their hatred of the Negro is stronger than that entertained by Caucasians."⁸⁰ Clearly, Congress could not settle the question of who the Croatans were—but everyone agreed that they were not "Negro," which they proved by their "hatred of the Negro."

Having achieved a separate Normal School, the Croatans, now known as "Cherokee Indians of Robeson County," in 1915 sought to exclude other students from the Normal School because they had "negro blood." The Goins children were apparently members of the sub-group of Lumbees known as "Smilings," who had come from South Carolina. Although they won their case before the North Carolina Supreme Court, the county built

78. *Ibid.*, 25.

79. Indians of North Carolina, Letter from the Sec'y of the Interior, Report on the Condition & Tribal Rights of the Indians of Robeson, 1915, 33. "The existence of a peculiar people, claiming Indian ancestry and nominally distinct from negroes and whites, has not prevented such admixture as to confuse every inquirer who has undertaken to solve their relations and the numbers of those rightfully claiming any defined racial distinctions, but it has made certain districts a refuge for men of all races who preferred the half wild life of the woods to regular labor, or who preferred the bullet to the slow forms of law to settle difficulties" *Ibid.* at 35.

80. Indians of North Carolina, Letter from the Sec'y of the Interior, Report on the Condition & Tribal Rights of the Indians of Robeson, 1915, 242.

them a separate school, and from then on they were regarded as a separate community.⁸¹ Three brothers sought to have their children admitted to the school. In a long trial, Willie Goins testified that he brought his family from Sumter County, South Carolina, and that they "belong to the Indian race of people if any to my knowledge." He testified that their general reputation was "Indian" and that "we were not associated with that class of people (meaning the negroes) and we pulled out from among them and built us a new church by the name of Hopewell and we tried to get them to see as we saw and do as we did and we couldn't do so and finally there was such a few of us we couldn't do anything ourselves and we came from there . . . up here."⁸²

The Goinses, like so many other members of tri-racial groups who had moved to white areas, experienced racial investigations. Willie's brother, W. W., testified that the "Indian Baptist Association of Robeson County made an investigation before they admitted us." Rev. Blank, Rev. Gilbert Locklear, and Rev. Bell were sent to Sumter to investigate the Goinses' racial identity. "In South Carolina," W. W. explained, "we are sometimes called 'Red-bones'; some call us 'Croatans.'"⁸³ A. S. Locklear, one of the investigators of the Goinses, gave his opinion that "on the mother's side plaintiffs are Indians and on the father's side malungeans." Locklear was impressed that "these families had made every endeavor to keep themselves aloof from the negro. Did not want to associate with them in churches and in schools."⁸⁴

Other plaintiffs' witnesses testified that the Goinses belonged to a race apart, perhaps white mixed with Indian, but not "negro," and especially emphasized their efforts to keep clear of black people socially. Lizzie Brown, the plaintiffs' sister, explained, "We are Indians in the North, but they give us the name of 'Red Bones' down there [in South Carolina]."⁸⁵ A white witness who testified by deposition argued that the Goinses "belong to a mixed race, indian predominant. . . . They are commonly known as 'Red Bones' and that is a synonymous term for indian." The witness recounted approvingly that the Goinses withdrew from their original church when it "got a negro for their pastor," and that he helped them organize a new church, until they moved to North Carolina. Yet although he claimed that "They were not considered a mixture of the negro," on cross-examination he allowed that "[a]s a matter of fact they are not pure blooded Indians.

81. Sider, *Lumbee Indian Histories*, 79.

82. *Goins v. Trustees Indian Training School*, N.C. Supreme Court, Fall Term 1915, #296, Robeson County, trial record 8.

83. *Ibid.*, 9.

84. *Ibid.*

85. *Ibid.*, 11.

They have got some mixture in them. Mixture of some dark strain of blood I presume." A handwritten addition to his testimony added, "Some of these red bones intermarried with negroes."⁸⁶

The school board tried to introduce the testimony of Hamilton McMillan, now seventy-eight years old, about his recollections of the bill he introduced in the state legislature designating the "Croatan" Indians and establishing the Normal School. McMillan asserted that he had intended the school for Indians residing in Robeson County and no other. He explained his theory that the Croatans were "descendants of John White's lost colony." The court asked McMillan, "Do these people here call themselves croatans?" He answered, "No sir. They call themselves malungeans." Other witnesses for the defendants, including the investigators sent by the School Board to Sumter, South Carolina, testified to the plaintiffs' reputation as "colored people." One testified that Willie and Walter Goins "went with the darkies" and that Willie had lived with a black woman.⁸⁷

The judge then charged the jury that it was state policy to "give every child an opportunity to get at least a limited education," and also state policy "to separate the races." Occasionally, "a mixture of blood . . . creates a discussion and trouble." He explained that if the mixture went back "a few generations and if it is then passed out so that it is hard to trace back," state policy was "to put the matter to sleep in a few generations and in that way provides so that every child shall go to school somewhere and to separate races as well as can be done."

He went on to charge the jury that the law regarding the Normal School should apply to all "croatans," not only those in Robeson County at a given moment, and should exclude only those with "negro blood" in the fourth generation, not any "trace of negro blood." He refused to submit to the jury special questions about the "negro blood" of the plaintiffs and instead submitted only the question, "Are the plaintiffs entitled to be admitted into the Indian normal training school at Pembroke?" to which the jury answered, "Yes."⁸⁸ Clearly, the jury was less concerned with policing the black-Indian color line or with maintaining the racial purity (i.e., the lack of African heritage) of the Croatans than it was with simply establishing a tripartite system of racial identity: white, black, and Indian. In a Jim Crow world where whiteness was the political prize, white jurors were not prepared to bother too much about whether Indians had some "admixture" of blackness.

Croatans, on the other hand, remained highly concerned with demon-

86. *Ibid.*, 13.

87. *Ibid.*, 15.

88. *Ibid.*, 22-23.

strating that their community contained no "taint" of black blood and was instead purely Indian. They were supported in their efforts by the North Carolina General Assembly, which in 1921 established a racial screening committee for the Robeson County schools, staffed only by Indians of Robeson County. The group also policed the boundaries of Indian identity in the pages of local newspapers as well as in the courts, so that in 1914, the *Robesonian* was forced to print a retraction for having referred to Amos Bell of Ten Mile Swamp as a "darky." "That was a mistake and if the reporter had not been too busy to observe when 'Uncle' Amos called he would have known better. 'Uncle' Amos is a highly respected Indian."⁸⁹

The Croatans/Lumbee took advantage of every opening to establish their Indian heritage and to win all the political rights that Indian identity implied. Thus, in the 1930s, when John Collier took over the new Bureau of Indian Affairs, and Congress passed the Indian Reorganization Act, allowing and even encouraging tribes to re-establish federally recognized tribal governments, the Croatans also pressed Congress for a bill to recognize "the Robeson Indians" as "Siouian Indians of the Lumber River." However, the bill was blocked by Secretary of Interior Harold Ickes, who worried about extending federal recognition to tribes who had not received any federal benefits in the past. In 1953, however, the Croatans won a measure of state recognition when North Carolina officially changed their designation to "Lumbee Indians." Three years later, Congress finally followed suit, though their new designation as Lumbee Indians did not bring with it any federal benefits. Still, in the Jim Crow South, any move toward Indian identity, and by extension, away from "Negro" identity, must have seemed to the Lumbee like a step forward.

As we can see, the Croatan/Lumbee took a very different path from the Melungeons in the crucial era of Reconstruction and "Redemption." Rather than passing to the white side of the color line with the establishment of Jim Crow, they sought a "third way." Demanding recognition as Indian allowed the Croatans/Lumbee to create an existence somewhat separate from whites and blacks—yet very different from when they had "free people of color" status before the Civil War. Adamant that their intermediate status would *not* lead to any fluidity in racial identity, the Croatans/Lumbee rigorously policed the line between Croatan and other people of color, whether they were individuals suspected of "negro blood," or other racially ambiguous communities like the Smilings.

Even when Jim Crow ended, however, the Croatan preoccupation with racial identity did not cease. Since the 1960s, the Pembroke School has been opened to whites and blacks, and the school for Smilings closed—but

89. *Robesonian* (August 10, 1914: 1), quoted in Lumbee Petition, 133.

the Lumbees did not cease resisting integration. One elderly Lumbee man, speaking in the late 1970s about a recent meeting attended by Indians, whites, and blacks, told an ethnographer: "An Indian stood up, right in front of Negroes, and said [to the Whites], 'You've forced the Negro down our throats and now they're forcing him down yours. Don't you go pushing them off on us. If you take him, we'll take him.' And not before will we take them." This sentiment, combining Indian nationalism with anti-black racism, echoes conflicts in other nations who have struggled with racial identity issues.⁹⁰

Meanwhile, in the twentieth and twenty-first centuries, the Lumbees and other groups who consider themselves to be Indians but who were deemed "mulatto" by Southern whites have continued to seek federal recognition as "Indian." Their claims, like the land claims of Northeastern tribes such as the Mashpee, have suffered because they have been able to demonstrate neither racial purity nor continuous tribal identity. For these Indian tribes who mixed with blacks and whites, "race" and "nation" have proven to be swords that cut both ways.

A Multi-Racial Indian Society: The Narragansett of Rhode Island

Unlike either the Melungeons or the Lumbee, the Narragansett of Rhode Island staked a claim to Indian identity without denying their African roots. Indeed, in repeated confrontations with state and Federal efforts to strip them of tribal status, individual Narragansett spoke eloquently of their refusal to accept U.S. racial hierarchies and designations. At the same time, they sought to maintain their tribal sovereignty and control over their territory.

For most of the nineteenth century, the Narragansett tribe of Rhode Island fought the Rhode Island legislature in its efforts to gain access to tribal lands and repeal tribal rights. The "mongrel" characterization of the Narragansett figured prominently in the state's efforts to portray them as unworthy of tribal status. In 1830, the general assembly appointed a committee to "examine the present condition of the Narragansett tribe." The committee report portrayed the Narragansett as "verging towards [a] state of complete extinction": while the tribe claimed two hundred members, "[o]f this number however only five or six are genuine untainted Narragansetts all the rest are either clear negroes or a mixture of Indian, African and European blood." The committee concluded, "Forty years ago this was a nation of indians now it is a medly of mongrels in which the African blood predominates." The committee recommended the appointment of a white overseer for the

90. Blu, *The Lumbee Problem*, 77.

tribe; the adoption of rules of membership to "prevent a transmigration of this tribe from an indian to a negro race"; the elimination of the tribal exemption from lawsuits for debt; and the opening of Narragansett lands for "publick uses" at such time as the tribe was found to be extinct.⁹¹

The Narragansett responded with strong objections to all of the committee's recommendations, noting that "the white citizens have got away all the best of our Lands. And we pray that we may be permitted to enjoy what we have left, and that no more of our Lands may be sold. . . . And as to the mixture of African and European Blood with that of the native Indians; It has been done, and cannot be undone by any Legislative Act."⁹²

Again, in 1852, another committee reported to the assembly about the Narragansett: "While there are no Indians of whole blood remaining, and nearly all have very little of the Indian blood, they still retain all the privileges which belonged to the Tribe in ancient times." This committee too recommended revoking their tribal status.⁹³ Six years later, the Commissioner of the Narragansett Indians reported that " . . . the Narragansett of the present day can boast of little else than the name, without exhibiting any of the traits of character that distinguished his ancestors."⁹⁴ Yet the Narragansett managed to turn away each of these committees, preserving its tribal status for several more decades.

In the immediate aftermath of the Civil War, the Narragansett responded forcefully to efforts to make the Indians into citizens of the United States and repeal their tribal status. In December 1866, they turned back one investigative committee with the following words: "We have not sent for this committee, and we know of no particular occasion for its visiting us at this time." The Narragansett expressed their skepticism about citizenship, for they feared it would be the same second-class citizenship blacks enjoyed: "We have traveled much over the country; Have visited many States and have seen many men, both white and black. We have heard much said about the rights of the negro; of negro citizenship, and negro equality; but we have not found the place where this equality and these rights exist, or the negroes who enjoy them. Negro citizenship as we have seen it, means

91. Paul Campbell Research Notes, Exhibit 143. Rhode Island State Archives, Narragansett Indians 43, December 1831 Resolution Messrs Dan King & B. B. Thurston, Committee relative to Indians, 448–50, 465.

92. 1-1-14, 1825–1832 Exhibit 144, January 1832, Rhode Island State Archives, Narragansett Indians 89, Letter To the Honorable General Assembly of the State of Rhode Island & Providence Plantations, to be holden at Providence in said State, on the second Monday of January in the year 1832: 478, 484.

93. 1-1-17, 1851–1862 Exhibit 342 Report of the Committee on Indian Tribe made to the General Assembly, October 1852, 1185.

94. Exhibit 346 Report of the Commissioner on the Narragansett Tribe of Indians made to the General Assembly, January 1858, 1195.

the right to have the negro vote for somebody, but not to be voted for; no white man votes for a negro.”⁹⁵

After describing the status quo of Jim Crow, the Narragansett spokesperson explained why they did not want to submit to it themselves—not because they did not want to associate with “negroes” but because they saw the injustice of the “negroes” place in society: “we do not want this negro citizenship, and if we are to have some other citizenship, we prefer to see it enjoyed by some one else before we accept it. . . . We are not negroes, we are the heirs of Ninagrit, and of the great chiefs and warriors of the Narragansetts. Because, when your ancestors stole the negro from Africa and brought him amongst us and made a slave of him, we extended him the hand of friendship, and permitted his blood to be mingled with ours, are we to be called negroes? And to be told that we may be made negro citizens? We claim that while one drop of Indian blood remains in our veins, we are entitled to the rights and privileges guaranteed by your ancestors to ours by solemn treaty, which without a breach of faith you cannot violate.” This was a very different notion of Indian identity than that of the dominant society—a vision of Indians as a nation rather than a race, and a multi-racial nation at that.⁹⁶ Furthermore, it turned the emerging “one drop rule” of “negro” identity on its head; the Narragansett claimed that even one drop of Indian blood entitled them to Indian national status and the rights and privileges guaranteed their nation by treaty.

In 1880, at the outset of the allotment era, the Narragansett Tribe of Rhode Island was finally “de-tribalized” and their tribal lands made available for public sale.⁹⁷ The Rhode Island General Assembly concluded, after decades of committee investigations showing the “decline” and “mongrelization” of the tribe, that it had become extinct and should be terminated. Also in 1880, a new committee reported that “there is not a person of pure Indian blood in the tribe, and that characteristic features, varying through all the shades of color, from the Caucasian to the Black race, were made manifest at the several meetings of the Committee. Their extinction as a tribe has been accomplished as effectually by nature as an Act of the General Assembly will put an end to the name.”⁹⁸

95. Exhibit 658 Bartlett’s, *Rhode Island Miscellany*, Volume 6, page 2214 *The Narragansett Indians*, Dec. 1866 pp. 28–29. See also *Memorial To the Honorable General Assembly of the State of Rhode Island*, January Session, AD 1867 (“ . . . Under the present organization of society, we do not wish to be citizens. For we know we cannot be so in the full acceptation of that term.” Samuel Rodman).

96. *Ibid.*

97. Jan. 1880 Act to abolish the tribal authority and tribal relations of the Narragansett Tribe of Indians.

98. Box 3 1864–1976, 1-1-1 1864–1870, Report of the Committee of Investigation; A Historical Sketch and Evidence Taken, made to the House of Representatives at its January Session, AD 1880 (Providence: Freeman & Co., 1880), p. 6.

The Narragansett had vigorously resisted this de-tribalization—not only in defense of tradition, and in order to hold onto their land, but in conscious rejection of American racial practices. In a series of public meetings in Charlestown in 1879, Narragansett Council members articulated the difference between their understanding of Indian identity, encompassing people of “mixed race,” and the larger community’s two-tiered hierarchy of whites and people of color. Joshua Noka explained why he did not want to be a U.S. citizen: “Now, for me as an individual to ask to be a citizen, under the present existing circumstances, I don’t see anything that would be interesting to me. For a colored man to be a citizen, he will remain about the same as at the present time.” In practical terms, citizenship would mean only being “brought out” to vote, but the “colored citizen” could not “expect ever to be President of the United States, or an Attorney-General. It makes no difference how well he is qualified, he can’t be put into a jury box; to be drawn as a common juror, or anything of the kind; but if you have got a cesspool to dig out, put him in there.” Under these circumstances, “what would be the object in throwing off the tribal authority and come out and be called a citizen, with nothing to do as a colored man? . . . Why should the Narragansett tribe be willing, just for the sake of being a citizen, to throw away the rights and privileges that they now have?”⁹⁹

Another Council Member, Daniel Sekater, agreed: “I can’t see for my life wherein we shall be benefited any more than we are at the present time by coming out as citizens under the present circumstances. . . . Some argue that they ought to come out as citizens because they are mixed up with others. There are niggers, it is true—perhaps more niggers than anything else. But other classes are mixed up with other nations just as well. There is hardly one that can say, ‘I am a clear-blooded Yankee.’ So I can’t see whereby I should be benefited. . . .”¹⁰⁰ Tribal member Brister C. Michael too preferred to “remain as I am, and to hold the lands as we do at the present time. To be a citizen I don’t think would be any use to me. I shouldn’t be permitted, or any of my sons, to be a jurymen. Might do, as some one said a little while ago, to dig out a cesspool, or some other job.” When several Congressmen protested that as citizens, they would have the right to vote and sit on juries, Michael replied, “That may be, but in Rhode Island there is no such thing. I never knew one on a jury.”¹⁰¹

One Congressman tried to suggest that were it not for the land issue, the Narragansett would accept citizenship. But Tribal Council Member

99. Appendix B: Evidence taken by the Committee of Investigation, on the Narragansett Tribe of Indians, at three public meetings, held in the town of Charlestown, 1879, First Meeting, pp. 32–34.

100. *Ibid.*, 38.

101. *Ibid.*, 41.

Ammons insisted, "You can't bring us out as citizens. . . . I don't think that many of these white gentlemen here would like to have any of our nigger tribe hang around your daughters and court them. If we come out citizens, it would be a name without any gain to it. It would sound rather large, it is true, but there wouldn't be much to it. . . ." ¹⁰²

Only one tribal member, Samuel Congdon spoke in favor of detribalization, and he admitted that he was the only one in favor. And even Congdon compared tribal government favorably to the harsh rule of Jim Crow in the South: "We are not under restraint like the four and a half million colored people of the South; we are not led to the whipping-post; but I had just as leave be in that condition as under this tribal institution. I have always been in favor of coming out citizens, and having the rights and privileges that other men have." ¹⁰³

At the second and third public meetings, tribal members were examined, in order to determine tribal enrollment for the purpose of distributing cash payments to the members upon dissolution of the tribe. One individual, Edward Cone, challenged the right to membership of several others, including Joshua Noka. Brister Michel spoke in Noka's defense: "Deacon Cone has made objections to the Noka family as not belonging to the tribe, and he is just as lame as they are. When you come to the point of the law, they have got to be begotten by an Indian man, and any other woman but a negro woman. Now, Cone's mother was a nigger woman, and I know it." Yet Michel raised the objection only to counter Cone's effort to exclude Noka; he did not try to exclude Cone, who he noted had voted and been a member of the Tribal Council without challenge. ¹⁰⁴ When Cone took the stand, Representative Ammons expressed some skepticism about his claims to tribal membership: "If we can judge anything from color, we should judge that you was an African." Cone retorted: "Then I should judge that you were. There is not much difference in our color." ¹⁰⁵ There was also considerable testimony on tribal practices regarding intermarriage between Indians and Africans, in which several witnesses testified that the child of an Indian and a negro, whether free or slave, was an Indian.

The record of these late nineteenth-century hearings is striking in its account of such profound solidarity between people who identified as Narragansett and those of African ancestry, as well as in its evidence of the Narragansett's acceptance of racial mixture. There is some evidence that this may have changed by the mid-twentieth century. In 1934,

102. *Ibid.*, 43–44.

103. *Ibid.*, 53.

104. 1st Ann. Report of the R.I. Commission on Narragansett Indians, 1881, Appendix B, Second Meeting, p. 57.

105. *Ibid.*, 58–59.

in the aftermath of the Wheeler Howard Indian Reorganization Act, the Narragansett Tribe incorporated and began to hold annual reunions and pow-wows, and other cultural events, and to publish a newspaper, the *Narragansett Dawn*.¹⁰⁶ The Indian Office investigated the Narragansett in 1935, finding that despite their history of "intermixture," many were now "strongly anti-negro." The investigators considered that the Narragansett "have suffered many injustices and they deserve a great deal of credit for having made a move to check intermarriage with true negroes."¹⁰⁷ Perhaps by the mid-twentieth century, having grown up in a Jim Crow world, the children and grandchildren of those who had once fought to retain their tribal government had now lost their more inclusive and "national" sense of Narragansett identity. Indeed, in the twentieth century, for many Indian tribes seeking recognition, like the Lumbee and the Narragansett, nationalism became associated with anti-black feeling. But for the Narragansett, unlike the Lumbee, this was something new.

Racially ambiguous groups of Indian and African ancestry took radically different paths in the face of Jim Crow: the Melungeons claiming whiteness; the Lumbee asserting Indian identity and rejecting association with blacks; the Narragansett asserting Indian identity without rejecting their African origins. Other small "islands" simply remained in the racial borderlands, trying to avoid state regulation.

Indian communities who had welcomed African Americans at one point in their history, as well as racially ambiguous communities with varied ancestry, faced enormous pressure during this era to comply with the new rules of Jim Crow. While some of these communities had survived quite successfully as racial "islands," despite all of these pressures in the years leading up to the Civil War—and a few even survived well into the twentieth century—Indian communities fought hard to maintain their places in the racial hierarchy. Those who thought of themselves as Indian and wanted to retain an Indian identity faced difficult choices. The Croatan/Lumbee were relatively successful in maintaining Indian status by distancing themselves from blacks and policing the Indian/black line themselves; the Narragansett, who refused to accept white notions of Jim Crow citizenship, were far less successful. Yet today the Lumbee still have not won Federal recognition, despite massive and extremely expensive efforts over the last two decades. And the national identity of the Narragansett was reinstated only after the BIA approvingly noted the extent of their rejection of blacks in the mid-twentieth century.

106. F. 7 1934–35, Pow-wows, Narragansett Tribe incorporates—*Providence Journal*, Dec. 4, 1934.

107. Indian Office File No. 150, Re Location, History, Government, Language Etc. of the Narragansett Indians, 1935.

In every case, when racially ambiguous groups came before courts or legislatures, the state demanded that they exercise their claims to citizenship through the rejection of blackness. Whether proving Indian or white identity, the community or individual who could show the strongest hatred for “the negro” had the best claim. Ultimately, the lesson of Jim Crow America was that citizenship meant whiteness, measured in distance from blackness.