

CHAPTER 1

White People: The Creation

This chapter and the next are devoted to providing an explanation for the creation of the group of humanity called “white” people. It sounds pretty outrageous to think about white people as an invention. In fact, such a claim may be perceived as offensive to some. This is so because the invention has been such a success. In fact, many people today understand themselves to be racially white and view race as a biological fact. Such a perspective is completely understandable when forms utilized by the U.S. government, medical providers, and schools ask for a racial designation. Such common social practices make both “race” and the groups listed under it seem real. In fact, they work to make these groups “real” in the sense that they give groups meaning in society and work to make them different.

In spite of this common experience of “race,” we should begin by realizing that “white” people as a designation of a group of humanity, much less as a race, never existed until late in the seventeenth century. This means that “white” people have been in existence for a very short period of time, while people whose skin reflects light skin pigmentation have been in existence for thousands of years.⁴ Long before the colonists arrived upon the shores of North America, people referred to a person as a color in relation to the appearance of her or his skin as in William Shakespeare’s *Othello* (1604). However, these descriptions were just that—descriptive; much like a person can be said to have yellow or brown hair. Descriptive terminology creates a visual context. Such descriptions generally do not presuppose a human difference that is thought to constitute a distinct human order or unique race.

Prior to the label “white,” people were referenced by a number of possibilities, including national origin (such as Spanish, British, or Brazilian), or by religion (such as Jew, Christian, or Muslim). There were other possibilities as well, such as one’s status as servant or free, owning class or servant class. However, “whites” or “white” people was not one of them. It should also be noted that “white” designating a group conceived of as united by *race* was an invention upon the invention. In other words, at the time “white” people were invented, they were not seen as a race. This occurred later and will be discussed in the next chapter.

The label “white” reflecting a group of humanity appears nowhere in law until 1681. It first appears in an enactment passed by the Colonial Assembly of the Colony of Maryland. The question is why? Who were “white” people prior to the invention? What did it mean when they became “white”? What was the problem that lawmakers sought to address through the imposition of this new category of humanity?

This chapter will explore the initial appearance of this group of humanity called “whites,” addressing the motivations for the creation, those who constituted this group, and ideas that helped give rise to the new category of humanity. We will look into why “white” was selected over other possibilities. Finally, we will examine constructive (i.e., pieces that combined to create the category) and persuasive (i.e., efforts to make the category make sense) efforts deployed in the creation of “whites.” These constructive and persuasive efforts will help us to identify institutional commitments. Chapter two will explore the legal and social effort involved in making the label stick. In that chapter we will consider how the label was imposed, how it functioned to alter colonial society, and how and when it began to be conceptualized as a race.

The exploration of the human group called “white” within law is instructive, even if not all-inclusive, because law is the principal means by which a society defines and regulates itself (Kelman, 1987). Significantly, law is a legitimizing institution giving preference to one version of events over others, to one description among many, to a specific policy or practice among others. Law does not produce meaning, give authority, or establish boundaries in a vacuum but

rather within a larger social context, in dynamic interaction with prevailing social forces and pressures. Because of these functions, law is an important arena through which to explore and understand social phenomena. This chapter relies heavily upon colonial North American enactments and the historical record of life among laborers both preceding and following a significant expression of discontent called Bacon’s Rebellion that will be discussed later in the chapter. Bacon’s Rebellion represents a critical historical moment that gave rise to fear among the elite. That fear was ultimately alleviated through the invention of “white” people.

Because few people study social relations in early colonial North American history beyond the Thanksgiving story, I have taken the liberty of painting a picture with a broad stroke. Most students are familiar with post-slavery relations between “whites” and persons of African descent. In fact, this understanding is so well entrenched that many have difficulty imagining anything else. For most, it is surprising to learn that from 1619 through the 1680s in Virginia, and up to 1800 in other areas, interactions suggesting significant trust and mutuality between Europeans and Africans were not uncommon. There is rich documentation of friendly, co-conspiratorial, and loving relations between those of European and African ancestry some of which will be explored below.

Students struggle to grasp the time period in Colonial North America before slavery became entrenched. This is so, in part, because there is little understanding of the condition of poor British and Europeans who constituted the vast majority of the population, and because there is a strong tendency to interpret the past through powerful ideological frameworks within the present.

In an effort to help capture this moment in early colonial North American history, I will focus on the colony of Virginia. Virginia is significant because it was central to the invention of “white” people. It was an early colony with English settlers arriving first in 1585, then again in 1607, while the colony of Maryland was not planted until 1633. Virginia was the site of Bacon’s Rebellion in the 1670s, which was followed by dramatic changes in law that created a new (much lower) bottom to the social hierarchy and assigned this location to those of African descent.

Colonial Virginia Before the Institution of Black Slavery

The Virginia colony was pursued in 1585 with lofty goals. Englishmen Walter Raleigh and Richard Hakluyt convinced Queen Elizabeth to support the establishment of the colony to serve as a hub for attacks on Spanish settlements, and advance the riches of the Crown while decreasing those of Spain (Morgan 1975: 25-28). The colony was to serve as an employer for England's growing numbers of unemployed and create new markets for her goods among the native tribes and settlers, as well as bring the natives into the fold of Christianity and the British government. By 1590 the settlement was found deserted, without a record of what happened to the English settlers (Ibid. at 42).

The next effort to colonize Virginia began with 105 settlers in 1607 as a corporate endeavor intended to increase the investments of shareholders of The Virginia Company of London.⁵ The governor of the colony recruited vigorously. By 1624 over four thousand British settlers had come to the colony, but less than a thousand survived.⁶ In 1619, just over twenty people from Africa were recorded in the colony. It is unclear how many survived by 1624. The death rate was shocking, and the king dissolved the company and placed it under control of the crown. The demand for laborers continued despite the low survival rate, in part because tobacco was being grown and shipped to England. Tobacco farming required significant human labor and so helped fuel the demand for farm workers. Tobacco held the hope of riches for many.

Between 1607 and 1682 roughly 92,000 immigrants from Europe were brought, mostly to the Virginia colony but also to Maryland, and more than three-quarters of these immigrants – or more than 69,000 – were chattel bond laborers (Allen 1997: 119).⁷ Most were men, and most were English. In Virginia until approximately 1640, there were seven males twenty years of age or older for every woman (Wells 1975: 164). The sex ratio improved significantly by 1700, but remained high because of the large numbers of indentured servants from Europe imported into the colony, most of whom were males. The sex ratio in Virginia is thought to be similar to that of Maryland,

where few women were among the first colonists and a sex imbalance remained until the Civil War (Ibid.).

Getting to the colony was one thing; surviving there was another. The colony grew from about 1,300 settlers in 1625 to about 2,600 by 1629, 8,000 by 1640, more than 14,000 by 1653, and 25,000 by 1660 (Morgan 1975: 136). It is estimated that there were only about five hundred persons of African descent in the Virginia colony by 1650. There was also a substantial minority of others who were not English, including Portuguese, Spanish, French, Turk and Dutch. The growing population reflects not an increase in the flow of immigrants to the colony, but an advancing survival rate. By raising cattle and other grazing animals in addition to farming corn and planting orchards, Virginians were able to feed themselves and improve their health.

English laborers came to the colony in one of several statuses: tenant, bond servant, or apprentice. Tenants were under the supervision of a company agent and entitled to one-half of the returns earned. Bond servants belonged to their master. The master supplied the servant with food, clothing, and shelter during the years of service, and the master got everything earned by the servant. Apprentices were bound as servants for seven years and then another seven years as a tenant to the planter, who paid ten pounds for the laborer. Historian Edmund S. Morgan notes that it is likely that the majority of the men were sent as tenants, but that abuses of laborers and the addition of terms of years by masters were not uncommon (1975: 116-121, 126-128). In fact, the treatment of servants in Virginia by their masters shocked other Englishmen. Large numbers of Europeans were regularly bought and sold "like horses" in Virginia. Most Europeans came to Virginia with only varying degrees or future promises of freedom. To put it another way, most people arrived in Virginia being unfree to some degree.

While large numbers of laborers were working to their death in Virginia, some officers in the colony were getting rich. The beginnings of this colony reveal a private enterprise operating with few checks and balances, advancing the fortunes of a few and the death of many. It is important to remember that at this time, the vast majority of laborers in Virginia were Englishmen. Morgan remarks on this period of the Virginia colony, stating that a "servant, by going to Virginia, became for a number of years a thing, a commodity with a price," and he

concludes that we “may also see Virginians beginning to move toward a system of labor that treated men as things” (1975: 129). According to Theodore Allen, landowners accumulating wealth from tobacco in 1620s Virginia transformed European tenants and wage laborers into “chattel bond-servitude” (1997: 178). European servitude in the tobacco fields of Virginia, claims Morgan, came closer to slavery than anything the British had ever seen (1975: 296).

The status of the first African colonists in Virginia is indeterminate. What is certain is that within the decades before 1680, some Africans were free or became so. Africans worked for masters alongside British laborers. There is plenty of ethnographic material revealing that at least some persons of African descent were not treated as degraded beings, and behaved in manners consistent with Englishmen of a similar class. That persons of African descent were treated in a disparate manner by some Europeans at some moments in time cannot be disputed, and evidence of such will be discussed later in the chapter. However, the entire body of available documents weighs much heavier with evidence of Europeans and Africans interacting in ways that suggest cooperation and a degree of mutuality.

Records that help to paint a picture of the status of Africans prior to 1680 are scarce. Those that have been retrieved reveal that antipathy directed at persons of African descent did not define the social landscape. If, as some historians have argued, English people had a “natural” antipathy toward persons with dark skin, you would not expect British or other Europeans to treat persons of African descent as equals, or as desirable other than as labor.⁸ Furthermore, if persons of African descent were accustomed to being treated in a degrading manner by Europeans, then you would expect a fearful and possibly subservient posture as a result of accumulated insult and injury. Neither is the case with any consistency.

Instead, the evidence shows that many African men married European servants, and these marriages appear to have been accepted. Because there were five to seven times more men than women in the colony, a woman could likely have her pick. In one case, an African servant sued successfully for her freedom and married the European lawyer who represented her in court (Allen 1997: 195-6). If such a marriage were viewed by local Virginians as an affront to the British

then you would expect to find the lawyer shunned or otherwise harmed, but the marriage did not seem to diminish the lawyer’s social position.

Historian Philip Morgan provides detailed descriptions of relationships between persons of European and African descent during the colonial period in North America (1998). For example, the European widow of an African planter next married a European farmer without issue. Again, if there was stigmatization attached to a European woman having married an African man, then we would expect the widow to be rejected by European men as a potential spouse. This does not appear to be the case. Another piece of ethnographic material reveals that a European female servant told her European master that she would rather marry an African slave on a nearby plantation than marry him, despite his wealth. That is exactly what she did (Morgan 1998).

Women outlived men and widows regularly remarried, bringing land and animals to their marriages. Records from one county show that in the 1660s, one-fourth of all children born to European female servants were of joint African and European ancestry. Records from an Eastern Shore colonial county reveal that five of the ten free African men there were married to European women (Parent 2003).

Resistance to governmental authority was common among the British and shared by at least some men of African descent. For example, a particularly descriptive court deposition describes an African property owner who was approached by a European messenger of the court delivering a subpoena. The owner responded with contempt. The messenger informed him that he should appear to testify, but instead the landowner flogged him and sent the messenger away, stating that he would appear when he pleased, after his corn was harvested (Morgan 1975: 156-7).

Edmund Morgan references numerous wills wherein masters set up conditions “whereby Negro slaves would become free or could purchase their freedom. And the terms indicate an expectation that they would become regular members of the free community” (1975: 156). Furthermore, both European and African men working for the same master slept, ate, and labored together. Court records of this period reveal that Europeans and Africans joined together in escapes and criminal endeavors. Such joint ventures suggest trust and cooperation,

qualities of a relationship that stand in opposition to animosity on the basis of color. There is ample evidence from court records that Europeans and Africans of the same class behaved similarly and were treated so by courts.

Until 1662, both persons of African and European ancestry appear to have been treated similarly for sexual violations.⁹ Each stood in church with the customary white sheet and white wand to do penance for fornication or for having committed adultery (Morgan 1975: 155-56). There is still more evidence of trust and cooperation between Europeans and Africans. G.S. Rowe's study of defendants of African descent in the criminal courts of Philadelphia in the late eighteenth century reveal that both Europeans and Africans of the lower classes accepted each other, as evidenced by shared ventures that required trust and cooperation (1989: 695). This was not the case, however, among the more economically privileged Europeans. The overwhelming evidence suggests that, prior to the 1680s in Virginia, Maryland and Carolina, and as late as 1800 in areas of New England, European antipathy toward persons of African descent because of their skin color was not widespread.

As we prepare to explore the first appearance of "white" reflecting a distinct group of humanity in law, a general overview of the legal landscape out of which it emerged is instructive. It is not possible in the space of this chapter to articulate, even briefly, the full legal context of the Colonial Era along the eastern seaboard of what became the U.S. Therefore, those areas of society and law that the law under consideration most interacted with and depended upon will be explored. They include the social and legal significance of marriage, the law regulating the status of a child, and other laws and social practices that laid the groundwork for human division.

Colonial North America: A Social and Legal Context

The colonial Assemblies of Maryland and Virginia stood at the forefront of the development of laws that promulgated and imposed the human category "white." Colonial enactments from these colonies are central to an exploration of the invention of "white" people. Both colonies

shared an economy heavily invested in the farming of tobacco, a crop demanding tremendous human labor.

Colonists brought with them the patriarchal order of the household that existed in pre-modern England. The context within which each colony engaged in the work of establishing the parameters of community, as a matter of definition and regulation, was guided by British common law. It provided the basis for the system of law, including marriage. Common law provided a clear directive regarding women's place in marriage as captured by Sir William Blackstone:

By marriage, the husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during marriage, or at least is incorporated and consolidates into that of the husband; under whose wing, protection, and cover, she performs everything (Salmon 1979: 94).

In other words, the traditional common law conception of marital unity was that "man and wife are one – but the man is the one" (Williams 1947: 18). The male head of the household was assumed to represent the interests of a family. Under common law, marriage placed firmly within the control of a husband all property ownership, all economic matters concerning the household, the custody of children, and the responsibility to govern a wife's behavior. He was expected to provide materially and to protect all women, children, and other dependents within the household, in exchange for the obedience of women and children.¹⁰

This model of marriage was carried into the colonies and eventually incorporated within U.S. law (Blood and Wolf 1960). Indeed, well into the nineteenth century, a married woman in the U.S. was unable to hold title to property in her own name, including property inherited or which was bequeathed to her, retain her own wages, enter into contracts, or to acquire custody of her children in the case of legal separation (Basch 1984: 42-69).

North American colonial law largely replicated the common law of Great Britain, as in the case of marriage noted above. However, not every law in the colonies was consistent with British common law. Colonial enactments that are inconsistent reveal a great deal

about the specific context the colonists faced and the constraints and opportunities it posed for those in positions of power. Areas of colonial law that stand in opposition to British law include: (1) the determination of the status of a child as free or enslaved; (2) numerous areas of law concerning European laborers, including the prohibition of marriage during years of bond-servitude; and (3) marriage prohibitions, called antimiscegenation laws, that punished an English person who married a specifically identified "other." Each reflects a dramatic break from British law. British common law was being deftly altered to take advantage of the new economic opportunities offered by unique colonial social conditions. This is revealing not only of the particular forces and pressures and opportunities that the colonial context presented, but also of the role of law as a means to address them.

The rule of law in England, *partus sequitur patrem*, made the status of the child dependent upon the condition of the father. In 1662 the General Assembly of the Virginia Colony made a "mulatto" child's status as free or slave dependent upon the condition of the child's mother, marking a dramatic shift from British law (Hening 2:170).

As African laborers began to be synonymous with life-service or slavery at the end of the seventeenth century, the law worked to render the children of women of African descent human capital. Black women were transformed into a machinery of capitalist production. The law permitted and encouraged the sexual violation of black women as a means of increasing plantation wealth.

This law dramatically impacted British (eventually white) women as well. They became the only possible production site of "pure" British (eventually white) children. Steve Martinot explains:

Sexuality was devalued in English women in the process of relocating it in the bodies of African Women. That is, by validating the violation of African women as the cultural site of sexuality itself, in the name of and in the interest of plantation wealth, sexual being was in the same gesture withheld from English women. English women became instead the desexualized site of validated motherhood as the concomitant of the commodification of African motherhood

as capital. Motherhood was functionalized for English women in the process of appropriating motherhood as production in the African (2010: 40-41).

Through this law, black women's reproduction advanced the property value of the plantation while English women's reproduction ensured "pure" inheritors of this property. Virginia's formula for determining the status of a mulatto child was adopted by every southern commonwealth with the exception of Maryland.¹¹ This law's existence and wide acceptance reflects its ability to serve the interests of the most powerful colonists, specifically those most invested in unpaid and underpaid labor.

In the colonies, marriage was prohibited during years of bond-servitude unless the master consented. This was not the case in England, where the marriage of servants was viewed as necessary for the production of the next generation of servant class laborers. This was not the only difference. Servants in the colony faced longer terms and much more severe treatment than their counterparts in England. In the colonies, exclusion from marriage combined with laws that punished premarital and extra-marital sex and extended years of service when a child was born outside of marriage, to render women in bond-servitude particularly vulnerable to sexual exploitation and to the extended exploitation of their labor (Hening 1643, 1: 252-253; *Arch. Md.* 1640, 1:97; Hening 3: 74, 139, 361).

These laws combined to create particularly harsh conditions for women laborers and reveal something of the type of capitalism taking hold. In this version of capitalism, conditions were being structured to set female reproduction against labor. The laws stretched the years of servitude owed beyond the original agreement and without compensation. Through such enactments, labor was rendered less hospitable to women than men, while the value of family (at least among the masses of people in the colony) was devalued. The degree of labor exploitation upon which the version of capitalism taking hold depended will prove to be a pattern in the colony and later in the U.S.

Another area of law that diverges from British common law is that of antimiscegenation. Because this area of law is the site of the first appearance of "white" people, it will be explained and addressed in its own section that follows.

Antimiscegenation Law

Antimiscegenation law, advancing what would become “racial” restrictions on marriage, saw the invention of the category “white,” reflecting a distinct group of people. These laws prohibited a “white” person from marrying specific categories of persons seen as not “white.” Such “mixing” would eventually be called “miscegenation,”¹² and the laws that prohibited such relations would be referred to as “antimiscegenation” laws (Getman 1984:122-23). The crime of miscegenation was shaped and reshaped over time in response to and as a reflection of political, economic, ethical and psychological needs and desires of the British ruling elite as they interacted with and responded to the free Europeans of the colonies. The creation of this new body of crime, called *miscegenation*, created a criminal that did not steal goods or inflict physical violence.

No law stands alone. Legislation comes about largely because lawmakers perceive a deficiency in existing laws as they interact with cultural practices and/or social change. It does not make much sense for lawmakers to go through the trouble of crafting and then passing legislation unless it addresses a need or desire. What was the need addressed or desire served by the first law in which “white” referencing a group of humanity appears? In order to explore this question we first must understand some things about this body of law.

Antimiscegenation law references those laws that imposed restrictions upon marriage that prohibited a member of a group understood by lawmakers to be superior from marrying a person of the opposite sex who was a member of a group they believed to be inferior.¹³ These laws, for example, prohibited a “white” person from marrying a person of African descent. Like the human category “white,” antimiscegenation law was an invention of North American colonists and reflects a dynamic interaction of gender relations, social control measures, and economic and power-gaining opportunities within the colonial context.

This arena of law provides an important entranceway into the invention and evolving understanding of the category “white” and the role of law in the inventive enterprise. Why? Because examining antimiscegenation law provides a number of insights. First, it helps

inform the parameters that influenced those thought to be “white.” Second, it reveals meanings that were predicated to this new group of humanity. Third, because antimiscegenation law pre-existed the first use of the human category “white” in law and because antimiscegenation law served as a site of significance to the new category, this area of law is insightful to the inventive effort itself, helping to answer the “why white?” question.

Antimiscegenation law was neither derived from the statutory laws of antiquity nor from the common law of England, but was a creation of colonial North America. It was in an environment wherein marriageable women were in short supply and the location of power within marriage was held almost exclusively by the husband that the first antimiscegenation law was enacted. In this statute, a British woman and an African man were being portrayed as members of sufficiently different human groups to require the enactment of a marriage prohibition.

The Colonial Assembly of Maryland in 1664 enacted a law that punished a woman who was “English or freeborn” who married a black slave (*Arch. Md.* 1: 526-527). The law stated in part:

...for preuention whereof for deterring such (English and) free borne women from such shamefull Matches . . . whatsoever free borne woman shall inter marry with any slaue . . . shall Serue the master of such slaue during the life of her husband And that all the Issue of such free borne women soe married shall be Slaues as their fathers were (*Ibid.* at 527).

While Maryland law did not void the marriage, it did legislate harsh consequences for the woman who entered into it and to any children of the couple. She faced life service to the master of her husband for the duration of her husband’s life, while any children of the couple were rendered slaves. In these ways, the law worked as a deterrent to these marriages, the express intent of the law. However, prevention and deterrence were not the only forces at work.

For slaveholders, there was incentive to encourage English or other freeborn women to enter into marriages with enslaved African men. The law worked to enlarge their slaveholdings by adding not only

the new bride, but also any children the couple might have. As a result, there was encouragement for slaveholders to promote these marriages. In 1681 the Maryland Assembly corrected for the conflicting messages within the Maryland Enactment of 1664. The 1681 enactment will be discussed later in the chapter.

The three areas of colonial law discussed above that stand in opposition to British law are highlighted here because they provide important legal context for the emergence of “white” people. The invention of “white” people in law represents a moment in time when a line is drawn in the sand. It represents a linguistic divide separating those who are within it from those excluded from it. While “negro” and “Indian” already served to separate and divide, “white” sharpened those divisions by erasing divisions within and among British and Europeans of the colonies. At the same time, it represents a need or desire and reveals a commitment in the colonies to a particular version of capitalism that stands in opposition to a shared sense of humanity and in opposition to “the family” in favor of human hierarchies and cruel extensions of labor. These colonial laws also lay the foundation for a division of humanity that will be accelerated by the invention of “white” people.

The laws are important, in part, because they are contrary to British common law, and therefore suggest needs and desires particular to the colonial North American context. But the question remains: whose needs and desires? A law may reflect the sentiment of some, most, or few of the people in the community. It is fairly obvious that the law rendering the status of a child dependent upon the status of the mother, and the law that imposed additional years of service for a child born during one’s years of bond-servitude, served the interests of those invested in plantation labor and worked against the interests of the masses of laborers. What is often missed is that these extensions of labor also harmed European and African farmers who were free of servitude, because it is hard to compete with the farmer who has free labor. Large landholders who extended years of servitude among servants without pay could produce more for less.

What about the law that punished a British or freeborn woman who married a slave of African descent? Does this law reflect a widely held belief that people were in need of separation, specifically English

women from black men? There is a wealth of information, some of which has been previously noted, that suggests that the lawmakers’ sentiments regarding the impropriety of “English” and other “free born” women marrying black slaves was not shared by the masses within the colonies.

Creating Difference In Law

The degree of similarity of treatment between those of African descent and those who would become “white,” prior to 1680 in Virginia and Maryland and up to 1800 in other areas, is well established (E. Morgan 1975; Parent 2003; P. Morgan 1998; Rowe 1989). There is also evidence of different treatment. It is in those areas where treatment was not similar that clues might be found to help explain the emergence of the human category “white.” Evidence of different treatment is not reviewed here because it overshadows the evidence that Europeans and Africans engaged in relationships of trust and mutuality. It does not. Rather, it is important in order to make visible the process that eventually gave rise to the social and legal change in the colony that dramatically altered those relationships of mutuality, cooperation and trust between persons of African and European ancestry.

For example, the experience of coming to the colonies was different. European bond laborers entered contracts for their labor and traveled, without literal chains, across the Atlantic. The journey took between eight to twelve weeks and was difficult. Indentured servants were packed into the hull of the ship with little or no fresh air and were given a ration of bread every two weeks. In contrast, African laborers were exclusively stolen people forced through the middle passage in chains under grueling conditions.¹⁴ Winthrop Jordan highlights another way in which Africans were set apart from British and Europeans generally – the label “negroes” (1968: 73). Similarly, native tribal members were set apart from the English not only by the word “Indians” but by their treatment (Barber 1913).

Another example of differential treatment can be seen when, in 1640, the Virginia General Court pronounced the sentence for three servants who temporarily escaped. The Dutchman and the Scot were ordered four additional years of service while the third servant, “a negro

... shall serve his master or his assigns for the time of his natural life ...” (Jordan 1968: 75).¹⁵ Add to this the Maryland antimiscegenation law of 1664 and the Virginia fornication law of 1662, wherein lawmakers doubled the fine imposed for sexual intimacy outside of marriage when one party was “English or Christian” and the other party was “negro,” and there is some evidence that *among lawmakers*, distinctions between Europeans and Africans were being crafted and expressed through law (*Arch. Md.* 1: 526-527; Hening 2: 170). There are all kinds of distinctions among and between people reflected in law, such as plaintiff and defendant, lessor and lessee, victim and accused, and buyer and seller, to mention just a few. What makes the distinctions noted in the laws above so noteworthy is that they are distinctions that the invention of “white” people presumed and worked to accelerate and sharpen.

The Maryland and Virginia laws noted above reveal that during the 1660s, within the arena of sexuality and marriage, persons of African descent and members of native tribes were being constructed by lawmakers, though not by the masses of laborers, as sufficiently unlike the British so as to justify what was at that point an ethnic-based marriage prohibition and different, more harsh treatment in law.¹⁶ Similarly, the dramatic sex imbalance that existed in Maryland could very well have been a motivating force for the antimiscegenation law in that colony, rather than animus toward black Africans. However, legal descriptions within the enactment of 1664 suggest the emergence of an understanding of human difference between those viewed as like the British on the one hand, who were seen as superior, and on the other hand, those viewed as clearly not like the British, who were seen as inferior. What is certain is that these laws reveal that those of African descent and members of native tribes *began* to be reflected in law as different from those who were seen as sufficiently like the English as early as the 1660s (Hening 2:170; *Arch. Md.* 1:526-527).

The evidence of different treatment noted above should not be construed as a challenge to the interpretations of historians who claim that prior to the 1680s, there is “little clear evidence of uniform or widespread social antipathy on account of their [blacks’] color.” (Smedley 2007: 104-105). It does suggest that historian Edmund Morgan’s claim, that Virginia colonists of the 1660s and 1670s were

poised to think of Africans as potential members of the community on the same terms as other men (1975: 155), requires some modification, as this sentiment is not clearly reflected by Virginia’s lawmakers at this time even if it was supported by the actions of laborers. What the Maryland antimiscegenation law of 1664 and the Virginia fornication law of 1662 present is a record, prior to the 1680s, that shows those who will become “white” (i.e., those seen as like the English) being constructed in law as sufficiently different from those of African descent and members of native tribes, by those exerting legal authority within these colonies (*Arch. Md.* 1: 526-527; Hening 2: 170).

In Virginia, a law was enacted in 1640 that prohibited those of African descent from possessing firearms; however, the law appears to have been ignored and unenforced (Breede and Innis 1980). This 1640 enactment is noteworthy because it suggests a very early sign of a desire on the part of lawmakers to treat Africans in an inferior manner. It is equally noteworthy that this effort was apparently rejected by the community.

These laws build upon the law that linked the status of a child with that of her mother, and set the groundwork for the invention of “whites” by starting to divide people in ways that the invention of “white” people dramatically accelerated. They reveal an understanding of perceived human difference rooted in sufficient likeness or unlikeness to the British. Finally, they help to reveal institutional patterns and commitments that will be elaborated upon later.

Bacon’s Rebellion

Bacon’s Rebellion occurred at a time when the survival rate had significantly improved and the numbers of tenants and servants who completed their terms (not to mention survived) was growing. While survival and completion of terms of indenture were positive outcomes for laborers, they posed problems for those who governed. These changes meant more competition for large landholders as freed tenants sought their own fortunes in tobacco, adding to the supply and depressing the price.

These free men, most of whom were bachelors, presented a growing threat to British authorities in Virginia. They responded to

this threat by extending years of servitude and increasing the term of service required as a penalty for such violations as running away, giving birth to a child, or killing a hog. In 1670 a law was enacted that stripped these men of their ability to vote so that only landowners and keepers of homes could vote in elections (Hening 2: 280).

As the numbers of freed tenants and servants grew in the 1640s and 1650s, fewer and fewer could expect to hold public office or to find workable land that was not already claimed. Indentured servants faced harsher conditions, while freed ones faced narrowing opportunities for financial independence. Falling tobacco prices, combined with taxation from the crown and the relative exclusion of most colonists from participating in the fur trade, all worked to increase the resentment of the indentured and freed.

Other conditions had changed as well. Recalling that Virginia's economy was deeply invested in tobacco and that the farming of tobacco required tremendous human effort, the desire for laborers failed to decline. Recalling also that the vast majority of laborers who arrived in Virginia every year were Englishmen, changes in this labor supply would have a noticeable impact upon the colony. By mid-century the poor and homeless who were sent from England slowed significantly, leaving a gap in the labor supply. British landholders in Virginia had to look elsewhere, and in the decades that followed the numbers of laborers from Africa began to increase significantly.

The numbers of discontented Virginians were many. Servants of African and European descent faced harsher treatment while those freed from servitude confronted conditions that rendered their freedom from servitude, much less their success; more and more tenuous.

In 1676, these discontented people erupted in the colony of Virginia with laborers of European and African descent, bond and free, uniting in the fight against unpaid labor, the plantation elite, and those governing the colony, in an effort to realize greater opportunity and independence. Bacon's Rebellion was complicated and nuanced. Here, I will provide only a brief overview. There was a first phase that focused upon attacking native tribes, and a second phase that was a direct challenge to the British who ruled the colony. The rebels expressed disdain for the way they ruled and grew their wealth.

The rebellion is named after the man who led it, Nathaniel Bacon. He and a number of his neighbors held contempt for native tribal members, who they blamed for the death of numerous servants. These neighbors were unimpressed by the response of the government to these incidents, and were increasingly perturbed by the cost of the government that they supported through taxes. Bacon himself was a member of the governing council and tried without success to get a commission from Governor Berkley to attack native tribes. Bacon proceeded without it and on May 10, 1676, the governor denounced Bacon and removed him from the council. Bacon proceeded to lead a crusade against all native tribes, friendly and hostile, those with whom the Virginia colony had agreements and those with whom it did not.

Bacon was decreed a rebel by Governor Berkley while Bacon issued a "Declaration of the People" that sought to ruin all native tribes, including all trade with them. In addition, he began advocating for a redistribution of some of the ill-gotten wealth in the colony. According to Morgan, "[i]n a society where success had always depended on exploitation that fell short of plunder, it was an appealing formula to men of every class" (1975: 255). Within an environment of tremendous discontent among poorly treated laborers from Africa and Europe and more constraints with fewer opportunities for the growing numbers of freed servants, it was not hard to rally supporters for Bacon's cause. While Bacon continued to attack native tribes, other rebel groups plundered the estates of government loyalists. In late October, Bacon died. Soon thereafter, armed ships from England arrived and the rebellious tide died out, but not without having made an impact. Bacon's Rebellion represents the unification of laborers of African and European descent, freed servants, and small landowners. The threat of a united labor force to the capitalist plantation system was clear. The response by the governing elite was a divide and conquer approach. They separated laborers by creating one group with the authority to rule over and oppress the other.

Historian Gary Nash, in describing the process of imposing slavery upon persons of African descent, provides a succinct review of the legal response that followed Bacon's Rebellion:

In rapid succession Afro-Americans lost their right to testify before a court, to engage in any kind of commercial activity, either as buyer or seller; to hold property; to participate in the political process; to congregate in public places with more than two or three of their fellows; to travel without permission; and to engage in legal marriage or parenthood (1992: 159).

According to Theodore W. Allen, the response to the rebellion was the creation of a new social status that would be a birthright of Anglos as well as Europeans in North America, a “white” identity designed to set them apart from African bond laborers as well as enlist Europeans across class lines as active or passive supporters of capitalist agriculture based on chattel bond labor (1997: 167).

Bacon’s Rebellion provides the rationale to explain the need to divide laborers as a means of social control. A more detailed look at the response of colonial legislators to Bacon’s Rebellion reveals such an undertaking in law, and will be examined in the next chapter. However, neither the rebellion nor the response to it explains why “white” was procured as the means to do so. There is always more than one way to accomplish a task - here, the division of laborers.

Why “White”?

In the aftermath of Bacon’s Rebellion, Virginia’s landowning elite pushed for legislation that set “British and other whites” apart from those of native tribes, mulattos, and those of African descent. These laws emerged in Virginia from 1691 through the first quarter of the eighteenth century. The inclusion of antimiscegenation law among the list of benefits and privileges afforded to “whites” by law suggests that the law was less of a control mechanism to restrict “whites” than a benefit to advance interests. This claim will be advanced in the next chapter.

It was not within an enactment from the Virginia colony where Bacon’s Rebellion raged that “white” referencing a group of humanity first appears, but rather, in an enactment from the colony of Maryland. Recalling that Maryland’s antimiscegenation law of 1664 had the effect of encouraging the very marriages the law explicitly claimed to prevent, Maryland legislators sought to address the conflict in 1681.

The law included financial disincentives to masters who encouraged or assisted such marriages and imposed fines upon the priest, minister, or magistrate who performed the marriage (*Arch. Md.* 7: 204). The law states in part:

And for as much diverse freeborn English or White woman sometimes by the Instigacon Procurement or Convenience of their Masters Mistres or dames....doe intermarry with Negroes & Slaves.....” (Ibid.).

The switch from the use of “English or freeborn” as the critical category referenced in the 1664 legislation requiring protection to that of “white” women can be seen in this law.

Virginia enacted an antimiscegenation law in 1691 and applied its marriage prohibitions to men and women within identified groups. It punished a “white” woman or man who married a person who was of African descent or a member of a native tribe by banishing them from the colony. The law stated, in part:

...whatsoever English or other white man or woman being free shall intermarry with a negroe, mulatto, or Indian man or woman bond or free, shall within three months after such marriage be banished and removed from this dominion forever, ... (Hening 3: 86-88).

The 1681 antimiscegenation law of Maryland utilizes an entirely new label to reference a group of people. This new label was unlike those used in the past, which referenced nationality, religious affiliation, or legal status relative to enslavement or freedom. What explains the emergence of this new label and what is its significance? While Bacon’s Rebellion explains the desire to divide laborers, why was “white” the selected mechanism to do so? Historians who have addressed the emergence of race in colonial North America fail to subject the category deployed to question. There are always multiple ways of accomplishing a task.

Maryland’s antimiscegenation laws of 1664 and 1681 and Virginia’s fornication law of 1662 and antimiscegenation law of 1691

reflect shifts in labels given to those who would become “white.” These laws reveal that those who were members of native tribes or of African descent were viewed as sufficiently unlike the British so as to warrant separate labels and exclusion from the full package of rights and privileges that the British and those considered sufficiently like them enjoyed. This was true prior to Bacon’s Rebellion, at least among lawmakers. What is striking after Bacon’s Rebellion is the label given to those who were not “Negroes or mulattos or Indians.” These people, who were referenced in law first primarily as “British and other Christians” and then by mid-century as “English and free born,” became after 1680 “white” (*Arch. Md.* 1: 526-527; 1662, Hening 2: 170). These shifts in labels were not unique to laws restricting marriage but are apparent in the broad legal record.

The Maryland antimiscegenation law of 1681 refers to “Freeborn English and other whites” as the group of women to whom the law is directed (*Arch. Md.* 7: 204). Virginia’s antimiscegenation law, enacted in 1691, references “English and other whites” as the relevant group and applies its prohibitions to both men and women (Hening 3: 86). Maryland followed suit one year later and extended its prohibition to men and women (*Arch. Md.* 1692, 13: 546-549).

What do these shifts in labels offer to an understanding of why “white” became the label to designate a group, over other possibilities? Furthermore, what do these statutes reveal about who is “white” and what “white” means in law, at least within the context of its emergence in colonial North America? Finally, and most generally, what does antimiscegenation law offer to a fuller understanding of the construction of “white” people?

The shifts in labels for those who would become “white” capture the struggle to name those who would lay claim to a “new” land. The evolution of labels within antimiscegenation law reflects a struggle to name the expanding community of privilege as the label “British” alone became increasingly insufficient, with the influx of other colonists. The first such labeling effort, “British and other Christians,” was problematic because conversion to Christianity offered a relatively easy crossover. This was especially problematic with regard to those who had been identified via homogenizing labels such as “Indian” or “negro” to be unlike the British and who, beginning in the

1660s, began to be carved out in laws for separate and less favorable treatment. This anxiety is reflected in a 1664 enactment in Maryland clarifying that conversion to Christianity holds no relevance to one’s status as a slave and does not lead to manumission (*Arch. Md.* 1: 526, 533; 2: 272). Freedom would not be permitted so easily.

The next labeling effort captures a status conferred at birth, thereby taking care of the conversion threat. However, the designation “English and Freeborn” presented its own limitations: the majority of tribal members were born free, while some Africans were free as well. In these ways, both “Christian” and “freeborn” were too expansive to the social order being crafted by lawmakers, capturing at least some of those who were rendered outsiders by the British elite. These attempts to name those who were English-like suggest the needed elements of a satisfactory label: one, it would require that those already identified as unlike the English be excluded, and second, it would require that the label not allow for simple conversion into the group. Bacon’s Rebellion represented the unification of the masses in Virginia in opposition to native peoples, to the plantation elite as well as those who governed (these were often one on the same). As such, the rebellion provided the need for another element of a satisfactory label: it would need to facilitate the making of strong ties between large numbers of laborers and the elite of the colony. These elements helped to narrow the field of possibilities for the new label.

Previous efforts to label the community of privilege failed to develop an ideology of shared identity that was strong enough to cause laborers to see themselves as sufficiently linked to the elite British of the colony. Rather, the evidence of social relations prior to the decades following the rebellion reveal strong ties between and among laborers, whether from Africa, Ireland, England, or Portugal.

There can be little doubt that the visible differences between British and African helped facilitate the social divide created between the two, and reduction of the latter into permanent servitude. Anthropologist Audrey Smedley notes that the “visibility of Africans made it possible to structure the demarcation point of permanent slavery solely on the basis of color” (2007: 115). It is critical to an understanding of the invention of the human category “white” to recall that, while early colonists saw people who looked dramatically

different from them, these differences had little *meaning* in society until the decades following Bacon's Rebellion. Post-rebellion, "the negro" was assigned new meaning as debased and servile, and was positioned below and in opposition to British and Europeans in order to accommodate the needs of the planter class. This group of British and Europeans, laborers and freemen that would stand in opposition to the African slave needed to be sufficiently aligned with the ruling British of the colonies.

It is within this context and under these constraints, desires and demands that "white" became the next label to capture the community of privilege (i.e., those sufficiently like the British) within the Virginia and Maryland colonies and all others to follow. "White" rendered inclusion within the privileged group to an element of phenotype, in other words, a physical feature that is not readily changed. As such, from the outset it could exclude the vast majority of those already clearly established by lawmakers, if not others, as insufficiently British-like. Also, unlike Christian and freeborn, "white" had no previously established firm guidelines and accepted parameters. This gave the new category incredible flexibility, and is likely a feature of its incredible survival and success. Who was "white" was by no means clearly established in 1681 and remains undefined as a matter of law to this day.

Constructive and Persuasive Efforts: Creating the Common Knowledge of Whiteness¹⁷

Antimiscegenation law offers insight into an understanding of what courts later term the "common knowledge" of whites. The Maryland legislators worked to shape the meaning of Britishness such that it functioned to signify freedom and the presumption of certain citizenship rights and privileges. In the eyes of the Maryland colonial lawmakers, a British woman could only enter into a marriage with an enslaved African man if she failed to acknowledge her essence: free. It is somewhat ironic that under this law, being British, as a reflection of being free, functioned as justification for a law that imposed restrictions (specifically on marital choice), although limiting the freedoms of women was nothing new.

The Maryland antimiscegenation law of 1664 reflects not only a constraint upon British women's interactions, but the imposition of a fragile superiority. The rights and privileges that the law recognized and protected for British and other free people, although not indefinite, could be lost by certain acts that posed a serious threat to the very meanings of British and freedom that the law both presumed and imposed.

The legislation refers to the marriage of an English woman to a slave of African descent as being to the "disgrace of our nation" (*Arch. Md.* 1: 527). This description of harm is significant for a number of reasons. It reveals that the legislators viewed the resulting harm as collectively shared. The law goes on to explain that the servitude imposed upon the woman and the children of her marriage was intended to deter British women from entering "such shameful matches" (*Ibid.*).

That the Maryland law imposed a marriage restriction upon English women and enslaved African men but not upon English men and enslaved women of African descent reveals, among other things, that rights and privileges were not shared equally. Important factors such as gender were significant determinants of the degree of access or restriction. The law worked to advance the privileges of English men and those viewed as sufficiently like the British, since an effect of the law was to expand the pool of available women by making them legally available *only* to them.

Within the southern colonies, the social pressure for women to marry was tremendous.¹⁸ During this period, especially in those locations where women were scarce and in great demand, control over marriageable women is apparent.¹⁹ The Maryland law of 1664 is one example. The law worked to direct the marital choices of English and other freeborn women.

The shift from "English and other freeborn women" to "English and other *white* women and men" as the class requiring protection is significant. The Maryland law of 1681 reflects the first time in legal history, in the land that would eventually become the U.S., that "white" was used in law to reflect a human classification. This Maryland law represents the invention of "white" people in law. This moment in history does not reflect a genetic mutation that is linked

to a race called “whites”; it represents the need of elites within the colonies to control large masses of laborers, and their desire to have greater access to women.

The Maryland law of 1681 includes the first appearance of the term “white” used to designate a distinct group of humanity in law, and served as a corrective to the antimiscegenation law of 1664 that had the unintended effect of encouraging slaveholders to promote the very marriages the law expressly intended to discourage (*Arch. Md.* 7: 203-205). The law provides that freeborn English or “white” women who enter into marriage with a slave of African descent do so “to the satisfaction of their lascivious and lustful desires” and to the “disgrace not only of the English but also of many other Christian nations” (*Ibid.* at 204). This language reveals important perceptions and reflects persuasive efforts to shape a human group now being referred to as “white.” Taken-for-granted components include that African bodies represent excessive sexuality while bodies seen as “white,” like the English, reflect normal sexuality. The normality that is conferred by virtue of one’s status as English or white is corrupted and turned sexually deviant by the desire to wed those being constructed as “other” and inferior – first enslaved African men, and then simply Africans. The corruption of the individual is then perceived to harm the group by disgracing the English collectively through challenging what being English symbolizes. The Maryland lawmakers here fuse biology with morality (Battalora 1999: 56). Here criminality is linked not to property damage or physical harm, but to an action that represents a threat to a group status. Here “white” is revealed as fragile, requiring significant protective measures.

The 1681 enactment of the Maryland lawmakers reveals the initial legal authorization of a label and its package of ideas that worked to create, perpetuate, and institutionalize representations of bodies made different, specifically those made “white,” and in the most general sense those rendered other-than-white. In addition, the law exposes these community standards to be premised upon a hierarchical ordering of humanity that presupposes the superiority of the English and then reveals the category “English” being expanded to encompass “other whites.” We learn here, too, that whiteness was built upon the idea of English *as white* and upon the presumption of the English *as*

Christian. We see also in these enactments that white is reflective of those who are deserving of freedoms and privileges denied those viewed as sufficiently unlike the English. These assumptions and ideas combine in the invention of the new category of humanity.

For those who are now thinking that the invention of white people and the resulting racial hierarchy that follows is the fault of “the damn British,” I will caution that such a view of human categorization did not emerge from England and was viewed as peculiar by legal actors there.²⁰ In England, access to rights and privileges were rooted in wealth, not shades of skin color. It was by British leadership *within the context* of colonial North America that “white” people were imagined and invented. Institutional patterns and commitments within colonial North America include the advancement of a British patriarchy and the development of a capitalist economy dependent upon large numbers of unpaid and/or underpaid laborers. Both of these claims will be elaborated upon in the next chapter.

Discussion questions:

1. What were some names or labels for those who became “white” people before “white” was invented, and why were these problematic?
2. What label other than “white” might have been utilized to divide laborers? What are the possibilities and limitations of the label you suggest?
3. How are workers today divided and separated?
4. When you consider colonial North American laws that represent a break from British common law, what patterns emerge?
5. What threat did Bacon’s Rebellion pose to the plantation elite?
6. What were meanings assigned to “white” people from the first creation of them?