

**Native, Aboriginal, Indigenous:
Who Counts as Indian in Post Apartheid Virginia**

By

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In 1948, sociologist William Gilbert wrote: "Indian blood still remains noticeable in our eastern States population in spite of the depletions arising from over 300 years of wars, invasions by disease and white men from Europe and black men from Africa."¹ Gilbert chronicled remnant Indian groups of the eastern states from Maine to Texas and Virginia to Illinois. In his findings, he reported that only Vermont and New Hampshire exhibit no residual Native tribal population while Georgia, Arkansas and Illinois manifest no surviving social groups.² At the time, Gilbert estimated the survival of 75,000 to 100,000 mixed-blood Natives "Who may frequently be more white or Negro in appearance" than Indian.³ Having fallen into disuse, the original tribal names were largely lost in time and most often the distinguishing terms applied to these Native Americans has been nicknames given them by the dominant white people.

Noting that Virginia's surviving Indian groups tended to retain traditions of their Native origin, Gilbert identified several mixed blood groups along the Blue Ridge and

¹William Harlan Gilbert, Jr., "Surviving Indian Groups of the Eastern United States," *Annual Report*, Smithsonian Institution. Washington, DC: U. S. Government Printing Office, 1948: 407.

²In recent times, tribal populations and social groups have surfaced and claimed aboriginal rights under state recognition in both Vermont and Georgia.

³Gilbert, "Surviving Indian Groups," 407.

Piedmont zones of the state. Stating that these concentrations "beginning with Rappahannock County in the north and continuing southward along the Blue Ridge through Rockbridge and Amherst Counties and striking directly southward to Halifax County on the North Carolina border,"⁴ he gave definition to the geographical occupation of these interior Virginia tribal groups. Specifically he identified 500 to 600 mixed bloods in central and the extreme western end of Amherst County near Bear Mountain and Tobacco Row Mountain of the Blue Ridge. Known locally as "Issues," he describes these people as having "a very rich brunette with straight black hair and Caucasian features." Noting a second group northwest of Amherst County, he further identified a population of over 300 "Brown people" exhibiting "a mixture of white, Indian, and occasionally Negro blood." A third group who claimed Indian descent was identified by Gilbert in "Halifax County on the North Carolina border."⁵ Locally both groups were considered to be "mulattoes" but acknowledged as "a group apart from both whites and Negroes." While this brief summary exhausts the information supplied by Gilbert, it does not begin to manifest the social history and cultural significance of these and other surviving Virginia Piedmont and Blue Ridge Indian groups.

Considered in an ahistorical context, these sociological reports of "tri-racial isolates" have largely been taken as a means of undermining the aboriginal-indigenous character of surviving Native Americans in the eastern United States. Minding this conclusion, it is the intent of this paper to, first, supply to an historical background of Colonial Indian assimilation and explore the American institutional racism that has plagued these

⁴Gilbert, "Surviving Indian Groups," 419.

⁵Gilbert, "Surviving Indian Groups," 419.

Natives, particularly in the south, and second, to consider factors of their Native-aboriginal-indigenous birthright.

Writing in 1785, Thomas Jefferson commented "An inhuman practice once prevailed in this country of making slaves of the Indians."⁶ In a manuscript note, Jefferson, furthermore, declared that "This practice commenced with the Spaniards with the first discovery of America."⁷ Although Jefferson took no further notice of this institutional slavery as applied to American Indians, there is a well preceded history that included his beloved state of Virginia.

While Jefferson's observations may have been a matter of selective perception characteristic of his times, the failure of Gilbert and his colleagues to give consideration of this history is less forgivable. As oppressed minorities, particularly, African Americans began to struggle for their civil rights and overthrow apartheid segregation in the south, little thought was given to the historical survivance of American Indians in the region. After all in the minds of most Americans, those southern Indians had been removed to the west and those remaining were at best "tri-racial isolates" and not "real" Indians. Reflecting, however, Jefferson's observation of more than a century before,

⁶Thomas Jefferson, *Notes on the State of Virginia* [1785]. Edited and with an Introduction & Notes by William Peden. Chapel Hill: University of North Carolina Press, 1982: 61.

⁷Jefferson, *Notes on Virginia*, 61, fn. 89 where editor Peden references "Ms note by TJ. See Herrera. Amer. Vesp., Ed. note. Antonio de Herrera y Tordesillas (1559-1625), Spanish Historian, author of *Historia General de los Hechos de los Castellanos en las Islas y Tierra Firme del Mar Oceano* (Madrid, 1601-15, 4 vols.).

ethnohistorian Irving Hallowell wrote, in 1963, that "in the colonial period of our history some Indians shared the status of slaves with Negroes."⁸

European enslavement of American Indians began with Christopher Columbus who in 1494 sent more than 500 Indians to Spain and the slave market.⁹ After enslaving the Natives of Espanola for exploitation in Spanish gold mines, great mortality was experienced among captives leading slavers to raid the Bahamas and Florida in the early 1500s. American Indians, accordingly, were consigned to slavery in the West Indies concurrently with the first African slaves who were introduced there between 1501 and 1503.¹⁰ During the 1520s, over one-hundred fifty eastern Siouan Indians were taken as slaves from the Cape Fear River area by Lucas Vásquez de Ayllón.¹¹

There are several accounts of Indian enslavement in Virginia. For instance, as the "Old Dominion" began asserting its colonial institutions in the early 1600s, the practice of educating Indian children at the College of William and Mary became a ruse for

⁸A. Irving Hallowell, "American Indians, White and Black: The Phenomenon of Transculturalization," *Current Anthropology*, v. 4(1963):522.

⁹Donald Grinde, Jr., "Native American Slavery in the Southern Colonies," *The Indian Historian*, v. 10 (1977) n. 2: 38.

¹⁰A. F. Chamberlain, "African and American: The Contact of Negro and Indian," *Science*, v. 17 (1891) n. 419: 85.

¹¹J. Leitch Wright, Jr., *The Only Land They Knew: The Tragic Story of the American Indians in the Old South*. New York: The Free Press, 1981: 103-104.

officials to sell the children as slaves.¹² Following the 1644 Powhatan uprising and the Treaty of October 1646, Indian prisoners were kept by the English and made into servants.¹³ Despite an act of 1660 in Virginia that "Indians [were] not to be sold as slaves,"¹⁴ it later became legal during Bacon's Rebellion to enslave tributary Indians who had committed acts, such as fighting, or who were deemed hostile by the English.¹⁵ In fact following a May 1676 attack upon the Occaneechi, the Virginia General Assembly passed laws "declaring all Indians who deserted their towns or harbored hostile Indians to be enemies, and any Indians captured in 'war' were to be slaves."¹⁶ By 1682, the Assembly "declared all servants who were not Christians at time of purchase, as well as all Indians sold by 'neighboring Indians or any other' people, to be slaves."¹⁷

¹²See Helen C. Rountree, *Pocahontas's People: The Powhatan Indians of Virginia Through Four Centuries*. Norman: University of Oklahoma Press, 1990: 168.

¹³Ibid, p. 87.

¹⁴Charles C. Royce, *Indian Land Cessions in the United States*, Smithsonian Institution, Bureau of American Ethnology, Annual Report, 1896-97, pt. 2. Washington, D. C.: U. S. Government Printing Office, 1899: 567.

¹⁵Rountree, *Pocahontas's People*, p. 139. Enslavement of Indians by the English is further discussed by Almon Wheeler Lauber, *Indian Slavery in Colonial Times within the Present Limits of the United States* [1913]. New York: AMS press, 1969: 105-117.

¹⁶Ibid, pp. 97-98.

¹⁷Ibid, p. 139.

The proprietors of Colonial South Carolina identified Indian enslavement in that colony writing:

Mr. Maurice Matthews & Mr. James Moore have most Contemptuously disobeyed our order about sending away Indians & have contrived most unjust warrs upon the Indians in order to the getting of Slaves & were Contriving new warrs for that purpose.¹⁸

Matthews and Moore were associates within a group of powerful Carolina planters known as the Goose Creek men who were notorious for their incitement of tribal allies to war upon neighboring Natives whom they captured and sold as slaves.¹⁹ The South Carolina colonist Dr. Henry Woodward reports in 1674 to Lord Shaftsbury "trade was opened from St. Giles' plantation for 'deare skins, furs and *young Indian slaves*.'"²⁰ Emphasis is given to Woodward's account in the following year (1675) when "a Chisca (Yuchi) woman ... escaped from slavery in Carolina" to the Spanish Apalache in Florida.²¹ While the Carolinians engaged in limited Indian wars prior to 1680, there were a series of clashes which "developed the notorious traffic in Indian slaves, in which South Carolina achieved a bad eminence among the English colonies."²² In 1680, the colonial

¹⁸Quoted in Amy Ellen Friedlander, "Indian Slavery in Proprietary South Carolina," M. A. *Thesis*. Atlanta: Department of History, Emory University, 1975: 19.

¹⁹Wright, *The Only Land*, pp. 102-125 discusses these colonials.

²⁰Vernon W. Crane, *The Southern Frontier 1670-1732*, [1929]. Westport, CN: Greenwood Press, 1977:16-17, emphasis added.

²¹*Ibid*, p. 17.

²²*Ibid*, pp. 17-18.

Proprietors charged that the powerful Charles Town slave-dealers made the Westo [Indian] War for the purposes of selling Indian slaves in the West Indies.²³ Following this precedent, the Carolinians regularly encouraged and conducted Indian slave raids against tribes, as diverse and far away as, the "Winyahs from the North Carolina border, Appomatox from Virginia, Cherokee from the mountains, and Chatot from the Gulf of Mexico."²⁴ Expanding this commerce in Indian slaves, the Carolinians encouraged intertribal warfare, which was "extraordinarily wasteful in its effects, and led to rapid penetration of the interior."²⁵ Noting the 1690-1700 war with the Choctaw, Vernon Crane writes "that the ultimate aim of the English was to exhaust them by wars in order to seize their lands and send them all slaves into distant countries."²⁶

Indian slavery was also practiced for the Carolina domestic economy. In a 1704 raid upon the Apalachees, Moore boasted of returning with 4,000 captive Indian women and children slaves for the colony.²⁷ Crane further notes that traffic in Indian slaves spread to other colonies and the West Indies. While many Southern Indian slaves were shipped off

²³Ibid, p. 19.

²⁴Ibid, p. 21.

²⁵Ibid, p. 23.

²⁶Ibid, p. 68.

²⁷Wright, *The Only Land*, p. 114.

to New England²⁸ and the West Indies, southern plantations remained rich with enslaved Natives. Crane notes, for example, that "In 1708, when the total population of South Carolina was 9,580, including 2,900 negroes, there were 1,400 Indian slaves held in the province."²⁹ Although not peculiar to South Carolina, Indian slavery reached greater proportions there than in any other English colony. Following the Tuscarora War in 1711, at least seventy-five of these North Carolina and Virginia Iroquian peoples were brought to South Carolina as Slaves.³⁰ Available records reveal that a minimum of 5,500 Indians were enslaved in the Carolinas.³¹ Although Indian groups survived in the South,³² those who remained as slaves, however, melted into the black population.³³ Charles Royce, furthermore, notes that "systematic slave hunts had nearly exterminated

²⁸Ibid, p. 114, it should be noted that "In the early eighteenth century the Boston News Letter printed frequent advertisements of runaway Carolina Indians," thereby promoting sale of the Indians as Slaves in New England.

²⁹Ibid, pp. 112-113.

³⁰Friedlander, *Indian Slavery*, p. 37.

³¹Robert William Snell, "Indian Slavery in Colonial South Carolina, 1671-1795,"

Dissertation. Tuscaloosa: University of Alabama, 1972: 3.

³²See William Harlen Gilbert, Jr., "Surviving Groups of the Eastern United States," *Annual Report of the Smithsonian Institution*. Washington, D.C.: U. S. Government Printing Office, 1948: 419 where surviving *Monacan* groups from whom I am descendent are reported in Rockbridge and Amherst Counties, Virginia.

³³Friedlander, *Indian Slavery*, p. 80.

the aboriginal occupants of the Carolinas before anybody had thought them sufficient importance to ask who they were, how they lived, or what were their beliefs and opinions."³⁴

While many Carolina Siouans were sold onto plantations within their original homelands, others were sold as captives into West India bondage.³⁵ Actually as early as 1638, the Massachusetts English had deported many of the conquered Pequots to the Bermudas as slaves.³⁶ Transportation of Indian slaves to the West Indies included captured Kussoe Indians during the war of 1671-1674.³⁷ In fact 600 householders on Jamaica reported holding 51 Indian slaves between the years 1670 and 1700.³⁸ Governor Cabrera of St. Augustine expressed his grief over Indian enslavement and the slave trade with 'Barbados.³⁹ Decreed by the Barbados governing council, it was announced in 1636 that "*Negroes and Indians* that come here to be sold, should serve for life...."⁴⁰ Not to be outdone, the Virginia English decreed that all Nanzaticos age twelve years and older

³⁴Royce, *Land Cessions*, p. 630.

³⁵*Ibid*, p. 631.

³⁶Friedlander, *Indian Slavery*, p. 37.

³⁷Chamberlain, "African and American," p. 86.

³⁸Friedlander, *Indian Slavery*, p. 8.

³⁹*Ibid*, pp. 29-30.

⁴⁰Alden T. Vaughn, *Roots of American Racism*. New York: Oxford University Press, 1995: 157.

were to be sold in servitude in the West Indies, and as a result, an entire Powhatan tribal group was eliminated from Virginia and enslaved in Antiqua.⁴¹

Another factor contributing to the disassociation of American Indian identity in the south was the racial integrity codes that were legally binding in the region. Governor William Gooch promised "the better government of Negroes, Mulattoes, and Indians," with a 1724 Virginia law that deprived men in those categories of their political franchise. As early as 1705 the Virginia Assembly decreed that "the child of an Indian and the child, grand child, or great grand child of a negro shall be deemed, accounted, held and taken to be a mullato." The legislative intention was clearly to include Indians among the colony's colored population, thereby creating a bi-racial -- white and colored - - society.⁴² Politically exclusive of Native Americans, southern colonies began legislating Indians into oblivion. In 1712 South Carolina followed Virginia with apartheid legislation which North Carolina also affirmed in 1712 and 1741.⁴³ A century later the Virginia General Assembly passed an 1823 law stating, "Be it enacted and declared, and it is hereby enacted and declared, That the child of an Indian and the child, or great grandchild of a Negro shall be deemed, accounted, held and taken to be a

⁴¹Rountree, *Pocahontas's People*, p. 121.

⁴²Helen C. Rountree, "The Indians of Virginia: A Third Race in a Biracial State" in *Southeastern Indians Since the Removal Era*. Edited by Walter L. Williams. Athens: The University of Georgia Press, 1979: 27-48.

⁴³Vaughn, *Roots of American Racism*, pp. 17-19.

mulatto."⁴⁴ In this pre-Civil War period, anyone declared Black or mulatto was subject to severe civil depravation including enslavement. Later with the Virginia Racial Integrity Law of 1924, the state continued to acknowledged only two races -- White and Black.

This law reads:

...It shall be unlawful for any white person in this State to marry save a white person, or a person with no other admixture of blood than white or American Indian. For the purpose of this act, the term "white person" shall apply only to the person who has no trace whatsoever of any blood other than Caucasian; but persons who have one-sixteenth or less of the blood of an American Indian...⁴⁵

The product of Dr. W. A. Plecker, registrar of the State Bureau of Vital Statistics, this Statute outlawed Indians in Virginia. Plecker had decided that no Native Americans remained in Virginia and he determined to legislate those claiming to be Indians out of existence. Plecker systematically altered Indian birth, death, and marriage certificates to

⁴⁴William Waller Henning, *The Statutes at Large*. Philadelphia: Thomas De Silver, 1823, v. IV:252.

⁴⁵"The Virginia Racial Integrity Law," No. 5, *Acts and Resolutions of the General Assembly of the State of Virginia*, Davis Bottom, Superintendent of Public Printers, Richmond, 1924:535.

read "colored" or Negro. Thus, at this time no one could claim a Native American racial heritage and if they attempted to do so they were labeled mulatto or Black by the state.⁴⁶

Addressing the apartheid history of Virginia and the south is never an easy matter, on the one hand, one seeks to identify the racist's indicators, such as the term mulatto, as a means of affirming Native ancestry, while on the other hand, one must be sensitive to the slight of African Americans. As Helen Rountree, nonetheless, explains Natives were forced into the "colored" status, thereby making them a "third race" in a "bi-racial state."⁴⁷ Rountree, moreover, writes:

People of dark complexion claimed that their "suspicious" ancestor had been an Indian, sufficiently far back, and they were then classed as whites. Plecker and his associates were outraged at this; it did not seem to occur to them that the menial jobs and second-rate schools and hospitals set aside for "colored" people were enough to make anybody pass for white who could.⁴⁸

⁴⁶Peter W. Houck, M.D., *Indian Island in Amherst County*, Lynchburg Historical Research Co., Lynchburg, 1984:72-73; see also Paul T. Murray, "Who is an Indian? Who is a Negro? Virginia Indians in the World War II Draft," *The Virginia Magazine of History and Biography*, April 1987, v. 95(2):215-231; and Susan Greenbaum, "What's in a label? Identity Problems of Southern Indian Tribes," *The Journal of Ethnic Studies*, v. 19 (1991) 2:107-126. For a thorough discussion of this matter see J. David Smith, *The Eugenic Assault on America: Scenes in Red, White and Black*. Fairfax, VA: George Mason University Press, 1993.

⁴⁷Rountree, "Indians of Virginia," 27-48.

⁴⁸Rountree, "Indians of Virginia," 41.

As chief of the state's vital statistics bureau, Plecker was methodical when classifying Indians. He drew, furthermore, upon the 1823 racial code classifications to discredit Indian descendants under the authority of the 1924 Racial Integrity Act that he pushed through the Virginia legislature. As Rountree explains, "If the Indians category was a way station to whiteness, it had to be eliminated, or at least discredited. This meant proving that all people in Virginia who claimed to be Indian were actually of African ancestry and therefore colored."⁴⁹ During this apartheid segregation era, no one could claim a Native American tribal/racial/ethnic heritage under the color of Virginia law lest they be disenfranchised of their constitutional liberties and civil rights. These racial integrity laws remained in force until 1969 following their repeal by the Virginia General Assembly as a result of the Supreme Court ruling in *Loving v. Virginia*.⁵⁰ Common throughout the south for over three centuries,⁵¹ these laws made it possible to disassociate

⁴⁹Rountree, "Indians of Virginia," 41.

⁵⁰*Loving v. Virginia*, 388 U. S. 1 (1967); see also Lombardo, "Miscegenation, Eugenics, and Racism: Historical Footnotes to *Loving v. Virginia*," *University of California, Davis Law Journal*, v. 21 (1988): 421 for a discussion of these circumstances in Virginia history.

⁵¹Cf. Charles M. Hudson, *The Catawba Indians*. Athens: University of Georgia Press, 1970:69-71 where he identifies the bi-racial problems generated by Black Codes in South Carolina; see also David Duncan Wallace, *South Carolina: A Short History, 1540-1948*. Chapel Hill: University of North Carolina Press, 1951:569-590, 632; William H. Gilbert,

tribal and Native identity from those surviving Native Americans in the region based upon erroneous bi-racial apartheid proscriptions.

In presentation, the following considerations were discussed: 1.) mulatto as a an apartheid legal category for Indians in known Native communities. In this matter, there are problematic issues with the sociological reviews in generating terms such as “tri-racial isolates” and mestizo, for persons of Indian-white admixture, because this term was never used in Virginia as a racial category. 2.) A Native bloodline is an aboriginal inheritance and when Indians emerged in Virginia and other states they did so under the triumph of the Civil Rights movement that permitted them to emerge from centuries of apartheid segregation. Those scholars, American Indian and otherwise, who disregard and discount this rightful emergence of a Native American population are perpetuating the legacy of racism imposed by Colonial and State decree. 3.) Federalist and tribal Indian decree of some critics may at first glance appear significant based upon factors of a.) ethnic fraud, b. wannabees and Cherokee populism, however, these factors do not invalidate the rights of suppressed Natives from the segregated south. The idea espoused by some of c.) a tribal mandate and d.) federal recognition is unduly dismissive of individual Indians and persons of Indian descent whose ancestors were inappropriately removed from the Native racial category in Virginia and other southern states. 4.) The process of recognizing tribal Indians in Virginia has been selective and uneven favoring

Jr., "Memorandum Concerning the Characteristics of the Larger Mixed-Blood Racial Islands of the Eastern United States," *Social Forces*, v.24 (1946):438-447; _____, "Surviving Indian Groups of the Eastern United States," *Smithsonian Report for 1948*. Washington, D.C.: U. S. Government Printing Office, 1949:407-438; Brewton Berry, "The Mestizos of South Carolina," *American Journal of Sociology*, v. 51 (1945):34-41; _____, *Almost White*. New York: Macmillan Company, 1963.

some and dismissing others including citizen Indians, these conditions were created by the Colonial government and the contemporary state in historical racial war upon Indian identity, as a result, the state bears some burden of recovery of Indian identity both tribally and individually. Programs of equitable recognition of Natives in Virginia should be pro-active and ongoing as a means of redeeming American Indian heritage in the state. 5.) The rights of racial identity are constitutionally mandated, moreover, race is fundamental and the subject of strict scrutiny in legal interpretation. Both individuals claiming their Indian heritage and tribes seeking recognition or those currently recognized by the state must be given and assured equal protection and due process of law in the courts as a means of recovering their racial/ ethnic heritage. There are furthermore treaty obligations that should and must be addressed as the Indians of Virginia recovery from the era of apartheid segregation in Virginia. 6.) As a legal means of accomplishing these goals, there must be access to the courts and a system of review established for such racial/ ethnic review, as well as, treaty arbitration. In this regard, the courts can rule on Indian individual identity and ethnic/ tribal rights. The criteria for court determination of individual Indians can include current DNA genetic testing, historical records and anecdotal accounts or community testimony that identifies or records one as Indian prior to 1968 when racial segregation was lifted in Virginia, official state documents that list surnames as mulatto, such as the Plecker "Hit List" where said persons are living in a known or historic area of Indian inhabitation, as well as, other sociological criteria including genealogies and family histories. There are, moreover, genetic, biological, and socio-cultural factors and resources that can be used by individual Indians to prove their Native identity within Virginia and through the courts. 7.) The courts must be ready and willing prepared to implement these considerations of Indian identity, if Native, aboriginal, indigenous racial and ethnic background rights and justice are to be insured and recovered from the segregation apartheid era of Virginia history and civil policy. 8.) At stake there are significant rights that include a.) aboriginal

right, b.) tribal. Treaty rights and obligations, c.) individual Indian rights to their racial property, d.) minority rights, e.) cultural and heritage rights, all of which were improperly taken and or deprived from Natives in the pre Civil Rights era of Virginia history. 9.) Persons and tribes identifying themselves as Native, furthermore, have an obligation to attend their aboriginal cultural inheritance and assure its transmission to future generations. As a force in interrupting these Native rights and obligations, Virginia in concert with the Federal government has a responsibility to social justice in these matters. In conclusion, Indian identity in Virginia is a complex matter that must respect all persons of proven Native heritage, giving them the right to prove and claim their racial heritage, whether tribal or non-tribal and individual.