

Handout 2.5 - White by Law

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In its first words on the subject of citizenship, Congress in 1790 restricted naturalization to "white persons." Though the requirements for naturalization changed frequently thereafter, this racial prerequisite to citizenship endured for over a century and a half, remaining in force until 1952. From the earliest years of this country until just a generation ago, being a "white person" was a condition for acquiring citizenship.

Whether one was "white," however, was often no easy question. As immigration reached record highs at the turn of this century, countless people found themselves arguing their racial identity in order to naturalize. From 1907, when the federal government began collecting data on naturalization, until 1920, over one million people gained citizenship under the racially restrictive naturalization laws. Many more sought to naturalize and were rejected. Naturalization rarely involved formal court proceedings and therefore usually generated few if any written records beyond the simple decision. However, a number of cases construing the "white person" prerequisite reached the highest state and federal judicial circles, and two were argued before the U.S. Supreme Court in the early 1920s. These cases produced illuminating published decisions that document the efforts of would-be citizens from around the world to establish their Whiteness at law. Applicants from Hawaii, China, Japan, Burma, and the Philippines, as well as all mixed-race applicants, failed in their arguments. Conversely, courts ruled that applicants from Mexico and Armenia were "white," but vacillated over the Whiteness of petitioners from Syria, India, and Arabia. Seen as a taxonomy of Whiteness, these cases are instructive because they reveal the imprecisions and contradictions inherent in the establishment of racial lines between White and non-Whites. . . .

. . . Although now largely forgotten, the prerequisite cases were at the center of racial debates in the United States for the fifty years following the Civil War, when immigration and nativism were both running high. Naturalization laws figured prominently in the furor over the appropriate status of the newcomers and were heatedly discussed not only by the most respected public figures of the day, but also in the swirl of popular politics. Debates about racial prerequisites to citizenship arose at the end of the Civil War when Senator Charles Sumner sought to expunge Dred Scott, the Supreme Court decision which had held that Blacks were not citizens, by striking any reference to race from the naturalization statute. His efforts failed because of racial animosity in much of Congress toward Asians and Native Americans. The persistence of anti-Asian agitation through the early 1900s kept the prerequisite laws at the forefront of national and even international attention. Efforts in San Francisco to segregate Japanese schoolchildren, for example, led to a crisis in relations with Japan that prompted President Theodore Roosevelt to propose legislation granting Japanese immigrants the right to naturalize. Controversy over the prerequisite laws also found voice in popular politics. Anti-immigrant groups such as the Asiatic Exclusion League formulated arguments for restrictive interpretations of the "white person" prerequisite, for example claiming in 1910 that Asian Indians were not "white," but an "effeminate, caste-ridden, and degraded" race who did not deserve citizenship. For their part, immigrants also participated in the debates on naturalization, organizing civic groups around the issue of citizenship, writing in the immigrant press, and lobbying local, state, and federal governments.

The principal locus of the debate, however, was in the courts. From the first prerequisite case in 1878 until racial restrictions were removed in 1952, fifty-two racial prerequisite cases were reported, including two heard by the U.S. Supreme Court. Framing fundamental questions about who could join the citizenry in terms of who was White, these cases attracted some of the most renowned jurists of the times. . . .

Though the courts offered many different rationales to justify the various racial divisions they advanced, two predominated: common knowledge and scientific evidence. . . . "Common knowledge" rationales appealed to popular, widely held conceptions of races and racial divisions. . . . Under a common knowledge approach, courts justified the assignment of petitioners to one race or another by reference to common beliefs about race.

The common knowledge rationale contrasts with reasoning based on supposedly objective, technical, and specialized knowledge. Such "scientific evidence" rationales justified racial divisions by reference to the naturalistic studies of humankind. . . . These rationales, one appealing to common knowledge and the other to scientific evidence, were the two core approaches used by courts to explain their determinations of whether individuals belonged to the "white" race. . . .

The first reported racial prerequisite decision was handed down in 1878. From then until the end of racial restrictions on naturalization in 1952, courts decided fifty-one more prerequisite cases. These decisions were rendered in jurisdictions across the nation, from state courts in California to the U.S. Supreme Court in Washington, D.C., and concerned applicants from a variety of countries, including Canada, Mexico, Japan, the Philippines, India, and Syria. all but one of these cases presented claims of White racial identity.