ESSAY

OREGON'S HISTORY OF USING THE LAW TO "STACK THE DECK" IN FAVOR OF WHITE MALES

by
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The United States has a sordid, racist history that permeates society still today. The State of Oregon has its own racist history, systematically excluding persons of Black African ancestry in its early years. This Essay explains this history and how seemingly historical practices continue to provide advantages to some, while detrimentally impacting others. This history is put in context by providing explanations of particular terms and this Essay further explains why examining these historical laws are critical in moving forward.

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INTRODUCTION

The United States Department of Education (DOE) asserted that "[e]ducational institutions have toxically indoctrinated students with the *false premise* that the United States is built upon 'systemic and structural racism.'"[1] Further, President Trump has asserted that

> Illegal DEI [diversity, equity, and inclusion] and DEIA [diversity, equity, inclusion, and accessibility] policies not only violate the text and spirit of our longstanding Federal civil-rights laws, they also undermine our national unity, as they deny, discredit, and undermine the *traditional American values of hard work, excellence, and individual achievement*.[2]

One would think that the DOE and the President would know this country's history and understand that, "traditionally," the United States gave advantages to some white males and that those white males earned those advantages through their gender and skin color rather than through hard work, excellence, or individual achievement. Although the United States has passed constitutional amendments and civil rights laws to prevent the advantaging of white males and the disadvantaging of "others," such laws have not and cannot erase the compounding effects of years of historical advantage.

Given that the DOE and President Trump apparently do not know this history, this Essay will demonstrate how just one state, the State of Oregon, used exclusionary laws to advantage one group over another on the basis of race and gender. In addition, it will demonstrate how that exclusionary history continues to

[1] Letter from Craig Trainor, Acting Assistant Sec'y for C.R., U.S. Dep't Educ. Off. C.R., at 2 (Feb. 14, 2025) (emphasis added), https://www.ed.gov/media/document/dear-colleague-letter-sffa-v-harvard-109506.pdf [https://perma.cc/ASL8-F4T8].

[2] Exec. Order No. 14173, 90 Fed. Reg. 8633 (Jan. 21, 2025) (emphasis added).

provide advantages to some members of one group, while detrimentally impacting other groups. Part I of this Essay will explain why we as a society need to understand this exclusionary history. Part II will then define particularly relevant terms to ensure that the reader understands how the Author is using such terms. Finally, Part III will support the Essay's thesis by outlining the specific laws that gave unearned advantages to white males.

I. WHY DOES THIS HISTORY MATTER?

While some individuals apparently want to bury the United States' problematic history, I believe that, in order to move forward and be a better country, we must acknowledge, accept, and learn from both our laudable history and our problematic history. Isabel Wilkerson, in her book entitled *Caste: The Origins of Our Discontents*, analogizes this process to that of filling out a medical history form.[3] She states, "it does us no good to pretend that certain ailments have not beset us, to deny the full truths of what brought us to this moment. Few problems have ever been solved by ignoring them."[4] When you discover a problematic history, either yours or your ancestors,

> You don't ball up in a corner with guilt or shame at these discoveries. You don't, if you are wise, forbid any mention of them. In fact, you do the opposite. You educate yourself. . . . You learn the consequences and obstacles, the options and treatment. You may pray over it and meditate over it. Then you take precautions to protect yourself and succeeding generations and work to ensure that these things, whatever they are, don't happen again.[5]

It is thus with the history of our country, the United States of America; some of it is beautiful, and some of it is ugly. We acknowledge it and its consequences and its benefits so that we know how best to move forward.[6]

Before this Essay goes any further, I want to note that the purpose of this Essay is not to shame, blame, or bash any particular group. I do not believe that any of us are responsible for the sins of our ancestors, nor can we lay claim to our ancestors' goodness. I also do not believe that any group is a monolith where all members of one group think one way and all members of another group think another way. That said, we have instances in our history where some members of one group, white

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[3] ISABEL WILKERSON, CASTE: THE ORIGINS OF OUR DISCONTENTS 13 (2023).

[4] *Id.*

[5] *Id.* at 14.

[6] Janet Steverson, Presentation for the National Lawyer's Guild's Race Matters Series: Oregon's History on Race: Exclusion, Strength, and Resilience (Oct. 11, 2024) (on file with author) ("If you look at the exclusionary laws and practices of the United States at large, and Oregon specifically, you'll see that, *while the groups that we target change over time*, the language and reasoning that we use to exclude folks often does not change all that much.").

males, deliberately set up a system that violated a basic tenet of kindergarten, i.e., "we share everything."[7] These white males did not want to share power, wealth, resources, or rights with individuals who were not white males. Not all white males felt this way. In fact, as you will see by the votes for some of the exclusionary laws, many white males felt differently. Unfortunately, those who felt differently were in the minority, such that the majority put in place legal structures designed to further their discriminatory system.

In moving forward, I do not believe that we elevate any one group over another. Nor do I believe that we push one group aside in favor of another. After all, Robert Munsch, whose writing I referenced earlier,[8] appears to be a white male, but I would not want to lose the magic that he weaves for children with his writing. Rather, I would like to create space for everyone at the table. A post by Jay Kuo nicely explains the challenge and the hope.[9] He discusses the dominance of white males in many of the books that we read, but one can analogize to the history of the United States and the aftereffects of that history. In the post, Kuo explains that his daughter, Riley, loves books. He also loves books and wants to share his favorite books with Riley.[10] But Kuo faces a dilemma faced by many persons of color who also love books. He describes the dilemma as follows (I am quoting a lot of the post because Kuo writes so beautifully):

> Riley's love of books matches my own. I spent my childhood absorbed in fantastical stories: *The Chronicles of Narnia*, the Brothers Grimm fairy tales, *The Hobbit* and *The Lord of the Rings* series. Stories of heroism, morality tales, long quests—they held my rapt attention throughout childhood.
>
> It wasn't until much later that I understood something key to my own adult identity: People like *me* weren't actually *in* any of those books. Even though I imagined myself there, wandering through those mysterious lands, I was always a spectator, never a main character.
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> I often wonder how to approach this tension with my own kids. I want to share the stories I loved as a boy, but all of them feature white heroes, mostly men and boys. The stories are wonderful, but what kind of message would that send, even subtly, to a little Chinese girl like Riley? I could switch to others, but there are only so many *Mulan* stories made for English speaking audiences, and I would lose the chance to share a connection from my own childhood to hers.

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[7] *See generally* ROBERT MUNSCH, WE SHARE EVERYTHING! (1999) (repeating the refrain: "In kindergarten we share. We share *everything*." throughout).

[8] *Id.*

[9] Jay Kuo, *Miss Education*, STATUS KUO (Mar. 9, 2025), https://statuskuo.substack.com/p/miss-education [https://perma.cc/LXR4-KZRB].

[10] *Id.*

> Sure, I could build some kind of Great Wall around Riley, tell her about brave and smart women throughout history, read only Chinese stories to her, let her live a safe and protected life in her early years. But it won't be long before she starts to ask questions. If women are so smart and such great leaders, why has there never been a woman president? If being Chinese is something we should [be] proud of, why are kids making fun of me?
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> Far better to tell her the more complex truth, even as we find joy in the stories. These books were written mostly by men, mostly of European heritage. So we're only getting a small slice of the world through them, even if that slice gets top billing nearly all the time. Riley will have to learn to deconstruct the world, even as she makes her way in it.
>
> . . .
>
> I'm going to tell my kids that they were both born in a period of great transition, one with upheavals and uncertainty. I'll explain that history is like the weather: While skies are normally blue and the wind gentle, sometimes great, dark storms descend. When they do, we are all left running for cover, huddled together for protection.
>
> No one gets to decide what eras will overlap their lives. With any luck, and a lot [of] hard work by the people, this storm will pass, too, and there will be blue skies again.[11]

But Kuo does not end on a note of despair. He occupies a space occupied by many individuals of all races, ethnicities, and genders who want *everyone* to be at the table; to be a part of the United States and its narrative. Individuals who have fought throughout time for that dream. Kuo says,

> On why people who look like us aren't much in the books, I'll explain that we're part of a great quest ourselves. One day, there will be just as many fantastic stories to read and movies to watch, where the main characters are us and the stories are about our lives. Our own family is a part of that quest, and your Ba has worked hard his whole life to help make that dream come true.[12]

Similar to some of our beloved books, Oregon has beautiful aspects to its history. At the same time, Oregon's history reveals that it was an equal opportunity excluder of groups who did not fit within a fairly narrow definition of "white" and worthy. Specifically, Oregon has a history of exclusionary laws pertaining to individuals of Indigenous ancestry, individuals of Chinese ancestry, individuals of Hawaiian ancestry, individuals of Black African ancestry (BAA), individuals of Japanese ancestry, women, individuals who identify as LGBTQ+, and more.[13]

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[11] *Id.*

[12] *Id.*

[13] For books or articles outlining how Oregon targeted particular groups in the late 1800s

However, analyzing all of these exclusionary laws would require a book (or two). In an attempt to give a deeper analysis of Oregon's exclusionary history, this Essay focuses on Oregon's exclusionary laws and practices that relate to individuals of BAA. Further, it focuses on the time before (or shortly after) Oregon became a state. At that time, Oregon advantaged the members of one group, white males, and targeted for exclusion the members of five groups: those of Indigenous ancestry, those of BAA, those of Chinese ancestry, those of Hawaiian ancestry, and women.[14] It only targeted the above groups, as opposed to other groups, because those groups were the non-white, non-male groups present in Oregon at the time.

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and early 1900s, see for example, E.A. SCHWARTZ, THE ROGUE RIVER INDIAN WAR AND AFTERMATH, 1850–1980 (2010); MARIE ROSE WONG, SWEET CAKES, LONG JOURNEY: THE CHINATOWNS OF PORTLAND, OREGON (2004); MITZI ASAI LOFTUS, MADE IN JAPAN AND SETTLED IN OREGON (1990); David Lewis (Takelma, Chinook, Molalla, Santiam, Kalapuya), *Confederated Tribes of Grande Ronde*, OR. ENCYC. (Nov. 13, 2023), https://www.oregonencyclopedia.org/articles/confederated_tribes_of_grand_ronde/ [https://perma.cc/CRC2-6HNM]; *White Supremacy & Resistance*, 120 OR. HIST. Q. 356 (Darrell Millner & Carmen P. Thompson, eds. 2019); LAWSON FUSAO INADA, AKEMI KIKUMURA, MARY WORTHINGTON & EIICHIRO AZUMA, IN THIS GREAT LAND OF FREEDOM: THE JAPANESE PIONEERS OF OREGON (1993); Eric Cain & John Rosman, *Broken Treaties: An Oral History Tracing Oregon's Native Population*, OR. PUB. BROAD. (Mar. 20, 2017, at 18:30 PT), https://www.opb.org/artsandlife/series/brokentreaties/oregon-tribes-oral-history-broken-treaties/ [https://perma.cc/9SYK-NEL6]; ELAINE RECTOR, COACHING FOR EDUC. EQUITY, LOOKING BACK IN ORDER TO MOVE FORWARD: AN OFTEN UNTOLD HISTORY AFFECTING OREGON'S PAST, PRESENT AND FUTURE (2011), https://www.oregon.gov/lcd/CL/Documents/CFEE_timeline_092011.pdf [https://perma.cc/U3JY-X56N]; Kimberly Jensen, *Revolutions in the Machinery: Oregon Women and Citizenship in Sesquicentennial Perspective*, 110 OR. HIST. Q. 336 (2009) [hereinafter Jensen, *Revolutions*]; Kimberly Jensen, *"Neither Head nor Tail to the Campaign": Esther Pohl Lovejoy and the Oregon Woman Suffrage Victory of 1912*, 108 OR. HIST. Q. 350 (2007) [hereinafter Jensen, *Neither Head nor Tail*]; Daniel P. Johnson, *Anti-Japanese Legislation in Oregon, 1917–1923*, 97 OR. HIST. Q. 176 (1996); Eiichiro Azuma, *A History of Oregon's* Issei*, 1880–1952*, 94 OR. HIST. Q. 315 (1993–94); Linda Tamura, *Railroads, Stumps, and Sawmills: Japanese Settlers of the Hood River Valley*, 94 OR. HIST. Q. 369 (1993–94); Robert J. Miller, *American Indians, The Doctrine of Discovery, and Manifest Destiny*, 11 WYO. L. REV. 329 (2011) (outlining how the "doctrine of discovery" and "manifest destiny" powered the United States acquisition of land occupied by Indigenous peoples in the West); 1857 OREGON CONSTITUTION, *see infra* note 49 and accompanying text (explaining the prohibition of women and persons of color from voting). For an article that focuses on the exclusionary practices on the West Coast, see Brendan Williams, *Hostile Shores: Racial Exclusion Laws and the West Coast*, 28 CARDOZO J. EQUAL RTS. & SOC. JUST. 559, 568 (2022). Williams writes:

> The West Coast, dating to its growing white population in the mid-1800s, and up to modern times, was a very racist region of our country, and that racism was embodied in laws and even state constitutions. That history, and how it resonates to the present day, is worth examining as we come to terms with the racial inequities that have long defined our society.

Id. at 561.

[14] *See* sources cited *supra* note 13.

II. DEFINITIONS

To ensure that we understand each other, it is important to define relevant terms that this Essay uses. This Essay will define some of the terms in the way that individuals used those terms during the relevant time period and other terms in the way in which individuals currently use them. To begin, one can define systemic and structural racism by breaking the phrase down into its component parts of systemic, structural, and racism. Doing so leads to defining systemic and structural racism as the disadvantaging of individuals in a group because of their race, where such disadvantage is not individualized, i.e., one individual disadvantaging another, but is rather part and parcel of a country's systems or structures. I culled this definition from the following individual definitions. First, two leading dictionaries define *systemic* as follows: "fundamental to a predominant social, economic, or political practice";[15] and "of or relating to a system, plan, or method."[16] Those same two dictionaries define *structural* as "of, relating to, or affecting structure"[17] and "of or relating to the arrangement and mutual relation of the parts or elements of a complex unity."[18] *Black's Law Dictionary* defines *racism* as "unfair treatment of people, often including violence against them, because they belong to a different race from one's own."[19] Conversely, the *Merriam-Webster Dictionary* defines *racism* as "a belief that race is a fundamental determinant of human traits and capacities and that racial differences produce an inherent superiority of a particular race; behavior or attitudes that reflect and foster this belief; discrimination, prejudice, or violence against people because of their race."[20] Finally, the *Oxford English Dictionary* defines *racism* as "prejudice, antagonism, or discrimination by an individual, institution, or society, against a person or people on the basis of their nationality."[21]

However, the phrase *systemic and structural racism* has become a term of art. Accordingly, one can define the phrase in its entirety. Two leading dictionaries define *systemic racism* as follows: "the oppression of a racial group to the advantage

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[15] *Systemic*, MERRIAM-WEBSTER DICTIONARY (Jan. 27, 2026), https://www.merriam-webster.com/dictionary/systemic [https://perma.cc/JK5Z-CVMF].

[16] *Systemic*, OXFORD ENG. DICTIONARY (Sep. 2025), https://www.oed.com/dictionary/systemic_adj [https://doi.org/10.1093/OED/5588726468].

[17] *Structural*, MERRIAM-WEBSTER DICTIONARY (Feb. 4, 2026), https://www.merriam-webster.com/dictionary/structural [https://perma.cc/8D6R-QX56].

[18] *Structural*, OXFORD ENG. DICTIONARY (Dec. 2025), https://www.oed.com/dictionary/structural_adj [https://doi.org/10.1093/OED/2380502305].

[19] *Racism*, BLACK'S LAW DICTIONARY (12th ed. 2024).

[20] *Racism*, MERRIAM-WEBSTER DICTIONARY, https://www.merriam-webster.com/dictionary/racism [https://perma.cc/YK5Y-MYLZ] (last visited Feb. 7, 2026).

[21] *Racism*, OXFORD ENG. DICTIONARY (July 2023), https://www.oed.com/dictionary/racism_n [https://doi.org/10.1093/OED/1101660185].

of another as perpetuated by inequity within interconnected systems (such as political, economic, and social systems)";[22] and "discrimination or unequal treatment on the basis of membership of a particular racial or ethnic group."[23] The *Oxford English Dictionary* defines *structural racism* in the same way that it defines systemic racism.[24] An article examining the health effects of racism says the following:

> Systemic and structural racism are forms of racism that are pervasively and deeply embedded in and throughout systems, laws, written or unwritten policies, entrenched practices, and established beliefs and attitudes that produce, condone, and perpetuate widespread unfair treatment of people of color. They reflect both ongoing and historical injustices. Although *systemic racism* and *structural racism* are often used interchangeably, they have somewhat different emphases. *Systemic racism* emphasizes the involvement of whole systems, and often all systems—for example, political, legal, economic, health care, school, and criminal justice systems—including the structures that uphold the systems. *Structural racism* emphasizes the role of the structures (laws, policies, institutional practices, and entrenched norms) that are the systems' scaffolding. Because systemic racism includes structural racism, for brevity we often use *systemic racism* to refer to both; at times we use both for emphasis.[25]

To contend that the United States is built on systemic and structural racism is to acknowledge that, in many instances, white males advantaged themselves by embedding race-based discriminatory laws, practices, and policies into the various political, legal, and similar systems in the United States.[26] Given the narrow scope

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[22] *Systemic racism*, MERRIAM-WEBSTER DICTIONARY (Feb. 6, 2026), https://www.merriam-webster.com/dictionary/systemic%20racism [https://perma.cc/YY5G-RBPK].

[23] *Systemic racism*, OXFORD ENG. DICTIONARY, https://www.oed.com/dictionary/systemic-racism_n [https://doi.org/10.1093/OED/3519067187] (last visited Jan. 20, 2026).

[24] *Structural racism*, OXFORD ENG. DICTIONARY, https://www.oed.com/dictionary/structural-racism_n [https://doi.org/10.1093/OED/2892380750] (last visited Jan. 20, 2026).

[25] Paula A. Braveman, Elaine Arkin, Dwayne Proctor, Tina Kauh & Nicole Holm, 41 HEALTH AFFS. 171, 171–72 (2022) (footnotes omitted). *See generally* Eduardo Bonilla-Silva, *Rethinking Racism: Toward a Structural Interpretation,* 62 AM. SOCIO. REV. 465 (1997) (surveying theories of racism and proposing a structural theory of racism centered around racialized social systems).

[26] *See generally* John Shuford, *"The Tale of the Tribe and the Company Town": What We Can Learn About the Workings of Whiteness in the Pacific Northwest*, 90 OR. L. REV. 1273 (2012) (analyzing structural racism in the Inland Northwest). In analyzing the concept of whiteness in the Pacific Northwest through the lens of W.E.B. Du Bois's *The Souls of Black Folk*, Shuford discusses:

> Du Bois calls into question the notion that America is a nation whose creation and greatness came solely from the hands and minds of white forefathers. Here, and later in *The Gift of Black Folk*, Du Bois reminds readers that America has always been a nation of diverse people

of this Essay, the next Section will examine a small part of a larger national picture and demonstrate how some white males created a legal system in Oregon to advantage themselves and disadvantage others.

III. THE SEVERE NATURE OF THE EXCLUSIONARY LAWS OF OREGON

If you want to build power and wealth for yourself, your descendants, and "your" country or state, you need to first limit the ability of others to fight against you, i.e., you need to ensure that you have sufficient power to create laws and policies that benefit you. You then need to use this power to stack the deck in your favor in acquiring wealth. If you can, you also need to ensure that "others" cannot or will have difficulty in acquiring wealth. Building this power and wealth constitutes systemic and structural racism as defined above if one uses the law, among other avenues, to build this power and wealth for individuals who are white and to disadvantage individuals who are of BAA. As this Part will demonstrate, Oregon, both before and after becoming a state, did all the above masterfully.[27]

A. Use of Exclusionary Laws to Obtain and Retain Power

This Section demonstrates how Oregonians used exclusionary laws to obtain and retain power for white males. They did so by only allowing white males to vote and by also prohibiting individuals of BAA from residing in the state. White Oregonians put the voting limitations in place because they knew that if one group wants to obtain power in a democratic nation like the United States, then that group needs to control who can and cannot vote. The group must exert this control because doing so gives those who can vote the power to choose the legislators and judges who will make the laws—laws that will benefit those who chose the legislators and judges. At the same time, exerting this control takes away the same choice for those who cannot vote.[28] In addition, in a state like Oregon where individuals can

> and contributions, and that African Americans have made numerous, valuable, and distinct contributions to a nation that had taken those gifts but denigrated and excluded the givers, even as the nation and entire world had benefitted.

Id. at 1279 (footnotes omitted) (first citing W.E. BURGHARDT DU BOIS, THE SOULS OF BLACK FOLK: ESSAYS AND SKETCHES (1903); then citing W.E. BURGHARDT DU BOIS, THE GIFT OF BLACK FOLK: THE NEGROES IN THE MAKING OF AMERICA (1924)).

[27] For a broader article on U.S. history and individuals of BAA, see Hal Clay, Comment, *Forty Acres and a Mule: America's Bill for Reparations Is Long Past Overdue*, 24 SCHOLAR: ST. MARY'S L. REV. & SOC. JUST. 505 (2023). For an article on Oregon's history, individuals of BAA, and the Fourteenth Amendment, see Cheryl A. Brooks, *Race, Politics, and Denial: Why Oregon Forgot to Ratify the Fourteenth Amendment*, 83 OR. L. REV. 731 (2004).

[28] *Cf.* Travis Crum, *The Unabridged Fifteenth Amendment*, 133 YALE L.J. 1039, 1143–44 (2024). As Crum wrote,

> [T]he Fifteenth Amendment flipped the pre-existing hierarchy of rights on its head and

enact laws via the referendum system,[29] those who can vote can directly control the creation of laws. If one group can also keep particular individuals out of the state completely, then that is even better. In addition to limiting voting and presence, Oregon also limited who could testify against whites and sue whites.[30] This limitation on testifying and suing prevented individuals harmed by discriminatory practices from holding anyone accountable for that discrimination.[31]

> embraced a more modern theory of democracy: the right to vote is necessary to protect civil rights. As Pamela Brandwein has observed: "After the passage of the Fifteenth Amendment, the right to vote began a slow and uneven migration into the category of civil rights."
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> Although the Radicals did not prevail in their broader effort to achieve universal suffrage, their ideology was a motivating factor in the Fifteenth Amendment's adoption. The Radicals recognized that Black and White people living in the South had divergent interests and voted in racial blocs. The Radicals understood that a South without Black voters was a South with the Black Codes. This insight repudiated the original Constitution's theory of democracy and moved our constitutional system closer to one that acknowledged that the right to vote is preservative of all other rights, rather than just being a privilege for a select few. As Senator Warner aptly explained, citizens "need the ballot for their protection."

Id. (footnotes omitted) (quoting PAMELA BRANDWEIN, RETHINKING THE JUDICIAL SETTLEMENT OF RECONSTRUCTION at 70–71 (2011)); *see* Michael W. McConnell, *Originalism and the Desegregation Decisions*, 81 VA. L. REV. 947, 1016 (1995) (discussing the tripartite typology of rights—civil, political, and social).

[29] *Initiative, Referendum, and Recall Introduction*, OR. SEC'Y OF STATE: OR. BLUE BOOK, ALMANAC & FACT BOOK, https://sos.oregon.gov/blue-book/Pages/state/elections/history-introduction.aspx [https://perma.cc/K4WS-T5YA] (last visited Feb. 8, 2026) ("In 1902, Oregon voters overwhelmingly approved a legislatively referred ballot measure that created Oregon's initiative and referendum process. In 1904, voters enacted the direct primary and, in 1908, Oregon's Constitution was amended to allow for recall of public officials. These were the culmination of efforts by the Direct Legislation League, a group of political activists that progressive leader William S. U'Ren founded in 1898.").

[30] 1854–1855 Or. Laws 130 (providing that persons of color and Indigenous persons were precluded from testifying in an action in which a white person was a party); *National and Oregon Chronology of Events*, OR. SEC'Y OF STATE: BLACK IN OR. 1840–1870, https://sos.oregon.gov/archives/exhibits/black-history/Pages/default.aspx [https://perma.cc/DRK8-KTR5] (last visited Feb. 8, 2026); K. Keith Richard, *Unwelcome Settlers: Black and Mulatto Oregon Pioneers*, 84 OR. HIST. Q. 29, 31 (1983) ("The most discriminatory constitutional restriction on blacks and mulattoes was not that they could not vote, hold office, etc., but because of the definition given citizenship that they could not sue in the courts.").

[31] *See* R. GREGORY NOKES, BREAKING CHAINS: SLAVERY ON TRIAL IN THE OREGON TERRITORY 95–96 (2013); Joe Streckert, *Oregon's First African Americans: How the Institutional Racism of Yesterday Still Reverberates Today*, PORTLAND MERCURY (Dec. 11, 2014, at 04:00 PT), https://www.portlandmercury.com/General/2013/12/11/11213892/oregons-first-african-americans [https://perma.cc/VSY7-HM55] (examining the lasting effects of Oregon's early discriminatory legal framework on Black residents); *see also* Richard, *supra* note 30, at 41 n.25 (describing the event that prompted Oregon's prohibition on Black people suing whites in state court).

1. Who Is "White" and Who Is Not

Many of the advantages and disadvantages visited on individuals in Oregon depended upon the individual being "white" or "non-white." To understand the exclusionary laws outlined below, one must have some concept of what the drafters of the laws meant when they used the term "white." At the same time, it is important to note that the concept of race is a construct created to categorize individuals into groups of "us" and "other."[32] Accordingly, that construct has changed shape as the needs of its creators have changed.

As demonstrated below, Oregon and the United States generally used the term "white" to refer to individuals of European ancestry. In his book *White by Law: The Legal Construction of Race*, Ian Haney López attempts to "unearth and elaborate some of the perduring, seemingly fundamental characteristics of Whiteness, particularly as these have been fashioned by law," while, at the same time, contending that "however powerful and however deeply a part of our society race may be, races are still only human inventions."[33] López indicates that "the categories of White and non-White became tangible when certain persons were granted citizenship and others excluded."[34] Specifically, "European" became the synonym for white.[35] The category of white was further defined by judicial opinions that determined individuals from particular groups were not white. Specifically, in analyzing "whiteness" in the context of naturalization laws, López demonstrates that the cases that reached the highest state and federal judicial circles, including two before the U.S. Supreme Court, found that individuals from the following countries failed to prove their whiteness: "Hawaii, China, Japan, Burma, and the Philippines, as well as all mixed-race" individuals.[36] At the same time, "courts ruled that applicants from Mexico and Armenia were 'white,'" and still yet, courts "vacillated" in determining whiteness when petitioners were from Syria, India, and Arabia.[37] Of course, it went without saying that persons of BAA and Indigenous ancestry were not white.[38]

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[32] *See* IAN HANEY LÓPEZ, WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE 19–20 (10th ed. 2006) ("Races do not exist as defined entities, but only as amalgamations of people standing in complex relationship with other such groups.").

[33] *Id.* at xxii.

[34] *Id.* at 13.

[35] *Id.*

[36] *Id.* at 1.

[37] *Id.*

[38] *See, e.g.*, Rebecca Tsosie, *The New Challenge to Native Identity: An Essay on "Indigeneity" and "Whiteness,"* 18 WASH. U. J.L. & PUB. POL'Y 55, 59 (2005) ("From the country's inception, America's social, legal and economic institutions utilized conceptions of race and property to establish and maintain the racial and economic subordination of non-White peoples. In the earliest years, this was done primarily through the use of racial hierarchies and stereotypes that 'justified' the enslavement of Africans and the dispossession of Native people from their lands and

In addition to the case law mentioned by López, past and current categories that the U.S. Census uses to classify individuals give insight into who was/is and was/is not white. In collecting racial information in 1790, the U.S. Census had the following categories: Black or African American; white; and "some other race."[39] In 1860, the U.S. Census added in the following categories: "Indian" and "Mulatto."[40] "Chinese" was introduced as a category in 1870.[41] In 1930, the U.S. Census added in "Mexican," took out that category from 1940–1960, then added it back—now more broadly labeled "Hispanic or Latino"—from 1970–2020.[42] In 1960, the U.S. Census added in "Hawaiian" and "Part Hawaiian."[43] Finally, although "some other race" was a category from 1790–1840, that category was not present from 1850–1900, and in 1960.[44] As demonstrated above, Oregonians used the term "white" to describe a select group of individuals, namely, native Europeans.

2. Voting

This Section outlines the various laws enacted to limit the right to vote to white males. Lest one think that the disenfranchised stood by passively as white males limited their rights, this Section also examines the mechanisms used by the disenfranchised to fight to gain rights.

As stated earlier, if one group wants to obtain power in a democratic nation like the United States, then that group needs to control who can and cannot vote. More specifically, as this Author stated in an earlier essay,

> In its simplest terms, a democracy is based upon the idea that the people governed have the ability to utilize the election process to attempt to elect those persons who will best protect their interests. . . . The departure from the simple democratic idea and the impetus for disenfranchisement stems from the general idea that many persons in power (we will call them the "ins") will seek to retain that power and to protect their interests. In a democracy, the

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resources."); Ariela J. Gross, *Litigating Whiteness: Trials of Racial Determination in the Nineteenth-Century South*, 108 YALE L.J. 109, 132 (1998) (describing the various mechanisms used by the law and by jurors to determine whiteness and observing that "blackness" was the opposite of whiteness). *See generally* Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707, 1714–1745 (1993) (tracing the "evolution of whiteness from color to race to status to property as a progression historically rooted in white supremacy and economic hegemony over Black and Native American peoples" (footnote omitted)).

[39] *See* Karen Humes & Howard Hogan, *Measurement of Race and Ethnicity in a Changing, Multicultural America*, 1 RACE SOC. PROBS. 111, 112 (2009) (explaining that census data on race from 1790–1810 was recorded using these categories: "'Free white Males;' 'Free white females;' 'Other Free Persons;' and 'Slaves'").

[40] *Id.* at 113.

[41] *Id.*

[42] *Id.* at 116–21, 123–24.

[43] *Id.* at 117–18.

[44] *Id.* at 112–18, 123–24.

> "ins" are well aware of the fact that "the right of suffrage is a fundamental matter in a free and democratic society. Especially since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights." As Gunnar Myrdal explained in his commissioned landmark study of the "Negro Problem,"
>
> > Unquestionably the most important thing that Negroes get out of politics where they vote is legal justice—justice in the courts; police protection and protection against the persecution of the police; ability to get administrative jobs through civil service; and a fair share in such public facilities as schools, hospitals, public housing, playgrounds, libraries, sewers and street lights.
>
> Thus, in a democracy, the "ins" will attempt to either limit or diffuse enfranchisement to the extent needed to allow them to stay in power and to keep the benefits that flow from enfranchisement to themselves.[45]

Oregon gave power to white males by putting in place a Constitution that limited the power to vote to "white males." Specifically, the 1857 Oregon Constitution, article II, section 2 reserved to "white males," citizen or foreign born, the right to vote in Oregon.[46] The actual language is as follows:

> In all elections, not otherwise provided for, by this Constitution, *every white male citizen* of the United States, of the age of twenty one years, and upwards, who shall have resided in the State during the six months immediately preceding such election; and *every white male of foreign birth* of the age of twenty one years, and upwards, who shall have resided in the United States one year, and shall have resided in this State during six months immediately preceding such election, and shall have declared his intention to become a citizen of the United States one year preceding such election, conformably to

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[45] Janet W. Steverson, *The Path Forward from* Shelby County v. Holder, 16 BERKELEY J. AFR.–AM. L. & POL'Y 331, 332–33 (2015) (footnotes omitted) (first quoting Harper v. Va. Bd. of Elections, 383 U.S. 663, 667 (1966) (holding that conditioning voting rights on poll tax payment violates the Equal Protection Clause); then quoting GUNNAR MYRDAL, AN AMERICAN DILEMMA: THE NEGRO PROBLEM AND MODERN DEMOCRACY 497 (5th ed. 1944) (discussing the work of John Hart Ely, who used the term "ins" and "outs" in his 1980 book DEMOCRACY AND DISTRUST: A THEORY OF JUDICIAL REVIEW 103 (1980)); *see* SAMUEL ISSACHAROFF, PAMELA S. KARLAN & RICHARD H. PILDES, THE LAW OF DEMOCRACY: LEGAL STRUCTURE OF THE POLITICAL PROCESS 2, 13 (4th ed. 2012) ("Historical evidence provides convincing reasons to believe that those who currently hold power will deploy that power to try to preserve their control. Thus, democratic politics constantly confront the prospect of law being used to freeze existing political arrangements into place."); *see also* Reynolds v. Sims, 377 U.S. 533, 561–62 (1964) (holding the Equal Protection Clause requires state legislative districts to have equal populations). Gunnar Myrdal's study was made possible by funds granted by Carnegie Corporation of New York and was relied upon in *Brown v. Board of Education*. *See* Brown v. Bd. of Educ., 347 U.S. 483, 495 n.11 (1954); MYRDAL, *supra* (explaining the funding of the study on the title page).

[46] OR. CONST. of 1857, art. II, § 2.

> the laws of the United States on the subject of naturalization, shall be entitled to vote at all elections authorized by law.[47]

This language in section 2 makes it clear that neither women nor non-white persons could vote. But, lest we have any misunderstanding, the 1857 Oregon Constitution, article II, section 6 went on to specifically prohibit individuals of Chinese ancestry, individuals of BAA, and so-called "mulattoes"[48] from voting.[49] As with any law, not all voting Oregonians agreed with all aspects of the advantaging of whites over persons of BAA. For example, of the 60 delegates who met to adopt the Oregon Constitution, ten voted against adoption of the constitution and 15

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[47] *Id.* (emphasis added).

[48] Although the Oregon laws did not define the term "mulatto," other sources give a definition of the term. *See, e.g.*, U.S. DEP'T INTERIOR CENSUS OFF., NINTH CENSUS OF THE UNITED STATES, 1870: INSTRUCTIONS TO ASSISTANT MARSHALS 10 (1870), https://www2.census.gov/programs-surveys/decennial/technical-documentation/questionnaires/1870/1870-instructions.pdf [https://perma.cc/238P-YFTG] (instructing those taking the census to "[b]e particularly careful in reporting the class *Mulatto*," as the word is "generic, and includes quadroons, octoroons, and all persons having any perceptible trace of African blood"); U.S. DEP'T INTERIOR CENSUS OFF., ELEVENTH CENSUS OF THE UNITED STATES, JUNE 1, 1890: INSTRUCTIONS TO ENUMERATORS 23 (1890), https://www.census.gov/content/dam/Census/programs-surveys/decennial/technical-documentation/questionnaires/1890instructions.pdf [https://perma.cc/QHK8-WFAQ] (defining "mulatto" as " those persons who have from three-eighths to five-eighths black blood," and also including two additional classifications: "quadroon," defined as "those persons who have one-fourth black blood," and "octoroon," defined as "those persons who have one-eighth or any trace of black blood").

[49] The actual language is as follows: "No Negro, Chinaman, or Mulatto shall have the right of suffrage." OR. CONST. of 1857, art. II, § 6; WONG, *supra* note 13, at 30–31 ("[D]elegates approved Article II of the state constitution, which allowed voting based on color, age, and length of residence. . . . Article II, Section 6, further removed any doubt regarding the voting privileges of non-whites: 'No Negro, Chinaman, or Mulatto shall have the right of suffrage.'"); Jensen, *Revolutions*, *supra* note 13, at 341 ("The state constitution that resulted made voting a privilege for 'white male citizens' in Article II Section 2 and prevented all women and all men of color from exercising this right. Article II Section 6 prohibited African Americans, Chinese Americans, and those of mixed heritage or 'mulattos' from casting a ballot." (first citing THE OREGON CONSTITUTION AND PROCEEDINGS AND DEBATES OF THE CONSTITUTIONAL CONVENTION OF 1857, at 405–06 (Charles Henry Carey ed. 1926) [hereinafter PROCEEDINGS OF THE OREGON CONSTITUTIONAL CONVENTION]; and then citing Sister Miriam Teresa, Legislation for Women in Oregon (1924) (Ph.D. dissertation, Catholic University of America) (on file with Paul L. Boley Law Library, Lewis & Clark Law School)); Kimberly Jensen, *Woman Suffrage in Oregon*, OR. ENCYC. (Sep. 5, 2023) [hereinafter Jensen, *Woman Suffrage*], https://www.oregonencyclopedia.org/articles/woman_suffrage_in_oregon/ [https://perma.cc/MQ93-6A7E] ("What emerged was a state constitution that made voting a privilege for white men only and prevented all women and all men of color from exercising that right, with specific prohibitions against African Americans, Chinese Americans, and those of mixed heritage or 'mulattos.' Woman suffrage in Oregon was tied to questions of race and ethnicity from the beginning.").

were absent.[50] One of the absent delegates was Jesse Applegate, who "left the convention in disgust,"[51] but apparently wrote a letter to Matthew Deady[52] stating as follows:

> [T]he free Negro section is perfectly abominable, and it is hard to realize that men having hearts and consciences, some of them today in the front ranks of the defenders of human rights, could be led so far by party prejudice as to put such an article in the frame of a government intended to be free and just.[53]

Another delegate, William Watkins, who felt that persons of BAA were "undesirable"[54] and who had no issue with preventing persons of BAA from coming to Oregon,[55] still felt that "he could not support legislation that would place other human beings so completely outside the protection of the law."[56] Williams wrote as follows:

> Under this barbarous provision (for I can use no milder term) the negro is cast upon the world with no defense; his life, liberty, his property, his all, are dependent on the caprice, the passion, and the inveterate prejudices of not only the community at large but of every felon who may happen to cover an inhuman heart with a white face.[57]

With the ratification of the Fifteenth Amendment to the U.S. Constitution in 1870,[58] men of BAA gained the right to vote.[59] Although the Fifteenth Amendment overrode the Oregon Constitution denying the right to vote to men of BAA, Oregon was not happy with this outcome, as it did not remove the clause denying men of

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[50] ELIZABETH MCLAGAN, A PECULIAR PARADISE: A HISTORY OF BLACKS IN OREGON, 1788–1940, at 51–52 (1980).

[51] *Id.* at 52.

[52] The delegates to the Oregon constitutional convention elected Matthew Deady as their president. *Id.* at 51.

[53] *Id.*

[54] Richard, *supra* note 30, at 31.

[55] MCLAGAN, *supra* note 50, at 53.

[56] *Id.*

[57] *Id.* (quoting PROCEEDINGS OF THE OREGON CONSTITUTIONAL CONVENTION, *supra* note 49, at 384–85).

[58] *15th Amendment to the U.S. Constitution: Voting Rights (1870)*, NAT'L ARCHIVES (May 16, 2024), https://www.archives.gov/milestone-documents/15th-amendment [https://perma.cc/QGU9-N4B8].

[59] Section 1 of the Fifteenth Amendment states: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." U.S. CONST. amend. XV, § 1. Section 1 of the Fourteenth Amendment gave citizenship to individuals of BAA. *Id.* amend. XIV, § 1 ("All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.").

BAA the right to vote until 1927[60] and did not ratify the Fifteenth Amendment until 1959.[61]

Although this Essay focuses on individuals of BAA, it is important to note that the Fifteenth Amendment did not change the denial of voting rights for individuals of Indigenous ancestry, of Chinese ancestry, or of individuals who were women, including, of course, women of BAA.[62] Some Indigenous individuals in Oregon gained the right to vote via the 1887 Dawes Act which gave citizenship to tribal members who participated in the allotment system.[63] Further, "After 1888, Indian women who married U.S. citizens in state-sanctioned ceremonies became citizens."[64] The federal Indian Citizenship Act passed in 1924, and finally, "all Indian women and men in Oregon could vote."[65]

In addition, under federal law, first-generation Asian immigrants were statutorily barred from naturalized citizenship and voting until 1952.[66] Specifically, even though the Fifteenth Amendment enumerated the right to vote for citizens in 1870,[67] first-generation Asian-immigrant women and men did not have access to naturalized citizenship because Congress enacted restricting legislation to clarify that

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[60] Brooks, *supra* note 27, at 747 & n.84 (explaining that "[b]etween 1880 and 1920, black political clubs organized in the metropolitan area and lobbied the legislature to repeal anti-black provisions in the state constitution," and in 1927, "[m]any of the anti-black constitutional provisions were removed").

[61] *Id.* at 751 ("In 1959, as part of the Oregon's centennial celebration, the legislature finally ratified the Fifteenth Amendment.").

[62] Crum, *supra* note 28, at 1076–78, 1107, 1134–35, 1145.

[63] Jensen, *Revolutions*, *supra* note 13, at 343–44 (citing INDIAN AFFAIRS: LAWS AND TREATIES, vol. 4, at 1165, (Charles J. Kappler ed., U.S. Gov't Printing Off. 1929)); Stephen Dow Beckham, *Federal-Indian Relations*, *in* THE FIRST OREGONIANS 208, 226–28 (Laura Berg ed., 2d ed. 2007).

[64] Jensen, *Revolutions*, *supra* note 13, at 343.

[65] *Id.* at 343; *cf.* S. DOC. NO. 117–12, at 393 (2022) (noting that the Naturalization Act of 1790 "provided that any 'free white person' who resided 'within the limits and under the jurisdiction of the United States' for at least two years could be granted citizenship if he or she showed 'good character' and swore allegiance to the Constitution" (citing Naturalization Act of 1790, ch. 3, § 1, 1 Stat. 103, 103–04)); Ozawa v. United States, 260 U.S. 178, 195 (1922) (holding that the phrase "free white person" in the 1790 Naturalization Act was employed by the original framers in 1790 for the purpose of excluding those of Black, Indigenous, and all other races deemed non-white).

[66] Jensen, *Revolutions*, *supra* note 13, at 343–44 (citing RONALD TAKAKI, STRANGERS FROM A DIFFERENT SHORE: A HISTORY OF ASIAN AMERICANS (1989); ROGER DANIELS, GUARDING THE GOLDEN DOOR: AMERICAN IMMIGRATION POLICY AND IMMIGRANTS SINCE 1882 (2004); LAUREN KESSLER, STUBBORN TWIG: THREE GENERATIONS IN THE LIFE OF A JAPANESE AMERICAN FAMILY (1993); WONG, *supra* note 13, at 30).

[67] Section 1 of the Fifteenth Amendment states that "[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." U.S. CONST. amend. XV, § 1.

the Naturalization Act applied only to "free white persons" and "aliens of African nativity and to persons of African descent."[68]

Finally, with regard to women, it was not until November 1912 that women gained the right to vote in Oregon.[69] Although discussion of the right to vote for women appeared very briefly in Oregon when "David Logan of Multnomah County moved 'to strike out male before citizen'" during the state Constitutional Convention in August and September 1857, Logan's "motion lost, apparently without debate."[70] On the national level, while the Nineteenth Amendment to the Constitution gave women the right to vote in 1920, Congress passed a statute that remained in force from 1907 to 1922, rescinding a woman's citizenship and the accompanying privileges, including the right to vote, "if she married a 'foreigner.'"[71] Under this law, a woman yielded her U.S. citizenship to "take the nationality of her husband."[72] One should note that the members of the disenfranchised groups continuously fought against that disenfranchisement. For example, starting with Logan's 1857 proposal to eliminate the term "male" from the Oregon Constitution provision regarding who could vote, women and their male allies continued to fight for the right of women to vote until they won in 1912.[73] In fact, in "placing the question of votes for women on the ballot six times—in 1884, 1900, 1906, 1908, 1910, and 1912," Oregonians requested the right more times than any other state.[74] Moreover, the fight was not limited to women of any particular race or ethnicity. Although many individuals know about the efforts to obtain the vote by Abigail

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[68] United States v. Thind, 261 U.S. 204, 207 (1923) (holding that "a high-caste Hindu, of full Indian blood, born at Amritsar, Punjab, India," was not "a white person" under Rev. Stat. § 2169 (1875)); *see also Ozawa*, 260 U.S. at 194–95, 197–98 (holding that the trial court correctly denied the petition of Ozawa to become a U.S. citizen because Ozawa, being born in Japan, was not a white person; "the federal and state courts, in an almost unbroken line, have held that the words 'white person' were meant to indicate only a person of what is popularly known as the Caucasian race"). In giving the history of the immigration law in effect at the time, the Court explained:

> The language of the naturalization laws from 1790 to 1870 had been uniformly such as to deny the privilege of naturalization to an alien unless he came within the description "free white person." By § 7 of the Act of July 14, 1870, c. 254, 16 Stat. 254, 256 the naturalization laws were "extended to aliens of African nativity and to persons of African descent." Section 2169 of the Revised Statutes, as already pointed out, restricts the privilege to the same classes of persons, viz: "to aliens [being free white persons, and to aliens] of African nativity and persons of African descent."

Ozawa, 260 U.S. at 177–78 (alteration in original).

[69] Jensen, *Woman Suffrage*, *supra* note 49.

[70] *Id.*

[71] Jensen, *Revolutions*, *supra* note 13, at 344–45.

[72] *Id.*

[73] Jensen, *Woman Suffrage*, *supra* note 49; *see supra* text accompanying note 70.

[74] *Id.*

Scott Duniway and other white women beginning in 1870,[75] it is less well known that these early efforts were not limited to white women. For example, in 1872, a woman of BAA, Mary Beatty, joined three white women, Abigail Duniway, Maria Hendee, and Mrs. M.A. Lambert, in attempting to cast ballots in the November presidential election.[76] In addition, Harriet "Hattie" Redmond, a woman of BAA, served as a leader in the struggle for women's suffrage in Oregon.[77]

But the involvement of women of BAA was much more extensive than this simple statement indicates. As Kimberly Jensen reports in her article titled *"Neither Head nor Tail to the Campaign:" Esther Pohl Lovejoy and the Oregon Woman Suffrage Victory of 1912*, "In May [of 1912], members of the three-month-old Colored Women's Council of Portland organized the Colored Women's Equal Suffrage Association (CWESA),"[78] with the Association's mission being to spread "'equal suffrage ideas among those of the race.'"[79] Members of CWESA were active in the community—both attending lectures given by leaders of the BAA community and inviting white suffragists to speak, "including Esther Pohl, Viola Coe, and Sara Bard Field Ehrgott."[80] Jensen goes on to report that "Portland's CWESA was among '[h]undreds of African American women's clubs mobilized for the vote' in the first decades of the twentieth century, and it mirrored national trends in members' club

[75] *Id.* Women in Oregon began organizing in 1870 by forming local suffrage associations. *Id.* In addition, Abigail Scott Duniway, an early advocate of women's voting rights, "arranged for suffragist Susan B. Anthony to tour the Pacific Northwest in 1871." *Oregon and the 19th Amendment*, NAT'L PARK SERV., https://www.nps.gov/articles/oregon-and-the-19th-amendment.htm [https://perma.cc/8KUK-55T8] (last visited Feb. 10, 2025). The success of that tour led to the formation of Oregon Woman Suffrage Association in 1873. *Id.*; Jensen, *Woman Suffrage*, *supra* note 49.

[76] Jensen, *Woman Suffrage*, *supra* note 49.

[77] *See* Janice Dilg, *Harriet "Hattie" Redmond (1862–1952)*, OR. ENCYC. (Oct. 17, 2022), https://www.oregonencyclopedia.org/articles/redmond_harriet_hattie/ [https://perma.cc/2Q8E-MZEH] ("The right to vote was especially important to Redmond as a Black woman living in a state that had codified Black exclusion laws in its constitution. . . . She organized meetings and educational lectures on woman suffrage at Mt. Olivet First Baptist Church and served on the State Central Campaign Committee. Following the triumph of the woman suffrage vote on November 5, 1912, she used her newly gained right by registering to vote in April 1913.").

[78] Jensen, *Neither Head nor Tail*, *supra* note 13, at 365.

[79] *Id.* (quoting *Mrs. Coe Temporary Head*, MORNING OREGONIAN, May 15, 1912, at 11). Jensen further indicates that "Katherine Gray served as the first president, with Mrs. Lancaster the vice president and Edith Gray the treasurer. Hattie Redmond was the organization's first secretary and later served as president." *Id.*

[80] *Id.* (citing local newspapers reporting CWESA activities in 1912 such as: *Colored Suffragists Meet Tonight*, MORNING OREGONIAN, Sep. 16, 1912, at 9; *Suffrage Rally Dates Are Fixed*, MORNING OREGONIAN, Oct. 11, 1912, at 3; *Suffragists Are Warned*, MORNING OREGONIAN, Nov. 2, 1912, at 14; and *What Suffragettes Are Doing*, OR. DAILY J., Oct. 29, 1912, at 13.

and church associations."[81] One of the Portland clubs was the Oregon Federation of Colored Women's Club, organized by nine already-existing Portland clubs in 1917.[82] The nine clubs organized the Oregon Federation in order to better work together to accomplish their common interests in, *inter alia*, the "betterment of the race and the education of black women and girls."[83]

In addition to the organizing of women of BAA, women of Chinese ancestry (CA) also organized on behalf of women's suffrage. Specifically, women of CA "formed an equal suffrage society with Dr. (Mrs. S.K.) Chan as its president."[84] On April 11, 1912, Dr. Chan spoke to other women of CA and to Caucasian women at the Portland Suffrage Luncheon.[85] In her speech, Dr. Chan, with her daughter Bertie interpreting, explained that "China had taken a step ahead of the United States and Oregon by granting the ballot to women."[86] Dr. Chan went on to say, "'Oregon is bounded by states in which women are on equal terms with the men

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[81] *Id.* at 365–66 (quoting ROSALYN TERBORG-PENN, AFRICAN AMERICAN WOMEN IN THE STRUGGLE FOR THE VOTE, 1850–1920, at 97 (1998)). Jensen continued by pointing out while there was discrimination on a national and local level

> barr[ing] African American women in Portland from membership in white women's clubs since 1902, the CWESA was included in the broader suffrage coalitions of Portland in the 1912 campaign. A CWESA representative served on the Central Campaign Committee, and mainstream Portland newspapers included information about the CWESA's activities with other suffrage events. At the August 1 meeting of the Central Campaign Committee, the group announced that it had doubled its membership and "that the editor of their paper, the Advocate, favored the movement." Significantly, proclamations issued in November 1912 before the suffrage victory on behalf of "Presidents of all the suffrage organizations in Portland" and after the election by the Central Campaign Committee included Hattie Redmond and the CWESA. While the decentralized, multi-organizational nature of the1912 campaign did not eliminate racism against African American suffragists, in Portland it appears that it did create conditions of partial coalition-building and participation.

Id. (footnotes and citations omitted).

[82] MCLAGAN, *supra* note 50, at 120.

[83] *Id.*

[84] Jensen, *Neither Head nor Tail*, *supra* note 13, at 366.

[85] *Id.* at 366–67. Jensen's article includes a picture of the luncheon. The caption for the photo says as follows: "Women gathered for the Portland Suffrage Luncheon on April 11, 1912. Front row, left to right: Bertie G. Chan, Mrs. Herbert Low, Edna Low, Dr. (Mrs. S.K.) Chan, Ida Tong, Mrs. Ng Tong. Back row: La Reine Helen Baker, Buehlah Tong, Sarah Commerford, and Fannie Chan." *Id.*; *see also Chinese Women Dine with White*, MORNING OREGONIAN, Apr. 12, 1912, at 16 ("The Chinese women attending the banquet were Mrs. S. K. Chan, wife of a Chinese physician, and herself a physician; her two daughters, Bertie and Fannie Chan; Mrs. Tong, with her two daughters, Ida and Beulah Tong, and Mrs. Herbert Low. Mrs. Chan is the president of a local equal suffrage society among the Chinese women. White suffragists yesterday learned for the first time of the existence of such an organization in the Chinese quarter. Mrs. Chan addressed her white sisters in her native language, and her words were interpreted by her daughter, Bertie, who speaks fluent English.").

[86] Jensen, *Neither Head nor Tail*, *supra* note 13, at 366.

[Idaho, Washington, and California], China completing the square.'"[87]

3. Law Excluding Blacks from Oregon

In addition to limiting the vote to white males as outlined in Section III.A.2, Oregon helped white males to retain that power by ensuring that disenfranchised individuals would not agitate for change. Specifically, Oregon excluded individuals of BAA from residing in the state. One of the reasons repeatedly given for the exclusion was to avoid the combined hostilities of individuals of BAA and of Indian ancestry (IA).[88] As Elizabeth McLagan reports in her book, *A Peculiar Paradise: A History of Blacks in Oregon, 1788–1940*, an 1850 delegate from Oregon to the U.S. House of Representatives, Samuel Thurston, repeated the above fear "in his efforts to secure the restriction of land grants to white people only."[89] McLagan quotes Thurston as follows:

> The first legislative assembly that met last July, passed another law against the introduction of free negroes. This is a question of life and death to us in Oregon, and of money to this Government. The negroes associate with the Indians and intermarry, and, if their free ingress is encouraged or allowed, there would a relationship spring up between them and the different tribes, and a mixed race would ensue inimical to the whites; and the Indians being led on by the negro who is better acquainted with the customs, language, and manners of the whites, than the Indian, these savages would become much more formidable than they otherwise would, and long and bloody wars would be the fruits of the comingling of the races. It is the principle of self-preservation that justifies the action of the Oregon legislature.[90]

With regard to individuals of BAA, as will be demonstrated below, Oregon

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[87] *Id.* at 366–67 (alteration in original) (citing *Chinese Women Dine with White*, *supra* note 85; *College Equal Suffragists, Chinese Women Dine Together Celestial Speaker Thanks Her American Sisters Heartily*, OR. DAILY J., Apr. 12, 1912, at 6).

[88] MCLAGAN, *supra* note 50, at 30 ("The immediate justification of the exclusion laws passed in 1844 and 1849 was the fear of the combined black/Indian hostilities, a paranoia that found frequent expression in the documents of the day."); *see* Thomas C. McClintock, *James Saules, Peter Burnett, and the Oregon Black Exclusion Law of June 1844*, 86 PAC. NW. Q. 121, 125–26, 129 (1995). While acknowledging that Peter Burnett and other Oregon settlers held racial prejudice against persons of BAA, McClintock offers an additional and detailed explanation as to why the lawmakers, including Burnett, were so eager to pass the law, given that there were very few people of BAA in Oregon in 1844. McClintock states, "That the white settlers feared that free blacks could precipitate Indian trouble is unquestionable. That this fear produced the black exclusion law and explains both the haste in which it was passed and the harshness of its enforcement provision is supported by later events." *Id.* at 129.

[89] MCLAGAN, *supra* note 50, at 30.

[90] *Id.* at 30–31 (quoting Letter from Samuel L. Thurston, Del. from Or., to the Members of the House of Reps., First Session of the Thirty-First Cong. (1850) (on file with the Oregon Historical Society)).

made it clear that it did not welcome individuals of BAA by enacting three separate exclusionary laws.[91] Commentators disagree as to the reason for Oregon's unwelcoming attitude. As indicated above, the stated reason for at least one of the exclusionary provisions was the fear of "combined black/Indian hostilities."[92] Never mind that white Oregonians' actions themselves caused the possibility of hostilities, but the stated reason rang hollow given that the laws persisted well after any fear of combined hostilities had passed.[93] As McLagan points out, an exclusion clause remained a part of Oregon law until 1926, in spite of repeated attempts to remove the clause.[94] The persistence of the exclusion clause lends weight to the arguments of some commentators that Oregon's exclusionary laws stemmed from a desire to have a "white utopia."[95] This Author suspects that, as with most legislation, various fears and desires motivated various legislators. Whatever the reason, the result was to chill the immigration of persons of BAA such that their small numbers hampered their ability to fight against practices that were inimical to their interests and well-being.[96]

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[91] Charlotte B. Rutherford, *Laws of Exclusion: A Foundation of My Childhood*, 64 OR. STATE BAR BULL., No. 4, Jan. 2004, at 29, 31 n.1 (citing BOSCO-MILLIGAN FOUND., CORNERSTONES OF COMMUNITY: BUILDINGS OF PORTLAND'S AFRICAN AMERICAN HISTORY 6 (1995)).

[92] MCLAGAN, *supra* note 50, at 30; *see also* McClintock, *supra* note 88, at 129 ("That the white settlers feared that free blacks could precipitate Indian trouble is unquestionable."); Greg Nokes, *Black Exclusion Laws in Oregon*, OR. ENCYC. (May 17, 2024), https://www.oregonencyclopedia.org/articles/exclusion_laws/ [https://perma.cc/358W-CD46] (suggesting that one of the exclusionary laws "targeted African American seamen who might be tempted to jump ship" in Oregon).

[93] MCLAGAN, *supra* note 50, at 31.

[94] *Id.*

[95] Philip Thoennes & Jack Landau, *Constitutionalizing Racism: George H. Williams's Appeal for a White Utopia*, 120 OR. HIST. Q. 468, 468 (2019); *see also* Williams, *supra* note 13, at 568 ("As a *National Geographic* article recounts, 'Before Oregon became a state, it fashioned itself as a whites-only utopia.'" (citing Nina Strochlic, *Oregon Once Legally Banned Black People. Has the State Reconciled Its Racist Past?*, NAT'L GEOGRAPHIC (Mar. 8, 2021), https://www.nationalgeographic.com/history/article/oregon-oncelegally-barred-black-people-has-the-state-reconciled-its-racist-past [https://perma.cc/328K-5SVP])).

[96] *See* Darrell Millner, *Black People in Oregon*, OR. ENCYC. (Mar. 17, 2018), https://www.oregonencyclopedia.org/articles/blacks_in_oregon/#exclusion-laws [https://perma.cc/EE89-PKCV] ("The greatest impact of the exclusion laws was not in how many Black people were whipped, sent out of the state, or stopped at the state line but in their deterrent effect on potential Black immigrants. The laws made it clear that Oregon was a hostile destination for Blacks contemplating a move west, and they proved to be remarkably effective. Potential Black immigrants who had the means and the motivation to go west simply chose to go elsewhere."); *see, e.g.*, Nokes, *supra* note 92 (noting that although the "lash law" was rescinded several months after its passage, "[t]he law did discourage at least one Black settler—George Bush, who had been born in Pennsylvania and was a successful farmer in Missouri. After arriving in Oregon with his wife and six sons, he decided to settle north of the Columbia River near Puget Sound, out of the reach of the 1844 Oregon law").

Oregon enacted its first exclusionary provision on June 18, 1844.[97] At that time, the legislative council of Oregon's provisional government put in place an exclusionary provision when it amended the 1843 Organic Laws of Oregon[98] to add a provision that excluded individuals of BAA from the state, along with a "lash law" to enforce the exclusion.[99] The law prohibited slavery; gave slaveholders a three-year time limit in which to "remove" their slaves "out of the country," and freed slaves if their owners refused to remove them; once freed, the former slaves were required to leave Oregon—within two years if male and within three years if female; any free person of BAA who refused to leave would be subject to lashing.[100] This latter provision was known as "Peter Burnett's lash law."[101] The "lash law" stated as follows:

> Sec. 6 That if any such free negro or mulatto shall fail to quit the country, as required by this act, he or she may be arrested upon a warrant issued by some justice of the peace, and, if guilty on trial before such justice, shall receive upon his or her bare back not less than twenty nor more than thirty-nine stripes, to be inflicted by the constable of the proper county. Sec. 7. That if any free negro or mulatto shall fail to quit the country within the term of six months after receiving such stripes, he or she shall again receive the same punishment once in every six months, until he or she shall quit the country.[102]

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[97] *National and Oregon Chronology of Events*, *supra* note 30.

[98] On May 2, 1843, "Oregon [trappers and] settlers [met] in Champoeg to create a provisional government to last until 'such time as the United States of America can extend their jurisdiction over us.'" The Oregon trappers and settlers met again in Champoeg on July 5, 1843, and "pass[ed] a temporary blueprint for the provisional government including 'The Organic Laws of Oregon.'" *National and Oregon Chronology of Events*, *supra* note 30. Specifically, "Oregon's small white population had voted on June 5, 1843, to prohibit slavery by incorporating into Oregon's 1843 Organic laws a provision of the 1787 Northwest Ordinance," i.e., "There shall be neither slavery nor involuntary servitude in the said territory otherwise than in the punishment of crimes whereof the party shall have been duly convicted." Nokes, *supra* note 92 (citing AN ORDINANCE FOR THE GOVERNMENT OF THE TERRITORY OF THE UNITED STATES NORH-WEST OF THE RIVER OHIO art. 6 (1787)); *see* David C. Duniway & Neil R. Riggs, *The Oregon Archives, 1841–1843*, 60 OR. HIST. Q. 211, 273–74 (1959).

[99] MCLAGAN, *supra* note 50, at 25–26; Nokes, *supra* note 92; McClintock, *supra* note 88, at 122.

[100] J. HENRY BROWN, BROWN'S POLITICAL HISTORY OF OREGON 132–33 (1892); McClintock, *supra* note 88, at 122; *Slavery: A National and Oregon Summary*, OR. SEC'Y OF STATE: BLACK IN OR. 1840–1870, https://sos.oregon.gov/archives/exhibits/black-history/Pages/context/slavery.aspx [https://perma.cc/W234-4M3S] (last visited Feb. 10, 2026).

[101] *Slavery: A National and Oregon Summary*, *supra* note 100; Nokes, *supra* note 92.

[102] BROWN, *supra* note 100, at 133; HUBERT HOWE BANCROFT, HISTORY OF OREGON, 1834–1848, at 439 (1886); *see also* McClintock, *supra* note 88, at 122 (explaining that, although the Oregon Archives Division could not locate an official copy of the law, other sources have reprinted the complete text).

Although the council soon recognized that the lash law was too harsh, the fact that the council enacted the law at all indicates the disdain with which the council regarded individuals of BAA.[103]

In December of 1844, at the same time that it repealed the lash law (before it went into effect), the council substituted the penalty of forced labor as the enforcement mechanism for the exclusionary provision.[104] Under the forced labor provision, if a person of BAA was tried and found guilty of being in the Oregon Country illegally, the person was to be hired out publicly to whomever would employ them for the shortest amount of time.[105] After the period of forced labor expired, the "employer" had six months to get the individual out of Oregon.[106] If the "employer" failed to do so, the employer would be punished by a fine of $1,000.[107] This forced labor law was to go into effect in 1846, by which time those who wrote it doubtless hoped that most persons of BAA would have left Oregon.[108] The 1845 session of the Provisional Legislature repealed the forced labor law.[109]

Oregon's Territorial Legislature enacted the second exclusion law on September 26, 1849.[110] The law specified that "it shall not be lawful for any negro or mulatto to come into, or reside within the limits of this Territory."[111] In essence, the law allowed "black settlers and their children who were already living in Oregon to stay, but prohibited other black people from moving in."[112] In an attempt to prevent sailors of BAA coming into Oregon, it imposed a $500 fine on any ship owner that did not ensure that all crew members of BAA left the territory with their ship.[113] Oregon rescinded the law in 1854, apparently by accident, but attempts to

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[103] *See* BROWN, *supra* note 100, at 133–34 (reporting that in December 1844 the Legislative Committee recommended amending the June exclusion law to remove corporal punishment and substitute a bond for good behavior); McClintock, *supra* note 88, at 123 (explaining that it is likely "some settlers considered the flogging provision unnecessarily harsh and also pressured the legislatures to change it").

[104] McClintock, *supra* note 88, at 122–23; *National and Oregon Chronology of Events*, *supra* note 30.

[105] McClintock, *supra* note 88, at 122; *Slavery: A National and Oregon Summary*, *supra* note 100.

[106] McClintock, *supra* note 88, at 122.

[107] *Id.*

[108] *See* MCLAGAN, *supra* note 50, at 26.

[109] McClintock, *supra* note 88, at 123 (noting that the Oregon provisional legislature repealed the 1844 law by a vote of ten to three).

[110] An Act, to Prevent Negroes and Mulattoes from Coming to, or Residing in Oregon, 1851 Or. Laws 181–82 (rescinded in 1854); MCLAGAN, *supra* note 50, at 26–27. The U.S. Congress created the territorial legislative assembly in 1848 as the legislative branch of the government of the Oregon Territory. Act of Aug. 14, 1848, ch. 177, § 4, 9 Stat. 323, 324.

[111] 1851 Or. Laws 181; *see* MCLAGAN, *supra* note 50, at 26; Nokes, *supra* note 92.

[112] MCLAGAN, *supra* note 50, at 26.

[113] 1851 Or. Laws 182; MCLAGAN, *supra* note 50, at 26.

revive the law were not successful until 1857.[114]

The third iteration of Oregon's exclusionary laws was Oregon's Constitution. Specifically, in 1857, three years after Oregon rescinded the 1849 law, Oregon placed exclusionary language in the Oregon Constitution.[115] Putting such language into its constitution gave Oregon the dubious distinction of being "the only free state admitted to the Union with an exclusion clause in its constitution."[116] In fact, as one commentator stated,

> The constitution which emerged from 33 days of deliberation was aimed at putting black and mulatto residents in a state of complete subordination and even rightlessness. It was so thoroughly a 'white man's document' that the provision for the establishment of a "free and white" militia was offered, debated and rejected as unnecessary.[117]

The mechanism by which the state included the exclusionary clause was through delegates to Oregon's Constitutional Convention who "submitted an exclusion clause to voters on November 7, 1857, along with a proposal to legalize slavery."[118] Although Oregon voters widely disapproved of slavery, ensuring that Oregon would be a free state, voters also "approved the exclusion clause by a wide margin"—with 8,640 voting "Yes," and 1,081 voting "No."[119] Ironically, the state chose to put the exclusionary clause in the so-called "Bill of Rights."[120] The exact language of the clause stated as follows:

> No free Negro, or Mulatto, not residing in this state at the time of the adoption of this constitution, shall come, reside, or be within this state, or hold any real estate, or make any contracts, or maintain any suit therein; [and]

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[114] MCLAGAN, *supra* note 50, at 27–28.

[115] *See* OR. CONST. of 1857 art. XVIII, § 4. Regarding the placement of the "anti-slavery provision and the provision against free Negroes" in the Oregon Constitution, both "were added to the Bill of Rights as unnumbered sections by vote of the people at the time of adoption, in accordance with Article XVIII, Section 4 . . . . They have since been treated as Sections 34 and 35 of Article I." However, "Section 35 was repealed November 2, 1926." PROCEEDINGS OF THE OREGON CONSTITUTIONAL CONVENTION, *supra* note 49, at 404.

[116] MCLAGAN, *supra* note 50, at 57; Nokes, *supra* note 92; *see* RECTOR, *supra* note 13, at 6 ("On February 14, 1859, Oregon became the only state admitted to the Union with an exclusion law written into a state's constitution.").

[117] Richard, *supra* note 30, at 31.

[118] Nokes, *supra* note 92.

[119] *Id.*; MCLAGAN, *supra* note 50, at 53; *see also* Margaret Riddle, *Donation Land Claim Act*, HISTORYLINK.ORG (Aug. 9, 2010), https://www.historylink.org/File/9501 [https://perma.cc/7VTG-RDPG] ("The issue was put to public vote. Oregon voters upheld the anti-slavery law and, at the same time, excluded African Americans—as well as Hawaiians—from Oregon when it became a state. Hawaiians had made up a large portion of the territory's work force and most soon returned to the islands.").

[120] *See* discussion *supra* note 115.

> the Legislative Assembly shall provide by penal laws, for the removal, by public officers, of all such Negroes, and Mulattos, and for their effectual exclusion from the state, and for the punishment of persons who shall bring them into the state, or employ, or harbor them.[121]

Another clause in the Oregon Bill of Rights made it clear that Oregonians did not oppose immigration to Oregon per se. In fact, they welcomed the immigration of white individuals by including the following clause in the Bill of Rights:

> White foreigners who are, or may hereafter become residents of this State shall enjoy the same rights in respect to the possession, enjoyment, and descent of property as native born citizens. And the Legislative Assembly shall have power to restrain, and regulate the immigration to this State of persons not qualified to become Citizens of the United States.[122]

Although we do not have exact statistics regarding the effects of the exclusionary laws, we can see that the exclusionary laws served their purpose in that Oregon historically had very few residents of BAA. As noted by one commentator:

> Although the exclusion laws were not generally enforced, they had their intended effect of discouraging Black people from settling in Oregon. The 1860 census for Oregon, for example, reported 128 African Americans in a total population of 52,465. In 2013, only 2 percent of the Oregon population were Black people.[123]

Even now, the percentage of individuals of BAA alone in Oregon is 2%, in comparison to 12.4% nationally.[124]

In addition, we know of several individuals who were either expelled or threatened with expulsion from Oregon because of the exclusionary law. Specifically, in 1851, Jacob Vanderpool, a person of BAA, was arrested and expelled from the Oregon Territory under the exclusion law.[125] One source says that Vanderpool was an owner of a saloon, restaurant, and boarding house in Salem,[126] and another source says that Vanderpool was a sailor from the West Indies who

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[121] OR. CONST. of 1857 art. XVIII, § 4; *see* discussion *supra* note 115.

[122] OR. CONST. of 1857 art. I, § 31.

[123] Nokes, *supra* note 92.

[124] *State: Oregon*, U.S. CENSUS BUREAU, https://data.census.gov/profile/Oregon?g=040XX00US41#populations-and-people [https://perma.cc/5UNA-66AZ] (last visited Feb. 12, 2026); America Counts Staff, *Oregon Population 4.2 Million in 2020, Up 10.6% from 2010*, U.S. CENSUS BUREAU (Aug. 25, 2021) https://www.census.gov/library/stories/state-by-state/oregon.html [https://perma.cc/T6KM-83SZ].

[125] MCLAGAN, *supra* note 50, at 23–24; RECTOR, *supra* note 13, at 5; Nokes, *supra* note 92; Quintard Taylor, *Slaves and Free Men: Blacks in the Oregon Country, 1840–1860*, 83 OR. HIST. Q. 153, 163–64 (1982).

[126] RECTOR, *supra* note 13, at 5.

arrived in Oregon in 1850.[127] In addition to Vanderpool, historical records indicate that Oregon issued exclusion orders against at least three other individuals of BAA during the period of 1849, when the second exclusion law was enacted, and 1854, when the second exclusion law was rescinded.[128] The three targeted individuals were not, however, excluded because they received support from their white neighbors.[129] Other incidents of exclusion or exclusion orders may not have been officially recorded.[130]

In addition to having at least one individual kicked out of Oregon, other individuals of BAA chose to not try to settle in Oregon due to its exclusionary laws. As a result, Oregon missed out on having some remarkable citizens who chose to live elsewhere. For example, after hearing of Oregon's exclusionary laws, George Washington Bush bypassed Oregon and became a successful farmer in what is now Bush Prairie (near Olympia) and was famous for his generosity.[131] George Washington Bush made his way to Oregon on the Oregon trail:

> Born in Pennsylvania in 1790 to an African-American father from India and Irish-American mother.
>
> . . .
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> In 1844, Bush and his family, along with four white families, including his friend Michael Simmons, left Missouri and headed west on the Oregon Trail. Bush knew the western region from his days as a trapper, which made him a huge asset to the wagon party. By the time the party reached the Oregon Country, they found that the discriminatory laws had preceded them. The provisional government set up in the Oregon Territory had enacted legislation preventing Blacks from settling or owning land. As a result, Bush and his party traveled north across the Columbia River, into territory that was claimed by both the United States and Great Britain.[132]

Although Bush could not claim the land that his family settled due to the fact that Washington laws eventually also denied settlement rights to individuals of BAA,[133] many of the legislators who the Bush family knew, or with whom they were

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[127] *See* Nokes, *supra* note 92.

[128] *Id.*

[129] *See id.*

[130] RECTOR, *supra* note 13, at 5.

[131] *See* Richard, *supra* note 30, at 42 n.29 (describing George Bush as "a master farmer and generous neighbor" (citation omitted)); *George Washington Bush*, OR. SEC'Y OF STATE: BLACK IN OR. 1840–1870, https://sos.oregon.gov/archives/exhibits/black-history/Pages/families/bush.aspx [https://perma.cc/RHJ7-MNVW] (last visited Feb. 12, 2026).

[132] *George Washington Bush*, *supra* note 131.

[133] *Id.* ("When the United States' boundaries expanded to include Washington Territory with the Oregon Treaty of 1846, the laws denying settlement rights to Blacks also moved north. This meant that Bush could not claim the land his family had settled.").

friends, voted for a resolution that urged Congress to give ownership of the land to the Bush family.[134] Congress granted the resolution in 1855.[135] Consequently, Bush became one of the first landowners of BAA in Washington State.[136] Following the death of Bush in 1863 and his wife, Isabella, in 1866, their children and their children's children continued the Bush "legacy of agriculture and public service."[137]

A proposal to repeal the exclusion clause in the Oregon Constitution was proposed to Oregon voters in 1900, but the voters rejected the proposal on November 2, 1900.[138] Then, with the assistance of a woman of BAA, Beatrice Cannady,[139] the state repealed the clause on November 2, 1926.[140]

With the passage of the Thirteenth, Fourteenth, and Fifteenth Amendments to the U.S. Constitution, Oregon's laws preventing persons of BAA from voting, living in the state, and owning property were superseded by national law.[141] The Thirteenth Amendment was ratified in 1865[142] and it passed by referendum in Oregon that same year.[143] But Oregon did not ratify the Fourteenth Amendment—the Due Process and Equal Protection Clauses—until 1973, more than 100 years after its federal ratification.[144] More specifically, Oregon ratified the Amendment in 1866, rescinded its ratification in 1868, and then finally ratified it permanently in 1973.[145] Oregon did not ratify the Fifteenth Amendment, which gave persons of

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[134] *Id.*

[135] *Id.*

[136] *Id.*

[137] *Id.*

[138] *Later Developments*, OR. SEC'Y OF STATE: BLACK IN OR. 1840–1870, https://sos.oregon.gov/archives/exhibits/black-history/Pages/context/later-developments.aspx [https://perma.cc/B4C4-EQ8V] (last visited Feb. 12, 2026).

[139] KIMBERLEY MANGUN, A FORCE FOR CHANGE: BEATRICE MORROW CANNADY AND THE STRUGGLE FOR CIVIL RIGHTS IN OREGON, 1912–1936, at 17–18 (2010); Kathy Tucker & A.E. Platt, *Portland Chapter NAACP 50th Anniversary*, OR. HIST. PROJECT, https://www.oregonhistoryproject.org/articles/historical-records/portland-chapter-naacp-50th-anniversary/ [https://perma.cc/D7P3-GAAQ] (last visited Feb. 12, 2026). Beatrice Morrow Cannady graduated in 1922 from Northwestern College of Law, which later merged with Lewis & Clark College to become Lewis & Clark Law School. Cannady graduated with her brother, Almus, and upon graduation, Cannady became the first woman of BAA to graduate from the law school. MANGUN, *supra*, at 29.

[140] PROCEEDINGS OF THE OREGON CONSTITUTIONAL CONVENTION, *supra* note 49, at 404; MCLAGAN, *supra* note 50, at 160–61.

[141] *See* U.S. CONST. amend. XIII, § 1 (abolishing slavery); *id.* amend. XIV, § 1 (granting birthright citizenship, due process, and equal protection); *id.* amend. XV, § 1 (prohibiting the abridgment of the right to vote on "account of race, color, or previous condition of servitude").

[142] S. DOC. NO. 117–12, at 2032 (2022).

[143] Brooks, *supra* note 27, at 740–41.

[144] *Id.* at 731; S. DOC. NO. 117–12, at 2073.

[145] Brooks, *supra* note 27, at 731; David Peterson del Mar, *14th Amendment*, OR. ENCYC.

BAA the right to vote, until 1959,[146] making it one of only seven states that refused to ratify that Amendment when it passed.[147]

4. Additional Exclusionary Laws that Assisted White Males in Retaining Power and/or Not Being Held Accountable for Harms to Individuals of Color

In addition to the above exclusionary laws, Oregon also enacted laws similar to the "Black Codes" enacted by the southern states to circumscribe the freedom of individuals of BAA. The Black Codes limited the freedom of movement of individuals of BAA, barred them from certain occupations, and prohibited them from owning firearms, serving on juries, testifying in cases involving whites, and voting.[148] In 1853, Oregon prohibited individuals of BAA, so-called mulattoes, and individuals of Indigenous ancestry from testifying against whites with a law that stated as follows: "The following persons shall not be competent to testify . . . Negroes, mulattoes and Indians, or persons having one-half or more of Indian blood, in any action or proceeding to which a white person is a party."[149] The Oregon State Constitution followed in the footsteps of this previous law by restricting to white individuals the right to be a juror, hold public office, and serve in the militia.[150] Oregon created these restrictions by tying the above rights to one's status as a U.S. citizen, knowing that only whites were considered to be citizens of the United States.[151] Specifically, article II, section 2 of the Oregon Constitution defined "citizen" on the basis of the federal Constitution.[152] Thus, those who were

(July 28, 2025), https://www.oregonencyclopedia.org/articles/14th_amendment/ [https://perma.cc/P7KL-MWZ2].

[146] Brooks, *supra* note 27, at 746–47, 751; Clay, *supra* note 27, at 560.

[147] Crum, *supra* note 28, at 1117 map 3. The number becomes one of six states if we recognize that in 1871, New Jersey rescinded its 1870 refusal to ratify. *Id.* at 1113.

[148] As Justice Thomas explained concurring in Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll., 143 S. Ct. 2141, 2178 (2023):

> Soon after the Thirteenth Amendment's adoption, the reconstructed Southern States began to enact "Black Codes" which circumscribed the newly won freedoms of blacks. The Black Code of Mississippi, for example, "imposed all sorts of disabilities" on blacks, "including limiting their freedom of movement and barring them from following certain occupations, owning firearms, serving on juries, testifying in cases involving whites, or voting."

Id. (quoting ERIC FONER, THE SECOND FOUNDING: HOW THE CIVIL WAR AND RECONSTRUCTION REMADE THE CONSTITUTION 47–48 (2019)).

[149] Richard, *supra* note 30, at 50 n.50 (quoting 1854–1855 Or. Laws 130).

[150] *Id.* at 31.

[151] *Id.*

[152] *See* OR. CONST. of 1857 art. II, § 2. As K. Keith Richard noted:

> The second section of Article II defined 'citizen' on the basis of the federal Constitution, thus excluding blacks and mulattoes from citizenship within the state. Since these people lacked citizenship they were not eligible to vote, hold public office, serve on juries or in the militia. The word 'citizen' is used repeatedly throughout the constitution to define the rights of people residing in Oregon. Although barred from coming into Oregon by constitutional provision, any blacks or mulattoes that did come could not hold real estate. The problem of

not considered citizens of the United States did not have any of the rights granted to citizens.[153]

In terms of becoming a U.S. citizen, only free white persons could gain citizenship via the 1790 Naturalization Act because the act "stated that 'free white persons' could gain citizenship if they had lived in the U.S. for two years and had a good character. The new citizens' children under the age of 21 were given citizenship, too."[154] With regard to most individuals of BAA, the Supreme Court of the United States found that they were not citizens of the United States. Specifically, the *Dred Scott* Court held that the following persons were not citizens: any person who was of BAA and descended from a slave, even if that individual was freed or descended from an individual who was freed, i.e., an individual who was never born as a slave.[155] The Fourteenth Amendment, ratified in 1868, was thus necessary to overturn *Dred Scott* and to settle the question of the citizenship of the newly freed slaves.[156]

In addition to the restriction of rights, in 1862, the Oregon Legislature imposed an annual poll tax of five dollars to be paid by "every Negro, Chinaman,

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> real estate ownership for those already in the state remained muddy. The most discriminatory constitutional restriction on blacks and mulattoes was not that they could not vote, hold office, etc., but because of the definition given citizenship that they could not sue in the courts.

Richard, *supra* note 30, at 731.

[153] *See, e.g.*, OR. CONST. of 1857 art. VII, § 18 (art. VII, § 18 grants the right to be a juror to "citizens"); *id.* art. X, § 1 (art. X, § 1 grants the right to be a part of the militia to "citizens").

[154] Erin Blakemore, *Why the United States Has Birthright Citizenship*, HISTORY (June 27, 2025), https://www.history.com/news/birthright-citizenship-history-united-states [https://perma.cc/CLD2-4XQ9] (citing Naturalization Act of 1790, ch. 3, § 1, 1 Stat. 103, 103–04).

[155] Dred Scott v. Sanford, 60 U.S. 393, 404 (1857). The issue presented to the Court was stated as follows:

> Can a negro, whose ancestors were imported into this country, and sold as slaves, become a member of the political community formed and brought into existence by the Constitution of the United States, and as such become entitled to all the rights, and privileges, and immunities, guarantied [sic] by that instrument to the citizen? One of which rights is the privilege of suing in a court of the United States in the cases specified in the Constitution.
>
> It will be observed, that the plea applies to that class of persons only whose ancestors were negroes of the African race, and imported into this country, and sold and held as slaves. The only matter in issue before the court, therefore, is, whether the descendants of such slaves, when they shall be emancipated, or who are born of parents who had become free before their birth, are citizens of a State, in the sense in which the word citizen is used in the Constitution of the United States. And this being the only matter in dispute on the pleadings, the court must be understood as speaking in this opinion of that class only, that is, of those persons who are the descendants of Africans who were imported into this country, and sold as slaves.

Id. at 403.

[156] *See* S. DOC. NO. 117–12, at 2032, 2073 (2022).

[Hawaiian] and Mulatto residing within the limits of this state."[157]

B. Property and Wealth

In addition to granting rights to themselves and restricting the rights of persons of BAA as outlined above, the white males in Oregon also obtained an enormous advantage in wealth acquisition because, although persons of BAA could not buy or receive land in Oregon, a white male settler could not only buy land, but he could receive land for free via the Land Donation Act.[158] Such land equated to wealth that an individual could pass on to future generations and gave white males an enormous leg up that individuals of color did not enjoy.[159] This land, of course, was land taken from the Indigenous people who had been living here for centuries.[160] White males could acquire this enormous gift whether they were citizens or "foreign-born."[161] The gift consisted of 320 acres of land for an unmarried white male settler and 640 acres to a married white male settler.[162] The requirements for acquiring the

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[157] McLagan, *supra* note 50, at 64 (alteration in original) (quoting THE ORGANIC AND OTHER GENERAL LAWS OF OREGON TOGETHER WITH THE NATIONAL CONSTITUTION AND OTHER PUBLIC ACTS AND STATUTES OF THE UNITED STATES: 1945–1864, at 815–16 (M.P. Deady ed. 1866)).

[158] Donation Land Claim Act of 1850, ch. 76, 9 Stat. 496.

[159] For an article outlining the persistent wealth gap between whites and persons of BAA, see Clay, *supra* note 27, at 550–51.

[160] William G. Robbins, *Oregon Donation Land Law*, OR. ENCYC. (Aug. 17, 2022), https://www.oregonencyclopedia.org/articles/oregon_donation_land_act/ [https://perma.cc/7TU2-HSY3].

[161] OR. CONST. of 1857 art. I, § 31 (providing in the Oregon Bill of Rights: "White foreigners who are, or may hereafter become residents of this State shall enjoy the same rights in respect to the possession, enjoyment, and descent of property as native born citizens"); *see also* Donation Land Claim Act § 4 (granting the rights to white male citizens and to non-citizens "having made a declaration according to law, of his intention to become a citizen, or who shall make such declaration on or before the first day of December, eighteen hundred and fifty-one").

[162] Donation Land Claim Act § 4 ("[T]here shall be, and hereby is, granted to every white settler or occupant of the public lands, American half-breed Indians included, . . . the quantity of one half section, or three hundred and twenty acres of land, if a single man, and if a married man, or if he shall become married within one year from the first day of December, eighteen hundred and fifty, the quantity of one section, or six hundred and forty acres, one half to himself and the other half to his wife, to be held by her in her own right . . ."); *see* Dane Bevan, *Oregon Land Donation Claim Notification*, OR. HIST. SOC'Y, https://www.oregonhistoryproject.org/articles/historical-records/oregon-land-donation-claim-notification/ [https://perma.cc/XH84-PHJU] (last visited Feb. 12, 2026) (explaining the Land Donation Act). For additional information on previous laws granting free land to whites and on the Land Donation Claim Act itself, see Riddle *supra* note 119. Riddle states as follows:

> The act took effect on September 27, 1850, granting 320 acres of federal land to white male citizens 18 years of age or older who resided on property on or before December 1, 1850. If married before December 1, 1851, a couple received an additional 320 acres in the wife's

land were fairly easy to meet: (1) be above the age of eighteen years; (2) be a citizen of the United States or make a declaration to become a citizen by December 1, 1851; (3) reside in the territory or become a resident by December 1, 1851; and (4) have resided on and cultivated the land for four consecutive years.[163] The original law was amended a couple of times to provide additional time to acquire land—the original deadline was 1853, but it was extended to 1854 and then 1855.[164] In addition, an 1854 amendment made it even easier to meet the requirements by shortening the four-year period of residency and cultivation to one year.[165]

CONCLUSION

We are all part of a great quest. One day, we will learn the history of Oregon and the United States in all its sadness and its glory. We will see that the history involves all peoples of the United States, including white males, but not excluding all others.[166] As part of that quest, we must understand and reckon with our past. This Essay is a small step on that quest. A small attempt to help achieve a successful and happy end to the quest.

> name. (A large number of marriages reportedly took place during this one year.) Recipients agreed to live on and cultivate the allotment for four consecutive years, which could be counted retroactively. A certificate was issued to the claimant, granting immediate ownership once the land was occupied. Claimants who located on property between December 1, 1850, and December 1, 1853, (later extended to 1855) could obtain 160 acres of land (320 acres to married couples). Under an extension of the act in 1854, land could be purchased for $1.25 an acre. This policy held until Congress authorized the Homestead Act in 1862.

Riddle *supra* note 119.

[163] Donation Land Claim Act § 4.

[164] Robbins, *supra* note 160 ("The 1850 law originally set a two-year window for surveying lands open for claims, limiting the offer to December 1, 1853, but Congress amended the law twice. In 1853, the rights of widows to land claims was added, and the law was extended until 1855 to address complaints about the slow progress in surveying lands.").

[165] *Id.* ("In 1854, Congress again amended the law by reducing the residency requirement from four years to one year.").

[166] *See* Kuo, *supra* note 9. Kuo said,

> On why people who look like us aren't much in the books, I'll explain that we're part of a great quest ourselves. One day, there will be just as many fantastic stories to read and movies to watch, where the main characters are us and the stories are about our lives. Our own family is a part of that quest, and your Ba has worked hard his whole life to help make that dream come true.

Id.