Racial Naturalization

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Prologue: Notes of a Naturalized Son

A few years ago, I pledged allegiance to the United States of America—that is to say, I became an American citizen. Before that, I was a permanent resident of America and a citizen of the United Kingdom.

Yet I became a black American long before I acquired American citizenship. Unlike citizenship, black racial naturalization was always available to me, notwithstanding the fact that I tried to make myself unavailable for that particular Americanization process.

But I became a black American anyway. Resistance to this naturalization was futile. It is part of a broader social practice wherein all of us are Americanized and made socially intelligible via racial categorization. My intelligibility was skin deep. Epidermal. Visually inscribed on my body. I could not cross (pass) the phenotypic borders of blackness.

And I could not escape black racial social meaning. That I had a dream did not matter. The politics of distinction, or self-presentation strategies with the intraracial signification "I am the New Negro," did not help.[1] Out of racial necessity, my American black identity developed one interpellation after another.

Nor could I count on color blindness to protect me. That veil of ignorance became racially transparent.[2] Color blindness helps to prevent African Americans from becoming black no more.[3] Its racial ideology casts all of us in an ongoing national drama, an "American Dilemma."[4]

A significant part of this drama is acted out on the streets in the context of police interactions; there is no dearth of black men in leading roles. One of my earliest performances occurred only a few months after I purchased my first car, a yellow, convertible Triumph Spitfire. My brother and I were stopped by the police while driving in Inglewood, a predominantly black neighborhood in Los Angeles.

After we were forced to exit the car and sit on the pavement, I questioned whether we had done anything wrong: "We have a right to know, don't we? We're not criminals after all." Today I might have acted differently, less defi-

antly, but my strange career with race within the racial borders of America had only just begun. It had not occurred to me that my encounter with these officers was potentially life threatening. This was one of my many racial blind spots. Eventually, I would develop my second sight.

The officer discerned that I was not American. Presumably, my accent provided the clue, but my lack of racial etiquette—mouthing off to white police officers in a "high crime" area in the middle of the night—might also have suggested that I was an outsider with respect to the racial dynamics of police encounters, that I had not internalized the racial survival strategy of performing obedience for the police.[5]

The officer looked at my brother and me, seemingly puzzled. He needed more information to racially process us, to make sense of what he might have experienced as a moment of racial incongruity—that we were not quite not black. While there was no disjuncture between the phenotypic cues for black identity and how we *looked*, our *performance* of blackness could have created a racial indeterminacy problem that had to be fixed. The officer could see—with his inner eyes[6]—that we had the souls of black folk.[7] He simply needed to confirm our racial stock so that he could freely trade on our blackness.

"Where are you guys from?"

"The U.K."

"The what?"

"England."

"You were born in England?"

"Yes."

We were still strange fruit.[8] Our racial identity had to be grounded.

"Where are your parents from?"

"The West Indies."

At last, we were racially intelligible. Our English identity had been dislocated—falsified—or at least buried among our diasporic roots. Black was our country.

"How long has he been in America?" the officer wanted to know, pointing at me.

"About a year," my brother responded.

"Well, tell him that if he doesn't want to find himself in jail, he should shut the fuck up."

The history of racial violence in his words existentially moved us.[9] We were now squarely within a subregion of the borders of American blackness. Unwillingly, we were participating in a naturalization ceremony within which our submission to authority both reflected and reproduced black American

racial subjectivity. We were being pushed and pulled through the racial body of America to be born again. A new motherland awaited us. Eventually we would belong to her. Her racial burden was to make us naturalized sons.[10]

And naturalized sons we became. Other police interactions facilitated this Americanization. They, too, helped to integrate us into an American black identity. I recount one more episode here.

My brothers and my brother-in-law had just arrived from England. On our way from the airport, we stopped at my sister's apartment, which was in a predominantly white neighborhood.

After letting us in, my sister left to do some errands. One of my brothers went into the kitchen to make tea. When the kettle continued whistling, and my brother did not respond to our calls to turn it off, my other brother went to see what was going on. Finally the whistling stopped, but neither of my brothers returned. My brother-in-law and I were convinced that my brothers were engaged in some sort of prank. Together, we went into the kitchen. At the door were two police officers. Guns drawn, they instructed us to exit the apartment. With our hands in the air, we did so.

Outside, both of my brothers were pinned against the wall: at gunpoint. There were eight officers. Each was visibly edgy, nervous, and apprehensive. Passersby comfortably engaged in conspicuous racial consumption. The racial product was a familiar public spectacle: white law enforcement officers disciplining black men. The currency of their stares purchased for them precisely what it took away from us: race pleasure and a sense of racial comfort and safety. This racial dialectic is a natural part of, and helps to sustain, America's racial economy, an economy within which racial bodies are differentially valued, made into property, and invested with social meaning. No doubt, our policed presence confirmed what the onlooking racial interpellators already "knew": that we were criminals.

"What's going on?," my brother-in-law inquired. The officer responded that they had received a call from a neighbor that several black men had entered an apartment with guns.

"Do you have any drugs?"

"Of course not. Look, this is a mistake." The officers (white men) did not believe us (would not listen). We were trapped inside their racial imagination. Our only escape was to prove that, in a social meaning sense, we were not what, phenotypically, quite obviously we were: black. Our look—or, in Fanonian terms, *the* look—was unmistakable.[11]

"May we search the apartment?"

"Sure," my brother in-law "consented." "Whatever it takes to get this over."

Two officers entered the apartment. After about two minutes, they came out shaking their heads, presumably signaling that they were not at a crime scene. Based on bad information—information that was *presumed* to be good—they had made an error.

"Sometimes these things happen." Sometimes? The "things" to which the officers referred happen all the time. Indeed, they have a name: the color line. We were its problem. There was no mystique about that.[12]

"Look, we're really sorry about this, but when we get a call that there are [black] men with guns, we take it quite seriously. Again, we really are sorry for the inconvenience." With that racial excuse, they departed. Our privacy had been invaded, we experienced a loss of dignity, and our race had been established—once more—as a crime of identity.

But that was our law enforcement cross to bear. In other words, the police were simply doing their job: acting on racial intelligence. And we were simply shouldering our racial burden: responding to the racial prerequisite that we prove our noncriminality. The borders of the color line had been protected. Entry had been simultaneously denied and granted. We were being included in one American experience (police harassment) and excluded from another (police protection). We had participated in a naturalization ceremony whose purpose was to make us a particular kind of American subject.

We went inside, drank our tea, and didn't talk much about what had transpired. Perhaps we were too shocked. Perhaps we needed time to recover our dignity, to repossess our bodies. Perhaps we knew that the incident was part of a broader social process to welcome us to and include us in America. Perhaps we understood that we were already Americans, that our race had naturalized us.

We relayed the incident to my sister. She was furious. "Bloody bastards!" She lodged a complaint with the Beverly Hills Police Department. She called the local paper. She contacted the NAACP. "No, nobody was shot." "No, they were not physically abused." "Yes, I suppose everyone is alright." Of course, nothing became of her complaints. After all, the police were "protecting and serving." We, like other blacks in America, were necessary casualties of the war against crime. Eventually, we would learn that we were impossible witnesses to police abuse, that within the racial borders of the United States, policed black identity is a national and natural resource—an American reserve that can be mined to fuel our anxieties about race, place, and crime.[13]

Introduction

Much of the literature on race and naturalization laws has as its point of departure Ian Haney López's extremely important book *White by Law*.[14] In it,

López explicates and theorizes the so-called prerequisite cases, cases that reveal the racial terms upon which courts granted American citizenship. What interests López is both the fact that whiteness operated as a prerequisite in naturalization jurisprudence and the shifting ways in which it did so—moving back and forth, according to López, between justifications based on science and justifications based on common sense. In large part, López's project is to answer, among other questions, the following: "How did the courts define who was white? What reasons did they offer, and what do those rationales tell us about the nature of whiteness? What do the cases reveal about the legal construction of race? . . . Do these cases afford insights into white racial identity as it exists today? What, finally, *is* white?"[15]

Yet there is another question one might ask about the prerequisite cases, the answer to which theoretically underwrites this essay: How precisely is naturalization operating within these cases? The dominant answer to this question is that naturalization operates in the prerequisite cases largely to deny American citizenship to people the courts construct as nonwhite.[16] That answer is certainly right, but it is based on a formal and doctrinal understanding of naturalization—namely, that it is a process through which a person becomes an American citizen.

However, more is going on in the prerequisite cases than race-based denials of citizenship. In these cases, courts naturalize (rather than simply construct) whiteness itself. The prerequisite cases are significant not only because they reveal the racial terms upon which people became (and sometimes unbecame) white by law; they are significant as well because they naturalized whiteness as the normative identity for citizenship. In the prerequisite cases, law establishes whiteness as American identity, and racism facilitates this naturalization.

Reading the prerequisite cases in this way broadens our understanding of naturalization. More particularly, this reading helps us to conceive of naturalization not simply as a formal process that produces American citizenship but also as a social process that produces American racial identities. Under this view of naturalization, Americanization and racial formation are not oppositional. They go hand in hand. It is precisely this relationship between Americanization and racial identity formation that is the subject of this essay.[17]

More specifically, I advance three broad claims: first, that racism is a naturalization process through which people become Americans; second, that historically the law has structured (though not exhausted) the racial terms of this naturalization; and third, that racial naturalization is simultaneously a process of exclusion and inclusion. Underwriting these claims is a distinction between American identity, on the one hand, and American citizenship, on the other. American citizenship here means formal citizenship, or citizenship as legal

status.[18] American identity means the capacity, as a racial subject, to be a representative body—figuratively and materially—for the nation. Historically, Asian Americans, even those with formal American citizenship, have lacked this representational capacity.[19] By and large, Asian Americans have experienced a kind of national identity displacement or racial extraterritorialization.

Disaggregating American citizenship from American identity reveals that American identity does not require American citizenship, and that American citizenship does not guarantee American identity. Citizenship is neither a necessary nor sufficient condition for American identity, and American identity is neither a necessary nor sufficient condition for citizenship. Thus, one can be included in the category of people with American citizenship and be excluded from the category of people perceived to have an American identity. Racial naturalization produces these inclusions and exclusions. Consider, for example, the internment of people of Japanese ancestry during World War II. While most of the people the government interned were *included* in the category of formal citizenship, they were *excluded* from the category of American identity. Notwithstanding their formal citizenship status, they were perceived to be foreigners. One can think of Japanese Americans in this context as citizen aliens (as distinct from illegal aliens), a status that is forged at the interstices of an inclusive exclusion: inclusion in American citizenship and exclusion from American identity.

In a sense, my aim is to elaborate the foregoing example to demonstrate more generally how racial naturalization produces inclusionary forms of exclusion. This demonstration undermines the dominance of two sets of equivalencies: (1) the inclusion-equality equivalency (or the notion that inclusion and equality go hand in hand) and (2) the exclusion-inequality equivalency (or the notion that exclusion and inequality go hand in hand). One might reasonably read this intervention as broadening and racializing Giorgio Agamben's notion of "bare life." Agamben writes that

> the protagonist . . . is bare life, that is, the life of *homo sacer* (sacred man), who *may be killed and yet not sacrificed*, and whose essential function in modern politics we intend to assert. An obscure figure of archaic Roman law, in which human life is included in the juridical order . . . solely in the form of its exclusion (that is, of its capacity to be killed), has thus offered the key by which not only the sacred texts of sovereignty but also the very codes of political power will unveil their mysteries.[20]

Implicit in Agamben's conception of bare life is the notion that inclusion can be a social vehicle for exclusion and that inclusive exclusions can have constitutive power. This understanding allows us to conceive of blackness it-

self as a form of bare life. Simply put, the notion is this: blackness has often been included in the juridical order solely in the form of its exclusion (that is, its capacity to be subordinated). This inclusive exclusion historically has positioned black people both inside and outside America's national imagination—as a matter of law, politics, and social life. Blackness, in this sense, might be thought of as an insular identity; like Puerto Rico, blackness is foreign in a domestic sense. This racial liminality—outside and inside the borders of the American body, not quite not American—is precisely what I enlist the term *racial naturalization* to convey. To borrow from Gloria Anzaldúa, racial naturalization produces a borderlands space within which "you are at home, a stranger."[21]

As will become clear, the foregoing claims eschew the rubric of second-class citizenship. By and large, the literature on second-class citizenship understands this status to be constituted by (a) the acquisition of the legal or formal rights of citizenship (such as the right to vote) and (b) economic and social inequality. Thus, in the context of Jim Crow, both black Americans and Japanese Americans were second-class citizens; while both groups had acquired formal citizenship, or citizenship as legal status, neither group had achieved social equality.

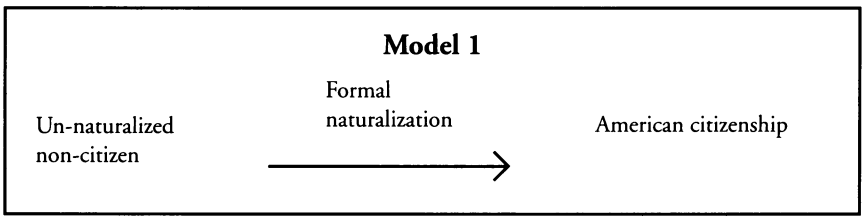
This essay avoids the language of second-class citizenship because the process of naturalization it describes does not necessarily culminate in, and is not exhausted by the acquisition of, formal citizenship status.[22] In short, one need not be an American citizen to racially belong to America. To racially belong to America as a nonwhite is to experience racial inequality. To become an American citizen is often to cross the border into, not outside of, this racial inequality.

The above claim is not intended to suggest that people of color experience only racism in America. Nor is the argument that the American national identity is constituted only by racism. Because significant racial progress has been made in the United States, the weight of racism on our national identity, and in the lives of people of color, has significantly diminished. Still, racism persists in the United States—rarely in its Jim Crow iteration, to be sure—but the practice persists nonetheless. Examining the relationship between racism and Americanization helps to explain why—namely, that racism not only divides us as Americans; it also binds us as a nation in a multiracial hierarchy.

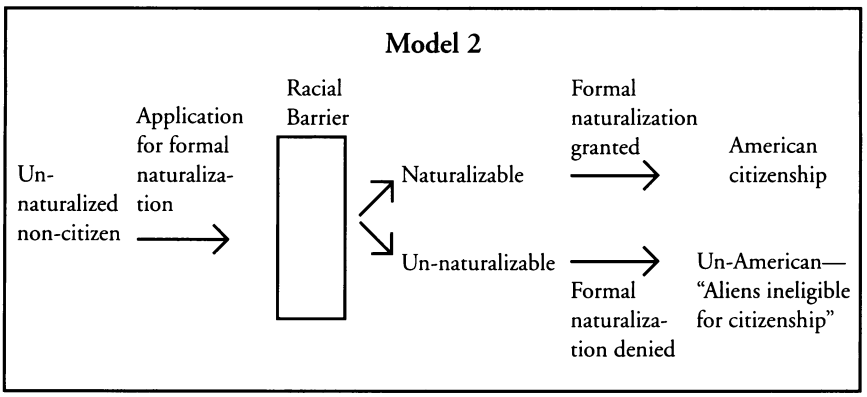
Models of Naturalization

Studies of naturalization principally appear in three forms, each of which is situated within an immigration framework that conceives of naturalization as

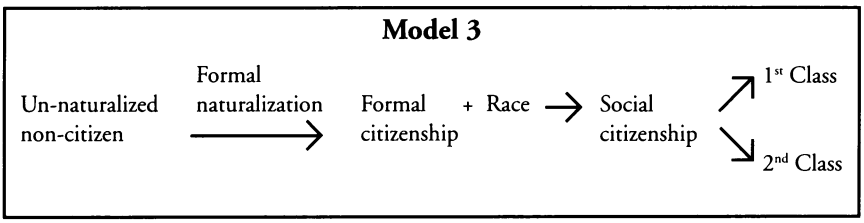
a formal legal process through which a noncitizen acquires American citizenship. This framework conflates American citizenship and American identity, obscuring the role racism plays in producing and sustaining both. Instead, we should understand racism itself as a naturalizing phenomenon.



The first model of naturalization is perhaps both the simplest and the one with the most ideological currency. The basic idea is this: the immigrant moves from unnaturalized noncitizen to American citizen by a formal and bureaucratic naturalization process. Significant in this model is the fact that American identity and citizenship are inextricably linked. In other words, under this model, American identity does not exist outside of citizenship, and citizenship necessarily carries within it an American identity. The conflation of citizenship and American identity signifies both social inclusion and legal status. That is, under Model 1, becoming an American citizen effectuates a move not only from noncitizen to citizen, a transition that confers rights, privileges, and responsibilities. Becoming an American citizen also effectuates a move from outsider (or social exclusion) to insider (or social inclusion), a transition that, according to this model, confers the possibility, if not guarantee, of equality in social position and economic status.



The second model exposes the racial legacy of naturalization. More particularly, it reveals that, historically, the legal borders of naturalization have been racialized. This racialization created two trajectories: the naturalizable trajectory and the unnaturalizable trajectory. The former became American citizens, the latter became un-American—more exactly, "aliens ineligible for citizenship." This is precisely the story of Asian naturalization. Racial naturalization laws moved Asian immigrants from unnaturalized noncitizens to unnaturalizable noncitizens. The juridical and ideological effect of this move was the production of all people of Asian ancestry as presumptively foreign and thus un-American.[23] In other words, as a result of racial naturalization laws, people of Asian ancestry became un-American by law. This status helped to create the social and legal conditions of possibility for the internment of Japanese Americans.



The third model lays naturalization onto broader social processes of race. The basic aim of this model is to demonstrate that race is implicated in naturalization not only as a prerequisite—that is, as a basis for determining who gets to become an American citizen. Race also determines the kind of American citizenship status one occupies. Under this model, everyone who is naturalized acquires formal citizenship, a status that confers a set of rights and privileges—for example, the right to vote. According to this model, formal citizenship interacts with race to produce social citizenship, a status that attempts to track the social conditions—economic, political, educational—of people's lives. The model delineates two categories of social citizenship: first class and second class. The former signifies a privileged social position in society, the latter a marginal position. The fundamental idea this model conveys is that naturalization occurs in a racial context, and this context shapes how citizenship is experienced. To make the point more concretely, while a white Frenchman and a black Ethiopian would, under formal citizenship, have the same formal rights and privileges, they would not necessarily have the same social citizenship.

While each of the foregoing models is useful, none invites us to think about the relationship between race and naturalization *outside of* a formal immigration process. Model 1 ignores race altogether and presents a race-neutral picture of naturalization. Model 2's engagement with race is historical, and the analysis is situated solely within the context of naturalization law. While Model 3 maps naturalization onto broader societal racial dynamics, that mapping does not conceive of naturalization itself as a racialization process. Under Model 3, the unnaturalized person is first naturalized into a formal citizenship status via a legal process, and then, through an entirely separate social process, racialized into a social citizenship status (first- or second-class citizenship). Central to the theory of naturalization I am offering is the notion that racialization is itself a form of naturalization and, further, that this naturalization does not require and is not exhausted by the acquisition of formal citizenship. The following diagram attempts to capture this.

	Formal citizenship	American identity	Equality
Japanese ancestry/Internment	YES	NO	NO
Black slave identity	NO	YES	NO
Contemporary black identity	YES	YES	NO

The diagram delineates three identity categories: Japanese ancestry identity in the context of internment, black identity in the context of slavery, and contemporary black identity. The diagram then pursues three questions with respect to each: whether holders of the identity (1) acquired formal citizenship status, (2) were intelligible as Americans, that is, had the capacity as a racialized body to represent the nation, and (3) experienced social equality. While many (though not all) people of Japanese ancestry were in fact formal citizens in the context of internment, they were not perceived to be Americans.

A similar point can be made about blacks in the context of slavery. While slaves were not citizens, they were intelligible as Americans—more particularly, as inferior beings that belonged to America. Slavery was a kind of forced naturalization, a process in which blacks were simultaneously denationalized from Africa and domesticated to (but never fully incorporated in) America.[24] *Dred Scott* was the key case in enacting this denationalization and domestication.[25]

Roughly, *Dred Scott* held in 1856 that people of African ancestry—whether free or slave—were not, and could never become, citizens of the United States.[26] This decision, and the language the Court employed to articulate it—that "the civilized and enlightened portions of the world" considered blacks "so far

inferior, that they had no rights which the white man was bound to respect"—has earned *Dred Scott* an anticanonical status.[27] Central to the conception of *Dred Scott* as an anticanonical case is the notion that Justice Taney's opinion represents an extreme example of racial exclusion. Indeed, because of the racially subordinating positions the Court stakes out, Christopher Eisgruber suggests that the case is "almost certainly the worst judicial ruling in American constitutional history."[28] Yet precisely why this is so remains to be fully articulated. *Dred Scott* is problematic not only because it excludes people of African ancestry (from citizenship) but also because it includes them (as American [property]).[29] *Dred Scott*'s inclusive exclusion establishes legal and normative precedent for the conception of African Americans as foreign in a domestic sense.

The specific phrase "foreign in a domestic sense" comes from Justice White's concurrence in *Downes v. Bidwell*, one of the Insular Cases that characterized Puerto Rico as neither foreign nor a part of the United States.[30] According to Justice White,

> while in an international sense Porto Rico was not a foreign country, since it was subject to the sovereignty of and was owned by the United States, it was foreign to the United States in a domestic sense, because the island had not been incorporated into the United States, but was merely appurtenant thereto as a possession.[31]

In the context of slavery, blacks were similarly positioned vis-à-vis the nation-state. That is, under slavery, blacks were "subject to the sovereignty of and . . . [were] owned by the United States." Moreover, with respect to citizenship, blacks had "not been incorporated into the United States, but . . . [were] merely appurtenant thereto as a possession." This is the manner in which slaves were "foreign in a domestic sense" or American aliens. The following brief discussion of *Dred Scott* makes this liminal status more apparent. Consider the two interrelated claims upon which Justice Taney builds his argument that blacks were not (and could never become) citizens of the United States. Claim 1: People of African ancestry are not, strictly speaking, foreigners. Perhaps the clearest manifestation of this idea is Justice Taney's juxtaposition of slaves with Indians. According to Taney, the situation of this population [African slaves] was altogether unlike that of the Indian race. The latter, it is true, formed no part of the colonial communities, and never amalgamated with them in social connections or in government. But although they were uncivilized, they were yet a free and independent people, associated together in nations or tribes, and governed by their own laws.[32]

In further distinguishing the Indians, the Court explains that the nation treated Indians as foreign governments, "as much so as if an ocean had separated the red man from the white . . . [T]he people who compose these Indian political communities have always been treated as foreigners not living under our government."[33] Taney extraterritorializes Indians (people who were actually here) and intraterritorializes blacks (people who had in fact been separated from white inhabitants by an ocean). Taney invites us to conclude that, unlike Indians, blacks were *not* foreigners; they "were living under our government" as a subordinate class.[34]

And one gets the sense that Taney does indeed conceive of slave identity as a kind of American class status, a status that was defined by complete domination. Implicit in his opinion is the notion that the American identity or class position of blacks was co-extensive with their involuntary servitude. The terms upon which they were included in the United States constituted the very terms of their exclusion. Thus, while people of African ancestry "had no rights which the white man was bound to respect"[35] (signaling their exclusion), "the African race . . . born in the country, did owe allegiance to the government" (signaling a kind of inclusion).[36] Slavery both denationalized blacks from Africa and Americanized them. The notion that blacks might belong to Africa—owe allegiance to one of *its* nations—is completely unintelligible in Justice Taney's opinion. As Neil Gotanda puts it, "The social categorization and hence social identity of the former slaves was not Yoruba, Hausa, or even African, but Negro or black."[37] Anthony Farley makes a similar point, observing that the middle passage was an experience in which "all manner of nations went into the wombs of those terrible ships to be born again 'as blacks' after a transatlantic labor-of-hate."[38] Part of the discursive violence of *Dred Scott* is the ease with which it eliminates the African identity of slaves. "No one of that race had ever migrated to the United States voluntarily; all of them had been brought here as articles of merchandise."[39] Taney's suggestion seems to be that the involuntary nature of slavery and its racial exclusivity is precisely what provided people of African ancestry their American identity—that is to say, naturalized them. Understood in this way, people of African ancestry became American via slavery. Slavery substantially diminished, if not eliminated, the formal status of Africans as foreigners.

Claim 2: While people of African ancestry are not, strictly speaking, foreigners, nor are they citizens—"constituent members of this sovereignty."[40] According to Taney, people of African ancestry "are not included, and were not intended to be included, under the word 'citizens' in the Constitution."[41] Informing Taney's reasoning, once again, are the twin notions of black inferi-

ority and subordination. Taney argues that at the time the Constitution was written, blacks were "considered as a subordinate and inferior class of being . . ., who had been subjugated by the dominant race, and whether emancipated or not, yet remained subject to their authority, and had no rights or privileges but such as those who held the power and the government might choose to grant them."[42] For Taney, black inferiority and subordination precluded blacks from being citizens.

Read together, the foregoing two claims demonstrate that, for Taney, blacks were neither foreigners nor citizens. The Court recognizes that slaves were from somewhere else, but the terms upon which they came to the United States eliminated any prior national belonging and created a new one: slave status within the American nation-state. In this sense, African people's rebirth as slaves did not render them stateless. Slaves existed within, not outside of, the boundaries of America's national identity. Indeed, as Taney makes clear, slaves owed allegiance to and were subjects of the United States. Slaves had a place—a social position—in the political and constitutional order of the nation.[43] They were nonforeign-noncitizen—a status that had at least marginal (re)cognizability as an American identity. Not from "here" (America), not, for purposes of constitutional law, foreign, and with no claim to "there" (Africa), slaves were not quite not American, not quite not foreign; they were foreign in a domestic sense.[44]

If slavery inaugurated the inclusive exclusion that characterizes the Americanization of black people, the legacy of slavery perpetuates it. In fact, neither the granting of formal citizenship to blacks nor the eradication of Jim Crow has eliminated the constitutive role racism plays in naturalizing black people into their subordinate American identities. To put the point more directly, inclusion in the category of formal citizenship has not meant exclusion from racial inequality. Notwithstanding the doctrinal death of *Dred Scott* and the repudiation of *Plessy* (a case I discuss more fully below), the social intelligibility of African Americans as Americans remains directly linked to racial subordination. Indeed, almost 150 years after *Dred Scott*, black people still become Americans through (not in spite of) racism. Because of racism, black people, even today, express some iteration of what Zora Neale Hurston expressed many years ago: "I remember the very day that I became colored."[45] In remembering her social birth as an American Negro, Hurston is remembering her racial naturalization.

Dred Scott usefully demonstrates why we might conceptualize racism as a naturalization process. I want to more fully explain why this conceptualization is productive. To do so, I offer a simple definition of racial naturalization and then broaden it to distinguish between de jure and de facto racial naturalization.

De Jure and De Facto Racial Naturalization

A simple definition of naturalization is that it is the process through which people become American. If it is understood that part of becoming American is being forced into a particular racial identity and developing an epistemology about race, then racial naturalization is a process or experience in which that identity formation and knowledge production occurs. To put the point slightly differently, racial naturalization is what produces and renders intelligible race-based American identities. How the Irish became white is a story about racial naturalization; and the representational moves from African to slave to Negro to colored, and so on, are moves effectuated by racial naturalization. They are moves within the borders of American identity, moves that Americanized black people. This is the sense in which the experience of racism is a naturalizing one. It socializes people to become, and understand themselves as, American via their experiences with race. While there is a vast literature delineating how racism prevents people from becoming American, little attention has been paid to how racism *makes* people American. My hope is that the examples of racial naturalization I offer below will further our understanding of this latter phenomenon.

Broadly speaking, there are two forms of racial naturalization: de jure racial naturalization and de facto racial naturalization. Both forms, operating independently and collaboratively, produce, normalize, and render (re)cognizable race-based American identities. I discuss each form in turn.

De Jure Racial Naturalization

De jure racial naturalization occurs when race is intentionally and explicitly used to establish an American identity. Jim Crow politics and law reflect this. Consider, for example, *Plessy v. Ferguson*, in which, roughly, the Supreme Court declares racial segregation constitutional.[46] This case is most commonly understood as excluding blacks from American identity. My suggestion here, however, is that the case can also be conceptualized as a case about inclusion, and more specifically about inclusion in an American identity. Significantly, there is no dispute in the case about the status of blacks either as Americans or as citizens. The Fourteenth Amendment took care of the latter, overruling *Dred Scott* and declaring that "all persons born or naturalized in the United States . . . are citizens of the United States."[47]

Nowhere in the *Plessy* opinion does its author, Justice Brown, suggest that blacks are un-American. At all times in Justice Brown's opinion, blacks are intelligible as Americans. Indeed, the juridical effect of Justice Brown's analy-

sis is the naturalization of blacks into an American identity—that is, the racial position they will occupy *as Americans*. According to Justice Brown, the Fourteenth Amendment "could not have been intended to abolish distinctions based upon color, or to enforce social . . . equality, or a commingling of the two races upon terms unsatisfactory to either."[48] For Justice Brown, segregation is a constitutive part of the American identity, and black people reside within, not outside of, the boundaries of this racial body.

Even Justice Harlan's *Plessy* dissent, which argues that racial segregation is unconstitutional, reflects formal racial naturalization. Consider the following two passages from this dissent.

Passage 1:

> The white race deems itself to be the dominant race in this country. And so it is, in prestige, in achievements, in education, in wealth, and in power. So, I doubt not that it will continue to be for all time, if it remains true to its great heritage.[49]

When reading this passage, one has to remind oneself that Justice Harlan is arguing against, not for, racial segregation. The significance of the passage for our purpose is that it advances the idea that "for all time" black American identity will be subordinate to white American identity. While in Harlan's view, the law should be employed neither to separate the races nor to create a dominant race, he is comfortable with a society in which there is both racial segregation and racial dominance.

In the above passage and elsewhere, Harlan goes out of his way to make clear that eliminating racial segregation as a matter of law would not lead to substantive equality for blacks as a matter of social fact. "For social equality no more exists between two races when traveling in a passenger coach or a public highway than when members of the same races sit by each other in a street car."[50] Like Justice Brown's majority opinion, Justice Harlan's dissent naturalizes black people into a subordinate but cognizable American identity. For Justice Brown, this naturalization may occur as a matter of formal law; for Justice Harlan, it should occur only as a matter of private social practice. In both opinions, then, blacks are recognized and recognizable as both citizens and Americans, and this racial recognition presupposes black marginalization.

Consider now Passage 2:

> There is a race so different from our own that we do not permit those belonging to it to become citizens of the United States. Persons belonging to it are, with few exceptions, absolutely excluded from our country. I allude to the Chinese race. But by the statute in question a Chinaman can ride in the same passenger coach with white citizens of the United States.[51]

One could read this passage as being concerned only with citizenship. But I want to suggest that it is not only citizenship that is being denied here, but also access to an American identity. People of Chinese ancestry are "so different from our own" that they cannot, even as a subordinate group, comfortably fit within the borders of the American body.

Justice Harlan's representation of the Chinese as unalterably different in his *Plessy* dissent rehearsed a position he would stake out two years later in *United States v. Wong Kim Ark*.[52] The question in that case was whether the Citizenship Clause of the Fourteenth Amendment applied to persons of Chinese ancestry. In a sense, the issue was about naturalization. Prior to the ratification of the Fourteenth Amendment, blacks were not citizens of the United States. The Fourteenth Amendment naturalized them. (The more standard articulation is that the Fourteenth Amendment conferred citizenship.) The question for the Court was whether the amendment similarly naturalized people of Asian ancestry born in the United States. The Court answered the question in the affirmative, and Justice Harlan (joining the opinion of Justice Fuller) dissented.[53] For our purposes, two aspects of this dissent are significant.

First, the dissent clearly understands the Fourteenth Amendment as a naturalization amendment. According to the dissent:

> In providing that persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens, the 14th Amendment undoubtedly had particular reference to securing citizenship to the members of the colored race, whose servile status had been obliterated by the 13th Amendment, and who had been born in the United States, but were not and never had been subject to any foreign power. *They were not aliens (and even if they could be so regarded, this* [the Fourteenth Amendment] *operated as a collective naturalization)*, and their political status could not be affected by any change of the laws for the naturalization of individuals.[54]

The passage rehearses a conception of slaves that Justice Taney articulated in *Dred Scott*: in the context of slavery blacks occupied a liminal status, neither citizen nor alien. The Fourteenth Amendment naturalized them.

The second significant aspect of the dissent is its discourse about the Chinese. The dissent reproduces Chinese subalternity as unalterably different, noting what it perceived to be the serious social problems that could arise from "large numbers of Chinese laborers, of a distinct race and religion, remaining strangers in the land, residing apart by themselves, tenaciously adhering to the customs and usages of their own country, unfamiliar with our institutions, and apparently incapable of assimilating with our people."[55] The dissent is not simply denying citizenship here; it is denying any claim people

of Chinese ancestry might make to an American identity. Unlike blacks, the Chinese did not have the liminal status of domestic foreigners, a status that can be disaggregated from and has intelligibility outside of formal citizenship. Indeed, in neither the *Plessy* dissent nor the *Wong Kim Ark* dissent are people of Chinese ancestry perceived to be domestic in any sense at all. Both dissents produce the Chinese as utterly and completely foreign and alien—not simply noncitizen, but also non-American. Moreover, in both dissents, the seeds for this racial production are sown in a juridical field that naturalizes blacks as a subordinated group with both American citizenship and American identity.

De Facto Racial Naturalization

De facto racial naturalization occurs when race is implicitly being used to establish, solidify, or sediment race-based American identities. Police interactions often perform this function. Consider, for example, the so-called stop-and-frisk practice. Consistent with Fourth Amendment law, police officers may stop and subject to questioning any person about whom they have "reasonable suspicion" to believe to be engaged in criminality.[56] Further, officers may frisk any person about whom they have reasonable suspicion to believe is armed and dangerous. Lower than probable cause, reasonable suspicion is a relatively easy evidentiary burden for police officers to meet.[57] In other words, an officer will have little difficulty justifying his stop-and-frisk decisions.

Because of racial stereotypes, every time a police officer stops a black person, blackness is reestablished and consumed as a crime of identity. This is so whether or not the officer's decision to stop is informed by race. For quite apart from the officer's intentionality, people could believe that stopping African Americans makes sense given the common notion that blacks are more criminally inclined than other groups.

A similar racial logic—that black people are more dangerous than people from other racial backgrounds—sanctions the frisking of African Americans. Simultaneously, the practice of frisking entrenches this racial logic and reifies black dangerousness: black people must be dangerous given the extent to which the police frisk them.

Significantly, the stop-and-frisk representation of black people as criminal and dangerous is not just an external phenomenon in the sense that it confirms people's suspicions about, and in effect re-creates, black criminality and dangerousness. There is an internal phenomenon as well. Because of the pervasive nature of stop-and-frisk, black people often experience these moments as a natural and constitutive part of their American identity. Discourses on

what it means to be both black and American almost always reference some aspect of stop-and-frisk. Rather than undermine black American identity or citizenship, then, the stop-and-frisk practice actually facilitates both. Indeed, to the extent that the deployment of stop-and-frisk against blacks is based on stereotypes, the practice renders blacks more, not less, intelligible as Americans. This is at least one sense in which stop-and-frisk is a naturalization ritual. More broadly, the practice establishes the terms and conditions upon which black people will experience their American identities and be understood as Americans.

I should be clear to point out that the naturalizing effects of police interactions are manifested not only in what police officers do but in how suspects respond. These, too, are moments in Americanization. Part of becoming a black American is being socialized into performing obedience for the police. In their book *The Race Trap: Smart Strategies for Effective Racial Communication in Business and in Life*, Robert L. Johnson and Steven Simring offer the following obedience strategies for black people who are stopped by the police:

> * Don't argue the Fourth Amendment . . . [A]t the point you are stopped it is important to maintain control of your emotions and your behavior.
> * Don't be sarcastic or condescending to the officer. Always be cooperative and polite.
> * Don't display anger—even if it's justified.[58]

Presumably, everyone feels some pressure to be polite and courteous in the context of police encounters. Presumably, everyone employs technologies of the self. Each of us negotiates the pressures of governmentality. But for blacks, the pressure to be polite, and the self-discipline and self-regulation it engenders, is often experienced as a survival strategy. The reason relates to stereotypes. To the extent that blacks are perceived to be criminal and dangerous and that both of these perceptions invite police surveillance and control, there is an incentive for blacks to direct their performance of obedience toward disconfirming or negating stereotypes.

One way blacks may attempt to negate or disconfirm stereotypes is to consent to more police searches than they otherwise would. If, for example, Toney, a black man, consents to the search of his person and the search yields nothing, Toney may believe that he has demonstrated that he is not criminal, disconfirming or negating the stereotype that he is. Another strategy Toney might employ is to respond to questions such as "Where are you going?" "Where are you coming from?" and "What are you doing in this part of town?" under circumstances in which, as a matter of formal law, he is not required to do so.

Toney may believe that answering questions of the foregoing sort sends a clear signal that he has nothing to hide, that he is not in fact "up to no good."[59]

One can think of stereotype-negation strategies in the Marxian sense as a kind of surplus compliance. Surplus compliance is productive ("surplus") not only in the social sense of helping to make the stop play out smoothly; it is productive in an affective sense as well, creating a sense of comfort, ease, and naturalness to the stop. More generally, surplus compliance is naturalizing in that it reflects and reproduces a "normal" way of being American and a "normal" understanding of a particular American identity. From the perspective of the police, black people are supposed to perform surplus compliance; it is "natural" (sometimes articulated as "rational") to expect them to do so. From the perspective of black people, surplus compliance is a constitutive part of their American lives—an existential "what is." The Americanizing economy of police interactions not only creates the racial demand for and supply of surplus compliance, but it profits from the production of this racial obedience.

Conclusion

My argument has been that American identity and American citizenship do not necessarily go hand in hand, that racial naturalization constitutes both, and that racial naturalization ought to be understood as a process or experience through which people enter the imagined American community as cognizable racial subjects. Explicit in this claim is a conception of racism itself as a technology of naturalization. Indeed, it is precisely through racism that our American racial identities come into being. Put differently, racism plays a significant role in socially situating and defining us *as Americans.* Our sense of ourselves as Americans, of others as Americans, and of the nation itself, is inextricably linked to racism.

I do not mean to suggest that we are overdetermined by racism—that, as a result of racism, we have no agency. My point is simply that racism helps to determine who we are as Americans and how we fit into the social fabric of American life. Racism, in other words, is always already a part of America's social script, a script within which there are specific racial roles or identities for all of us. None of us exists outside of or is unshaped by the American culture racism helps to create and sustain.

To some extent, my conception of racial naturalization is linked to a claim Toni Morrison advances in "On the Backs of Blacks." Morrison's point of departure is a critique of Elia Kazan's critically acclaimed *America, America.* She writes:

> Fresh from Ellis Island, Stavros gets a job shining shoes at Grand Central Terminal. It is the last scene of Elia Kazan's film *America, America*, the story of a young Greek's fierce determination to immigrate to America. Quickly, but as casually as an afterthought, a young black man, also a shoe shiner, enters and tries to solicit a customer. He is run off the screen—"Get out of here! We're doing business here!"–and silently disappears.
>
> This interloper into Stavros's workplace is crucial in the mix of signs that make up the movie's happy-ending immigrant story: a job, a straw hat, an infectious smile—and a scorned black. It is the act of racial contempt that transforms this charming Greek into an entitled white. Without it, Stavros's future as an American is not at all assured.[60]

Morrison powerfully reveals the nature of Stavros's racialized journey into American identity. Indeed, the scene depicts Stavros's social rebirthing as an American—which is to say, his racial naturalization. Through the deployment of a recognizable American social practice—antiblack racism—Stavros is born again. He becomes a (white) American out of the racial body of northern racism.

Significantly, this transition in Stavros's identity does not require the acquisition of formal citizenship status. Stavros becomes a white American by social practice, not by law.[61] While formal naturalization and citizenship might never be available to Stavros, he can (and does) become racially naturalized by simply shoring up his whiteness, and positioning himself against black subalternity.

Morrison's analysis might lead one to conclude that the episode she describes figures Stavros's, but not the shoe shiner's, Americanization. My own view, however, is that the encounter naturalizes the shoe shiner as well. More than merely reflect the shoe shiner's black American identity, the encounter actually produces it. When it is kept in mind that Kazan's *America, America* takes place in the early 1900s, a period during which African American racial subordination was utterly and completely normative, it becomes clear that Stavros's displacement of the shoe shiner rehearses an American script that is both inclusive and familiar. The shoe shiner's part in this script is to experience racial subordination. Stavros's is to practice it. Both are included in the drama, and both are Americanized by it.

In this sense, Kazan's representation of the black shoe shiner reflects more than a problem of racial exclusion. It reveals what I have been calling an inclusive exclusion. Stavros's "Get out of here" includes the black shoe shiner into a recognizable American social position—that of the American Negro. This social position is in turn subordinated to Stavros's newly acquired status as a white American. In other words, Stavros's attainment of white American identity depends upon an exclusion of the black shoe shiner ("Get out of here"), and that exclusion is precisely what renders the shoe shiner intelligible as an

American. Indeed, it is through Stavros's exclusion that the shoe shiner reexperiences his American belonging.

What I am suggesting, in short, is that the scene around which Morrison frames her argument naturalizes Stavros *and* the black shoe shiner. The event assimilates both, drawing them into an American reality that both precedes and is enacted by the racial roles they perform. Morrison is only half right, then, when she asserts that "becoming [white] American is based on . . . an exclusion of me." The concept of racial naturalization disarticulates racism from exclusion. It conceives of racism as a social process that *includes* everyone, naturalizing us into different but recognizable American racial positions, both as citizens and noncitizens. None of us is excluded from this process. None of us is outside of it. None of us is left behind.

Conceiving of racial naturalization in this way has at least two benefits. First, it provides another theoretical vehicle to make the point that racism is endemic to American society, that, historically, racism has been formative of, and not simply oppositional to, American democracy.[62] Second, the concept helps to disrupt our tendency to engage in racial compartmentalism. By racial compartmentalism I mean the application of particular racial paradigms (such as immigration) to understand the racial experiences of particular racial groups (such as Latinas/os). As a result of racial compartmentalism, blacks disappear in the context of discussions about immigration law and policy, and Asian Americans disappear in the context of discussions about racial profiling.[63] Racial compartmentalism makes it possible to study *Korematsu v. United States* and never engage, or even reference, the fact that the constitutionality of Japanese American internment was litigated in the context of Jim Crow.[64] And because of racial compartmentalism, it is acceptable to study the racial failures of Reconstruction and never engage, or even acknowledge, the fact that these failures occur in the context of Chinese exclusion.[65] If, like Nikhil Pal Singh, we understand the color line as "an internal border"[66]—or, to pluralize his conception, a series of borders—it becomes more difficult for us to ignore or elide the multiracial social dynamics of inclusion and exclusion.[67]

Conceptualizing the color line as an internal border (or a series of borders) provides a way of highlighting the fact that racial identification *is* a form of documentation. How we cross the borders of the color line and where socially we end up are functions of the racial identification we carry. Perhaps not surprisingly, then, historically, racial identification (like other forms of identification) has raised evidentiary questions about falsification, standards of proof, and methods of authentication—in short, questions about the "real" and the "copy."

To the extent that we understand race as a form of identification, it becomes apparent that problems of migration (social movement across marked boundaries), documentation ("papers"/identifications), and national membership (noncitizen, citizen, American identity) do not end at the physical borders of America. These problems are a part of the broader social landscape of America. Consider this point with respect to Latinas/os. The racial identification of this group as both "illegal" and "alien" is a problem within, and not simply a problem at the physical borders of, the nation-state.[68] Thus we have the phenomenon of factory surveys, or raids of workplaces with significant representation of Latina/o employees by U.S. immigration officials. These raids, within the nation's interior, suggest that the color line operates both as a fixed checkpoint (at the physical borders of the United States) and as a roving patrol (within the interior).[69]

Problematizing the color line in terms of documentation has implications for black experiences as well. Specifically, this framing brings into sharp relief the ways in which documentation has served as an important technology for policing physical and social boundary-crossings by blacks. *Dred Scott* is a useful starting place for elaborating this point.

A little-discussed aspect of *Dred Scott* is Justice Taney's concern about the relationship between citizenship and black freedom of movement. Specifically, Taney worried that if blacks were granted citizenship,

> it would exempt them from the operation of the special laws and from the police regulations which they considered to be necessary for their own safety. It would give to persons of the negro race, who were recognized as citizens in any one State of the Union, the right to enter every other State whenever they pleased, singly or in companies, without pass or passport, and without obstruction, to sojourn there as long as they pleased, to go where they pleased at every hour of the day or night without molestation, unless they committed some violation of the law for which a white man would be punished.[70]

Justice Taney need not have worried. The conferral of citizenship to blacks did not enable black freedom of movement "without pass or passport, and without obstruction." Indeed, just last year, the Supreme Court ruled that, with no more than "reasonable suspicion" (which again is a lower evidentiary showing than probable cause) police officers may require a suspect to identify himself, and states may criminalize a suspect's failure to do so.[71] While everyone is affected by this law, African Americans are particularly vulnerable given racial assumptions about crime and criminality. Against a backdrop of racial stereotypes, the Supreme Court's pronouncement creates an incentive for police officers to both stop black people and request that they produce identifica-

tion. The cumulative effect of such requests is a reduction in black peoples' freedom to "go where they please . . . at every hour of the day or night without molestation."

There is another more general way in which documents are implicated in black people's vulnerability to police encounters. The absence of documents—a driver's license or an identification card—undermines the perceived truthfulness of a black person's claim of noncriminality or innocence. As John Torpey observes, "Identity documents reveal a massive illiberality, a presumption of their bearers' guilt when called upon to identify themselves. The use of such documents by states indicates their fundamental suspicion that people will lie when asked who or what they are."[72] Because in the context of policing this suspicion is racialized, undocumented black people have a kind of illegal identity, that of a presumptive criminal. Without papers and the background check it enables, this presumption of criminality is difficult to rebut.

None of this is to say that physical documents alone will *necessarily* be enough to prove innocence. No amount of documentation (papers) can overcome strong racial investments or the perceived authenticity of racial identity. Put another way, if we think of race as a type of "paper" worn, inscribed, or lacerated onto the body, the presumptive authenticity of *this* form of documentation, and what it reads, in terms of social meaning, will not always be undermined by more traditional forms of identification.

***

Racial naturalization is a provisional concept. It is not intended to exhaust our understanding of racial formation. Its aim is more limited: to link, rather than disaggregate, racism and Americanization, and to employ that nexus to complicate how we think about inclusion, exclusion, and American belonging.

Notes

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1. See *The New Negro: An Interpretation*, ed. Alain Locke (New York: A. and C. Boni, 1925).
2. See John Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971).
3. See George Schuyler, *Black No More: Being an Account of the Strange and Wonderful Workings of Science in the Land of the Free, A.D. 1933–1940* (Boston: Northeastern University Press, 1989).
4. See Gunnar Myrdal, *An American Dilemma: The Negro Problem and Modern Democracy* (New York: Harper & Brothers, 1944).
5. Jim Crow required blacks to perform a kind of racial etiquette for whites. A classic example is the domestic worker who implicitly understands that a racial condition of her employment is that she signal happiness (by, for example, singing or smiling) while performing her work.
6. See Ralph Waldo Ellison, *Invisible Man* (New York: Random House, 1952), 1 (referring to the "inner eye" as the "eye . . . with which they look through their physical eyes upon reality").
7. See W. E. B. DuBois, *The Souls of Black Folk: Authoritative Text, Contexts, Criticism*, ed. Henry Louis Gates and Terri Hume Oliver (1903; New York: W. W. Norton, 1999), 10.
8. Billie Holiday, *Strange Fruit* (Commodore, 1939).
9. See J. L. Austin, *How to Do Things with Words* (Oxford: Clarendon Press, 1975).
10. See Richard Wright, *Native Son* (New York: Harper & Brothers, 1940).
11. See Frantz Fanon, *Black Skin, White Masks*, trans. Charles Lam Markmann (New York: Grove Press, 1967), 113.
12. See Betty Friedan, *The Feminine Mystique* (New York: Norton, 1963).
13. This narrative, as well as the narrative articulated in the conclusion, draws heavily from and builds on an earlier work. See Devon W. Carbado, "(E)racing the Fourth Amendment" *Michigan Law Review* 100 (2002): 946.
14. Ian F. Haney López, *White by Law: The Legal Construction of Race* (New York: New York University Press, 1996).
15. López, *White by Law*, 3 (emphasis in original).
16. See John Tehranian, "Performing Whiteness: Naturalization Litigation and the Construction of Racial Identity in America," *Yale Law Journal* 109 (January 2000): 817–848.
17. See Paul Gilroy, *"There Ain't No Black in the Union Jack": The Cultural Politics of Race and Nation* (London: Hutchinson, 1987).
18. See also Linda Bosniak, "Citizenship Denationalized," *Indiana Journal of Global Legal Studies* 7 (2000): 447, 452.
19. See Leti Volpp, "The Citizen and the Terrorist," *UCLA Law Review* 49 (June 2002): 1597–98.
20. Giorgio Agamben, *Homo Sacer: Sovereign Power and Bare Life*, ed. Daniel Heller-Roazen (Stanford, Calif.: Stanford University Press, 1998), 8.
21. Gloria Anzaldúa, "To Live in the Borderlands," in *Borderlands/La Frontera: The New Mestiza* (San Francisco: Aunt Lute, 1987), 194.
22. Note that there are other reasons one might eschew the concept of second-class citizenship, including, but not limited to, the notion that the concept assumes that one can move from first- to second-class citizenship, an understanding that obscures the fact that first- and second-class citizenship are co-constitutive. The point is that one need not be an American citizen of any sort to be subject to racial naturalization; noncitizens are subject to this process as well. Nor does being a citizen necessarily bar one from the experience.
23. See Robert S. Chang, "Dreaming in Black and White: Racial-Sexual Policing in *The Birth of a Nation*, *The Cheat*, and *Who Killed Vincent Chin?*" *Asian Law Journal* 5 (May 1998): 41–61.
24. See Neil Gotanda, "Towards Repeal of Asian Exclusion: *The Magnuson Act of 1943*, *The Act of July 2, 1946*, *The Presidential Proclamation of July 4, 1946*, *The Act of August 9, 1946*, and *The Act of August 1, 1950*," in *Asian Americans and Congress: A Documentary History*, ed. Hyung-Chan Kim (Westport, Conn.: Greenwood Press, 1996), 309, 320.
25. *Dred Scott v. Sandford*, 60 U.S. 393 (1856).
26. The court also held that the federal government lacked constitutional authority to prohibit slavery in its territories. *Dred Scott*, 395–96.
27. Ibid., 407.
28. Christopher L. Eisgruber, "The Dred Scott Story: Originalism's Forgotten Past," in *Constitutional Law Stories*, ed. Michael C. Dorf (New York: Foundation Press, 2004), 151.
29. See Michael Hardt and Antonio Negri, *Empire* (Cambridge, Mass.: Harvard University Press, 2000), 171. Hardt and Negri write that "African American slaves could be neither completely included nor

entirely excluded. Black slavery was paradoxically both an exception to and a foundation of the Constitution."
30. 182 U.S. 244 (1901).
31. Ibid., 341–42 (Justice White concurring).
32. *Dred Scott v. Sanford*, 403, n. 25.
33. Ibid., 404.
34. To substantiate this point, elsewhere in the opinion the Court draws on state law to explicitly distinguish people of African ancestry from aliens. "The alien is excluded, because, being born in a foreign country, he cannot be a member of the community until he is naturalized. But why are the African race, born in the State, not permitted to share in one of the highest duties of the citizen?" Taney's answer: black people "form . . . no part of the sovereignty of the State." Ibid., 415.
35. Ibid., 407.
36. Ibid., 420.
37. Gotanda, "Towards Repeal of Asian Exclusion," 320, n. 24.
38. Anthony Paul Farley, "All Flesh Shall See It Together," *Chicano-Latino Law Review* 19 (spring 1998): 163, 167.
39. *Dred Scott v. Sanford*, 411, n. 25.
40. Ibid., 404.
41. Ibid.
42. Ibid., 404–5.
43. Several provisions of the Constitution implicate slavery.
44. For an interesting discussion of how black experiences immediately following slavery can broaden how we think about immigration and foreignness, see Kunal M. Parker, "Making Blacks Foreigners: The Legal Construction of Former Slaves in Post-Revolutionary Massachusetts," *Utah Law Review* 2001.1 (2001): 75–124.
45. Zora Neale Hurston, "How It Feels to Be Colored Me," in *"I Love Myself When I Am Laughing and Then Again When I Am Looking Mean and Impressive": A Zora Neale Hurston Reader*, ed. Alice Walker (Old Westbury, N.Y.: Feminist Press, 1979).
46. 163 U.S. 537 (1896).
47. Fourteenth Amendment, U.S. Constitution.
48. *Plessy v. Ferguson*, 544, n. 43.
49. Ibid., 559.
50. Ibid., 561.
51. Ibid. I have problematized these passages elsewhere. See Devon W. Carbado, "Race to the Bottom," *UCLA Law Review* 49 (June 2002): 1283–1312. Others have as well. See Ronald S. Sullivan Jr., "Multiple Ironies: Brown at 50," *Howard Law Journal* 47 (fall 2003): 23–57; Gabriel J. Chin, "The *Plessy* Myth: Justice Harlan and the Chinese Cases," *Iowa Law Review* 82 (October 1996): 151, 171–82; Cheryl I. Harris, "The Story of *Plessy v. Ferguson*: The Death and Resurrection of Racial Formalism," in *Constitutional Law Stories*, 181, n. 28. Each of these investigations, including my own, discusses *Plessy* along the lines of the racial exclusion thesis.
52. 169 U.S. 649 (1898).
53. Ibid., 705–32.
54. Ibid., 727 (my emphasis).
55. Ibid., 731 (citing *Fong Yue Ting v. United States*, 149 U. S. 698, 717 (1893).
56. *Terry v. Ohio*, 392 U.S. 1 (1968).
57. See Carbado, "(E)Racing the Fourth Amendment," 13.
58. Robert L. Johnson and Steven Simring, *The Race Trap: Smart Strategies for Effective Racial Communication in Business and in Life* (New York: Harper Business, 2002): 121.
59. For a complete articulation of this argument, see Carbado, "(E)racing the Fourth Amendment," 13.
60. Toni Morrison, "On the Backs of Blacks," in *Arguing Immigration: The Debate Over the Changing Face of America*, ed. Nicolaus Mills (New York: Touchstone, 1994), 97.
61. Of course, law is playing a role here. My point is that it is not a formal immigration-naturalization regime that is effectuating the shift in Stavros's identity.
62. See, generally, Derrick Bell, *And We Are Not Saved: The Elusive Quest for Racial Justice* (New York: Basic Books, 1989).

63. But see Lolita K. Buckner, "Tricky Magic: Blacks as Immigrants and the Paradox of Foreignness," *DePaul Law Review* 49 (1999): 85–137 (discussing the black experience as an immigrant experience).
64. 323 U.S. 214 (1944).
65. Erika Lee, *At America's Gates: Chinese Immigration During the Exclusion Era, 1882–1943* (Chapel Hill: University of North Carolina Press, 2003).
66. Nikhil Pal Singh, *Black Is a Country: Race and the Unfinished Struggle for Democracy* (Cambridge, Mass.: Harvard University Press, 2004).
67. See Carbado, "Race to the Bottom," n. 51.
68. I purposefully separate "illegal" and "alien" from the expression "illegal alien" to make clear that the terms have stand-alone racial signification.
69. In *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976), the Supreme Court ruled that "apparent Mexican ancestry" alone, with no other indicia of suspicion, was sufficient grounds to detain individuals at fixed checkpoints near the border. The Court distinguished this holding from its ruling the year before, in *United States v. Brignoni-Ponce*, 422 U.S. 873 (1975), that apparent Mexican ancestry alone was not sufficient justification for a "seizure" in which the officers were on a "roving patrol" for suspected violations of immigration law.
70. *Dred Scott v. Sanford*, 416–17, n. 25.
71. *Hiibel v. Sixth Judicial Dist. Court of Nevada*, Humboldt County 124 S. Ct. 2451, 2458 (2004).
72. John Torpey, *The Invention of the Passport: Surveillance, Citizenship, and the State* (Cambridge: Cambridge University Press, 2000), 166.