

THE CODIFICATION OF RACISM

Historian's Craft
(HST-300; Section 1)

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“All men are created equal.” “Equal justice under law.” “Justice is blind.” These are mottos that aid in defining the makings of the political and legal systems in the United States of America and have done so since the founding of the land as a sovereign state. However, such defining, idealistic characteristics of America, taking into consideration the colonial history of the land going into the era of sovereignty, have often been overshadowed by the reality of life in America from the Colonial Era going into the post-Colonial Era. In reality, from Colonial times going into an era of sovereignty, America was defined in large part by discriminatory, prejudicial, and racist laws that afforded unambiguous favor to Whites, particularly wealthy Whites, to the detriment of Blacks who were more akin to property than human under such laws by means of codification. How and why did racism in the Americas influence the laws that govern and have governed the people who inhabit the land? As racism is an import to the Americas from race-based systems of organizing societies and economies by European colonial powers, racism in the Americas yielded laws made to benefit lawmakers themselves and those with whom they shared social and, in particular, economic interests.

As a historiographical statement, if one were to study the history of the individuals associated with the Transatlantic Slave Trade, and the history of racism in the Americas associated with the Transatlantic Slave Trade in particular, then one would discover that such racism was born of a circulation of thought related to desires of preserving social order and especially of protecting economic interests. This reading contains a series of works cited from primary sources of the seventeenth century reflective of race and racism present at the time, juxtaposed by works cited from a book authored by historian, professor, and activist for anti-racism Ibram X. Kendi and a collection of journal articles written by various individuals as interpretations open to readers in relation to the interconnections of race, racism, slavery, society,

and economy with purposeful reference to the thoughts, beliefs, words, and actions of individuals, both the socioeconomically and, by extension, racially privileged and the socioeconomically and racially underprivileged of the time.

From the time of the founding of the United States of America as a sovereign state, there have been some particularly significant decisions made by the Supreme Court of the United States that illustrate the influence of racism on life in the land over which the Court presides. One may explore a display of division open to discovery in decisions made by the Supreme Court that granted permission for de facto segregation aside from de jure segregation. The story of racism in law in the United States can be represented in part by a number of cases ruled on by the Supreme Court that aided in creating views held in society concerning race and equality in the United States. Decisions made by the Supreme Court, certainly in the earlier days of the history of the republic represented by the same court, have certainly stood in contrast with the idea inscribed in the Declaration of Independence that “all men are created equal.” In fact, early decisions in relation to race in the United States by the Supreme Court were largely defined by racism and prejudice. In large part, such decisions associated with race were made not only with demographics in mind, with race given particular attention, but especially with economics in mind. Justices having kept economic interests in mind related to cases heard served the interests of those with racial and, by extension, socioeconomic privilege.¹ From the founding of the United States as a sovereign state, the law has served as a means of protecting the interests of a socially constructed class of elites, Whites in this case, against potential competition from a socially constructed class of non-elites, Blacks in this case. One may be familiar with the phrase “America is a nation of laws.” With this in mind, to the extent that America has been a nation of

¹ Welsh, David. 2009. “Racism and the Law: Slavery, Integration, and Modern Resegregation in America.” *Utah Law Review* 2009 (2): 479–87.

laws from the time of founding, one should keep in mind the context of such laws. When the Declaration of Independence was drafted, the idea that all are created equal and have the right to life, liberty, and the pursuit of happiness was a part of a declaration not fully enforced among all, but rather manipulated to the benefit of a privileged upper class at the expense of a lower class lacking in privilege. Race and, by extension, systems of a racialized and sociopolitical nature that enshrined racial and sociopolitical inequality have played a role in the structure of the United States from the official founding of the country.²

For a more specific case of racism and prejudice on display in the history of race in the United States, there is the case of the concept of liberty juxtaposed with the enforcement of the bondage of Blacks in Georgia from the Colonial Era. From this era, there was a contention in which British colonists believed, in a contrarian sort of manner, that both liberty and slavery played significant and essential roles to the ability of British America to function and the ability of Colonial Georgia to function, in particular. Perhaps the concepts of liberty and slavery being juxtaposed at the time could be better understood with select adjectives preceding the words “liberty” and “slavery.” In other words, WHITE liberty could not be achieved absent of BLACK slavery. In seventeenth-century Colonial America, those of the economic means to employ White indentured servants for labor grew concerned over issues related to such servants. Former servants encountered difficulty in the potential to acquire land of their own. By contrast, they found themselves pushed out toward the frontier or simply landless and virtually penniless. This new underclass in society of White male paupers posed a threat to the established order at the time. As a response, those of the economic means to do so turned from White indentured

² Coates, Rodney D. "Law and the Cultural Production of Race and Racialized Systems of Oppression: PROD." *The American Behavioral Scientist* 47, no. 3 (11, 2003): 329-351.

servants to African slaves for labor. The presence of slaves changed the social order, drawing a dividing line based on race and creating an imperfect but noteworthy sense of unity among different classes of Whites based on their shared status of freedom paired against the absence of freedom for Blacks relegated to bondage born largely of a desire for economic stability.³ Not completely unrelated to the reality of the history of racism in America, in the eighteenth-century, Thomas Jefferson wrote the Declaration of Independence, including a passage that served as an attack on slavery in his original draft of the Declaration. Jefferson blamed his removal of the passage from his final draft of the Declaration on delegates from South Carolina and Georgia who had a desire to maintain both social and economic order in their jurisdictions. However, blame was also assigned by Jefferson to delegates from the North who represented merchants actively involved in the Transatlantic Slave Trade at the time. In writing that “all men are created equal” and that every person has a right to “life, liberty, and the pursuit of happiness,” Jefferson appeared to have made exceptions in the interests of preserving social stability and, in particular, economic stability.⁴

Concerning race in the United States, Colonial Virginia in this case, the laws that governed Blacks as slaves were not owed to racism; rather racism was the effect of such laws. Given that slavery served a largely economic purpose, in Colonial Virginia, what would have been established as an institution primarily for economic purposes would, by extension, assume a secondary role as establishing a part of a social order.⁵ Nevertheless, race, and racism by extension, were not “ultimate realities.” Rather, race and racism were employed as guises for

³ Lannen, Andrew C. 2017. “Liberty and Slavery in Colonial America: The Case of Georgia, 1732-1770.” *Historian* 79 (1): 32–55.

⁴ The Deleted Passage of the Declaration of Independence

⁵ Vaughan, Alden T. “The Origins Debate: Slavery and Racism in Seventeenth-Century Virginia.” *The Virginia Magazine of History and Biography* 97, no. 3 (1989): 140.

other, generally economic, interests. In Colonial Virginia in the seventeenth century, Africans were not immediately singled out for purposes of bondage. Africans, more or less, were relegated to status akin to English indentured servants. Only under pressure from the environmental realities of the New World did Africans eventually become associated with being relegated to the roles of slaves.⁶ As a sovereign state formerly colonized by Great Britain, America saw religion play a significant role in the lives of elites born of influence from Great Britain and founders of the United States. Individuals in positions of power made laws that governed people in society based on race, and the same individuals of influence attempted to justify the reasoning behind such laws based on religion. The codification of racism in America, both in the Colonial and post-Colonial Eras, was not absent of the employment of religion. In fact, religion served as a gift to be manipulated by lawmakers to craft racist policies. One could look to eighteenth-century rhetoric concerning what were perceived as differences based on race that influenced the attitudes of Protestants toward the religious salvation of Blacks. The idea that a resurrected body could be Black would have been considered impossible at the time. The time included an underlying belief in a status of subordination for Christians of color in mortal life. Such an inferior view of people of color at the time, specifically Blacks, was front and center in the making of laws now defined by prejudice and now studied as having displayed evidence of being crafted not so much in the interests of the Almighty Creator but in interests related to preserving the social order of the time and very much in interests related to protecting the almighty dollars of elites.⁷

⁶ Campbell, James, and James Oakes. Review of *The Invention of Race: Rereading White Over Black*, by Winthrop Jordan. *Reviews in American History* 21, no. 1 (1993): 172–83.

⁷ TRIGG, CHRISTOPHER. “The Racial Politics of Resurrection in the Eighteenth-Century Atlantic World.” *Early American Literature* 55, no. 1 (2020): 47–84.

In 1791, Benjamin Banneker wrote a letter to Thomas Jefferson to challenge the ideology of Jefferson associated with race. In his letter, Banneker expressed how Blacks are just as capable of attaining education and the benefits associated with education and capable of reason as Whites. In addition, the letter to Jefferson served as a petition for aid with the goal of ending slavery as an institution in the United States. With his letter, Banneker made a case on his behalf and on the behalf of his fellow Blacks by appealing to a wealthy White man found in Jefferson, explaining in the letter, albeit not in a very direct manner, that equality among Blacks and Whites would not yield a social or economic crisis.⁸ In contrast to a written plea for equality of behalf of Blacks, just two years later, in 1793, the United States Congress passed the Fugitive Slave Act. This was an act of Congress to serve the interests of slave owners against escaped slaves.⁹ Thomas Jefferson was not the President who signed the bill into law, not was he a member of Congress who drafted or sponsored the legislation. However, one can take into consideration the role of significance played by Thomas Jefferson in American politics and government at the time, and the reality of Jefferson having intentionally left out an inscribed attack on the institution of slavery from the final draft of the Declaration of Independence.

To regulate relations between colonists and slaves, the Louisiana Code Noir was introduced. The Code Noir in Louisiana was based in large part on regulations that governed the affairs of colonists and slaves in Carribean colonies in France. The Code Noir did afford some rights to slaves, but not many. For example, slave owners were obligated to care for their slaves who may become sick. However, even if this stipulation were to not be under the rule of law, the stipulation would likely be under a rule of economics; one may save money by tending to issues related to his or her property owned for labor-related purposes rather than simply buying new

⁸ Benjamin Banneker's Letter to Thomas Jefferson

⁹ Fugitive Slave Act

property. There also existed strict controls which governed the conduct of slaves under the Code Noir. One illustration of such strict control could be gleaned from the prohibition of slaves from owning property. In effect, slaves were relegated to being at the same level in then eyes of the law as property themselves; slaves enjoyed no legal capacity. In spite of rules that restricted what slave owners could do with their slaves, and guidelines for slaves to potentially become emancipated, the Code Noir-French for Black Code-is largely defined by a dark mark of relegating Blacks to the legal status of property to be bought and sold for economic purposes.¹⁰ The Code Noir in Louisiana is not unlike the Virginia Code of 1705. The Virginia Code served as a code of conduct for slaves being in a clear position of subordination to their masters. Slaves in Virginia, for example, who broke the law could face penalties such as lashes imposed by individuals who could very well be strangers to such slaves upon being found having broken the law, with the law effectively deputizing citizens to enforce penalties.¹¹ Not by pure coincidence, also from 1705, a bill passed the legislative body of the Colony of Virginia became law and declared all slaves in Virginia to be property. The Virginia Code of 1705, among a number of other laws enacted around the same time, codified racism in the name, albeit not in a very clear manner, of preserving social order juxtaposed by promoting the economic interests of slave owners.¹²

The Dunmore Proclamation afforded the first emancipation of slave labor and servant labor on a mass scale in the history of Colonial British America. The Proclamation afforded an opportunity for Blacks to attain freedom. However, this opportunity was attached to a contingency rather than having been a clean proclamation of freedom for a group historically

¹⁰ Louisiana's Code Noir

¹¹ Costa, Tom. "An Act Concerning Servants and Slaves." The geography of slavery.

¹² Costa, Tom. The geography of slavery.

oppressed based on race. Strikingly, the awareness of Blacks having been historically oppressed by the law in Colonial times was not absent from the mind of Dunmore. If such awareness were absent from the mind of Dunmore, then he never would have made such a proclamation. As an aristocrat of the United Kingdom, a victory for the British Crown would have been in both the social and, in particular, the economic interest of Dunmore. Affording a pathway to liberation for enslaved Blacks in British Colonies in America, in the mind of Dunmore, would have served as an investment opportunity.¹³ “The Book of Negroes” is a series of documents which outlines persons of African descent in the form of a list who were part of an evacuation from the United States at the end of the American Revolution to Canada. Slaveholders in the United States had desired to reclaim possession of the people whom were enslaved that had fled to the British and whom the slaveholders believed were to be repatriated as per the terms of the Paris Peace Treaty of 1782. Sir Guy Carlton, the British commander charged with negotiations related to the Paris Peace Treaty of 1782, made a proposal to compensate slave owners for loss of property, serving as a continuance of codification rooted in the socially constructed inferiority of the Black race to the benefit of wealthy Whites.¹⁴

In the Americas, bondage has inherently been associated with race. In the Colonies of Spain, Indians served as the first enslaved group of people. After 1517, however, Spain started to look to Africa for slave labor. Select native people were captured and sold to be slaves in the mainland colonies of Great Britain. However, by the end of the seventeenth century, slaves in British Colonial America were almost exclusively of African descent. With that being established, at one point, the Supreme Court of Virginia made an assertion that being Black created a presumption of being in bondage. Southern intellectuals,

¹³ Lord Dunmore's Proclamation

¹⁴ The Book of Negroes

politicians, and professionals crafted and expressed serpentine defenses of slavery. According to Cobb, slavery was not an evil, but a good that preserved freedom in the United States. By extension, Cobb contended that freedom in the United States would be under threat if not for the codified institution of slavery. The Africanization of bondage gave way to English colonists associating bondage with race. By extension, this yielded how racism came to be in the United States as a sovereign state. Racism in America was not only enshrined as part of the social order but was also integral to daily economic functioning.¹⁵ Nothing would induce American slave owners to end their incitement of proclamations of British slavery. By extension, American slave owners would not end the enslavement of African people from which they benefitted economically. The continuance of slavery in the United States as a codified institution was in the political and economic interests of slave owners. When Thomas Jefferson made his original draft of the Declaration of Independence, delegates from South Carolina and Georgia did not appreciate the characterization of slavery by Jefferson as a “cruel war against human nature.” Such verbiage would pose a threat to the foundation of vast estates enjoyed by wealthy South Carolinians and Georgians. Perhaps unsurprisingly, economic interests trumped human interests in the production of the final draft of the Declaration of Independence, albeit in such a manner that may not be too obvious to readers.¹⁶

In conclusion, simply because one of the founders of a present-day sovereign state wrote in an official declaration of sovereignty on behalf of his fellow inhabitants of the land that “all men are created equal” does not necessarily mean a translation into equality realized by all would be inevitable, and certainly not what is yet another motto commonly associated with the

¹⁵ Finkelman, Paul. “Thomas R.R. Cobb and the Law of Negro Slavery - DOCS@RWU”: 75.

¹⁶ Kendi, Ibram X. 2017. *Stamped from the Beginning: The Definitive History of Racist Ideas in America*: 107-108.

history and political and legal system of the same land; “equal justice under law.” The legal system of the United States is symbolized by Lady Justice, who, with the presumption of being just, is blind. Unfortunately, blindness is not a guarantee of fairness. From the Colonial Era into the post-Colonial Era, America was governed by a portfolio of laws that benefitted Whites, particularly wealthy Whites, at the expense of Blacks who viewed as being more akin to property in terms of status than human by means of codification. To recapitulate, having been an import to the Americas born of race-based systems of organizing societies and economies by colonial powers in Europe, racism in the Americas yielded laws made to benefit lawmakers themselves and those with whom they shared social and, in particular, economic interests.

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