

THE AMERICAN UNTOUCHABLES

America & the Racial Contract

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Critical Perspectives on Social Science



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Introduction

Several years ago the author watched the nightly news, and a story that highlighted several young African American children being turned away from a suburban private pool. The author viewed the story and observed the participants and replayed a fundamental question that has plagued America for four centuries, "Why?" Racism is a phenomenon that lacks rationality, but the author discovered that Carole Patemen (1988) and Charles Mills (1997) incorporated original contract theory to construct a framework of race and gender based Western domination as an explanation of sociopolitical interactions. The author took the framework as a viable model to explain the irrationality of the treatment of the young Philadelphia children, and as model to explain America's race centered sociopolitical history, and constructed the original work that follows.

One hundred years ago W.E.B. Du Bois wrote that the ... "the problem of the 20th Century would be the problem of the 19th Century, race." One hundred years later, Du Bois' words remain prophetic. It is too easy to claim that America's long seated racial problem has disappeared because America has twice elected an African American to the presidency. The long engrained socioeconomic problems of race persist: the African American unemployment rate is double that of whites; the incarceration rate of African Americans outpaces that of whites; the college graduate rate of African Americans lags that of whites; the life expectancy of African Americans trails that of whites; the infant mortality rate of African Americans surpasses that of whites; the asset gap between African Americans and whites is vast, and etc. The African American saga is fraught by disenfranchisement and oppression, but to understand the socioeconomic climate of America, one must understand that politics and social order are dictated by race. Simply, the American social order is filtered through race tinted lenses.

The social order is generally defined by three social classes: the poor, the middle, and the wealthy; however, in America there is a fourth, people of color. It is more akin to the Indian caste system, and African Americans are at the floor of the caste system, the untouchables. Social order, politics, education, and geography are played out through the lenses of race.

On March 7, 1965, a young John Lewis was viciously assaulted as he marched in protest across Selma, Alabama Edmund Pettus Bridge. John Lewis was the President of the Student Non-Violence Coordinating Committee and marched with hundreds of others to highlight the struggle of African Americans for basic civil rights. In 2009, sixty African American children paid entry to a private swimming club in suburban Philadelphia when a witness advised of the following: "When the minority children got in the pool all of the Caucasian children immediately exited the pool," Horace

Gibson, parent of a day camp child, wrote in an email, “The pool attendants came and told the black children that they did not allow minorities in the club and needed the children to leave immediately” (NBC News, 2009).

An Alabama Jim Crow era law read, “Every employer of white or Negro males shall provide for such white or Negro males reasonably accessible and separate toilet facilities.” A similar Florida law of the era read, “All marriages between a white person and a Negro, or between a white person and a person of Negro descent to the fourth generation inclusive, are hereby forever prohibited.” A Georgia law of the period read, “The officer in charge shall not bury, or allow to be buried, any colored persons upon ground set apart or used for the burial of white persons.”

The Indian word “jati” describes the hereditary social structure of Indian society, which is described by the Portuguese word for race, *casta*. Indian society has four distinct social class categories, *varna*. At the apex of the system, are the Brahmins and at its floor were the untouchables. Physical contact between the upper classes and the lowest class was strictly prohibited, and Brahmins adhered so strongly to this rule that they felt obliged to bathe if even the shadow of an untouchable fell across them (Mabbett, 1977, p. 430). For the Indian caste system, there was no hope of social mobility individuals were born into, worked, married, and died within these groups.

Humans are invariably born with differing physical attributes, which once was attributed to human subcategories of race, which scientists have found do not exist, “Human evolution has been and is characterized by many locally differentiated populations coexisting at any given time, but with sufficient genetic contact to make all humanity a single lineage sharing a common evolutionary fate” (Templeton, 1998, p. 632). There are no human subcategories of race, only morphological differences: skin color, nose, and eye appearance etc. The notion of racial differences plays into the conception of white privilege (or white skin privilege) defined as societal privileges that benefit white people in Western countries beyond what is commonly experienced by non-whites under the same social, political, or economic circumstances.

The aforementioned instances of once codified race based American laws and the more recent experience of the young African American swimmers hints to an American sociopolitical system that is more akin to the Indian system with the obvious morphological differences between blacks and whites making the ease of propagating the system. W.E.B. Du Bois (1903) famously predicted that the problem of the twentieth century would be the problem of the nineteenth century, race. Du Bois was correct and his analysis of the racial problem being the social spur that pushed the nation into war in the nineteenth century and cemented social segregation for most of the next century, but a sharper analysis of the American racial relations will display a historical sociopolitical system, with whites perching themselves at the apex of the social pyramid and with people of darker hues of complexion at the lowest rung, the untouchables. The unconscious or conscious

reliance on the American caste system cements white privilege and dictates sociopolitical ideologies and constituencies. Simply, the American sociopolitical system is propagated by a race based social order that maintains its existence by an adherence to the sociopolitical precepts that reinforce white privilege by classifying African Americans as the perennial subclass, the untouchables, and as potential socioeconomic threats to the white middle or lower classes.

The American revolution was the rejection of the European social order with its reliance on a hereditarily defined socioeconomic order for an equalitarian based republican society. America's geographic distance from its European overlords allowed a democratic tradition to take hold in American institutions: Virginia's House of Burgess, and legislative assemblies in Maryland, New Hampshire, Massachusetts, New York, Connecticut, Rhode Island, Delaware, Carolina, and New Jersey. The distance from European capitals enabled American institutions to develop free from the influence of traditional governing institutions that existed in European capitals. Most of the colonial institutions could levy taxes, muster troops, and enforce British common law. Britain acted as the central government; enacting foreign policy and other broader centralized government functions.

America unlike European colonies in Africa, Asia, or South America population was dominated by immigrating Europeans. The American colonial workforce was not a forced indigenous population as in Asia or Africa, but was primarily composed of European immigrants their decedents, indentured servants of European ancestry, or enslaved Africans. Most free land owning white men could vote to elect their local and colonial legislations.

The pre-citizenship rights of the white European settlers or colonist ingrained a pre-existing social order retained from the colonizing country, a social contract. The pre-citizenship rights of Europeans have foundations in the systematic ending of Western feudalism and the inception of the modern social contract (Mills, 1997 p. 11). Simply, rights of citizenship for colonists from England were expected and transferred to the English colonists. English common law and legal practices were the basis of the colonial legal systems: voting rights were strictly for landowning white males, jury trials, and other legal practices of English law were the norm. English colonists considered themselves to be English citizens and tacitly bounded by the social contract.

People of African ancestry first made appearances in the English colonies in 1619; a Dutch ship brought twenty-two Africans ashore to the British colony of Jamestown. It was not uncommon for poor European colonists to begin their life in America as indentured servants, which required a stipulated number of years of service by an individual to pay off a debt, which was normally passage to the colonies. During the seventeenth-century, these years of service became perpetual for Africans, and the debate was not centered on the natural rights of human beings.

In 1700, Massachusetts Judge Samuel Sewall became embroiled in a legal dispute with fellow Judge John Saffin, over the fate of an African indentured servant who Saffin refused to free. Sewall published the pamphlet *The Selling of Joseph a Memorial* in which he relied on Christian biblical scripture to lambast slavery as an immoral practice. In 1701, Judge Saffin responded with the pamphlet *A Brief and Candid Answer to the later Printed Sheet, Entitled, the Selling of Joseph*. Saffin argued that Christian scripture not only condoned slavery, but wrote, “[God]...who hath Ordained different degrees and orders of men, some to be High and Honorable, some to be Low and Despicable; some to be Monarchs, Kings, Princes and Governors, Masters and Commanders, others to be Subjects, and to be Commanded; Servants of sundry sorts and degrees, bound to obey; yea, some to be born Slaves, and so remain during their lives...”

The enslavement of Africans sat in place the American feudal system, which was immediately at odds with the enlightened natural rights basis of America's government, but not at odds with an implicit social contract that Charles Mills (1997) labels the “Racial Contract.” Mills (1997, p. 11) argues that the Western social contract, “... set formal or informal agreements or meta-agreements (higher-level contracts about contracts, which set the limits of the contracts' validity) between the members of one subset of humans” (Western Europeans). All sets of other humans, owing to phenotypical/genealogical/cultural differences, are outside the bounds of the European social contract; and for Western Europeans, “...the moral and juridical rules normally regulating the behavior of whites in their dealing with one another either do not apply at all in dealing with nonwhites or apply only in a qualified form.”

Before understanding Mills' framework, which is the basis of the book, one must understand the context of Mills' racial contract. The racial contract has its foundation in the work of Carole Pateman (1988). Pateman explored the seminal question of contract theory from the feminists perspective and argued that contemporary scholarship ignored the role of gender domination, specifically, the sexual contract, that historically justified the governance of women by men. She explored the legal codification of the domination, which is modernly manifested via the institutions of marriage and employment. Marriage and employment, both legal abstracts that are defined by contract obligations. The initial marriage contract places women as the singular and contractually obligated property of men creating a codified relationship of domination and subordination.

Mills (1997) expanded on Pateman's earlier exploration arguing, “... that European expansionism and the establishment of white/nonwhite relations of domination could be seen as a similar constitution “race” as a structure of exclusion” (Pateman & Mills, 2007). Mills argued that the original conception of the social contract was neither egalitarian nor inclusive and regarded, “...people of color (Native American and Australian as “savages.” Mills rests his framework on the following three premises: ... “the existential claim—white supremacy, both local and global, exists and has existed for many years, the conceptual claim—white supremacy should be

thought of as itself a political system, white supremacy can illuminatingly be theorized as based on a “contract” between whites, a Racial Contract.”

Utilizing Mill’s framework to analyze the rationale of Judge Saffin’s legal argument is that he [Judge Saffin] was not bound to treat Africans within the same legal/moral context of the social contract as he would treat fellow whites. It is this contextual foundation that American neo-feudalism was established with land owning whites at the apex and Africans at the bottom, the serfs. Yet an internal moral and philosophical conflict persisted as challenges to the exclusion of Africans from the social contract persisted. The internal conflict was satisfied by both compromise and legal definition. For America’s first national election, only land owning white males were allowed the right to cast votes and to stand for office, but the same legal document that provided the legal basis of the nation defined the legal status of Africans. A compromise was agreed upon to give the lightly populated Southern states a greater proportion of allocated seats in the House of Representatives by counting African slaves as three-fifths human, it outlawed the importation of slaves after 1808, but did not outlaw the practice. The three-fifths clause cemented the status of people of African descent in the lower level of the evolving American feudal system.

The American Civil War was a conflict that beginnings lie in the original compromises of the American constitution. The tradition of compromise regarding the continued practice of slavery was historically evident by the Missouri Compromise and the Kansas Nebraska Act, but the Fugitive Slave Act and the Supreme Court’s rejection of the historical context of compromise in its ruling in the Dredd Scott decision effectively pushed the country toward war.

The aftermath of the Civil War and the end of the Reconstruction period sat in motion the sociopolitical effectiveness of the black threat hypothesis, and defined ideological and political cleavages that remain at the heart of American politics, social interactions, and social class distinctions. The end of the Reconstruction era witnessed the construction of the socioeconomic system that defined America through two lenses: white and the white defined social order for Americans of color. The system was legally and socially enforced segregation that was based on the separate but equal doctrine that defined interaction with African Americans as a social and legally sanctioned taboo. It buttressed white privilege by defining people of color as the perpetual underclass, and the “economic boogie man” reinforcing the political cleavage of middle-class and poor whites to one of the two political parties.

The examination is a look into the American social order via a chronologically ordered examination of sociopolitical responses to African Americans first appearance in the nation; the building blocks of feudal based American slavery; the social choices that led to civil war; the post-Civil War configuration of the social order; and the sociopolitical reaction to the Civil Rights Movement.

The primary framework of the work relies on a dual sociopolitical analysis that American slavery was the re-establishment of a feudal social order, which like the previous feudal system was based on hereditary; but unlike Western feudalism the distinctions between the lowest social order and the higher social orders was skin color. The similarities of the American slavery system to Western feudalism, excluding the distinctions of skin color, were its hereditary nature, the hierarchical social order, its reliance on an agricultural system, and the tethering of serfs/slaves to the land.

The second context of the sociopolitical framework is that the historical period after the ending of the Reconstruction decade, that a race based American caste system was established with African Americans positioned at the bottom rung as the “Untouchables.” The system does not exist without the historical and societal foundation of slavery, which preceded its inception. It is this race based caste system that has influenced sociopolitical movements since its inception.

The book is organized in a chronological historical order beginning with the examination of the feudal beginnings and similarities of American slavery to Western feudalism. The second section of the examination begins with the ending of slavery and the inception of the American raced based caste system and its foundation. The examination ends with a current look of the sociopolitical order from the context of the African American perspective.

Part One
Slavery/Neo-Feudalism

Chapter 1:

The Basics of America's Social Order

Charles Mills (1997) developed a framework that examines sociopolitical interactions through the lenses of the original thesis of social contract theory. For Mills, the historical interactions between Western Europeans and nonwhites has a genesis of subordination and domination. It was and is political, and is based on an existential “contract” between Western Europeans sometimes defined as “white privilege.” Mills’ framework has the three following tenets: existentially white supremacy globally and locally has existed for many years; white supremacy has to be operationalized as a political system; and that white supremacy can be theorized as based on a “contract” between whites, a Racial Contract. The following chapter synthesizes the historical genesis of the treatment of African Americans via the historical and legally codified construction of American chattel slavery. It relies on Mills’ framework, specifically, that the historical interactions between Western Europeans and nonwhites (captive Africans) was based on politicized domination and subordination; however, the system of slavery did not develop in a vacuum, but was the reconstitution of the earlier political system of Western Feudalism.

The tentacles of feudalism

The feudalist system coupled people to the land under a horizontal hereditarily defined system with religiously defined allegiances. The two distinctions of feudalism were its pre-industrial period and the longevity of the hereditarily defined social order. The social ties required for the system were simple; the serfs farmed the land providing sustenance and an available conscript military force. Serfs were tied to the land, and not free to travel from one region to the next. The feudal lord’s power emanated from ownership of the land and the default ownership of the people that resided on the land. The glue binding the social system was a shared faith, which dictated hereditary defined social interactions. Compensation took three forms for the feudal serf: occasional access to the commons, residence, and mutual protection. America’s pre-Civil War captive Africans lacked access to the commons, and the idea of mutual protection was a foreign concept for Africans held in generational bondage. However, one cannot understand American slavery without first understanding its vestigial origins, Western feudalism.

American slavery must be viewed through the lenses of feudalism, which shackled peasants to the land, established a hereditary defined social order, and effectively

defined the peasant as the property of the feudal lord. Historically, Western feudalism began to slowly collapse after 1648, and a “social contract” based on defined obligations between the state, the individual, and individual to individual interactions began to emerge. Within this context or community, the “social contract” was delineated to apply only to those within the community, Western Europeans. A “racial contract” was implicitly enacted, which was the original basis of slavery and colonialism, which when enacted was a reconstitution of feudalism, a raced based feudalism. The chapter will trace the legal basis of the “racial contract,” which historically codified slavery and detail the key similarities of the American system of chattel slavery to Western feudalism.

The Western feudal system was not defined by race but by birth. There were no racial, ethnic, linguistic, or religious differences between feudal lord and peasant. The feudal lord worshipped at the same church, albeit, different pews than the serf. Ethnically, the Western serf and his landed feudal lord were the same; their ancestry and history were identical. The simple distinction between lord and serf was birth, and that distinction was defined by the status of the father, paternalism.

The ties of Western paternalism are easily recognizable in Western legal norms. The English right of succession is defined by English common law, primogeniture, that is loosely defined as the state of being the firstborn male child; the right of succession belonging to the firstborn male child; especially the feudal rule by which the whole real estate of an intestate passed to the eldest son. Similarly, the patriarchal nature of Western feudal society is witnessed by the singular role of males as priests and lord. Given the patriarchal nature of the system, it is no surprise that for British common law the child legally followed the status of the father both for social and economic status.

The economic realities of feudalism were not yet defined by commercialism. Subsistence agriculture was the norm with limited global trade and cross continental interactions. The changing nature of the economic system was witnessed by the rural to urban change in the world’s populations. Viewing Table 1.1, one will observe that the population of Europe only grew by 54.3 percent from the year 500-1450 with the largest population increases witnessed in the south and central western regions (Russell, 1972, p. 25). The city of London grew from a population of 60,000 to 70,000 at the end of the 15th century to about 250,000 by 1600, and the city of Paris population grew from 200,000 in 1348 to 415,000 (Office of National Statistics, 2015; National Institute of Statistics and Economic Studies, 2015). The significance of the population growth over the period were the social changes that took place with slowly increasing urban based populations signifying the loosening ties of feudalism, the peasant chains to land were slowly loosening.

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