Race Ideology and the Law

Key Concepts and Theories

- On matters of “race,” Difference: Political figures, scientists, naturalists, academics and social elite asked: What constitutes civil and “un-civilized” human societies, governmentality, and just prior to the construction of the U.S. Constitution?

- What constitutes good/proper/progressive/civil human interaction? Great attention paid to racial, or physical and cultural, elements of society. Figures increasingly placed focus on social control due to the dichotomies presented in human social formations. and the disciplinary measures systematized to organize that society around certain sets of rules, beliefs and laws about human-ness, nature, civility, and normality.
Terms

- What does Luana Ross refer to in the term “racialized oppression”?
- What does Charles Mills mean when he says “white supremacy is...”?
Preamble: U.S. Constitution

We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.
Thomas Jefferson 1743 - 1826

- Born and died in Virginia
- Delegate mid 1770s and 80s
- Governor of Virginia 1779 - 1781
- U.S. Minister to France 1785 - 1789
- 1st U.S. Secretary of State 1790 - 1793
- Vice President of the U.S. 1797 - 1801
- 3rd President of the U.S. 1801 - 1809
- Slave owner

In the history of the U.S. “racialized oppression” emerge in the forms of social practices and legislation. Jefferson serves as a representative of Western figures who weighed the concepts of race against what constituted a democratic union. Built on notions of Western “white” exceptionalism and the dehumanization of colonized peoples, Jefferson and others grappled with what the Constitution and other civil laws legally provide to the different peoples of the developing nation?
Thomas Jefferson and “race ideology”

Jefferson believes racial difference is proven through differences in physical appearance, cognitive and emotional capacity, and political and cultural practices.

On the notion of “biological determinism,” racial differences, according to Jefferson, including skin color, hair texture and degree of “tolerance for heat” were nature’s proof of natural human difference.

He went so far as to suggest, “… It is not against experience to suppose, that different species of the same genus, or varieties of the same species, may possess different qualifications” (Jefferson 1785: 270).

To the extent that cultural differences provided evidence of a human societies evolution wherein cultural practices illustrated scales of civility: primitive/savage, barbaric, or civilized. These measures of civility were also based on the idea that different peoples held different potential to assimilate into civil society. Among the characteristics evaluated were one’s “manners,” “morals,” capacity to love, and one’s potential to master and contribute to the liberal arts.

Specieism: Jefferson contended that nature would have it that human and animal beauty had the power to entice one from the other, even across species where people of color were concerned.
Racialization and Human Potential

On the matter of Native Americans and their potential to become members of society, Jefferson suggested:

“Indians, with no advantages of this kind (proper teaching in the arts), will often carve figures on their pipes not destitute of design and merit. They will crayon out an animal, a plant, or a country, so as to prove the existence of a germ in their minds which only wants cultivation. They astonish you with strokes of the most sublime oratory; such as prove their reason and sentiment strong, their imagination glowing and elevated” (Jefferson 1785: 266).
For peoples recently freed from the system of slavery:

(T)hey should continue with their parents to a certain age, then be brought up, at the public expence [sic], to tillage, arts or sciences, according to their geniusses, till the females should be eighteen, and the males twenty-one years of age, when they should be colonized to such place as the circumstances of the time should render most proper, sending them out with arms, implements of household and of the handicraft arts, feeds, pairs of the useful domestic animals, to declare them a free and independant [sic] people, and extend to them our alliance and protection, till they shall have acquired strength; and to send vessels at the same time to other parts of the world for an equal number of white inhabitants; to induce whom to migrate hither, proper encouragements were to be proposed. (Jefferson 1785: 264)
Two years after the publication of Jefferson’s Notes on the State of Virginia, the United States Constitution is created. It is ratified one year later on June 21, 1788

According to Mills, the Racial Contract allowed:

“Expansion by conquest, however necessary, seems especially unjust and disturbing to the conscience of democracies. . . . But to transpose democratic institutions into such a setting is aberrant nonsense. The subject people are not and cannot become citizens in the democratic sense of the term. . . . It is necessary, then, to accept as a principle and point of departure the fact that there is a hierarchy of races and civilizations, and that we belong to the superior race and civilization. . . . The basic legitimation of conquest over native peoples is the conviction of our superiority, not merely our mechanical, economic, and military superiority, but our moral superiority. Our dignity rests on that quality, and it underlies our right to direct the rest of humanity” (Mills 25).
“Indian laws, slave codes, and colonial native acts formally codified the subordinate status of nonwhites and (ostensibly) regulated their treatment, creating a juridical space for non-Europeans as a separate category of beings. So even if there was sometimes an attempt to prevent ‘abuses’... the point is that "abuse" as a concept presupposes as a norm the legitimacy of the subordination. Slavery and colonialism are not conceived as wrong in their denial of autonomy to persons; what is wrong is the improper administration of these regimes” (Mills 25).

As late as the 1940s the world "was still by and large a Western white-dominated world. The long-established patterns of white power and nonwhite non-power were still the generally accepted order of things. All the accompanying assumptions and mythologies about race and color were still mostly taken for granted. . . . [W]hite supremacy was a generally assumed and accepted state of affairs in the United States as well as in Europe's empires” (Mills 27).
Sovereignty and the Law

Ross’s main arguments:

- Western expansion and territorial acquisitions associated with it used the “laws of just war” to first destabilized, “deterritorialize,” indigenous peoples in the Americas.

- Colonialism, with an inherent “race ideology,” followed western expansion and fostered the denigration of Native American sovereignty by changing how Native American peoples and their legal systems, social structures and cultures were viewed.

- Western “race ideology” criminalized Native American expressions of sovereignty by limiting the social mobility and civil rights of Native Americans - as non-citizens, as people with religions that threatened American settlement and nation formation, and as peoples who were viewed as unintelligibly resistant to “civilized” life.
Western expansion, Colonial Ideology, and American Nation-making

- Ross asserts that “tribal sovereignty” has been eroded through: 1) genocidal violence, 2) legal doctrines, and, 3) colonial indoctrination, the latter two under colonialism.

- Ross defines colonialism as the assumption of the right to exert “unilateral political control, economic exploitation, and cultural oppression” over colonized peoples (Ross 1998: 15). These practices “were present in European expansionism” and remain in practice. Today, it is called “coloniality”.

- The practice of colonization includes the “(c)ultural suppression (as) a legal process that involves deculturation – eradication of indigenous people’s original traditions – followed by indoctrination in the ideas of the dominators so the colonized may themselves assist the colonial project (Talbot 1981). The process, in which the colonized are removed from their cultural context through enslavement or transplantation, involves the abandonment of culture and the adoption of new ways of speaking, behaving and reasoning” (Ross 1998: 12).

- “(T)he system of justice was changed into a shadow of itself. Attempts were made to make Natives like white people, first by means of war and, when the gunsmoke cleared, by means of laws” (Ross 1998: 14).
“Racialized Oppression,” Naturalizing Native American Criminality, and “Differential Justice”

• As the governmental and judicial systems of Native Americans are eroded, largely influenced by “race ideology,” “Native-white relations” are increasingly regulated by European-American political figures who, along with colonial settlers, emphasize the increasing need for American, “white,” legal systems to adjudicate all legal matters.

• In the process, Native American cultural practices were made illegal - “criminal” -- along with the act of resisting assimilation as colonized peoples. As Ross states, “Indian reservations are the only places in the United States where the criminality of an act relies exclusively on the race of the offender and victim” (Ross 1998: 27).
“Racialized Oppression” is... “Differential Justice”? (Ross, 1998: 15 - 16)

- “Nineteenth-century laws and their enforcement can readily be seen as instruments for maintaining social and economic stratification created in the centuries before.”

- “Crime control was part of the maintenance of that sacred foundation.”

- Law-enforcement officials... participated in and encouraged lawlessness in the interests of suppressing minorities.”

- Genocide against Native people was never seen as murder. Indeed, in the Old West the murder of Natives was not even a crime.”

- In some states, like California, legislation “allowed white people to simply take Native children, those orphaned or supposedly with parental consent, as indentured slaves.”

- In most states, “Indians” who “loitered or gathered together in public were subject to arrest. White citizens had the right to report on and call for the arrest of “Indians” - courts and law enforcement officials were required to respond or higher enforcers within a set amount of hours. In California, courts had 24 hours to respond, accepted bids by enforcers, and allowed bounty hunters up to 4 months to locate and seize the “Indian” “offender”.

How is sovereignty eroded:

- Acknowledged as *sovereign* peoples through treaties. Treaties asserted that “tribes retained exclusive jurisdiction over such issues as law and order” (Ross 1998: 16).
- How law and order were maintained in Native American societies conflicted with Western/colonial views on crime and punishment.
- Bureau of Indian Affairs established as an arm of the U.S. government in 1824. It is housed within the Dept. of War.
- Assimilative Crimes Act 1825 - asserts federal jurisdiction wherever the federal government assumes land it has “reserved or acquired”.
- Major Crimes Act 1885 - asserts that U.S. federal law enforcement has jurisdiction of seven major crimes on reservations or in “Indian country” - murder, manslaughter, rape, assault with intent to murder, arson, burglary, larceny.
- American Indian Boarding Schools, 1879, Richard Henry Pratt, former volunteer militia and later Second Lieutenant, presided over “Buffalo Soldiers” - freed and former enslaved men used by the U.S. military to police “Indian country”. Pratt started the first AIBS on the motto: “Kill the Indian, save the man”
- PL 280 - allowed the assumption of jurisdiction over crimes committed from one Native American against another