
How to Study Social Welfare Law

A Review of Robbie Shilliam, *Race and the Undeserving Poor: From Abolition to Brexit*, Agenda Publishing. 2018. 209 pp. £18.99 (PB). ISBN: 978-1-78821-038-6

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Britain's social welfare laws have been purposely designed to withhold vital state support from black people. This is especially true of subsistence in the form of unemployment benefit and public housing.

Underlying the law's partial and discriminatory impulse is the belief that the provision of welfare will simply exacerbate characteristics that have long been attributed to black people; namely: innate, and therefore irredeemable, tendencies towards idleness and dependency. Positioned thus, black people must always threaten the primary objective of a system of state welfare, which is to guide its recipient towards economic independence.

The law's racial bias can be traced through key milestones of Britain's complex social welfare landscape, including the framework of universal welfare brought about by the much lauded National Assistance Act 1948. "There is no 'golden age' of public goods to return to that was not already racialized" (Shilliam, 2018: 178).

Race and the Undeserving Poor is not a work of legal scholarship. Indeed, its author expressly refuses to situate, in any one discipline, the book's exploration of various instantiations of the racialized "distinction between the deserving and the undeserving poor" (Shilliam, 2018: 11). This distinction, Shilliam argues, lies at the very centre of Britain's major social welfare reforms. Understanding the force of the distinction between the deserving and undeserving of welfare requires analysis that is resolutely interdisciplinary in form, because "Race cuts across – or at the very least problematizes – common sense distinctions between the domains of politics, law, economy, culture and knowledge production" (Shilliam, 2018: 6).

Notwithstanding the above, Shilliam's contribution to our understanding of law cannot be underestimated. In a manner reminiscent of Peter Fitzpatrick's seminal essay, "Racism and the Innocence of Law" (1987: 119-132) in which is demonstrated how race discrimination laws are deeply implicated in a racially discriminatory employment landscape (Fitzpatrick, 1987: 122), Shilliam draws the reader to an understanding of how Britain's welfare laws, ostensibly designed to assist poor black people, instead serve to present them as "intractably undeserving" (Shilliam, 2018: 24) of the benefits of the welfare state.

This review is structured around two aspects of Shilliam's work, which, it is suggested, point to the direction in which university level study of social welfare law should tend. The first strand is that the long history of the development of Britain's welfare state which Shilliam narrates provides a concrete instance of legal extraterritoriality. The second strand relates to Shilliam's insistence that an understanding of any disciplinary regime (which, in

essence, is how he conceives of social welfare systems), cannot be fully grasped without attention to the institution of slavery.

As regards the first, Shilliam's compact histories impress upon the reader that law has always strained the boundaries of the nation state. Over-preoccupation with the text and *local* context of Britain's welfare legislation has had the effect of giving the regime its flavour of a "quintessentially national arrangement" (Shilliam, 2018: 57). A significant achievement of the book is its convincing portrayal of social welfare as a disciplinary regime which cannot be fixed at a particular time or space. Thus, governance over welfare extended to "not just a national economy but a vast and shifting imperial hinterland"(Shilliam, 2018: 178). The territories on which Britain's social welfare system was conceived extended across a "Commonwealth that effectively saved the sterling economy in the reconstruction period immediately following the Second World War" (Shilliam, 2018: 178).

Against this intriguingly expansive framework, Shilliam argues that Britain's network of social welfare norms would be incompletely mapped without taking account of legal measures which most histories of the welfare state would disregard. For example, he is as much concerned to identify the Abolition of Slavery Act 1833 as a key component of Britain's social welfare regime as he is to signpost those legislative enactments more familiarly referenced in the literatures, such as the Vagrancy Act 1547 and, much later in time, the National Insurance Act 1911. Shilliam invites us to read into the Abolition of Slavery Act expression of a "...generalised doubt of the capacity of enslaved Africans to become orderly-and-free labourers..." (Shilliam, 2018: 36).

In short, central to Shilliam's analysis of why, today, welfare support is unevenly distributed between black and minority ethnic people and their white counterparts are the "imperial determinants that racialized those deserving and undeserving of social security and welfare" (Shilliam, 2018: 57). Among these many determinants is the "...single-most important economic enterprise of the late eighteenth century – African enslavement..." (Shilliam, 2018: 173). As a consequence of the institution of slavery, "the distinction between the deserving and the undeserving poor began to be racialized by analogy to the black slave" (Shilliam, 2018: 15).

Legal scholarship has not entirely neglected the question of slavery in its analysis of the doctrines, systems, institutions and ideologies of law. In spite of attempts in law and in the academy to suppress the question of slavery, "Slavery is with us still" declared Anthony Farley in the opening lines of the article titled "Perfecting Slavery" (Farley: 2004: 225). For Farley, attempts to suppress the fact that "the slave produced the legal form" must ultimately fail (Farley, 2004: 232). Despite of his conviction, it is fair to say that there has been minimal investment in the question of how foundational principles of law have been crafted from the institution of slavery. Moreover, from the point of view of legal doctrine, it is to the law of contract and not to social welfare law that scholars would usually look in order to excavate the relationship between slavery and legal principle.

The study of contract law has been enriched by works that show how modern contract doctrine attempts to conceal “the tension between what can be sold and what ought not to be sold” (Williams: 2002). In this way, contract law is identified as a primary site in which to “...consider questions such as slavery, indentured servitude, prostitution and trafficking in women and children” (Williams, 2002. See also, Harris, 1995: 276-292 and, generally, Cardozo Law Review, 1996).

The privileging of contract law in the analysis of the constitutive relation between law and slavery is in part due to the fact that social welfare law, unlike contract law, does not enjoy a place on the compulsory curriculum of undergraduate and postgraduate courses, and this is true of most, if not all, common law jurisdictions. In UK law schools, it would be hard to find social welfare law offered even as an optional area of study. For this reason alone Shilliam’s book, carrying as it does the timely reminder that contract law is not the only legal category which owes its development to the lives and freedom of slaves, comes as a welcome potential new resource on which legal scholars might draw. Shilliam’s work is all the more valuable because it is nicely situated between legal doctrine and legal theory. Whilst he does not neglect examination of various legislative enactments, his core concern is with how social welfare norms are shaped in tension with the trope or metaphor of the slave. To this extent, Shilliam’s book can be aligned with those works which seek to reveal the legal form as being essentially vacuous, and, as such, deeply reliant upon the labour of the slave for its content. Conceived thus, the slave and those constructed in the figure of the slave are not excluded from law, but have a primal and vital relation to it. Characteristic of this relation are the production of groups – racialised in precisely the terms in which Shilliam speaks – who although vital to law, cannot engage or enjoy the law. (Farley, 2004: 332; Tuitt, 2004: 1-20).

Standing head and shoulders above most legal accounts of how law attributes to the “enslaved and the colonised” (Fitzpatrick, 1987: 120) an “insuperable inadequacy” (Fitzpatrick, 1987: 131) is the aforementioned “Racism and the Innocence of Law”. Here Fitzpatrick paves the way to a conceiving of the very function of law as being best understood through the metaphor of the slave, since, ultimately, it is servile to dominant powers. Instead of being a force that can “order or correct that part of material life called racism” (Fitzpatrick, 1987: 121):

“...law positively acquired identity by taking elements of racism into itself and shaping them in its own terms. Yet law also takes identity from its opposition to and separation from racism. But this very opposition is not innocent for it operates by containing and constraining law. Law, as a result... is unable assuredly to counter racism...the point here is that racism marks constitutive boundaries of law, persistent limits on its competence and scope. Being so limited, law proves to be compatible with racism” (Fitzpatrick, 1987: 122).

A study of social welfare law along the lines indicated in *Race and the Undeserving Poor* can only enhance the still nascent strand of legal scholarship, the contours of which I have sought to summarise, above. Documenting a period in which the “rhetorical” use of the distinction between deserving and undeserving poor began “over the course of the 1980s” to be settled in legislation (Shilliam, 2018: 115), Shilliam presents to the reader a very plausible argument to the effect that underlying Britain’s increasingly punitive social welfare reforms is the insistent presence of the slave. To aid the argument, certain

legislative measures are highlighted either because they are considered by Shilliam to be explicitly racialised (such as the Immigration and Asylum Act (Shilliam, 2018: 123) and/or because they provide a particular illustration of the conviction that certain sections of the poor require not state support but discipline and punishment, such as the Welfare Reform Act 1999. (Shilliam, 2018: 120).

However, it is the thread which ties all the legislative enactments together which Shilliam is at pains to render visible. For Shilliam, welfare principles rest upon the fundamental idea that however abject the state of poverty in which the putative recipient falls, he/she is able to be rescued or redeemed, and, through the welfare system, eventually encouraged towards financial independence. According to Shilliam, persons of African and Caribbean descent are, exceptionally seen as impervious to the civilising strains of welfare. More precisely, in Britain's welfare culture "Black was a fixed position, constituted in slavery, and formative of undeserving characteristic" (Shilliam, 2018: 40). It is for this "...substantive historical reason..." (Shilliam, 2018: 173) reason that what Shilliam alludes to as the "Black thread" (Shilliam, 2018: 173) ties the various strands of his argument together.

In terms of the architecture of social welfare, two important consequences flow from what Shilliam argues is the tendency, still, for the guardians of social welfare policy to attribute to black people characteristics associated with the slave. The first of these is that the design of welfare entitlement must always give priority to the need to guard against encouraging the development of 'slave-like' qualities in other welfare recipients.

The 1911 National Insurance Act provides an exemplary instance of the law being deployed in order to "...mitigate against the degeneration of deserving characteristics among English workers and ensure the reproduction of deserving stock. In these ways, the Act guarded against...race degradation" (Shilliam, 2018: 54). As chapter five of the work illustrates, Britain's black colonised and, later, Britain's black migrants were the bodies on whom was scripted the attributes that were seen to be enduringly incompatible with the objectives of welfare (Shilliam, 2018: 92), deserving only the "worst provision of public goods" (Shilliam, 2018: 82). Today, the black person's supposedly irredeemably degenerate character is rendered more acutely real in comparison to the much degraded so-called white "underclass" (e.g Shilliam, 2018: 24 & 26), who, debased as they are, "might still be rescued, regenerated" (Shilliam, 2018: 133) through welfare.

When articulating the dangers of uncontrolled access to state welfare by the poor (Shilliam, 2018: 78), officials would frequently invoke the spectre of 'wage slaves' (e.g. Shilliam, 2018: 23, 31, 34, 48, 138, 142, 149). The slave trope, which was "widely shared among England's elites" (Shilliam, 2018: 28), lingers on in the idea of black and Asian labour as "cheap" (Shilliam, 2018: 90)). A point worth noting is that the slave trope or analogy is deployed more openly and aggressively at moments of significant legal transformation. In light of Britain's decision to leave the European Union, we might now accord greater significance to the fact that the European Union is seen as part of the various apparatus that would encourage the British citizenry to adopt despised 'slave-like' habits (Shilliam, 2018: 152). Not only was the European Union's relatively progressive social policies indicted in this regard, race equalities laws were also deeply caught up in the dichotomy between the deserving and undeserving (Shilliam, 2018: 100 & 122) – perceived as "a wedge that separates government from its most deserving (white) constituency" (Shilliam, 2018: 141).

The second consequence was that black people would be systematically directed away from welfare relief – for who would squander welfare when “...idleness, licentiousness and anarchy...” (Shilliam, 2018: 10) are traits much more amenable to disciplinary intervention? The suggestion that any disadvantage can be explained away as merely the result of the discriminatory implementation of racially neutral laws is very quickly dispelled. Shilliam’s account reveals that black people continue to experience the effects of the original violation that was slavery. To invoke Anthony Farley again, “the initial injury is the marking of bodies for less respect, less land, less freedom, less education, less” (Farley, 2004: 227).

The most striking instance of this process of “marking” black bodies for “less land” is provided in Shilliam’s account of how black people fare in the social housing market. Noting that “of all welfare provision, housing was historically most open to the racialized distinction between deserving and undeserving” (Shilliam, 2018: 159), Shilliam reports that:

“The majority of Black arrivals and their families were compelled to rent sub-standard and overcrowded accommodation in the private market. When Black citizens sought to claim social housing they were met with officers who tended to judge their standard of civilisation as inadequate to the task of caring for properties... officers saw themselves as protecting public resources against reckless black clients” (Shilliam, 2018: 92).

It is on the theme of access by black and minority ethnic people to safe and affordable social housing that the work draws to an end, and if anything could serve to remind legal scholars of the great disservice done to students of law by not embedding social welfare law within the core curriculum, it is Robbie Shilliam’s timely and well-crafted monograph.

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