Towards a Federal Common Law on the Black Family

A PETITION IN GENERAL EQUITY

to the

Federal Government of the United States of America,

Its Courts, Legislature, and Chief Executive,

Regarding the

***Plight* of African American Fathers, Men, and Boys**

In the

United States of America

by

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"Towards a Federal Common Law on the Black Family":

A Petition in General Equity regarding the Plight of African American Fathers, Men, and Boys in the United States

This is Booklet is a Position Paper that was prepared for the United States Congress; the state courts of the several United States; the United States District Courts; the United States Courts of Appeals; and the United States Supreme Court, pursuant to 42 U.S.C. § 1983. It is designed to supplement the filing of Amicus Curie briefs by churches, para-churches, and clergymen in support of several of the salient legal and constitutional issues that have been discussed herein.

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Jurisdictional Statement

1. **COMMISSION ON THE SOCIAL STATUS OF BLACK MEN AND BOYS.—** Public Law 116-156 (Aug. 14, 2020).

2. **28 U.S.C. § 351 (a) FILING OF COMPLAINT BY ANY PERSON.—** Any person alleging that a judge has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts …. may file with the clerk of the court of appeals for the circuit a written complaint containing a brief statement of the facts constituting such conduct.

3. **28 U.S.C. § 352 (b) IDENTIFYING COMPLAINT BY CHIEF JUDGE.—** In the interests of the effective and expeditious administration of the business of the courts and on the basis of information available to the chief judge of the circuit, the chief judge may, by written order stating reasons therefor, identify a complaint for purposes of this chapter and thereby dispense with filing of a written complaint.

4. **28 U.S.C. § 352 (c) TRANSMITTAL OF COMPLAINT.—** Upon receipt of a complaint filed under subsection (a), the clerk shall promptly transmit the complaint to the chief judge of the circuit….

5. **U.S. Const., FIRST AMENDMENT.—** Congress shall make no law… prohibiting the free exercise [of religion]; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

6. **U.S. Const., THIRTEENTH AMENDMENT.—** Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

7. **U.S. Const., FOURTEENTH AMENDMENT.—** No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

8. **42 U.S.C. § 1983 CIVIL ACTION FOR DEPRIVATION OF RIGHTS.—** Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

9. **INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR) .—** adopted Dec. 19, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976). The United States ratified the treaty Sept. 8, 1992.

   Article 1.— All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

   Article 17.— No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

Preface

February 24, 2023

U.S. Senator Marco Rubio
United States Senate
284 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Rubio:

There is no area of African American life that was more devastated by the effects of chattel slavery than the Black family. Senator Daniel Patrick Moynihan, in his landmark publication *The Negro family: The Case for National Action* (1965), pronounced that "[i]t was by destroying the Negro family under slavery that white America broke the will of the Negro people…." Most ominously, this destroying of the Black family under slavery occurred under the purview of state courts; the opinions of state attorney generals; and the tacit approval of state bar associations and the American legal profession. This constitutional crisis still persists in Florida's state family law courts.

For this reason, Congress enacted the Civil Rights Acts of 1866 and 1871 to throw open the doors of the United States District Courts so that African American freedmen and their descendants could vindicate, inter alia, their natural and constitutional rights which protect the integrity and health of the Black family. To that end, I respectfully submit this pamphlet on the subject matter of the Black church and its important historical influence upon (i.e., *de facto* ecclesiastical jurisdiction over) Black family life. Within the Black church is an interior wisdom on leavening the traumatic effects of slavery and discrimination upon Black family life, that the state family law courts lack. The results have devastated the plight of <u>African American fathers, men, and boys</u>.

This pamphlet proposes as an administrative solution, utilizing the parameters of § 1983, that the United States Courts and the Black church work together, in close cooperation, to develop a "federal common law" that seriously addresses the trauma and vicissitudes of the Black family, paying careful attention to the differences of gender and the decline in marriages, while also paying a careful attention to the plight of <u>African American fathers, men, and boys</u>, in order to remedy the perennial injustices that have been sustained in the state family law courts since end of the U.S. Civil War in 1865.

Yours Faithfully,

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CC: Congresswoman Frederica S. Wilson
Chief Judge, U.S. Eleventh Circuit Court of Appeals
Chief Justice, Supreme Court of Florida
Chief Judges, Florida Judicial Circuits (Twenty Judicial Districts in Florida)
Chief Judges, U.S. District Courts (Northern, Middle, and Southern Districts of Florida)

CHAPTER I

"Introduction"

Why does the Black church have so small an influence upon state family law court proceedings that impact the plight of African American fathers, men, and boys?[1] The crisis of this plight is a little-known, quiet, and yet devastating constitutional crisis that is vexing the American republic. This constitutional crisis is, arguably, slowly deteriorating into a genocidal social condition. And it is not likely that the United States government, or any local or state government, can resolve this constitutional crisis without wisdom and instruction from the "God of the Black church"[2]— mediated through African American churchmen. Since the recommendations made in this pamphlet shall challenge our popular conception of the constitutional doctrine of separation of church and state, I respectfully ask the reader to deconstruct this constitutional doctrine and to engage in an exercise of pragmatic "legal realism" that is deeply rooted in our nation's racial history. I start off with the fundamental belief that the Gospel of Jesus Christ, by making common men "kings and priests,"[3] laid the foundation of constitutional democracy throughout the world;[4] and that, fundamentally, the Black church is the natural outgrowth of that same constitutional democracy which is reflected in the United States Constitution.

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[1] Carter G. Woodson, *The History of the Negro Church* (Washington, D.C.: The Associated Publishers, 1921), p. 282 ("The [Negro] church serves as a moral force, a power acting as a restraint upon the bad and stimulating the good to further moral achievement. Among the Negroes its valuable service is readily apparent…."); W.E.B. Du Bois, "The Souls of Black Folk," *Writings* (New York, N.Y.: The Library of America, 1986), p. 496 ("[T]he [Negro] Church often stands as a real conserver of morals, a strengthener of family life, and the final authority on what is Good and Right"); and James H. Cone and Gayraud S. Wilmore, *Black Theology: A Documentary History,* Vol. One: 1966- 1979 (Maryknoll, N.Y.: Orbis Books, 2003), p. 218 ("[T]he Black Church of the nineteenth century… thought of itself as God's judgment upon racism… converted thousands, stabilized the Black family… founded schools and colleges…. And provided the social, cultural, economic, and political base of the entire African American community in the United States.")

[2] In this position paper, the definition of the word "Black church" has been borrowed from the following text: C. Eric Lincoln and Lawrence H. Mamiya, *The Black Church in the African American Experience* (Durham, N.C.: Duke University Press, 1990), p. 1 ("We use the term 'the Black Church' as do other scholars and much of the general public as a kind of sociological and theological shorthand reference to the pluralism of black Christian churches in the United States.") See, also, James H. Cone and Gayraud S. Wilmore, *Black Theology: A Documentary History*, Vol. One: 1966-1979 (Maryknoll, N.Y.: Orbis Books, 2003), p. 217, citing Lincoln and Mamiya, *The Black Church in the African American Experience*, and adopting the same definition of "Black Church."

[3] Revelation 1:6.

[4] See, generally, William Goodell, *The Democracy of Christianity, or; An Analysis of the Bible and its Doctrines in Their Relation to the Principles of Democracy* (New York, N.Y.: Cady and Burgess, 1852).

The "God of the Black church" is the same God of colonial British North America and of the early American republic— e.g., the God of the early Anglicans, Puritans, Baptists, Quakers, Methodists, Presbyterians, and many others who received the English Common Law and, therewith, laid the foundations of the American Republic. This God of the Black Church is the same God of Old Testament: He is orthodox, traditional, and deeply conservative in His attributes and in his patriarchal design for the ancient Hebrew family, and of his designation of the biblical patriarchs as the leaders of families, extended families, clans, tribes, and nations.[5]

Historically, the God of the Black church sought to deal with the unique plight of African American fathers, men, and boys, through the medium of the Black church, when unfolding His divine, prophetic plan for the liberation of the African American people.[6] Of course, not all African Americans, who themselves have a constitutional liberty of thought,

[5] See, e.g., Chanse Jamal Travis, "The Political Power Of The Black Church" (2015). Electronic Theses and Dissertations. 788. https://egrove.olemiss.edu/etd/78 , stating:

> The peculiarity of the black church is it is an institution that sends mixed messages. Black churches advocate on behalf of the Democratic Party but **advance conservative messages all year round.** This causes blacks to be politically cross pressured. As such, what are individuals to do? …
>
> Being the most religiously committed group in America (Pew Research, 2009), **African Americans are predominately theologically conservative**. The church sees the Bible as the authoritative word of God. As a result, the black church is traditionally socially conservative in nature.

[6] See, generally, "Million Man March," https://en.wikipedia.org/wiki/Million_Man_March ("The Million Man March was a large gathering of African-American men in Washington, D.C., on October 16, 1995."); and see "Million Man March" https://www.britannica.com/event/Million-Man-March, stating:

> Million Man March, political demonstration in Washington, D.C., on October 16, 1995, to promote **African American unity and family values**. Estimates of the number of marchers, most of whom were **African American men**, ranged from 400,000 to nearly 1.1 million, ranking it among the largest gatherings of its kind in American history.
>
> The event was organized by Louis Farrakhan, the often controversial leader of the Nation of Islam, and directed by Benjamin F. Chavis, Jr., the former executive director of the National Association for the Advancement of Colored People, to bring about **a spiritual renewal that would instill a sense of personal responsibility in African American men for improving the condition of African Americans**. Among other prominent African Americans who supported and spoke at the event were Jesse Jackson, Rosa Parks, Cornel West, and Maya Angelou, along with Marion Barry and Kurt Schmoke, then the mayors of Washington, D.C., and Baltimore, Maryland, respectively. "Let our choices be for life, for protecting our women, our children, keeping our brothers free of drugs, free of crime," Schmoke told the crowd, which assembled on the Mall. It was reported that in response to the march some 1.7 million African American men registered to vote.

speech, and conscience, are bound to agree with this conservative worldview and perspective.[7] Nevertheless, the Black church and its Judea-Christian value system remain the fundamental source of social cohesion, family customs and traditions, and spiritual beliefs on morality, religion, and ethical norms[8]— and that value system is fundamentally orthodox Judea-Christian in nature.

> **"But I would have you know, that the head of every man is Christ; and the head of the woman is the man; and the head of Christ is God."**
>
> -- 1 Corinthians 11:3

This conservative description of the Black church seems counterintuitive, because present-day images of the Black community and family are portrayed as matriarchal or as liberation theology, which is often described as liberal postmodern Christianity.[9] But the Black church has historically been a thorough-going conservative institution.[10] And this is especially true with respect to its emphasis upon the Old Testament-Jewish-Puritan model for a patriarchal family structure, which the Black church assumed had remained intact within American common law.[11] Thus patterned after the Law of Moses and the Children of Israel's plight from slavery to freedom, Black-church ideology has centered around the objective of restoring the Black father to his rightful and natural position within the home and in society.[12] Today's state courts, and implementing state family laws, are prohibiting this objective,

[7] Indeed, this position paper does not claim to impose the Christian religion upon those Black persons who do not want it; for to do so would be to deny those Black person their fundamental constitutional and natural rights. That said, there is no reason why the forces of secularism should deprive the Black church and those willing Black Christians from carrying out a massive and almost-universally accepted program of Black spiritual uplift and survival— one that predates the U.S. Civil War (1861 – 1865) and continues up the present date.

[8] See Footnote # 1.

[9] See, e.g., C. Eric Lincoln and Lawrence H. Mamiya, *The Black Church in the African American Experience* (Durham, N.C.: Duke University Press, 1990), p. 12; pp. 179-180 (A.M.E. church); pp. 176-183 (Black consciousness); pp. 202-204, 223, 234 (civil rights); pp. 179- 180 (COGIC); pp. 240-241 (economics); pp. 193-194 (ecumenism); pp. 201-202 (politics); pp. 302-303 (women).

[10] See Footnote # 5.

[11] Id.

[12] Id.

because Black churchmen, fathers, and men are disproportionately absent from the process of making and interpreting the family laws and policy.

This position paper avers that the First Amendment, U.S. Constitution, through the Fourteenth Amendment's application to the states, together with implementing legislation such as the Civil Rights Act of 1871 (42 U.S.C. 1983), protects the Black church in its *quest* to ameliorate the plight of African American fathers, men, and boys, through its conservative Judea-Christian ethos, including the implementation of patriarchal family structures that are designed to restore the natural, familial, and social functioning of this suppressed group. The Black church is likely the only institution on American soil that can achieve this objective.

Thus, this position paper also avers a sort of "domino" theory: that is to say, that by destroying the Black church, the plight of African American fathers, men, and boys will be placed in great jeopardy, reversed, and worsened. Thus, by undermining the fundamental ethos of the Black church, the more marginalized and oppressed African American fathers, men, and boys become. Conversely, by nurturing, sustaining, and reinforcing the fundamental ethos of the Black church, the more empowered and dignified African American fathers, men, and boys become. Hence, a "federal common law" of the Black family ought to be organized around the implementation of this core concept.

Domino Theory on the Destruction of the Black Church	
(1). Destruction of patriarchal Judea-Christian value system of the Black church ------→	(2). Destruction of African American Fathers, Men, and Boys

I do not hesitate to further explain here that the *ethos* of the Black church is "paternalistic" and "patriarchal," patterned after the ancient Hebrew and Judea-Christian traditions contained within the Old Testament. The implication here is that by destroying the patriarchal or paternalistic value system of the Black church, a genocidal attack upon African American fathers, men, and boys (i.e., the Black family and community) has been the ultimate result.

The federal courts have the jurisdiction, power, and authority to pronounce this evil as a violation of the fundamental and natural familial rights that are guaranteed under the First and Fourteenth Amendments, United States Constitution, as well as the United Nations Universal

Declaration of Human Rights and its various protocols to which the United States Senate has ratified and made federal law.

Economic Motives behind Race Discrimination

The *economic* motives behind these evils cannot be ignored.[13] Peonage, sharecropping, convict leasing, labor union exclusion, hiring and promotion discrimination, redlining or loan discriminations, etc., have always been at the seat of this constitutional crisis regarding the plight of African American fathers, men, and boys.[14] Private enterprises and business organizations, which have perpetuated these injustices, have historically and perennially received the full support of the American court systems, lawyers, and judges.

Racists Lawyers and Judges

For example, in his masterpiece *Abraham: The World's First (And Certainly Not Last) Jewish Lawyer*, Harvard law professor Alan Dershowitz described the career of one Judah Benjamin, a "Confederate Leader" and "Commercial Lawyer," who attended Yale College, owned a sugar plantation and 150 slaves in Louisiana, served in the U.S. Senate, was twice offered a position on the U.S. Supreme Court by two U.S. Presidents, served as the Attorney

[13] Economics and labor market insecurities by white workers have always been the foundation of the plight of African American men, fathers, and boys. See, e.g., St. Clair Drake and Horace R. Cayton, *Black Metropolis: A Study of Negro Life in a Northern City* (New York, N.Y.: Harcourt, Brace and Co., 1945), pp. 270-271, stating:

> [During the Seventeenth Century] White indentured servants, having the advantage of cultural kinship with the overlords, sharply dissociated themselves from the African slave and buttressed their privileged position by stressing the importance of the color of their skins. By keeping the Negro bound to the plantation, the lowly white man protected his claim to the free lands of the West and his opportunity to rise from indentured servant to apprentice to journeyman to master artisan in the South and East. (Further, he accepted the doctrines of inherent biological inferiority in order to square things with his Puritan conscience and his democratic idealism.)
>
> By the turn of the nineteenth century, however, it was becoming evident that the southern landed aristocracy was ambitious to extend its system of slavery even to the free lands of the West, and thousands of southerners and ex-southerners in the border states began to turn against the planter class. Northern capitalists and artisans became the spearhead of an attack upon a slave system that threatened to hamper the growth of an industrial society, and menaced the free yeomen farmers in the West. The result was civil war. By this time the racial doctrines had become a part of the folk-thought, and, **although the white workers in North and South alike hated slavery, they did not love the slave**. In fact, **the freeing of the slaves three millions of potential competitors into the struggle for jobs** and the scramble for western lands.

[14] Id. See, generally, W.E.B. Du Bois, "The Souls of Black Folk," *Writings* (New York, N.Y.: The Library of America, 1986).

General for the Confederacy during the U.S. Civil War, and, following that war, absconded to England where he became a successful commercial lawyer. Dershowitz goes on to state: "It is difficult to categorize Judah Benjamin…. His Jewish background did not seem to hold him back in the South…. He collaborated with evil, as did many southerners—including Thomas Jefferson, long before the Civil War—though they probably believed they were on the right side of history."[15] Judah Benjamin's and Thomas Jefferson's examples were not the exceptions, but they were the rule amongst successful Southern lawyers and judges.[16] Hence, the American legal profession, which has benefitted from the status quo through protecting and benefitting from the same interests which have sought to exploit and suppress African American labor, has contributed to this constitutional crisis regarding the collapse of the Black family and the suppression of African American fathers, men, and boys.[17]

Black Pastors and Black Lawyers

African American lawyers are still very much an anomaly within the American legal profession. Their contributions within the larger American legal profession have been notable

[15] Alan M. Dershowitz, *Abraham: The World's First (And Certainly Not Last) Jewish Lawyer* (New York: N.Y.: Schocken Books, 2015), pp. 109- 110.

[16] See, e.g., Donald G. Nieman, ed. *African American Life in the Post-Emancipation South, 1861-1900,* Vol. 12 (New York: Garland Pub., 1994), p. 463, stating: " A worker under the best of circumstances usually lacked the resources to hire a lawyer and sue his employer, and a black worker faced the added problems of **racist** lawyers, judges, and juries and the danger that his complaints would lead to physical violence." And see, See, e.g., Gustavus Myers, *History of the Supreme Court of the United States* (Chicago, IL: Charles H. Kerr & Co., 1912), P. __, supra, stating:

> [The] lawyers themselves sprang from the ruling class, but with the fewest and most creditable exceptions, all others of that profession sought to ingratiate themselves into the favor of the rich by flattering, pleasing and serving them with an excess of zeal in stamping down the worker still further by statutes ingeniously borrowed from medieval law, or by harrowing the worker in the courts with lawsuits in which these attorneys by every subtle argument appealed to the prejudices of the judge, already antagonistic to the worker and prejudiced against him. Even if the judge, perchance, were impartially and leniently disposed, the laws, as they were, left him no choice. Reading the suits and speeches of the times, one sees clearly that the lawyers of the masters outdid even their clients in asserting the masters' lordly, paramount rights and powers, and in denying that any rights attached to the underclass.'

[17] See, e.g., Charles Hamilton Houston, "The Need for Negro Lawyers," *The Journal of Negro Education,* Vol. 4, No. 1 (Jan., 1935), pp. 49-52, stating:

> The social justification for the Negro lawyer as such in the United States today is the service he can render the race as an interpreter and proponent of its rights and aspiration. There are enough white lawyers to care for the ordinary legal business of the country if that were all that was involved. **But experience has proved that the average white lawyer, especially in the South, cannot be relied upon to wage an uncompromising fight for equal rights for Negroes. He has too many conflicting interests, and usually himself profits as an individual by that very exploitation of the Negro** which, as a lawyer, he would be called upon to attack and destroy.

and noble, but their influence upon the Black community has been dwarfed and overshadowed by that of the Black church and the Black pastor.[18] The influence of the Black church was, and still is, supreme within the Black community. But despite its influence, the central paradox of the Black churches' and Black pastors' leadership, however, is that while they fought valiantly for racial integration and human freedom during the 1950s and 60s, they were unable to withstand countervailing secular and economic forces that engulfed the Black community during the 1970s and beyond. And they have been unable to reconcile or to apply the fundamental principles contained within the Law of Moses with the secular constitutional, criminal, and civil laws of the United States. (Here, Black lawyers and Black judges, together with Black masters or doctors of philosophy is various fields, must not only bolster the Black church, but they should also join and become one with the Black church in achieving this objective).

[18] See, e.g., J. Clay Smith, Jr., *Emancipation: The Making of the Black Lawyer, 1844-1944* (Philadelphia, P.A.: University of Pennsylvania Press, 1993), p. 5, stating:

> Black lawyers were one of the last group of professionals to emerge as a class in the black community. They were given a 'high status' in the black community, but they occupied 'a less-favored position within the social structure' as a whole. Their presence and their small numbers were not viewed as a significant threat in the legal community because they were only marginally accepted by white lawyers and white clients. Black people often used black lawyers in almost hopeless criminal matters but turned to white lawyers in the more lucrative civil cases.
>
> The black lawyers' status remained viable, but they faced direct competition from the black preacher in terms of prestige and effectiveness: the black lawyer worked in a public forum which he did not control, and over which he had little influence, but the black preacher came closer than any other black professional to serving as an advocate in the public arena. Black preachers had a built-in constituency; black lawyers had to build theirs. But the black preacher was also able to protect the black lawyer when he entered the public arena to plead the black cause, because the white power structure knew that the preachers could stir up the black community and influence their vote. The black lawyer thus often found sanctuary for his public persona in the privacy of the black church.
>
> Black preachers consistently outnumbered the number of black lawyers in the South. In 1930 Alabama had 1,653 black preachers and 'four lawyers who cared to struggle against the caste system in the Alabama courts.' One million black people in Alabama looked to three or four lawyers to seek justice, but they were doubtful that such a small number of black lawyers could launch a successful attack against the racial policies of the white establishment. During and after the Reconstruction era, then, black people, anchored to the church, remained tied to black preachers rather than to black lawyer as the primary source of leadership in the community.

Slavery and the Black Family[19]	**Black Church and the Black Family during early 20th Century**[20]
"The slave may be 'used' so as to be 'used up' in seven years; may be used as a '**breeder**,' as a **prostitute**, as a **concubine**, as a **pimp**, as a **tapster**, as an attendant at the gaming-table, as a subject of **medical and surgical experiments** for the benefit of science, and the Legislature makes no objection against it."[21]	"The plague-spot in sexual relations is **easy marriage** and **easy separation**. This is no sudden development, nor the fruit of Emancipation. It is the **plain heritage from slavery**…. The **Negro church has done much to stop this practice**, and now most marriage ceremonies are performed by pastors. Nevertheless, the evil is still deep seated, and only a general raising of the standard of living will finally cure it."[22]

For instance, Dr. Martin Luther King's *Letter from the Birmingham City Jail* (1963) was a valiant, but failed, attempt at this very objective; as the U.S. Supreme Court refused to recognize its central arguments under the parameters of the First Amendment in the case of *Walker v. City of Birmingham*, 388 U.S. 307 (1967). The *Walker* case thus exemplifies the plain fact that the White-dominated American legal profession has largely ignored and deprecated the sacred role of the Black church, whether in the field of civil rights or

[19] Alexis de Tocqueville, *Democracy in America*, Chapter XVIII: Future Condition of Three Races- Part I ("The negro has no family; woman is merely the temporary companion of his pleasures, and his children are upon an equality with himself from the moment of their birth. Am I to call it a proof of God's mercy or a visitation of his wrath, that man in certain states appears to be insensible to his extreme wretchedness, and almost affects, with a depraved taste, the cause of his misfortunes? The negro, who is plunged in this abyss of evils, scarcely feels his own calamitous situation. Violence made him a slave, and the habit of servitude gives him the thoughts and desires of a slave; he admires his tyrants more than he hates them, and finds his joy and his pride in the servile imitation of those who oppress him: his understanding is degraded to the level of his soul.")

[20] Carter G. Woodson, *The History of the Negro Church* (Washington, D.C.: The Associated Publishers, 1921), p. 282 ("The [Negro] church serves as a moral force, a power acting as a restraint upon the bad and stimulating the good to further moral achievement. Among the Negroes its valuable service is readily apparent…."); W.E.B. Du Bois, "The Souls of Black Folk," *Writings* (New York, N.Y.: The Library of America, 1986), p. 496 ("[T]he [Negro] Church often stands as a real conserver of morals, a strengthener of family life, and the final authority on what is Good and Right."); and James H. Cone and Gayraud S. Wilmore, *Black Theology: A Documentary History*, Vol. One: 1966- 1979 (Maryknoll, N.Y.: Orbis Books, 2003), p. 218 ("[T]he Black Church of the nineteenth century… thought of itself as God's judgment upon racism… converted thousands, stabilized the Black family… founded schools and colleges…. And provided the social, cultural, economic, and political base of the entire African American community in the United States.")

[21] William Goodell, *The Democracy of Christianity, or; An Analysis of the Bible and its Doctrines in Their Relation to the Principles of Democracy* (New York, N.Y.: Cady and Burgess, 1852), p. 327.

[22] W.E.B. Du Bois, "The Souls of Black Folk," Writings (New York, N.Y.: The Library of America, 1986), p. 460- 461.

otherwise. And this is especially true in the area of family law, where the life of the Black family is thoroughly regulated and impacted.[23]

This position paper is thus designed to correct this mistake and to restore the central position of the Black sacred tradition (i.e., the Sacred Scriptures) of within American constitutional law and jurisprudence.[24]

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[23] See, generally, Shani M. King, "The Family Law Canon in a (Post?) Racial Era," 72 Ohio St. L.J. 575 (2011), available at http://scholarship.law.ufl.edu/facultypub/232. As a result, the American legal profession has tacitly undermined the unique plight of the African American fathers, men, and boys, who sincerely desire to establish honorable homes and stable families and to become productive citizens. Through ahistorical and colorblind civil rights jurisprudence, the American legal profession has also undermined the plight of the Black community. The American legal profession, through ahistorical, colorblind jurisprudence, has covered up legislative history of the Civil War Amendments; it has obscured the historical experience of Black persons through 246 years of chattel slavery, followed by a bewildering deprivation of civil and human rights, punctuated by perennial insecurities from White workers who felt no desire to see Black workers rise in stature. The American legal profession, through ahistorical, colorblind jurisprudence, has covered up the effects of peonage, lynchings, political disenfranchisement, de jure racial segregation, and race relations throughout the American South easily from 1865 through the 1950s. And, finally, the American legal profession has failed to recognize or acknowledge the role of the Black church and Black pastors, together with the Judea-Christian customary laws taken from the Sacred Scriptures, in helping the Black community survive and to sustain itself throughout this awful historical period. To the extent that the American legal profession has tried to adjudicate and resolve Black family rights or Black family issues, involving Black citizens, without taking into account the historical and social experiences of the African American people, it has often performed grave miscarriages of justice and a disservice to the nation.

[24] The twentieth-century Black Church is deeply symbolized in the life and times of **Rev. Dr. Howard Thurman (1900 – 1981)**. See David Yount, "Quakers and Human Rights," *How the Quakers Invented America* (Lanham, MD: Rowman & Littlefield Pub., 2007), p. 129 ("Lamentably, emancipation fell short of guaranteeing black Americans the same right as whites. Nearly a century would pass before **Martin Luther King, Jr.** spurred a successful civil rights movement based on nonviolent protest. **Dr. King's spiritual mentor was Howard Thurman (1900 – 1981)**, a fellow student of King's father. After being ordained a Baptist minister in 1925, Thurman became the protégé of Quaker philosopher Rufus Jones at Haverford College in Pennsylvania. From Jones and from travels that included conversations with Mahatma Gandhi, Thurman became persuaded that American blacks could achieve their full freedom of opportunity only thorough nonviolent protest. In 1953, Thurman became the first African American dean of chapel at predominantly white Boston University. He also established the first racially integrated, intercultural church in America, the Church for Fellowship.") In his work, *Jesus and the Disinherited* (Boston, M.A.: Beacon Press, 1976), pp. 34-35, **Dr. Thurman set forth his own analysis of the parallel between early twentieth-century Black America and the Jews of ancient Judea during the time of Christ**, stating:

> The striking similarity between the social position of Jesus in Palestine and that of the vast majority of American Negroes is obvious to anyone who tarries long over the facts. We are dealing here with conditions that produce essentially the same psychology. There is meant no further comparison. It is the similarity of a social climate at the point of a denial of full citizenship rights, no fundamental protection, guaranteed to them by the state, because their status as citizens has never been clearly defined. There has been for them little protection from the dominant controllers of society and even less protection from the unrestrained elements within their own group.
>
> The result has been a tendency to be their own protectors, to bulwark themselves against careless and deliberate aggression. The Negro has felt, with some justification, that the peace officer of the community provides no defense against the offending or offensive white man; and for an entirely different set of reasons the peace officer

CHAPTER II

"Black Church as a Bulwark Against Slavery and Oppression"

The Black church emerged, nourished, and supported the Black family throughout the darkest of days of chattel slavery. For, indeed, it was during the period of slavery and *de jure* segregation when the influence of the Black church and Black clergy were at their highest and when the Black family was leavened and stabilized. This tremendous and notable service which the Black church performed has undeservedly gone unnoticed by the American courts and the American legal profession. The parallel between the decline in the influence of the Black church during the 1970s, and the decline of the Black Family during the same period, has likewise undeservedly gone unnoticed. This paper therefore highlights the *essential link* between the strength and influence of the Black church and the health and integrity of the Black family and community in the United States.

Most importantly, when the Black church was at its height, during the period 1865 to the 1950s, it operated upon definite principles of morality that were informed by the Sacred Scriptures, natural law, the traditional canon laws of various Western churches, and traditional Anglo-American common law. It then exercised an ecclesiastical jurisdiction over the Black family; and that jurisdiction was certainly a part of the law of the land—it was certainly unwritten, customary law which implemented the Sacred Scriptures.

When the ecclesiastical jurisdiction of the Black church was at its fullest and largest extent during the period 1865 -1950, the Black family and its stability were largely restored. Since the 1970s, however, mainstream public policy measures—operating through and being

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gives no protection against the offending Negro. Thus the Negro feels that he must be prepared, at a moment's notice, to protect his own life and take the consequence therefor. Such a predicament has made it natural for some of them to use weapons as a defense and to have recourse to premeditated or precipitate violence.

Living in a climate of deep insecurity, Jesus, faced with so narrow a margin of civil guarantees, had to find some other basis upon which to establish a sense of well-being. He knew that the goals of religion as he understood them could never be worked out within the then-established order. Deep from within that order he projected a dream, the logic of which would give to all the needful security. There would be room for all, and no man would be a threat to his brother. 'The kingdom of God is within.' 'The Spirit of the Lord is upon me, because he hath anointed me to preach the gospel to the poor.'

The basic principles of his way of life cut straight through to the despair of his fellows and found it groundless. By inference he says, 'You must abandon your fear of each other and fear only God. You must not indulge in any deception and dishonesty, even to save your lives. Your words must be Yea—Nay; anything else is evil. Hatred is destructive to hatred and hater alike. Love your enemy, that you may be children of your Father who is in heaven.'

reinforced by America's courts—have omitted, discredited, and (or) marginalized the Black church's traditional jurisdiction of the Black family, replacing that institution with public welfare programs that have been wholly aloof, when not altogether inimical towards, the fundamental problems that impact African American fathers, men, and boys. The results, which are now well-known and embodied in our statistics on black males, have been catastrophic—almost to the point whereby the Black community can credibly charge the United States governments of having orchestrated the perpetuation of structural racism that is *genocidal* in nature. This charge of genocide is poignantly exemplified in the plight of African American fathers, men, and boys since the 1970s.

Here, the Black church's theological doctrine can perform its greatest service to the nation by demonstrating how the spiritual, customary, ecclesiastical laws, together with the folkways, mores, and traditions of ethnic minority groups and local communities are embodied within the jurisdiction of churches (e.g., such as the Black church, the Korean-American church, the Chinese-American church, etc.,) whereby the *essential customary law of the family* is maintained, taught, and implemented. Today's state courts, and implementing state family laws, are prohibiting this objective, because Black churchmen, fathers, and men are disproportionately absent from the process of making and interpreting the family laws and policy.

This was true of the Church of England and its ecclesiastical tribunals for more than ten centuries; and it was equally true for the Black church during the period 1865 to the 1950s. Wherefore, the human rights, natural rights, and fundamental constitutional rights of Black American citizens have been incarnated within the institution of the Black church, so that by diminishing or undermining the Black church through the curtailment of its natural leadership and influence upon the Black family, the fundamental plight of African American fathers, men, and boys are thus placed in grave jeopardy.[25] I believe that this is the fundamental nature of the current constitutional crisis in the United States.

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[25] But this acknowledgment of the proper positioning and place of the Black church within our American constitutional system cannot take place without radical changes within the present structures of the several Black churches themselves, e.g., for so long as the Black church and Black clergymen themselves do not realize, or recognize, this important fact; or for so long as Black churchmen do not reassess the important professional and academic qualifications —such as graduate education in law, economics, public administration, public policy, social work, etc., addition to degrees in theology and divinity—for Black clergymen and other church leaders.

One unifying principle tying the goals and objectives of the United States Courts and the Black Church together is that of natural law. The American Declaration of Independence and the Constitution of the United States are deeply rooted in the same natural law principles that are contained within the Decalogue.[26] Hence, both the United States Courts and the Black Church share a common goal here.

In Reformed theology and legal theory,[27] the fundamental natural rights (i.e., human rights) of mankind are reflected in both the Decalogue and the entire Law of Moses. The Decalogue is the cornerstone to the entire Law of Moses. This Decalogue consists of two tables; the first table relates to mankind's sacred obligations and duties toward God; and the second table relates to mankind's solemn obligations towards each other. The Apostle Paul, who was a Christian convert, as well as a former Jewish theologian, rabbi, Pharisee, and student of the great legal scholar Gamaliel, summarized the second table of the Decalogue in his *Epistle to the Romans*, as follows:

> Owe no man any thing, but to love one another: for he that loveth one another hath fulfilled the law. For this, Thou shalt not commit adultery, Thou shalt not kill, Thou shalt not steal, Thou shalt not bear false witness, Thou shalt not covet; and if there be any other commandment, it is briefly comprehended in this saying, namely, Thou shalt love thy neighbour as thyself. Love worketh no ill to his neighbor: therefore love is the fulfilling of the law [of Moses].[28]

In Reformed theology and legal theory, the fundamental natural rights are reflected in both the Decalogue. For instance, in the Reformed tradition, it is legally sufficient that international human rights (i.e., natural rights) be grounded upon the Decalogue, whereby God himself prohibited adultery, murder, theft, false evidence or testimony.[29] All human beings, therefore,

[26] See, Footnote # 57, below, citing William Goodell's *The Democracy of Christianity.*

[27] Reformed Methodist Theology (RMT) was coined by the undersigned author while as a seminary student at the Whitefield Theological Seminary.

[28] Romans 13: 8-10. See, also, The fundamental "Law of Christ," to wit, which is to "love ye one another" (John 15:12); to do justice and judgement (Genesis 18:18-19; Proverbs 21: 1-3); to judge not according to appearance but to judge righteous judgments (John 7:24); to do justice, judgment, and equity (Proverbs 1:2-3); and "whatsoever ye would that men should do to you, do ye even so to them" (Matthew 7:12). See, also, Robert F. Cochran and Zachary R. Calo, Agape, Justice and Law: How might Christian Love Shape Law? (Cambridge, United Kingdom: Cambridge University Press, 2017).

[29] John Witte, Jr., and Frank S. Alexander, *Christianity and Law: An Introduction* (Cambridge, UK: Cambridge Press, 2008).

have the inalienable right to a monogamous marriage uninterrupted by forced separation, rape, unjustified incarceration, etc.; and to protection against unjust killing, murder, theft, and the denial of due process of law on the basis of false evidence or false testimony, etc.[30] The story of the enslavement of the ancient Israelites, particularly as it recounts the targeted murder of the baby Hebrew boys,[31] also informs us that *genocide*— i.e., the targeting killing or suppression, whether in whole or in part, of a particular racial or ethnic group[32]— violates the fundamental natural law (i.e., human rights) of mankind.

The Polish lawyer Raphäel Lemkin first coined the word "genocide" in 1944.[33] The word "genocide" consists of the Greek prefix *genos*, meaning race or tribe, and the Latin suffix *cide*, meaning killing. "Lemkin developed the term partly in response to the Nazi policies of systematic murder of Jewish people during the Holocaust, but also in response to previous instances in history of targeted actions aimed at the destruction of particular groups of people. Later on, Raphäel Lemkin led the campaign to have genocide recognised and codified as an international crime."[34]

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[30] Id.

[31] Exodus 1:15-17.

[32] See, e.g., Convention on the Prevention and Punishment of the Crime of Genocide, Article II, stating:

> In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
>
> (a) Killing members of the group;
>
> (b) Causing serious bodily or mental harm to members of the group;
>
> (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
>
> (d) Imposing measures intended to prevent births within the group;
>
> (e) Forcibly transferring children of the group to another group.

[33] See, e.g., Raphael Lemkin, et al., *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress (Foundations of the Laws of War)(1944)*[citation omitted].

[34] United Nations, Office on Genocide Prevention and the Duty to Protect, https://www.un.org/en/genocideprevention/genocide.shtml.

During the 1940s, the African Americans in the United States were paying close attention to international plight of Jews and worked closely with the Roosevelt and Truman administrations to enact policies and laws that would root out racial oppression and discrimination. Indeed, during World War II, the African American community had pushed the "Double V" slogan, meaning victory of the Nazis abroad and victory of racial discrimination and prejudice at home in the United States. The parallel situation concerning the Jews in Nazi Germany and American Blacks in many areas in the South, and in many parts of inner cities in the North, were unnerving. During the early 1940s, Dr. W.E.B. Du Bois had expressed the very realistic concern that:

> As the Negro develops from an easily exploitable, profit-furnishing laborer to an intelligent independent self-supporting citizen, the possibility of his being pushed out of this American fatherland may easily be increased rather than diminished. We may be expelled from the United States as the Jew is being expelled from Germany.[35]

In 1945, the NAACP sent Dr. Du Bois, as one of its delegates, to the United Nations, where he witnessed the ratification of the United Nations Universal Declaration of Rights. That Declaration set forth nearly all of the principles and objectives which Du Bois, the NAACP, and scores of other African Americans—including the Black Church—had sought to achieve since the end of the U.S. Civil War (1861 – 1865).

Dr. Du Bois' parallel between the plight of Black Americans with that of twentieth-century Jews is fully appropriate. In the United States, Black and Jews acknowledged the parallel and worked together to end the worst forms of racial discrimination and abuses on American soil.

Although great progress was made in the field of civil and human rights from between 1945 and 1970, including President Truman's Executive Order which integrated the Armed Forces in 1948; the United States Supreme Court's decision that desegregated public schools in 1954; the enactment of the Civil Rights Act of 1964, the Voting Rights Act of 1965, and the Fair Housing Act of 1968, the African American population has been subjugated to crippling economic and social dislocations that have decimated the Black family structure since the 1970s. These crippling economic and social dislocations, which especially target and affect

[35] W.E.B. Du Bois, "The Dusk of Dawn," *Writings* (New York, N.Y.: The Library of America, 1986), p. 778.

the plight of African American fathers, men, and boys, are tantamount to genocidal conditions within the African American community.[36]

[36] See, e.g., H. Res. 517, "Original Slavery Remembrance Day Resolution of 2021," August 20, 2021 (United States House of Representatives, U.S. Congress), stating:

> Whereas enslaved Black families lived with the perpetual possibility of separation caused by the sale of one or more family members;
>
> Whereas it is estimated that approximately one third of enslaved children in the upper South States of Maryland and Virginia experienced family separation in one of three possible scenarios: sale away from parents, sale with mother away from father, or sale of mother or father away from child….

See, e.g., Daniel P. Moynihan, *The Negro family: The Case for National Action*. Washington, DC: Office of Policy Planning and Research, U.S. Department of Labor (March 1965), stating:

> It was by destroying the Negro family under slavery that white America broke the will of the Negro people….
>
> When Jim Crow made its appearance towards the end of the 19th century, it may be speculated that it was the Negro male who was most humiliated thereby; the male was more likely to use pubic facilities, which became segregated once the process began, and just as important, segregation, and the submissiveness it exacts, is surely more destructive to the male than to the female personality. Keeping the Negro 'in his place' can be translated as keeping the Negro male in his place: the female was not a threat to anyone. Unquestionably, these events worked against the emergence of a strong father figure….
>
> In essence, the Negro community has been forced into a matriarchal structure which, because it is to out of line with the rest of the American society, seriously retards the progress of the group as a whole, and imposes a crushing burden on the Negro male….

See, e.g., "Federal Role in Urban Affairs," Hearings before the Sub-Committee on Executive Reorganization. *Congressional Record*, (August 15, 1966), with Senator Robert Kennedy stating:

> We know the importance of strong families to development; we know that financial security is important for family stability and that there is strength in the father's earning power. But in dealing with Negro families, we have too often penalized them for staying together.
>
> As Richard Cloward has said: 'Men for whom there are no jobs will nevertheless mate like other men, but they are not so likely to marry. Our society has preferred to deal with the resulting female-headed families not by putting the men to work but by placing the unwed mothers and children on public welfare—substituting check-writing machines for male wage-earners. By this means we have robbed men of manhood, women of husbands, and children of fathers. To create a stable monogamous family, we need to provide men (especially Negro men) with the opportunity to be men, and that involves enabling them to perform occupationally.

See, e.g., "African American Family Structure," Wikipedia (online encyclopedia), stating:

> According to Hattery and Smith 25–33% of African-American men are spending time in jail or prison and according to Thomas, Krampe, and Newton 28% of African-American children do not live with any father representative….

Most ominously, this paper suggests that, despite the fact that the African American social crisis is historic and deep-seated, America's judges, lawyers, state legislators, and public officials have *recklessly mismanaged this crisis* with a callous indifference towards the history of racial oppression and discrimination in the United States. These stakeholders have evaded, or essentially repealed, the *customary law of the Black family*, which the Black church has developed over several decades in order to stabilize Black families and to ameliorate the plight of Black youth. These stakeholders (which are majority White, but also includes very many Blacks) have also purposefully:

- marginalized the Black church and Black clergymen from the policy-making, administrative, and adjudicatory systems which administer family law nationwide;[37]
- disregarded the sciences of history and sociology when administering family law policies within the oppressed Black communities nationwide;[38]

This incarceration rate for black males increased by a rate of more than four between the years of 1980 and 2003. The incarceration rate for African American males is 3,045 out of 100,000 compared to 465 per 100,000 White American males. In many areas around the country, the chance that black males will be arrested and jailed at least once in their lifetime is extremely high. For Washington, D.C., this probability is between 80 and 90%....

The Moynihan Report, written by Assistant Secretary of Labor, Daniel Patrick Moynihan, initiated the debate on whether the African-American family structure leads to negative outcomes, such as poverty, teenage pregnancy and gaps in education or whether the reverse is true and the African American family structure is a result of institutional discrimination, poverty and other segregation. Regardless of the causality, researchers have found a consistent relationship between the current African American family structure and poverty, education, and pregnancy. According to C. Eric Lincoln, the Negro family's "enduring sickness" is the absent father from the African-American family structure….

Black single-parent homes headed by women still demonstrate how relevant the feminization of poverty is. Black women often work in low-paying and female-dominated occupations. Black women also make up a large percentage of poverty-afflicted people. Additionally, the racialization of poverty in combination with its feminization creates further hindrances for youth growing up black, in single-parent homes, and in poverty ….

[37] W.E.B. Du Bois, "The Souls of Black Folk," *Writings* (New York, N.Y.: The Library of America, 1986), p. 496 ("[T]he [Negro] Church often stands as a real conserver of morals, a strengthener of family life, and the final authority on what is Good and Right."); Carter G. Woodson, *The History of the Negro Church* (Washington, D.C.: The Associated Publishers, 1921), p. 282 ("The [Negro] church serves as a moral force, a power acting as a restraint upon the bad and stimulating the good to further moral achievement. Among the Negroes its valuable service is readily apparent…."); and James H. Cone and Gayraud S. Wilmore, *Black Theology: A Documentary History*, Vol. One: 1966- 1979 (Maryknoll, N.Y.: Orbis Books, 2003), p. 218 ("[T]he Black Church of the nineteenth century… thought of itself as God's judgment upon racism… converted thousands, stabilized the Black family… founded schools and colleges…. And provided the social, cultural, economic, and political base of the entire African American community in the United States.")

[38] Shani M. King, "The Family Law Canon in a (Post?) Racial Era," 72 Ohio St. L.J. 575 (2011), available at http://scholarship.law.ufl.edu/facultypub/232.

- adopted a "colorblind" approach to family law policies within the oppressed Black communities nationwide;[39] and,
- fomented conflict-ridden relationships between Black men/women which have resulted in the decline in Black marriage, families, and educational prospects for Black children.

First, it is doubtful whether men and women who hold the *juris doctor* degree from the typical ABA-accredited law school are most qualified to hear, mediate, and adjudicate *family law cases that involve Black families*. It is highly doubtful, for instance, as to whether these lawyers and judges are more qualified than senior Black clergymen, to preside over these types of cases. The history of the American legal profession suggests that, without adequate additional education and training, the American bar and bench are not suitable for this work. Notwithstanding, the American legal profession has nearly a complete monopoly on the administration of family law (i.e., divorce, child custody, etc.); and this near monopoly has not only aggravated the above-referenced African American family crisis, but it has also fostered *genocidal social conditions* within the Black community.[40]

Given this present situation, this paper suggests that it is the plain duty—i.e., the pastoral and prophetic duty— of the Black church and Black clergy to develop creative methods, working alongside lawyers, judges, and other public officials, in order to reclaim the Black church's natural leadership role over (i.e., *equitable jurisdiction*) the Black family.[41] Without the implementation of the Black church's natural, cultural, spiritual and racial leadership over the Black family crisis, state and federal government officials will not only fail to resolve this crisis, but they will, in fact, not only make that crisis much worse over time but also foment *genocidal social conditions* within the Black community. This paper suggests that the major constitutional implication of this crisis is that the "substantive fundamental due process rights" of large segments of the Black community have been negatively impaired precisely because the Black church and its historic leadership over the Black family has been steadily diminished over time, until that present-day Black-church leadership now constitutes only a very negligible factor in the plight of the Black family.[42]

[39] Id.

[40] Id. See, also, Footnote 36.

[41] Id. See, also, Footnote 37.

[42] The Black church's diminished leadership role should be drastically reversed—special chaplaincy programs should be co-sponsored between Black churches and state or private colleges with the express purpose of reintegrating the Black church

The United Nations' "Convention on the Crime of Genocide" highlights the effects and the results of racially-discriminatory motives of government actors who abuse or misuse their authority.[43] Under the UN Convention on the Crime of Genocide, genocide occurs when the perpetrator causes "serious bodily or mental harm to members of the group" or "deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part." Those same *anti-genocide* provisions are also cognizable under the United States Constitution and various federal civil rights statutes such as 42 U.S.C. § 1983. Accordingly, the objective of this paper is to "red flag" the American family law state court system, because it has perennially failed the Black family. This objective is also to establish the jurisdiction of federal courts over family law matters that affect Black families, and to remind the Black church of its special pastoral and prophetic role within the African American community.[44]

into the family-law court system. An ecclesiastical court system, based upon arbitration principles, should also be developed and implemented.

[43] Shani M. King, "The Family Law Canon in a (Post?) Racial Era," 72 Ohio St. L.J. 575 (2011), available athttp://scholarship.law.ufl.edu/facultypub/232.

[44] The American legal profession—i.e., the bar and bench—is not immune from bad actors who might perpetuate such abuses upon the Black family, through the disguise of proceedings within the state family courts, in order to perpetuate the effects of past slavery and racial discrimination, thus resulting in genocidal conditions. This paper suspects, through anecdotal evidence, that this is not only possible, but it is the reality; and that, historically, the Black church was organized around the goals and objectives of uprooting the effects of slavery and, inter alia, of ameliorating the plight of the Black family. It has been the only organic institution with the identify of community of interests, the credibility, and the resources to achieve these goals and objectives. Wherefore, the present-day public policy of marginalizing the Black church's influence and leadership over the Black family is not only bad public policy but it may very well constitute the crime of genocide.

CHAPTER III.

"Anglo-American Common Law of the Family and Slavery"

The Black church offers no new or radical doctrines. In fact, the traditional family customs, values, and practices of the Black church largely conform to the traditional common law of England. Indeed, the Black church's family values and traditions are deeply rooted in natural law principles which became the law of the Christian church through the epistles of the Apostle Paul. Since the 4th century A.D., both church and state in the West have shared overlapping jurisdiction over laws and courts that regulated the family. This was true throughout most of the history of England and also in colonial New England and all of colonial British North America. For more than ten centuries, the White families of England, Europe, and North America, were nourished, disciplined, and shaped by the family or canon law of the Western Church, which reinforced male leadership over the family, to wit:

> **"But I would have you know, that the head of every man is Christ; and the head of the woman is the man; and the head of Christ is God."**
>
> -- 1 Corinthians 11:3

To that end, the Protestant churches in the West held family law court, appointed ecclesiastical family law judges, and informed both the church and the state about the application of public family civil, ecclesiastical, or common law that regulated the institution of the family law matters— and this same ecclesiastical law of the family became the source of familial stability within the White American communities throughout the United States.

But the Black American family and the Black church do not enjoy that same historical experience— in fact, the Black church's experience, which was disfigured by the institution of chattel slavery, is tragically different than the White church's experience— and herein lay the current paradox that depicts the present crisis in American family law jurisprudence and the primary justification for creating a special "family law" jurisdiction that relate or pertain to the Black family— particularly the plight of African American fathers, men, and boys, together with the conflict-ridden relations between African American men/women.[45]

[45] See, e.g., Shani M. King, "The Family Law Canon in a (Post?) Racial Era," 72 Ohio St. L.J. 575 (2011), available at http://scholarship.law.ufl.edu/facultypub/232.

To remedy this dichotomy, the U.S. District Courts should be tasked with the duty to develop a specialized "federal common law of the Black family," in order to address this social crisis, under the rubric of federal civil rights jurisprudence arising under the Civil War Amendments and § 1983.[46] By its very nature, this "federal common law" should reflect the historical experiences of Black family life, which certainly place the Black church and Black clergymen at the front and center of that historical experience. That federal common law of the Black family should therefore get to the core and root causes of the social problems that perennially vex the social life of the Black community.[47] That federal common law of the Black family should acknowledge the spiritual strivings of the African peoples, tribal, traditional, Jewish, Christian, Islamic—whatever thing that is material and relevant to the social life of the Black community. That federal common law of the Black family should tacitly acknowledge that, overall, the Black church has defined the Black experience of slavery and struggle as being more authentically aligned with the Old Testament's stories of ancient Israel. And it is this Black experience that communicates most convincingly the present-day milieu of orthodox Black church theology on fundamental natural rights (i.e., human rights) which are founded upon the Decalogue and the Law of Moses. It is the Black constituency, perhaps more than any other group, that is in dire need of those fundamental natural rights, together with the cultural apparatus of the Black church, in order to implement those rights in real life. For these reasons, the Black community and the Black church have long sought to attain the blessings of the Anglo-American common law, which slavery had systematically prohibited.

From its inception on the British Isles during the 9th and 10th centuries, A.D., the Anglo-Saxon customary law (and, later, English common law) on marriage and family was deeply rooted in the Christian religion. Later, during the 16th and 17th centuries, through the socializing and cultural apparatus of both the established Church of England and several mainline Protestant churches in the American colonies, these Christian values were sewn into Anglo-American common law.[48]

[46] The United States District Courts must take some form of appellate or equitable jurisdiction over the several state courts that adjudicate legal matters or disputes that involve the Black family—particularly African American fathers.

[47] See, e.g., Daniel P. Moynihan, *The Negro family: The Case for National Action*. Washington, DC: Office of Policy Planning and Research, U.S. Department of Labor (March 1965).

[48] John Marshall Guest, "The Influence of Biblical Texts Upon English Law" (An address delivered before the Phi Beta Kappa and Sigma Xi Societies of the University of Pennsylvania on June 14, 1910)(pages 15-34), p. 16, stating:

For instance, the decisions of the Church of England's ecclesiastical courts, which had jurisdiction over and adjudicated family law matters, were incorporated into American common law and statutory law regulating the family relation. The cases of *Short v. Stotts*, 58 Ind. 29; *Wightman v. Wightman*, 4 Johns Ch. 343; and *Crump v. Morgan*, 3 Ired. Eq. 91, represent the prevailing state jurisprudence which held generally that the opinions from England's ecclesiastical courts constituted a part of the English common law which also had been incorporated into American common law. Thus, quoting the following holding in *Crump v. Morgan*, to wit:

> It is said that these are the adjudications of ecclesiastical courts and are founded not in the common law, but in the canon and civil laws, and therefore not entitled to respect here. But it is an entire mistake to say "that the canon and civil laws, as administered in the ecclesiastical courts of England, are not part of the common law. Blackstone, following Lord HALE, classes them among the unwritten laws of England, and as parts of the common law which by custom are adopted and used in peculiar jurisdictions. They were brought herd by our ancestors as parts of the common law and have been adopted and used here in all cases to which they were applicable, and whenever there has been a tribunal exercising a jurisdiction to call for their use. They govern testamentary cases and matrimonial cases. Probate and re-probate of will stand upon the same grounds here as in England, unless so far as statutes may have altered it.[49]

Under the common law, during marriage, each party generally owes the other party a duty of support. *Campagna v. Cope*, 971 So.2d 243 (Fla. 2nd DCA 2008); *Killian v. Lawson*, 387 So.2d 960 (Fla. 1980) (discussing common law duty to support spouse)("[d]uring the marriage, each party generally owes the other party a duty of support"). In this regard, it has been said that a husband has a common-law duty to support his wife. *Killiam v. Lawson*, 387 So.2d 960, 961 (Fla. 1980):

> A husband has a common law duty to support his wife. *Contractors Contract NOY 5948 v. Morris*, 154 Fla. 497, 18 So. 2d 247 (1944). When alimony or support money is awarded, this duty to support survives dissolution of marriage because

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It has been often said, indeed, that Christianity is part of the common law of England, and this is due in great measure to the authority of Sir Matthew Hale (*King v. Taylor*, i Vent. 293, 3 Keble 507), Blackstone and other writers, while Lord Mansfield held (*Chamberlain of London v. Evans*, 1767) that the essential principles of revealed religion are part of the common law.

[49] "The Adoption of the Common Law by the American Colonies," *The American Register* (September 1882), p. 564. https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=3029&context=penn_law_review

> public policy requires the doing of that which in equity and good conscience should be done. *Brackin v. Brackin*, 182 So. 2d 1 (Fla. 1966). As this Court has noted, the purpose of alimony is to prevent a dependent party from becoming a public charge or an object of charity. *Aldrich v. Aldrich*, 163 So. 2d 276 (Fla. 1964). Exemption statutes serve the same purpose and should be liberally construed in favor of a debtor so that he and his family will not become public charges. *Patten Package Co. v. Houser*, 102 Fla. 603, 136 So. 353 (1931); *Elvine v. Public Finance Co*., 196 So. 2d 25 (Fla. 3d DCA 1967).
>
> The Married Women's Act is not to be construed as relieving a husband from any duty of supporting and maintaining his wife and children. Fla. Stat. 708.10(1)("Married women's rights; construction of law— This law shall not be construed as… Relieving a husband from any duty of supporting and maintaining his wife and children"). *Pawley v. Pawley*, 46 So.2d 464, 473 (Fla. 1950); *Astor v. Astor*, 89 So. 2d 645, 648 (Fla. 1956); *Pawley v. Pawley*, 46 So.2d 464, 467(Fla. 1950); *Kaufman v. Kaufman*, Fla., 63 So.2d 196, 199 (Fla. 1952). Thus, the common law makes it the legal duty of a husband to support his wife and family.

Unfortunately, that same common law on the family was not readily extended to the African slaves who reached America's shores. The American slave codes thoroughly divested African slaves of fundamental and natural familial rights which Anglo-American common law expressly guaranteed.[50]

Had these slaves been able to avail themselves of the various rights, privileges, and immunities established in Anglo-American and English common law, they would have been automatically liberated. Thus, writing on this same topic, the Rev. William Goodell has written in his classic work, *The American Slave Code*, that:

> It is undoubtedly true that **the common law, if applied to the slave, would amply protect him from outrage and murder**. It would also protect him in his right to his earnings and to the disposal of the products of his industry, to exemption from seizure and sale: in a word, **the *common law*, if applied to the slave, would *emancipate* him**….[51]

[50] Jacob D. Wheeler, Esq., *A Practical Treatise on the Law of Slavery: Being a Compilation of all the Decisions Made on that Subject, In the Several Courts of the United States and State Courts* (New York, N.Y.: Craighead & Allen, 1837); William Goodell, *The American Slave Code* (New York, N.Y.: The American Anti-Slavery Society, 1853).

[51] William Goodell, *The American Slave Code In Theory and Practice: its Distinctive Features Shown by Its Statutes, Judicial Decisions, and Illustrative Facts* (New York, N.Y.: American and Foreign Anti-Slavery Society, 1853), p. 185.

During two hundred and forty-six years of slavery, black husbands and fathers were systematically and officially *emasculated*[52]-- denied their natural or common law rights to provide for and to protect their wives and children.[53]

"Badges and Incidents of Slavery": Divestiture of Rights of Marriage and Family Status	
No Rights of Marriage/ or to Contract Matrimony John D. Wheeler, *A Practical Treatise of the Law of Slavery* (1837)	Cases • *Girod v. Lewis*, 6 Martin's Louisiana Rep. 559 (1819)
No Rights of Protection of Black Wives Against Rape/ Sexual Abuse Pokorak, Jeffrey J. , "Rape as a Badge of Slavery: The Legal History of, and Remedies for, Prosecutorial Race-of-Victim Charging Disparities," *Nevada Law Journal*: Vol. 7: Iss. 1, Article 2. (2006), pp. 8-10 ("[f]or most of our nation's history, it was not a crime to rape a Black woman.")	Cases • *Commonwealth v. Mann*, 4 Va. 210 (1820); • *State v. Charles*, 1 Fla. 298 (1847); and • *George v. State*, 37 Miss. 316 (1859).

That systematic and official denial of basic familial rights, which were guaranteed in Anglo-American common law, was manifested in various forms of "common law" torts and

[52] See, e.g., W.E.B. Du Bois, *The Souls of Black Folk*, https://etc.usf.edu/lit2go/203/the-souls-of-black-folk/4432/chapter-2-of-the-dawn-of-freedom/ (Chapter Two, "Of the Dawn of Freedom")("Here at a stroke of the pen was erected a government of millions of men,--and not ordinary men either, but **black men emasculated by a peculiarly complete system of slavery**, centuries old…").

[53] Id.

(or) "constitutional" torts. Examples of common law torts that were perpetually committed against the integrity of black family life include:

"Common Law Torts (Violation of Black Families During Slavery)"

Restatement (Second) of Torts § 683 "Alienation of Wife's Affections"

One who, without a privilege to do so, purposely alienates a wife's affections from her husband, is liable for the harm thereby caused to any of his legally protected marital interests.

Restatement (Second) of Torts §684 "Inducing a Wife to Separate from or Refuse to Return to Her Husband"

One who, without a privilege to do so and for the purpose of disrupting the marriage relation, induces a wife to separate from her husband or not to return to him after she has separated from him, is liable to the husband for the harm thereby caused to any of his legally protected marital interests.

Restatement (Second) of Torts § 685 "Criminal Conversation with a Married Woman"

One who, without the husband's consent, has sexual intercourse with a married woman is liable to the husband for the harm thereby caused to any of his legally protected marital interests…. b. Under the rule stated in this Section, the husband is entitled to recover from anyone who, without his consent, has sexual relations with his wife even though the husband sustains no further loss.

Those same common law rights in familial relations were later expressly acknowledged as fundamental or as substantive constitutional rights that are guaranteed by the American Bill of Rights (1789), i.e., the First Amendment, U.S. Constitution, and applicable to the states pursuant to the Fourteenth Amendment, U.S. Constitution, to wit:

"Constitutional Torts (Violation of Black Families During Slavery)"

Fundamental Right of Marriage (Consortium), Family (Associational Relations), and Procreation (Parenthood) that are protected under the First and Fourteenth Amendment, U.S. Constitution:[54]

See, e.g., *Paul v. Davis*, 424 U.S. 693, 712-714 (1976); *Carroll by Carroll v. Parks*, 755 F.2d 1455, 1457 (11th Cir. 1985); *City of North Miami v. Kurtz*, 653 So.2d 1025, 1027 (Fla. 1995)("The federal privacy provision… extends to such fundamental interests as marriage, procreation, contraception, family relationships, and the rearing and educating of children. *Carey v. Population Serv. Int'l*, 431 U.S. 678, 97 S.Ct. 2010, 52 L.Ed.2d 675 (1977)...")

Historically, these familial rights were well-established in English common law and in early American jurisprudence. These familial common law rights were afforded to white citizens since the inception of the founding of the American colonies, but they were thoroughly and systematically denied to black slaves. And that denial is not simply historical, but rather it continues up to the present-day; that is, the fundamental natural rights that are contained within the common law, and guaranteed in the First Amendment, U.S. Constitution, are still largely denied to African American men, fathers, and boys.[55]

[54] See, e.g., *Paul v. Davis*, 424 U.S. 693, 712-714 (1976); *Carroll by Carroll v. Parks*, 755 F.2d 1455, 1457 (11th Cir. 1985); *City of North Miami v. Kurtz*, 653 So.2d 1025, 1027 (Fla. 1995)("The federal privacy provision… extends to such fundamental interests as marriage, procreation, contraception, family relationships, and the rearing and educating of children. *Carey v. Population Serv. Int'l*, 431 U.S. 678, 97 S.Ct. 2010, 52 L.Ed.2d 675 (1977)...")

[55] See, e.g., Footnote 36.

CHAPTER IV.

"The Black Church and Traditional Anglo-American Common Law of Family"

Since the antebellum period of the American republic, the Black church sought to eradicate the effects of chattel slavery upon the Black family[56] through application of the traditional Anglo-American common law of marriage and family.[57] Most Black clergymen

[56] Alexis de Tocqueville, *Democracy in America*, Chapter XVIII: Future Condition of Three Races- Part I ("The negro has no family; woman is merely the temporary companion of his pleasures, and his children are upon an equality with himself from the moment of their birth. Am I to call it a proof of God's mercy or a visitation of his wrath, that man in certain states appears to be insensible to his extreme wretchedness, and almost affects, with a depraved taste, the cause of his misfortunes? The negro, who is plunged in this abyss of evils, scarcely feels his own calamitous situation. Violence made him a slave, and the habit of servitude gives him the thoughts and desires of a slave; he admires his tyrants more than he hates them, and finds his joy and his pride in the servile imitation of those who oppress him: his understanding is degraded to the level of his soul.")

[57] William Goodell, *The Democracy of Christianity, or; An Analysis of the Bible and its Doctrines in Their Relation to the Principles of Democracy* (New York, N.Y.: Cady and Burgess, 1852), pp. 376-377, to wit:

> The noble fathers of civil and religious liberty in England (so far as those inestimable blessings have ever been enjoyed there) have given us expositions of this passage, in their time-honored maxims of COMMON LAW, that differ widely from those that have been transmitted down to us from the time-serving or ambitious prelates of that period. According to the former class of expositors, Paul teaches us that 'the lawful power is from God alone, but the power of wrong is from the devil, and not from God.' They deny that Paul speaks of any authority but a *just* authority, and *just* also in the sense of being *justly exercised*. The text of Paul, then, teaches that there IS (de facto) NO civil authority or power deserving the name, or to be recognized or treated as such, that does not answer to the description he gives here of that rightful and Heaven-established authority. It is easy to see why those who resist such authority (the authority of justice and of God) 'receive to themselves damnation.' But the principle reacts with tremendous force upon all pretended civil governments that are not 'of God,' and therefore are no legitimate 'powers' (or authorities) at all; such as are not a terror to evil works, but to the good!
>
> These Puritan and Common Law expositions of Paul, in Romans xiii., are among the most revolutionary maxims we have in modern times, and, as a matter of historical fact, they have wrought two tremendous revolutions already, one in England and one in America, whether they are to be regarded as sound expositions or otherwise. An echo of these expositions we have in our Declaration of Independence. Bracton, in his exposition of Romans xiii., had said:
>
> > 'He is called a king for ruling righteously, and not because he reigns. Wherefore he is a king when he governs with justice, but a tyrant when he oppresses the people committed to his charge.'
> >
> > In nearly the same language our Declaration of Independence abjures the authority of the British monarch:
> >
> > 'A prince, whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.'

and believed that Anglo-American common law represented Christian principles and values which the Black church widely advocated as being the foundation of the freedom of African American people.[58] Thus, following the end of the U.S. Civil War, the freedmen sought to conform to the highest and noblest ideals of Anglo-American civilization, which included traditional Christian family values and customs; and they did so primarily through the institution of the Black church,[59] to wit:

Christian Marriage and Family

- **1 Corinthians 11:3** ("But I would have you know, that the head of every man is Christ; and the head of the woman is the man; and the head of Christ is God.")
- **Ephesians 5:25-27** ("Husbands, love your wives, even as Christ also loved the church, and gave himself for it….")
- **1 Peter 3:1-7** ("…Likewise, ye wives, be in subjection to your own husbands…. Likewise, ye husbands, dwell with them according to knowledge, giving honour unto the wife, as unto the weaker vessel….")

For instance, under the traditional Anglo-American common law, together with the traditional Judea-Christian teachings,[60] the husband is the provider and leader of the family

These words of Jefferson seem but a paraphrase or application of Bracton's, and Bracton's are but his own reference from his own exposition of Paul.

[58] Carter G. Woodson, *The History of the Negro Church* (Washington, D.C.: The Associated Publishers, 1921), p. 282 ("The [Negro] church serves as a moral force, a power acting as a restraint upon the bad and stimulating the good to further moral achievement. Among the Negroes its valuable service is readily apparent…."); W.E.B. Du Bois, "The Souls of Black Folk," *Writings* (New York, N.Y.: The Library of America, 1986), p. 496 ("[T]he [Negro] Church often stands as a real conserver of morals, a strengthener of family life, and the final authority on what is Good and Right."); and James H. Cone and Gayraud S. Wilmore, *Black Theology: A Documentary History*, Vol. One: 1966- 1979 (Maryknoll, N.Y.: Orbis Books, 2003), p. 218 ("[T]he Black Church of the nineteenth century… thought of itself as God's judgment upon racism… converted thousands, stabilized the Black family… founded schools and colleges…. And provided the social, cultural, economic, and political base of the entire African American community in the United States.")

[59] C. Eric Lincoln and Lawrence H. Mamiya, *The Black Church in the African American Experience* (Durham, N.C.: Duke University Press, 1990), p. 1 ("We use the term 'the Black Church' as do other scholars and much of the general public as a kind of sociological and theological shorthand reference to the pluralism of black Christian churches in the United States.")

[60] See, e.g., 1 Corinthians 11:3, stating "[b]ut I would have you know, that the head of every man is Christ; and the head of the woman is the man; and the head of Christ is God." See, e.g., J. Andrew Dearman, "The Family in the Old Testament," *Interpretation: A Journal of Bible and Theology* (April 1, 1998), stating:

unit.[61] The Black church instilled the same patriarchal value system within the Black community. See, e.g., Am. Jur., Family Law, § 10 Head of Family:

> **"Head of Family":**
> **American Jurisprudence (First Edition)**
>
> **§ 10 Head of Family**
>
> The husband, unless incapacitated from executing the authority and performing the duty, is head of the family. This is so, not only at common law, but under the Married Women's Acts. It is not the purpose of these acts to depose the husband from the position given him by the common law as the head of the family. It is necessary to the unity and preservation of the family, which is regarded as the basis of the state, to have a single head with control and power, and the husband is made that head and, in return, is made responsible for the maintenance and, at common law, for the conduct of his

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> The Hebrew term to 'Family' is bet' ab, literally rendered as 'father's house,' reflecting a male-headed, multigenerational household as the basic unit in ancient Israel. A household was shaped by endogamous marriage rites, patrilineal succession, and inheritance customs that privileged the eldest son…. Another term related to the concept of 'family' is mispaha, often rendered 'clan.' A mispaha is a kinship unit of related fathers' houses. An association of related 'clans' would comprise a tribe (sebet).

See, also, Brenda Colin, "Family in the Bible: A Brief Survey," *Ashland Theological Journal* (AJS 2004), stating:

> "The Old Testament affirms the biological family, which is assumed to be the basic unit of society." See, also, Richard Baxter, *A Christian Directory Or, a Sum of Practical Theology, And Cases of Conscience* (Part 2 Christian Economics)(reprinted in Columbia, S.C. on January 18, 2019), p. 61 ("The husband is to be the mouth of the family…. He must be as it were the priest of the household….").

[61] See, e.g., 1 Corinthians 11:3, stating "[b]ut I would have you know, that the head of every man is Christ; and the head of the woman is the man; and the head of Christ is God." See, e.g., J. Andrew Dearman, "The Family in the Old Testament," *Interpretation: A Journal of Bible and Theology* (April 1, 1998), stating:

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wife. Such fundamental authority is necessary to his duty to protect and provide for his wife and children.

The authority of the husband as the head of the family gives him the right, acting reasonably, to direct the family's affairs and to determine where and what the home of the family shall be, and thus, to establish the matrimonial and family domicile. The view has been taken that this right of the husband is not limited to the state or country in which the parties live at the time of their marriage, but in these days of easy communication between different countries and different parts of the same country, he may exercise it, where acting reasonably, in a way which will change his citizenship and allegiance. But he must act with due regard to the welfare, comfort, and peace of mind of his wife, and to her legal status as the mistress of his home, his companion, the sharer of his fortune, and not his servant. She is under duty to submit to such reasonable governance of the family by the husband.

A husband is responsible to society for the good order and decency of the household, and this is true under Married Women's Acts endowing married women with separateness and equality of legal responsibility.

The wife is the head of the family in so far as the husband is incapacitated from performing the duty.

Indeed, the Black church believed that instilling these patriarchal moral values, that it was also remedying slavery's tortious assaults upon Black fathers and Black husbands. According to historians Carter G. Woodson[62] and W.E.B. Du Bois,[63] the Black church was the primary

[62] Professor Carter Godwin Woodson, Harvard, Ph.D. (1912). See, Carter G. Woodson, *The History of the Negro Church* (Washington, D.C.: The Associated Publishers, 1921), pp. 282-283, 304, and 313, stating:

> The church serves as a moral force, a power acting as a restraint upon the bad and stimulating the good to further moral achievement. Among the Negroes its valuable service is readily apparent when one considers the fact that this race, oppressed as it has been by the government of the State and nation, is at heart rebellious, while the church, as outspoken as it may seem, is not radical. Coming under the influence of the church, the safety valve in the South, the race has been dissuaded from any rash action by the patient and long suffering ministry reiterating the admonition that "vengeance is mine, I will repay" ….
>
> The ministry too is more attractive among Negroes than among whites. The white minister has only one important function to perform in his group, that of spiritual leadership. To the Negro community the preacher is this and besides the walking encyclopedia, the counselor of the unwise, the friend of the unfortunate, the social welfare organizer, and the interpreter of the signs of the times. No man is properly introduced to the Negro community unless he comes through the minister, and no movement can expect success there unless it has his coöperation or endorsement….

institution within the African American community which sought to instill and preserve traditional Christian family values and customs, during both the antebellum period and during the period immediately after the end of slavery, up through the early 1900s.[64] Indeed, Du Bois

> Through the Negro churches, and these alone, have the Negroes been able to effect anything like a coöperative movement to counteract the evil influences of such combinations against the race as the revived Ku Klux Klan. The church then is no longer the voice of one man crying in the wilderness, but a spiritual organization at last becoming alive to the needs of a people handicapped by social distinctions of which the race must gradually free itself to do here in this life that which will assure the larger life to come. To attain this the earth must be made habitable for civilized people. Funds are daily raised in Negro churches to fight segregation, and an innocent Negro in danger of suffering injustice at the hands of the local oppressor may appeal with success to the communicants with whom he has frequented a common altar. The National Association for the Advancement of Colored People would be unable to carry out its program without the aid of the Negro church….
>
> The importance of the position of the Negro minister is apparent when one considers the large following which some of these churches have. Here the minister controls not only hundreds but thousands, as in the cases of Rev. J. E. Willis of the Vermont Avenue Baptist Church in Washington, of the Rev. Mr. Adams of the Concord Baptist Church in Brooklyn, Dr. M. W. Reddick in the leadership of thousands of Baptists in Georgia, and the eloquent Dr. M. W. D. Norman, who after years of service as a minister in North Carolina and Virginia and as Dean of the Theological Department of Shaw University, succeeded the lamented Rev. Robert Johnson at the Metropolitan Baptist Church in Washington, where thousands wait upon Dr. Norman's words. Some of these ministers are drawing very large numbers, because, instead of merely building large edifices and buying fine clothes and gifts for themselves, they are putting efficiency in the management of the churches, as in the cases of R. H. Bowling in Norfolk, Mordecai W. Johnson in Charleston, and Dr. A. Clayton Powell in New York City. In the Negro churches, moreover, as with Dr. J. C. Austin in Pittsburgh, there are being organized banks, housing corporations, insurance companies, and even steamship projects in keeping with the ideas of Dr. L. G. Jordan. Yet despite this change in point of view, the Negro church has not become a corrupt machine. Its affairs are still in the hands of men who, as a majority, are interested in their race rather than in themselves. The opportunity here sought is not that of leadership but that of service….
>
> [T]he Negro minister, like a majority of the thinking members of this group to-day, will welcome the assistance and coöperation of the white man, but will not suffer himself to be used as a tool in connection with forces from without the circles of the race, pretending to be interested in the solution of its problems.

[63] Professor W.E.B. Du Bois, Harvard, Ph.D. (1895). See, W.E.B. Du Bois, *The Souls of Black Folk* (New York, N.Y.: The Library of America, 1986).

[64] Testaments as to the tortious assaults upon Black fatherhood are well-documented throughout the African American historical experience. See, also, Roderick O. Ford, *Labor Matters: The African American Labor Crisis, 1861-Present* (2015), pp. 424-427, to wit:

> The color line of the twentieth century was established in 1896 in the Supreme Court's infamous case of Plessy vs. Ferguson, which upheld racial segregation. But the American color line had deep roots in the American slave codes as well. Those old slave codes lumped multiracial Africans (i.e., mulattoes) into the same class as the unmixed African slaves. Florida's antebellum statutes explicitly mention mulattoes and treat them as 'slaves,' 'Negroes,' 'free Negroes,' etc....
>
> In the antebellum South white fathers usually disowned their multiracial children and were willing to relegate them to the status of slaves. Indeed, in many states the race of the mother determined the race of the child, precisely to

described the Black church in 1903 as an institution that "often stands as a real conserver of morals, **a strengthener of family life**, and the final authority on what is Good and Right."[65] Indeed, the mores, folkways, customs, and traditions of black family life have been thoroughly shaped by the Christian religion through the organized Black church.[66]

The black family is the primary unit of the Black Church. The historic Black Church was a gathering of families and extended families worshipping in a sanctuary they themselves erected, and buried in due course in the churchyard that was already hallowed by the

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achieve the perpetual subordination of mulatto children to the same status as the other darker-skinned African American slaves.

Writing on this same point, **Frederick Douglass** observed that '[s]lavery had no recognition of fathers, as none of families. That the mother was a slave was enough for its deadly purpose. By its law the child followed the condition of its mother. The father might be a freeman and the child a slave. The father might be a white man, glorying in the purity of his Anglo-Saxon blood, and his child ranked with the blackest slaves. Father he might be, and not be husband, and could sell his own child without incurring reproach, if in its veins coursed one drop of African blood.'

'[W]hile Africa is the land of our mothers,' **Booker T. Washington** once observed, 'the fathers of about a million and a half of us are to be found in the South among the blue-blooded Anglo- Saxons.'

And **W.E.B. Du Bois** once decried, "O Southern Gentlemen! If you deplore their [African Americans] presence here, thy ask, Who brought us? Why you cry, Deliver us from the vision of intermarriage, they answer that legal marriage is infinitely better than systematic concubinage and prostitution. And if in just fury you accuse their vagabonds of violating women, they also in fury quite as just my reply: The wrong which your gentlemen have done against helpless black women in defiance of your own laws is written on the foreheads of two million of mulattoes, and written in ineffaceable blood.'

Similarly, while commenting on the system of' Jim Crow' racial segregation in the South during the early twentieth century, **James Weldon Johnson** observed that 'a white gentleman may not eat with a colored person without the danger of serious loss of social prestige; yet he may sleep with a colored person without incurring the risk of any appreciable damage to his reputation.... [E]very thinking Southern white man understands clearly: 'Social equality' signifies a series of far-flung barriers against amalgamation of the two races; except so far as it may come about by white men with colored women.'

[65] W.E.B. Du Bois, "The Souls of Black Folk," *Writings* (New York, N.Y.: The Library of America, 1986), p. 496.

[66] In 1903, W.E.B. Du Bois observed that:

> [The Negro] churches are really governments of men, and consequently a little investigation reveals the curious fact that, in the South, at least, practically every American Negro is a church member. Some, to be sure, are not regularly enrolled, and a few do not habitually attend services; but, practically, a proscribed people must have a social centre, and that centre for this people is the Negro church.

W.E.B. Du Bois, "The Souls of Black Folk," *Writings* (New York, N.Y.: The Library of America, 1903), p. 496.

memories of past generations it enshrined. There is a symbiosis between the black family and the church which makes for mutual reinforcement and creates for most black families their initial or primary identity.[67]

Conservative sexual, marriage, and social norms were taught in the Black church—with a special emphasis upon the amelioration of Black family life.[68] And included within the exigencies of postbellum African American culture was the plight of the Black family, which the conservative Christian teachings of the Black church helped to revitalize and stabilize during the period 1870 – 1950.[69]

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[67] C. Eric Lincoln and Lawrence H. Mamiya, *The Black Church in the African American Experience* (Durham, N.C.: Duke University Press, 1990), p. 402.

[68] W.E.B. Du Bois, "The Souls of Black Folk," *Writings* (New York, N.Y.: The Library of America, 1986), p. 496 ("[T]he [Negro] Church often stands as a real conserver of morals, **a strengthener of family life**, and the final authority on what is Good and Right"); and see, also, James H. Cone and Gayraud S. Wilmore, *Black Theology: A Documentary History*, Vol. One: 1966- 1979 (Maryknoll, N.Y.: Orbis Books, 2003), p. 218 ("[T]he Black Church of the nineteenth century… thought of itself as God's judgment upon racism… converted thousands, **stabilized the Black family**… founded schools and colleges…. And provided the social, cultural, economic, and political base of the entire African American community in the United States.")

[69] According to W.E.B. Du Bois, the plight of "Negro home" lay front and center amongst the challenges of Emancipation, as presented in "The Souls of Black Folk," *Writings*, supra, 460- 461:

> The plague-spot in sexual relations is easy marriage and easy separation. This is no sudden development, nor the fruit of Emancipation. **It is the plain heritage from slavery**. In those days Sam, with his master's consent, 'took up' with Mary. No ceremony was necessary, and in the busy life of the great plantation of the Black Belt it was usually dispensed with. If now the master needed Sam's wok in another plantation or in another part of the same plantation, or if he took a notion to sell the slave, Sam's married life with Mary was usually unceremoniously broken, and then it was clearly to the master's interest to have both of them take new mates. This widespread custom of two centuries has not been eradicated in thirty years. To-day Sam's grandson 'takes up' with a woman without license or ceremony; they live together decently and honestly, and are, to all intent and purposes, man and wife. Sometimes these unions are never broken until a rival suitor, or perhaps more frequently the hopeless battle to upon a family, lead to separation, and a broken household is the result. **The Negro church has done much to stop this practice, and now most marriage ceremonies are performed by pastors**. Nevertheless, the evil is still deep seated, and only a general raising of the standard of living will finally cure it.

But as researcher Erol Richards has suggested, the modern-day plight of the African American family owes much to urbanization, and perhaps economic discrimination within the labor markets, and to the historical legacy of slavery—although it may be difficult to distinguish between these "historic" and "contemporary" phenomena. See, e.g., Erol Ricketts, "The Origin of Black Female-Headed Families," [citation omitted], stating:

> It is clear from the data that 1950 is a watershed year for black families; thereafter black female-headed families grow rapidly and blacks become more urbanized than whites. Between 1930 and 1950 the rates of black female-headed families, in the United States as a whole and in urban areas, are parallel to the corresponding rates for whites. The black rates are higher than the rates for whites, as one would expect given the black socioeconomic differential and higher rates of widowhood among blacks. It is after 1950

The common theme that runs throughout both Woodson's and Du Bois' assessment of the Black church is that it was markedly distinct and different from its White counterpart.[70] Because of historical forces, politics, and the institution of American slavery, the Black church was made to function differently and to meet a distinct and different set of cultural needs.[71] Thus, when the Civil Rights Movements commenced during the 1950s, Dr. Martin

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that the rate of female-headed families for blacks diverges significantly from the rate for whites, although the rate of white female-headed families begins to converge with the rate for blacks in about 1970.

[70] See, also, C. Eric Lincoln and Lawrence H. Mamiya, *The Black Church in the African American Experience* (Durham, N.C.: Duke University Press, 1990), p. 4, 15, 231 stating:

> The black Christians who formed the historic black churches also knew implicitly that their understanding of Christianity, which was premised on the rock of antiracial discrimination, was more authentic than the Christianity practiced in white churches…. Black churches are viewed as 'mediating institutions.' For example, after the Civil War the church was the main mediating and socializing vehicle for millions of former slaves, teaching them **economic rationality**, urging them to get an **education**, **helping them to keep their families together**, and providing the **leadership** for early black communities….
>
> Throughout their histories both the NAACP and the National Urban League were supported by black clergy and churches. In fact, in many local chapters clergy and church members formed the backbone of these secular organizations.

[71] See, e.g., W.E.B. Du Bois, "The Souls of Black Folk," *Writings*, supra, p. 501, stating:

> For fifty years Negro religion thus transformed itself and identified itself with the dream of Abolition, until that which was a radical fad in the white North and an anarchistic plot in the white South had become a religion to the black world. Thus, when Emancipation finally came, it seemed to the freedman a literal Coming of the Lord. His fervid imagination was stirred as never before, by the tramp of armies, the blood of dust of battle, and the wail and whirl of social upheaval. He stood dumb and motionless before the whirlwind: what had he to do with it? Was it not the Lord's doing, and marvelous in his eyes? Joyed and bewildered with what came, he stood awaiting new wonders till the inevitable Age of Reaction swept over the nation and brought the crisis of to-day.

And, see, Carter G. Woodson, *The History of the Negro Church* (Washington, D.C.: The Associated Publishers, 1921), pp. 307-308, stating:

> In spite of the Negroes' logical preaching of the fatherhood of God and the brotherhood of man, however, the North now seems inclined to accept the faith of the South. Science has long since uprooted the theory that one race can be superior to another, but the northern churches are loath to act accordingly. The same churches, which prior to emancipation, championed the cause of the Negro, are to-day working indirectly to promote racial distinctions. The southern white man, wiser in his generation than most of his competitors, easily realized that he could not legally reënslave the Negro, but early devised a scheme to convert the North to the doctrine of segregation, educational distinctions, and the elimination of the Negroes from the body politic, to make it improbable, if not impossible, for the Negroes to attain the status of white men. The Christian spirit of the North at first rebelled against the very idea; but, already pledged to the policy of the economic proscription of Negroes through trades unions, that section, once bristling with churches dominated by abolitionists, soon yielded to the temptation of sacrificing the principles of Jesus for dollars and cents. The Negro of to-day, therefore, is hated as much by the northern religious devotee as by the southern enthusiast at the shrine of race prejudice….

Luther King, Jr., in perhaps his first public statement on civil rights, could very credibly describe African American southerners as a "Christian people."[72] That assessment, however, is no different than the United States Supreme Court's general description of the United States as a whole. See, e.g., *Terrett v. Taylor*, 13 U.S. 43 (1815);[73] *Holy Trinity v. United States*, 143 U.S. 457 (1892);[74] and *United States v. Macintosh*, 283 U.S. 605 (1931).[75]

However, after the 1950s, the *leavening* influence of the Black church (especially its teachings on the leadership role of the black husband and father) slowly gave way to the secular economic forces of labor markets, private industry, the jurisdiction of secular court systems, public welfare agencies, the policing system in general, and urbanization.[76] And

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> In the midst of the changing order involving all but the annihilation of the Negro, the race has repeatedly appealed to the "Christian" element of the North only to have a deaf ear turned to its petition. Inasmuch as the northern ministers are influenced by rich laymen whose businesses have so many ramifications in the South, they refrain from such criticism or interference in behalf of the Negro, since it might mean economic loss. Negroes at first secured from northern churches large sums of money to establish adequate private schools and colleges throughout the South, but before these institutions could be developed these funds were diverted to the support of industrial education which the South openly interpreted to signify that no Negro must be encouraged to become the equal of any white man, and that education for him must mean something entirely different from that training provided for the Caucasian. The northern white man, more interested in developing men to produce cotton and tobacco than in the training of a race to think for itself, again bowed to mammon.

[72] Dr. Martin Luther King, Jr. "Speech on the Montgomery Bus Boycott" (1955) https://www.blackpast.org/african-american-history/1955-martin-luther-king-jr-montgomery-bus-boycott/ ("I want it to be known throughout Montgomery and throughout this nation that we are Christian people. We believe in the Christian religion. We believe in the teachings of Jesus.")

[73] *Terrett v. Taylor*, 13 U.S. 43, 52, 9 Cranch 43 (1815)(referencing "the principles of **natural justice**, upon **the fundamental laws of every free government**").

[74] *Holy Trinity v. United States*, 143 U.S. 457 (1892)(providing an extensive history of the influence of Christianity upon state and federal constitutional documents and traditions, and concluding that the United States is "**a Christian nation**.")

[75] *United States v. Macintosh*, 283 U.S. 605, 625 (1931) (stating that [w]e are a **Christian people** (*Holy Trinity Church v. United States*, 143 U. S. 457, 143 U. S. 470- 471), according to one another the equal right of religious freedom and acknowledging with reverence the duty of obedience to the will of God.")

[76] See, generally, C. Eric Lincoln and Lawrence H. Mamiya, *The Black Church in the African American Experience* (Durham, N.C.: Duke University Press, 1990), pp. 382 – 404, (Chapter 13, "The Black Church and the Twenty-First Century: Challenges to the Black Church."), stating, inter alia:

> …. The process of secularization in black communities has always meant a diminishing of the influence of religion and an erosion in the central importance of black churches…. There is some evidence that the present and past central importance of the Black Church may be threatened by the virtual explosion of opportunities, which are now becoming available to recent black college graduates. An officially segregated society contributed to the dominant role black churches were able to maintain as one of the few cohesive black institutions to emerge from slavery….

See, also, Erol Ricketts, "The Origin of Black Female-Headed Families," [citation omitted], stating:

many Black Americans themselves, as a consequence the these an other social changes, abandoned the church and the Christian religion altogether.

Decline and Fall of the Black Church's Socializing Influence

"Along with the diminution of white middle-class contacts for a large percentage of Negroes, observers report that **the Negro churches have all but lost contact with men in the Northern cities as well**. This may be a normal condition of urban life, but it is probably a changed condition for the Negro American and cannot be a socially desirable development."

-- Daniel Patrick Moynihan, "The Moynihan Report: The Case of National Action" (1965).[77]

For this reason, this position paper does not claim to impose the Christian religion upon those Black persons who do not want it; for to do so would be to deny those Black person their fundamental constitutional and natural rights.

That said, there is no reason why the forces of secularism (e.g., concerns over LGTBQ rights and the like) should deprive the Black church and those willing Black Christians from carrying out a massive and almost-universally accepted program of Black spiritual uplift and survival— one that predates the U.S. Civil War (1861 – 1865) and continues up the present date, to wit:

BLACK CHURCH'S FORMULA FOR SURVIVAL, LIBERATION, AND FREEDOM

(1) Adherence to principles of the Christian faith = (2) Black survival, liberation, and freedom

It is clear from the data that 1950 is a watershed year for black families; thereafter black female-headed families grow rapidly and blacks become more urbanized than whites. Between 1930 and 1950 the rates of black female-headed families, in the United States as a whole and in urban areas, are parallel to the corresponding rates for whites. The black rates are higher than the rates for whites, as one would expect given the black socioeconomic differential and higher rates of widowhood among blacks. It is after 1950
that the rate of female-headed families for blacks diverges significantly from the rate for whites, although the rate of white female-headed families begins to converge with the rate for blacks in about 1970.

[77] The Moynihan Report (1965), https://www.blackpast.org/african-american-history/moynihan-report-1965/#chapter4

There is no reason why local, state, and federal chief magistrates and administrators should not support the Black church's *ecclesiastical jurisdiction* (i.e. constitutional and legal authority to state what family law is or is not), which upholds the belief that adherence to principles of the Christian religion is the surest means to Black survival, liberation, and freedom. To impede this free exercise of religion would not only violate the First Amendment, U.S. Constitution, but it would also effectuate genocidal social conditions within the African American community. In fact, through the implementation of ahistorical, colorblind jurisprudence and public policies, this has already happened; and it has been occurring since the 1970s.[78]

[78] See Footnotes 87 and 88.

CHAPTER V.

"The Feminization of Black Leadership and the Decline and Fall of the Black Family"

The American legal profession has failed to acknowledge the human rights implications that are manifested within the present-day effects of chattel slavery upon the intimate and conjugal Black male/female relationships and the Black family structure in the United States.[79] The educational and occupational rise of professional African American women have come about at the high cost of the steady decline in the security and health of the Black family and Black marriage; and they have come also at the expense of African American fathers, men, and boys.[80] Since the 1950s, urbanization, labor market discrimination, and

[79] See Footnotes # 87 and # 88, below.

[80] See Footnotes # 87 and # 88, below. See, also, "Federal Role in Urban Affairs," Hearings before the Sub-Committee on Executive Reorganization. *Congressional Record*, (August 15, 1966), with Senator Robert Kennedy stating:

> We know the importance of strong families to development; we know that financial security is important for family stability and that there is strength in the father's earning power. But in dealing with Negro families, we have too often penalized them for staying together.
>
> As Richard Cloward has said: 'Men for whom there are no jobs will nevertheless mate like other men, but they are not so likely to marry. Our society has preferred to deal with the resulting female-headed families not by putting the men to work but by placing the unwed mothers and children on public welfare—substituting check-writing machines for male wage-earners. By this means we have robbed men of manhood, women of husbands, and children of fathers. To create a stable monogamous family, we need to provide men (especially Negro men) with the opportunity to be men, and that involves enabling them to perform occupationally.

See, e.g., "African American Family Structure," *Wikipedia* (online encyclopedia), stating:

> According to Hattery and Smith 25–33% of African-American men are spending time in jail or prison and according to Thomas, Krampe, and Newton 28% of African-American children do not live with any father representative….
>
> This incarceration rate for black males increased by a rate of more than four between the years of 1980 and 2003. The incarceration rate for African American males is 3,045 out of 100,000 compared to 465 per 100,000 White American males. In many areas around the country, the chance that black males will be arrested and jailed at least once in their lifetime is extremely high. For Washington, D.C., this probability is between 80 and 90%....
>
> The Moynihan Report, written by Assistant Secretary of Labor, Daniel Patrick Moynihan, initiated the debate on whether the African-American family structure leads to negative outcomes, such as poverty, teenage pregnancy and gaps in education or whether the reverse is true and the African American family structure is a result of institutional discrimination, poverty and other segregation. Regardless of the causality, researchers have found a consistent relationship between the current African American family structure and poverty, education, and pregnancy.

institutional racism have systematically impaired the labor market outcomes for African American men.[81] During this same time period, African American women have not experienced the same level of resistance to their entrance into service-industry and white collar employment.[82] This employment preference for Black women creates labor-market competition and jealousy between Black male and Black female workers.[83] Moreover, these labor market forces— which are certainly reinforced (if not altogether aggravated) by equal employment opportunity laws such as the Equal Pay Act of 1963 and Title VII of the Civil Rights Act of 1964 (gender)— negatively impair the ability of African American men to discharge their lawful duties as husbands and fathers.[84]

> According to C. Eric Lincoln, the Negro family's "enduring sickness" is the absent father from the African-American family structure….
>
> Black single-parent homes headed by women still demonstrate how relevant the feminization of poverty is. Black women often work in low-paying and female-dominated occupations. Black women also make up a large percentage of poverty-afflicted people. Additionally, the racialization of poverty in combination with its feminization creates further hindrances for youth growing up black, in single-parent homes, and in poverty ….

[81] See Footnote # 89, below. See, also, W.E.B. Du Bois, *Darkwater: Voices From Within the Veil* (New York, N.Y.: Washington Square Press, 2004), pp. 139- 140, stating:

> The breaking up of the present family is the result of modern working and sex conditions and it hits the laborers with terrible force. The Negroes are put in a peculiarly difficult position, because **the wage of the male breadwinner is below the standard**, while **the openings for colored women in** certain lines of domestic work, and now in industries, **are many**. Thus while toil holds the **father and brother** in country and town at low wages, the **sisters and mothers** are called to the city.

[82] Id.

[83] See Footnotes # 87 and # 88, below. See, e.g., Gerda Lerner, *Black Women In White America: A Documentary History* (New York, N.Y.: Vintage Books, 1972), pp. xxiv-xxv. ("In fact, one can say quite definitely **that white society has economically pitted black women against black men**…."); see, also, Joe R. Feagin and Melvin P. Sikes, *Living With Racism: The Black Middle-Class Experience* (Boston, MA: Beacon Press, 1994), pp. 181-183, stating:

> On occasion, some observers of U.S. racial relations have asked whether black women face more or less discrimination than black men in pursing their employment goals and careers…. A male college graduate in the West saw some important differences: 'There are definitely systematic differences. [Black] women are perceived as being less of a threat, more passive than men…. Black males are perceived to be powerful, a threat. In his view the black male image that is frightening to many whites on the street has a counterpart in the workplace.

[84] See Footnote # 87, below. In 1920, W.E.B. Du Bois wrote that the American labor market system and political systems sought "to apply [equal employment opportunity and civil rights] slowly and with some reluctance to white men and more slowly with greater reserve to white women, but black folk and brown and for the most part yellow folk we have widely determined shall not be among those whose needs must justly be heard and whose wants must be ministered to in the great organization of the world industry." *Darkwater: Voices from Within the Veil* (New York: Washington Square Press, 2004), pp. 77-78. Even in 1920, Dr. Du Bois' social analysis clearly puts Black males below the pay grade or employment class of both White males and White females. In 2023, this industrial analysis is still accurate.

Particularly within the labor markets, these secular forces collectively "stacked the deck" to *the disadvantage of African American men and fathers*— a phenomenon that had existed in the North even prior to the U.S. Civil War (1861 – 1865).[85] See, e.g., Senator Robert F. Kennedy's statement on the "Federal Role in Urban Affairs," Hearings before the Sub-Committee on Executive, Reorganization. *Congressional Record*, (August 15, 1966), stating:

> We know the importance of strong families to development; we know that financial security is important for family stability and that there is strength in the father's earning power. But in dealing with Negro families, we have too often penalized them for staying together.
>
> As Richard Cloward has said: 'Men for whom there are no jobs will nevertheless mate like other men, but they are not so likely to marry. Our society has preferred to deal with the resulting female-headed families not by putting the men to work but by placing the unwed mothers and children on public welfare—substituting check-writing machines for male wage-earners. By this means we have robbed men of manhood, women of husbands, and children of fathers. To create a stable monogamous family, we need to provide men (especially Negro men) with the opportunity to be men, and that involves enabling them to perform occupationally.

From 1970 up to the present date (2023), the "collapse of the Black family" has been the result.[86] This collapse is centered largely around the primary target of racial discrimination and oppression: African American husbands, fathers, and boys.[87] And those bewildered Black

[85] See Footnote # 88, below.

[86] See, generally, "African American Family Structure," Wikipedia (online encyclopedia): https://en.wikipedia.org/wiki/African-American_family_structure. And see, also, Ralph Richard Banks, *Is Marriage For White People: How the African American Marriage Decline Affects Everyone* (New York, N.Y.: Dutton/Penguin Group, 2011).

[87] See, e.g., Daniel P. Moynihan, *The Negro family: The Case for National Action*. Washington, DC: Office of Policy Planning and Research, U.S. Department of Labor (March 1965), stating:

> When Jim Crow made its appearance towards the end of the 19th century, it may be speculated that it was **the Negro male who was most humiliated thereby**; the male was more likely to use public facilities, which became segregated once the process began, and just as important, segregation, and the submissiveness it exacts, is surely more destructive to the male than to the female personality. **Keeping the Negro 'in his place' can be translated as keeping the Negro male in his place: the female was not a threat to anyone**. Unquestionably, these events worked against the emergence of a strong father figure….

male victims have quietly complained that many African American women, through a system called Black *matriarchy*[88]— whether through ignorance or malice, and with the support of

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See, also, Ronald Walters, *White Nationalism Black Interests* (Detroit, MI: Wayne State Univ. Press, 2004), pp. 149-150, stating:

> [Demographer Philip] Hauser [conducted a five decade study in which he] located the problem of endemic poverty in the institution of slavery, which denied many Blacks the opportunity to adopt a middle-class family lifestyle. However, he suggested that its **most devastating impact was on the Black male, who, both within the slave system and thereafter, was unable 'because of the lack of opportunity and discriminatory practices, to assume the role of provider and protector of his family in accordance with prevailing definitions of the role of husband and father.'** Because of substantial damage to 'normative' Blacks and consequently to their families and social structure, they have been relatively more dependent upon the state.'

And, finally, see also, Bruce Western, *Punishment and Inequality in America* (New York, N.Y.: Russell Sage Foundation, 2006), p. 6, stating:

> [Y]oung black men obtained no benefit—either in employment or relative wages—from the record-breaking economic growth in the late 1990s…. This is a profound social exclusion that significantly rolls back the gains to citizenship hard won by the civil rights movement. The new marginality of the mass-imprisonment generation can be seen not only in the diminished rates of employment and marriage of former prisoners. Incarceration also erases prison and jail inmates from our conventional measures of economic status. So marginal have these men become, that the most disadvantaged among them are hidden from statistics on wages and employment. The economic situation of young black men—measured by wage and employment rates—appeared to improve through the economic expansion of the 1990s, but this appearance was wholly an artifact of rising incarceration rates.

[88] During the antebellum period (1800 – 1865), particularly in the free northern states, the urban centers were hostile toward free black male laborers, while simultaneously opened the doors to menial employment to black females.

1. Writing on the general labor restrictions against free blacks, Rev. William Goodell observed that:

> 'In Ohio, [a free State,] not only are the blacks excluded from the benefit of public schools, but, with a refinement of cruelty unparalleled, they are doomed to idleness and poverty by a law which renders a white man who employs a colored one to labor for him for one hour, liable for his support through life.' (Ib. 24) The Ohio law is, we believe, repealed. But in New York, and some other Northern cities, colored persons are still denied licenses to drive carts, and pursue other similar avocations for a livelihood.'

Source: William Goodell, *The American Slave Code* (New York, N.Y.: The American Anti-Slavery Society, 1853), p. 359.

2. Writing on gender and employment during the antebellum period (1820 – 1860), Dr. Carter G. Woodson observed that:

> [t]he fact that a larger number of Negroes performed menial service is explained by the strong animus against hiring Negroes in the higher occupations. As a result the Negro males found it exceedingly difficult to secure any sort of employment. In this extremity the Negro washer-woman rose to prominence. She became in many instances the sole breadwinner of the family. She washed and ironed while her all but idle husband brought in and carried the clothes back to the homes. This was especially evident in cities like Cincinnati and Philadelphia. Returns from Cincinnati in 1835 showed an exceptionally large number of Negro washerwomen…. A census taken in Philadelphia in 1849

showed that the females outnumbered the males in gainful occupations. The returns gave 3,358 males and 4,249 females. The importance of the Negro washerwoman as a provider is further demonstrated by the fact that out of these 4,249 women so occupied, 1,970 or almost 50 per cent, were engaged in washing and ironing or day work. Without a doubt many a Negro family in the free States would have been reduced to utter destitution had it not been for the labor of the mother as a washerwoman.

Source: Lorenzo J. Greene and Carter G. Woodson, *The Negro Wage Earner* (Washington, D.C.: Wildside Press, 1930), pp. 3-4.

3. Likewise, W.E.B. Du Bois made a similar finding during the 1920s, but he went so far as to state that this economic stress caused the breakup of Black families, to wit:

> The breaking up of the present family is the result of modern working and sex conditions and it hits the laborers with terrible force. The Negroes are put in a peculiarly difficult position, because **the wage of the male breadwinner is below the standard**, while the openings for colored women in certain lines of domestic work, and now in industries, are many. Thus while toil holds the **father and brother** in country and town at low wages, the **sisters and mothers** are called to the city.

Source: W.E.B. Du Bois, *Darkwater: Voices From Within the Veil* (New York, N.Y.: Washington Square Press, 2004), pp. 139- 140.

4. Similarly, thus concurring with both Woodson and Du Bois, Dr. Pauline Murray seems to have reached the same conclusion where she writes, "Like the Western pioneer settlements, the embattled Negro society needed the strength of all its members in order to survive. The economic necessity for the Negro woman to earn a living to help support her family—*if indeed she was not the sole support*—fostered her independence and equalitarian position…." This quotation was taken from Gerda Lerner, *Black Women In White America: A Documentary History* (New York, N.Y.: Vintage Books, 1972), p. 594.

5. Similarly, writing on gender and employment during the period of the 1970s, scholar Gerda Lerner observed that:

> [T]he status of black women can be viewed from two different viewpoints: one, as members of the larger society; two, within their own group. When they are considered as Blacks among Blacks, they have higher status within their own group than do white women in white society. This paradox is the direct result of the special relationship of white society to black women: because the lowest-status, lowest paid jobs in white society are reserved for black women, they often can find work even when black men cannot. *In fact, one can say quite definitely that white society has economically pitted black women against black men*…. **Black girls** thus were given more incentive to complete their advanced education than were **black boys**, who found that, even with a college degree, job opportunities for them were severely restricted by race discrimination. The **financially independent and often better-educated black woman** has higher status within her family than some men, although there are many black families with husbands holding steady jobs which follow the usual middle-class family pattern. The *greater equality in relations between black men and black women*, which are perceived and expressed by many black authors in their writings, may well be due more to the *embattled situation of the black family* and the *constant stress and danger* with which it is faced in a hostile world than any other factor.

Source: Gerda Lerner, *Black Women In White America: A Documentary History* (New York, N.Y.: Vintage Books, 1972), pp. xxiv-xxv.

6. And, finally, in his landmark study, "The Moynihan Report: The Case of National Action," Daniel Patrick Moynihan observed that:

More important, it is clear that Negro females have established a strong position for themselves in white collar and professional employment, precisely the areas of the economy which are growing most rapidly, and to which the highest prestige is accorded.

The President's Committee on Equal Employment Opportunity, making a preliminary report on employment in 1964 of over 16,000 companies with nearly 5 million employees, revealed this pattern with dramatic emphasis.

"In this work force, Negro males outnumber Negro females by a ratio of 4 to 1. Yet Negro males represent only 1.2 percent of all males in white collar occupations, while Negro females represent 3.1 percent of the total female white collar work force. Negro males represent 1.1 percent of all male professionals, whereas Negro females represent roughly 6 percent of all female professionals. Again, in technician occupations, Negro males represent 2.1 percent of all male technicians while Negro females represent roughly 10 percent of all female technicians. It would appear therefore that there are proportionately 4 times as many Negro females in significant white collar jobs than Negro males.

"Although it is evident that office and clerical jobs account for approximately 50 percent of all Negro female white collar workers, it is significant that 6 out of every 100 Negro females are in professional jobs. This is substantially similar to the rate of all females in such jobs. Approximately 7 out of every 100 Negro females are in technician jobs. This exceeds the proportion of all females in technician jobs — approximately 5 out of every 100.

"Negro females in skilled jobs are almost the same as that of all females in such jobs. Nine out of every 100 Negro males are in skilled occupations while 21 out of 100 of all males are in such jobs."31
This pattern is to be seen in the Federal government, where special efforts have been made recently to insure equal employment opportunity for Negroes. These efforts have been notably successful in Departments such as Labor, where some 19 percent of employees are now Negro. (A not disproportionate percentage, given the composition of the work force in the areas where the main Department offices are located.) However, it may well be that these efforts have redounded mostly to the benefit of Negro women, and may even have accentuated the comparative disadvantage of Negro men. Seventy percent of the Negro employees of the Department of Labor are women, as contrasted with only 42 percent of the white employees.

Among nonprofessional Labor Department employees

— where the most employment opportunities exist for all groups

— Negro women outnumber Negro men 4 to 1, and average almost one grade higher in classification.

The testimony to the effects of these patterns in Negro family structure is wide-spread, and hardly to be doubted.

Whitney Young: "Historically, in the matriarchal Negro society, mothers made sure that if one of their children had a chance for higher education the daughter was the one to pursue it."

"The effect on family functioning and role performance of this historical experience [economic deprivation] is what you might predict. Both as a husband and as a father the Negro male is made to feel inadequate, not because he is unlovable or unaffectionate, lacks intelligence or even a gray flannel suit. But in a society that measures a man by the size of his pay check, he doesn't stand very tall in a comparison with his white counterpart. To this situation he may react with withdrawal, bitterness toward society, aggression both within the family and racial group, self-hatred, or crime. Or he may escape through a number of avenues that help him to lose himself in fantasy or to compensate for his low status through a variety of exploits."

private employers, public policies, state agencies, and state officials— have aggravated the racial discrimination and oppression of African American fathers, men, and boys.

This, of course, is not true of all African American women, but it would be foolhardy to make a blanket assumption or generalization that, given the systemic institutionalized educational and industrial advantages that many African American women have been afforded, which many their Black brethren have been denied, that some African American women will not also retain an air of condescension and arrogance towards their Black brethren.[89]

Thomas Pettigrew: "The Negro wife in this situation can easily become disgusted with her financially dependent husband, and her rejection of him further alienates the male from family life. Embittered by their experiences with men, many Negro mothers often act to perpetuate the mother-centered pattern by taking a greater interest in their daughters than their sons."

Deton Brooks: "In a matriarchal structure, the women are transmitting the culture."

Dorothy Height: "If the Negro woman has a major underlying concern, it is the status of the Negro man and his position in the community and his need for feeling himself an important person, free and able to make his contribution in the whole society in order that he may strengthen his home."

Duncan M. MacIntyre: "The Negro illegitimacy rate always has been high — about eight times the white rate in 1940 and somewhat higher today even though the white illegitimacy rate also is climbing. The Negro statistics are symtomatic [sic] of some old socioeconomic problems, not the least of which are under-employment among Negro men and compensating higher labor force propensity among Negro women. Both operate to enlarge the mother's role, undercutting the status of the male and making many Negro families essentially matriarchal. The Negro man's uncertain employment prospects, matriarchy, and the high cost of divorces combine to encourage desertion (the poor man's divorce), increases the number of couples not married, and thereby also increases the Negro illegitimacy rate. In the meantime, higher Negro birth rates are increasing the nonwhite population, while migration into cities like Detroit, New York, Philadelphia, and Washington, D.C. is making the public assistance rolls in such cities heavily, even predominantly, Negro."

Robin M. Williams, Jr. in a study of Elmira, New York: "Only 57 percent of Negro adults reported themselves as married-spouse present, as compared with 78 percent of native white American gentiles, 91 percent of Italian-American, and 96 percent of Jewish informants. Of the 93 unmarried Negro youths interviewed, 22 percent did not have their mother living in the home with them, and 42 percent reported that their father was not living in their home. One-third of the youth did not know their father's present occupation, and two-thirds of a sample of 150 Negro adults did not know what the occupation of their father's father had been. Forty percent of the youths said that they had brothers and sisters living in other communities: another 40 percent reported relatives living in their home who were not parents, siblings, or grandparent."

Source: "The Moynihan Report" (1965), https://www.blackpast.org/african-american-history/moynihan-report-1965/#chapter5.

[89] Ralph Richard Banks, *Is Marriage For White People: How the African American Marriage Decline Affects Everyone* (New York, N.Y.: Dutton/ Penguin Group, 2011), pp. 97-101, to wit:

Black Woman A (Supportive of Black Men, Husbands, Fathers, Boys, etc.)	**Black Woman** C (*Unsupportive* of Black Men, Husbands, Fathers, Boys, etc.)
Black Woman B (*Unsupportive* of Black Men, Husbands, Fathers, Boys, etc.)	**Black Woman** D (Supportive of Black Men, Husbands, Fathers, Boys, etc.)

For instance, given the socio-economic and political construct of American society, of four African American women (say, e.g., **A**, **B**, **C**, and **D**), easily one or more of these four women may harbor condescension and resentment towards their Black brethren as a result of predominant Black male stereotypes and underachievement within their local communities.[90]

> Whatever the drawbacks of the conventional role-dived marriage, one virtue is that everyone knows their job. Roles, if constricting, are at least understood: the husband provides economically, while the wife cares for the home and the children. When a wife out-earns her husband, the couple cannot conform to that conventional male-breadwinner model. Rather than adhere to predefined roles, they have no choice but to improvise, to attempt to fashion their own model of a relationship as they patch together expectations developed during their own coming of age. Many husbands find it difficult to accept a subordinate economic role in the family. They know they don't earn the bulk of the income, but they might still feel that they should.
>
> A 2010 report issued by the Pew Research Center, 'Women, Men, and the New Economics of Marriage,' found that when the husband is the primary earner, each member of the couple is equally likely to have the final say about how money is spent; but that when the wife is the primary earner, she is more than twice as likely as her husband to have the final say about financial decisions. It seems that if the husband earns the money, it is assumed to belong to the family. When the wife earns the money, it is more likely to be viewed as hers.
>
> These tensions about gender roles no doubt help to explain the empirical finding that marriages in which the wife earns substantially more than the husband seem to be more likely to dissolve than marriages in which the husband is the primary earner. I wouldn't find it surprising if such marriages are **more conflict ridden**.

[90] Cases of black-on-black oppression, within the context of the workplace, can be found in federal employment law, to wit: *Word v. A.T.&T*, 576 Fed.Appx. 908 (11th Cir. 2014); *Walker v. Secretary of the Treasury, IRS*, 713 F.Supp. 403 (N.D. GA 1989); *Bryant v. Bell Atlantic Maryland, Inc*., 288 F.3d 124 (4th Cir. 2002); *Williams v. Wendler*, 530 F.3d 584 (7th Cir. 2008); *Cooper v. Jackson-Madison County General Hospital District*, 742 F.Supp. 2d 941 (W.D. Tenn. 2010); *Richardson v. HRHH Gaming Senior Mezz, LLC*, 99 F.Supp.3d 1267 (D.Nev. 2015). For a historical note that traces black-on-black discrimination and oppression to the institution of American slavery, see Alexis de Tocqueville, *Democracy In America*, Chapter XVIII: Future Condition of Three Races—Part V ("More mulattoes are to be seen in the South of the Union than in the North, but still they are infinitely more scarce than in any other European colony: mulattoes are by no means numerous in the United States; they have no force peculiar to themselves, and when quarrels originating in differences of color take

Such Black women may align themselves with White oppressors; or they may avail themselves of socioeconomic and political boon that is the result of public policy or private initiatives that favor African American women to the detriment of the natural rights and opportunities of African American men.[91] Such women might also, through a general system of Black *matriarchy*,[92] oppress and discriminate against African American fathers, men, and boys.[93]

The human rights violations here are implicated in the fact that the American legal profession— i.e., both the bar and the bench— has retained its jurisdiction over all civil matters that relate to the condition and plight of the Black family, but it has done so by perennially taking a color-blind approach to adjudicating those civil matters, thus evading the central fact of Black female matriarchy within the Black family structure, and thus creating grave injustices in litigation outcomes for Black families in the state courts.[94]

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place, they generally side with the whites; just was the lackeys of the great, in Europe, assume the contemptuous airs of nobility to the lower orders.")

[91] Gerda Lerner, *Black Women In White America: A Documentary History* (New York, N.Y.: Vintage Books, 1972), pp. xxiv-xxv, stating:

> [T]he status of black women can be viewed from two different viewpoints: one, as members of the larger society; two, within their own group. When they are considered as Blacks among Blacks, they have higher status within their own group than do white women in white society. This paradox is the direct result of the special relationship of white society to black women: because the lowest-status, lowest paid jobs in white society are reserved for black women, they often can find work even when black men cannot. **In fact, one can say quite definitely that white society has economically pitted black women against black men**….
>
> **Black girls** thus were given more incentive to complete their advanced education than were **black boys**, who found that, even with a college degree, job opportunities for them were severely restricted by race discrimination. The **financially independent and often better-educated black woman** has higher status within her family than some men, although there are many black families with husbands holding steady jobs which follow the usual middle-class family pattern. The *greater equality in relations between black men and black women*, which are perceived and expressed by many black authors in their writings, may well be due more to the *embattled situation of the black family* and the *constant stress and danger* with which it is faced in a hostile world than any other factor.

[92] See, generally, Daniel P. Moynihan, *The Negro family: The Case for National Action*. Washington, DC: Office of Policy Planning and Research, U.S. Department of Labor (March 1965).

[93] "Are the better-educated black women willing to go to war to help the black man?" asks Professor A.L. Reynolds, III. "Are they now willing to marry less-educated black men in order to create homes and black families for the survival of the race?" *Do Black Women Hate Black Men?* (Mamaroneck, N.Y.: Hastings House Pub., 1994), p. 151.

[94] See, generally, Shani M. King, "The Family Law Canon in a (Post?) Racial Era," 72 Ohio St. L.J. 575 (2011), available at http://scholarship.law.ufl.edu/facultypub/232. As a result, the American legal profession has tacitly undermined the unique plight of the African American fathers, men, and boys, who sincerely desire to establish honorable homes and stable families and to become productive citizens. Through ahistorical and colorblind civil rights jurisprudence, the American legal profession has also undermined the plight of the Black community. The American legal profession, through ahistorical,

That state courts routinely resolve family issues and conflicts within the Black community without sufficient knowledge of, for instance, the *tortious assaults by some African American women* upon the humanity, dignity, and manhood of underprivileged, less-educated African American fathers, men, and boys (See, e.g., A.L. Reynold's *Do Black Women Hate Black Men*?); and this juridical resolution of family law issues, without adequate knowledge of Black family life, constitutes judicial misconduct and a violates both fundamental rights under both the U.S. Constitution and international human rights protocols.

Notes on A.L. Reynold's *Do Black Women Hate Black Men*?

- "Except for the black family, the **black church** has been the main foundation for the protection and advancement of black people in America…."[95]
- "Until the 1950s, strong relationships existed between black women and black men…. Now, it has been replaced, in many instances, by a war between the genders…." [96]
- "Because **black men have begun to lose self-esteem** and confidence **as women took over the roles as the head of the family**, it began to **destroy the family**. It's not that the black women were doing a bad job raising children, but it sent mixed signals to the young. Soon the stereotype of the black family became the norm…."[97]
- "In the African-American underclass, almost 80 percent of the households are run by single parents, and most of those single parents are women…."[98]

colorblind jurisprudence, has covered up legislative history of the Civil War Amendments; it has obscured the historical experience of Black persons through 246 years of chattel slavery, followed by a bewildering deprivation of civil and human rights, punctuated by perennial insecurities from White workers who felt no desire to see Black workers rise in stature. The American legal profession, through ahistorical, colorblind jurisprudence, has covered up the effects of peonage, lynchings, political disenfranchisement, de jure racial segregation, and race relations throughout the American South easily from 1865 through the 1950s. And, finally, the American legal profession has failed to recognize or acknowledge the role of the Black church and Black pastors, together with the Judea-Christian customary laws taken from the Sacred Scriptures, in helping the Black community survive and to sustain itself throughout this awful historical period. To the extent that the American legal profession has tried to adjudicate and resolve Black family rights or Black family issues, involving Black citizens, without taking into account the historical and social experiences of the African American people, it has often performed grave miscarriages of justice and a disservice to the nation.

[95] Id. at p. 66.

[96] Id. at p. xi.

[97] Id. at p. 38.

[98] Id. at p. 39.

- "The plight of the vanishing black American male, which is contributing to the diminish number of healthy black American families, is a major domestic problem in America…."[99]

- "I have come to the conclusion that the major threat to extinction is the antagonism between black men and black women…."[100]

- "Although racism is destructive to black people in America, it falls far short of the destruction caused by the conflict between today's black woman and black man…."[101]

- "Their conflict is black America's major enemy. Relationships between black men and black women are marked by anger and distrust. Their conflict is black America's major enemy…. "[102]

- "The major harm to black Americans doesn't come from racism, though that is a part of it. It doen't come from lack of jobs, political control, or lack of affirmative action, although that, too, is part of it; nor from the presence or absence of government programs. It comes from the enemy within, the present-day relationships between the genders. The reasons for this conflict must be accurately addressed, analyzed, and solved in a practical way. Not to do so will cause the ***genocide*** of the black American male and the end of the African-American community…."[103]

At the present moment in history, <u>our state and federal courts are simply not equipped to redress this delicate social problem that, indeed, has mushroomed into a constitutional crisis of great proportion</u>—hence, the need for a "federal common law" to address it. At our present moment in history, the result of this crisis is a crippling *conflict* that is devastating the Black family; a *conflict of socio-economic and political interests* between Black women and men; and *conflict-ridden* intimate relationships between Black men and Black women, thus

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[99] Id. at p. 3.

[100] Id. at p. 5.

[101] Id. at p. 6.

[102] Id.

[103] Id. at pp. 6-7.

retarding the development of Black families.[104] See, e.g., Taylor and McClain, "Conflict in Black Male/Female Relationships," to wit:

Notes on Debra Colleen Taylor and Marilyn Renee McClain, "Conflict in Black male/female relationships" (1997). *Theses Digitization Project.*

- "This study addressed the research question: How can Black males and females who have been oppressed by race, class and gender discrimination be empowered to build healthier, intimate relationships? It is these researchers' hypothesis that by providing various interventions to, increase their knowledge of the history of oppression, insight will be gained to help empower Black males and females to build healthier, intimate relationships."[105]

- "Overall, there seems to be a consensus about the existence of conflict between Black males and Black females. It is the viewpoint of these writers that a major problem in Black male/female relationships is largely attributed to race, class and gender discrimination. This discrimination of Blacks has affected their role identity and self-esteem which impede their ability to establish and maintain intimate and/or healthy relationships."[106]

[104] See, generally, "African American Family Structure," Wikipedia (online encyclopedia): https://en.wikipedia.org/wiki/African-American_family_structure. And see, also, Ralph Richard Banks, *Is Marriage For White People: How the African American Marriage Decline Affects Everyone* (New York, N.Y.: Dutton/Penguin Group, 2011).

[105] Debra Colleen Taylor and Marilyn Renee McClain, "Conflict in Black male/female relationships" (1997). *Theses Digitization Project*. 1322, p. 16; https://scholarworks.lib.csusb.edu/etd-project/1322.

[106] Id. at p. 10.

- "The purpose of this descriptive study is to provide Black men and women with knowledge and insight on the results of race, gender, and class oppression and theireffect upon Black male/female relationships. A review of the literature indicates that a significant number of Black male/female relationships have experienced conflict which has had a negative impact on the deterioration of the Blackfamily (Anderson & Mealy, 1979;[107] Staples, 1978;[108] Ahramovitz, 1988;[109] Day, 1997).[110] Economic pressures, inability to commit, lack of communication and a general lack of understanding of the causes of the conflict have made it difficult to establish and maintain intimacy in Black male/female relationships."[111]

- "A major problem today is that conflict in Black male/female relationships has broken down their ability to, share intimacy. Intimacy is. defined here as, a close personal association. "Succinctly, by and large, most Black male and Black female authors writing on the subject seem to agree that many black male/female relationships today are destructive and potentially explosive."[112]

- "The problem is that discrimination of African American men and women has affected their ability to develop intimate relationships with each other. Anderson and Mealy (1979) state, "It is clear that the animosity between Black men and women as a group did not stem from early slavery" (p.42). They indicate that it is capitalism, born out of slavery that created conflict in these relationships. With the exchange of capital necessary to purchase slaves it became a necessity to split families. Families became less stable and it was many times futile for slave men and women to pledge commitment in their relationships."[113]

[107] Anderson, S.E., & Mealy, R. (1979). Who originated the Crises? A historical perspective. *The Black Scholar*. 4061.

[108] R. Staples (1978). Masculinity and race: The dual dilemma of black men. *Journal of Social Issues*. 34.(1). 169-181.

[109] M. Abramovitz (1988). Regulation the lives of women: Social welfare policy from colonial times to present. Boston, Massachusetts: South End Press.

[110] P.J. Day, *A New History of Social Welfare* (New Jersey: Prentice hall, Inc., 1997)

[111] Debra Colleen Taylor and Marilyn Renee McClain, "Conflict in Black male/female relationships" (1997). *Theses Digitization Project*. 1322, p. 14; https://scholarworks.lib.csusb.edu/etd-project/1322.

[112] Id., pp. 7-8.

[113] Id., p. 1.

- "However, Staples (1971) depicts the only crucial role of the Black man as that of siring the children. Anderson and Mealy (1979) further indicate that because Blacks were not afforded the same capitalist freedom as White Americans, a breakdown of intimacy between Black men and women began to occur. Many believe that this breakdown occurred, because of the inability of Black men to economically provide for their families. As a result. Black men saw themselves as failures, leaving the family building role to Black women."[114]

- "In the case of black men, their subordination as a racial minority has more than cancelled out their advantages as males in the larger society" (Staples, 1978, p. 169)."[115]

- "Comparably, Madhubuti (1990) states, "Black men in U.S. society are virtually powerless, landless and moneyless in a land where white manhood is measured by such acquisitions" (p. 61)…. Madhubuti states, "Black men in relationship to Black women cannot, a great majority of the time, deliver the 'American dream'. Therefore, the dream is often translated into a Black male/female relationship nightmare where Black men, acting out of frustration and ignorance, adopt attitudes that are not productive or progressive in relationship to Black women"(p. 61).[116]

Whether the conflict-ridden nature of Black male/female relations since the 1950s, 60s, and 70s have been purposefully fomented—either wittingly or unwittingly—by mainstream American institutions (i.e., state courts, state agencies, private employers, educational institutions, etc.), in order to weaken the Black family and undermine the plight of African American fathers, men, and boys, is **a question that implicates the violation** of the **fundamental right to familial integrity** within the First Amendment, U.S. Constitution, as well as various U.N. protocols on international human rights.

I disagree with those persons, such as Professor A.L. Reynolds, III, who believe that this crisis is solely an internal problem that only Black Americans can solve by themselves, without government assistance. What is needed, however, is an immediate cessation of a "colorblind" approach to American family law and constitutional jurisprudence, and a coordinated effort between the federal government and authentic grassroots leadership within the Black church (and related organizations) to radically change state courts, state agencies, federal courts, and public policies that directly interact with members of the Black community.

[114] Id., p. 3.

[115] Id., p. 6.

[116] Id., p. 12.

CHAPTER VI.

"Secularism, Colorblind Jurisprudence, Ahistoricism, and the Decline and Fall of the Black Family"

Whatever the actual situation is, from the perspective of juridical science, the American legal system has not been a valuable source for remediating the crisis within Black families. But, rather the American legal system has, in fact, been one of the major contributors to this dire social crisis[117] from within the African American community.[118] A major reason this is true is the fact that American civil rights and family law jurisprudence are both "ahistorical"[119] and "colorblind."[120]

[117] See, generally, Debra Colleen Taylor and Marilyn Renee McClain, "Conflict in Black male/female relationships" (1997); *Theses Digitization Project*. 1322, p. 14; https://scholarworks.lib.csusb.edu/etd-project/1322; and
A. L. Reynolds III, *Do Black Women Hate Black Men?* (Mamaroneck, N.Y.: Hastings House Book Publishers, 1994).

[118] See, generally, "African American Family Structure," Wikipedia (online encyclopedia): https://en.wikipedia.org/wiki/African-American_family_structure. And see, also, Ralph Richard Banks, *Is Marriage For White People: How the African American Marriage Decline Affects Everyone* (New York, N.Y.: Dutton/Penguin Group, 2011).

[119] For examples of "ahistorical" and "colorblind" approaches to American civil rights and family law jurisprudence, see, generally, Shani M. King, "The Family Law Canon in a (Post?) Racial Era," 72 Ohio St. L.J. 575 (2011), available athttp://scholarship.law.ufl.edu/facultypub/232. See, generally, Alan Freeman, "Antidiscrimination Law From 1954 to 1989: Uncertainty, Contradiction, Rationalization, Denial," *The Politics of Law: A Progressive Critique* (New York, N.Y.: Basic Books, 1998), pp. 288-289 ("The key principle is that of 'color blindness,' which would be the appropriate rule in a future society that had totally eliminated racial discrimination, or, more likely, had never had such a problem at all.")

I surmise that the American legal profession, including the law schools which sets the tone and reinforces the culture and highest ideals of the law; the lawyers and local bar associations who advise clients; and the judges or the courts, which state what the law is and mete out justice. Academic institutions (public and private schools, colleges, and universities) and private employers or hiring agencies (i.e., business and industry) are other key sources of this form of racial oppression. And, finally, the nation's great cultural reserves, such as Hollywood, are also key instruments in perpetuating this form of oppression as well.

[120] *Id*. NOTE: It is for this reason that Dr. Martin Luther King, Jr. stated in his classic *Why We Can't Wait* that, "[The Negro] knows that the spotlight recently focused on the growth in the number of women who work is not a phenomenon in Negro life. The average Negro woman has always had to work to help keep her family in food and clothes."

Source: James M. Washington, *A Testament of Hope: The Essential Writings and Speeches of Martin Luther King, Jr.* (New York, N.Y.: Harper Collins Publishers, 1986), p. 524.

The American legal system— due in large measure to its commitment to colorblind jurisprudence[121] — has not yet fully grasped the irony, contradictions, and inconsistencies between the legal obligations that are imposed upon African American men, fathers, and husbands and the economic (i.e., labor market), social, and political realities and circumstances that daily unite to undermine, weaken, and impair the ability of African American fathers and husbands to fulfill those obligations.

Stated succinctly, colorblind jurisprudence[122] uproots and extinguishes critical factual information which is essential for hearing officers, judges, and arbitrators to apply the "equity jurisprudence" that is incorporated into most family law statutes and rules of court procedure. It prohibits legal advocates and courts from assessing truth and reality; it nearly eliminates "social engineering" advocacy; and it impairs the ability of family-law judges to compare, contrast, and distinguish white males from black males; black males to black females; white females to black females, etc., in light of legislative history, social history, economic data, statistics, academic literature, expert witness testimony, etc.

And, perhaps most ominously, ahistoricism and secularism also tragically erase the historic and contemporary roles that Black pastors and the Black church have performed in molding, shaping, and administering the mores, folkways, customs, traditions, deeply-held religious beliefs, and family law within the African American community.[123]

[121] See, generally, Alan Freeman, "Antidiscrimination Law From 1954 to 1989: Uncertainty, Contradiction, Rationalization, Denial," *The Politics of Law: A Progressive Critique* (New York, N.Y.: Basic Books, 1998), pp. 288-289 ("The key principle is that of '**color blindness**,' which would be the appropriate rule in a future society that had totally eliminated racial discrimination, or, more likely, had never had such a problem at all.")

[122] Id.

[123] W.E.B. Du Bois, "The Souls of Black Folk," *Writings* (New York, N.Y.: The Library of America, 1986), p. 496 ("[T]he [Negro] Church often stands as a real conserver of morals, **a strengthener of family life**, and the final authority on what is Good and Right"); and see, also, James H. Cone and Gayraud S. Wilmore, *Black Theology: A Documentary History*, Vol. One: 1966- 1979 (Maryknoll, N.Y.: Orbis Books, 2003), p. 218 ("[T]he Black Church of the nineteenth century… thought of itself as God's judgment upon racism… converted thousands, **stabilized the Black family**… founded schools and colleges…. And provided the social, cultural, economic, and political base of the entire African American community in the United States.")

CHAPTER VII.

"Who, then, is Qualified to Judge the Black Family and Black Life?"

I now return to the subject matter of the old ecclesiastical jurisdiction of the Black church over legal matters, disputes, and issues relating to the Black family. Here, we must tacitly admit that the delicate social crisis affecting the Black family involves essentially the spiritual, emotional, and cultural state of Black male/ Black female intimate and conjugal relations. Because of the legacy of slavery, these intimate or conjugal relations are not simply a routine or even a complex "legal question" that most members of the American bar and bench can resolve without special training, a shared interest, and a deep commitment to the plight of the Black community. Unfortunately, there is scarcely a single graduate or law school course in any college, university, or law school in the nation that even begins to introduce legal scholars or law practitioners to answers to the pressing questions imposed by this social crisis.

Who is qualified to adjudge or to decide delicate questions stemming from conflict-ridden relationships between Black husbands/fathers and Black wives/mothers?

As a consequence, our present-day family law system is grossly inadequate; nay, its lawyers, administrators, and judges are ill-equipped to properly address this delicate question regarding the crippling effects of history upon the spiritual, emotional, and cultural state of Black male/ Black female intimate and conjugal relations. Writing on this very topic, Harvard-trained Professor Shani M. King of the Rutgers University Law School has observed in his pioneering law review article, "The Family Law Canon in a (Post?) Racial Era," that:

> While the debate about a post-racial society rages, our justice system continues to operate in a way that is race-conscious. It seems as though most of the discussion about race and the justice system concerns criminal justice, juvenile justice, education, and immigration. But race-consciousness also impacts family law. Nonetheless, the family law canon dies not scrutinize race-based disparities in laws, procedures, and outcomes, and that omission feeds a mistaken notion of a race-blind or a post-racial society. Once consequence of this omission is that it obscures race-based decision making by legislatures, judges, legal reform organizations, legal

> scholars, lawyers, and child welfare workers, and thereby immunizes race-based decision making from scrutiny. This Article suggests that the family law canon inaccurately describes a race-neutral or post-racial state for family law and that the canon should correct its colorblindness so that legal authorities can address the problems that structural racism creates for African-American families.[124]

Here, I surmise that, without the Black church[125] and its expertise, insight, concern, and resources, that state family law court systems—including its practicing lawyers and judges—will be unable to fully grasp the unique crisis that plague the present-day Black family, and will continue to effectuate grave injustices to African American husbands, fathers, and boys. African American senior clergymen and trained professionals operating within church networks may be the only group who have the credibility to weigh in on this particular issue—and particularly the nature of the "intimate-relational" conflict between Black men and Black women.[126] (I note, here, that being an African American in and of itself is not the sole qualification for judging black family matters— much more training and education are needed across the board, amongst judges from all racial groups, who exercise juridical authority over the Black family. I anticipate that Black clergymen are in the best position to develop, and redevelop, that expertise over time).

As things now stand, I do not believe that the American bar and bench, standing alone and without logistical assistance and cultural information from the Black church, can remedy the present-day social crisis plaguing the Black family structure. In fact, without the Black church, the American court systems will likely create further, if not altogether irreparable, harm to the plight of the Black Family and especially to the plight of African American fathers, men, and boys.[127] Simply stated, the American legal system—the bar and the bench—has too many conflicting interests that prevent them from remedying this crisis.[128]

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[124] Shani M. King, "The Family Law Canon in a (Post?) Racial Era," 72 Ohio St. L.J. 575 (2011), available athttp://scholarship.law.ufl.edu/facultypub/232.

[125] Carter G. Woodson, *The History of the Negro Church* (Washington, D.C.: The Associated Publishers, 1921), p. 282 ("The [Negro] church serves as a moral force, a power acting as a restraint upon the bad and stimulating the good to further moral achievement. Among the Negroes its valuable service is readily apparent…."); W.E.B. Du Bois, "The Souls of Black Folk," *Writings* (New York, N.Y.: The Library of America, 1986), p. 496 ("[T]he [Negro] Church often stands as a real conserver of morals, a strengthener of family life, and the final authority on what is Good and Right"); and James H. Cone and Gayraud S. Wilmore, *Black Theology: A Documentary History*, Vol. One: 1966- 1979 (Maryknoll, N.Y.: Orbis Books, 2003), p. 218 ("[T]he Black Church of the nineteenth century… thought of itself as God's judgment upon racism… converted thousands, stabilized the Black family… founded schools and colleges…. And provided the social, cultural, economic, and political base of the entire African American community in the United States.")

[126] Id.

[127] Shani M. King, "The Family Law Canon in a (Post?) Racial Era," 72 Ohio St. L.J. 575 (2011), available athttp://scholarship.law.ufl.edu/facultypub/232.

Recently, I raised a similar issue in an open letter to a senior Black clergymen and the current President of the Board of Bishops to the African Methodist Episcopal Church. I forewarned this senior clergymen against a dangerous over-reliance upon the American bar and bench for the interpretation and application of crucial civil rights or human rights laws.[129]

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[128] See, e.g., W.E.B. Du Bois, *The Souls of Black Folk*, https://etc.usf.edu/lit2go/203/the-souls-of-black-folk/4432/chapter-2-of-the-dawn-of-freedom/ (Chapter Two, "Of the Dawn of Freedom")("Here at a stroke of the pen was erected a government of millions of men,--and not ordinary men either, but **black men emasculated by a peculiarly complete system of slavery**, centuries old…"). See, also, W.E.B. Du Bois, *Darkwater: Voices From Within the Veil* (New York, N.Y.: Washington Square Press, 2004), pp. 139- 140, describing socioeconomic circumstances in 1920, stating:

> The breaking up of the present family is the result of modern working and sex conditions and it hits the laborers with terrible force. The Negroes are put in a peculiarly difficult position, because **the wage of the male breadwinner is below the standard**, while **the openings for colored women in** certain lines of domestic work, and now in industries, **are many**. Thus while toil holds the **father and brother** in country and town at low wages, the **sisters and mothers** are called to the city.

[129] "An Open Letter to Bishop Ronnie E. Brailsford, President of the A.M.E. Council of Bishops" (December 17, 2022) http://www.roderickford.org/, stating, inter alia:

> My white brothers in the Puritan and Presbyterian church community have a healthy distrust of certain aspects of secular society and the government. The Baptist and the Anabaptist heritages have always had scathing critiques of the "worldliness" of secular civil polity. I am writing to suggest that the Black Church, and particularly the A.M.E. Church, attain a similar healthy distrust of the legal system, the court system, the bar, the bench, and the administration of justice. The truth is, the Black Church's deeply held Christian values and interests are not safe with, or reflected in, the general ethos or praxis of the American bar and bench. See, e.g., Gustavus Myers, History of the Supreme Court of the United States (1912), supra, stating:
>
> [The] lawyers themselves sprang from the ruling class, but with the fewest and most creditable exceptions, all others of that profession sought to ingratiate themselves into the favor of the rich by flattering, pleasing and serving them with an excess of zeal in stamping down the worker still further by statutes ingeniously borrowed from medieval law, or by harrowing the worker in the courts with lawsuits in which these attorneys by every subtle argument appealed to the prejudices of the judge, already antagonistic to the worker and prejudiced against him. Even if the judge, perchance, were impartially and leniently disposed, the laws, as they were, left him no choice. Reading the suits and speeches of the times, one sees clearly that the lawyers of the masters outdid even their clients in asserting the masters' lordly, paramount rights and powers, and in denying that any rights attached to the under class.'

See, also, Donald G. Nieman, ed. *African American Life in the Post-Emancipation South, 1861-1900*, stating:

> A worker under the best of circumstances usually lacked the resources to hire a lawyer and sue his employer, and a black worker faced the added problems of racist lawyers, judges, and juries and the danger that his complaints would lead to physical violence.

And see, also, Charles Hamilton Houston, "The Need For Negro Lawyers," stating:

> The social justification for the Negro lawyer as such in the United States today is the service he can render the race as an interpreter and proponent of its rights and aspiration. There are enough white lawyers to care for the ordinary legal

This letter described the very same forms of the conflicts of interest[130] between the American bar and bench and the African American community that has also been thoroughly memorialized in the court opinions of the United States Supreme Court. See, e.g., the Case of *Patsy v. Board of Regents of State of Florida*, 457 U.S. 496 (1982)[131] and the Case of See, e.g., *Monroe v. Pape*, 365 U.S. 167, 175-177 (1961), stating:

> business of the country if that were all that was involved. But experience has proved that the average white lawyer, especially in the South, cannot be relied upon to wage an uncompromising fight for equal rights for Negroes. He has too many conflicting interests, and usually himself profits as an individual by that very exploitation of the Negro which, as a lawyer, he would be called upon to attack and destroy."

[130] W.E.B. Du Bois pointed out this very problem in his masterpiece "The Souls of Black Folk" (1903), stating:

> Daily the Negro is coming more and more to look upon **law and justice**, not as protecting safeguards, but as sources of humiliation and oppression…. That to leave the Negro helpless and without a ballot to-day is to leave him, not to the guidance of the best, but rather to the exploitation and debaucher of the worst; that this is no truer in the South than of the North,-- of the North than of Europe: in any land, in any country under modern free competition, to lay any class of weak and despised people, be they white, black, or blue, at the political mercy of their stronger, richer, and more resourceful fellows, is a temptation which human nature seldom has withstood and seldom will withstand…. For, as I have said… when the Negroes were freed and the whole South was convinced of the impossibility of free Negro labor, the first and almost universal device was to use **the courts** as a means of reenslaving the blacks.

Source: W.E.B. Du Bois, *Writings* (New York, N.Y.: The Library of America, 1986), p. 484, 485-486.

[131] See, e.g., Justice Thurgood Marshall's majority opinion in *Patsy v. Board of Regents of State of Florida*, 457 U.S. 496, 503 (1982), to wit:

> The Civil Rights Act of 1871, along with the Fourteenth Amendment it was enacted to enforce, were crucial ingredients in the basic alteration of our federal system accomplished during the Reconstruction Era. During that time, the Federal Government was clearly established as a guarantor of the basic federal rights of individuals against incursions by state power…. As we recognized in *Mitchum v. Foster*,[citation omitted] (1972) (quoting Ex parte Virginia, [citation omitted] (1880)), "[t]he very purpose of § 1983 was to interpose the federal courts between the States and the people, as guardians of the people's federal rights -- to protect the people from unconstitutional action under color of state law, 'whether that action be executive, legislative, or judicial.'"
>
> At least three recurring themes in the debates over § 1 cast serious doubt on the suggestion that requiring exhaustion of state administrative remedies would be consistent with the intent of the 1871 Congress. First, in passing § 1, Congress assigned to the federal courts a paramount role in protecting constitutional rights…. The 1871 Congress intended § 1 to "throw open the doors of the United States courts" to individuals who were threatened with, or who had suffered, the deprivation of constitutional rights, id. at 376 (remarks of Rep. Lowe), and to provide these individuals immediate access to the federal courts notwithstanding any provision of state law to the contrary. …
>
> A major factor motivating the expansion of federal jurisdiction through §§ 1 and 2 of the bill was the belief of the 1871 Congress that the state authorities had been unable or unwilling to protect the constitutional rights of individuals or to punish those who violated these rights. See, e.g., Globe 321 (remarks of Rep. Stoughton) ("**The State authorities and local courts are unable or unwilling to check the evil or punish the criminals**"); id. at 374 (remarks of Rep. Lowe) ("**the local administrations have been found inadequate or unwilling to apply the proper corrective**"); id. at 459 (remarks of Rep. Coburn); id. at 609 (remarks of Sen. Pool); id. at 687 (remarks of Sen. Shurz); id. at 691 (remarks of Sen. Edmunds); Globe App. 185 (remarks of Rep. Platt). …

> While one main scourge of the evil -- perhaps the leading one -- was the Ku Klux Klan, the remedy created was not a remedy against it or its members, but against **those who representing a State in some capacity were unable or unwilling to enforce a state law**….
>
> Senator Osborn of Florida put the problem in these terms…. [t]hat **the State courts in the several States have been unable to enforce the criminal laws of their respective States or to suppress the disorders existing**…. There was, it was said, no quarrel with the state laws on the books. It was their lack of enforcement that was the nub of the difficulty….
>
> Mr. Burchard of Illinois pointed out that the statutes of a State may show no discrimination: '… [b]ut if the statutes show no discrimination, yet, in its judicial tribunals, one class is unable to secure that enforcement of their rights and punishment for their infraction which is accorded to another, or, if secret combinations of men are allowed by the Executive to band together to deprive one class of citizens of their legal rights without a proper effort to discover, detect, and punish the violations of law and order, the State has not afforded to all its citizens the equal protection of the laws.'

The Black church, taken collectively and in cooperation with organizations such as the NAACP, is perhaps the only institution with the infrastructure, that mediate the conflict of interest between the American court system and the African American community.

For we must acknowledge that this conflict of interest is inherent within human nature and is a constitutional fact of our national life.[132] Given the current condition of humanity,

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Of primary importance to the exhaustion question was the mistrust that the 1871 Congress held for the factfinding processes of state institutions. See, e.g., Globe 320 (testimony of Hon. Thomas Settle, Justice of the North Carolina Supreme Court, before the House Judiciary Committee) ("The defect lies not so much with the courts as with the juries"); id. at 394 (remarks of Rep. Rainey); Globe App. 311 (remarks of Rep. Maynard). This Congress believed that federal courts would be less susceptible to local prejudice and to the existing defects in the factfinding processes of the state courts. See, e.g., Globe 322 (remarks of Rep. Stoughton); id. at 459 (remarks of Rep. Coburn). This perceived defect in the States' factfinding processes is particularly relevant to the question of exhaustion of administrative remedies: exhaustion rules are often applied in deference to the superior factfinding ability of the relevant administrative agency. See, e.g., *McKart v. United States*, 395 U.S. at 395 U.S. 192-196.

[132] In *The Federalist Papers*, No 10, James Madison lucidly described the nature of this conflict of interest, as follows:

> AMONG the numerous advantages promised by a well constructed Union, none deserves to be more accurately developed than its tendency to break and control the **violence of faction**….
>
> The **instability, injustice, and confusion introduced into the public councils**, have, in truth, been **the mortal**

with its natural tendency to devolve into self-interested factions, whether those factions be based upon class, race or gender, it would not be too far afield to confront the very delicate question as to whether (a) the far more politically influential and economically empowered White class of citizens have (b) systematically disadvantaged and marginalized Black men, boys, fathers, and husbands, while simultaneously (c) improving, remediating, and ameliorating the plight of Black women and girls—thus fomenting conflict-ridden relations between Black men and Black women.[133] The average lawyer or judge—and especially White lawyers and judges who have received no special training on, or exposure to, the vicissitudes of African American family life—can credibly adjudicate and remediate the unique conflict-ridden intimate or conjugal relationships between Black men/women. Indeed, there may be too much disinterest amongst, and a of conflict of interest on the part of, white legal professionals in order for them to care sufficiently enough about this African American social

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> **diseases** under which popular governments have everywhere perished….
>
> However anxiously we may wish that these complaints had no foundation, the evidence, of known facts will not permit us to deny that they are in some degree true….
>
> [T]he most common and durable **source of factions** has been the various and **unequal distribution of property**. Those who hold and those who are without property have ever formed distinct interests in society. Those who are creditors, and those who are debtors, fall under a like discrimination. A landed interest, a manufacturing interest, a mercantile interest, a moneyed interest, with many lesser interests, grow up of necessity in civilized nations, and divide them into different classes, actuated by different sentiments and views. The regulation of these various and interfering interests forms the principal task of modern legislation, and involves the spirit of party and faction in the necessary and ordinary operations of the government….
>
> The inference to which we are brought is, that the **CAUSES of faction cannot be removed**, and that **relief is only to be sought in the means of controlling its EFFECTS**.

[133] Gerda Lerner, *Black Women In White America: A Documentary History* (New York, N.Y.: Vintage Books, 1972), pp. xxiv-xxv, stating:

> [T]he status of black women can be viewed from two different viewpoints: one, as members of the larger society; two, within their own group. When they are considered as Blacks among Blacks, they have higher status within their own group than do white women in white society. This paradox is the direct result of the special relationship of white society to black women: because the lowest-status, lowest paid jobs in white society are reserved for black women, they often can find work even when black men cannot. **In fact, one can say quite definitely that white society has economically pitted black women against black men**….
>
> **Black girls** thus were given more incentive to complete their advanced education than were **black boys**, who found that, even with a college degree, job opportunities for them were severely restricted by race discrimination. The **financially independent and often better-educated black woman** has higher status within her family than some men, although there are many black families with husbands holding steady jobs which follow the usual middle-class family pattern. The *greater equality in relations between black men and black women*, which are perceived and expressed by many black authors in their writings, may well be due more to the *embattled situation of the black family* and the *constant stress and danger* with which it is faced in a hostile world than any other factor.

problem in order to try and resolve it.[134] Simultaneously, the African American community leaves too much to chance and great risk of further irreparable damage to Black family life, by not insisting upon culturally competent judges to adjudicate family law cases involving Black families.

[134] See, e.g., Erol Ricketts, "The Origin of Black Female-Headed Families," [citation omitted], https://www.irp.wisc.edu/publications/focus/pdfs/foc121e.pdf, stating:

> It is clear from the data that 1950 is a watershed year for black families; thereafter black female-headed families grow rapidly and blacks become more urbanized than whites. Between 1930 and 1950 the rates of black female-headed families, in the United States as a whole and in urban areas, are parallel to the corresponding rates for whites. The black rates are higher than the rates for whites, as one would expect given the black socioeconomic differential and higher rates of widowhood among blacks. It is after 1950 that the rate of female-headed families for blacks diverges significantly from the rate for whites, although the rate of white female-headed families begins to converge with the rate for blacks in about 1970.

CHAPTER VIII.

"A Final Word: A Federal Common Law on the Black Family"

The state family law court system—together with the state domestic relations and child support enforcement agencies— have, in general, the tendency to evade the Black social and familial experience, which, in the end, has had an emasculating effect[135] upon African American fathers, men, and boys. Black clergymen and black judges are rarely, if ever, assigned to preside as judges of family law matters that impact the Black family. Today's state courts, and implementing state family laws, are prohibiting justice for African American fathers, men, and boys, because Black churchmen, fathers, and men are disproportionately absent from the process of making and interpreting the family laws and policy. Even thus, the problem is centered not so much around the skin color of the judge as it is around the substantive and procedural components of the various state family law court systems.[136] What is needed is a new "federal common law" that addresses the unique circumstances of the Black family in the United States.

Because this crisis of the Black family is deep-seated, historical, and national, it requires a federal response. The individual states, or the local state courts, have proven themselves to be incompetent or inadequate. Therefore, the jurisdiction of the United States District Court already encompass the deprivation of natural familial rights that are protected under the First Amendment, U.S. Constitution.

What is now needed is a national "federal common law"[137] for the Black family— one that is developed in the United States District Courts in conjunction with input from the Black church, one that is designed to implement the plenary provisions of Section 1 of the Thirteenth Amendment, Section 4 of the Fourteenth Amendment, and the Civil Rights Act of 1871 (42 U.S.C. § 1983).[138] The primary target of this new federal common law should be to root out

[135] See, e.g., W.E.B. Du Bois, *The Souls of Black Folk*, https://etc.usf.edu/lit2go/203/the-souls-of-black-folk/4432/chapter-2-of-the-dawn-of-freedom/ (Chapter Two, "Of the Dawn of Freedom")("Here at a stroke of the pen was erected a government of millions of men,--and not ordinary men either, but **black men emasculated** by a peculiarly complete system of slavery, centuries old…").

[136] See, e.g., Shani M. King, "The Family Law Canon in a (Post?) Racial Era," 72 Ohio St. L.J. 575 (2011), available at http://scholarship.law.ufl.edu/facultypub/232.

[137] See, e.g., "Federal Common Law," https://en.wikipedia.org/wiki/Federal_common_law.

[138] The Civil War Amendments, U.S. Constitution, have already given the United States Congress ample authority to act upon, and to address, the genocidal social conditions which the crisis of Black family present. The U.S. District Courts can

the genocidal conditions that are being perpetuated by the Black family crisis and which the state court systems have proven to be inadequate.

DISCRIMINATORY STATE COURT PRACTICES		
State Tribunal	**State Litigants**	**"Injustices" Against Black Families in State Courts**
State Court Family Law Proceedings	Black Family members (fathers, mothers, children); Divorce; Separation; Custody; Child support enforcement, etc., etc.	Ahistorical; colorblind family law jurisprudence Failure, refusal or inability to address conflict-ridden nature of Black male/ female intimate or conjugal relations Negative or false assumptions of Black family life Racial stereotypes of Black men, fathers, and boys (in general); abusive and outrageous child support enforcement procedures. Random assignment to judges or hearing officers with no special training in Black sociology, history, family customs, etc.

In addition to the development of a new federal common law on the black family, in conjunction with the Black church, there should also be the development of specialize federal tribunals, as permanent division of the United States District Courts, that are especially

utilize various federal constitutional or statutory provisions in order to develop a "federal common law" on special problems that impact the Black family in the several United States, as a consequence of inadequate state procedures and enforcement mechanisms. That "federal common law" must attack and root out the racial injustices and disparities that are being perpetrated in the state courts and state administrative proceedings. And that "federal common law" should also reflect the historical experiences of the Black community. It should reflect the mores, folkways, customs, and traditions of the Black community as a whole; and it should be implemented by special federal tribunals with hearing officers who have been specially trained to address and resolve the unique crisis of the present-day Black family structure.

established to adjudicate all cases and controversies that arise under (a) § 1983; (b) the First and Fourteenth Amendment, U.S. Constitution; and (c) involve the deprivation of familial rights of one or more African American citizens. Jurisdiction of such cases should work simultaneously and alongside the regular state court jurisdiction, immediately clarifying the federal common law of the Black family and correcting any abuses arising out from the state courts.

Such specialized federal tribunals are now extremely necessary. These tribunals should be staffed by specially-trained judges or hearing officers who are assigned through an appointment system that involves input from the Black church, with the objective of rooting out the badges and incidents of slavery upon Black life— under the rubric of 42 U.S.C. § 1983, to wit:

PROPOSED NEW FEDERAL APPELLATE COURT JURISDICTION OVER STATE FAMILY LAW CASES

Federal Magistrate-Level Family Law Tribunal	**Federal Litigants**	**"FEDERAL COMMON LAW" Designed to Provide Guidance, Education, and Instruction on Black Family Life; and (or) to Correct or Reverse the "Injustices" Against Black Families Perpetuated in the State Courts**
• Direct appeals from State Trial Court Family Law Proceedings • Jurisdiction under 42 U.S.C. § 1983; Section 1 of the Thirteenth Amendment • Jurisdiction pursuant to International Human Rights Treaties and Protocols to which the United States is a signatory • Specially-trained Magistrate Judges and Hearing Officers • Appeals to the U.S. District Court; U.S. Court of Appeals, etc.	Black Family members (fathers, mothers, children); Divorce; Separation; Custody, etc.	Ahistorical; colorblind family law jurisprudence Failure, refusal or inability to address conflict-ridden nature of Black male/ female intimate or conjugal relations Negative or false assumptions of Black family life Racial stereotypes of Black men, fathers, and boys (in general); abusive and outrageous child support enforcement procedures. Random assignment to judges or hearing officers with no special training in Black sociology,

		history, family customs, etc.
Ecclesiastical Courts: private, ad hoc courts. Established to function like private arbitration panels, with specially trained and appointed arbitrators (i.e., church lawyers, senior clergy, chancellors), etc., managed and administered by ecumenical church denominations.		

As the Black church itself reaches a level of maturity with its experience in adjudicating family law matters, I envision that it will someday establish private, ecumenical Ecclesiastical Courts, with trained and professional arbitrators from organizations such as the American Arbitration Association (AAA), to handle and arbitrate family matters between Black church members, or between non-churchmen who are Christians. I recognize that the idea of reinventing the old English ecclesiastical court system in the United States, with specially-trained lawyers and judges who are under "holy orders," is likely unthinkable; but such an idea is not far afield of what may be absolutely indispensable in the African American community, which largely upholds, at least in principle, to traditional Anglo-American common law social norms. Private ecumenical ecclesiastical courts—operating like ad hoc arbitration forums and whose decisions are binding upon the parties—may be a part of the solution to the present-day crisis of the Black family.

The Black church and Black clergymen ought now to take the lead on the important constitutional project of implementing a new "federal common law on the Black family," which I envision will incorporate the wisdom, advice and experience of both the Black church and Black academic institutions (e.g., law schools, graduate schools, seminaries, etc.).[139] As appropriate, I therefore conclude this discussion by stating, without hesitancy, that the secular legal system in the United States cannot resolve the social crisis regarding the plight of African American fathers, men, and boys, without the input and moral teachings of the Black church of the United States.

THE END

[139] To be sure, other renowned African American professionals, scholars, and clergymen (e.g., Islamic, Jewish, etc.) who share a genuine interest is ameliorating the plight of the Black family and, especially, the plight of African American fathers, men, and boys, should be permitted to participate in this process. And all federal judges or hearing officers, who implement and administer this new federal common law, pursuant to § 1983, ought to be appointed, upon the advice and consent of the Black church and their constituents.

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