THE LAW OF NATIONS

Towards A Federal Common Law of the Black Family

Part III

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

Rev. Roderick Andrew Lee Ford, J.D., Litt.D., LL.D.

Executive Director, The Methodist Law Centre at Sante Fe

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Towards a Federal Common Law of the Black Family

Part III

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

This Booklet is a Position Paper that was prepared for the United States Congress; the state courts of the several states of the 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 civil rights lawyers, human rights organizations, multinational nongovernmental organizations, 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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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 on 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.

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PREFACE

November 18, 2024

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

Dear Senator Rubio:

Please accept this third and final installment of my two pamphlets (a) *Towards a Federal Common Law of the Black Family* © 2023 and (b) *Head of the Family: Towards a Federal Common Law of the Black Family* © 2024. This third installment is titled "***The Law of Nations****: Towards a Federal Common Law of the Black Family* © 2024. As this title conveys, the subject matter of this pamphlet is international law.

Accordingly, the objective of this pamphlet is to remind state and federal magistrates that the plight of the African American family in the United States was created by serial and wanton violations of international customary law – namely, piracy, inhumane treatment of prisoners of warfare, slave trading off the coast of Africa, and slavery in the United States. The African American family was created out of these awful conditions, and the "effects" are still being felt to this day.

The plight of the African American family is an international problem, as well as a national problem— one that is far beyond the scope of any singe state legislature or state judge to satisfactorily resolve on their own. To that end, this pamphlet sheds light on the international customary laws and international treaty laws apply to the plight of the African American family.

This pamphlet is designed to give recommendations for precisely how international law may be applied in the state or federal courts of the United States.

Ostensibly, this pamphlet takes a "pro-federal court" position, because it is written from the perspective of the Congressional aims and intent behind the Civil War Amendments and their enabling legislation, such as the Civil Rights Acts of 1866 and 1871, as well as national historic experience.

As I have previously explained in "Head of the Family," the state courts have proven to be ill-equipped to address the crisis of the African American family. This pamphlet repeats this same theme, but it does so with emphasis upon two treaty laws of the United States, namely, the International Covenant of Civil and Political Rights (ICCPR) and the International Convention on the Prevention of All Forms of Racial Discrimination (ICERD). The ICCPR and the ICERD supplement the Civil War Amendments and the Civil Rights Acts of 1866 and 1876, and these international laws specifically safeguard the institution of the family.

Finally, I would be remiss if I did not here bring to your attention two very important aspects about the principle of *Jus Cogens (i.e., international customary law)*: first, this principle is of Jewish-Hebraic origins and has long ago formed the basis of the common law of the family in England and the United States; and, secondly, this principle is firmly incorporated in the Universal Declaration of Human Rights and in the African Charter on People's and Human Rights. These several international sources of the *Jus Cogens* principles clearly embrace traditional Judea-Christian standards; and these sources also bolster my legal arguments made in the first two installments, namely, that the African and African American peoples are fundamentally traditional or conservative in their family value systems and in their objectives being sought to resolve the present crisis.

Yours Faithfully,

Roderick A. L. Ford

Rev. Roderick Andrew Lee Ford, Esquire
Executive Director, The Methodist Law Centre
5745 S.W. 75th Street, Ste. # 149
Gainesville, Florida 32608
Florida Bar Number: 0072620

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)

November 22, 2024

Office of the Attorney General
State of Florida
ATTN: Ashley Moody, Esq.
PL-01, The Capitol
Tallahassee, Florida 32399-1050

Dear Attorney-General Moody:

I believe that Florida Statute, Chapter 61 [Dissolution of Marriage; Support; and Time-Sharing] violate the Equal Protection and Due Process Clauses of the Fourteenth Amendment, U.S. Constitution, as well as public international law of human rights, because the ostensibly "race-neutral" language and provisions of this Florida statute create irrefutable presumptions that the African American family structure and condition is *the same as*, or nearly the same as, that of white American families, or other non-black American families, which have not had the slavery/racial segregation experience on American soil for nearly 350 years. And when we add the financial expense of family law litigation to this crisis, we may easily conclude that "remedies" which should be available as a matter of constitutional right, and uniquely tailored to meet the exigent circumstances of African American husbands and fathers, are not obtainable in Florida's family law tribunals.

In theory, English and American "chancery" is indeed flexible enough to do complete justice. However, as you are well aware, in practice, "chancery" alone, without the Thirteenth Amendment, the 1866 Civil Rights Act, the Ku Klux Klan Act of 1871, and similar federal or international civil rights laws, has never been sufficient, standing alone, to safeguard the fundamental rights of black folk. This same maxim is equally true in the family law tribunals of this state.

Accordingly, please accept this third and final installment of my two pamphlets (a) *Towards a Federal Common Law of the Black Family* © 2023 and (b) *Head of the Family: Towards a Federal Common Law of the Black Family* © 2024. This third installment is titled "***The Law of Nations****: Towards a Federal Common Law of the Black Family* © 2024. As this title conveys, the subject matter of this pamphlet is international law.

Yours Faithfully,

Roderick A. L. Ford

Rev. Roderick Andrew Lee Ford, Esquire
Executive Director, The Methodist Law Centre
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CC: Senator Marco Rubio
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)
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Chapter One

Black Husbands and Fathers:

"*Jus Cogens*: The Expert Witness Deposition of Armon R. Perry, Ph.D., MSW"

By

Rev. Roderick Andrew Lee Ford, J.D., Litt.D., LL.D.
Chancellor and Executive Director of The Methodist Law Centre
Member of the Bar of the United States Supreme Court

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Introduction

The decline and fall of the traditional Black family in the United States of America is indeed a part of the legacy of slavery in the United States[1] that has begun to define a global crisis of Western neo-colonialism throughout the Pan-African world.[2] Neo-liberal notions of "human rights"

[1] 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)("It was by destroying the Negro family under slavery that white America broke the will of the Negro people.")

[2] See, generally, W.E.B. Du Bois, *The World and Africa* (New York, N.Y. : International Publishers, 2015).

that focus upon the plight of women and children, while systematic ignoring the health of monogamic two-parent families, too often ignore the problem of "androcide" and "gendercide" that target male populations (i.e., men and boys) within racial minority groups. [See, generally, **Appendices, "*Jus Cogens*: Androcide, or Killing the 'Image of God**.'" (Appendix I discussing the targeted killing of men and boys in the Holy Bible[3] and World History)]. Through taking jurisdiction over female-headed, single-parent African American families, state family law and policy have divested black American men of "head of the family" status in violation of *Jus Cogens*.

Accordingly, we must begin this discussion with an acknowledgment of the principle of *Jus Cogens* that is part of the fundamental law of the United States.[4] And we must acknowledge that *Jus Cogens* is deeply-rooted in the same natural-law and Judea-Christian law traditions which undergird the fundamental laws of England, the Declaration of Independence, and of the United States. See, generally, the **Appendix I** (discussing the targeted killing of men and boys in the Holy Bible[5] and World History).

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[3] See also The Carter Center's ***Scripturally Annotation of the Universal Declaration of Human Rights*** at the following link: universal-declaration-human-rights-scriptually-annotated.pdf.

[4] See, e.g., Restatement (Third) of Foreign Relations Law § 702(c) (Am. L. Inst. 1987)("The customary law of human rights is part of the law of the United States to be applied as such by State as well as federal courts."). *Lawrence v. Texas*, 539 U.S. 558, 576 (2003)(citing the case law of the European Court of Human Rights); *Thompson v. Oklahoma*, 487 U.S. 815, 831 n. 34 (1988)(noting that the International Covenant on Civil and Political Rights, the American Convention on Human Rights and the Geneva Convention Relative to the Protection of Civil Persons in Time of War prohibit juvenile death penalties); *Roper v. Simmons* , 543 U.S. 551, 579 (2005)(relying on international human rights law to hold that sentencing juveniles to death violates the Eighth Amendment).

[5] See Footnote # 3.

For Africans and African American civil rights and human rights advocates—including clergymen, lawyers, social activists, etc.—the plight of the black American husband and father is deeply-rooted in, and framed by, the Sacred Scriptures and the ancient Hebrew conception of manhood.[6] That conception of manhood is based upon an **"image of God"** that is manifest in the structure and nature of ***the first family***. See, generally, "Introduction" to **Appendices**.[7]

Therefore, the plight of black American husbands, fathers, and men within the state family law tribunals of the United States implicate certain *Jus Cogens* norms**.** This is especially true through the American South, such as in the state of Florida, where various courthouse grounds hosts "Confederate" statutes and memorials—ostensibly relics of a lost cause that stood in direct opposition to, e.g., the Civil War Amendments and the Ku Klux Klan Act of 1871.[8] Indeed, these *Jus Cogens*, or customary international law normative standards, implicate rights in (a) "manhood,"[9] (b) "husbandhood,"[10] and (c) "fatherhood"[11] which American slavery and on-going racial discrimination denied to this class of men.

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[6] See, generally, "Human Rights," *Jewish Virtual Library* (https://www.jewishvirtuallibrary.org/rights-human). And see, generally, **The African Charter on People's and Human Rights** which expressly states the Pan-African perspective that the family is the foundation of civilization.

[7] Ibid.

[8] See, e.g., See, e.g., Deborah R. Gerhardt, "Law in the Shadows of Confederate Monuments," *Michigan Journal of Race & Law*, Vol. 27:1 (2021).

[9] Daniel P. Black, *Dismantling Black Manhood: An Historical and Literary Analysis of the Legacy of Slavery* (London and New York: Garland Publishing, Inc., 1997).

* Dr. Daniel Black (1965 – present) is currently a professor at Clark-Atlanta University. He received his B.A. degree from Clark College in 1988 and his Ph.D. from Temple University in 1992.

[10] Ibid.

[11] Ibid.

Present-day state family laws interpose race-neutral standards that violate both *Jus Cogens*[12] and international treaty law,[13] because they require black American men to pretend that they are white American men; or to pretend that they have had enjoyed centuries of economic, political, and social advantages that white American have enjoyed; or that there are no "effects of slavery" which inhibits their conjugal or familial relations with black American women or their own children.

Thus, this official sanctioning of making black American men to pretend that they are something that they are not – i.e., white American men—is itself a violation of Jus Cogens, because this is simply *a subversive method* (i.e. subterfuge) of denying to black American men the unique and specific remedies that only men in their unique position need and deserve.

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[12] Indeed, the right to a remedy for international human rights violations has attained the status of customary international law. See U.N. Basic Principles on the Right to a Remedy, Principles I.1(b) and 2; *Prosecutor v. Andre Rwanmkuba*, Case No. ICTR-98-44C, Decision on Appropriate Remedy, ¶ 40 (Jan. 31, 2007); *Prosecutor v. Andre Rwanmkuba*, Case No. ICTR-98-44C-A, Decision on Appeal Against Decision on Appropriate Remedy, ¶¶ (Sept. 13, 2007); Cantoral-Benavides v. Peru, 2001 Inter-Am. Ct. H.R. (ser. C) No. 88, ¶ (Dec. 3, 2001); *Customary International Humanitarian Law*, Vol. 1: Rules 537-50 (Jean-Marie Henckaerts & Louise Doswald-Beck, eds. 2005).

[13] See, e.g., European Convention for the Protection of Human Rights and Fundamental Freedoms art. 13, Nov. 4, 1950, 213 U.N.T.S. 222 [hereinafter ECHR]; African Charter on Human and People's Rights art. 7(1)(a), adopted June 27, 1981, 1520 U.N.T.S. 217; League of Arab States, Arab Charter on Human Rights art. 23, May 22, 2004, reprinted in 12 INT'L HUM. RTS. REP. 893 (2005); Universal Declaration on Human Rights, G.A. Res. 217A(III), art. 8, U.N. Doc. A/810 (Dec. 10, 1948); American Declaration on the Rights and Duties of Man arts. 17-18, O.A.S. Res. XXX, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OAS/Ser.L/V/I.4 Rev. 9 (2003); Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, G.A. Res. 40/34, ¶ 4, U.N. Doc. A/RES/40/34 (Nov. 29, 1985); U.N. Human Rts. Comm. General Comment 31, ¶¶ 15-17, U.N. Doc. CCPR/C/21/ Rev.1/Add.13 (May 26, 2004)[hereinafter UNHCR General Comment 31]; Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, G.A. Res. 60/147, Principles 18-23, U.N. Doc. A/RES/60/147 (Dec. 16, 2005)[hereinafter U.N. Basic Principles on the Right to a Remedy].

II.

This pamphlet holds that the unique familial history, familial function, and familial status of:

- African American *boys*;
- African American *men*;
- African American *fathers*; and
- African American *husbands*

constitutes distinct material and key evidence which state family law judges, courts, lawyers, and all official personnel, who play a role in the administration of family law justice, can not ignore, suppress, or exclude, without violating both the United States Constitution and customary international law (i.e., *Jus Cogens*).[14]

Hence, state courts and state judges can not expect to administer substantive justice to African American fathers, husbands, and men in family law proceedings and, also, to comply with the Due Process Clauses or the Civil War Amendments of the United States Constitution and international law of human rights (i.e., *Jus Cogens*), where key and material evidence is both outcome-determinative and yet *systematically excluded* from the litigation.[15]

This *systematic exclusion of evidence* regarding important sociological, cultural, and historical *material facts* about the plight of African American fathers, husbands, and men as "Heads of the Family"[16] raises salient legal or constitutional questions that implicate international law of human

[14] Ibid.

[15] Ibid.

[16] Ibid.

rights—both treaty law and customary law (i.e., the Law of Nations), as well as federal statutory and constitutional violations of the United States Constitution.

Does the *systematic exclusion* of material evidence on the past and present-day sociology, culture, and history of **the "Head of the Family" status of African American fathers, husbands, and men** result in gross miscarriages of justice in the state courts?[17]

Does this *systematic exclusion* perpetuate the negative effects of chattel slavery upon the African American people?

Does this *systematic exclusion* especially have an emasculating effect on the "husbandhood"[18] and "fatherhood"[19] of African American men?

To help address these questions, and with the objective of further exploring whether such salient concerns warrant immediate Congressional or judicial actions, I have sought the assistance of an expert in the field of African American sociology and social work.

I found such a person in Dr. Armon R. Perry of the University of Louisville, viz.:

Armon R. Perry, Ph.D., MSW
University of Louisville
Kent School of Social Work
Oppenheimer Hall
Louisville, KY 40292
(502) 825-3234
(502) 852-0422
Email: arperr01@louisville.edu

[17] Ibid.

[18] See, generally, Daniel P. Black, *Dismantling Black Manhood: An Historical and Literary Analysis of the Legacy of Slavery* (London and New York: Garland Press, 1997).

[19] Ibid.

EDUCATION		
Institution: **University of Alabama**	Ph.D. '08	MSW '02
Institution: **Alabama State Univ.**	BSW '01	

In 2022, I secured several articles and a book titled *Black Love Matters: Authentic Men's Voices on Marriages and Romantic Relationships* which Dr. Perry published.

Subsequently, I conducted an in-person interview of Dr. Perry upon the subject matter of the plight of African American fathers and husbands, and of the African American family as a whole.

In my interview with Dr. Perry, I focused the discussion upon whether state family law proceedings afforded no procedural avenue to African American men, fathers, or ex-husbands to vindicate their natural rights as husbands, fathers, and "heads of the family"; if not, whether such denials violated federal constitutional and civil rights laws.

And although I made no explicit references to international human rights, my references to "slavery" and (or) "slavery-related practices" clearly placed the subject matter of our discussion within the domain of international human rights, i.e., the doctrine of *Jus Cogens*,[20] as well as the Universal Declaration of Human Rights (UDHC, 1948); the Convention on the Punishment of the Crime of Genocide (CPCG, 1948); International Covenant on Civil and Political Rights (ICCPR, 1966) and the International

[20] See, e.g., W.E.B. Du Bois, "The Souls of Black Folk," Writings (New York, N.Y.: The Library of America, 1986), p. 386, stating: ("[T]o leave the Negro in **the hands of Southern courts** was impossible…. [T]he **regular civil courts** tended to become **solely institutions for perpetuating the slavery of blacks**. Almost **every law** and **method ingenuity could devise** was employed by the legislatures **to reduce the Negroes to serfdom—**to make them **the slaves of the State**, if not of individual owners….") See, also, 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

Convention on the Elimination of All Forms of Racial Discrimination (ICERD, 1969).

I. Literature Review of Dr. Armon R. Perry's articles and book, *Black Love Matters: Authentic Men's Voices on Marriages and Romantic Relationships*[21]

First, prior to interviewing Dr. Perry, I attained a copy of his published materials and reviewed them.

In his book, *Black Love Matters*, Dr. Perry's findings supported my hypothesis that official state family laws and procedures are not responsive to the fundamental requirements of justice administration for African American families or of safeguarding the rights of African American men.

A. First-Generation African American Civil Rights regarding Black "Husbandhood" and "Fatherhood" are systematically Evaded in State Family Law Tribunals in Violation of *Jus Cogens*

1. "First-Generation" Civil Rights *Evidence*: The systematic suppression of litigation evidence in State Family Law Proceeding on the **unique Black Male struggle** for "**Husbandhood**" and "**Fatherhood,**" which is the direct result of slavery and racial discrimination, violates *Jus Cogens*.

2. "First-Generation" Civil Rights *Evidence*: **Dr. Armon R. Perry**, Professor of Social Work, University of Louisville, in

[21] Armon R. Perry, *Black Love Matters: Authentic Men's Voices on Marriages and Romantic Relationships* (Lanham, MD: Lexington Books, 2020).

NOTE: The undersigned author, Roderick Ford, has met personally with Dr. Perry and secured his deposition upon written questions in the form of an "Expert Witness" Affidavit.

his work ***Black Love Matters***,[22] explored the present-day effects of Slavery upon the psychology, beliefs, and attitudes of African American men living in the United States during the second decade of the 21st century.

a). "First-Generation" Civil Rights *Evidence*:

In ***Black Love Matters***, Dr. Perry explores the generalized African American male "concept of masculinity" and "whether or not being in a romantic relationship or marriage was central to their sense of manhood."[23]

b). "First-Generation" Civil Rights *Evidence*:

"Black Men's Struggles for Husbandhood"

In ***Black Love Matters***, Dr. Perry states: "The findings revealed that 62.5 percent of men agreed that their romantic relationships or marriages shaped their concepts of masculinity. In elaborating on this belief, the men discussed how being married or in a romantic relationship created opportunities for intimacy and companionship with their partners, encouraged them to be responsible as men and fathers, and reinforced traditional gender roles, all of

[22] Ibid.

[23] Ibid., p. 115.

which they saw as behavioral manifestations of manhood."[24]

"The other 37.5 percent of the men rejected that idea that romantic relationships or marriages impacted their masculine identify…. According to these men, their manhood was defined by their self-reliance and independence and feeling liberated and secure enough in themselves to engage in a relationship or not if they saw fit."[25]

c). "First-Generation" Civil Rights *Evidence*:

"Black Men's Struggles for Fatherhood"

In ***Black Love Matters***, Dr. Perry states: "Interestingly, as some men argued that their concept of masculinity was influenced by their relationship creating a pathway for their fathering, and taking active roles in raising their children, other men rejected the salience of relationships in shaping masculinity but also invoked fatherhood."[26]

"However, rather than making the case that their relationship facilitated their involvement, these men discussed prioritizing fathering over participation in a romantic relationship."[27]

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[24] Ibid., pp. 126 – 127.

[25] Ibid., p. 127.

[26] Ibid.

[27] Ibid.

d). "First-Generation" Civil Rights *Evidence*:

"**Negative Stereotypes of the Black Male Image During and After Slavery"**

In ***Black Love Matters***, Dr. Perry states: "Historical stereotypes and controlling images that have negative implications in contemporary contexts persist. Throughout their residence in the United States, black men's sexuality has been framed as violent, dangerous, and predatory (Anderson 1990; Collins 2002; Kniffley, Brown, and Davis 2018).[28]

"During slavery, fears of insurrection which were assumed would include large numbers of rapes were used to justify formal and informal laws, policies, and customs to restrict black men's activity and mobility.[29]

"Post slavery, newspapers, books, and racialized 'science' all became venues for pathologizing black men's sexuality, paving the way for racial violence, usually in the form of lynching (McGruder 2010)…."[30]

"The result was the stereotype of the black man as virile, hypersexual, and uncontrollable that

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[28] Ibid., p. 55.

[29] Ibid.

[30] Ibid.

continues to persist in contemporary society (Childs, Laudone, and Tavernier 2010)."[31]

e). "First-Generation" Civil Rights *Evidence*:

"**Slavery's Enduring Psychological Damage to Black Men"**

In ***Black Love Matters***, Dr. Perry states: "Interestingly, many of the men invoked the lasting legacy of slavery as **a psychological trauma** negatively impacting their own relationships, as well as the relationships of large numbers of black men.[32]

"In these instances, the men talked about how the peculiar institution **restricted black men's authority** in their relationships and kept them from fulfilling the same socially prescribed gender roles as their white counterparts.[33]

"In other words, the men expressing this sentiment felt as though black men have never been allowed to assume their roles as providers and protectors. Since black men believed that **the emasculation of black men** has been **woven into the fabric of black male-female relationships** to the point where many contemporary black men find great difficulty

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[31] Armon R. Perry, *Black Love Matters: Authentic Men's Voices On Marriages and Romantic Relationships* (Lanham, Maryland: Lexington Books, 2020), 55.

[32] Ibid., p. 78.

[33] Ibid.

assuming the role as the unquestioned **heads of their households**."[34]

f). "First-Generation" Civil Rights *Evidence*:

"Slavery's Enduring legacy of Black Women's Lost Confidence in Black Men"

In ***Black Love Matters***, Dr. Perry states: "So pervasive are these notions of black men as hypersexual and predatory that they have been cast as dogs in public discourse.[35]

"As explained by Benjamin (2014), the **negative epithet of the dog** is applied by women to explain the behavior of men who fail to fulfill their prescribed ideal role of breadwinner, companion, husband, and father.[36]

"Typically, women do not perceive men's inability to fulfill traditional roles as a function of external forces (i.e., racism and restricted opportunities); hence they use the dog stereotype to rationalize any conflicts and shortcomings that occur between them.[37]

"[S]ome black women may also perceive black men as passive, unreliable, irresponsible, unfaithful, less

[34] Ibid.

[35] Ibid.

[36] Ibid., p. 56.

[37] Ibid.

likely to contribute, and less committed to long-term romantic relationships (Bell, Bouie, and Baldwin 1990; Bell 1999; Cazenave and Smith 1990; Lawrence-Webb, Littlefield, and Okundaye 2014)."[38]

g). "First-Generation" Civil Rights *Evidence*:

"Slavery's Enduring legacy of Reciprocal Oppression Between African American Men and Women"

In ***Black Love Matters***, Dr. Perry states: "Indeed, insidious sexual stereotypes shape the way that many black men and women see themselves and communication problems and also impair couple's ability to develop honesty and trust (Cazenave and Smith 1990)."[39]

"Further exacerbating these issues is that since black women's sexuality has also been stereotyped and deficit framed, some black men may see women who are sexually assertive as promiscuous, assuming that her freedom with him means that she is sexually free with other men as well (Crook, Thomas, and Cobia 2009)."[40]

[38] Ibid.

[39] Ibid.

[40] Ibid.

II. Deposition and Personal Interview of Dr. Armon R. Perry (July 2022)

In July 2022, the undersigned, Roderick Ford, Esq., conducted an interview of Dr. Armon R. Perry.

Following this interview, the undersigned sent a list of questions to Dr. Perry, in the form of a "Deposition Upon Written Questions."

Dr. Perry gave the following responses:

A.

Attorney Roderick Ford

QUESTION: "Does the institution of African American slavery still negatively affect the formation and maintenance of 'traditional' families (i.e., heterosexual males and females getting married, having and raising children, etc.), in the United States?"

Dr. Armon R. Perry

ANSWER: "Yes. American slavery was different than slavery in other parts of the world in that it was chattel slavery. This meant that not only were the slaves personal property of their masters, but so too were their children. Slaves were prohibited from legally marrying although in cases, owners would permit slaves to function as married couples. However, even in these cases, slaves had to live with the real threat of having a spouse or child sold and removed at the owner's discretion. Slaves were also subjected to forced sexual intercourse as a form of breeding. As a result, Black families had no autonomy with regard to the formation and maintenance of family life. The nature and structure of family life was prescribed and

dictated to them with the expressed aim of keeping them subservient and limiting their ability to form unions, be educated, own capital or amass wealth.

"And although slavery was outlawed with the ratification of the 13th Amendment in 1865, this was followed by 100 years of Jim Crow which lasted until the 1960s which was followed by a combination of outsourcing of jobs from central cities, the ushering in of the Crack epidemic and mass incarceration which further decimated Black families and communities.

"The result of slavery and the subsequent systematic oppression and benign neglect is that Black people have always had their autonomy restricted and economic opportunities limited in America. This has had negative implications for Black family formation in the way that it has kept Black men from assuming the roles of providers and breadwinners who are also the heads of their families, key features of American masculinity."

B.

Attorney Roderick Ford

QUESTION: "[D]o state family law agencies in general (i.e., welfare agencies, child protective services, child support enforcement agencies, family law courts, judges, attorneys, social workers, etc.) perpetuate "customs, usages, or policies" that tend to aggravate or worsen the negative impact which the institution of slavery continues to have on the formation of traditional African American families [?]"

Dr. Armon R. Perry

ANSWER: "Yes, many of society's institutions perpetuate and exacerbate the deleterious legacy of slavery. Child Protective Service agencies disproportionately investigate families of color and remove

their children into foster care. Research has concluded that social service providers are less likely to engage black fathers than other types of fathers which has the effect of marginalizing their participation and influence on case planning decisions. Child support policy has criminalized poverty by revoking personal and professional licenses or incarcerating obligors who cannot afford to pay which disproportionately impacts Black fathers. Finally public assistance policy has historically prohibited in-tact, 2-parent families from being eligible. This has had the effect of placing many families in the position of having to choose between having an involved, resident father and public assistance benefits that sustained families.

C.

Attorney Roderick Ford

QUESTION: "[C]an you please state whether the nature of the discrimination against African American fathers takes the form of (a) harassment in the collection of child support or other domestic support obligations that impact (1) job opportunities or (2) driver's licenses revocations; (b) turning African American mothers (or women in general) against African American fathers (or men in general); (c) diminishing family cohesion and unity within the African American community; and (d) presenting an unfair general image of African American men as bad husbands and fathers[?]"

Dr. Armon R. Perry

ANSWER: "There is a long history of discrimination against Black men in America that started with slavery which gave way to the neo-slavery in the form of reconstruction and Jim Crow segregation. It is important to remember that both slavery and the Jim Crow era were

willful and intentional policy regimes that served to significantly limit Black men's to fulfill the financial provider and protector roles that are customary expectations of men in our society. As a result, many Black families have been forced to adapt by adopting 'non-traditional' family forms that are viewed as deviant or inferior including heavy reliance upon the extended family and disproportionately high rates of female headed, single parent homes. Even after the Civil Rights Movement brought an end to Jim Crow, subsequent macroeconomic policies leading to outsourcing of manufacturing work and public assistance policy requiring separation to maintain eligibility combined with the effects of the Crack Cocaine epidemic and associated War on Drugs/mass incarceration have contributed to negative stereotypes of Black men and fathers. These stereotypes exist and persist in both public discourse and academic research to the point where Black men are rarely discussed except to the extent that they can be implicated in discussions related to what ails their families and communities. Moreover, contemporary society continues to perpetuate these stereotypes through the negative portrayals of Black men in media that only serve to further marginalize them. All of these factors have conspired to create a culture of mistrust among many Black men and women in which men are perceived as irresponsible and untrustworthy while the women are perceived as overbearing and disloyal. The consequences have been dire for Black families as marriage rates for Blacks are lower than their White counterparts. Further, close to 66% of all Black children are born to unmarried parents which puts them at risk for paternal disengagement and all of the social problems associated with it including poverty, drug use, low educational attainment and risky sexual behavior."

CONCLUSION

"Legal Analysis and Conclusions Regarding Deposition of Dr. Armon R. Perry"

My interview with Dr. Perry resulted in the following legal or constitutional conclusions:

The *systematic exclusion* of evidence on the sociology, culture, and history of the plight of the African American family in general from state family law courts violates the fundamental rights of African American litigants, thus create gross miscarriages of justice that implicate the perpetuation of "badges and incidents" of slavery.

More specifically, as Dr. Perry's comments indicate, such *systematic exclusion* of evidence regarding the sociology, culture, and history of the African American family continuously and willfully violates the specific natural rights— **"husbandhood,"**[41] **"fatherhood,"**[42] **and "manhood"**[43] **— of African American husbands, fathers, and men**; namely, those natural rights that are contained within:

1. The Declaration of Independence;[44]

2. The Privileges and Immunities Clause, U. S. Constitution; [45]

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[41] See, generally, Daniel P. Black, *Dismantling Black Manhood: An Historical and Literary Analysis of the Legacy of Slavery* (London and New York: Garland Press, 1997).

[42] Ibid.

[43] Ibid.

[44] Declaration of Independence (1776), which itself states: "the Laws of Nature and of Nature's God entitle … all men… [to]… certain unalienable rights, that among these are Life, Liberty and the pursuit of Happiness."

[45] "Privileges and Immunities Clause" in Article IV, Section 2 of the United States Constitution (1787). That section states: "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." See, e.g., *Corfield v. Coryell*, 46 F. Cas. 546, 550

3. The First Amendment, U.S. Constitution;[46]

4. The Thirteenth Amendment, U. S. Constitution, and the 1866 Civil Rights Act;[47]

5. Article 16 of the *Universal Declaration of Human Rights;* [48]

(Washington, Circuit Justice, C.C.E.D. Pa. 1823); *Paul v. Virginia*, 75 U.S. 168, 180 (1869); *Chamber v. Balt. & Ohio R.R.,* 207 U.S. 142, 147-149 (1907); and *Whitfield v. Ohio*, 297 U.S. 431, 437 (1936).

[46] The right of marriage and the right to procreation is a fundamental and substantive constitutional rights. 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)...")

[47] See, e.g., *U.S. v. Morris*, 125 Fed. Rep. 322, 325 (E.D. Ark. 1903), stating:

> The defendants are indicted for a violation of the provisions of … the thirteenth amendment to the Constitution of the United States and the provisions of section 1 of the act of Congress entitled 'An act to protect all persons in the United States in their civil rights and furnish means of their vindication,' enacted April 9, 1866 (chapter 31, 14 Stat. 27, digested in the United States Revised Statutes as section 1978; U.S. Comp. St. 1901, p. 1262)….
>
> Every citizen and freeman is endowed with certain rights and privileges, to enjoy which no written law or statute is required. These are fundamental or natural rights, recognized among all free people.
>
> In our Declaration of Independence, the Magna Carta of our republican institutions, it is declared: 'We hold these rights to be self-evident: That all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty and the pursuit of happiness'….

[48] See, e.g., the *Universal Declaration of Human Rights*, stating:

> The General Assembly,
>
> Proclaims this Universal Declaration of Human Rights as **a common standard** of achievement **for all peoples** and **all nations**…
>
> **Article 16**

6. Article 23 of the *International Covenant on Civil and Political Rights* (ICCPR);[49]

7. Article 5 of the *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD);[50] and,

8. Article 17, 18, and 29 of the *African Charter on People's and Human Rights*.

From the perspective of black or African American men, one such constitutional and evidentiary-court challenge is the inability to present **"admissible racial discrimination" evidence** in state family law tribunals in the form of evidence which substantiates the lack of empathy, sympathy, respect, and (or) cooperation from their black American women (i.e., wives, ex-wives, girlfriends who are mothers of their children, etc.) who stereotype and treat them as being "**dogs**" [i.e., as slaves or male breeders], thereby divesting those men of the ability to carry out **"head of the family"** duties and functions.

Another such constitutional and evidentiary-court challenge is the inability to present **"admissible racial discrimination" evidence** in state family law tribunals in the form of evidence which substantiates the biases

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> Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
>
> Marriage shall be entered into only with the free and full consent of the intending spouses.
>
> The **family is the natural and fundamental group unit of society** and is entitled to protection by society and the State.

[49] Article 23(1): "The family is the natural and fundamental group unit of society and is entitled to protection by society and the State."

[50] Article 5(d)(4): "The right to marriage and choice of spouse."

in state courts and state agencies which favor and (or) ratifies the substandard behaviors of those same black American women (i.e., wives, ex-wives, girlfriends who are mothers of their children, etc.) who stereotype and treat black American men as being "dogs" [i.e., as slaves or male breeders], thereby divesting those men of the ability to carry out **"head of the family"** duties and functions.

Such evidence of **"admissible racial discrimination"** that demonstrates that (a) state laws, state agencies, and (or) state officials may conjoin with (b) certain black American women to divest black American men of their rights and ability to carry out **"head of the family"** duties and functions constitutes slavery and (or) the customs, usages, badges and incidents of slavery (i.e., slave-like conditions).

Accordingly, this pamphlet focusses on the Law of Nations and the international status of the plight of African American family in the United States. It concludes that since the jurisprudence of the Thirteenth Amendment and the 1866 Civil Rights Acts are so under-litigated and underdeveloped, in terms of questions regarding the effects of slavery upon black American families, that *Jus Cogens* and the treaty law of the United States must be relied upon in order (a) to articulate the wrongs being perpetuated and (b) to attain adequate remedies for those wrongs. This is fully appropriate given the United States Supreme Court's holding in ., *The Slaughterhouse Cases*, 83 U.S. 36, 37 (1872), stating:

> "The privileges and immunities of citizens of the United States are those which arise out of the nature and essential character of the national government, the provisions of its Constitution, or its laws and **treaties made** in pursuance thereof, and it is these which are placed under the protection of Congress by this clause of the **Thirteenth amendment**."

For this reason, jurisdiction over state family law matters involving African American families (and especially legal questions that relate to the conjugal or paternal rights of black American men) must be routinely transferrable

to the United States District Courts so that a nationalize and federal remedy can be applied nationally and with the objective of alleviating much age-old cruelties that are still being perpetuated against black American men in state family law tribunals.

--- The End of Chapter One ---

Chapter Two

Black Husbands and Fathers:

"*Jus Cogens*: Denial of Court Access as a Deprivation of International Human Right"

By

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Introduction

Court access is a major fundamental, constitutional, and human right under Florida's Constitution,[1] the United States Constitution,[2] and

[1] See, e.g., Article 1, Section 21 of Florida's Constitution.

[2] See, e.g., *NAACP v. Button*, 371 U.S. 415 (1963).

international law.[3] The denial of the right to court access is a badge and incident of African slavery under the Thirteenth Amendment, U.S. Constitution.[4]

The American state-court based family law system currently and largely denies meaningful court access to black American fathers, husbands, and men. This state-court family law system is therefore largely in violation of various international treaty laws of the United States vis-à-vis its lack of will or capability of safeguarding the conjugal or paternal rights and "head of family" status of black American husbands, fathers and men.[5] See, e.g., Article 16 to the Universal Declaration of Human Rights (UDHR); Article 23 of the *International Covenant on Civil and Political Rights* (ICCPR); and Article 5(d)(4) of the *International Convention on the Elimination of Racial Discrimination*. These treaty laws are cognizable in both the state and federal courts via the Thirteenth Amendment, U. S. Constitution, and the Civil Rights Act of 1866 and 1871 (e.g., 42 U.S.C. §§ 1981, 1982, and 1983). See, e.g., *The Slaughterhouse Cases*, 83 U.S. 36, 37 (1872), stating:

> "The privileges and immunities of citizens of the United States are those which arise out of the nature and essential character of the national government, the provisions of its Constitution, or its laws and **treaties made** in pursuance thereof, and it is

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[3] See, generally, Parts I through IV of this paper.

[4] See *The Civil Rights Cases*, 109 U.S. 3, 22 (1883).

[5] The "Jus Cogens" legal and constitutional perspective of this paper is based upon the traditional Judea-Christian conception of natural law of the family. See, e.g., The Carter Center's *Scripturally Annotation of the Universal Declaration of Human Rights* at the following link: universal-declaration-human-rights-scriptually-annotated.pdf. Neo-liberal human rights and civil rights programs in the United States and the West are focused upon the plight of "women and children," without placing it into the larger context of androcide or target oppression of the men and boys of insular minority groups. Hence, through taking jurisdiction over female-headed, single-parent African American families, state family law and policy have divested black American men of "head of the family" status in violation of *Jus Cogens*.

these which are placed under the protection of Congress by this clause of the **Thirteenth amendment**."

Unfortunately, in state family law tribunals, which have limited jurisdiction, such as in the state of Florida, this federal or international law question cannot see the light of day due to the "limited jurisdiction" of those chancery courts. This problem is now one of crisis status, wholly cognizable in the United State District Courts—black American fathers must, as a matter of international human rights law, have access to those federal courts in order to vindicate their fundamental familial rights.

From the perspective of black or African American men, one such constitutional and evidentiary-court challenge in state family law tribunals is their inability to present **"admissible racial discrimination" evidence** in the form of evidence which substantiates the lack of empathy, sympathy, respect, and (or) cooperation from their black American women (i.e., wives, ex-wives, girlfriends who are mothers of their children, etc.) who stereotype and treat them as being "**dogs**" [i.e., as slaves or male breeders],[6] thereby divesting those men of the ability to carry out **"head of the family"** duties and functions.

Another such constitutional and evidentiary-court challenge in the state family law tribunals is the inability of any litigant to present **"admissible racial discrimination" evidence** in the form of evidence which substantiates the biases in state courts and state agencies which favor and (or) ratifies the substandard behaviors of those same black American women (i.e., wives, ex-wives, girlfriends who are mothers of their children, etc.) who stereotype and treat black American men as being "**dogs**" [i.e., as slaves or male breeders], thereby divesting those men of the ability to carry out **"head of the family"** duties and functions.

Such evidence of **"admissible racial discrimination"** that demonstrates that (a) state family law tribunals [i.e., state agencies, state

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[6] Armon R. Perry, *Black Love Matters: Authentic Men's Voices On Marriages and Romantic Relationships* (Lanham, Maryland: Lexington Books, 2020), 56 ("the negative epithet of the dog").

officials, judges, lawyers, etc.] may, and do often, conjoin with (b) certain black American women to divest black American men of their rights and ability to carry out **"head of the family"** duties and functions constitutes a constitutional tort or wrong that is similar in nature to "slavery."[7] Therefore, when state or federal courts fail or refuse to provide a remedy to black American men for such a constitutional tort, they violate both customary international law and treaty law, as well as the constitution of the United States.

I. Meaningful Court Access is a Human Right under International law and a Fundamental Right under the U. S. Constitution

A. **Denial of State Court Access:** The African American citizen of the United States is unaware that most

(1). Court rules;

(2). Court procedures;

(3). Common law;

(4). Statutory law; and

(5). Substantive judicial opinions—

[7] Section 1 of the Civil Rights Act of 1866 prohibits "customs" which perpetuate slavery or involuntary servitude. Similarly, Section 1 of the Civil Rights Act of 1871 prohibits "usages" and "customs" which divest persons of constitutional rights. Such "customs," for instance, can be identified in the form of "customary slave marriages," which the state of Florida once officially recognized and enforced; and these "customs" severely limited the paternal, conjugal, and "head of the family" rights and status of black American men.

fail to take into account, fail to adjudicate, and (or) fail to adjust, the *unique socio-economic or political circumstances* or unique *material facts and evidence* that:

(a) demonstrate the affliction and oppression the poor; or

(b) perpetuate the "badges and incidents of slavery" upon citizens of African descent.

B. **Denial of State Court Access:** Getting evidence that constitute (1) unique *socio-economic or political circumstances* or (2) unique *material facts and evidence*:

(a) admitted into courtroom evidence, through means of **Expert Witness** or **Expert Testimony,** and

(b) to be fairly respected, adjudicated, and applied by the American bar and bench to real-world cases that impact African American fathers and husbands is a **fundamental challenge of international human rights law**; American constitutional law; and family law.

C. **Denial of State Court Access:** William Goodell's *The American Slave Code* (1853):[8]

> "Chapter XIX. The Slave Cannot Sue His Master" ("The slave is a 'chattel;' his master is his 'owner.' This 'legal relation' precludes the idea of a suit at law between them,

[8] 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).

especially a suit in which the chattel should be plaintiff!").[9]

Part II, Chapter II. No Access to the Judiciary, and No Honest Provision For Testing the Claims of the Enslaved to Freedom" ("A Slave cannot be a party to a suit…. A Slave can possess nothing. He can hold nothing. He is therefore not a competent party to a suit.")[10]

Part II, Chapter III. Rejection of Testimony of Slaves and Free Colored Persons" ("A slave cannot be a witness against a white person, either in a civil or criminal cause." (Stroud's Sketch, p. 65.")).[11]

D. **Denial of State Court Access:** *Dred Scott v. Sandford*, 60 U.S. 393, 403-405, stating:

The question is simply this: can a negro whose ancestors were imported into this country and sold as slaves become a member of the political community formed and brought into existence by the Constitution of the United States, and as such become entitled to all the rights, and privileges, and immunities, guarantied by that instrument to the citizen, **one of which rights is the privilege of suing in a court of the United States in the cases specified in the Constitution**….

[9] Ibid., p. 239.

[10] Ibid., p. 295.

[11] Ibid., p. 300.

> The question before us is whether the class of persons described in the plea in abatement compose a portion of this people, and are constituent members of this sovereignty? We think they are not, and that they are not included, and were not intended to be included, under the word "citizens" in the Constitution, and can therefore claim none of the rights and privileges which that instrument provides for and secures to citizens of the United States. On the contrary, they were at that time considered as a subordinate and inferior class of beings who had been subjugated by the dominant race, and, whether emancipated or not, yet remained subject to their authority, and had no rights or privileges but such as those who held the power and the Government might choose to grant them.

E. **Denial of State Court Access:** 13th Amendment/ 1866 Civil Rights Act/ *Civil Rights Cases*, 109 U.S.3, 22 (1883)(Abrogation of Slavery's Formal Denial of Court Access to Black citizens).

(1) Thirteenth Amendment, U. S. Constitution, Section 1:

> "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."

(2) 1866 Civil Rights Act, Section 1:

> "Be it enacted . . . , That all persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the

United States; and such citizens, of every race and color, without regard to any previous condition of slavery or involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall have the same right, in every State and Territory in the United States, to make and enforce contracts, **to sue**, **be parties**, and **give evidence**, to inherit, purchase, lease, sell, hold, and convey real and personal property, and **to full and equal benefit of all laws and proceedings for the security of person and property**, **as is enjoyed by white citizens**, and shall be subject to like punishment, pains, and penalties, and to none other, any law, statute, ordinance, regulation, or custom, to the contrary notwithstanding."

(3) *Civil Rights Cases*, 109 U.S. 3, 22 (1883):

"[T]he Civil Rights Bill of 1866, passed in view of the Thirteenth Amendment before the Fourteenth was adopted, undertook to wipe out these burdens and disabilities, the necessary incidents of slavery constituting its substance and visible form, and to secure to all citizens of every race and color, and without regard to previous servitude, those fundamental rights which are the essence of civil freedom, namely, the same right to make and enforce contracts, to sue, be parties, give evidence, and to inherit, purchase, lease, sell and convey property as is enjoyed by white citizens."

F. **Denial of State Court Access:** See, also**,** *Monroe v. Pape, 365 U.S. 167, 175-177* (1961), stating:

The legislation -- in particular the section with which we are now concerned -- had several purposes….

The third aim was to provide **a federal remedy where the state remedy**, **though adequate in theory**, was **not available in practice**….

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.'

G. **Denial of State Court Access:** *Ake v. Oklahoma*, 470 U.S., 68, 77 (1985)(Justice Thurgood Marshall's majority opinion):

> **Meaningful access to justice** has been the consistent theme of these cases. We recognized long ago that **mere access to the courthouse doors does not, by itself, assure a proper functioning of the adversary process**, and that a criminal trial is fundamentally unfair if the State proceeds against an indigent defendant without making certain that he has access to the raw materials integral to the building of an effective defense. Thus, while the Court has not held that a State must purchase for the indigent defendant all the assistance that his wealthier counterpart might buy, see *Ross v. Moffitt*, 417 U. S. 600 (1974), it has often reaffirmed that fundamental fairness entitles indigent defendants to **"an adequate opportunity to present their claims fairly within the adversary system,"** id. at 417 U. S. 612. To implement this principle, we have focused on identifying the **"basic tools of an adequate defense or appeal,"** *Britt v. North Carolina*, 404 U. S. 226, 404 U. S. 227 (1971), and we have required that such tools be provided to those defendants who cannot afford to pay for them.

H. **Denial of State Court Access** (**International Law**)**:**

Universal Declaration of Human Rights (1948), Article 8, states:

> Everyone has **the right to an effective remedy** by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law….[12]

[12] Article 8 to the Universal Declaration of Human Rights (UDHR), which is a written proclamation of *Jus Cogens* norms, states:

I. **<u>Denial of State Court Access</u>** (**International Law**)**:** Breaches of human rights violations <u>must be remedied</u>:

> See, e.g., *Chorzow Factory* (F.R.G. v. Pol.), 1928 P.C.I.J. (ser. A) No. 17, ¶ 21 (Sept. 13, 1928) ("[I]t is a principle of international law, and even a general conception of law, that any breach of an engagement involves an obligation to make reparation); see also *Castillo-Paez v. Peru*, 1997 Inter-Am. Ct. H.R. (ser. C) No. 34, ¶ 82 (Nov. 3, 1997)(noting that the right to remedy 'is one of the fundamental pillars… of the very rule of law in a democratic society"). See, also, U. N. Basic Principles of the Right to a Remedy, Principles I.1(b) and 2; *Prosecutor v. Andre Rwaamakuba*, Case No. ICTR-98-44C, Decision on Appropriate Remedy, ¶ 40 (Jan. 31, 2007); *Prosecutor v. Andre Rwamakuba*, Case No. ICTR-98-44C-A, Decision on Appeal Against Decision on Appropriate Remedy, ¶¶ 23-25 (Sept. 13, 2007); *Cantoral-Benavides v. Peru*, 2001 Inter-Am. Ct. H.R. (ser.C) No. 88, ¶ 40 (Dec. 3, 2001); *Customary International Humanitarian Law*, Vol. 1: Rules 537-50 (Jean-Marie Henckaerts & Louise Doswald-Beck, eds. 2005).

The General Assembly [United Nations]

Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations…

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law….

J. **Denial of State Court Access** (**International Law**)**:** Breaches of human rights must be remedied through meaning access to a procedure capable of providing a remedy:

(1). See, e.g., International Covenant on Civil and Political Rights, 2(3)(b)

> "Each State Party to the present Covenant undertakes… [t]o ensure that any person claiming such a remedy **shall have his right thereto determined by competent judicial, administrative or legislative authorities**, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy…."

(2). See, also, U.N. Basic Principles on the Right to a Remedy, Principles, Section 2(b) through (d), stating:

> States shall, as required under international law, ensure that their domestic law is consistent with their international legal obligations by… (b) Adopting appropriate and effective legislative and administrative procedures and other appropriate measures that provide fair, effective and prompt access to justice; (c) Making available adequate, effective, prompt and appropriate remedies, including reparation, as defined below; (d) Ensuring that their domestic law provides at least the same level of protection for victims as that required by their international obligations.

(3). See, also, U.N. Basic Principles on the Right to a Remedy, General Principles, Section 3(c) and (d), stating:

> The obligation to respect, ensure respect for and implement international human rights law and international humanitarian law as provided for under the respective bodies of law, includes, inter alia, the duty to: (c) Provide those who claim to be victims of a human rights or humanitarian law violation with equal and effective access to justice, as described below, irrespective of who may ultimately be the bearer of responsibility for the violation; and (d) Provide effective remedies to victims, including reparation, as described below.

(4). See, also, U.N. Basic Principles on the Right to a Remedy, General Principles, Section 11(a), stating:

> "Remedies for gross violations of international human rights law and serious violations of international humanitarian law include the victim's right to the following as provided for under international law:
>
> (a) Equal and effective access to justice;
>
> (b) Adequate, effective and prompt reparation for harm suffered;
>
> (c) Access to relevant information concerning violations and reparation mechanisms."

(5). See, also, U.N. Basic Principles on the Right to a Remedy, General Principles, Section 12.

> "A victim of a gross violation of international human rights law or of a serious violation of international humanitarian law shall have equal access to an effective judicial remedy as provided for under international law. Other remedies available to the victim include access to administrative and other bodies, as well as mechanisms, modalities and proceedings conducted in accordance with domestic law. Obligations arising under international law to secure the right to access justice and fair and impartial proceedings shall be reflected in domestic laws…."

II. State and Local Courts in the United States have historically blocked African American citizens from attaining effective remedies for *Jus Cogens* and other Civil Rights Violations

A. **Denial of State Court Access:** Since the end of the U. S. Civil War (1861 – 1865), there is a long history of the state and local courts of the United States being hostile towards the fundamental or constitutional and statutory rights of African Americans.[13]

B. **Denial of State Court Access**: The United States Supreme Court's holding's in *Monroe v. Pape* (1963) and *Patsy v. Florida Board of Regents*

[13] See, e.g., W.E.B. Du Bois, "The Souls of Black Folk," *Writings* (New York, N.Y.: The Library of America, 1986), p. 386, stating: ("[T]o leave the Negro in the hands of Southern courts was impossible…. [T]he regular civil courts tended to become solely institutions for perpetuating the slavery of blacks. Almost every law and method ingenuity could devise was employed by the legislatures to reduce the Negroes to serfdom—to make them the slaves of the State, if not of individual owners….")

(1982) clearly demonstrate that "Jus Cogens" claims (i.e., customary international law) that may be articulated under Federal Civil Rights Acts of 1866 (e.g., 42 U.S.C. §§ 1981, 1982) may be brought in the U. S. District Courts, without first exhausting remedies in the state courts.

1. See, e.g., *Monroe v. Pape*, 365 U.S. 167, 175-177 (1961), supra.
2. See, also, *Patsy v. Board of Regents of State of Florida*, 457 U.S. 496, 503 (1982)[reaching the same conclusion as *Monroe v. Pape*, supra].

III. United States District Courts have historically Failed to Prevent State and Local Courts from denying effective remedies to African American citizens

Unfortunately, many U. S. District Courts have historically evaded their constitutional obligation to safeguard the fundamental or constitutional and statutory rights of African American citizens, as set forth in *Monroe v. Pape*, 365 U.S. 167 (1961) and *Patsy v. Board of Regents of State of Florida*, 457 U.S. 496 (1982).

This system-wide federal court evasion violates *Jus Cogens* norms, as expressly set forth in Article 8 of the UDHR.[14]

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[14] Article 8 to the Universal Declaration of Human Rights (UDHR), which is a written proclamation of *Jus Cogens* norms, states:

> The General Assembly [United Nations]
>
> Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations…
>
> **Article 8**
>
> Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law….

A. **Denial of Federal Court Access**: See, e.g., Kermit L. Hall, "The Civil War as a Crucible for Nationalizing the Lower Federal Courts," *Prologue Magazine*, Vol. 7, No. 3 (Fall 1975), to wit:

> **U.S. District Courts Give in to Local Prejudice**
>
> "[T]he traditional concept of embedding federal district courts in the local constituencies they served made them as potentially responsive to local interests as to the dictates of national authority promulgating a program of reconstruction. The federal courts could as readily serve the interests of ex-Confederates seeking to return to pre-war conditions as they could Republicans concerned with building partisan strength and sustaining Unionists and freedmen….
>
> The changes made in 1862 and 1869, and those proposed in 1866, were more cosmetic than substantial. At least in their institutional structure the federal courts proved resistant to the impact of the Civil War and the first years of Reconstruction. For their part, the Republicans emerged as at best reluctant nationalizers, willing to extend the jurisdiction of the courts but unwilling to break from more traditional notions of parsimonious government and judicial representation that emphasized local and regional diversity over the assertion of national or central authority."

B. **Denial of Federal Court Access**: **"We Charge Genocide"**- 1951 Petition to the United Nations. One of the primary reasons why in 1951 dozens of African Americans filed their petition to the United Nations titled, "We Charge Genocide," [15] was because

> "**[W]e Negro petitioners have no true and real recourse in these courts, because we receive no protection from the state,**

[15] William L. Patterson, editor, *We Charge Genocide: The Crime of Government Against the Negro People* (New York, N.Y.: International Publishers, 1951)

because police and courts are themselves involved in the genocide directed against us, that we are forced to appeal to the General Assembly for redress and relief."[16]

One of the major grievances of these African American petitioners was that the United States Supreme Court had utilized the Fourteenth Amendment to protect the equal rights of American corporations but that it had for several decades failed to enforce those same constitutional rights in order to protect the civil rights of African American citizens. Their 1951 UN dossier thus stated:

> "The Supreme Court
>
> "The record of the Supreme Court in buttressing the tyranny directed against the Negro people is particularly revolting because it has decorated oppression with legal pomposity, excused genocide by every legal circumlocution found in the lexicon of law and precedent. Its record is peculiarly painful in that it has used the righteous tone of legal language to authorize murder and to permit that segregation which inevitably leads to mass slayings on the basis of race. With synthetic independence and with Olympian gestures it has handed over 15,000,000 Americans to oppression and grief….
>
> "It has used the very provision that was to protect Negroes to enrich the monopoly that oppressed them. If found that the Fourteenth Amendment was not meant for the protection of the Negro but for the protection of powerful corporations. From 1868 to 1912, the Supreme Court rendered 604 decisions based upon the Fourteenth Amendment, of which 312 concerned corporations. There were twenty-eight appeals to the Court involving Negro rights under the Fourteenth Amendment, of which twenty-two were decided adversely.
>
> "As late as 1945, in the case of *Screws v. United States*, the Supreme Court found that the Fourteenth Amendment,

[16] Ibid., p. 41.

> providing that Negroes should be allowed due process of law, did not apply to a Negro beaten to death by police before trial after he had been arrested and charged with theft of a tire. But it is in upholding segregation that the Supreme Court has been, and continues to be particularly adamant. Repeatedly it has held that segregation is not a violation of the Fourteenth Amendment providing for equality of treatment, on the theory that segregation is legal if 'separate but equal' accommodations are provided. The obvious and easily provable fact that accommodations provided for Negroes are virtually never equal but always inferior, has not shaken the Court. Mr. Justice Harlan, in a powerful dissent still valid today, charged his colleagues in 1896 with emasculating the Thirteenth and Fourteenth Amendments by upholding segregation."[17]

C. **Denial of Federal Court Access**: In 2000, the United States Department of State filed its official report to the *U. N. Committee on the Elimination of Racial Discrimination*,[18] which tacitly embraced, and adopted, the viewpoint of the dozens of African American citizens who had previously filed their 1951 UN dossier some forty-nine years earlier. The U. S. State Department's report tacitly admitted:

> "However, for **almost 100** years after the enactment of the Fourteenth Amendment, the **federal courts refused to apply its principles to state-sponsored racial discrimination and de jure segregation**. Thus, this kind of unequal treatment was the rule, rather than the exception, all over the United States until the middle of the twentieth century. In 1954, the U.S. Supreme Court, for the first time, applied the Fourteenth Amendment's requirements of "equal protection under the law" against the states and ushered into U.S. law

[17] Ibid., pp. 183 – 184.

[18] U. N. Committee on the Elimination of Racial Discrimination, "Report Submitted by State Parties Under Article 9 of the Convention" (Third Periodic Reports of States Parties Due 1999)(Addendum, United States of America)(September 21, 2000), ¶ 79.

the idea that state-sponsored segregation was antithetical to the country's fundamental principles. See *Brown v. Board of Education*, 347 U.S. 483 (1954)."

D. **Denial of Federal Court Access**: The United States Supreme Court has also acknowledged that for nearly a century, the federal courts of the United States had failed to enforce the Civil War Amendments to protect the civil rights of African Americans.

See, e.g., Justice Lewis F. Powell's majority opinion in the case of *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 390-391 (1978), stating:

> The Court's initial view of the Fourteenth Amendment was that its 'one pervading purpose' was 'the freedom of the slave race, the security and firm establishment of that freedom, and the protection of the newly-made freeman and citizen from the oppressions of those who had formerly exercised dominion over him.' *Slaughter-House Cases*, 16 Wall. 36, 83 U. S. 71 (1873). **The Equal Protection Clause, however, was '[v]irtually strangled in infancy by post-civil-war judicial reactionism.'** It was relegated to decades of relative desuetude while the Due Process Clause of the Fourteenth Amendment, after a short germinal period, flourished as a cornerstone in the Court's defense of property and liberty of contract. See, e.g., *Mugler v. Kansas*, 123 U. S. 623, 123 U. S. 661 (1887); *Allgeyer v. Louisiana*, 165 U. S. 578 (1897); *Lochner v. New York*, 198 U. S. 45 (1905). In that cause, the Fourteenth Amendment's "one pervading purpose" was displaced. See, e.g., *Plessy v. Ferguson*, 163 U. S. 537 (1896).

E. **<u>Denial of Federal Court Access</u>**: Other critics, legal historians, and scholars have also long ago noticed and acknowledged that from between the period of the end of Reconstruction up through the early part of the twentieth century, the federal courts have failed, or refused, to enforce the federal constitutional and civil rights of African American citizens.

> See, e.g., Gustavus Myers, *History of the Supreme Court of the United States* (Chicago, IL: Charles H. Kerr & Co., 1912), pp. 676 – 678, stating
>
> > "The most noteworthy feature, however, in this decision applying to the bakeshop workers [*Lochner v. New York*, 198 U.S. 45 (1905)] was that the law was declared unconstitutional under the Fourteenth Amendment.
> >
> > "Now this amendment had been one of the amendments adopted to secure the full freedom of Negroes, and safeguard them from the oppressions of their former owners. Yet for more than twenty years the Supreme Court of this United States, in deference to the demands of the ruling class, had consistently emasculated it. The Supreme Court had refused to define what the rights of Negroes were; it had held that the amendment had no reference to the conduct of individual to individual; it had declined to give the Negroes the protection of the National Government when it decided that 'sovereignty for the protection of rights of life and personal liberty within the States rests alone with the States.' This meant that the former slave States were empowered to abridge the liberty of the Negro as they pleased.
> >
> > "Other decisions, each curtailing the rights of Negroes, followed. On the ground that it was not warranted by the amendment, an Act of Congress giving Negroes the right co-equally with whites of enjoying inns, public conveyances, theaters and

other public resorts, was declared unconstitutional.[19] The right of suffrage was neither granted nor protected by the Amendment.[20] A State could curtail the right of trial by jury without violating the amendment.[21] It was further held that a State enactment requiring whites and Negroes to ride in separate railroad cars did not violate the amendment.[22]

"These are a few of the many decisions of the Supreme Court of the United States, the cumulative effect of which was to allow States to nullify guarantees of freedom for the Negro. That many States did this is common knowledge.

"Finally, the Supreme Court sanctioned the most revolting kind of Negro peonage in the case of *Clyatt* who had been found guilty in Florida of forcibly keeping Negroes in virtual slavery. Passing on a writ of certiorari, the Supreme Court of the United States ordered the case back for a new trial on the pretext that the trial judge erred in permitting the case to go to the jury…."[23]

"Using the Fourteenth Amendment to load the helpless Negro race with the obloquy of prejudicial law and custom, and to snatch away from the white worker what trivial rights he still had, the Supreme Court availed itself of that same amendment to put

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[19] Gustavus Myers, *History of the Supreme Court of the United States*, supra, p. 677, citing "*Civil Rights Cases*, 109 U.S. Reports, 3."

[20] Id., p. 677, citing "*U. S. v. Cruikshank*, 92 U.S. Reports, 542.

[21] Id., citing "*In re Lockwood*, 154 U.S. Reports, 3."

[22] Id., citing "*L. & N. R. R. Co. v. Schmidt*, 177 U.S. Reports, 230."

[23] Id., p. 678, citing "*Clyatt v. U.S.*, 198 U.S. Reports, 207. Brewer delivered the Court's decision. In this case, also, Harlan dissented. 'The accused' he said, 'made no objection to the submission of the case to the jury, and it is going very far to hold in a case like this, disclosing barbarities of the worst kind against these negroes, that the trial court erred in sending the case to the jury.'"

corporations in a more impregnable position in law than they had ever been before."[24]

IV. Exclusion of Material Evidence in State and Family Law Courts is a violation of *Jus Cogens*.

A. For this reason, African American husbands and fathers have *Jus Cogens* familial rights, under the Law of Nations (i.e., customary international law, 1948 UNDHR), as well as other treaty laws.

1866 Civil Rights Act

"Sec. 1

Be it enacted . . . , That all persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be **citizens of the United States**; and such citizens, of every race and color, without regard to any previous condition of slavery or involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall have the same right, in every State and Territory in the United States, **to make and enforce contracts**, **to sue**, **be parties**, and **give evidence**, **to inherit**, **purchase**, **lease, sell**, **hold**, **and convey real** and **personal property**, and to **full and equal benefit of all laws and proceedings for the security of person and property**, ***as is enjoyed by white citizens***, and shall be subject to like punishment, pains, and penalties, and to none other, any law, statute, ordinance, regulation, or custom, to the contrary notwithstanding."

B. In order for state or federal courts to properly vindicate the fundamental familial rights of African American husbands and

[24] Ibid., p. 679.

fathers, they must be willing to receive and to objectively and fairly adjudicate material evidence on the unique trauma and plight of African American husbands, fathers, men, and boys.

C. Hence, federal courts and federal judges may not systematically exclude evidence of *Jus Cogens* violations, simply because such *Jus Cogens* evidence is narrowly-tailored or unique to the experiences of African American husbands and fathers—indeed, Article 2(2) of the ICERD expressly prohibits such exclusion.[25]

D. If the state courts cannot, or will not, receive such *Jus Cogens* evidence, then the U. S. District Courts must; otherwise, the entire state-federal court system apparatus will be in violation of the Law of Nations, as expressed in Article 8 of the Universal Declaration of Human Rights.

E. Because certain sensitive evidence regarding human sexuality, gender differences, the sources and causes of conflict-ridden relations with the opposite sex, and androcide or other forms of race-and-gender based oppression that are unique and narrowly-tailored to **the plight of African American husbands and fathers**, state and federal courts must—in order to facilitate the requirements of Article 2(2) of the International Convention on the Elimination of Racial Discrimination and the general demands of justice—be willing:

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[25] Under international treaty law, Article 2(2) of the *International Convention for the Elimination of Racial Discrimination* (ICERD), the United States has the express duty to "when the circumstances so warrant, take, in **the social, economic, cultural and other fields**, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms."

1. To study whether race-neutral family law and procedures, which ostensibly were adopted by state legislatures, which had no intent to ensure that such laws and procedures were responsive to the needs of African American families or to remedy the present-effects of slavery and discrimination upon them, do more harm than good to African American families and citizens;

2. To receive material evidence from Expert Witnesses in various professional and academic fields—social work, sociology, history, economics, social science, law, etc.—in order to facilitate the requirements of Article 2(2) of the International Convention on the Elimination of Racial Discrimination and the general demands of justice.

3. To determine whether alternative forms of family-law dispute resolution forums may be developed and implemented in order to remedy the defects of state family law court systems.

4. To provide a federal administrative procedure whereby individual family law cases can be transferred from the state to the U. S. District Courts for the express purpose of implementing *Jus Cogens* and other similar federal constitutional standards within state court proceedings.

Conclusion

"Admissible evidence" is the engine that drives the train in American trial law and jurisprudence. It is "fundamental" to due process and ordered liberty in the United States. For this reason, the 1866 Civil Rights Act, which was enacted pursuant to the Thirteenth Amendment, expressly safeguarded the rights of black freedmen "to sue, be parties, and give evidence… and to full and equal benefit of all laws and proceedings for the security of person and property, as is enjoyed by white citizens…."

Most state family law statutes (including that of the state of Florida) creates an *irrebuttable* or *irrefutable* presumption that African American families—i.e., "husband," "wife," "father," "mother," "marriage," and "family" —are no different than white American families, or other non-black American families that have been unimpacted by the transatlantic slave trade and American slavery. [26]

The most egregious evasion in this system of state family-law jurisprudence is its failure to acknowledge (a) the distinct differences between white American males and black American males; [27] (b) the impact of racial discrimination and oppression of black American males in the labor markets and other areas of society; and (c) black American women's

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[26] Such irrebuttable or irrefutable presumptions violate international law. Under international treaty law, **Article 2(2) of the International Convention for the Elimination of Racial Discrimination (ICERD)**, the United States has the express duty to "when the circumstances so warrant, take, in **the social, economic, cultural and other fields**, special and concrete measures to ensure the **adequate development** and **protection of certain racial groups or individuals belonging to them**, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms."

[27] See, e.g., Daniel Patrick Moynihan's 1965 Report on the Black Family, stating: "[i]t was by destroying the Negro family under slavery that white America broke the will of the Negro people," and "[w]hen 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…. 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."

lack of empathy, sympathy, and respect towards the plight of black American men to function as (1) husbands or fathers;[28] and (2) heads of the family.[29]

Under these conditions, race-neutral state family laws which treat marriages between African American men and women as though they were marriages between white American men and women divests both African American men and women meaningful court access in order to address their unique conjugal and familial challenges.

For instance, race-neutral family law statutes [including Fla. Stat., Chap. 61] create certain *irrebuttable* or *irrefutable* presumptions about the definition of "family" and "family relations" that make meaningful and affordable litigation impossible for black or African American families. Those irrebuttable or irrefutable presumptions require judges and litigants to ignore the plain fact that the history and socioeconomics of the African American community and family are <u>significantly different</u> than that of the white American community and family.

Since this significant difference between white American families and black American families is so great, such legally-operative words found within most state family law statutes [including Fla. Stat., Chap. 61], such as "husband," "wife," "father," "mother," "marriage," and "family," <u>do not have</u> the same historical, social, and economic contextualization and meaning, when applied to most black or African American families.[30]

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[28] Armon R. Perry, *Black Love Matters: Authentic Men's Voices On Marriages and Romantic Relationships* (Lanham, Maryland: Lexington Books, 2020), 56 ("the negative epithet of the dog").

[29] Daniel P. Black, *Dismantling Black Manhood: An Historical and Literary Analysis of the Legacy of Slavery* (London and New York: Garland Publishing, Inc., 1997).

[30] Hence, such state family-law statutory schemes seemingly run afoul of the 1866 Civil Rights Act's "**as is enjoyed by white citizens**" provision, as well as the "**Due Process**" and "**Equal Protection**" clauses of the Fourteenth Amendment, U. S. Constitution. See, also, *United States v. Savarese*, No. 19-11799 (11th Cir. Jan 20, 2021) ("facial" and "as-applied standard); (*Doss v.*

From the perspective of black or African American men, one such constitutional and evidentiary-court challenge is the inability to present **"admissible racial discrimination" evidence** in state family law tribunals in the form of evidence which substantiates the lack of empathy, sympathy, respect, and (or) cooperation from their black American women (i.e., wives, ex-wives, girlfriends who are mothers of their children, etc.) who stereotype and treat them as being "**dogs**" [i.e., as slaves or male breeders],[31] thereby divesting those men of the ability to carry out **"head of the family"** duties and functions.

Another such constitutional and evidentiary-court challenge is the inability to present **"admissible racial discrimination" evidence** in state family law tribunals in the form of evidence which substantiates the biases in state courts and state agencies which favor and (or) ratifies the substandard behaviors of those same black American women (i.e., wives, ex-wives, girlfriends who are mothers of their children, etc.) who stereotype and treat black American men as being "**dogs**" [i.e., as slaves or male breeders], thereby divesting those men of the ability to carry out **"head of the family"** duties and functions.

Such evidence of **"admissible racial discrimination"** that demonstrates that (a) state laws, state agencies, and (or) state officials may conjoin with (b) certain black American women to divest black American men of their rights and ability to carry out **"head of the family"** duties and functions constitutes slavery and (or) the customs, usages, badges and incidents of slavery (i.e., slave-like conditions). [32] When state or federal

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United Parcel Services, 331 So.3d 216 (Fla. 1st DCA 2021)("as-applied" standard); *Ricketts v. Vill. of Miami Shores*, 232 So.3d 1095 (Fla. App. 2017)("facial" and "as-applied" standard).

[31] Armon R. Perry, *Black Love Matters: Authentic Men's Voices On Marriages and Romantic Relationships* (Lanham, Maryland: Lexington Books, 2020), 56 ("the negative epithet of the dog").

[32] Section 1 of the Civil Rights Act of 1866 prohibits "customs" which perpetuate slavery or involuntary servitude. Similarly, Section 1 of the Civil Rights Act of 1871 prohibits "usages" and "customs" which divest persons of constitutional rights. Such "customs," for instance, can be identified in the form of "customary slave marriages," which the state of Florida once

courts fail or refuse to prove a remedy for such a constitutional tort, they violate both customary international law and treaty law, as well as constitution of the United States.

A final but most important constitutional and evidentiary-court challenge is the inability of any litigant to present "**admissible racial discrimination" evidence** in the form of "**judicial bias" evidence** in form of the lack of knowledge, education, and training in African American history and sociology on the part of the vast majority of lawyers and judges who administer state family law court system. Unfortunately, standard law school training and bar admissions do not require family-law professionals to attain a working knowledge of the black American family structure or its unique plight and present-day challenges.[33] At the very heart of this *systematic international human rights problem*, I think, are the following factors:

- The American Bar Association, the Florida Bar, and the several state bar associations have not acknowledged, or recognized, the sociological, cultural, and historical significance of the plight of **the "Head of the Family" status of African American fathers, husbands, and men** in the United States as being indispensable, material evidence in state family law proceedings in cases involving African American families.[34]

officially recognized and enforced; and these "customs" severely limited the paternal, conjugal, and "head of the family" rights and status of black American men.

[33] See, e.g., Daniel Patrick Moynihan's 1965 Report on the Black Family, stating: "[i]t was by destroying the Negro family under slavery that white America broke the will of the Negro people," and "[w]hen 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…. 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."

[34] Ibid.

- The accredited American law schools do not teach, acknowledge, or recognize the sociological, cultural, and historical significance of the plight of **the "Head of the Family" status of African American fathers, husbands, and men** in the United States as being indispensable, material evidence in state family law proceedings in cases involving African American families.[35]

- The family law bar and bench—in Florida and throughout the several states of the United States—have been influenced by both the ABA and the accredited American law schools to ignore the sociology, culture, and history of the plight of **the "Head of the Family" status of African American fathers, husbands, and men** in the United States.[36]

- African American lawyers and judges themselves have not insisted that white or other non-black professionals, lawyers, and judges take into consideration the sociology, culture, and history of the plight of **the "Head of the Family" status of African American fathers, husbands, and men** in the United States.[37]

- American civil rights organizations—such as the NAACP, the American Civil Liberties Union, Southern Christian Leadership Conference, the Southern Poverty Law Center, Rainbow PUSH, etc.—have omitted from their agendas the plight of **the "Head of the Family" status of African American fathers, husbands, and men** in the United States, as well as the plight of the Black family

[35] Ibid.

[36] Ibid.

[37] Ibid.

in general, and particularly as that plight is manifested in state agencies and state family law courts.[38]

- The historic Black Church—which should have more influence over this matter than it presently does—has also omitted from its Christian ministerial objectives the plight of **the "Head of the Family" status of African American fathers, husbands, and men** in the United States, as well as the plight of the Black family in state agencies and state family law courts.[39]

Therefore, since the African American community itself has failed to offer any reasonable alternatives to the present system, the lack of meaningful court access to family law tribunals on the part of African American litigants remains both an American constitutional and an international human rights crisis that is of great magnitude.

--- The End of Chapter Two ---

[38] Ibid.

[39] Ibid.

Chapter Three

Black Husbands and Fathers:

"*Jus Cogens*: 'Privileges and Immunities' under the United States Constitution and International Law"

By

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Introduction

Black or African American husbands and fathers have certain absolute or fundamental rights called "privileges and (or) immunities" in the United States Constitution (Article IV and the 14th Amendment), and these absolute or fundamental rights encompass their natural rights to function as husbands, fathers, and heads of families.[1]

Significantly, these "privileges and (or) immunities" are derived from ancient rights of every freeborn white Englishman, as explained in Sir William Blackstone's *Commentaries on the Laws of England*. To this very point, Blackstone has written:

> And this spirit of liberty is so deeply implanted in our constitution, and rooted even in our very soil, **that a slave or a negro**, the moment he lands in England, falls under the protection of the laws, and with regard to all natural rights becomes *eo instanti* a freeman.[2]

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[1] The "Jus Cogens" legal and constitutional perspective of this paper is based upon the traditional Judea-Christian conception of natural law of the family. See, e.g., The Carter Center's *Scripturally Annotation of the Universal Declaration of Human Rights* at the following link: universal-declaration-human-rights-scriptually-annotated.pdf. Neo-liberal human rights and civil rights programs in the United States and the West are focused upon the plight of "women and children," without placing it into the larger context of androcide or target oppression of the men and boys of insular minority groups. Hence, through taking jurisdiction over female-headed, single-parent African American families, state family law and policy have divested black American men of "head of the family" status in violation of *Jus Cogens*.

[2] Sir William Blackstone, *Commentaries on the Laws of England* (1765), 1:120—41. Here, Blackstone's commentary may be compared to the respective Civil War Amendments, U.S. Constitution (particularly the 13th Amendment) and the 1866 Civil Rights Act, which were enacted to secure the fundamental rights of African freedmen. See, e.g., *U.S. v. Morris*, 125 Fed. Rep. 322, 325 (E.D. Ark. 1903), stating:

> Every citizen and freeman is endowed with certain rights and privileges, to enjoy which no written law or statute is required. These are fundamental or natural rights, recognized among all free people. In our **Declaration of Independence, the Magna Carta of our republican institutions**, it is declared: 'We hold these rights to be self-evident: That all men are created equal; that they are endowed by their Creator with

As males, one such natural, absolute, and fundamental right that is included within those "privileges and (or) immunities" is the "head of the family" status.

For Details Regarding the Denial of the "Head of the Family" status to African American men, see, generally, Part II of this Series

Author: Roderick Andrew Lee Ford

Title: "The Head of The Family: Towards A Federal Common Law of the Black Family"

Chapter One: The 'History and Tradition' of Fundamental Rights

Chapter Two: The 1866 Civil Rights Act and Marriage Contract

Chapter Three: The Freedmen's Bureau Courts and Marriage Contract

Chapter Four: "Black Men as 'Head of the Family'"

Chapter Five: The 1866 Civil Rights Act and Family Law Tribunals

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certain unalienable rights; that among these are life, liberty and the pursuit of happiness….

This demonstrates that the **"Privileges and Immunities"** contained within Article IV of the U. S. Constitution, and also referenced in Section 1 of the 14th Amendment, U. S. Constitution, originated in the natural law jurisprudence of England and Great Britain (e.g., Blackstone's *Commentaries on the Law of England* (1765)), and were codified in *Section 1 of the 1866 Civil Rights Act*, in order to implement the Thirteenth Amendment and to liberate the African American freedman. See, e.g., *Civil Rights Cases*, 109 U.S. 3, 22 (1883).

Black or African American fathers and husbands—who seek to vindicate their federal constitutional familial rights as "**Heads of the Family**"— may utilize the **Thirteenth Amendment**, U. S. Constitution. See, e.g., *The Slaughterhouse Cases*, 83 U.S. 36, 37 (1872), stating:

> The privileges and immunities of citizens of the United States are those which arise out of the nature and essential character of the national government, the provisions of its Constitution, or its laws and **treaties** made in pursuance thereof, and it is these which are placed under the protection of Congress by this clause of the **Thirteenth amendment**.

Black or African American fathers and husbands—who seek to vindicate their federal constitutional familial rights as "**Heads of the Family**"—may also utilize **international customary law** and **treaty law** such as the "*Jus Cogens* principles" enunciated in the Universal Declaration of Human Rights (1948);[3] the International Covenant on Civil and Political Rights (ICCPR);[4] and the International Convention on the Elimination of

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[3] Article 16 to the Universal Declaration of Human Rights (UDHR), which is a written proclamation of *Jus Cogens* norms, states:

> The General Assembly [United Nations]
>
> Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations…
>
> Article 16
>
> Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
>
> Marriage shall be entered into only with the free and full consent of the intending spouses.
>
> The **family** is the **natural and fundamental group unit of society** and is entitled to protection by society and the State.

[4] Article 23(1): "The **family** is the **natural and fundamental group unit of society** and is entitled to protection by society and the State."

All Forms of Racial Discrimination (ICERD).[5] See, e.g., *The Slaughterhouse Cases*, 83 U.S. 36, 37 (1872), stating:

> The privileges and immunities of citizens of the United States are those which arise out of the nature and essential character of the national government, the provisions of its Constitution, or its laws and **treaties** made in pursuance thereof, and it is these which are placed under the protection of Congress by this clause of the **Thirteenth amendment**.

When utilizing the Thirteenth Amendment, international customary law (i.e., *Jus Cogens*), and international treaty law, the federal statutory laws which may be relied upon in order to invoke the jurisdiction of the United States District Courts, include the following:

- 28 U.S.C. §1331 ("federal question jurisdiction")
- Civil Rights Act of 1866 (42 U.S.C. §1981, 1982)
- Civil Rights Act of 1871 (42 U.S.C. §1983) [6]

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[5] *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD), Article 5(d)(4):

> "In compliance with the fundamental obligations laid down in **article 2** of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights… [t]he **right to marriage** and choice of spouse."

[6] Non-self-executing international human rights treaties, which the United States Senate has already ratified, may be brought to federal courts through the vehicle of §1983. In addition, international treaty laws that prohibit slavery and slave-like conditions, which the U.S. Senate has already ratified, may be interposed within civil rights cases where the 1866 Civil Rights Act is being litigated. This means that federal civil rights litigation may be "internationalized" in the United States, when the pleadings are properly set forth and framed within context of international problems such as racism, genocide, and slavery.

Both the Civil Rights Act of 1866 and 1871 were fundamentally designed to implement *international human rights law*, such as the principles of *Jus Cogens* (i.e., the Law of Nations or customary international law) and Treaty law of the United States.

This implementation is important because (a) since the 1860s and 1870s, when American civil rights statues were enacted (b) the most important legislative developments covering areas of (1) slavery; (2) slave-like conditions; (3) genocide; and (4) economic oppression, exploitation, and self-determination of developing peoples have occurred in international legislatures such as the United Nations, rather than in the United States Congress.

Two of the most important international treaties which black or African American husbands or fathers may look to are:

- the International Covenant on Civil and Political Rights (ICCPR);[7]

- the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).[8]

In addition, when relying upon the principle of Jus Cogens, all persons of African descent may likewise look to:

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[7] Article 23(1): "The **family** is the **natural and fundamental group unit of society** and is entitled to protection by society and the State."

[8] *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD), Article 5(d)(4):

> "In compliance with the fundamental obligations laid down in **article 2** of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights… [t]he **right to marriage** and choice of spouse."

- the African Charter on Peoples' and Human Rights.[9]

Section 2 of the Thirteenth Amendment has authorized Congress to enact federal statutes that are necessary to carry out the provision of Section 1, which abrogates "slavery" and "involuntary servitude"; and Congress has done this through its several treaty obligations[including the ICCPR and the ICERD] and Jus Cogens obligation [including customary international law that is unique and specific to persons of African descent, such as the African Charter on People's and Human Rights].

Again, the Thirteenth Amendment, U.S. Constitution authorizes the United States District Courts to take such international law into account when adjudicating racial discrimination claims brought by African American litigants. See, e.g., *The Slaughterhouse Cases*, 83 U.S. 36, 37 (1872), stating:

> "The privileges and immunities of citizens of the United States are those which arise out of the nature and essential character of the national government, the provisions of its Constitution, or its laws and **treaties** made in pursuance thereof, and it is these which are placed under the protection of Congress by this clause of the **Thirteenth amendment**."

What this means is that African American husbands and fathers, who enter into "marriage contracts," may not be deprived of their "privileges and (or) immunities" as "husbands," "fathers," or as "Head of the Family," under circumstances that give rise to a reasonable inference of slave-like conditions, racism, racial oppression, or racial discrimination—the deprecation of African American *manhood*.[10]

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[9] African Americans may rely upon this African Charter to cite the historical developments of Pan-Africanism since the transatlantic slave trade and the status of "customary international law" among African nations and African peoples in general.

[10] See, also, Daniel P. Black, *Dismantling Black Manhood: An Historical and Literary Analysis of the Legacy of Slavery* (London and New York: Garland Publishing, Inc., 1997); see, also, W.E.B. Du Bois, "Niagara Movement Speech" (1905)("[w]e will not be satisfied to take one jot or tittle less than our full manhood rights."); see, also, Dr. Martin Luther King, Jr., "Speech in Montgomery,

Therefore, this chapter shall explain why the "privileges and immunities" of all American citizens include, and are expressly contained in, international treaty law and international customary law. Therefore, African American husbands, fathers, and men may vindicate their natural familial rights through Section 2 of the Thirteenth Amendment, the ICCPR, the ICERD, and the *Jus Cogens* principles contained within African Charter on People's and Human Rights.

I. What are the "Privileges and Immunities" of Citizens of States and of the United States? Where did they come from?

A. "Privileges and Immunities" in English Law are "Absolute Rights" or the "Natural Law Rights" which All Men Possess with Equal Dignity and Equal Right

1. Sir William Blackstone, *Commentaries on the Laws of England* (1765), 1:120—41

   a. "The **absolute rights of every Englishman** (which, taken in a political and extensive sense, are usually called their liberties) as they are **founded on nature and reason**, so they are **coeval with our form of government**; though subject at times to fluctuate and change: their establishment (excellent as it is) being still human… 'the **birthright of the people of England**;' according to the ancient doctrine of the common law.""

   b. "For the principal aim of society is to protect individuals in the enjoyment of those **absolute rights**, which were vested in them by the immutable laws of nature…."

Ala." (1967)(" [d]on't let anybody take your manhood. Believe in yourself and believe that you are somebody").

c. "… the first and primary end of human laws is to maintain and regulate these **absolute rights of individuals**."

d. "… the principal view of human laws is, or ought always to be, to explain, protect, and enforce such rights as are absolute, which in themselves are few and simple…."

e. "The **absolute rights of man**, considered **as a free agent**, endowed with discernment to know good from evil, and with power of choosing those measures which appear to him to be most desirable, are usually summed up in one general appellation, and denominated the natural liberty of mankind. This **natural liberty** consists properly in a **power of acting as one thinks fit**, without any restrain or control, unless by the **law of nature**: being **a right inherent in us by birth, and one of the gifts of God to man** at his creation, when he endued him with faculty of free-will."

f. Three primary "**absolute rights**" are:

1) "I. The right of **personal security** consists in a person's legal and uninterrupted enjoyment of his life, his limbs, his body, his health, and his reputation."

2) "II. Next to personal security, the law of England regards, asserts, and preserves the **personal liberty** of individuals. This personal liberty consists in the power of locomotion, of changing situation, or removing one's person to whatsoever place one's

own inclination may direct; without imprisonment or restraint, unless by due course of law… it is a right strictly natural: that the laws of England have never abridged it without sufficient cause…."

3) "III. The third absolute right, inherent in every Englishman, is **that of property**: which consists of the free use, enjoyment, and disposal of all his acquisitions, without any control or diminution, save only by the laws of the land. The original of private property is probably founded in nature, as will be more fully explained in the second book of the ensuing commentaries…. So great moreover is the regard of the law for private property, that it will not authorize the least violation of it; no, not even for the general good of the whole community."

4) "In the **three preceding articles** we have taken a short view of the principal absolute rights which appertain to every Englishman."

g. "And this spirit of liberty is so deeply implanted in our constitution, and rooted even in our very soil, **that a slave or a negro**, the moment he lands in England, falls under the protection of the laws, and with regard to all natural rights becomes *eo instanti* a freeman."[11]

[11] Here, Blackstone's commentary may be compared to the respective Civil War Amendments, U.S. Constitution (particularly the 13th Amendment) and the 1866 Civil Rights Act, which were enacted to secure the fundamental rights of African freedmen. See, e.g., *U.S. v. Morris*, 125 Fed. Rep. 322, 325 (E.D. Ark. 1903), stating:

> Every citizen and freeman is endowed with certain rights and privileges, to enjoy which no written law or statute is required. These are fundamental or natural rights, recognized among all

B. Article IV, Section 2, Clause 1, U.S. Constitution states:

1. "The Citizens of each State shall be entitled to all ***Privileges and Immunities of Citizens*** in the several States."

2. The "*Privileges and immunities of Citizens in the several States*" are "natural rights" which freeborn Englishmen inherited from England and Great Britain and pre-existed the founding of the United States.[12]

3. Landmark Federal Court Opinion on "**Privileges and Immunities**": See the case of *Corfield v. Coryell*, 46 F. Cas. 546, 550 (Washington, Circuit Justice, C.C.E.D. Pa. 1823), stating:

> The next question is, whether this act infringes that section of the constitution which declares that 'the citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states?' The inquiry is, **what are the privileges and immunities of citizens in the several states**? We feel no hesitation in confining these expressions to those privileges and immunities which are, **in their nature, fundamental**; which belong, **of right, to the citizens of all free governments**; and which have, **at all times**, been enjoyed by the citizens of the several states which

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> free people. In our **Declaration of Independence, the Magna Carta of our republican institutions**, it is declared: 'We hold these rights to be self-evident: That all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty and the pursuit of happiness….

This demonstrates that the **"Privileges and Immunities"** contained within Article IV of the U. S. Constitution, and also referenced in Section 1 of the 14th Amendment, U. S. Constitution, originated in the natural law jurisprudence of England and Great Britain (e.g., Blackstone's *Commentaries on the Law of England* (1765)), and were codified in *Section 1 of the 1866 Civil Rights Act*, in order to implement the Thirteenth Amendment and to liberate the African American freedman. See, e.g., *Civil Rights Cases*, 109 U.S. 3, 22 (1883).

[12] *Corfield v. Coryell*, 46 F. Cas. 546, 550 (Washington, Circuit Justice, C.C.E.D. Pa. 1823).

> compose this Union, from the time of their becoming free, independent, and sovereign. What these fundamental principles are, it would perhaps be more tedious than difficult to enumerate. They may, however, be all comprehended under the following general heads: **Protection by the government**; the **enjoyment of life and liberty, with the right to acquire and possess property of every kind**, and **to pursue and obtain happiness** and **safety**; subject nevertheless to such restraints as the government may justly prescribe **for the general good of the whole**. The right of a citizen of one state to pass through, or to reside in any other state, for purposes of **trade**, **agriculture**, **professional pursuits**, or **otherwise**; to claim the benefit of the writ of **habeas corpus**; to **institute and maintain actions** of any kind in the **courts of the state**; to **take, hold and dispose of property**, either real or personal; and an exemption from higher taxes or impositions than are paid by the other citizens of the state; may be mentioned **as some of the particular privileges and immunities of citizens**, which are clearly embraced by the general description of privileges **deemed to be fundamental**: to which may be added, the **elective franchise**, as regulated and established by the laws or constitution of the state in which it is to be exercised. These, and many others which might be mentioned, are, strictly speaking, privileges and immunities, and the enjoyment of them by the citizens of each state, in every other state, was manifestly calculated (to use the expressions of the preamble of the corresponding provision in the old articles of confederation) **'the better to secure and perpetuate mutual friendship and intercourse among the people of the different states of the Union.'**

4. The United States Supreme Court's holding in *Paul v. Virginia*, 75 U.S. 168, 180 (1869), has expressly adopted the holding in *Corfield v. Coryell*, supra, which enunciates the "Law of Nature," the law of "Nature's God," and the principles of *Jus Cogens*, to wit:

It was undoubtedly the object of the clause in question to place the citizens of each State upon the same footing with citizens of other States, so far *as the advantages resulting from citizenship* in those States are concerned. It relieves them from the *disabilities of alienage* in other States; it *inhibits discriminating legislation* against them by other States; it gives them the right of *free ingress* into other States, and *egress* from them; it insures to them in other States the same freedom possessed by the citizens of those States in *the acquisition and enjoyment of property* and in *the pursuit of happiness*; and it secures to them in other States the *equal protection of their laws*. It has been justly said that no provision in the Constitution has tended so strongly to constitute the citizens of the United States one people as this.

Indeed, without some provision of the kind removing from the citizens of each State the disabilities of alienage in the other States, and giving them *equality of privilege with citizens of those States*, the Republic would have constituted little more than a league of States; it would not have constituted the Union which now exists.

But the *privileges and immunities* secured to citizens of each State in the several States by the provision in question are those privileges and immunities which are common to the citizens in the latter States under their constitution and laws by virtue of their being citizens.

C. First Amendment, U.S. Constitution: guarantees "**right of marriage**" or "**right of family**" as a "**privilege and (or) immunity**" of U. S. Citizens (i.e., substantive due process):

1) *Paul v. Davis*, 424 U.S. 693, 712-714 (1976)

" In *Roe [v. Wade*], the Court pointed out that the personal rights found in this guarantee of

personal privacy must be limited to those which are "fundamental" or "implicit in the concept of ordered liberty" as described in *Palko v. Connecticut*, 302 U. S. 319, 302 U. S. 325 (1937). The activities detailed as being within this definition were ones very different from that for which respondent claims constitutional protection -- matters relating to **marriage**, **procreation**, contraception, **family relationships**, and **childrearing** and education."

2) See, e.g., *City of North Miami v. Kurtz*, 653 So.2d 1025, 1027 (Fla. 1995), stating:

"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)..."

3) See, e.g., *Carroll by Carroll v. Parks*, 755 F.2d 1455, 1457 (11th Cir. 1985)

"Those 'zones of privacy' which have been recognized as warranting protection under the Constitution include the right to be free from unreasonable search and seizure, and **the right to make personal decisions**

regarding **marriage**, contraception, **procreation** and **family relationships**.

4) *Maynard v. Hill*, 125 U.S. 190, 210-211 (1888)

The U. S. Supreme Court has held in *Maynard v. Hill*, supra, at 205 that, "Marriage, as **creating the most important relation in life**, as having more to do with **the morals and civilization of a people than any other institution**, has always been subject to the control of the legislature…."

5) *Via v. Putnam*, 656 So.2d 460 (Fla. 1995)

The Florida Supreme Court has held in the case of *Via v. Putnam*, 656 So.2d 460, 465 (Fla. 1995) that, "[t]he **institution of marriage** has been a **cornerstone of western civilization** for thousands of years and is the most important type of contract ever formed."

6) The "**Head of the Family**" status is a "**privilege and immunity**" of the "civil marriage," that is customarily, traditionally, and legally discharged by **the Husband**.

a) See, e.g., 30 Corpus Juris Secundum (1st Ed), Husband and Wife, § 16 "C. Personal Rights and Duties- Head of Family."[13]

[13] Reference states: "The husband is the head of the family, and as such the general right at

b) 26 Am Jur, Husband and Wife, § 10 Head of Family.[14]

II. The Civil War Amendments guaranteed to African Americans the "Privileges and Immunities" of Citizens of States and of the United States

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common law to regulate the household, its expenses, and its visitors, and to exercise the general control of family management."

[14] "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 basic 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 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.

A. The Thirteenth Amendment, U.S. Constitution guarantees to African freedmen and their descendants the same "*Privileges and Immunities of Citizens in the several states*."[15] Section 2 allows Congress to enact both federal statutes and international treaties in order to achieve the objectives of the Thirteenth Amendment.

B. Fourteenth Amendment, Section 1, U.S. Constitution guarantees to African freedmen and their descendants the same "*Privileges and Immunities of Citizens in the several states*," thus prohibiting the State governments from denying those rights to African Americans (as well as citizens from other states), to wit:

> "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."

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[15] See, e.g., *The Slaughterhouse Cases*, 83 U.S. 36, 37 (1872), stating:

> "The privileges and immunities of citizens of the United States are those which arise out of the nature and essential character of the national government, the provisions of its Constitution, or its laws and **treaties** made in pursuance thereof, and it is these which are placed under the protection of Congress by this clause of the **Thirteenth amendment**."

C. Declaration of Independence: "**Life, Liberty, and the Pursuit of Happiness**" guarantees "**privileges and (or) immunities**" of African American citizens via the Thirteenth and Fourteenth Amendments, U.S. Constitution.

1. *U.S. v. Morris*, 125 Fed. Rep. 322 (E.D. Ark. 1903); [16]
2. *Butchers' Union Co. v. Crescent City Co.*, 111 U.S. 746 (1884).[17]

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[16] See, e.g., *U.S. v. Morris*, 125 Fed. Rep. 322, 325 (E.D. Ark. 1903)[discussing the **Declaration of Independence**, while adjudicating the **Thirteenth Amendment** and **1866 Civil Rights Act**], stating:

> Every citizen and freeman is endowed with certain rights and privileges, to enjoy which no written law or statute is required. These are fundamental or natural rights, recognized among all free people. In our **Declaration of Independence**, the Magna Carta of our republican institutions, it is declared: 'We hold these rights to be self-evident: That all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty and the pursuit of happiness….

[17] See, e.g., *Butchers' Union Co. v. Crescent City Co.*, 111 U.S. 746, 756 - 757 (1884)[discussing the **Declaration of Independence**, while adjudicating the **Fourteenth Amendment**], stating:

> As in our intercourse with our fellow men, certain principles of morality are assumed to exist without which society would be impossible, so certain inherent rights lie at the foundation of all action and upon a recognition of them alone can free institutions be maintained. These inherent rights have never been more happily expressed than in **the declaration of independence**, that new evangel of liberty to the people: "We hold these truths to be self-evident" -- that is, so plain that their truth is recognized upon their mere statement – 'that all men are endowed' -- not by edicts of emperors, or decrees of Parliament, or acts of Congress, but 'by their Creator with certain inalienable rights' -- that is, rights which cannot be bartered away, or given away, or taken away, except in punishment of crime – 'and that among these are life, liberty, and the pursuit of

III. The Thirteenth Amendment and the 1866 Civil Rights Act guaranteed to African American husbands and fathers the "privileges and immunities" of making marriage contracts and of the "head of the family status."

A. Thirteenth Amendment guarantees to African American husbands and fathers the "**Privileges or Immunities**" of U.S. Citizens and the "**Privileges and Immunities of the citizens of the several states**," including the "*natural rights of marriage*"; the "*natural rights of family*"; and the "*natural rights of head of the family*."

1. *The Slaughterhouse Cases*, 83 U.S. 36, 37 (1872), stating:

> "The **privileges and immunities of citizens of the United States** [e.g., Article IV, U.S. Constitution] are those which arise out of the nature and essential character of the national government, the provisions of **its Constitution**, or **its laws** and treaties made in pursuance thereof, and it is these which are placed

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happiness, and to secure these' -- not grant them, but secure them – 'governments are instituted among men, deriving their just powers from the consent of the governed.'

> Among these inalienable rights, as proclaimed in that great document, is the right of men to pursue their happiness, by which is meant the right to pursue any lawful business or vocation, in any manner not inconsistent with the equal rights of others, which may increase their prosperity or develop their faculties, so as to give to them their highest enjoyment.
>
> The common business and callings of life, the ordinary trades and pursuits, which are innocuous in themselves, and have been followed in all communities from time immemorial, must therefore be free in this country to all alike upon the same conditions. The right to pursue them, without let or hindrance, except that which is applied to all persons of the same age, sex, and condition, is a distinguishing privilege of citizens of the United States, and an essential element of that freedom which they claim as their birthright.

under the protection of Congress by this clause of the **Thirteenth amendment**."

2. *Hall v. U.S.*, 92 U.S. 27, 30 (1875), stating:

"It was an inflexible rule of the **law of African slavery**, wherever it existed, that the slave was incapable of entering into any contract, not excepting the **contract of marriage**. Stephens on West Ind. Slav., 58; *Hall v. Mullin*, 5 Har. & J. 190; *Gregg v. Thompson*, 2 Const. Ct. Rep. (S. C.) 331; *Jenkins v. Brown*, 6 Humph. 299; *Jackson v. Lewey*, 5 Cow. 397; *Emerson v. Howland*, 1 Mas. 45; *Bland v. Dowling*, 9 Gill & J. 27."

3. *Adams v. Sneed*, 25 So. 893 (Fla. 1899) –

The Florida Supreme Court has expressly acknowledged in *Adams v. Sneed*, supra, pp. 894, that the Thirteenth Amendment and (or) the abolition of slavery invested African American freedmen with the right to make and enforce the marriage contract, stating:

> [W]ith the abolition of slavery **all impediments to future legal marriages** and to the acquisition of inheritable blood by the issue of such future marriages **were swept away**….

4. *Civil Rights Cases*, 109 U.S. 3, 20-22 (1883) –

The 1866 Civil Rights Act was enacted to implement the Thirteenth Amendment and to secure "fundamental rights," including the right to "**make and enforce contract**," including the

marriage contract, "**as is enjoyed by white citizens**."[18]

5. *Burns v. State*, 48 Ala. 195 (Ala. 1872)

The Alabama Supreme Court held in *Burns v. State*, supra, pp. 197- 198, that "**marriage is a civil contract**" and that the **1866 Civil Rights Act** established the rights of emancipated freedmen "to **make and enforce contracts, amongst which is that of marriage**."

IV. International Human Rights Law also guaranteed to African American husbands and fathers the same "privileges and immunities" of making <u>marriage contracts</u> and of the "<u>head of the family status</u>" guaranteed under Section 2 of the Thirteenth Amendment and the 1866 Civil Rights Act.

1. *The Slaughterhouse Cases*, 83 U.S. 36, 37 (1872), stating:

"The **privileges and immunities of citizens of the United States** [e.g., Article IV, U.S. Constitution] are those which arise out of the nature and essential character of the national government, the provisions of its Constitution, or its laws and **treaties made** in pursuance thereof, and it is these which are placed

[18] See, e.g., *Civil Rights Cases*, supra, p. 22, stating "the Civil Rights Bill of 1866, passed in view of the Thirteenth Amendment before the Fourteenth was adopted, undertook to wipe out these burdens and disabilities, the necessary incidents of slavery constituting its substance and visible form, and to secure to all citizens of every race and color, and without regard to previous servitude, those fundamental rights which are the essence of civil freedom, namely, the same right to make and enforce contracts, to sue, be parties, give evidence, and to inherit, purchase, lease, sell and convey property as is enjoyed by white citizens."

under the protection of Congress by this clause of the **Thirteenth amendment**."

2. See, e.g., "*Jus Cogens* principles" enunciated in the Universal Declaration of Human Rights (1948)[19] and the African Charter on People's and Human Rights;

3. See, e.g., the International Covenant on Civil and Political Rights (ICCPR);[20] and

4. See, e.g., the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).[21]

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[19] Article 16 to the Universal Declaration of Human Rights (UDHR), which is a written proclamation of *Jus Cogens* norms, states:

> The General Assembly [United Nations]
>
> Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations…
>
> Article 16
>
> Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
>
> Marriage shall be entered into only with the free and full consent of the intending spouses.
>
> The **family** is the **natural and fundamental group unit of society** and is entitled to protection by society and the State.

[20] Article 23(1): "The **family** is the **natural and fundamental group unit of society** and is entitled to protection by society and the State."

[21] *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD), Article 5(d)(4):

> "In compliance with the fundamental obligations laid down in **article 2** of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights… [t]he **right to marriage** and choice of spouse."

5. The ICCPR and the ICERD may be implemented through the Civil Rights Acts of 1866 and 1871. [i.e., Congress' treaty obligations under the ICCPR and ICERD, and Jus Cogens obligations under customary international law, are already expressly carried out in the Civil War Amendments, U. S. Constitution, and federal civil rights statutes.]

V. International law requires that the "privileges and immunities" of the Citizens of the United States to be safeguarded and protected in its national tribunals

A. Universal Declaration of Human Rights (1948), Article 8, states:

> Everyone has **the right to an effective remedy** by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law….[22]

B. See, e.g., International Covenant on Civil and Political Rights, 2(3)(b), stating:

> "Each State Party to the present Covenant undertakes… [t]o ensure that any person claiming such a remedy shall have his right thereto

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[22] Article 8 to the Universal Declaration of Human Rights (UDHR), which is a written proclamation of *Jus Cogens* norms, states:

> The General Assembly [United Nations]
>
> Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations…
>
> **Article 8**
>
> Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law….

determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy…."

C. See, e.g., U.N. Basic Principles on the Right to a Remedy, Principles, Section 2(b) through (d), stating:

> States shall, as required under international law, ensure that their domestic law is consistent with their international legal obligations by… (b) Adopting appropriate and effective legislative and administrative procedures and other appropriate measures that provide fair, effective and prompt access to justice; (c) Making available adequate, effective, prompt and appropriate remedies, including reparation, as defined below; (d) Ensuring that their domestic law provides at least the same level of protection for victims as that required by their international obligations.

D. See, also, U.N. Basic Principles on the Right to a Remedy, General Principles, Section 3(c) and (d), stating:

> The obligation to respect, ensure respect for and implement international human rights law and international humanitarian law as provided for under the respective bodies of law, includes, inter alia, the duty to: (c) Provide those who claim to be victims of a human rights or humanitarian law violation with equal and effective access to justice, as described below, irrespective of who may ultimately be the bearer of responsibility for the

violation; and (d) Provide effective remedies to victims, including reparation, as described below.

E. See, also, U.N. Basic Principles on the Right to a Remedy, General Principles, Section 11(a), stating:

> "Remedies for gross violations of international human rights law and serious violations of international humanitarian law include the victim's right to the following as provided for under international law:
>
> (a) Equal and effective access to justice;
>
> (b) Adequate, effective and prompt reparation for harm suffered;
>
> (c) Access to relevant information concerning violations and reparation mechanisms."

F. See, also, U.N. Basic Principles on the Right to a Remedy, General Principles, Section 12, stating:

> A victim of a gross violation of international human rights law or of a serious violation of international humanitarian law shall have equal access to an effective judicial remedy as provided for under international law.
>
> Other remedies available to the victim include access to administrative and other bodies, as well as mechanisms, modalities and proceedings conducted in accordance with domestic law. Obligations arising under international law to secure the right to access justice and fair and impartial proceedings shall be reflected in domestic laws….

CONCLUSION

Family rights—e.g., the "Head of the Family" status of African American men—is a "*Privilege and Immunity*" of the citizens of the several states, as well as a "*Privilege or Immunity*" of the citizens of the United States; and these rights from the "Laws of Nature," the "Law of God," and (or) *Jus Cogens* (or international peremptory norms).

Under the constitution and laws of the United States, such privileges and immunities—including the "Head of the Family" status-- were finally bequeathed to African American husbands, fathers, and men through the Thirteenth Amendment, U. S. Constitution, and the 1866 Civil Rights Act.

Section 1 of the Thirteenth Amendment prohibits "slavery" and "involuntary servitude."

Section 2 of the Thirteenth Amendment authorizes Congress to enact federal legislation in order to carry out the provisions of Section 1.

And pursuant to Section 2 of the Thirteenth Amendment, Congress has ratified international treaty laws with the express purpose of carrying out the provisions of Section 1, namely, the *ICCPR* and the *ICERD*, which both regulate the institution of the family.

Therefore, as "federal constitutional or civil rights," the "privileges and immunities" of the citizens of the United States may be vindicated and preserved, even against private parties who impair those fundamental rights, in the U. S. District Courts.

The Fourteenth Amendment, Section 1, expressly prevents state government and state officials from violating those same rights, privileges, and immunities. And the Thirteenth Amendment and the 1866 Civil Rights Act expressly prevent private actors from committing the same violations.[23]

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[23] See, e.g., *The Slaughterhouse Cases*, 83 U.S. 36, 37 (1872), stating:

The treaty law of the United States is a Congressional obligation—not that of the state governments. Public international law (both customary law and treaty law) safeguards the same "privileges and immunities" and, therefore, requires that the national tribunals of nation states provide effective remedies within their national tribunals for the breaches of those absolute and fundamental rights.[24]

-- The End of Chapter Three ---

"The privileges and immunities of citizens of the United States are those which arise out of the nature and essential character of the national government, the provisions of its Constitution, or its laws and treaties made in pursuance thereof, and it is these which are placed under the protection of Congress by this clause of the Thirteenth amendment."

[24] Ibid.

Chapter Four

Black Husbands and Fathers:

"*Jus Cogens*: The Thirteenth Amendment, U.S. Constitution"

By

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Introduction

African American fathers and husbands—who seek to vindicate their natural familial rights as "Heads of the Family"—may utilize both *Jus Cogens* (i.e., the Law of Nations or customary international law) and Treaty law, which may be implemented through the Thirteenth Amendment, U. S. Constitution, and the Civil Rights Act of 1866 and 1871 (e.g., 42 U.S.C. §§

1981, 1982, and 1983).[1] See, e.g., *The Slaughterhouse Cases*, 83 U.S. 36, 37 (1872), stating:

> "The privileges and immunities of citizens of the United States are those which arise out of the nature and essential character of the national government, the provisions of its Constitution, or its laws and **treaties made** in pursuance thereof, and it is these which are placed under the protection of Congress by this clause of the **Thirteenth amendment**."

Notably, Section 2 of the Thirteenth Amendment authorizes Congress to adopt laws (including international treaties) to carry out the provisions of Section 1. Therefore, international treaty law may be implemented through the Thirteenth Amendment, United States Constitution.

I. The Thirteenth Amendment and its National Scope and Objectives

The Thirteenth Amendment, which prohibits slavery and involuntary servitude, automatically preserves all the natural rights which are guaranteed in the Declaration of Independence and the Privileges and Immunities Clauses in Article IV of the U. S. Constitution. See, e.g., *U.S. v. Morris*, 125 Fed. Rep. 322, 325 (E.D. Ark. 1903), stating:

> Every citizen and freeman is endowed with certain rights and privileges, to enjoy which no written law or statute is required. These are fundamental or natural rights, recognized among all free

[1] The "Jus Cogens" legal and constitutional perspective of this paper is based upon the traditional Judea-Christian conception of natural law of the family. See, e.g., The Carter Center's *Scripturally Annotation of the Universal Declaration of Human Rights* at the following link: universal-declaration-human-rights-scriptually-annotated.pdf. Neo-liberal human rights and civil rights programs in the United States and the West are focused upon the plight of "women and children," without placing it into the larger context of androcide or target oppression of the men and boys of insular minority groups. Hence, through taking jurisdiction over female-headed, single-parent African American families, state family law and policy have divested black American men of "head of the family" status in violation of Jus Cogens.

people. In our Declaration of Independence, the Magna Carta of our republican institutions, it is declared: 'We hold these rights to be self-evident: That all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty and the pursuit of happiness….

The Thirteenth Amendment is directly implemented through, inter alia, the 1866 Civil Rights Act.

A. **The Thirteenth Amendment, U. S. Constitution prohibits "slavery."**

1. "Section 1.

   Neither **slavery** … , 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."

2. *Civil Rights Cases*, 109 U.S. 3, 22 (1883)(holding that the **13th Amendment** is enforced through the **1866 Civil Rights Act**).

3. *Jones v. Alfred H. Mayer, 392 U.S. 409,* 438-439 *(1968)(*adopting the ruling in the *Civil Rights Cases*, supra, and holding that the **13th Amendment** is enforced through the **1866 Civil Rights Act**).

B. **The Thirteenth Amendment, U. S. Constitution prohibits "involuntary servitude."**

1. "Section 1.

Neither … **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."

2. *The Slaughterhouse Cases*, 83 U.S. 36, 69 (1872), stating:

> "The word **servitude** is of **larger meaning than slavery**, as the latter is popularly understood in this country, and the obvious purpose was to forbid all shades and conditions of African slavery. It was very well understood that, in the form of apprenticeship for long terms, as it had been practiced in the West India Islands, on the abolition of slavery by the English government, or by reducing the slaves to the condition of serfs attached to the plantation, the purpose of the article might have been evaded if only the word slavery had been used. The case of the apprentice slave, held under a law of Maryland, liberated by Chief Justice Chase on a writ of habeas corpus under this article, illustrates this course of observation."

C. **The Thirteenth Amendment, U. S. Constitution prohibits "badges and incidents" of slavery**

1. *Civil Rights Cases*, 109 U.S. 3, 21-22 (1883), stating:

> Congress has a right to enact all necessary and proper laws for the obliteration and prevention of slavery with all its badges and incidents…. The long existence of African slavery in this country gave us very distinct notions of what it was and what were its necessary incidents. Compulsory service of the slave for the benefit of the master, restraint of his

movements except by the master's will, disability to hold property, to make contracts, to have a standing in court, to be a witness against a white person, and such like burdens and incapacities were the inseparable incidents of the institution.

2. *Jones v. Alfred H. Mayer, 392 U.S. 409,* 439 - 440 *(1968),*

> For [Sec. 2 of the Thirteenth Amendment] clothed 'Congress with power to pass *all laws necessary and proper for abolishing* ***all badges and incidents of slavery*** *in the United States….'*
>
> And the majority leaders in Congress -- who were, after all, the authors of the Thirteenth Amendment -- had no doubt that its Enabling Clause contemplated the sort of positive legislation that was embodied in the **1866 Civil Rights Act**.

II. Thirteenth Amendment and its International Scope and Objectives

A. The principle of *Jus Cogens* coincides with the Thirteenth Amendment, prohibiting "slavery" and "slave-related practices" [i.e., "involuntary servitude" and "badges and incidents" of slavery]

1. *Jus Cogens (i.e., the Law of Nations*) and Treaty law to which the United States is Signatory are incorporated into the Thirteenth Amendment, U.S. Constitution.

2. See, e.g., *The Slaughterhouse Cases*, 83 U.S. 36, 37 (1872), stating:

"The privileges and immunities of citizens of the United States are those which arise out of the nature and essential character of the national government, the provisions of its Constitution, or its laws and **treaties made** in pursuance thereof, and it is these which are placed under the protection of Congress by this clause of the **Thirteenth amendment**."

3. *Jus Cogens* has been defined in the U. S. Court of Appeals for the Eleventh Circuit in the case of *United States v. Bellaizac-Hurtado*, 700 F.3d 1245, 1261 (11th Cir. 2012), as **"slavery"** and **"slave-related practices,"** viz:

   Although "[i]nternational criminal law evidences the existence of twenty-seven crime categories[,]" only the so-called jus cogens crimes of "piracy, **slavery** and **slave-related practices**, war crimes, crimes against humanity, genocide, apartheid, and torture" have thus far been identified as supporting universal jurisdiction.

4. Jus Cogens in general has universal application and cannot be ignored, modified, changed, or derogated in any way by federal authority or by the local state courts or legislatures of the United States.

   a. **"*Jus cogens* norms** are a subset of '**customary international law**,' are **binding on all nations**, and **cannot be preempted** by treaty." 48 C.J.S. 2d, § 1 [Citing *U. S. v. Struckman*, 611 F.3d 560 (9th Cir. 2010).]

   b. "A **'*jus cogens* norm**,' also known as a '**peremptory norm**' of international law, is a norm accepted and recognized by the international community of states as a whole as **a norm from**

which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character." 48 C.J.S. 2d, § 1 [citing *Yousuf v. Samantar*, 699 F.3d 763 (4th Cir. 2012)].

c. "A ***jus cogens*** norm is a norm accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted, and which can be modified only by a subsequent norm of general international law having the same character." 44B Am Jur 2d, § 3 [citing *Carpenter v. Republic of Chile*, 610 F.3d 776 (2d Cir. 2000); *Yousuf v. Samantar*, 699 F.3d 763 (4th Cir. 2012); Saleh v. Bush, 848 F.3d 880 (9th Cir. 2017)].

III. "Right of Marriage" and "Family" are Preserved in both the Thirteenth Amendment and under International Law

African American husbands and fathers may rely upon the 1866 Civil Rights Act in order to preserve and enforce their "right of marriage," "familial" rights, and (or) right to status as "Head of the Family" via:

For Details Regarding the Denial of the "Head of the Family" status to African American men, see, generally, Part II of this Series

Author: Roderick Andrew Lee Ford

Title: "The Head of The Family: Towards A Federal Common Law of the Black Family"

Chapter One: The 'History and Tradition' of Fundamental Rights

Chapter Two: The 1866 Civil Rights Act and Marriage Contract

Chapter Three: The Freedmen's Bureau Courts and Marriage

Contract

Chapter Four: "Black Men as 'Head of the Family'"

Chapter Five: The 1866 Civil Rights Act and Family Law Tribunals

Weblink:

https://nebula.wsimg.com/6a1bfd60caea5b5dbc6d9f86782dfbe0?AccessKeyId=CFD051C099636C9F5827&disposition=0&alloworigin=1

A. The Thirteenth Amendment, U. S. Constitution

1. The **Thirteenth Amendment, U.S. Constitution** (slavery; badges and incidents of slavery, etc.) and the **1866 Civil Rights Act** constitutes "**federal preemption**" in **domestic relations matters**:

(a). *Civil Rights Cases*, 109 U.S. 3, 20-22 (1883) –

> The 1866 Civil Rights Act was enacted to implement the Thirteenth Amendment and to secure "fundamental rights," including the right to "**make and enforce contract**," including the marriage contract, "**as is enjoyed by white citizens**."[2]

[2] See, e.g., *Civil Rights Cases*, supra, p. 22, stating "the Civil Rights Bill of 1866, passed in view of the Thirteenth Amendment before the Fourteenth was adopted, undertook to wipe out these burdens and disabilities, the necessary incidents of slavery constituting its substance and visible form, and to secure to all citizens of every race and color, and without regard to previous servitude, those fundamental rights which are the essence of civil freedom, namely, the same right to make and enforce contracts, to sue, be parties, give evidence, and to inherit, purchase, lease, sell and convey property as is enjoyed by white citizens."

(b) *Hall v. U.S.*, 92 U.S. 27 (1875) –

The U. S. Supreme Court has tacitly acknowledged in *Hall v. U.S.*, supra, p. 30, that the institution of African slavery prohibited black slaves from making "the contract of marriage," stating **"It was an inflexible rule of the law of African slavery, wherever it existed, that the slave was incapable of entering into any contract, not excepting the contract of marriage**. Stephens on West Ind. Slav., 58; *Hall v. Mullin*, 5 Har. & J. 190; *Gregg v. Thompson*, 2 Const. Ct. Rep. (S. C.) 331; *Jenkins v. Brown*, 6 Humph. 299; *Jackson v. Lewey*, 5 Cow. 397; *Emerson v. Howland*, 1 Mas. 45; *Bland v. Dowling*, 9 Gill & J. 27."

(d) *Burns v. State*, 48 Ala. 195 (Ala. 1872)

The Alabama Supreme Court held in *Burns v. State*, supra, pp. 197- 198, that "**marriage is a civil contract**" and that the **1866 Civil Rights Act** established the rights of emancipated freedmen "to **make and enforce contracts, amongst which is that of marriage**."

(c) *Adams v. Sneed*, 25 So. 893 (Fla. 1899) –

The Florida Supreme Court has expressly acknowledged in *Adams v. Sneed*, supra, pp. 894, that the Thirteenth Amendment and (or) the abolition of slavery invested African American

freedmen with the right to make and enforce the marriage contract, stating:

> the author contends that children of **customary slave marriages** were not regarded as illegitimates or bastards in slavery, but occupied a statutes peculiar to that institution; … that **the abolition of slavery destroyed this peculiar status**, and it could never again be occupied by any person, white or black….
>
> [W]ith the abolition of slavery **all impediments to future legal marriages** and to the acquisition of inheritable blood by the issue of such future marriages **were swept away**….

2. The **<u>Thirteenth Amendment preserves and protects</u>** all "fundamental rights" – including those regarding "marriage" and "family," whether stated in the U. S. Constitution, the Declaration of Independent, or International Law.

   a. <u>Thirteenth Amendment Protections</u>: *The Slaughterhouse Cases*, 83 U.S. 36, 38 (1872)(the Thirteenth Amendment preserves privileges and immunities whether they emanate from the U. S. Constitution, federal statutory law, or international law (i.e., *Jus Cogens* or Treaty Law).

   b. <u>Thirteenth Amendment Protections</u>: *Maynard v. Hill*, 125 U.S. 190, 210-211 (1888)

The U. S. Supreme Court has held in *Maynard v. Hill*, supra, at 205 that, "Marriage, as **creating the most important relation in life**, as having more to do with **the morals and civilization of a people than any other institution**, has always been subject to the control of the legislature…."

c. Thirteenth Amendment Protections: *Via v. Putnam*, 656 So.2d 460 (Fla. 1995)

The Florida Supreme Court has held in the case of *Via v. Putnam*, 656 So.2d 460, 465 (Fla. 1995) that, "[t]he **institution of marriage** has been a **cornerstone of western civilization** for thousands of years and is the most important type of contract ever formed."

d. Thirteenth Amendment Protections: *Paul v. Davis*, 424 U.S. 693, 712-714 (1976), stating:

> In *Roe [v. Wade*], the Court pointed out that the personal rights found in this guarantee of personal privacy must be limited to those which are **"fundamental"** or **"implicit in the concept of ordered liberty"** as described in *Palko v. Connecticut*, 302 U. S. 319, 302 U. S. 325 (1937). The activities detailed as being within this definition were ones very different from that for which respondent claims constitutional protection -- matters relating to **marriage**, **procreation**, contraception, **family relationships**, and **childrearing** and education.

e. Thirteenth Amendment Protections: Article 16 of the Universal Declaration on Human Rights (UDHR) protects "**[t]he family**" as "the natural and fundamental group unit of society."[3]

f. Thirteenth Amendment Protections: Article 23 of the *International Covenant on Civil and Political Rights* (ICCPR) protects "**[t]he family**" as "the natural and fundamental group unit of society."[4]

g. Thirteenth Amendment Protections: Article 5(d)(4) of the *International Convention on the Elimination of Racial Discrimination*, the derogation or divestiture of **marriage** rights [or the right to contract marriage] is a form of "**racial discrimination**."[5]

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[3] Article 16 to the Universal Declaration of Human Rights (UDHR), which is a written proclamation of *Jus Cogens* norms, states:

> The General Assembly [United Nations]
>
> Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations…
>
> Article 16
>
> Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
>
> Marriage shall be entered into only with the free and full consent of the intending spouses.
>
> The **family** is the **natural and fundamental group unit of society** and is entitled to protection by society and the State.

[4] Article 23(1): "The **family** is the **natural and fundamental group unit of society** and is entitled to protection by society and the State."

[5] *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD), Article 5(d)(4):

Therefore, the Thirteenth Amendment, which is implemented through the 1866 Civil Rights Act, enforces statutory, constitutional, and international law. And African American husbands and fathers, through the forum of the United States District Courts, may utilize the 1866 Civil Rights Act to enforce Jus Cogens and the Treaty laws of the United States in order to safeguard the fundamental rights as "Head of the Family."

Conclusion

In the United States, the Thirteenth Amendment, U. S. Constitution and its related jurisprudence have been grossly underutilized; and particularly it has been underutilized by the African American community for whom it was specially designed.

One method of revitalizing, and breathing life into, the Thirteenth Amendment is through linking it to the Universal Declaration on Human Rights and various international treaties to which the United States is a signatory. This may be achieved through civil rights actions arising under both the 1866 and 1871 Civil Rights Acts (42 U.S.C. §§ 1981, 1982, and 1983).

Another method of revitalizing the Thirteenth Amendment is to acknowledge that Section 2 of that Amendment expressly authorizes Congress to enact federal legislation to carry out the express provisions of Section 1, which abrogates slavery and involuntary servitude. In that connection, Congress has ratified the *International Covenant on Political and Civil Rights* (ICCPR) and the *International Convention on the Elimination of Racial Discrimination* (ICERD) via its authority under Section 2 of the

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"In compliance with the fundamental obligations laid down in **article 2** of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights… [t]he **right to marriage** and choice of spouse."

Thirteenth Amendment. Both the ICCPR and ICERD expressly bring the plight of the African American family within the domain of federal civil rights jurisprudence and, hence, within the jurisdiction of the United States District Courts.

--- The End of Chapter Four ---

Chapter Five

Black Husbands and Fathers:

"*Jus Cogens*: Remedies for African American Husbands, Fathers, and Families in the United States District Courts"

By

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Introduction

Universal Declaration of Human Rights (UDHR) is a reliable international standard whereby "U.S. courts and legislatures may [rely upon] to inform or interpret laws concerned with human rights."[1] As such, the UDHR is an expression of *Jus Cogens* norms[2] that also serves as the basis for interpreting and defining human rights under the Declaration of Independence, the First Amendment and Thirteenth Amendments, U. S. Constitution, and federal civil rights statutes such as the 1866 Civil Rights Act.[3]

The UDHR is also the basis for several other international treaties to which the United States is a party, namely, the **International Covenant on Civil and Political Rights** (ICCPR) and the **International Convention on the Elimination of Racial Discrimination** (ICERD).

But there is another very important international human rights treaty which is regional in nature and to which the United States is not a party, but which has salience and relevance to the unique plight of African American families in the United States: the **African Charter on People's**

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[1] See, e.g., G. Christenson, "Using Human Rights Law to Inform Due Process and Equal Protection Analyses," *University of Cincinnati Law Review* 52 (1983).

[2] See, e.g., "Universal Declaration of Human Rights," Wikipedia (online encyclopedia), states:

> Many international lawyers believe that the **Declaration forms part of customary international law** and is a powerful tool in applying diplomatic and moral pressure to governments that violate its articles. One prominent international jurist described the UDHR as being "**universally regarded as expounding generally accepted norms**." Other legal scholars have further argued that the Declaration constitutes **jus cogens**, fundamental principles of international law from which no state may deviate or derogate. The 1968 United Nations International Conference on Human Rights advised that the Declaration "constitutes an obligation for the members of the international community" to all persons.

[3] See, e.g., United States' Report to the Committee on the Elimination of All Forms of Racial Discrimination, CERD/C/351/Add.1 10 October 2000. ("¶ 171 As was the case with prior human rights treaties, **existing U.S. law provides protections and remedies sufficient to satisfy the requirements of the present Convention**.") [discussed in detail below].

and Human Rights.[4] Because this African Charter is an outgrowth of the Pan-African movement in the Western Hemisphere, to which many leading African Americans—such as W.E. B. Du Bois and others played a prominent role—this paper holds that this international African Charter also contains many *Jus Cogens* norms and principles that are directly relevant to the African American population in the United States.

From the perspective of black or African American men, one such constitutional and evidentiary-court challenge is the inability to present **"admissible racial discrimination" evidence** in state family law tribunals in the form of evidence which substantiates the lack of empathy, sympathy, respect, and (or) cooperation from their black American women (i.e., wives, ex-wives, girlfriends who are mothers of their children, etc.) who stereotype and treat them as being "**dogs**" [i.e., as slaves or male breeders],[5] thereby divesting those men of the ability to carry out **"head of the family"** duties and functions.

Another such constitutional and evidentiary-court challenge is the inability to present **"admissible racial discrimination" evidence** in state family law tribunals in the form of evidence which substantiates the biases in state courts and state agencies which favor and (or) ratifies the substandard behaviors of those same black American women (i.e., wives, ex-wives, girlfriends who are mothers of their children, etc.) who stereotype and treat black American men as being "**dogs**" [i.e., as slaves or

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[4] The "Jus Cogens" legal and constitutional perspective of this paper is based upon the traditional Judea-Christian conception of natural law. See, e.g., The Carter Center's *Scripturally Annotation of the Universal Declaration of Human Rights* at the following link: universal-declaration-human-rights-scriptually-annotated.pdf. Neo-liberal human rights and civil rights programs in the United States and the West are focused upon the plight of "women and children," without placing it into the larger context of androcide or target oppression of the men and boys of insular minority groups. Hence, through taking jurisdiction over female-headed, single-parent African American families, state family law and policy have divested black American men of "head of the family" status in violation of *Jus Cogens*.

[5] Armon R. Perry, *Black Love Matters: Authentic Men's Voices On Marriages and Romantic Relationships* (Lanham, Maryland: Lexington Books, 2020), 56 ("the negative epithet of the dog").

male breeders], thereby divesting those men of the ability to carry out **"head of the family"** duties and functions.

Such evidence of **"admissible racial discrimination"** that demonstrates that (a) state laws, state agencies, and (or) state officials may conjoin with (b) certain black American women to divest black American men of their rights and ability to carry out **"head of the family"** duties and functions constitutes slavery and (or) the customs, usages, badges and incidents of slavery (i.e., slave-like conditions).[6] When state or federal courts fail or refuse to prove a remedy for such a constitutional tort, they violate both customary international law and treaty law, as well as constitution of the United States.

Since the subject matter of whether **the African American male population** is a special target of racist antipathy and discrimination that directly impairs the ability to function as "Head of the Family" or to discharge other familial functions (e.g., *androcide*), this chapter is designed to explore whether **international human rights law** may provide, or facilitate in the provision, of **an effective remedy** for African American husbands and fathers in the state and federal courts of the United States.

I. State and Local Courts in the United States have historically blocked African American citizens from attaining effective remedies for *Jus Cogens* and other Civil Rights Violations

A. **Denial of State Court Access:** Since the end of the U. S. Civil War (1861 – 1865), there is a long history of the state and local courts of the

[6] Section 1 of the Civil Rights Act of 1866 prohibits "customs" which perpetuate slavery or involuntary servitude. Similarly, Section 1 of the Civil Rights Act of 1871 prohibits "usages" and "customs" which divest persons of constitutional rights. Such "customs," for instance, can be identified in the form of "customary slave marriages," which the state of Florida once officially recognized and enforced; and these "customs" severely limited the paternal, conjugal, and "head of the family" rights and status of black American men.

United States being hostile towards the fundamental or constitutional and statutory rights of African Americans.[7]

B. **Denial of State Court Access**: The United States Supreme Court's holding's in *Monroe v. Pape* (1963) and *Patsy v. Florida Board of Regents* (1982) clearly demonstrate that "Jus Cogens" claims (i.e., customary international law) that may be articulated under Federal Civil Rights Acts of 1866 (e.g., 42 U.S.C. §§ 1981, 1982) may be brought in the U. S. District Courts, without first exhausting remedies in the state courts.

1. See, e.g., *Monroe v. Pape*, 365 U.S. 167, 175-177 (1961), stating:

> The legislation -- in particular the section with which we are now concerned -- had several purposes….
>
> The third aim was to provide **a federal remedy where the state remedy**, **though adequate in theory**, was **not available in practice**….
>
> 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

[7] See, e.g., W.E.B. Du Bois, "The Souls of Black Folk," *Writings* (New York, N.Y.: The Library of America, 1986), p. 386, stating: ("[T]o leave the Negro in the hands of Southern courts was impossible…. [T]he regular civil courts tended to become solely institutions for perpetuating the slavery of blacks. Almost every law and method ingenuity could devise was employed by the legislatures to reduce the Negroes to serfdom—to make them the slaves of the State, if not of individual owners….")

> 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.'

2. See, also, *Patsy v. Board of Regents of State of Florida*, 457 U.S. 496, 503 (1982)[reaching the same conclusion as *Monroe v. Pape*, supra].

II. United States District Courts have historically Failed to Prevent State and Local Courts from denying effective remedies to African American citizens

Unfortunately, many U. S. District Courts have historically evaded their constitutional obligation to safeguard the fundamental or constitutional and statutory rights of African American citizens, as set forth in *Monroe v. Pape*, 365 U.S. 167 (1961) and *Patsy v. Board of Regents of State of Florida*, 457 U.S. 496 (1982).

This system-wide federal court evasion violates *Jus Cogens* norms, as expressly set forth in Article 8 of the UDHR.[8]

A. **Denial of Federal Court Access**: See, e.g., Kermit L. Hall, "The Civil War as a Crucible for Nationalizing the Lower Federal Courts," *Prologue Magazine*, Vol. 7, No. 3 (Fall 1975), to wit:

> **U.S. District Courts Give in to Local Prejudice**
>
> "[T]he traditional concept of embedding federal district courts in the local constituencies they served made them as potentially responsive to local interests as to the dictates of national authority promulgating a program of reconstruction. The federal courts could as readily serve the interests of ex-Confederates seeking to return to pre-war conditions as they could Republicans concerned with building partisan strength and sustaining Unionists and freedmen….
>
> The changes made in 1862 and 1869, and those proposed in 1866, were more cosmetic than substantial. At least in their institutional structure the federal courts proved resistant to the impact of the Civil War and the first years of Reconstruction. For their part, the Republicans emerged as at best reluctant nationalizers, willing to extend the jurisdiction of the courts but unwilling to break from more traditional notions of parsimonious government and judicial representation that emphasized local and regional diversity over the assertion of national or central authority."

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[8] Article 8 to the Universal Declaration of Human Rights (UDHR), which is a written proclamation of *Jus Cogens* norms, states:

> The General Assembly [United Nations]
>
> Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations…
>
> **Article 8**
>
> Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law….

B. **<u>Denial of Federal Court Access</u>**: **"We Charge Genocide"**- 1951 Petition to the United Nations. One of the primary reasons why in 1951 dozens of African Americans filed their petition to the United Nations titled, "We Charge Genocide," [9] was because

> "**[W]e Negro petitioners have no true and real recourse in these courts, because we receive no protection from the state, because police and courts are themselves involved in the genocide directed against us, that we are forced to appeal to the General Assembly for redress and relief**."[10]

One of the major grievances of these African American petitioners was that the United States Supreme Court had utilized the Fourteenth Amendment to protect the equal rights of American corporations but that it had for several decades failed to enforce those same constitutional rights in order to protect the civil rights of African American citizens. Their 1951 UN dossier thus stated:

> "The Supreme Court
>
> "The record of the Supreme Court in buttressing the tyranny directed against the Negro people is particularly revolting because it has decorated oppression with legal pomposity, excused genocide by every legal circumlocution found in the lexicon of law and precedent. Its record is peculiarly painful in that it has used the righteous tone of legal language to authorize murder and to permit that segregation which inevitably leads to mass slayings on the basis of race. With synthetic independence and with

[9] William L. Patterson, editor, *We Charge Genocide: The Crime of Government Against the Negro People* (New York, N.Y.: International Publishers, 1951)

[10] Ibid., p. 41.

> Olympian gestures it has handed over 15,000,000 Americans to oppression and grief….
>
> "It has used the very provision that was to protect Negroes to enrich the monopoly that oppressed them. If found that the Fourteenth Amendment was not meant for the protection of the Negro but for the protection of powerful corporations. From 1868 to 1912, the Supreme Court rendered 604 decisions based upon the Fourteenth Amendment, of which 312 concerned corporations. There were twenty-eight appeals to the Court involving Negro rights under the Fourteenth Amendment, of which twenty-two were decided adversely.
>
> "As late as 1945, in the case of *Screws v. United States*, the Supreme Court found that the Fourteenth Amendment, providing that Negroes should be allowed due process of law, did not apply to a Negro beaten to death by police before trial after he had been arrested and charged with theft of a tire. But it is in upholding segregation that the Supreme Court has been, and continues to be particularly adamant. Repeatedly it has held that segregation is not a violation of the Fourteenth Amendment providing for equality of treatment, on the theory that segregation is legal if 'separate but equal' accommodations are provided. The obvious and easily provable fact that accommodations provided for Negroes are virtually never equal but always inferior, has not shaken the Court. Mr. Justice Harlan, in a powerful dissent still valid today, charged his colleagues in 1896 with emasculating the Thirteenth and Fourteenth Amendments by upholding segregation."[11]

C. **<u>Denial of Federal Court Access</u>**: In 2000, the United States Department of State filed its official report to the *U. N. Committee on*

[11] Ibid., pp. 183 – 184.

the Elimination of Racial Discrimination,[12] which tacitly embraced, and adopted, the viewpoint of the dozens of African American citizens who had previously filed their 1951 UN dossier some forty-nine years earlier. The U. S. State Department's report tacitly admitted:

> "However, for **almost 100** years after the enactment of the Fourteenth Amendment, the **federal courts refused to apply its principles to state-sponsored racial discrimination and de jure segregation**. Thus, this kind of unequal treatment was the rule, rather than the exception, all over the United States until the middle of the twentieth century. In 1954, the U.S. Supreme Court, for the first time, applied the Fourteenth Amendment's requirements of "equal protection under the law" against the states and ushered into U.S. law the idea that state-sponsored segregation was antithetical to the country's fundamental principles. See *Brown v. Board of Education*, 347 U.S. 483 (1954)."

D. **Denial of Federal Court Access**: The United States Supreme Court has also acknowledged that for nearly a century, the federal courts of the United States had failed to enforce the Civil War Amendments to protect the civil rights of African Americans.

> See, e.g., Justice Lewis F. Powell's majority opinion in the case of *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 390-391 (1978), stating:
>
> > The Court's initial view of the Fourteenth Amendment was that its 'one pervading purpose' was 'the freedom of the slave race, the security and firm establishment of that freedom, and the

[12] U. N. Committee on the Elimination of Racial Discrimination, "Report Submitted by State Parties Under Article 9 of the Convention" (Third Periodic Reports of States Parties Due 1999)(Addendum, United States of America)(September 21, 2000), ¶ 79.

protection of the newly-made freeman and citizen from the oppressions of those who had formerly exercised dominion over him.' *Slaughter-House Cases*, 16 Wall. 36, 83 U. S. 71 (1873). **The Equal Protection Clause, however, was '[v]irtually strangled in infancy by post-civil-war judicial reactionism.'** It was relegated to decades of relative desuetude while the Due Process Clause of the Fourteenth Amendment, after a short germinal period, flourished as a cornerstone in the Court's defense of property and liberty of contract. See, e.g., *Mugler v. Kansas*, 123 U. S. 623, 123 U. S. 661 (1887); *Allgeyer v. Louisiana*, 165 U. S. 578 (1897); *Lochner v. New York*, 198 U. S. 45 (1905). In that cause, the Fourteenth Amendment's "one pervading purpose" was displaced. See, e.g., *Plessy v. Ferguson*, 163 U. S. 537 (1896).

E. **Denial of Federal Court Access**: Other critics, legal historians, and scholars have also long ago noticed and acknowledged that from between the period of the end of Reconstruction up through the early part of the twentieth century, the federal courts have failed, or refused, to enforce the federal constitutional and civil rights of African American citizens.

See, e.g., Gustavus Myers, *History of the Supreme Court of the United States* (Chicago, IL: Charles H. Kerr & Co., 1912), pp. 676 – 678, stating

> "The most noteworthy feature, however, in this decision applying to the bakeshop workers [*Lochner v. New York*, 198 U.S. 45 (1905)] was that the law was declared unconstitutional under the Fourteenth Amendment.
>
> "Now this amendment had been one of the amendments adopted to secure the full freedom of

Negroes, and safeguard them from the oppressions of their former owners. Yet for more than twenty years the Supreme Court of this United States, in deference to the demands of the ruling class, had consistently emasculated it. The Supreme Court had refused to define what the rights of Negroes were; it had held that the amendment had no reference to the conduct of individual to individual; it had declined to give the Negroes the protection of the National Government when it decided that 'sovereignty for the protection of rights of life and personal liberty within the States rests alone with the States.' This meant that the former slave States were empowered to abridge the liberty of the Negro as they pleased.

"Other decisions, each curtailing the rights of Negroes, followed. On the ground that it was not warranted by the amendment, an Act of Congress giving Negroes the right co-equally with whites of enjoying inns, public conveyances, theaters and other public resorts, was declared unconstitutional.[13] The right of suffrage was neither granted nor protected by the Amendment.[14] A State could curtail the right of trial by jury without violating the amendment.[15] It was further held that a State enactment requiring whites and Negroes to ride in separate railroad cars did not violate the amendment.[16]

"These are a few of the many decisions of the Supreme Court of the United States, the cumulative effect of which was to allow States to nullify

[13] Gustavus Myers, *History of the Supreme Court of the United States*, supra, p. 677, citing "*Civil Rights Cases*, 109 U.S. Reports, 3."

[14] Id., p. 677, citing "*U. S. v. Cruikshank*, 92 U.S. Reports, 542.

[15] Id., citing "*In re Lockwood*, 154 U.S. Reports, 3."

[16] Id., citing "*L. & N. R. R. Co. v. Schmidt*, 177 U.S. Reports, 230."

guarantees of freedom for the Negro. That many States did this is common knowledge.

"Finally, the Supreme Court sanctioned the most revolting kind of Negro peonage in the case of *Clyatt* who had been found guilty in Florida of forcibly keeping Negroes in virtual slavery. Passing on a writ of certiorari, the Supreme Court of the United States ordered the case back for a new trial on the pretext that the trial judge erred in permitting the case to go to the jury…."[17]

"Using the Fourteenth Amendment to load the helpless Negro race with the obloquy of prejudicial law and custom, and to snatch away from the white worker what trivial rights he still had, the Supreme Court availed itself of that same amendment to put corporations in a more impregnable position in law than they had ever been before."[18]

III. Exclusion of Material Evidence in State and Family Law Courts is a violation of *Jus Cogens*.

A. For this reason, African American husbands and fathers have *Jus Cogens* familial rights, under the Law of Nations (i.e., customary international law, 1948 UNDHR), as well as other treaty laws.

1866 Civil Rights Act

[17] Id., p. 678, citing "*Clyatt v. U.S.*, 198 U.S. Reports, 207. Brewer delivered the Court's decision. In this case, also, Harlan dissented. 'The accused' he said, 'made no objection to the submission of the case to the jury, and it is going very far to hold in a case like this, disclosing barbarities of the worst kind against these negroes, that the trial court erred in sending the case to the jury.'"

[18] Ibid., p. 679.

> "Sec. 1
>
> Be it enacted . . . , That all persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be **citizens of the United States**; and such citizens, of every race and color, without regard to any previous condition of slavery or involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall have the same right, in every State and Territory in the United States, **to make and enforce contracts**, **to sue**, **be parties**, and **give evidence**, **to inherit**, **purchase**, **lease, sell**, **hold**, **and convey real** and **personal property**, and to **full and equal benefit of all laws and proceedings for the security of person and property**, ***as is enjoyed by white citizens***, and shall be subject to like punishment, pains, and penalties, and to none other, any law, statute, ordinance, regulation, or custom, to the contrary notwithstanding."

B. In order for state or federal courts to properly vindicate the fundamental familial rights of African American husbands and fathers, they must be willing to receive and to objectively and fairly adjudicate material evidence on the unique trauma and plight of African American husbands, fathers, men, and boys.

C. Hence, federal courts and federal judges may not systematically exclude evidence of *Jus Cogens* violations, simply because such *Jus Cogens* evidence is narrowly-tailored or unique to the experiences of African American husbands and fathers—indeed, Article 2(2) of the ICERD expressly prohibits such exclusion.[19]

[19] Under international treaty law, Article 2(2) of the International Convention for the Elimination of Racial Discrimination (ICERD), the United States has the express duty to "when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms."

D. If the state courts cannot, or will not, receive such *Jus Cogens* evidence, then the U. S. District Courts must; otherwise, the entire state-federal court system apparatus will be in violation of the Law of Nations, as expressed in Article 8 of the Universal Declaration of Human Rights.

E. Because certain sensitive evidence regarding human sexuality, gender differences, the sources and causes of conflict-ridden relations with the opposite sex, and androcide or other forms of race-and-gender based oppression that are unique and narrowly-tailored to **the plight of African American husbands and fathers**, state and federal courts must—in order to facilitate the requirements of Article 2(2) of the International Convention on the Elimination of Racial Discrimination and the general demands of justice—be willing:

1. To study whether race-neutral family law and procedures, which ostensibly were adopted by state legislatures, which had no intent to ensure that such laws and procedures were responsive to the needs of African American families or to remedy the present-effects of slavery and discrimination upon them, do more harm than good to African American families and citizens;

2. To receive material evidence from Expert Witnesses in various professional and academic fields—social work, sociology, history, economics, social science, law, etc.—in order to facilitate the requirements of Article 2(2) of the International Convention on the Elimination of Racial Discrimination and the general demands of justice.

3. To determine whether alternative forms of family-law dispute resolution forums may be developed and

implemented in order to remedy the defects of state family law court systems.

4. To provide a federal administrative procedure whereby individual family law cases can be transferred from the state to the U. S. District Courts for the express purpose of implementing *Jus Cogens* and other similar federal constitutional standards within state court proceedings.

IV. Under the International Treaty Law to which the United States is a party --- *International Covenant on Civil and Political Rights* (ICCPR) ---- "**[t]he family"** is a basic and fundamental human right.

The **African American male population** (i.e., husbands and fathers) may also vindicate their familial rights as "**Head of the Family**" by pointing out that *Jus Cogens* (i.e., the customary Law of Nations) is indeed federal law; and that the International Covenant on Civil and Political Rights, as *Jus Cogens*, expressly establishes "**[t]he family**" as a basic human right, enforceable under the Thirteenth Amendment and Civil Rights Act of 1866 (i.e., 42 U.S.C. §§ 1981, 1982, and 1983).

A. **<u>General Provision</u>**: Article 23 of the *International Covenant on Civil and Political Rights* (ICCPR) protects "**[t]he family**" as "the natural and fundamental group unit of society."[20]

[20] Article 23(1): "The **family** is the natural and fundamental group unit of society and is entitled to protection by society and the State."

1. See, also, Declaration of Independence ("liberty of contractual pursuit" clause)[21]

2. See, also, First Amendment, U.S. Constitution ("right of marriage as substantive due process")[22]

3. See, also, **Thirteenth Amendment, U.S. Constitution** (proscribing both "slavery" and "involuntary servitude")[23]

4. See, also, the **1866 Civil Rights Act** (enforcing the 13th Amendment by guaranteeing the right to "make and enforce [marriage] contracts").[24]

5. See, also, Article 16 of the Universal Declaration of Human Rights, United Nations ("marriage" and "family" as fundamental rights.

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[21] Under the First Amendment, United States Constitution, marriage as a fundamental right. 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)...")

[22] Ibid.

[23] Ibid.

[24] Ibid. See, also, *Civil Rights Cases*, 109 U.S. 3, 22 (1883), stating "the Civil Rights Bill of 1866, passed in view of the Thirteenth Amendment before the Fourteenth was adopted, undertook to wipe out these burdens and disabilities, the necessary incidents of slavery constituting its substance and visible form, and to secure to all citizens of every race and color, and without regard to previous servitude, those fundamental rights which are the essence of civil freedom, namely, the same right to make and enforce contracts, to sue, be parties, give evidence, and to inherit, purchase, lease, sell and convey property as is enjoyed by white citizens."

B. **General Enforcement**:

1. The International Convent on Civil and Political Rights (ICCPR) was ratified by the U. S. Senate in 1992.[25]

2. Although ICCPR is "not self-executing" -- meaning that no private party can directly enforce ICCPR in a court of law—it is the official position of the United States Department of State that several federal constitutional and statutory provisions already adequately enforces and implement the same provisions of ICCPR.

3. However, the ICCPR may be utilized in the federal courts as *persuasive authority* when interpreting federal civil rights laws which have ostensibly been enacted to further the same ends of justice. (See, e.g., Sec. III below, regarding the implementation and reliance upon the ICERD in federal courts).

    a. See, also, Declaration of Independence ("liberty of contractual pursuit" clause.) [26]

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[25] 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.

[26] Under the First Amendment, United States Constitution, marriage as a fundamental right. 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)...")

b. See, also, First Amendment, U.S. Constitution ("right of marriage as substantive due process").[27]

c. See, also, **Thirteenth Amendment, U.S. Constitution** (proscribing "slavery" and "involuntary servitude").[28]

d. See, also, the **1866 Civil Rights Act** (enforcing the 13th Amendment and guaranteeing the right to "make and enforce the [marriage] contract").[29]

e. See, also, Article 16 of the Universal Declaration of Human Rights, United Nations ("marriage" and "family" as fundamental rights).[30]

V. Under the International Treaty Law to which the United States is a party --- *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD) **----** "[t]he right to marriage" is a basic and fundamental human right.

The **African American male population** (i.e., husbands and fathers) may also vindicate their familial rights as "**Head of the Family**" by pointing out that *Jus Cogens* (i.e., the customary Law of Nations) is

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[27] Ibid.

[28] Ibid.

[29] Ibid.

[30] Ibid.

indeed federal law; and that the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), as *Jus Cogens*, expressly establishes "**[t]he right to marriage**" as a basic human right, enforceable under the Civil Rights Act of 1866 (i.e., 42 U.S.C. §§ **1981, 1982, and 1983).**

A. **General Obligations**: Articles 2 of the *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD) imposes upon the United States certain treaty obligations to eliminate racism "in all its forms."[31]

1. Under international treaty law, Article 2(1) of the ICERD, the United States must "condemn racial discrimination and undertake to pursue by **all appropriate means** and **without delay** a policy of eliminating racial discrimination in **all its forms** and **promoting understanding** among all races"

2. Under international treaty law, Article 2(2) of the ICERD, the United States has the express duty to " when the circumstances so warrant, take, in **the social**, **economic**, **cultural** and **other fields**, special and **concrete measures** to ensure the adequate development and protection of **certain racial groups** or **individuals belonging to them**, for the purpose of guaranteeing them **the full and equal enjoyment of human rights** and **fundamental freedoms**."

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[31] *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD), Article 5(d)(4):

> "In compliance with the fundamental obligations laid down in **article 2** of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights… [t]he **right to marriage** and choice of spouse."

3. Under international treaty law, Article 5(d)(4) of the ICERD, the derogation or divestiture of **marriage** rights [or the right to contract marriage] is a form of "**racial discrimination**."[32]

    a. See, also, Declaration of Independence ("liberty of contractual pursuit" clause.[33]

    b. See, also, First Amendment, U.S. Constitution ("right of marriage as substantive due process").[34]

    c. See, also, **Thirteenth Amendment, U.S. Constitution** (proscribing "slavery" and "involuntary servitude").[35]

    d. See, also, the **1866 Civil Rights Act** (enforcing the 13th Amendment and guaranteeing the right to "make and enforce the [marriage] contract").[36]

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[32] Ibid.

[33] Under the First Amendment, United States Constitution, marriage as a fundamental right. 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)...")

[34] Ibid.

[35] Ibid.

[36] Ibid.

e. See, also, Article 16 of the Universal Declaration of Human Rights, United Nations ("marriage" and "family" as fundamental rights).[37]

B. **Enforcement of General Obligation**: the ICERD is not self-executing.

1. The International Convention on the Elimination of Racial Discrimination was ratified by the U. S. Senate in 1994.[38]

2. Although ICERD is "not self-executing" -- meaning that no private party can directly enforce ICERD in a court of law—it is the official position of the United States Department of State that several federal constitutional and statutory provisions already adequately enforces and implement the same provisions of ICERD.

The United States Department of State has cited several of these federal provisions in its 2000 Report to the United Nations, including:

i. The Fifth Amendment;[39]

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[37] Ibid.

[38] "The United States ratified the International Convention on the Elimination of All Forms of Racial Discrimination in October 1994, and the Convention entered into force for the United States on 20 November 1994. In its instrument of ratification, which was deposited with the Secretary-General of the United Nations pursuant to article 17 (2) of the Convention, the United States conditioned its ratification upon several reservations, understandings and declarations."

[39] United States' Report to the Committee on the Elimination of All Forms of Racial Discrimination, CERD/C/351/Add.1 10 October 2000. ("¶ 171 As was the case with prior

ii. The Thirteenth Amendment;[40]

iii. The Fourteenth Amendment;[41]

iv. The Civil Rights Act of 1866;[42]

v. The Civil Rights Act of 1871;[43]

vi. The Civil Rights Act of 1964;[44]

vii. And several other federal provisions.[45]

FEDERAL LAW ALREADY IMPLEMENTS THE ICERD

United States' Report to the Committee on the Elimination of All Forms of Racial Discrimination, CERD/C/351/Add.1 10 October 2000.

¶ 169 In ratifying the Convention, the United States made the following declaration:

human rights treaties, **existing U.S. law provides protections and remedies sufficient to satisfy the requirements of the present Convention**.")

[40] Ibid.

[41] Ibid.

[42] Ibid.

[43] Ibid.

[44] Ibid.

[45] Ibid.

> "[T]he United States declares that the provisions of the Convention are not self-executing."
>
> ¶ 170 This declaration has no effect on the international obligations of the United States or on its relations with States parties. However, **it does have the effect of precluding the assertion of rights by private parties based on the Convention in litigation in U.S. courts**. In considering ratification of previous human rights treaties, in particular the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (1994) and the International Covenant on Civil and Political Rights (1992), both the Executive Branch and the Senate have considered it prudent to declare that **those treaties do not create new or independently enforceable private rights in U.S. courts**. However, this declaration does not affect **the authority of the Federal Government** to enforce the obligations that the United States has assumed under the Convention through administrative or judicial action.
>
> ¶ 171 As was the case with prior human rights treaties, **existing U.S. law provides protections and remedies sufficient to satisfy the requirements of the present Convention**. Moreover, **federal, state and local laws already provide a comprehensive basis for challenging discriminatory statutes, regulations and other governmental actions in court**, as well as certain forms of discriminatory conduct by private actors. Given **the adequacy of the provisions already present in U.S. law**, there was **no discernible need for the establishment of additional causes of action** or **new avenues of litigation in order to guarantee compliance with the essential obligations assumed by the United States under the Convention**. As was the case with prior human rights treaties, **existing U.S. law provides protections** and **remedies sufficient to satisfy the requirements of the present Convention**. Moreover, federal, state and local laws already provide a comprehensive basis for challenging discriminatory statutes, regulations and other governmental actions in court, as well as certain forms of discriminatory conduct by private actors.

While the ICERD, as well as most other international law treaties, are not self-executing, they are nonetheless binding; and, as such, federal courts, while interpreting U. S. law, are at liberty to take international treaty law to which the United States is a signatory, such as the ICERD, into account and to find them to be persuasive when applying state or federal law.

Cases in which Federal Courts Have Applied International law to U.S. cases

- *Lawrence v. Texas*, 539 U.S. 558, 576 (2003)(citing the case law of the European Court of Human Rights)
- *Thompson v. Oklahoma*, 487 U.S. 815, 831 n. 34 (1988)(applying several international treaties to the interpretation of state law on juvenile death penalties)
- *Roper v. Simmons*, 543 U.S. 551, 579 (2005)(applying international law to the interpretation of state law on juvenile death penalties).

Therefore, the ICERD's description of the impairment of "marriage" rights as a form of "racial discrimination" may be utilized in federal civil rights litigation involving the deprivation of the fundamental rights of African American husbands and fathers as the "**Head of the Family**."

That is to say, under international treaty law, to which the United States is a party, the "marriage contract" falls under an express category of "racial discrimination," despite the fact that few, if any, America's state, local, or federal courts have expressly reached that conclusion:

International Convention on the Elimination of Racial Discrimination (ICERD) Article 5(d)(4) "[t]he right to marriage"	
United States Law	**International Law**
"Marriage Contracts; Head of Family" **Federal courts may apply the First Amendment, the Thirteenth Amendment, and the 1866 Civil**	**"Marriage Contracts; Head of Family"** **Under international law, Federal courts may also find the derogation of the "right to marriage" – within**

Rights Act to *racial discrimination* cases involving "the making and enforce of contracts… to convey… real and personal property rights… as is enjoyed by white citizens," etc.	**the *social*, *economic*, and *cultural* context of the plight of African American husbands, fathers, and men—to be a form of racial discrimination under Articles 2(2) and 5(d)(4) of the ICERD, which may be relied upon as *persuasive authority* when interpretating of the Thirteenth Amendment and the 1866 Civil Rights Act.**
"Marriage Contracts; Head of Family" First Amendment, ---------→ U.S. Constitution (Substantive Due Process of Law; Right to Privacy and Marriage) Under slavery, the right to make marriage contracts were denied to African Americans.	**"Marriage Contracts; Head of Family"** Articles 2(2) and 5(d)(4) of the ICERD may be utilized as *persuasive authority* that the First Amendment proscribes racial discrimination with respect to "[t]he right to marriage."
"Marriage Contracts; Head of Family" Thirteenth Amendment, ----------→ U.S. Constitution (Slavery and involuntary Servitude) Under slavery, the right to make marriage contracts were denied to African Americans.	**"Marriage Contracts; Head of Family"** Articles 2(2) and 5(d)(4) of the ICERD may utilized as *persuasive authority* to affirm that the Thirteenth Amendment proscribes racial discrimination with respect to "[t]he right to marriage."
"Marriage Contracts; Head of Family" Civil Rights Act of 1866 ----------→ (42 U.S.C. §§ 1981, 1982) The 1866 Civil Rights Act implements the Thirteenth Amendment (see, e.g., *The Civil Rights Cases*, 109 U.S. 3, 22 (1883) ; *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409 (1968).	**"Marriage Contracts; Head of Family"** Articles 2(2) and 5(d)(4) of the ICERD may be utilized as *persuasive authority* that the 1866 Civil Rights Act proscribes racial discrimination with respect to "[t]he right to marriage."

VI. Under the Law of Nations, whenever there is no treaty law or other domestic laws on point, federal courts may apply *Jus Cogens* (i.e., customary international law) to protect victims of human rights violations.

A. The divestiture of the "**Head of the Family**" status of African American husbands and fathers violates *Jus Cogens*.

1. "***Jus cogens* norms** are a subset of '**customary international law**,' are **binding on all nations**, and **cannot be preempted** by treaty." 48 C.J.S. 2d, § 1 [Citing *U. S. v. Struckman*, 611 F.3d 560 (9th Cir. 2010).]

2. "A '***jus cogens* norm**,' also known as a '**peremptory norm**' of international law, is a norm accepted and recognized by the international community of states as a whole as **a norm from which no derogation is permitted** and which can be modified only by a subsequent norm of general international law having the same character." 48 C.J.S. 2d, § 1 [citing *Yousuf v. Samantar*, 699 F.3d 763 (4th Cir. 2012)].

3. "A ***jus cogens*** norm is a norm accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted, and which can be modified only by a subsequent norm of general international law having the same character." 44B Am Jur 2d, § 3 [citing *Carpenter v. Republic of Chile*, 610 F.3d 776 (2d Cir. 2000); *Yousuf v. Samantar*, 699 F.3d 763 (4th Cir. 2012); Saleh v. Bush, 848 F.3d 880 (9th Cir. 2017)].

B. However, in the United States, there are <u>no state or federal laws</u> that expressly acknowledge and **remediate the effects of slavery** and **racial discrimination** upon the paternal and conjugal rights (i.e., the

"**Head of the Family**" status) of African American husbands and Fathers.

> ***Jus Cogens* as "Slave-Related Practices" and the Familial Rights of Black Men**
>
> For Details Regarding Marriage as a "civil contract" and the Husband as the "Head of the Family" and Black Men see, generally, Part II of this Series:
>
> **Author**: Roderick Andrew Lee Ford
>
> **Title**: "The Head of The Family: Towards A Federal Common Law of the Black Family"
>
> **Chapter Two**: "The 1866 Civil Rights Act and Right to 'Make and Enforce' the Marriage Contract'"
>
> **Chapter Three**: "The Freedmen's Bureau Courts and the Marriage Contract'"
>
> **Chapter Four**: "Black Men as 'Head of the Family'"
>
> **Weblink**:
>
> https://nebula.wsimg.com/6a1bfd60caea5b5dbc6d9f86782dfbe0?AccessKeyId=CFD051C099636C9F5827&disposition=0&alloworigin=1

C. Under the Law of Nations, "slavery" or "slave-related" practices violate *Jus Cogens* (i.e., customary international law) and may be punished in federal courts, even though there is no treaty law or domestic federal or state law in existence:

> **Eleventh U. S. Circuit Court of Appeals**
>
> ***United States v. Bellaizac-Hurtado*, 700 F.3d 1245 (11th Cir. 2012)**

In the case of *U.S. v. Bellaizac-Hurtado*, the Eleventh Circuit Court of Appeals defined *Jus Cogens* as "'**piracy**, **slavery** and **slave-related practices**, **war crimes**, **crimes against humanity**, **genocide**, **apartheid**, and **torture**'" and concluded that these crimes "have thus far been identified as supporting **universal jurisdiction**" among all nations.

D. To remedy the systematic divestiture of the "**Head of the Family" status of African American husbands and fathers** (i.e., *Jus Cogens* violations), federal judges are obligated to review the works of jurists, legal scholars, official government publications, and leading academic experts in various fields in order to ascertain the *nature of the crimes* being perpetuated against Black husbands and fathers, as well as to the "**customs** and **usages of civilized nations**."

1. U. S. Supreme Court leading opinion on sources of *Jus Cogens*

United States Supreme Court

***The Paquete Habana*, 175 U.S. 677, 700, 708 (1900)**

"International law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction, as often as questions of right depending upon it are duly presented for their determination. For this purpose, where there is **no treaty**, and **no controlling executive or legislative act or judicial decision**, **resort must be had to the customs and usages of civilized nations**; and, as evidence of these, to **the works of jurists and commentators**, who by **years of labor**, **research** and **experience**, have made themselves peculiarly well acquainted with the subjects of which they treat. **Such works are resorted to by judicial tribunals**, not for the speculations of their authors concerning what the law ought to be, but for trustworthy evidence of **what the law really is**. *Hilton v. Guyot*, 159 U.S. 113, 163- 164, 214-215....

"This review of the precedents and authorities on the subject appears to us abundantly to demonstrate that at the present day, by the general consent of the civilized nations of the world, and independently of any express treaty or other public act, it is an established rule of international law, founded on considerations of humanity to a poor and industrious order of men, and of the mutual convenience of belligerent States, that coast fishing vessels, with their implements and supplies, cargoes and crews, unarmed, and honestly pursuing their peaceful calling of catching and bringing in fresh fish, are exempt from capture as prize of war...."

2. Sources of *Jus Cogens* and the role of African American husbands and fathers within the Black Family [46]

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…."

3. Sources of *Jus Cogens* regarding State Family Law Systems that negatively affect the "Head of the Family" status of African American husbands and fathers

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 [47]

[46] Under the principle of *Jus Cogens* and the holding in *The Paquete Habana*, 175 U.S. 677, 700, 708 (1900), federal judges are obligated to review the works of **leading official government publications**, in order to ascertain the nature of the crimes being prosecuted and the "customs and usages of civilized nations," such as, in the case of the decline and fall of the Black Family in the United States, and on the plight of African American husbands and fathers.

[47] Under the principle of *Jus Cogens* and the holding in *The Paquete Habana*, 175 U.S. 677, 700, 708 (1900), federal judges are obligated to review the published works of **leading legal scholars** and **their publications**, in order to ascertain the nature of the crimes being prosecuted and the "customs and usages of civilized nations," such as, in the case of the systematic failure

4. **Sources of *Jus Cogens* regarding the interpretation of federal constitutional and statutory law that pertain to the civil rights of African American husbands, fathers, men, and boys: "*History and Tradition*"**

(a) Sources of *Jus Cogens* regarding the status and plight of African American husbands and fathers: Article 2(2) of ICERD

> Under international treaty law, Article 2(2) of the ICERD, the United States has the express duty to "when the circumstances so warrant, take, in **the social**, **economic**, **cultural** and **other fields**, special and **concrete measures** to ensure the adequate development and protection of **certain racial groups** or **individuals belonging to them**, for the purpose of guaranteeing them **the full and equal enjoyment of human rights** and **fundamental freedoms**."

(b) Sources of *Jus Cogens* regarding the status and plight of African American husbands and fathers: U.S. Supreme Court

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of state family law courts to properly comply with basic human rights standards, regarding the plight of African American families, fathers, and husbands, as articulated Article 2(2) of the International Covenant on the Prevention of All Forms of Racial Discrimination (ICERD), to wit:

> [Article 2(2) of the ICERD, the United States has the express duty to] 'when the circumstances so warrant, take, in the **social**, **economic**, **cultural** and **other fields**, **special and concrete measures to ensure the adequate development and protection of certain racial groups** or **individuals** belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms.'

Washington v. Glucksberg, 521 U.S. 702 (1997)[48]

[48] When ascertaining what are the "fundamental rights" of American citizens, the U. S. Supreme Court has held that "history and tradition" are an appropriate guidepost. See, e.g., *Washington v. Glucksberg*, 521 U.S. 702, 720-721 (1997), stating:

> Our established method of substantive-due-process analysis has two primary features: First, we have regularly observed that the Due Process Clause specially protects those fundamental rights and liberties which are, objectively, "**deeply rooted in this Nation's history and tradition**," [*Moore v. East Cleveland*, 431 U. S. 494, 503 (plurality opinion).]; *Snyder v. Massachusetts*, 291 U. S. 97, 105 (1934) ("so rooted in the traditions and conscience of our people as to be ranked as fundamental"), and "implicit in the concept of ordered liberty," such that "neither liberty nor justice would exist if they were sacrificed," *Palko v. Connecticut*, 302 U. S. 319, 325, 326 (1937).

(c) Sources of *Jus Cogens* regarding the status and plight of African American husbands and fathers: Examples included the Writings of Distinguished Jurists such as Justice Oliver Wendell Holmes

See, e.g., Oliver Wendell Holmes, Jr., *The Common Law* (New York, N.Y.: Dover Pub., 1991), p. 3, stating:

> "The life of the law has not been logic: it has been experience…. The law embodies the story of a nation's development through many centuries, and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics…. We must alternatively consult history and existing theories of legislation."

(d) Source of *Jus Cogens* regarding the status and plight of African American husbands and fathers: Examples include explanations of the Slave Codes' negative regulating the role of African American husbands and fathers within the Black Family in Florida and the United States

For Details Regarding the Denial of the "Head of the Family" status to African American men, see, generally, Part II of this Series

Author: Roderick Andrew Lee Ford

Title: "The Head of The Family: Towards A Federal Common Law of the Black Family"

Chapter One: The 'History and Tradition' of Fundamental Rights

Chapter Two: The 1866 Civil Rights Act and Marriage Contract

Chapter Three: The Freedmen's Bureau Courts and Marriage Contract

Chapter Four: "Black Men as 'Head of the Family'"

Chapter Five: The 1866 Civil Rights Act and Family Law Tribunals

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(e) Source of *Jus Cogens* regarding the status and plight of African American husbands and fathers: the Present-Day Effects of Labor Market Discrimination against Black Men and Black Families

<u>Evidence Presented to the Court Through Expert Witness Testimony</u>:

(1) Government Research: Daniel Moynihan

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)

"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….

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**.'

Evidence Presented to the Court Through Expert Witness Testimony:

(2) Academic Research: William Julius Wilson

William Julius Wilson, ***More Than Just Race: Being Black and Poor in the Inner City*** **(New York, N.Y.: W.W. Norton & Co., 2009), p. 77.**

"Many employers in our study favored women and recent immigrants of both genders (who have come to populate the labor pool in the low-wage service sector) over black men for service jobs.

"Employers in service industries felt that consumers perceived inner-city black males to be dangerous or threatening in part because of their high incarceration rates….

"Employers in the study maintained that black males lack the soft skills that their jobs require…."

Evidence Presented to the Court Through Expert Witness Testimony Evidence:

(3) Academic Research: Joe R. Feagin and Melvin Sikes

Joe R. Feagin and Melvin P. Sikes, ***Living With Racism: The Middle-Class Experience*** **(Boston, MA: Beacon Press, 1994), pp. 181-183.**

"On occasion, some observers of U. S. racial relations have asked whether black women face more or less discrimination than black men in pursuing their employment goals and careers….

'There are definitely systematic differences. [Black] women are perceived as being less of a threat, more passive than [Black] men.'"

Evidence Presented to the Court Through Expert Witness Testimony:

(4) Academic Research: Gerda Lerner

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

"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."

Evidence Presented to the Court Through Expert Witness Testimony:

(5) Academic Research: Carter Woodson and Lorenzo Greene

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

[During the Antebellum period, in northern status such as Ohio, Illinois, and New York]

"The 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…."

VII. Federal Courts may not ignore *Jus Cogens* or International Treaty violations that are perpetuated against the "Head of the Family" status of Black Men in the United States and Must Provide Effective Remedies

A. A nation-state's general obligation to provide an **effective remedy**[49] for human rights violations such as androcide or slave-related practices—which have historically prohibited African American husbands and fathers from carrying out their duties and privileges as "**Head of the Family**"—stems from the general principle of international law that such breaches must be remedied.[50]

B. The right to an **effective remedy** is also expressly enumerated in human rights treaties ratified or signed by the United States, including the International Covenant on Civil and Political Rights.[51]

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[49] See, e.g., the *Universal Declaration of Human Rights*, stating:

> **Article 8**
>
> Everyone has the right to **an effective remedy** by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law….

[50] See, e.g., *Chozow Factory (F.R.G. v. Pol.)*, 1928 P.C.I.J. (ser. A) No. 17, ¶ 21 (Sept. 13, 1928)("[I]t is a principle of international law, and even a general conception of law, that any breach of an engagement involves an obligation to make reparation); see also *Castillo-Paez v. Peru*, 1997 Inter-Am. Ct. H.R. (ser. C) No. 34, ¶ 82 (Nov. 3, 1997)(noting that the right to remedy "is one of the fundamental pillars… of the very rule of law in a democratic society").

[51] International Covenant on Civil and Political Rights art. 2(3), Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR](ratified by the United States).

C. The right to an **effective remedy** for international human rights violations has attained the status of customary international law.[52]

D. The **effective remedy** must entail reparation of the harm, including guarantees of non-repetition and changes in relevant laws and practices, as well as bringing those responsible to justice.[53]

E. The right to an **effective remedy** for *Jus Cogens* violations are absolute: nation-states cannot avoid providing a remedy for *Jus Cogens* violations.[54]

E. National Courts Are the Courts of First Instance for Adjudicating Claims of *Jus Cogens* or Treaty Violations and Providing an **Effective Remedy** to Victims

1. See, e.g., 28 U.S.C. § 1350(2)(b)("The district courts shall have original jurisdiction of any civil action ***by an alien*** for a tort only, committed in violation of the law of nations or a treaty of the United States.")

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[52] U. N. Basic Principles on the Right to a Remedy, Principles I.1(b) and 2; *Prosecutor v. Andre Rwamakuba*, Case No. ICTR-98-44C, Decision on Appropriate Remedy, ¶¶ 23-25 (Sept. 13, 2007); *Cantoral-Benavides v. Peru*, 2001 Inter-Am. Ct. H.R. (ser. C) No. 88, ¶ 40 (Dec. 3, 2001); *Customary International Humanitarian Law*, Vol., 1: Rules 537-50 (Jean-Marie Henckaerts & Louise Doswald-Beck, eds. 2005).

[53] See UNHRC General Comment No. 31, ¶ 16; U.N. Basic Principles on the Right to a Remedy, Principles 18-23. See also *Velasquez-Rodriquez v. Hond.*, 1989 Inter-Am. Ct. H.R. (ser. C) No. 7, ¶¶ 25-26 (July 21, 1989); *Papamichalopoulos and Others v. Greece*, App. No. 14556/89, 21 Eur. H.R. Rep. 439, ¶ 34 (1995).

[54] See *Judicial Guarantees in States of Emergency*, Advisory Opinion OC-9/87, 1987 Inter-Am. Ct. H.R. (ser. A) No. 9, ¶¶ 24-25 (Oct. 6, 1987).

2. Before an international human rights claim is admissible in an international forum, individuals must first exhaust adequate and available local remedies. See, e.g., *Jean v. Dorelin*, 431 F.3d 776, 782 (11th Cir. 2005), stating:

> More specifically, . . . [the exhaustion requirement] should be informed by general principles of international law. The procedural practice of international human rights tribunals generally holds that the respondent has the burden of raising the nonexhaustion of remedies as an affirmative defense and must show that domestic remedies exist that the claimant did not use. Once the defendant makes a showing of remedies abroad which have not been exhausted, the burden shifts to the plaintiff to rebut by showing that the local remedies were ineffective, unobtainable, unduly prolonged, inadequate, or obviously futile. The ultimate burden of proof and persuasion on the issue of exhaustion of remedies, however, lies with the defendant.

CONCLUSION

Historically, state constitutions, state laws, and state court systems in the United States were designed by all-white state Legislatures with only or primarily the benefit of white citizens in mind. Such laws and systems—even after slavery was ended—were not designed to address the unique plight and socioeconomic conditions of African Americans. Although the United States District Courts were fully vested with the power and the authority, under the Thirteenth and Fourteenth Amendments and 1866 and 1871 Civil Rights Acts to protect the vital interests of black citizens, it has historically rarely done so, and this is particularly true with respect to the plight of the African American families.

This chapter demonstrates that such reckless disregard of the state and federal courts towards the fundamental rights of African American families violates *Jus Cogens* (i.e., customary international law) as well as the treaty law of the United States.[55] Under both the International Covenant on Civil and Political Rights (ICCPR) and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), both "family" and "[t]he right of marriage" are basic human rights. The United States Department of State's 2000 report to the U.N. opined that the ICERD was already implemented in several federal and state constitutional laws and statutes.

For these reasons, the plight of African American husbands and fathers is indeed a "federal" constitutional crisis and fully cognizable under the Thirteenth and Fourteenth Amendments, U. S. Constitution, as well as

[55] Neo-liberal human rights and civil rights programs in the United States and the West are focused upon the plight of "women and children," without placing the it into the larger context of androcide or target oppression of the men and boys of insular minority groups. Hence, through taking jurisdiction over female-headed, single-parent African American families, state family law and policy have divested black American men of "head of the family" status in violation of *Jus Cogens*.

the 1866 and 1871 Civil Rights Act. Whenever African American husbands and fathers believe that state family law courts or agencies have violated their civil rights because they are "black men," the United States District Courts have authority, pursuant to 28 U.S.C. § 1331, to hear and adjudicate their claims and grievances. A refusal to hear such claims in the federal courts constitutes a violation of *Jus Cogen*, as well as the treaty law of the United States.

--- The End of Chapter Five ---

APPENDICES

Black Husbands and Fathers:

"Jus Cogens: *Androcide,* or Killing the Husband, Father, and Family Unit as an 'Image of God'"

By

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APPENDICES

Table of Contents

Introduction To Appendices

The Jus Cogens "**image of God**" foundation of international human rights law is promulgated in the Torah (Genesis 9:6). This principle is re-stated in the Decalogue (Exodus 20: 1-17) and other narratives in the Old Testament.

In Chapter One, I have explained how the **"image of God"** is manifest in the structure and nature of ***the first family***, where Adam was first created, then Eve; and from which Adam, the first husband or first father, was placed at the "Head of the Family." And from this example in the Old Testament, we may re-affirm the saying of Christ[1] and the theology and writings of the Apostle Paul.[2] Wherefore, in the Holy Bible and under orthodox Jewish law, the institution of **"marriage,"** in which man is **"Head of the Family,"** is itself the **"image of God."**[3]

But I should also add here the very important fact that Jacob (Israel) organized his twelve sons (i.e., the twelve tribes of Israel) along patriarchal lines; for Jacob, who had one daughter and twelve sons, only invested his sons with the heritage of the promise, as the leaders or patriarchs over their respective families.

---

[1] **Matthew 19: 4-6** ("And he answered and said unto them, Have ye not read, that **he which made them** at the beginning made them **male and female**, And said, For this cause shall a man leave father and mother, and shall cleave to his wife: **and they twain shall be one flesh**? Wherefore they are no more twain, **but one flesh**. What therefore **God hath joined together**, let not man put asunder.")

[2] **1 Timothy 2: 12-13** ("But I suffer not a woman to teach, nor to usurp authority over the man, but to be in silence. For **Adam was first formed**, **then Eve**."); **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.")

[3] See, e.g., Footnotes # 1 and #2, above. See also The Carter Center's ***Scripturally Annotation of the Universal Declaration of Human Rights*** at the following link: universal-declaration-human-rights-scriptually-annotated.pdf.

This the lawgiver Moses reaffirmed in the Torah, where a narrative is given of the national organization of the nation-state of Israel after having reached the Promised Land. See, e.g., Numbers 2: 32 ("These are those which were numbered of the children of Israel **by the house of their fathers**"). Indeed, each of the twelve tribes were headed by a Prince. See, e.g., Numbers 1: 16 ("princes of the tribes of their fathers, heads of thousands in Israel").

The "Restored Israel," whom Jesus the Messiah inherited, was organized along the lines of twelve men who were Christ's apostles (Matthew 10: 1-5), who thus symbolized the twelve tribes or the twelve princes of ancient Israel (Revelation 7: 4-8; 21:12).

From the example of the Torah, which Christ was the principal interpreter, the husband and the father is the "head" of the family, the clan, the tribe, the nations, etc. The woman, who came out from the man, was designed to be the man's helper (Genesis 2:18).

The Torah and the Decalogue thus constitute an age-old common law that exemplifies of the "Head of the Family" or *patriarchal* status within the traditional Anglo-American common law of the family structure,[4] to wit:

---

[4] See, e.g., 26 Am Jur, Husband and Wife, stating:

> § 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 basic 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 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

THE TORAH: FAMILY IN ANCIENT ISRAEL

THE FAMILY UNIT

The Israelite family as reflected in all genealogical and narrative sources is **patriarchal**. Attempts have been made to find traces of matriarchy and patriarchy in the earliest stages of Israel's history, but none of the arguments is convincing (see below).

The family was aptly termed bet av **("house of a father";** e.g., Gen. 24:38; 46:31). To found a family was "to build a house" (Deut. 25:10). The bayit ("house") was a subdivision of the mishpaḥah ("clan, family [in the larger sense]," Josh. 7:14). The criterion for membership in a family (in the wider sense) was blood relationship, legal ties (e.g., marriage), or geographical proximity. The genealogies of I Chronicles sometimes speak of the clan leader as the **"father"** of a town, or towns, in his district (e.g., I Chron. 2:51, 52). A common livelihood or profession was probably a major factor in family and clan solidarity. Besides those families who engaged primarily in agriculture (conducted on their own lands), there were others who practiced some specific trade (e.g., they were linen workers, I Chron. 4:21, or potters, I Chron. 4:23). The sacerdotal functions of the Levites and the sons of Aaron are the most striking case in point….

FUNCTIONS OF FAMILY MEMBERS

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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 respective functions and status of these persons are reflected in scattered passages. **The father was the head of the family unit** and owner of its property (Num. 26:54–55). He was the chief authority and, as such, is portrayed as commanding (Gen. 50:16; Jer. 35:6–10; Prov. 6:20) and rebuking (Gen. 37:10; Num. 12:14). Ideally he was expected to be benevolent, to show love to his family (Gen. 25:28; 37:4; 44:20) and also pity (Ps. 103:13). The patriarchal blessing (Gen. 27) evidently carried legal force with regard to the distribution of the patrimony and other attendant privileges.
>
> The mother, if she were the senior wife of a harem or the sole wife of a monogamous marriage, occupied a place of honor and authority in spite of her subordination to her husband (see below). At his death she might become the actual, and probably the legal, head of the household (II Kings 8:1–6) if there were no sons of responsible age. As a widow, she was especially vulnerable to oppression; concern for her welfare was deemed a measure of good government and wholesome society (e.g., Deut. 24:17). The influence of famous mothers in epic tradition, e.g., Sarah (Gen. 21:12) and the wife of Manoah (Judg. 13:23), is illustrative of the significance attached to their role. Not all of their power was exercised openly; often the motherly stratagem is deemed worthy of special notice in the epic tradition, e.g., the stratagems of Rebekah (Gen. 27:5–17), Leah (Gen. 30:16), and Rachel (Gen. 31:34). The mother naturally displayed care and love (Gen. 25:28; Isa. 49:15; 66:13; Prov. 4:3).

Thus, relying on the Holy Bible (i.e., the Torah and other Jewish traditions) and Anglo-American common law[5] as its model, the Black Church and the Black Family in the United States may rightfully cite the Holy Bible's exemplification of "Christian marriage," whereby man is established as the "**Head of the Family**," as *Jus Cogens* (i.e., as the customary international law on human rights).[6]

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[5] Ibid.

[6] See, generally, "Human Rights," *Jewish Virtual Library* (https://www.jewishvirtuallibrary.org/rights-human). And see, generally, **Chapter Four**, "The

Simultaneously, while relying upon that same authority, the Black Church and the Black Family may rely upon that same authority as defense of natural and human rights of African American men to their status as **"Head of the Family"**—namely, that any law, policy, or custom which is a derogation of that **"Head of the Family"** status [e.g., the several laws and customs of chattel slavery which impacted the Black family] violate Jus Cogens, or customary international human rights law.

CHRISTIAN MARRIAGE IS THE 'IMAGE OF GOD'

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….")

In other words, the Torah and the Decalogue constitute an age-old expression of natural moral law, Jewish law, and customary international law (i.e., *Jus Cogens*) regarding **gendercide**, **androcide**, or **gender-specific**

Law of Nations: The African Charter on People's and Human Rights and the Black American Family."

oppression, all of which constitutes "**slavery** and **slave-related practices,**"[7] which are criminal practices that are within the subject-matter jurisdiction of the federal courts of the United States.[8]

To be sure, "**androcide**" is a form of genocide.

The word "**androcide**" means the targeted killing men and boys.

Here, within an American context, the system of chattel slavery perpetuated a form of "**androcide**" in the form of a sinister system of prohibiting African American from fulfilling their natural functions as "husbands" and "fathers," thereby decimating the institution of African American "**marriage**" and thus violently mutilating the "**Image of God**" — i.e., *Jus Cogens*.[9]

In the Torah (i.e., the Law of Moses) and in the New Testament, androcide is mentioned and manifested as political measures utilized to suppress particular ethnic or racial groups, particularly the ancient Hebrews (Old Testament) and the Jews (New Testament).

In other words, "**[m]en** and **boys** are not solely targeted because of abstract or ideological hatred. Rather, **male civilians** are often targeted *during warfare* as a way to remove those considered to be potential combatants, and *during genocide* as a way to destroy the entire community."[10]

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[7] *United States v. Bellaizac-Hurtado*, 700 F.3d 1245, 1261 (11th Cir. 2012)(defining *Jus Cogens* as "'universality,' legal issues that involve "slavery and slave-related practices… have thus far been identified as supporting universal jurisdiction'")

[8] Ibid. This principle is expressly acknowledged by the Eleventh Circuit Court of Appeals (covering the federal district courts of Florida, Georgia, and Alabama).

[9] See, e.g., Footnote # 21, below.

[10] "Androcide," https://www.wikiwand.com/en/Masculicide#google_vignette (stating, "Androcide—the murder of men and boys on the basis of their gender").

In the Law of Moses, the narrative in the Book of Exodus regarding the killing of Hebrew baby boys denotes three notable factors or laws, to wit:

- First, there is the factor of **ethnic** or **racial distinctions**;
- Second, there is the factor of **social, economic, and political insecurities** that stem from those ethnic or racial distinctions; and,
- Third, there is the factor of **gender-specific ethnic or racial oppression** (i.e., *gendercide* or *androcide*) that is the result of social and political insecurities between two distinct ethnic or racial groups.

As these biblical accounts are told in the Torah and New Testament as forms of "Jewish law through narratives and storytelling,"[11] they indeed constitute a natural and universal moral law against racial hatred, murder, and genocide (i.e., *Jus Cogens*).

For instance, the Torah's account of Pharoah's decree to kill the newborn Hebrew boys,[12] and the New Testament's account of the kill of the "innocent" Jewish boys,[13] give the Black Church in the United States of America[14] —and indeed all humanitarians and Christians of all races and

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[11] For this Law of Moses is promulgated through a combination of express divine commandments (i.e., the Ten Commandments; the 613 additional Mosaic commandments) as well as divine stories, story-telling, or narratives.

[12] Exodus 1: 8-16.

[13] Matthew 2: 16.

[14] 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

nationalities— every reason to be concerned about the **"HEAD OF THE FAMILY STATUS" OF AFRICAN AMERICAN FATHERS, MEN, AND BOYS** in the United States of America.[15]

Significantly, Black America's foremost intellectual of the 20th Century, **W.E.B. Du Bois**, who is highly regarded as the "**Father of Pan-Africanism**,"[16] thus advised the Nigerian people that "the **ancient faith** in

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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." See, also, 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.")

[15] The suppression of this unique and distinct class of American citizens centers largely upon their status as "Head of the Family." See, e.g., 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.")

[16] "Panafricanism," *Britanica* (https://www.britannica.com/topic/Pan-Africanism)("Although the ideas of Delany, Crummel, and Blyden are important, the true father of modern Pan-Africanism was the influential thinker W.E.B. Du Bois."); "W.E.B. Du Bois was the Father of Pan-African Socialism," Jacobin (https://jacobin.com/2022/05/w-e-b-du-bois-father-pan-african-socialism-black-reconstruction-history); "W.E.B. Du Bois- The Father of Pan-Africanism?" *New African Magazine* (www.newafricanmagazine.com).

communal family and clan" is a "**method of protecting the masses**."[17] He made a similar analysis of the role of the Black Church in upgrading and protecting the Black Family in the United States, to wit:

Slavery and the Black Family	**Black Church and the Black Family during early 20th Century**
"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."[18]	"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."[19]

And yet the ripping apart of the conjugal relationship of African American men and African American women was key feature of American slavery (i.e., **"slavery"** and **"slavery-related practices"** under the international customary law of *Jus Cogens*).[20]

[17] W.E.B. Du Bois, *The World And Africa* (New York, N.Y. : International Publishers, 2015), p. 331.

[18] 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.

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

[20] *United States v. Bellaizac-Hurtado*, 700 F.3d 1245, 1261 (11th Cir. 2012)(defining *Jus Cogens* as "'universality,' legal issues that involve "slavery and slave-related practices….")

"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).

Indeed, the nature of this *Jus Cogens* violation to the **conjugal or marriage relationship between African American men and women** may be expressed as a constitutional tort, pursuant to 42 U.S.C. § 1983, and articulated under a number of common-law tort theories, including the following:

"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.

Moreover, as presented in Chapter Four, "Black Men as 'Head of the Family,'" in *Head of the Family: Towards a Common Law of the Black Family*,[21]

[21] See, generally, Roderick Andrew Lee Ford, *The Head of the Family: Towards a Common Law of the Black Family* [official court document filed in U. S. Federal Courts].

https://nebula.wsimg.com/6a1bfd60caea5b5dbc6d9f86782dfbe0?AccessKeyId=CFD051C099636C9F5827&disposition=0&alloworigin=1

both the general common law of the United States, and the common law in the state of Florida, firmly established the "husband" as the "Head of the Family."

There were three primary features of antebellum civil law that negatively impaired the "Head of the Family" status of African American men in the United States:

- First, under slavery, civil law negatively impaired the natural rights of African American men to function **as "*Husbands*.**

- Second, under slavery, the civil law negatively impaired the natural rights of African American men to function **as "*Fathers*."**

- Third, under slavery, white or non-black persons— whether as slave-holders, slave overseers, judges, and (or) lawyers — disproportionately defined, interpreted, and controlled the

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See, e.g., *"Head of the Family: Towards a Common Law of the Black Family"*

Chapter Four

"Black Men as 'Head of the Family'"

Contents

application of the civil law, which negatively impaired the naturals rights of African American men to function as "*Husbands*" and (or) as "*Fathers*."

But today there was also **a residual and secondary feature of the slavery system**, which today negatively impairs the "Head of the Family" status of African American men in the United States, namely this: a **"Custom and Usage" of dysfunctional familial relationships** that divest African American men of their status and functions as **"husbands"** and as **"fathers**."[22]

- A **"custom and usage"** of a system of **matriarchy** developed among the African American people, whereby African American women were taught, under the system of slavery, **not to rely upon African American men as the "Head of the Family**," whether as (a) *Husband* or as (b) *Father*.[23]

- Similarly, a **"custom and usage"** of a system of matriarchy encouraged African American men to perform sexually, to mate, and to procreate, as under the system of slavery, but to also shun responsibility as the **"Head of the Family."**[24]

- During the period of Jim Crow and throughout the 20th century, de jure racial discrimination and various economic pressures upon

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[22] See **Chapter One**, **"The Law of Nations: The Expert Witness Deposition of Armon R. Perry, Ph.D., MSW"**; see, also, 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; and see, also, Richard Ralph Banks, *Is Marriage For White People: How The African American Marriage Decline Affects Everyone* (New York, N.Y.: Penguin Group, 2011).

[23] Ibid.

[24] Ibid.

the Black Family helped to perpetuate this **"custom and usage"** of dysfunction among African American men and women.[25]

- During the late 20th century, public welfare policies helped to perpetuate this **"custom and usage"** of dysfunction among African American men and women—expressly deprecating the natural status of **African American men as the "Head of the Family**," whether as (a) *Husband* or as (b) *Father*.[26]

- The perpetuation of this **"custom and usage"** of divesting African American men of their "Head of the Family" status as "husbands" or "fathers" are expressly proscribed under the Thirteenth Amendment and the Civil Rights Act of 1866, which states:

> Be it enacted . . . , That all persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States; and such citizens, of every race and color, without regard to any previous condition of slavery or involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall have the same right, in every State and Territory in the United States, **to make and enforce contracts**, **to sue, be parties, and give evidence, to inherit, purchase, lease, sell, hold, and convey real and personal property, and to full and equal benefit of all laws and proceedings for the security of person and property, as is enjoyed by white citizens**, and shall be subject to like punishment, pains, and penalties, and to none other, any law, statute, ordinance, regulation, or **custom**, to the contrary notwithstanding.

- The perpetuation of this **"custom and usage"** of divesting African American men of their "Head of the Family" status as "husbands"

[25] Ibid.

[26] Ibid.

or "fathers" are expressly proscribed under the Thirteenth Amendment and the Civil Rights Act of 1871,[27] which states:

> Be it enacted…That any person who, under color of any law, statute, ordinance, regulation, **custom**, or **usage** of any State, shall subject, or cause to be subjected any person within the jurisdiction of the United States to the deprivation of any rights, privileges, or immunities secured by the Constitution of the United States, shall, any such law, statute, ordinance, regulation, custom or usage of the State to the contrary notwithstanding, be liable to the party injured in any action at law, suit in equity, or other proper proceeding for redress….

- The perpetuation of this **"custom and usage"** of divesting African American men of their "Head of the Family" status as "husbands" or "fathers" may be expressly proscribed as a violation of *Jus Cogens* (i.e., "slavery" or "slave-related practices" conditions) under customary international law,[28] and, as such, must be **adjudicated and remedied in the national courts of nation states** (i.e., in the United States District Courts).

- Specifically, in the state of Florida, the so-called **"race-neutral" family law statutes** [e.g., Fla. Stat. § 61, "Dissolution of Marriage, Support, and Time-Sharing"];

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[27] 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)...")

[28] *United States v. Bellaizac-Hurtado*, 700 F.3d 1245, 1261 (11th Cir. 2012)(defining *Jus Cogens* as "'universality,' legal issues that involve "**slavery** and **slave-related practices**… have thus far been identified as supporting universal jurisdiction'") (citing "Restatement (Third) of Foreign Relations Law § 404 (1987) (recognizing that universal jurisdiction applies only to "prescribe punishment for certain offenses recognized by the community of nations as of universal concern, such as piracy, slave trade, attacks on or hijacking of aircraft, genocide, war crimes, and perhaps certain acts of terrorism").

- (1) fail to address the **negative effects of slavery and racism** upon the Black Family and the "Head of the Family" status of African American men; [29]

- (2) systematically deny to African American fathers, husbands, and men the **constitutional remedies** necessary to abate the **negative effects of slavery and racism** upon their "Head of the Family" status, -- **constitutional remedies** which are implicitly contained within the Thirteenth Amendment and the 1866 Civil Rights Act;[30] and

- (3) thereby perpetuate the **"<u>custom and usage</u>"** of dysfunction among African American men and women, in violation of the Thirteenth Amendment.[31]

- Hence, the denial to African American men of the right to have their state family law grievances presented as ***Jus Cogens*** **customary international law violations** of their "manhood,"[32]

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[29] 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.

[30] Ibid.

[31] Ibid.

[32] Daniel P. Black, *Dismantling Black Manhood: An Historical and Literary Analysis of the Legacy of Slavery* (London and New York: Garland Publishing, Inc., 1997).

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"husbandhood,"[33] and "fatherhood"[34] rights and adjudicated in the U. S. District Court violates both *Jus Cogens*[35] and international treaty law,[36] because U.S. District Courts must apply international principles of *Jus Cogens* to federal statutory law, such as the Civil Rights Acts of 1866 and 1871, where applicable.[37]

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[33] Ibid.

[34] Ibid.

[35] Indeed, the right to a remedy for international human rights violations has attained the status of customary international law. See U.N. Basic Principles on the Right to a Remedy, Principles I.1(b) and 2; *Prosecutor v. Andre Rwanmkuba*, Case No. ICTR-98-44C, Decision on Appropriate Remedy, ¶ 40 (Jan. 31, 2007); *Prosecutor v. Andre Rwanmkuba*, Case No. ICTR-98-44C-A, Decision on Appeal Against Decision on Appropriate Remedy, ¶¶ (Sept. 13, 2007); Cantoral-Benavides v. Peru, 2001 Inter-Am. Ct. H.R. (ser. C) No. 88, ¶ (Dec. 3, 2001); *Customary International Humanitarian Law*, Vol. 1: Rules 537-50 (Jean-Marie Henckaerts & Louise Doswald-Beck, eds. 2005).

[36] See, e.g., European Convention for the Protection of Human Rights and Fundamental Freedoms art. 13, Nov. 4, 1950, 213 U.N.T.S. 222 [hereinafter ECHR]; African Charter on Human and People's Rights art. 7(1)(a), adopted June 27, 1981, 1520 U.N.T.S. 217; League of Arab States, Arab Charter on Human Rights art. 23, May 22, 2004, reprinted in 12 INT'L HUM. RTS. REP. 893 (2005); Universal Declaration on Human Rights, G.A. Res. 217A(III), art. 8, U.N. Doc. A/810 (Dec. 10, 1948); American Declaration on the Rights and Duties of Man arts. 17-18, O.A.S. Res. XXX, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OAS/Ser.L/V/I.4 Rev. 9 (2003); Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, G.A. Res. 40/34, ¶ 4, U.N. Doc. A/RES/40/34 (Nov. 29, 1985); U.N. Human Rts. Comm. General Comment 31, ¶¶ 15-17, U.N. Doc. CCPR/C/21/ Rev.1/Add.13 (May 26, 2004)[hereinafter UNHCR General Comment 31]; Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, G.A. Res. 60/147, Principles 18-23, U.N. Doc. A/RES/60/147 (Dec. 16, 2005)[hereinafter U.N. Basic Principles on the Right to a Remedy].

[37] See, e.g., Restatement (Third) of Foreign Relations Law § 702(c) (Am. L. Inst. 1987)("The customary law of human rights is part of the law of the United States to be applied as such by State as well as federal courts."). *Lawrence v. Texas*, 539 U.S. 558, 576 (2003)(citing the case law of the European Court of Human Rights); *Thompson v. Oklahoma*, 487 U.S. 815, 831 n. 34 (1988)(noting that the International Covenant on Civil and Political Rights, the American Convention on Human Rights and the Geneva Convention Relative to the Protection of Civil Persons in Time of War prohibit juvenile death penalties); *Roper v. Simmons* , 543 U.S. 551, 579

APPENDICE I.

"Androcide in the Torah (Law of Moses)"

When the Black Church and African American fathers, husbands, men, and boys turn to the Holy Bible as the moral foundations upon which they assert *Jus Cogens* violations, they are standing upon the foundations of ancient Hebrew and Jewish legal tradition which holds that:

> "the Torah of the Jews is… a basis for social, political, and religious life";[38]
>
> "the Torah has an equal concern for behavior n communal affairs, like the court system, employee/employer relations, and property rights";[39] and,
>
> "a judge and his court are surrogates for God's judgments…."[40]

And because the Torah holds generally that all of humanity was made in the "**image of God**" (Genesis 9:6; Noahic covenant), all of humanity has certain unalienable rights that are, in essence, the foundation of international human rights.[41]

(2005)(relying on international human rights law to hold that sentencing juveniles to death violates the Eighth Amendment).

[38] Arthur Kurzweil, *The Torah* (Hoboken, N.J.: Wiley Publishing, Inc., 2008), p. 1.

[39] Ibid., p. 5.

[40] Ibid., p. 161.

[41] Fiona de Londras, "The Religiosity of Jus Cogens: A Moral Case For Compliance?" Javaid Rehman and Susan C. Breau (eds), *Religion, Human Rights and International Law* (Netherlands: Koninklijke Brill NV, 2007)(Chapter 9)("[t]here can be little doubt that the initial stages of rights

To be sure, in the Holy Bible and under orthodox Jewish law, the institution of **"marriage,"** in which man is **"Head of the Family,"** is itself the **"image of God."**[42]

Within the text of the Torah, there is a general principle of nature which explains clearly that when two nationalities become belligerent, the nature of their conflict often takes on forms of "**androcide**," that include the systematic decimation of the "**image of God**."

That is to say, the nature of the racial discrimination or racial oppression against one group by another group often takes on the form of *sexualized violence*, *sexualized discrimination*, or *sexualized oppression* **directed against men and boys (i.e., androcide)**, and the destruction of "marriage" or "family" (i.e., the "**image of God**") depending upon the context or the specific objectives of the oppressing group.

In the United States, the plight of African American husbands, fathers, men, and boys—i.e., as "Heads of the Family"-- may be credibly grounded upon, as matter of *Jus Cogens*, the moral principles contained within the Torah of the Jews (i.e., the Sacred Scriptures) in that regards.

And, upon the foundation of this Jewish **Torah**, the Black Church and the Black preacher must have an authoritative voice in the practical application of the family law, civil rights, and human jurisprudence of the United States.

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protections in international law were influenced by Judeo-Christian principles of human dignity.")

[42] See, e.g., Footnotes # 1 and #2, above.

A. "Androcide in the Old Testament Law"

In the Old Testament, the most frequent type of gendercide occurred in the form of "**androcide**" or the targeted oppression or killing of men and boys of a particular despised nationality or racial or ethnic group. For instance, in the Book of Exodus, we find the narrative of Pharoah and the Egyptians oppressing the Hebrew people.

The Egyptians became insecure upon realizing that the Hebrew people were increasing in number; they thus oppressed them with rigorous and hard labor. But when this oppression still did not stop the steady growth in the Hebrew population, the king of Egypt ordered that all newborn Hebrew baby boys—not the girls—be killed, thrown in the Nile River, etc.

Exodus 1: 8 - 22

8 Then a new king, to whom Joseph meant nothing, came to power in
Egypt. 9 "Look," he said to his people, "the Israelites have become far
too numerous for us. 10 Come, we must deal shrewdly with them or
they will become even more numerous and, if war breaks out, will join
our enemies, fight against us and leave the country."

11 So they put slave masters over them to oppress them with forced
labor, and they built Pithom and Rameses as store cities for
Pharaoh. 12 But the more they were oppressed, the more they
multiplied and spread; so the Egyptians came to dread the
Israelites 13 and worked them ruthlessly. 14 They made their lives bitter
with harsh labor in brick and mortar and with all kinds of work in the
fields; in all their harsh labor the Egyptians worked them ruthlessly.

15 The king of Egypt said to the Hebrew midwives, whose names were
Shiphrah and Puah, 16 "When you are helping the Hebrew women
during childbirth on the delivery stool, **if you see that the baby is a
boy, kill him; but if it is a girl, let her live**." 17 The midwives, however,

feared God and did not do what the king of Egypt had told them to do; they let the boys live. 18 Then the king of Egypt summoned the midwives and asked them, "Why have you done this? Why have you let the boys live?"

19 The midwives answered Pharaoh, "Hebrew women are not like Egyptian women; they are vigorous and give birth before the midwives arrive."

20 So God was kind to the midwives and the people increased and became even more numerous. 21 And because the midwives feared God, he gave them families of their own.

22 Then Pharaoh gave this order to all his people: "**Every Hebrew boy that is born you must throw into the Nile**, **but let every girl live**."

But we are not to assume that this example of singling out and distinguishing the boy babies (i.e., the males) from the girl babies (i.e., the females) is inherently evil according to biblical standards, because even the ancient Hebrews, whom God had commanded, committed the same type of acts of gendercide (i.e., **androcide**), as in the Book of Deuteronomy, where the God of Israel ordered the Hebrews to kill every man, but keep the women and children alive, in situations where cities refused to surrender, viz:

Deuteronomy 20: 10 - 15

10 When you march up to attack a city, make its people an offer of peace. 11 If they accept and open their gates, all the people in it shall be **subject to forced labor** and shall work for you.

12 If they refuse to make peace and they engage you in battle, lay siege to that city. 13 When the LORD your God delivers it into your hand, **put to the sword all the men in it**. 14 As for **the women, the children, the livestock and everything else in the city, you may take these as plunder for yourselves.** And you

may use the plunder the LORD your God gives you from your enemies. **15** This is how you are to treat all the cities that are at a distance from you and do not belong to the nations nearby.

Here we are not to understand that men or boys are targeted for no apparent reason, when, in nature and through the laws of warfare, the male population in targeted groups is often labeled as the source of danger and potential belligerent rebellion and reprisal. "Men and boys are not solely targeted because of abstract or ideological hatred. Rather, male civilians are often targeted during warfare as a way to remove those considered to be potential combatants, and during genocide as a way to destroy the entire community."[43]

The birth of Moses thus occurred under such conditions of androcide (i.e., the targeted killings of Hebrew baby boys) for political reasons.

B. "Androcide in the New Testament Law"

Now Christ expounded upon the Law of Moses and is Chief Rabbi of the Christian Religion. (Matthew 5:17 ["Think not that I am come to destroy the law, or the prophets…."]; Matthew 9:35 [teaching in synagogues]; Matthew 19: 3-12 [marriage and divorce]).

As such, the New Testament is a midrash of the Mosaic Law. Hence, the birth of Christ occurred under similar circumstances as did the birth of Moses, viz:

[43] "Androcide," https://www.wikiwand.com/en/Masculicide#google_vignette (stating, "Androcide—the murder of men and boys on the basis of their gender").

The Last Eight Leaders of the Jewish Hasmonean Dynasty in ancient Judea

1. Aristobulus I, 104–103 BC (King and High Priest)
2. Alexander Jannaeus, 103–76 BC (King and High Priest)
3. Salome Alexandra, 76–67 BC (the only Queen)
4. Hyrcanus II, 67–66 BC (King from 67 BCE; High Priest, 76 BC)
5. Aristobulus II, 66–63 BC (King and High Priest)
6. Hyrcanus II (restored), 63–40 BC (High Priest from 63 BC; Ethnarch from 47 BC)
7. Antigonus, 40–37 BC (King and High Priest)
8. Aristobulus III, 36 BC (only High Priest)

• Herod the Great executed all of the last surviving male members of the Hasmonean Dynasty, even executing three of his own sons, who were born to his wife Mariamne, a sister of Hasmonean High Priest Aristobulus III.[44]

The Herodian Dynasty in ancient Judea

1. Antipater the Idumaen (47 – 44 BC)
2. Herod the Great (72 BC – 1 BC) * Jesus Christ is born.

• After receiving news that the Jewish Messiah had been born, Herod the Great executed all of the Hebrew baby boys aged two years old and younger.[45]

In fact, one of King Herod's most ferocious acts was to have the last scion of the Hasmonean dynasty, who was the High Priest, killed, because Herod feared his political influence and popularity with the Jewish people, to wit:

[44] "Herod the Great," Wikipedia (online encyclopedia): https://en.wikipedia.org/wiki/Herod_the_Great

[45] Ibid.

> To secure himself against danger from [the last scion of the Hasmonean royal house and High Priest, Aristobulus III (53 – 36 BC] Herod instituted a system of espionage against him and his mother. This surveillance proved so onerous that they sought to gain their freedom by taking refuge with Cleopatra. As told by the Roman Jewish historian Josephus, their plans were betrayed and the disclosure had the effect of greatly increasing Herod's suspicions against his brother-in-law. As Herod dared not resort to open violence, he caused him to be drowned while he was bathing in a pool in Jericho during a banquet organized by Aristobulus' mother.[46]

Thus, Herod the Great created a ruling religious class of Jewish priests that was loyal to both the Herodian kings and the Roman empire.[47] This means that the Jewish priesthood during the time of Christ's birth, and for the next three decades during his lifetime, was Herodian and pro-Roman. The political implications of Jesus's spiritual kingdom—though misunderstood at the time by Jewish and Roman authorities—was a direct threat to King Herod and the Herodian-Roman political system in Judea.

The Gospel of Matthew's description of King Herod the Great, and the historical account of the times in which Jesus was born, are credible, since they correlate perfectly with the historical records and secular descriptions of the same personalities and time period.

The Gospel of Matthew, for instance, states that "[w]hen Herod realized that he had been outwitted by the Magi, he was furious, and he gave orders to **kill all the boys in Bethlehem** and its vicinity who were two years old and under, in accordance with the time he had learned from

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[46] Source: "Aristobulus III of Judea," Wikipedia (online encyclopedia): https://en.wikipedia.org/wiki/Aristobulus_III_of_Judea

[47] Ibid.

the Magi."[48] This description of Herod the Great correlates with the historical records of his other devious tendencies and drastic measures to secure his own political position, authority, and influence. Herod the Great's reputation was so dangerous, that even Joseph and Mary, the proud parents of Jesus, did not trust Herod's son, Herod Archelaus (Ethnarch of Judea)(4 – 6 AD), and refused to return to Judea, but instead settled in Galilee, in the town of Nazareth.[49]

Thus relying upon the political theology of the Sacred Scriptures, we find that "androcide" was employed to target **men and boys** who are actual or potential threats to the established political order, power structure, polity or civil government, or particular civil magistrates and authorities.

C. "Androcide in other World History"

The international status of the plight of African American men, husbands, and fathers in the United States can only be rightfully understood through the lens of the Law of Nations governing war and peace between diverse groups of peoples.

That Law of Nations consists of common codes of behavior stemming from the laws of nature. In the long sage of human history, the laws of nature are manifest, and this we find stated plainly in the Sacred Scriptures, as in Psalm 19 ("*The heavens declare the glory of God; and the firmament sheweth his handywork*….").

And here, the Law of Nations (e.g., the law of war and warfare, the law of slavery and the treatment of enemy combatants, etc.) demonstrates that throughout human history the primary cause of war has been male-to-male competition and conflict; and the primary forms of warfare have been

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[48] Matthew 2:16.

[49] Matthew 2:20-23.

between male-to-male combatants, often leading to organized and sustained forms of androcide (i.e., the gendercide of men).

Gendercide of men

Gendercide of men has been, and continue to be, a common component of political, military and ethnic conflicts, including mass killings of non-combatant men and boys.

Examples of violent conflicts where gender-selective mass killings of men has occurred outside the realm of traditional "battlefield" warfare:

- The Paraguayan War of 1864 - 1870
- World War II, including the Jewish holocaust and the killings of 2.8 million Soviet prisoners-of-war by Nazi authorities in 1941-1942
- The Indonesian genocide of 1965-1966
- The Delhi Massacre of 1984
- The 1988 Anfal Campaign in Iraqi Kurdistan
- The Balkan War of the 1990s
- The East Timor conflict (including the gendercide of 1999)

Stalin´s Purges deserve a special mentioning, due to both their complexity and massive scale. They did not occur as a part of a conflict between two clearly defined opposing sides but did include notable elements of both gender selection and ethnic selection.

When we begin to look closer at conflicts with our gendercide glasses on, we notice many interesting nuances. Take for instance the Jewish holocaust during World War II. Both men, women and children were victims of the holocaust, but some phases of the holocaust were strongly gendered. A similar pattern can be noticed for the Armenian genocide of 1915-1917 and 1994 Rwandan genocide of Tutsis, genocides where both men, women and children were victims but where there were also gendered

components that could possibly help us better understand the underlying mechanisms of this type of atrocities.[50]

Between two groups of warring peoples, where one group is predominant and victorious over the other, then the subordinate-group males typically become the targets of physical, economic, and other similar forms of oppression and abuse, and this can form the basis of intergenerational conflict and on-going oppression .

In the most extreme cases, "**androcide**" (i.e., the targeted killing of subordinate-group males) is often the result. In the Medieval world, this was the common tactic of warlords such as Genghis Khan, viz:

> Genghis Khan was among many recorded warlords who would often employ the mass, indiscriminate murder of men and boys he felt threatened by regardless if they were soldiers, civilians, or simply in the way.
>
> In the year 1202, after he and Ong Khan allied to conquer the Tatars, and ordered the execution of every Tatar man and boy taller than a linchpin, and enslaving Tatar women for sexual purposes. This was done as collective punishment for the fatal poisoning of Genghis Khan's father, Yesugei for which the Mongols blamed the Tatars according to *The Secret History of the Mongols*.
>
> Likewise, in the year 1211, Genghis Khan had planned on the widescale killing of males in retaliation for the revolt against his daughter Alakhai Bekhi, until she persuaded him to only

[50] "Gendercide," https://www.gendercide.org/

> punish the murderers of her husband, the event which caused the revolt.

As previously mentioned, **androcide** (i.e., the targeted killing of subordinate-group males) occurred during the early 1900s in Armenia, viz:

> During the Armenian genocide of the 1910s, Turkish irregulars massacred Armenian men.
>
> Men were the traditional heads of the family, so killing them meant that the remainder of the community was defenseless and without leadership.
>
> The women were then subjected to rape, sex slavery, kidnapping, forced conversion, and forced marriage.
>
> Although men were typically massacred first, women were also massacred or died during death marches. Both the murder of men and the sexual violence against women furthered the plan to exterminate the Armenian population.[51]

In more recent times, **androcide** occurred in Iraq, between the Iraqis and the Kurds, to wit:

> The Anfal genocide of 1988 killed between 50,000 and 182,000 Kurds and thousands of Assyrians during the final stages of the Iran-Iraq War. This act committed during the Anfal Campaign was led by Ali Hassan al-Majid, under the orders of President Saddam Hussein.
>
> Anfal, which officially began in 1988, had eight stages in six geographical areas. Every stage followed the same patterns: steer civilians to points near the main road, where they were

[51] "Androcide," https://en.wikipedia.org/wiki/Androcide.

> met by the jash forces and transported to temporary meeting points.
>
> After transport, they were then separated into three groups: teenage boys and men, women and children, and the elderly.
>
> The men and teenage boys were never to be seen again.
>
> Women, all children, and the elderly of both genders were sent to camps; men were immediately stripped out of their clothes, only wearing a sharwal, and were executed.
>
> Gendercide Watch also regards this case as a gendercide against men. Many Kurd men and boys were killed in order to reduce the chance of ever fighting back.

And **androcide** was also a key component of the Rwandan genocide, during the conflict between the Tutsi and the Hutu peoples, viz:

> The Rwandan genocide of 1994 caused the death of hundreds of thousands of ethnic Tutsi people.
>
> Men were the primary targets for killing, while women were the primary targets for rape and mutilation.
>
> Because of this, Gendercide Watch describes the Rwandan genocide as a gendercide against men, even though men were not the sole victims; Tutsi women were also murdered.

These examples from world history plainly demonstrate that when two groups of peoples are in various forms of economic, political, or social conflict—such as European Americans and African Americans in the Western hemisphere – the male population within the subordinate group (i.e., the ***Black male population***) often experiences racial discrimination and racial oppression that is different and distinct in kind and degree from

the adverse treatment received by the females (i.e., the ***Black female population***) within that subordinate-group population.[52]

[52] In the 21st century, the undersigned author surmises that one major form of group oppression so the *destruction of family life or the institution of the Black family,* together with the *reversal of sex roles* between Black men and Black women—thus creating the ultimate proverbial Babylonian confusion—with the oppressed Black population. See, e.g., Ralph Richard Banks, *Is Marriage For White People: How the African American Decline Affects Everyone* (New York, N.Y.: Dutton/ Penguin Group, 2011).

APPENDICE II.

"Androcide: The Black Husband, the Black Father, and the Black Family"

Within the context of the Torah (i.e., Jewish legal history and tradition) the denial to certain, select **"targeted" groups** of fathers, husbands or men of the ability to function as **"Head of the Family"** implicate the crime of **androcide**, **gendercide**, and (or) **genocide**.[53]

In other words, the "killing" of "men" may take on many forms: it may be a "physical" killing men, such as "murder" and "castration"; or, it may be a "spiritual" or a **"cultural" killing of men**, whereby the men within the **"targeted" group of men** are prohibited from carrying out or fulfilling natural roles and responsibilities ***as husbands*** and **as *fathers***.

In the antebellum American South, this later form of *"cultural" killing* of men was often reinforced by the *"physical" killing* of men.

In other words, the African men within the "targeted" group are given two proverbial choices: (1) accept their subordinated status on the slave plantations (i.e., the "cultural" killing of their manhood roles as husbands and fathers) or (2) be emasculated, castrated, killed, etc., etc.[54]

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[53] See, e.g., *Convention on the Prevention and Punishment of the Crime of Genocide* (1948), Article II (describing "genocide" as "(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.

[54] See, e.g., "South Carolina Slave Code," https://en.wikipedia.org/wiki/South_Carolina_slave_codes ("South Carolina established its first slave code in 1695. The code was based on the 1684 Jamaica slave code, which was in turn based on the 1661 Barbados Slave Code. The South Carolina slave code was the model for other North American colonies. Georgia adopted the South Carolina code in 1770, and Florida adopted the Georgia code.")

However, in the United States, the chief problem in American family law, which is administered primarily in the state courts, is that state family law statutes neither explicitly acknowledge, nor afford remedies for, the trauma which slavery and racial oppression perpetuated against the **"Head of the Family"** status of African American husbands and fathers—through **"custom and usage."**

Notably, this **"custom and usage"** is a comprehensive cultural pattern in which both black and white Americans alike participate in the suppression of the function of African American men as "Head of the Family" – several renowned African American sociologists have reached this conclusion, including Armon R. Perry,[55] William Julius Wilson,[56] and E. Franklin Frazier.[57]

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[55] See, e.g., Armon R. Perry, *Black Love Matters: Authentic Men's Voices on Marriages and Romantic Relationships* (Lanham, MD: Lexington Books, 2020).

[56] See, e.g., William Julius Wilson, *More Than Just Race: Being Black and Poor in the Inner City* (New York, N.Y.: W.W. Norton & Co., 2009).

[57] See, e.g., E. Franklin Frazier, *Black Bourgeoisie* (Glencoe, Illinois; The Free Press, 1957), pp. 220-221, stating:

> There is much frustration among black bourgeoisie despite their privileged position within the segregated Negro world. Their 'wealth' and 'social' position can not erase the fact that they are generally segregated and rejected by the white world. Their incomes and occupations may enable them to escape the cruder manifestations of racial prejudice, but they can not insulate themselves against the more subtle forms of racial discrimination. These discriminations cause frustrations in Negro men because they are not allowed to play the 'masculine role' as defined by American culture. They can not assert themselves or exercise power as white men do….
>
> As one of the results of not being able to play the 'masculine role,' middle-class Negro males have tended to cultivate their 'personalities' which enables them to exercise considerable influence among whites and achieve distinction in the Negro world. Among Negroes they have been noted for their glamour. In this respect they resemble women who use their 'personalities' to compensate for their inferior status in relation to men. This fact would seem to support the observation of an American sociologists that the Negro was 'the lady among the races,' if he had restricted his observation to middle-class males among American Negroes.

The roots of this oppression from **"custom and usages"** are deeply-rooted in the culture of the United States:

A. "Androcide: "Frederick Douglass (1817 – 1895)"

Frederick Douglass (1817 – 1895) on the effects of Slavery upon the Black family and the African American father:

> "I say nothing of father, for he is shrouded in a mystery I have never been able to penetrate. Slavery does way with fathers, as it does with families. Slavery has no use for either fathers or families, and its laws do not recognize their existence in the social arrangements of the plantation. When they do exist, they are not the outgrowths of slavery, but are antagonistic to that system. The order of civilization is reversed here."[58]

In the South the middle-class Negro male is not only prevented from playing a masculine role, but generally he must let Negro women assume leadership in any show of militancy. This reacts upon his status in the home where the tradition of female dominance, which is widely established among Negroes, has tended to assign a subordinate role to the male.

[58] Frederick Douglass, "My Bondage and My Freedom," *Autobiographies* (New York, N.Y.: The Library of America, 1995), p. 151.

B. Androcide: "*Partus sequitur ventrem*"

Ostensibly, the antebellum public policy of the American South made the **"Black mother"** the sole "family governor" of the "Black family," (i.e., matriarchal), thereby removing the "Black father" from having any conjugal or parental responsibility or authority. This was achieved through the adoption of the Roman law of *Partus sequitur ventrem*, which became a part of the municipal slave codes in the North American slave-holding colonies:

> *Partus sequitur ventrem* ("[t]hat which is born follows the womb"; also partus) was a legal doctrine passed in colonial Virginia in 1662 and other English crown colonies in the Americas which defined the legal status of children born there; the doctrine mandated that all children would inherit the legal status of their mothers. As such, children of enslaved women would be born into slavery. **The legal doctrine of *partus sequitur ventrem* was derived from Roman civil law**, specifically the portions concerning slavery and personal property (chattels). The doctrine's most significant effect was placing into chattel slavery all children born to enslaved women. *Partus sequitur ventrem* soon spread from the colony of Virginia to all of the Thirteen Colonies. As a function of the political economy of chattel slavery in Colonial America, **the legalism of *partus sequitur ventrem* exempted the biological father from relationship toward children he fathered with enslaved women, and gave all rights in the children to the slave owner**. The **denial of paternity to enslaved children secured the slaveholders' right to profit from exploiting the labour of children engendered, bred, and born into slavery**. The doctrine also meant that multiracial children with white mothers were born free. Early generations of Free Negros in the

> American South were formed from unions between free working-class, usually mixed race women, and black men."[59]

C. Androcide: "Law of *Partus Sequitur Ventrem*"

The natural effects of the *Partus sequitur ventrem* (i.e., matriarchy and the removal of the Black father from the slave family structure) was that it decimated the "husband and wife" relation within the Black family.

The "duties of husband and wife" were "incompatible" with the condition of slavery. 38 Corpus Juris Secundum (1st Ed), Marriage, § 25 "e. Civil Status—(1) Slavery—(a) In General," states:

> "While the institution of slavery existed it was generally held that **a valid marriage could not exist between slaves**, because of the paramount ownership in them as property, their incapacity to make a contract, and the **incompatibility of duties and obligations of husband and wife with the condition of slavery**…. Slaves were, however, permitted a form of cohabitation which was termed a customary moral marriage or quasi marriage, which while given rise to no civil rights, was a status greater dignity than mere concubinage. As a general rule, the consent of the master was necessary to such a union, and only the master could dissolve it." For "Incapacity of slaves to contract see Slaves [35 Cye 464]" and lists several cases. For "Duties of a married person generally see Husband and Wife §§ 4 – 177."

[59] See, e.g., "Partus Sequitur Ventrem," Wikipedia Encyclopedia (Online): https://en.wikipedia.org/wiki/Partus_sequitur_ventrem, to wit:

The system of *Partus sequitur ventrem* significantly impaired the natural rights of African American men and fathers in the United States:[60]

Marriage of Enslaved People (United States)

Francis William Kellogg states:

> [Slaves] are men, but they **must not read the work of God**; they have no right to any reward for their labor; **no right to their wives**; **no right to their children**; **no right to themselves**! The law makes them **property and affords them no protection**, and what are the Christian people of this country doing about it? Nothing at all!

"**Husbands and fathers**

> Some men and women lived with their children in nuclear families. In most cases, enslaved fathers did not live with their families. In many ways, enslaved couples assumed typically female and male roles within the relationships, except that since their children and wife were subject to enslavers' whims, men had less control in the care of their family than free men with free family members.
>
> In the 19th century, Alexis de Tocqueville found there was a "profound and natural antipathy between the institution of marriage and that of slavery" because a man could not be an authority figure to his wife and children. He could not control their fate, what work they performed, or their privileges."

D. Androcide: *"The 1951 U.N. Petition: We Charge Genocide"*

The nature of anti-Black androcide, or anti-Black misandry, was manifest in state codes on (a) marriage and (a) the strict prohibition of sexual relations between white women and African American men, often

[60] https://en.wikipedia.org/wiki/Marriage_of_enslaved_people_(United_States).

enforced formally through state or local courts, informally through lynchings, or a combination of both.

For this reason, dozens of American citizens filed a petition to the United Nations in 1951, titled "*We Charge Genocide!*"[61]

This 1951 UN dossier pointed out that there were very different state laws, state customs, and local rules that were utilized in the Southern state courts to govern and regulate:

AFRICAN AMERICAN MALES

The focus of the South's state laws was thus described as targeting—in violation of the Convention on the Crime of Genocide (1948)-- one specific sector of the American population, namely, that of African American males.

White Males	Black Males
White Females	Black Females

This 1951 UN dossier was filed pursuant to the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, viz.:

1.

> Article II, Convention on the Prevention and Punishment of the Crime of Genocide:
>
> Adopted December 9, 1948

[61] For this reasons, William Patterson, Paul Robeson, W.E.B. Du Bois and dozens of leading African American citizens from throughout the United States directly petitioned the United Nations, filing a 246-page dossier providing in-depth analysis, details, and supplementary evidence demonstrating how state and federal officials, as well as private citizens, who often acted under color of law, committed numerous acts of atrocities and genocide against the African American people.

"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."

Article III.

"The following acts shall be punishable:

(a) Genocide;
(b) Conspiracy to commit genocide;
(c) Direct and public incitement to commit genocide;
(d) Attempt to commit genocide;
(e) Complicity to genocide."

This 1951 UN dossier, titled "We Charge Genocide," cited the pivotal fact that the prohibition of interracial marriage and the enforcement of anti-miscegenation laws in the South were the foundational basis for sexual oppression and murder of African American males (elderly men, middle-age men, young men, and boys, etc.). This report states:

2.

"Marriage between the races is forbidden: Article 14, General Provisions, Section 263, states "The marriage of a white person with a Negro or mulatto, or person who shall have one-eighth or more of Negro blood, shall be unlawful and void.'

> Even 'advocacy' of social equality or intermarriage is penalized, a clear infringement of the Federal Constitution's Bill of Rights: Chapter 20, Section 1103 of the Mississippi Code of 1930 reads, 'Any persons, firm or corporation who shall be guilty of printing, publishing, or circulating printed, typewritten or written matter urging or presenting for public acceptance, or general information, arguments or suggestions in favor of social equality, or intermarriage, between whites and Negroes, shall be guilty of a misdemeanor and subject to a fine not exceeding five hundred dollars or imprisonment not exceeding six months or both fine and imprisonment in the discretion of the court.'[62]

The 1951 UN dossier pointed out that state statutes preventing the intermarriage of whites and blacks constituted a hidden "gimmick for carrying out the original White League plan of Black Code justice," to wit:

3.

> "Statutes on intermarriage have further emphasized the survival of slave regulations. In 1825, under slavery, not only was marriage between free persons and slaves forbidden, but also marriage 'between free white persons and free persons of color' (Art. 95, Civil Code, 1895). This provision was repealed during Reconstruction, but in 1894, with the revival of white man's rule, statute (Act 54 of 1894, amending Art. 94, Revised Civil Code, 1870) forbade marriage 'between white persons and persons of color.' In 1942 (No. 43, Art. 79), this rule was strengthened by defining 'miscegenation' as 'marriage or habitual co-habitation, with knowledge of their difference in race, between a person of the Caucasian or white race and a person of the colored or Negro race.' (Dart's Louisiana Code of Criminal Law and Procedure, 740-79.) The 1942 statute thus illegalizes interracial 'co-habitation' (common law marriage) as well as formal marriage, that is, **it makes any kind of sex relationship between whites and Negroes—with emphasis on white women and Negro men—a criminal offense**.
>
> This **limitation of marriage provided a new gimmick for carrying out the original White League plan of Black Code justice**. It meant that,

[62] Ibid., p. 155

while sex relation of a white man with a white woman could be either voluntary or at the worst simple rape, and of a white man with a Negro woman 'probably' voluntary but sometimes simple rape, a sex relation of a Negro man with a white woman had no legal standing at all; it must be, in practice and in logic, *aggravated rape*. The gimmick thus provided a concealed legal foundation for the Special Category of White Rapists, virtually guaranteeing that in practice a white rapist would not receive the death penalty.

The hidden Black Code is the theoretical basis for an unequal administration of justice in Louisiana. The explanation of a ratio of 40 death sentences for rape by 35.0 percent of the population, during a half-century, to 2 death sentence for that crime by the remaining 64.1 percent, lies in the black Code mentality of Louisiana courts and government.

The former legal differentiation between punishment of white criminals and punishment of Negro criminals, which existed in pre-Civil War days established a *practice* of unequal justice; this *practice* was re-established and continued with the setting up of post-Reconstruction 'white man's rule'; the practice of unequal administration of criminal statutes, *particularly that providing for the punishment of rape*, backed and protected as it is by the segregation and political subjugation of the Negro people in this state, and facilitated by legal and constitutional ambiguities, **still continues in all state and local courts**.[63]

Under these conditions, the 1951 UN dossier reported that the crime of "rape of white women by black men" was elevated to the status of a regional pandemic in the South, and utilized to justify their widespread sexual control and lynching:

4.

"These, then, are some of the methods of the conspiracy whereby finance joins with the state and terrorist organization to disfranchise

[63] Ibid., pp. 226 – 228.

> Americans for political power and private profit. The conspiracy has made potent use of the spurious charge of 'rape' as a political weapon. The charge of 'rape' was consciously forged as a matter of state policy. It emerged in the Southern states at the same historic moment as the poll-tax. It has since consistently been used to terrorize militant Negroes with the ever-present menace of death by lynching or by 'legal murder' through police, incited mobs, and venal courts….
>
> In most Southern states 'rape' had no special connotation as a crime until about 1890. Then it came into use as a political device for the oppression of the Negro people, as part of the drive completely to disfranchise the Negro people and break the Populist movement….
>
> [S]ince the 1890's, thousands of Negroes have been lynched and 'legally' executed on the basis of race on the spurious charge of 'rape' while the number of whites who have been executed on the charge, legally or any other way, is virtually nil. 'Rape' became an incitement to lynching—and lynching, as the President's own Committee on Civil Rights noted in 1947, is the ultimate weapon of terror to keep the Negro in a subordinate status. The genocidal, murderous quality of the charge of 'rape' is apparent to all in the South…."[64]

With this background in mind, the 1951 UN dossier's voluminous "Evidence,"[65] regarding the killing of innocent African Americans (mostly

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[64] Ibid., pp. 149- 150.

[65] Ibid., p. 25 ("Terror was unleashed against them at home—there were 1,955 recorded lynchings from 1889 through 1901, according to the minimal count of Tuskegee Institute.") Ibid, p. 150 ("But since the 1890's, thousands of Negroes have been lynched and 'legally' executed on the basis of race on the spurious charge of 'rape'….")

See, also, Aaron Oneil, "Number of lynchings in the U.S. by state and race 1882-1968," https://www.statista.com/statistics/1175147/lynching-by-race-state-and-race/ ("Lynching in the United States is estimated to have claimed over 4.7 thousand lives between 1882 and 1968, and just under 3.5 thousand of these victims were black. Today, lynching is more commonly associated with racial oppression, particularly in the south, however, in early years, victims were more commonly white (specifically Mexican), and lynchings were more frequent in western territories and along the southern border. It was only after Reconstruction's end where

men) from between the period 1890 and 1945 must be placed into its constitutional and legal proper perspective: **marriage laws and anti-miscegenation laws have been applied and utilized by state officials and state courts to justify *anti-Black androcide***, and such application has been tacitly approved by the United States Supreme Court.

E. **Androcide: *"The Moynihan Report"***

The *Jus Cogens* principles which are contained within the Torah are also reflected in an analysis of the regulation of the Black family during slavery.

For example, Daniel Patrick Moynihan has written that a system of "matriarchy" has been "enforced" upon the African American community, with "crushing" consequences for African American males.[66]

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the lynching of black people became more prevalent, and was arguably the most violent tool of oppression used by white supremacists. Nationwide, the share of the population who was black fluctuated between 10 and 13 percent in the years shown here, however the share of lynching victims who were black was almost 73 percent.")

[66] See, e.g., Moynihan, Daniel P. *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…. 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….
>
> 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**….
>
> A fundamental fact of Negro American family life is the often reversed roles of husband and wife. **Robert O. Blood, Jr.** and **Donald M. Wolfe**, in a study of Detroit families, note that 'Negro husbands have unusually low power,' and while this is characteristic of all low income families, the pattern pervades the Negro social structure: 'the cumulative

result of discrimination in jobs…, the segregated housing, and the poor schooling of Negro men'….

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….
>
> Negro females in skilled jobs are almost the same as that of all females in such jobs….
>
> This pattern is to be seen in the Federal government, where special efforts have been made recently to insure equal employment opportunity for Negroes…. 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….
>
> 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

In other words, Black matriarchy, which was initially orchestrated by the system of chattel slavery,[67] has been a vital component to the

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> 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."
>
> **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….

[67] See, e.g., "Partus Sequitur Ventrem," *Wikipedia* Encyclopedia (Online):

> https://en.wikipedia.org/wiki/Partus_sequitur_ventrem, to wit:
>
> *Partus sequitur ventrem* ("[t]hat which is born follows the womb"; also partus) was a legal doctrine passed in colonial Virginia in 1662 and other English crown colonies in the Americas which defined the legal status of children born there; the doctrine mandated that all children would inherit the legal status of their mothers. As such, children of enslaved women would be born into slavery. The legal doctrine of *partus sequitur ventrem* was derived from Roman civil law, specifically the portions concerning slavery

systematic divestiture of the paternal status of African American men as "Head of the Family."[68]

In the United States, the Black family was intentionally dismantled and oppressed in order to promote the institution of slavery and racial discrimination:

> "[P]erhaps the greatest curse which slavery inflicted upon us was the destruction of the home."
>
> **-- Bishop Daniel Payne (A.M.E. Church)**[69]
>
> ———
>
> "It was by destroying the Negro family under slavery that white America broke the will of the Negro people."

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and personal property (chattels). The doctrine's most significant effect was placing into chattel slavery all children born to enslaved women. *Partus sequitur ventrem* soon spread from the colony of Virginia to all of the Thirteen Colonies. As a function of the political economy of chattel slavery in Colonial America, **the legalism of *partus sequitur ventrem* exempted the biological father from relationship toward children he fathered with enslaved women, and gave all rights in the children to the slave owner**. The **denial of paternity to enslaved children secured the slaveholders' right to profit from exploiting the labour of children engendered, bred, and born into slavery**. The doctrine also meant that multiracial children with white mothers were born free. Early generations of Free Negros in the American South were formed from unions between free working-class, usually mixed race women, and black men.

[68] See **"Marriage of Enslaved People (United States),"**
https://en.wikipedia.org/wiki/Marriage_of_enslaved_people_(United_States)

And see **"African American Family Structure,"**
https://en.wikipedia.org/wiki/African-American_family_structure

And see **"Black Matriarchy"**
https://en.wikipedia.org/wiki/Black_matriarchy

[69] Source: Daniel P. Black, *Dismantling Black Manhood*, supra, p. 165.

-- Assistant Sec. of Labor Daniel Moynihan[70]

In the United States, the "Moynihan Report" documented the intentional dismantling and oppression of African American fatherhood, men, and boys:[71]

The Moynihan Report - 1965 (Summary Description)

"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.

"C. Eric Lincoln also suggests that the implied American idea that poverty, teen pregnancy, and poor education performance has been the struggle for the African-American community is due to the absent African-American father. According to the Moynihan

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

[71] See, e.g., Daniel Patrick Moynihan's 1965 Report on the Black Family, stating: "[i]t was **by destroying the Negro family under slavery** that **white America broke the will of the Negro people**," and "[w]hen 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…. **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**."

Report, the failure of a male dominated subculture, which only exist in the African-American culture, and reliance on the matriarchal control has been greatly present in the African-American family structure for the past three centuries. This **absence of the father**, or 'mistreatment,' has resulted in the African-American crime rate being higher than the National average, African-American drug addiction being higher than whites, and rates of illegitimacy being at least 25% or higher than whites.

"A family needs the presence of both parents for the youth to 'learn the values and expectations of society.'"

Source: "African American Family Structure," Wikipedia (Online encyclopedia) https://en.wikipedia.org/wiki/African-American_family_structure#:~:text=%25%20to%2018%25.-,African%2DAmerican%20family%20members%20at%20a%20glance,place%20of%20a%20fragmented%20household

F. Androcide: *"Senator Robert F. Kennedy"*

The *Jus Cogens* principles which are contained within the Torah are also reflected in a speech which Senator Robert F. Kennedy made on August 15, 1966 in which he said the following:

> 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.'"[72]

G. Androcide: *"Professor Dr. Ronald Walters"*

White Nationalism Black Interests **(Detroit, MI: Wayne State Univ. Press, 2004), pp. 149 – 150.**

"Slavery not only impoverished Blacks, it distorted and corrupted the structure of the Black family.

"In a survey of 612 Black families in rural Georgia in the 1930s, Black sociologist Charles Johnson found vivid evidence of communal disorganization: 29% of all children were illegitimate, and 25% of families were headed by a female; though an additional 37% of families were headed by married couples, the rest were common-law households. Johnson noted that '**sex, as such, appears to be a thing apart from marriage**.' This is comparable to the function of **sex in the slave system, where it was mostly 'a thing apart from marriage'**-- a practice permitted by slave masters….

"[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.'"

[72] "Statement before U.S. Congressional Sub-Committee Hearing" (August 15, 1966).

Conclusion

These two Appendices establish the proposition that, in the Holy Bible and under orthodox Jewish law, the institution of "**marriage**," in which man is "**Head of the Family**," is itself the "**image of God**."[73]

Since this "**image of God**" theology is a major pillar of the "Law of Nations" or customary international law and human rights jurisprudence (i.e., **Jus Cogens**), the deprivation of the natural rights of African American fathers, husbands, and men to establish themselves as the "**Head of the Family**" comes within domain of the Law of Nations (e.g., customary international human rights, or Jus Cogens, as defined in the Eleventh Circuit Court of Appeal's holding in the case of *United States v. Bellaizac-Hurtado*).[74]

For law practitioners in the United States, **African American husbands**, **fathers**, and **men** who interpose such human rights claims and contentions under *Jus Cogens* principles, within a family-law context, may do so in the U. S. District Courts, pursuant to Restatement (Third) of Foreign Relations Law §§ 404, 701-703 (1987)(federal subject-matter jurisdiction); 28 U.S.C. § 1331 (federal subject-matter jurisdiction); 28 U.S.C. § 1443/ 1447(d)(transfer jurisdiction); and the 1866 and 1871 Civil Rights Acts (or 42 U.S.C. §§ 1981, 1982, and 1983).

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[73] See, e.g., Footnotes # 1 and #2, above.

[74] *United States v. Bellaizac-Hurtado*, 700 F.3d 1245, 1261 (11th Cir. 2012)(defining *Jus Cogens* as "'universality,' legal issues that involve "**slavery** and **slave-related practices**… have thus far been identified as supporting universal jurisdiction'") (citing "Restatement (Third) of Foreign Relations Law § 404 (1987) (recognizing that universal jurisdiction applies only to "prescribe punishment for certain offenses recognized by the community of nations as of universal concern, such as piracy, slave trade, attacks on or hijacking of aircraft, genocide, war crimes, and perhaps certain acts of terrorism").

Hence, this Appendices-Chapter lays both a juridical and scholarly foundation for the idea that **male members** of ethnic and racial minority groups can become the targets of varying types of oppression, ranging from economic subjugation, political suppression such as criminalization and mass incarceration, and systematic programed murder.

In customary international law, such targeting of men and boys who belong to certain ethnic or racial minority groups is called ***androcide***. In the Holy Bible, **androcide** is described as a political weapon. In the Book of Genesis, the king of Egypt utilized androcide in his political suppression of the Hebrews. And in the Book of Matthew, King Herod also utilized androcide in his attempt to suppress the rise of a Jewish Messiah.

Hence, the Black Church, civil rights lawyers, and human rights advocates who perennially highlight the *statistical facts* which undergird the *suppression African American men and boys* may rightfully look to **customary international law against androcide (*Jus Cogens*)** as a legal and constitutional basis[75] for interposing federal jurisdiction over state family law cases wherein African American husbands and fathers are systematically divested of their "**Head of the Family**" status.

--- The End ---

[75] Here, customary international law against androcide may be interwoven into federal statutory claims that arise under, e.g., the 1866 and 1871 Civil Rights Acts, or constitutional claims that arise under, e.g., the First, Thirteenth, and Fourteenth Amendments, U. S. Constitution.