

# **ST. LUKE’S INN OF COURT**

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### **“A History of the Anglican Church—Part XXIX: An Essay on the Role of Christian Lawyers and Judges within the Secular State”©**

**By**

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The ideas expressed in this Apostolate Paper are wholly those of the author, and subject to modification as a result of on-going research into this subject matter. This paper is currently being revised and edited, but this version is submitted for the purpose of sharing Christian scholarship with clergy, the legal profession, and the general public.

## PREFACE

The organized Christian church of the Twenty-First Century is in crisis and at a crossroad. Christianity as a whole is in flux. And I believe that Christian lawyers and judges are on the frontlines of the conflict and changes which are today challenging both the Christian church and the Christian religion. Christian lawyers and judges have the power to influence and shape the social, economic, political, and legal landscape in a way that will allow Christianity and other faith-based institutions to evangelize the world for the betterment of all human beings. I write this essay, and a series of future essays, in an effort to persuade the American legal profession to rethink and reconsider one of its most critical and important jurisprudential foundations: the Christian religion. To this end, I hereby present the forty-fifth essay in this series: “A History of the Anglican Church—Part XXIX (Part One).”

## INTRODUCTION<sup>1</sup>

Perhaps the greatest legacy which the Puritans of seventeenth-century colonial New England gave to the United States is their philosophy and practice of “family government.” Instead of treating the “shire,” the “hundred,” the “county,” “city,” or the “borough” as the most important forms of local government, **the Puritans considered the “family” to be the most basic form of local government.<sup>2</sup> Indeed, the Puritan divines considered the family unit to be the**

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<sup>1</sup> This paper is dedicated to the memory of my grandfather, **Rev. Sidney Ford** (1904-1962), a former pastor of the **Ebenezer A.M.E. Church** of Live Oak, Florida. For many years, Ebenezer A.M.E. was the home church of my paternal grandmother and widow of Rev. Sidney Ford, **Mrs. Alice Ford** (1907- 1998). (During the Fall of 1984, the author lived temporarily for a few weeks with his paternal grandmother, Mrs. Alice Ford, who lived alone in a house that was situated adjacent to the Ebenezer A.M.E. Church in downtown Live Oak, Florida. The author was able to observe firsthand that Mrs. Ford was a devout Christian and lived strictly by the Bible; for instance, she strictly observed the “Sabbath” day and prohibited the author from performing any work (e.g., washing, drying and folding his clothes) whatsoever on Sunday. This is an example of the strict religious discipline within early twentieth-century African American culture.) This paper is also written with special appreciation for the work of the **Ford Family Historical and Welfare Association (founded in 1978)** in preserving the history of the Ford Family of Suwannee County, Florida.

<sup>2</sup> This Puritan belief was in keeping with traditional Catholic and Anglican views on *paterfamilias*. See, e.g., Saint Augustine, *The City of God* (New York, N.Y.: The Modern Library), pp. 694-695:

And therefore, although our righteous fathers (i.e., The Patriarchs) had slaves, and administered their domestic affairs so as to distinguish between the condition of slaves and the heirship of sons in regard to the blessings of this life, yet in regard to the worship of God, in whom we hope for eternal blessings, **they took an equally loving oversight of all the members of their household.** And this is so much in accordance with the natural order, that **the head of the household was called *paterfamilias*; and this name has been so generally accepted, that even before those whose rule is unrighteous are glad to apply it to themselves.** But those who are **true fathers of**

**cornerstone of society.** And, importantly, the Puritans did not leave the business of family government to individual families to manage alone by themselves—as *we today experience in the United States*. Instead, the Puritans allocated a significant percentage of their community resources to the sustenance, health, and proper functioning of the family unit.<sup>3</sup> They understood that holiness and the holy life were serious business that required constant attention and care. Puritan communities were committed to holiness, and every member was charged with policing other community members who breached community standards of decency and decorum. It was as though, with St. Augustine of Hippo, the Puritans of seventeenth-century colonial New England could proclaim:

**“I snatched it up, opened it, and in silence read the paragraph on which my eyes first fell: ‘Not in rioting and drunkenness, not in chambering and wantonness, not in strife and envying, but put on the lord Jesus Christ, and make no provision for the flesh to fulfill the lusts thereof.’”<sup>4</sup>**

The Puritans thus considered the family unit to be a constituent part of the church (either the Church of England or the Congregational churches in North America). To be sure, this Puritan family government was organized along ecclesiastical lines, bolstered by Christian beliefs and values and technical assistance from Anglican-Puritan priests. In England, the family unit was a constituent part of an ecclesiastical parish, where deacons, priests and ecclesiastical courts taught husbands and wives how to resolve family disputes,

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**their households** desire and endeavor that all the members of their households, **equally with their own children, should worship and win God**, and should come to that heavenly home in which the duty of ruling men is no longer necessary, because the duty of caring for their everlasting happiness has also ceased; but, until they reach that home, masters ought to feel their position of authority a greater burden than servants their service. And if any member of the family interrupts the domestic peace by disobedience, he is corrected either by word or blow, or some kind of just and legitimate punishment, such as society permits, that he may himself be the better for it, and be readjusted to the family harmony from which he had dislocated himself.... **Since, then, the house ought to be the beginning or element of the city, and every beginning bears reference to some end of its own kind, and every element to the integrity of the whole of which it is an element, it follows plainly enough that domestic peace has a relation to civic peace**—in other words, that the well-ordered concord of civic obedience and domestic rule has a relation to the well-ordered concord of civic obedience and civic rule. And therefore it follows, further, that **the father of the family ought to frame his domestic rule in accordance with the law of the city, so that the household may be in harmony with the civic order.**

<sup>3</sup> When we compare the regulation of African slaves and slave families in British North America to the standards of “family government” established by the Puritans, we can easily see how the African American family structure in the United States was seriously crippled by the system of slavery and lingering racial discrimination. Whereas Puritan and Anglican ideals of the family unit required strict conformity of Christian standards and ideals, the institution of American slavery stripped the African slaves of having any of these conjugal privileges. See, e.g., **Appendix D— “The American Slave Code: Systematic Denial of Anglo-American Common Law of Family, Husband and Wife to African Americans, 1619-1865.”**

<sup>4</sup> St. Augustine, *Confessions* (New York, N.Y.: Barnes and Nobles Classics, 2007), p. 126.

govern the household, and educate and raise their children!<sup>5</sup> Constant care and attention were provided to the family.

In colonial New England, as this paper attests, the practice of Christian organization of family government continued. This practice of family government was in essence the English common law of the family as well as the ecclesiastical law of the Church of England—both of these laws were incorporated into the common law of the United States during the 1800s. Under both the Anglo-American common law and the English ecclesiastical law, the husband was the unquestioned head of the family and household. See, e.g., *American Jurisprudence* (First Edition), “Head of Family” § 10:

### **§ 10 Head of Family**

The husband, unless incapacitated from executing the authority and performing the duty, is head of the family. This is so, not only at common law, but under the Married Women’s Acts. It is not the purpose of these acts to depose the husband from the position given him by the common law as the head of the family. It is necessary to the unity and preservation of the family, which is regarded as the basis of the state, to have a single head with control and power, and the husband is made that head and, in return, is made responsible for the maintenance and, at common law, for the conduct of his 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,

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<sup>5</sup> See, e.g., Appendix C, “England’s Ecclesiastical Courts (General and Limited Jurisdiction), 1534-1800.

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.

Thus, *paterfamilias* was officially established in Anglo-American common law. This development took several centuries to complete. England's common law of family, estates, and inheritance had slowly evolved under the auspices of the Roman Catholic Church since the days of William the Conqueror. In England, prior to 1534, the doctrine of *paterfamilias* had multifaceted elements of native Anglo-Saxon tribal culture, imperial Roman culture, and ancient Hebrew culture. Respecting each of these traditions, the Christian faith confirmed, substantiated, and reinforced the idea that the father was the head of the home and family, and that the family was the cornerstone of society, the church, and the state. The influence of Hebrew-Jewish culture upon Anglo-American common law of family was quite significant. For example, J. Andrew Dearman, Professor of Old Testament and Acting Dean, "Interpretation: A Journal of Bible and Theology," writes:

The Hebrew term to 'Family' is *bet' ab*, literally rendered as 'father's house,' reflecting a male-headed, multigenerational household as the basic unit in ancient Israel. A household was shaped by endogamous marriage rites, patrilineal succession, and inheritance customs that privileged the eldest son.... Another term related to the concept of 'family' is *mispaha*, often rendered 'clan.' A *mispaha* is a kinship unit of related fathers' houses. An association of related 'clans' would comprise a tribe (*sebet*).<sup>6</sup>

And Keith Reeves, Professor of Biblical Studies at Azusa-Pacific University, writes:

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<sup>6</sup> J. Andrew Dearman, "The Family in the Old Testament," *Interpretation: A Journal of Bible and Theology* (April 1, 1998).

Within the clans was the most basic unit, **the “father’s house.” This is headed by the “father,” the oldest living patriarch of the family.** Children, grandchildren, and great-grandchildren are all under the authority of the father. The father’s house could be a fairly large unit, comprised of more than 50 people.... This is much more than just interesting history. **The family unit is as important to economics and social order today as it was in ancient Israel.** We no longer have a land-based economy, so land as such is not the key factor now. But the family is still vitally connected to the economy. Nick Schulz, in *Home Economics: the Consequences of Changing Family Structure*, details the destructive consequences of the breakdown of the family in America. Wayne Grudem and Barry Asmus, in their book *The Poverty of Nations*, include “Laws that give protection and positive economic incentives to stable family structures” as one of the factors that help nations overcome poverty (p. 256-257).

**The biblical account of the household raises no shortage of critical questions for us today. What can we do – as individuals, as families, as churches, as communities – to protect the integrity of the family? What can we do to aid those who find themselves in broken families? How can we help people see familial and economic relationships as deeply interconnected rather than separate and unrelated?**<sup>7</sup>

And Brenda Colijn (Ph.D., Cornell; M.A. ATS), Associate Professor of Biblical Interpretation and Theology at A.T.S., writes: “The Old Testament affirms the biological family, which is assumed to be the **basic unit of society.**”<sup>8</sup> (So, too, in mainstream secular political theory and jurisprudence, the family was considered to be the cornerstone of the civil society. Thomas Hobbes, John Locke, and several other secular leaders of seventeenth and eighteenth-century England and colonial New England certainly held this view. See Part A3, ‘The Family as Basic Unit of the Christian Commonwealth,’ below.) The Old Testament’s ideals of both family and patriarchy were thoroughly woven into Anglo-American jurisprudence.

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<sup>7</sup> “Family, Land and Household in the Old Testament,” <https://oikonomianetwork.org/2015/11/family-land-and-household-in-the-old-testament/>

<sup>8</sup> Brenda Colijn, “Family in the Bible: A Brief Survey,” *Ashland Theological Journal* (AJS 2004).



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The seventeenth-century Puritans of British North America—their ideas and ideals of family and government—naturally appealed to me, an African American southerner. During the 1970s and 80s, the African Baptist and African Methodist churches of rural northern Florida only taught a Christian theology that reinforced patriarchy, and this patriarchy served as the cultural and theological foundation upon which I received and learned Roman Catholicism and Anglican political theory during my undergraduate collegiate years during the late 1980s. *Growing up in rural, southern farming communities during the 1970s was like growing up inside of a museum*: like many areas in the South, there were Confederate memorials in northern Florida. Within the nearby Osceola National Forests where my family frequently picnicked at “Ocean Pond,” was a historic Civil War battleground (i.e., the historic “Battle of Olustee”) where battlefield reenactments are today still commemorated. There was also widespread relics of late nineteenth and early twentieth-century rural, southern African American culture. I frequently visited African American families who lived in wooden homes built upon cinder blocks, without indoor toilets, plumbing and faucets, surrounded by plenty of farmland, tobacco barns, smokehouses, and slaughterhouses. The history of African American slavery, emancipation, sharecropping, tenant-farming, and independent proprietor farming was also readily apparent and predominant throughout North Florida and South Georgia: as a child, I thoroughly enjoyed this ambience. But I also had a natural appreciation for sophistication, refinement, and urban life! (Much of this appreciation for culture and refinement, without question, came from the superb teachers at Suwanee High School.) As a child growing up in rural northern Florida, I longed to see the North and city life—going away to college was largely my personal excuse for secretly wishing, through my juvenile immaturity, that I had grown up in a northern city. And so, turning down full or partial tuition scholarships to FAMU and Hampton University, I accepted a full academic (and room-and-board) scholarship to attend Morgan State University in Baltimore—arguably, the cradle of African American history and culture in the United States.

The city of Baltimore was a very fine laboratory for me to learn African American history and sociology. And from my station in Baltimore, I was a frequent visitor to upstate New York and the Washington D.C. metropolitan area. I also sometimes travelled south to Virginia Beach, Virginia, or north to Philadelphia, Pennsylvania. Eventually, I began the process of comparing and contrasting the North and the South, as well as the various African American communities within these two regions. And one striking contrast that I observed



was the nature, formation, and function of the African American family unit within these regions. During this same time, I began my studies of W.E.B. Du Bois, Booker T. Washington, and early twentieth-century African American history and culture. Without the writings of Washington and Du Bois, I would not have picked up on any of this, but I became engulfed in early twentieth century history and culture—that period of American history before the civil rights movement of the 1960s. Through Booker T. Washington’s writings, I encountered the Tuskegee idea of industrial development and mutual race cooperation between white and black southerners; and through W.E.B. Du Bois’ writings I discovered the National Association for the Advancement of Colored People (NAACP), Harlem-Renaissance poetry, literature, and the humanities, social science, Pan-Africanism, socialism, political economy, and political propaganda! Through these men I encountered other great men: President Theodore Roosevelt, John D. Rockefeller, Andrew Carnegie, William Monroe Trotter, James Weldon Johnson, Marcus Garvey, John Hope, Horace Mann Bond, and many other men (and women) who influenced early twentieth-century American history.

Early twentieth-century American history was a period of tremendous racial friction, but at the same time there was racial cooperation throughout the South, and prior to 1915, Washington and Du Bois dominated African American southern leadership. The rural and agricultural environment in which I was raised in northern Florida certainly reinforced and facilitated my research into this early twentieth-century African American history and culture. I understood the South and southern culture, and thus an in-depth understanding of the history of this region came naturally. In the South of the early twentieth-century, there was certainly the “lily white jury” that would never convict a white man for killing an African American; there was lynching; but there was also more mutual cooperation between white and black southerners in the rural South than what mainstream history typically gives credit.<sup>9</sup> All of this mutual cooperation was carefully documented in the writings of Booker T. Washington, and even in W.E.B. Du Bois’ *The Souls of Black Folk* (1903), which highlighted both the economic struggles and development of African American farmers and farmworkers in the rural South, as well as assistance from southern whites who genuinely sought to help African Americans.<sup>10</sup> The three chapters in *The Souls of Black Folk*, which I read over and over again in college and law school, were as follows: Chapter 7 “Of the Black Belt”; Chapter 8 “Of the Quest of the Golden Fleece”; and Chapter 9 “Of

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<sup>9</sup> W.E.B. Du Bois, “The Souls of Black Folk,” *Writings* (New York, N.Y.: The Library of America, 1986), p. 478 (“And yet with all this there are many essential elements in the cooperation of Negroes and whites for work and wealth that are too readily overlooked or not thoroughly understood.”)

<sup>10</sup> *Ibid.*

the Sons of Master and Man.” These chapters opened the door to the political economy of the South, race relations, and the courts; they helped me to better understand that southern, rural environment in which I had been raised, but which I seldom understood while growing up there. Most significantly, Du Bois spoke candidly of race, marriage, sex, and the African American family in poetic, evocative language that lingered in my mind throughout law school.<sup>11</sup>

In law school, at the University of Illinois, an understanding of the interplay between race, economics, and the Civil War Amendments (13<sup>th</sup>, 14<sup>th</sup>, and 15<sup>th</sup> Amendments, U.S. Constitution) began to come together for me. And I put my heartfelt beliefs into action. For instance, I once stuffed a copy of an article titled “The Conservation of Races,” written by W.E.B. Du Bois, into the inboxes of fellow law students within the Black Law Students Association (BLSA). This article was to be the basis of a follow-up presentation and argument that I would give at a later BLSA meeting. I had then planned to explain to fellow BLSA members why African American law students needed to focus their collective scholarship on the plight of the African American family, economic development, and similar issues that were unique to the African American community. In the article on “Conservation of Races,” Dr. Du Bois asked the following fundamental question, “*What, then, is a race?*” To which he answered: “*It is a vast family of human beings.*”<sup>12</sup> In law school, perhaps unlike the majority of my peers, I could easily understand this idea of connecting race and family.<sup>13</sup>

Similarly, to study the plight of the *African American race* in the rural South during the first half of the twentieth century was to study this history and development of the *African American family*. As I distinctly recall, African American families in the rural South were largely “patriarchal,” and I can distinctly recall the following African American patriarchies (i.e., families headed by Black farmers). See, e.g., Table 1, “Black Patriarchy in rural Suwannee County, Florida,

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<sup>11</sup> See, e.g., Appendix D— “The American Slave Code: Systematic Denial of Anglo-American Common Law of Family, Husband and Wife to African Americans, 1619-1865”

<sup>12</sup> *W.E.B. Du Bois: A Reader* (New York, N.Y.: Holt and Co., 1996), p. 21.

<sup>13</sup> For I had had the distinct advantage of having had the privilege of knowing the rural African American farming communities, and large African American families who owned large farms since the late 1800s and early 1900s. Those black farmers were not formally educated in college or graduate schools, but they learned most of what is today taught at the university through their business transactions with leading white men who were elected officials, merchants, shop owners, traders and brokers, and politicians. Those black farmers were also churchmen, electricians, mechanics, brick masons, and members of great fraternal organizations! I had the privilege of listening at their conversation, and it was nearly always about business, politics, and religion—they were men amongst men, honored husbands, and honored fathers. In the rural South, African American farmers were highly respected and highly regarded by everyone, white as well as black;-- perhaps there was a comradery of mutual respect that resulted from shared hardship between white and black farmers.

1865-1970.” Interestingly, it is important to point out that there was significant intermarriage between these groups of black families in Suwannee County, and this result created local community cohesion, identity, and bonding, and was quite common during the early twentieth century.

**Table 1. Black Patriarchy in rural Suwannee County, Florida, 1865-1970**

<p align="center"><b>Large or medium-sized African American Farming Families (Patriarchies) in Suwannee County (Branford, Houston, Pine Mount, O’Brien, Hildreth, Beachville, Suwannee Springs, Fort Union, McAlpin, Wellbon, Dowling Park), Florida, 1865-1970</b></p>
1. Freeman Family
2. Washington Family
3. Ivey Family
4. Mackey Family
5. Fields Family
<p>6. Ford Family*</p> <p>* My great grandfather, Charley Ford (1861-1962), who is the Patriarch of the Ford Family in Suwannee County, and who appears to have been bi-racial (black and white), was born in Society Hill, South Carolina in 1861. He moved to North Florida during the 1890s and took up farming. He and his wife Mary Ford (1870-1971) had thirteen children, including my grandfather Rev. Sidney Ford, who was born in 1904. My father, Ozell Ford, was born in 1938; and I was born near Louisville, Kentucky in January 1969.</p>
7. Snead Family
8. Jackson Family
9. Baker Family

By the time I matriculated into undergraduate college at Morgan State University in Baltimore in the fall of 1987, the phenomena which today characterizes the severed relations between both African American men and

women; the break-up of African American marriages; teenage pregnancies; gang proliferation; the underground illegal drug trade, and the like, appeared to me to be uniquely African American inner-city problems— this was true in cities in the South, such as Jacksonville, Florida and Houston, Texas, as well as in the North, in places like Chicago, Illinois and Philadelphia, Pennsylvania. In college and law school, I learned that the destabilization of the African American family was largely economic, and I then concluded that the solution to this problem was primarily spiritual and cultural (i.e., church and family structure). I then placed, and still place, highly-important economic and political solutions next in line of priority—although one might argue, as Karl Marx certainly did, that “cultural” or “culture” automatically denotes or implicates “economics”.

My conceptualization of civil rights and social uplift thus took on a different character than that of my college or law school peers, or even than that of the leading African American public officials or public figures of my generation. I emphasized the “spiritual and cultural” (i.e. church and family structure) as the foundational standard of liberty and civil rights; and I judged all other public endeavors or civil rights acts or movements by the standard of ameliorating the plight of the African American family unit. In my mind, the great migrations of African Americans from farms to cities during the early twentieth centuries, followed by urban blight during the 1970s and early 80s, had come at a great cost to the health of the African American family. There was a steady rise in education and standards of living in the urban North, but the urban ghettos screamed out for help and seemed to overshadow the African American urban elite. At Morgan State, in Professor Michael Kamara’s<sup>14</sup> rigorous upper-level research course titled “Scopes and Methods of Political Science,” I chose as my senior thesis “The Economic Impact of Black-Owned Businesses in Baltimore,” as an expression of my interest in the capacity of the African American community to be economically self-sufficient and to shield itself from economic discrimination. At the same time, the plight of the African American family somehow kept percolating up from my research materials, and influenced my understanding of race progress. **In my mind, civil rights, economic empowerment, and the stabilization of the African American two-parent household were important measures of racial progress. The African American labor crisis, the problem of absentee fathers, and the break-up of African American families all seemed to be tied together.** And it goes without saying that while in college and law school during the late 1980s and early 90s, and largely as a result of my upbringing in the rural South, I intuitively wanted African American fathers and husbands to be the “heads of the

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<sup>14</sup> Professor Michael Kamara, B.A., Morgan State; J.D., Columbia University.

household,” and I viewed the lack thereof to be a civil and human rights crisis.<sup>15</sup> *And so from this standpoint, I emphasized that the race problem in the United States was centralized around the plight of the African American family, and around undoing the impact of chattel slavery, segregation, and discrimination upon the African American family unit.*<sup>16</sup> **What I had in mind then was that the African American community needed Puritan-style “family government” in order to arrest the crisis of the deterioration of the African American family unit.** *Let me be clear: my argument then, and now, was that no measure of civil rights would make any difference, until basic morals, character, and integrity undergirded a rebuilt, restricted African American family unit.* More specifically, for instance, my goal for the Black Law Students Association was to launch a new “law journal” or a new “law review” publication that would focus on legal issues that impacted the African American and other minority communities.<sup>17</sup> Today I believe that my idea of “family government” should be the most important political catchphrase for the African American community—a new and novel idea which the African American community needs to study, develop, and apply to its struggling families—indeed, it is an idea whose time has come!

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The Puritans of seventeenth-century colonial New England thus attracted me because they thought critically about law and the Bible,— I could relate to men such as the Rev. John Winthrop, Rev. Thomas Hooker, Rev. Roger Williams, and Rev. Nathaniel Ward. They believed that the “family unit” was the cornerstone of the secular civil society, as well as the foundation of the church. They also believed that a properly functioning family structure also required “family government”—that is to say, proper training, adequate preparation, and the highest public-policy priorities of both the Church and the State. And I viewed this Puritan ideal as a model for the African American community. Indeed, in the United States today, with the decimation of the African American heterosexual two-parent family unit, during the past four decades, together with catastrophic divorce rates among all racial groups, signifies that our American family crisis is deeply rooted in a national unwillingness to acknowledge the fact that the “American family

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<sup>15</sup> See, e.g., **Appendix D-- “The American Slave Code: Systematic Denial of Anglo-American Common Law of Family, Husband and Wife to African Americans, 1619-1865.”**

<sup>16</sup> [See, e.g., **Appendix D-- “The American Slave Code: Systematic Denial of Anglo-American Common Law of Family, Husband and Wife to African Americans, 1619-1865.”**]

<sup>17</sup> Unfortunately, we were not able to launch the African American law journal, and, besides that, most members of BLSA never got behind my ideas. But I still believe that my ideas were great ideas for African American law students and law professors to embrace and develop: today, however, I would add students and professionals from a variety of disciplines, especially theology and divinity, political science, economics, and social work.



unit” needs support from both Church and State; that it requires an adequate programme and philosophy of “family government”; and that “family government” should be treated as the most basic and important form of local government in the United States.

## **Part XXIX. Anglican Church: “Puritanism, the Family, and Family Government—Part One”**

### **A. Puritanism and Family Law: Christian Theology (Part One)**

#### **1. The Sanctification of the Family Unit**

According to Puritan ideals, beliefs and Christian teaching, a truly Christian family must be set apart for service to Christ— i.e., the family must be *sanctified*.<sup>18</sup> This idea or process of sanctification is the responsibility of the *family governor*— customarily at common law, and under the Law of Christ, the father (but the mother can serve as governor in case of the father’s absence or incapacitation).<sup>19</sup>

Significantly, the family unit has a dual significance: to the civil government, it is of natural origin, most fundamental, and the basic unit of the civil society; and, for this reason, the Puritans believed that the family unit must be acknowledged, regulated, and protected. But to the Church, the family is ordained by God. The Anglicans also believed that “God’s right of government ...[is] a full right of government of families, as families [which]... must honour and worship

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<sup>18</sup> Richard Baxter, *A Christian Directory Or, a Sum of Practical Theology, And Cases of Conscience* (Part 2 Christian Economics)(reprinted in Columbia, S.C. on January 18, 2019), p 29. (“the particular family relations are expressly sanctified. The family complete consisteth of three pairs of relations; husband and wife, parents and children, masters and servants. Husbands must love their wives with a holy love in the Lord, even as ‘the Lord loved the church, who gave himself for it, to sanctify and cleanse it by the washing of water by the word, that he might present it to himself a glorious church.’ Eph. V. 25-27. ‘Wives must submit themselves to their husbands as unto the Lord; and be subject to them, as the church is to Christ,’ Eph. V. 22-24. ‘Children must obey their parents in the Lord,’ Eph. Vi. 1. ‘Parents must bring up their children in the nurture and admonition of the Lord,’ Eph. Vi.4.”)

<sup>19</sup> “Note therefore, that the governor is an essential part of the family, and so are some of the governed, (viz. that such there be,) but not each member. If therefore twenty children or servants shall worship God without the father, or master of the family, either present himself, or in some representative, it is not a family worship in strict sense. But if the head of the family in himself (or delegate or representative) be present, with any of his children or servants, though all the rest be absent, it is yet a family duty; though the family be incomplete and maimed (and so is the duty therefore, if culpably so performed.” Richard Baxter, p. 25.



him according to their utmost capacities.”<sup>20</sup> Anglican-Puritan theologian Rev. Richard Baxter (1615-1691) has said:

God is not a mere titular but real Governor. All powers on earth are derived from him, and are indeed his power. All lawful governors are his officers, and hold their places under him, and act by him. As God therefore is the proper Sovereign of every commonwealth, and the Head of the church, so is he the Head of every family.<sup>21</sup>

In England, therefore, the regulation of the family was early and largely assigned to the jurisdiction of the ecclesiastical courts, whose clerical judges could apply the Law of Christ to the common law of the family.<sup>22</sup> For, indeed, the family under English common law was both sacred and civil—its regulation was largely influenced by, if not altogether governed by, Christian principles regarding “sanctification.”

#### (a). **The Covenants of Noah and Abraham**

The Anglican family unit comprised the “church” under traditional and common beliefs within the Church of England. For in the Bible, it was apparent that God dealt not simply with individuals, but with the Patriarchs of families and with their entire households. God had entered into covenants with individual patriarchs, such as Noah, on behalf of entire families; and God’s blessings and curses, as in the story of Noah, applied not simply to individual but to entire families. The covenant to the patriarch Abraham was an everlasting covenant, through which all the world would be blessed, —to do *judgement and justice*:

And the LORD said, Shall I hide from Abraham that thing which I do;

Seeing that **Abraham shall surely become a great and mighty nation, and all the nations of the earth shall be blessed in him?**

For I know him, that he will command **his children and his household after him, and they shall keep the way of the LORD, to**

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<sup>20</sup> Ibid., p. 26.

<sup>21</sup> Richard Baxter, p. 27.

<sup>22</sup> See **Appendix C—“England’s Ecclesiastical Courts (General and Limited Jurisdiction), 1534-1800”**

*do justice and judgment*; that the LORD may bring upon Abraham that which he hath spoken of him.<sup>23</sup>

Accordingly, the Church of England believed that God’s promises and blessings were manifested and worked out within families, especially through the fathers of families.<sup>24</sup> For this reason, the great heritage of Anglo-American common law is to place the husband as the head of the family.

### **(b). The First Passover and Circumcision— Family Sacraments**

Next, in addition to the covenants that were given to individual patriarchs of families, such as Noah and Abraham, were the obligations of sacred and solemn family worship.<sup>25</sup> “Family prayer and praises,” writes Rev. Richard Baxter, “are a duty ordinarily crowned with admirable, divine, and special blessings: therefore it is of God....”<sup>26</sup> “Family discipline is part of God’s solemn worship....”<sup>27</sup> “If [God] have a full right of government of families, as families, then families as families must honour and worship him according to their utmost capacities.”<sup>28</sup> “If households must serve the Lord, then households must pray to him and praise him: but households must serve him....”<sup>29</sup> “Family prayer and praises are a duty owned by the teaching and sanctifying work of the Spirit; therefore they are of God.”<sup>30</sup> “Those that are to be chosen deacons or bishops, must be such as rule their own children and their own household well....”<sup>31</sup>

Importantly, in both the ancient Hebrew tradition, as well as the early Church tradition, solemn worship occurred not in synagogues and churches but rather inside of individual households, with the father or household head serving priestly functions. This commenced with the first Passover, where the fathers of every Hebrew household was instructed to take charge of this sacrament, placing

<sup>23</sup> Genesis 18:17-19.

<sup>24</sup> “When there were few or no church assemblies that were larger than families, no doubt God was ordinarily worshipped in families. Every ruler of a family then was as a priest to his own family. Cain and Abel offered their own sacrifices so did Noah, Abraham, and Jacob.... After the institution of Aaron’s priesthood family-worship continued.... Nor is there a word of Scripture that speaketh of God’s reversing of his command or order for family prayer, or other proper family worship. Therefore it is proved to continue obligatory still.” Richard Baxter, p. 36.

<sup>25</sup> “[B]efore the flood in the families of the righteous, and after till the establishment of a priesthood, God was worshipped in families or households: it is a greater doubt whether then he had any other public worship.” Richard Baxter, p. 36.

<sup>26</sup> Richard Baxter, p. 33.

<sup>27</sup> Ibid, p. 30.

<sup>28</sup> Ibid., p. 26.

<sup>29</sup> Ibid., p. 35.

<sup>30</sup> Ibid., p. 33.

<sup>31</sup> Ibid.

the blood of a sacrificial male lamb upon the door posts.<sup>32</sup> This was done before Moses' brother Aaron or the Levites had been consecrated as priests, and before the establishment of the synagogue and temple. Similarly, the Christian church was originated largely inside of private homes, with no formal priesthood or episcopacy. But even after the priesthood was established, the sacraments of circumcision and Passover continued to be performed within individual Hebrew families.<sup>33</sup>

Hence, the Anglicans believed that the fathers, as household heads, retained some form of sacred responsibility for divine family government through private family worship—to ensure that the entire family is saved, holy, and knowledgeable of spiritual obligations and duties.<sup>34</sup> Leading Anglican-Puritan theologian Richard Baxter advanced four primary reasons for private family worship:

a. First, the Anglicans believed that the “family that prays together stays together.” Along the same lines, they also believed that the Church itself, as an institutional organization, is incapable of providing all necessary instruction, guidance, discipline, and support. In addition, there are some forms of “**private**” worship which families should perform inside of the household. For example, the two sacraments of circumcision and the Passover were appropriate of private family worship.<sup>35</sup> In other words, some forms of “private” worship are not suitable for the “public” services which are provided inside of the Church organization.<sup>36</sup> The Puritans believed that private family worship was indispensable for the Christian walk of faith: “Christians are a ‘holy priesthood, to offer up sacrifices to God, acceptable through Jesus Christ.’”<sup>37</sup>

b. Second, it is the duty of parents to **teach children the obligations and duties of Salvation**. The “rulers of families” are the husband and the wife, as the parents. “It is the will of God that the rulers of families should teach those that are under them the doctrine

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<sup>32</sup> Exodus 12:1-51.

<sup>33</sup> “After the institution of Aaron’s priesthood family-worship continued, as I have proved before; yea, the two sacraments of circumcision and the Passover, were established in families by the master of the house; therefore prayer was certainly continued in families.” Richard Baxter, p. 36.

<sup>34</sup> “If before the giving of the law to Moses, God was worshipped in families by his own appointment, and this appointment be not yet reversed, then God is to be worshipped in families still.” Richard Baxter, P. 36.

<sup>35</sup> Ibid., p. 36.

<sup>36</sup> Ibid., p. 25.

<sup>37</sup> Ibid., p. 38.

of salvation.”<sup>38</sup> The rulers of the family (husband/ father or wife/ mother should command and direct family worship. But the father, as the “head of the family” is the “priest of the household.”<sup>39</sup>

c. Third, the form of worship that God expects from families is “prayers,” “discipline” and “obedience.” The private worship of families must not replace or contradict the public worship of the Church. As such, the rulers of the family must promote Christian discipline.

d. Fourth, God especially cares for families and He communicates directly with them. Indeed, he bestows special blessings to individuals through their families. The Puritans wanted the head of the family to make a special covenant with God on behalf of his family. Indeed, Rev. Baxter tells us:

Yea, it seems that there was a special dedication of families to God. And therefore we read so frequently of households converted and baptized: though none at age were baptized, but such as seemed believers; yet when they professed faith, they were all together initiated as a household. And it seems, the master’s interest and duty were taken to be so great for the conversion of the rest, that as he was not content himself with his own conversion, but to labour presently, even before his baptism, that his household should join with him, that so the whole family at once might be devoted to God; so God did bless this his own order and ordinance to that end: and where he imposed duty on masters, he usually gave success, so that commonly the whole family was converted and baptized with the ruler of the family....<sup>40</sup>

Acts xvi. 32, Paul promiseth the jailer, ‘Believe on the Lord Jesus Christ, and thou shalt be saved and thy house; and he and all his were baptized straightway; for he believed in God with all his house.’...

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<sup>38</sup> Ibid., p. 29.

<sup>39</sup> Ibid., p. 61 (“The husband is to be the mouth of the family.... He must be as it were the priest of the household....”)

<sup>40</sup> Ibid., p. 28.

And Christ told Zaccheus, salvation was come that day unto his house, ‘and he and all his household believed.’ So that nobleman, John iv. 53. Therefore when Christ sent forth his disciples, he saith, ‘If the house be worthy,’ let your peace come upon it, but if it be not worthy, let your peace return to you.’...

**So that as it is apparently the duty of every Christian sovereign, to do what he is able to make all his people God’s people; and so to dedicate them to God as a holy nation, in a national covenant, as the Israelites were: so it is the unquestionable duty of every Christian ruler of a family, to... bring all his family to be people of Christ... and so to dedicate all his family to Christ.<sup>41</sup>**

The husband, as the family priest, governs the wife; and both the husband and wife govern the children and servants within the family, by divine authority from God. “Let your family understand that your authority is of God,” Rev. Baxter counseled, “who is the God of order, and that in obedience to him they are obliged to obey you.”<sup>42</sup> Family governors (i.e., husband/ father or wife/mother) are to seek and to develop a fitness toward the holy governing and government of the family.<sup>43</sup> “Labour for prudence and skillfulness in governing,” wrote Rev. Baxter. “He that undertaketh to be a master of a family, undertaketh to be their governor...”<sup>44</sup> This is not inborn or attained always through intuition, but rather from consultations with parents, pastors, fellow churchmen, and other experienced persons. Rulers must rule the family through and with a godly and spiritual love.<sup>45</sup>

## 2. The Family Covenant

The Puritans of British North America were free to develop a Christian political theory based upon their understanding of the Bible—a freedom that was significantly restricted in England. In America, the Puritans developed a sophisticated Christian theology and political theory that revolved around the idea of the divine covenant. Covenant theology and political theory was deeply grounded in the same blue print from which the unwritten English constitution had

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<sup>41</sup> Ibid.

<sup>42</sup> Ibid., p. 40.

<sup>43</sup> Ibid. pp. 40-42.

<sup>44</sup> Ibid., p. 41.

<sup>45</sup> Ibid.

been developed throughout several centuries. God himself was present in human government, human compacts, and the family unit. Therefore, all human conduct had to conform to God’s will in order for human institutions to thrive. This, of course, was no different than St. Augustine’s platonic conception of nature, or of St. Thomas Aquinas’ theory of law (i.e., Eternal Law ---→ Divine Law ---→ Natural Law ---→ Human Law). Inherent within this conception of the Puritan civil and secular law was the Mosaic conception of covenant theology as found in the Book of Deuteronomy.<sup>46</sup> The Puritans believed that blessing and curses were bestowed upon peoples and nations in just proportion to their virtue and morality. See, e.g., Table 2., “The Mosaic Life-Death Grid”

**Table 2. The Mosaic Life-Death Grid**

<b>Law of Moses (Life)</b>	<b>Law of Sin (Death)</b>
Virtue	Vice
Liberty	Slavery

For this reason, the Puritans of colonial New England (i.e., Massachusetts Bay, Plymouth, Connecticut, Rhode Island, etc.), could not conceptualize a constitutional framework where God was not present and where Divine Law was not ultimately the supreme law. This was, in essence, Puritan covenant theology:

**Covenant Theology.** Covenants were important in the religious communities of the Puritans in early New England....

These were solemn and binding agreements which were patterned after the covenants they believed God... had made with man. In the Covenant of Works, Adam and Eve agreed to obey God’s will and obtain salvation by their own good works. They broke this covenant and lost God’s favor. Through the Covenant of Redemption, Jesus agreed to take upon himself the guilt of the sins of men and save them from their fate. In the Covenant of Grace, God’s spirit entered those predestined for salvation. God also made covenants with groups of people, such as Abraham and his descendants, to look on them with special favor if they strove to obey his will. The Puritans believed that

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<sup>46</sup> See, e.g., Deuteronomy 28: 1, 15. “And it shall come to pass, if thou shalt hearken diligently unto the voice of the LORD thy God, to observe and to do all his commandments which I command thee this day, that the LORD thy God will set thee on high above all nations of the earth.... But it shall come to pass, if thou wilt not hearken unto the voice of the LORD thy God, to observe to do all his commandments and his statutes which I command thee this day; that all these curses shall come upon thee, and overtake thee....”



they were one of these groups and employed covenants throughout their society in entering marriage, creating churches, forming towns, and establishing governments. All of these specific covenants added up to the society's covenant with God, who was quick to punish any infraction.<sup>47</sup>

Naturally, the Puritans considered every Christian family to be governed by a direct divine covenant from God, whereby God would bestow divine blessings according to His will. The governor(s) of the household were thus under no less of a solemn obligation to follow God than was Noah or Abraham. In fact, the "cornerstone" of Puritan government lay not with the secular government or the even the church, but rather with the household or family unit. In colonial New England, "family government" was the most basic, fundamental local government unit.

**Family and Society.** The **family was the cornerstone of the society** where the closest scrutiny and continuous religious instruction occurred. Thus **people with no family were placed in one.** The townsfolk carefully monitored activities within the households to insure that the family maintained the harmony that characterized God's original creation. If trouble arose, the church elders would intervene, removing children, apprentices, and servants. Government officials were empowered to grant a divorce so that a contentious husband and wife might enter more-pleasing matrimonial covenants, although it rarely happened.

A hierarchy existed within a family so that all would know their places, thus avoiding competition and arguments. The **husband was at the head and represented the family unit in all public and church affairs; the wife deferred to him and supervised the private household affairs.** The husband also was responsible for raising the children in a strict fashion that would suppress their naturally sinful instincts. If any stepped out of their prescribed roles, it was believed that they would be vulnerable to the temptations of Satan. Similar hierarchies in the larger society were expected to promote the same harmony. The most important was the religious hierarchy, with the minister at the top and the church elders below him, followed by the church members; at the bottom were the non-

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<sup>47</sup> "Puritans," Encyclopedia.com.

church members. By law everyone had to pay taxes to support the minister, attend church regularly, and conform to Puritan practices and precepts.<sup>48</sup>

We may safely conclude that the Puritans' conception of family was not unique to Puritanism but was rather a reflection of Anglican values, customs, and norms throughout the England and the entire Church of England. This was all part and parcel of the English common law and was incorporated into American common law,<sup>49</sup> which survives to the present day.<sup>50</sup> In other words, the Puritans' assessment as to the importance of the family unit; the headship of the husband as family governor; important yet subordinate role of the wife; and of the laws of nature as to the foundations of the family unit, was essentially the same ideals, rules, traditions, and parameters of the English common law of the family unit.<sup>51</sup>

The Church of England (Anglicans, Puritans, Independents, Baptists, Evangelicals, Methodists, etc.) accepted the "Law of Christ"<sup>52</sup> as the source of English family law and jurisdiction over the family and related matters, such as the law of wills and probate, into ecclesiastical courts.<sup>53</sup> The archbishops of Canterbury and York, the various bishops, and lower-level clergymen thus defined and administered English family law for several centuries up through the 1800s. In colonial North America, the jurisprudence from England's ecclesiastical courts was accepted as binding law unless otherwise changed by municipal or statutory law. And following the American Revolution (1774-1783), the American judges firmly adopted, in no uncertain terms, the binding precedent of the English ecclesiastical courts.<sup>54</sup>

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<sup>48</sup> "Puritans," Encyclopedia.com

<sup>49</sup> See, e.g., **Appendix B**: "American Common Law of Family, Husband and Wife."

<sup>50</sup> Ibid.

<sup>51</sup> Ibid.

<sup>52</sup> The Law of Christ is to "love ye one another" (John 15:12); to do justice and judgement (Genesis 18:18-19; Proverbs 21: 1-3); to judge not according to appearance but to judge righteous judgments (John 7:24); and to do justice, judgment, and equity (Proverbs 1:2-3).

<sup>53</sup> See, e.g., **Appendix D**: "England's Ecclesiastical Courts (General and Limited Jurisdiction) 1534-1800."

<sup>54</sup> See, e.g., "**The Adoption of the Common Law by the American Colonies**," **The American Law Register (September 1882)** ("But through the jurisprudence of England, as administered through common-law forms, has been incorporated into the body of the American law without much dispute, **the remedies enforced in the ecclesiastical courts** were not so willingly accepted as within the jurisdiction of our purely secular courts, in a country **where matters ecclesiastical are left entirely to church judicatories independent of the state. If, however, all these matters which in England at the time of the settlement of the American colonies were solely cognizable in the courts ecclesiastical, are not within the jurisdiction of our courts, many most [sic] flagrant civil injuries would be without a remedy.** For in England, many matters purely civil in their nature are within the exclusive jurisdiction of the ecclesiastical courts. For example, all cases arising out of the contract of marriage, in consequence of the old view that this relation was of a purely religious character, were only cognizable in courts presided over by ecclesiastics. In America, where the contract of marriage is purely a civil contract, and where no ecclesiastical courts exist to take cognizance of such cases, breaches of marital rights would be remediless if the

### a. Family Unit as the Church

The Puritans understood that the “family” was ordained by God and predated the Jewish or Christian church—the “family unit” was, in essence, the church. Puritan theologians were quick to point out that in the Old Testament, **God dealt directly with patriarchs (i.e., heads of families) and families**—not with bishops, pastors, churches, mosques, and synagogues. To the Puritan, the “father or head of the household” was the first priest, and they found nothing in the Bible that changed or modified this fundamental relationship.

The Puritans therefore considered the Puritan family to be a “church” and as a constituent subunit of the organized Church of England or of the various Congregational churches in colonial America. As previously mentioned, family discipline, the instruction of children, and family prayer were essential components

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ordinary civil courts had not jurisdiction of such causes. In many of the states, statutory enactments incorporating in extensor the main provision of the English law, and designating the proper courts for the exercise of this jurisdiction, have removed all difficulty and confusion from the subject. **But apart from these statutes, it has been decided that our civil courts have jurisdiction of cases in which rights of person or property are involved, which in England are solely within the jurisdiction of the ecclesiastical courts.** [citing *Short v. Stotts*, 58 Ind. 29; *Crump v. Morgan*, 3 Ired. Eq. 91; *Wightman v. Wightman*, 4 Johns. Ch. 343; and *Williamson v. Williamson*, 1 Johns. Ch. 489]. See, e.g. *LeBarron v. LeBarron*, 35 Vt. 365 (“To enable us to determine this question, it becomes necessary to examine into the real source and extent of the jurisdiction of the court over this subject. **The legal power to annul marriages has been recognized as existing in England from a very early period, but its administration, instead of being committed to the common-law courts, was exercised by their spiritual or ecclesiastical courts. Under the administration of these courts for a long period of time, the principles and practice governing this head of their jurisdiction ripened into a settled course and body of jurisprudence,** like that of the courts of chancery and admiralty, and constituted with these systems a part of the general law of the realm, and in the broad and enlarged use of the term, a part of the common law of the land. **This country having been settled by colonies from England under the general authority of the government, and remaining for many years a part of its dominion, became and remained subject and entitled to the general laws of the government, and they became equally the laws of this country, except so far as they were inapplicable to the new relation and condition of things. This we understand to be well settled, both by judicial decision and the authority of eminent law writers.** But if this were not so, the adoption of the common law of England by the legislature of the state was an adoption of the whole body of the law of that country, aside from their parliamentary legislation, and included those principles of law administered by the courts of chancery and admiralty to our local situation and circumstances and not repugnant to our constitution and laws), as well as that portion of their laws administered by the ordinary and common tribunals. **As the jurisdiction in cases matrimonial in England was exclusively committed to the spiritual courts, and had never been exercised by the ordinary law courts, the same could not be exercised by the courts of law in this country until it was vested in them by the law-making power. As we have never had any ecclesiastical courts in this country who could execute this branch of the law, it was in abeyance until some tribunal was properly clothed with jurisdiction over it or vested in the legislature.** It was probably on this ground that the legislatures of the states proceeded in granting divorces as many of them did in former times. **When the legislature establish a tribunal to exercise this jurisdiction or invest it in any of the already established courts, such tribunal becomes entitled, and it is their duty to exercise it according to the general principles of the common law of the subject and the practice of the English courts so far as they are suited to our condition and the general spirit of our laws.”)**

of the Christian life, which the organized Church cannot replicate. “Therefore Christian families are called churches,” concluded the Anglican-Puritan theologian Richard Baxter, “because they consist of holy persons, that worship God, and learn, and love, and obey his word.... [W]ell-governed families are blessed with the special presence and favour of God. They are his churches where he is worshipped; his houses where he dwelleth: he is engaged both by love and promise to bless, protect, and prosper them, Psal. i. 3; cxxviii.”<sup>55</sup>

The Puritan divines thus concluded that God bestowed his blessings to individuals through families and family covenants.<sup>56</sup> Hence, the leaders of the Puritan family<sup>57</sup>, particularly, the fathers, had a stern duty to sanctify the family<sup>58</sup> and home life by setting high Christian standards.<sup>59</sup> Indeed, the Puritan home was a church sanctuary where religious ritual and sanctification occurred. Here, inside of the Puritan home, God performed required a most solemn worship; there, God bestowed miracles and blessings. Therefore, the Puritan family was expected to organize the household for Christian education, family prayer, and family worship. They used as their model the story of Exodus, where God used the Israelite families to coordinate the first Passover ritual<sup>60</sup>:

*“Then Moses called for all the elders of Israel, and said unto them, Draw out and take you a lamb according to your families, and kill the Passover.”*  
-- Exodus 12:21

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<sup>55</sup> Richard Baxter, p. 45.

<sup>56</sup> See, e.g., Richard Baxter, *A Christian Directory Or, a Sum of Practical Theology, And Cases of Conscience* (Part 2 Christian Economics)(reprinted in Columbia, S.C. on January 18, 2019), p 27 (“we find in Scripture not only single persons, but the societies of such, sanctified to God. Deut. vii. 6, ‘Thou art an holy people unto the Lord thy God; he hath chosen thee to be a special people to himself above all people that are upon the face of the earth.’ So Deut.xiv. 20, 21. So that body of that commonwealth did all jointly enter into covenant with God, and God to them, Deut. xxix.; xxx.; and xxvi. 17-19, ‘Thou hast vouched the Lord this day to be thy God, and to walk in his ways; and the Lord hath vouched thee this day to be his peculiar people, that thou mayst be an holy people to the Lord.’ So chap. Xxviii. 9; Dan. viii. 24; xii, 7. **Joshua, chap. xxiv. devoteth himself and his house to Lord; ‘I and my house will serve the Lord.’ And Abraham by circumcision (the covenant, or seal of the covenant of God) consecrated his whole household to God; and so were all families after him to do (as the males, in whom the whole was consecrated). And whether besides the typifying intent, there were not somewhat more in the sanctifying of all the first-born to God, who if they lived, were to be the heads of the families, may be questioned).**

<sup>57</sup> The great Puritan divine Richard Baxter tells us “If Christian families (besides all the forementioned advantages and obligations) are also societies sanctified to God, then is it God’s will that families, as such, should solemnly worship him; but Christian families are societies sanctified to God.... To sanctify a person or thing, is to set it apart, and separate it from a common or unclean use, and to devote it to God, to be employed in his service.” *A Christian Directory Or, a Sum of Practical Theology, And Cases of Conscience* (Part 2 Christian Economics)(reprinted in Columbia, S.C. on January 18, 2019), p 27.

<sup>58</sup> Ibid.

<sup>59</sup> “[A] family of Christians is a society of holy persons....” Ibid., p. 27.

<sup>60</sup> “The Passover was a family duty, by which they were yet further sanctified to God.” Ibid., p. 28.

Hence, even before there was the institution of the Aaronic priesthood or the building of God's Temple at Jerusalem, there was family worship inside of the home. God's first "priests" were the "elders of Israel," who were the patriarchs and fathers of individual families—the presided over the first Passover ceremony, which was the killing of a male lamb without blemish, and wiping the blood on the door posts:

And the LORD spake unto Moses and Aaron in the land of Egypt, saying: This month shall be unto you the beginning of months: it shall be the first month of the year to you.

Speak ye unto all the congregation of Israel, saying, In the tenth day of this month they shall take to them every man a lamb, according to the house of their fathers, a lamb for an house....

Your lamb shall be without blemish, a male of the first year: ye shall take it out from the sheep, or from the goats.... And they shall take of the blood, and strike it on the two side posts and on the upper door post of the houses, wherein they shall eat it....<sup>61</sup>

Then Moses called for all **the elders of Israel**, and said unto them, Draw out and take you a lamb **according to your families**, and kill the Passover.

And ye shall take a bunch of hyssop, and dip it in the blood that is in the bason, and strike the lintel and the two side posts with the blood that is in the bason; and none of you shall go out at **the door of his house until the morning**.

For the LORD will pass through to smite the Egyptians; and when he seeth the blood upon the lintel, and on the two side posts, the LORD will pass over the door, and will not suffer the destroyer to come in unto **your houses** to smit you.

And ye shall observe this thing for an ordinance to thee and to thy sons for ever.

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<sup>61</sup> Exodus 12:1-7.



And it shall come to pass, when ye be come to the land which the LORD will give you, according as he hath promised, that ye shall keep this service.

And it shall come to pass, when your children shall say unto you, What mean ye by this service?

That ye shall say, It is the sacrifice of the LORD's Passover, who **passed over the houses of the children of Israel** in Egypt, when he smote the Egyptians, and delivered our houses. And the people bowed the head and worshipped.<sup>62</sup>

For this reason, the Puritan divines concluded that God loved Christian families and bestowed his blessings upon individuals through families.

#### **b. Family Prayer and Family Time**

The common cliché that **“a family that prays together stays together”** was actually customary practice and law in colonial New England. “If households must serve the Lord, then households must pray to him and praise him: but households must serve him; therefore, &c.”<sup>63</sup> It was therefore expected that individual families would study the Bible together, pray together, practice and teach holiness, and enforce spiritual and family discipline upon fellow family members. **Moreover, the Puritans understood that no pastor or church could conceivably be expected to enforce this discipline at the family unit level—only family governors could do that, and the efficacy, viability, and survival of the Church as an organized institution actually depended upon this aspect of effective family government.**

As previously mentioned, **the husband, as the family priest, governs the wife; and both the husband and wife govern the children and servants within the family, by divine authority from God.**<sup>64</sup> “Let your family understand that your authority is of God,” Rev. Baxter counseled, “who is the God of order, and

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<sup>62</sup> Exodus 12:21-27.

<sup>63</sup> Richard Baxter, p. 35.

<sup>64</sup> This idea as to the natural-law origin of the family was embraced by political theorists Thomas Hobbes. See, e.g., Edwin A. Burt, *The English Philosophers From Bacon to Mill* (New York, N.Y.: The Modern Library, 1967), pp. 192-195. It was also embraced by John Locke. Edwin A. Burt, *The English Philosophers From Bacon to Mill* (New York, N.Y.: The Modern Library, 1967), p. 475.



that in obedience to him they are obliged to obey you.”<sup>65</sup> In addition, Puritan divines encouraged family governors (i.e., husband/ father or wife/mother) to continuously seek to develop a fitness toward the holy governing and government of the family unit.<sup>66</sup> “Labour for prudence and skillfulness in governing,” wrote the Anglican-Puritan theologian Richard Baxter. “He that undertaketh to be a master of a family, undertaketh to be their governor....”<sup>67</sup>

Thus, the Puritan church was, in essence, an extension of the traditional family (i.e., husband/ father (male); wife/mother (female); and children). See, e.g., Table 3, below, “Manhood: A Priestly Function in Church and Home.”

**Table 3. Manhood: A Priestly Function in the Church and Home**

<b>Father (Church)</b>	<b>Father (Home)</b>
Priest	Husband
Church	Home (Wife/ Children)
Obey/ Administer/ Teach Law of Christ	Obey/ Administer/ Teach Law of Christ

Indeed, Puritan families were believed to be small replicas of the larger Christian church. Puritans believed that the family (i.e., the household unit) to be ordained and sanctified by God. Family or household godly devotion was essential to Christian practice and an integral component to the larger Church body. The renowned, erudite Anglican-Puritan Richard Baxter has thus written:

It is the will of God that **rulers of families should teach those that are under them the doctrine of salvation**, i.e. the doctrine of God concerning salvation, and the terms on which it is to be had, and the means to be used for attaining it, and all the duties requisite on our parts in order thereunto.... Where I say men must thus teach, I imply they must be able to teach.... Family teaching must stand in a subordination to ministerial teaching, as families are subordinate to

<sup>65</sup> Ibid., p. 40.

<sup>66</sup> Ibid. pp. 40-42.

<sup>67</sup> Ibid., p. 41.

churches; and therefore, (1) Family teaching must give place to ministerial teaching, and never be set against it; you must not be hearing the master of a family, when you should be in a church hearing the pastor.... And therefore when any hard text or controversies fall in, the master [of the family] should consult the pastor for their exposition, unless it fall out that the master of the family be better learned in the Scripture than the pastor for their exposition, which is rare.... Now to the proof (remembering still that whatsoever proves it the ruler's duty to teach, must needs prove it the family's duty to learn, and to hearken to his teaching that they may learn.... Those that are to be chosen deacons or bishops, must be such as rule their own children and their own household well, 1 Tim. iii. 4, 12.<sup>68</sup>

**The husband must undertake the principal part of the government of the whole family, even of the wife herself.**<sup>69</sup>

The husband must be the principal teacher of the family. He must instruct them and examine them, and rule them about the matters of God.... He must be as it were **the priest of the household.**<sup>70</sup>

Therefore **Christian families are called churches**, because they consist of holy persons, that worship God, and learn, and love, and obey his word....<sup>71</sup>

Here, we should not deprecate or underestimate the significance of “family government” upon the whole system of Christian life in England and colonial New England. The family unit was the cornerstone of both the Church and the State! The Puritans understood that the family unit needed competent governors—husbands/ fathers and wives/ mothers who were holy— or else both Church and State could not exist. Family discipline was quintessential. The Puritans understood that **no pastor or church could conceivably be expected to enforce this family discipline at the family unit level—only family governors (i.e.,**

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<sup>68</sup> Richard Baxter, *A Christian Directory (or, A Sum of Practical Theology, and Cases of Conscience), Part 2, Economics* (reprinted in Columba, S.C. on January 18, 2019).

<sup>69</sup> *Ibid.*, p. 60.

<sup>70</sup> *Ibid.*, p. 61.

<sup>71</sup> *Ibid.*, p. 45.

**fathers and mothers) could effectively enforce family discipline and administer effective family government.**

**c. Holy Education of Children**

To be sure, the most important component to “family government” is the proper raising and education of children. The Puritans understood that this function was profound and comprehensive, requiring the “greatest care and diligence.”<sup>72</sup> Parents must not only provide a Christian education but they must also provide a Christian example—hence, the holy education of children is a perpetual, never-ending process, with deep significance regarding the survival of both the Church and the State.

Lastly, consider, that holy, well-governed families are blessed with the special presence and favour of God. They are his churches where he is worshipped; his houses where he dwelleth: he is engaged both by love and promise to bless, protect, and proper them....

So that it is an evident truth, that most of the mischiefs that now infest or seize upon mankind throughout the earth, consist in, or are caused by, the disorders and ill-governedness of families. These are the schools and shops of Satan, from whence proceed the beastly ignorance, lust, and sensuality, the devilish pride, malignity, and cruelty against the holy ways of God, which have so unmanned the progeny of Adam. These are the nests in which the serpent doth hatch the eggs of covetousness, envy, strife, revenge, of tyranny, disobedience, wars, and bloodshed, and all the leprosy of sin that hath

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<sup>72</sup> Ibid., p. 47.

so odiously contaminated human nature, and all the miseries by which they make the world calamitous.<sup>73</sup>

Thus to the Puritan mind, if families were not considered to be sacred and holy institutions (i.e., extensions of churches), then they would become “nests” of evil, thus leading to the deterioration and break-down of a healthy social order.<sup>74</sup>

### 3. The Family as Basic Unit of the Christian Commonwealth

We now turn to the political foundations of Anglo-American civil law, in order to show that the Anglican and Puritan ideals of the family unit were a close parallel, if not altogether identical to, Greco-Roman and universal natural laws governing the family. (See, also, **Part XI. Anglican Church: Of the Christian Law of Marriage (1300 to early 1600s, A.D.**, of this series). First, we consider the Catholic theology of St. Augustine of Hippo (480-354 A.D.), who opined that the term “*paterfamilias*” was “so much in accordance with the natural order” that both Christian and non-Christian or pagan nations adopted this practice and treated it as the foundation of society and government.<sup>75</sup> St. Augustine clearly set forth an idea that is closely akin to the Puritan form of “family government,” where in *The City of God*, he speaks of “domestic rule,” as follows:

And therefore, although our righteous fathers (i.e., The Patriarchs) had slaves, and administered their domestic affairs so as to distinguish between the condition of slaves and the heirship of sons in regard to the blessings of this life, yet in regard to the worship of God, in whom we hope for eternal blessings, **they took an equally loving oversight of all the members of their household.** And this is so much in accordance with the natural order, that **the head of the household was called *paterfamilias*; and this name has been so generally accepted, that even before those whose rule is unrighteous are glad to apply it to themselves.** But those who are **true fathers of their households** desire and endeavor that all the members of their households, **equally with their own children, should worship and win God,** and should come to that heavenly home in which the duty of ruling men is no longer necessary, because the duty of caring for their everlasting happiness has also ceased; but, until they reach that

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<sup>73</sup> Ibid., p. 45.

<sup>74</sup> Ibid., p. 45.

<sup>75</sup> St. Augustine of Hippo, *The City of God* (New York, N.Y.: The Modern Library, 1950), p. 694.

home, masters ought to feel their position of authority a greater burden than servants their service. And if any member of the family interrupts the domestic peace by disobedience, he is corrected either by word or blow, or some kind of just and legitimate punishment, such as society permits, that he may himself be the better for it, and be readjusted to the family harmony from which he had dislocated himself.... **Since, then, the house ought to be the beginning or element of the city, and every beginning bears reference to some end of its own kind, and every element to the integrity of the whole of which it is an element, it follows plainly enough that domestic peace has a relation to civic peace**—in other words, that the well-ordered concord of civic obedience and domestic rule has a relation to the well-ordered concord of civic obedience and civic rule. And therefore it follows, further, that **the father of the family ought to frame his domestic rule in accordance with the law of the city, so that the household may be in harmony with the civic order.**<sup>76</sup>

Here we find in a Church Father the same theological elements of Anglican or Puritan political theory—the paterfamilias was to be the cornerstone of the Christian republic or commonwealth, as indeed it was likewise claimed to be amongst the ancient pagans.

Second, we consider the conservative Anglican Thomas Hobbes (1588-1679), who wrote during the time of the tumultuous English Civil Wars (1641-1653). Like the Puritans, Hobbes placed the seat of government in the family unit—where he claims the right of government (i.e., dominion) originates in nature, natural law, the law of reason, or the law of God. Hobbes writes that “[d]ominion is acquired two ways; by generation, and by conquest. The right of dominion by generation, is that, which the parent hath over his children; and is called *paternal*.... For as to the generation, God hath ordained to man a helper; and there be always two that are equally parents: **the dominion therefore over the child**, should belong equally to both.”<sup>77</sup> Hobbes, however, points out that there may be cases where dominion over the child should rest with the mother, but such cases are generally rare—such as the father’s absence or incapacitation or death.<sup>78</sup> Under most normal circumstances, the father is the head of the household, as

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<sup>76</sup> St. Augustine, *The City of God*, pp. 694-695.

<sup>77</sup> Edwin A. Burt, *The English Philosophers From Bacon to Mill* (New York, N.Y.: The Modern Library, 1967), pp. 192-193.

<sup>78</sup> *Ibid.*, p. 193 (“[I]n the condition of mere nature, where there are no matrimonial laws, it cannot be known who is the father, unless it be declared by the mother; and therefore the right of dominion over the child dependeth on her will, and is consequently hers.”)

established by civil law and by nature. Here, Hobbes does not take into account the writings of St. Paul, St. Peter, or the Church Fathers—he is simply assessing this situation from the point of view of universal natural law.

Hence, from this natural law of the family—that is, the fatherhood dominion over a household, Hobbes reasoned toward a theory of legitimate civil government. The father's dominion over his children extended to his dominion over his grandchildren and great-grandchildren, etc., together with their servants. This is how families became tribes, and groups of tribes were forged into nations and nation-states—generally ruled, at first by princes and monarchs.

He that hath dominion over the child, hath dominion also over the children of the child; and over their children's children. For he that hath dominion over the person of a man, hath dominion over all that is his; without which, dominion were but a title, without the effect. The right of succession to paternal dominion, proceedeth in the same manner, as doth the right of succession of monarchy....<sup>79</sup>

By this it appears; that a great family, if it be not part of some commonwealth, is of itself, as to the rights of sovereignty, a little monarchy; whether that family consist of a man and his children; or of a man and his servants: or of a man, and his children, and servants together; wherein the father or master is the sovereign.<sup>80</sup>

Thus, to Thomas Hobbes and other classical political theorists, the obligations of the parent towards the child—instruction, protection, discipline, good faith, etc.—defined, in broad general terms, the duties of the monarch towards his subjects. For Hobbes and other conservative Anglicans, just as a parent has not absolute right to take the life of the child, the monarch had not absolute right to take the life of the subject—the right of revolt by the subject, and the parameters of constitutional limitations of divine right of kings, were the subject-matter of the English Civil War, which Hobbes tried to work through in his masterpiece *Leviathan*.

English physician, philosopher, and theologian John Locke (1632- 1704) picked up where Hobbes left off, and he adopted the exact same natural-law theory of the family as the foundations of secular civil government. Locke agreed with

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<sup>79</sup> Ibid., p.194.

<sup>80</sup> Ibid., p. 195.



Hobbes that paternal dominion of the father is the natural source of dominion and authority both within the home and in the civil society. But Locke loosened the grip of authority which the patriarch might wield over his adult children. Locke wrote: “First, then, paternal or parental power is nothing but that which parents have over their children to govern them, for the children’s good, till they come to the use of reason, or a state of knowledge, wherein they may be supposed capable to understand that rule, whether it be the law of nature or the municipal law of their country, they are to govern themselves by—capable, I say, to know it, as well as several others, who live as free men under that law.... And thus, **it is true, the paternal is natural government, but not at all extending itself to the ends and jurisdictions of that which is political.**”<sup>81</sup> In other words, Locke incorporated within that foundation **the right of the “adult child” to “voluntary agreement” or “to continue or discontinue being governed” by the father (i.e., the monarch)**; and, from this analysis, he developed the idea of the “social contract” or principles of democratic governments, bills of rights, and constitutional limitations upon the divine right of a monarchy. “Nature gives the first of these—viz.,” wrote Locke, “paternal power to parents for the benefit of their children during their minority, to supply their want of ability and understanding how to manage their property.... Voluntary agreement gives the second—viz., political power to governors, for the benefit of their subjects, to secure them in the possession and use of their properties.”<sup>82</sup>

It goes without saying that, when the Four Gospels (particularly Jesus’ “Sermon on the Mount”) are added to Anglo-American and Western political thought, practice and theory, the situation becomes explosively democratic—the “Law of Christ”<sup>83</sup> leads naturally to democracy and to constitutional limitations upon abusive governmental authority. This explosive democratic spirit is what fueled the Puritan movements in England and colonial New England; and it was at the very heart of the English Civil Wars (1642-1653). The Levelers, the Diggers, the Independents, the Baptists, the Quakers, and the Puritan-Anglicans relied upon the text of the Four Gospels (i.e., the “Law of Christ”) to justify the positions they took against abusive royal authority. The “Law of Christ” completely decimated ideals of human superiority over other human beings and challenged the ideal of “divine right of kings.” Today, however, the fundamental problem of modern democracy in the United States, the United Kingdom and the British

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<sup>81</sup> Ibid., p. 475.

<sup>82</sup> Ibid.

<sup>83</sup> The Law of Christ is to “love ye one another” (John 15:12); to do justice and judgement (Genesis 18:18-19; Proverbs 21: 1-3); to judge not according to appearance but to judge righteous judgments (John 7:24); and to do justice, judgment, and equity (Proverbs 1:2-3).

Commonwealth is its potential to “vote down” royal commands that reflect eternal moral laws of God, such as the laws of nature and the law of establishing the father as the head of the family and treating family as the cornerstone of civil government).<sup>84</sup>

## CONCLUSION

The Puritans of seventeenth-century colonial New England believed that the “family unit” was the cornerstone of the secular civil society, as well as the foundation of the church. They also believed that a properly functioning family structure required “family government”—that is to say, proper training, adequate preparation, and the highest public-policy priorities from both the Church and the State. In colonial New England, the family was considered to be the most basic and important unit of local government. The husband or father was automatically placed at the head of the household and functioned as the spokesman and governor for the family. The wife or mother held a highly-regarded position within the family; she was one of the governors of the family but she was second in authority to her husband. *Both husband and wife governed subordinate servants—whether those servants were male or female.* For example, an indentured male servant or male slave was subordinate to, and owed due respect and obedience towards, the mistress or wife of the master and to the mother of the household. Thus relying on the biblical examples of the patriarchs and families of the Old Testament, the Puritans also believed that the family unit was a part of the church; and that the husband was considered to “priest of the household.” As a constituent part of the church, the family unit served a most important function, including enforcing Christian discipline among family members, family prayers, and the education of children. In both England and colonial New England, the family was not left to fend for itself, but instead it received ecclesial support from the parish clerical staff (deacons and priests), and there was an appellate court system, ran by clergymen, which ensured that Christian standards and principles were applied and governed the Christian household.

## THE END

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<sup>84</sup> See, below, **Appendices A through C.**

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**APPENDIX A: Anglo-American Common Law of Family, Husband and Wife  
(Am Jur (1<sup>st</sup> Edition); Am Jur (2d Edition)).**

**Am Jur (First Edition)**

**§ 2 Marital and Family Relationship**

“The relationship of husband and wife is at once a natural and a legal relationship. [citing Blackstone’s Commentaries, Chap. 15, p. 433] The rights and duties growing out of the natural relation are of a kind that must vary with changing circumstances, and many of them are of a nature in the main impracticable of enforcement by positive law....

The group of husband, wife, and children, including stepchildren, when living together, as they are presumed to do, constitutes the family. The family includes a parent of one of the spouses living with it under the headship of the husband.”

**§3 Unity of Husband and Wife. –**

**“Under the common law, husband and wife become by marriage one person, and the entire legal existence of the woman is completely merged or incorporated in that of the husband.**

“This fundamental principle is the foundation of the common-law theory and rules of rights, duties, and disabilities of marriage.

“Equity, however, has long recognized the separate existence of the wife with respect to her equitable separate estate, and under the Married Women’s Acts, in force in most if not all states, the unity of the spouses is severed, and each is a separate legal personality in so far as the disabilities of the wife are abolished; but such acts are to be construed as not otherwise impairing the unity of the spouses....

“The civil law has, generally speaking, recognized the separate existence of the wife.”

#### **§ 4 Legislative Power; Constitutionality and Construction of Statutes**

**“Legislative power over the marriage relationship exists in the state of the matrimonial domicil, and not in the United States, except in territories thereof.**

“The public interest in the marriage relationship is greater even than the private interest of husband and wife in their relationship. The law favors the marital relation and the permanence of the family.

“The family, with the obligations and privileges pertaining to it, reaches back of all state regulations, although it is necessarily regulated by positive law.” [It predates the state and state law, but it is regulated by positive law].

#### **§ 8 Rights of Wife and Duties of Husband**

“Consortium includes, at least according to some cases, the wife’s right to support by the husband, and among the duties assumed by the husband are his duties to love, cherish, and protect his wife, to give her a home, to provide her with comforts and the necessities of life within his means, to treat her kindly and not cruelly or inhumanly, and to discharge all the duties growing out of the relationship which has been created by the marriage.

“He is bound to honor her, accord to her freely and liberally all her rights, and guarantee to her the full and free enjoyment of all her just privileges and prerogatives as the mistress of his family and of the home that he provides for her. It is his duty not only to maintain and support her, but also to protect her from oppression and wrong.”

#### **§ 9 Rights of Husband and Duties of Wife**

“Consortium includes the husband’s right to the services of his wife as a wife, and this involves her duties to be his helpmeet, to love and care for him in such role, to afford him her society and her person, to protect and care for him in sickness, and to labor faithfully to advance his interests.

“Consortium includes the performance by a wife of her household and domestic duties, in the sense of whatever is necessary in such respect according to their station in life, without compensation therefor.



“A husband is entitled to the benefit of his wife’s industry and economy, and a contract for the performance of such services by her for compensation is void and of no effect.

“It has been said that by entering into the marriage she impliedly agrees to perform such services without compensation. The right of the husband to such services is a right of property. A wife is, however, under no duty to her husband at common law or under statute to perform services other than those usual marital services of a wife; and while the books abound in statements that the wife’s services are the husband’s, and that it is her duty to render them, the common law, it has been contended, gives him no remedy if she chooses not to perform them.”

### § 10 Head of Family

**“The husband, unless incapacitated from executing the authority and performing the duty, is head of the family. This is so, not only at common law, but under the Married Women’s Acts. It is not the purpose of these acts to depose the husband from the position given him by the common law as the head of the family.** It is necessary to the unity and preservation of the family, which is regarded as the basis of the state, to have a single head with control and power, and the husband is made that head and, in return, is made responsible for the maintenance and, at common law, for the conduct of his 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 serevant. 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.”**

### **§ 11 Authority of Husband over Wife**

“At early common law, however, the husband had authority, in many things, over the person of the wife. She performed everything under the wing, protection, and cover of the husband. She was in a condition of complete dependence and the inferior of her husband in all respects. She was under duty to obey him, at least, in so far as he was head of the family, and he could restrain her from gross misbehavior.

### **§ 14 Presumption that Spouses Do Duty and Kindness to Each Other**

“It is a fundamental presumption of the law of husband and wife that both husband and wife do their marital duty to each other. Such presumption follows from the general presumption of the law that persons do their duty. It is presumed that a wife lives with her husband. One spouse ought to be presumed to entertain dispositions of kindness toward the other.”

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### **Am Jur 2d**

### **§ 2 Unity of Husband and Wife and Disability of Wife at Common Law**

“At common law, husband and wife were regarded as one, and the legal existence of the wife during coverture was merged with that of her husband; as such, the wife was incapable of making contracts of acquiring property or disposing of property without her husband’s consent. As to her personal and property rights, the very legal existence of the wife was regarded as suspended for the duration of the marriage and merged into that of the husband, so that she lost the capacity to contract for herself, or to sue and be sued without joining the husband as plaintiff or defendant. The husband acquired the right to possession and use of his wife’s real and personal property, and he was entitled to all of her choses in action provided that he reduced them to possession during marriage by some act by which

he appropriated them to himself. In turn, he became liable for the torts of his wife, committed either before or during the marriage.”

### § 3 Statutory supersession of common-law status of married women

“The social order upon which the concept of legal unity between husband and wife was predicated no longer exists. During the 19<sup>th</sup> century Married Women’s Emancipation Acts were passed in all American jurisdictions. These were designed to confer upon married women a separate legal personality and to give them a separate legal estate in their own property. They conferred upon a wife the capacity to use or be sued without joining the husband and, generally, as far as third persons were concerned, made the wife separately responsible for her own torts. From an early date it was recognized that a primary purpose of these statutes was to free the wife’s property from the control of her husband. **The emancipation of a married woman from the legal disabilities of coverture does not merely place her on an equality with her husband, but it places her on an equality with a single woman and gives her all the rights that she would have had under the same facts as if she were single instead of married.** The modern conception of a married couple is not as an independent entity with a mind and heart of its own, but as an association of two individuals, each of whom controls or has the right to control his or her own life, association, finances, and affairs generally. Marriage does not destroy one’s constitutional right to personal autonomy.”

## APPENDIX B: The Anglo-American Doctrine of Coverture

I. England's "Common Law of Coverture" was based upon the Sacred Scriptures, such as Gen. 2:21-24; Gen. 5:1-2; Matt. 19: 3-9; 1 Peter 3: 1-7; Eph. 5:22-33. The principle of coverture was described in William Blackstone's *Commentaries on the Laws of England* in the late 18th century:

By marriage, the husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband: under whose wing, protection, and cover, she performs every thing; and is therefore called in our law-French a feme-covert; is said to be covert-baron, or under the protection and influence of her husband, her baron, or lord; and her condition during her marriage is called her coverture.

Upon this principle, of a union of person in husband and wife, depend almost all the legal rights, duties, and disabilities, that either of them acquire by the marriage. I speak not at present of the rights of property, but of such as are merely personal.

For this reason, a man cannot grant anything to his wife, or enter into covenant with her: for the grant would be to suppose her separate existence; and to covenant with her, would be only to covenant with himself: and therefore it is also generally true, that all compacts made between husband and wife, when single, are voided by the intermarriage.<sup>85</sup>

### The Puritans of England and Colonial New England

The common law theory of coverture, first developed in England and brought to America... grew directly from the Christian belief of the unity of the spouses described above....<sup>86</sup>

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<sup>85</sup> <https://en.wikipedia.org/wiki/Coverture>

<sup>86</sup> Judith R. Gething, Ph.D., "Christianity and Coverture: Impact on the Legal Status of Women in Hawaii, 1820-1920," [Citation omitted], pp. 188-220.

Christianity, as interpreted by a line of thinkers from John Calvin through John Winthrop, to the preachers of the early 1800s, detailed an important but subservient role for women. As opposed to other interpretations of the Bible, the Congregationalists believed all souls, those of women as well as those of men, were important and worthy of salvation. This is an essential key to understanding the role of women because part of the result of this belief was a sincere respect for women and their work within their own sphere. Their own sphere, however, was almost totally separate from and subservient to men's. The Bible was the key to this subservient status and the basis for it started with the beginning, the book of Genesis....<sup>87</sup>

Woman was to be man's helpmate, his subordinate, whose Christian duty was to fulfill the roles of wife and mother. Marriage was a solemn sacrament. Jesus had 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 no man put asunder." A woman was not to be a preacher or hold lay offices, except perhaps in the Sunday or church school....<sup>88</sup>

In addition to establishing the father as the head of the household, Christianity had an impact on the lives of women in many other ways. Divorce, adultery, and fornication had been proscribed by Jesus in the Sermon on the Mount. Divorce on grounds of adultery was permissible; remarriage, however, was not. Divorce, adultery, and fornication, along with sodomy, rape, statutory rape, and prostitution were all illegal in New England in the early 1800s. Opinion varies on the question of what the Bible requires in relation to abortion, but in 1800 abortion after quickening was generally considered murder and was illegal. A modest Christian woman wore conservative clothes and covered her head in church in respect to Paul's command.<sup>89</sup>

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<sup>87</sup> Ibid.

<sup>88</sup> Ibid.

<sup>89</sup> Ibid.

## II. The Biblical Origins of the Anglo-American Common Law of the Doctrine of Coverture

1. **Law of Moses( Genesis 5:1-2):** “This *is* the book of the generations of Adam. In the day that God created man, in the likeness of God made he him; Male and female created he them; and blessed them, and called their name Adam, in the day when they were created.”

2. **Law of Moses (Genesis 2: 21-24):** “And the LORD God caused a deep sleep to fall upon Adam, and he slept: and he took one of his ribs, and closed up the flesh instead thereof; And the rib, which the LORD God had taken from man, made he a woman, and brought her unto the man. And Adam said, This is now bone of my bones, and flesh of my flesh: she shall be called Woman, because she was taken out of Man. Therefore shall a man leave his father and his mother, and shall cleave unto his wife: and they shall be one flesh. And they were both naked, the man and his wife, and were not ashamed.”

3. **Law of Christ (Matthew 19:3-9):** “The Pharisees also came unto him, tempting him, and saying unto him, Is it lawful for a man to put away his wife for every cause? 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. They say unto him, Why did Moses then command to give a writing of divorcement, and to put her away? He saith unto them, Moses because of the hardness of your hearts suffered you to put away your wives: but from the beginning it was not so. And I say unto you, Whosoever shall put away his wife, except *it be* for fornication, and shall marry another, committeth adultery: and whoso marrieth her which is put away doth commit adultery.”

4. **Law of Christ (1 Peter 3: 1-7):** “Likewise, ye wives, *be* in subjection to your own husbands; that, if any obey not the word, they also may without the word be won by the conversation of the wives; While they behold your chaste conversation *coupled* with fear. Whose adorning let it not be that outward *adorning* of plaiting the hair, and of wearing of gold, or of putting on of apparel; But *let it be* the hidden man of the heart, in that which is not



corruptible, *even the ornament* of a meek and quiet spirit, which is in the sight of God of great price. For after this manner in the old time the holy women also, who trusted in God, adorned themselves, being in subjection unto their own husbands: Even as Sara obeyed Abraham, calling him lord: whose daughters ye are, as long as ye do well, and are not afraid with any amazement. Likewise, ye husbands, dwell with *them* according to knowledge, giving honour unto the wife, as unto the weaker vessel, and as being heirs together of the grace of life; that your prayers be not hindered.”

5. **Law of Christ (Ephesians 5:22-33):** “Wives, submit yourselves unto your own husbands, as unto the Lord. For the husband is the head of the wife, even as Christ is the head of the church: and he is the saviour of the body. Therefore as the church is subject unto Christ, so *let the wives be* to their own husbands in every thing. Husbands, love your wives, even as Christ also loved the church, and gave himself for it; That he might sanctify and cleanse it with the washing of water by the word, That he might present it to himself a glorious church, not having spot, or wrinkle, or any such thing; but that it should be holy and without blemish. So ought men to love their wives as their own bodies. He that loveth his wife loveth himself. For no man ever yet hated his own flesh; but nourisheth and cherisheth it, even as the Lord the church: For we are members of his body, of his flesh, and of his bones. For this cause shall a man leave his father and mother, and shall be joined unto his wife, and they two shall be one flesh. This is a great mystery: but I speak concerning Christ and the church. Nevertheless let every one of you in particular so love his wife even as himself; and the wife *see* that she reverence *her* husband.”

**APPENDIX C. England’s Ecclesiastical Courts (General and Limited Jurisdiction)—1534-1800<sup>90</sup>**

<b>England’s Ecclesiastical Court System (1534-1800)</b>	<b>Jurisdiction</b>	<b>Court Type</b>
<b>Archbishop</b> (York; Canterbury)	Province (includes several Dioceses)	Audience Court/ Appeals Courts/ Prerogative Court <sup>91</sup>
<b>Bishop</b>	Diocese (includes several Parishes)	Bishop’s Courts/ Consistory Courts <sup>92</sup>
<b>Priests</b>	Parishes	Church Courts/ Ecclesiastical Courts <sup>93</sup>

**ARCHBISHOPS (York; Canterbury):**

In England and Wales two leading bishops developed at York and Canterbury with powers to supervise their fellow bishops and to hear appeals in disputes. The areas of jurisdiction of these ‘archbishops’ were called ‘provinces’ and the province of Canterbury came to include all Wales (until the Archbishopric of Wales was created in 1920), the northern province of York covering the counties of Cumberland, Durham, Lancashire, Northumberland, Nottinghamshire

<sup>90</sup> “Church Courts in England and Wales,”

[https://www.familysearch.org/wiki/en/Church\\_Courts\\_in\\_England\\_and\\_Wales](https://www.familysearch.org/wiki/en/Church_Courts_in_England_and_Wales)

<sup>91</sup> [https://www.familysearch.org/wiki/en/Church\\_Courts\\_in\\_England\\_and\\_Wales](https://www.familysearch.org/wiki/en/Church_Courts_in_England_and_Wales)

<sup>92</sup> Ibid.

<sup>93</sup> Ibid.

(prior to 1839), Westmorland and York, and that part of the Cheshire north of the River Ribble.

The archbishops had several courts. Each had an audience court that heard cases against the clergy and each had an appeal court that heard cases of every description referred from the bishops' and other lower courts.

Both archbishops also had a prerogative court which proved wills but also heard cases about the validity of wills that were in dispute. Cases about the interpretation of wills usually went to the Court of Chancery, though it was not uncommon for cases about a will to run in parallel in both a prerogative and the Chancery Court.<sup>94</sup>

### **BISHOPS (Church of England):**

From its earliest days the Church of England was ruled by bishops and their areas of jurisdiction were called dioceses or sees. They ordained priests and allotted them to churches which likewise came to be called parishes. The bishops oversaw the spiritual welfare of the people as well as the property and income given to the church and its clergy, enforcing the rules and regulations of the mother church.

To this end the bishops visited their dioceses on appointment and then again every three or four years. They did not go out to every parish but held court in one church for each group of three or four rural deaneries, each of which contained perhaps a dozen parishes. Before his 'visitation' the churchwardens of each parish in the diocese were given notice to submit a 'presentment' of things that needed attention.

The bishops' courts came to be called consistory courts and were held regularly throughout the year as well as during visitations. The bishop did not necessarily preside in person and much of the business was carried out by his chancellor or, as mentioned below in the larger archdeaconries, by his 'commissary'.

From the sixteenth century the churchwardens were provided with a printed list of 'articles of inquiry' to which they, as 'presenters', were

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<sup>94</sup> Ibid.

required to give answers. These may not be very helpful, the words 'all is well' or 'omnia bene' often being used in reply. However, from the 1670s, the numbers of communicants and the names of the recusants and dissenters in the parish as well as details of schools and charities often appear. Bishop Turner, of Ely, for instance, in 1686 asked for a census of people in his dioceses over the age of sixteen. Sadly, in this case only the statistics and not the names survive. From the early and mid-eighteenth century these visitation articles of inquiry may be much more detailed and informative. A few, for example the diocese of Oxford in 1738 and 1854, the diocese of Exeter in 1821, and the diocese of Yorkshire in 1743, have been printed.<sup>95</sup>

### **PARISH COURTS (i.e., the Ecclesiastical Courts)(BEFORE 1641):**

Because of the many cases of sexual misconduct and defamation which the church courts heard, they have become known as the 'bawdy courts', but there is much in the records that is of great value genealogically and which deserves wider attention.

The matters 'presented' by the churchwardens and their sidesmen at the visitations of archdeacons and bishops touched on many aspects of parish life. Thus attendance at, and especially behaviour in, the church or churchyard, the conduct of parish officers, matters connected with the church fabric, furniture and its maintenance, parish dues and tithes, were considered, as well as all aspects of betrothal, marriage and wills. Offences such as libel, slander, defamation, bastardy, bigamy, incest and adultery were also dealt with.

In the sixteenth century the Act Books kept by the archdeacon's clerk would show, in a typical example, that some thirty per cent of his cases would be to do with wills and administrations, sixteen per cent with non-payment of tithes, eleven per cent with the non-presentment or concealment of offences at and absences from the archdeacon's visitation, nine per cent with defamation and libel, eight per cent with non-payment of fees, four per cent with working on Sundays or, more

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<sup>95</sup> [https://www.familysearch.org/wiki/en/Church\\_Courts\\_in\\_England\\_and\\_Wales](https://www.familysearch.org/wiki/en/Church_Courts_in_England_and_Wales)

often, on holidays, and the remainder to do with licences for curates, preaching or teaching, and with offences committed by the clergy, parish officers and the laity. However, in about twelve per cent of the cases the actual offence would not be specified in the record.

The matters dealt with by the church courts changed slowly following the Reformation in 1530 but it had no effect at all on the forms of the records maintained. Many of the semi-secular cases which the courts would have dealt with in the sixteenth century passed, however, to the courts of Quarter Sessions in the seventeenth century.

Following presentment by the churchwardens or constables of the appropriate parish the accused person was then 'cited' to appear. This was done by notice sent to the clergy and read out in church. The notice was endorsed to that effect and returned to the bishop. The witnesses made depositions on oath that they might purge the accused by proving his or her innocence. Failure to appear usually involved excommunication, notice again being sent via the clergy, read out, sign and returned.

The church courts were abolished in 1641 and some losses in the earlier records then occurred. Some of the pre-1641 Act Books seem to have been preserved merely for use as precedents and the subsidiary papers do not often survive for this period.<sup>96</sup>

### **PARISH COURTS (i.e., Ecclesiastical Courts) (AFTER 1661):**

Although the church courts were restored in 1661, their authority was never quite the same again. By the end of that century, with the continued decline in the power of the Church of England, there were only a few matters which came regularly to their attention. Aside from the regular probate of wills and the granting of marriage licences about a third of all the cases concerned probate disputes, fifteen per cent matrimony, fifteen per cent dilapidations, faculties, pews, tithes, rates and fees, ten per cent defamation, and the remainder mostly

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<sup>96</sup>“Church Courts in England and Wales,”

[https://www.familysearch.org/wiki/en/Church\\_Courts\\_in\\_England\\_and\\_Wales](https://www.familysearch.org/wiki/en/Church_Courts_in_England_and_Wales)

concern the clergy, churchwardens and the misbehaviour of parishioners in church and matters arising from the work of the court itself. The presentments of non-attenders at church down to about 1760 may be a valuable source of information about nonconformists and Catholics in each parish.

In this later period, although again the Act Books remain the chief guide to what was happening, there may be digests of presentments (files made up by parishes in deaneries for each visitation) and the important depositions of witnesses which show age, occupation and length of residence, are more likely to survive.

Some cases which appear on the surface to be merely of a technical nature, for example those to do with tithes or with the pews in the church, may produce whole groups of elderly local witnesses. A dispute about the right to nominate a curate at Saltash which went to appeal in 1752, for instance, produced twenty such witnesses. Tithe cases may be of value in tracing nonconformist families and those to do with seating in the pews may provide details of old family rights and ancestral claims.

The records of the various church courts are usually with the other diocesan records in the appropriate county record office. The existence of indexes or calendars varies enormously from place to place. If possible depositions are to be found much searching of files may be required. At all times cases dragged on, often with no clear purpose or stated outcome.<sup>97</sup>

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<sup>97</sup> Ibid.



## **Appendix D-- “The American Slave Code: Systematic Denial of Anglo-American Common Law of Family, Husband and Wife to African Americans, 1619-1865”**

The Puritans of seventeenth-century colonial New England believed that the “family unit” is the cornerstone of the secular civil society, as well as the foundation of the church. They also believed that a properly functioning family structure also required “family government”—that is to say, proper training, adequate preparation, and the highest public-policy priorities of both the Church and the State. **When we compare the regulation of African slaves and slave families in British North America to the standards of “family government” established by the Puritans, we can easily see how the African American family structure was seriously crippled by the system of slavery and lingering racial discrimination. Whereas Puritan and Anglican ideals of the family unit required strict conformity of Christian standards and ideals, the institution of American slavery stripped the African slaves of having any of these conjugal privileges.**

1. A publication of the American and Foreign Anti-Slavery Society is titled, *The American Slave Code*, provides a compilation of the laws that governed and regulated the conjugal relationship among African American slaves in the United States. For example, **Chapter VII, “Slaves Cannot Marry,” of The American Slave Code**<sup>98</sup>, says:

a. “Men may forget or disregard the rules of logic in their reasonings about slavery, but the genius that presides over American slavery never forgets or disregards them.”<sup>99</sup>

b. “The slave has no rights. Of course he, or she, cannot have the rights of a husband, a wife.”<sup>100</sup>

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<sup>98</sup> William Goodell, *The American Slave Code in Theory and Practice: Its distinctive features shown by Its Statutes, Judicial Decisions, and Illustrative Facts* (New York: American and Foreign Anti-slavery Society, 1858)[reprinted by the University of Michigan], pp. 106-112.

<sup>99</sup> Ibid.

<sup>100</sup> Ibid.

c. “Slaves are not people, in the eye of the law. They have no legal personality.”<sup>101</sup>

d. “The slave is one who is in the power of a master to whom he belongs.’ How, then, can the slave marry?”<sup>102</sup>

e. “The legal relation of master and slave,’ with all the vestal robes of its spotless innocency, and saintly Biblical paternity, has never, in this country, been held to be compatible with marriage.”<sup>103</sup>

f. “So early as in colonial times, when parish ministers, all over New England, owned slaves, it was held by learned civilians in good old Connecticut, that when a slaver master, though inadvertently, gave verbal license to a female slave to marry, the license made her free. Being married, she was not a slave, and the husband bore off his prize in triumph, before her master!”<sup>104</sup>

g. “The same doctrine has always been held (though differently enunciated) at the South. Slave mothers are there licensed by their masters to be ‘breeders,’ not wives, and thus they are retained as slaves.”<sup>105</sup>

h. “ ‘A slave cannot even contract matrimony, the association which takes place among slaves, and is called marriage, being properly designated by the word contubernium, a relation which has no sanctity, and which no civil rights are attached.’ (Stroud’s ‘Sketch of the Slave Law,’ p. 61).”<sup>106</sup>

i. “ ‘A slave has never maintained an action against the violator of his bed.’”<sup>107</sup>

j. “Slaves were not entitled to the conditions of matrimony, and therefore they had no relief in cases of adultery; nor were they the proper objects of

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<sup>101</sup> *ibid.*

<sup>102</sup> *ibid.*

<sup>103</sup> *ibid.*

<sup>104</sup> *ibid.*

<sup>105</sup> *ibid.*

<sup>106</sup> *ibid.*

<sup>107</sup> *ibid.*

cognition or affinity, but of quasi-cognition only.’ (Dr. Taylor’s ‘Elements of the Civil Law,’ p. 429).<sup>108</sup>

k. “The obligations of marriage are evidently inconsistent with the conditions of slavery, and cannot be performed by a slave. **The husband promises to protect his wife and provide for her. The wife promises to be the help-meet for her husband. They mutually promise to live with and cherish each other, till parted by death. But what can such promises by slaves mean? The ‘legal relation of master and slave’ renders them void!** It forbids the slave to protect even himself. It clothes his master with authority to bid him inflict deadly blows on the woman he has sworn to protect. It prohibits his possession of any property wherewith to sustain her. His labor and his hands it takes from him. It bids the woman assist, not her husband, but her owner! Nay! It gives him unlimited control and full possession of her own person, and forbids her, on pain of death, (as will be shown,) to resist him, if he drags her to his bed! It severs the plighted pair, at the will of their masters, occasionally, or for ever!”<sup>109</sup>

l. “The innocent ‘legal relation’ of slave-ownership does or permits all this, and without forfeiting clerical favor, or a high seat in the Church, or in the Senate, or Presidential chair. What, then, can the marriage vows of slaves mean?”<sup>110</sup>

m. “The Presbyterian Synod of Kentucky, in their address, have given us their testimony to the general fact and its effects. They say: The system ‘produces general licentiousness among the slaves. Marriage, as a civil ordinance, they cannot enjoy.’”<sup>111</sup>

n. “We have seen a well-authenticated account of a respectable Christian lady at the South, who kept a handsome mulatto female for the use of her genteel son, as a method of deterring him, as she said, from more indiscriminate and vulgar indulgences.”<sup>112</sup>

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<sup>108</sup> Ibid.

<sup>109</sup> Ibid.

<sup>110</sup> Ibid.

<sup>111</sup> Ibid.

<sup>112</sup> Ibid.

o. “Even in Puritan New-England, seventy years ago, female slaves, in ministers’ and magistrates’ families, bore children, black or yellow, without marriage. No one inquired who their fathers were, and nothing more was thought of it than of the breeding of sheep or swine. We had the facts from those who well remembered them.”<sup>113</sup>

p. “The rapid and constant bleaching of colors, at the South, assures us that there is no exaggeration in these pictures. And if the Synod of Kentucky were not mistaken, the innocent ‘legal relation’ of slave ownership is to be held responsible for it all. Where the laws annul marriage, we may be certain that ‘the people are not better than their laws.’”<sup>114</sup>

4. And, as another example, **Chapter VIII, “Slaves Cannot Constitute Families,”** *The American Slave Code*, states the following:<sup>115</sup>

a. “The family relation originates in the institution of marriage, and exists not without it.”

b. “‘Of course, these laws do not recognize the parental relation, as belonging to slaves. A slave has not more legal authority over his child than a cow has over his calf.’ (Jay’s Inquiry, p. 132)”

c. “The fact that the slave, as a chattel personal, may be bought, sold, transported from one place to another, mortgaged, attached, leased, inherited, and ‘distributed’ in the settlement of estates, shows plainly that slaves cannot constitute families.”<sup>116</sup>

d. “‘In the slaveholding States, except in Louisiana, no law exists to prevent the violent separation of parents from their children, or even from each other.’ (Stroud’s Sketch, p. 50).”<sup>117</sup>

e. “‘Slaves may be sold and transferred from one to another without any statutory restriction or limitation, as to the separation of parents and children, &c., except in the State of Louisiana.’ (Wheeler’s Law of Slavery, p. 41).”<sup>118</sup>

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<sup>113</sup> Ibid.

<sup>114</sup> Ibid.

<sup>115</sup> Ibid., pp. 113-121.

<sup>116</sup> Ibid.

<sup>117</sup> Ibid.

f. “ ‘They often part men from their wives by selling them far asunder, which is common when estates are sold by executors at vendue.’ (Journal of the Life of John Woolman, London edition, p. 74).”<sup>119</sup>

g. “It is the common understanding at the South, that slaves do not constitute families.”<sup>120</sup>

h. “Parents are almost never consulted as to the disposition to be made of their children, and they have as little control over them as have domestic animals over the disposal of their young. Every natural and social feeling and affection are violated with indifference. Slaves are treated as though they did not possess them.’ (Ib. pp. 65-7)[Italics in the original text].<sup>121</sup>

5. And a final example can be found in **Chapter IX, “Unlimited Power of the Slaveholder,”** *The American Slave Code*, which says:<sup>122</sup>

a. “The Savannah River Baptist Association approvingly recognized the unlimited authority of the master, when they maintained his authority to annul slave marriages, and to compel new sexual connections between Baptist husbands and wives whom he had forcibly severed! The people are here found to be no better than their laws, and the Church no better than the people.”<sup>123</sup>

6. Similarly, while describing the impact of this aspect of the “American Slave Code” upon the black family, African American scholar **W.E.B. Du Bois, in his seminal classic *The Souls of Black Folk*** has likewise noted:

a. “Under the lax moral life of the plantation, where marriage was a farce, laziness a virtue, and property a theft, a religion of resignation and submission degenerated easily, in less strenuous minds, into a philosophy of indulgence and crime. **Many of the worst characteristics of the Negro masses of to-day had their seed in this period of the slave’s ethical growth.** Here it was

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<sup>118</sup> Ibid.

<sup>119</sup> Ibid.

<sup>120</sup> Ibid.

<sup>121</sup> Ibid.

<sup>122</sup> Ibid., pp. 122-127.

<sup>123</sup> Ibid., p. 127.

that the **Home was ruined under the very shadow of the Church**, white and black....”<sup>124</sup>

b. **“The plague-spot in sexual relations is easy marriage and easy separation. This is no sudden development, nor the fruit of Emancipation. It is the plain heritage from slavery.** In those days Sam, with his master’s consent, ‘took up’ with Mary. No ceremony was necessary, and in the busy life of the great plantations of the Black Belt it was usually dispensed with. If now the master needed Sam’s work in another plantation or in another part of the same plantation, or if he took a notion to sell the slave, Sam’s married life with Mary was usually unceremoniously broken, and then it was clearly to the master’s interest to have both of them take new mates. This widespread custom of two centuries has not been eradicated in thirty years. To-day Sam’s grandson ‘takes up’ with a woman without license or ceremony; they live together decently and honestly, and are, to all intents and purposes, man and wife. Sometimes these unions are never broken until death; but in too many cases family quarrels, a roving spirit, a rival suitor, or perhaps more frequently the hopeless battle to support a family, lead to separation, and a broken household is the result. **The Negro church has done much to stop this practice,** and now most marriage ceremonies are performed by the pastors. Nevertheless, **the evil is still deep seated, and only a general raising of the standard of living will finally cure it.**”<sup>125</sup>

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<sup>124</sup> W.E.B. Du Bois, “The Souls of Black Folk,” *Writings* (New York, N.Y.: The Library of America, 1986), p. 500.

<sup>125</sup> *Ibid.*, p. 461.