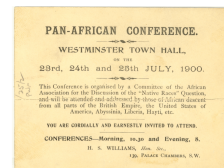


# THE CHRISTIAN ORIGINS OF THE PAN-AFRICAN MOVEMENT

“Notes on Pan-Africanism, International Law on the Family, and the Black Church of the United States”



Unity • Cooperation • Action



by  
**Rev. Roderick Andrew Lee Ford, J.D., Litt.D., LL.D.**  
Executive Director, The Methodist Law Centre at Sante Fe

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

This Position Paper serves as an “epilogue” to the author’s series on “**Towards a Federal Common Law on the Black Family**,” which is still being completed.

The overall theme of this Position Paper reflects the Wesleyan tradition of social holiness and social justice. Appendix A contains the thoughts of one of Methodism’s principal founders, Rev. John Wesley; and Appendix B contains those of Dr. Daniel Black, professor at the Methodist-founded Clark-Atlanta University.

Disclaimer: the ideals set forth in the Position Paper are those of the author and should not be attributed to any of the organizations to which he is a member. **This Paper is also a “draft copy”** and any grammatical foibles, and the legal conclusions set forth herein, are subject to being amended as the law changes, or as new information comes to the author’s attention.

Rev. Roderick Andrew Lee Ford, J.D., Litt.D., LL.D.  
Director, The Methodist Law Centre at Sante Fe  
5745 S.W. 75<sup>th</sup> Street, # 149  
Gainesville, Florida 32608  
(352) 559-5544- Gainesville  
(813) 223- 1200- Tampa  
Email: [admin@methodistlawcentre.com](mailto:admin@methodistlawcentre.com)  
[www.methodistlawcentre.com](http://www.methodistlawcentre.com)

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By

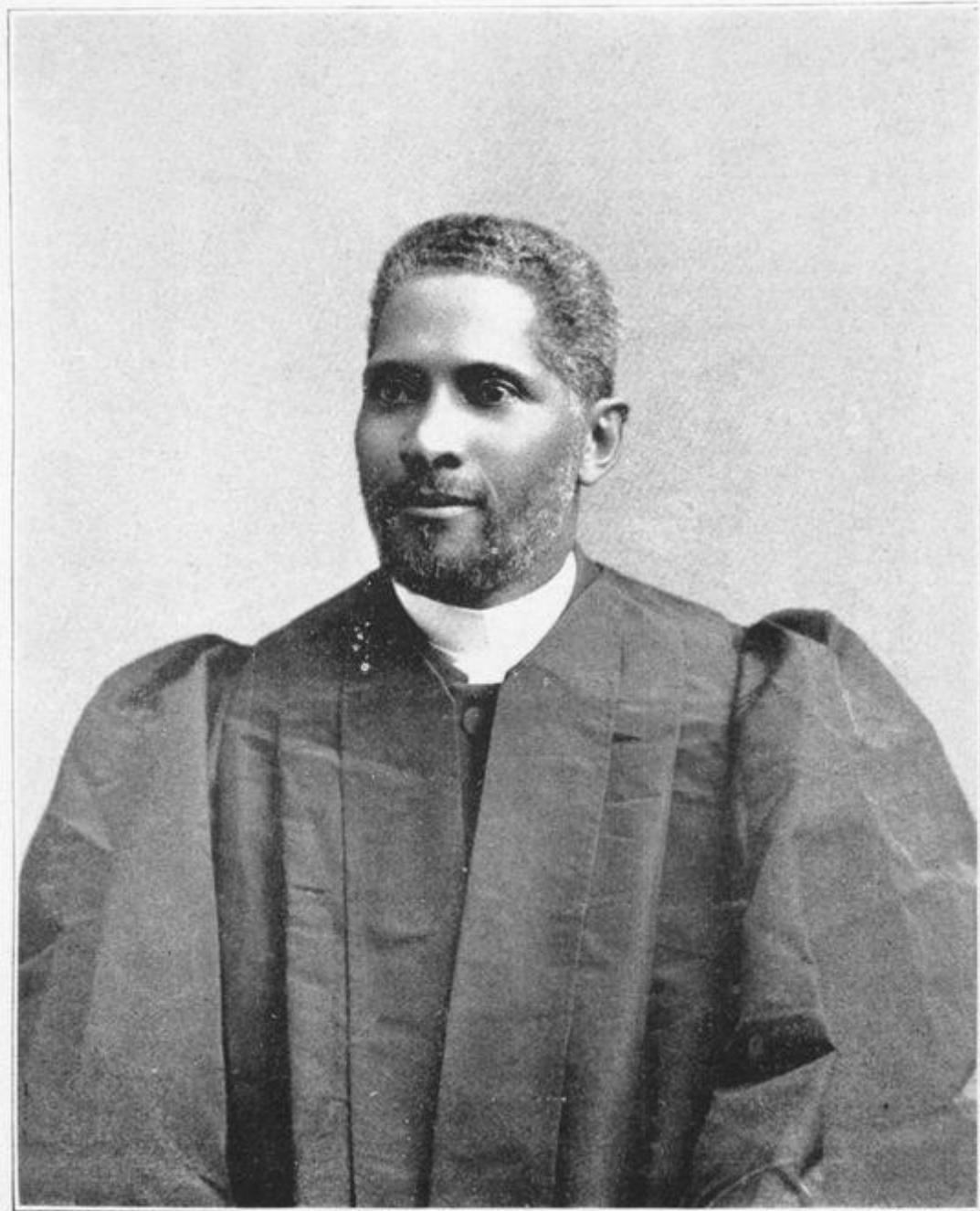
**Rev. Roderick Andrew Lee Ford, J.D., Litt.D., LL.D.**

Board Member of the *Africa University Law Review Journal* and  
Chancellor & Senior Fellow of St. Clements University

## **Table of Contents**

Introduction.....	5
Part I. Pan-Africanism, <i>Jus Cogens</i> , Family Law of Great Britain, and the Church of England.....	18
Part II. Pan-Africanism, <i>Jus Cogens</i> , and the Black Church of the United States.....	23
Part III. Pan-Africanism: The Black Family in Africa and North America.....	28
A. The Black Family in South Africa.....	29
B. The Black Family in Kenya.....	30
C. The Black Family in West Africa.....	31
D. The Black Family in the United States.....	32
E. Pan-Africanism and Safeguarding the Traditional Black Family.....	34
Conclusion.....	43
<b>Appendix A.</b> <i>Jus Cogens</i> : An Analysis of Rev. John Wesley’s <i>Thoughts Upon Slavery</i> .....	47
<b>Appendix B.</b> <i>Jus Cogens</i> : An Analysis of Dr. Daniel Black’s <i>Dismantling Black Manhood</i> .....	68

## Bishop Alexander Walters (1858 - 1917)



**BISHOP ALEXANDER WALTERS.**

Born in Kentucky, August, 1858—Educated in the Common Schools of that State  
—At Thirty-five Elected Bishop of the A. M. E. Zion Church, Taking  
High Rank as a Theologian, Originator and First President  
of the National A. M. E. Council Thinker,  
Orator and Leader.

## Special Dedication

**“Bishop Alexander Walters** (August 1, 1858 – February 2, 1917) of the African Methodist Episcopal Zion Church, was an American clergyman and civil rights leader. Born enslaved in Bardstown, Kentucky, just before the Civil War, he rose to become a bishop in the African Methodist Episcopal Zion Church at the age of 33, then president of the National Afro-American Council, the nation's largest civil rights organization, at the age of 40, serving in that post for most of the next decade....

“In March 1898, alarmed by an upsurge in violent lynchings of African Americans across the country, Walters asked Fortune to publish a nationwide appeal for a meeting of African-American leaders. More than 150 leaders from across the country signed the call, which resulted in an organizational meeting in Rochester, New York, in September 1898, also attended by Susan B. Anthony and the widow of Frederick Douglass.

“The new National Afro-American Council was intended to replicate the old League. Its constitution declared the Council nonpartisan in nature, and envisioned a structure of state and local councils, gathered together in annual meetings with delegates from affiliated organizations, schools, and newspapers, to protest against racial injustice and discrimination and to lobby for protective laws. Walters was elected the first president, while Fortune became the first chairman of the executive committee....

“In the 1910s, he became a member of both the new National Association for the Advancement of Colored People (NAACP) and the National Urban League. Walters traveled abroad frequently, including frequent trips to London, where he attended the First Pan-African Conference in 1900 (giving a paper entitled ‘The Trials and Tribulations of the Coloured Race in America’), and becoming President of the Pan-African Association, and visited West Africa in 1910 and the Caribbean in 1911. A well-respected figure internationally, he declined an offer in 1915 by US President Woodrow Wilson to become US minister to Liberia.”<sup>1</sup>

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<sup>1</sup> “Bishop Alexander Walters,” Wikipedia (online encyclopedia)  
[https://en.wikipedia.org/wiki/Alexander\\_Walters](https://en.wikipedia.org/wiki/Alexander_Walters)

## Introduction

The Universal Declaration of Human Rights (UDHR, 1948) stands today as a beacon of natural law and global human rights principles regarding the dignity and equality of mankind that have biblical or Judea-Christian foundations.<sup>2</sup> For this reason, the Black Church of the United States, and indeed all Christian advocates, lawyers, and jurists, may utilize the UDHR as a primary means for advocating the Golden Rule in state and federal courts, and in executive and legislative chambers.

Pan-Africanism, too, was founded upon Judea-Christian principles, and particularly it was founded upon the idea that all human beings have equal dignity, equal worth, and inalienable rights because they were made in the “**image of God**.”<sup>3</sup> Indeed, the struggle to ameliorate the plight of the

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<sup>2</sup> See, generally, “Scripturally Annotated Universal Declaration of Human Rights: Biblical Texts Promoting Human Rights,” *The Carter Center* (Published by The Carter Center, One Copenhill, 453 Freedom Parkway, Atlanta, Georgia 30307).

<sup>3</sup> Fiona de Londras, “The Religiosity of Jus Cogens: A Moral Case For Compliance?” Javaid Rehman and Susan C. Breau (eds), *Religion, Human Rights and International Law* (Netherlands: Koninklijke Brill NV, 2007)(Chapter 9); see, also, “Human Rights,” *Jewish Virtual Library* (<https://www.jewishvirtuallibrary.org/rights-human>)(“ In Jewish law, man's rights and liberty stem from the fact that he was **created in God's image**, as described in the book of Genesis (Gen. 1:27). From Adam on, this theory developed and was also introduced into **the laws of nations**.”).

See, also, Jerome J. Shestack, “The Philosophic Foundations of Human Rights,” *Human Rights Quarterly*, 20 (1998), 201 at pp. 205-6: “Theology presents the basis for a human rights theory stemming from **a law higher than that of the state** and whose **source is the Supreme Being**. If one accepts the premise of the Old Testament that Adam was created in the ‘**image of God**,’ this implies that the divine stamp gives human beings a high value of worth. ... In a religious context every human being is considered sacred. ... When human beings are not visualized in God's image then their basic rights may well lose their metaphysical *raison d’être*. On the other hand, the concept of human beings created in **the image of God** certainly endows men and women with a worth and dignity from which the components of a comprehensive human rights system can flow logically.”

See, also, the Fifth Circuit Court of Appeals’ making reference to the same principle in the case of *Smyly v. United States*, 287 F.2d 760, 771 (5th Cir. 1961)[now binding on the Eleventh Circuit Court of Appeals since September 30, 1981], stating:

Black family of the United States may be conceptually articulated as a church-based movement that is a subunit or sub-branch of “Pan-Africanism.” Indeed, black American churchmen in the United States,<sup>4</sup> together with black churchmen from the British West Indies,<sup>5</sup> together with their allied professionals from many other disciplines such as law and education, founded a late-19<sup>th</sup> and early 20<sup>th</sup>-century movement known as “Pan-Africanism.”

By the 1960s, when the Organization of African Unity was founded, the globally-based Pan-Africanists soon recognized that slavery, colonialism, and neo-colonialism had had their most devastating impact upon the traditional or customary family unit on the continent of Africa. For instance, while commenting upon the plight of the African family unit in West Africa, the preeminent Pan-African scholar W.E.B. Du Bois<sup>6</sup> thus

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But when they do, and a court of justice accords the protection of that right, they are really, in a strange sort of way, unintentionally making their contribution to a civilization of freedom under law. This affirms for the world that man in his nobler institutions may reflect the **image of God** who "sendeth rain on the just and unjust."...

<sup>4</sup> Some prominent Pan-Africanists from the United States include: **Martin Delaney** (1812 - 1885) (United States); **Alexander Crummell** (1819- 1898)(United States); **Bishop Alexander Walters** (1858 - 1917)(United States); **W.E.B. Du Bois** (1868 - 1963)(United States); **Paul Robeson** (1898 - 1976)(United States); **Malcom X** (1925 - 1965)(United States); **Amos Nelson Wilson** (1941 - 1995)(United States); and **Omali Yeshitela** (born Joseph Waller in 1941)(United States). Note: the author has met, consulted and visited with, and coordinated at least one civil rights protest with **Omali Yeshitela** and the **Uhuru Movement** in St. Petersburg, Florida (Tampa Bay area).

<sup>5</sup> Some prominent Pan-Africanists from the West Indies and South America include: Reverend **Henry B. Brown** (Canada); **H. Sylvester Williams, Esq.** (1867 - 1911)(Jamaica); **Marcus Garvey** (1887 - 1940) (Jamaica; United States); **Edward Blyden** (1832 - 1912)(British West Indies); **Cyril Lionel Robert James** (1901 - 1989)(Trinidad and Tobago); **George Padmore** (1903 - 1959)(British West Indies); **Yousef Alfredo Antonio Ben-Jochannan** (1918 - 2015); **Franz Fanon** (1925 - 1961)(British West Indies); and **Walter Anthony Rodney** (1942 - 1980)(Guyana).

<sup>6</sup> Significantly, Black America’s foremost intellectual of the 20th Century, W.E.B. Du Bois, was one of these original founders and primary movers of the Pan African movement. Thus, the Pan-Africanism that is reflected in the Organization of African Unity [e.g., the “African Union” ] and the African Charter for People’s and Human Rights stem from the same sources which led the founding of the National Association for the Advancement of Colored People in the United States. W.E.B. Du Bois is today highly regarded as the “Father of Pan-Africanism.” See, also,

advised the Nigerian people that “the **ancient faith** in communal family and clan” is a “**method of protecting the masses.**”<sup>7</sup>

Notably, even though both Great Britain and the United States had ended slavery and the slave-trade, and several “equal rights” laws or civil rights statutes – such as the Civil Rights Acts of 1866 and 1871-- had been enacted in both nations, the daily phenomena of race prejudice and economic self-interest proved to be extremely formidable and nearly insurmountable countervailing forces. Consequently, an international community of clergymen, scholars, lawyers, and other professionals – most of whom were of African descent – formulated the idea of “Pan-Africanism” during the late 19<sup>th</sup>- and early 20<sup>th</sup> centuries.<sup>8</sup> Their appeal was to a Higher Law, which international lawyers and legal scholars today call *Jus Cogens* – i.e., preemptory norms which may not be changed or derogated; a moral law or a law of nature; a “law of Christ”<sup>9</sup> or a “law of God”<sup>10</sup> – which is known in the general jurisprudence of customary

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

<sup>7</sup> W.E.B. Du Bois, *The World And Africa* (New York, N.Y. : International Publishers, 2015), p. 331.

<sup>8</sup> West Indian lawyer Henry Sylvester Williams (1869 – 1911) is credited with coining the phrase “Pan-Africanism.” This West Indian Lawyer Sylvester, who also became the first barrister of African descent in what is today South Africa, helped to organize the first Pan-African conference in London in 1900.

<sup>9</sup> See, also, Robert F. Cochran and Zachary R. Calo, *Agape, Justice and Law: How might Christian Love Shape Law?* (Cambridge, United Kingdom: Cambridge University Press, 2017). See, also, *The English Philosophers from Bacon to Mill* (New York, N.Y.: The Modern Library, 1994), [page number omitted] quoting John Stuart Mill’s essay on Utilitarianism, as stating: “[i]n the golden rule of Jesus of Nazareth, we read the complete spirit of the ethics of utility. To do as you would be done by and to love your neighbor as yourself, constitute the ideal perfection of utilitarian morality.”)

<sup>10</sup> Javaid Rehman and Susan C. Breau (eds), *Religion, Human Rights and International Law* (Netherlands: Koninklijke Brill NV, 2007) p. 264. [(Chapter 9), Fiona de Londras, “The



international law as the “law of reason,” which is universally accepted among all civilized nations.<sup>11</sup> This same *Jus Cogens* formulated the basis of the Pan-African movement. *Jus Cogens* thus undergird the various petitions for human rights on behalf of persons of African descent throughout the diaspora as well as on the African continent.

After “Pan-Africanism” was coined and advanced by blacks from North America, the Caribbean, and the Western Hemisphere, *it was later bequeathed* to Africans on the continent of Africa.<sup>12</sup> Many of those Africans, such as Kwame Nkrumah (1909 - 1972), helped found the Organization of African Unity in 1963. Pan-Africanism is thus a worldwide movement with its epicenter now residing on the African continent. But its origins are West Indian and African American, particularly within the Black Church of the United States.

Though the slave trade and slavery were ended in the British empire in 1807 and 1833, respectively; and by the United States in 1808 and 1865, respectively, “**Pan-Africanism**” in the United States, the British West Indies, and Latin America was necessitated by predominate theories of white supremacy, de jure racial segregation, colonialism or neo-colonialism, and the refusal among American and Latin American jurists

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Religiosity of *Jus Cogens*: A Moral Case For Compliance?” stating “[t]here can be little doubt that the initial stages of rights protections in international law were influenced by Judeo-Christian principles of human dignity.”]

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

<sup>12</sup> The author of this paper believes this was done in 1957, when the North American scholar W.E.B. Du Bois passed the title “President of the Pan African Conference” to Kwame Nkrumah, President of Ghana.

and courts to enforce fundamental and civil rights laws to protect persons of African descent.

In the field of international human rights and civil rights, **Pan-Africanism** is fundamentally an appeal to *Jus Cogens* (i.e., the preemptory norms of customary international law) that uniquely pertain or relate to persons of African descent. Collectively, the work of Pan-Africanists from the British West Indies, the United States, and the African continent resulted in the founding of the Organization of African Unity in 1963 and the enactment of the “**African Charter on People’s and Human Rights.**”

One of the primary objectives of Pan-Africanism and the **African Charter on People’s and Human Rights** was to safeguard the **institution of customary and traditional African family**; and to acknowledge, further refine, and apply traditional or customary African laws to **safeguard the family and clan.**<sup>13</sup>

Most significantly, Articles 17, 18, and 29 of the **African Charter on People’s and Human Rights** expressly safeguard traditional and customary African ethical standards and family values. According to this African charter, the “**family**” is the “**basis of society,**” stating:

**African Charter on People’s and Human Rights**

**Article 17**

1. Every individual shall have the right to education.
2. Every individual may freely, take part in the cultural life of his community.

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<sup>13</sup> See, e.g., W.E.B. Du Bois, *The World and Africa* (New York, N.Y. : International Publishers, 2015), p. 331. (For instance, on January 23, 1961, the imminent Pan-African scholar W.E.B. Du Bois thus advised the Nigerian people that “[t]here is... a third force which must be watched: this is the **ancient faith** in communal **family** and **clan**... [which is a] “method of protecting the masses.”)

3. The promotion and **protection of morals** and **traditional values recognized by the community** shall be the duty of the State.

#### **Article 18**

1. The **family** shall be the **natural unit** and **basis of society**. It shall be protected by the State which shall take care of **its physical health and moral**.
2. The State shall have **the duty to assist the family** which is **the custodian or morals** and **traditional values** recognized by the community.
3. The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.
4. The aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs.

#### **Article 29**

The individual shall also have the duty:

1. To preserve the **harmonious development of the family** and to work for **the cohesion** and **respect of the family**; to **respect his parents at all times**, to maintain them in case of need....
6. To **preserve** and **strengthen positive African cultural values** in his relations with other members of the society, in the spirit of tolerance, dialogue and consultation and, in general, to contribute to the promotion of the moral well being of society;
7. To contribute to the best of his abilities, at all times and at all levels, to the **promotion** and **achievement of African unity**.

Although the **African Charter on People's and Human Rights** are not a part of the treaty law of the United States, there is a viable legal and constitutional question as to whether an African American citizen of the United States may utilize the operative legal language in that African Charter, to explain the true meaning of "slavery" and "involuntary servitude," which are contained in the Thirteenth Amendment (U.S. Constitution), and proscribed through application of the 1866 Civil Rights Act.

This paper holds that African American Citizens may indeed utilize the African Charter on People's and Human Rights to achieve this objective, because this African Charter is a Pan-African expression of *Jus Cogens*, uniquely tailored to the plight of persons of African descent throughout the world, especially on the African continent, North America, and the Western Hemisphere.

Hence, this paper holds that the principle of *Jus Cogens* is contained within this **African Charter on People's and Human Rights**, and that United States District Courts must apply this sort of Afrocentric *Jus Cogens* when applying the Thirteenth Amendment and its implementing statutory laws, as well as to the treaty laws which the United States is a signatory. Namely, federal courts must apply international treaties to which the United States is a party. See, e.g., Article 23 of the **International Covenant on Civil and Political Rights** (ICCPR)<sup>14</sup> and, Article 5 of the **International Convention on the Elimination of All Forms of Racial Discrimination** (ICERD),<sup>15</sup> which are a part of the treaty law of the United States.

Hence, an African American husband or father who claims race-based familial discrimination through the hands of state officials, state

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<sup>14</sup> Article 23(1): "The **family** is the natural and fundamental group unit of society and is entitled to protection by society and the State."

<sup>15</sup> Article 5(d)(4): "The right to marriage and choice of spouse."

agencies, and state courts, may very well seek relief pursuant to 42 U.S.C., §§ 1981, 1982, or 1983, respectively, in the United States District Courts, through interposing the principle of “*Jus Cogens*” or customary international law (i.e., the Law of Nations), as expressly codified pursuant to the adopted treaty law of the United States, namely, the **International Covenant on Civil and Political Rights (ICCPR)** and the **International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)**.

And because the ICCPR and ICERD already embraces many of the same doctrines and principles that are contained in the **African Charter on People’s and Human Rights** – without expressly mentioning the African people or the continent of Africa – there is no reason why a federal judge may not, when applying the ICCPR or the ICERD to court litigation involving African American litigants, also look to the express language in the **African Charter on People’s and Human Rights** for additional substance, regarding the unique conditions and plight of African American husbands, fathers, men, and boys in the United States.

Indeed, the African Charter is both a codification of *Jus Cogens*, as it relates or pertains to African Americans, and other persons of African descent, throughout the African diaspora, as well as supplemental persuasive legal authority on the subject matter of international human rights.

For this reason, the **plight of the Black family of the United States**,<sup>16</sup> and of the “**Head of the Family**” status of African American men,

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<sup>16</sup> See “**Marriage of Enslaved People (United States)**,”  
[https://en.wikipedia.org/wiki/Marriage\\_of\\_enslaved\\_people\\_\(United\\_States\)](https://en.wikipedia.org/wiki/Marriage_of_enslaved_people_(United_States))

And see “**African American Family Structure**,”  
[https://en.wikipedia.org/wiki/African-American\\_family\\_structure](https://en.wikipedia.org/wiki/African-American_family_structure)

And see “**Black Matriarchy**”  
[https://en.wikipedia.org/wiki/Black\\_matriarchy](https://en.wikipedia.org/wiki/Black_matriarchy)

husbands, and fathers, since the end of U.S. Civil War (1861 – 1865) are deeply-rooted in *Jus Cogens*, or customary international law which proscribes “slavery and slave-related practices”<sup>17</sup> that are **unique to men, husbands, and fathers who are of African descent**, and may be constitutionally or juridically conceptualized and articulated as “**Pan-Africanism.**” And, without question, the African Charter on People’s and Human Rights speaks to these concerns.

### **Pan-Africanism and Zionism**

As the Black Church of the United States is deeply-connected to the fundamental tenets of the Christian faith, and has in the past found many similarities between the plight of African Americans and Jews, African American Christians who assert “human rights” grievances regarding the denial of familial rights may also look to Zionism and Jewish law as a source of their definition of *Jus Cogens* (i.e., customary international law).

Pan-Africanism and Zionism (or Anti-Semitism) are similar, if not altogether closely linked, world movements that are founded upon the establishment of international human rights.<sup>18</sup> For instance, “**the Torah**

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<sup>17</sup> *United States v. Bellaizac-Hurtado*, 700 F.3d 1245, 1261 (11th Cir. 2012).

<sup>18</sup> For instance, one of the founding fathers of Pan-Africanism **Henry Blyden (1832 – 1912)** explicitly likened Pan-Africanism to Zionism, viz.:

In suggesting a **redemptive role for African Americans in Africa** through what he called Ethiopianism, Blyden **likened their suffering in the diaspora to that of the Jews**; he supported the 19th-century Zionist project of Jews returning to Palestine. In their book *Israel in the Black American Perspective*, Robert G. Weisbord and Richard Kazarian write that in his booklet *The Jewish Question* (published in 1898, the year after the First Zionist Congress) Blyden describes that while travelling in the Middle East in 1866 he wanted to travel to "the original home of the Jews--to see Jerusalem and Mt. Zion, the joy of the whole earth". While in Jerusalem he visited the Western Wall. Blyden advocated for the Jewish settlement of Palestine and chided Jews for not taking advantage of the opportunity to live in their ancient homeland. Blyden was familiar with Theodor Herzl and his book *The Jewish State*, praising it for expressing ideas that "have given such an impetus to the real work of the Jews as will tell with enormous effect upon their future history."

**places great value on the family unit....**<sup>19</sup> “The Jewish people are a theocentric family, which means that God is at the center of all being and is the center of life.”<sup>20</sup> Similarly, not only do ancient African customary laws and traditions reflect the same “theocentric family value” system, but many present-day Africans and African Americans have embraced the Torah – whether as Black Jews, Black Christians, or Black Muslims – as the foundation of their own familial customs and traditions.

Indeed, both African Americans and Jews have insisted upon the biblical idea that every human being has inherent dignity because God created them in the “**image of God.**” As such, **both Pan-Africanism and Zionism** are deeply rooted in the **Torah.**

For instance, Pan-Africanism was a consequence of Christian ministry within the “Black Church,”<sup>21</sup> with a significant boost from an Archbishop of Canterbury and the Church of England during the early 1900s.<sup>22</sup> Similarly, Zionism was a creature of religious conservatism within

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<sup>19</sup> Arthur Kurzweil, *The Torah* (Hoboken, N.J.: Wiley Publishing, Inc., 2008), p. 148.

<sup>20</sup> *Ibid.*, p. 131.

<sup>21</sup> In this position paper, the definition of the word “Black church” has been borrowed from the following text: C. Eric Lincoln and Lawrence H. Mamiya, *The Black Church in the African American Experience* (Durham, N.C.: Duke University Press, 1990), p. 1 (“We use the term ‘the Black Church’ as do other scholars and much of the general public as a kind of sociological and theological shorthand reference to the pluralism of black Christian churches in the United States.”) See, also, James H. Cone and Gayraud S. Wilmore, *Black Theology: A Documentary History*, Vol. One: 1966-1979 (Maryknoll, N.Y.: Orbis Books, 2003), p. 217, citing Lincoln and Mamiya, *The Black Church in the African American Experience*, and adopting the same definition of “Black Church.”

<sup>22</sup> For a more detailed description of the **First Pan-African Congress of 1900**, see “**The 1<sup>st</sup> Pan-African Conference**,” [At the first Pan African Conference a permanent organization was formed and the following officers were elected to serve for two years: Bishop A. Walters, New Jersey, President; Rev. Henry B. Brown, London, Vice-President; Prof. W. E. B. DuBois, Georgia,](https://friendsoftheafricanunion.com/african-diaspora/the-pan-african-congresses/the-1st-pan-african-congress/#:~:text=When%20the%20First%20Pan%2DAfrican,of%20the%20globe%20to%20discuss, stating, inter alia:</a></p></div><div data-bbox=)

the Church of England, which sought to find a homeland for the Jews in the Middle East.

Hence, African American Christians are certainly not unlike the global Jewish community in their *uniqueness* with respect to their coordination with the Church of England, and in their heavily relying upon the authority of the Sacred Scripture (i.e., Torah), as their reference for equity, moral law, and justice within civil policies of secular nation states.<sup>23</sup>

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Vice-President for America. Mr. H. Sylvester Williams, General Secretary; T. J. Calloway, Secretary for America; Dr. R. J. Colenzo, Treasurer.

Executive Committee: S. Coleridge Taylor, John R. Archer, J. F. Loudin, Henry T. Downing, Mrs. J. Cobden Unwin, Miss Annie J. Cooper.

#### The Conference

When the First Pan-African Conference opened on Monday, 23 July 1900, in London's Westminster Hall, **Bishop Alexander Walters** in his opening address, "The Trials and Tribulations of the Coloured Race in America", noted that "for the first time in history black people had gathered from all parts of the globe to discuss and improve the condition of their race, to assert their rights and organize so that they might take an equal place among nations." The **Bishop of London, Mandell Creighton**, gave a speech of welcome "referring to 'the benefits of self-government' which Britain must confer on 'other races ... as soon as possible'."

<sup>23</sup> See, e.g., James H. Cone and Gayraud S. Wilmore, *Black Theology: A Documentary History*, Vol. Two: 1980 - 1992 (Maryknoll, N.Y.: Orbis Books, 2003), pp. 283 - 284, stating:

More than anyone, Black theologians have captured the essence of the significance of Jesus in the lives of Black people which to an extent includes Black women. They all hold that the Jesus of history is important for understanding who he was and his significance for us today. By and large they have affirmed that this Jesus is the Christ, that is, God incarnate. They have argued that in the light of our experience, Jesus meant freedom. They have maintained that Jesus means freedom from the sociopsychological, psychocultural, economic and political oppression of Black people. In other words, Jesus is a political messiah. 'To free [humans] from bondage was Jesus' own definition of his ministry. This meant that as Jesus identified with the lowly of his day, he now identified with the lowly of this day, who in the American context are Black people. The identification is so real that Jesus Christ in fact becomes Black. It is important to note that Jesus' blackness is not a result of ideological distortion of a few Black thinkers, but a result of careful Christological investigation. Cone examines the sources of Christology and concludes that **Jesus is Black because 'Jesus was a Jew.'** He explains:



Unlike Judaism, however, the Christian religion of the Black Church conceptualizes itself as global in scope encompassing the Gentiles, because its Messiah of the Jews had arisen from the dead and was now “a king” over the whole world.<sup>24</sup> See, e.g., (Matthew 28:18-20), viz:

And Jesus came and spake unto them, saying, **All power is given unto me in heaven and in earth.** Go ye therefore, and **teach all nations**, baptizing them in the name of the Father, and of the Son, and of the Holy Ghost: Teaching them to observe **all things whatsoever I have commanded you:** and, lo, I am with you always, even unto the end of the world. Amen.

Thus, the central thrust of human rights and civil rights advocacy within the Black Church has always been to promote racial concord and peace, through the “**Golden Rule,**” namely, **Leviticus 19: 17-18; Matthew 5:17; Matthew 7:12; Matthew 22: 37-40; and John 13:34.**<sup>25</sup>

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It is on the basis of the soteriological meaning of the particularity of his Jewishness that the theology must affirm the Christological significance of Jesus’ present blackness. **He is black because he was a Jew.** The affirmation of the black Christ can be understood when the significance of **his past Jewishness** is related dialectically to the significance of **his present blackness.** On the other hand, the Jewishness of Jesus located him in the context of the Exodus, thereby connecting his appearance in Palestine with God’s liberation of oppressed Israelites from Egypt. **Unless Jesus were truly from Jewish ancestry, it would make little theological sense to say that he is the fulfillment of God’s covenant with Israel.** But on the other hand, **the blackness of Jesus brings out the soteriological meaning of his Jewishness for our contemporary situation** when Jesus’ person is understood in the context of the cross and resurrection. Without negating the divine election of Israel, the cross and resurrection are Yahweh’s fulfillment of his original intention for Israel....

<sup>24</sup> See, e.g., Bertrand Russell, *A History of Western Philosophy* (New York, NY: Touchstone, 2007), p. 309 (“For Christians, the Messiah was the historical Jesus, who was also identified with the Logos of Greek philosophy....”); and p. 289 (“It was this intellectual element in Plato’s religion that led Christians – notably the author of Saint John’s Gospel – to identify Christ with the Logos. Logos should be translated ‘reason’ in this connection.”).

<sup>25</sup> See, also, Robert F. Cochran and Zachary R. Calo, *Agape, Justice and Law: How might*

Because the international customary law of *Jus Cogens* is interchangeable with the “image of God” and (or) the “Golden Rule,”<sup>26</sup> the fundamental objectives of the Black Church, which include the amelioration of the plight of the “**Head of Family**” status of **African American fathers, husbands, and men** in the United States, is a human right under customary international law, and should be defined under federal law and protected as such in the federal courts of the United States.

### Customary Christian Family Value System

**“But I would have you know, that the head of every man is Christ; and the head of the woman is the man; and the head of Christ is God.”**

-- 1 Corinthians 11:3

Indeed, because of the history of the transatlantic slave trade, slavery, and the dislocations of peoples of African descent in the Western hemisphere, the Black Church in the United States has a human right under customary international law (i.e., *Jus Cogens* or the Law of Nations), and its treaty law, to define and found family structures that are “traditional” or “customary,” in accord with promoting and safeguarding

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*Christian Love Shape Law?* (Cambridge, United Kingdom: Cambridge University Press, 2017). See, also, *The English Philosophers from Bacon to Mill* (New York, N.Y.: The Modern Library, 1994), [page number omitted] quoting John Stuart Mill’s essay on Utilitarianism, as stating: “[i]n the golden rule of Jesus of Nazareth, we read the complete spirit of the ethics of utility. To do as you would be done by and to love your neighbor as yourself, constitute the ideal perfection of utilitarian morality.”)

<sup>26</sup> Javaid Rehman and Susan C. Breau (eds), *Religion, Human Rights and International Law* (Netherlands: Koninklijke Brill NV, 2007) p. 264. [(Chapter 9), Fiona de Londras, “The Religiosity of *Jus Cogens*: A Moral Case For Compliance?” stating “[t]here can be little doubt that the initial stages of rights protections in international law were influenced by Judeo-Christian principles of human dignity.”]

the “**Head of the Family**” status of African American fathers, husbands, and men.<sup>27</sup>

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

Hence, the objective of this chapter is (1) to remind the African and African American Christian churches of their historical roots in Pan-Africanism and (2) to also inform American jurists and lawyers about the Black Church’s unalienable and fundamental rights to advocate for the health and security of the African American family.

**I. Pan-Africanism, *Jus Cogens*, and the Natural Law Tradition of Great Britain and the Church of England**

Pan-Africanism was founded in the British West Indies and in London during the height of the British Empire, when Queen Victoria still reigned. **Pan-Africanism was very much deeply rooted in the doctrines and principles of Great Britian and the Church of England.**

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<sup>27</sup> See, e.g., Chanse Jamal Travis, "The Political Power Of The Black Church" (2015). Electronic Theses and Dissertations. 788. <https://egrove.olemiss.edu/etd/78> , stating:

The peculiarity of the black church is it is an institution that sends mixed messages. Black churches advocate on behalf of the Democratic Party but advance conservative messages all year round. This causes blacks to be politically cross pressured. As such, what are individuals to do? ...

Being the most religiously committed group in America (Pew Research, 2009), **African Americans are predominately theologically conservative.** The church sees the Bible as the authoritative word of God. As a result, the **black church is traditionally socially conservative in nature.**

In the United States of America, the Black Church, and other African American human rights advocates who joined forces with other Africans and West Indians to promote Pan-Africanism, could find the principles of human rights or *Jus Cogens* expressed in its own Sacred Scriptures, as interpreted by the Englishman Sir William Blackstone (1723 - 1780) in his *Commentaries on the Law of England*,<sup>28</sup> viz:

Law, in its most general and comprehensive sense, signifies a rule of action; and is applied indiscriminately to all kinds of action, whether animate or inanimate, rational or irrational.

Thus we say, the laws of motion, of gravitation, of optics, or mechanics, as well as the laws of nature and of nations. And it is that rule of action which is prescribed by some superior, and which the inferior is bound to obey.

Thus, when the Supreme Being formed the universe, and created matter out of nothing, he impressed certain principles upon that matter, from which it can never depart, and without which it would cease to be. When he put that matter into motion, he established certain laws of motion, to which all moveable bodies must conform. And, to descend from the greatest operations to the smallest, when a workman forms a clock, or other piece of mechanism, he establishes, at his own pleasure, certain arbitrary laws for its direction,-- as that the hand shall describe a given space in a given time, to which law as long as the work conforms, so long it continues in perfection, and answers the end of its formation....

The whole progress of plants, from the seed to the root, and from thence to the seed again; the method of animal nutrition, digestion, secretion, and all other branches of vital economy; are not left to chance, or the will of the creature itself, but are

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<sup>28</sup> Edwin A. Burt, *The English Philosophers From Bacon to Mill* (New York, NY: The Modern Library, 1967).

performed in a wondrous involuntary manner, and guided by unerring rules laid down by the great Creator. This, then is the general signification of law, a rule of action dictated by some superior being....

Man, considered as a creature, must necessarily be subject to the laws of his Creator, for he is entirely a dependent being.... This will of his Maker is called **the law of nature**. For as God, when he created matter, and endued it with a principle of mobility, established certain rules for the perpetual direction of that motion, so, when he created man, and endued him with freewill to conduct himself in all parts of life, he laid down certain immutable laws of human nature, whereby that freewill is in some degree regulated and restrained, and gave him also **the faculty of reason to discover the purport of those laws**. Considering the Creator only as a being of infinite power, he was able unquestionably to have prescribed whatever laws he pleased to his creature, man, however unjust or severe. But, as he is also a being of infinite wisdom, he has laid down only such laws as were founded in those relations of justice that existed in the nature of things antecedent to any positive precept. These are the eternal immutable laws of good and evil, to which the Creator himself, in all his dispensations, conforms; and which he has enabled **human reason to discover**, so far as they are necessary for the conduct of human actions. Such, among others, are these principles: that we should live honestly (2), should hurt nobody, and should render to every one his due; to which three general precepts Justinian (a) has reduced the whole doctrine of law....

**The law of nature, being coeval with mankind, and dictated by God himself, is of course superior to obligation to any other. It is binding over all the globe, in all countries, and at all times:** no human laws are of any validity, if contrary to this (3); and such of them as are valid derive all their force, and all their authority, mediately or immediately, from this original.

Black Church in the United States could also find that same international customary law of *Jus Cogens* codified within the Declaration of Independence (1776). Indeed, Sir William Blackstone's influence upon the American founding fathers, the first generation of American lawyers and judges, and upon the founding constitutional documents of the United States was significant.<sup>29</sup>

Hence, Sir William Blackstone's Anglican jurisprudence is reflected in the plain text of the Declaration of Independence (1776), viz:

When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the **Laws of Nature and of Nature's God** entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

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<sup>29</sup> See, e.g., Greg Baily, "Sir William Blackstone in America: Lectures by an English Lawyer becomes the Blueprint for a New Nation's Laws and Leaders," <https://www.varsitytutors.com/earlyamerica/early-america-review/volume-2/sir-william-blackstone-in-america> ("Blackstone's lectures were published as the Commentaries in England between 1765 and 1769. An American edition published in Philadelphia between 1771-72 sold out its first printing of 1,400 and a second edition soon appeared.... The philosophy of the Declaration of Independence asserting the 'self-evident' 'unalienable Rights' of people granted by 'the Laws of Nature and of Nature's God' could have come, and probably did, from Blackstone's description of the rights of Englishmen under the British Constitution. The indictment against the Crown, the bulk of the Declaration, recites many of the absolute rights of individuals covered by Blackstone including the prohibition of taxation without consent.... Blackstone played an influential part in the drafting and ratification of the Constitution.... American lawyers in the early republic relied on Blackstone as the primary and often only source of the common law.... The Americanized versions never supplanted the original. One Commentaries trained lawyer James Kent, later a Chancellor in New York, between 1826-1830 wrote his Commentaries on American Law critical of Blackstone and substituting much Roman law and civil code in place of the traditional common law. Edward Story, who also learned law through reading Blackstone, became the youngest Supreme Court Justice and author of many influential law books. Blackstone was the unseen teacher for uncounted numbers of American lawyers, first among them Abraham Lincoln.")

We hold these truths to be self-evident, that all men are created equal, that they are endowed by **their Creator** with certain **unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.**--That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, --That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it...

We, therefore, the Representatives of the united States of America, in General Congress, Assembled, appealing to the **Supreme Judge of the world** for the rectitude of our intentions... solemnly publish and declare, That these United Colonies are, and of Right ought to be Free and Independent States.... And for the support of this Declaration, **with a firm reliance on the protection of divine Providence**, we mutually pledge to each other our Lives, our Fortunes and our sacred Honor.

And if the Black Church ever made further inquiries of Blackstone's position on African slavery, they could also find in his *Commentaries on the Laws of England*, Amendment IX (1:120–41), the following words:

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

And this natural-law argument has been the guiding principle upon which Pan-Africanism built its arguments against imperialism and slavery throughout the British empire and the United States.<sup>30</sup>

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<sup>30</sup> See, e.g., “Frederick Douglass,” *Stanford Encyclopedia of Philosophy*, <https://plato.stanford.edu/entries/frederick-douglass/> (“The ideas that Douglass drew on in his arguments against slavery originate from natural law theory and Christian theology.”)

Pan-Africanism was built largely upon the natural-law tendency in Anglo-American constitutional law and jurisprudence to liberate the oppressed. Indeed, several years after Blackstone's *Commentaries* (1765) were published, Lord Mansfield rendered his famous anti-slavery judgment in the case of *Somerset v. Stewart* (1772) 98 ER 499, (1772) 20 State Tr 1, (1772) Lofft 1 (1772), which restated the same anti-slavery position which Blackstone had previously published in his *Commentaries* (1765).

And, later, during the early 19<sup>th</sup> century, the holding in the *Somerset* opinion was expressly incorporated into American jurisprudence by the United States Supreme Court in the case of *Prigg v. Pennsylvania*, 41 U.S. 539 (1842).<sup>31</sup>

Without question, the Pan-Africanism of the Black Church in the United States was largely a restatement of Sir William Blackstone's and the Church of England's natural rights theory and Christian jurisprudence. This English natural rights theory and Christian jurisprudence were natural-law corollaries to Black Church theology and to Pan-African objectives. African American Christians such as Frederick Douglass and Bishop Daniel Payne gravitated toward this Christian and natural-rights philosophy.

## **II. Pan-Africanism, *Jus Cogens*, and the Black Church of the United States**

Perhaps as early as the 17<sup>th</sup> century, the Great Commission of Jesus Christ<sup>32</sup> and the goals of liberation from slavery and racial discrimination were exemplified in the Black Church of the United States as, inter alia, **Pan-Africanism.**

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<sup>31</sup> However, in 1857, the United States expressly reversed the *Priggs* decision in the case of *Dred Scott v. Sandford*, 60 U.S. 393 (1857).

<sup>32</sup> Matthew 28: 18-20.



Hence, the Pan-African sentiment within the Black Church is not new or novel. To this very point, W.E.B. Du Bois has written in *The World and Africa* that:

The idea of one Africa to unite the thought and ideals of all native peoples of the dark continent belongs to the twentieth century and stems naturally from the West Indies and the United States. Here various groups of Africans quite separate in origin, became so united in experience and so exposed to the impact of new cultures that they began to think of Africa as one idea and one land. Thus late in the eighteenth century when a separate Negro Church was formed in Philadelphia it called itself 'African'; and there were various 'African' societies in many parts of the United States.

It was not, however, until 1900 that a black West Indian barrister, practicing in London, called together a Pan-African Conference. This meeting attracted attention, put the word 'Pan-African' in the dictionaries for the first time, and had some thirty delegates, mainly from England and the West Indies, with a few colored North Americans. The conference was welcomed by the Lord Bishop of London and a promise was obtained from Queen Victoria, through Joseph Chamberlain, not to 'overlook the interests and welfare of the native races.'<sup>33</sup>

For it was under these conditions that the Church of England and various African American clergymen and lawyers – *no doubt while believing themselves to be disciples and followers of the example set by Jesus Christ* – **birthed the idea of Pan-Africanism** during the late 1800s.

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<sup>33</sup> W.E.B. Du Bois, *The World and Africa: An Inquiry Into the Part which Africa has Played in World History* (New York, N.Y.: International Publishers, 2015), p. 7.

The first Pan-African Congress of 1900, that was held at Westminster Town Hall in London, was the first of several historical Congresses held during the early 20<sup>th</sup> century.

This first Pan-African Congress was chaired by two African American clergymen – Bishop **Alexander Walters** (1858 - 1917) of the A.M.E. Zion Church, and Rev. **Henry B. Brown**.<sup>34</sup>

The Lord Bishop of London, whom Du Bois referenced, was the Right Reverend **Mandell Creighton** (1843 - 1901), who served in that role from 1897 to 1901.<sup>35</sup> The West Indian barrister referenced was **H. Sylvester Williams** (1867 - 1911).<sup>36</sup>

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<sup>34</sup> Rev. Henry B. Brown was from Ontario, Canada. <https://lists.h-net.org/cgi-bin/logbrowse.pl?trx=vx&list=H-Africa&month=9907&week=b&msg=tc4gpW87Z80/6B68ws9T2A&user=&pw=>

<sup>35</sup> "Mandell Creighton," Wikipedia (online encyclopedia) [https://en.wikipedia.org/wiki/Mandell\\_Creighton](https://en.wikipedia.org/wiki/Mandell_Creighton).

<sup>36</sup> See, e.g., "H. Sylvester Williams," Wikipedia (online encyclopedia) [https://en.wikipedia.org/wiki/Henry\\_Sylvester\\_Williams](https://en.wikipedia.org/wiki/Henry_Sylvester_Williams), stating:

Henry Sylvester-Williams (24 March 1867 or 15 February 1869 – 26 March 1911) was a Trinidadian lawyer, activist, councillor and writer who was among the founders of the Pan-African movement.

As a young man, Williams travelled to the United States and Canada to further his education, before subsequently moving to England, where he founded the African Association in 1897 to "**promote and protect the interests of all subjects claiming African descent, wholly or in part, in British colonies and other place, especially Africa, by circulating accurate information on all subjects affecting their rights and privileges as subjects of the British Empire, by direct appeals to the Imperial and local Governments.**"

In 1900, Williams organised the First Pan-African Conference, held at Westminster Town Hall in London. In 1903 he went to practise as a barrister in Southern Africa, becoming the **first black man to be called to the bar in the Cape Colony.**



For it was during this period, from roughly 1900 to 1945, that the African peoples organized six Pan-African Congresses:

1900<sup>37</sup> - London

1919<sup>38</sup> - Paris

1921<sup>39</sup> - London, Brussels, and Paris

1923<sup>40</sup> - Lisbon and London

1927<sup>41</sup> - New York

1945<sup>42</sup> - Manchester (England)

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<sup>37</sup> W.E.B. Du Bois, *The World and Africa: An Inquiry Into the Part which Africa has Played in World History*, supra, p. 7.

<sup>38</sup> Ibid., p. 7-8, 306.

<sup>39</sup> Ibid., p. 306

<sup>40</sup> Ibid.

<sup>41</sup> Ibid.

<sup>42</sup> Ibid.

## 1900 Pan-African Congress

“The objects of the meeting were: First, to bring into closer touch with each other the peoples of African descent throughout the world; second, to inaugurate plans to bring about a more friendly relation between the Caucasian and African races; third, to start a movement looking forward to the securing to all African races living in civilized countries their full rights and to promote their business interests.”<sup>43</sup>

## 1900 Officers- Pan-African Congress

Bishop A. Walters, New Jersey, President;

Rev. Henry B. Brown, London, Vice-President;

Dr. R. J. Colenso, M.A., General Treasurer.

M. Benito Sylvain, General Delegate for Africa

Prof. W. E. B. DuBois, Georgia, Vice-President for America

Mr. H. Sylvester Williams, General Secretary;

T. J. Calloway, Secretary for America;

Dr. R. J. Colenzo, Treasurer.

## 1900 - Petition to Queen Victoria

1. The degrading and illegal compound system of labour in vogue in Kimberley and Rhodesia.

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<sup>43</sup> “The 1st Pan African Conference,” *Friends of the African Union*

<https://friendsoftheafricanunion.com/african-diaspora/the-pan-african-congresses/the-1st-pan-african-congress/#:~:text=The%20objects%20of%20the%20meeting,the%20securing%20to%20all%20African>

2. The so-called indenture, i.e., legalized bondage of African men and women and children to white colonists.
3. The system of compulsory labour in public works.
4. The “pass” or docket system used for people of colour.
5. Local by-laws tending to segregate and degrade Africans such as the curfew; the denial to Africans of the use of footpaths; and the use of separate public conveyances.
6. Difficulties in acquiring real property.
7. Difficulties in obtaining the franchise.

Pan-Africanism thus began as a church-led movement for international human rights. It had always been based upon “Higher Law” ideology – the law of God – and upon the basis of the principle of *Jus Cogens*.

In 1900, this Pan-African movement was supported by senior clergy within both the Church of England and within the Black Church of the United States.

And this Pan-African movement was also led by other non-clergy Black professionals such as lawyer H. Sylvester Williams (British West Indies) and scholar W.E.B. Du Bois (United States).

### III. Pan-Africanism: The Black Family in Africa and North America

The most significant exemplification of these cultural differences between the West and sub-Saharan Africa is manifest in present-day political and international affairs.

African nations such as Nigeria,<sup>44</sup> Ghana,<sup>45</sup> Senegal,<sup>46</sup> and Uganda<sup>47</sup> have recently openly opposed the liberal proposals and policies of the United States of America toward the LGTBQ community and same-sex marriage.

Today the post-colonial African world grapples with the blessings and curses of European colonialism on the African continent.

It is universally accepted that the “rape” of Africa took an economic and psychological toll upon **the African family, tribal, and community structure**, and as such the Organization of African Unity (OAU) adopted the **African Charter on People’s and Human Rights**, in part, to safeguard the family unit as the fundamental basis of society. See, also, Article 23 of the *International Covenant on Civil and Political Rights* (ICCPR)<sup>48</sup> and, Article

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<sup>44</sup> “In Nigeria, Anti-Gay Law Associated with Increased Stigma and Discrimination,” *International Perspectives on Sexual and Reproductive Health: A Journal of Peer-Reviewed Research* (Volume 41, Issue 3, September 2015), <https://www.guttmacher.org/journals/ipsrh/2015/09/nigeria-anti-gay-law-associated-increased-stigma-and-discrimination>.

<sup>45</sup> Thomas Naadi, “Ghana passes bill making identifying as LGBTQ+ Illegal,” *BBC News, Africa* (28 February 2024), <https://www.bbc.com/news/world-africa-68353437>.

<sup>46</sup> Basillioh Rukanga, “Two jailed in Senegal for criticizing PM on gay rights,” *BBC News* (4 June 2024) (“A Senegalese court has jailed two men for ‘spreading false news’ after they accused Ousmane Sonko, the country’s new prime minister, of tolerating homosexuality.”)

<sup>47</sup> Larry Madowo and Bethlehem Feleke, “Uganda passed one of the world’s harshest anti-gay laws. LGBTQ people describe living there as ‘hell,’” *CNN News* (29 June 2023), <https://www.cnn.com/2023/06/29/africa/uganda-life-for-lgbt-community-intl-cmd/index.html>.

<sup>48</sup> Article 23(1): “The **family** is the natural and fundamental group unit of society and is entitled to protection by society and the State.”

5 of the *International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)*,<sup>49</sup> which are a part of the treaty law of the United States.

A.

**“The Black Family in South Africa”**

Under Apartheid, the African family was disrupted and oppressed. Thus, we may rightfully consider the health and security of the family as marker of racial oppression and genocide.

“This article draws together unusual characteristics of the legacy of apartheid in South Africa: the state-orchestrated destruction of family life, high rates of unemployment and a high prevalence of HIV/AIDS. The **disruption of family life** has resulted in a situation in which many women have to fulfil the role of both breadwinner and care giver in a context of high unemployment and very limited economic opportunities. The question that follows is: given this crisis of care, to what extent can or will social protection and employment-related social policies provide the support women and children need?”

**Source:** Debbie Budlender and Francie Lund, “South Africa: A Legacy of Family Disruption,” *Development and Change: International Institute of Social Studies, The Hague* (Vol. 42, Issue 4, July 2011), pp. 925 - 946.

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<sup>49</sup> Article 5(d)(4): “The right to marriage and choice of spouse.”

## B.

### “The Black Family in Kenya”

In Kenya, when the British or Europeans arrived, there was much family disruption stemming from colonialism.

However, just as in Western and South Africa, the Christian religion bore many similarities to African traditions and was readily accepted by most Africans as a natural enhancement or improvement to already-established African traditions.

“By the time the Europeans arrived in Africa as either colonialists or missionaries, there was much order in the way family life was carried out because of the solid established structures. Ojua et al. (2014) observes that these value structures or systems were used to ensure and promote order of socialisation and morality in African society. This social harmony was depicted in marriages, family relationships, legal systems, and religious, economic, and political structures. Inglehart (2018) observes that a people's values and behaviour are shaped by the degree to which survival is secure, a reason some Africans welcomed the Europeans and received western education, medical care and many other European provisions as others put up a bitter struggle to reject the foreign influence. Mesoudi (2011) posits that the best cultures are those that survive and get transmitted over the inferior cultures, as the European culture overtook the African culture....

“Kiambati (2021) notes that Christianity advocated for monogamy. Many people in Embu North attended the mission church at Kigari, and since there were requirements for continued membership, those in family life had to act in certain ways like exempting their daughters from clitoridectomy, marrying one wife and abandoning traditional religion and practices that the missionaries were opposed. Christianity improved family life by preaching peace and harmony in marriage, equality between men and women and mutual concern for married partners. It also outlawed degrading practices like clitoridectomy. Wife battering, which was a very common practice, also was minimized as family



members were taught about the needs to treat each other with respect and utmost love. Due to emphasis on monogamy, domestic violence meted on women reduced as fights in a monogamous family were fewer with less conflict.”

**Source:** Lizza N. Kaaria, Caroline M. Kithinji, Dickson K. Nkonge, “Colonialism and Its Implication on the African Family Stability in Embu North Sub-County of Kenya from 1895 to 1965” *Journal of History and Cultural Studies* (August 2022).

The Kenyan experience suggests that “traditional” Christian values have merged with “traditional” African values to create what may be called “Christocentric” traditional African tribal, clan, and family values. Today, the Church of Kenya – like the Church of Nigeria, the Church of Rwanda, and the Church of Uganda – are very conservative Anglican expressions of the Christian faith.

### C.

#### **“The Black Family in West Africa”**

In West Africa, and indeed throughout all of Africa, there is no outright rejection of European Christianity but rather there is more of a synthesis of that Christian religion with African traditions and customs.

“It is no longer a debate that pre-colonial African life was heavily influenced by religion. Almost every aspect of life was seen and interpreted in the supernatural. The belief that the ancestors played prominent roles in the maintenance of morality in the community hardly dies, even today. However, it is true that colonialism altered the belief and values of the Africans significantly, just as its structure was almost completely eroded. Today, the argument oscillates between a return to the ‘glorious’ precolonial past as the minimum requirement for moral rearmament and a total break with the past. This paper clarifies these positions and posits that even though it is not practically possible to have a total return to the past, there are certain cultural

values that consistently define the African personality, history and belief that cannot be jettisoned without consequences. Through the gristmill of scholarly and analytical framework, this paper argues that these values are critical to African identity in a postcolonial, global community, and as such, there is the need to revisit some of them in order to keep pace with the history and identity in the face of current global challenges.”

**Source:** Benson O. Igboin, “Colonialism and African Cultural Values,” *African Journal of History and Culture*, Vol. 3(6), pp. 96-103, July 2011

Similarly, the post-segregated African American community today grapples with the effects of slavery and de jure segregation upon the plight of the Black family in the United States.

#### D.

#### “The Black Family in the United States”

In the United States, both the Christian religion and Western values have lost credibility in the African American community, because there the Black family was intentionally dismantled and oppressed in order to promote the institution of slavery.

“[P]erhaps the greatest curse which slavery inflicted upon us was the destruction of the home.”

-- **Bishop Daniel Payne (A.M.E. Church)**<sup>50</sup>

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<sup>50</sup> Source: Daniel P. Black, *Dismantling Black Manhood*, supra, p. 165.

"It was by destroying the Negro family under slavery that white America broke the will of the Negro people."

-- Assistant Sec. of Labor Daniel Moynihan<sup>51</sup>

### **The Moynihan Report - 1965 (Summary Description)**

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

"According to C. Eric Lincoln, the Negro family's 'enduring sickness' is the absent father from the African-American family structure.

"C. Eric Lincoln also suggests that the implied American idea that poverty, teen pregnancy, and poor education performance has been the struggle for the African-American community is due to the absent African-American father. According to the Moynihan Report, the failure of a male dominated subculture, which only exist in the African-American culture, and reliance on the matriarchal control has been greatly present in the African-American family structure for the past three centuries. This absence of the father, or 'mistreatment,' has resulted in the African-American crime rate being higher than the National average, African-American drug addiction being higher than whites, and rates of illegitimacy being at least 25% or higher than whites.

"A family needs the presence of both parents for the youth to 'learn the values and expectations of society.'"

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<sup>51</sup> Source: Moynihan, Daniel P. *The Negro family: The Case for National Action*. Washington, DC: Office of Policy Planning and Research, U.S. Department of Labor (March 1965).

**Source:** “African American Family Structure,” Wikipedia (Online encyclopedia) [https://en.wikipedia.org/wiki/African-American\\_family\\_structure#:~:text=%25%20to%2018%25.-,African%2DAmerican%20family%20members%20at%20a%20glance,place%20of%20a%20fragmented%20household](https://en.wikipedia.org/wiki/African-American_family_structure#:~:text=%25%20to%2018%25.-,African%2DAmerican%20family%20members%20at%20a%20glance,place%20of%20a%20fragmented%20household)

## E.

### “Pan-Africanism and Safeguarding the Traditional Black Family”

The rights of ethnic and racial minority groups [and religious groups such as Jews, Muslims, orthodox Christians, etc.] to make and enforce marriage contracts that comport with the cultural laws, religious canons, or ethnic customs of their clan, tribe, or group **are international fundamental rights** that have been embraced by the *International Convention on the Elimination of All Forms of Racial Discrimination* (1966), ratified by the United States in 1994.

Marriages may be formed through a variety of customs, ceremonies and rituals that may be sanctioned by the State. Civil marriage is sanctioned solely by the State and is registered. Religious marriage is solemnized through the performance of ritual(s) prescribed by religious law. Customary marriage is undertaken by the performance of ritual(s) prescribed by the customs of the parties’ community.<sup>52</sup>

Finally, African Americans may – whether through establishment of “traditional marriages” under the English common law, and through such institutions as the historic Black Church, or through re-capturing “customary marriages” from West Africa – avail themselves of the Law of

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<sup>52</sup> Convention on the Elimination of All Forms of Discrimination against Women, [https://www.nichibenren.or.jp/library/ja/kokusai/humanrights\\_library/treaty/data/CEDA\\_W\\_GC\\_29e.pdf](https://www.nichibenren.or.jp/library/ja/kokusai/humanrights_library/treaty/data/CEDA_W_GC_29e.pdf)

Nations (i.e., the *International Convention on the Elimination of All Forms of Racial Discrimination* (1966)) to safeguard themselves against the evil effects of slavery, segregation, present-day racial discrimination, and economic exploitation, and to insist upon their fundamental rights of self-determination, cultural preservation, traditional or customary marriage, and family.

Article 5) of the Convention states:

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

Other civil rights, in particular....

(d)(iv) The right to marriage and choice of spouse....

(e)(vi) Economic, social and cultural rights, in particular... [t]he right to equal participation in cultural activities....

Indeed, one of the very negative effects of African slavery, the transatlantic African slave trade, European imperialism, and African colonialism was the decimation of the **familial institutions** of African and African American peoples.

For instance, and without hesitancy, Dr. Daniel P. Black has concluded that **patriarchy** is not exclusively European, white, or Jewish,<sup>53</sup> but that the West Africans who were enraptured and brought to the New

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<sup>53</sup> Daniel P. Black, *Dismantling Black Manhood: An Historical and Literary Analysis of the Legacy of Slavery* (London and New York: Garland Press, 1997), pp. 43 - 59.

World as slaves retained their **patriarchal** conceptions of **manhood**, **fatherhood**, and **husbandhood**.<sup>54</sup>

Using two influential African American clergymen-- Rev. Samuel R. Ward (1817 - 1866) and Bishop Daniel Payne (1811 - 1893)-- who lived during the slavery era, Dr. Black points out that African American men embraced the Christian religion and incorporated it into their traditional, patriarchal ideals of family.<sup>55</sup>

Finally, Dr. Black points out that the Torah – i.e., Christ as an example of “manhood” – was a primary source of African American ideals of family and manhood during the era of slavery, emancipation, and the era of the Civil Rights Movement.<sup>56</sup>

To that same end, on January 23, 1961, the imminent Pan-African scholar W.E.B. Du Bois thus advised the Nigerian people that “the **ancient faith** in communal family and clan” is a “**method of protecting the masses**.”<sup>57</sup>

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<sup>54</sup> Ibid., pp. 11-13 (“the concept of manhood throughout West African communities.... West Africa was usually attained via four consecutive stages: **boyhood rites of passage**, demonstrations of **physical prowess** as adolescents, **husbandhood**, and **fatherhood**.”)

<sup>55</sup> Ibid., pp. 149 - 150, stating:

As Christians and, indeed, preachers, Payne and Ward cannot comprehend how a nation can purport to be God-fearing and yet deny the black man what every other man in the world enjoys – a celebrated sense of manhood. Upon receiving their calling, both perceive it their duty to preach the ‘unadulterated gospel,’ which includes the principle of liberty for all people. The conversion process which they experience prepares them to be spokesmen for universal equality in America.

<sup>56</sup> Hence, this chapter thus purports that African American fathers, husbands, and men in the United States may rightfully rely upon the Torah as the basis for vindicating their fundamental rights as “Head of the Family” under customary international law (e.g., *Jus Cogens*).

<sup>57</sup> W.E.B. Du Bois, *The World And Africa* (New York, N.Y. : International Publishers, 2015), p. 331.

Dr. Du Bois and several other imminent African American scholars have reiterated this same sentiment, with respect to the Black Church of the United States and its orthodox Christian religion.

Slavery and the Black Family	Black Church and the Black Family during early 20th Century
<p>“The slave may be ‘used’ so as to be ‘used up’ in seven years; may be used as a ‘breeder,’ as a prostitute, as a concubine, as a pimp, as a tapster, as an attendant at the gaming-table, as a subject of medical and surgical experiments for the benefit of science, and the Legislature makes no objection against it.”<sup>58</sup></p>	<p>“The plague-spot in sexual relations is easy marriage and easy separation. This is no sudden development, nor the fruit of Emancipation. It is the plain heritage from slavery.... The <b>Negro church</b> has done much to stop this practice, and now most <b>marriage ceremonies are performed by pastors</b>. Nevertheless, the evil is still deep seated, and only a general raising of the standard of living will finally cure it.”<sup>59</sup></p>

In the year 1946, soon after the close of World War II and the United Nations General Assembly meeting in San Francisco, W.E.B. Du Bois published his scholarly work, *The World and Africa: An Inquiry into the Part which Africa has played in World History*.<sup>60</sup>

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<sup>58</sup> William Goodell, *The Democracy of Christianity, or; An Analysis of the Bible and its Doctrines in Their Relation to the Principles of Democracy* (New York, N.Y.: Cady and Burgess, 1852), p. 327.

<sup>59</sup> W.E.B. Du Bois, “The Souls of Black Folk,” *Writings* (New York, N.Y.: The Library of America, 1986), p. 460- 461.

<sup>60</sup> W.E.B. Du Bois, *The World And Africa* (New York, N.Y. : International Publishers, 2015). This is a 2015 re-print of the original 1946 edition, from the International Publishers, Inc. It also contains, too, Dr. Du Bois’ “Writings on Arica, 1955 - 1961,” and it is this edition which the undersigned authorize has utilized in the presentation of this summary. While the objective of this summary will not do complete justice to Dr. Du Bois’ great work, and it strictly limited to

Just as the Black family and African American husbands and fathers in the United States were categorically dismantled, so too did European colonialism dismantle the African family and clan, viz.

1.

“One of the worst things that happened was the complete and deliberate breaking-down of cultural patterns among the suppressed peoples.... ‘The **invasion of family life**, the ruthless destruction of every social barrier, the shattering of every tribal law, the introduction of criminal practices which struck the chiefs of the people dumb with horror – in a word, the veritable avalanche of filth and immorality overwhelmed the Congo tribes.’ [citing Harris, *Dawn in Africa*, p. 66].”

**Source:** W.E.B. Du Bois, *The World And Africa* (New York, N.Y. : International Publishers, 2015), p. 35.

2.

“With all this went **the fall and disruption of the family**, the deliberate attack upon the ancient African clan by missionaries. The invading investors who wanted cheap labor at the gold mines, the diamond mines, the copper and tin mines, the oil forests and cocoa fields, followed the missionaries. The **authority of the family was broken up**; the authority and tradition of the clan disappeared; the power of the chief was transmuted into the rule of the white district commissioner. The old religion was held up to ridicule, the old culture and ethical standards were degraded or disappeared, and gradually all over Africa spread the inferiority complex, the fear of color, the worship of white skin, the imitation of white ways of doing and thinking, whether good, bad, or indifferent.”

**Source:** W.E.B. Du Bois, *The World And Africa* (New York, N.Y. : International Publishers, 2015), p. 78.

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(a) the effects of contract of European culture and civilization upon the African peoples and (b) the resulting collapse of the African family and familial traditions.



3.

“Finally, the treatment of **colored women** by white men [in the United States] has been a worldwide disgrace. American planters, including some of the highest personages in the nation, left broods of colored children who were sometimes sold into slavery....<sup>61</sup>

Of the treatment of **women in India**... [William Howitt (1792 - 1879), and English Quaker, said] ‘The treatment of the females could not be described.... The virgins were carried to the Court of Justice, where they might naturally have looked for protection, but... those tender and modest virgins were brutally violated.’

**Source:** W.E.B. Du Bois, *The World and Africa* (New York, N.Y. : International Publishers, 2015), pp. 24-25.

At the same time, “enslavement made it practically impossible for African men to fulfill their roles as fathers, as it had prevented them from fulfilling their roles as husband.”<sup>62</sup>

Hence, the Pan-Africanist W.E.B. Du Bois counseled the African continent to turn away from Western acquisitive values and embrace their own ancient faith and traditions of family and clan, viz:

“There is... a third force which must be watched: this is the **ancient faith in communal family and clan**. This **method of protecting the masses** is

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<sup>61</sup> See, also, W.E.B. Du Bois, “The Souls of Black Folk,” *Writings* (New York, N.Y.: The Library of America, 1986), p. 368, stating, “[t]he red stain of bastardy, which two centuries of systematic legal defilement of Negro women had stamped upon his race, meant not only the loss of ancient African chastity, but also the hereditary weight of a mass of corruption from white adulterers, threatening almost the obliteration of the Negro home.”

<sup>62</sup> Daniel P. Black, *Dismantling Black Manhood*, supra, p. 85.

distinctly socialist.... Widows married the dead man's brother. Orphans were adopted in **the family**. Trade was carried on by small distributors, chiefly women, in vast markets.... These old folkways and this economic organization have changed by the **breaking up of families**, by the rise of mass industry and the growth of cities....

Indeed, it now seems that Africans may have to show American Negroes the way to freedom."

**Source:** W.E.B. Du Bois, *The World and Africa* (New York, N.Y. : International Publishers, 2015), p. 331.

Here, it should be acknowledged that W.E.B. Du Bois, while outlining his blueprint for the social, economic, and political liberation of the African continent, passed his proverbial, titular head as "President of the Pan-African Congress" to Kwame Nkrumah of Ghana in 1957, stating:

I hereby put into your hands, Mr. Prime Minister, my empty but still significant title of 'President of the Pan-African Congress,' to be bestowed on my duly-elected successor who will preside over a Pan-African Congress due, I trust, to meet soon and for the first time on African soil, at the call of the independent state of Ghana.<sup>63</sup>

It is safe to say that Dr. Nkrumah and others implemented Dr. Du Bois' Pan-African ideals with the founding of the Organization of African Unity (OAU) on May 25, 1963, when Du Bois himself was still alive.<sup>64</sup>

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<sup>63</sup> W.E.B. Du Bois, *The World and Africa* (New York, N.Y.: International Publishers, Inc., 2015), p. 297.

<sup>64</sup> "Organisation of African Unity," *Wikipedia* (online encyclopedia), stating:

The Organisation of African Unity (OAU; French: Organisation de l'unité africaine, OUA) was an intergovernmental organization established on 25 May 1963 in Addis Ababa, Ethiopia, with 33 signatory governments. One of the main heads for OAU's

The OAU's Charter stated:

**Charter to the Organization of African Unity (OAU)**

"We, the **Heads of African States and Governments** assembled in the City of Addis Ababa, Ethiopia;

"CONVINCED that it is the **inalienable right** of all people to control their own **destiny**;

"CONSCIOUS of the fact that freedom, equality, justice and dignity are essential objectives for the achievement of **the legitimate aspirations of the African peoples**;

"CONSCIOUS of our responsibility to harness the natural and human resources of our continent for the total advancement of our peoples in spheres of human endeavour;

"INSPIRED by a common determination to promote understanding among our peoples and co-operation among our States in response to the aspirations of our peoples for brotherhood and solidarity, in a larger unity transcending ethnic and national differences;

"CONVINCED that, in order to translate this determination into a dynamic force in the cause of human progress, conditions for peace and security must be established and maintained;

"DETERMINED to **safeguard and consolidate the hard-won independence** as well as the sovereignty and territorial integrity of our States, and **to fight against neo-colonialism in all its forms**;

"DEDICATED to the **general progress of Africa**;

"PERSUADED that the **Charter of the United Nations** and the **Universal Declaration of Human Rights**, to the principles of which we

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establishment was Kwame Nkrumah of Ghana. It was disbanded on 9 July 2002 by its last chairman, South African President Thabo Mbeki, and replaced by the African Union (AU). Some of the key aims of the OAU were to encourage political and economic integration among member states, and to eradicate colonialism and neo-colonialism from the African continent.

reaffirm our adherence, provide a solid foundation for peaceful and positive co-operation among states;

DESIROUS that **all African States** should henceforth **unite so that the welfare and well-being of their peoples** can be assured;

“RESOLVED to reinforce the links between our states by establishing and strengthening **common institutions** ;

“HAVE agreed to the present Charter.”

Not until 1981, however, did the OAU enact pathbreaking resolutions on the social, cultural, economic, and familial of the African peoples in its “**African Charter on People’s and Human Rights.**” The text of this African human rights charter demonstrates that **Pan-Africanism expressly safeguards the traditional African family as the basic foundation of African society.**

Hence, the basic principles of Pan-Africanism holds that the Black family in the United States and on the African continent suffered greatly from the effects of slavery and colonialism; and that only through a restoration of the “traditional” or “customary” family and marriage can African Americans and Africans safeguard themselves against continued racial oppression and neo-colonialism.

## CONCLUSION

The Holy Bible is as sacred to both Africans and African Americans as the Torah is to the Jews. And these Sacred Scriptures are especially authoritative in providing guidelines for husbands, wives, children, and families, both amongst individual African and African American Christian families and in the Black Church of the United States and on the African continent.

In the Black Church community, at least historically up through the death of Dr. Martin Luther King, Jr. (1929 - 1968) in the United States and throughout present-day Africa, the Holy Bible carries the same moral authority as does the Torah for the Jewish community. And among individual African American Christian families, that authority has not changed.

Hence, when the British empire was at its peak and Great Britain still reigned as the most powerful nation on earth, and during the days when Queen Victoria (1819 - 1901) still reigned, the Black Church of the United States helped various Black West Indians and Black Africans to organize the first Pan-African Congress in 1900 at Westminster Town Hall in London.

Notably, in the United States, the landmark Thirteenth, Fourteenth, and Fifteenth Amendments to the United States Constitution had already been enacted by the Congress of the United States. Both the 1866 and 1871 Civil Rights Acts had already been enacted in order to safeguard the constitutional rights of African American citizens. Nevertheless, their lack of enforcement in the state and federal courts of the United States necessitated the Pan-African movement.

The unwritten moral natural law upon which this first Pan-African Congress was established was the Torah of the Jews, the Holy Bible of the Black Church, and natural law or Christian jurisprudence of the Church of England. Indeed, this was a natural extension of great human rights advocacy of the great Frederick Douglass and others.<sup>65</sup>

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<sup>65</sup> See, e.g., "Frederick Douglass," *Stanford Encyclopedia of Philosophy*, *supra*, stating:

The ideas that Douglass drew on in his arguments against slavery originate from natural law theory and Christian theology. Douglass was an Enlightenment thinker, a nineteenth-century modernist, and a Protestant, so natural law in his view was a combination of the prescriptions of *reason* and *revelation* evident in the historical and civilizational progress of humanity....

Pan-Africanism based its several human rights petitions upon the same universal natural moral law of the Torah of the Jews and of the Roman Catholic Church or of the Church of England, which is today known as *Jus Cogens* – a principle that is coterminous with the “Golden Rule” and the “law of Christ.”<sup>66</sup>

Through the foundational work of Pan-Africanists such as W.E.B. Du Bois and Kwame Nkrumah, Pan-Africanism was firmly established in the **Organization of African Unity (OAU)** in 1963, and in the OAU’s adoption of “**African Charter on People’s and Human Rights**” in 1981.

Hence, the Black Church help to lay the foundations of Pan-Africanism as early as 1900, and African Americans such as W.E.B. Du Bois

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The sources for his *driving* belief in natural law and its moral implications were many: the founding documents of the United States; popular intellectuals, such as Ralph Waldo Emerson and his colleagues and acquaintances in the American Abolition movement; the allies he encountered abroad; and his appreciation of George Combe’s *The Constitution of Man*, from 1834 (Van Wyhe 2004). However, given the numerous religious references in his speeches and writings, a primary source for his employment of the idea of natural law was his adaptation of the American Protestantism of the Second Great Awakening, with its democratic and republican values and generally independent spirit. All of this is on prominent display at the conclusion of his famous speech, “The Meaning of July Fourth for the Negro”:

The arm of the Lord is not shortened”, and the doom of slavery is certain. I, therefore, leave off where I began, with hope. While drawing encouragement from the Declaration of Independence, the great principles it contains, and the genius of American Institutions, my spirit is also cheered by the obvious tendencies of the age. (1852 [SFD: 90])

Relying on the *deus ex machina* was not enough for Douglass. His vision of natural rights involved action; his image of civic republicanism emphasized the need for active participation to claim or earn one’s rights and status as a citizen (Davis 1971; Pettit 1997; Myers 2008; Gooding-Williams 2009).

<sup>66</sup> For this reason, it is high time that this nation acknowledges the customary international law doctrine of *Jus Cogens* as an ample, independent federal jurisdictional authorization whereby aggrieved African American fathers, husbands and men may petition for the vindication of their marriage contract status rights as “Head of the Family” in the United States District Courts, particularly where those same rights have been abrogated, ignored, or denied in the several state family law courts.

and Randall Robinson, Esq.,<sup>67</sup> helped to formulate and shape the objectives of late 20<sup>th</sup>-century Pan-Africanism following widespread African independence from colonialism.

Today, the Black Church in the United States has both a duty and a rightful authority to advocate for the application of *Jus Cogens*, relying heavily upon the text of the “**African Charter on People’s and Human Rights**,”<sup>68</sup> the text of the Sacred Scriptures (i.e., the Torah, the Holy Bible), and traditional Anglo-American common law of the family, in order to the dismantle all oppressive economic, legal, and juridical systems that divest African American fathers, husbands, and men of their “**Head of Family**” status,— a divestiture that has led to the decline and fall of the African American family.

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<sup>67</sup> Randall Robinson (1941 – 2023) was a Harvard-training Pan-Africanists, human rights lawyer, and founder of Transafrica.

See, e.g., “Randall Robinson,” [https://en.wikipedia.org/wiki/Randall\\_Robinson](https://en.wikipedia.org/wiki/Randall_Robinson).

<sup>68</sup> See, e.g., Restatement (Third) of Foreign Relations Law § 702(c) (Am. L. Inst. 1987)(“The customary law of human rights is part of the law of the United States to be applied as such by State as well as federal courts.”). *Lawrence v. Texas*, 539 U.S. 558, 576 (2003)(citing the case law of the European Court of Human Rights); *Thompson v. Oklahoma*, 487 U.S. 815, 831 n. 34 (1988)(noting that the International Covenant on Civil and Political Rights, the American Convention on Human Rights and the Geneva Convention Relative to the Protection of Civil Persons in Time of War prohibit juvenile death penalties); *Roper v. Simmons*, 543 U.S. 551, 579 (2005)(relying on international human rights law to hold that sentencing juveniles to death violates the Eighth Amendment).

# APPENDIX A

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## ***“Jus Cogens: An Analysis of ‘Thoughts upon Slavery’ by The Rev. John Wesley (1703 – 1791)”***

By

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

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### **Table of Contents**

Introduction.....	48
A. On the Nature and Origins of Slavery.....	51
B. The Christian Religion Destroyed Slavery.....	52
C. The Age of Discovery, Mercantilism, and Profit.....	53
D. Who were the African Captives, From Whence Did They Come?.....	54
E. How the Africans were Captured, Transported to the New World.....	58
F. In What Manner are the Africans Treated?.....	59
G. Slavery Inconsistent with Natural Law and the Fundamental Laws of England.....	60
H. Capitalism, Slavery, and Profits.....	63
Conclusion.....	65



## INTRODUCTION

In the case of *U.S. v. Bellaizac-Hurtado*,<sup>69</sup> the Eleventh Circuit Court of Appeals has defined Jus Cogens as inclusive of the following:

- Piracy;
- Slavery;
- Slave-related practices;
- War crimes;
- Crimes against humanity;
- Genocide;
- Apartheid; and,
- Torture.

In *Thoughts Upon Slavery* (1774), Rev. Wesley demonstrates that each of these criminous actions were committed against those Africans who were brutally snatched from Africa and transported to the New World.<sup>70</sup>

In 1774, when *Thoughts Upon Slavery* was first published, the official doctrine of “Jus Cogens” had not yet been coined.

Instead, the language of “Law of Nature” and the “Fundamental Laws of England,” which Rev. Wesley uses, were utilized to denote the same concept of *Jus Cogens* (i.e., peremptory norms of morality).<sup>71</sup>

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<sup>69</sup> *United States v. Bellaizac-Hurtado*, 700 F.3d 1245 (11th Cir. 2012).

<sup>70</sup> See, also, W.E.B. Du Bois, “The Rape of Africa,” *The World and Africa: An Inquiry into the Part Which Africa has played in World History* (New York, N.Y.: International Publishers, Inc., 2015), pp. 44- 80.

<sup>71</sup> See, e.g., Fiona de Londras, “The Religiosity of Jus Cogens: A Moral Case For Compliance?” Javid Rehman and Susan C. Breau (eds), *Religion, Human Rights and International Law* (Netherlands: Koninklijke Brill NV, 2007)(Chapter 9) p. 260, stating:

Most of these early allusions to **the notion of peremptory norms** made some, at least implicit, reference to morality and the underlying indication of a connection with **Christian natural law theory** was clear. Indeed the early international natural law theorists such as de Vattel believed that

In *Thoughts Upon Slavery* (1774), the Rev. John Wesley masterfully explains the essential nature of what is today known as the doctrine of *Jus Cogens*. Rather than using the words “*Jus Cogens*,” Wesley uses terminology then in vogue during the late 18<sup>th</sup> century, such as “mercy” and “justice.” Here, we may conclude that, in advocating the principles of “mercy” and “justice,” that Rev. Wesley clearly understood that he was well within the domain of the professional responsibilities of the Christian pastor, which is to preach and teach the “Golden Rule” of Christ.

And, while doing so, Rev. Wesley demonstrates how (1) the transatlantic African slave trade and (2) African slavery in the New World violated the principles of “nature” or the customary international law principles of *Jus Cogens*, stating:

The grand plea is, “[Slavery and the slave trade] are authorized by law.” But can law, human law, change the nature of things? Can it turn darkness into light, or evil into good? By no means. Notwithstanding ten thousand laws, right is right, and wrong is wrong still. There must still remain an essential difference between justice and injustice, cruelty and mercy. So that I still ask, Who can reconcile this treatment of the negroes, first and last, with either mercy or justice.

In other words, Rev. Wesley reminds his readers that there is a *moral code* in the universe, designed and administered by a Creator, which determines what is right and wrong, just and unjust, and that human laws – not even “ten thousand laws” – can change this “nature.”

Significantly, *Thoughts Upon Slavery* (1774) describes brutal acts of **piracy, torture, mutilation, castration, family separation, cultural**

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international law included necessary law as well as consent based law.

**Necessary law was the ‘application of natural law to the law of nations’** and was ‘necessary because nations are absolutely obliged to observe it’.

As the impetus grew for the express inclusion of **jus cogens** in an international treaty **the connection with natural law and religion** was submerged.

**decimation**, and **slavery** against various peaceful, innocent African peoples that absolutely “shock the conscience.”

### Key Feature

The implications of *Thoughts Upon Slavery* (1774) are namely this:

- The transport of Africans from the continent of Africa to the New World constituted a **willful, knowing**, and **wanton** violation of the principles of *Jus Cogens*, even by 17<sup>th</sup> and 18<sup>th</sup>-century standards of “right and wrong” and “justice and injustice;<sup>72</sup>
- *Piracy* and *torture* were key features of this transatlantic slave trade;
- *Slavery* was perpetrated against the African race in North America from 1619 until 1865 (i.e., 246 years);
- *Slave-related* practices-- amongst which include the decimation of the Black Family – have been perpetuated against African Americans since the end of Slavery in 1865.
- Since *Jus Cogens* includes slave-related practices (see, e.g., *U.S. v. Bellaizac-Hurtado*),<sup>73</sup> the U. S. District Courts have federal jurisdiction over “**family law issues**” that

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<sup>72</sup> See, also, W.E.B. Du Bois, “The Rape of Africa,” *The World and Africa: An Inquiry into the Part Which Africa has played in World History* (New York, N.Y.: International Publishers, Inc., 2015), pp. 44- 80.

<sup>73</sup> *United States v. Bellaizac-Hurtado*, 700 F.3d 1245 (11th Cir. 2012).

constitute *Jus Cogens* or “**slave-related practices**,” such as the systematic break-up of the Black family and the deprivation the of “**Head of Family**” status to **African American fathers, husbands, and men**.

### A. On the Nature and Origins of African Slavery

The plight of the African American family in the United States falls within the domain of *Jus Cogens* (i.e., customary international law of human rights). See, e.g., *U.S. v. Bellaizac-Hurtado*.<sup>74</sup>

#### The Break-Up of the African Family and Clan

“With all this went the **fall** and **disruption** of the family, the deliberate attack upon the ancient African clan by missionaries....

The **authority of the family was broken up**; the authority and tradition of the clan disappeared....”

Source: W.E.B. Du Bois, “The Rape of Africa,” *The World and Africa: An Inquiry into the Part Which Africa has played in World History* (New York, N.Y.: International Publishers, Inc., 2015), p. 78.

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<sup>74</sup> Ibid.

In *Thoughts Upon Slavery* (1774), Rev. Wesley defines “Domestic Slavery” and admits that slavery may be manifest in a “variety of forms.”

There are, however, as Rev. Wesley contended, certain universal and key features of slavery that were manifest in almost every place where that institution existed. One key feature of slavery is compulsory service from the slave to the master, -- a relationship which only the master could dissolve.

Another key feature is that the master class retained an arbitrary power of correction and punishment over their slaves. An additional key feature is that the slave class could own or possess nothing except for the benefit of the master class. And, finally, a fourth key feature of slavery was that the master class could also alienate or sell his slaves, just as any of its other domestic animals.

This form of slavery, under various disguises, has appeared worldwide since time immemorial, contended Rev. Wesley in *Thoughts Upon Slavery*, “and in process of time spread into all nations. It prevailed particularly among the Jews, the Greeks, the Romans, and the ancient Germans: and was transmitted by theme to the various kingdoms and states, which arouse out of the Roman empire.”<sup>75</sup>

## **B. The Christian Religion Destroyed Slavery**

Notably, Rev. Wesley and Alexis de Tocqueville point out that the influence of the Christian religion (i.e., the Torah, the Law of Moses, the law of Christ, etc.) naturally destroyed slavery.

*Thoughts Upon Slavery* (1774) purports the important truth that the true essence of the Christian religion – its emphasis upon brotherly love for all mankind – created a set of circumstances that naturally led to the ultimate liberation of humanity and the ultimate extinction of slavery.

Notably, Rev. Wesley pointed out that slavery “gradually fell into decline in almost all parts of Europe,” during a period of its history “after

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<sup>75</sup> John Wesley, *Thoughts Upon Slavery*, supra, p. 3.

Christianity prevailed.”<sup>76</sup> “From this time Slavery was nearly extinct,” Wesley concludes.<sup>77</sup> Here we may surmise that Rev. Wesley intends to purport that the influence of the Christian religion curtailed the continuation and growth of the institution of slavery throughout Europe.

Thus commenting on the same subject matter, the great French social theorist Alex De Tocqueville opined in his class work *Democracy in America* (1835) that “[a]ntiquity could only have a very imperfect understanding of this effect of slavery on the production of wealth. Then slavery existed throughout the whole civilized world, only some barbarian peoples being without it. Christianity destroyed slavery by insisting on the slave’s rights; nowadays it can be attacked from the master’s point of view; in this respect interest and morality are in harmony.”<sup>78</sup>

### C. The Age of Discovery, Mercantilism, and Profit

*Thoughts Upon Slavery* (1774) addresses the problem of economic greed in a subtle but forceful and masterful way. It does this, first, by pointing out when, where, and why slavery was revitalized; and, secondly, by exposing the three classes of persons – e.g., (a) the captains of the slave ships, (b) the merchants who induce Africans to sell their countrymen, and (c) planters who owned the plantations – who profited from slavery and the slave trade.

#### The Changing Economic Method

“The new capitalism as a method of production and trade began to supplant the farmer and merchant at home in Europe....

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<sup>76</sup> Ibid.

<sup>77</sup> Ibid., p. 4.

<sup>78</sup> Alexis de Tocqueville, *Democracy in America* (New York, N.Y.: Harper Perennial, 1988), p. 348.

“Trade began to change from a gambler’s search for treasure to investment for permanent income.... To perfect this arrangement slaves and more slaves must be had.”

Source: W.E.B. Du Bois, “The Rape of Africa,” *The World and Africa: An Inquiry into the Part Which Africa has played in World History* (New York, N.Y.: International Publishers, Inc., 2015), pp. 52-53.

Rev. Wesley thus contended that slavery was, unfortunately, revitalized during the 15<sup>th</sup> century, when the Portuguese began to supply the Spanish colonies in the Western Hemisphere African slaves.<sup>79</sup> This wicked traffic and trade was briefly halted in 1540 when Charles V, the king of Spain, ended them through royal decree. But later, slavery and the slave trade was soon revitalized, and continued for the next three centuries. “Slavery returned and flourished as before.”<sup>80</sup>

#### **D. Who were the African captives and From Whence Did they Come?**

The most thought-provoking aspect of the transatlantic slave trade and the institution of slavery is the decimation of African languages, religion, family institutions, and culture – both on the continent of Africa and amongst the African slaves.

A desire on the part of present-day African Americans to (1) return to Africa or (2) to remain in the United States but to regain and to preserve their lost African languages, religion, family institutions, and culture constitutes “fundamental rights” under the United States Constitution and “human rights” under both customary and enacted international law.

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<sup>79</sup> John Wesley, *Thoughts Upon Slavery*, supra, p. 4.

<sup>80</sup> Ibid.

### The People of Guinea

“The Guinea trade was at first mainly in gold, pepper, and other commodities, with some trading in slaves which went to Europe....

Between 1480 and 1578 the peoples of Guinea enjoyed a vigorous life with economic independence based on foreign trade.

“But by the middle of the sixteenth century there was trouble in West Africa. A vast migration of black people, **the Limbas**, moved slowly westward from Central Africa. They were a part of the migration of **the Bantu** moving down from the Mohammedan invasion of the Nile Valley and the empire-building of the black kingdoms of the Sudan....”

“Migration and native wars lasted for a generation. This meant that cheap labor of captives became available on the West Coast and opened the way for the beginning of the American slave trade....”

Source: W.E.B. Du Bois, “The Rape of Africa,” *The World and Africa: An Inquiry into the Part Which Africa has played in World History* (New York, N.Y.: International Publishers, Inc., 2015), p. 48.

In *Thoughts Upon Slavery*, Rev. Wesley demonstrates precisely why cultural rights and the right to self-determination are definite human rights, even within an African American context.



Rev. Wesley inquires as to precisely what parts of the continent of Africa were the slaves taken, captured, and transported to the New World, and he gives the following description:

That part of Africa when the Negroes are brought, commonly known by the name of *Guinea*, extends along the coast, in the whole, between three and four thousand miles. From the river *Senegal* (seventeen degrees North of the line) to Cape Sierra Leona, it contains seven hundred miles. Thence it runs Eastward about fifteen hundred miles, including the *Grain-coast*, the *Ivory-coast*, the *Gold-coast*, and the *Slave-coast*, with the large kingdom of *Benin*. From thence it runs Southward, about twelve hundred miles and contains the kingdoms of *Congo* and *Angola*.<sup>81</sup>

Rev. Wesley goes on to describe the character of the African peoples who inhabited Senegal, the Grain coast, the Ivory coast, the Gold coast, the Slave coast, Benin, Congo, and Angola and thus concluded:

Upon the whole therefore the Negroes who inhabit the coast of Africa, from the rive Senegal to the Southern bounds of Angola, are so far from being the stupid, senseless, brutish, lazy barbarians, the fierce, cruel, perfidious Savages they have been described, that o the contrary, they are represented by them who have no motive to flatter them, as remarkably sensible, considering the few advantages they have for improving their understanding: as industrious to the highest degree, perhaps more so than any other natives of so warm a climate: as fair, just, and honest in all their dealings, unless where white men have taught them to be otherwise: and as far more mild, friendly and kind to strangers, than any of our forefathers were. Our forefathers! Where shall we find at this day, among the faire-faced natives of Europe, a nation generally practicing the justice, mercy, and truth, which are found among these poor

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<sup>81</sup> Ibid., pp. 4-5.

Africans? Suppose the preceding accounts are true, (which I see no reason or pretence to doubt of,) and we may leave England and France, to seek genuine honesty in Benin, Congo, and Angola.<sup>82</sup>

From these general descriptions, it is clear that Rev. Wesley concludes in *Thoughts Upon Slavery* that the African civilizations which the slaves were extracted were monotheistic, religious, orderly, and governed by custom and law; and that Europeans who captured and enslaved these African peoples were avaricious criminals.<sup>83</sup>

### **The African Civilization During the 14<sup>th</sup> & 15<sup>th</sup> Centuries**

“There can be little doubt that in the fourteenth century the level of culture in black Africa south of the Sudan was equal to that of Europe and was so recognized....

“What changed all this? What killed the Sudanese empires, brought anarchy into the valley of the Nile, decimated the thick populations of East and Central Africa, and pressed the culture of West Africa beneath the ruthless heel of the rising European cultures?”

Source: W.E.B. Du Bois, “The Rape of Africa,” *The World and Africa: An Inquiry into the Part Which Africa has played in World History* (New York, N.Y.: International Publishers, Inc., 2015), pp. 44-45.

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<sup>82</sup> Ibid., pp. 8-9.

<sup>83</sup> See, also, Frederick Douglass, *Autobiographies* (New York, N.Y.: The Library of America, 1994), 534 (“‘Slaveholders,’ thought I, ‘are only a band of successful robbers, who, leaving their own homes, went into Africa for the purpose of stealing and reducing my people to slavery.’”).

Hence, Rev. Wesley insinuates in *Thoughts Upon Slavery* that the systematic enslavement of these poor Africans was predicated upon racist stereotypes and pretexts that were designed to vindicate their brutal enslavement.<sup>84</sup>

### **E. How the Africans Were Captured and Transported to the New World?**

In *Thoughts Upon Slavery*, Rev. Wesley concluded that the whole system of slavery and the transatlantic slave trade was induced “by fraud”<sup>85</sup> by “[c]aptains of ships,”<sup>86</sup> and “by force.”<sup>87</sup>

Significantly, the Europeans sowed seeds of dissension between the Africans, thus “prevailing upon them to make war upon each other, and to sell their prisoners.”<sup>88</sup> In addition, “the white men first taught them drunkenness and avarice, and then hired them to sell one another. Nay, by this means, even their Kings are induced to sell their own subjects.”<sup>89</sup>

In support of these conclusions, Rev. Wesley cites “Mr. Moore, Factor of the African Company in 1730”;<sup>90</sup> “Barbot, (another French Factor)”;<sup>91</sup>

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<sup>84</sup> John Wesley, *Thoughts Upon Slavery*, *supra*, pp. 4-9.

<sup>85</sup> *Ibid.*, p. 9.

<sup>86</sup> *Ibid.*

<sup>87</sup> *Ibid.*, p. 9 (“The Christians landing upon their coasts, seized as many as they found, men, women and children, and transported them to America.”)

<sup>88</sup> *Ibid.*

<sup>89</sup> *Ibid.*

<sup>90</sup> *Ibid.*, pp. 9-10.

<sup>91</sup> *Ibid.*, p. 10.

“the Journal of a Surgeon”;<sup>92</sup> and “Mr. Anderson in his history of Trade and Commerce.”<sup>93</sup>

### F. In What Manner are the African Captives Treated?

The horrors of the Middle Passage are today well known and studied, and Rev. Wesley mentions some those same accounts in his *Thoughts Upon Slavery* (1774).

“[A]t least ten thousand of them die in the voyage” of the Middle Passage,” Rev. Wesley concluded,<sup>94</sup> and “about a fourth part more die at the different Islands, in what is called the Seasoning. So that at an average, in the passage and seasoning together, thirty thousand die: that is, properly are murdered.”<sup>95</sup>

The remaining survivors are exposed naked, whipped, branded, and packed into the slave ships under conditions that evoke wonder as to how any of them survived the voyage from Africa to the West Indies. Upon arrival in the New World, families were brutally separated. “Here you may see mothers hanging over their daughters, bedewing their naked breasts with tears, and daughters clinging to their parents, till the whipper soon obliges them to part.”<sup>96</sup>

“As to the punishment inflicted on them,” Rev. Wesley quotes “Sir Hans Sloan,” who writes, “ ‘they frequently geld them, or chop off half a foot: after they are whipped till they are raw all over. Some put pepper and salt upon them: some drop melted wax upon their skill. Others cut off their ears, and constrain them to broil and eat them. For Rebellion,’ (that is, asserting their native Liberty, which they have as much right to as to the air

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<sup>92</sup> Ibid., p. 11.

<sup>93</sup> Ibid.

<sup>94</sup> Ibid.

<sup>95</sup> Ibid.

<sup>96</sup> Ibid., p. 12.

they breathe) ‘they fasten them down to the ground with crooked sticks on every limb, and then applying fire by degrees, to the feet and hands, they burn them gradually upward to the head.’”<sup>97</sup>

One objection which Rev. Wesley received was this: “it is necessary when we have slaves, to use them with severity.”<sup>98</sup> To this point, Rev. Wesley rejoined, “What, to whip them for every petty offence... To castrate them? To cut off half their foot with an axe?”<sup>99</sup>

Rev. Wesley then analyzes the “law of Virginia,” the “law of Jamaica,” the “law of Barbadoes” and concluded that “these Law-makers” were no more civilized or merciful than the brutal slave traders aboard the slave ships or the slave drivers on the plantations.<sup>100</sup>

### **G. Slavery Inconsistent with Natural Law and the Fundamental Laws of England**

The principle of *Jus Cogens* (e.g., “slavery,” etc.), as reflected in the holding in *U.S. v. Bellaizac-Hurtado*,<sup>101</sup> was already firmly established in English common law as early as the 18<sup>th</sup> century.

Significantly, in *Thoughts Upon Slavery* (1774), Rev. Wesley turned to Chief Justice William Blackstone’s *Commentaries on the Laws of England* (1765)<sup>102</sup> for a complete rationale for the natural-law jurisprudence which

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<sup>97</sup> Ibid., p. 13.

<sup>98</sup> Ibid., pp. 18-19.

<sup>99</sup> Ibid., p. 19.

<sup>100</sup> Ibid., pp. 13-14.

<sup>101</sup> Ibid.

<sup>102</sup> Ibid. Here, Rev. Wesley’s quote of Blackstone is taken from Article 4, Section 2, Clause 3 of the *Commentaries on the Laws of England* (1765), which the University of Chicago has reprinted at the following link: [https://press-pubs.uchicago.edu/founders/documents/a4\\_2\\_3s1.html](https://press-pubs.uchicago.edu/founders/documents/a4_2_3s1.html)

undergird the English Common Law and constitution. He quotes Blackstone, as follows:

The three origins of the right of slavery assigned by Justinian, are all built upon false foundations.

1. Slavery is said to arise from captivity in war. The conqueror having a right to the life of his captive, if he spares that, has then a right to deal with them as he speaks. But this is untrue, if taken generally, That by the laws of nations, a man has a right to kill his enemy. He has only a right to kill him in particular cases, in cases of absolute necessity for self-defense. And it is plain, this absolute necessity did not subsist, since he did not kill him, but made him prisoner. War itself is justifiable only on principles of self-preservation. Therefore it gives us no right over prisoners, but to hinder their hurting us by confining them. Much less can it give a right to torture, or kill, or even enslave an enemy when the war is over. Since therefore the right of making our prisoners slaves, depends on a supposed right of slaughter, that foundation failing, the consequence which is drawn from it must fail likewise....

It is said secondly, Slavery may begin, by one man's selling himself to another. And it is true, a man may sell himself to work for another; but he can not sell himself to be a slave, as above defined. Every sale implies an equivalent given to the seller, in lieu: of what he transfers to the buyer. But what equivalent can be given for life or liberty? His property likewise, with the very price which he seems to receive devolves ipso facto to his master, the instant he become his slave: in this case therefore the buyer gives nothing. Of what validity then can a sale be, which destroys the very principle upon which all sales are founded?'

We are told, Thirdly, that men may be born slaves, by being the children of slaves. But this being built upon the two former

rights must fall together with them, if neither captivity, nor contract can by the plain law of nature and reason, reduce the parent to a state of slavery, much less can they reduce the offspring.’<sup>103</sup>

And even though Rev. Wesley omits a portion of Blackstone’s quotation, it is helpful to our discussion to include, in addition, the following part, where Blackstone concludes his remarks by stating:

Upon these principles the law of England abhors, and will not endure the existence of, slavery within this nation....

Upon these principles the law of England abhors, and will not endure the existence of, slavery within this nation: so that when an attempt was made to introduce it, by statute 1 Edw. VI. c. 3. which ordained, that all idle vagabonds should be made slaves, and fed upon bread, water, or small drink, and refuse meat; should wear a ring of iron round their necks, arms, or legs; and should be compelled by beating, chaining, or otherwise, to perform the work assigned them, were it never so vile; the spirit of the nation could not brook this condition, even in the most abandoned rogues; and therefore this statute was repealed in two years afterwards. And now it is laid down, **that a slave or negro, the instant he lands in England, becomes a freeman;** that is, the law will protect him in the enjoyment of his person, his liberty, and his property.

From these two authorities, Blackstone’s *Commentaries on the Laws of England* (1765) and Wesley’s *Thoughts Upon Slavery* (1774), we must conclude that the American Founding Fathers of ’76 and ’87 were without excuse, and without ignorance of the moral law or common law or

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<sup>103</sup> Ibid., pp. 15-16 [Rev. Wesley quoting William Blackstone’s *Commentaries on the Laws of England* (1765)]

constitutional law of Great Britain, which were then adopted and incorporated into the laws of all of the colonies.<sup>104</sup>

When the United States was founded, it tried to compromise with this moral evil, this moral stench, with all of its trifling, filthy, and licentious wrongs that were inflicted upon the African slaves, by permitted the institution of slavery and the slave trade to exist for a while, by permitting the slave trade to linger for twenty additional years from the adoption of the United States Constitution; and by protecting the interests of slave-holders by having fugitive slaves in the free states to be returned to their masters in the slave states.

This the United States Supreme Court acknowledged in the case of *Prigg v. Pennsylvania* (1842), *supra*, but, later, it tried in the *Dred Scott* opinion (1857), *supra*, to reverse, thus making slavery a national right of the slaveholder, no matter where he decided to take his slaves. This was the chief cause of the American Civil War (1861 - 1865).

### **H. Capitalism, Slavery, and Profits**

Finally, Rev. Wesley goes to what he concludes is the source of the problem, namely, (1) “the captains employed in this trade”;<sup>105</sup> (2) “every Merchant, who is engaged in the Slave-Trade”;<sup>106</sup> and “every gentleman that has an estate in our American plantations.”<sup>107</sup>

Regarding the later class, that of the “planters” or the “gentlemen,” Rev. Wesley charge:

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<sup>104</sup> See, e.g., W.E.B. Du Bois, “The Suppression of the African Slave Trade,” *Writings* (New York, N.Y.: The Library of America, 1986), p. 15 (stating that the colony of Georgia was founded upon the principle that slavery could not be suffered to exist, because slavery violated the Gospel and the fundamental laws of England.)

<sup>105</sup> John Wesley, *Thoughts Upon Slavery* (1774), *supra*, p. 21.

<sup>106</sup> *Ibid.*, p. 22.

<sup>107</sup> *Ibid.*, p. 23.



Now it is your money that pays the Merchant, and through him the Captain, and the African butchers. You therefore are guilty, yea principally guilty, of all these frauds, robberies and murders. You are the spring that puts all the rest in motion: they would not stir a step without you: therefore the blood of all these wretches, who die before their time, whether in the country or elsewhere, lies upon your head.”<sup>108</sup>

### **The Changing Economic Method**

“By 1750 there was hardly a manufacturing town in England which was not connected with the colonial trade.

The profits provided one of the main streams of that capital which financed the Industrial Revolution. The West Indian islands became the center of the British Empire and of immense importance to the grandeur of England.

It was the Negro slaves who made these sugar colonies the most precious colonies ever recorded in the annals of imperialism.

Experts called them ‘the fundamental prop and support’ of the Empire. The British Empire was regarded as a ‘magnificent superstructure of American commerce and naval power on an African foundation.”

Source: W.E.B. Du Bois, “The Rape of Africa,” *The World and Africa: An Inquiry into the Part Which Africa has played in World History* (New York, N.Y.: International Publishers, Inc., 2015), p. 58.

Hence, Rev. Wesley’s critique of the capitalistic system that produced slavery, the slave trade, and their brutal exploitation of the African

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<sup>108</sup> Ibid., pp. 23-24.

continent is an exemplification of legitimate Christian social-justice advocacy, as well as the “social holiness” theme that characterizes true Methodism, notwithstanding the tendency to dub such ministry as socialism and Marxism.<sup>109</sup>

## CONCLUSION

Wesley’s *Thoughts Upon Slavery* (1774) demonstrate that the forced removal of persons of African descent to the New World and their subsequent enslavement constituted clear violation of the same *Jus Cogens*

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<sup>109</sup> See, also, R.H. Tawney, *Religion and the Rise of Capitalism* (New York, N.Y.: Mentor Books, 1954), pp. 156 - 157:

With the expansion of finance and international trade in the sixteenth century, it was this problem which faced the Church. Granted that I should love my neighbor as myself, the questions which, under modern conditions of large-scale organization, remain for solution are, Who precisely is my neighbor? And, How exactly am I to make my love for him effective in practice? To these questions the conventional religious teaching supplied no answer, for it had not even realized that they could be put. It had tried to moralize economic relations by treating every transaction as a case of personal conduct, involving personal responsibility. In an age of impersonal finance, world-markets and a capitalist organization of industry, its traditional social doctrines had no specific to offer, and were merely repeated, when, in order to be effective, they should have been thought out again from the beginning and formulated in new and living terms. It had endeavored to protect the peasant and the craftsman against the oppression of the moneylender and the monopolist. Faced with the problems of a wage-earning proletariat, it could do no more than repeat, with meaningless iteration, its traditional lore as to the duties of master to servant and servant to master. It had insisted that all men were brethren. But it did not occur to it to point out that, as a result of the new economic imperialism which was beginning to develop in the seventeenth century, the brethren of the English merchants were the Africans whom he kidnaped for slavery in America, or the American Indians whom he stripped of their lands, or the Indian craftsmen from whom he bought muslins and silks at starvation prices.... [T]he social doctrines advanced from the pulpit offered, in their traditional form, little guidance. Their practical ineffectiveness prepared the way for their theoretical abandonment.... [T]he Church of England turned its face from the practical world, to pore over doctrines which, had their original authors been as impervious to realities as their later exponents, would never have been formulated. Naturally it was shouldered aside. It was neglected because it had become negligible.

principles that are enumerated in the case of *U.S. v. Bellaizac-Hurtado*,<sup>110</sup> namely the following:

- Piracy;
- Slavery;
- Slave-related practices;
- War crimes;
- Crimes against humanity;
- Genocide;
- Apartheid; and,
- Torture.

Today, it is the “slave-related practices” component of *Jus Cogens* which brings the plight of the Black Family in general, and of the “Head of the Family” status of African American men with the domain of both customary international law and enacted human rights protocols against racism and genocide.

**--- End of Appendix A---**

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<sup>110</sup> *United States v. Bellaizac-Hurtado*, 700 F.3d 1245 (11th Cir. 2012).

## APPENDIX B

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### *“Jus Cogens: An Analysis of Dr. Daniel P. Black’s Dismantling Black Manhood: An Historical and Literary Analysis of the Legacy of Slavery ”*

By

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

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#### Table of Contents

Introduction.....	68
A. “‘Husbandhood’ in Pre-Colonial West Africa”.....	72
B. “‘Fatherhood’ in Pre-Colonial West Africa” .....	74
C. “Plantation Existence and West African Concept of Manhood” .....	76
D. “Concept of Manhood and the Free Black Male” .....	78
Conclusion.....	82

## Introduction

The “natural right to manhood” – i.e., the right to function as the “Heads of Families” within a traditional or customary family unit – is certainly a well-recognized human right under *Jus Cogens* (i.e., customary international law or the Law of Nations) and treaty law.

- For instance, Articles 4 and 5 of the **African Charter on People’s and Human Rights** expressly acknowledges that:

### African Charter on People’s and Human Rights

#### Article 4

Human beings are *inviolable*. Every human being shall be entitled to respect for his *life* and the *integrity of his person*. No one may be arbitrarily deprived of this right.

#### Article 5

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status.

All forms of exploitation and degradation of man particularly *slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment* shall be prohibited.

Most significantly, Articles 17, 18, and 29 of this African Charter expressly safeguards traditional and customary African ethical standards and family values. According to this African charter, the “**family**” is the “**basis of society,**” stating:

## African Charter on People's and Human Rights

### Article 17

4. Every individual shall have the right to education.
5. Every individual may freely, take part in the cultural life of his community.
6. The promotion and **protection of morals and traditional values recognized by the community** shall be the duty of the State.

### Article 18

5. The **family** shall be the **natural unit and basis of society**. It shall be protected by the State which shall take care of **its physical health and moral**.
6. The State shall have **the duty to assist the family** which is **the custodian or morals and traditional values** recognized by the community.
7. The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions.
8. The aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs.

### Article 29

The individual shall also have the duty:

2. To preserve the **harmonious development of the family**

and to work for **the cohesion and respect of the family**; to **respect his parents at all times**, to maintain them in case of need....

8. To **preserve and strengthen positive African cultural values** in his relations with other members of the society, in the spirit of tolerance, dialogue and consultation and, in general, to contribute to the promotion of the moral well being of society;
9. To contribute to the best of his abilities, at all times and at all levels, to the **promotion and achievement of African unity**.

The natural rights contained within this **African Charter on People's and Human Rights** are actually the same "fundamental" rights which are enshrined in:

- the Torah's "**image of God**" theology;
- the American Declaration of Independence (1776);
- the Thirteenth Amendment (1865, slavery) and the Fourteenth Amendment (1868, due process of law) to the U.S. Constitution (1865);
- the United Nations Universal Declaration of Human Rights (1948);
- the International Covenant on Civil and Political Rights (1966);
- the International Convention on the Elimination of All Forms of Racial Discrimination (1969); and
- the international customary law of *Jus Cogens*,<sup>111</sup> stating:

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<sup>111</sup> Indeed, Articles 60 and 61 of this African human rights charter requires that a multitude of various international human rights and international law doctrines be expressly referenced in utilized when applying the principles asserted in that charter, stating:

#### **Article 60**

The Commission shall draw inspiration from international law on human and peoples' rights, particularly from the provisions of various African instruments on human and peoples' rights, the **Charter of the United Nations**, the **Charter of the Organization of**

Under American slavery, African American men were systematically divested of that “natural right to manhood, husbandhood, and fatherhood” under conditions which constitute “androcide” or the **targeted killing and targeted suppression** of African men and boys.

Dr. Daniel P. Black describes this system of androcide in his masterpiece *Dismantling Black Manhood: An Historical and Literary Analysis of the Legacy of Slavery*.<sup>112</sup>

Dr. Black defines “manhood” as a definite set of responsibilities, roles, functions, and expectations which only men can have, fulfill, and complete.

He argues that West African “manhood” was no less patriarchal than predominant European ideals of manhood; and that when chattel slavery divested African men of this “manhood,” it decimated their sense of self-worth, community, and family.

Thus, in *Dismantling Black Manhood*, we observe the unique effects which the men-stealing and the transatlantic African slave trade and

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**African Unity, the Universal Declaration of Human Rights**, other instruments adopted by the United Nations and by African countries in the field of human and peoples' rights as well as from the provisions of various instruments adopted within the Specialized Agencies of the United Nations of which the parties to the present Charter are members.

#### **Article 61**

The Commission shall also take into consideration, as subsidiary measures to determine the principles of law, **other general or special international conventions**, laying down rules expressly recognized by member states of the Organization of African Unity, African practices consistent with international norms on human and people's rights, customs generally accepted as law, general principles of law recognized by African states as well as legal precedents and doctrine.

<sup>112</sup> Daniel P. Black, *Dismantling Black Manhood: An Historical and Literary Analysis of the Legacy of Slavery* (London and New York: Garland Publishing, Inc., 1997).

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



slavery had upon African and African American men's ability to function as "husbands," "fathers," and "heads of families."<sup>113</sup>

## A.

### "'Husbandhood' in Pre-Colonial West Africa"

Dr. Black states in *Dismantling Black Manhood* that in West Africa there were firmly established traditions, protocols, and customs which placed the husband as the "head of the family, stating:

[O]nce an agreement was reached between the two fathers, and the ceremony had taken place, the new husband was expected to rule his wife and to be head of his household. He knew that all expected his word to be law and, consequently, 'his authority [usually] went unquestioned by West African women' [citing Diane Kayongo-Male, *African Family*, 7.].

In fact, wives were expected to treat their husbands with great honor and reverence. Some women walked behind their husbands in public and served them the kitchen's best foods. This behavior reflected the husband's sovereignty in his household.

If at any point a wife attempted to usurp her husband's authority, he was expected by the community to 'correct' her, thereby restoring 'the natural order of things' [citing Westerman, *The African*, 49.].

This chastisement was rarely physical, however, because the wife would surely have reported the abuse to her family, and, although they might have agreed that she was out of order, the husband would have been reprimanded for his actions.

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<sup>113</sup> See, also, Chapter 4, "Black Men as 'Head of the Family'" in Part II of this series, *THE HEAD OF THE FAMILY: Towards a Federal Common Law of the Black Family*.

Nonetheless, it was within the husband's bounds to dictate his wife's public and private character. She was never to disagree with him publicly nor was she to refuse any of his requests. One observer wrote in the early 18th century that:

[West African communities] keep their women very much under and will never allow them to eat [sic] at one table with their husbands; all the time he's eating shee [sic] stands by with water to serve him and so upon all occasions she waits like a servant upon her husband at home and abroad.

[Citing Nicholas Owen, *Journal of a Slave-Dealer: A View of Some Remarkable Axcedents in the Life of Nicholas Owen on the Coast of Africa and America from the Year 1746 to the Year 1757*, edited and with an introduction by Eveline Martin (New York: Houghton and Mifflin Co., 1930), 52.]

This is not to suggest that husbands manipulated wives such like one would a robot, but to illustrate that the husband was the head of the household, as defined by pre-colonial West Africans, and wives usually allowed husbands such authority.<sup>114</sup>

Dr. Black suggests that this basic relationship between husbands and wives was widespread throughout all of West Africa during the pre-colonial period.<sup>115</sup>

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<sup>114</sup> Ibid., pp. 28- 32.

<sup>115</sup> Ibid., pp. 11-13 ("the concept of manhood throughout West African communities.... West Africa was usually attained via four consecutive stages: **boyhood rites of passage**, demonstrations of **physical prowess** as adolescents, **husbandhood**, and **fatherhood**."

## B.

### “‘Fatherhood’ in Pre-Colonial West Africa”<sup>116</sup>

Dr. Black also states in *Dismantling Black Manhood* that the West African conception of manhood naturally included, and required, being an influential father figure, to wit:

#### Fatherhood

The final conduit through which West African males acquired the status of manhood was fatherhood....

Children were seen as gifts from God; therefore, the more children a man had, the more blessed he was....

Once a father had an abundance of children, he was expected to administer discipline and to perpetuate his culture through them, especially the boys....

In Ghana, sons were told, ‘When you walk behind your father, you learn to walk like him.’ And the goal of fathers was to have sons who walked like their elders, for fathers understood that ‘the strength of the palm tree (father) is in its branches (sons) [citing J. G. Christaller and Kofi Ron Lange, *Three Thousand Six Hundred Ghanian Proverbs* (Lewiston, New York: Edwin Mellen Press, 1990), 76 & 6 respectively.]....

Equally significant, fathers were to steep their children in the history of their people....

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<sup>116</sup> Ibid.

See, also, Chapter 4, “**Black Men as ‘Head of the Family’**” in **Part II** of this series, *THE HEAD OF THE FAMILY: Towards a Federal Common Law of the Black Family*.

Because religion played a key role in traditional West African culture, the father was also a religious leader. He understood the importance of children knowing the faith of their foreparents and knew that it would have been blasphemous for them not to know, for children were thought to 'maintain the link between the ancestors and the living' [citing Kayongo-Male, *The Sociology of the African Family*, 87.]....

In summary, a father's role in pre-colonial West Africa included having many children, rearing them with a strong sense of discipline, teaching them the culture of their people, and insisting that they love, honor, and respect their elders, an essential aspect of West African religious beliefs.<sup>117</sup>

These well-organized West African customs assured wives and children that their West African fathers played a responsible, influential, and wholesome role in the lives of their children.

Moreover, Dr. Black's description of the role of African fathers certainly correlates with the several reports of whole, organized, and lawful African cultures which pre-existed the slave trade, which I have previously mentioned in Rev. Wesley's *Thoughts Upon Slavery*, mentioned above in Appendix A.

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<sup>117</sup> Ibid., pp. 32 - 34.

### C.

#### “Plantation Existence and West African Concept of Manhood”<sup>118</sup>

Similarly, just as Rev. Wesley’s *Thoughts Upon Slavery* described the brutal and savage ripping away of West Africans from their homelands and being transported to the New World and subjected to the most brutal suppression, so, too, does Dr. Black described this same phenomenon in *Dismantling Black Manhood*, stating, the West African conception of manhood naturally included “the Long March, his journey from his home village to the slave vessels on the coast;”<sup>119</sup> “the Middle Passage... the three-to-eight month journey across the seas to the New World”;<sup>120</sup> and the “stage of seasoning, [which] was no less traumatic,” whereby “[h]usbands and wives were often sold to different buyers, and many men were forced to accept the reality that they would never see their children or any other relatives again.”<sup>121</sup>

Dr. Black surmises that for those African men who survived the Long March, the Middle Passage, and “Seasoning,” would have endured a profound psychological experience,<sup>122</sup> whereby “African manhood

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<sup>118</sup> Ibid.

See, also, Chapter 4, “**Black Men as ‘Head of the Family’**” in **Part II** of this series, *THE HEAD OF THE FAMILY: Towards a Federal Common Law of the Black Family*.

<sup>119</sup> Ibid., pp. 43 - 59.

<sup>120</sup> Ibid.

<sup>121</sup> Ibid., p. 56.

<sup>122</sup> Ibid., p. 59.

underwent such a blow.... For the West African male who survived the Middle Passage, the notion of manhood must have been modified."<sup>123</sup>

Furthermore, Dr. Black writes that **"West African men arrived in America with a very explicit idea of what it meant to be a man, and when enslavement forced them to exist outside of that cultural standard, they suffered a degradation only they could understand."**<sup>124</sup>

Tragically, West African men lost their prior rights of *"husbandhood"* on the slave plantations of the Americas. **"A husband could no longer expect his wife to follow his lead but knew that, in fact, the man to whom she must now be ultimately committed was their captor."**<sup>125</sup> Similarly, such men also lost their prior rights of *"fatherhood"* on those same plantations.<sup>126</sup> **"Another tragedy fathers sustained,"** writes Dr. Black, **"was the loss of their right to usher sons into manhood."**<sup>127</sup>

Hence, such West African men **"concluded that their manhood had necessarily vanished.** In other words, West African men arrived in America with a very explicit idea of what it meant to be a man, and when enslavement forced them to exist outside of that cultural standards, **they suffered a degradation only they could understand."**<sup>128</sup>

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<sup>123</sup> Ibid.

<sup>124</sup> Ibid., p. 90.

<sup>125</sup> Ibid., pp. 80-81.

<sup>126</sup> Ibid., pp. 84 - 86.

<sup>127</sup> Ibid., p. 85.

<sup>128</sup> Ibid., p. 90.

## D.

### “‘Concept of Manhood’ and the Free Black Male”

Dr. Black points out that the leadership class of free African American men, who lived during the anti-slavery period, necessarily sought “manhood” by re-establishing natural, normal, and healthy relationships with their wives and children, in addition to attaining gainful employment and respect within their communities<sup>129</sup>-- i.e., “the black male struggle for manhood in America.”<sup>130</sup>

Dr. Black’s work highlights the life, times, and ideas of two leading free-born African American men during the abolitionist **Rev. Samuel R. Ward (1817 - 1866)** and **Bishop Daniel Payne (1811 - 1893)**. For both Rev. Ward and Bishop Payne, the conception of “manhood” for African American men became to attain “the qualities they attributed to God,”<sup>131</sup> because Christ was “their example of true manhood... the one who possesses the strength and the courage to right the world’s wrongs.”<sup>132</sup> And, according to Bishop Payne, “perhaps the greatest curse which slavery inflicted upon us was the destruction of the home.”<sup>133</sup>

Thus, during the 19<sup>th</sup> century, and certainly throughout the Civil Rights Movement of 1960s, African American manhood – whether

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<sup>129</sup> Ibid., pp. 137 - 170.

<sup>130</sup> Ibid., p. 138, 139.

<sup>131</sup> Ibid., p. 153.

<sup>132</sup> Ibid., p. 152.

<sup>133</sup> Ibid., p. 165.

See, also, See, e.g., Moynihan, Daniel P. *The Negro family: The Case for National Action*. Washington, DC: Office of Policy Planning and Research, U.S. Department of Labor (March 1965), stating: “**It was by destroying the Negro family under slavery that white America broke the will of the Negro people....**”

Christian or Muslim – was religiously conceptualized to mirror the image of the Almighty God.<sup>134</sup>

Their petitions, demonstrations, and movements for “manhood” were essentially movements to establish the “law of God,”<sup>135</sup> “law of Christ,”<sup>136</sup> and (or) the “law of Nature”<sup>137</sup> in the United States. Hence, in *Dismantling Black Manhood*, Dr. Black writes:

As Christians and, indeed, preachers, Payne and Ward cannot comprehend how a nation can purport to be God-fearing and yet deny the black man what every other man in the world enjoys – a celebrated sense of manhood. Upon receiving their calling, both perceive it their duty to preach the ‘unadulterated gospel,’ which includes the principle of liberty for all people. The conversion process which they experience prepares them to be spokesmen for universal equality in America.<sup>138</sup>

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<sup>134</sup> Ibid.

<sup>135</sup> Ibid., p. 149. See, also, Leviticus 19:17-18 (“Thou shalt not hate thy brother in thine heart... but thou shalt love thy neighbor as thyself: I am the LORD.”)

<sup>136</sup> Ibid. See, also, Matthew 7:12 (“Therefore all things whatsoever ye would that men should do to you, do ye even so to them: for this is the law and the prophets.”)

<sup>137</sup> Ibid., See, e.g., the Declaration of Independence (1776)(“We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness”); see, also, Sir. Thomas Hobbes’ *Leviathan or The Matter, Forme and Power of a Commonwealth Ecclesiasticall and Civil* (1651), stating “The laws of God therefore are none but the laws of nature....” “[W]hat are the Divine laws, or dictates of natural reason; which laws concern either the natural duties of one man to another, or the honor naturally due to our Divine Sovereign. The first are the same laws of nature, of which I have spoken already in the fourteenth and fifteenth chapters of this treatise; namely, equity, justice, mercy, humility, and the rest of the moral virtues.” Edwin A. Burt, *The English Philosophers From Bacon to Mill* (New York, NY: The Modern Library, 1967), pp. 214, 222, 225.

<sup>138</sup> Ibid., pp. 149 – 150.



Therefore, the “**the black male struggle for manhood in America**”<sup>139</sup> is fundamentally a *godly* and a *religious* struggle that is **constitutional** and **statutory** in nature, for the following four reasons:

First, this “*black male struggle for manhood*” is contained, first within the very words of the **Declaration of Independence (1776)**, which itself states: “the Laws of Nature and of Nature’s God entitle ... all men... [to]... certain unalienable rights, that among these are Life, Liberty and the pursuit of Happiness.”

Secondly, this “*black male struggle of manhood,*” which is contained within the Declaration of Independence (1776), is also preserved in the “**Privileges and Immunities Clause**” in Article IV, Section 2 of the **United States Constitution (1787)**.<sup>140</sup> See, e.g., *Corfield v. Coryell*, 46 F. Cas. 546, 550 (Washington, Circuit Justice, C.C.E.D. Pa. 1823); *Paul v. Virginia*, 75 U.S. 168, 180 (1869); *Chamber v. Balt. & Ohio R.R.*, 207 U.S. 142, 147-149 (1907); and *Whitfield v. Ohio*, 297 U.S. 431, 437 (1936).

Third, this “*black male struggle for manhood,*” which is contained in the Declaration of Independence and preserved in the “Privileges and Immunities Clause” of the Constitution, was expressly established in the **Thirteenth Amendment**, U. S. Constitution, and in the **1866 Civil Rights Act**. See, e.g., *U.S. v. Morris*, 125 Fed. Rep. 322, 325 (E.D. Ark. 1903), stating:

The defendants are indicted for a violation of the provisions of ... **the thirteenth amendment to the Constitution of the United States** and the provisions of section 1 of **the act of Congress entitled 'An act to protect all persons in the United States in their civil rights and furnish means of their vindication,' enacted April 9, 1866** (chapter 31, 14 Stat. 27, digested in the United States Revised Statutes as section 1978; U.S. Comp. St. 1901, p. 1262)....

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<sup>139</sup> *Ibid.*, p. 138, 139.

<sup>140</sup> That section states: “The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.”

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

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

And, fourthly, this "*black male struggle for manhood*" is expressly authorized and protected under various *Jus Cogens* provisions of international law, such as:

- a). Article 16 of the *Universal Declaration of Human Rights*;<sup>141</sup>
- b). Article 23 of the *International Covenant on Civil and Political Rights (ICCPR)*;<sup>142</sup>

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<sup>141</sup> See, e.g., the *Universal Declaration of Human Rights*, stating:

The General Assembly,

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

**Article 16**

Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

Marriage shall be entered into only with the free and full consent of the intending spouses.

The **family is the natural and fundamental group unit of society** and is entitled to protection by society and the State.

<sup>142</sup> Article 23(1): "The family is the natural and fundamental group unit of society and is entitled to protection by society and the State."

- c). Article 5 of the *International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)*,<sup>143</sup> and
- d). Articles 3, 4, 5, 17, 18, 22, and 29 of the **African Charter on People’s and Human Rights**.

Under the customary international human rights law of *Jus Cogens*, African American men, fathers, husbands, and boys may rely upon each the aforementioned international protocols – but especially the **African Charter on People’s and Human Rights** – to vindicate their status as “Head of the Family” in the local, state, and federal tribunals of the United States.

This chapter also proposes, however, that between the various domestic state or federal laws in the United States, that the aforementioned “international human rights laws” – and especially the **African Charter on People’s and Human Rights** – have become more important to the “*black male struggle for manhood*” in the United States, because the domestic statutes and laws of the United States were largely designed to reflect and address the socioeconomic conditions and cultural patterns of American whites, while evading and ignoring the unique circumstances and conditions of American blacks.

Hence, American lawyers and judges – largely through callous indifference and in violation of the principles of *Jus Cogens*-- have categorically failed to acknowledge the present-day effects of both the transatlantic African slave trade and slavery upon the African American people in the United States.

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<sup>143</sup> Article 5(d)(4): “The right to marriage and choice of spouse.”

## Conclusion

Under the system of slavery in the United States, African American men were systematically divested of their natural right to function as “Heads of Families”<sup>144</sup> – whether within an Anglo-American or a West African conception of “manhood.”

Therefore, under principles of *Jus Cogens* (i.e., customary international law against slavery and slave-related practices), African American men may rightfully appeal to the express provisions within the **International Convention on the Elimination of Racial Discrimination (ICERD)**, as well as other related human rights treaties, such as the **African Charter on People’s and Human Rights**, which state:

1. That African slavery and the transatlantic slave trade divested persons of African descent of traditional and customary African culture and language in violation of customary international law (i.e., *Jus Cogens*).
2. That African slavery and the transatlantic slave trade divested persons of African descent of natural rights of husbands, fathers, and status as “Head of the Family,” in violation of customary international law (i.e., *Jus Cogens*).
3. That the **African Charter on People’s and Human Rights** is a re-statement of the principles of *Jus Cogens*, as it relates and pertains to persons of African descent within the diaspora (such as the British West Indies and the United States).
4. That the **African Charter on People’s and Human Rights** is a re-statement of the principles of *Jus Cogens*, and as, it may be relied upon by African American litigants in the state and federal courts of the United States, when litigating the

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<sup>144</sup> See, also, Chapter 4, “**Black Men as ‘Head of the Family’**” in **Part II** of this series, *THE HEAD OF THE FAMILY: Towards a Federal Common Law of the Black Family*.

deprivation of fundamental familial and cultural rights, including the rights of African American men, husbands, and fathers to the status of “Head of the Family.”

African American fathers, husbands, and men may make these legal arguments in the United States District Courts, as auxiliary arguments whereby international law (e.g., *Jus Cogens*) is utilized to interpret and give present-day meaning to both state and federal statutes such as the 1866 and 1871 Civil Rights Acts (42 U.S.C. §§ 1981, 1982, and 1983), and constitutional provisions such as the Thirteenth Amendment and the Privileges and Immunities clauses of Article IV and the Fourteenth Amendment, U.S. Constitution.

**--- The End ---**

## ABOUT THE AUTHOR



### **REV. RODERICK ANDREW LEE FORD, ESQ., D.LITT, J.D., LL.D.**

Chancellor and Senior Academic Fellow at St. Clements University

Member of the Bar of the U. S. Supreme Court

Member of the Bar of the U. S. Eleventh Circuit Court

Member of the Bar of the U. S. District Courts

Member of the Bar of the State of Florida (U.S.)

Former Judge Advocate for the U. S. Army

Director, The Methodist Law Centre- Sante Fe