RIDDLED WITH BULLETS: THE NORMATIVE FOUNDATIONS OF INTERNATIONAL LAW

by

Erik Crew
POINTS OF DEPARTURE

MASS INCARCERATION

The Great-Great Grandchild of Slavery

A correct diagnosis is essential for finding the right cure. For OJPCC, and our allies across the state, a deeper historical diagnosis is the key to our power to change. We believe 2022 will be a year when our advocacy and education—rooted in this understanding of history—will be able to bring present transformations to the systems that are harming people and communities.

Will you look forward with us?

COMMUNITY CHAMPIONS

Community champions approach problems with eyes wide open. We take the path that we’ve been on and the one we want to walk forward on together.

http://www.ohiojcc.org/new-year-old-beginnings
http://www.ojpcc.org/looking-forward-2022

STATE PRISON INCARCERATION RATES

1 of every 12 residents behind bars in 2003
Ohio sales even an estimated 30%

This has not made Ohioans or Americans safer, healthier, or more free. It has wrecked people, families, and communities. We must not accept it as normal. We invite Community Champions like you to join us in safely dismantling this terrible excess.

Black people make up 13.7% (1.59M people) of Ohio’s population yet represent 44.4% (22,500 people) of the state prison population.
POINTS OF DEPARTURE

RIDDLED WITH BULLETS.

A White Man Kills a Negro in Self-Defense in Pickens County.

Special to The State.

GREENVILLE, S. C., April 16.—James Holliday, a white man, instantly killed John Crews, colored, four miles from Central, in Pickens County, yesterday. The two men had a dispute at a sawmill, which Crews had been operating well, and refused to give possession to Holliday, who had leased it. Crews struck Holliday with a monkey wrench and threw a weight at him. Holliday had a shotgun loaded with buck-shot and fired. Crews was riddled with bullets. The coroner's jury exonerated the slayer, who surrendered himself to the sheriff of Pickens County.

THE MURDER OF JOHN CREWS.

Statement of a Disinterested Eye-Witness of the Tragedy.

Special to The State.

PICKENS, S. C., April 18.—I desire to correct the statement of the Greenville correspondent of The State in regard to the homicide of John Crew in Pickens County, and also to do justice to the negro race. I have read the evidence that Coroner Hogg today filed in the clerk's office that he took at the inquest. The only disinterested white witness to the shooting was Green Perry, a respectable young white man. He says they were about one-fourth of a mile from the sawmill on the way home, and got to where the roads fork. Holliday came up and told Crew to stop and put down the governor balls (which Crew had taken off of the mill) or he would shoot him. Crew turned around and told Holliday not to shoot him. Holliday kept on advancing and saying he would shoot him, and when about five steps of Crew, did shoot him with a shotgun, and Crew fell. Holliday then shot at him twice with a pistol. Witness didn't know whether the pistol shot hit Crew.

Holliday has not been arrested yet. Officers are hunting him. The parties had disagreed about the possession of the saw mill. Both claimed that they had rented it, and had hot words about it at the mill. Perry, the witness, said that the negro Crew had cursed Holliday at the mill the same evening.
POINTS OF DEPARTURE
“The central problem facing critical legal scholars, and indeed all thoughtful legal scholars, is the search for a normative source....”

“To the question ‘How can one know that a rule or principle is just?’ the CLS scholar could reply, ‘Ask someone who has suffered and fought against oppression, study their experience, and understand their world vision. They will help you find the right answer.’”

NORMS: WORKING DEFINITION

A norm is “a social rule that does not depend on government for either promulga-
tion or enforcement…, may be independent of laws…, or may overlap them.”

Norms are made up by normative attitudes held by a significant proportion of the members of a group. Normative attitudes make a “certain kind of principled judgment about the world” such as “judgments about the normative status of actions (such as whether they are forbidden or required); normative expectations concerning the actions of others; reactive attitudes (such as resentment and indignation) and ‘dispositions to have such attitudes’; and attitudes that presuppose normative judgments, normative expectations, and reactive attitudes.”

Norms are made up of "normative principles," which are presented as "general requirements" for those over whom the norm applies. Norms “operate over and are ‘somehow accepted within’ particular groups or communities.” The norm of a group is a “social fact...subject to verification,” not based on its objective validity, but based on whether the facts of social life show that the principle has been accepted.

The Origins of Sovereign Nation States

The 1648 Peace of Westphalia, now considered as the foundation of the international system of laws we experience, sought “[t]hat there be a Christian, universal and perpetual Peace....” With the Holy Roman Empire as one of the primary negotiating parties, this “Christian, universal and perpetual Peace” contemplated a world of civilized and savage. The civilized were to be sovereign, and the savage were to be unrecognized. The civilized were to have rights, and the savage were not.

available at <<https://pages.uoregon.edu/dluebke/301ModernEurope/Treaty of Westphalia %5BExcerpts%5D.pdf>>
SOVEREIGN MONOPOLIES: DISTINGUISHING THE SOVEREIGN FROM THE NON-SOVEREIGN

1. Monopoly on the recognition of legitimate actors at international law
2. Monopoly on the legitimate use of violence at international law
Westphalian Racial formations: Civilized and Savage Written in Black and White

1. Taking Indigenous Land and African Peoples

2. Codification of Race and Racism

3. Luxury Commodity Production and the Accumulation of Wealth for ‘the West’
## Westphalian Racial Formations: Virginia

### Virginiia’s Racial Codifications

<table>
<thead>
<tr>
<th>Year</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1662</td>
<td>Any child born to an enslaved woman will also be a slave. Blacks now face the possibility of life servitude;</td>
</tr>
<tr>
<td>1667</td>
<td>Baptism of a slave does not make them free;</td>
</tr>
<tr>
<td>1669</td>
<td>The “Act on the casual killing of slaves,” making it legal for a white owner to kill resisting blacks;</td>
</tr>
<tr>
<td>1672</td>
<td>First “maroon hunting” law;</td>
</tr>
<tr>
<td>1691</td>
<td>First “anti-miscegenation” law, making it illegal for a white person to have sexual relations with a black person</td>
</tr>
<tr>
<td>1723</td>
<td>Removal of all penalties for those who killed enslaved Africans.</td>
</tr>
</tbody>
</table>

### Virginia’s Tobacco Exports

<table>
<thead>
<tr>
<th>Year</th>
<th>Quantity</th>
</tr>
</thead>
<tbody>
<tr>
<td>1618</td>
<td>40,000 pounds</td>
</tr>
<tr>
<td>1688</td>
<td>18,000,000 pounds</td>
</tr>
<tr>
<td>1775</td>
<td>55,000,000 pounds</td>
</tr>
</tbody>
</table>
WESTPHALIAN RACIAL FORMATIONS: SOUTH CAROLINA

South Carolina’s Racial Codifications

1690/1691
South Carolina’s first general statute racializing slavery, “An Act for the Better Ordering of Slaves”

1696
“An Act for the Better Ordering of Slaves” updated and expanded

1701
“An Act for the Better Ordering of Slaves” updated and expanded

1712
“An Act for the Better Ordering of Slaves” updated and expanded

1722
“An Act for the Better Ordering of Slaves” updated and expanded

1744
“An Act for the Better Ordering of Slaves” updated and expanded

South Carolina’s Rice Exports

1698
10,000 pounds

1699
131,000 pounds

1700
394,000 pounds

1709
1,500,000 pounds

1726
9,442,710 pounds

1774
76,265,700 pounds
An Act for the Better Ordering of Slaves, 1712: Preamble

The plantations and estates of this Province cannot be well and sufficiently managed and brought into use, without the labor and service of negroes and other slaves; and forasmuch as the said negroes and other slaves brought unto the people of this Province for such purpose, are of barbarous, wild savage natures, and such as renders them wholly unqualified to be governed by the laws, customs and practices of this Province; but that it is absolutely necessary, that such other constitutions, laws and orders should in this Province be made and enacted, for the good regulating and ordering of them, as may restrain the disorders, rapines and inhumanity, to which they are naturally prone and inclined; and may also tend to the safety and security of the people of this Province and their estates....

These acts did, among other things:

- Created a ticket-of-leave system that strictly constrained the movements of slaves and enlisted the entire planter population in policing and punishing captives discovered without tickets
- Established detailed runaway regulation
- Set a graduated schedule of punishments for captives who attacked any white person (whipping on the first offense; nose-slitting and burning on the second; death on the third)
- Mandated frequent searches of captives for weapons and stolen goods
- Established a special court and criminal penalties code for captive people. The court was juryless and consisted of two justice and three slaveholders
- Declared that a captives profession of Christianity who should not render her free
- Gave immunity to white people that killed captives or runaways
- Officially declared “slaves” as property and payable for debts
- Created a graduated schedule of punishments for runaways that included bodily mutilation of repeat offenders (castration of males above sixteen years old, women to have one ear sliced off)
- Mandated that children of “slaves” would also be “slaves.”
France’s Racial Codification and Luxury Commodity Production

1685

France enacted the Code Noir, which included many similar provisions as Virginia and South Carolina. It was particularly sophisticated with “fugitive slave” punishment and prevention prescriptions. To check marronage, “the mounted police was established, firm bounty prices set, and a list of escaped slaves officially kept.”

1697

In the Treaty of Riswick, France and Spain formally enshrined in international law the French control of Saint Domingue, which would become Haiti.

1789

On the eve of the Haitian Revolution, Saint Domingue produced close to one-half of all the sugar and coffee consumed in Europe and the Americas (141,089,831 pounds of sugar).
Westphalian Racial Formations: Normative Foundation

The social and political norms that produced the national and international legal systems we live in today are based on one false but still prevailing norm: white supremacy. As Scholar Cheryl Harris observes, “Whiteness as treasured property in a society structured on racial caste” has been “affirmed, legitimated, and protected by the law.”

Cheryl I. Harris, Whiteness as Property, 106 Harv. L. Rev. 1709, 1713 (June 1993).
Westphalian Racial Formations: Normative Foundation

“For the enslaver and the nations that enslaved others, freedom may have implied the freedom to enslave others; for the enslaved, freedom may have meant finding a place that they could call home without being hunted and dehumanized and humiliated.”

**GRAND MARRONAGE**

Grand Marronage was the collective, mass flight of captives off the plantations to form their own communities. The term “maroon” emerged in the colonial context. Marronage scholar Neil Roberts concisely summarizes the etymology of the term, stating, “The Spanish word cimarron developed on the island of Hispaniola in reference initially to Spanish colonialists’ feral cattle, which fled to the hills, then to enslaved Amerindians seeking refuge in those areas, and ultimately (by the early 1530s) to enslaved Africans seeking escape from chattel slavery beyond plantation boundaries.”


“It was marronage on the grand scale, with individual fugitives banding together to create independent communities of their own, that struck directly at the foundations of the plantation system, presenting military and economic threats that often taxed the colonists to their very limits.”

NORMS FOR FREEDOM: DRAWING NORMATIVE PRIORITIES FROM MAROON COMMUNITIES

1. Freedom Requires Land

2. Freedom Requires Egalitarianism

3. Freedom Requires Peoples’ Ability to Create and Maintain ‘Landscapes’ in ‘Places’
NORMS FOR FREEDOM: DRAWING NORMATIVE PRIORITIES FROM MAROON COMMUNITIES

[When notions of right and wrong, justice and injustice, are examined not from an abstract position but from the position of groups who have suffered through history, moral relativism recedes and identifiable normative priorities emerge.
—Mari Matsuda

The main legacy of slavery is emancipation as unfinished business.
—Kwame Nimako and Glen Willemsen