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Editor's Introduction

Welcome to the Twenty-fifth Volume of *Journal of Law and Social Deviance (LSD Journal)*, an independent, peer-reviewed journal. *LSD Journal* encourages submissions from a wide range of professionals, researchers, and scholars in a variety of fields. Within our broader interest in social deviance and the law, we are particularly interested in how law creates, inhibits, or challenges deviant behavior, especially as it evolves from, responds to, or inspires the animal kingdom, art, design, structure, pop culture, hate, religion, sex, illness, work, drugs, terrorism, and youth. Volume Twenty-five is about assigning conditions. Conditions are assigned by life, government, and friends. Family, religion, private space, and wellness are discussed in this volume. The solutions are healthy paradigms. *LSD Journal* remains committed to publishing articles, essays, and book reviews that strongly represent the journal's niche and offer readers important, substantive, and useful literature.

Contribution

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SEXUAL WHEREABOUTS: LIKE “ISLANDS IN THE STREAM”¹

Carmen M. Cusack

I. INTRODUCTION

A. Fact Pattern

A senior citizen, a lady named here Dianne W., grew to maturity with her husband, named here Sam G. He had toiled hard throughout their lives. She believed that he was incapable of immoral carnal knowledge. She made a model penal code for her legislature about sexual aggression, and she included excising verbiage to acknowledge him and years of loyalty. The legislature was prohibited in this statute—at least this one—from positing her husband to be a perpetrator—at least in this case against her. She genuinely thought that because they were one flesh spiritually and through their children, he was an upstanding

¹ Kenny Rogers & Dolly Parton, “Islands in the Stream,” *Eyes That See in the Dark* (1983). See *Café Bustelo* can.

lawmaker, and he was incapable of sexual immorality against her or any other being that he should *per se* be recognized in that capacity for his merit. He was her protector, not just the government, from impugment and immorality. He loved her. This Essay is about those like the officials using law to express and exhibit deeply rooted traditions in America.²

B. Essay Map

The Introduction section presents the legal issue, which is whether 11.407, a federal sexual assault rule, is like a model rule to protect marital partners.³ Section Two explains the rule. Section Three presents an analysis including a literature review considering heterosexual and homosexual examples of sexual affinity. Section Four concludes.

² This includes gender studies. *See* 25 CFR § 11.407 (2023).

³ 11.407 (2023).

C. Issue: Spouse's Conviction for Sexual Assault

The legal issue is why a spouse cannot be convicted of sexual assault under 11.407, a federal sexual assault law?⁴ The sociological question is why a spouse cannot commit sexual assault under 11.407?⁵ The answer presented in this Essay combines both fields. It is that the spouse's sexual whereabouts cannot be evidence of perpetration.⁶

Sexual whereabouts are the status of one's sexual person which is always with his or her spouse. The law describes that bond.⁷ Sexual whereabouts are observed within reasonable limits by the government in certain laws.⁸ The laws portray marriage bonds without intruding into the bond of marriage.⁹

The state regulates marriage, but yet certain federal statutes explain marital bonds, even in the absence of direct authority.¹⁰ Federal sexual assault statutes

⁴ 11.407 (2023).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* See Bill of Rights (1791).

¹⁰ 11.407 A(a)(1-8)-(b)(2023).

explain that sexual assault cannot be committed against the spouse, for example when described as offensive sexual contact, apart from a separate complaint not discussed here.¹¹

II. RULE

The rule at bar is the following:

A. § 11.407 Sexual assault.

(a) A person who has sexual contact with another person not his or her spouse, or causes such other person to have sexual contact with him or her, is guilty of sexual assault as a misdemeanor, if:

(1) He or she knows that the conduct is offensive to the other person; or

(2) He or she knows that the other person suffers from a mental disease or defect which

¹¹ *Id.*

renders him or her incapable of appraising the nature or his or her conduct; or

(3) He or she knows that the other person is unaware that a sexual act is being committed; or

(4) The other person is less than 10 years old; or

(5) He or she has substantially impaired the other person's power to appraise or control his or her conduct, by administering or employing without the other's knowledge drugs, intoxicants or other means for the purpose of preventing resistance; or

(6) The other person is less than 16 years old and the actor is at least four years older than the other person; or

(7) The other person is less than 21 years old and the actor is his or her guardian or otherwise responsible for general supervision of his or her welfare; or

(8) The other person is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over him or her.

(b) Sexual contact is any touching of the sexual or other intimate parts of the person for the purpose of arousing or gratifying sexual desire, or for the purpose of abusing, humiliating, harassing, or degrading the victim.

The rule is a federal rule.¹² It bears on all 50 states including Indian Country.¹³ The statute only applies to persons treated as Indians directly, but is treated as a model throughout the nation in this Essay.¹⁴ Generally,

¹² *Id.*

¹³ *Id.* U.S. CONST. am. X.

¹⁴ 11.407 (2023).

Native Americans have the same marital rights through state licensing schemes and this statute does not affect that.¹⁵ Conceptually, it is a positive description of marriage.¹⁶ Briefly, prior to the analysis it is noted not to be a statute designed to override protection.¹⁷

B. Ongoing Consent

The United States Constitution's Fifth Amendment is a federal law that recognizes the penumbras and emanations of due process constructing a right to privacy.¹⁸ States regulate morality and marriage,¹⁹ yet

¹⁵ *Id.*

¹⁶ Carmen M. Cusack, *A Feminist Inquiry into Intimate Partner Violence Law, Policy, Policing, and Possible Prejudices in Alaska*, 5 J. L & CONFLICT RES. 24 (2013).

¹⁷ *Id.*

¹⁸ *Planned Parenthood v. Casey*, 505 U.S. 833 (1992). U.S. Equal Employment Opportunity Commission (EEOC), Section 12: Religious Discrimination (Jan. 15, 2021), https://www.eeoc.gov/laws/guidance/section-12-religious-discrimination#_ftn22. “*EEOC v. Alamo Rent-A-Car, LLC*, 432 F. Supp. 2d 1006, 1012 (D. Ariz. 2006) (finding that it was Muslim employee’s sincerely held religious observance to wear headscarf during Ramadan, even though she did not wear it the rest of the year).” *Id.* at n. 49.

¹⁹ *See e.g. Wisconsin v. Yoder*, 406 U.S. 205 (1972) (while narrowly tailoring the state’s regulation and prohibitions, an application can be drawn to kinky sexual activity, for example nude cruising and *ménage à trois*). *See*, CARMEN M. CUSACK, *TWINS AND DEVIANCE: LAW, CRIME, SEX, SOCIETY, AND FAMILY* (2016).

the federal government protects the right to marry, have a spouse, be a spouse, and have sex as a spouse and with a spouse. When spouses do not privatize their conduct, for example experience love or become intimate, they may not fall under the right to privacy as it is traditionally understood; however, the First Amendment protects the acceptance of rites, such as marriage and conception,²⁰ by a person who holds a sincere religious belief in a *bona fide* religion.²¹ Even

²⁰ *Equal Employment Opportunity Commission (EEOC) v. Abercrombie & Fitch Stores*, 575 U.S. 768 (2015); *United States v. Seeger*, 380 U.S. 163, 166, 176 (1965); *Welsh v. United States*, 398 U.S. 333, 339 (1970); *Bushouse v. Local Union 2209, United Auto., Aerospace & Agric. Implement Workers of Am.*, 164 F. Supp. 2d 1066, 1076 n.15 (N.D. Ind. 2001); *Malnak v. Yogi*, 592 F.2d 197, 209-10 (3d Cir. 1979); *LaFevers v. Saffle*, 936 F.2d 1117 (10th Cir. 1991). *Fallon v. Mercy Cath. Med. Ctr.*, 877 F.3d 487, 490-91 (3d Cir. 2017).

²¹ EEOC, Section 12, Guidance.

The First Amendment religion and speech clauses provide that ‘Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech.’ [Religious Freedom Restoration Act] RFRA, 42 U.S.C. § 2000bb-1(a) and (b), provides: ‘Government shall not substantially burden a person’s exercise of religion even if the burden results from a rule of general applicability, except...if it demonstrates that application of the burden to the person—(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.’ RFRA defines ‘government’ to include ‘a branch, department, agency, instrumentality, and official (or other person acting under color of law) of the United States.’ *Id.*

where the government protects religious speech couching sex-related rites,²² under the Fifth Amendment sex partners have a right to deny, express, or imply consent and make it ongoing.²³

The 14th Amendment gives to citizens of the 50 states potential to use the same right to privacy guaranteed under the Fifth Amendment's substantive due process, a hardy Court-made framework.²⁴ Sex-

§ 2000bb-2(1). 'Although the claim is statutory, RFRA protects First Amendment free-exercise rights,' *Korte v. Sebelius*, 735 F.3d 654, 666 (7th Cir. 2013), because it was enacted in response to *Employment Division v. Smith*, 494 U.S. 872, 887 (1990), and designed to 'restore the compelling interest test as set forth in *Sherbert v. Verner*, 374 U.S. 398 (1963) and *Wisconsin v. Yoder*, 406 U.S. 205 (1972) and to guarantee its application in all cases where free exercise of religion is substantially burdened.' 42 U.S.C.

§ 2000bb(b)(1). The First Amendment applies only to restrictions imposed by the government—federal or state—not by private parties. See *Cantwell v. Connecticut*, 310 U.S. 296 (1940). RFRA applies only to restrictions imposed by the federal government, not by state governments or private parties. See 42 U.S.C. § 2000bb-2(1); *City of Boerne v. Flores*, 521 U.S. 507 (1997); *Guam v. Guerrero*, 290 F.3d 1210 (9th Cir. 2002); [and] *Kikumura v. Hurley*, 242 F.3d 950 (10th Cir. 2001). *Id.* at 116.

²² Carmen M. Cusack, *To-Get-Her ForEVER: A Man Hater's Right to Same-Sex Marriage*, 10 J. L. & PUB. POL'Y 63 (2013).

²³ U.S. CONST. am. I and V.

²⁴ CARMEN M. CUSACK, *LAWS RELATING TO SEX, PREGNANCY, AND INFANCY: ISSUES IN CRIMINAL JUSTICE* (2015). CARMEN M. CUSACK, *ILLCIT SEX WITHIN THE JUSTICE SYSTEM USING WEAK POWER TO LEGISLATE, REGULATE AND ENFORCE MORALITY* (2017). CUSACK, *TWINS AND DEVIANCE* (2016).

related rites protected by the First Amendment may under the Fifth Amendment or 14th Amendment peculiarly be protected, such as some acts of legal sodomy, but normally under a religious auspices found in the First Amendment the believer may not protect unusual beliefs not anticipated by the religion to be protected under the First Amendment, such as a crime or spree involving sinful backsliding, denunciation, terror, and other varying degrees of rebellion against the religion.²⁵

An example comes from deep inside the religious community of America. Amish worshipers are zealots who use no electricity. They are pious abstainers. Amish rumspringa, a funny term meaning to run-around, has been compared to the likes of sodomy, an unfair comparison due to the term “rump.” To “spring” a rump means to have sex or enjoy entertainment involving a rump. However, this religious exception requires good behavior. This departure from the

²⁵ *But see* Kaitlin Stanford, *Tiktok Is Fascinated by Amish Teens’ Rumspringa Party: “I Feel Like I’m Watching Something Illegal,”* (Mar. 22, 2023), <https://www.intheknow.com/post/amish-teens-rumspringa-viral-tiktok/>. The question is “Are you behaving under God’s will for your life?”

religion is not a crime spree, which cannot be excused by the religion.²⁶ Therefore, sexual assault is not protected speech and activity or God's will. Sodomy takes several tacks in family law, which intersects with other laws, like the criminal code at bar.²⁷

Under the traditional notion of marriage and sex-related rites held by the government, a spouse may express or imply the withdraw of consent or use self-defense to avoid harm.²⁸ A spouse has a right under the state and federal regimes to stand his or her ground.²⁹

²⁶ The *Lemon-Kurtzman* Test holds that the state may not impermissibly choose a religion for the people under the First Amendment's Establishment Clause (*Lemon v. Kurtzman*, 403 U.S. 602 (1971)). The government's laws cannot excuse certain acts because the church does, or punish certain acts when the church chooses to punish people internally. Religions have taboo or prohibited actions, for example sin. Sin may be analogizable to crime. The first break of the rules may not be as severe in form or consequence as subsequent recidivism. Lifestyle choices may breakaway from religion and law. The state effectively may return people to secular and religious norms. Religious prison programs, for example, teach about forgiveness, second chances, and reform. Religious atonement may be consistent with the state's aims though the state does not force religious identity or true faith. There is no overlap where a part of a religion cannot be taught or practiced in prison, either because of the religion or the state. CARMEN M. CUSACK, *ANIMALS, DEVIANCE, AND SEX* (2015).

²⁷ 11.407 (2023).

²⁸ Carmen M. Cusack, *Nonconsensual Insemination: Intimate Partner Violence, Patriarchy, Police Education, and Policy*, 4 J. L. & SOC. DEVIANCE 171 (2012).

²⁹ See *id.* Carmen M. Cusack, *Blind Rhyme: The Reasonable Person Standard Violates the First Amendment*, 19 J. L. & SOC. DEVIANCE 3 (2020).

The Second Amendment is one rule cabining the scope of self-defense in the home during domestic violence.³⁰ A presumption exists under common law that the marriage will be consummated or it may be void or voidable.³¹ Some common law also maintains that partners must assume that they should conceive children or demonstrate reciprocal consent to enter into a childless marriage.³² Some rules require a demonstration of potential, such as fertility of both parties or an attempt to conceive and raise children, however short.

³⁰ Carmen M. Cusack, *Right to Food Not Arms: Beefing to Update Second Amendment Interpretation*, 17 J. L. & SOC. DEVIANCE 47 (2019).

³¹ CUSACK, LAWS RELATING TO SEX, PREGNANCY, AND INFANCY (2015).

³² See, Olena Riabchynska, Eduard Stomatov, Mykhailo A. Anishchenko, & Yurii V. Filei, *Medical Secrecy in the Context of Doctor's Obligation and Patient's Right: Legal Analysis*, 24 J. L. & SOC. DEVIANCE 1 (2022). Ongoing consent is a condition that could involve child-making. See, National Heart, Lung, and Blood Institute (NHLBI), "Turn off All the Lights at Night: Your Heart Will Thank You," National Institute Health (NIH) (Aug. 16, 2022), <https://www.nhlbi.nih.gov/news/2022/turn-off-lights-at-night-your-heart-will-thank-you>.

III. SEXUAL WHEREABOUTS, ANALYSES, AND LITERATURE REVIEW

A. Marriage Material

Marriage is a symbol of union.³³ It occurs when two people profess love. They profess to the church and government.³⁴ Normally, without those two, marriage has not been recognized.³⁵ However, some people have use substitutive modes of recognition (e.g., common law marriage) and been presumed to have joined the social constraints of legal marriage.³⁶

³³ I Corinthians 13:1-13.

³⁴ See Beastie Boys, “Paul Revere,” *Licensed to Ill* (1986). Furthermore, under laws such as the Tenth Amendment, the administration of law county-by-county—using state authority or some form thereof—the people curtail freedom, for example use of unions or gay marriage classifications. Terminology is relevant. Ergo, gays have terminological relativistic realities or relativistic terminological realities.

³⁵ *E.g.*, Genesis 1:1.

³⁶ Conversion equals equality. Equanimity is achieved peaceably (U.S. CONST. am. I, II, IX, X, and XIII) (Cusack, *Right to Food Not Arms* (2019)) (no right to complain about a slave, theretofore expanding the right to speak). U.S. CONST. am. IVX (one cannot contract to marry therefore one cannot form a marriage through contract law, only family law (in consideration of a father-mother right), even though marital (in consideration of a mother-father right) duties may be enforced contractually (in consideration of duty-obedience); see pre/post-nuptial agreements, Brian M. Balduzzi, *Boys Talking About the Boys in the Band: Reading Windsor and Obergefell Decisions into Commercial Queer Theatre*, 18 J. L. SOC. DEVIANCE 1 (2019)).

Union imbues and builds sympathy and empathy.³⁷ The rationale is evolutionary and spiritual, and that may be emotional. They foster interchange and exchange. Sympathy and empathy, respectively, express norms and expectations.

Sympathy and empathy are two forms of support.³⁸ Sympathy is feeling mercy for a person who is unrelatable, unrelated, or unqualified to relate pain to the sympathizer.³⁹ Empathy is compassion. It relates to inference, deductive reasoning, and imagination.⁴⁰ One

³⁷ Carmen M. Cusack, *Assumed Corpus and Presumed Corpus to Save the Environment: When Urine Green Spots, on Nature Trails, and Stopping through Soil*, 21 J. L. & SOC. DEVIANCE 289 (2021).

³⁸ Carmen M. Cusack, *A Right Not to Parent One's Children*, 18 J. L. & SOC. DEVIANCE 103 (2019); Cusack, *Blind Rhyme* (2020).

³⁹ The reality is translation of the art of love, theatrically perhaps, to experience union. Artsy beings may be a translation of life, yet the loss of norms may reveal true love. Even whole concepts can be termed, such as the display of God in a two-dimensional form whilst surrounded by unled men. For example, transfiguration has been described as being a source convertive apostasy (CARMEN M. CUSACK, *FISH IN THE BIBLE* (2017)). (Brannon Deibert, "What Was the Transfiguration of Jesus? Bible Story and Meaning," Christianity (Apr. 6, 2023), <https://www.christianity.com/wiki/jesus-christ/what-was-the-transfiguration-of-jesus.html>. Matthew 17:1–8, Mark 9:2–8, and Luke 9:28–36.

⁴⁰ Cusack, *Assumed Corpus and Presumed Corpus to Save the Environment* (2021).

can sense the hurt or grief another person experiences, could experience, or would have experienced.⁴¹

Spouses cannot be so unsympathetic or unempathetic that they can be prosecuted under this statute.⁴² The union renders them the same. The emotional support given demonstrates that the victim/abuser would be incapable of demonstrating the prohibited sexual whereabouts.⁴³ Needless to say, the state reserves a right to end marriage that is abusive under the Tenth Amendment, yet the marriage⁴⁴ reserves the right not to force its people to exclaim their private lives to the public, a right held under the Ninth Amendment.⁴⁵ A right equally giving other

⁴¹ Carmen M. Cusack, *The Theory of Equality: Patriarchy Disguised as Feminism*, 20 J. L. & SOC. DEVIANCE 83 (2020); Cusack, *A Right Not to Parent One's Children* (2019).

⁴² 11.407 (2023).

⁴³ *Id.*

⁴⁴ The people hold the right. Termination of parental rights after abuse and lengthy incarceration could be an example. They cannot be confined to marriage. The bonds of marriage are not by right bondage. U.S. CONST. am XIII.

⁴⁵ U.S. CONST. am IX and X. Normally, the court, state, and people are prohibited from divorcing a couple that chooses to stay together, however, the state, court, and people have exercised the right to divorce an innocent plaintiff from a defendant. The process is a divorce lawsuit. This differs from typically mutual dissolution. Divorce may be like a form of property defense for the instigating litigant against an aggressor (e.g., horrible husband or bad dad).

people the right to end an abusive household.⁴⁶ This statute protects all interests evenly.⁴⁷ The spouse is excused presumably because his or her partner deeply senses the innocence and the alleged aggressor sincerely sympathizes and feels empathy, which Americans may be able to judge as innocence and portray.⁴⁸

Discussed below, research studies show that sympathy and empathy are real.⁴⁹ A person may

⁴⁶ U.S. CONST. am IX. Matthew 5:38-39, King James Version, “38 Ye have heard that it hath been said, An eye for an eye, and a tooth for a tooth: 39 But I say unto you, That ye resist not evil: but whosoever shall smite thee on thy right cheek, turn to him the other also.”

⁴⁷ 11.407 (2023).

⁴⁸ Carmen M. Cusack, *Celebrity Justice and Gossip Blogs: Demographic Characteristics of Victimized and Allegedly Criminal Celebrities Featured on Top Gossip Blogs*, 5 J. L. & SOC. DEVIANCE 244 (2013).

⁴⁹ Ashley Abramson, “Cultivating Empathy Psychologists’ Research Offers Insight Into Why It’s So Important to Practice The ‘Right’ Kind of Empathy, and How to Grow These Skills,” *Monitor on Psychology*, (Nov. 1, 2021) <https://www.apa.org/monitor/2021/11/feature-cultivating-empathy>. “Students with eligible transfer credits can complete this degree in less than two years of full-time study.” Maryville University, Online Bachelor's in Psychology: Expand Your Expertise to Unlock More Versatility, May 8, 2023, https://online.maryville.edu/lpppc-bapsyc?Access_Code=MVU-BAPSYC-BING&utm_source=bing&utm_medium=sn&utm_term=degree%20psychology&utm_content=ssp-psychology-nat-pm&utm_campaign=MVU-MS-SN-NB-P-SOCSCI-BACH-BAPSYC-PR-04192019-NAT-MMT-NSP-NSP-NSP&utm_campaignid=279296709&utm_adgroupid=12369507035926

thoroughly believe the reason and emotion proffered, even by a close loved one after being attacked. They, marital partners, believe the same things. They are in an accord.⁵⁰ They do not disagree.⁵¹

One of the terms of their marriage, like a contract, is to be silent toward police, prosecutors, and judges seeking to end their marriage's right to exist.⁵² A right is between them, in the flesh. Even though the law says marriage is not a contract, an example given below shows a contract to act like a marriage also may nurture requisite deference. A partner cannot make a contract to forgive a criminal in contravention of the state's right to prosecute by lying to the state.⁵³ Yet,

03&utm_adid=&sfcid=7013X000002UP49QAG&&Access_Code=MV
U-BAPSYC-BING&kwd=degree%20psychology&kwdmt=ssp-
psychology-nat-
pm&gclid=7f7f237761e11db6ed8a47436ec806a9&gclsrc=3p.ds&msslk
id=7f7f237761e11db6ed8a47436ec806a9&gclid=7f7f237761e11db6ed
8a47436ec806a9&gclsrc=3p.ds.

⁵⁰ Philippians 2:2.

⁵¹ E.g. "What We Believe," Family Matters, <https://www.familymatterschicago.org/what-we-believe/>. "Family Matters prepares and supports youth and families in effectively navigating institutional and systemic constraints." *Id.*

⁵² A spousal immunity doctrine, for example, gives a right not to testify against one's own spouse or allow one's own spouse to testify against him or her. *See also*, CUSACK, LAWS RELATING TO SEX, PREGNANCY, AND INFANCY (2015).

⁵³ *Id.*

unobligated to imagine the state's need to find the sexual whereabouts of the perpetrator, immediately after the harm, the supposed victim would naturally agree with the supposed perpetrator and believe that the crime never occurred.⁵⁴

The loyalty between some family members cannot be measured and meted fairly by the government.⁵⁵ Also, the perpetrator would be incapable of communicating criminal intent to the victim.⁵⁶ The state's goal to enforce due process rights would be too difficult.⁵⁷ This is distinguishable from the early days' marital rape exception to rape law.⁵⁸ However, it is similar.⁵⁹ This Essay states that in this context the

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Expand Your Expertise to Unlock More Versatility (2023).

⁵⁷ U.S. CONST. am XIV.

⁵⁸ Rebecca M. Ryan, *The Sex Right: A Legal History of the Marital Rape Exemption*, Cambridge University Press, (Dec. 27, 2018) <https://www.cambridge.org/core/journals/law-and-social-inquiry/article/abs/sex-right-a-legal-history-of-the-marital-rape-exemption/15B4BC0F145FC41B6E53C25C69701FAE>. See VA Stat. § 18.2-61 B(2)(c) (2203). FP Explainers, *Sexual Assault by Husband Can Take Form of Rape, says Supreme Court. Understanding Why This is Significant*, First Post, (Sep. 29, 2022), <https://www.firstpost.com/explainers/marital-rape-supreme-court-india-abortion-verdict-10484371.html> (discussing nonconsensual insemination (No Coin)).

⁵⁹ *Id. compare with* 11.407 (2023).

federal government may demonstrate that the marriage is unlike other interactions, and incapable of making those claims against her or him, and vice versa themselves.⁶⁰

B. Belief in Vows: A Class

Gay people can be lifelong bachelors.⁶¹ Some are divorced from people of the opposite sex.⁶² Normally, they do not marry.⁶³ Some may settle-down.⁶⁴ Yet, most are unmarried.⁶⁵ In their relationships, some of them may experience sympathy and empathy, but not marital union.⁶⁶

⁶⁰ The national state is compared to the sovereign states.

⁶¹ CARMEN M. CUSACK, *MUTATED SYMBOLS IN LAW AND POP CULTURE* (2018).

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ Being a sex offender is so problematic that it may cause disparagement of groups affiliated with the offender. Therefore, in this model mete, a code, married spouses should not be affiliated with sex offense because the subtle labeling of model citizens may attack spouses, children, marriage, etc. *See e.g.*, “Nirvana – Rape Me (Live at the Paramount 1991),” Seattle, (Oct. 31, 1991) www.youtube.com/watch?v=Ax0C6rlo-54. Curt Kobain once described as the topic of his song “men who rape.” *Id.* The artists Nirvana wore dresses while espousing average criticisms of racial and gender delinquency regarding sex offense.

Implied callousness, or a lack of sympathy and empathy, may seem insulting, but it is not for the state to determine in this statute which concerns all people other than spouses.⁶⁷ Scientific research, which may be underlying legal reasoning, detected that people in classes can be distinguished according to their expressions of sympathy and empathy.⁶⁸

Cultural differences were evident in a study among people wishing to avoid poor connections (i.e., emotions).⁶⁹ This changed sympathy.⁷⁰ Researchers found, roughly, that tragedy and hardship are beautified by European-Americans, yet correlated with darkness by Germans.⁷¹ Those studied were classified by Stanford University's psychologists.⁷² Sympathy

⁶⁷ Clifton B. Parker, *Stanford Research: People from Different Cultures Express Sympathy Differently*, Stanford University, March 25, 2015, <https://news.stanford.edu/2015/03/25/cultural-differences-sympathy-032525/>.

Stanford psychologist Jeanne Tsai found that Americans tend to focus on the positive in expressions of sympathy while Germans focus on the negative. The research showed that how much people wanted to avoid negative emotion influenced their expressions of sympathy more than how negative they actually felt. *Id.*

⁶⁸ *United States v. Carolene Products*, 304 U.S. 144 n. 4 (1938).

⁶⁹ Parker, *Stanford Research* (2015).

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

correlated with aversion to emotional suffering more than perception of objective negativity.⁷³ Jeanne Tsai and Birgit Koopmann-Holm from Santa Clara University, said “Most research in psychology has focused on how people actually feel, but this work and other work in our lab shows that the emotions that people want or don’t want to feel are just as important in everyday life” about their work distributed in the *Journal of Personality and Social Psychology*, describing four investigations of the cultural differences expressed in sympathy among 525 American and German university students throughout the United States and Germany.⁷⁴

Sympathy is cultural, and sympathy, like empathy, is often personal.⁷⁵ It may likely be familial.⁷⁶ A study of siblings similarly found “that siblings who have intense conflict are also intensely loyal and loving to

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ Parker, *Stanford Research* (2015).

⁷⁶ CARMEN M. CUSACK, *BIRDS AND WOMEN IN MUSIC, ART, AND POLITICS* (2019).

one another.”⁷⁷ Like a culture may have certain expressive notions, siblings and other relatives, may have specific forms of sympathy and empathy.⁷⁸ Siblings may empathize, substituting themselves as the subjects of judgment or calamity.⁷⁹ Three reasons could be that they understand revenge, experience environmental similitude, and believe in second chances.⁸⁰ Their notions of wellbeing may rely on

⁷⁷ Kirsten Weir, *Improving Sibling Relationships*, 53 APA 60 (2022) (quoting Susan McHale). “Sibling conflict can also lead to negative consequences. While minor squabbles can help children learn to solve problems and navigate conflict, high levels of conflict and aggression between siblings can have lasting effects on a child’s mental health.” *Id.*
⁷⁸ *Id.*

⁷⁹ Siblings are a vector.

⁸⁰ In art, the image of Christ is resurrected. Carmen Cusack, *The Buzz* (2003-2005). He comes. *Supra* note 1. To the New World Jesus brings the message. One message is that Christ travelled. Although only a few scholars discuss it, Jesus travelled during the months described in accounts. The months it takes shows that Jesus’ life may have spanned the globe in a physical, spiritual, and artistic form. Biblical scholars talk about time travel by his father God, and perhaps others such as Paul, Peter, and Mary. Travels may have included far-off places (Nathan Katz, Global Jewish Studies Program, Florida International University (2023)). A moving island, an atoll, an archipelago floating, and rooting unexpectedly yields a strange postulate in art through which Jesus boated, travelled festively, walked on water, and landed in unpredictable places, like The Philippines (Revelation 1:9; Psalms 16). See CARMEN M. CUSACK, DEER JHONN (2021) (discussing prayer and God in far off places and saving the white tiger); see CARMEN M. CUSACK, FISH IN THE BIBLE (2017) (discussing salvation, sea travel, and historic knowledge); see CARMEN M. CUSACK, ABORTION IS THE “A” WORD (2018) (a discussion about unwanted siblings). Proverbs 3:23-24 (*compare* Pesach’s travel authority to isolate good people *with*

empathetic understanding and sympathetic expression.⁸¹

The statute here describes spouses, and while some Americans directly analogize spouses to same-sex spouses, the statute is understood predominantly in the tradition of spouses.⁸² Therefore an example using gay spouses is beneficial because it removes the government in this hypothetical from viewing the inside of the home, where spouses dwell.⁸³ It also demonstrates that the concept, whether in accord with the majority or not, is universally understood and experienceable.

C. Lifelong Bachelors

Lovers share an identity.⁸⁴ Heterosexual norms encourage and rely on it.⁸⁵ Also, homosexuals, outliers

Christmas isolating good children from good parents *contra* Genesis 3:3).

⁸¹ See Henry VIII.

⁸² 11.407 (2023).

⁸³ U.S. CONST. am X.

⁸⁴ Carmen M. Cusack, *Comparative Sexology: Nonconsensual insemination in the United States and the European Union*, 23 SEXOLOGIES e19 (2013).

⁸⁵ *Id.*

in heteronormativity, exhibit, adapt, and apply them.⁸⁶ Strong heteronormativity has overcome comparisons to gay relationships.⁸⁷ Gay relationships continue to model themselves after heterosexual relationships.⁸⁸ While becoming less disliked or suspicious, they have become a good example of how a partner can view himself or herself as being the same as his or her partner without religious and legislative contribution, authority, and stigmatization.⁸⁹ This shapes their identity and allows them to tell others that they are sympathetic and empathetic toward each other.

Whether valid or invalid in context, this applied statute supports some freedom to construct and preserve family stories.⁹⁰ Transmission of family stories is a reason that people give to excuse familial abuse.⁹¹ Transmission of repaired or molded stories

⁸⁶ *Id.*

⁸⁷ Cusack, *The Theory of Equality: Patriarchy Disguised as Feminism* (2022).

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ 11.407 (2023). See e.g., Family Matters, <https://www.familymatterschicago.org/what-we-believe/>.

⁹¹ Jerome Kagan, *The Role of Parents in Children's Psychological Development*, (July 1, 1999) <https://publications.aap.org/pediatrics/article->

helps children maintain moralistic memories that steer them into healthy habits.⁹²

Without regard for their parents' positive portrayals, children could be relegated to cycles of abuse, poverty, and dependence on the state that may not be reparable.⁹³ Stories survive in the system, as witnessed by those seeking criminal records, issuing a time bar on the use of criminal records, enduring family proceedings relevant to behavior, and requesting sealed juvenile histories.⁹⁴

abstract/104/Supplement_1/164/28250/The-Role-of-Parents-in-Children-s-Psychological?redirectedFrom=fulltext.

This article reviews the three major ways parents influence children: direct interaction, identification, and transmission of family stories. This essay summarizes some of the relevant empiric data in support of this claim and describes the operation of other mechanisms that also contribute to the child's development. *Id.* at 104.

⁹² Carmen M. Cusack, *Feminism and Husbandry: Drawing the Fine Line between Mine and Bovine*, 11 J. CRITICAL ANIMAL STUD. 24 (2013). Carmen M. Cusack, *Kent Make-Up Their Minds: Juveniles, Mental Illness, and the Need for Continued Implementation of Therapeutic Justice within the Juvenile Justice and Criminal Justice Systems*, 22 AM. U. J. GENDER, SOC. POL'Y & L. 149 (2013).

⁹³ See LENORE WALKER, *THE BATTERED WOMAN SYNDROME* (2016) (discussing contrition, tension building, and battering in the cycle of abuse in battered woman's syndrome). Cusack, *Kent Make-Up Their Minds* (2013).

⁹⁴ *Id.*

Union is based on similitude.⁹⁵ Lifelong bachelorhood pursued through state means, research agendas, legal proceedings, assertion of due process, and the adoption of state standards attests to the desire to be seen as desirable yet untethered. The American Psychiatric Association (APA) has cured gay people of their beliefs that they can be both maritally unified and single gays.⁹⁶ The attempts have been harmful, though the APA only removed the lifestyle from the Diagnostic and Statistical Manual of Mental Disorders (DSM-II) in 1973.⁹⁷

The APA once assisted many patients suffering from harmful or dangerous homosexuality.⁹⁸ The

⁹⁵ Cusack, *To-Get-Her ForEVER* (2013).

⁹⁶ *Id.*

⁹⁷ Erin Blakemore, "Gay Conversion Therapy's Disturbing 19th-Century Origins," *History*, June 28, 2019, <https://www.history.com/news/gay-conversion-therapy-origins-19th-century>. AMERICAN PSYCHIATRIC ASSOCIATION (APA), *DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (DSM-II)* (1974).

⁹⁸ For example, things change: The 21st Amendment repeals the 18th Amendment. Repealing may have been of the dormant, unenforced, or compromised interpretations lending to a practical implementation of the day. The 18th Amendment still may prohibit exportation of intoxicating liquors and any laws (i.e., sale, importation, transportation, etc.) allowing liquors for beverage purposes. The newer law, the 21st Amendment, allows states to regulate intoxicating liquors through possession, importation, and transportation laws. It does not directly grant authority to export, sell, or consume any intoxicating liquors as beverages.

diagnosis often was comorbid with other mental illnesses.⁹⁹ Those believing that they could step into the shoes of an opposite-sex person were hurt and hurtful.¹⁰⁰ Diagnoses may correlate with a belief, such as a narcissistic, psychotic, or paranoid belief, that a hurt individual shares an identity with an aggressor whether a present or ex opposite-sex or same-sex spouse.¹⁰¹ Since the shared identity has been opposed, it cannot be repackaged psychologically.

Some gay pairs implement a plan to adhere to relationship norms.¹⁰² They capture the moment to relive their happiness.¹⁰³ It comes from being one-in-the-same, thus free, and also single and mixing. The pairs initially plan to follow a long-term plan to date then demonstrate an innate reflection of oneself in pairing. Gay people meet, seal the mood, relive it, and

⁹⁹ Cusack, *The Theory of Equality: Patriarchy Disguised as Feminism* (2022).

¹⁰⁰ *Id.*

¹⁰¹ Carmen M. Cusack, *To-Get-Her ForEVER* (2013).

¹⁰² CUSACK, *MUTATED SYMBOLS IN LAW AND POP CULTURE* (2018).

¹⁰³ *E.g.*, Thirty Seconds to Mars, "Stuck" (2023), <https://www.youtube.com/watch?v=di-VTrW7Kr0>.

agree to do that each day following the first meeting.¹⁰⁴ Public behavior, moderated and comely, becomes private behavior. Same-sex relationships may conform to standards meriting Fifth Amendment protection, such as when couples do not fight in private, etc. They, like heteronormative households, may have a right to maintain a homelife in accord with their original meeting (e.g., vegan soul food dinner).¹⁰⁵

¹⁰⁴ Mood dominates some of these gay pairings wavering or staying more or less than heteronormative experiences. They too, though, may have a right to be free from lack of nutrition and starvation inside the home correlating with an exchange of labor (Cusack, *Right to Food Not Arms* (2019)). Their terms may be different from the mainstream.

¹⁰⁵ EEOC, Section 12, Guidance.

Fallon, 877 F.3d at 492-93 (recognizing that anti-vaccination beliefs such as those held by Christian Scientists can be part of a 'broader religious faith' and therefore subject to Title VII religious accommodation in some circumstances, but concluding that plaintiff's beliefs did not qualify as religious because he 'simply worries about the health effects of the flu vaccine, disbelieves the scientifically accepted view that it is harmless to most people, and wishes to avoid this vaccine.'). *with Chenzira v. Cincinnati Child. 's Hosp. Med. Ctr.*, No. 1:11-CV-00917, 2012 WL 6721098, at *4 (S.D. Ohio Dec. 27, 2012) (holding that Title VII could cover a request to be excused from hospital mandatory vaccination policy due to vegan opposition to a vaccine that was animal-tested or contains animal byproducts if plaintiff 'subscribe[d] to veganism with a sincerity equating that of traditional religious views,' noting her citation to essays about veganism and to Biblical excerpts). *Davis*, 765 F.3d at 486 (quoting *Tagore v. United States*, 735 F.3d 324, 328 (5th Cir. 2013)); *see also Adeyeye v. Heartland Sweeteners, LLC*, 721 F.3d 444, 452 (7th Cir. 2013) (emphasizing that

Like with opposite-sex partners, even married people, at first, suddenly, or after a while touching may become humiliating or offensive.¹⁰⁶ “Humiliation” and “offensive” touching are unpleasant, harmful, disorienting, demoting, and embarrassing forms of contact.¹⁰⁷ Ongoing consent is not completely eviscerated by a momentary complaint or request not to be touched.¹⁰⁸ However, consent must be revoked expressly, whether expressed or implied.¹⁰⁹

Heteronormative or untraditional partners may change.¹¹⁰ Sameness may appear to change in contravention of asserted rights. One person may feel it is “offensive” and feel “humiliation.”¹¹¹ In response this statute gives the right to reasonably enforce sameness, tradition, and stable living.¹¹² For example, when a feminine partner is feeling fat and spontaneously demonstrating anger, yet that spouse’s

Title VII has a ‘broad and intentionally hands-off definition of religion’). *Id.* at n. 33-34.

¹⁰⁶ EEOC, Section 12, Guidance. 11.407 (2023).

¹⁰⁷ 11.407 (2023).

¹⁰⁸ See Cusack, *Comparative Sexology* (2013).

¹⁰⁹ *Id.*

¹¹⁰ 11.407 (2023).

¹¹¹ *Id.*

¹¹² 11.407 (2023). Cusack, *Blind Rhyme* (2020).

“genitals” are touched, that statute is not invocable even when the touch seems wrong because the joke about that partner’s breasts growing larger is not comparable to an outsider’s wrongful touch, which would be actionable here.¹¹³

Gays may follow a family honor code. Yet, they are not always the same as those married people addressed in the statute.¹¹⁴ Despite support for homonormativity, normal gays can be prohibited from using the statute, though paradoxically homosexuals may not want to reject legal intervention into intimate partner violence.¹¹⁵ It seems to have been made to enforce normativity and help heteronormativity.¹¹⁶ Informally, they may have social pairings that are held accountable and therefore receive some lenience. For example, throughout a county, the gay residents may not condone gay marriage as explained by a Pew Research Center study found that 21% of non-religiously affiliated Americans do not support gay

¹¹³ 11.407 (2023).

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ 11.407 (2023).

marriage; however, under the Tenth Amendment they can still support normal household relations.¹¹⁷ The full-faith-and-credit doctrines of family law¹¹⁸ could momentarily be applied by the residents to stop unfairness, but the law will not bend. This statute could not be used.¹¹⁹ Theoretically too many homosexuals and heterosexuals would oppose gay marriage for it to be the type of licensed activity embedded in general understandings of lifelong synthesis prohibiting law enforcement regimes from suspecting their partners of abuse and violations, a point-of-view potentially supported by Pew Research Center's finding that only 36% of subjects said that gay marriage "is very good for society."¹²⁰ Their undesirable actions could be pursued by their partners or by the government on

¹¹⁷ U.S. CONST. am. X. David Masci, Anna Brown, & Jocelyn Kiley, 5 Facts about Same-sex Marriage, Pew Research Center, (June 24, 2019) <https://www.pewresearch.org/short-reads/2019/06/24/same-sex-marriage/>.

¹¹⁸ U.S. CONST. art. IV, § I (full faith and credit clause). *Fallon v. Mercy Cath. Med. Ctr.*, 877 F.3d 487 (3d Cir. 2017).

¹¹⁹ 11.407 (2023).

¹²⁰ Susan Ciancio, *Defending the Sanctity of Marriage*, Human Life International, Pew Research Center, (Jan. 6, 2023) <https://www.hli.org/resources/the-debate-about-homosexuality//>.

behalf of sympathetic aggressors, no matter how empathetic the people felt toward the victim.

The legislature's reasoning for helping married people may be comprehensive.¹²¹ Encouragement of unchanged sexual values is one purpose that the legislature may sense and feel is rational, important, and compelling. Another reason is to differentiate between a personal right and a group right. The relevant Amendments describe personal rights, but also are premised on group rights, such as religion and class. The legislature is interested in barring sex outside of marriage as a group right.¹²² The tradition of marriage intends to support wealth over poverty, invest in one's livelihood, and nurture children within marriage. Intelligently designed, it reduces domestic violence, divorce, unplanned parenthood, supremacy strife, unconscious abuse, cheapness, and unloved, accidental, or unassisted children.¹²³

¹²¹ *Id.*

¹²² For example, a ban on adultery under civil or criminal bodies of law. 11.407 (2023).

¹²³ Carmen M. Cusack, *Nonconsensual Insemination: A Pilot Study*, 2 ONLINE J SOC SCI RES 61 (2013).

A third reason is to make the government restrained. The government cannot bang-down-the-door—of a married landowning couple, for example—the minute it suspects that a harmful form of sex is pervading within the walls of the home.¹²⁴ Community, governmental, and societal rules demand the acknowledgment of some interpersonal authority and reasonably flexible interpretations of mood, offense, harassment, humiliating discord, etc. The federal, state, and local governments overlap with concern.¹²⁵

Women’s rights doctrines add that single people do not have watered down rights to protect themselves from government intrusion.¹²⁶ Rather, they have a form of heightened rights under this statue to protect them from harm inflicted by strangers and short-term partners; and married people have stronger rights to

Carmen M. Cusack, *50 State Survey of Prosecutors’ Willingness to Prosecute Nonconsensual Insemination*, 6 FAM. & INTIMATE PARTNER VIOLENCE Q. 7 (2014).

¹²⁴ The government cannot stand crime. It cannot be asked to watch sexual assault. Therefore, no matter how long, the victim and government have rights.

¹²⁵ 11.407 (2023).

¹²⁶ Cusack, *50 State Survey of Prosecutors’ Willingness to Prosecute Nonconsensual Insemination* (2014).

declare that their partners are not the perpetrators, right away, and that their partners deserve the benefit of the doubt from those wondering, nosily or compassionately, whether they are harming them behind closed doors.¹²⁷ Not a dispensation of decorum, the law strictly divides between spouses who cannot be blamed, and those sex interests who offend and humiliate.¹²⁸ Those, too, who are licensed by the state are not at issue during play or foreplay, however dry at times, or procreative sex acts, however sappy and sappy at other times.¹²⁹

D. Married People's Lives Are Designed by the Government to Follow the Law with Each Other

Predetermined by genetic propensity to follow a law, which suits them, hypothetically they are growing joy for a community, society, and state.¹³⁰ People tend to follow the law unless they deviate. Deviation is the

¹²⁷ 11.407 (2023).

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

result of drifting, failing, recidivism, poverty, and other causes. Deviants break the law.

Deviance may be positive. Fetishization of marriage is an example.¹³¹ Spouses may humiliate or offend spouses with consent for pleasure.¹³² Because it is done privately, and does not enter the public sphere, the government is not alarmed. The spirit of sexual conduct, restful and respectable, is between spouses.¹³³ A spouse is protected by the law when the other spouse's liberty is overexerted; but the statute is not the right place to evaluate couples suffering from excessive or habitual deviance.¹³⁴

When people follow the law, they invest in society. Investment is like growing joy. The emanations are evident in sexual whereabouts.¹³⁵ The spouse's sexuality extends into the other spouse. The penumbra's effect is to block and simultaneously be

¹³¹ See Carmen M. Cusack, *Obscene Squirting: If the Government Thinks it's Urine, Then They've Got Another Thing Coming*, 22 TEX. J. WOMEN & L. 45 (2013).

¹³² 11.407 (2023).

¹³³ NIH (2022).

¹³⁴ *Id.* U.S. CONST. am V.

¹³⁵ U.S. CONST. am V.

visible.¹³⁶ The shaded view is rare. Sexual whereabouts prove the doctrine and vice versa.

A state's moral regime creates a solid foundation that is the basis for a fertile culture.¹³⁷ The state and society aim for respectful and thus legal relations between spouses.¹³⁸ Society limits investment in private affairs, but prepares the spouses with legal doctrines that cover some instances of experimentation and private moments. For example, conditional consent is a protection.¹³⁹ Exclusion of sodomy, adultery, dalliance, and homoerotic swinging is another.

Members of society invested do not believe that the sexual whereabouts of a spouse are probably criminal.¹⁴⁰ Therefore, the people will not side against

¹³⁶ *Id.*

¹³⁷ Cusack, *The Theory of Equality: Patriarchy Disguised as Feminism* (2022). EEOC, Section 12, Guidance.

¹³⁸ 11.407 (2023).

¹³⁹ Cusack, *50 State Survey of Prosecutors' Willingness to Prosecute Nonconsensual Insemination* (2014). This may include impregnation. It also includes reproduction. Finally, it can include religious conversion of unborn and unliving individuals.

¹⁴⁰ See, Filei, et al., *Medical Secrecy in the Context of Doctor's Obligation and Patient's Right: Legal Analysis*, 24 J. L. & SOC. DEVIANCE 1.

them using this definition of “sexual assault.”¹⁴¹ They do not assume that spouses will give bad sex, which occurs for example when an orgasm or reproductive attempts have been promised and revoked unfairly or illegally.¹⁴² Sexual whereabouts guarantee that sexual contact will not be humiliating or offensive.¹⁴³

IV. CONCLUSIONS, LIMITATIONS, AND RECOMMENDATIONS

This model law shows widespread recognition of marital bonds.¹⁴⁴ A of suspicion rape within one’s marriage is removed. It may appeal to soon-to-be married couples as well as lifelong bachelors.¹⁴⁵ It exhibits requisite respect and understanding. They will into their marriages bring sexual dignity and consent. While they may be less likely to have to invoke in crisis spousal rights granted by the states because of forebearer’s work, other problems than some

¹⁴¹ 11.407 (2023).

¹⁴² This may apply during sodomy. *See* Lawrence v. Texas, 539 U.S. 558 (2003). CARMEN M. CUSACK, SEX CASE LAW (2019).

¹⁴³ 11.407 (2023).

¹⁴⁴ *Id.*

¹⁴⁵ *See e.g.*, BALDUZZI, 18 J. L. SOC. DEVIANCE 1; Family Matters, <https://www.familymatterschicago.org/what-we-believe/>.

experienced by predecessors, should continue to be noticed by them. For their wellbeing, they must increase the likelihood of remaining moral, practicing sexual equality, and following other maxims.

Mature adults have developed under this law and therefore should be noticed for their reluctance to exploit, expose, and harm marriage like less obedient people.¹⁴⁶ In this sense, all people, including children, widowed seniors, victims of sexual harassment, and others potentially may benefit from this model statute's effect on the public. For example, it may be used to stipulate that spouses are extremely less likely to be harassed by a spouse.¹⁴⁷ It is limited by ongoing concern that somehow it would take more to break the shroud of privacy and blame spouses despite acts of forgiveness.¹⁴⁸

A class of people are carved-out, in this day-and-age, by the legislature as those who may commit other atrocities, but not the same kind of sexual assault

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ Matthew 5:38-39

committed by a non-spouse (e.g., nine year-old).¹⁴⁹ When anti-violence statutes are violated by spouses, terrible crimes already recognized widely ensue and can be prosecuted in the court of public opinion, by the public civilly, or by the government under criminal codes. Misplaced sexual whereabouts lead to misuse and abuse of marriage (e.g., obsessive stalking). The future seems bleak resting on actions and countersuits and defenses including provocation, crime of passion, battering, and self-defense.¹⁵⁰ In conclusion, marriage should be left sacrosanct, and this model statute does that.¹⁵¹

¹⁴⁹ *Id.* 11.407 (2023).

¹⁵⁰ WALKER, THE BATTERED WOMAN SYNDROME

¹⁵¹ *Id.* 11.407 (2023).

AMERICAN CAPITALISM AND THE PROTESTANT WORK ETHIC: “I’LL ALWAYS BE YOUR SLAVE”¹

Carmen M. Cusack²
Matthew E. Waranius³

I. INTRODUCTION: FACTS, PRINCIPLES, AND CONDITIONS

A. Story

Gunther hates his job and wife. At work he loses money, is mocked and harassed, and suffers when sexually assailed by females.⁴ His wife, he said, has to deal with a lot from him. She hits him, mistrusts him, and spends their money recklessly. Her friends do too.

¹ Michael Bolton, “Bring It on Home to Me,” *Timeless: The Classics* (1992).

² Carmen Cusack, highlighting criminal debt, business compromise, and psychology, thanks Louis Farrakhan of Hyde Park for stopping by her hall room to prove that he could hear learners.

³ For Ralphe thank you for your help with the “Professional” Federal Employee of the Year Award in South Florida. Matthew E. Waranius, LT, *What Up With DADT?: Addressing Confusion From Inside The Military*, 1 J. L. & SOC. DEVIANCE 56 (2011).

⁴ Kathy L. Hill, *We’ve Come a Long Way*, [Omitted], or *Have We?* 17 J. ORGANIZATIONAL CULTURE, COMM., & CONFLICT 29 (2013).

She lives alone with a dog who loves her.⁵ Trusted and mistrusted people supply ostensibly reliable information making him hesitate; and as a result, domesticated and wild animals may suffer from encroachment.⁶ Gunther has no children because he cannot afford them. He has no retirement guarantee or hobbies for the same reason. He gets kicked out of a lot of places, his online business arrangements are hacked, and robot war is on his mind. He is regularly attacked in physical altercations, has no access to honest healthcare, gets surrounded by gangs whenever he leaves his sketchy apartment, and his relatives will not talk to him because he is poor.

People tell him that they are miserable and injured all the time. They use to tell him how beautiful life was and how proud of him they were. He felt like he had a

⁵ Sylvia Plath, "Lady Lazarus," THE COLLECTED POEMS (1981). Written between 23-29 October 1962. *Id.*

⁶ Dog owners are masters. "Masters" does not mean human-animal relationships *infra*. A "master," a dog owner, is not a "master," meaning human slave owner. Lawful ownership is protected. Some animals have escaped harm on a 13th Amendment theory. Broadly, anti-cruelty arguments made under the 13th Amendment do not apply to all American animals simultaneously, arbitrarily, and without limit. Absurd results would damage animals, otherwise. This discussion is about all American people, not individuals or syndicates.

calling. They use to keep his confidence and confide in him. Now, they make it seem like they are struggling to live. No one is ever selfless and no one ever meets the standard of care with him. He feels like he knows everyone wherever he goes, but no one talks to him. He has to lie because he has nothing good say and fears reprisal for the truth. When he has visited a professional, he has been confronted by people receiving leaked information and has been forced to receive confidential information about others without warning, such as details about strangers on his voicemail. He constantly receives unsolicited messages, including breaches from companies, including those about which he has no knowledge. He is always overcharged and overlooked.

Gunther cannot get a new job, wife, or living arrangement, or afford a lawyer. Lawyers have taken his money in the past, and when he has had really good cases every lawyer on the Internet has turned down his case. He has never won. When he attempts things like licensure and credential-seeking activity, his investments have been stolen, squandered, and

useless. He has been harassed for every reason imaginable, like unfair debt collection and charity requests, and has never retaliated. He is a kind person who looks mean all the time because he feels that people who are or are not “born in the USA,”⁷ he does not know which, place him in a position of inferiority. He previously had friends from every walk of life, including gays, jocks, nerds, spiritual seekers, volunteers, businessmen, advice givers, and models, but now, no one is around. He thinks most of his old friends might be dead. He cannot talk to some of them because he is drug-free and does not want to be peer-pressured by their new associates. He lives in fear and silence.

Gunther is like most Americans. He refuses to give-up or end his life. He will not go in favor of some master’s wishes. The master is unknown. It could be an embodiment of greed, adultery, complication, forgetfulness, or other powers and principalities,⁸ like

⁷ Bruce Springsteen, “Born in the U.S.A.,” *Born in the U.S.A.* (1984).
“Hiring man says, ‘Son, if it was up to me.’” *Id.*

⁸ *Infra* is an explanation of the Protestant work ethic, which is the spirit of capitalism, fairness, and free enterprise. Free enterprise is in the

those that have hate for Americans. The source or sources of his turbulent existence are by-and-large unidentified. The person or people perpetuating the dismal feeling upon Americans make it seem like it cannot be stopped, in Gunther's world.

B. Thesis, Exposition, and Map

This Article is about the rudimentary belief that an American citizen is entitled to benefit from capitalism.⁹ Capitalism is a system in which a worker provides a good or a service and receives a reward.¹⁰ Work is a product, service, or method that causes others to profit. Profit is spiritual, mental, physical, or

Bible and the Bible promotes free enterprise. Galatians 3:28 says, "There is neither Jew nor Greek, there is neither slave nor free, there is no male and female, for you are all one in Christ Jesus." Ecclesiastes 9:10 says, "Whatever your hand finds to do, do it with your might." The Bible is a guiding authority. Though recently, people have changed Americans' access to spiritual principles in the workplace, the original prosperity is linked to its return. Ephesians 6:12 says, "For our wrestling is not against flesh and blood, but against the principalities, against the powers, against the world-rulers of this darkness, against the spiritual hosts of wickedness in the heavenly places." Proverbs 3:5-6 says, "Trust in the Lord....and lean not on your own understanding;....and [God] will make your paths straight."

⁹ U.S. CONST. am XIII.

¹⁰ See inferential reference, U.S. CONST. am V.

social gain.¹¹ For example, marriage requires work though it may be spiritual and discrete.¹² The spirit of capitalism manifests through the practice of good morals and ethics before the physical result, capitalism, attests to the success of the values, yet interchangeably and synchronously; and it is developed through a Protestant work ethic from Protestant values which preexisted the spirit of capitalism, yet propels and complements it.¹³ It is the root of American business and family.¹⁴ It is a guiding force made from the ethical principles that make life seem worthy and normal to Americans.¹⁵

With regard to capitalism, private and public affairs, like the government, are based on Protestant work ethic demonstrating morality.¹⁶ The benefits of capitalism show that Americans are not enslaved.¹⁷ Slaves do not benefit from business and in their private

¹¹ *Id.*

¹² *See infra.*

¹³ U.S. CONST. am V.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ U.S. CONST. am I.

¹⁷ U.S. CONST. am XIII.

lives.¹⁸ It is prohibited in America.¹⁹ Though many Americans are struggling through deprived economic and personal circumstances, the capitalist spirit fostered by a Protestant work ethic, which is supplied strength by the United States Constitution and the United States Supreme Court, will recover.²⁰ This Article addresses the role of downtrodden and successful aspects of Americans' way of life and citizenship.²¹

Americans have a way of life.²² They may rely on the citizenship granted by the Constitution.²³ Citizenship entitles one to live within the moral, including ethical, code that founds the rights that permits one to prosper.²⁴ *Infra*, each section responds to problems that Americans have.²⁵ In some Americans' lives their concerns may feel like loss of

¹⁸ U.S. CONST. am V. U.S. CONST. am XIII.

¹⁹ U.S. CONST. am XIII.

²⁰ U.S. CONST., art. III, § I.

²¹ U.S. CONST. am V. U.S. CONST. am XIII.

²² Miss Liberty, The Pledge of Allegiance (Sep. 2, 2020), https://www.youtube.com/watch?v=RFtP_dtz-xM. This video cites the four great freedoms: freedom of speech, freedom of religion, freedom from want, and freedom from fear. *Id.*

²³ U.S. CONST. am V. U.S. CONST. am XIII.

²⁴ U.S. CONST. am V. U.S. CONST. am XIII.

²⁵ *See infra*.

value, bent rules, and undescribed and fickle processes causing self-imposed comparison to economic and interpersonal slavery among Americans through anecdotal, symbolic, and statistical sources.²⁶ It should be noted that economic and interpersonal activity bars slavery.²⁷ Yet, with little access to the brighter and freer benefits of bastions like healthcare, education, mediation, and mentorship²⁸ Americans feel like they are forced to survive without prosperity while others unlike them or lacking American patriotism claim to have the benefits and be entitled routinely to dismiss their concerns, needs, allegations, and motions. While the antagonists are discussed in part here, this Article offers a position.²⁹ Though Americans are hurt, all has not been lost.³⁰ They are citizens.³¹

²⁶ U.S. CONST. am V. U.S. CONST. am XIII.

²⁷ U.S. CONST. am V. U.S. CONST. am XIII.

²⁸ United States Coast Guard (U.S.C.G.), Conversation Guide: Coaching Call with 2/c Cadets (2023).

²⁹ U.S. CONST. am IVX. Educated professionals must have access to rewards and rewards must compensate them. Those is need of services must have access to the appropriate rewards to give and to the services provided.

³⁰ *Id.*

³¹ *Id.*

Those who feel most upset by the mishandling of government and the people's rights would ask, whether any governing body can actually free them.³² Thus, comparing themselves to slaves or the problem to slavery.³³ The overpowering force creates a self-rejecting question of whether Americans have been subjected to a total abrogation in this country that amounts to slavery.³⁴ The answer is no.

This Article address two sides of the answer. First, Americans are not slaves because the problem does not amount to slavery.³⁵ Second, Americans are not slaves because they have citizenship.³⁶ These sides to the answer give Americans a breadth of history, options, potential, and feelings that continue to assure them of America's future and their rights.³⁷ Survivorship and leadership through the United States Coast Guard's (C.G.'s) mentoring sheet is mentioned throughout as an example of how Americans continue to work, are

³² *Id.*

³³ U.S. CONST. am XIII.

³⁴ *Id.*

³⁵ Dred Scott v. Sanford, 60 U.S. 393 (1856).

³⁶ *Id.*

³⁷ *Id.*

not enslaved, practice workplace continence, such as at the Coast Guard Academy (CGA), through the spirit of capitalism, and intend to better the nation through leadership.³⁸ It is an instrumental guide for making business connections with those who have earned respect and can handle conversing with their inspirational predecessors.³⁹ The value of the conversation topics exists in sharing them.⁴⁰

Section Two discusses statistics and more about how Gunther's problems also bother so many like him.⁴¹ Section Three cites cases that when analyzed in this Article prove that Americans are not only not slaves, they can also feel better about hurt feelings and hardship when they recognize their country's great past and connection to capitalism.⁴² The law suits' concepts in this Article demonstrate increased freedom and Protestant work ethic because they built more of the founders' ideas into the present understanding of

³⁸ U.S.C.G., Conversation Guide (2023).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *See infra.*

⁴² U.S. CONST. am V. *Sanford*, 60 U.S. 393. *Roe v. Wade*, 410 U.S. 113 (1973). *See* CARMEN M. CUSACK, ABORTION IS THE "A" WORD (2018).

freedom from slavery.⁴³ The Article Concludes with information about how to attain better and satisfactory conditions while the country improves and regains capitalism.⁴⁴

C. Are Americans Slaves?

No. The first reason is discussed below in this Section.⁴⁵ A citizen of the United States is not a slave.⁴⁶ Second, people without legal owners are not slaves.⁴⁷ Here, this Section discusses how Americans are feeling a loss of attention to the Protestant work ethic, the fabric of the American workforce.⁴⁸ Discussed below are statistics and ideas that show that their family lives also suffer from the loss of moral continuity and tradition within business.⁴⁹ They feel like the law is easily wielded against them; they are susceptible to loss; and feel that they are owed money, respect, and

⁴³ *Id.*

⁴⁴ *See* U.S.C.G., Conversation Guide (2023).

⁴⁵ *See* Section I.

⁴⁶ U.S. CONST. am V. U.S. CONST. am XIII.

⁴⁷ U.S. CONST. am XIII.

⁴⁸ *See* Section I.

⁴⁹ *Id.*

exchanges.⁵⁰ Americans sense no incoming relief, but feel their value of their citizenship.⁵¹ Below two cases are discussed that demonstrate the role of government in assuring citizens that they are not slaves.⁵² Despite the present failures, neither men nor women are slaves.⁵³ Dead-end jobs and family life do not amount to the loss of freedom suffered by those threatened with conscription.⁵⁴

The ordinary synopsis of these cases demonstrates in traditional contexts that the business at-hand then was deliberately different than present day affairs.⁵⁵ Consideration given to these cases is given to demonstrate horrifying comparisons.⁵⁶ Though truly felt, the direct comparison to a slave, who was free and happily married on federal land for some time, and the indirect comparison, to a female citizen who was pregnant, could not have an abortion, and was forced

⁵⁰ *Sanford*, 60 U.S. 393.

⁵¹ See U.S.C.G., Conversation Guide (2023).

⁵² *Sanford*, 60 U.S. 393. *Wade*, 410 U.S. 113. U.S. CONST. am V. U.S. CONST. am XIII. U.S. CONST. am IVX.

⁵³ *Sanford*, 60 U.S. 393. *Wade*, 410 U.S. 113. U.S. CONST. am IVX.

⁵⁴ *Sanford*, 60 U.S. 393. *Wade*, 410 U.S. 113.

⁵⁵ See e.g., *Sanford*, 60 U.S. 393; *Wade*, 410 U.S. 113.

⁵⁶ *Sanford*, 60 U.S. 393. *Wade*, 410 U.S. 113.

to give birth bear witness to Americans' suffering, yet not their status.⁵⁷

All citizens are free and while some may deserve the relief owed to slaves, when they are violated as slaves, the relief they seek from pervasive unfairness should be granted by local, state, and federal authorities to return stolen property, intellectual rights, wellness, counsel, and control of the future.⁵⁸ In addition, the remedies, though claimed to be inaccessible to most because of corruption, unfair hierarchy, and violence by members of the system, may be granted by systemic outsiders, interveners, do-gooders, influencers, and leaders.⁵⁹ Remedies should be sought from tradition and expertly guided support for those suffering in the following areas and others: family, criminal, contracts, torts, property, cyber, church (i.e., non-profits, religious freedom, education, and disability), and immigration.⁶⁰

⁵⁷ *Sanford*, 60 U.S. 393. *Wade*, 410 U.S. 113.

⁵⁸ U.S. CONST. am V.

⁵⁹ U.S. CONST. am V. U.S. CONST. am XIII. U.S. CONST. am IVX.

⁶⁰ U.S. CONST. am I. U.S. CONST. am V. U.S. CONST. am XIII. U.S. CONST. am IVX.

Like 58.9% of Americans, Gunther is in physical pain because he suffers from abuse, poverty, and dissatisfaction at work.⁶¹ He tries to follow the rules, the law, the Lord's Ten Commandments, and his parents' upbringing.⁶² Yet, he gains not. He is like an artist, hardworking and underpaid. An artist is supposed to make an average of \$69,870 annually according to the Bureau of Labor.⁶³ However, for example, some art departments in schools may propagate the possibility that art will be unpaid.⁶⁴ This is unfair.⁶⁵ Artists may produce art anyway because they are like vessels that cannot stop working.⁶⁶ Only .089 per 1,000 jobs will pay artists the annual wage.⁶⁷

⁶¹ E.g., Becky Upham, *More than Half of Americans Live with Pain According to Report Longer Life Expectancy and Healthcare Disparities Play a Role in Growing Problem*, Everyday Health (Aug. 13, 2021), <https://www.everydayhealth.com/pain-management/more-than-half-of-americans-live-with-pain-according-to-report/>. See Office of the Secretary, Labor Department, <https://www.dol.gov/agencies/osec>.
⁶² Steven K. Green, *The Fount of Everything Just and Right? The Ten Commandments as a Source of American Law*, 14 J. L. & RELIGION 525 (2000).

⁶³ U.S. Bureau of Labor Statistics (BLS), National Occupational Employment and Wage Estimates United States (May 2022), https://www.bls.gov/oes/current/oes_nat.htm#19-0000.

⁶⁴ *But see infra*.

⁶⁵ *Id.*

⁶⁶ *See infra*.

⁶⁷ *Id.*

Personal services traditionally have been staved-off by marital contributions.⁶⁸ In abusive marriages, the contribution might be demanded, unilateral, misportrayed, or unrewarded.⁶⁹ Individual statistics do not provide a basis for their estimated worth because all women are different and marriage is private and noncommercial; yet they may indicate that women expend a valuable resource.⁷⁰ The average annual salary of a personal service manager is \$75,250. Of 1,000 jobs, .152 will be personal service manager positions.⁷¹

Some other statistics to illustrate the problems are the number of on-the-job injuries, prevalence of harassment, white collar crime figures, and violence reports.⁷² Workplace unintentional overdose from nonmedical drug and alcohol use increased 536% from 2011 to 2021 in addition to the 62 million workplace injuries in 2021.⁷³ People experienced the following

⁶⁸ U.S. CONST. am V.

⁶⁹ See Section II.

⁷⁰ U.S. CONST. am V.

⁷¹ *Id.*

⁷² *Id.* See *infra*.

⁷³ "Injury Facts," National Safety Council, <https://injuryfacts.nsc.org>.

rates of these violations: 77% verbal sexual harassment; 51% unwelcomed sexual touching; 41% cybersexual harassment; 34% being physically followed; 30% unwanted genital flashing; and 27% sexual assault.⁷⁴ David Sklansky, a Stanford University law professor, said that “[i]t’s disturbing” that prosecution of white collar crime has slowed, for example between 2001 and 2021 from 9,507 prosecutions to 4,727 prosecutions.⁷⁵ Between 2015 and 2019, approximately 529,000 nonfatal injuries arrived at hospital emergency rooms because of workplace violence.⁷⁶ Strain in relationships relates to these statistics.⁷⁷ One research endeavor

⁷⁴ Rhitu Chatterjee, *A New Survey Finds 81 Percent of Women Have Experienced Sexual Harassment*, National Public Radio (NPR) (Feb. 21, 2018), <https://www.npr.org/sections/thetwo-way/2018/02/21/587671849/a-new-survey-finds-eighty-percent-of-women-have-experienced-sexual-harassment>.

⁷⁵ Eva Herscovitz, *White-Collar Crime Prosecutions Continue 20-Year Decline*, The Crime Report (TCR) (Aug. 10, 2021), <https://thecrimereport.org/2021/08/10/white-collar-crime-prosecutions-continue-to-decline/>.

⁷⁶ Erika Harrell, Lynn Langton, Jeremy Petosa, Stephen M. Pegula; Mark Zak, Susan Derk, Dan Hartley, & Audrey Reichard, “Indicators of Workplace Violence, 2019,” Bureau of Justice Statistics (BJS) (2022), <https://bjs.ojp.gov/library/publications/indicators-workplace-violence-2019>.

⁷⁷ Marisa T. Cohen, *Financial Strain and Relationship Health How Money, or Lack thereof, Can Impact a Relationship*, PSYCHOL. TODAY

“demonstrated that financial satisfaction was positively related to marital satisfaction, and financial stressors were negatively related to marital satisfaction.”⁷⁸

Gunther’s problems make him feel like a slave at work and home.⁷⁹ He is like Blacks, women, and others in America who feel that their rights are unenforced and their complaints are ignored.⁸⁰ The difference is that a slave has no rights.⁸¹ Even those in poverty are not an enslaved.⁸²

About 34.0 million people....lived below the official poverty level in 2019....Although the poor were primarily adults who had not participated in the labor force during the year and children,....7.0

(Mar. 1, 2021), <https://www.psychologytoday.com/us/blog/finding-love-the-scientific-take/202103/financial-strain-and-relationship-health>.

⁷⁸ *Id.*

⁷⁹ U.S. CONST. am XIII. *See e.g.*, Elizabeth O’Shea, “Are You A Slave To Your Child?,” Parent4Success (Nov. 7, 2011), <https://www.parent4success.com/2011/11/07/are-you-a-slave-to-your-child/>. *See e.g.*, Careerizma, “7 Signs That Indicate You Have Become a Corporate Slave” (Oct. 13, 2020), <https://www.careerizma.com/blog/7-signs-you-are-a-corporate-slave/>. *See e.g.*, Clare Murphy, “Tactic #15 — How Men Coerce Women into Domestic Slavery and Why Equality Is the Answer,” Speak Out Loud, <https://speakoutloud.net/intimate-partner-abuse/gender-roles>.

⁸⁰ *See* Section II.

⁸¹ U.S. CONST. am XIII.

⁸² *Id.*

million in 2018... [were] working poor...who spent at least 27 weeks in the labor force (that is, working or looking for work) but whose incomes still fell below the official poverty level.⁸³

The Bureau of Labor Statistics’ definitions of “poverty” describe ways that a person may not receive recognition for performance.⁸⁴ Under the

⁸³ BLS, Report 1093: A Profile of the Working Poor (2019), <https://www.bls.gov/opub/reports/working-poor/2019/home.htm#:~:text=Highlights%20from%20the%202019%20data%3A%201%20The%20working-poor,percent%20and%203.5%20percent%2C%20respectively%29.%20..%20More%20items>.

⁸⁴ BLS, 2021 Report 1093: A Profile of the Working Poor (2019), <https://www.bls.gov/opub/reports/working-poor/2019/home.htm#technical-notesConcepts and definitions>.
Poverty classification statistics presented in this report are based on...[t]he actual poverty thresholds....In 2019, the weighted average poverty threshold for a family of four was \$26,172; for a family of nine or more people, the threshold was \$52,875; and for one person (unrelated individual), it was \$13,011....Thresholds do not vary geographically. For more information, see “Income and Poverty in the United States: 2019,” www.census.gov/content/dam/Census/library/publications/2020/demo/p60-270.pdf.
 The *low-earnings* level, as first developed in 1987, represented the average of the real value of the minimum wage between 1967 and 1987 for a 40-hour workweek. The year 1967 was chosen as the base year.... The low-earnings level has been adjusted each year..., so the measure maintains the same real value that it held in 1987. In 2019, the low-earnings threshold was \$376.28 per week. For a complete definition, see Bruce W. Klein and Philip L. Roness, “A profile of the working poor,” *Monthly Labor Review*, October 1989, pp. 3–11, www.bls.gov/opub/mlr/1989/10/art1full.pdf.

Protestant work ethic, one explanation is that the person is not predestined to be saved.⁸⁵ Yet, the spirit of capitalism ought to work throughout the country.⁸⁶ Workers involuntarily working part-time are an example of people who cannot rise “because of slack

Data on *income* are limited to money income....

The *labor force* refers to people who worked or looked for work sometime during the calendar year. The number of weeks in the labor force is accumulated over the entire year. The focus in this report is on people who were in the labor force for 27 weeks or more.

The *working poor* are people who spent at least 27 weeks in the labor force (that is, working or looking for work) but whose incomes still fell below the official poverty level.

The *working-poor rate* is the number of individuals in the labor force for at least 27 weeks whose incomes still fell below the official poverty level, as a percentage of all people who were in the labor force for at least 27 weeks during the calendar year.

Involuntary part-time workers are people who, during at least 1 week of the year, worked fewer than 35 hours because of slack work, unfavorable business conditions, or because they could not find full-time work. The number of weeks of involuntary part-time work is accumulated over the year.

Occupation refers to the job in which a person worked the most weeks during the calendar year.

Unemployed people are those who looked for work while not employed or those who were on layoff from a job and were expecting to be recalled to that job. The number of weeks unemployed is accumulated over the entire year....

A *family* is a group of two or more people residing together who are related by birth, marriage, or adoption.... Families include those with or without children under 18 years old....

Sub-families are excluded from the count of families. A sub-family is a family that does not maintain its own household, but lives in the home of someone else. *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

work” and “unfavorable business conditions” potentially resulting from discordant economic theories, low moral investment, and absent ethical values in workplaces.⁸⁷

Fearing unemployment is a problem in America.⁸⁸ It affects self-esteem, work performance, and confidence in others.⁸⁹ It can happen from unexpected factors like changes (e.g., tech platforms) and disassociation (e.g., loss of friendship).⁹⁰ It is a particularly Protestant feeling that occurs in America.⁹¹ It concerns the government, for example President Gerald R. Ford, who funded “established and proven Federal programs including Comprehensive Employment Training Act (CETA), summer youth employment and public service employment;”⁹² and this feeling has been identified by researchers.⁹³ This

⁸⁷ *Id.*

⁸⁸ BLS (2019).

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Infra* note.

⁹² Gerald Ford Museum, Economy, <https://www.fordlibrarymuseum.gov/library/document/factbook/economy.htm>.

⁹³ André van Hoorn & Robbert Maseland, *Does a Protestant Work Ethic Exist? Evidence from the Well-Being Effect of Unemployment*, 91 J. ECON. BEHAV. & ORG. 1 (2013).

applies to a variety of feelings about people's own loss and others' loss of job commitment; for example, asking too much for tips and not getting enough tips; looking for too many students and not having any students; and asking for too many cases and not getting enough cases, etc.⁹⁴ "Analyzing a sample of 150,000 individuals from 82 societies," researchers demonstrated "strong support for a Protestant work ethic: unemployment hurts Protestants more and hurts more in Protestant societies. Whilst the results shed new light on the Protestant work ethic," the results are used to also open a greater description of the hurt and circumstances causing Protestants to become unemployed or underemployed, feel abused, and get hurt.⁹⁵

Protestant work ethic identifies several types of people in the modern era.⁹⁶ First, it continues to identify Christians, like those in America, who are predestined to be saved, meaning die and go to

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

heaven.⁹⁷ To prove that God chose them, they work hard and become rich.⁹⁸ The second group is those who work hard and make it.⁹⁹ They are the Americans to whom “the central value of innerworldly deeds and actions of every believer” should praise God.¹⁰⁰ They believe that they were chosen by God, fate, or another ruling force, such as a university, like CGA, to be good at a certain craft or profession.¹⁰¹ Their first dose of success proves their worth and they are entitled to continue as long as they maintain a high ethical standard, on average, throughout.¹⁰² The third group is those converts, originally irrational, like Americans without deep family or religious roots, that excel and give credit to God, society, the American way of life, or the field that provided them with good work plans.¹⁰³

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *E.g.*, BLS (2022).

¹⁰⁰ J.H.J. van Kessel, *Benjamin Franklin: The Personification of Max Weber's 'Spirit of Capitalism,'* 31 PHIL. AGE. ALMANAC 159, 164 (2006).

¹⁰¹ *Id.* U.S.C.G., Conversation Guide (2023).

¹⁰² U.S.C.G., Conversation Guide (2023).

¹⁰³ van Kessel, *Benjamin Franklin*, 31 PHIL. AGE. ALMANAC 159, 166. U.S. CONST. am I.

When moral and ethical standards are high, people do not discuss the private details of their lives or rely on personal information to reduce, woo, or pervert.¹⁰⁴ Poor introduction of hyperfeminine values, for example, that force others to normalize around the topics of children, health crises, and marital issues, can be tolerated by those with work ethic, but efficiency decreases.¹⁰⁵ Pew Research found that despite equality movements, women bear a greater load at work due to family.¹⁰⁶ Therefore, would be likelier to make office policies and chat about it.¹⁰⁷

In economic analyses of asymmetric information, better-informed agents are assumed capable of reproducing the judgments of less-informed agents....A systematic violation of this assumption that [is]... call[ed] the ‘curse of knowledge.’ Better-informed agents are unable to ignore private information even when it is in their interest to do so; more information is not

¹⁰⁴ U.S. CONST. am V.

¹⁰⁵ Kim Parker, *Despite Progress, Women Still Bear Heavier Load than Men in Balancing Work and Family*, Pew Research Center (Mar. 10, 2015), <https://www.pewresearch.org/short-reads/2015/03/10/women-still-bear-heavier-load-than-men-balancing-work-family/>. U.S. CONST. am I.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

always better. Comparing judgments made in individual-level and market experiments,...market forces reduce the curse by approximately 50 percent but do not eliminate it. Implications for bargaining, strategic behavior by firms, principal-agent problems, and choice under uncertainty are...[discussable].¹⁰⁸

Special institutions, like University of Chicago and Oxford University, rigorously discuss this information.¹⁰⁹

Also, institutions, like the CGA, train students to receive the benefit of principled talks.¹¹⁰ The C.G., an example of a patriotic employer, uses a Mid-Grade Transition Course (MCTC), which “prepares cadets to transition from Leading Self to Leading Others.”¹¹¹ Leaders also train by listening and delivering talks in

¹⁰⁸ Colin Camerer, George Loewenstein, & Martin Weber, *The Curse of Knowledge in Economic Settings: An Experimental Analysis*, 97 J. POL. ECON. __ (1989).

¹⁰⁹ See *supra* note 2. Laura Paull, “Feminist Art Icon Judy Chicago Returns to S.F. [Omitted],” J., (Aug. 31, 2017) <https://jweekly.com>. The Honorable William J. O’Neil, *The Courts and the Media: Improving the Dialogue*,” 52 NIEMAN REPORTS 27 (1998). “Most Americans see themselves as tough individualists, as people who are able to ‘...keep on....’ It just isn’t so, especially when it carries a personal edge to it.” *Id.* see 28, 29.

¹¹⁰ U.S.C.G., Conversation Guide (2023).

¹¹¹ *Id.*

exchange for pay.¹¹² For example, they may maintain a log of training seminars, publication opportunities, conferences (e.g., feminist studies conference), and excelled mentoring activities that could exceed the investment of cadet-mentor conversations.¹¹³ Data presented may result in persuasive support to receive a promotion and compensation.¹¹⁴ Leadership enhancement of ethical business strategies may solve problems attacking American capitalists.¹¹⁵ “Capitalism is an approach that promotes social cooperation and motivates members in society to solve problems.”¹¹⁶ “Discussions of capitalism often revolve around rule of law, property rights, voluntary exchange, profit motive and competition, which are the economic terms that articulate the”

¹¹² Coast Guard Form 40-82.

¹¹³ If everyone retained absolute acknowledgement of the military’s labor and energy contribution to the economy, Keynesianism, capitalism, and wealth would be assured.

¹¹⁴ U.S.C.G., Conversation Guide (2023).

¹¹⁵ *Id.*

¹¹⁶ Randy Gibb, “Free Market Capitalism Viewed from a Christian Context,” Grand Canyon University (Oct. 28, 2021), <https://www.gcu.edu/blog/business-management/free-market-capitalism-viewed-christian-context> (citing ADAM SMITH, AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS (1976) AT 96). Randy Gibb holds a PhD in Business and Management. Gibb, Grand Canyon University.

“ethical decision-making, integrity and morality that allows this cooperative interaction to succeed for the greater good. It is imperative for businesses to serve society in an ethical manner, and...[observe] this in action every day through voluntary exchange.”¹¹⁷

Researchers found that those people who believe that hard work should pay-off for those who maintain high ethical standards oppose distribution of unearned resources to those who unexpectedly demand pay without work.¹¹⁸

As predicted, people who strongly endorsed the Protestant work ethic stressed negative individualistic explanations for unemployment and were, by and large, more against welfare payments than those who did not strongly endorse those beliefs.¹¹⁹

A crisis of unemployment and dissatisfaction in America cuts both ways.¹²⁰

¹¹⁷ Gibb, Grand Canyon University.

¹¹⁸ *Infra* note.

¹¹⁹ Dr. Adrian Furnham, *The Protestant Work Ethic and Attitudes towards Unemployment*, 55 J. OCCUPATIONAL PSYCHOL. 277 (1982).

¹²⁰ “Franklin D. Roosevelt State of the Union Address of 1935,” University at Albany, <https://www.albany.edu/faculty/gz580/his101/su35fdr.html>.

In 1935, President Franklin Roosevelt described the troubles of Americans.¹²¹

We have here a human as well as an economic problem. When humane considerations are concerned, Americans give them precedence. The lessons of history, confirmed by the evidence immediately before me, show conclusively that continued dependence upon relief induces a spiritual disintegration fundamentally destructive to the national fiber. To dole our relief in this way is to administer a narcotic, a subtle destroyer of the human spirit. It is inimical to the dictates of a sound policy. It is in violation of the traditions of America. Work must be found for able-bodied but destitute workers.¹²²

People who are perceived as being uninvited to the table by longstanding standards now may seem to receive priority for resources that they have not earned and should reject.¹²³ Those entitled who are displaced cannot receive limited and commensurate entitlement for resources and would be characterized as

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

subordinated and excluded.¹²⁴ State income for unemployment and divorced, abandoned, and neglected people is an ablutio that solves next to nothing for Americans who believe in deep Christian roots.¹²⁵ The right people cannot receive the means, and the wrong people get it, which is a deprivation.¹²⁶ “Theft is a vice!”¹²⁷ This is a pitfall.¹²⁸ People who work hard ought to have fair opportunities and earn the benefits of capitalism.¹²⁹ This is the capitalist spirit.¹³⁰

The majority of Americans have extended memories of forebearers relying on Christian principles for the foundations of business and family life.¹³¹ The U.S. President who ended slavery for

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ U.S. CONST. am. V.

¹²⁷ Tibor R. Machan, *In Defense of Property Rights and Capitalism: Capitalism is the Political Manifestation of the Human Condition.*, Foundation for Economic Education (FEE) (June 1, 1993), <https://fee.org/articles/in-defense-of-property-rights-and-capitalism/>.

¹²⁸ “Through the comic arts, editorials, pulpit, and so forth... [c]apitalism does not just protect the freedom of the base but also that of the noble” self. Machan, FEE.

¹²⁹ *Id.*

¹³⁰ “The moral nature of property rights should be clear enough.” Machan, FEE.

¹³¹ *E.g.* Abraham Lincoln Presidential Library and Museum, Lincoln Facts, <https://presidentlincoln.illinois.gov/lincoln-facts/>. “Lincoln’s Gettysburg Address is the most well-known speech ever given by an

Africans and descendants of Africa, Abraham Lincoln, said “It is difficult to make a man miserable while he feels worthy of himself, and claims kindred to the great God who made him.”¹³² Those who do not obey a moral and ethical code are seen as breachers, abusers, and criminals; and people mistreat those who they assume are not wealthy or would not fight heavily for personal wealth.¹³³ Though some defenses may be raised by them, when groups contribute to antithetical norms, they are anti-American.¹³⁴ Each American solely has to prosper to demonstrate entitlement, and some people may be new to America and be

English-speaking politician and has been reprinted and recited countless times since he delivered it on November 19, 1863.” *Id.* See Abraham Lincoln Presidential Library and Museum, Lincoln Quotes, <https://presidentlincoln.illinois.gov/lincoln-quotes/>. Lincoln said on September 11, 1858, “Our reliance is in the love of liberty which God has planted in our bosoms. Our defense is in the preservation of the spirit which prizes liberty as the heritage of all men, in all lands, everywhere.” *Id.* On October 1, 1858, Lincoln said, “There is no contending against the Will of God; but still there is some difficulty in ascertaining, and applying it, to particular cases.” On August 14, 1862, Lincoln’s word supported this Article. *Id.*

¹³² *Id.*

¹³³ On April 16, 1864, Lincoln said, “I am responsible... to the American people, to the Christian world, to History, and on my final account to God.” *Id.*

¹³⁴ “In great contests, each party claims to act in accordance with the will of God. Both may be, and one must be, wrong,” was said on September 2, 1862 by Lincoln. *Id.*

predestined to be saved, and suffer tides of wealth while others work-on classifying them as worthy.¹³⁵

To enjoy America, a process for those who lack foundations, immigrants' grandchildren tend to become more Protestant.¹³⁶ "Children of immigrants weakened their religious ties while the grandchildren of immigrants exhibit greater religious participation....[I]n Detroit,...increasing church attendance associated with increasing Americanization for Protestants and Catholics."¹³⁷ The effect may be because the groups oppressing Americans do not recognize them as rooted and obedient to the Protestant work ethic.¹³⁸ The family members return after the demonstration of wealth attracts them or their religion proves profitable to others.¹³⁹ Catholics are a type of Christian that can live as Protestants, and yet may experience some strain.¹⁴⁰

¹³⁵ On September 4, 1864, Lincoln reported, "I am much indebted to the good Christian people of the country for their constant prayers and consolations."

¹³⁶ Bernard Lazerwitz & Louis Rowitz, *The Three-Generations Hypothesis*, 69 AM. J. SOC. __ (1964).

¹³⁷ *Id.* at Abstract.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

Exotic Americans with a capitalist spirit may be influenced by moral lessons and that may root them.¹⁴¹ Biological, religious, and other differences, such as racial preference, discussed in this Article, are relevant to the proposition that the Protestant work ethic affects people across the country.¹⁴²

When Protestants and Catholics are subdivided by sex and the children-of-immigrants category is confined to people both of whose parents were foreign-born, it is found that (1) Protestants of both sexes show an increasing frequency of church attendance with more generations in the United States; (2) among Catholic men who are children of immigrants church attendance drops; [and] (3) Catholic women show no meaningful changes in church attendance for the various generations. It is thought that these Protestant-Catholic differences stem from the secular orientation of Protestant immigrants.¹⁴³

Women, for example, discussed *infra*, may be less likely to adopt strong financial positions although they

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

retain and may build the moral basis of the home.¹⁴⁴ The economic environment supports that.¹⁴⁵ This does not violate the establishment, but upholds it.¹⁴⁶

The establishment is the government, full of Protestants, like most college-educated Americans, Calvinists, and people raised by Christians exposing them to Christianity.¹⁴⁷ The spirit of capitalism is shared.¹⁴⁸ Government standards and capitalism, require people to use polite talk to get advancement.¹⁴⁹ In the C.G., the collegiate community of officers, setting an example, tangentially for the band of enlisted members with respect to the overlapping nature of serving, coaches cadets to talk to C.G. leaders about the framework they intend to use in the future to lead

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ U.S. CONST. am I.

¹⁴⁷ Gert H. Mueller & Max Weber, *Socialism and Capitalism in the Work of Max Weber*, 33 THE BRITISH J. SOC. 151 (1982). PEW Research Center, Religious Landscape Study: College Graduates, <https://www.pewresearch.org/religion/religious-landscape-study/educational-distribution/college/>. PEW Research Center, Main Survey of Nationally Representative Sample of Adults Final Questionnaire, Religious Landscape Study (RLS-II), May 30, 2014. The study found that 66% of college graduate were Christian. Of those, Evangelical Protestants comprised 21%. Mainline Protestants were 17% and Historically Black Protestants were four percent.

¹⁴⁸ U.S. CONST. am I.

¹⁴⁹ U.S.C.G., Conversation Guide (2023).

and instruct others.¹⁵⁰ E-mailing by leaders for support is encouraged.¹⁵¹ The “Conversation Guide” includes talking bullets.¹⁵² These are operations.¹⁵³

Operations are crafted procedures, like statements, to achieve a predicted outcome.¹⁵⁴ A good operation can be fruitful.¹⁵⁵ Living language is nurturing. It is the language of making a living. The operationalizing officers are guided briefly to introduce oneself and inquire about the future leader.¹⁵⁶ Appropriate question topics include hometown, major, extracurricular activities, programs, etc.¹⁵⁷ The chats are nice.¹⁵⁸ What excites or makes the cadet nervous about leadership may be fielded by the mentor.¹⁵⁹ Accepting questions about the topic and offering to follow up and coordinate is the agenda.¹⁶⁰

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Infra* note.

¹⁵⁵ "Be fruitful and multiply and fill the earth." Genesis 1:28.

¹⁵⁶ U.S.C.G., Conversation Guide (2023).

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

Education, and offshoot of the government and family, facilitates capitalism.¹⁶¹ Refined, confidence instilling, reliable conversation guides are a norm among private school students, like a Duke University conversation guide, and others seen that stick to professional topics for business and operationalizing.¹⁶² Alumni bases, nonsexual officer networks, companies, and other focused groups may minimize or exclude an untrained mix of people that will cause delays.¹⁶³ Good businesspersons may shift loners to a unique liaison.¹⁶⁴ A strong Protestant façade allows a one-on-one mentor to play two roles at once or be purely willing to work on one path with a strong group.¹⁶⁵ A strong reputation allows moral people to choose objects to talk to about their backgrounds without hesitation.¹⁶⁶

Contemporary means for delivering the government's message, such psychology outreach,

¹⁶¹ *Id.*

¹⁶² U.S.C.G., Conversation Guide (2023).

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

mentorship, environmental groups, and public forums, show that it is not intentionally delivering religion, but the basis for the rise and permanization of capitalism.¹⁶⁷

Protestant Work Ethic (PWE) and the rise of [c]apitalism, few have challenged the specification of the behaviour [*sic*] patterns, goals and values of those adhering to this ethic. Whereas psychologists have not been very interested in the nature of the historical, political and sociological arguments concerning the PWE, they have devoted a great deal of research to its measurement and correlates.¹⁶⁸

Protestants are not alone.¹⁶⁹ Emotionally, they are a majority, with Catholics, Muslims, Hindus, and others, that guides the nation to the spirit of capitalism.¹⁷⁰ Drifting from Protestant values, like attending a state university to study atheist business, opens the door to outsiders that take away from the system.¹⁷¹ Those

¹⁶⁷ U.S.C.G., Conversation Guide (2023).

¹⁶⁸ A. Furnham, *The Protestant Work Ethic: A Review of the Psychological Literature*, 14 EUROPEAN J. SOC. PSYCH. 87 (1984).

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ Michael T. Nietzel, *The Five Most Significant Ten-Year Trends in College Majors*, FORBES (July 24, 2022),

students are redundant and absence is recorded. When the system collapses—and, note, it can be repaired—it is because Christians stopped realizing, in spite of government messages, that their foundations are based on capitalism; and that due to their reliance on Christian attitudes in the home and business, they were limited to Christian identity—a strong force in America.¹⁷²

A central contention of much of the literature about the nature of work values and the meaning of work is that there is (or at least has been) a consensual work ethic operating in modern industrial societies....[E]vidence for a modern work ethic is....[t]he link between this work ethic and religion.... While one conclusion of the

<https://www.forbes.com/sites/michaelnietzel/2022/07/24/the-five-most-significant-ten-year-trends-in-college-majors/?sh=418fd648350f>. “Of those 2.0 million bachelor’s degrees conferred in 2019–20, 58% were concentrated in just six fields of study” with “387,900 degrees” in “business.” *Id.*

¹⁷² Jeremy Guida, *The Summer of Love Wasn’t All Peace and Hippies*, JSTOR DAILY (June 21, 2021), <https://daily.jstor.org/the-summer-of-love-wasnt-all-peace-and-hippies/>.

The center of countercultural activities[,] [f]or many, the Summer of Love calls to mind an ambitious attempt at cultural revolution when America’s youth championed values like peace, love, and freedom of expression. Fifty years later, that utopian vision of the Summer of Love prevails. But underground papers like those in Reveal Digital’s Independent Voices Collection testify to the dark underbelly of that fateful season. *Id.*

analysis is that it is still an identifiably Protestant ethic, contextual analysis demonstrates that the effect of a country's religious culture is more potent than the religious beliefs of the individual.¹⁷³

In conclusion, the traditional values supporting work standards are not met, and will not change.¹⁷⁴ Americans are, as workers and families, experiencing great distance from what they deserve and feel entitled to have.¹⁷⁵ The standards will guide people to prosperity if they follow them.¹⁷⁶ The angering circumstance and terrorizing individuals, substances, and technology, yet are not going to enslave Americans.¹⁷⁷ They are free from that condition, and can rise through the spirit of capitalism.¹⁷⁸

¹⁷³ Liana Giorgi & Catherine Marsh, *The Protestant Work Ethic as a Cultural Phenomenon*, 20 EUROPEAN J. SOC. PSYCH. 499 (1990).

¹⁷⁴ *Id.*

¹⁷⁵ *See supra.*

¹⁷⁶ van Hoorn & Maseland, 91 J. ECON. BEHAV. & ORG. 1 (2013).

¹⁷⁷ *See supra.*

¹⁷⁸ U.S. CONST. am. XIII.

II. ARGUMENT: AMERICANS ARE NOT SLAVES

A. Issue: Is an American a Slave in the Market?

1. Rule: 13th Amendment

Slavery is barred.¹⁷⁹ The United States Constitution prohibits slavery under the 13th Amendment in two Constitutional sections.¹⁸⁰

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction. Section 2. Congress shall have power to enforce this article by appropriate legislation.¹⁸¹

Citizenship in the United States prohibits slavery.¹⁸² John F. A. Sanford intended to inherit Dred Scott as a slave.¹⁸³ The U.S. Supreme Court heard the case, *Scott v. Sanford*.¹⁸⁴ The case cannot be applied to all

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ U.S. CONST. am. XIII.

¹⁸² *Id.*

¹⁸³ *Sanford*, 60 U.S. 393.

¹⁸⁴ *Id.*

Americans for its holding because it preceded the rule, but to utilize the following proposition:

The question is simply this: Can a negro, whose ancestors were imported into this country, and sold as slaves, become a member of the political community formed and brought into existence by the Constitution of the United States, and as such become entitled to all of the rights, and privileges, and immunities, guarantied [*sic*] by that instrument to the citizen?¹⁸⁵

The Court held that he could not.¹⁸⁶ Sanford inherited Scott.¹⁸⁷

The Court later expanded their holdings when they held that the 13th Amendment protected people from residual hatred against slaves.¹⁸⁸

Instead, the Court explained, the ‘badges and incidents’ of slavery included: (1) compulsory service for another’s benefit; (2) restrictions on freedom of movement; (3) the inability to hold property or enter into contracts; and (4) the incapacity to

¹⁸⁵ *Id.* at 403.

¹⁸⁶ *Sanford*, 60 U.S. 393. U.S. CONST. am. XIII.

¹⁸⁷ *Id.*

¹⁸⁸ *The Civil Rights Cases*, 109 U.S. 3 (1883), at 22.

have standing in court or testify against a [W]hite person.¹⁸⁹

The results rested on *Sanford*.¹⁹⁰

2. Analysis: Historic Enslavement of Blacks for Industry

A hallmark of slavery is a total loss of the pursuit of happiness, which is anti-capitalist.¹⁹¹ Happiness is the right to envision better future circumstances.¹⁹² Industry developed as a result of slavery to some extent.¹⁹³ Industry is an example of a market form, like commerce and archives.¹⁹⁴ Industry deprived enslaved Blacks of all benefits.¹⁹⁵ It required work for no pay or power to plan one's future.¹⁹⁶ It also required total

¹⁸⁹ Cornell Law School, Amdt13.S1.1.2 Defining Badges and Incidents of Slavery, <https://www.law.cornell.edu/constitution-conan/amendment-13/section-1/defining-badges-and-incidents-of-slavery#:~:text=In%20the%20consolidated%20Civil%20Rights%20Cases%2C%20the%20Court,that%20denied%20a%20person%20access%20to%20accommodations.%204.> *Civil Rights*, 109 U.S. 3, 22.

¹⁹⁰ *Sanford*, 60 U.S. 393. *Civil Rights*, 109 U.S. 3.

¹⁹¹ *Sanford*, 60 U.S. 393. *Civil Rights*, 109 U.S. 3.

¹⁹² *Sanford*, 60 U.S. 393. *Civil Rights*, 109 U.S. 3.

¹⁹³ *See Sanford*, 60 U.S. 393.

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

acquiescence to the master's choice.¹⁹⁷ It ended their pursuit of happiness.¹⁹⁸ Slavery may be instantaneous or long-term.¹⁹⁹ Certain and predictable slavery that cannot be relieved may be class slavery.²⁰⁰ The remedies are liberation (e.g., specific performance) from bondage and restitution.²⁰¹

Bondage is a form deprivation that is not the same as poor work conditions.²⁰² Scott was returned to slavery because he was Black.²⁰³ He was seen as a slave in the North bound to slavery by his master.²⁰⁴ Even nonpaying exacerbated jobs are not slavery.²⁰⁵ The “workforce is attractive to” blue collar workers and professionals, like doctors and priests, “but it accepts that an insufficient number of” participants, like “graduates are being attracted to the workforce, and that there is a vulnerability in relying so heavily on...continuing to join the...workforce in these

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ See *Sanford*, 60 U.S. 393. *Civil Rights*, 109 U.S. 3.

²⁰⁰ See *Sanford*, 60 U.S. 393. *Civil Rights*, 109 U.S. 3.

²⁰¹ *Civil Rights*, 109 U.S. 3.

²⁰² U.S. CONST. am. V.

²⁰³ *Sanford*, 60 U.S. 393.

²⁰⁴ *Id.*

²⁰⁵ *Id.*

numbers. Additionally, the data shows that” stable family members “leave the...workforce at a higher rate than” unstable attractive people, like “graduates, so there is an existing instability.”²⁰⁶ These jobs are binding ineffectively.²⁰⁷

“There are opportunities to be more efficient and more effective in all the business units and all the functions that support them,” said Ford spokesman T.R. Reid to Consumer News and Business Channel (CNBC).²⁰⁸ One way is by working with remedy-providing institutions, like courts, law enforcement, leadership programs, and another way is by supporting channels for remedies propagating informal means.²⁰⁹ The remedies are owed to the deprived, victims of slavery, or the seemingly enslaved perhaps from the first moment that they alleged and maintained the

²⁰⁶ Cara Docherty, [General Medical Council (GMC)] Workforce Report 2022: Recruitment and Retention, Supporting Doctors to Reach Their Full Potential and Improving Morale, BTO Solicitors, LLP (Oct. 21, 2022), <https://www.bto.co.uk/blog/gmc-workforce-report-2022-recruitment-and-retention,-supporting-doctors-to-reach-their-full-potential-and-improving-morale.aspx>.

²⁰⁷ *Id.*

²⁰⁸ Michael Wayland, *Ford to Eliminate 3,000 Jobs in an Effort to Cut Costs*, CNBC (Aug. 22, 2022), <https://www.cnbc.com/2022/08/22/ford-to-cut-3000-jobs-primarily-in-north-america.html>.

²⁰⁹ *See Civil Rights*, 109 U.S. 3.

charges of slavery.²¹⁰ Remedies can be conditioned on understanding the 13th Amendment, but not include a claim directly under it.²¹¹ Business units would profit as capitalism rose because the 13th Amendment's values would be practiced.²¹² To exercise only wanted control may cause business to further morality and ethics.²¹³

Black slaves were controlled.²¹⁴ They could not have property, control their movement, stop working, or oppose enslavers using the system.²¹⁵ These problems come from poor ethics, not just racial divides that now affect some people of the same race and may be caused by a person of any racial background.²¹⁶ Enslavement could not be alleviated fairly because Blacks did not have access to courts, police, or social

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² *Id.*

²¹³ *Id.*

²¹⁴ Abraham Lincoln freed slaves using the *Emancipation Proclamation*. National Archives, "Transcript of the Proclamation," January 1, 1863, <https://www.archives.gov/exhibits/featured-documents/emancipation-proclamation/transcript.html>. Susan Mchugh, [Omitted]: *Personal Criticism, Feminist Theory, and Dog-writing*, 27 HYPATIA 616 (2012).

²¹⁵ *See Civil Rights*, 109 U.S. 3.

²¹⁶ *Civil Rights*, 109 U.S. 3.

workers.²¹⁷ They could not receive the benefit of a bargain.²¹⁸ They were unable to control skills safely and could not trust others with their property.²¹⁹

Badges and incidents of slavery are prohibited under the 13th Amendment.²²⁰ A badge of slavery is like a sign that lawbreakers take to mean that they may mistreat the victim because of his or her historic relationship to slavery in the United States.²²¹ The most commonly sighted example comes from Blacks in the South prior to civil rights.²²²

Antagonists that imitate them perpetuate loss of capitalist prosperity.²²³ For example, people who do not deserve welfare or falsely call for class warfare may be causing pain to Americans, for example by disrespecting students about being underprivileged when the appropriators are not actually disadvantaged.²²⁴ People in a suspect class who are

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ *See id.*

²²⁰ *Civil Rights*, 109 U.S. 3.

²²¹ *Id.*

²²² *Id.*

²²³ *Id.*

²²⁴ U.S. CONST. am. XIII.

labeled by badges of slavery, perhaps by an incident or culture of suppressive imitation, may find relief individually or on a case-by-case basis, but as a rule citizenship overcomes the self-label of enslavement.²²⁵ The prohibition stands because the reasoning in this Article shows that no American people will not likely suffer from the effects of slavery as a whole despite the damage caused without capitalist values.²²⁶

If a cause of action is brought then facts must be proven and damages may be awarded, but the capitalist spirit will remain unhampered throughout for citizens.²²⁷ The general feeling that a person in America is likely to have upsetting encounters at any time, for example, with a bank asking excessive security questions, like those relating to racial indicators, marital arrangements, information about musical tastes, and privacy identifying areas, in exchange for basic service is not the same as a Black

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409 (1968). *City of Memphis v. Greene*, 451 U.S. 100 (1981). These cases were about upholding Congressional right to bar the badges and incidents of slavery. *Id.* Native Americans are also protected by the 13th Amendment. *See* note.

person being excluded from home ownership last century because of his or her race.²²⁸ Incidents during which banks rob and defraud through mortgage, insurance, interest, late fees, and other schemes that target specific protected or unprotected classes may not likely be badges or incidents of slavery, but similarly are prohibited.²²⁹ Although financial corruption is more pervasive than in the past and people report feeling targeted because of race, sex, age, and other identifiers, it is unlike a badge and incident of slavery, and more like second class treatment.²³⁰

B. Issue: Is an American a Slave in Private?

1. Rules: Due Process and the 13th Amendment

Related rules state that under the Fifth Amendment Americans cannot “be deprived of life, liberty, or

²²⁸ *Civil Rights*, 109 U.S. 3.

²²⁹ U.S. CONST. am. V. U.S. CONST. am. IVX. *See infra* note.

²³⁰ Peter Cregg, *How Can Banks Address the Rising Financial Crime Rate?*, FINTECH MAG. (Sep. 17, 2022), <https://fintechmagazine.com/banking/how-can-banks-address-the-rising-financial-crime-rate>.

property.”²³¹ In this Article, the Fifth Amendment prohibits women from being owned by men.²³² Analogous activity is prohibited.²³³ The 13th Amendment holds, “Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.”²³⁴ Section One of the 14th Amendment provides protection against state action similar to the Fifth Amendment’s protection against federal action: “nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”²³⁵ It may also protect women like it may protect men.²³⁶

Jane Roe sued because she needed to reverse the problem of pregnancy through abortion.²³⁷ Applying

²³¹ U.S. CONST. am. V. States cannot deprive people of substantive due process under the 14th Amendment.

²³² *Id.*

²³³ *Id.* U.S. CONST. am. XIV.

²³⁴ U.S. CONST. am. XIII.

²³⁵ U.S. CONST. am. IVX.

²³⁶ *Id.*

²³⁷ *Wade*, 410 U.S. 113.

for *certiorari*, the parties sought injunction of the obstacle in *Roe v. Wade*.²³⁸ The Court granted *cert*.²³⁹ At the hearing, those present knew that she had already delivered the child.²⁴⁰ The child was adopted before the hearing.²⁴¹

The *Sanford* case principle quoted *supra* applies to the argument in this Article because under substantive due process law, she had a right to choose whether to have sex.²⁴² She was not a slave.²⁴³ Yet, her right needed to be expanded so that she could complete here choice to have sex and not have a baby the next time.²⁴⁴ Due process, for example substantive due process that may be reviewed under intermediate scrutiny,²⁴⁵ is a

²³⁸ *Wade*, 410 U.S. 113.

²³⁹ U.S. CONST. am. I.

²⁴⁰ *Meyer v. Nebraska*, 262 U.S. 390 (1923).

²⁴¹ *Wade*, 410 U.S. 113.

²⁴² *Griswold v. Connecticut*, 381 U.S. 479 (1965).

²⁴³ First Amendment freedom of speech says, “Congress shall make no law...abridging the freedom of speech.” U.S. CONST. am. I.

²⁴⁴ *Wade*, 410 U.S. 113. *Roe* was capable of having the same problem, like her 1970 pregnancy, in the future, and other women are too. *Id.* U.S. CONST. am. XIV.

²⁴⁵ Three-levels of scrutiny could apply. *See e.g.*, *Wade*, 410 U.S. 113, 162. *See id.* (citing “Pp. 147-164” at Syllabus).

right she had despite the state creating an undue burden.²⁴⁶

2. Analysis: Historic Enslavement of Women by Men

Wade was not moot because the child had been born.²⁴⁷ This proves that her circumstances changed.²⁴⁸ Her destiny was not conscripted.²⁴⁹ Her unmarried and pregnant status could be considered by the government.²⁵⁰ Her circumstances may have correlated with patriarchy in her private life demonstrating a loss of power.²⁵¹ She did not experience ideal circumstances, but she and the Court could foresee her needs.²⁵² In the future, she retained her power to accept a marriage proposal and have a child even though it

²⁴⁶ *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), holding for an undue burden test. “Only where state regulation imposes an undue burden on a woman’s ability to make this decision does the power of the State reach into the heart of the liberty protected by the Due Process Clause.” *Id.* at 874. *See supra note. id.* at 871.

²⁴⁷ *Wade*, 410 U.S. 113.

²⁴⁸ *Id.*

²⁴⁹ *United States v. Virginia*, 518 U.S. 515 (1996). Virginia Military Institute (VMI) was an all-male school sued for female admission. *Id.*

²⁵⁰ *Wade*, 410 U.S. 113.

²⁵¹ *Id.*

²⁵² *Id.*

may have changed the status of her property, privacy, and child's life.²⁵³ The nations values hold that marrying under patriarchy would violate her rights, while also proving that she was not a slave.²⁵⁴ His patriarchy would violate her right differently than slavery.²⁵⁵

Women are controlled by some men.²⁵⁶ Some were historically forced unfairly to serve, prevented from moving, denied ownership and consent power, and lacked access to the justice system, especially against patriarchs, like badges and incidents of slavery.²⁵⁷ Yet distinct, because enslavement through marital bondage cannot be alleviated fairly because those women would not have access to courts, police, social workers, telephones, cars, use of the home, friends, employment, or any other means of escape or independence.²⁵⁸ Slave women cannot receive the benefit of any bargain, judgment, or commitment.²⁵⁹

²⁵³ *Id.*

²⁵⁴ *Id.*

²⁵⁵ *Id.*

²⁵⁶ *See id.*

²⁵⁷ *See Civil Rights*, 109 U.S. 3.

²⁵⁸ *Wade*, 410 U.S. 113.

²⁵⁹ *Id.*

Unlike American women, generally, they would be unable to control their homelives safely or trust others with their children.²⁶⁰ Patriarchal control is not the same as slavery because patriarchy is a form of habitual mistreatment.²⁶¹ It is not a total denial of or control over all rights amounting to slavery or the historic purpose of slavery.²⁶²

Privacy and homelife developed as a result of women.²⁶³ Americans have relied on moral and ethical complements, like women's liberation and freedom of choice, to further the Protestant work ethic, which centers around the same moral values for men and women.²⁶⁴ Perhaps destructive patriarchy that cannot be relieved under substantive due process' privacy laws may be considered to be enslavement of American women.²⁶⁵ However, in America, some answers may be women's liberation and a remedy of restitution relating to damages caused by his family.²⁶⁶

²⁶⁰ *Id.*

²⁶¹ *Id.*

²⁶² *Id.*

²⁶³ *See id.*

²⁶⁴ *Wade*, 410 U.S. 113.

²⁶⁵ U.S. CONST. am. XIII.

²⁶⁶ *See Wade*, 410 U.S. 113.

While patriarchy deprives women of all benefits, it does not enslave in America.²⁶⁷ It unethically allows equal work for less pay and domestic engineering for no pay or pleasure from her husband, violations of private and public affairs.²⁶⁸

It also imposes total destruction of her will power by making private scenarios into an arena of violence.²⁶⁹ Interpersonal violence her may lower her chances of fixing her problem.²⁷⁰ Domestic violence damages her development, shakes her marital stability, and prevents her growth.²⁷¹ Patriarchy limits choice, but marriage is voluntary and therefore the general right granted through marriage opposes patriarchy but is unlike slavery, which is absolute, even though patriarchy against a wife may be instantaneous, scarring, or for the duration of the marriage.²⁷²

A hallmark of patriarchal marriage is a total denial of the historic role of women in the precedence of

²⁶⁷ *Id.* U.S. CONST. am. XIII.

²⁶⁸ U.S. CONST. am. V.

²⁶⁹ *Id.*

²⁷⁰ U.S. CONST. am. VI.

²⁷¹ U.S. CONST. am. IVX.

²⁷² U.S. CONST. am. V.

privacy rights shared by men.²⁷³ Privacy is the right to keep information from the government.²⁷⁴ Patriarchal men deny privacy to women. The *Wade* plaintiff did not suffer from this or slavery because she was unmarried and did not want to have a family.²⁷⁵ She was free because she was a citizen.²⁷⁶ She did not have to ask the Court for liberation in order to gain privacy rights.²⁷⁷ The Plaintiff was free to tell the government what she experienced without concern for her marital privacy under patriarchy.²⁷⁸ Neither had she been enslaved by a man posing as her husband, or lover, allowing the government to decide for her whether the man had been unethical.²⁷⁹ Though lawful matrimony would have saved her from any actual slavery, ergo the ritual, the Court recorded that she chose to avoid the deed possibly because she did not want to commit.²⁸⁰ The Court did not determine that she had or had alleged

²⁷³ U.S. CONST. am. IVX.

²⁷⁴ *Wade*, 410 U.S. 113.

²⁷⁵ *Id.*

²⁷⁶ *Id.*

²⁷⁷ *Id.*

²⁷⁸ *Id.*

²⁷⁹ *Id.*

²⁸⁰ Man's survival rests on women's function. *Wade*, 410 U.S. 113.

having suffered from the badges and incidents of slavery, like absolute loss of ethical treatment including privacy and the right to ask for an examination of the right of women to address the Court in private matters.²⁸¹

A badge of slavey is like a citizen wanting capitalism, but being deprived and possessing the need to pursue happiness, but lacking freedom and being restricted by past slavery anyway.²⁸² A badge of slavery illegally imposes a duty to fight more than others for the same right.²⁸³ “In recent years, American women have been nudging the men aside.... There's still a long way to go.”²⁸⁴ The remedies are owed to the victims of patriarchy and slavery, perhaps from the first moment that those wives and victims alleged slavery and maintained patriarchy.²⁸⁵ The expiration of remedies may not apply, like in *Wade* and when

²⁸¹ *Wade*, 410 U.S. 113. U.S. CONST. am. XIII.

²⁸² *Wade*, 410 U.S. 113.

²⁸³ *See id.*

²⁸⁴ Joanne A. Fishman, *Women's Role in Sailing: Equality Is a Long Way Off*, THE NEW YORK TIMES, Apr. 2, 1978, S, 11, <https://www.nytimes.com/1978/04/02/archives/womens-role-in-sailing-equality-is-a-long-way-off-womens-sailing.html>.

²⁸⁵ *Wade*, 410 U.S. 113.

stipulated in other similar cases, for example because the slave was led, convinced, or forced to believe that the marital bondage would last a lifetime or was merely patriarchy and vice versa.²⁸⁶

III. CONCLUSION

In conclusion, Americans possess a capitalist spirit that prevents them from being enslaved and promotes the American way of life.²⁸⁷ They have the law and their shared principles to help them through suppression, hurt, and confusion.²⁸⁸ Even though many Americans feel helpless and poor, they retain qualities that save them.²⁸⁹ Citizenship is a safety barrier under them that will allow them to rise.²⁹⁰

Americans' shared spirit proves that they are owed remedies and a better tomorrow.²⁹¹ While some may feel like slaves to problems and due to the hurt caused

²⁸⁶ For example, a plaintiff did not sue because she thought socially that she was a slave. *E.g. Wade*, 410 U.S. 113.

²⁸⁷ *Supra* Section I.

²⁸⁸ U.S. CONST. am. XIII.

²⁸⁹ *Supra* Section I.

²⁹⁰ *Id.*

²⁹¹ *Id.*

by certain people, generally and as a group, Americans cannot find a remedy for their problems, like poverty and gendered rejection, under the 13th Amendment.²⁹² Consideration of individual claims should continue.²⁹³ The question of whether present day circumstances can be compared to historic circumstances amounting to slavery and badges and incidents of slavery has been answered.²⁹⁴ No, poor work conditions, including those of unrewarded and physically abused domestic engineers, are not tantamount to slavery under the 13th Amendment.²⁹⁵ Yet, careful attention must be paid to groups claiming violations.²⁹⁶ Individual claims may survive, and possibly other remedies like divorce, may prove there is no pattern amounting to slavery.²⁹⁷

Americans must continue to pursue happiness and riches.²⁹⁸ Americans should continue resisting new aggressive stances against the way of life based on freedom, religion, fairness, and family values, and

²⁹² U.S. CONST. am. XIII. *Supra* Sections I and II.

²⁹³ U.S. CONST. am. V.

²⁹⁴ *Id.* U.S. CONST. am. XIII.

²⁹⁵ U.S. CONST. am. XIII.

²⁹⁶ *Supra* Section I.

²⁹⁷ *Id.*

²⁹⁸ *Supra* Section I.

should continue pushing out aggressors who trespass into Americans' lives.²⁹⁹ This may contribute to the cultivation of resistance to enslaving forces that cause groups, such as Americans, to feel that they are enslaved.³⁰⁰ Adopting polite business mentalities may open potential.³⁰¹ Americans may pose existential propositions, like inquiring about whether others possess enough opportunities to follow the commands of a good mentor; whether a person is presently receiving signs and guides; and the extent to which a person may enjoy one's work or the asker's work.³⁰²

Capitalism bears a relationship to the Protestant work ethic in leadership and education that demonstrates willingness to work, be moral, and achieve wealth.³⁰³ Tolerant business demeanor will lead to improved circumstances.³⁰⁴ Additionally, polite questions among trusted patriots avoiding inquiries about sex, race, financial failure, and lethargic family

²⁹⁹ *Id.*

³⁰⁰ *Id.* U.S. CONST. am. V.

³⁰¹ U.S.C.G., Conversation Guide (2023).

³⁰² *Id.*

³⁰³ *Supra* Sections I and II.

³⁰⁴ U.S.C.G., Conversation Guide (2023).

background include the following: What are the central rules in a patriotic emotional framework, for example “life, liberty, and property” ownership,³⁰⁵ or perhaps candor, positivity, and recordkeeping?; What comes easily to an American, or rather generally, someone who shares your values?; Where can others share by growing joy, such as supporting through challenges and joining in culture?; and How can those learning from an average Protestant follow the example?³⁰⁶ Mentorship between Americans may be able to transmit positive attitudes, confidence, legacy building skills, respect for the government, ecofriendly values, drug-free demands, moderation, and healthy attitudes toward responsible censorship, and help other common ways of proving Americanism.³⁰⁷ These attributes are effective wealth retainers and likely to build wealth.³⁰⁸

³⁰⁵ U.S. CONST. am. V. U.S. CONST. am. XIV.

³⁰⁶ *Id.*

³⁰⁷ *Id.*

³⁰⁸ *Id.* U.S. CONST. am. IV. Amber Tamblyn, *Beyond a Reasonable Doubt* (2009).

TENDENCIES IN THE DEVELOPMENT OF LEGISLATIVE SUPPORT IN THE SPHERE OF MENTAL HEALTH OF THE POPULATION IN UKRAINE AND SPAIN

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I. INTRODUCTION

Improving guarantees for the rights of citizens in the field of mental health is one of the most important indicators of state policy in ensuring human rights

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and freedoms. The sphere of mental health has as its subject a system of institutional, organizational, and legal means aimed primarily at ensuring the rights of citizens who, due to mental health, constitute a socially vulnerable part of the population. After all, depending on the nature of mental disorders, the behavior of persons suffering from such diseases may have risks both for themselves and for others. At the same time, functional restrictions, also associated with the recognition of shortcomings in the legal capacity of such persons, always contain risks of violation of their rights. Therefore, in the context of a system of universally recognized standards of human rights and freedoms, this area requires special legal regulation that comprehensively takes into account the mental health, social and legal, status of such persons. At the same time, the state of legislation in this area is a marker of the inclusiveness of state policy on the approval of the principles and conditions of life, in which the honor and dignity of a person are not only declared as social values, but through the instrumental provision of the

inalienable rights of persons whose social vulnerability is due to mental disorders, strengthening civilizational foundations for organizing social life on the basis of freedom, equality and justice. Therefore, the question of the tendency in the development of legislative support for the sphere of mental health in the context of the experience of individual countries, in particular Ukraine and Spain, is relevant, including taking into account the modern challenges of ensuring peace and development stability in the European region.

II. INTERNATIONAL LEGAL STANDARDS FOR ENSURING THE SPHERE OF MENTAL HEALTH OF THE POPULATION

General standards in the field of human rights and freedoms define universal international acts, among which the Universal Declaration of Human Rights is of fundamental importance.² It enshrined the right of every person to such a standard of living, including food, clothing, housing, medical care, and

² Universal Declaration of Human Rights, United Nations (1948).

the necessary social services needed for the health and well-being of person and his or her family.³ Although the Universal Declaration of Human Rights is not in itself a legally binding document, it establishes a fundamental set of human rights, which includes the right to an adequate standard of living, like, among other things, medical care and necessary social services, as well as the right to security in the event of unemployment, illness, and disability.⁴ This applies, in particular, to mental health, which requires the creation of appropriate conditions for the functioning of the mental health care system so that people can fully exercise their rights. The International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, and their protocols to a certain extent specified the relevant provisions of the Declaration.⁵ In particular, part one of Article 12 of the International Covenant on Economic, Social, and

³ *Id.*

⁴ *Id.*

⁵ *Id.* International Covenant on Civil and Political Rights (1966). International Covenant on Economic, Social and Cultural Rights (1966).

Cultural Rights imposes obligations on Member States to recognize the right of every person to the highest attainable standard of physical and mental health.⁶

The Convention on the Rights of Persons with Disabilities establishes special guarantees of rights and freedoms specifically for persons with mental and behavioral disorders.⁷ Article 1 defines persons with disabilities as those with long-term physical, mental, intellectual, or sensory impairments that, in interaction with various barriers, may prevent their full and effective participation in society on an equal basis with others.⁸ The Convention, in particular, declares the principles: respect for the characteristics of persons with disabilities and their acceptance as a component of human diversity and part of humanity,

⁶ International Covenant on Economic, Social and Cultural Rights (1966).

⁷ Convention on the Rights of Persons with Disabilities, United Nations (UN) General Assembly (2006), <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/convention-on-the-rights-of-persons-with-disabilities-2.html>. Convention on the Rights of Persons with Disabilities, Office of the High Commissioner for Human Rights (2006), available at <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities>.

⁸ *Id.*

respect for the abilities of children with developing disabilities, and respect for the right of children with disabilities to preserve their individuality.⁹

Relevant advisory documents adopted by the United Nations (UN) General Assembly are also of universal importance in terms of setting standards in this sphere. One of the first is the Declaration on the Rights of Mentally Retarded Persons, proclaimed by General Assembly Resolution 2856 (XXVI).¹⁰ Its purpose is to serve as a common basis and guide for the protection of these rights.¹¹ It determines that a mentally retarded person has, to the maximum extent possible, the same rights as other people,¹² the right to adequate medical care and treatment, as well as the right to education, training, rehabilitation, and protection, which will allow him or her to develop his or her abilities and maximum opportunities,¹³ the right to material security and to a satisfactory

⁹ *Id.*

¹⁰ Declaration on the Rights of Mentally Retarded Persons, General Assembly Resolution 2856 (XXVI) (1971).

¹¹ *Id.*

¹² *Id.* at paragraph one.

¹³ *Id.* at paragraph two.

standard of living,¹⁴ the right to stay with his or her family as far as possible,¹⁵ or with a qualified guardian,¹⁶ and the right to protection from exploitation, torture, and inhuman and degrading treatment or punishment.¹⁷ The Principles for the Protection of Persons with Mental Illness and the Promotion of Mental Health, approved by the UN General Assembly in resolution 46/119,¹⁸ contain a set of rules for the treatment of persons with mental or behavioral disorders, and also proclaim equality and the prohibition of discrimination against such persons (principles one, two), the right to live in society (principle three), and the right to privacy (principle six), and indicate a standard of procedure for the handling and treatment of persons with certain

¹⁴ *Id.* at paragraph three.

¹⁵ *Id.* at paragraph four.

¹⁶ *Id.* paragraph five.

¹⁷ *Id.* paragraph six.

¹⁸ Principles for the Protection of Persons with Mental Illness and the Promotion of Mental Health, UN General Assembly, Resolution 46/119 (1991). “Principles for the protection of persons with mental illness and the improvement of mental health care,” Office of the High Commissioner for Human Rights (1991), <https://www.ohchr.org/en/instruments-mechanisms/instruments/principles-protection-persons-mental-illness-and-improvement>.

mental or behavioral disorders. The UN General Assembly Resolution A/RES/48/96 adopted the Standard Rules for the Equalization of Opportunities for People with Disabilities,¹⁹ which includes the prerequisites for equal participation, areas for the implementation of relevant participation tools, and control mechanisms. The Convention on the Rights of Persons with Disabilities, adopted within the framework of the UN General Assembly, subsequently became an international human rights treaty aimed at protecting the rights and dignity of people with disabilities.²⁰ It is obvious that all the principles and norms of value content proclaimed in international legal acts of a general nature find refraction and development in branch and special professional acts, standards, protocols, etc.

¹⁹ Standard Rules for the Equalization of Opportunities for People with Disabilities, UN General Assembly Resolution A/RES/48/96 (1993).

²⁰ Convention on the Rights of Persons with Disabilities, UN General Assembly (2006).

Thus, the World Health Organization (WHO)²¹ defines the basic principles for the organization of mental health services:

1. protection of human rights—avoiding any restrictions on rights, respecting the independence of the patient, and ensuring decent conditions and proper methods of treatment for everyone;
2. accessibility—the provision of psychiatric care to the patient at any time and in any area, including remote areas (rural areas);
3. comprehensiveness—the provision of psychiatric care in all forms and types in accordance with the real needs of the population;
4. continuity and consistency—the possibility of providing psychiatric care constantly, at any time in conditions of clear consistency and coordination between doctors of all specialties;
5. effectiveness—the effectiveness of psychiatric care based on the application of the latest achievements of science and scientific validity;
6. equality—providing adequate psychiatric care to all who need it and without any restrictions; and
7. economic efficiency—the maximum effectiveness of financial and other material resources allocated to mental health services.

²¹ H. HERRMAN, SH. SAXENA, & R. MOODIE (EDITORS), PROMOTING MENTAL HEALTH: CONCEPTS, EMERGING EVIDENCE, PRACTICE (2005).

Nevertheless, the models of organization of mental health care services in different countries have their own, due to many factors, features. The Ukrainian mental health system is still based on elements of the structure of the Soviet health care system, many of which require revision. As guidelines for solving problems in the field of mental health, the government of Ukraine relies on the positive experience of certain foreign countries, including the achievements in this area of Spain.

These principles, problems and main priorities in the field of mental health—a comprehensive system for the prevention, diagnosis, treatment, and rehabilitation of mental disorders²²—allow us to identify the main tasks for improving the mechanism of psychiatric care:

improvement of methods for the prevention of mental disorders, development and implementation of counseling assistance, and training

²² V. Lashkul & I. Bibyk, *Analysis of the Legal Framework Governing the Work of Mental Health Services Ukraine*, 2 BUL. SOC. HYGIENE & HEALTH PROTECTION ORG. UKRAINE 4 (2017).

programs for the population on mental health and suicide prevention;

improvement of methods for diagnosing and treating mental disorders, and the introduction of team forms of work in a psychiatric hospital, day hospital, and neuropsychiatric dispensary; and

socialization of patients with severe mental disorders after intensive inpatient treatment.

Obviously, issues of medicine should be submitted in connection with the above-mentioned problem of legislation.

Observing the principles of providing medical care for mental and behavioral disorders, the following conditions must be met:

1. **Accessibility**—the provision of medical care to patients with mental and behavioral disorders should be carried out at the primary level. That is to say, at the request of the patient, mental health care should be provided by a general practitioner/family doctor.
2. **Continuity**—continuous access not only to medical care, but also assistance in social and professional adaptation, solving psychological problems for patients who need it.

3. A full range of services—not only the provision of medical care, assertive therapy, but also sanatorium-resort treatment, support and intervention in times of crisis, the solution of social problems related to housing, employment, the provision of emergency assistance by special services that must work around the clock.
4. Adaptability—health services should provide services according to the needs of patients.
5. Efficiency—the development of services for patients with mental and behavioral disorders must be effective, i.e. guided by the principles of evidence-based medicine.
6. Emphasis on rehabilitation—that is to say, after successful treatment with medications or against this background, it is necessary to introduce active rehabilitation. The introduction of new generations of antipsychotics with lower side effects on the pharmaceutical market improves the rehabilitation process.
7. Help from relatives—the participation of family, guardians, friends in the process of rehabilitation, social and professional adaptation of patients.
8. Prevention—conducting explanatory and training sessions in all educational institutions of the country, at large enterprises. If possible, eliminate and prevent risk factors.
9. Justice—that is to say, all segments of the population, regardless of their social status, place of residence, nationality, should receive the same medical care, rehabilitation, social and professional assistance.

III. THE MAIN TENDENCIES IN THE DEVELOPMENT OF LEGISLATIVE SUPPORT IN THE FIELD OF MENTAL HEALTH OF THE POPULATION IN SPAIN

Article 43 of the Spanish Constitution recognizes the right to health care.²³ It is noteworthy that the Spanish Constitution separates which issues in the health sector the state is responsible for, and in which it contributes to their solution. It says that public authorities are responsible for organizing public health through preventive measures and necessary benefits and services. However, public authorities promote health education, physical education and sports, and encourage proper leisure activities.

Spain has a public health system. Publicly funded health care is funded by revenue generated from state, provincial, and municipal taxes. Thus, the Spanish state grants its people the right to health care,

²³ Article 43 of Constitution of Spain (1978). *See* World Health Organization, “Spain: Assessing Health System Capacity to Manage Sudden Large Influxes of Migrants” (2018), available at https://cdn.who.int/media/docs/default-source/documents/publications/spain-assessing-health-system-capacity-influx-of-migrants0fc727bc-4ae1-4c24-9759-804672c202ec.pdf?sfvrsn=636e69cd_1&download=true.

relying mainly on the public sector, just over 70%, which ensures the universalization of the national health service: every citizen of Spain is guaranteed health care, since the costs are mainly covered by the state. At the same time, health care financing in Spain remains decentralized. Regional authorities independently decide the procedure for spending funds allocated from the state budget, due to the fact that they are entrusted with the functions of providing medical care. The remainder, about 30%, is privately funded through “voluntary” payments.²⁴

In Spain, as a result of the adoption of the General Law on Health,²⁵ the national health system (NHS) is decentralized, therefore, powers in health matters are transferred to 17 autonomous communities (Comunidades Autonomas, CCAA), as well as the competence of the cities, autonomous

²⁴ Ministry of Health, Social Services and Equality, National Health System of Spain (2012). *See* Ministry of Health, Social Services and Equality, Mental Health Strategy of the Spanish National Health System 2009-2013 (2013).

²⁵ General Law on Health (1985). *See* Criminal Procedure Code of Ukraine, No. 4651-VI (2012). *See*, Proposal for the General Mental Health Law № 122/000158, Official Gazette of the Cortes Generales, 185-1, 1-20 (2021).

Ceuta and Melilla. The National Health Service is set up as a coordinated set of health care services from the central government administration and the CCAA that brings together all the health care functions and benefits for which government agencies are legally responsible. The General Healthcare Act²⁶ establishes coordinating mechanisms such as an inter-territorial council and recognizes the role of the National Health Service in setting goals or common minimum tasks in the field of promotion, prevention, protection, and health, as well as the general establishment of minimum, basic and general evaluation criteria of effectiveness and efficiency of programs, health centers, and services.²⁷ The National Health Strategy²⁸ was approved in a consensual manner by all the CCAAs, and a common framework was established for the improvement of mental health care and for the advances in the implementation of the community

²⁶ General Healthcare Act (1985).

²⁷ World Health Organization (2018).

²⁸ National Health Strategy (2006).

mental health care model in an equitable way in the country.

As Holder et al. point out, the Spanish mental health system is composed of a specialized and integrative network that supports primary care, and which is made up of salaried professionals and residential and intermediate centers in the community, where there are multidisciplinary clinical teams that provide services.²⁹ In primary care, it is general practitioners who care for patients, establishing treatment or referring them to a specialized network. In recent years, some elements such as person-centered care, population-based improvements, user experience, and a look at the costs and care of the professional have been added to this model of community mental health. Progress has also been made in the development of assessment models, although a future national mental health

²⁹ S.M. Holder, E.R. Peterson, & R. Stephens, et al., *Stigma in Mental Health at the Macro and Micro Levels: Implications for Mental Health Consumers and Professionals*, 55 COMMUNITY MENTAL HEALTH J. 369 (2019).

strategy should incorporate the participation of patients and their families.

Studying the work of the Spanish researcher Onésimo González Álvarez,³⁰ we can highlight the following fundamental provisions of the legal regulation of mental health care in Spain:

1. the principle of non-discrimination and inclusive legislation, according to which a psychiatric patient is treated as a citizen who has only a peculiar type of illness and in a legal sense is no different from other patients, except for the type of medical care he needs;
2. in development of the above principles, Spanish law does not have a specific law on psychiatric patients; and the official doctrine in the field of law and psychiatry considers the very existence of such a law to be discrimination, and ultimately, a source of stigma. At the same time, in the professional circles of lawyers and psychiatrists, this state of affairs is not considered absolutely correct, and this issue causes a lot of discussion. Their content will be discussed below; and
3. the current legal framework in Spain in relation to psychiatric patients is advanced and destigmatizing, however, law enforcement practice does not always comply with legal

³⁰ O. Álvarez, *Mental Illness, Stigma and Legislation*, 29 REV. ASOC. ESP. NEUROPSIQ 471 (2009).

norms, and encounters resistance from a number of subjects, including medical professionals, psychiatric patients themselves, judicial and prosecutorial officials, etc. It should also be noted that the compulsory public health insurance in Spain does not cover the treatment of mental illness.

A number of Spanish researchers in their writings testify to problems in the implementation of the rights of psychiatric patients both at the level of legislation and law enforcement practice. Thus, according to Blanca Morera,³¹ one of the problems in realizing the rights of psychiatric patients is finding a difficult balance between respecting the autonomy of patients and preventing the rejection of those patients who cannot receive the necessary help and are doomed to worsen, not always satisfy or alleviate by social, medical, and judicial structures, since the Convention on the Rights of Persons with Disabilities requires the limitation of coercive

³¹ B. Morera, *Problemas Médicos y Jurídicos en el Seguimiento Clínico-terapéutico del Trastorno Mental Grave*, TRASTORNO MENTAL GRAVE: PSIQUIATRÍA Y LEY 11 (2020), https://fepsm.org/files/publicaciones/2020-Trastorno_Mental_Grave__Psiquiatr%C3%ADa_y_Ley.pdf.

measures.³² In turn, Carlos Lledó³³ points out a number of problems in applying Spanish criminal and criminal procedure legislation to psychiatric patients. He lists the following as the main problems:

1. they are subjected to a criminal process for people without disabilities, without the slightest adaptation or support;
2. preventive measures are applied to them, even restricting freedom, of dubious constitutionality and having nothing to do with their pathology, legally excluding other possibilities with greater therapeutic effectiveness;
3. they are subjected to a trial that can hardly be called fair, in which they cannot properly carry out their defense;
4. their danger is assumed in connection with their mental illness and an act already committed, qualified as a crime, for which, however, they do not consider themselves responsible;
5. a legal consequence is imposed on them, restricting rights, even restricting freedom, even if it is called not a fine, but rather a measure of restraint;
6. such a consequence in its intensity and duration is commensurate with the fact for which he or

³² Convention on the Rights of Persons with Disabilities, UN (2006).

³³ C. Lledó, *Trastorno Mental Grave y Procedimiento Penal*, TRASTORNO MENTAL GRAVE: PSIQUIATRÍA Y LEY, 53 (2020), https://feppsm.org/files/publicaciones/2020-Trastorno_Mental_Grave__Psiquiatr%C3%ADa_y_Ley.pdf.

- she are not responsible, but has nothing to do with the biography and pathology of the subject and is not even directly related to his or her possible danger;
7. this legal consequence ends within the time limit set by the verdict, regardless of their personal situation, the state of their pathology and the possible residual danger, sending the answer from that moment to the civil sphere, which, apparently, cannot now take care of such danger; and
 8. even legally, no treatment is imposed, even if it may be encouraged by criminal or penitentiary benefits.

Now in the public, medical, political, and legal circles of Spain, the issue of passing a special law on mental health care is being seriously discussed. So, according to Elena Cabrera in 2020, a number of problems of the modern psychiatric system in Spain are pushing for the adoption of this law, including: compulsory psychiatric treatment, low level of access to psychiatric care, professionalization of psychiatric diseases, and insufficient level of suicide control. Characteristically, the position criticizes the bill itself for research weakness. The Spanish Society of Psychiatry expressed its opposition to the

Psychiatric Health Bill in 2021 for a number of reasons, including:

pharmacotherapy of psychiatric diseases, as indicated in the draft, must agree with the bar association, which, in the opinion of society, violates the principle of autonomy of the patient's personality and does not meet international clinical standards;

according to society, the draft law increases the stigmatization of mentally ill people, as it calls for treating them differently from other patients, that is to say, the principle of equality is violated; experts also disagree with the conceptual approach of the legislator, based on social preconditions and sources of psychiatric diseases, like poverty, social oppression, repressions of employers, and other social problems—however, according to experts, social disadvantage is not the main cause of psychiatric diseases, as evidenced by official statistics, according to which mortality due to psychiatric diseases in the most developed countries is several times higher than in countries with less developed economies;

the community of psychiatrists also criticizes the terminology of the draft law under consideration, including the

definition of suicide proposed by the draft, which, contrary to the interpretation in the draft, cannot be a voluntary act, according to society.

In general, talking about the reform of the psychiatric service in Spain, we are talking about the organizational structure of psychiatric care with a system of dispensary observation that contributes to the unity of the biopsychosocial, polyprofessional approach at all stages of its provision, in the presence, in addition to hospitals, of a number of organizational forms of care that are created in accordance with the variety of needs and requirements of patients, but without its excessive fragmentation and segmentation.³⁴ Its development is associated with a tendency towards integration with general medicine, multidisciplinary, and a further shift to out-of-hospital, less restrictive conditions without separation of patients from their usual social environment or directly in the community, which will more facilitate their

³⁴ “Mental Health Care Lost in the Wilds of Reform,” *Your Health* (2017), <http://www.vz.kiev.ua/ohorona-psychnogo-zdorov-ya-zagubylasya-v-netryah-reformy/>.

autonomy and independent living. It is also important to keep in mind the need to develop links directly related to protection of mental health care.

IV. THE MAIN TENDENCIES IN THE DEVELOPMENT OF LEGISLATIVE SUPPORT IN THE FIELD OF MENTAL HEALTH OF THE POPULATION IN UKRAINE

According to the Constitution of Ukraine,³⁵ a person, his or her life and health, honor and dignity, inviolability, and security are recognized as the highest social value. The approval and enforcement of rights is determined by the main duty of the state.³⁶ In this regard, Article 49 of the Basic Law of Ukraine establishes the right of everyone to health care, medical care, and medical insurance, as well as state funding of relevant socio-economic, health, and preventive programs. The basic legislative act in the field of health care is the Fundamentals of

³⁵ Constitution of Ukraine, No. 254к/96-BP (1996).

³⁶ *Id.* at Article Three.

Legislation in the Field of Health Care.³⁷ The Law of Ukraine "On Psychiatric Care" plays a key role in regulating public relations in the relevant sphere in Ukraine.³⁸

As Mykahailo Anishchenko, et al. indicated, in Ukraine, the normative support in the field of psychiatric care is quite developed.³⁹ At the same time, mechanisms for the implementation of some laws and other legal acts relating to the protection of the rights of persons with mental disorders remain imperfect due to the incompleteness of a number of basic and interrelated reforms in the state, in particular, reforms in the field of decentralization, local self-government, and healthcare. At the same time, Ukraine is actively moving along the path of improving state policy in this area. Thus, the

³⁷ Fundamentals of Legislation in the Field of Health Care (1992). Fundamentals of Ukrainian legislation on healthcare, No. 2801-XII (1992).

³⁸ Law of Ukraine, "On Psychiatric Care," No. 1489-III (2000) <https://zakon.rada.gov.ua/laws/show/1489-14>.

³⁹ M. Anishchenko, L. Hamburh, O. Krasnokutskyi, V. Glazunov, & P. Davidov, *Legal Regulation of Providing Psychiatric Care in Ukraine: Problems and Prospects*, 23 J. L. & SOC. DEVIANCE 77 (2022), <http://www.lsd-journal.net/archives/Volume23/UkrainePsychiatricCare.pdf>.

Government approved and is currently implementing the National Action Plan for the implementation of the Convention on the Rights of Persons with Disabilities for the period until 2025, approved by the Cabinet of Ministers of Ukraine No. 285-r, and the State Policy Strategy on Healthy and Active Longevity of the Population for the period up to 2022, approved by the Order of the Cabinet of Ministers of Ukraine No. 10-r.⁴⁰

The statistical information contained in the Concept for the development of mental health care in Ukraine for the period up to 2030, approved by the Order of the Cabinet of Ministers of Ukraine,⁴¹ indicates that as of January 1, 2017, 1,673,328

⁴⁰ Cabinet of Ministers of Ukraine, National Action Plan, "On approval of the National Action Plan for the Implementation of the Convention on the Rights of Persons with Disabilities for the Period Until 2025," No. 285-r, Convention on the Rights of Persons with Disabilities, 2025 (2021); State Policy Strategy on Healthy and Active Longevity of the Population, 2022, Order of the Cabinet of Ministers of Ukraine No. 10-r (2018). Order of the Cabinet of Ministers of Ukraine, "On the approval of the State Policy Strategy on Healthy and Active Longevity of the Population for the Period Until 2022," No. 10-p (2018).

⁴¹ Decree of the Cabinet of Ministers of Ukraine, No. 1018-p. (2017). Concept for the Development of Mental Health Care in Ukraine for the Period up to 2030, <http://zakon2.rada.gov.ua/laws/show/1018-2017-%D1%80>.

residents of Ukraine were registered in connection with mental and behavioral disorders, about four percent of the population, and in general, WHO⁴² estimates that about 8 million people with mental disorders live in Ukraine (about 20% of the population). According to the Ukrainian Helsinki Human Rights Union,⁴³ the most vulnerable group remained incapacitated persons and persons whose legal capacity was restricted by a court order. At the same time, almost nine percent of people with mental health disorders were not identified with a disability, so they did not have access to an appropriate level of services. It was necessary to activate guardianship authorities in ensuring access of incapacitated persons to services related to disability. Many incapacitated persons and persons with limited civil capacity were appointed guardians and custodians, of

⁴² World Health Organization (WHO) Ukraine, "Today is World Mental Health Day!" Official Facebook Page of the World Health Organization Ukraine (2020), <https://www.facebook.com/WHOUkraine/posts/3356133217836679> (Accessed August 10, 2022).

⁴³ V. Lebed & B. Moisa, Rights of Persons with Mental Health Problems, Official Site of the Ukrainian Helsinki Human Rights Union (2017), <https://helsinki.org.ua/prava-osib-iz-problemamy-psychnoho-zdorov-ya-2017/>.

which 95.5% are related to the wards. The rest, for whom guardians and custodians were not appointed, were assigned guardianship by social protection institutions in the sphere of administration of the Ministry of Social Policy of Ukraine.

Therefore, in 2017, the Verkhovna Rada of Ukraine adopted a number of important bills called to improve the situation with ensuring the rights of people with mental health disorders.⁴⁴ Most legislative innovations are aimed at expanding the rights of incapacitated persons, changing the procedure for depriving a person of legal capacity, the mechanisms for involuntary hospitalization and compulsory examination of persons with mental disorders, as well as changing the criminal procedural legislation governing the use of compulsory medical measures. The amendments made to the Civil Procedure Code of Ukraine are intended to improve access to justice for this category of citizens.⁴⁵ Article 300 of Civil Procedure

⁴⁴ Verkhovna Rada of Ukraine (2014, 2016-2017).

⁴⁵ Civil Procedure Code of Ukraine (2004).

Code of Ukraine, has determined that an application for reconsideration of a decision on declaring a person incapacitated can be filed by this person himself or herself.⁴⁶ According to part six of Article 300 of the Civil Procedure Code of Ukraine, the decision to restrict civil capacity or deprivation of legal capacity is now limited to two years, which provides additional protection for the legitimate interests of incapacitated or partially incapacitated persons.⁴⁷ However, these changes cannot be considered complete, since the legislator has not made appropriate changes to Article 42 of the Civil Code of Ukraine, which also regulates the procedure for the renewal of legal capacity.⁴⁸ It turns out that there is a conflict in the legislation because the Civil Code of Ukraine states that the restoration of civil capacity occurs only at the request of the guardian or guardianship authority.⁴⁹

⁴⁶ Article 300, Civil Procedure Code of Ukraine (2004).

⁴⁷ Article 300, part six, Civil Procedure Code (2004).

⁴⁸ Article 42, Civil Code of Ukraine (2004).

⁴⁹ Civil Code of Ukraine (2003). *See also* Civil Code of Ukraine No. 435-IV (2003) and Civil Procedure Code of Ukraine No. 1618-IV (2004).

The provisions of Article 299 of the Civil Procedure Code of Ukraine⁵⁰ on the participation of a person in respect of whom a decision is made to recognize him or her as incapacitated or limit his or her legal capacity, in court, seem to be positive.⁵¹ It is possible to participate via videoconference if a person is in a psychiatric institution. The participation of a person in a court session hearing his or her opinion is one of the fundamental conditions for access to justice for people with mental health problems. However, the legislator decided that not in all matters relating to incapacitated persons and persons whose legal capacity is limited, their opinion is important. In particular, consideration of the opinion of a person is not provided for when considering cases on the appointment of a guardian or custodian. It should be noted that the Parliament of Ukraine is currently

⁵⁰ Article 299, Civil Procedure Code of Ukraine (2004).

⁵¹ Draft Law on Amendments to Certain Legislative Acts of Ukraine, On the regulation of legislation in the field of application of measures to a person in respect of whom the application of compulsory medical measures is envisaged or the issue of their application was decided, No. 1242 (2014).

considering a draft law⁵² aimed at strengthening the protection of the rights of persons declared legally incompetent by the court. The draft act proposes to amend the Civil Code of Ukraine and the Civil Procedure Code of Ukraine to grant persons recognized as legally incompetent the right to independently apply to the court for the dismissal of a guardian appointed by it and granting such a right to family members of legally incompetent persons.⁵³

At the same time, the intervention of the guardian in other areas of the life of an incapacitated person has been reduced, namely, the provision on the sterilization of incapacitated persons with the consent of the guardian has been excluded,⁵⁴ Article 49 of the Fundamentals of Ukrainian Legislation on

⁵² Draft Law on Amendments to the Civil Code of Ukraine and the Civil Procedure Code of Ukraine on Strengthening the Protection of the Rights of Persons Recognized by the Court as Incapacitated (2021),

http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=73512.

Draft Law on Amendments to Certain Legislative Acts of Ukraine on the Provision of Psychiatric Care No. 4449 (2016). Draft Law on Amendments to the Economic Procedure Code of Ukraine, the Civil Procedure Code of Ukraine, the Code of Administrative Procedure of Ukraine and other legislative acts No. 6232 (2017).

⁵³ *Id.*

⁵⁴ Article 281, Civil Code of Ukraine (2003).

Healthcare,⁵⁵ which was aimed to strengthen the protection of the rights of incapacitated persons. However, the risk of the guardian making decisions that may not necessarily be supported by an incapacitated person remains in accordance with Article 43 of the Fundamentals of Ukrainian Legislation on Healthcare,⁵⁶ according to which medical intervention in respect of an incapacitated person is carried out at the request of a guardian.

The issue of ensuring the right to protection of persons under guardianship also remains unresolved, since the law has not provided yet for independent obtaining of free legal assistance by such persons. According to part three of Article 18 of the Law of Ukraine “On free legal aid,”⁵⁷ such assistance can be provided solely on the basis of an application from a guardian or custodian. This provision significantly complicates or even makes it impossible for

⁵⁵ Article 49, Fundamentals of Ukrainian Legislation on Healthcare (1992).

⁵⁶ Article 43, Fundamentals of Ukrainian Legislation on Healthcare (1992).

⁵⁷ Part three, Article 18, Law of Ukraine "On free legal aid" (2011). Law of Ukraine “On Free Legal Aid” No. 3460-VI (2011).

incapacitated persons to access justice, in particular in matters of restoring civil capacity.

For a long time, one of the problems of Ukrainian legislation was discrimination against incapacitated persons in terms of depriving them of the right to appeal. According to Article Eight of the Law of Ukraine "On Citizens' Appeals"⁵⁸ appeals of incapacitated persons are not subject to consideration, such an appeal can only be filed by legal representatives. The Commissioner of the Verkhovna Rada of Ukraine for Human Rights⁵⁹ prepared an appropriate constitutional submission on the recognition of such provisions as unconstitutional.⁶⁰ According to the Decision of the

⁵⁸ Law of Ukraine "On Citizens' Appeals," No. 393/96-BP (1996), <https://zakon.rada.gov.ua/laws/show/393/96-%D0%B2%D1%80>. Decision of the Constitutional Court of Ukraine in the case based on the constitutional submission of the Human Rights Commissioner of the Verkhovna Rada of Ukraine regarding the compliance with the Constitution of Ukraine (constitutionality) of certain provisions of the second part of Article 8, the second sentence of the fourth part of Article 16 of the Law of Ukraine "On Appeals of Citizens" (case of appeals by persons recognized incapacitated by the court) No. 8/2018 (2018), available at <https://zakon.rada.gov.ua/laws/show/v008p710-18>.

⁵⁹ Commissioner of the Verkhovna Rada of Ukraine for Human Rights (2017).

⁶⁰ See Constitutional submission of the Commissioner of the Verkhovna Rada for Human Rights No. 1-2553 (2017).

Constitutional Court No. 8-r/2018,⁶¹ the provisions of the second part of Article Eight, which does not consider "the appeal of persons recognized by the court as incapacitated," was recognized as inconsistent with the Constitution of Ukraine, being unconstitutional, which was a significant step towards changing the legal paradigm in matters of ensuring the rights of incapacitated persons.⁶²

Amendments to the Law of Ukraine "On Psychiatric Care" revised the procedure for hospitalization of incapacitated persons. According to the decision of the Constitutional Court of Ukraine,⁶³ the procedure for hospitalization of an incapacitated person with the consent of the guardian was declared unconstitutional. Since then, the issue of hospitalization of an incapacitated person was decided on the basis of a court decision. In accordance with the amendments to Article 13 of the

⁶¹ Decision of the Constitutional Court, No. 8-r/2018 (2018).

⁶² *Id.*

⁶³ Decision of the Constitutional Court of Ukraine on Case, No. 1-1/2016 (2016), <http://zakon3.rada.gov.ua/laws/show/v002p710-16>.

Law of Ukraine “On Psychiatric Care,”⁶⁴ an incapacitated person may be hospitalized with his or her consent, or if it is impossible to obtain such consent, by decision of the guardianship authority, which is taken no later than 24 hours from the moment the legal representative applies to this authority of a said person and may be challenged in court. However, the establishment of control over the hospitalization of incapacitated persons seems to be more nominal than practical due to the low efficiency of guardianship authorities. Therefore, their decisions will be more as formal character, which is indirectly evidenced by the data on the number of incapacitated persons deprived of services related to disability. The Constitutional Court also undertook to solve this problem, which, by its Decision No. 13-r/2018,⁶⁵ recognized the norm that is inconsistent with the Constitution, that a person recognized in the

⁶⁴ See Decision of the Constitutional Court of Ukraine, Commissioner of the Verkhovna Rada of Ukraine on Human Rights, Constitution of Ukraine, sixth sentence, first part, Article 13, Law of Ukraine "On Psychiatric Assistance," No. 13-r/2018 (2018), <https://zakon.rada.gov.ua/laws/show/v013p710-18#n37>.

⁶⁵ *Id.*

manner prescribed by law as legally incompetent, who, due to his or her health, is not able to make a request or provide an informed written consent, is hospitalized in an institution for the provision of psychiatric care by decision (consent) of the guardianship authority.

The same Law⁶⁶ provides for the need to obtain the consent of a person with mental disorders in cases of providing mental health services, for example, to decide on the application of treatment, conducting a psychiatric examination, providing outpatient care, hospitalization in a psychiatric hospital, and placement in social protection institutions. If such a person is unable to make a request or provide informed written consent, then consent may be provided by the guardian, who in turn must inform the guardianship authorities.

In order to determine whether or not a person has a mental disorder (a mental disorder recognized as such in accordance with the International Statistical Classification of Diseases, Injuries and Causes of

⁶⁶ Law of Ukraine, “On Psychiatric Care” (2000).

Death), the need is to provide him or her with psychiatric care, as well as to resolve the issue of the type of such assistance and the procedure for it providing a psychiatric examination. In accordance with part four of Article Seven, part two of Article 11 of the Law of Ukraine “On Psychiatric Care”⁶⁷ in relation to a person subject to examination who has reached the age of 14, his or her informed written consent or request is required. Examination of a person under the age of 14 years (minor) requires such consent or a request from the parents or other legal representative. If a person recognized as incapacitated, due to his or her state of health, is not able to make a request or give informed consent, then this should be done by his or her legal representative.

In case of disagreement of one of the parents or in the absence of parents, a psychiatric examination of a person under the age of 14 years (a minor) is carried out by decision (consent) of the guardianship authority, which is accepted no later than 24 hours from the moment the other legal representative of the

⁶⁷ *Id.*

specified person applies to this authority and may be appealed in accordance with the law, including to court. The legal representative of a person recognized as incapacitated in accordance with the procedure established by law shall notify the guardianship authority at the place of residence of the ward of the granting of his consent to conduct a psychiatric examination of the ward not later than the day following the day of granting such consent. No court fee is charged for submitting an application for the provision of compulsory psychiatric assistance to a person.⁶⁸ The list of documents required to apply to the court includes:

1. An application for a psychiatric examination; provision of outpatient psychiatric care, its extension on a compulsory basis; hospitalization of a person in a psychiatric institution, its extension, which indicates the grounds for the provision of psychiatric care on a compulsory basis;
2. The conclusion of a psychiatrist, in the case of an application for a psychiatric examination or the provision of outpatient psychiatric care; and

⁶⁸ Law of Ukraine “On Court Fees,” No. 3674-VI (2011), <https://zakon.rada.gov.ua/laws/show/3674-17>.

3. The conclusion of the commission of psychiatrists, in the case of an application for the extension of outpatient psychiatric care, for involuntary hospitalization, its extension.

Persons to whom compulsory medical measures have been applied are in the amendments put into effect on June 10, 2018 to Article 19 of the Law of Ukraine “On Psychiatric Care”⁶⁹ and Article 95 of the Criminal Code of Ukraine.⁷⁰ Article 514 of the Criminal Procedure Code of Ukraine⁷¹ provides guarantees of access to alternative forensic psychiatric examination and the right to apply to the court to change or terminate the application of compulsory medical measures. In addition, now the administration of the institution in which the person is located must ensure an unimpeded possibility of examination of the person by an independent psychiatrist chosen by him or her on the territory of the institution for the provision of psychiatric care or penitentiary institution, respectively. Amendments

⁶⁹ Law of Ukraine, “On Psychiatric Care” (2000).

⁷⁰ Article 95 of the Criminal Code of Ukraine (2001). *See* Criminal Code of Ukraine No. 2341-III (2001).

⁷¹ Article 514 of the Criminal Procedure Code of Ukraine (2013).

have also been made to the Criminal Procedure Code of Ukraine: the procedural rights of persons with mental disorders in criminal proceedings are protected⁷² and the mandatory participation of a person against whom coercive medical measures are expected to be taken in a court session is guaranteed.⁷³

The tendency towards improving mental health services is conditioned due to the Concept for the Development of Mental Health for the Period up to 2030⁷⁴ approved by the Cabinet of Ministers of Ukraine. In order to solve problems in this area, the said Concept provides for the need to bring national legislation in line with the requirements of international human rights documents and implement programs to support the employment of persons with mental and intellectual disabilities, their social integration, education, involvement of patients and their families, as well as public organizations that protect the rights of patients, for the planning and

⁷² Article 506 of the Criminal Procedure Code of Ukraine.

⁷³ Article 512 of the Criminal Procedure Code of Ukraine (2013).

⁷⁴ Decree of the Cabinet of Ministers of Ukraine, No. 1018-p. (2017).

implementation of programs in the field of mental health, the introduction of an effective mechanism for monitoring the observance of human rights when providing assistance to people with mental health problems, and a mechanism for holding accountable for actions that have signs of discrimination based on mental health. The Concept also focuses on the need to counter stigma and overcome the social exclusion of persons with mental and intellectual disabilities by including such persons in social communities, supporting their residence at the level of the territorial community, social support during employment, and improving the system for providing rehabilitation and social services. Achieving such progressive goals is possible only if the directions of its implementation are filled with specific content and the necessary financial resources. At the same time, long-term solutions in the field of mental health must be coordinated with reforms in other areas, in particular with decentralization, in the course of the overall health care reform.

Mental health professionals are concerned about the lack of attention to this link in health care reform. Experts note that the reduction of beds in inpatient health care facilities that treat and rehabilitate people with mental disorders, without the development of its outpatient forms, will not contribute to effective services. In addition, serious challenges for people with mental health problems can arise when interacting with family doctors at the primary level, in particular, in protecting confidential information about the patient's mental health status.

The actions of the Ministry of Health of Ukraine on the development and “approval of new Rules for the application of compulsory medical measures in a special institution for the provision of psychiatric care”⁷⁵ deserve a positive assessment. The aforementioned legal act defines the rights and obligations of persons subject to compulsory medical measures, provides for the development of individual

⁷⁵ Order of the Ministry of Health of Ukraine, "On approval of the Rules for the application of compulsory medical measures in a special institution for the provision of psychiatric care," No. 992, (2017), <http://zakon2.rada.gov.ua/laws/show/z1408-17>.

plans for the social and psychological rehabilitation of patients, and regulates the social and living conditions for patients in institutions for the provision of psychiatric care. For 2021, the National Health Service of Ukraine (NHSU)⁷⁶ has concluded agreements with all institutions that meet the requirements and paid for the services provided in accordance with the signed agreement. Therefore, all patients in need of psychiatric care were able to receive it. On the basis of the psychiatric care package, the NHSU has entered into contracts with 198 medical institutions. To date, 114 multidisciplinary hospitals throughout the country provide psychiatric care under contract with the NHSU. Another 64 are single-profile psychiatric institutions, 20 are narcological institutions. In this

⁷⁶ National Health Service of Ukraine, “In 2021, under the program of medical guarantees, psychiatric care will also be provided by mobile multidisciplinary teams” (2020), <https://www.kmu.gov.ua/news/u-2021-roci-za-programoyu-medichnih-garantij-psihiatrichnu-dopomogu-nadavatimut-i-mobilni-multidisciplinarni-komandi>. National Health Service of Ukraine, “Psychiatric care: what will change in 2021. The introduction of the new care package by the mobile teams will bring mental health care closer to the patient, as they can receive it at home (2021), <https://nszu.gov.ua/novini/psihiatrichna-dopomoga-shcho-zminitsya-u-2021-roci-466>.

direction, since the beginning of April, medical institutions have received one billion 324 million UAH.⁷⁷

Psychiatric care in multidisciplinary establishments contributes to reducing the stigmatization of patients. People will be less embarrassed to go to such hospitals for help, they will not be forced to ride, for example, to the regional center, but will be able to go to the nearest multidisciplinary clinic. The transition from treating patients in single-profile hospitals to providing assistance in multidisciplinary medical institutions is not an innovation of the NHSU, but a world practice. In Ukraine, such a strategy is enshrined in the Concept for the Development of Mental Health in Ukraine for the period up to 2030.⁷⁸

In December 2018, the Order of the Ministry of Health of Ukraine⁷⁹ came into force that

⁷⁷ Ukrainian Hryvnia (UAH), currency of the Ukraine.

⁷⁸ Decree of the Cabinet of Ministers of Ukraine, No. 1018-p. (2017).

⁷⁹ Order of the Ministry of Health of Ukraine, "On approval of the scope of provision of secondary (specialized) medical care, which must be provided by multidisciplinary intensive care hospitals of the first and second level, and amendments to the procedure for

multidisciplinary hospitals can provide inpatient care in the specialty "psychiatry." The actions of the NHSU are aimed at improving the quality and accessibility of mental health services. They concern not only the medical, but also the social and moral component. NHSU pays only for medical care. It is important for the patient to know that under the program of medical guarantees he can receive psychiatric care both in the hospital and on an outpatient basis free of charge. To do this, one needs to contact an institution that has an agreement with the NHSU for psychiatric care. A suitable package includes both diagnostics and treatment, as well as medicines from the National List. Separately, in the institution, the patient must be provided with medicines that are purchased centrally for budget money. A patient can go to a psychiatrist without a referral. Such a service for him or her will be equally gratuitous. The hospital will be paid for by the NHSU. If the patient has a referral from a primary

regionalization of perinatal care," N 1292/32744 (2018),
<https://zakon.rada.gov.ua/laws/show/z1292-18>.

care physician or other specialist, the patient chooses an establishment that has a contract with the NHSU for psychiatric or outpatient care and a psychiatrist in the state. The place of registration or residence does not matter when choosing a hospital. A patient who is brought by an ambulance or who applies himself or herself in an emergency also receives assistance free of charge—regardless of whether he or she has a health care declaration. A referral in emergency is not required.

Since July 2021, a new package has been introduced “Psychiatric care provided by mobile multidisciplinary teams.”⁸⁰ Such a service will help bring mental health care closer to the patient, because he or she will be able to receive it at home. After an acute course of the disease, patients can continue treatment on an outpatient basis. If necessary, a mobile multidisciplinary team will go to the patient

⁸⁰ National Health Service of Ukraine (2020), <https://www.kmu.gov.ua/news/u-2021-roci-za-programoyu-medichnih-garantij-psihiatrichnu-dopomogu-nadavatimut-i-mobilni-multidisciplinarni-komandi>. National Health Service of Ukraine (2021), <https://nszu.gov.ua/novini/psihiatrichna-dopomoga-shcho-zminitsya-u-2021-roci-466>.

and provide assistance at the location. P. Castrillo, R. Guijarro, and M. Cerviño⁸¹ indicate that not only the therapeutic relationship between the patient and psychiatry is important, but also the joint approach of various specialists. The aim is to emphasize the importance of comprehensive treatment. This means sharing therapeutic goals among different specialists. Multidisciplinary is a general trend of modern psychiatry, which is gradually becoming part of the Ukrainian model. The demand for this model in Ukraine is due to the unfavorable general social, moral climate.⁸² As the Minister of Health of Ukraine Viktor Lyashko noted, previous studies and the bitter experience of other countries affected by armed conflicts show that at least one in five people will have negative consequences for mental health, and one in ten will experience these consequences at the level of moderate or severe illness.

⁸¹ P. Castrillo, R. Guijarro, & , M. Cerviño, *Multidisciplinary Approach to Several Mental Disorders: Clinical Case*, 41 EUROPEAN PSYCHIATRY S712 (2017).

⁸² Press Service of the Cherkasy Regional State Administration, “The Impact of War on Mental Health is Enormous” (2022), <https://ck-oda.gov.ua/novyny-cherkaskoyi-oblasti/vpliv-vijni-na-psixichne-zdorovya-kolosalnij/>.

V. CONCLUSION

Thus, the modern organization of psychiatric care is a system/type of specialized medical care, the knowledge and experience of which have gone far beyond the general medical and clinical problems of psychiatry, and cover a wide range of organizational and social issues. However, in the last two decades, a number of serious problems have been identified in the field of psychiatry and the system of organization of mental health care. One of the priorities should be the development and implementation of programs to increase the population's tolerance for the mentally ill, to reduce the stigmatization of this category of patients. Over the past decades, there has been an increasingly clear tendency towards the integration of psychiatry with other medical disciplines (multidisciplinarity), the development of specialized types of psychiatric care. A distinctive feature of the system of psychiatric care of the last decade is the emergence of its fifth link—public (social) psychiatry. At the same time, the development of legal policy in the field of ensuring the right of

citizens to psychiatric care should follow the path of finding a balance between the principle of inclusion, preventing stigma, and ensuring public safety with unconditional and absolute respect for human rights and freedoms and ensuring appropriate guarantees.

**SPRING AND DEATH: *CHIC BON
VIVANT***

LSD Journal Book Reviewer

Paris Hilton relays a confession of having Attention-Deficit/Hyperactivity Disorder (ADHD) as she opens her memory in a critical memorialization. Like the people involving Tylenol in a lawsuit claiming that ADHD is a birth defect, Hilton says that she suffered from ADHD, a part of her that is also beneficial, throughout her life. She reveals her participation in congregate care facilities legislation, and shares several deadening and angering memories. She covers when she was told by a girl seated at the same table in a group home that she must eat or would be force-fed and when she witnessed teens being sexually harassed by male and female staff members while in a group shower. She talks about feeling violated throughout a body cavity search while in custody in front of males threatening to hold her down and spread her legs. She even says

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that she was dried-out while being forced to listen to music by Kenny Rogers and John Denver during sessions that never played female vocalists on the loudspeaker. Even before she was famous, she was humiliated in handcuffs in front of locals who knew something about her at John F. Kennedy International Airport in New York City.

Hilton's nearly unnamed recording tinkers with a tale made in the press, *Paris: The Memoir*. It is about "it." Huge club appearances, a girls' club, and a baby voice made her fans yelp. In this recount of her imagination, Hilton is "the man." Only money guides Hilton. This is about life and debt matters. Criminal history is evident. There are no second chances.

This doled memoir is redemptive, and this review suffices for celebrity studies at collegiate and professional levels. Readers can revisit early comments about Hilton's past work including additional facts that synthesize Hilton. For example, here she discusses how she wore loungewear; and outside contributions may show that in a way that creates passivity and smothers terror. Like a

dictation, this work weaves explored and unexplained events resulting in crime. Stalking, suspended sentences, identity theft, community service, and other criminal justice interests are complemented here. Although reductive, Hilton claims hard-work throughout her life. She, a character, is put to rest by Hilton who claims to move onto better things. An opera under-her-belt, Hilton is noted by her word choice as an accomplished singer, reality television pioneer, animal rights enthusiast, and conservator of fashion. She studies and distributes *prêt à porter*. To do this she uses a closeknit cabal—not everybody in it is *laissez-faire*, but many come from humbler family origins, go against the grain, and unlike Hilton, have come full circle in life. In the end, she satisfies some conditions, but the stuff left behind shows she does not succeed in cleaning up her act. Though, this famous act—polished—has left big shoes to fill.