Slavery and the Origins of Family Law

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ABSTRACT

The foundation of family law in the United States of America was used as a tool of exclusion and division, and in many ways the foothold of structural racism began with placing insurmountable barriers between enslaved men, women and children as a family unit. The stamp of slave inferiority and its relationship to the African-American race runs deep in the American legal system, and it is reflected in the establishment of family law. While the family law canon is not often thought of as instrumental to the structure of America's capitalistic regime, without family structure and identity, there would be no behavioral or social institution upon which our economy could stand. Race and family have been inextricably intertwined since America was founded, and the law has played a critical role in the intersection of the two concepts in our society, as well as a calculated role in separating them from an ideological perspective.

This article is the first article to note the ways in which the legal institution of slavery impacted private family law doctrine. Slavery had a distinct effect on the development and the dissolution of white marriages and black unions, as well as subsequent issues such as property distribution, alimony, and child custody. Using antebellum case law, this article breaks apart the complicated roles of women as slaveowners, mothers, mistresses, enslaved persons, concubines, and breeders. It illustrates that slavery law and the development of race as a social construct are core aspects of the origins of family law. This article further contends that slavery laws promulgated unequal treatment of African-American families within the American legal system, the impact of which can still be tracked through family well-being, status and the accumulation of wealth through family relationships.