




# The Constitutionality of Reparations

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Dec 7, 2022

# The Constitutionality of Reparations

- The 14<sup>th</sup> Amendment Challenge
  - The Malcolm X Doctrine
  - Article 6 of the US Constitution
  - Treaties under US Law
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  - ICERD, General Recommendation 28, People of African Descent
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# The 14<sup>th</sup> Amendment

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- *“... 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.** ...”*
- A law created on the basis of race is a violation of the “equal protection” clause.
- This is a hinderance to the majority of lawyers and legislators –
- Reparations just for Blacks will not stand up under the strict parameters of this clause. Reparations is race-based
- We have to open up reparations to all people enslaved, all people discriminated against.

# The Malcolm X Doctrine

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- Whenever you are in a civil-rights struggle, whether you know it or not, you are confining yourself to the jurisdiction of Uncle Sam. ... Civil rights comes within the domestic affairs of this country.
- When you expand the civil-rights struggle to the level of human rights, **you can then take the case of the black man in this country before the nations in the UN.** You can take it before the General Assembly. You can take Uncle Sam before a world court. **But the only level you can do it on is the level of human rights.**

# Malcolm X Doctrine – Ballot or the Bullet

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- **Civil rights keeps you under his restrictions, under his jurisdiction.** Civil rights keeps you in his pocket. Civil rights means you're asking Uncle Sam to treat you right.
- Human rights are something you were born with. **Human rights are your God-given rights.** Human rights are the rights that are recognized by all nations of this earth. And any time anyone violates your human rights, you can take them to the world court.

# Reading of the Malcolm X Doctrine

- Only nations can take other nations to the World Court
- However, we can use an international framework
  - international covenants
  - International treaties
  - International statutory law
- International customary law
- International structures
- International articles
- Why –
  - because its constitutional
  - Because we live in a global system

# Article VI of the US Constitution (Par 2)

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- This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, **shall be the supreme Law of the Land;** and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.
- Not using this article has locked many lawyers into the **dungeon** of civil rights law when it comes to reparations

# Treaties, Covenants and Conventions

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- Legally, **there is no difference between a treaty, a convention or a covenant.** All are international legal instruments which, in international law, legally bind those States that choose to accept the obligations contained in them by becoming a party in accordance with the final clauses of these instruments.



# ICERD

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- **2. International Convention on the Elimination of All Forms of Racial Discrimination ([CERD](#)) –United States signed in 1966, and ratified in 1994**
- CERD is designed to protect individuals and groups from discrimination based on race, whether the discrimination is intentional or is the result of seemingly neutral policies.
- The United States is bound by all provisions of the treaty,...  
which includes a periodic compliance review conducted by the United Nations Committee on the Elimination of Racial Discrimination.

# ICERD Signing, Ratifying, Becoming A Party Of

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- **A State becomes a Party to the Convention ... by signing and ratifying ...** or consenting to be bound by the Convention
- **Signing** the Convention..., States ... indicate their intention to take steps to be bound by the treaty at a later date. Signing also creates an obligation, in the period between signing and ratification or consent to be bound, to refrain from acts that would defeat the object and purpose of the treaty.
- **Ratify** means to approve or enact a legally binding act that would not otherwise be binding in the absence of such approval.
- **Ratification** defines the international act whereby a state indicates its consent to be bound to a treaty
- **Party** to a convention or 'Party' means a State ...that has consented to be bound by the Convention and for which the Convention is in force;

# General Recommendations To UN Conventions

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- Convention[s]... [are] living instrument[s] that must be interpreted and applied **taking into account the circumstances of contemporary society (reinterpreted)**
- The UN Human Rights Treaty Committees publish their **interpretation of the content of human rights provisions, known as general comments** on thematic issues or methods of work.

# ICERD General Recommendation 28

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- Adopted the 2001 Durban Declaration and Program of Action
- TransAtlantic Slave Trade, slavery, apartheid and colonialism were crimes against humanity.
- Africans and “people of African descent” were victims of those crimes
- The crimes have a continued impact on current descendants
- Reparations is due.

# ICERD

- The term “non-discrimination” does not signify the necessity of uniform treatment when there are significant differences in situation between one person or group and another, **or, in other words, if there is an objective and reasonable justification for differential treatment.** To treat in an equal manner persons or groups whose situations are objectively different will constitute discrimination in effect, as will the unequal treatment of persons whose situations are objectively the same. ...the application of the principle of non-discrimination **requires that the characteristics of groups be taken into consideration.**

# The Group – Victims of CAH

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- The group is not “ all Black” people in general,
- The group are those people whose ancestors were kidnapped from the continent of Africa through a series of illegal and barbaric actions, brought to America and incorporated into a systematic forced-labor economy; with accompanying dehumanizing, violently punitive, sexually perverted. degrading, and terror infusing acts;
- whose progeny was legally bound by the same victimization; whereby the system morphed into socially sanctioned and legally enforced alternative acts of forced inequality, underdevelopment, resource theft, labor theft, additional periods of multibillion dollar plunder, murder, terrorism and fundamental denial of their humanity and human rights.

# Who Receives the Remedy

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- Jewish holocaust survivors and (in some cases) their descendants – not all European Jews
- Japanese internment camp survivors and their descendants – not all Japanese Americans
- People of African Descent, i.e, (Black people victimized by crimes against humanity) and their descendants, (because the crimes continue) **not all Black people**– it matters not that most Black people in America are People of African Descent.

# 6<sup>th</sup> Amendment and DDPA

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- Cleverly combining the 6th Amendment, ICERD GC 28, and the Durban Declaration and Program of Action's distinction of **People of African Descent** gives us constitutional foundation for Reparations.









# ICERD General Recommendation 32

- UN Committee on the Elimination of Racial Discrimination (CERD), *General Recommendation no. 32, The meaning and scope of special measures in the International Convention on the Elimination of All Forms [of] Racial Discrimination*, 24 September 2009, CERD/C/GC/32
- to provide... practical guidance on the meaning of special measures
- Based on the principles of the dignity and equality ... equal protection of the law ... enjoyment of human rights on an equal footing is integral

# ICERD GC 32 Special Measures

- The concept of special measures is based on the principle that laws, policies and practices adopted and implemented in order to fulfil obligations under the Convention require supplementing, when circumstances warrant, by the adoption of temporary special measures designed to secure to disadvantaged groups the full and equal enjoyment of human rights and fundamental freedoms.
- “special measures” and “special and concrete measures” ... may be regarded as functionally equivalent and have an autonomous meaning ... includes also measures that in some countries may be described as “affirmative measures”, “affirmative action” or “positive action” ... and encourages States parties to employ terminology that clearly demonstrates the relationship of their laws and practice to these concepts in the Convention.

- 13. “Measures” include the full span of legislative, executive, administrative, budgetary and regulatory instruments, at every level in the State apparatus, as well as plans, policies, programmes and preferential regimes in areas such as employment, housing, education, culture and participation in public life for disfavoured groups, devised and implemented on the basis of such instruments. States parties should include, as required in order to fulfil their obligations under the Convention, provisions on special measures in their legal systems, whether through general legislation or legislation directed to specific sectors in the light of the range of human rights referred to in article 5 of the Convention, and through plans, programmes and other policy initiatives referred to above at national, regional and local levels.