Domestic Relations Civil Debt In The United States, Human Rights Considerations.

Modern Domestic Relations Civil Debt in the United States, Human Rights Considerations.

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I. Introduction.

The evolution and development of modern domestic relations civil debt\(^1\) collections in the United States have become a serious threat to individual human rights over the last 50 years. The civil debt collections laws and mechanisms have the capacity to seriously and personally affect individuals in a manner which is mutually inconsistent human rights protections that prohibit incarceration for civil debt, enforced disappearance, extreme poverty, and unlawful interference with individual privacy, and family. The destructive nature of the civil debt collections practices and programs has and will continue to victimize individuals to the point of creating a refugee class in their own country.

Although the United States has a constitutional prohibition against incarceration for debt\(^2\) under its thirteenth amendment\(^3\) and collaterally constrained under the fourteenth amendment\(^4\) guaranteeing equal protection, U.S. Domestic civil relations debt has evolved through legislative measures into a tangle of laws and rules that can utterly destroy individuals by a lifetime of civil debt contempt incarceration for unpaid and/or unpayable civil “debt.”\(^5\)

Domestic relations civil debt collections in the United States may be unique in that it is specifically funded by U.S. federal government programs. And in that state subscription to these programs offers a substantial pecuniary incentive to the states to assign domestic relations civil debt to individuals under the guise of social programs. This allows the States to receive federal programs stipends, reimbursements, awards, grants and compensation for their participation.

This article examines some elements of human rights violations that include incarceration based on domestic relations civil debt, enforced disappearance, and establishment of a dark jail system for persons incarcerated on civil debt collections actions. These items appear under U.N. International Covenant on Civil and Political Rights\(^6\) and the Declaration on the Protection of all Persons from Enforced Disappearance.\(^7\)

II. Background Information On 20\(^{th}\) Century Domestic Relations Civil Debt.

The evolution of civil debt in domestic support cases began in earnest in 1910 at the National Conference of Commissions on Uniform State Laws when the conference attempted to criminalize the failure to pay domestic relations civil debt. The conference met again in 1950 and attempted to close the loophole created in 1910 that barred enforcement when a party moved across a state line. The drafted legislation provided civil or criminal enforcement for these out-of-jurisdiction cases. And finally in 1975 the Title IV-D of the Social Security Act\(^8\) was signed into law, which in turn created the Health Human Services division programs that specifically addressed domestic relations civil debt collections.

It should be noted that President Ford expressed "reservations" when he signed the enacting legislation. While supporting the objectives of the amendments, he contended that certain provisions "go too far by injecting the Federal Government into domestic relations." He complained of "serious privacy and administrative issues…"\(^9\)

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\(^1\) Domestic relations civil debt is any debt that arises out of marital, spousal (alimony), or child support action.

\(^2\) 15 U.S.C.§1692a (5) (1977 (and as subsequently amended) The term “debt” means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.

\(^3\) U.S. Const. amend XIII §2 (1865) Prohibition against slavery and involuntary servitude.

\(^4\) U.S. Const. amend XIV §1 (1868) Equal rights protection.


\(^6\) International Covenant on Civil and Political Rights. RES.2200A (XXI) of 16 December 1966. art. 11. No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.


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In 1978 P.L. 105-200\(^\text{10}\) established a revised incentive payment system that provide payments to states based on a percentage of the state’s civil debt collection rates and incorporates five performance measures related to establishment of paternity and domestic relations civil debt support orders, collection of current and past-due civil debt payments, and the establishment of cost-effective collection methods.

The U.S. Department of Health and Human Services created the Office of Child Support Enforcement, along with a number of Government stipends, incentives, grants and program reimbursements\(^\text{11}\) that States become eligible for when they setup and administer domestic relations civil debt collection programs.\(^\text{12}\) Currently all 50 states, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands operate these collections programs and are entitled to federal matching funds.\(^\text{13}\)

For the States to qualify for their share of Federal monies associated with domestic relations civil debt cases, the States were/are required to submit domestic relation civil debt cases, collection levels for each reporting period. Greater collections levels increase a State’s revenue stake from the Federal Government program entitlements.\(^\text{14}\) It should be noted that HHS OSCE does not require strict auditing or otherwise substantiated accounting for State level reporting, and the reports are often inflated, inaccurate or fraudulent. This has taken the form of the States retaining debt collection payments and not redistributing the domestic relations civil debt payments to obliges\(^\text{15}\) as required by law.

The program pecuniary benefits from this Federal program was sufficient to warrant establishment of dedicated States agencies and staff, the assignment of court judges and hiring of court commissioners that specifically handle these types of domestic relations cases. All of which are typically overseen by the State’s Attorney General’s office\(^\text{16}\) who claim not to represent or to have an attorney/client relationship with the debt collection services recipients/clients.

Two surveys in 2009 and 2010 were conducted by Libba Patterson, a law professor at the University of South Carolina and found that one out of every eight inmates — or 13.2 percent of the inmate population — was behind bars for failure to pay their domestic relations civil debt (4,300 contemnors). The 2010 study also showed that over 98 percent of the debtors did not have legal counsel and that 95 percent of those ended up being sentenced to jail.

Currently civil debt contempt incarcerations in the United States are at an estimated 90,000 to 200,000 individuals yearly. This was extrapolated from limited available individual state jail records, reports and state population figures. Contempt incarceration can last up to a year before being brought back before a judge, commissioner or other judicial officer for re-hearing and potential re-incarceration,\(^\text{17}\) with the average sentence being three months.\(^\text{18}\)

The U.S. federal government does not mandate nor do the States subscribing to the domestic relations civil debt collections programs have any requirement to report how many individuals have been or are being incarcerated for civil debt contempt proceedings for non-payment.\(^\text{19}\) The Bureau of Justice statistics in 2015 estimate placed the U.S. national average incarceration population at 2,100,000 individuals which included over 700,000 individuals in the U.S. State jail systems, and an estimated 28% of those are under domestic relations civil debt contempt detention.


\(^{16}\) A.R.S. § 25-509 (A) (2016) (in part. “An attorney-client relationship does not exist between the attorney and an applicant or recipient of child support enforcement services.”)

\(^{17}\) Turner v. Rogers, et.al. 564 U.S. 431, 431 ¶ 1 (2011)

\(^{18}\) Brief amici curiae of Elizabeth G. Patterson, et al. p.3 Turner v. Rogers 564 U. S. 431 (2011)

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In reply to the author inquiry made on June 6th, 2017 to the United States Department of Justice, office of justice programs, corrections statistics unit, the Bureau of Justice Statistics replied that the last year the federal government compiled statistics on contemnors was in 2002 and that report comined civil and criminal contempt into one group.20 Note: Incarceration data from these types of reports are restricted from public viewing.21

III. The State Of Arizona Set As The Example.

All 50 states, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands who currently subscribe to the U.S. Department of Health and Human Services domestic relations civil debt collections programs have enacted sets of laws that specifically mirror one another in content and intent. The author having personal experience with the State of Arizona will set the State of Arizona as the example.

In June 2017 the author asked the Director of Statistical Analysis for the Center the Arizona Criminal Justice Commission whether they kept records on incarceration rates for civil debt contemnors. The reply was chilling: “the Arizona Criminal Justice Commission does not have access to the jail data that you are searching for. To my knowledge, such a data set does not exist in this state.” The same requests made to other States either confirmed a lack of that records, database, or went unanswered.

This indicates that Arizona and other program subscriber States are violating human rights by virtue of their ability to simply vanish domestic relations civil debtors/contemnors into their jail system without any external transparency whatsoever. Additionally Arizona superior court rules impose limits on, suspension of, or prohibition of electronic/remote case searches, case records, and minute entries to the general public, effectively obscuring oversight and transparency at the same time.22

The most chilling abuse of the legal system in Arizona occurs when an unrepresented domestic relations civil debtor attends a hearing in their case matter, and the State in the form of the Attorney General’s Office advance a surprise oral motion for contempt which invariable leads to immediate incarceration/re-incarceration.23 The Attorney General’s Office is well aware that the layperson will be “overwhelmed” by the “distressing and disorienting situation” of a rushed contempt hearing.24

There is no prohibition against surprise oral motions in Arizona civil procedure rules25, it is simply exploited by the Attorney General’s Office knowing that lay person cannot defend against this type of action. According to the Attorney General’s Office this is the most “cost effective” method as it requires about three minutes26 on average and the only requirement is that the domestic relations civil debt exists, has not been paid in full, and has arrears.27 In contrast South Carolina Family Court Rules has an automatic system in place that is triggered if any domestic relations debt payment is five or more days late.28 These are examples of very cost-effective collection methods established by States specifically for domestic relations civil debt collection programs.

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28 Rule 24 SCFCR (South Carolina Family Court Rules) “Automatic enforcement of child support and periodic alimony” (last visited July 12th, 2017) http://www.sccourts.org/courtReg/displayRule.cfm?ruleID=24.0&subRuleID=&ruleType=FAM
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More ominous is when the state of Arizona blocks an individual’s remote court access and then proceeds to file multiple unilateral motions and pleadings to assign debt and issue warrants against individuals. It should be noted that under Arizona state law that the State has an unconditional right to enter domestic relation civil debt cases without the mandated showing of compelling state interest and/or strict scrutiny tests required when the State infringes on certain fundamental liberty interests reserved for families, individuals, and parents.

These include individual reproductive rights and rights under the free exercise clause of the first Amendment, made applicable to the States by the fourteenth amendment. The U.S. supreme court has held that if a law “impinges upon a fundamental right explicitly or implicitly secured by the Constitution it is presumptively unconstitutional.” These facially defective laws impair the appearance of legitimacy of any State action in domestic relations civil debt cases.

IV. Legal Analysis and Effect of Marital and Domestic Relations Civil Debt on Wages and Salary.

Domestic relations civil debt collections in Arizona are subject to some, all or combinations of the following. These are non-exhaustive examples of current laws and do not represent the total spectrum of all applicable laws in Arizona associated with domestic relations civil debt collections.

a.) The civil debt is subject to an annual interest rate of as high as 10%.37

b.) That the State without notice can levy and impound any monies held in bank accounts.38

c.) That the State can cause to be liquidated the individual’s person property.39

d.) That the State can cause the loss of driver’s license and work license for the individual.40

e.) That the State can intercept welfare program, unemployment and disability entitlements towards payment of the domestic relations civil debt.41

f.) That if payments on the civil debt fall behind for any reason the individual can be incarcerated repeatedly until the civil debt is paid.43

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29 Arizona superior courts, have enacted electronic case access rule changes including, registration with an Arizona drivers license. Restrictions and/or bans on individual ability to appear telephonically and to file and respond to their own cases electronically. (https://ecr.clerkofcourt.maricopa.gov/login.aspx) “Authenticate your identity in the system, either in person by visiting the Clerk of the Superior Court, or online by submitting your Arizona driver’s License number and date of birth.”
31 A.R.S. §25-509(B) (2016)in part “Intervention by the state in an existing action is by unconditional right and is accomplished by the State filing an entry of appearance.”
34 Skinner v. Oklahoma ex rel. Williamson 316 U.S. 535 (1942),
36 Harris v. McdRae, 448 U.S. 297 (1980)
37 A.R.S. §44-1201 (2016) Rate of interest for loan or indebtedness; interest on judgments. (A) provides for interest to be accumulating at the rate of 10% per year on a judgment.
38 A.R.S. §25-521. (2016) Levy; seizure of property for collection of support debt; definitions
39 A.R.S. §33-1133 (2016) Other exemption laws
40 A.R.S. §25-518. (2016) Child support arrearage; license suspension; hearing
41 31 CFR 285.4 (2017) Offset of Federal benefit payments to collect past-due, legally enforceable nontax debt
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g.) That if incarcerated, the state will levy and impound any monies earned through jail programs. And that interest and payments will continue to accrue for incarceration periods of less than six months.44

h.) That the only required showing for incarceration is that the debt exists, has not been paid, and that arrears are owed. This is a 3 minute court proceeding and typically is not accompanied by a finding of fact related to ability to pay the debt.45

i.) That repeated incarcerations can occur without end, because the debt is legally structured without a time limit, is automatically renewable, and cannot be extinguished by either bankruptcy or an individual’s death.46

j.) That the individual is not entitled to be provided legal representation, because the domestic relations debt is assigned during a civil proceeding.47

k.) That some States have instituted “work release” programs for debtors and require debtors to pay fees to the incarcerating entity in order to participate in the programs. This is analogous to a debtor’s prison in so far as some of the assigned debt is so large and coupled with perpetual interest on unpaid balances that the debt can never be paid in full.48

l.) The State can request rendition of an individual living in another state.49

V. Individual Impoverishment through Domestic Relations Civil Debt Collections Programs.

When calculating wage residuals under average case scenarios we will use an example case for an individual whose hourly pretax wage is $20 an hour.

This calculates out to $41,600 a year, which in turn is $26,525 above the established poverty level for a single person is $15,075. (125% FPL (2016 federal poverty level))50

Domestic relations civil debt is paid from the gross amount of the salary, not the net amount realized after taxes. A wage assignment of 50% of the salary can be taken to satisfy the any domestic relations civil debt.51

The starting wage of $41,600 is reduced to $23,300. A federal tax rate of 15% is applied to the gross salary amount of $41,200, (2017 estimated tax rate of 15% or $6,180) which is deducted from the post garnishment amount of $23,300 leaving $17,120 as the net income after federal tax.52

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44 A.R.S. § 33-1131 (2016) Definition; wages; salary; compensation. Sections (B, C)
46 A.R.S. § 25-503(J)(K) (2016) Statute of Limitations to enforce a child support order
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The next deductions applied are for a social security tax with a rate of 6.2% and the Medicare tax rate of 1.45%. Finally a deduction for state tax rate (not all states have state income tax) of 10% of the federal rate. Again applied to the gross earnings of $41,600, this creates additional deductions of 17.65% or $3,021.68.

A residual net income of $14,068.32 is realized after civil debt payments, and applicable tax deductions. The residual wage is now $1,006.68 below the 125% FPL. This yields an hourly net income level of about $6.44 an hour. This can be aggravated when State and Federal laws allow bank account levy’s and impounds of any monies above $300.00, which is justified in some states as an adequate amount of reserve money for a debtor’s daily life and emergencies.54

The reader is invited to calculate a standard of living based for their home state, country or the Arizona minimum wage rate of $10.00 an hour. A straight division by two yields a net income level of about $7,033 a year or $3.20 an hour, which is less than 17% of original gross salary earnings, or less than one half of U.S. federal poverty level.55

The assignment of domestic relations civil debt also carries the crippling burden in the form of negative credit reporting. The debt is registered with all consumer reporting agencies, such as Equifax, Experian, Innovis, and Transunion. The negative credit entries56 on the individuals consumer account can lead to denial of extension of credit, which directly impacts the ability to purchase housing, vehicles, and extends to rental and leasing denials. And although ostensibly prohibited by certain State laws, can lead to denial of many types of employment leaving only minimum wage and part time employment as viable options.57

And once the domestic relation civil debt has been established through a consent decree, accumulated debt amounts cannot be reduced. Only future monthly payments can be reduced for continuing changes of financial circumstances.58 This creates a perpetual state of impoverishment for some individuals. This level of forced financial impoverishment is generally considered a violation human rights59 and presents itself as a facet of forced servitude.60

VI. Discussion.

The U.S. social structure for martial and domestic relations civil debt has evolved into a Government concern which was, is and continues to be legislated/reviewed by Federal and States governments to aid in the collection of domestic relations civil debt awarded in domestic relations divorce and child support cases.

These two type of domestic relations civil debt have an enhanced set of supporting rules and laws that can easily be abused to trap individuals in perpetual debt and imprisonment. And in most cases without any substantive legal safeguards or representation either before, during or after the establishment of the debt. In many of these cases the opposing party is represented by the State, Ex rel.61

56 A.R.S. § 25-512 (2016) Consumer credit reports; use of child support or spousal maintenance obligation information
61 Ex rel. Ex relatione. Latin, “on the relation of.” A phrase showing that the plaintiff is suing based on information from another person. (last visited July 9th, 2017) https://www.law.cornell.edu/wex/ex_rel.
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The pecuniary prospects of government awards, block grants, reimbursements and performance incentives which flow from the Federal Government to the States, along with lax, unsubstantiated, or inaccurate reporting by the States to the federal government has led to unusual acts of fraud by the states. Notably, States retaining a portion of the domestic relations debt collection monies meant for distribution to their obligors/clients.62

Domestic relations civil debt collections laws has a very one-sided process where 70% of domestic relations debt is owed by individuals whose income is $10.000 a year or less.63 96% were unrepresented by counsel64, and who have no legal background and find themselves opposed by the state’s attorney general’s office in the courtroom facing judicial officers appointed by the State who rely on the good will of the State’s attorney general’s office for judicial advancements, all of which is funded by Government reimbursement program that pays the majority of their salaries and creates their respective jobs.

An individual faced with these situations can find themselves in a state of perpetual servitude under the weight of the debt which accrues interest and which can leave an individual destitute and incarcerated for the remainder of the lives. The fact that neither the states nor the government keep records on civil debt incarcerations related to their domestic relations civil debt collection enforcement programs is indicative of a gravely systemic problem with the programs and process.65

VII. Human Rights Analysis.

International Covenant on Civil and Political Rights bar incarcerations based on the inability of fulfill a contractual obligation which includes civil debt.66 And civil debt incarceration constitutes a basis for asylum in some countries.67 Within the scope of this article we find a new manifestation of civil debt that places its foundation in domestic relations cases, with States participating in incentivized domestic relation civil debt collection program legislated and sponsored by the U.S. Government.

The scope of laws and rules dedicated to this process can render individuals perpetually impoverished, and under the reoccurring menace of unending incarceration which is so opaque by virtue of its lack of required record-keeping that that in itself violates human right tenants and safeguards against enforced disappearance.68 It is interesting to note that it is easier to obtain detainee information via Google for those individuals held at Camp Six at America’s naval base at Guantánamo bay Cuba69 than it is for those being held persona non grata for civil debt collection contempt incarceration in the U.S. States’ jail systems.

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66 Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto 1963. art. 1. Prohibition of imprisonment for debt. In toto
Individuals are similarly exposed to renditions, passport revocations, separation from family and forced returns to the civil debt issuing jurisdictions to appear unrepresented by legal counsel against State Attorney General’s representatives. With the bleak prospect of vanishing into a dark jail system for years on end on the basis of their inability to pay off the accumulated civil debt.

Civil debt incarcerations often violates Standard Minimum Rules for the Treatment of Prisoners by comingling civil debtors with convicted criminals, and further forces the civil debtor into jail conscription labor pools to wash laundry, prepare meals, and provide janitorial services, often without remuneration. Domestic relations civil debt incarceration is coercive confinement and cannot attach forced labor as a punishment which is constitutionally barred and which is allowed as a punishment for some criminal acts.

Disabled Individuals who owe domestic relations civil can be placed in extreme poverty and denied even a meager standard of living as their social security benefits and disability stipends and payments provided under the U.S. Government social security and State disability programs can be intercepted to pay down their domestic relations civil debt. Domestic relations civil debt incarceration also diminishes available medical treatments and therapies which has a direct impact on quality of life and inflicts needless suffering, more so on individuals who have mental and physical disabilities.

The totality of domestic relations civil debt is ominous in that an individual can be stripped of their possessions, forced into a state of unemployment, become unemployable and even if employed lose the majority of their salary and wages to live below the U.S. federal poverty level. This is contra to the Guiding Principles on Extreme Poverty and Human Rights when Government mandated mechanisms force individuals into abject poverty and humiliation on the basis on unpaid civil debt. According to HHS about one quarter of all States treat incarceration in itself is treated as voluntary unemployment barring the individual from judicial relief, modification or suspense of the domestic relations civil debt.

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70 22 CFR 51.65 (2016) Notification of denial or revocation of passport.
71 Declaration on the Protection of all Persons from Enforced Disappearance A/RES/47/133 December 1992. art. 10 ¶ 3., Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment CAT/C/28/Add.5 9 February 2000. art. 1.
72 Standard Minimum Rules for the Treatment of Prisoners. 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977. art. 8, ¶ (c). Persons imprisoned for debt and other civil prisoners shall be kept separate from persons imprisoned by reason of a criminal offence.
73 International Covenant on Civil and Political Rights. RES.2200A (XXI) of 16 December 1966. art. 8, ¶ 3, § a. No one shall be required to perform forced or compulsory labour. (sic)
74 Turner v. Rogers, et.al. 564 U.S. 431, Pp. 431-434 (2011), U.S. Const. amend. XIII §1 (1865) Neither involuntary servitude, except as a punishment for crime (emphasis added ) Whereof (sic) the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.
VIII. Conclusion.

Domestic relations civil debt administered under these circumstances can amount to perpetual indentured servitude, forced labor, and debtors’ prison. It should be noted that many types of civil debts can be and are enforced in a similar manner and fashion as they are subject to interest accruals, perpetual renewals, bank levies, wage assignments, property liens and liquidations, et al. Marital and domestic relations civil debt can be appear as a thinly veiled social evil perpetuated under the guise of an equitable social good when the state is allowed to unconditionally appear in domestic relations cases.\(^{82}\)

When any country obscures the transparency of its justice system, quietly stops keeping complete records of its jail population, and further restricts this data from public review, they create in essence a dark jail system to warehouse domestic relations debtors under unacceptable jail conditions and successive terms of coercive confinement, often spanning years.

When any country constructs legal mechanisms that pit governmental agendas that violate individual rights by removal of procedural, legal and constitutional safeguards, we generally attribute these practices to closed governments and regimes and not to egalitarian, democratic, enlightened societies, which operate under the true rule of law.

On December 20, 2016 the U.S. Department of Health and Human Services final rules were published\(^{83}\), and it was emphasized to state agencies that there is “no evidence that incarceration results in more reliable child support payments that families can count on to make ends meet.”\(^{84}\) However HHS failed to prohibit or condemn the practice of coercive domestic relations civil debt incarceration, and it remains a uniquely cost effective and expedient collection method in domestic relation civil debt cases.

HHS relies on State’s voluntary compliance with program rules to provide safeguards against capricious and arbitrary actions against individuals. And in their latest report they did not mention or otherwise address the ongoing failure of States to keep records and submit reports on domestic relations civil debt incarcerations rates\(^{85}\) or the failure of the States to distribute all of the payments collected for the benefit of their obligor/clients. This continuing opacity in the domestic relations civil debt collection programs and processes lacks the integrity and public trust needed to fully legitimize the programs as a vehicle for social good.

Human right abuses flourish when any government strips away the light of day for political and pecuniary justifications under any circumstances. There has been a calculated disregard for treaties, laws, constitutional protections, and individual rights which have seriously and personally affected U.S. citizens for over 42 years. With an estimated 4 million incarcerations, and an unknown number of deaths, the U.S. domestic relations civil debt collections programs has multiple unresolved and ongoing human rights issues.

Is it commendable or condemnable to create a legal entanglement under the guise of a social good that can compel an individual to flee to another state or country\(^{86}\) when faced the prospect of never ending cycles of coercive incarceration, unemployment, and impoverishment, or even death under the color of law?\(^{87}\)

\(^{82}\) International Covenant on Civil and Political Rights. RES.2200A (XXI) of 16 December 1966. art. 17. ¶ 1., ¶ 2.


\(^{86}\) E.g. intra-national v. Inter-national.