

THE TRANS-ATLANTIC SLAVE TRADE: EUROPEAN SLAVING CORPORATIONS, THE PAPACY AND THE ISSUE OF REPARATIONS

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The Trans-Atlantic slave trade's legal institution from a regional economic practice into an international financial market originated from Papal grants initiated during the 16th century. Territories and nation-states party to this grant referred to it as the Asiento, as later affirmed by international custom and bilateral treaties.¹ This article will discuss the origins of the Asiento, the legal framework in which the Papacy granted parties' authority to transfer and other manners in which this contract was conveyed, its effects on Africans and Africans of the Diaspora, and on international conflict, which arose from the coveted slave trade monopoly. As a result, many nations, monarchs, corporations and Western seaboard economies financially benefited from the Trans-Atlantic slave trade through condonation and participation. The author argues that the Asiento evolved into the lawful nucleus which transformed the Trans-Atlantic slave trade into a flourishing international market of human commodities until its legal extermination through international intervention. The article concludes that, as a result of the Papacy's intimate participation in the origins of the Asiento and as holders of

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African slaves, it is obliged to provide international restitution to those of the African Diaspora adversely affected by its vestiges.

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I. INTRODUCTION (ORIGINS OF THE ASIEN TO)

The Trans-Atlantic Slave trade is popularly characterized by the brutal crimes against humanity that nation-states and private actors implemented against their primarily African targets. Historians and publicists within the international community deemed these human rights violations egregious crimes against humanity,² yet most have not adequately focused on the years that members of the international community accepted this practice as a valid commerce, based on religious doctrine³ and promoted by their quest for financial prosperity. Although arduous to discern how this financial institution remained viable for such a significant time, the human yearning for wealth, power and prestige complimented with inordinate religious perception led the Papacy, governments and slavers to develop and justify a tier of international norms, which supported and advanced the slave trade. Slavers, corporations, and monarchs later codified international custom in treaties and other contractual obligations, while the enterprise continued to be characterized by inhumane practices including torture,⁴ kidnapping,⁵ rape, involuntary sodomy and oft-times death.

The slave trade's record as a complex, international economic franchise developed from a monopolistic Papal grant. Initially, the Portuguese and Spanish monarchs primarily benefited from this territorial, slaving license which became known as the *Asiento*.⁶ These monarchs created or held interest in slaving companies along with merchants of its

² See Hilary M. Beckles, *Slave Voyages: The Transatlantic Trade in Enslaved Africans*, p. 10, UNESCO (2002); see also Patricia M. Muhammad, *The Trans-Atlantic Slave Trade: A Legacy Establishing a Case for International Reparations*, 3 COLUM. J. OF RACE AND L. 147, 149 (2013) [hereinafter Muhammad - A Legacy].

³ See Katie G. Cannon, *Christian Imperialism and the Transatlantic Slave Trade*, 24 J. OF FEMINIST STUD. IN RELIGION 132 (2008).

⁴ See Patricia M. Muhammad, *The Trans-Atlantic Slave Trade: A Forgotten Crime Against Humanity as Defined by International Law*, 19 AM. UNIV. INT'L LAW REV. 883, 902 (2004) [hereinafter Muhammad - A Forgotten Crime].

⁵ See Richard Gary, *The Vatican and the Atlantic Slave Trade*, History Today, Mar. 3, 1981, at 38.

⁶ See W.E.B. DuBois, THE NEGRO 91 (1915).

citizenry.⁷ The monarch's active participation in negotiating slave contracts and treaties regarding the issue of the high seas for international trade in goods and in Africans, its selection of employees such as seamen, brokers and merchants in the New World clearly demonstrate their activity as market participants.⁸ Originally, a verbal legal construct, additional European nation-states and slavers steadily vied for the revered Asiento, which they incorporated by reference into various multi-lateral agreements.⁹

This article will examine the religious and legal origin of the Asiento, its monopolistic nature as to the slave trade, and its legal framework within individual slave trading agreements. The author will also discuss the parties' blatant disregard for human life until the Asiento's eventual extinction, shadowed by war and international abolition.

The author surmises that the Asiento became the legal nexus between nation-states' desire to justify the barter in Africans and the institution's evolution into a profitable international trade through reciprocal contracts. The Trans-Atlantic Slave trade's legal origins, however ambiguous, is sourced from European exploration and sporadic kidnappings of African natives.¹⁰ History records Europeans' *original* view of Africans as a developed people with self-government, as any other civilized society. However, as with the passage of time, Europeans began to emphasize two major differences between themselves and their African contemporaries--religion and race. European monarchs and slavers used these distinctions to justify their increasing desire to develop exploration of the high seas and slave bartering¹¹ by propagating the notion that Africans were naturally savage.¹²

The French, British, Portuguese, and Spanish monarchs all professed their affiliation to a variety of Christian sects in legal writings, including slave trading treaties. Portugal and Spain emphasized their Catholic inclinations, while Great Britain distinguished themselves in treaties as Anglican Christians. However, a significant portion of North African populations were already Muslim by the 15th century, while others were pagan or professed other African traditions. Islamic religious fervor reached and established a stronghold in what is now southern Spain, which segments of Europe and the Catholic Church deemed a threatening

⁷ See Wiendel, *supra* note 1, at 250; see also DuBois, *supra* note 6, at 91; see also *infra* note 13, at 292-293.

⁸ See Wiendel, *supra* note 1, at 250.

⁹ See George Scelle, *The Slave-Trade in the Spanish Colonies of America: The Assiento*, 4 THE AM. J. OF INT'L L. 612, 618 (1910).

¹⁰ Muhammad – A Forgotten Crime, *supra* note 4, at 941-942.

¹¹ Cannon, *supra* note 3, at 127.

¹² Muhammad – A Forgotten Crime, *supra* note 4, at 887-888.

religious encroachment to the Anglo-Saxon position of financial and moral authority in the eastern hemisphere.¹³ Europeans' self-aggrandizement of Christian superiority increased their religious notions that it was not only their duty but their divine right to 'civilize' the *heathen* by enslavement and forced conversion.¹⁴

In addition, although earlier Europeans noted the beauty of the dark-skinned Africans, this view later became corrupted and eventually transformed into racist dogma,¹⁵ which was later supported by the Papacy. It was the promotion of social caste systems with a preference for the lighter North Africans, who were genetically intertwined with their Arab counterparts, which would also influence the attitudes of other nation-states that would participate in the Trans-Atlantic slave trade nearly a century later.

Across the Atlantic Ocean, Queen Elizabeth I of Spain would manifest this integral racial justification when she decided to spare the 'pure-blooded' Native Americans of her extended empire because their skin was fairer than their swarthy African contemporaries. Some influential Europeans [or European nation-states] argued that Africans' blackness resulted from a religious curse, which made Africans predestined forever to forced servitude and labor.¹⁶ European slavers and merchants pondered the notion that to force Africans to slave in mines would be to the latter's benefit because their skin would be shielded from the sun, resulting in lighter and more acceptable skin tones by their gracious masters.

Thus, the Papacy as well as Christian European nations, used race to indoctrinate a loathsome guardian-ward, a master-servant relationship through promotion of their religious doctrine.¹⁷ Meanwhile, Portugal and Spain used their knighted religious and political authority, from various Popes, to solidify a legal custom to profit from the barter and exploitation of African slaves in the form of the Papal grant.¹⁸

However, to justify the development of the slave trade institution, nation-states understood they needed to plead to an influential religious authority for approval and dominance of this commerce and its complimentary territorial expansion.¹⁹ The Catholic Papacy was an all too

¹³ See Hugh Thomas, *THE SLAVE TRADE: THE STORY OF THE ATLANTIC SLAVE TRADE 1440-1870* (1997).

¹⁴ *Id.* at 7.

¹⁵ *Id.* at 22.

¹⁶ Cannon, *supra* note 3, at 132.

¹⁷ *Id.* at 130-131.

¹⁸ Thomas, *supra* note 13, at 66.

¹⁹ See Valentin Juetner, *Of Islands and Sunny Beaches: Law and the Acquisition of Territory*, *WORLD HISTORY BULLETIN*, 2013, at 7.

willing participant to fulfill this quasi-legal, authoritative role in developing the Trans-Atlantic slave trade. Popes of different generations indulged Portugal's and Spain's request and used their religious influence in the European geosphere to require neighboring nation-states to adhere to the Papacy's authority to grant the Asiento, which morphed into the primary legal monopoly in the slave trade.

Yet, African monarchs and chiefs were not exempt from abusing differences among themselves which included tribal affiliation, ethnicity and social status in order to profit from and gain additional access to European goods through the slave trade. Africans raided and pillaged rival villages, which resulted in the capture and deportation of their neighbors or spoils of war.²⁰ Despite cultural and religious differences, Europeans knew through custom, that in order to gain access to the African interior, they needed to provide corporate-like enhancements, primarily as to chieftains and other tribal leaders.²¹ These activities were partially responsible for the new staple of slaves that would transform the Trans-Atlantic slave trade from an inconsistent bartering system to a sophisticated financial market.

II. LEGAL SUCCESSION OF THE ASIEN TO

A. *The Asiento's Origin and Successive Conveyances*

To appreciate the role of the Roman Catholic Church and its Papal authority regarding the Trans-Atlantic Slave trade, a brief introduction of European interest in commerce and exploration among the high seas is warranted.

European exploration into the Western Hemisphere as well as into Africa's coastal interior and northern seaboard manifested their desire for a new trade in goods which led to the development of the Trans-Atlantic slave trade.

B. *The Early Years of the Asiento*

As early as the 15th century, the Catholic Church and its then appointed vicar became involved in the exploration of Africa's coastal interior and soon after, slave trading. In 1442, Pope Eugenius IV granted Portugal the exclusive license to explore Africa.²² Despite this exclusivity,

²⁰ Thomas, *supra* note 13, at 227.

²¹ *Id.* at 201.

²² See Muhammad – A Forgotten Crime, *supra* note 4, at 904 [fn. 64] (2004) (revealing how Portugal secured approval from several popes for buying slaves and using them as workmen and entertainers).

Spain sought similar, potential economic benefits in coastal Africa as well. Although the Papacy was aware of the Islamic presence in Spain, and despite earlier Christian crusades, the Catholic Church did not conduct any notable overt, hostile military campaigns against Muslims until a decade later. This is likely due to Western African Muslims' ongoing trade in Muslim African slaves as a result of the Trans-Saharan trade, and eventually to some Europeans.²³ These African-Arab Muslims would use the same justification as the Catholic Church of Europe to justify their captives' enslavement,²⁴ the false religious notion concerning the swarthinness of Africans' skin and the latter likely belief in traditional African religions which were not monotheistic. Interestingly, history records that this predecessor to the Trans-Atlantic slave trade was not as extreme as its successor.²⁵ Notably, even non-Muslim slaves and servants gained military rank and other respectable status within their new society, sometimes through recruitment into the military or as tradesmen and even, at times, regarded as family members of the household to which they served. This characteristic of slavery would later manifest itself in American municipal slavery, yet remained dissimilar. As after war, they remained slaves with no legal status nor legal recourse to enforce promissory estoppel against their slavers.

In 1452, Pope Nicholas V charged King Alfonso of Portugal with the Christian duty to enslave any non-Christian.²⁶ The Pope's act would be the first recorded international edict to literally grant a Christian nation the right to promote, enforce, and heavily profit from slave trading. Decades later, a new Pope, Alexander VI beckoned Christian monarchs to conquer native populations in the name of the Catholic Church.²⁷ Pope Alexander VI thus upheld his predecessor's tradition to enslave non-Christians²⁸ in whatever lands they called home.

As European nations continued to struggle for additional (external) lands and power around the world, the need for religious endowment and approval became indispensable. The 1496 Treaty of Tordesillas fulfilled this necessity.²⁹ This bilateral agreement appeared to be a *prima facie* secular contract between two warring monarchs in which the Catholic Church explicitly consecrated European nation-states to trade in African

²³ See *id.* at 891.

²⁴ See DuBois, *supra* note 6, at 77; see also Thomas, *supra* note 13, at 22.

²⁵ See generally DuBois, *supra* note 6.

²⁶ See John F. Maxwell, SLAVERY AND THE CATHOLIC CHURCH: THE HISTORY OF CATHOLIC TEACHING CONCERNING THE MORAL LEGITIMACY OF THE INSTITUTION OF SLAVERY 53 (1975); see also Thomas, *supra* note 13, at 65.

²⁷ See Maxwell, *supra* note 26, at 55-56.

²⁸ *Id.*

²⁹ See Muhammad – A Forgotten Crime, *supra* note 4, at 909.

slaves, as well as delineated clear territorial rights throughout the world.³⁰ To permeate this secular veil, historians simply must consider prior treaties and Papal edicts concerning new lands beyond Europe as the religious, and economic basis to expand the Trans-Atlantic Slave trade. Prior to 1496, the Papacy already granted Spain rights to the world's southern hemisphere.³¹ An even earlier Papal bull of 1442 had already recognized Portuguese expansion as including parts of West Africa.³² The Pope with presumptive religious authority, arguably not knowing or even concerned with the existence of indigenous inhabitants who either owned their native land by possession or communal system, allotted foreseen and acknowledged lands from the Eastern and Western Hemispheres between Spain and Portugal.³³ This division of territory codified the Papacy's institutional belief that non-Christians, and especially ethnic populations, possessed no intrinsic human rights to flourish in their own kingdom, maintain their own culture, or to fundamentally exist freely.³⁴

Some historians have referred to this Papal edict as the 'Papal Line of Demarcation,'³⁵ noting the authority of the Catholic Church's involvement in territorial exploration and the flourishing, economic market in the trading of slaves in addition to non-human, tangible goods.³⁶ As most of the known world appeared to be unilaterally allotted from the Papal's perspective, the newly authorized Portuguese and Spanish monarchs' next rational step was to attain greater standing in power through a global economy—increasing the slave trade's financial markets.

As the Spanish and Portuguese Crowns vied for continuous powers from the Papacy,³⁷ to ensure their respective kingdom's expansion, the *Asiento* would not transfer and revert between the two until generations later. Throughout the later portion of the 17th century, other European nations would seek the exclusive *Asiento* to financially benefit their national governments, quasi-governmental companies, and merchants.

The first known recorded right issued by a monarch to merchants, who desired to engage in slave trading from the coast of Africa, occurred

³⁰ See Juetner, *supra* note 19, at 8.

³¹ See Maxwell, *supra* note 26, at 55-56.

³² *Id.* at 52-53.

³³ *Id.* at 55-56.

³⁴ See *id.* at 66-67; see also Gary, *supra* note 5, at 37.

³⁵ See DuBois, *supra* note 6, at 91 ("The Pope's Bull or Demarkation, 1493, debarred Spain from African possessions, and compelled her to contract with other nations for slaves. This contract was in the hands of the Portuguese in 1600; in 1640 the Dutch received it, and in 1701 the French."); see also generally Edward G. Bourne, *The Demarcation Line of Alexander VI: An Episode of the Period of Discoveries*, 1 *YALE REV.* 35 (1892).

³⁶ See generally Juetner, *supra* note 19.

³⁷ See John Thornton, *AFRICA AND AFRICANS IN THE MAKING OF THE ATLANTIC WORLD, 1400-1800* 58 (2nd ed. 1998).

in 1510. King Ferdinand IV of Spain-Arragon, acting on his royal legal authority, granted the slaving license to a group of merchants. According to the terms of this license, the merchants were to secure 50 slaves under the tutelage and financial auspices of the King.³⁸

In 1517, the successor to the Arragonese and Carthaginian dynasties, King Charles V, rose to the dual throne and a year later issued an exclusive Asiento to a merchant interested in the slave trade business by the name of Garrevod,³⁹ who would sell his license to a group of Genoese merchants.⁴⁰ The same year, King Charles V broke the exclusivity of the slave trading license and granted the privilege to a Fleming by the name of De Dresa. The merchant obliged himself to secure African slaves for the Americas and West Indies over an eight-year period. Charles the V granted additional licenses to other individual merchants including Laurens de Goumenot.⁴¹ Around 1528, another group of German slavers secured the Asiento to supply a German company with 4,000 slaves.⁴² The Asiento was a monopoly of the slave trade to the extent that its early holders (Portugal and Spain) had the exclusive right to grant multiple uses to whom it chose and dictate the terms of import taxes and duties as it deemed fit.⁴³

In earlier explorations, the then Queen Isabella, her *Catholic Majesty*, had declared that because natives of the ‘New World’ were now under the auspices of her rule, they were to be treated as her subjects. However, she was quite willing, based on confirmed Papal authority, to exterminate those under Spain’s forced rule who did not comply with the newly religious precepts.⁴⁴ Whether for political or religious gain, the Catholic Church memorialized a more lenient sentiment towards Native Americans,⁴⁵ sparing them the overall degrading effects of systemic slavery in the West,⁴⁶ while their African contemporaries would continue to be frowned upon with disdain primarily for being of African origin.⁴⁷ This, along with Native Americans’ milder physical features⁴⁸ and lack of

³⁸ See DuBois, *supra* note 6, at 88.

³⁹ See Ulrich B. Phillips, *AMERICAN NEGRO SLAVERY: A SURVEY OF THE SUPPLY, EMPLOYMENT AND CONTROL OF NEGRO LABOR AS DETERMINED BY THE PLANTATION REGIME 17-18* (1929).

⁴⁰ See *id.*

⁴¹ See Thomas, *supra* note 13, at 98.

⁴² See Scelle, *supra* note 9, at 619-620; see also Phillips, *supra* note 39, at 18.

⁴³ See Thomas, *supra* note 13, at 103, 141.

⁴⁴ See Maxwell, *supra* note 26, at 55-56.

⁴⁵ See Thomas, *supra* note 13, at 71; see also Maxwell, *supra* note 26, at 73.

⁴⁶ See Phillips, *supra* note 39, at 17; see also Maxwell, *supra* note 26, at 69-70; see also Thomas, *supra* note 13, at 98.

⁴⁷ See Maxwell, *supra* note 26, at 72-73.

⁴⁸ See Muhammad – A Forgotten Crime, *supra* note 4, at 928-929.

strength to endure a life as plantation slaves,⁴⁹ would soon reverberate decades later to the detriment of African natives. It was this pivotal point in modern antiquity where Africans would become the sole source of forced labor⁵⁰ and would endure centuries of brutality, massacre and human rights violations under the guise of economic practicality and religious prosperity.

The Spanish kingdom provided respite for the lighter-skinned Native Americans, yet conflicting doctrine by the Catholic Church would determine that both they and Africans were to be enslaved should they refuse to accept Christian beliefs.

As the trade license in slaves existed prior to the clearly delineated source of human commodities, it is here where the grant became formally known as the *Asiento de Negros*.⁵¹ At the time, Spain and Portugal were separate monarchs, which would later revert to a joint nation-state two additional times between the 17th and 18th centuries,⁵² and shift the power of the *Asiento* to Spain as the primary holder.⁵³ Although Charles V granted the *Asiento* to Goumonet, he could not legally obtain slaves from West Africa. The Treaty of Tordesillas had already partitioned the area exclusively for Portugal's domain. During the 13th-14th centuries, the Berbers of the Mali and Songhai empires sold African slaves to the Portuguese. Since the *Asiento*'s source was limited only to African labor, Goumonet had to secure slaves from the Portuguese and then transport them to the Americas. He eventually sold his assets to Genoese traders in 1538.

As the Castilian, Arragonese and Portuguese monarchs already garnered Catholic authority, their need for Papal validation of the Trans-Atlantic slave trade continued to prosper. Under King Phillip's rule, successor to Charles V, fiscal complications worsened due to his increased desire for luxuries and the accession of Portugal into the Roman Empire. Although African slaves were a financial avenue to remedy King Phillip's financial malfeasance, it was the continued tradition of denigrating the humanness of the African, as well as creating and exploiting religious dogma that was required to maintain the slave trade. The trade in human commodities simply increased the Crown's revenue to support soldiers ordered into war in the name of the Catholic Crown or *His Majesty*, a

⁴⁹ See Scelle, *supra* note 9, at 619-620.

⁵⁰ See Davenport, *supra* note 1, at 39-50, 54, 171, 490-510.

⁵¹ See Paul Lokken, *From the "Kingdoms of Angola" to Santiago de Guatemala: The Portuguese Asientos and Spanish Central America, 1595-1640*, 93 *HISP. AM. HIST. REV.* 171 (2013).

⁵² See Wiendel, *supra* note 1, at 223; see also Robin Law, *The First Scottish Guinea Company*, 36 *THE SCOT. HIST. REV.* 185, 188 (1997); see also Thomas, *supra* note 13, at 210.

⁵³ See Thomas, *supra* note 13, at 236.

phrase that would be used in official treaties that incorporated the Asiento license by reference during the 18th century.

Traditionally, the Crown's grant of the Asiento provided a group of merchants and slavers, usually supported by a commercial company or the Crown itself, with the legal right to explore the West Indies.⁵⁴ As a result, the *asientists* would pay licensing fees, tariffs, such as export taxes to the Crown, as well as any fees and duties to the governor, slavers or other participants to facilitate the transport and selling of slaves. Although European Crowns maintained the monopoly of the Asiento during the early period, they granted licenses and sometimes permitted sublicenses to certain merchants⁵⁵ in order to ensure their profits in the international trade of African natives.

In October 1575, King Phillip granted the Asiento to Duke Don Juan of Naples and the Duke of Netherlands. From 1575-1585 the slavers were required to import 38,250 black, African slaves into the Indies over a nine-year period. In 1586, slaves were procured for Cuba and 208 were to be sold to various slaving companies headquartered in Europe.

From 1585-1600, as the Crown of Portugal reigned over a multi-state empire and as the need to generate additional revenue arose, the Iberian Peninsula experienced increased instability. The Catholic Church had already pressured King Phillip to wage war and heighten its offense against his northern European neighbors in order to conquer the heretics, whether pagan or simply a non-Catholic Christian, but primarily Africans and some Arabs. Spain's initial usage of the Asiento was not only to generate revenue for its Crown,⁵⁶ but also to increase the economic status of individual Spaniards by concentrating the distribution of slaving licenses under the Asiento to its own population.⁵⁷ In 1585, "...the Spanish crown contracted an *Asiento de Negro* with a Portuguese merchant for the first time."⁵⁸

The Asiento remained an integral part of the Western European regime, as well as of the New World. Not only did the Catholic Church have the originating, proclaimed authority to grant the Asiento to the two competing monarchs of the Trans-Atlantic slave trade, that is Portugal and Spain, but the Papacy also generated income for Portugal through taxes it obtained with the jurisdiction of the Holy See during the 16th through 17th centuries.

⁵⁴ *Id.* at 210.

⁵⁵ *See, e.g.,* Lokken, *supra* note 51, at 178.

⁵⁶ *See* Thomas, *supra* note 13, at 292.

⁵⁷ *See* Scelle, *supra* note 9, at 616.

⁵⁸ *See* Thomas, *supra* note 13, at 232.

From 1593-1595, the Spanish Crown, King Phillip IV, whose reign of Spain and Portugal would span from 1581-1640,⁵⁹ granted slaving licenses to Portuguese merchants.⁶⁰ However, in 1595, King Phillip reverted the Asiento back to the Spanish Crown. According to some accounts, due to Spain's greater size in both population and landmass, the license revocation was to maintain Spain's authority and monopoly, resulting in greater revenue to the Crown from the triangular trade. Although the Portuguese nation was now subsumed with Spain, nationalistic and ethnic differences permeated the union. Spain and Portugal still maintained separate treasuries and accounting. As King Phillip arose as the emperor of both Spain and Portugal, due to the latter's monarchy, sovereign weakness resulted from its lack of heirs to the royal throne; his primary duty was to Spain—especially in light of it and Portugal's past rivalry arising from the Papal grant. Spain would reinstate its previous practice of granting slaving licenses under the Asiento to primarily Spaniards for the final years of the 16th century.⁶¹

C. The Prevalence of the Asiento During the 17th Century

Interestingly, the Spanish and Portuguese monarchs issued licenses to trade in slaves to multiple individuals,⁶² who forged mercantile alliances to demonstrate financial and maritime capability in order to fulfill the rights and obligations under the slave trade contract. The Portuguese Crown from 1611-1640 issued these licenses consecutively or concurrently to its Spanish subjects, depending on the monarch's need for revenue.⁶³ Thereafter, the Spanish Crown re-established the exclusionary, streamlined Asiento system, which would reinvent itself into formalized bilateral and multilateral treaties with nation-states or their closely held corporations, rather than with individual merchants in the late 17th century and throughout the 18th century.

As mentioned beforehand, the Spanish Crown issued a series of direct Asiento licenses to individual merchants (Portuguese), slavers, and explorers from 1595 until approximately the year 1640.⁶⁴ In 1640, the Spanish monarch rescinded usage of the slave trading license and reissued the exclusive trade privilege to the Dutch and the British. This transitional period⁶⁵ would lessen and eventually extinguish Spain's grant of the

⁵⁹ See Thomas, *supra* note 13, at 210.

⁶⁰ See Lokken, *supra* note 51, at 202; see also Thomas, *supra* note 13, at 234.

⁶¹ See Lokken, *supra* note 51, at 184.

⁶² See Thomas, *supra* note 13, at 256.

⁶³ *Id.* at 165, 178, 299.

⁶⁴ See Thomas, *supra* note 13, at 299.

⁶⁵ See Lokken, *supra* note 51, at 173.

Asiento to sole individuals and morph into binding international agreements between the Spanish monarch and other nations interested in the financial possibilities associated with trading in black African slaves.⁶⁶

More established companies began to ingratiate themselves into the business of the slave trade. The Dutch West Indian Company, however, attempted to force itself to reign over the one monarchy, which retained authority of the Asiento—Spain. As the Netherlands in-tactically waged war against Spain in 1621, the Dutch West Indian Company established itself as a legitimate, chartered corporate entity.⁶⁷ In 1630, the Dutch West Indian Company began to emerge as a major colonial power, which reigned over much of Brazil. The Dutch's failed attempt to conquer Spain and its military encroachment and the taking of Brazil placed the Dutch in a vulnerable position with Portugal as well,⁶⁸ which was still under Spanish rule and protection.⁶⁹ Although the Dutch West India Company ended the company's venture in print in 1645, the company was able to obtain a slave license encompassing Ghana and its interior. In 1657, the Dutch West Indian Company agreed to deliver 500-600 slaves to Curaçao under its Asiento with Spain.⁷⁰

Following, the Dutch West Indian Company agreed to have the slaves it obtained from its slaving license for and to Ghana, to be delivered to the Americas. The two current holders of the Asiento, Domingo Guillo [Grillo] and Ambrosio Lomelin⁷¹ were to facilitate the slave deliveries to and through the Genoese merchants and slavers.⁷² These merchants obtained the Asiento from the Spanish monarch and held the exclusive slave brokerage until 1669. However, the two merchants failed to fulfill their obligations under the contract with the Dutch West Indian Company, which canceled the agreement. In 1667, with only two years remaining on the slave license, the merchants assigned their Asiento rights to a broker, who was actually a banker named Baltasar Coymans.⁷³ Under an agreement with Portugal, the two merchants obliged themselves to pay Portugal 1-2 m. riyals. However, the Crown canceled this Asiento in 1670.⁷⁴

The Crown continued to convey individual slave trading licenses under the term Asiento to merchants who worked as partnerships,

⁶⁶ See Thomas, *supra* note 13, at 236.

⁶⁷ *Id.* at 161.

⁶⁸ *Id.* at 169.

⁶⁹ See Davenport, *supra* note 1, at 353-360.

⁷⁰ See Thomas, *supra* note 13, at 186.

⁷¹ See Scelle, *supra* note 9, at 629; see also Thomas, *supra* note 13, at 301.

⁷² See Thomas, *supra* note 13, at 213.

⁷³ *Id.*

⁷⁴ *Id.*

consortia,⁷⁵ or even as informal agreements amongst themselves, as well as obtained financial support through third-party corporations, usually founded or controlled by varying European nations.⁷⁶

For instance, in 1670, the Crown conveyed the Asiento to Antonio Garcia, Sebastian de Silico and businessmen, Juan Farraso (Barraso or Baffaso) del Pozo and the Consulado of Seville. This Asiento was to remain legally binding on all parties until about 1679. However, according to some records, Antonio Garcia was sent to prison. The Spanish Crown decided to grant the Asiento to another Consulado of Seville from 1676-1679,⁷⁷ as the other previous Consulado was too dependent upon the Dutch to fulfill the needs of the Asiento. However, this Consulado failed to make the Asiento lucrative, likely due to the Spanish Crown's resistance to having its authority in the slave trade threatened by the influence of Dutch participation, Crown which attempted to conquer Spain in previous decades.

In 1679, Spain granted the Asiento to Juan Barroso del (Farrose del) Pozo and Nicholas Porció.⁷⁸ Spain negotiated that this Asiento would legally expire in 1689; however, Nicolás Porció abandoned the slave trading contract five years prior (1684),⁷⁹ the year Barraso died.⁸⁰

The same year, Spain revived the Asiento and transferred it to Balthasar Coymans, a Netherlands subject, the coveted Asiento that would take effect in 1685.⁸¹ Meanwhile, the Pontiff's advisors issued support, which reiterated previous Papal bulls regarding the legitimacy of the slave trade in Africans.⁸² The Vatican had an unlikely spirited and religious advisor under its commission; an African, and likely a former slave, by the name of Lorenzo de Silva de Mendoza. As the Papacy already solidified its authority as to religious and international legal affairs, its influence in systematizing the Trans-Atlantic slave trade through 17th century Papal grants vested in the closest religious and political allies, Spain and Portugal,⁸³ is astounding. De Silva requested that Pope Innocent excommunicate any slavers or slave traders who captured, sold and resold African Christians.⁸⁴ This premise is diametrically opposed to the earlier

⁷⁵ See, e.g., Davenport, *supra* note 1, at 396.

⁷⁶ See Thornton, *supra* note 37, at 55, 59.

⁷⁷ See Scelle, *supra* note 9, at 630-631; see also Thomas, *supra* note 13, at 214.

⁷⁸ Thomas, *supra* note 13, at 214.

⁷⁹ *Id.*

⁸⁰ *Id.* at 215.

⁸¹ See Asiento for the Introduction of Negro Slaves into the Indies, Spain-Balthasar Coymans, Feb. 23, 1685, 17 C.T.S. 1686; see also Thomas, *supra* note 13, at 215.

⁸² See Thomas, *supra* note 13, at 216.

⁸³ See Maxwell, *supra* note 26, at 55-56.

⁸⁴ See Gary, *supra* note 5, at 37.

Pope's grant to enslave Africans and transport them to the West Indies regardless of whether they converted to Catholic Christians, because as European rulers concluded, Africans were deemed heretics and not worthy of freedom and naturally characterized as animals.⁸⁵ Thus, Africans from the West and North Africa were already forced to convert to Catholicism, then faced a lifetime of misery (through slave trading, and forced military service) as a by-product of converting to Catholicism, a specific form of modern Christianity.⁸⁶ De Silva's pleas to the Catholic Church demonstrated the integral legal and advisory role that the Papacy held in the inception and perpetration of the Trans-Atlantic slave trade via the Asiento grant. As a result, the Cardinals from the Holy Office/Vatican, though not explicitly acting on the behalf of Pope Innocent, advised the latter's ambassadors in Europe to relay the Vatican's concern that African slaves should not be physically abused. The Vatican and the vicar continued to obtain taxes from the Asiento's primary Catholic beneficiaries, that is, Spain and Portugal.⁸⁷ As the Papacy's proclaimed vested interest was to propagate Catholicism to heathens, it never declared during the development and apex of the triangular trade itself, inhumane. Nor did it declare any acts, such as the separation of African families through capture, the mental and social abuses or their long-term impact, the branding, the lack of adequate food and proper hygiene, and the shelter deprivation through force as violation of human rights, as violations of natural law or religious principles.

As a result of these informal Papal decrees, no kind of economic sanctions were implemented, nor was any slave trading market participant, whether government or individual, found guilty or liable of such egregious acts, nor did they endure any type of negative consequences from their respective Crowns or from the Vatican itself. These released pronouncements were superficial, with an advisory impact containing no legal or economic injunctions should the participants fail to adhere to

⁸⁵ See Maxwell, *supra* note 26, at 66-67.

⁸⁶ See Convention between Denmark and Spain, Jul. 21, 1767, 44 C.T.S. 29.; see also Cannon, *supra* note 3, at 131 ("White supremacy is the Trojan horse within organized Christianity, undermining and subverting the liberating news of the gospel. Such idolatry taught traffickers that this highly respected, booming, lucrative transatlantic commerce of embodied commodified labor violated neither divine nor natural law. Traders, merchants, and slaveholding planters should have no fear in losing their chattel property because with baptism, Africans become efficiently subservient. Striking at the core where enslaved women, men and children lived, enslavers tried to indoctrinate Africans to believe they were duty bound to serve Jesus Christ while they worked for their oppressors, performing their duties with great diligence and fidelity to God. The traditional notion that a baptized person was entitled to freedom was no longer applicable in the African world; spiritual freedom was only personal freedom from the bondage of personal sin.").

⁸⁷ Muhammad – A Forgotten Crime, *supra* note 4, at 906.

them. The lack of consequences, however, was not a result of the lack of power the Papacy possessed. It had the foresight not to destroy the institution of slavery nor the quasi-legal instrument, which solidified its proliferation, because the Papacy benefited from it. Thus, the Holy Office entrenched itself on both sides of the slave trade, with advisory declarations that the poor treatment of slavers was prohibited, while failing to denounce the institution of slave trading; slavery itself. As a result, the Trans-Atlantic slave trade would continue to flourish for nearly two additional centuries through the Asiento, which would in later agreements be formalized through incorporation by reference in international treaties.

The Spanish Crown continues to convey and rescind the Asiento as demonstrated in 1686, when it annulled the Asiento with Balthasar Coymans,⁸⁸ a Dutchman, who died a year prior.⁸⁹ His assistant, Jan Corcau continued to implement the terms of the Asiento contract until March 1688,⁹⁰ when he was imprisoned. From 1690-1691, Nicolás Porció would once again briefly possess the slave trading contract.⁹¹ In 1694, the Spanish Crown granted its last Asiento to an individual merchant, Bernardo Francisco Marín de Guzman.⁹²

D. The Asiento in the 18th Century and International treaty

The Asiento shifted, although not consistently, as the Spanish Crown granted the Asiento to some companies and nation-states⁹³ doing business in the name of such,⁹⁴ rather than merchants, either individually or as conglomerates. In 1696, the Real Companhia da Guine de Reinde Portugal obtained the Asiento agreement through its representative, Manual Ferrcia de Carvalho.⁹⁵ As with the legacy of the Asiento within a year of the

⁸⁸ See Wiendel, *supra* note 1, at 249 (“The *asiento* in 1685 concluded with the Dutch trading firm Coymans increased the opportunities of the Dutch West Indian Company (WIC) to deliver slaves, but did not change anything international about the treaty.”) (emphasis in original).

⁸⁹ See Thomas, *supra* note 13, at 217.

⁹⁰ See JOHANNES POSTMA, *THE DUTCH IN THE ATLANTIC SLAVE TRADE, 1600-1815* 42 (2008) (“When Coymans died in November 1686, his place at the asiento office was taken by his longtime assistant Jan Carçau, who kept the asiento functioning according to contract until he was jailed in March 1688.”).

⁹¹ See Thomas, *supra* note 13, at 218 (“Despite the interest of Jan Coymans, Baltasar’s brother, and, behind him, the Dutch West India Company, Coyman’s company now lost the *asiento*: first, it was returned to Nicolás Porció, who claimed that he had been unfairly outmaneuvered by Coymans . . .”).

⁹² See Scelle, *supra* note 9, at 631-32.

⁹³ See Carmona, *supra* note 1, at 257.

⁹⁴ See Asiento between Spain and the East India Company (Great Britain), Mar. 26, 1713, 27 C.T.S. 425.

⁹⁵ See Asiento between Spain and the Portuguese Guinea Company signed at Madrid, Jul. 12, 1696, 21 C.T.S. 151; Asiento between Spain and the Portuguese Guinea Company signed at

contract's execution, Spain required an adjustment of the Asiento.⁹⁶ This amendment abridged the Portuguese Guinea's Company's usage of the Asiento to toll from 1703 to 1701, a loss of nearly two years, due to its failure to pay stipulated taxes and slave licensing fees to the Spanish Crown.

Although these international treaties are rife with financial expectations, legal rights and obligations of those party to the agreement, the Asiento and its originating religious authority, as vested in the Vatican, is notably demonstrated by religious titles and governmental authority of the respective nation-states. For instance, in the 'Adjustment (Transacción) of the Asiento, concluded by Spain and Portugal at Lisbon,' June 18, 1701, N.S. Ratification by Spain in July 1, 1701. Ratification by Portugal, June 18, 1701⁹⁷ states in part the summary of the King of Spain's authority to initiate and bind the monarch as follows:

Don Philip, the Fifth, by the grace of God, king of the Spains, the Two Sicilies, Jerusalem, the Indies, etc., archduke of Austria, duke of Burgundy and of Milan, count of Hapsburg and of the Tyrol, etc,⁹⁸

as well as in the Asiento's introduction to the terms of the treaty:

Whereas here met by agreement at the court of Lisbon President of Rouelle, ambassador extraordinary of his **Most Christ Majesty** in the court, armed with many powers...⁹⁹

In the Name of the Most Holy Trinity Whereas it was stipulated in the second article of the treaty of new alliance and of guaranty of the will of Charles II, **Catholic king of Spain**, in the part relating to the succession of the very powerful prince, Philip V, **by the grace of God Catholic king** of Spain, to all of Charles II's estates and dominions, concluded with the very high and very powerful prince Pedro II, likewise **by the grace of God**

Madrid, Aug. 27, 1701, 23 C.T.S. 489; *see also* Transaction between Portugal and Spain respecting the Asiento of the Guinea Company signed at Lisbon, Jun. 18, 1701, 23 C.T.S. 419.

⁹⁶ *See* Transaction between Portugal and Spain respecting the Asiento of the Guinea Company signed at Lisbon, Jun. 18, 1701, 23 C.T.S. 419.

⁹⁷ *See id.*

⁹⁸ *See id.*

⁹⁹ *See id.*

king of Portugal, that all the damages caused to the Company of the Assiento for negroes for the Indies by the (vexation) vexations acts and lack of fidelity wherewith his **Catholic Majesty's** agents have fulfilled the conditions of the contract. . . .¹⁰⁰ [emphasis added]

It is clear that this treaty incorporated the Asiento by reference, as well as several succeeding Asiento treaties have taken great care to emphasize their legal authority to trade in African slaves by not only their religious affiliation (Christianity) but also by their respective kingdoms' allegiance and reciprocal award of the Papal grant. Thus, Papal authority ran with these international agreements not by implication but by express acknowledgment.

The Spanish monarch continued to convey the Asiento with its succeeding transaction of the 'Asiento for the Introduction of Negro Slaves into Spanish American between the French Guinea Company and Spain,' which the parties ratified on August 27, 1701.¹⁰¹ As African slaves were relegated to less than human and as mere commodities, Spain did, however, ensure that a limited number of slaves were captured and transported during the Asiento's fixed ten-year term.

The French Guinea Company was required to provide 48,000 slaves per annum with an import license tax of 33.33 pieces of silver.¹⁰² Thus, the Spanish Crown would collect 1,599,984 pieces of silver over an estimated ten-year period in slave import taxes alone with this particular Asiento treaty. Spain ensured that its monarch would receive these import duties regardless of circumstances beyond it or the French Guinea's Company's circumstances or control by requiring that the latter make two deposits in the amount of 300,000 by the end of 1701, the year both parties consummated the Asiento treaty.

To further elaborate the Papal and Holy Office's royal and religious dominion over the Asiento, Spain included the following stipulation in the treaty (Clause 8):

The Company shall transport its cargoes in ships of his **Most Christian** Majesty or in its own, or even in ships belonging to Spaniards, if to its advantage, manned by subjects of the French Crown, or by those of his **Catholic**

¹⁰⁰ *See id.*

¹⁰¹ *See* Asiento between Spain and the Portuguese Guinea Company signed at Madrid, Jul. 12, 1696, 21 C.T.S. 151; Asiento between Spain and the Portuguese Guinea Company signed at Madrid, Aug. 27, 1701, 23 C.T.S. 489.

¹⁰² *See supra* note 101.

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Majesty at its option; and in case of admitting any others, for want of men, although the assumption is unlikely, the **shall all be Roman Catholics**. At the same time the said Company is to be allowed and empowered to introduce the negro slaves required by the assiento, into the said parts of the North Sea (Atlantic Ocean) in any ships of the nations friendly to the crown, as has been conceded to other assientists; but always on the distinct condition that both the commander and the personnel of the crew of the said ship must be **Roman Catholics**.¹⁰³ [emphasis added]

Nearly every succeeding clause in this international agreement describes France and its French Guinea Company as Christian, connotating its right to obtain the Asiento from Spain and the latter's authority through the Catholic Church and to convey the slave trading license to nations and their representative trade companies as it deems appropriate.¹⁰⁴

Spain realized its next Asiento with the East India Company of Great Britain in 1713.¹⁰⁵ To continue the tradition of exhorting its Papal authorization to convey the Asiento, the Spanish monarch again referred to its Catholic affiliation within the international agreement with initial mention as follows:

First then, to procure, by this means, a mutual and reciprocal advantage to the sovereigns and subjects of both crowns, her British Majesty does offer and undertake for the persons whom she shall name and appoint, that they shall oblige and charge themselves with the bringing into the West Indies of America, belonging to his **Catholic Majesty** in the space of the said thirty years. .¹⁰⁶ [emphasis added]

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ See Asiento between Spain and the East India Company (Great Britain), Mar. 26, 1713, 27 C.T.S. 425; see also Thomas, *supra* note 13, at 161.

¹⁰⁶ See Asiento between Spain and the East India Company (Great Britain), Mar. 26, 1713, 27 C.T.S. 425; see also Carmona, *supra* note 1, at 257 (“The Catholic King grants to her Britannick Majesty, exclusive of the subjects of Spain and all others, the Contract of carrying Blacks into the Spanish West-Indies for the Space of Thirty Years, beginning from the first Day of May, 1713, on the same Conditions as the French enjoy’d it.”) (citation omitted).

As with the prior *Asientos*, this treaty continuously refers to Spain as *her Catholic Majesty*¹⁰⁷ and also emphasized the requirements that certain heirs, such as merchants and midshipmen must not in any way offend Roman Catholics in order to participate and profit from the Trans-Atlantic slave trade. This clause specifically differs from the *Asiento* of 1701,¹⁰⁸ which required slavers and merchants under hire to be Roman Catholics,¹⁰⁹ whereas this treaty merely requires such hires to conduct themselves in a manner which is in compliance with the Roman Catholic Church, which is Spain's national religion or be admonished and subject to the criminal laws of the Spanish Crown.¹¹⁰

Ironically, for nation-states to be in accordance with the mores and laws of Roman Catholicism and the then influential monarch of Spain, which was a primary purveyor of such religious canons, slave trading participants were, to a great extent, performing their Christian duty by subjecting Africans, whether Christian or not to a lifetime of branding, slavery, rape, kidnapping and torture as participants reduced African slaves' humanity to commodities for transport and auction. These nation-states, slaving companies, slavers, bankers, and merchants deemed Africans as worthy of human rights violations, and by Papal declaration, subject to enslavement.

To further these notions, cloaked with policy-oriented, religious doctrine, parties to treaties which incorporated by reference the *Asiento*, elucidated their diminishment of Africans as mere 'negroes,' and in the apposite even less than slaves but as 'piezas de India.'¹¹¹

The 1713's international treaty introduction recorded as 'The *Asiento* between Spain and East Indian Company (Great Britain)' proclaimed: "Whereas the *Asiento* agreed on with the Royal Guinea Company, settled in France, for the introducing of Negro slaves into the Indies, is determined..." The *Asiento* continues to state:

¹⁰⁷ See Carmona, *supra* note 1, at 257.

¹⁰⁸ See *Asiento* between Spain and the Portuguese Guinea Company signed at Madrid, Jul. 12, 1696, 21 C.T.S. 151; *Asiento* between Spain and the Portuguese Guinea Company signed at Madrid, Aug. 27, 1701, 23 C.T.S. 489 ("The Company shall transport its cargoes in ships of his Most Christian Majesty, or in its own, or even in ships belonging to Spaniards, if to its advantage, manned by subjects of the French crown, or by those of his Catholic Majesty, at its option; and in case of admitting any others, for want of men, although the assumption is unlikely, they shall all be Roman Catholics.").

¹⁰⁹ See *Asiento* between Spain and the East India Company (Great Britain), Mar. 26, 1713, 27 C.T.S. 425.

¹¹⁰ *Id.*

¹¹¹ *Id.*

First then, its procure, by this means, a mutual and reciprocal advantage to the sovereigns and subjects of both crowns, her British Majesty does offer and undertake for the persons, whom she shall name and appoint, that they shall oblige and charge themselves with the bringing into the West Indies of America, belonging to his Catholic Majesty, in the space of the said thirty years, to commence on the first day of May, one thousand seven hundred and thirteen, and determine on the like day, which will be in the year one thousand seven hundred and forty three viz. One hundred and forty-four thousand negroes, piezas de India, of both sexes and of all ages, at the rate of four thousand and eight hundred negroes, piezas de India, in each of the said thirty years. . . .¹¹²

These references continued throughout the Asiento as well as the description of what a sound product (slave) is considered as worthy for sale: “That for each negro, pieza de India, of the regular standard of seven quarters, not being old or defective, according to what has been practised and established hitherto in the Indies, the asientists shall pay thirty three pieces of eight (escados) and one third of a piece of eight. . . .”¹¹³

As African slaves were considered commodities as per the Asiento’s usage of terms such as “cargo,”¹¹⁴ they were stocked in the holes of ships. It is well-known that many captured Africans died en route to the West Indies and the Americas, of melancholy, squalor, and disease, as they were forced into inhumane conditions. By the time Africans reached the shores of the New World, many rapidly aged due the harsh conditions of their physical environment and due to depression. The warehouses were actually fortresses on the shore used as holding quarters until the time of transport and auction. The conditions of these warehouses were not any better than the ships, as disease and poor sanitation affected the captive Africans while they awaited their lugubrious fate. Ship captains, auctioneers, and some merchants attempted to disguise slaves’ physical defects, including age, by dyeing slaves’ hair, covering scars, which silently relayed the brutal treatment they endured at the hands of their original captors.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.* (“That the said assientists shall be at liberty to employ, in this commerce for the carrying of their cargoes, her Majesty of Great Britain’s own ships, or those of her subjects, or any belonging to his Catholick Majesties subjects”) [sic].

As commodities are beaten, physically and mentally abused or otherwise mishandled, they lose value due to the loss of the original integrity of the product. At times, these goods are discounted for quick sale or otherwise deemed an unsellable commodity. As a result, these goods are written off as a financial liability or loss for auditing and tax purposes. The same fate awaited African lives captured and forced into the Trans-Atlantic slave trade.

Parties to this treaty made it apparent that Africans were to be stripped of their familial and cultural identity as referenced in this and earlier Asiento agreements. The assentists, at times, referred to Africans simply as black slaves. Just as the Papacy systemically used the Catholic religion as the catalyst and justification to enslave others, it also used the term 'black slaves' to further demean, racially stigmatized, emasculate, defeminize, anonymize and objectify human beings with African heritage and their progeny.

As with all other previous Asiento agreements, Spain exhorted its right to convey the slave trading license to whom it chose through the authority it obtained from the Papacy. Although the Asiento evolved into an official contracting instrument, the Spanish Crown eluded exclusivity by issuing Asientos and treaties which either overlapped in time or shared a similar time frame for transporting African slaves but designating different portions for disembarkment and sale to different interested parties.

Additional terms of the international agreement between Spain and Great Britain via the East India Company, specified that they could ship nearly 5,000 slaves annually, for up to 30 years.¹¹⁵ Thus, the maximum number of slaves to be validly captured and shipped could not exceed 144,000 for the duration of the Asiento contract. The contract also stipulated that Great Britain, doing business as the East India Company, was obliged to initially deposit slaves at Spanish warehouses located at various ports in the extended Spanish empire,¹¹⁶ should Great Britain's ships arrive at port destinations before Spain's ships. The Asiento elaborated that the clause served to benefit Great Britain should expected slave auctions not occur, that Spain guaranteed it would hold annually.

The British monarch warranted that, not only were African slaves not defective as mentioned earlier, but these human commodities did not have a set price. Interestingly, Spain required that African slaves were to be purchased with goods already aboard ships and not with actual legal tender. Britain obligated itself to ship surplus goods to the West Indies for

¹¹⁵ *Id.*

¹¹⁶ *See id.* at "Cl. 9".

sale and likely for Spanish authorities to impose a trade tax to increase its profit, as this clause required Great Britain to dispose of goods overboard should it fail to import the surplus as stipulated.¹¹⁷

Thus, African slaves were to be disposed of as quickly as possible for whatever amount of value set forth at auction and equivalent merchandise for their exchange.¹¹⁸ Spain maintained its stronghold not only in the transport and sale of unwilling African survivors of the Middle Passage, but also monopolized the financial aspect of the triangular trade. Spain required duties, import taxes, and licensing fees to be paid in monetary units, increasing the Crown's revenue for its national economy and limiting the revenue of the assientists.

The original effective date of the Asiento was set for May 1, 1713.¹¹⁹ However, the East India Company was unable to tender its import duties to the 'Catholic Majesty' because it had purchased the African slaves but could not import them because Spain and Great Britain became embroiled in war.¹²⁰ Therefore, the Asiento could not take effect until a peace accord was reached between the two Crowns. As a result, the East India Company had to sell the African slaves in the British colonies. This re-routing of slave auctions resulted in Britain selling African slaves at a loss, as it could not afford to pay the duties on the African slaves to the Spanish Crown. This Asiento also stipulated to an adjustment in order for the East India Company to make its debt to Spain current.¹²¹ Upon approval by the Spanish monarch, the British Company was obliged to pay 200,000 pieces of eight as a proposed late fee as well as 466,666 pieces of eight for a total of 666,666 pieces of eight to Spain upon execution of the Asiento's effective date of May 1, 1714.¹²² However, Spain permitted the British company to pay either in lump sum or in installments in order to comply with the terms.¹²³

Further, even though the original terms of the 1713 treaty originally allowed Great Britain to transport 500 tons on a Spanish outfitted ship, because of the East India Company's loss of profits from 1713-1716 and as Great Britain's agreed to pay its late fees, the Spanish Crown granted the former an additional allowance of 150 tons per annum to commence from 1717 and to terminate in 1727. Thus, from 1717 to 1727, the East

¹¹⁷ See Asiento between Spain and the East India Company (Great Britain), Mar. 26, 1713, 27 C.T.S. 425.

¹¹⁸ See Convention for Explaining the Articles of the Asiento of 26 March 1713 between Great Britain and Spain, signed at Madrid, May 26, 1716, 29 C.T.S. 465.

¹¹⁹ See *supra* note 117.

¹²⁰ See Thomas, *supra* note 13, at 215.

¹²¹ See *supra* note 117.

¹²² See *id.*

¹²³ See *id.*

India Company would ship goods, African slaves on outfitted ships at a weight of 650 tons annually, increasing Great Britain's potential profits, as well as Spain's, based on estimated additional import taxes and duties.

As the War of the Spanish Succession (1701-1714) neared its inevitable extinction, European monarchs continued to vie for dominance in regional and international economies. The Spanish Crown had significant profits from licensing fees and import taxes that it obtained through the Trans-Atlantic slave trade's Asiento's circulation.¹²⁴ The war would not only determine Spain's autonomy and challenge its military forces, but would also vest controlling power of the international trade in African slaves and the revenue it produced for the kingdom in possession of it.

Great Britain's monarch had enormous difficulty in entering the lucrative Trans-Atlantic slave trade as a market participant because the Dutch accelerated its market share of trading (slaves) in South America and the West Indies. The Dutch had already challenged Spain's influence and share of the trade and dominance in South America, in particular Brazil. Thus, it was strategic that the Dutch made an alliance with Great Britain in the European regional conflict to determine the successor to the Spanish Crown. However, this particular Asiento was not that final peace accord to end the War of the Spanish Succession that Great Britain and Spain would enter into.

Throughout the Trans-Atlantic slave trade, the Papacy's authority and influence ebbed and flowed as its political interests dictated,¹²⁵ but did not actually wane. The Papacy not only endorsed the enslavement of Africans, non-Christians and Native Americans, but ordered it under edict. The Holy See used its religious-legal authority to determine which nation-states economically and politically excelled in the Trans-Atlantic slave trade without consistent nor substantial regard to the crimes against humanity that countries it supported by and through the latter's slavers, merchants, seaman, auctioneers and bankers who committed such atrocities in the name of abolishing what they determined to be as heresy, expanding Catholicism and colonizing the world unknown to them aforetime.¹²⁶ The Papacy possessed a fiscal, political, religious and

¹²⁴ See *id.*; Asiento for the Introduction of Negro Slaves into Spanish America between the French Guinea Company and Spain, signed at Madrid, Aug. 27, 1701, 23 C.T.S. 489.

¹²⁵ See Gary, *supra* note 5, at 37.

¹²⁶ See Silvia M. Loureiro, "By What Right?": *The Contributions of the Peninsular School for Peace to the Basis of the International Law of Indigenous Peoples*, 5 GOETTINGEN J. INT'L L. 18, 18 (2013) ("At the end of the fifteenth century, the Luso-Spanish kingdoms that occupied the Iberian Peninsula kept the same medieval mentality of the *orbis christianus*, which revolved around the power struggles between the Popes and the Emperors. The issue of infidelity of Pagans, Jews, and heretics challenged the universalism of *orbis christianus*, as well as disputes

pseudo-legal interest in strengthening its alliance with the two European nations that proffered its fidelity to the Catholic Church. According to historical records, the Holy See also never repealed or denounced any of the 15th century Papal bulls entitled *Deom Diverae* and *Romanus Pontifex*, which mandated that European monarchs have a Christian right to enslave whom they determined to be pagans, heretics as well as Muslims,¹²⁷ or other persons who did not recognize nor accept the Vatican as representative of Christian-religious doctrine.

Some historians argue that the Spanish and Portuguese Crowns were merely licensee holders of the *Asiento* and that legal and valid ownership of the slave trading license vested and remained with the Papacy. This legal argument does have validity, as to the *Asiento* itself as an internal legal construct created by the Papacy but based in religious dogma and authority. However, the Spanish and Portuguese Crowns consistently remained the agents of the *Asiento* to garner profits and taxes realized for the benefit of not only their respective nation-states but for the Vatican itself. Interestingly, one may reasonably argue that the first international agreement (carrying) the *Asiento* actually occurred between the Vatican and Portugal, the initial nation-state to hold the slave trading license.

The War of the Spanish Succession officially ended with a series of treaties subsumed under the general title of the Treaty of Utrecht.¹²⁸ These various treaties, which were signed in varying months of 1713 and operated as official multi-lateral peace agreements among specific nations, primarily the Two Crowns and the Hapsburg Alliance.

Although the *Asiento* of 1713 between Great Britain and Spain and the Treaty of Utrecht established a declaration of peace, the two warring nations required additional amendments to the terms of the original bilateral *Asiento* because conflict frustrated Great Britain's ability to perform its legal obligations to the Spanish Crown.

Furthering the Papal authority and ensuring that Spain's allegiance with the Catholic Church and any notion by and through its agents, representatives as recognized slave trading companies continued to acknowledge the religious and pseudo-legal relationship between the two, Spain began the Convention for Explaining the Article of the *Asiento* of

over the legitimacy of the use of *just war* as a way of fighting paganism were at the centre of debates.”).

¹²⁷ See Scelle, *supra* note 9, at 616 (“The Mediterranean relations there, the proximity of the Barbary Regencies, the wars sustained against them by the Catholic Kings, had multiplied the Moorish slaves”).

¹²⁸ See *id.* at 650 (“The diplomatic role of the *Assiento* reached its zenith at the time of the Congress of Utrecht; for this contract was the basis of the negotiations between France and Spain, on the one hand, and Portugal and England on the other.”).

26 March 1713 (hereinafter “Convention”) between Great Britain and Spain, signed at Madrid, 26 May 1716 with:

In the treaty of Affiento made between their Britannic and Catholic Majesties on March 26, 1713, for the carrying of Negroes to the Indies by the company of England, and for the term of thirty years, which were to commence from May 1, 1713, his Catholic Majesty was pleased to grant to the said Company the favour of finding to the Indies every year (during the said Affiento) a ship of 500 ton, as maintained in the said treaty.¹²⁹ [sic]

These references of Catholic Majesty and Catholic King once again permeate the international treaty and do not solely appear in the initial description of the terms of the 1716 Convention, but actually appear throughout this legal instrument, with Spain mentioning the Papal’s authority as running with the contract to trade in African slaves.¹³⁰

The Spanish monarch stipulated that it would guarantee a sponsored fair (a place of sale) to occur each year in order for Great Britain to ensure the goods it imported to the West Indies would be sold and would make a profit.¹³¹

Great Britain was to import their goods to the West Indies on a Spanish ship only if it was able to sail before June of each year, under the British flag. However, should Spain fail to meet the aforementioned condition, Great Britain was then permitted to dispatch its own ship under the British flag with proper notice to the Spanish Crown. After arrival, Great Britain had a waiting period of four months to await Spanish ships arrival for proper accounting of Britannic shipment.¹³²

In addition to the ships and their respective nations’ trade in goods, the agreement subjected them, as well as their predecessors party to the Asiento and ultimately the Papacy to not only international law, but also to the law of the high seas. The Convention acknowledges that the African slaves were to be sold by medium of goods and not currency and the price of Africans was not set.¹³³ In continuing the Asiento’s prior tradition, this

¹²⁹ See Convention for Explaining the Articles of the Asiento of 26 March 1713 between Great Britain and Spain, signed at Madrid, May 26, 1716, 29 C.T.S. 465.

¹³⁰ See *id.*

¹³¹ See *id.*

¹³² See *id.*

¹³³ See *id.*

international agreement continued to relegate Africans to a status not only as slaves but as commodities.¹³⁴

However, there are publicists who indicate that African monarchs were instrumental in providing Africans to Europeans off the North and Western Coasts of Africa for the Trans-Atlantic slave trade. African clans, tribesmen, and raiders had no significant use for European monetary units, as African nations were based on a different economic system, and thus, bartering was the primary means of conducting a transaction. As a result, European slavers and merchants used goods as legal tender to purchase Africans captured for the purpose of export into slavery.¹³⁵

As acknowledged in the Convention, the price of Africans could not be predetermined,¹³⁶ presumably due to age, the destination market of import in South America, and the purpose of their primary use, such as plantation labor, military use, breeding for more slaves, as gifts to others, and some even for domestic work. Consequently, the Spanish Crown allowed Great Britain to laden its ship with surplus goods.¹³⁷ Upon the event that goods in excess of the slaves purchased on the African coasts were not used, Great Britain could still ship them but they had to be held in the warehouses of Spanish owned ports until the ships could return to Europe.¹³⁸ Thus, Great Britain could not circumvent any import duties or taxes on goods by selling them beyond what it and Spain set forth in the Asiento; nor would the former be able to increase its profit shares. Spain obliged Great Britain to stipulate to this condition to avoid and prevent it from selling goods in unauthorized markets in ports owned by Spain.

During the period Great Britain and the Spanish Crown remained at war or otherwise in armed conflict, the British Royal African Company was forced to mitigate its financial losses and trade its human commodities in British colonies, instead of at the Spanish fairs, as stipulated in the original Asiento; the Spanish monarch agreed to permit the Asiento commence anew on May 1, 1714.¹³⁹

As a result, Great Britain was obliged to pay import taxes for the years 1714-1716, and in consideration Spain allowed the Britannic Royal African Company an additional 150 tons of goods for import over a two-year period, with the original 500 tons agreed upon in the 1713 Asiento

¹³⁴ *See id.*

¹³⁵ *See* Convention for Explaining the Articles of the Asiento of 26 March 1713 between Great Britain and Spain, signed at Madrid, May 26, 1716, 29 C.T.S. 465.

¹³⁶ *See id.*

¹³⁷ *See id.*

¹³⁸ *See id.*

¹³⁹ *See id.*

trade agreement.¹⁴⁰ As Spain and Great Britain did not agree upon any further amendments, Great Britain's Asiento license remained contractually in effect and would not terminate until May 1, 1743,¹⁴¹ pursuant to the original terms of the Asiento treaty of 1713.

The Trans-Atlantic slave trade not only provided heightened revenue for the monarchs in Europe, but served as the primary method to expand their respective dominions in South America and West Indies. As various Popes from the 15th century onward facilitated the settlement of disputes between nations over territorial rights in the new world,¹⁴² African slaves were necessary human commodities for these expansions to be realized. However, just as European nation-states subsumed captured African slaves into their realm, these monarchs also desired to expand their kingdoms within Europe, which made peace accords inevitably temporal.

Competing European powers considered the unification of two influential nation-states, Spain and France, as a threat to its ability to expand its territory, compete in the market of African slave trading, and to continue to expand its kingdom in the Americas.¹⁴³ Partially due to Great Britain's negotiations with France, The Treaty of Utrecht of 1713,¹⁴⁴ officially separated the reciprocal successorship of the royal thrones between Spain and France, as well as provided the Protestant Great Britain with the slave trade monopoly.¹⁴⁵ However, historians have noted that certain European monarchs suspected the terms of these treaties to be in jeopardy. An Italian friar by the name of Guili Alberoni convinced the future wife of King Philip of Spain of her right to be in the Spanish royal family. After Alberoni inserted himself into her confidence, the Pope at the time ordained Alberoni as cardinal. This Papal act of authority re-established the Pope's religious, and legal influence over Spain's rulership, as well as ensured the continued promotion of the international slave market in Africans, as well as over the resulting taxes it would realize from Spain's future profits. Alberoni's endeavor proved to be beneficial not only as to a newly appointed cardinal but as to Queen Elizabeth's authority as Chief Minister of Spain.

Spain's monarchy desired to reaffirm its dominance in the Mediterranean and solidify itself as a formidable nation in the international

¹⁴⁰ See Convention for Explaining the Articles of the Asiento of 26 March 1713 between Great Britain and Spain, signed at Madrid, May 26, 1716, 29 C.T.S. 465.

¹⁴¹ See *id.*

¹⁴² See Maxwell, *supra* note 26, at 55-56.

¹⁴³ See Carmona, *supra* note 1.

¹⁴⁴ See Treaty of Peace and Friendship between Great Britain and Spain, signed at Utrecht July 13, 1713, Gr. Brit.-Spain, 28 C.T.S. 295.

¹⁴⁵ See *id.*

trade,¹⁴⁶ which resulted in the dispatch of Spanish troops to Sardinia and Sicily. Spain's aggression led to a defeat by Great Britain. Yet this temporary military failure did not stave Spain off from threatening to invade Great Britain, still with the quasi-legal support of the Papacy, but surprisingly was prevented by the alliance of Austria and France. France, that had become autonomous from Spain's rule, successfully and independently decided which nations it would support.

This was only one of several acts that Alberoni conducted in order to incite societal unrest in Europe in the hopes of renewing the Spanish monarchy's dominion and prior influence. Ironically, King Philip V of Spain proposed the Treaty of Peace in 1720, which also declared Alberoni's dismissal from his role as Spain's Chief Minister. Thereafter, the Pope of Rome dismissed Alberoni as cardinal and after being forced to flee Spain, he was arrested and imprisoned. Yet, Alberoni's loss of his religious title was merely temporary, as a new Pope, Innocent IX, restored it upon him. Throughout these political alliances, wars and Papal declarations, one doctrine remained the same, African slaves and their progeny were not worthy of human rights and their enslavement and brutal treatment did not shock the conscience of the heads of states of these monarchs nor of the most influential non-Protestant Christian faith in Europe—the Roman Catholic Church. The Roman Catholic Church, as a rule not only continue to endorse the Trans-Atlantic slave trade through the revered *Asiento*, but realized the revenue from the taxes that Spain and Portugal tendered. As late as the 19th century, a former colonial power, the United States, through a standing Catholic justice of the U.S. Supreme Court heralded this teaching in an official opinion—which reiterated the Papacy's official religious stance on the trading of African slaves.¹⁴⁷

The succeeding treaty of peace entitled: 'Treaty between Great Britain and Spain concluded at Madrid' (1721)¹⁴⁸ maintained the consanguinity of invoking religious authority to ensure that the Trans-Atlantic slave trade's *Asiento* and its success in importing Africans for the

¹⁴⁶ See Thomas, *supra* note 13, at 215.

¹⁴⁷ See Maxwell, *supra* note 26, at 112-113 ("Roman Catholics in the 16 slave-holding States. On the contrary, it was a Catholic, Chief Justice Roger Taney, who was one of the Judges of the Supreme Court which was responsible for the judicial decision that Negro slaves were not intended by the Declaration of Independence to be included as a part of the people, and had been regarded as beings of an inferior order and altogether unfit to associate with the white race in social or political relations, and as so far inferior that they had no rights which the white man was bound to respect, and that Negroes might justly and lawfully be reduced to slavery for their own benefit.") (citation omitted).

¹⁴⁸ See Treaty of Peace and Friendship between Great Britain and Spain, signed at Utrecht July 13, 1713, Gr. Brit.-Spain, 28 C.T.S. 295.; see also Treaty between Great Britain and Spain, signed at Madrid June 13, 1721 31 C.T.S. 301.

international market, would no longer be interrupted; it states in its introduction:

IT having pleased the Divine Providence to dispose the Hearts of the most Serene and Patient Princes, George, by the Grace of God King of Great Britain, France, and Ireland, & c. and Philip V, by the Grace of God King of Spain, the Indies, & c. to forget all the Grounds of Dissatisfaction and Misunderstanding that have given Occasion to interrupt, for some time, the Friendship and good Correspondence which before flourished between them and their (B)ritannick and Catholic Majestys being nonderisive to renew and re-establish them by the strongest Ties, have stipulated and agreed by their under-written Ministers Plenipotentiary, named for that Purpose the following Article. . . .¹⁴⁹

as well as in Clause II:

. . . by virtue of another subsequent Treaty, made at Madrid the 14th of the Month of December 1715, between the Ministers Plenipotentiary, name for that purpose, by their (B)ritannick and Catholic Majestys, which Treaty remains likewise confirmed and ratified; as also the particular Contract, commonly called 'The Affiento,' for the Importation of Negro Slaves into the Spanifh Indies, which was made the 27th of March in the said Year of 1713, in Consequence of the 12th Article of the Treaty of Commerce of Utrecht; and behavior the Treaty of Declaration, concerning which Treatys, mentioned. . . . [sic]¹⁵⁰

This treaty re-established the friendly relations between Great Britain and the Spanish monarchy and reinstated the terms of the Asiento of 1713 entered into by said nations, again leaving Great Britain with the Asiento until 1743.

However, Europe remained unstable despite multiple declarations of peace, as monarchs furthered their political and financial agendas for

¹⁴⁹ See GEORGE CHALMERS, A COLLECTION OF TREATIES BETWEEN GREAT BRITAIN AND OTHER POWERS 208, 208 (1790).

¹⁵⁰ See *id.* at 209.

territorial expansion and the slave trade. As such, a dispute arose between the mainland American colonies of Carolina and Florida under the auspices of Spain and Great Britain respectively. This conflict coupled with Great Britain's and France's lack of assurance that the Spanish Crown would continue to honor the terms of the Treaty of Peace (1721) led to another interruption of the bilateral Asiento treaty.¹⁵¹

The Spanish monarchy once again witnessed its popularity waning amongst several European nations, as its acts of aggression seeded mistrust as to whether Spain would validly honor its trade agreements, which included the import of African slaves. Spain also maintained suspicions that Great Britain and its assigns were engaged in piracy and black market trading to exacerbate profits and circumvent import duties owed to Spain. Spain's kingdom as appointed holder of the Asiento through the Papacy, possessed the very legal leverage to coax Great Britain and its allies, including France, into once again entering into peace negotiations, which were concluded in May 1727 (Preliminary Articles between the Emperor and the Allies of Hannover, signed 5/31/1727).¹⁵² However, the solutions proffered in the Preliminary treaty were temporal, as Great Britain asserted claims regarding goods for shipment that the Spanish monarch signed resulting in peace treaty in 1728.¹⁵³ Once again, Spain invoked the authority it had through the Vatican (to issue and convey the Asiento) and Great Britain maintained its tradition of its Protestant Christian authority to enter into international agreements regarding the trade in African slaves and their descendants:

Whereas certain Difficulty have arisen upon the Execution as the Articles which are called Preliminaries, and which were sign'd at Paris the last Day of May, and after the Vienna the 13 of June 1727 by the Ministers respectively furnished with sufficient full Powers; and whereas, by ascertain Declaration made by the Count of Rothenberg, with the Consent of all the Party, and approved, the aforesaid Difficulty's have been happily adjusted; of which Declaration, and of the Acceptation thereof by this Catholick Majesty as the fame was

¹⁵¹ See Wiendel, *supra* note 1, at 246.

¹⁵² See Preliminary Articles between the Emperor and France, Great Britain and the Netherlands, May 31, 1727, 32 C.T.S. 427.

¹⁵³ See Declaration by the Emperor, France, Great Britain, the Netherlands and Spain, signed at Pardo, Feb. 24, 1728, 33 C.T.S. 89.

exhibited and subscribed by the Marquis de la Paz, in ,
'his Name, and by his Command, the Tenor as follows.¹⁵⁴

The primary influential European powers of Spain, France and Great Britain proved that their continental, as well as their Trans-Atlantic stronghold of expansion, did not cease and led to yet another frustration of the international Asiento treaty. Stability reached the region when the Spanish monarch and Great Britain, among other European nations consummated the Preliminary Articles of April 30, 1748.¹⁵⁵

The convention of European powers was the initial step in concluding a series of negotiations characterized by international armed conflict, succession of the Spanish and French Crowns, and the encroachment of and territorial takings of European declared lands (expanded kingdoms) of the West Indies. At the core of the War of the Spanish Succession and the Austrian Succession was the enslavement of Africans.¹⁵⁶ Yet, the negotiations, just as prior multilateral treaties did in the past, commodified their human chattel as a mere means to continue to generate revenue for the respective European Crowns, with no regards to their dignity or mental and physical suffering.

Spain, the primary hold and distributor of the Asiento, witnessed its military strength rescind and strengthen in influence throughout its expanded kingdom. Some historians argued that their loss of power at particular points in the 18th century catapulted its aggression resulting in these wars. Ironically, Spain would be one of the last nation-states to finally enter into the Aix la Chapelle in October 1748.¹⁵⁷

In essence, the Aix la Chapelle granted reciprocal land accessions to the respective monarchs and, Spain agreed to restore the remaining four years of the Asiento agreement with Great Britain,¹⁵⁸ which would allow Great Britain's hold of the Asiento to extend until 1752.¹⁵⁹ Although it

¹⁵⁴ *See id.*

¹⁵⁵ *See* Preliminaries of Peace between France, Great Britain and the Netherlands, signed at Aix-la-Chapelle, Apr. 30, 1748, 38 C.T.S. 237; *see also* General and Definitive Treaty of Peace between France, Great Britain and the Netherlands, signed at Aix-la-Chapelle, Oct. 18, 1748, 38 C.T.S. 297.

¹⁵⁶ *See* Treaty of Commerce between Great Britain and Spain, signed at Madrid, Oct. 5, 1750, 39 C.T.S. 77 ("I. His Britannick Majesty yeilds to his Cahtholic Majesty his right to the enjoyment of the Affiento of negros, and the annuel fhip, during the four years ftipulated by the 16th article of the treaty of Aix la Chapelle.").

¹⁵⁷ *See* General and Definitive Treaty of Peace between France, Great Britain and the Netherlands, signed at Aix-la-Chapelle, Oct. 18, 1748, 38 C.T.S. 297.

¹⁵⁸ *See* Muhammad – A Forgotten Crime, *supra* note 4, at 912.

¹⁵⁹ *See* General and Definitive Treaty of Peace between France, Great Britain and the Netherlands, signed at Aix-la-Chapelle, Oct. 18, 1748, 38 C.T.S. 297.

originally and legally contracted the Asiento 30 years earlier,¹⁶⁰ Spain did not find these terms amicable, causing the need for further negotiations between Great Britain and the Spanish monarchy. As a result, the Spanish monarch repurchased the Asiento license from Great Britain in 1750 from the financially strained and politically exhausted England.¹⁶¹ At that point, the Asiento legal system in its international form, as to Spain and other nation-states, as bilateral treaties ceased. However, just as the Asiento began as licensing system to merchants or specific companies that did not bind its home municipality, its immediate international decline is characterized as such.

E. The Decline of the Asiento

1. The Asiento's legal extinction

Spain granted at least six additional Asiento licenses, which overlapped during the years 1763-1773.¹⁶² These mercantile companies impacted the West Indies by importing thousands of additional Africans to its shores before the Asiento's validity became legally viable. For instance, in 1765, Spain contracted an Asiento with Real Compañía,¹⁶³ and according to some historians, the slave merchants imported nearly 5,000 slaves to Havana. Although not an explicit Asiento treaty, Spain and Portugal renewed their alliance regarding maritime exploration and trade in 1778 and reaffirmed all other treaties, which had not yet expired and thus included any previous agreements (Asientos) for the import and transport of African slaves to the Caribbean and South America.¹⁶⁴

In 1786, the Spanish monarch granted the Asiento to a British corporation, Baker and Dawson shipping,¹⁶⁵ which was able to import a few thousand slaves to the West Indies.¹⁶⁶ Finally in 1789, King Charles IV [Carlos IV] of Spain legally abolished the Asiento treaty-licensing

¹⁶⁰ See Asiento between Spain and the East India Company (Great Britain), Mar. 26, 1713, 27 C.T.S. 425.

¹⁶¹ See *id.*

¹⁶² See HUBERT H.S. AIMES, A HISTORY OF SLAVING IN CUBA 1511-1868 36 (1907) ("Various special licenses to import slaves were granted during the years 1763-73."); see also Thomas, *supra* note 13, at 279-280.

¹⁶³ See Thomas, *supra* note 13, at 280-281 ("Then came the concession of a new large-scale *asiento* in the old style, to the Cádiz Slave Company, a society directed by an imaginative and persistent Basque, Miguel de Uriarte, of Puerto de Santa María, supported by numerous fellow Basques resident in Cádiz The company was then formed [I]n the first seven years of the new *asiento*, from 1765 to 1772, nearly 12,000 slaves were sold.").

¹⁶⁴ See Treaty of Amity, Guarantee and Commerce Between Portugal and Spain, signed at Prado, Mar. 11, 1778, 46 C.T.S. 479.

¹⁶⁵ See Thomas, *supra* note 18, at 295.

¹⁶⁶ See *id.*

system¹⁶⁷ and officially embraced capitalism as the new form of profiteering from slave trading. With the import of slaves already in the 'New World' and parts of Europe, municipal slavery would flourish for at least another century. Interestingly, as the Papacy was the originating authority in granting the Asiento to Spain and Portugal, its quasi-legal influence diminished as slave trade piracy, wars, and national interest, with regards to territorial expansion and dominance, ebbed and flowed with political and financial dissatisfaction.¹⁶⁸ Although previous Popes encouraged nation-states throughout the slave trade to heed the notion that slavery was barbaric and against God,¹⁶⁹ no formal official edict would arise from the Vatican condemning the enslavement of Africans until 1839.¹⁷⁰ By that time nation-states such as Great Britain,¹⁷¹ France,¹⁷² Denmark,¹⁷³ Sweden,¹⁷⁴ the Netherlands,¹⁷⁵ Spain,¹⁷⁶ and Portugal¹⁷⁷ had already abolished the international commerce. Yet, slavery within the borders of these nations would not officially cease until decades later.

2. Piracy and the slave trade

Piracy has long been an anomaly of the Trans-Atlantic Slave trade despite the existence of licenses and the development of formalized international agreements.¹⁷⁸ This activity was usually pervasive during the transport of African slaves, especially near the shores of the West Indies' islands and not significantly far from the shores of South America. The effects of piracy usually resulted in Europeans losing estimated profits for

¹⁶⁷ See STANLEY J. STEIN, *APOGEE OF EMPIRE: SPAIN AND NEW SPAIN IN THE AGE OF CHARLES III, 1759-1789* 355 (2004).

¹⁶⁸ See Adam Black & Charles Black, *The Patrimony of St. Peter*, 227 EDINBURGH REV. CRITICAL J. (1860) ("Already, at the peace of Westphalia, the great Catholic Powers of Europe had shown that even ecclesiastical matters were to be dealt with as European interests demanded, without respect to the Papacy. The terms of the treaty were such as the pope had expressly forbidden, and the spiritual articles of the peace of Westphalia were prefaced by the declaration that the contracting parties would not regard the opposition of any one whatsoever, whether of temporal or spiritual estate. The pope, by his nuncio, in vain protested against the execution of the treaty.").

¹⁶⁹ See Muhammad – A Forgotten Crime, *supra* note 4, at 930.

¹⁷⁰ See Maxwell, *supra* note 26, at 73-74.

¹⁷¹ See Muhammad – A Forgotten Crime, *supra* note 4, at 932.

¹⁷² *Id.* at 931.

¹⁷³ *Id.*

¹⁷⁴ *Id.* at 932.

¹⁷⁵ *Id.*

¹⁷⁶ See Muhammad – A Forgotten Crime, *supra* note 4, at 932.

¹⁷⁷ *Id.*

¹⁷⁸ See Scelle, *supra* note 9, at 635 ("But this commerce was dead in Spain, the number of licenses delivered was insignificant, whilst during all this period of hesitation, from 1609-1614, the negroes were introduced into the Indies illicitly and the coffers of Hacienda (the treasury) defrauded of the total amount of the duty.").

lack of slaves to sell at the auction block at the different ports of the Americas.¹⁷⁹

As the lucrateness of the Trans-Atlantic Slave trade waned, so did the effect of the *Asiento*. Once the *asiento* was extinguished by King Carlos IV in 1789 and declared free market, the slave trade's financial and nationalistic credibility became even more nebulous for the proximate 50 years.

III. PROFITS OF THE TRANS-ATLANTIC SLAVE TRADE

A. *Slaving Corporations*

The Trans-Atlantic slave trade provided financial benefits through contracts and international legal instruments. These agreements between monarch and company,¹⁸⁰ monarch and slaver,¹⁸¹ as well as monarch and monarch¹⁸² had, throughout its history, the religious hallmark of the Roman Catholic Church. One of the most financially astonishing feats that these European nation-states performed, based on Spain's and Portugal's capitalistic paradigm, was to create a financial institution wrought with stock options, shares, and title—primarily based on the exploitation, sale and transfer of Africans and blacks of the Diaspora.

Economic historians have delved into the accounting practices and finances of slaving corporations as it relates to the foundation of modern capitalism¹⁸³ and the eventual downfall of nearly every monarchy, which participated in the Trans-Atlantic slave trade. However, it was the legal creation of the slaving corporations that provided the avenue by which these nation-states would realize great financial profits and unique and

¹⁷⁹ See DuBois, *supra* note 6, at 97 (“Slaves imported under the *Asiento* treaties went to all parts of the Americas. Spanish America had by the close of the eighteenth century ten thousand in Santo Domingo, eighty four thousand in Cuba, fifty thousand in Porto Rico, sixty thousand in Louisiana and Florida, and sixty thousand in Central and South America.”) [sic].

¹⁸⁰ See for example *Asiento* between Spain and the Portuguese Guinea Company, July 12, 1696, 21 C.T.S., 151-190; see also Davenport, *supra* note 1, at 39-50 (Adjustment (Transacción) of the *asiento*, concluded by Spain and Portugal at Lisbon (June 18, 1701)), at 171 (The *Asiento* between Spain and East India Company (Great Britain), (Mar. 26, 1713)), at 54 (*Asiento* for the Introduction of Negro Slaves into Spanish America between the French Guinea Company and Spain (Aug. 27, 1701)), at 293 (Treaty between Brandenburg and Denmark concerning the Island of St. Thomas (Dec. 4, 1685)).

¹⁸¹ See for example *Asiento* for the Introduction of Negro Slaves into the Indies between Spain and Balthasar Coymans, Feb. 23, 1685, 17 C.T.S. 233.

¹⁸² See for example Davenport, *supra* note 1, at 39-50 (Adjustment (Transacción) of the *asiento*, concluded by Spain and Portugal at Lisbon, (June 18, 1701)).

¹⁸³ See generally Carmona, *supra* note 1, at 252; see also David Eltis, Frank D. Lewis, & David Richardson, *Slave Prices, The African Slave Trade, and Productivity in the Caribbean, 1674–1807*, 58:4 THE ECON. HISTORY REV. 673-700 (2005).

extensive horrors that only Africans and their progeny would endure for centuries.

Slaving corporations primarily evolved into two forms. The initial form, found in both Spain and Portugal, was based upon merchants within those respective nations who simply desired to enter the slave trade's new market. Merchants would create, either formal or informal consortia¹⁸⁴ or companies in which they were the primary holders of all financial interests and shares. The second type of corporation was founded upon a European nation, such as Great Britain, which desired to become a market participant, creating a corporation in that kingdom's name¹⁸⁵ in order to contract with the reigning holder of the *Asiento*. This legal formation allowed a nation-state to obtain profits from the Trans-Atlantic slave trade, without having to pay taxes to its own oligarchy and limit the use of projected revenue for the benefit of its citizens within its territorial boundaries.

B. Merchants as representatives of corporations

The simplest of slaving consortia would simply pay a fee to the European nation which held the *Asiento*. During the 17th century, this was either Spain or Portugal. The merchants had to demonstrate that they, in conjunction with the men that they had in their employ, had the skill and equipment to capture and transport the slaves to fulfill the needs of the requirement contract. These consortia also had to show that in addition to the fees they paid to the Crown, that they had the fiscal backing from banks or other companies, which were necessary to ensure shipping, the payment of the import duties at various port, and any other expenses due in the Americas required to unload the *piezas de Negro* for auction and barter. At times merchants were doing business as and considered closely held companies. Some slave trading merchants (assientists) used their negotiation skills as a means to get other slaving corporations to contract their services to scout and barter in Africans so the company would be able to maintain the production of the requirement contract (*Asiento* treaty) with the current (monarch) holder of the *Asiento*.¹⁸⁶ Other consortia created sophisticated corporations in which they were the only stockholders and ensured they were the primary beneficiaries of any profits to be realized during the use of the *Asiento* license.

¹⁸⁴ See for example Davenport, *supra* note 1, at 293 (Treaty between Brandenburg and Denmark Concerning the Island of St. Thomas (Dec. 4, 1685)).

¹⁸⁵ See Thornton, *supra* note 37, at 59.

¹⁸⁶ See Thomas, *supra* note 13, at 218.

C. *Incorporation and funding*

Although assientists likely had to demonstrate a history of supplying slaves for the slave trading corporations to maintain a presence in the international market, oft-times assientists were backed by bankers. However, monarchs who, for the most part, acted as market participants¹⁸⁷ in the Trans-Atlantic slave trade, used government coiffures to establish slave trading corporations as well as to support merchant-citizens who endeavored in the international enterprise. Generally, these slaving companies would be initiated by merchants of a particular European nation-state or a European Crown. In either case, the monarchy would provide encouragement, financial sponsorship and the weight of its diplomatic strength in order to secure the asiento slave trading contract in lieu of or in addition to creating corporate entities for the specific purpose to trade in African slaves through monopoly via treaty.

Several of the prominent European Crowns had both ‘East and West’ India companies. In most cases the East India companies were concerned with colonizing the Far East and expanding trade with their Asian neighbors, including slaves from those regions. The West India Companies would concern themselves with what would evolve to be the Trans-Atlantic slave trade. Both types of companies were generally mutually exclusive; however, on rare occasions an East India Company would also become involved with either enslaving Africans in the southern portion of the continent for use in their own forts and factories,¹⁸⁸ in addition to or in lieu of supplying west African slaves to the Americas. One such company, the Dutch East India Company was established in 1602 and entered the slave trade with the intent to remove Portugal from its competitive landscape.¹⁸⁹ This connection debunks the general notion that all African slaves to the ‘New World’ were from Africa’s western coast, as many traveled across the Trans-Sahara from as far as Ethiopia to their final destinations in the West Indies and South America.

During the 17th century, the Dutch entered the Trans-Atlantic slave trade through its newly chartered Dutch West India Company. The company would initially fail¹⁹⁰ but resurrect itself with charters filed in

¹⁸⁷ See *id.* at 291.

¹⁸⁸ See PAUL LOVEJOY, *TRANSFORMATIONS IN SLAVERY* 130 (Cambridge University Press 3d ed. 2012) (1983).

¹⁸⁹ See *supra* note 18, at 160; see also Scelle, *supra* note 9, at 627; see also Oscar Gelderblom, Abe de Jong, & Joost Jonker, *The Formative Years of the Modern Corporation: The Dutch East India Company VOC, 1602-1623*, 73 *J. ECON. HISTORY*, 1050-1076 (2013) [1602-1799].

¹⁹⁰ See Thomas, *supra* note 13, at 160 (“In 1607, a Dutch West India Company was founded on the model of the already successful East India Company, but at first failed.”) [1607].

decades later.¹⁹¹ As more European nation-states became interested in exploiting the barter in African slaves, additional chartered companies appeared. In 1626, a Swede incorporated a prominent slave trading company, by the name of the Swedish South Sea Company.¹⁹² The Dutch, which would remain a leading maritime power and slave trading nation-state continued to maintain a stronghold in the Trans-Atlantic slave trade and re-chartered the Dutch West India Company in 1647¹⁹³ to continue its prosperous endeavor in trading in African slaves.

The British, not only had legal claim to participate in the Trans-Atlantic slave trade through the Asiento treaty and the British Royal Company in the latter portion of the 17th century, Great Britain also entered into the revered African slave trade much earlier in 1631.¹⁹⁴ The French monarchy followed suit and established the French Guinea Company in 1634.¹⁹⁵ However, the primary financial corporate and nation-state powers through most of the slave trade, which would flux depending on which was victorious in wars and political allies, were Spain, Portugal the Netherlands, and Great Britain. In 1649, the Swedes official chartered the Svensk (Swedish) African Company to embark and a claim a share of the Trans-Atlantic slave trade with its governmentally veiled corporation.¹⁹⁶ In 1651 another British-backed corporation, the British New Guinea Company was chartered to access the Trans-Atlantic slave trade.¹⁹⁷ These

¹⁹¹ Thomas, *supra* note 13, at 161; *see also* Scelle, *supra* note 9 at 627; *see also* Phillips, *supra* note 39, at 22; *see also* RR DONNELLEY, WORLD BOOK ENCYCLOPEDIA 392, (5th ed. 2014).

¹⁹² Thomas, *supra* note 13, at 172 (“The man who from the first had opposed this new policy of trading Africans by the Dutch West India Company, Usselinx, now left his home country determined to found a rival enterprise. He went first to the King of Denmark, Christian IV, and, when rejected in Copenhagen, went to King Gustavus Adolphus of Sweden. That ambitious monarch which, after Usselinx’s death, also did its best to enter the slave trade.”) [1626].

¹⁹³ *See also* RR DONNELLEY, WORLD BOOK ENCYCLOPEDIA 392, (5th ed. 2014), RR Donnelley, Willard, OH (“Dutch West India Company was formed by Dutch merchants and chartered by the government of the Netherlands in 1621. The Dutch government gave the company trading and colonizing privileges for a period of 24 years in the Americas and West Africa. The government renewed the company’s charter in 1647 for a period of 25 years...”) [1647].

¹⁹⁴ Law, *supra* note 52, at 185, 192 (“Transparently the Scottish company of 1634 was mainly modelled on the example of the English Guinea Company, which Charles I himself had chartered only three years before in 1631.”) [sic] [1631].

¹⁹⁵ *Id.* at 189 (“A French Guinea Company for trade east of Sierra Leone, based on the port of Saint Palo, had also been chartered earlier in 1634.”) (citation omitted) [1634].

¹⁹⁶ *See id.* at 192; *see also* Thomas, *supra* note 13, at 222.

¹⁹⁷ Thomas, *supra* note 13, at 197, 198 (“In 1651, in the face of what seemed the obvious need for Africans, at least in the Caribbean if not in New England, a new Guinea Company in London was founded, in which, not surprisingly, the chief interloper Samuel Vassall, was a major shareholder....One instruction of 1651 by the Guinea Company demanded of a captain that he bring back to England ‘fifteen or twenty lusty negers’--presumably for use at home in England. Another asked a captain to ‘put aboard...so many negers as your ship can carry’--a cargo also apparently for London. Yet, a third letter requested, more conventionally, ‘We pray you buy as

corporations were not only created to provide a stronghold in the international market against their European nation-state counterparts, but encouraged free market and capitalism within their boundaries. These slave trading corporations maintained stocks or shares, which not only merchants held but also the ruling Crown, bankers and less prestigious members of royal families.

In 1649, Denmark became a market participant in the Trans-Atlantic slave trade through its Danish West India Company.¹⁹⁸ Although the Danish West India Company established itself as somewhat profitable venture, it operated on a smaller scale in comparison to the Dutch and Portuguese participation in the barter in African slaves.

At some point, the British Royal Adventurers was acquired or merged into the Great Britain's Royal African Company in 1660. This company would become prosperous throughout the slave trade and garner the envy of both the Spanish and Portuguese monarchs—which inevitably led to war.¹⁹⁹ The latter half of the 17th century witnessed European nation-states charter several additional slave trading companies,²⁰⁰ although they were 'new' in the legal sense, some would represent the metamorphosis of

many lusty negers as she will can carry, and so despatch her to the Barbadoes.”) (citation omitted) [1651].

¹⁹⁸ Thomas, *supra* note 13, at 223; see also Robin Law, *The First Scottish Guinea Company*, 36 THE SCOT. HIST. REV. 192 (1997) Law, *supra* note 52, at 192 (“The subsequent Swedish and Danish African Companies formed in 1649 and 1658, respectively were likewise partly financed and organized by Dutch entrepreneurs, for whom these companies provided a legal basis for challenging the monopoly of the African trade...”) [1659].

¹⁹⁹ See Phillips, *supra* note 39, at 24 (“In a drastic reorganization its affairs were taken over by a new corporation, the Royal African Company, chartered in 1672 with the Duke of York at its head and vested in its turn with monopoly rights under the English flag from Sallee on the Moroccan coast to the Cape of Good Hope.”) (citation omitted); see also Thomas, *supra* note 13, at 198 (“In 1660, after the Restoration, a new company, that of the Royal Adventurers into Africa, was founded in London.”) [1660-1672].

²⁰⁰ See Thomas, *supra* note 13, at 201 (“The troubles of the Royal Adventurers continued so much so that in 1672—a year when half Lombard Street seemed to be ruined—the company was wound up and, in its place, the Royal Africa Company (hereinafter RAC) founded.”), at 192 (“In 1672, partly as a result of the lively illegal trade, Colbert lost patience with the company and it in turn lost its right, and its obligation to sell slaves. Next year, a new company was formed the first of many companies to be named ‘de Senégal,’ being headed by a group of Parisian entrepreneurs...”), at 186 (“During the last quarter of the seventeenth century, the Dutch West India Company, reconstituted in 1674 primarily as a slave-trading organization, was sending three or four ships a year to the Caribbean from West Africa, without counting its shipments to the Guyanas.”), at 218 (“...for he employed the new Portuguese joint-stock Cacheu Company (funded in 1676, on the initiative of Duarte Nuñez, a Portuguese merchant established in Hamburg)...”), at 194 (“The king should have known all about the capacity of slaves, for his own galleys, were still powered by them. Thus, in 1685, Michel Misserel, an enterprising merchant of Toulon, engaged himself to supply 150 Turks for those galleys. They had to be between eighteen and forty, and in good health. The French consul in Candia acted as an agent for the king in providing most of these. In 1679, the Company of Sénégal provided 227 African slaves for the same purpose.”).

previous companies, which had failed due to bankruptcy, competition through piracy, and the inability to sustain the requirements of the Asiento slave license.

In 1682, merchants in Germany chartered the Brandenburg African Company to also compete with the Dutch West India Company. However, it was the last known European nation-state to embark on what became the inconsistently profitable slave trade in Africans.²⁰¹ One of the last slave trading companies would once again arise from the Portuguese monarchy, called the Portuguese Guinea Company.²⁰² Following, the Dutch, in order to broaden its economic reach in the Trans-Atlantic slave trade chartered the Dutch Suriname Company (*Sociëteit van Suriname*) in 1683, by three parties, one of which was the Dutch West India Company.²⁰³ Although the Dutch West India Company primarily concerned itself with transporting enslaved Africans to the Caribbean and South America, the Dutch Suriname Company is described by one publicist as follows:

Suriname Company had a different aim than the WIC had in the Atlantic. The directors bore the responsibility for striking a balance between gaining revenue from taxing shipping as well as privately owned plantations, and to simultaneously guarantee that there was a probably business climate in which plantations could prosper. This meant that the planters should be provided with capital, land, labor and protection. At the same time the colony was set up with the idea of benefiting the Dutch Republic as a whole by increasing the shipping, trade and power of the republic. The charter of the colony of Suriname covered all these areas, and

²⁰¹ See Davenport, *supra* note 1, at 293 (Treaty between Brandenburg and Denmark concerning the Island of St. Thomas, concluded at Copenhagen, November 24/December 4, 1685. Ratification by Denmark, January 5, 1686 [Ratification by Brandenburg, December 19, 1685]); see also Adam Jones, *Archival Materials on the Brandenburg African Company (1682-1721)*, 11 *CAMBRIDGE J. OF HISTORY IN AFRICA* 379, 380 (1984) (“Brandenburg-Prussia was the last European power to enter the African trade in the seventeenth century. In an attempt to emulate the success of the Dutch West India Company, the Great Elector granted a charter to a newly-created company in 1682. It was known under various names—as the Electoral Brandenburg African Company, the Emden Company, the Brandenburg Afro-American Company, and (after the Great Elector’s successor had made himself ‘King in Prussia’ in 1701) the Royal Prussian African Company.”) [1682].

²⁰² See Asiento between Spain and the Portuguese Guinea Company, July 12, 1696, 21 *C.T.S.* 151-190; see also Davenport, *supra* note 182 at 39-50 (Adjustment (Transacción) of the asiento, concluded by Spain and Portugal, June 18, 1701) [1696].

²⁰³ See *DUTCH ATLANTIC CONNECTIONS 1680-1800: LINKING EMPIRES, BRIDGING BORDERS (ATLANTIC WORLD)* 52 (Gert Oostindie, Jessica V. Roitman, eds., Brill Leiden, 2014).

created a general outline that was followed for much of the period between its inception in 1683 and the disbanding of the Suriname Company in 1795.²⁰⁴

At the beginning of the 17th century, the French created additional trading companies to participate in the barter of enslaved Africans.²⁰⁵ The first company, the French Royal Company of Guinea became party to that nation's first Asiento treaty which proclaimed that the nation-state desired to enter into the slave trading market, indicating that the French were not among the early participants in the developing international slave trading institution.²⁰⁶

In 1664, France established the French West India Company (Compagnie française des Indes occidentales) for its trade in African slaves in the West Indies as well as 'other' goods.²⁰⁷ However, this would not be the last French chartered company to barter in African slaves. France would maintain a series of such companies throughout the 1670s.²⁰⁸

The next British slaving company, the South Sea Company, entered the market by obtaining the Asiento from its government²⁰⁹ and maintaining its corporate shares among civilians. This included merchants who already had knowledge and experience in the Trans-Atlantic slave

²⁰⁴ *Id* at 57.

²⁰⁵ See Davenport, *supra* note 1, at 54 (Asiento for the Introduction of Negro Slaves into Spanish America between the French Guinea Company and Spain (Aug. 27, 1701) ("And since the Royal Company of Guinea, established in France desires to enter into this business, the directors and others interested in the company have empowered Monsiur Du Casse, Knight of the Order of St. Louis, rear-admiral of the naval fleets of the Most Christian King my grand father, in Paris on July 23 of this present year, to treat and adjust a new assiento for the introduction of negro slaves into the Indies...I. The before-mentioned Royal Company founded in France with permission of their Catholic and Most Christian Majesties, in order to take charge of the assiento, and the introduction of negro slaves into the American West Indies...")) [1701]; see also Scelle, *supra* note 9, at 618, 641 ("In the French Assiento the two kings agree: Louis XIV to authorize the company to be organized in France with the precise purpose of furnishing slaves to the Spanish colonists, and Philip to grant to it access to his domains. Two authorizations, that of Darouca and in France a decree of the Council of October 28, 1701, sanctioned its situation.") [1701-1713].

²⁰⁶ See *id.*

²⁰⁷ See Gérard Chouin, *Minor Sources: Two Accounts of a 1670-1671 French Voyage to Guinea: Description, Authorship and Context*, 31 *History in Africa* 133, 147 (2004).

²⁰⁸ See Muhammad – A Forgotten Crime, *supra* note 4, at 883, 912; See also Thomas, *supra* note 13, at 292.

²⁰⁹ See Thomas, *supra* note 13, at 235 ("...Lexington, who was also a Jacobite, would no doubt have played a part in a new Stuart regime had one succeeded in 1714. The government in Britain sold the new privilege, as expected for seven and a half million pounds to the South Sea Company, an enterprise which had been formed only two years before, as a Tory reply to the Whiggish Bank of England, precisely to export merchandise in perpetuity to the Spanish empire.") [1712].

trade triangular network characterized by negotiation, payment of duties, disembarkment, and auction of enslaved Africans.

Even a widely unknown Belgium (then Austria Netherlands) decided to partake in the lucrative enterprise of the Trans-Atlantic slave trade in 1723, and it chartered the Ostende Company to that effect.²¹⁰ During the 18th century, the Trans-Atlantic slave trade would see a resurgence of chartered slaving companies arising from the Iberian Peninsula. For instance, the Portuguese Crown capitalized from the Portuguese Guinea Company chartered in 1724,²¹¹ while Spain sought to re-emerge from decades of displacement from the encroachment of European nation-states, which gained a stronghold in the Trans-Atlantic slave trade throughout the 17th and early 18th centuries; thus the Barcelona Company was chartered in 1758.²¹²

Spain also chartered the Guipúzcoa Company (Compañía Guipúzcoa) in 1728 to combat piracy and illegal trade, though the latter was characteristic of the trade in Africans for centuries.²¹³ Although the Crown of Spain appeared to have legally abolished the Asiento monopoly format in 1765, one last recorded corporation involved with the commercial transport of enslaved Africans to the Americas was the Cadiz Slave Company, chartered in 1767.²¹⁴

These chartered companies, whose primary purpose was to engage in the Trans-Atlantic slave trade, have their legal corporate origins in European nation-states. Such monarchs found their maritime, slaving and

²¹⁰ See *id.* at 256.

²¹¹ See *id.* (“In 1724, a new Portuguese monopoly company was set up to serve Brazil; between 1721 and 1730, nearly 150,000 slaves were probably carried to the latter colony, just under 80,000 from Mina, just under 70,000 from Angola.”) [1724].

²¹² See *id.* (“Still when similar rights were offered to a Catalan company, the Barcelona Company, to provide slaves to Puerto Rico, Santo Domingo, and Margarita, some long-term voyages were planned and, in 1758, the first boat for many years, the *Perla Catalana* of Barcelona, did arrive in San Juan direct from Africa.”) [1758].

²¹³ See M. Andre Kroupa, *International Trade Relations of Venezuela* 18, Loyola University of Chicago, (1942). (“Seeing the danger of such commercial paralysis, the Spanish Crown took preventive measures on September 25, 1728, by issuing a royal grant to the Guipúzcoa Company. Just previous to the chartering of this company, a cédula of January 26, 1728, opened all Spanish ports except San Lucar de Barrameda to cocoa carried by the Spanish in Spanish ships. The only ‘catch’ to this cédula was that taxes were higher in all the other ports than they were at Cadiz.40- The Company’s chief reason for existence was the duty of warding off illicit foreign traders from the coast of Venezuela.”); see also Thomas, *supra* note 13, at 267 (“Guipúzcoa (Caracas) Company...carried nearly twelve thousand slaves to the port of Caracas between 1754-1765.”).

²¹⁴ See Thomas, *supra* note 13, at 280-281 (“Yet, in the end, Uriarte triumphed over his competitors, including Beaumarchais, though with numerous bureaucratic conditions associated with the *asiento*. He was obliged to carry fifteen hundred slaves a year to Caragena de Indias and to Portobelo, and a thousand to Havana...The company was then formed and, in 1767, the *Venganza* was duly from Cádiz to Africa.”) [1767].

colonizing authority from the Papacy and its grant of the Asiento slave monopoly. Both monarchs and European slaving companies not only experienced great financial gains but also paid import taxes, duties and licensing fees to the reigning monarchial holder of the Asiento. Monarchs deposited these monies in governmental treasuries and in their personal coffers for additional luxuries, while the primary subject matter of the trade, African slaves were steadily stripped of their basic human rights and dignity. The Papacy obtained Papal taxes through appointed merchant tax collectors from these European nation-states, after initiating what would become a 400-year international enterprise in the barter of African slaves. The Papacy not only financially benefited from such taxes but also purchased Africans who were enslaved by explorers or their own rival African neighbor. Although the Papacy practiced slavery since the crusades and had Turkish and other Arabs in its galley service as a product of 'war' (crusades) in the 15th century, African slaves in the Papacy's domain were a product of capture, exploitation, and torture due to the original Papal edict of Demarkation from the 17th century.

IV. RESTITUTION (REPARATIONS) AND THE PAPACY

A. *Restitution (Reparations) and International Law*

Common law of various nation-states has long recognized the concept that an offending party must render restitution to the aggrieved party as a result of a criminal or negligent act. The international community's confirmation of this legal concept has developed since participating European nation-states abolished the Trans-Atlantic slave trade. These state actors contributed to this widely accepted international custom through municipal penal codes as well, as through municipal civil laws based in common law. International law publicists have argued that international law would have no foundation were it not for such contributions. Nevertheless, nation-states throughout the world have accepted that felonious acts also categorized internationally as crimes against humanity, such as murder, kidnapping, torture, genocide and rape not only require just punishment but in most cases, restitution.

1. *Basis and Concept of Restitution*

The legal concept of restitution in international law is not a new concept, as many nation-states have used this legal remedy as accepted *jus cogens* regarding human rights violations. Commentators and publicists often cite restitution for historical injustices as the gateway for a nation and populace to move forward as part of mutual conciliation. Examples in recent memory have shown that survivors of human rights violations and

their progeny have a legal foundation to pursue restitution at common law, as well as under public international law. Many European nation-states have distributed restorative financial compensation for the Jews of the Holocaust, the Waikapato people of New Zealand, and the Japanese of both American nationality and Japanese immigrants who lived in the United States who were interned in concentration camps. However, to date, no European or African nation-state has taken concrete steps towards providing restitution for the atrocities of the Trans-Atlantic slave trade, both of African slaves captured in Africa, sold at auction in South America and the West Indies and finally for the subsequent municipal slavery within each homeland of each European nation.

The Papacy whose current residence is the Vatican-Holy See has also not provided nor even discussed the possibility of providing restitution to the descendants of the Trans-Atlantic slave trade. Although the formalized institution of the slave trade from the 17th to 18th century was based upon and continued with the Roman Catholic Church's authority, and it received taxes and revenues from the then European monarchs, (especially Spain and Portugal who were the initial and primary proponents and beneficiaries of the trade in African slaves) restitution must be provided within a legal framework.

Yet, in early Vatican history, one Pope discussed the Trans-Atlantic Slave trade, not only as inhumane, but as an unjust institution. A Catholic bishop went even further in the treatise to urge the Church not only to condemn the slave trade, but that those who enslaved the Native Americans should provide restitution for those who suffered brutal treatment at the hands of Christian slavers²¹⁵ under the legal auspices of the Catholic and Britannic majesties. However, as with the character of the Trans-Atlantic slave trade, the Papacy's concern was again for the Native Americans,²¹⁶ not for the Africans nor their progeny who would continue under a long-suffering regime of crimes against humanity perpetrated in the name of financial gain and religious zeal.

2. *Reconciliation (Apology): Declaration*

Although the Trans-Atlantic slave trade had its origins and Papal endorsement as early as the 15th century, the Catholic Church did not officially acknowledge its role in the international market until late 20th century.²¹⁷ Even then, the Catholic Church has not concretely called the

²¹⁵ See Maxwell, *supra* note 26, at 65-66.

²¹⁶ See Thornton, *supra* note 37, at 136.

²¹⁷ See E.J. Dionne Jr., *Pope Apologizes to Africans for Slavery*, N.Y. TIMES (Aug. 14, 1985), <http://www.nytimes.com/1985/08/14/world/pope-apologizes-to-africans-for-slavery.html>.

Trans-Atlantic slave trade nor its basis ('to civilize the heathen') unjust. The Popes have merely expressed their 'regret' over the Church's role in the trading of African slaves. Further, more recent Popes who have actually stated an actual apology, have done so only to Africans—this dismissive apology is wrought with historical inaccuracy as it was African tribesman, chieftains, or other African leaders who negotiated with European slavers and colonists to provide African slaves to the shores of the Americas and the West Indies, once Europeans realized that sporadic kidnappings²¹⁸ were not resourceful to maintain a constant stream of human commodities in the slave trade market.

Thus, the greatest neglect, other than not providing restitution at all, is the failure to apologize to Africans of the Diaspora whose ancestry of blood mixing and development, entanglement and assimilation of culture in their now home would make them into another people: such as the 'Black' American and the Afro-Latino. Not only did the Pope apologize to Africans, he did so in their homeland—in Africa,²¹⁹ as the Papacy had done similarly ten years prior.²²⁰ No Pope has visited South America, the West Indies' islands or mainland North America to perform such a reconciliatory act.

Therefore, in order for the Papacy to actively promote reconciliation and be in compliance with international law, it must clearly express its complicity in the Trans-Atlantic slave trade and its legacy; it must apologize to those who were likely the product of the financial enterprise, including Black Americans.

3. *Financial Compensation*

It is well settled that the Catholic Church financially benefited from the Trans-Atlantic slave trade. Spain and Portugal, early Papal supporters, were already obliged to pay annual taxes to the Vatican. The Trans-Atlantic slave trade not only increased the financial benefits for European nations, as it had to satisfy those monarchs' insatiable need for power, expansion, and luxuries, it would prove beneficial to provide the Papacy with a more stable source of revenue. Thus, as the Popes provided religious endorsement of Spain's and Portugal's involvement in the trade, it was securing for itself financial prosperity for centuries ahead.

²¹⁸ See Gary, *supra* note 5, at 38.

²¹⁹ See Stephen Bates, *Church apologises for benefiting from slave trade*, THE GUARDIAN (February 8, 2006), <http://www.theguardian.com/uk/2006/feb/09/religion.world>; see also Pope urges nations to apologize for slave trade, USA TODAY, (Jul. 22, 2002), <http://usatoday30.usatoday.com/news/world/2001/08/30/slavetrade.htm>.

²²⁰ See Dionne Jr., *supra* note 117.

As with any process of reconciliation, through common and international law, those who endure the brutality of crimes, especially crimes against humanity, are necessarily awarded compensation. Since the Vatican is a city-state which does not procure most of the Diaspora's populace, the most readily available remedy is financial compensation, which can be provided in different forms. Such forms include international funds, funds to current nation-states which would distribute the monies directly to those properly identified as descendants of the Diaspora, or the Vatican can create its own monetary fund and through its government and facilitate the distribution directly to those who are authenticated as descendants of the Diaspora.

Restitution will be determined by actual monies the Papacy collected via tax revenue from primarily Spain and Portugal, as the latter paid the Catholic Church a share of the profits it generated from the Trans-Atlantic slave trade. Although opponents to reparations may argue that there is no accurate manner to determine the full amount of revenue that Spain and Portugal obtained and what share of taxes was distributed to the Papacy, historical records indicate otherwise. In addition, publicists from the 20th century have produced a significant amount of research regarding the records of the Trans-Atlantic slave trade. These include the number of Africans actually captured, transported alive through the Middle Passage, and the loss of life during the treacherous voyage, the factors determining their 'value' for auction based on age, color, height, strength and skills. Not only have publicists delved into the intricate historical records concerning these historical matters, but also the nation-states which as then monarchs, preserved in memoriam the latter treaties which provided the legal parameters of the number of Africans to be sold, what taxes (import duties) to be paid, registration fees, and costs of use for fortresses on the African coastal lines that were to be paid as part of the financial transactions. Of course, the process of reviewing, gathering and authenticating such records for authenticity and accuracy from various sources will be arduous and will take some time, but it is not an insurmountable obstacle.

In addition, it is likely that the Vatican has its own history of accounting from the slave trade period, which framers of the proposed monetary fund can utilize and take into consideration.

However, there is also the labor for which Africans performed as slaves in European nations as well as the New World, their labor and skills utilized during the Middle Passage, in particular navigation as well as those slaves who toiled within the confines of the Vatican itself during the Trans-Atlantic slave trade period.

Not only must the Catholic Church account for the revenue obtained from Spain and Portugal, but even recently, the Vatican received funds in relation to its involvement with the Trans-Atlantic slave trade. Thus, as recent as the 21st century, the Papacy benefits from this historical financial institution.

B. Legal Arguments in Support of Restitution

1. U.N. Conventions

European nation-states' enactment of municipal laws, the evolution of municipal case precedent and the development of international custom prohibiting the Trans-Atlantic slave trade gave birth to the League of Nations. This international entity garnered the support of many European nation-states who condemned the Trans-Atlantic slave trade and the atrocities which characterized it. As a result, these state actors enacted several conventions, one of the earliest and arguably most prominent was the Slavery Convention. However, a precarious feature of these conventions is that in order to legally bind a nation-state or state actor, the latter must not only be a signatory to a particular convention, but must also ratify it. Thus, a nation-state has to voluntarily avail itself of a United Nations' instrument's authority and any of its judicial branches for it to apply.

a. Slavery Conventions

The League of Nations initially enacted the Slavery Conventions in 1926, with one official amendment.²²¹ The Slavery Convention described the atrocities of the Trans-Atlantic slave trade, including murder, genocide, rape, torture and kidnapping. This Convention set forth the primary standards the international community would uphold in determining acts that constitute crimes against humanity and address the Trans-Atlantic slave trade as a whole.²²² Specifically, the Slavery Convention states in article 1:

For the purpose of the present Convention, the following definitions are agreed upon: (1) Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised; and (2) The slave trade includes all acts

²²¹ See The Slavery Convention, Sept. 25, 1926, T.S. No. 778, 212 U.N.T.S. 17, amended by Protocol Amending the Slavery Convention, Dec. 7, 1953, T.I.A.S. No. 3532, 182 U.N.T.S. 51.

²²² See Muhammad – A Forgotten Crime, *supra* note 4, at 933.

involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves.²²³

Thus, European nation-states for centuries participated in exercising authority over and exploiting the labor of enslaved Africans. However, this state of tortuous servitude would not have occurred without the religious authority of the Papacy, which through various Papal edicts granted these monarchs the 'right' to conquer, colonize, and enslave Africans. In addition, the Holy See bartered and owned African slaves during the Trans-Atlantic slave trade²²⁴ and clearly falls within the legal purview of the Slavery Convention. Thus, the Papacy is also liable for the atrocities of the Trans-Atlantic slave trade and its legacies for Africans throughout the Diaspora.

b. Geneva Convention (1948)

The Geneva Convention, a product of World War I was established to provide legal and humanitarian protection for civilians during armed conflict, such as wars. Throughout the Trans-Atlantic slave trade, several European nation-states engaged in war and hostilities regarding territorial expansion and the *Asiento* monopoly. At the core of these wars were African slaves. European slavers kidnapped, with the assistance of African brokers (kings), transported and bartered African slaves. As European nation-states became embroiled in principalities and financial losses, these monarchs declared war upon each other and with the authority of the Catholic Church declared holy war upon African 'heathens.' African slaves were not voluntary participants in these armed conflicts. Further, due to Africans' servile status, European monarchs were forced to fight against other European nations in conflict, in which the former and their labor, which would generate profit was at issue. It is clear that the majority of African slaves were civilians and not engaged in war, unless forced by slavers and military campaigns. The Geneva Convention clearly articulates that it is a violation of international law during armed conflict that any persons who are not overtly engaged in war are to be

²²³ *Id.* at 934.

²²⁴ See Maxwell, *supra* note 26, at 76.

protected and treated as non-hostile civilians.²²⁵ Thus, not only did European monarchs violate the Geneva Convention, the Papacy, with its declaration of war and subsequent wars, which followed as a result of the grant and implementation of the Trans-Atlantic Slave trade's Asiento, are in clear violation of this international convention.

c. The International Convention on the Elimination of All Forms of Racial Discrimination (1966)

The International Convention on the Elimination of All Forms of Racial Discrimination became final²²⁶ during a period where the legacies of the Trans-Atlantic slave trade and municipal slavery remained prevalent in not only the United States, which spurred the Civil Rights movement and the enactment of the Civil Rights Act of 1964, but also in other European nation-states which possessed similar racial discrimination against descendants of the African slave trade Diaspora. These countries include France, Denmark, Great Britain, Sweden, Spain and Portugal, which all brought into fruition their own respective municipal laws, such as the French code, in an attempt to stem the remaining tide of the Trans-Atlantic slave trade's vestiges.²²⁷ These legacies emanated from the Trans-Atlantic slave trade, which developed based on the quasi-legal, religious authority of the Papacy.

This Convention declares three fundamental principles regarding race and human rights: (1) racial discrimination based on colonization must be eliminated in all forms; (2) doctrines based on "pseudo-science" that one population is more intelligent over another based solely on race is false; and (3) all human beings are equally protected under the law.²²⁸ Therefore, this Convention recognizes the need for state actors, based on international custom, to take whatever remedial measures that are necessary to address the legacies of the Trans-Atlantic slave trade, colonization and institutionalized discrimination based on race in order to promote harmony and progress among all humans around the world.

Racial discrimination has had an unfortunate legal and cultural presence for centuries in European nation-states. As a result, descendants of the African Diaspora have experienced racial discrimination in housing, education, employment and racial disparities, not only in the United States,

²²⁵ See Geneva Convention Relative to the Treatment of Prisoners of War art. 2-3, Oct. 21, 1950, 75 U.N.T.S. 135.

²²⁶ See G.A. Res. 2106 (XX), International Convention on the Elimination of All Forms of Racial Discrimination (Jan. 4, 1965).

²²⁷ See Muhammad – A Legacy, *supra* note 2, at 190.

²²⁸ See G.A. Res. 2106 (XX), International Convention on the Elimination of All Forms of Racial Discrimination (Jan. 4, 1965).

but in European nation-states as well, resulting in the passage of municipal legislation to address these disparate impacts.²²⁹ The Convention seeks to eventually eliminate such current injustices, just as the 14th Amendment of the U.S. Constitution sought to, along with other federal laws. However, the years in which European monarchs have exploited the labor of captured, tortured and systemically destroyed the ties which bind the families of the populace descendant from the slave trade African Diaspora. The creation of a psychological dependency²³⁰ has yet to be properly addressed. Therein, lies the need for the Papacy to provide restitution for the atrocities and legacies of the Trans-Atlantic slave trade.

In addition, the basis of certain Papal edicts, which declared Africans subject to enslavement as 'non-Christian,' non-Caucasian heathens must be repealed in order for the Papacy to comply with the provisions of this Convention and strengthen the foundation of a formal apology to the descendants of the Trans-Atlantic slave trade, in whichever nation where they currently reside.

Descendants of the Trans-Atlantic slave trade have a right to equal protection under the law, which for Western nation-states is also memorialized in domestic laws, such as the United States' Equal Protection Clause of the U.S. Constitution²³¹ and the Civil Rights Act of 1964.²³² Yet, descendants of the African Diaspora still suffer under disparities in nation-states which were active participants in the Trans-Atlantic slave trade.²³³ Interestingly, the Papacy is not only a signatory of this Convention, but also ratified it as a state actor and permanent observer at the United Nations.

*d. The United Nations Convention on the
Inapplicability of Statute of Limitations for Crimes
Against Humanity*

The United Nations General Assembly passed the U.N. Convention on the Inapplicability of the Statute of Limitations for Crimes Against Humanity in 1970 and states in relevant part:

(b) Crimes against humanity whether committed in time of war or in the time of peace as they are defined in the Charter of the International Military Tribunal, Nuremberg of 8 August 1945 and confirmed by resolution

²²⁹ See Muhammad – A Legacy, *supra* note 4, at 190.

²³⁰ See *id.* at 147, 149, 170.

²³¹ U.S. CONST. amend XIV.

²³² See Civil Rights Act of 1964, Title VII, 42 U.S.C. § 2000e-2 (2006).

²³³ See Muhammad – A Forgotten Crime, *supra* note 4, at 174.

(3)(I) of 13 February 1946 and 95(I) of 11 December 1946 of the General Assembly of the United Nations, eviction by armed attack or occupation and inhumane acts resulting from the policy of apartheid, and the crime of genocide as defined in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, even if such acts do not constitute a violation of the domestic law of the country in which they were committed.²³⁴

Crimes against humanity are defined by the International Military Tribunal as to include: “murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population.”²³⁵ These human rights violations are also articulated in the Rome Statute, the founding legal instrument of the International Criminal Court. The Holy See or Papacy was a vocal participant in not only promoting the enactment of this Convention but as to include sexual crimes as crimes against humanity in the Rome Statute and should be held accountable by this standard.²³⁶ The Trans-Atlantic slave trade and municipal slavery are characterized by kidnapping, torture, *rape*, systemic degradation of primarily Africans and their progeny and are therefore crimes against humanity based on this international legal standard. Therefore, the statute of limitations does not apply to all of these acts which constituted the international barter in Africans and does not apply as to the complicity of the Papacy.

Also, most European nation-states do not have at common law or through legislation a statute of limitation for murder, torture, and mayhem. Thus, inclusive of crimes against humanity, using municipal standards (which gives rise to acceptable international custom) would legally not exonerate the Papacy in its role as a co-conspirator in all acts of genocide, murder, torture, and mayhem which comprised the Trans-Atlantic slave trade.²³⁷ The U.N. Conventions are more legally viable as to the Papacy, because the Holy See, the governing authority of the Catholic Church, has ratified all of these Conventions, thus availing itself of their authority, and

²³⁴ See G.A. Res. 2391 (XXIII), annex, U.N. Convention on the Non-Applicability of Statute of Limitations for Crimes Against Humanity (Nov. 11. 1970).23 U.N. GAOR Supp. (No. 18) at 40, U.N. Doc. A/7218 (1968).

²³⁵ See *id.* at Art. 6.

²³⁶ See Cydric Ryngaert, *The Legal Status of the Holy See*, 3 GOETTINGEN J. OF INT’L LAW 829, 843 (2011).

²³⁷ See Muhammad – A Forgotten Crime, *supra* note 4, at 899-900.

is therefore liable for these crimes against humanity under international law.

2. *Legal Strategies*

Although Conventions established by the United Nations provide substantial legal basis for causes of actions based on the Papacy's intricate involvement with the Trans-Atlantic slave trade, additional legal issues must be considered. In order for any cause of action to be properly instituted at the proposed International Criminal Tribunal, litigants must establish standing.

a. *Proposed International Criminal Tribunal (e.g. ICC/Rome Statute)*

The crimes against humanity which comprised the Trans-Atlantic slave trade not only occurred as a result of the Papacy's explicit and quasi-legal authority and instruction, but also involved multiple nation-states, Africans from various coasts, traveled among the high seas, natives of the Caribbean, South and North America. As the reciprocal and international nature of the slave trade spanned multiple continents, so do those who have a legal cause of action against the Papacy.

The most feasible manner to adjudicate these crimes against humanity, wrongful death claims and disparate impact claims based on the legacy of the Trans-Atlantic slave trade and colonialism, which resulted in institutionalized racial discrimination in housing, education and employment is for the international community to establish an International Criminal Tribunal which specifically addresses these human rights violations.

1. *Standing*

The legal concept of standing requires that a complainant have the right to sue in a civil cause of action. Not only must a litigant demonstrate that there was a harm, but also that the perpetrator's act was the proximate cause of such harm and resulted in damages. Black/Native Americans, Latinos, Chicanos and descendants of Carib Indians and enslaved Africans of the West Indies can aptly show that as a result of Papal edicts that promoted the enslavement of the 'other,' the grant of territorial expansion and presumed ownership of lands and Natives in the "undiscovered" West to Spain and Portugal, the Trans-Atlantic Slave trade, municipal slavers and *de jure* slavery had and continue to have a disparate impact on the complainants' class with regards to housing, education, employment and

disparities in the implementation of the criminal justice system in their respective countries.

2. *Claims*

Class members may assert specific claims against the Papacy, including the exploitation of labor as various Popes purchased and owned African slaves. Claimants may also argue that the Papacy should disclose its historical records, which may contain the names and origins of those African slaves as well as the amount of revenue the Papacy generated from Spain and Portugal from taxes paid to it as a result of the *Asiento* grant. Thereafter, the class will determine whether it is feasible to institute specific claims of loss wages and inhumane acts for African slaves specified in the Papacy's records.

Inclusive of the proposed cause of action are the various crimes against humanity, which primarily European monarchs and their agents committed with the authority of the Papacy. Individual slavers, midshipmen, merchants, and primarily European monarchs committed most crimes against humanity and municipal heinous criminal offenses throughout the Trans-Atlantic slave trade.²³⁸ Criminal punishment is not a viable option as these individuals are deceased as a result of centuries past. However, crimes against humanity, which include genocide and murder against a population, are not only addressed on the international legal stage with criminal prosecution but also through civil suits, such as wrongful death and disparate impact, in this case as vestiges of the Trans-Atlantic Slave trade.

3. *Papal's Vicarious Liability Claims*

The history and legal succession of the *Asiento* slave trading monopoly was in operation for over two centuries. Although Spain and Portugal were the primary holders of the *Asiento* in the 17th century, several additional European monarchs possessed the *Asiento* through their respective corporate entities such as merchant consortia and chartered companies.²³⁹ The *Asiento*, throughout its international operation, always

²³⁸ See Loureiro, *supra* note 126, at 18 ("At the end of the fifteenth century, the Luso-Spanish kingdoms that occupied the Iberian Peninsula kept the same medieval mentality of the *orbis christianus*, which revolved around the power struggles between the Popes and the Emperors. The issue of infidelity of Pagans, Jews, and heretics challenged the universalism of *orbis christianus*, as well as disputes over the legitimacy of the use of just war as a way of fighting paganism were at the centre of debates."); see also Muhammad – A Forgotten Crime, *supra* note 4, at 178.

²³⁹ See for example Davenport, *supra* note 1, at 293 (Treaty between Brandenburg and Denmark concerning the Island of St. Thomas (Dec. 4, 1685)).

had one defining component—its existence and usage was based on Papal's authority, which used its religious influence and racist dogma to enslave Africans. Therefore, each Asiento license, conveyance, buyback, and use of the Asiento as a diplomatic instrument and slave trading instrument through bilateral and multilateral treaties had the legal-religious sanction of the Papacy. Also, in continuation of the 15th century tradition that monarchs, particularly Spain and Portugal, remit taxes to support what the Papacy deemed worthwhile activities, its Asiento grant provided the Papacy with revenue as a third-party beneficiary. Thus, the Papacy is liable, just as European nation-states, for the atrocities committed through the Trans-Atlantic slave trade.

b. Jurisdiction of the Papacy

In order for the proposed International Criminal Tribunal to have legitimacy based on national and international legal standards, certain procedural measures must be assured. In order for prospective claimants to sustain claims for restitution, the class members must demonstrate that the proposed Tribunal has jurisdiction of the Papacy. The Papacy and its representative—the Holy See, can legally be considered a separate entity from the Vatican.²⁴⁰ The Vatican is merely territory over which the Holy See exercises an advisory role; however, the Vatican is not considered an authoritative part of the legal personality of the Holy See.²⁴¹ Should the Holy See lose its city-state, as it has in the past, and the latter considered the territorial manifestation of the Holy See, it would lose its validity as an internationally recognized state actor and lose any rights to enter into treaties with nation-states, assist in international arbitration, and its quasi-legal authority over its Catholic adherents throughout the world.²⁴² Therefore, although the Holy See is not considered a nation-state based on

²⁴⁰ See Ryngaert, *supra* note 236, at 829, 832 (“U.S. courts in particular have broadly treated the Vatican and the Holy See as one legal person, and have even considered both of them as ‘States’ for purposes of the U.S. Foreign Sovereign Immunities Act (FSIA).”) (citation omitted).

²⁴¹ See *id.* at 836-37 (“What is clear is that the Holy See is not simply the government of the territorially delimited Vatican City, but the governance center of the Roman Catholic Church, or as the U.S. Court of Appeals for the Second Circuit sated in 2009 the “Holy See is the ecclesiastical, governmental, and administrative capital of the Roman Catholic Church, Defendant Holy See is the composite of the authority, jurisdiction, and sovereignty vested in the Pope and his delegated advisors to direct the world-wide Roman Catholic Church.”) (citation omitted).

²⁴² See *id.* at 837 (“However, as became clear after the Pontiff’s loss of the Papal States, during the territorial interregnum between 1870 and 1929, the Holy See continued to exercise the powers it had, but without a territorial base. This suggests the existence of an international legal personality that is independent of territory.”).

real property, the international community does recognize it as a state actor.²⁴³

The Holy See has a permanent seat at the United Nations, it can become a signatory and ratify legal instruments promulgated by the United Nations and maintains a quasi-legal and religious authority of its Catholic populace throughout the international community. Historically, it has established its legal authority in international affairs through Papal edicts and declarations, including the grant of the *Asiento* slave trading monopoly to Spain and Portugal. Therefore, the Papacy can legally be treated as an entity over which the proposed International Criminal Tribunal may exercise jurisdiction.

1. *Subject Matter Jurisdiction*

Subject matter jurisdiction is a procedural legal doctrine which allows a court, here a proposed International Criminal Tribunal, the authority to adjudicate particular types of cases (brought before it). The proposed International Criminal Tribunal is based on a hybrid of the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda,²⁴⁴ with the exceptions of including retroactive application of the legal standards which defined crimes against humanity and excluding the established standard of the Rome Statute of the International Criminal Court in order to process such claims against individuals. Thus, human rights violations defined as crimes against humanity, which were systemically committed by European monarchs, slavers, colonizers, bankers and merchants, with full grant and authority of the Papacy, are explicitly within the purview of claims the proposed Tribunal is to adjudicate.

2. *Personal Jurisdiction*

Prospective class members have the option to demonstrate to the Tribunal that personal jurisdiction applies to the Papacy, which shall include both the Holy See and the Vatican. The Tribunal may exercise personal jurisdiction over a person or entity based on two commonly accepted circumstances: (1) the entity is within or headquartered within that court's territory (jurisdiction); or (2) the entity has made sufficient

²⁴³ *See id.* at 841 (“The Holy See was granted permanent observer status at the UN in 1964. The rights that flow from the status were strengthened by UN General Assembly Resolution 58/314 (2004)...It is conspicuous that the UN General Assembly does not characterize the Holy See as a non-State actor, but as an observer *State*.”) (citations omitted).

²⁴⁴ *See* Muhammad – A Forgotten Crime, *supra* note 4, at 179.

minimum contacts with the jurisdiction where the Tribunal lies.²⁴⁵ Since the Tribunal is international in nature and is to adjudicate crimes against humanity based on the elements established by the international community, it is sufficient, based on the international travels and diplomatic relations of and the Holy See's permanent observer seat at the United Nations, for the Tribunal to exercise personal jurisdiction over the Papacy.

3. *In rem Jurisdiction*

In rem jurisdiction allows a court to exercise its authority over a person or entity based on the location of property owned by that entity. This is one of the difficult manners that the class would have to demonstrate in order for the Tribunal to exert jurisdiction over the Papacy. As mentioned, although the Papacy and its authoritative advisor—the Holy See owns the Vatican city-state, there is not a reciprocal nature as to the land that is attached to the Papacy.²⁴⁶ The Holy See can claim that its authority is worldwide based more so on religious rather than secular law, and therefore, the entirety of the Catholic Church is not confined within the border of the Vatican city-state. The Holy See may still maintain that it does not have secular authority of the Vatican, but this argument is likely to fail since the Papacy is to have religious governing authority of all Catholics, it would nevertheless have authority over the land in which it sits.

However, despite the international nature of the legal instrument used to secure the Vatican,²⁴⁷ the Papacy obtained title to the city-state through sale and purchase just as any other asset.²⁴⁸ Claimants may argue that the Vatican itself is not the asset that is to be used to compensate its class but only to obtain jurisdiction of the Papacy.

In addition to the Vatican territory, the Papacy has quasi-legal authority of the Catholic Church, its houses of worship and the hierarchy of administration of individual Church affairs through local archdioceses throughout the world. The Papacy arguably has legal interests in any regional coffers the latter may possess and in various nation-states throughout the world.

²⁴⁵ *Personal Jurisdiction*, BLACK'S LAW DICTIONARY 930 (9th ed. 2009). “the court’s power to bring a person into its adjudicative process; jurisdiction over a defendant’s personal rights, rather than merely over property interests;” *see also generally International Shoe v. Washington*, 326 U.S. 310 (1945).

²⁴⁶ *See Ryngaert*, *supra* note 236, at 837.

²⁴⁷ *See id.* at 833 (“The Vatican City was indeed only created by the Lateran Treaty in 1929 to provide a territorial basis for the Holy See—which predates the Vatican City by many centuries—that could guarantee its independence.”).

²⁴⁸ *See id.*

According to the United Nations Convention on Jurisdictional Immunities of States and their Affairs, bank accounts for non-commercial use, diplomatic visits and property used for military campaigns is not considered valid property in which in rem jurisdiction may attach.²⁴⁹ However, this Convention is expressly for the purposes of a lawsuit, which is initiated in or on behalf one State against another individual State. In rem jurisdiction still applies because the forum of the proposed International Criminal Tribunal is based on the international community, a multitude of states, on behalf of descendants of the African Diaspora, on obtaining in rem jurisdiction of one State actor, the Papacy.

C. Legal Arguments Opposing Restitution

As with any charge for prosecution and civil cause of action, the party subject to the allegations has a legal right to respond. The Papacy has few legal arguments to counter the overwhelming historical evidence regarding its complicity in the Tran-Atlantic slave trade and the crimes against humanity which plagued this international commerce. Therefore, the Papacy's probable arguments are procedural rather than factual in nature.

1. Sovereign Immunity and the Vatican (UN Convention on Jurisdictional Immunities Foreign and Sovereign Immunities Act)

Sovereign immunity is a widely recognized legal doctrine which prevents a civilian or State from initiating a cause of action against a nation-state, unless it consents or under similar, limited exception. As the general presumption is that a State only does what is in the best interest of the nation it presides over, it therefore cannot do any wrong.²⁵⁰

The Papacy may assert that it has sovereign immunity from suit and 'prosecution' for its role in the initiation and proliferation of the atrocities of the Trans-Atlantic slave trade. Its representative, the Pope, travels to various nation-states, arguably in only a diplomatic capacity, since its purpose is to advise and regulate the Catholic Church and its adherents throughout the international community, as well as when called upon, to arbitrate between States which fail to reach an agreement on a particular matter.

Although the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda only

²⁴⁹ See G.A. Res. 59/38, annex, United Nations Convention on Jurisdictional Immunities of States and Their Property (Dec. 2, 2004).

²⁵⁰ See Muhammad – A Forgotten Crime, *supra* note 4, at 175.

permit prosecution of criminal offenses committed by individuals, the proposed Tribunal would not have this restriction, as its purpose is to ensure that institutions, principalities, and nation-states, which financially benefited from and developed a modern capitalist system thereto are held accountable for the centuries of human rights violations that the Trans-Atlantic slave trade entailed.

Also, claimants may argue that sovereign immunity cannot apply to the Papacy, as it is not a traditional nation-state, though considered a state actor, but its primary role is religious with diplomatic privileges as its authority is not confined with a specific territory and does not control the physical, daily operations of citizens throughout the world. For instance, a citizen of the United States, even if Catholic does not appeal to the Papacy when garbage needs to be collected, nor as to the exertion of voting rights, or repairs to local roads or zoning standards for specific neighborhoods. This resident must adhere to and appeal to its local or federal government in order to exercise these rights.

The international community has already declared the Trans-Atlantic slave trade a crime against humanity,²⁵¹ and abolished slave trade based on international law. Thus, any resolutions, including restitution, are a reasonable response to such inhumane acts, and therefore, sovereign immunity would not apply to the Papacy, a state actor which had a prominent role in facilitating it.

2. *Statute of Limitations*

The Papacy may also assert the affirmative defense of statute of limitations. However, as previously discussed, statutes of limitation do not apply to crimes against humanity according to international law.²⁵² The Papacy may also argue that previous Popes throughout the 17th century attempted to deter the Trans-Atlantic slave trade by issuing advisory edicts to the slavers and governing structure in the New World. However, the proposed Tribunal will not adjudicate claims against individuals (Popes), but rather against institutions and nation-states. The Papacy as an institution, which initiated the Asiento, did not officially denounce the Trans-Atlantic slave trade until the 19th century.²⁵³ Nevertheless, the statute of limitations shall not apply as to the Papacy and its involvement with the Trans-Atlantic slave trade.

²⁵¹ *Id.*

²⁵² See G.A. Res. 2391 (XXIII), annex, U.N. Convention on the Non-Applicability of Statute of Limitations for Crimes Against Humanity (Nov. 11. 1970), 23 U.N. GAOR Supp. (No. 18) at 40, U.N. Doc. A/7218 (1968).

²⁵³ See Ryngaert, *supra* note 236, at 843.

V. CONCLUSION

The Trans-Atlantic slave trade was an international commerce in African slaves which spanned multiple continents, the high seas, various nation-states, and the Papacy. European monarchs, through promotion and financing, supported and encouraged slavers, merchants and bankers to charter slaving companies in order to seize the rare opportunity to profit from the suffering and exploitation of Africans and their descendants. Such monarchs were not only attracted to the barter in Africans due to the lure of financial prosperity, but also to the expansion of their ‘empires’ and exploiting the natural resources therein, through colonialism and the inherent political power attached to the *Asiento* slave trading monopoly.

The *Asiento* had its legal and religious origin in the teachings of the Catholic Church and in the Papacy’s issuance of quasi-legal edicts. The Papacy’s authority, though weakened in the 17th century, attached to the *Asiento*, which was most prevalent in the 18th century, as its monarchs incorporated by reference the monopoly in bilateral and multilateral treaties. Thus, vicarious liability may be imputed to the Papacy for the conduct of slavers, sailors, bankers, merchants, and nation-states for the crimes against humanity committed and the profits realized throughout this international commerce. Therefore, restitution from the Papacy to Blacks of the African Diaspora in *all* nation-states in which they reside is a reasonable, although not a completely restorative method to make amends for the crimes against humanity committed throughout the slave trade.

The Papacy recognized that the enslavement of the ‘Amerindians’ was an inhumane act and as early as mid-17th century a Catholic bishop proffered that the Papacy, at minimum should pay them for their unpaid labor they performed at the hands of their European “Christian” slavers.²⁵⁴

Of course, restitution will not be a complete remedy to eliminate the legacies of the Trans-Atlantic Slave trade, just as the harm committed against African slaves in the West was not solely physical. However, restorative justice occurs in stages, but it does require some form of undertaking to progress for succeeding generations to continue to attenuate the remaining effects of the harms done.

The Papacy has a legal obligation to provide restitution to the descendants of the (slave trade) African Diaspora. The primary forms of reparations are: (1) an apology; (2) the revocation of the Papal edict *Dum Diversas*; and (3) the provision of financial compensation. The apology must not entail simply an expression of mere regret, it is necessary for the

²⁵⁴ See Maxwell, *supra* note 26, at 65-66.

Papacy to acknowledge the wrongs committed, not just as to the initial enslavement of Africans, but as to the elimination of the Black family structure, kidnappings, rape, forced sodomy, burning and dismemberment of slaves and other forms of torture, deprivation of food, and deaths of so many at the hands of European slavers.

The second portion of restitution for the Papacy is through its vicar—the Pope to officially denounce *Dum Diversas*. The issuance of this Papal edict set European monarchs on a path to conquer, annihilate, and subdue any non-Christian, in particular Africans, and justified their enslavement. It is only fitting that that the Papacy revoke this edict which led to the countless shedding of tears and spillage of blood based on religious and financial intent.

Lastly, the Papacy must provide financial compensation to the descendants of the Trans-Atlantic slave trade. Detractors will argue that one cannot place a monetary value on human life, but restorative justice entails financial compensation. The compensation must be determined by a committee comprised of the descendants' own choice, including an advisory role in the proposed Tribunal, and provide the parameters in which compensation will be accepted, such as a trust fund or individual payments, funds for education and healthcare. Although previous Popes have mentioned regret for the Trans-Atlantic Slave trade before limited audiences, restorative justice demands that the Papacy take these three major steps for valid restitution.

Further, recently, Pope Francis implored the rich of the international community to redistribute its wealth to the poor.²⁵⁵ Most poignantly, Pope Francis declared: “Specifically, this involves challenging all forms of injustices and resisting the economy of exclusion, the throwaway culture and the culture of death which nowadays sadly risk becoming passively accepted.”²⁵⁶

Pope Francis as representative of the Papacy, in particular the Holy See, has declared what many descendants have known, that there is inequitable distribution of wealth; however, for the descendants of the Trans-Atlantic slave trade, poverty can be attributed to lack of access to education due to discrimination in housing, employment, and the criminal justice system. These inequities prominently reflect the disparate impact that racial discrimination has on descendants of African (and mixed) descent. The Papacy, as a permanent observer of the United Nations, considered as a world leader in global affairs, as the embodiment of

²⁵⁵ See ‘Pope Francis to World: Redistribute the Wealth,’ Dan Kedmey, May 9, 2014, TIME Magazine online edition, <http://time.com/94264/pope-francis-redistribute-wealth/> (last visited July 2, 2014).

²⁵⁶ See *id.*

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rulemaking for its Catholic adherents, must lead by example and provide restitution to the posterity of those who gravely suffered as a result of the Trans-Atlantic slave trade itself and its vestiges as a matter of law.