ELEANOR MARIE LAWRENCE BROWN

POSITIONS (ACADEMIC)

Associate Dean for External Affairs and Corporate Partnerships; Professor of Law and International Affairs; Senior Scientist, The Rock Ethics Institute, **The Pennsylvania State University** (Associate Dean position was completed in 2020); Chair, Lutie Lytle (A National Association to support Black Women Law Faculty in teaching and scholarship, relinquished in 2020)

Professor, School of Law, **George Washington University** (2009 to 2017, Tenured in 2014, Promoted to full professor in 2016), Faculty, Institute for Immigration Studies, George Washington University

Reginald F. Lewis Fellow, **Harvard Law School** (2007 to 2009)

Schwartz Fellow, **New America Foundation** (2008 to 2010)

GWIPP Policy Research Scholar (2012 to 2013), **George Washington University Institute of Public Policy**

EDUCATION

Yale Law School, J.D. (1999):

Notes Development Editor, Yale Law Journal; Orville Schell Human Rights Fellowship; Chair, Conference Committee, Black Law Students Association; Allard K. Lowenstein Human Rights Project; Jerome N. Frank Legal Services Organization

University of Oxford (Balliol College), M.Phil., Politics (1997):

Rhodes Scholarship; Thesis Title: *Is the Feminist Embrace of Sandellian Ontology Problematic?*

Brown University, B.Sc. in Biology (1993):

Citation from the Rhode Island State Legislature for Academic Excellence and Public Service; George W. Hagy Prize for Academic Excellence; Sigma Xi Scientific Honor Society; Harvey Alma Baker Fellowship of the Office of the Dean; Alice M. Steinert Scholarship.

Judicial Clerkships

Law clerk, Chambers of the (late) Honorable Judge Patricia Wald (ret.), **United States Court of Appeals for the District of Columbia**. (1999)[1]

Law clerk, Chambers of the Honorable Judge Keith Ellison, **United States District Court for the Southern District of Texas**. (1999-2000)

PUBLICATIONS AND WORKS IN PROGRESS

BOOK UNDER CONTRACT (OXFORD UNIVERSITY PRESS), THE BLACKS WHO "GOT" THEIR FORTY ACRES: A THEORY OF ASSET ACQUISITION – MANUSCRIPT WILL BE SUBMITTED IN 2021

THE NATURE OF THE FARM (CO-AUTHORED WITH IAN AYRES, "REVISE AND RESUBMIT" RECEIVED – JOURNAL OF LEGAL STUDIES (CHICAGO))

A plantation typically has two agricultural functions. The primary function is the production of the main cash crop, with cotton becoming dominant in much of the antebellum South and sugar cane being dominant in the West Indies. The secondary agricultural function is the production of food to feed enslaved people.

This article focuses on two different models of feeding enslaved people, and how their differences may have helped abet the creation of a property-owning class of enslaved people. In the first model, primarily associated with the cotton, tobacco and rice plantations of antebellum South and the *early* sugar plantations of the British West Indies both functions were typically performed within one unit, the plantation. That is, the obligation to feed the enslaved person was executed by the plantation. In contrast, a system known as provisioning developed in the British West Indian colonies. Instead of feeding enslaved people through the plantation administration, the master allocated land to the enslaved persons to grow their own food. Over time, this land was understood in the wider community of both those enslaved and the planters to be the "property" of the enslaved person. Thus, an enslaved person could "bequeath" land to their children, as long as their family remained with the plantation. Under the provisioning system, counterintuitively, chattel enslaved persons were both property themselves *and* the owners of property.

In the process, units developed by enslaved people aimed at fulfilling the food-provision function "spun off" from the main plantation administration. Thus, while the plantation continued to produce the main cash crop, the production of food for those enslaved was essentially outsourced from the plantation to the enslaved person. Although the primary purpose of farming for enslaved people was to ensure that they and their family were fed, an enslaved person could also retain the cash proceeds of any excess food sold at weekend food markets.

This article offers an explanation both for why provisioning was adopted in West Indies, and why provisioning did not take hold in southern U.S. plantations. The key difference was that the increased difficulty of importing food to the West Indies necessitated that plantations provide their own food. This difference, combined with the high degree of absentee ownership in the West Indies (and a low opportunity cost of allocating land unsuitable for sugar production to enslaved people), made

[1] I was honored to have interviewed for a clerkship with the late Justice John Paul Stevens, Former Associate Justice of the Supreme Court of the United States but was not selected for the position.

decentralized provisioning more efficient than centralized plantation production of food. Provisioning was not adopted by antebellum plantations in the southern United States because they retained robust access to external Midwest food markets and they had lower prevalence of absentee ownership.

Coase's key insight from his 1937 *The Nature of the Firm* article can also help us understand how firms are internally structured. Provisioning represents a kind of subcontracting within the firm. Following Coase, we should expect to see such subcontracting when doing so economizes on transactions and agency costs. Provisioning sacrificed the plantations claims to surplus food, but in the West Indies such decentralized production could enhance incentives for an enslaved person to produce their own food while economizing on the need for supervision.

WHY BLACK HOMEOWNERS ARE MORE LIKELY TO BE CARIBBEAN-AMERICAN THAN AFRICAN AMERICAN IN NEW YORK: A THEORY OF HOW EARLY WEST INDIAN MIGRANTS BROKE RACIAL CARTELS IN HOUSING (2021) (ACCEPTED BY AMERICAN JOURNAL OF LEGAL HISTORY (OXFORD))

Why are the Black brownstone owners in Harlem and Brooklyn disproportionately West Indian migrants and their descendants? Why are the landlords West Indian-American when the tenants are predominantly African American? These are tough questions. For students of housing discrimination, West Indian Americans have long presented a quandary. If it is reasonable to assume that racial exclusions are being consistently applied to persons who are dark-skinned, one would expect to find that housing discrimination has had similar effects on West Indian-Americans and African Americans. Yet this is not the case: West Indian-Americans generally own and rent higher quality housing than African Americans.

Moreover, these advantages began long ago. For example, when racial covenants — restrictions barring racial and ethnic groups from owning real property in particular neighborhoods — were rife in New York, they were not consistently applied against West Indians who were sometimes able to buy into tony neighborhoods. While it is true that such covenants were also inconsistently applied against other ethnic and religious groups (e.g. Jewish New Yorkers), West-Indians still stand out. Since West Indians are overwhelmingly dark-skinned persons of African descent they typically did not have the option of "passing," which may have been available to other groups.

Eschewing more traditional explanations in the civil rights literature, I apply the literature in which racial segregation in real property ownership is conceived as a racial monopoly in which racial cartels appropriate anti-competitive techniques to monopolize access to real property. Maintaining a racial cartel is dependent on White owners maintaining a united front, that is, they must uniformly refuse to sell**.** Importantly, realtors play a gatekeeping role in real estate and West Indians dominated the realtor sector. As realtors, they were expert at finding "defectors," namely, Whites willing to break norms of racial exclusivity, in exchange for their ability to extract a premium for selling to Blacks early. Brokers then proceeded to buy significant numbers of titles, which were then off-loaded to fellow West Indians. West Indian brokers could act in confidence because they had cash-rich clients and were often buying in trust (*de facto* if not *de jure*) for fellow West Indians.

In so doing, West Indian brokers in New York were simply replicating techniques that had been utilized by their land-brokering ancestors. I discuss the history that "previews" this period in New York, albeit in the British West Indian islands from which the migrants originated. There are repeated instances of Blacks "busting" White monopolies in land-ownership throughout the West Indies, often in contravention of racial norms in the British colonies of who was allowed to own land where. Upon arrival in New York, West Indians encountered another racial monopoly in real property ownership: Northern racial segregation. They essentially appropriated the same techniques that they had utilized in the West Indies to break into White neighborhoods in New York.

RACE, PROPERTY AND CITIZENSHIP (CO-AUTHORED WITH JUNE CARBONE – NORTHWESTERN UNIVERSITY LAW JOURNAL (ONLINE, 2021) – CURRENTLY IN EDITORIAL PROCESS)

In the United States, property ownership and citizenship have long been linked — and long served to deny African Americans full participation in American life. The colonies, like Great Britain, limited the franchise to White, male property owners. African Americans in the United States at the time of the country's founding were property, and even after they were freed, were denied the opportunity to acquire the kind of property that allowed for economic security and independence. This legacy continues to this day — a product not just of the continuing consequences of slavery, but of the forces that increase American economic inequality more generally, with particularly devastating effects on minority communities. This essay examines the continuing role of racial wealth disparities in American life. Racial disparities in wealth are substantially greater than disparities in income; one report finds that if present trends continue, the median wealth of Black Americans will be zero by 2053.

The racial wealth gap has received much less attention than police violence and more visible forms of discrimination, but it is at least as important in determining the health of minority communities. This article will examine the forces that produced the racial wealth gap and their consequences. First, it will consider modern notions of citizenship and their relationship to an ownership interest in American society, specifically considering the role of homeownership and higher education as the foundations for middle class life. Second, it will consider the move from public to debt financing associated with the increase in mortgage and student loan debt, and the particularly pernicious impact on minority borrowers. Third, it will discuss the demonization of minority borrowers in the aftermath. Fourth, it will link these developments to the evisceration of the protections that once served middle class Americans more generally. Finally, it will look at the prospects for the future.

ON THE EVOLUTION OF PROPERTY OWNERSHIP AMONG FORMER SLAVES TURNED FREEDMEN
(SUBMITTED TO JOURNAL OF LAW, PROPERTY AND SOCIETY)

One might think of the property system of provision grounds (or provisioning) in the West Indies as a happy coalition of interests between planters (who wanted to provide enslaved people incentives to feed themselves), Westminster (who wanted "properly-fed" enslaved people to ensure the productivity of the sugar sector, a hefty tax contributor to the Exchequer), and those enslaved (who saw the advantages of a system which ensured that they were fed and encouraged private enterprise). Yet while this was generally true, notably, not all members of the plantocracy viewed these developments as positive. An outspoken minority feared that the roots of the ultimate failure of plantation society would lie in the provisioning system. Moreover, they pointed to the resistance of the plantocracy in the U.S. South to private enterprise among those enslaved as the preferable course. The views of this outspoken minority ultimately proved prescient, as a struggle over true ownership of provisioning plots played out against the backdrop of Emancipation in the British colonies.

I focus on the era immediately after British Emancipation. During slavery, planters were willing to grant provisioning plots to those enslaved because the planters themselves exacted a benefit from doing so; they essentially "outsourced" the job of feeding those enslaved to the enslaved people themselves. Once labor became free, this benefit vanished. Planters began to wonder how to handle former provision grounds. Although provision grounds were the *de facto* (perceived to be) property of enslaved persons, typically these lands were *de jure* planter property (plots at the edge of the plantations for which the planters held title).

The issue became particularly acute in the aftermath of Emancipation when planters sought to "tie" those formerly enslaved to the plantations to secure a reliable workforce. Newly freed, those formerly enslaved had no obligation to accept planters' "offers" of employment on the plantations.

Property acquisition during slavery (when there were *no* formal protections) turned out to be singularly important in determining who continued to remain in the employ of the plantation post-Emancipation. The irony is that the extensive nature of the provisioning system (which acculturated enslaved people to a form of "property-and-contract-lite") made it *less likely* that an ex-enslaved person continued to remain in the employ of the planters once leaving became a viable choice. West Indian freedmen who already had a taste of property ownership were typically not enamored with long-term plantation employment.
Following this logic, one might predict that planters in the U.S. South would ultimately prove more successful in maintaining a long-term plantation-like society (even after the abolition of slavery) than their West Indian counterparts because they never allowed provisioning to develop. This prediction is spot-on. In particular, the early demise of status relationships that undergirded plantation society in the West Indies had much to do with the general failure of share tenancy (and its most popular iteration, sharecropping) in the West Indies.

In a system of sharecropping, a landowner allows a tenant to use the land in return for a share of the crops produced on the land. This significantly reduces the strain that up-front labor costs place on a plantation's cash-flow. Although now most widely associated in the popular American imagination with the U.S. South, sharecropping has a long historical heritage that pre-dates Southern plantation society. Sharecropping was attractive to the West Indian planter for the same reason that it was attractive to the Southern planter – primarily as a mechanism of tying newly freed West Indians to the plantations while saving on labor costs.

In summary, both planters in the West Indies and the U.S. South sought to institutionalize sharecropping arrangements. It is largely because of the provisioning system that West Indian planters fail in their efforts, while Southern planters succeed. Newly freed West Indians opted instead in large numbers to use the money that they had accumulated from contracting at food markets during slavery to buy their own land and become *de jure* property owners and contractors.

OF BLACK SOUTH AFRICANS, BLACK AMERICANS AND BLACK WEST INDIANS: SOME THOUGHTS ON ATUAHENE'S WE WANT WHAT'S OURS (MICHIGAN LAW REVIEW, 2016)

What happens when the state does more than simply "take" property, but also "takes dignity?" In such instances, the question becomes, is "just compensation," as we have traditionally understood it, enough? For Bernadette Atuahene, the answer is decidedly "no." She elucidates this through a detailed qualitative field study of the most ambitious "just compensation" program of modern times: the Commission on Land Restitution in post-apartheid South Africa.

What do "dignitary takings" mean on the ground? In a detailed ethnography, Atuahene interviews displaced South Africans, documenting in rich detail their lives both before and after the displacement that inevitably followed the forced removal policies implemented by the apartheid state. The narrative is familiar. To ensure that South Africans lived in racially homogenous communities, the government conducted an aggressive program of displacement—Blacks were moved to "Black" "homelands" or "townships," "coloureds" were moved to "coloured" areas and so forth.

The long-term social and psychological consequences of displacement from the property and the communities that anchored them was devastating—Atuahene exactingly recounts the common perception that the relocated will never recover from the upheaval. For these people, land is not enough. Money is not enough. Atuahene's central contribution is to insist that any "just compensation" procedure must

necessarily involve a process that she terms "dignity restoration." Narratives must be told and heard; suffering must be acknowledged by the state. Going forward, claimants must have a primary say as to where they will live. Moreover, claimants should also help direct state related land policies, to ensure that they are properly tailored to restoring their particular psycho-social health and sustaining their livelihoods. By any account, these are serious objectives that make traditional reparations look like "small stuff."

However, to my mind, Atuahene's notion of dignity takings might also be applied to the more difficult cases of potential "takings" from those who now constitute the majority of poor South Africans, that is, South Africans who never had even quasi-formal relationships with land to begin with. They were at best squatters with no land to "take." Nevertheless, they too suffered losses; they were denied access to government-subsidized land (which Whites received), because of their skin color. Here undoubtedly there is a dignitary affront, but is there a "taking"? Put differently, does a lost opportunity, that is, an opportunity cost, constitute a "taking?"

Ta-Nehesi Coates, whose article on reparations and the housing experiences of African Americans has received widespread media coverage, would have us believe so—although he writes about the United States, the applicability of his logic to South Africa is clear. Juxtaposing Coates with Atuahene, I review his case that African Americans should be compensated for such opportunity costs. The narrative of exclusion of Black Americans is similar in important ways to the narratives of exclusion of Black South Africans. The mechanism of these exclusions were generally more subtle in the United States (at least in the Northern states) than in South Africa. In the U.S., the primary mechanism of exclusion was not explicit state law a la South Africa ("Blacks cannot live here") but instead the extensive utilization of racially restrictive covenants—private contractual arrangements between neighbors which barred the sale or rental of certain properties to African Americans.

What is less well known to the wider public was that these racially restrictive covenants received significant federal government support and that Blacks were denied access to federally funded mortgage financing for many years. Since it is clear that the capability of Blacks to build net worth was undermined by their being denied opportunities to access mortgage financing (and indeed, to access homes in neighborhoods *without* racially restrictive covenants), Coates believes that compensation is due. While the methodology of exclusion might have been different in South Africa, the segregationist goals were similar and so was the result – even today, many African Americans are at best marginal property owners and their net worth is low.

We might also imagine the possibility that absent such exclusions a resilient home-owning class of Black people might have developed. Indeed, there is another group that we have not addressed: Black people who actually became robust (as opposed to marginal) land-owners; people who accumulated cash and bought precisely what they wanted, mostly where they wanted. It is this group that is the subject of my own work—namely the cash-rich Black British West Indian migrants to New York who quickly became property-owners.

While this review is primarily about property-based discrimination, I include the employment experiences of West Indians in early 20th Century New York because these employment narratives allow us to see Atuahene's dignitary affronts in a new light. Long before West Indians were buying into neighborhoods governed by racially restrictive covenants, they were working in factories where Blacks were not welcome. A workplace sign saying "Negroes need not apply" constitutes a dignitary affront: the employment equivalent of a racially restrictive covenant.

The property story is a similar one: just as West Indians were working in "racially exclusive" factories, they were living in "racially exclusive" neighborhoods. Herein lies the difference with African

Americans. These West Indians had cash, and even virulent racists sometimes became pragmatic sellers when faced with Black buyers who were willing to pay a premium to access neighborhoods that had previously been off-limits.

West Indians' early experiences in New York underline how it might have been possible for Black West Indians to experience dignitary affronts a la Atuahene, even as they roughly escaped the takings (of property or the "opportunity to acquire property") that often accompany these affronts. Neither Blacks in South Africa nor the United States were so fortunate. Indeed, for African Americans and South Africans of color, Atuahene's concerns have never been so pertinent.

AN ALTERNATIVE VIEW OF IMMIGRANT EXCEPTIONALISM (CALIFORNIA LAW REVIEW, 2015)

The contrast between Amy Chua and Jed Rubenfeld's The Triple Package (Chua & Rubenfeld 2.0) and Chua's previous work, World on Fire (Chua 1.0), is striking. Chua & Rubenfeld 2.0 contends that particular ethnic and religious groups are spectacularly successful in the United States because of a "triple package" of traits that are largely cultural; however, there is nary a word in Chua & Rubenfeld 2.0 about the role that law plays in contributing to wealth acquisition among their chosen subject groups. In contrast, Chua 1.0 clearly acknowledges the role of law through "law-in-culture" when accounting for the wealth of those whom Chua calls "market-dominant minorities." "Law-in-culture" consists of binding rules, such as default contract terms, that often underlie market relations in perilous "third world" environments. While these rules are not enforceable by the state, they are powerful because those who ignore them risk ostracism by their co-ethnics, with whom they often contract.

Perhaps because Chua & Rubenfeld 2.0 focuses on particular ethnic groups within the United States—a country that epitomizes the protection of property and contract rights—it overlooks the potential role of "law-in-culture" in accounting for wealth acquisition of particular groups. This oversight is significant. Many of the subject ethnic groups had contracting advantages underwritten by "law-in-culture" in their countries of origin.

I am particularly concerned about the absence of a discussion of institutions—whether underwritten by "law" or "law-in-culture"—when Chua & Rubenfeld 2.0 discusses Black people. A case in question is Nigerian Americans. Given their focus on Nigerian American economic success, a comparison to African American economic success (or lack thereof) is foreseeable. The question is inevitable: if Nigerian immigrants do so well in the United States, what does this say about the continuing scholarly emphasis on institutional (as opposed to cultural) impediments to native Black, that is, African American economic success?

Chua & Rubenfeld 2.0 acknowledges institutional impediments to African American success, but they say very little about institutional advantages that Nigerian Americans may have. In fairness to Chua and Rubenfeld, they are likely constrained by the dearth of scholarship on the pre- and post-migration trajectories of Nigerian Americans, who are largely relatively recent migrants. Thus, to explore the potential relevance of institutional factors, I consider the original Black "triple package" group for which much more scholarship is available, West Indians. I contend that institutional background matters. For example, even the earliest turn-of-the-century Black West Indian migrants gained exposure to an institutional context for wealth acquisition through the extension of property and contract rights to enslaved people and their descendants in the West Indies. This stands in stark contrast to the institutional context that generally existed for African Americans, not only during slavery, but also in the pre-civil rights southern United States.

Thus, despite the historical sociological focus on West Indian American success, I question the notion that West Indian Americans are necessarily a useful comparative sample to African Americans simply because they are Black — particularly given the historical disparity between West Indian Americans and

African Americans in accessing institutions for wealth creation. The question then becomes if the same might be true of Nigerian Americans.

SEX WORK AS GUEST WORK: SOME PRELIMINARY THOUGHTS ON RADIN AND BLACK WOMEN SELLING SEX ACROSS BORDERS *IN* BLACK WOMEN IN INTERNATIONAL LAW (JEREMY LEVITT, ED., CAMBRIDGE UNIVERSITY PRESS, 2015)

A primary reason that people cross borders is to buy and sell sex. When the legal scholarship does address transnational transactional sex, it is almost exclusively focused on persons who are trafficked in violation of the international human rights law regime. The volitional transnational sex worker, however, is virtually invisible in this scholarship. This invisibility persists despite evidence that a significant percentage of sex workers, while typically disadvantaged and from the developing world, are independent contractors who seek to enter developed markets in order to negotiate more favorable terms for the provision of their services.

Given the tremendous power differentials between the typical poor non-white sex worker from the developing world and the typical richer White patron from the developed world, critics argue that such a system is inevitably Dickensian. Seeking to walk a tightrope between permissiveness and prohibition, Margaret Radin crafts a framework in which sex workers are able to sell sex for their own profit, but contracts for the sale of sex are unenforceable.

This Chapter contends that the contracting process between sex workers, their clients, and their brokers need not be Dickensian. I conceptualize a hypothetical sex worker as occupying one of four quadrants defined by two lines that capture two pressing concerns. First, is it legally permissible to perform sex work? Second, even if she can sell her sexual services, is she able to relocate to a market where she can command a higher premium? The most fortunate may pursue sex work as guest workers (the "sex work rich/visa rich"). Most prospective sex workers, however, will be in one of the other quadrants where they are either "sex work poor" or "visa poor."

Currently, many transnational sex workers operate in legal grey area where they receive neither censure nor protection. Men from developed countries travel to sex workers in developing countries but the converse is nearly universally impermissible. This structure of limited labor mobility renders sex workers disproportionately dependent on brokers (pimps) with access to networks in Europe and North America that sex workers (who cannot travel) believe themselves to be unable to access. This framework augments information asymmetries in contractual negotiations between them and their brokers, leads to a systematic under-valuation of their services, and allows brokers to capture most of the value.

Given modern political realities, it is virtually inconceivable that most developed countries would permit a hypothetical sex worker to access the guest work visas that allow other poor persons from the developing world, such as agricultural and hotel workers, to sell their labor in developed markets. In light of this ongoing framework of limited labor mobility, it is vitally important that a hypothetical sex worker is able to mitigate the aforementioned information asymmetries by negotiating favorable contractual terms with her broker. The paradox is that Radin's emphasis on narrow commodification, while well intentioned, may ultimately deprive a sex worker of assets that she could derive from driving a hard bargain with her broker.

If transnational sex work may improve opportunity sets for precisely the poor women who are at the center of distributive justice concerns articulated by feminist legal theorists, the goal should be to make such work as dignified and lucrative as possible. Using insights garnered from ethnographic work among sex workers in the Caribbean — historically controversially termed the "brothel" of Europe (and arguably

now the "brothel" of North America) — I suggest that it is possible to recognize the deeply problematic historical origins of transnational sex work, as well as its ongoing racialized and gendered nature, while simultaneously recognizing that the marketization of transnational sex has liberatory aspects.

THE BLACKS WHO "GOT THEIR 40 ACRES": A THEORY OF BLACK WEST INDIAN MIGRANT ASSET ACQUISITION (NYU LAW REVIEW, 2014)[2]

The impediments to property acquisition among African Americans are a significant area of inquiry in legal scholarship, with most scholars focusing on the complex group of legal forces–particularly partition sales of land held under tenancies in common–which have caused the involuntary loss of much Black-owned land. The prevailing narrative in the legal scholarship on the historical relationship between Blacks and property is overwhelmingly focused on loss. Although neglected in the legal scholarship, there is a countervailing narrative in the social science literature of successful property acquisition and retention among a subset of migrant Blacks. The most successful subset of Black property owners in the U.S. today are descendants of Black migrants who were enslaved outside the U.S. These free Black migrants, overwhelmingly British subjects originating from the West Indies, are largely invisible in the legal scholarship. Questions have arisen in other disciplines about what differentiated this subset of Black people. Why was their experience of property ownership so different?

Debates in the social science literature have often focused on what Fukuyama has controversially termed "cultural questions," namely, the view that early West Indian migrants–like Korean or Japanese migrants–possessed a particular set of cultural traits that were distinctly well suited to asset acquisition. This Article focuses on a far more prosaic rationale, contending that the success of West Indian migrants may be rooted in the early grant of what I term *de facto* property and contract rights to enslaved West Indians, allowing their freedmen descendants to become the largest independent Black peasantry in the Americas. Through their own historical exposure to property and contract rights frameworks in the West Indies, as well as through internal communal networks which supported informal banking schemes, these Blacks were particularly well placed to take advantage of opportunities for home and business ownership upon arrival in the U.S.

The broader point is that there is a glaring omission amidst the "cultural" controversy: what about law? The law and economics scholarship has focused on institutional frameworks that allow certain religious and ethnic groups to dominate particular sectors, such as Orthodox Jews in the diamond industry or Koreans in the grocery sector. The insights of this literature allow us to interrogate whether Black West Indians had early access to institutions which facilitated contracting and property ownership, and if so, whether this institutional history might contribute to their long-term asset acquisition patterns. The question necessarily arises: why would we think of Black migrants any differently than we think of other ethnic and religious minorities who have been successful asset acquirers?

HOW THE U.S. SELECTED FOR A BLACK BRITISH BOURGEOISIE: REFLECTIONS ON WEST INDIAN MIGRANTS AND INADVERTENT IMMIGRATION INSTITUTIONAL DESIGN[3] (GEORGETOWN IMMIGRATION LAW JOURNAL, 2013)

This essay explores the history of a particular group of free Black migrants—overwhelmingly British subjects, originating from the Caribbean islands known as the West Indies—who are largely invisible in the legal scholarship. West Indian immigrants are an unusual group because—unlike many other

[2] This Article was selected for the Yale/Harvard/Stanford Junior Faculty Forum. It was also selected for the American Society of Comparative Law Junior Faculty Workshop.
[3] This paper was presented at a Plenary at the Immigration Law Professor's Conference.

immigrants of color whose inability to naturalize rendered them easily deportable—they entered the United States with a real possibility of naturalization. Ironically, it may be precisely because they could easily naturalize that West Indians were subject to strict admissions standards.

Although the case law offers little insight into the impediments that these Black immigrants faced, the history recounted here reveals a rich pattern of discrimination—albeit in non-judicial arenas, such as the immigration inspectorates and consulates. Yet, the paradox is that in an era of deep racial nativism, there is a parallel history of West Indians enjoying peculiar advantages in immigration decision-making. These advantages were the result of particular institutional arrangements in which the Americans granted immigration waivers to West Indians on the strength of British assurances that they would screen for short term migrants who would not compromise the overall American goal of reducing long-term Black migration. In generally seeking to minimize Black long-term migration, the immigration inspectorates may have inadvertently created a screening technology for certain "types," namely, those who were well placed to negotiate complex immigration processes.

These insights allow an interrogation of whether elite Black West Indians were inadvertently "selected for" in immigration screening processes. I also address what might be characterized as a duality in the role that West Indian immigrants occupied. Not only were they overwhelmingly Black; they were British subjects who clearly understood the advantages associated with this status. Unlike other immigrants who were required to "perform whiteness" to naturalize, West Indians may not have "become white," but they "performed Britishness" well and reaped the associated immigration benefits.

OUTSOURCING CRIMINAL DEPORTEES[4] (UNIVERSITY OF CHICAGO LAW REVIEW, 2013)

Despite an extreme prison overcrowding problem, the United States spends significant resources on incarcerating "deportees-in-waiting," aliens whose convictions are final and who are already subject to deportation orders. Peter Schuck contends that the federal government should deport some immigrant criminals before they enter prison. Yet Schuck points out that some countries have resisted entreaties to receive and incarcerate their nationals. This resistance is understandable: developing countries perceive that the U.S. is seeking to outsource "bad types."

The failure of certain developing countries to cooperate leads to a more fundamental question: how can we structure a system that provides appropriate incentives for source-labor countries to share the burdens when their nationals break U.S. law? These countries have good reason to be cooperative if they are properly incentivized. Indeed, there are likely to be multiple axes of interest convergence between the U.S. and the developing countries from which most criminal deportees originate: visas are now properly viewed as an indirect U.S. subsidy to developing countries, a type of foreign aid.

The proposal offered here is a modified auction system in which the U.S. would allocate visas to high-value source labor countries. In such a system, developing countries would bid for labor market access for their nationals by demonstrating that they can help find visa recipients who fit U.S. policy goals, or risk losing visas to other countries. One potential policy goal—crime reduction in the U.S.—could be achieved by source labor countries agreeing to help to identify, prior to admission, prospective migrants who are least likely to commit crime. Moreover, in the event of breaches, source labor countries would commit to accepting and incarcerating their nationals.

[4] This piece was a contribution to a University of Chicago Symposium convened by Professors Posner, Epstein and Cox on Immigration Institutional Design. I was an invited participant.

Utilizing an analogy that is familiar from Anglo-American contract law, I conceptualize a visa as a contract between the U.S. and the migrant, and reflect on who bears the risk in the event that the contract is broken when a migrant commits a crime. Deportees-in-waiting who refuse to consent to an early return to their country of origin are essentially able to defer the consequences of their contract violation. If the source labor state and the U.S. join forces to change the default rule so that certain criminals serve their sentences in their countries of origin, a migrant criminal will no longer be able to defer bearing the consequences of his visa-contract breach.

A VISA TO "SNITCH": AN ADDENDUM TO COX AND POSNER[5], 87 NOTRE DAME L. REV. 973 (2012)

The Times Square bombing attempt by the son of an elite Pakistani military officer confirms a disturbing trend, namely that terrorist groups are increasingly likely to recruit bombers from a network of global elites with access to the United States. In visa application processes, screening out terrorism suspects on an *ex ante* basis is notoriously difficult, in part because terrorist networks are typically difficult for outsiders to penetrate. Yet, the same cannot be said of elite networks. Indeed, the term "global elite" is meant to reflect precisely the fact that a "network" of rich, well-educated persons from developing countries exists, and that members of this network are now bona fide members of the Western elite. Social network theory tells us that these elites are typically only a few degrees of separation apart.

Yet while a primary goal of immigration law is screening—that is, collecting predictive information about which aliens are likely to be terrorist threats—the United States currently finds itself in the absurd position of screening elite aliens utilizing what this essay terms "insufficiently networked" information. This screening typically occurs with little reference to the closely-knit elite networks whence these aliens originate, even as these networks are far better placed to access information about their members. A primary goal of immigration law should be to leverage these networks to supply the government with early warning signals when members of such networks display terrorist sympathies. How do you leverage such networks? Take, for example, Umar Farouk Abdul Mutallab, the young Nigerian would-be terrorist who attempted to detonate a bomb on an airplane bound for Detroit on Christmas Day. What was unusual about this particular terrorist's profile were the repeated attempts of his father, a well-known Nigerian banker, to alert the U.S. authorities to his son's increasing radicalism.

Essentially, the United States needs to codify the behavior of the Christmas Day Bomber's father; in an effort to mitigate its informational disadvantage, the United States should impose a duty to snitch on elites who suspect terrorist activity within their network. For wealthy and mobile global citizens, an appropriate penalty for a failure to snitch—that is, for their network's failure to police itself—would be, at the very least, a loss of access to American shores. If not as a *de jure* matter, certainly as a *de facto* matter, elites typically have access to U.S. immigration privileges that are not easily available to their fellow nationals. Visas are status-conveyers, and their loss may undermine business and educational opportunities dear to global elites. Thus, the penalty should be the withdrawal of visas in the event that elites are later found to have failed to share critical information that could have prevented a terrorist attack and that they had reason to know.

[5] A very short version of this article was published in Slate, Eleanor Brown, *A Visa to Snitch*, SLATE, June 18, 2010, http://www.slate.com/articles/news_and_politics/jurisprudence/2010/06/a_visa_to_snitch.html.

VISA AS PROPERTY, VISA AS COLLATERAL[6], 64 VANDERBILT L. REV. 1047 (2011)

Although the "tragic choice" framework has not been applied in the context of U.S. immigration law, current immigration policy is rife with tragic choices, defined as a commitment by policy elites to maintaining certain illusions that shield from public view tough policy choices that offend deeply held values. Consider visa commodification. Policy makers remain committed to maintaining the illusion that U.S. visas are open to any well-deserving migrants and are not being sold. Yet U.S. immigration practice has long made concessions to commodification at the margins. Indeed, some migrants pay very high prices to obtain the right to enter the U.S. For example, certain elite visa applicants must invest significant sums in the U.S. economy as a condition of both obtaining and maintaining their visas. While in other countries, the poor migrant, like the rich migrant, may pledge something of value as a condition of receiving her visa, in the U.S., the poor migrant has no such option. Rather, the poor migrant faces another kind of "tragic choice." She may pay a trafficker an astronomical fee to transport her across the border illegally, or she simply cannot come.

Why this tragic choice? A primary challenge in immigration law is that screening poor visa applicants is notoriously difficult. In a quintessential problem of informational asymmetry, the typical applicant knows much more about her likely behavior in the U.S. than the government, which typically has no way of evaluating the sincerity of the applicant's commitments. Reflecting the longtime recognition in the common law that a contracting party is more likely to abide by her commitment if she pledges something of value, this Article recommends that the applicant should have to post a bond as a condition of receiving her visa. In the event that the applicant later fails to keep her promises, including an assurance not to overstay her visa, she forfeits this bond.

This sort of bonding regime encounters problems in the U.S. context. Bonding regimes appear to offend deeply held public values, and in so doing, justify our use of the "tragic choice" metaphor. For example, bonding systems may reinforce perceptions that market-based mechanisms, as opposed to other criteria that society values, are being used to determine who receives visas. Moreover, bonding regimes raise profound distributive justice concerns since most visa applicants from the developing world are too poor to post a bond. Yet ironically, bonding systems may actually mitigate distributive justice concerns by improving the opportunity sets of the poor. For example, a bonding system should raise the costs of non-compliance with visas, and in so doing make it more likely that a poor applicant will receive a visa. Thus, bonding systems may also improve access for the poor migrant to the U.S., where typically she significantly improves her earnings.

Herein lays the crux of the matter. The real issue is not the bonding requirement. After all, immigration law already routinely uses bond-like mechanisms to screen rich migrants. The question becomes why poor migrants should not have similar opportunities to bond themselves. The real issue is the absence of opportunities in developing countries for poor people to access transparent credit facilities from formal financial institutions to finance bonds.

How to solve this problem? This Article seeks to make labor mobility bankable by advocating a re-conceptualization of guest worker permits as a type of property; namely, licenses for temporary admission to the U.S. labor market. If appropriately designed, these visa-licenses could be modeled on other licenses that currently serve as collateral-like devices, and in so doing allow poor migrants to access transparent law-bound credit markets.

[6] Selected for Final Four, Best Paper in New Law Professors Section, American Association of Law Schools (AALS; republished in the Immigration and Nationality Review. A version of this Article also appears as Eleanor Marie Brown, *What the US Can Learn from the Gulf States About Immigration,* 2 Middle East Institute Viewpoints 87 (2010).

OUTSOURCING IMMIGRATION COMPLIANCE[7], 77 FORDHAM LAW REVIEW 2475 (2009)

Immigration is a hot-button issue about which Americans have sent a clear message. They prefer not to admit more aliens until the government is able to screen credibly for entrants who will abide by the terms of admission, and to sanction those who do not. While immigration debates now focus almost entirely on undocumented workers, the current discourse elides another critical, yet poorly understood, challenge: designing institutions to screen properly for aliens who are visa-compliant and sanctioning noncompliant aliens. Because failed guest worker programs unquestionably increase the size of the undocumented population, this Article addresses the difficulty of institutional design by analyzing the highly controversial guest worker provisions of the Immigration and Nationality Act. This Article presents original data from a study of visa-compliance decisions of Jamaicans who work in Canada under a program in which screening is precise, sanctioning is effective, and compliance is high. On the basis of this study, this comparative immigration law project contends that the United States should partially outsource screening and sanctioning to source-labor countries.

This Article critiques the historical uninational approach to immigration law. This approach fails to recognize that there are critical asymmetries between the United States and the countries from which aliens originate in their capacity to gather information about potential entrants and to sanction visa violators. This recognition leads to the following insight: source-labor countries are often better placed to screen because they can access accurate information about potential entrants from their communities. Source-labor countries are also often well placed to deter noncompliance because, through collective sanctioning, they can influence communities of origin to persuade their members to abide by visa terms. The criminal law scholarship regularly recognizes the impact of norms on deterring crimes; this ethnographic study suggests that the same may be true with respect to immigration violations. This Article contends that aliens are more likely to be compliant so long as the authorities design legal rules that augment compliance norms already present in source-labor communities and incentivize community members to reinforce them.

EARLIER WORK

The New Brown Blues (short title), 75 N.Y.U. L. REV. 309 (May, 2000)

The Tower of Babel, 105 YALE L. J. 513 (1995) (reproduced in Richard Delgado and Jean Stefanic (eds.), *Looking Behind the Mirror* (1998) (short title))

BOOK CHAPTERS (For The Blacks Who 'Got' Their 40 Acres, Under Contract, Oxford University Press)

DEMSETZ'S INDIANS: THE WEST INDIAN VERSION (BOOK CHAPTER)
This chapter views the evolution of property ownership in conditions of uncertainty among enslaved West Indians through the lens of the work of the economist Harold Demsetz. Demsetz believes that property rights arise as an adaptation to changed circumstances. (Demsetz, 1967, 2002) These new circumstances—whether economic, cultural, or technological—change the balance of what things are worth. Sometimes, they create new objects of worth. As the profit from owning these new (or newly valuable) objects begins to exceed the costs in collecting them, internalization begins—individuals try to

[7] This was subsequently selected for the Harvard Law School Series on Risk Regulation for which Cass Sunstein serves as editor. A 2010 version appears in GLOBAL LABOR AND EMPLOYMENT LAW FOR THE PRACTICING LAWYER: PROCEEDINGS OF NEW YORK UNIVERSITY'S 61ST ANNUAL CONFERENCE ON LABOR (Andrew Morris ed., 2010). Another 2011 version appears in the Immigration and Nationality Law Review. The article is also discussed in a widely utilized Immigration Law casebook (Legomsky and Thronson, Immigration and Refugee Law and Policy (University Casebook Series, 2018))

take for themselves the previously public-and-worthless-but-now-valuable goods. This internalization of costs and benefits is the ancestor of property rights.

Consider Demsetz's focus, the Northern Ojibwa, a group of native Americans indigenous to modern day Quebec. The Ojibwa were primarily hunter-gatherers that subsisted by ranging through broad territories in search of game and seasonal produce. For centuries, the Ojibwa had little use for borders—large game roamed large ranges, and where to find the best berries was subject to the vagaries of climate. As such, they hunted communally, following the ancient migration routes of animal herds. That changed when the Ojibwa made contact with European trappers. During the 17th century, felt hats—and the tiny mammal pelts they were made of—became extremely popular in Europe. Suddenly, squirrels, beavers, and other woodland creatures had a value beyond food. Moreover, because small animals tend to roam narrow ranges, it was possible (with judicious trapping) to "farm" pelts. As this occurred, individual groups of Ojibwa became stewards of individual tracts of land and, more importantly, the woodland creatures that lived on them. This responsibility included securing the land from other Ojibwa trappers to prevent overhunting. With this internalization of costs (of conservation) and benefits (money for pelts), nascent property rights began to appear among the Ojibwa.

The West Indian experience demonstrates Demsetz's thesis in a different setting. In the earlier days of West Indian slavery, enslaved people were fed poor-quality food from the "common pot." Because everyone ate the same food (and no one likely enjoyed it), there was no food market for enslaved people; it was worthless as a commodity. Worthless, and yet, given the costs of importing food to the remote islands of the West Indies, so very expensive.

As the precarity of (and costs to secure) shipping routes became clearer, the plantocracy adopted the provisioning system, tasking those enslaved with feeding themselves. This was not their only option. They could have had enslaved people work a central plot. But they wisely avoided this course, recognizing both the added costs of having an overseer for the common grounds and the risk of such an enterprise becoming a "tragedy of the commons" scenario in which each person has every incentive to shirk responsibility because they do not internalize the benefits of work.

Instead, the plantocracy gave individual plots to enslaved families to succeed or starve with as they would. As referenced earlier, in different islands, depending on the availability of surplus land, different strategies emerged. However for those in which provisioning was the dominant strategy, at this early stage these plots—invariably the most marginal sugar-farming land on the plantation—were more chore than property right. Enslaved people had to grow food to feed themselves, but as a practical matter, had no mechanism to monetize their surplus. The rich soils in the West Indies made subsistence (relatively) possible on most any plot. Thus, the plots remained fungible and, essentially worthless.

This all changed when enslaved people were allowed not only to keep, but more importantly trade, their excess produce. Suddenly, enslaved people found a market for what they could grow in the planters themselves because the same circumstances that conspired to make food importation both expensive and necessary for enslaved people applied to the plantocracy as well. With that market, their ability to produce surplus became valuable, meaning that provisioning plots with a greater capacity to produce food became more valuable.

Though plot distribution was generally arbitrary and somewhat random, the winners of the plot lottery received a valuable opportunity to trade surplus that they would not willingly give up. Those enslaved persons fortunate enough to farm these plots then put extra effort into farming and weeding, essentially (to echo Demsetz) internalizing the negative externalities of the plots, which they gladly did because the positive externality of farming the plots—the ability to produce surplus goods—was well worth the time

spent. Over time, this custom of a sole family putting in the work and reaping the benefits of their particular provisioning plots became embodied in a new social norm—that of property ownership.

Institutional Differences That Help Account For Differences in Levels of Property Ownership Among Slaves in the US South and the West Indies (Book Chapter)

While in the larger work, I mostly compare islands within the West Indies, the comparison to the American South is implicit. It bears emphasis: my focus is on the West Indies and on migrants to the U.S. from these islands. Yet, by tracing the relative economic success of West Indian migrants *within the United States* to conditions occurring *within the West Indies*, I implicitly contrast institutional aspects of an enslaved person's experience within the continental United States with the West Indies. Land ownership is salient to the book's overall thesis because it helps explain the political, economic, and social dominance of White elites over enslaved Blacks, and the continued dominance of White elites over Blacks when they later became freedmen. This is arguably a primary difference between the West Indies and the southern United States.

Conventional wisdom for many generations was that enslaved people owned no property in the United States because their ownership rights were typically not recognized under formal law. But nuanced historical work makes clear that conventional wisdom was incorrect. Indeed, Dylan Penningroth's work, *The Claims of Kinfolk: African American Community and Property in the Nineteenth Century South*, makes clear that ownership claims by enslaved people to vegetable gardens and accompanying chattel were recognized in small ways in many communities in the United States.

Whatever early institutional similarities there may have been between the plantation systems in the West Indies and the U.S. South, the institutional *differences* between the West Indies and the U.S. South will be clear to many readers. One such difference is the degree of provisioning in the West Indies versus the antebellum South. In the West Indies, provisioning was central. In the South, provisioning was present, but mostly marginal. Moreover, planters who owned plantations in both the South and the West Indies (in the Carolinas, in particular, there were several planters who migrated from Barbados and owned enslaved people in both Barbados and the Carolinas) allowed enslaved people to pursue provisioning in the West Indies, but typically, no such system developed on their Carolina plantations. Thus, the question becomes: what background institutional factors might have contributed to the evolution of different levels of provisioning among enslaved people in the U.S. South as opposed to the West Indies. Why would enslaved West Indian property ownership vastly exceed what was occurring in the Southern United States?

I focus on the relative cost of transporting food to the West Indies (versus the United States where food could be transported internally) given a background context of warfare and piracy. Peaceful waterways allowed easy importation of food to the South from other parts of the United States. The West Indies had no such luxury.

The critical fact about the West Indian colonies was their size and relative isolation. Extraordinarily well suited to sugar production but tiny and difficult to supply, West Indian sugar plantations were simultaneously very important to the Exchequer (British Treasury), and the source of significant discomfort to the Crown. The Crown was deeply disturbed by the instability of West Indian shipping routes, easily disrupted by the vagaries of skirmishes with other European powers (particularly the French). The British were desperate to mitigate the impact of war on supplies generally and particularly fresh food supplies, not only for their British compatriots but also importantly for those enslaved. In sum, market forces gave planters in the West Indies little choice but to allocate resources to spur those enslaved to cultivate their own food.

ON ACEMOGLU AND ROBINSON AND WEST INDIANS (BOOK CHAPTER)

In this chapter, I focus on the work of Daron Acemoglu and James Robinson. They emphasize the primacy of countries' colonially-bequeathed property and contract rights as the driver of subsequent economic development. Historically, European colonizers in what we now call "developing" countries (mostly in the Caribbean, Latin America, Africa, and Asia) pursued widely different colonization strategies with varied institutional frameworks. At one end of the continuum, colonizers set up "extractive" institutions. The goal of these institutions was to facilitate the speedy transfer of wealth to the colonial powers. The associated institutions neither protected the property rights of the median person, nor constrained elite power. At the other end of the continuum, Europeans created "settler" societies, in which they established institutions for the protection of property (Canada, New Zealand and so forth); the median citizen could expect that elite power would be held in check and his property and contract rights would be protected.

At first glance, there has been little controversy as to where the U.S. should be grouped. One would expect the U.S. to be classified as firmly "settler" on the "settler – extractive continuum." Indeed, this is the narrative of the new American Republic: the early settlers in Massachusetts were fleeing extractive elites in the "mother" country. They established a new country, based firmly on the principles of respect for individual rights, particularly property rights, and constraints on elite power.

Yet, Acemoglu and Robinson challenge this as an appropriate analysis of the entire U.S. Rather they argue that up until the 1960s, the U.S. in fact consisted of two separate societies. They do not dispute that the Northern U.S. is properly classified as "settler." However, in their view, for most of its history the South was paradigmatically extractive. While one might not contest their classification of antebellum Southern societies as extractive, Acemoglu and Robinson contend that even after the Civil War and Emancipation, the South remained firmly extractive. Setting aside the brief respite of Reconstruction, the South continued to display classic extractive characteristics; namely, minimal property ownership outside of an elite plantocracy and the non-existence of institutions for the protection of the property or contract rights of the median Southern citizen, who in many Southern states was typically a former enslaved person or the descendant of one.

For Acemoglu and Robinson, the key indication of the persistence of an extractive society even after Emancipation is the revocation of General Sherman's Reconstruction-era promise to former enslaved people of "40 Acres and a mule." That is, those formerly enslaved might have had a fighting chance of building inclusive political institutions if they had been able to break the back of extractive economic institutions by setting up a propertied class, independent of the Southern White plantation elite. But without property, as Acemoglu and Robinson see it, they had no chance. In Acemoglu and Robinson's view, the only clear break was when the civil rights movement broke the back of extractive political institutions.

Notably, West Indians have also been "market-dominant minorities" in many African American communities since early in the twentieth century. But if African Americans are the group to whom West Indian migrants are being compared (and I have argued that, at least implicitly, this is clearly so), up to at least the civil rights movement (and arguably even after), African Americans historically faced an entirely different institutional context than their West Indian migrant peers. Most West Indian migrants settled in Northern (i.e. longtime "settler") states rather than Southern (i.e. formerly "extractive") states. Thus, the notion that West Indians are necessarily a useful comparative sample to African Americans is worthy of further thought.

To understand West Indian migrants, and what they came to the U.S. with, you must begin with the West Indies. The West Indies —formerly British colonized Caribbean countries — work well by most

measures. They are characterized by high per capita GDPs, stable Westminster parliamentary democracies, strong property and contract enforcement and high levels of foreign direct investment. While some West Indian countries (Barbados, Bahamas) have clearly performed better than others (Jamaica, Guyana), there is little of the political, social, and economic chaos seen in many other formerly colonized countries. They perform particularly well in relation to the broader Latin American region and also in relation to the (largely sub-Saharan) Black diaspora countries.

Why is the West Indies such an oasis of stability and good government? Scholars are now beginning to understand that the West Indies had historical law-based advantages — vestigial of British colonial investment — that help account for its strong development trajectory. When the British exited the West Indies (at political independence), they left a full-fledged civil service, the elements of a decent educational and judicial system, and a common law that had been fully internalized by the West Indian people. It is little wonder that West Indians were sometimes called "Afro-Saxons." Indeed, the British administered many of their other Black colonies (including many colonies in sub-Saharan framework) through a network of West Indian elites, who then returned to the West Indies to run the West Indian civil service. Thus, in spite of a system of plantation slavery that supported the production of sugarcane, the West Indies had a degree of investment from their colonizers not replicated in many other colonies. Moreover, starting in the mid-1800s, the West Indies had the largest class of Black property-owners (mostly small farmers and a petty merchant class), in the Western hemisphere.

British investment in West Indian societies began during slavery. While the West Indies (with societies supporting slavery), might have appeared to be paradigmatic "extractive" societies (and are so classified by Acemoglu and Robinson), with minimal property protections, a more nuanced look at the property holdings of Blacks indicates that West Indian societies had strong settler characteristics. One might imagine West Indians as comparable to early Puritan migrants to the American colonies — Black Puritans, so to speak. West Indians were able to break the back of their classically extractive societies earlier than was possible in the U.S. because of their early access to property rights — at first informal and supported by communal convention, but then institutionalized in "hard law." Thus, when early West Indians came to the U.S. at the turn of the century, they had significant advantages — they were coming from countries that had many "settler" characteristics and they were migrating to "settler" states in the northern U.S. In contrast, at the turn of the 20th century when West Indians start arriving in the U.S. in large numbers, most African Americans remained trapped in the classically extractive Southern states.

I have published many opinion pieces and have made appearances on public radio and other programs, including the following:

Why Even in a small Pennsylvania Town, Black People Distrust the Police, **Opinion, Philadelphia Inquirer, June 30, 2020 (also published in the Pittsburgh Post-Gazette)*; Elite Law Professors are Putting Politics Aside to Support Brett Kavanaugh, (Lessons for US Elites from the Developing World),* Vox.com, The Big Idea, July 25, 2018; *A Visa to Snitch*, Slate.com, June 18, 2010; *Learning to Love the IMF*, New York Times, April 18, 2000; *Can Compassionate Conservatism Bridge the Racial Divide?* Los Angeles Times, October 20, 2000; *Brooklyn Dispatch,* The New Republic, September 25, 2000; *Lieberman's Revival of the Religious Left,* New York Times, August 30, 2000; *Unconventional Wisdom,* Salon, August 16, 2000; *Why not a Hispanic Cardinal?,* San Antonio Express-News, July 1, 2000; *Memories of Jamaican Exodus Shed Light on Cubans' Agonies*, Los Angeles Times, April 17, 2000; Appearance, National Public Radio, Morning Edition, April 19, 2000; Appearance, Wisconsin Public Radio, August 31, 2000; Appearance, EXBTV.com, September 8, 2000.**

CLASSES TAUGHT

Property, Immigration, Seminar on Property and Contract Rights in Developing Countries, Seminar on Capital Market Development in Emerging Markets, Seminar on Race, Gender, Sexual Orientation, and the Law

TEACHING AND RESEARCH INTERESTS

• *Primary interests*: Property with a particular focus on Emerging Markets, Immigration, Capital Market Development in Emerging Economies, Globalization, Race, Gender, Sexual Orientation, and the Law

• *Additional interests*: Contracts, Private Equity and Venture Capital, International Finance, Secured Transactions, International Trade

ACADEMIC SERVICE

Appointments Committee, Penn State Law; Chair, Racial Justice Speaker Series, School of International Affairs; Lutie A. Lytle Legal Writing and Scholarship Conference for Black Women, Conference Committee (I was of the Chair of the 2019 Conference and relinquished the post in 2020); Chair, Keynote by James Forman on his book, *Locking Up Our Own*; Chair, Keynote, sponsored by the Rock Ethics Institute with Bryan Stevenson on Racial Inequities in Death Penalty administration; Chair, Plenary, The Ethics of Policing sponsored by the Rock Ethics Institute (with Tracey Meares, Paul Butler and Cynthia Young);Immigration Law Teachers Conference, Scholarship Committee; Association for Law Property and Society, Conference Committee; Law and Society, Academic Award Committee; American Association of University Women, Fellowship Committee; Rhodes Trust (USA, Service on Selection Committee); Rhodes Trust (Jamaica, Service on Selection Committee); Rhodes Trust, Send-Off Weekend, Plenary with Daniel Markovits on how meritocracy contributes to ongoing structural inequities; Schreyer Honors College, Penn State, Faculty Board Member; Africana Research Program, Penn State, Faculty Board Member; George Washington Black Law Students Association, Faculty Advisor; George Washington Institute for Immigration Studies, Faculty Board Member; Globalization Committee, George Washington University, Faculty Member (Appointed by the Provost); Committee on Gender, George Washington University, Faculty Member (Appointed by the Provost)

PRESENTATIONS/PANELS

For reasons of brevity, I would highlight the following post-tenure presentations and talks (sample, not comprehensive):

University of Minnesota School of Law, Workshop, Why Black Homeowners are more likely to be Caribbean American than African American (2020)

Chicago-Kent College of Law, Workshop, Farming with Coase and Demsetz (2020)

Moderator and Annual Workshop Member, SELA, Yale Law School (https://law.yale.edu/centers-workshops/yale-law-school-latin-american-legal-studies/sela)(Postponed due to COVID 19)

Podcast, National Public Radio on Barriers to Police Reform, WPSU (NPR), July 28, 2020

Podcast, Racial Disposability and Cultures of Resistance, Sponsored by the Sawyer Seminar Series, Penn State University (for local public radio station) (2018)

Moderator, Podcast/Round Table on Professor James Forman's book, Locking Up Our Own, Crime and Punishment in Black America (2018)

Vanderbilt University Law School, Martin Luther King Lecture (2017)

Plenary Presenter, Lutie Lytle Roundtable on Improving the Pipeline of Black Women in Law Teaching, University of Michigan (2017)

University of Kentucky Faculty Workshop (2017), How West Indians Sidestepped Racial Cartels in Housing in New York

University of Cincinnati Faculty Workshop (Fall, 2016), Have West Indians Been Able to "Lock In Their Advantage."

New York University Property Seminar, On the Evolution of Property Ownership Among Former Slaves (Summer, 2016)

University of Florida, Why Black Homeowners are More Likely to be Immigrant Caribbean than African American in New York? (Fall, 2016)

Brigham Young University, Faculty Workshop (Spring, 2015), On the Evolution of Property Ownership Among Former Slaves

University of California Davis, Faculty Workshop (Fall, 2015), On the Evolution of Property Ownership Among Former Slaves

Immigration Law Professors, Annual Conference (Summer, 2014), An Alternative View of Immigrant Exceptionalism

Law and Society (Summer, 2015), Of Black South Africans, Black Americans, and Black West Indians

Panelist and Presenter, Lutie Lytle Conference for Black Female Legal Scholars, (Summer, 2015) Plenary Panelist on Book Proposal Writing

Pre-tenure talks:

Faculty Workshop, Notre Dame Law School, 2014, Why Are West Indians Disproportionately Represented in Elite Institutions?

Association for Law Property and Society, Undoing the Ghettoization of Capital (with Tamara Belinfanti), April 2014

AALS Mid-Year Meeting, Workshop on Poverty, Immigration and Poverty, On Extra-legality and the Ghettoization of Capital (with Tamara Belinfanti), June 2014

Law and Society, On Extra-legality and the Ghettoization of Capital (with Tamara Belinfanti), June 2014

Presenter, American Bar Foundation, Chapter Review, Economic Invisibility, May, 2014 (Bernadette Atuahene's book "We Want What's Ours: Redress for Past Property Violations in South Africa")

Faculty Workshop, Fordham Law School, February, 2013, (The Blacks Who "Got" Their 40 Acres)

Faculty Workshop, University of Minnesota Law School, February, 2013 (The Blacks Who "Got" Their 40 Acres)

Panelist and Presenter, Lutie Lytle Conference for Black Female Legal Scholars, Suffolk Law School, 2012 (Plenary Panelist on Scholarship Placement; Presenter: How the U.S. Selected For a Black British Bourgeoisie)

Presenter, Symposium, Immigration Institutional Design, University of Chicago, June 2012 (How the U.S. Selected For a Black British Bourgeoisie)

Presenter, At the Intersection of Immigration and Property Rights, Law and Society Conference, June 2012 (Sex Work as Guest Work)

Presenter, Immigration Law Professors Workshop, Hofstra Law School, June, 2012 (How the U.S. Selected For a Black British Bourgeoisie)

Presenter, Property Law Workshop, Fordham Law School, June, 2012 (The Blacks Who "Got" Their 40 Acres)

Presenter, North Carolina Central University, Obstacles and Opportunities: The Role of Law in Doing Business in New and Old Economies in the Global Marketplace, Summer, 2012

Presenter, Critical Race Theory Workshop, Columbia and Fordham Law Schools, March, 2012 (The Blacks Who "Got" Their 40 Acres)

Presenter, Faculty Workshop, University of Southern California Gould School of Law, March, 2012 (The Blacks Who "Got" Their 40 Acres)

Commenter, Feminist Legal Theory CRN, GWU School of Law, January 2012 (Response to Jill Hasday's Chapter, "Missing Class" in her book, Family Law Reimagined: Recasting the Canon)

Presenter, Feminist Legal Theory CRN, GWU School of Law, January 2012 (Early draft: May Property Allocations to West Indian Salve Women Play a Role in Explaining later Black Migrant Acquisition Patterns?)

Panelist, MAPOC (Mid Atlantic People of Color) Legal Scholarship Conference, Howard University School of Law, January 2012

Presenter, Law and Development Seminar (The Blacks Who "Got" Their 40 Acres), NYU School of Law, November 2011 and University of North Carolina at Chapel Hill School of Law, December 2011

Presenter, An Unusual Theory for the Economic Success of Jamaican-American Migrant Families: The Grant of Constructive Property and Contract Rights to Jamaican Slave Women; Law and Society, San Francisco, 2011

Presenter, An Addendum to Cox and Posner, Emerging Immigration Law Professors Conference, American University Washington College of Law, 2011

Presenter, Property Rights in Developing Countries, Notre Dame Law School (Property Law Class), March, 2011

Why Guest Work Visas Matter to Poor People in Poor Countries (Essay), Plenary Panel, New Thinking about Temporary Workers, Immigration Law Professors Conference, Summer, 2010

Presenter, Feminism and Legal Theory Workshop on the Implications of Feminist Theory for Distributive Justice Concerns in Migration: Some Preliminary Thoughts on Sex Workers Crossing Borders, Columbia Law School, 2010

Keynote, NAACP Youth Conference, From Kingston to Port au Prince to Washington D.C. Why Immigration Matters (Summer, 2010) (Invited to be Keynote by Benjamin Jealous, former CEO of the NAACP)

Presenter, Globalization Workshop, University of Toronto, Visa as Collateral, 2009

Presenter, Why Immigration Matters for Development, Law and Development Panel, International Congress of Comparative Law, 2010

Presenter, Guest Work and Sex Work, FAMU College of Law, February, 2010

Presenter, Association for Law, Property and Society, March 2010

Presenter, Visa as Property, Bottom-Up Strategies for Survival and Resistance, American Society of International Law, 2010

Panelist, Fourteenth Annual Lat Crit Conference, Remittance Issues: Securitization, Poverty Reduction, and the Latin American Dream, Washington DC, 2009

Presenter, Poverty and Economic Mobility Conference, American University Washington College of Law, Making Labor Mobility Bankable for the Migrant Poor, 2009

Presenter, Annual Meeting of the National Black MBA Association on Strategies to Cultivate the Development of SMEs (Small and Medium Sized Enterprises) in Inner Cities and other Emerging U.S. markets, San Diego, California, October, 2005

Presenter, Annual Meeting of the Finance Ministers of the Commonwealth on Lessons from the Caribbean and Latin America for the Development of Private Equity in Developing Economies, Commonwealth Secretariat Conference, Bridgetown, Barbados, September, 2005 (alongside the Honorable Dennis Lalor, Order of Jamaica)

Presenter, Leveraging the African Diaspora to Cultivate the Development of Venture Capital in Emerging Economies, Harvard Business School, H. Naylor Fitzhugh Conference, February, 2004

Presenter, The Law of Venture Capital in the Commonwealth Caribbean, Norman Manley Law School, University of the West Indies, Kingston, Jamaica, October, 2004

Presenter, The Contribution of Small and Medium Sized Enterprises to Economic Growth in Developing Countries, Jamaica Conference Centre, Jamaica Business Development Centre, Kingston, Jamaica, November, 2004

Presenter, Strategies to Raise Private Equity for Greenfield Projects, University of Technology, Technology Innovation Seminar, Kingston, Jamaica, June, 2004

Presenter, The Status of Capital Markets in Latin America, Emerging Markets Seminar, Wharton School of the University of Pennsylvania, Whitney Young Conference, December 2003

Presenter, Brown v. Board of Education at Fifty: Conference on Brown v. Board of Education, Yale Law School, New Haven, Connecticut, October 2003

Presenter, Prospective Changes in the Legislative Framework and Monetary Policy to Recruit Private Equity to Developing Economies, Sponsored by the Caribbean Development Bank, Eastern Caribbean Central Bank, Basseterre, St. Kitts, June, 2003.

Presenter, Raising Venture Capital in Emerging Markets for SMEs, On the Frontier of Consulting (Affiliate of the Monitor Management Consulting Group), Jamaica Cluster Competitiveness Project, Kingston, Jamaica May 2003

OTHER EXPERIENCE

The Constitution Project	Immigration Subcommittee (2014 - 2016)
Caribbean Basin Investors Limited	Executive Vice President, Caribbean Basin Investors Limited ("CBIL"), the General Partner of the Caribbean Investment Fund, the largest private equity fund in the English-speaking Caribbean. (2003 – 2007)
Investors Limited	Executive Vice President, Caribbean Basin Investors Limited ("CBIL"), the General Partner of the Caribbean Investment Fund, the largest private equity fund in the English-speaking Caribbean. (2003 – 2007)
Caribbean Metal Products	Chief Operating Officer for one of Jamaica's largest publicly traded companies, Caribbean Metal Products Industries Limited ("CMP"), with responsibility for overseeing the restructuring of CMP and its subsidiary, CMP Solutions Limited. (2001 – 2003)
New America Foundation	Fellow (2000 - 2001)

DIRECTORSHIPS:

My service on Public and Private Boards includes the following:

Appointed to the Education Commission by the Honorable Andrew Holness, Jamaican Prime Minister (2020)

Appointed to the CARICOM (Caribbean Community Economic Bloc) Commission by the Honorable Andrew Holness, Jamaican Prime Minister (2016-2017)

Advisor to the Ministry of Finance (Jamaica) (2014 - 2015)

Director, JPSCo (JSE: JPS) a Caribbean energy supplier and subsidiary of the publicly traded Marubeni Corporation (TYO: 8002) and Korea Electric Power Corporation (KRX: 015760; NYSE: KEP). Previously a member of the Government Committee charged with

overseeing the privatization of the asset formerly owned by the Government of Jamaica (GOJ). After the privatization, appointed by the Office of the Prime Minister to represent the GOJ on the Board of Directors. (Served from 2001 to 2007, Chair, Pension Subcommittee, 2003 - 2007)

Director, Scotia Jamaica Investment Management Limited (Jamaica) (SJIM; JSE: BNSJ), an investment banking subsidiary of Bank of Nova Scotia Limited, the Canadian bank (TSX: BNS). (Demitted service after many years)

Director, Bank of Nova Scotia Limited Foundation (Jamaica) (2003 -2007), a charitable foundation

Former Chairman of the Trade Board, the agency historically responsible for Jamaica's import/export policy (2001 - 2005). As Chair of the Trade Board, oversaw the process of securing agricultural development assistance for Jamaica under the United States Department of Agriculture PL480 program.

Director, Salada Foods Limited (Caribbean) (JSE: Salada), a publicly-traded coffee production and distribution company, 2002 - 2007

Director, Pulse Investments Limited (Caribbean) (JSE: Pulse), a publicly traded fashion and entertainment services company (2012 – present)

Director, Industrial Gases Limited (Caribbean), a privately held subsidiary of the Trinidadian Rahamut Group of Companies, the largest distributor of industrial gases in the Caribbean (2014 – present)

Director, World Brands (Jamaica) Limited, a food distribution subsidiary of Grace Kennedy Limited (JSE: GK; TTSE, GKC) (2002 - 2007)

Government of Jamaica (GOJ) representative, Review Board of the University of Technology, Kingston, Jamaica (2004 - 2006)

Member, Sugar Enterprise Team, the entity appointed by the Jamaican Cabinet to oversee the transfer of state-owned sugar estates to the Chinese state-owned Complant Group of Companies (2006 - 2007)

Director, CARIBIZ, an association of alumnae and students of Harvard Business School and the Wharton School, formed to promote capital market development in the Caribbean and Latin America. (2002 - 2014)

Director, Mona Rehabilitation Center for Persons with Disabilities, a non-profit. (2003 - 2007)

Director and Member of Finance Subcommittee, Family Life Ministries, a faith-based non-profit (2002 - 2005)

Director, Rhodes Scholars' Southern Africa Forum (Policy-related) (1995 - 1997)