REFLECTIONS: MY MOTHER WHO FATHERED ME

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I went away from the window over the dripping sacks and into a corner which the weather had forgotten. And what did I remember? My father who had only fathered the idea of me had left me the sole liability of my mother who really fathered me. - George Lamming, In the Castle of My Skin, 11

In consultation with the author, we are publishing the Reflection in its current form; please note that this means that the Reflection may not, in all ways, conform to Journal guidelines. The Editorial Board of the Washington University Journal of Law & Policy remains incredibly grateful for Professor Eleanor M. Brown's consideration, as well as the scholarship and research that went toward authoring this piece.

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1 The title is borrowed from Edith Clarke's anthropological classic, *My Mother Who Fathered Me*, which is a study of family life in three Jamaican communities. EDITH CLARKE, MY MOTHER WHO FATHERED ME (1957). Edith Clarke in turn borrowed the phrase from George Lamming's classic, *In the Castle of My Skin*. *Id.* at xvi. The title is a reflection of the Essay's focus, namely, matrifocality, and specifically how West Indian mothers in the absence of fathers, raise high performing children, not only in the Caribbean, but even after they migrate to the United States. The best definition of matrifocality I have found is from Carla Freeman. "Throughout the history of anthropology, kinship has been a staple in the study of culture and social organization. Nowhere in the world is the preoccupation with kinship greater than in the Afro-Caribbean. Caribbean anthropology from its inception was anchored in a mission to explain the structure and function of the region's highly charged *matrifocal* or female-centered family. *Matrifocality* in the Caribbean and around the world has been defined in a variety of ways to signal *the central importance played by women, and mothers."* CARLA FREEMAN, ENTREPRENEURIAL SELVES, NEOLIBERAL RESPECTABILITY AND THE MAKING OF A CARIBBEAN MIDDLE CLASS 97–98 (2014) (emphasis added).

ABSTRACT

Despite the prevalence of West Indian Americans and their networks throughout the United States, little attention is given to the significant accomplishments stemming from the collective work of West Indian Americans. Even less attention is given to the fact that many of these networks are predominantly comprised of women, many of whom are single mothers. This article focuses on the trend amongst West Indian American women to pursue motherhood regardless of marriage or intimate partnership despite the risks attendant to motherhood. The author argues that para-professional West Indian American women may be more willing than their counterparts in other communities to become single parents in the first place. Moreover, even if they are initially partnered, they may also be more likely to assume the later risk of single parenthood if a relationship ends. The Author explores various factors which may have led to this trend: for example, communal networks exist among West Indian Americans and provide support with the costs and labor related to child-rearing. Throughout the article, the Author relies upon an assumption of risk framework to explore the trends of child rearing amongst West Indian American women.

INTRODUCTION

Professor Lani Guinier caused some controversy when she noted that that voluntary Black migrants and their descendants are disproportionately represented in elite academic institutions.[2] This is particularly true of West

2. Lani Guinier, *Our Preference for the Privileged*, BOSTON GLOBE, July 9, 2004, at A13 ("Like their wealthier White counterparts, many first- and second-generation immigrants of color test well because they retain a national identity free of America's racial caste system and enjoy material and cultural advantages, including professional or well-educated parents."). Professor Guinier (who has noted that her own father was of West Indian origin) notes that we should be unsurprised when Black elites are disproportionately West Indian (including Secretary Colin Powell, Ambassador Susan Rice and Attorney General Eric Holder), if immigrant Blacks have disproportionate access to elite institutions. Ronald Roach, *Drawing Upon the Diaspora*, DIVERSE: ISSUES IN HIGHER ED. 39 (Aug. 25, 2005), https://www.diverseeducation.com/print/content/15080841 [https://perma.cc/TRS7-FVM7]. Secretary Powell tells this story in his biography. COLIN POWELL, MY AMERICAN JOURNEY 3–11 (1995)

Indian Americans.[3] While several factors have been offered to account for this, there has been virtually no discussion of West Indian networks. In earlier work, I have noted the importance of these networks to real property acquisition in New York.[4] I have also emphasized that these networks were particularly helpful in subsidizing West Indian landlords. These landlords were able to utilize their participation in collective savings regimes to

(recounting his parents' Jamaican origins). Secretary Powell's extended family included a cousin who was an early Black multimillionaire, J. Bruce Llewellyn, another son of Jamaican immigrants. Douglas Martin, *J. Bruce Llewellyn, Who Forged a Path for Blacks in Business, Is Dead at 82*, N.Y. TIMES (Apr. 9, 2010), http://www.nytimes.com/2010/04/10/business/10llewellyn.html [https://perma.cc/4MEY-UFJ4]. Attorney General, Eric Holder and U.N. Ambassador, Susan Rice are also of West Indian heritage. Holder's father and maternal grandparents were Barbadian. [Method of interview] Interview with Calvin Holder, Barbadian Historian (Dec. 2011). Rice's grandparents were Jamaicans. *See* Kelley Bouchard, *Rice family enjoys a fantastic journey,* PORTLAND PRESS HERALD (Oct. 8, 2018), https://www.pressherald.com/2008/12/08/rice-family-enjoys-a-fantastic-journey/ [https://perma.cc/2UKW-T5FT] (discussing how Rice's migrant Jamaican grandparents mortgaged their home repeatedly to finance their children's elite educations at Bowdoin and Harvard).

3. The term "Black" is used generically to refer to both African Americans and West Indian Americans. I will regularly refer to two groups of Blacks. The first group, African Americans, includes those descended from Africans who were enslaved here in the United States. The second group has a different historical heritage. I will refer to them in shorthand as West Indians, that is, persons who were enslaved by British subjects in the British West Indies but were not enslaved in the United States. Many later became voluntary migrants to the U.S., mostly after the Civil War and the passage of the Reconstruction Amendments. Most migrated after the Johnson Reed Immigration Act of 1924, when nativism amongst immigration bureaucrats was still rife. I argue in previous work that nativist barriers to immigration inadvertently selected for a "Black Bourgeoisie." *See* Eleanor Brown, *How the U.S. Selected for a Black British Bourgeoisie*, 27 GEO. L.J. 311 (2013) [hereinafter Brown, *Bourgeoisie*]; Eleanor Brown, *The Blacks Who 'Got' Their 40 Acres: A Theory of Black West Indian Migrant Asset Acquisition*, 89 N.Y.U. L. REV. 27 (2014) [hereinafter Brown, *40 Acres*]; Eleanor Brown, *On Black South Africans, Black Americans, and Black West Indians: Some Thoughts on We Want What's Ours*, 114 MICH. L. REV. 1037 (2016) [hereinafter Brown, *Thoughts*]; Eleanor Brown, *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*, 61 AM. J. HIST. 3 (2021) [hereinafter Brown, *Homeowners*]. I utilize the definition of West Indians that is conventionally used in the sociological literature, namely, Anglophone (formerly British-colonized) Caribbean nationals. Thus, when I utilize the term West Indian American, I mean to refer to voluntary migrants and their children who are descendants of Africans enslaved in the West Indies. Although West Indians are overwhelmingly descendants of African slaves, the term is "shorthand" since there are also West Indian immigrants to the U.S. of different ethnic backgrounds including West Indians of Chinese, Indian, Sephardic Jewish and Lebanese extraction. *See* Orlando Patterson, *Context and Choice in Ethnic Allegiance: A Theoretical Framework and Caribbean Case Study, in* ETHNICITY: THEORY AND EXPERIENCE 305 (Nathan Glazer & Daniel P. Moynihan eds., 1975). [hereinafter Patterson, Ethnic Allegiance]. The distinction between "native" African Americans and "voluntary" immigrant Blacks was first popularized by the sociologist, John Ogbu. *See* JOHN OGBU, MINORITY EDUCATION AND CASTE: THE AMERICAN SYSTEM IN CROSSCULTURAL PERSPECTIVE (1978).

4. *See* Brown, *Bourgeoisie*, *supra* note 3; Brown, *40 Acres, supra* note 3; Brown, *Thoughts, supra* note 3; Brown, *Homeowners, supra* note 3.

subsidize the purchase of boarding houses, whose rental income in turn allowed them to generate more wealth.

A little noted fact is that these networks were disproportionately likely to be female, and that women were disproportionately likely to be "bankers" in collective savings regimes.[5] Moreover, given background social and economic trends in which children are much more likely today to be parented by single women, these payoffs are particularly pronounced when the parents of high performing children are single mothers. Guinier's observations are particularly striking when juxtaposed with the work of Professor Rick Banks who explores why African American women (including more elite professional Black women) are disproportionately likely to be single and childless.[6] In this essay, I draw little-noticed connections between Guinier's observations and Banks' work.

Edin and Kefalas have famously asked why "poor women put motherhood before marriage."[7] In the public imagination, these women are overwhelmingly Black.[8] Banks' detailed conversations with Black women about their marital choices complicates this picture. It bears emphasis: Banks work is primarily about the marital choices of Black women (as opposed to their reproductive choices). However, a secondary theme stands out in his work: many of the African American middle-class women that he interviews make different reproductive choices than their poorer

5. A rotating savings and credit association, or ROSCA, is a group of individuals who agree to meet for a defined period of time in order to save and borrow together. ROSCAs are widespread in many countries, particularly among the poor and middle classes, and are a primary mechanism of financing for the financially marginalized. *See* Clifford Geertz, *The Rotating Credit Association: A 'Middle Rung' in Development,* 10 ECON. DEV. & CULTURAL CHANGE 241, 249–54 (1962) (describing the rotating credit association in Asia). For a deeper discussion of ROSCAs, see generally Timothy Besley et al., *The Economics of Rotating Savings and Credit Associations*, 83 AM. ECON. REV. 792 (1993). *See also* IVAN H. LIGHT, ETHNIC ENTERPRISE IN AMERICA: BUSINESS AND WELFARE AMONG CHINESE, JAPANESE, AND BLACKS, 35-36, 62-80 (1972) (arguing that susus, which originated in Yoruba land, persisted as a mechanism of saving among enslaved West Indians and freedmen, but less so among enslaved African Americans and freedmen); AUBREY W. BONNETT, INSTITUTIONAL ADAPTATION OF WEST INDIAN IMMIGRANTS TO AMERICA: AN ANALYSIS OF ROTATING CREDIT ASSOCIATIONS 55 (1981) (discussing disproportionate participation of West Indian women in these ROSCAs).

6. RALPH RICHARD BANKS, IS MARRIAGE FOR WHITE PEOPLE (2011).

7. KATHRYN EDIN & MARIA KEFALAS, PROMISES I CAN KEEP: WHY POOR WOMEN PUT MOTHERHOOD BEFORE MARRIAGE 9 (2005).

8. *See generally*, Catherine Powell & Camille Gear Rich, *The 'Welfare Queen' Goes to the Polls: Race-Based Fractures in Gender Politics and Opportunities for Intersectional Coalitions*, 19 GEO. L.J. 105 (2020) (summarizing the literature documenting the public perception that single mothers are overwhelmingly Black).

counterparts. That is, these African-American middle-class women remain childless. [9]

When compared with the Black professional women in Banks' book, West Indian American women stand out. Even if they do not marry, they are likely to have children. I discuss the reproductive decision-making frameworks of those who I term "para-professional" West Indian American women (or para-elites), who typically have significant university education. [10]

The relatively elite African American women who are the subjects of Banks' work understand clearly that decisions to have children entail significant risk. [11] Partners are thought to reduce the risks of child-rearing; parenting is riskier without a partner. Moreover, childbearing is risky even if a woman has a (perceived) long-term partner. How so? Women are disproportionately likely to become sole caregivers if a relationship later breaks down. [12] Even a partnered woman may quite reasonably ask herself if she would be able to raise a child on her own. Understandably, many Black women decline to become parents if they are unsure that they will have a long-term partner to share the burdens of parenting.

We can view childbearing decisions through a recognizable framework from other areas of the law, namely, assumption of risk. I argue that para-professional West Indian American women may be more willing than their counterparts in other communities to become single parents in the first place. Moreover, even if they are initially partnered, they may also be more likely to assume the later risk of single parenthood if a relationship ends.

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9. Please note I focus primarily in these pages on bearing children. I should emphasize that significant numbers of African American women, who do not themselves have children, are heavily involved in raising children in their extended circle of family and friends. CAROL STACK, ALL OUR KIN 69, 71 (1974). One might think of shades of what the anthropologist, Carol Stack's work in "all our kin" (which discusses extended child rearing networks which extend outside the "nuclear" family). *Id.*

10. The meaning of the term paraprofessional is "a person to whom a particular aspect of a professional task is delegated but who is not licensed to practice as a fully qualified professional." *Paraprofessional*, OXFORD ENGLISH DICTIONARY, (3d. ed. 2010). The author Ira Reid notes that West Indian migrants have always been strikingly well educated. IRA DE A. REID, THE NEGRO IMMIGRANT: HIS BACKGROUND, CHARACTERISTICS, AND SOCIAL ADJUSTMENT, 1899-1937 (1939).

11. BANKS, *supra* note 6.

12. *See, e.g.,* Thomas Leopold, *Gender Differences in the Consequence of Divorce: A Study of Multiple Outcomes,* 55 DEMOGRAPHY 769, 774 (2018). *See also,* Gretchen Livingston, *The Changing Profile of Unmarried Parents,* PEW RESEARCH (Apr. 11, 2018), https://www.pewresearch.org/social-trends/2018/04/25/the-changing-profile-of-unmarried-parents/ [https://perma.cc/URW3-2E8J].

Why might this be? First, we must candidly recognize that single mothers have historically been stigmatized. Even setting aside questions of stigmatization, single mothers cannot reliably depend on the state for support. The United States stands out among OECD countries (the twenty richest countries) because of the paltry state subsidies that it offers for childcare.[13]

West Indian Americans have the advantage of depending on communal networks imported from the West Indies. These communal networks are based on principles of collective responsibility that are reminiscent of those that underlie collective saving schemes, also imported from the West Indies. In short, West Indian informal networks subsidize both childbearing and childcare. Given that West Indian American women can reliably depend on these subsidies, they may be more willing to "assume the risks" associated with both childbearing and childcare.

In reviewing Banks' work, Professor Imani Perry wondered why "first- and second-generation Black immigrant" children (to use her words) have relatively higher educational outcomes.[14] I focus on one set of institutions where researchers have documented such outcomes: elite universities. Although Perry's question pre-dated comprehensive demographic studies documenting such outcomes in elite universities, Perry correctly surmised that Black migrant children perform well. Perry asked a question that needed to be asked—particularly in the context of Banks' work. In this Essay, I explore potential answers to Perry's question.

PART I

It would be unsurprising if West Indian communal subsidies lead to significant educational payoffs for single women and their children.[15] Why

13. This article from the New York Times is a good summary of the literature. Claire Cain Miller, *How Other Nations Pay for Child Care. The U.S. Is an Outlier*, N.Y. TIMES (Oct. 6, 2021), https://www.nytimes.com/2021/10/06/upshot/child-care-biden.html [https://perma.cc/7XA4-MNMH].

14. Imani Perry, *Blacks, Whites, and the Wedding Gap,* N.Y. TIMES (Sept. 16, 2011), https://www.nytimes.com/2011/09/18/books/review/is-marriage-for-white-people-by-ralph-richard-banks-book-review.html [https://perma.cc/2K8D-UEMW].

15. For a general summary of the high educational attainment levels of West Indian Blacks, see Xue Lan Rong & Frank Brown, *The Effects of Immigrant Generation and Ethnicity on Educational Attainment among Young African and Caribbean Blacks in the United States*, 71 HARV. EDUC. REV. 536, 548–52 (2001). *See also* Douglas S. Massey et al., *Black Immigrants and Black Natives Attending Selective Colleges and Universities in the United States,* 113 AM. J. EDUC. 243, 245–48 (2007).

so? Historically West Indian communal subsidies have also supported multiple mechanisms of upward mobility; particularly, business ownership, home ownership and real property acquisition more broadly.[16]

The West Indies were emancipated in 1833, and by 1860—a mere generation later and years before U.S. emancipation—twenty percent of Black Bostonians were of West Indian descent.[17] Similar circumstances held in other Northern cities, especially post-Emancipation. The turn of the twentieth century saw another wave of West Indian migration, particularly to New York City.[18] West Indians who migrated to the US, and particularly to New York, in the period between 1924 (the Johnson Reed Immigration Act) and the Hart Celler Immigration Act of 1965,[19] made significant headways in areas such as business ownership.[20] West Indians were also disproportionately represented in higher education through elite historically Black universities (particularly Howard), community colleges, and other public universities (such as the City University of New York). [21]

16. Good summaries of how communal networks aid West Indians in business are found in the following works. *See* GUY T. WESTMORELAND, WEST INDIAN AMERICANS xi–xii (2001); GODFREY MWAKIKAGILE, RELATIONS BETWEEN AFRICANS, AFRICAN AMERICANS, AND AFRO-CARIBBEANS 9–10 (2007). Malcolm Gladwell makes a similar point through the lens of his Jamaican aunts in New York. MALCOLM GLADWELL, OUTLIERS: THE STORY OF SUCCESS (2008). There are also similar accounts in the quasi-biographical fiction of the Barbadian American, Paule Marshall. PAULE MARSHALL, BROWN GIRL, BROWNSTONES (1959). Indeed, Jamaicans in Harlem were controversially dubbed "Jewmaicans" as early as 1910 and there was a common joke that if a West Indian had one cent more than ten cents he started a business. All of these stereotypes of West Indians are recounted by Claude McKay, the Harlem Renaissance writer who was born in Jamaica. *See* Winston James, *Explaining Afro-Caribbean Social Mobility in the United States: Beyond the Sowell Thesis*, 44 COMPAR. STUD. SOC'Y & HIST. 218 (2002) (discussing McKay).

17. *See*, James, *supra* note 16, at 219.

18. This wave of West Indian migration is discussed in Eleanor Brown, *How the U.S. Selected for a Black British Bourgeoisie*, 27 GEO. L.J. 311 (2013) It was with good reason that the pre-eminent African American newspaper in New York, the Amsterdam News, declared in 1920 that Harlem was the "largest West Indian city" outside of Kingston, Jamaica. Caribbean Migration, http://www.inmotionaame.org/print.cfm@migration=10.html (last visited January 2, 2023) See also, Winston James, Explaining Afro-Caribbean Social Mobility in the United States: Beyond the Sowell Thesis, 44 CoMP. STUD. IN Soc'Y & HIsT. 218 (2002).

19. Immigration and Nationality Act Amendments of 1965 or Hart-Celler Act, Pub. L. No. 89-236, 79 Stat. 911 (codified as amended in scattered sections of 8 U.S.C.).

20. Immigration Act (Johnson-Reed) Act of 1924, Pub. L. No. 68-139, 43 Stat. 153 (named for its sponsors, Rep. Albert Johnson and Sen. David Reed). An incisive account of the socio-political background to the law's passage with a particular emphasis on the nativism of the era is discussed in Chapter 1 of Aristide Zolberg's book. ARISTIDE ZOLBERG, A NATION BY DESIGN: IMMIGRATION POLICY IN THE FASHIONING OF AMERICA 1–24 (2006). This is discussed in Brown, *Bourgeoisie, supra* note 3 (discussing the benefits conferred on West Indians by being perceived as British subjects).

21. REID, *supra* note 10. (The disproportionate representation of early West Indian migrants at

But who were these West Indian migrants? Studies have found that immigrants self-select based on certain characteristics like education and occupational status, and West Indians were no exception.[22] West Indian immigrants were well-educated and well-connected by the standards of early twentieth century New York.[23] West Indians were disproportionately represented among Black elites.[24] Contemporaneous comments on West Indian migration support this view, for example a Jamaican civil servant complaining to London that "the brains of the island had been going to the United States."[25] Similar reports exist from Barbados, St. Kitts, Guyana, and Antigua.[26]

By combining data on Jamaican occupational demographics with similar information from the US immigration authorities, James determined that between 1899 and 1931 nearly 40% of Jamaican migrants were skilled laborers.[27] Other studies corroborate these estimates.[28] A 1906 survey of

elite historically Black colleges and universities, and particularly, Howard University) I also discuss it in Brown, *Bourgeoisie, supra* note 3, at 316.

22. The theory of immigrant selectivity, most prominently associated with the economist Barry Chiswick, is often applied to West Indians. *See generally* Barry R. Chiswick, *Are Immigrants Favorably Self-Selected? An Economic Analysis*, *in* MIGRATION THEORY: TALKING ACROSS THE DISCIPLINES 61, 70 (Caroline B. Brettell & James F. Hollifield eds., 2000) (discussing theoretical models demonstrating immigrant self-selection); Mosi Adesina Ifatunji, *Socioeconomic Disparities Between African Americans and Afro-Caribbeans In the U.S.: Re-Examining the Role of Immigrant Selectivity*, 32 Socio. F. 522, 529–35 (2017) (discussing recently collected data on socioeconomic disparities between African Americans and Afro Caribbean immigrants, and analyzing the potential causes); Douglas S. Massey et al., *Black Immigrants and Black Natives Attending Selective Colleges and Universities in the United States*, 113 AM. J. EDUC. 243, 245–48 (2007) (discussing the various economic and social factors contributing to Black immigrant selectivity and corresponding achievement in the United States).

23. For example, Winston James samples publications on West Indians to show that West Indians were disproportionately represented in lists of influential Blacks such as the *Who's Who of Colored America*, a well-known early twentieth-century guide to the Black elite. James, *supra* note 16, at 223.

24. It was clearly documented in the 1930s that West Indians were disproportionately represented among Black elites in New York City. *See* Calvin B. Holder, *Making Ends Meet: West Indian Economic Adjustment in New York City, 1900–1952*, 1 WADABAGEI 31, 52–54 (1998) ("By the 1930s, . . . West Indians were clearly the majority of black businesspersons in New York and were, for all intents and purposes, the only blacks with businesses connected to the skilled trades."); John C. Walter, *The Caribbean Immigrant Impulse in American Life: 1900–1930*, 11 REVISTA INTERAMERICANA 522, 529–30 (1981).

25. James, *supra* note 16, at 225 (citing the Jamaica League).

26. *Id.* at 225-226.

27. James focuses on Jamaica because the occupational data from Jamaica was more detailed than that available for other islands, but his focus is also justified because more than fifty percent of pre-1965 Black migrants came from Jamaica. James, *supra* note 18, at 227.

28. REYNOLDS FARLEY & WALTER ALLEN, THE COLOR LINE AND THE QUALITY OF LIFE IN AMERICA (Oxford Univ. Press 1989) (1987); STEPHEN STEINBERG, THE ETHNIC MYTH: RACE,

Black men in New York City found that over 60% of formal tradesmen came from the West Indies.[29] A different study of Black businesses in New York City reported that nearly 22% of these businesses were run by West Indians despite West Indians comprising only 9% of the city's Black population. Even those who were not formally trained had nevertheless clearly benefited from an excellent British grammar school education.[30] Colin Powell's parents who settled in New York from Jamaica, Eric Holder's grandparents who settled in New York from Barbados, and Susan Rice's grandparents who settled in Maine, are among the best-known migrants of this generation.

These immigrants were also strikingly literate. Even before the passage of a 1917 immigration law that imposed a literacy requirement on migrants, Black West Indian literacy rates were believed to exceed those of other migrants. Indeed civil rights advocates introduced evidence of high West Indian literacy rates into the 1914 Congressional record during a debate about the desirability of Black migration, which indicated that only 23% of West Indian migrants at the time were illiterate; a figure which compared very favorably with migrants from other countries, and which was sufficiently striking to merit a comment from Senator John Sharp Williams from Mississippi, a Southern segregationist who was an implacable opponent of Black migration. In the Senator's words:

Having heard those figures, I confess myself somewhat surprised. My own impression was that a majority of the West Indian Negroes could not read. It seems from this that only 23 per cent of those of them who came into the United States could not read. That is perhaps owing to the fact that the very best element—I mean by that the intellectually highest element—of the West Indian Negroes come to the United States, rather than the most inferior of them.[31]

The Senator's reflections on West Indians, though undoubtedly racially inflected (to put it diplomatically), accurately reflected the then-available information on West Indian immigrants as relative elites, particularly given their literacy rates. Subsequent research has confirmed that West Indian

ETHNICITY, AND CLASS IN AMERICA, (2d ed. 1989).

29. James, *supra* note 18, at 228 (citing dissertation).

30. *See* Eleanor Brown, *How the U.S. Selected for a Black British Bourgeoisie*, 27 GEO. L.J. 311 (2013)

31. 52 CONG. REC. 806 (1914) (statement of Sen. Williams).

literacy rates significantly exceeded the literacy rates for White immigrants and both Black and White native-born Americans.[32]

However, as is the case with African Americans, West Indian representation in elite predominantly White private universities is a modern phenomenon since prior to the civil rights movement, very few Black people had access to predominantly white universities.[33] Historical pathways to upward mobility, and particularly, home and business ownership, were important to establishing economically stable West Indian communities in places such as Brooklyn and Harlem.[34] However, modern access to elite schooling appears to super-charge upward mobility, since the beneficiaries of such elite education, significantly increase the earning potential of their families.[35] Earlier generations of West Indians may have been able to access well-paying union jobs in New York, but they could never have imagined their children working in "white shoe" law at Cravath, high finance at Goldman Sachs, or management consulting at McKinsey.

In my larger project, I focus on real property acquisition. In "The Blacks Who 'Got' Their Forty Acres," I consider a sometimes-contentious issue--why West Indian migrants of African descent have been such successful asset acquirers in the US. Oftentimes "cultural explanations" have dominated both the scholarship and the public intellectual debate.[36]

These articles have focused on West Indian "superstar stories." Recall the aforementioned heritages of Secretary Colin Powell (Jamaican on both sides), Secretary Susan Rice (Jamaican on one side), and Eric Holder (Barbadian on both sides).. In the larger project, I eschew cultural rationales and focus on a property-related rationale. I root the early success of West Indian migrants in the extension of de-facto property rights to enslaved

32. James, *supra* note 16, at 232-34.

33. This is true of Black representation in elite predominantly White universities, and particularly members of the Ivy League. STEFAN M. BRADLEY, UPENDING THE IVORY TOWER: CIVIL RIGHTS, BLACK POWER, AND THE IVY LEAGUE (2018).

34. *See* Calvin B. Holder, Making Ends Meet: West Indian Economic Adjustment in New York City, 1900–1952, 1 WADABAGEI 31, 52–54 (1998)

35. That elite education "supercharges" upward mobility is true not only of West Indians, but also more generally, particularly through access to elite professional paths including jobs in finance, law, and management consulting. The best summary of this thesis is DAN MARKOVITS, THE MERITOCRACY TRAP (2020).

36. Eleanor Brown, *The Blacks Who 'Got Their Forty Acres': A Theory of Black West Indian Migrant Asset Acquisition*, 89 New York University Law Review 27-88 (2014). (In this article, I discuss Francis Fukuyama, Thomas Sowell, Daniel Patrick Moynihan, Nathan Glazer, and Malcolm Gladwell, among others, weighing in on the "cultural" questions.).

Africans in several Caribbean islands—particularly Jamaica.[37] I also focus on the importance of collective savings schemes, imported from the West Indies.[38]

Prior to the 1965 Hart-Celler Immigration Act, voluntary Black migrants to the United States were overwhelmingly West Indian.[39] Given that Jamaica is the largest West Indian island, they were disproportionately Jamaican. In other work, I have demonstrated that the dominance of West Indians in voluntary Black migration streams was inadvertent.[40] While discrimination against Black migrants was rife, it was more difficult to discriminate against West Indians.

How so? West Indian dominance of pre-1965 voluntary migration streams was the result of "inadvertent institutional design." That is, British subjects (that is White British subjects) were typically welcomes to the US. Since Black West Indians were also British subjects, it was more challenging to discriminate against them. Moreover, the relative proximity of the West Indies to the United States mattered. West Indians were able to migrate by taking advantage of pre-existing trading routes for a wide variety of goods from the West Indies to the Hispanic Caribbean (and particularly Panama) and then onto to the United States.[41] They also took particular advantage of trading routes for the movement of bananas and other agricultural produce from the West Indies to Central America and then onto Florida and the Northeast.[42]

In a pre-1965 atmosphere of pervasive nativism, it was much more difficult for other (non-West Indian) Blacks to migrate to the United

37. Brown, *40 Acres, supra* note 3.

38. *Id.* at 85.

39. *See* Eleanor Brown, *How the U.S. Selected for a Black British Bourgeoisie*, 27 GEO. L.J. 311 (2013) [hereinafter Brown, *Bourgeoisie*].

40. *See* Eleanor Brown, *How the U.S. Selected for a Black British Bourgeoisie*, 27 GEO. L.J. 311 (2013) [hereinafter Brown, *Bourgeoisie*]; Eleanor Brown, *The Blacks Who 'Got' Their 40 Acres: A Theory of Black West Indian Migrant Asset Acquisition*, 89 N.Y.U. L. REV. 27 (2014) [hereinafter Brown, *40 Acres*].

41. *See* Dawn I. Marshall, The History of Caribbean Migrations: The Case of the West Indies, 11 CARIBBEAN REV. 6, 8 (1982) (suggesting that U.S. investments in expanding specific economic sectors in Cuba, Panama, Dominican Republic, and Central America between 1885 and 1920 encouraged heavy West Indian immigration to these Hispanic Caribbean regions and the United State during this time); Elizabeth M. Thomas-Hope, The Establishment of a Migration Tradition: British West Indian Movements to the Hispanic Caribbean in the Century After Emancipation, in CARIBBEAN SOCIAL RELATIONS 66 (Colin G. Clarke ed., 1978) (describing the economic and social factors that encouraged Caribbean migration to US dominated regions of the Hispanic Caribbean).

42. *See* Marshall, *supra* note 41. *See also* Thomas-Hope, *supra* note 41.

States.[43] Indeed, African migrants (even temporary ones such as Barack Obama's father) stand out in pre-1965 migration streams precisely because they were so few of them. They would come to the US in more significant numbers after 1965.[44]

Many rationales have been offered for West Indian dominance of pathways to home and business ownership. For obvious reasons, "cultural rationales" are controversial, particularly when West Indian Americans, who are descendants of persons enslaved elsewhere who later migrate to the US voluntarily, are implicitly contrasted to African Americans, namely, descendants of involuntary Black migrants, enslaved in the United States. In the larger project, I focus on a far more prosaic, property-related rationale.

I make the case that early exposure to a property regime gave migrant descendants of enslaved Jamaicans-turned freedmen a leg up in United States capital markets.[45] It bears emphasis: informal collective savings regimes, imported from the West Indian islands, were similarly important.[46] These collective savings schemes allowed West Indians to approximate informal mortgage lending regimes in New York enabling down payments for lumpy purchases (including real property) long before such mortgage regimes were available to any Americans, much less African Americans.[47]

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43. April Gordon, The New Diaspora – African Migration to the United States, Journal of Third World Studies, Vol. 15, No. 1, (SPRING, 1998), pp. 79-103 (25 pages) (summarizing Portes and Rumbaut's 2001's Immigrant America, in which they observe that before 1965, U.S. policy made it difficult for Africans to come to the U.S.).

44. *Id*.

45. Brown, *40 Acres, supra* note 3, at 85.

46. *See* BONNETT, *supra* note 5, at 55.

47. AUBREY W. BONNETT, INSTITUTIONAL ADAPTATION OF WEST INDIAN IMMIGRANTS TO AMERICA: AN ANALYSIS OF ROTATING CREDIT ASSOCIATIONS 55 (1981); See also IVAN H. LIGHT, ETHNIC ENTERPRISE IN AMERICA: BUSINESS AND WELFARE AMONG CHINESE, JAPANESE, AND BLACKS ((arguing that susus, which originated in Yoruba land, persisted as a mechanism of saving among West Indian enslaved people and their freedmen descendants); ROGER WALDINGER, STILL THE PROMISED CITY? AFRICAN-AMERICANS AND NEW IMMIGRANTS IN POSTINDUSTRIAL NEW YORK 119 (1996) (arguing that early "Caribbean immigrants engaged in considerable property speculation, with the result that real estate had emerged as a small, but still significant, Caribbean niche by the eve of World War II" and that "West Indians financed their early foray into the housing markets "through rotating credit associations" or "susus.") Irma Watkins-Owens, Early-Twentieth-Century Caribbean Women: Migration and Social Networks in New York City, in ISLANDS IN THE CITY: WEST INDIAN MIGRATION TO NEW YORK 25, 37-38 (Nancy Foner ed., 2001) (discussing multiple West Indian women who financed lumpy purchases such as downpayments on homes using the proceeds from rotating credit associations)

I emphasize collective saving schemes for good reason. They have endured and appear to now be subsidizing education.

I am now considering a separate but related question, namely, why West Indian Americans are disproportionately represented in elite universities. This is particularly striking since Black presence in elite (predominantly White) universities (as opposed to elite historically Black universities) is a post-1965 phenomenon.[48] Thus, the West Indians who "make it" in these elite predominantly White universities are *not* the children of pre-1965 migrants with a long-time historical foothold in the United States. It bears emphasis: once the Hart-Celler 1965 legislation significantly liberalized who could legally migrate to the US, the barriers to entry for migrants of more modest means were reduced.[49] This is why children of post-1965 migrants were more likely to come from less elite families.[50]

In earlier work, I have demonstrated that since 1924 West Indian community organizations—such as real estate acquisition networks, collective savings regimes, informal credit unions, West Indian taxicab and jitney associations, West Indian business associations more generally, and West Indian churches and other religious institutions—provided tangible communal subsidies, which enabled early West Indian migrants in New York to acquire real property.[51] These communal networks mattered. For

48. This is true of Black representation in elite predominantly White universities, and particularly members of the Ivy League. STEFAN M. BRADLEY, UPENDING THE IVORY TOWER: CIVIL RIGHTS, BLACK POWER, AND THE IVY LEAGUE (2018). "Blackballed: The Black and White Politics of Race on America's Campuses" by Lawrence Ross (2018) underlines the miniscule number of Black people of any background in Ivy League universities prior to the civil rights movement.

49. This point in made particularly eloquently in the Introductory Chapter of Zolberg ARISTIDE ZOLBERG, A NATION BY DESIGN: IMMIGRATION POLICY IN THE FASHIONING OF AMERICA 1-24 (2006) Zolberg briefly discusses the 1965 Immigration and Nationality Act, which abolished the national origin quota system that had previously favored immigrants from Europe, led to an increase in immigration from non-European countries, including the Caribbean, and helped to diversify the American population. A similar point is made in the Chapter 3 of Alejandro Portes and Reuben Rumbaut, Immigrant America (2001). (I should note that this is true not only of West Indians but more broadly. 1965 immigration reforms significantly reduced barriers to entry across the board. *See Modern Immigration Wave Brings 59 Million to U.S., Driving Population Growth and Change Through 2065*, PEW RSCH. CTR. (Sept. 28, 2015), https://www.pewresearch.org/hispanic/2015/09/28/modern-immigration-wave-brings-59-million-to-u-s-driving-population-growth-and-change-through-2065/ [https://perma.cc/Z6P8-H9X8].

50. This point is made by Portes and Rumbaut (Chapter 7) as well as by Vickerman and Holder, *See* Milton Vickerman, *Jamaica* and Calvin Holder, *The West Indies*, *in* THE NEW AMERICANS: A GUIDE TO IMMIGRATION SINCE 1965, at 491 (Vickerman begins), 674 (Holder begins) (Mary C. Waters & Reed Rueda, eds., 2007).

51. *See generally* Eleanor Brown, "The Blacks Who 'Got Their Forty Acres': A Theory of Black

example, reliance on the public purse was a source of communal shame—no West Indian should ever be "on the dole" (to use the British term for welfare subsidies). If West Indians fell on hard times, communal organizations intervened to help them.[52] These associations have endured. Communal networks appear to offer support to West Indian single mothers in New York that have significant educational payoffs.[53]

Some of the subsidies, such as scholarships, are tangible and immediately apparent. Other subsidies are intangible, but appear to be similarly important. For example, although single mothers contribute their

West Indian Migrant Asset Acquisition," 89 New York University Law Review 27-88 (2014). See Calvin B. Holder, Making Ends Meet: West Indian Economic Adjustment in New York City, 1900–1952, 1 WADABAGEI 31, 52–54 (1998) (discussing the importance of West Indian institutions and particularly mutual aid societies and informal savings institutions which supported economic advancement) Calvin B. Holder, The Causes and Composition of West Indian Immigration to New York City, 1900–1952, 11 AFRO-AM. N.Y. LIFE & HIST., Jan. 1987, at 7, 16 (attributing professional and skilled West Indians' preference for immigrating to New York over other U.S. cities in part to the strength of West Indian networks and institutions). For discussions of strong West Indian performance even in segregated the housing markets, supported in large part by West Indian networks, consider primarily Kyle D. Crowder, *Residential Segregation of West Indians in the New York/New Jersey Metropolitan Area: The Role of Race and Ethnicity*, 33 INT'L MIGRATION REV. 79 (1999). *See also* EMILY ROSENBAUM & SAMANTHA FRIEDMAN, THE HOUSING DIVIDE: HOW GENERATIONS OF IMMIGRANTS FARE IN NEW YORK'S HOUSING MARKET (2007) (Chapter 4 discusses West Indian concentration in neighborhoods such as Flatbush and Crown Heights, as facilitated in part by strong West Indian networks).

52. Studies suggest that West Indians were less likely than other immigrants and then native-born Americans (of any ethnicity or race) to rely on public assistance. *See generally* Waters, M. C., & Jiménez, T. R. (2005). Assessing immigrant assimilation: New empirical and theoretical challenges. Annual Review of Sociology, 31, 105-125 (finding that Caribbean immigrants in New York City were less likely to use public assistance than other immigrant groups). VanHeuvelen, Gelatt and Passel, Racial and Ethnic Differences in Welfare Receipt Among Immigrants (noting that West Indian migrants to Miami were particularly unlikely to receive public assistance using the results of the 2000 Census). One of the primary functions of West Indian immigrant mutual aid societies was to ensure that West Indian immigrants would never need state aid. Moynihan and Glazer emphasize this point. *See* NATHAN GLAZER & DANIEL P. MOYNIHAN, BEYOND THE MELTING POT: THE NEGROES, PUERTO RICANS, JEWS, ITALIANS, AND IRISH OF NEW YORK CITY 34–36 (2d ed. 1970).

53. *See generally* Roselyn Arlin Mickelson and Martha Bottia, Race Ethnicity and High School Graduation in the United States, Sociology of Education (2005 (noting that children on West Indian single mother have better educational outcomes than those of their African American counterparts and attributing this in part to West Indian social networks that support high education outcomes.) Brian Duncan and Stephen Trejo, Racial and Ethnic Differences in the Educational Achievement of Immigrant Children: Evidence from the New Immigrant Survey (2011) (finding high levels of educational attainment among Caribbean immigrant children in relation to other groups and emphasizing networks which subsidize high educational outcomes); M. Anne Visser and Elaine Congress, Caribbean Women in New York City: Family Structure and Family Support, Journal of Marriage and the Family (1995) (emphasizing strong connections between familial networks and communal networks, and the importance of these in contribution to educational outcomes).

own money to collective savings regimes imported from the West Indies, the ability to borrow against these savings schemes to meet lumpy expenses (e.g., such as school fees and tutoring costs) allows them to give their children educational advantages. I should also note that childcare programs, staffed primarily by West Indians, appear to mirror the collective savings regimes. That is, there is significant overlap between the persons alongside whom a single mother saves and the persons to whom she entrusts her children for childcare.

In summary, if a woman, comes from a community where the costs of single parenthood are subsidized, she may be more likely to assume the risk of childbearing, even if she has doubts about the long-term stability of her partner. She can comfortably assume that her community will "back her" (as West Indians say) even if her partner does not.

Moreover, she can rest secure in the knowledge that her communal network will subsidize those costs, including educational costs, that she might not be able to carry on her own. Thus, the educational subsidies are apparent to her as are the potential educational payoffs of this network. And if there is a ledger on which one tallies the costs and benefits of single parenthood, the costs of single parenthood (e.g., stigmatization with the implications for earning potential), may appear to be *less* weighty if there are background communal subsidies.

PART II

West Indian Americans, defined as immigrants or children of immigrant parents, are strikingly well-represented at elite American universities, particularly as compared to African Americans. In one study utilizing a national data set of college bound high school students, the demographer, Massey, and his co-authors found that although only 13% of college-age Blacks were immigrants, 27% of Black freshmen at elite institutions were first- or second-generation immigrants.[54] The imbalance becomes starker as the schools become more selective; 35.6% of the Black students at the ten most selective schools in the U.S. are immigrant Americans and of those at Ivy League schools, 40.6% are immigrants.[55] In keeping with historical

54. Douglas S. Massey et al., *Black Immigrants and Black Natives Attending Selective Colleges and Universities in the United States*, 113 AM. J. EDUC. 243, 245–48 (2007).

55. *Id.* at 248.

migration patterns, these elite Black immigrants are inordinately West Indian. The bottom line: at schools like Yale, Black migrants (and particularly West Indians) are four times more numerous than one would expect if their "West Indian-ness" were insignificant.

These numbers have long-term consequences for upward mobility. The issue became a full-fledged controversy in 2004 (provoking headline coverage in the New York Times), when Lani Guinier underlined the implications of disproportionate West Indian representation in elite institutions.[56] At a reunion of Black Harvard alumni, she noted that many of the Black beneficiaries of Harvard's powerful network were of immigrant origin. Indeed, as early as the 1930s, there was already evidence of disproportionate West Indian representation in leadership positions in business.[57]

Moreover, Guinier specifically addressed the implications of these trends for Harvard's affirmative action program. Pointing out that many of these West Indians were beneficiaries of affirmative action programs originally intended for African Americans, Guinier queried the "justice" of voluntary Black immigrants dominating elite universities to the detriment of "native" African Americans.[58] Perhaps anticipating a fracturing of traditional minority coalitions (as occurred at San Francisco's Lowell High School), Professor Orlando Patterson implored Guinier to let sleeping dogs lie.[59] But notwithstanding this entreaty, Professor Henry Louis Gates has joined Guinier in arguing that the time is long past for an "honest"

56. Guinier, *supra* note 2 ("Like their wealthier White counterparts, many first- and second-generation immigrants of color test well because they retain a national identity free of America's racial caste system and enjoy material and cultural advantages, including professional or well-educated parents.").

57. *See supra* note 24 for evidence of disproportionate representation of West Indians in business; *see also* John C. Walter, *The Caribbean Immigrant Impulse in American Life: 1900–1930*, 11 REVISTA INTERAMERICANA 522, 529–30 (1981).

58. *See generally* Angela Onwuachi-Willig, *The Admission of Legacy Blacks,* 60 VAND. L. REV. 1141, 1185 (2007) (A comprehensive summary of the larger debate concerning the "diversity" rationale and the eligibility of West Indian Americans for affirmative action programs). *See also* Kevin Brown & Jeannine Bell, *Demise of the Talented Tenth: Affirmative Action and the Increasing Underrepresentation of Ascendant Blacks at Selective Higher Educational Institutions*, 69 OHIO ST. L.J. 1229 (2008).

59. The sociologist Orlando Patterson made this point in response to Lani Guinier's contention that West Indians are disproportionate beneficiaries of Harvard's powerful network, arguing that the doors had never been so "wide open" for middle-class African Americans. *See* Sara Rimer & Karen Arenson, *Top Colleges Take More Blacks But Which Ones?,* N.Y. TIMES, (June 24, 2004), https://www.nytimes.com/2004/06/24/us/top-colleges-take-more-blacks-but-which-ones.html [https://perma.cc/GP96-DQ6W].

conversation (*his words*) about which Blacks are really benefiting from affirmative action at the nation's elite institutions,[60] and by extension, what factors would lead to disproportionate West Indian representation.

Because of the work of Massey et. al., we know that West Indians are disproportionately represented at elite universities. It would seem to be likely that West Indians are also disproportionately represented at the institutions that feed into these elite universities, including elite public high schools and elite independent schools. But there have not been equivalent studies of the feeder institutions; although in the absence of such studies, there are surely indicative data points.

"To Be Black at Stuyvesant High" was prominently placed in print and on the New York Times website. The prominent placement was not accidental.[61] The number of Black students admitted to Stuyvesant is now miniscule amidst increasing calls for an affirmative action program to buttress the numbers of Black admittees.[62] Stuyvesant is one of the New York City Board of Education's top three specialized exam schools, alongside Bronx High School of Science, and Brooklyn Technical High School. Students are admitted to one of the three schools based on their results on a specialized entrance exam. According to the New York Times article, at Stuyvesant, arguably the most elite of the three schools, the numbers are stark. In 2019, fewer than 1 percent of Stuyvesant's students were Black.[63] Although the specific composition of the Black student population at these schools has not been comprehensively studied, in my interviews with West Indian educators, it was strongly suggested that Black students from these schools are likely to be from the Caribbean, although

60. *Id.* Arguably, more "honest" rationales (recall Gates' aforementioned words) would emphasize how legacies of slavery, state-supported segregation, and xenophobia have damaged underrepresented minorities, are a more sensible predicate for affirmative action, although these "remedial" rationales are less likely to receive support from a majority of Americans and as such may undermine the politically sustainability of affirmative action programs.

61. Fernanda Santos, *To be Black at Stuyvesant High*, N.Y. TIMES (Feb. 25, 2012), https://www.nytimes.com/2012/02/26/education/black-at-stuyvesant-high-one-girls-experience.html [https://perma.cc/K5G8-XX77].

62. According to the NYC Department of Education's last pre-COVID report (2019-2020) on admissions to specialized high schools, in 2019, only 10 Black students were offered admission to Stuyvesant out of a total of 895 offers.

63. How the Few Black and Hispanic Students at Stuyvesant High School Feel - The New York Times (nytimes.com), March 22, 2019.

one study of the composition of these schools notes the strong immigrant representation but says nothing about Caribbean representation.[64]

The New York Times article profiled Rudi-Ann Miller, a seventeen-year-old Jamaican American senior at Stuyvesant, and her reflections on being one of very few Black students to have gained admission to Stuyvesant. The article noted one advantage that Rudi-Ann had over most other Black students seeking admission to Stuyvesant: although Miller's family was not affluent (her mother was a nursing assistant and her father was an accounting director at a community college), they were able to arrange access to expensive test preparation for the exam.

Given that so little has been written about West Indians at these elite schools, I interviewed a network of West Indian educators to see whether West Indians had launched their own test preparation programs. During these interviews, I was repeatedly told that such tutoring programs had long existed (informally), and were not difficult to organize given the strong tradition of after-school test prep (known as "extra lessons") that long existed in the British West Indies to prepare for high school Oxford and Cambridge external examinations, taken across the British Commonwealth.

Moreover, other mechanisms facilitate West Indian access to elite schooling. For example, many West Indian alumnae associations (based on a network of prestigious British-styled "public schools" in the West Indies) mentor West Indian students.[65] The alumnae associations arise from the West Indian "public school" model modified to meet New York City's testing requirements. The influence of West Indian schools (which are

64. WorkingPaper_PathwaystoAnEliteEducation.pdf (nyu.edu) (Research Alliance to New York City Schools, Pathways to an Elite Education: Application, Admission and Matriculation to New York City's Specialized High Schools (By Sean Corcoran and Christine Baker-Smith, 2015).

65. I am including here a note on research methodology and the snowballing sampling approach that I am utilizing to penetrate the networks that appear to be channeling West Indians into elite universities, beginning with West Indian churches, alumnae associations (from British-style boarding schools in the West Indies and also from high schools and universities in the United States). By way of background my interviews with these West Indian educators were a prelude to generating a "snowball sample" for a broader project on how West Indian students access elite educational networks. (In that study, my typical subject will be a working-class West Indian student, who has accessed or attempted to access an elite New York City public high school or an elite Northeastern private high school. Given the high levels of West Indian representation in elite universities, the principal objective of the study is to explore potential explanatory factors for West Indian success in the admissions process, including rationales that West Indians themselves offer.

themselves modeled on the paradigmatic British boarding schools such as Eton or Harrow) is clear. [66]

Yet the parents are overwhelmingly working and middle-class and, here's the catch, they are largely single mothers.[67] The typical mother is not unlike Rudi-Ann's mother in background and income—likely a nurse's aide, or home health aide, or other para-professional (I should note that unlike many West Indian households, Rudi Ann's father was present). One marvels at how a single-mother nurse's aide can afford to provide supplementary private tutoring in New York.

West Indian alumnae associations also help mothers to access scholarships, which subsidize tutoring and even enable some to send their children to private schools and private after-school programs[68]. Moreover, working-class West Indian parents utilize community organized informal collective savings schemes to afford tutoring and school fees.[69] Still others receive tuition subsidies from their (again overwhelmingly West Indian) churches for private church schools. This then feeds students into elite private middle and high schools, and their elite public counterparts, such as Stuyvesant.

It should also be noted that West Indians now dominate the Prep for Prep and A Better Chance ("ABC") programs which have been involved over the decades in recruiting Black students for elite prep schools. Indeed, these programs are a primary reason that so many West Indians have ended up at elite prep schools and universities.

PART III

It is important to explain why West Indian communal subsidies for single women who bear children matter. Hence the importance of framing. The assumption of the risk framing that is so familiar from other areas of the law is helpful.

Every first-year law student learns about "assumption of the risk." Let us say that a friend enjoys rock climbing. He has a rock-climbing gym at his

66. E. Gordon, *The Historical Development of Education in Jamaica*, 54 CARIBBEAN QUARTERLY 63-82 (2008); *see also* Robert Proctor, *Early Developments in Barbadian Education*, 49 THE JOURNAL OF NEGRO EDUCATION 184-95 (1980).

67. Notes from preliminary interviews in preparation for generating a snowball sample.

68. Notes from preliminary interviews in preparation for generating a snowball sample.

69. Notes from preliminary interviews in preparation for generating a snowball sample.

house and decides to throw a rock-climbing party. I attend the party, and I decide to rock climb. Once I knowingly and voluntarily engage in a risky activity, I cannot then turn around and sue my friend. Rock-climbing is an inherently risky activity. I knew that when I accepted the invitation to rock climb. And I chose to proceed in any event. Why am I talking about rock-climbing? We may view child-bearing decisions through a recognizable framework from other areas of the law, namely, assumption of the risk. Why so?

In traditional understandings of marriage and child-rearing, a man and a woman get married, and only after they get married, do they have children. (Note the emphasis on a man and a woman—traditional understandings were typically limited to a narrow conception of heterosexual marriage). Sequencing has traditionally been important. A primary rationale for marriage was that it was an institution that provided a stable context for the socialization of children. Raising children costs money. As conventional wisdom goes, when children have two parents the costs of raising them are more likely to be covered within the familial unit. When such a "conventional" familial unit does not exist, the costs are more likely to be passed onto the state. Thus, in assessing whether someone was an appropriate candidate to be a husband or a wife, one was also typically assessing whether that person was an appropriate candidate to be a father or a mother. A fundamental question underlying such an assessment was as follows: would the long-term partner (typically the husband) stick around to raise the child? Or would one parent (typically the mother) be "stuck" raising the child on her own?

This background provides a basis to understand how society makes judgments of women who found themselves without men to help raise their children.[70] In broad terms, there were typically three types of such women. One group were widows. One group were divorcees. The third group were mothers who had never married in the first place.

The first group, widows, were "acceptable" because they had borne children with the quite reasonable expectation that their husbands would live to help them raise their children. They bore no responsibility for the death of their husbands. Thus, while conventional society may have pitied

70. Michael Katz's framework of those who have historically been perceived to be "undeserving" of state help, may be applied also in this context. Michael Katz, The Undeserving Poor.

widows, they typically did not scorn them, since they had borne and initially raised children in the context of traditional marriage.[71]

Since men were the traditional breadwinners, when wives died, men may have been pitied, but they did not typically receive state support. Any able-bodied man should be expected to provide for his children, irrespective of the presence of a wife. The same was not true of wives. Wives were not expected to be breadwinners. So, the state provided subsidies. This is also why there were a whole range of benefits that have typically been reserved for "widows" but not "widowers."[72]

Society was understanding (but less so) of the second group, divorced women.[73] In one sense, they had followed the rules. They had borne their children in the context of a marriage. Perhaps the failure of the marriage indicated that she had exercised poor judgment in the first place. But at least she had tried. She had married. Her children had been born within the context of marriage.

Society reserved its harshest judgment for the third group, single mothers.[74] What was unforgivable was to bear a child with no husband in sight. These women were not "deserving" mothers. The state provided subsidies to such women very grudgingly. Childbearing is a particular financial risk, because childbearing requires money, particularly in the US which, unlike other rich developed countries, does not provide subsidized healthcare for women who bear children (with a few exceptions). Childrearing is similarly a significant financial risk. Again, in comparison to other rich developed countries, in the US there is no publicly funded maternity leave and no publicly funded childcare (again with a few

71. Widows still experience stigmatization although for reasons that are different than divorcees and single mothers. For a general discussion of this see, Rachel Lee, The Invisible Widows: Exploring the Stigmatization of Widowed Women.

72. Theda Skocpol, Protecting Soldiers and Mothers (1992) provides a general socio-political context for why widowed women with children were more likely to receive help that other groups within the United States.

73. Good general accounts which discuss the stigmatization that women disproportionately experience post-divorce are E. Mavis Hetherington and John Kelly, The Divorce Experience: A Study of Divorce at Midlife and Beyond and Barbara Dafoe Whitehead, The Divorce Culture: Rethinking Our Commitments to Marriage and Family.

74. Good general accounts of the stigmatization that accompanies single motherhood and how women navigate such stigmatization are Kathryn Edin and Maria Kefalas, Promises I Can Keep: Why Poor Women Put Motherhood before Marriage and Anne Crittenden, The Price of Motherhood: Why the Most Important Job in the World is the Least Valued.

exceptions). Thus, women who bear children in the US are quite clearly assuming a range of risks, not least of which is a financial risk.

This assumption-of-the-risk line of thinking is inextricably tied with stigmatization. It helps to explain the historical contempt (declining but still present) for women who get pregnant and bear children outside of marriage. The assumption-of-the-risk line of thinking also helps explain the historical emphasis on making sure that single mothers work, as opposed to being subsidized by welfare.

I want to say a little more about why this risk assumption framework is helpful. First, in considering a potential mate (with whom one might bear children), a prospective wife might quite reasonably ask: what is the likelihood that my husband will provide the appropriate level of support for a child? (Typically, it is the husband who disappears leaving the wife to bear the cost.) If a wife's prediction of long-term marital/relationship stability turns out to be flawed, she might further ask: if he disappears, am I willing to raise this child on my own? And if I raise the child on my own, what are the implications for my financial capacity? Will I be able to earn? Will my broader community subsidize the costs? I am referring here not to state subsidies, but instead to informal subsidies, both cash (*e.g.*, scholarships) and in-kind (*e.g.,* childcare), of the sort that West Indian communities provide.

If a woman comes from a community where the costs of single parenthood are subsidized, she may be more likely to assume the risk of childbearing, even if she has doubts about the long-term stability of a relationship. And if there is a ledger on which one tallies the costs and benefits of single parenthood, the costs (e.g., stigmatization with the implications for earning potential), may appear to be *less* weighty if there are background communal subsidies.

I am speaking here *not* primarily about cash subsidies, although these are also important. Take for example, a mother who may have a large hospital bill in the aftermath of childbearing. Communal collective savings schemes, also known as "banks" or "pots," which are ubiquitous in West Indian immigrant communities, may help me meet this cost. Consider the following: Joan puts in money into the "bank/pot" in week one, Beverly in week two, Monica in week three and so forth; Joan then borrows against the communal "pot" to meet her hospital bill.

What may matter even more are the communal mechanisms that help mothers meet long-term child rearing challenges.[75] Consider West Indian collective childcare arrangements. Joan watches the children on a Monday, Beverly on a Tuesday, Monica on a Wednesday, and so forth. In West Indian communities, collective child rearing schemes often mirror collective savings schemes. Even better if the childcare comes with a homework component—Dahlia joins Joan on a Monday so while Joan feeds the children, Dahlia supervises homework. Monica joins Beverly on a Tuesday, etc. By the time the mothers collect their children from this childcare group, they have been fed, bathed, and homework is already done, i.e., they have been properly taken care of.

As is the case with communal "banking," the likelihood of "defection" from the communal childcare arrangements is low—each mother contributes her fair share, since her life is already so intricately intertwined in broader communal arrangements (West Indian church, West Indian taxicab, West Indian Rotary club, etc.) that defection has much broader social and community implications. Thus, each woman contributes to the communal childcare "pot," secure in the knowledge that every mother will contribute her fair share and her child will be reliably taken care of.[76]

This background context also has implications for stigmatization. Single parenthood is normalized and thus is de-stigmatized through these communal mechanisms. A para-elite (recall the reference to the nurse's aide), may sign up for an additional course at the local college to improve her earning potential by training as a nurse, secure in the knowledge that her child is properly cared for.[77] She may even have another child. In summary: even if single parenthood is stigmatized in the larger American society, it is reasonable to "assume the risk" of single parenthood if one's own West Indian community is supportive.

This potentially has consequences for which women become single parents. Women who might have been "on the fence," convinced of their capacity to become good mothers, but perhaps simultaneously concerned about the financial commitments and potential stigmatization involved in solo parenting, might be convinced by the assurance of community support. This might also have implications for the likelihood that well-trained

75. Notes from preliminary interviews in preparation for generating a snowball sample.
76. Notes from preliminary interviews in preparation for generating a snowball sample.
77. Notes from preliminary interviews in preparation for generating a snowball sample.

women who are prime candidates for transmitting human capital to children, but who have not found reliable long-term mates, might become mothers.

PART IV

Professor Banks bluntly interrogates why marriage rates are so low among African Americans. In his words, why are Black women "half as likely as White women to be married, and more than three times as likely as White women never to marry?" His primary contribution is to demonstrate that low marriage rates are not largely a feature of the underclass. Focusing on middle-class and professional Black women, he demonstrates that they too have very low marriage rates.

Banks finds that although African Americans value marriage as much as other groups, the barriers to marriage are steep. Banks conducted detailed interviews with African American women concerning their views on marriage, dating, and parenthood. Many of women Banks discusses in his book are indisputably leaders in their professional fields.[78] One particularly striking: an Ivy League graduate contemplates the implications of her single and childless status while being interviewed by Banks in the corner of a fancy coffee shop. [79]

These interviews are essential—they guide Banks as he negotiates the social science research.

The reasons for disproportionate singlehood among Black women are varied. Some reasons are familiar. For example, Black girls (and later women) outperform their male counterparts at all levels of education and particularly in high school and college. Thus, the Black middle class is disproportionately likely to be female, and poorer African Americans are disproportionately likely to be male. High incarceration rates among Black men augment the disparity. While Banks disputes the notion that Black women are too choosy when it comes to choosing mates, economic status matters as Black women evaluate potential mates. Indeed, this is a primary reason that many Black women never marry. Banks cites research indicating that "in evaluating potential mates, economic stability still matters more for African Americans than for other groups."

78. BANKS, *supra* note 6.
79. *Id.*

Perhaps Banks greatest contribution is that his interviews allow him to portray the psychological lives of Black women who are grappling with the low likelihood of marriage and evaluating whether to have children without husbands. Some of the concerns are eminently understandable. Children are expensive. Without a partner, single women may lack the financial cushion that partnered women can rely on. However, there are other concerns articulated by Banks' interviewees that are particularly striking. For example, Banks' interviews are sufficiently detailed to allow him to credibly document the impact of stereotyping on Black women's decision-making. One is struck, for example, by the power of stereotypes that seem deeply reminiscent of the "welfare queen," motif, which is often so crudely applied to single Black mothers. Some of his interviewees appear to be deeply concerned that their decisions to become single parents will augment pre-existing stereotypes about Black women. [80]

Presumably, these same stereotypes would apply to West Indian women. Do they perceive the stereotypes differently? Do they care less? The questions write themselves. The question becomes: why are West Indian women willing to become single parents despite the risk of negative perceptions?

Indeed, more broadly, the question is why these two communities of Black women, namely West Indian and African American professionals, hold such different views on the risks associated with single parenthood. I think that this difference is key to the discussion. And one difference may be in how the two communities respond to what might be called "perception externalities." What do I mean by perception externalities? Many professional African American women, forego child-rearing despite having the desire and financial means to become single mothers. Banks asserts that these women forego having children for several reasons, but a primary one is the fear of being perceived negatively as "baby mamas"—the problematic term "ghetto" behavior comes to mind. I do not mean in any way to minimize the serious consequences of being perceived stereotypically (*both* personally, but also professionally).

On the personal front, examples abound. Women who already have children pay a "price" when they seek to re-enter the marriage "market" (particularly if they bore their earlier children out of wedlock). On the

80. *Id.*

professional front, there is an emerging literature quantifying the professional (and financial implications) for women who do not "look the part" or "play the part" (in disparate jobs from waitressing, to acting, to the professional services). Being perceived as "ghetto" undoubtedly has personal and professional consequences.

Terms like "welfare queens," "baby mamas," and "ghetto" speak volumes. [81] Why the fixation on these terms? They signify that for some women the decision to have a child out of wedlock is inextricably intertwined with deeply racialized and gendered perception externalities.[82] One might think of it as a vicious circle. In a society which has historically stigmatized childbirth outside of wedlock, Black women are perceived as more inclined to have children outside of wedlock. Thus, having children outside of wedlock reinforces precisely the perception that Black women are more likely to engage in this stigmatized behavior—thus fueling perception externalities.

Banks' work explains that many professional Black American women appear deeply aware of these perception externalities. It bears emphasis: what matters is not the reasonableness of the perception, but rather that the perception exists. If Black women generally are worse off (if perceptions are reinforced that they engage in such behaviors), as the argument goes, it is better to *not* engage in such behaviors at all. This constitutes professional Black women "taking one for the team," namely the Black community writ large.

Indeed, Banks writes a lot about professional Black women "taking one for the team." Controversially, professional Black women who "take one or the team" do not marry White men—even when no satisfactory Black male marriageable men present themselves. They also do not have children outside of wedlock.

West Indians understand the concept of "taking one for the team." In the West Indies, professional Black women who "take one for the team" *try* to get married. I emphasize that one must at least make a credible effort to get married so that one is later able to adopt the exculpatory preface of "I

81. We even have a Jamaican equivalent of the term "ghetto"—"bhutto." "Bhutto" signifies behavior, not worthy of a good Afro-Saxon upbringing—that is, the ideal Black West Indian upbringing. Suffice it to say that like "ghetto," the term is clearly deeply freighted.

82. Thanks to my research assistant Jared Stipelman for helping me figure this out. His reflections on how Orthodox Jewish communities' shame persons who transgress communal norms helped me get to the bottom of this perception externalities point.

tried by hardest but…" The "but" matters. It means that if West Indian women are unable to find husbands, taking one for the team *is having children*.

CONCLUSION

I close this with an unusual, but telling anecdote. For years, I have been doing development work for multilateral development agencies in CARICOM (Caribbean Common Market) member states. A disproportionate number of the development practitioners in the Caribbean are North Americans and I have often found them able to ask the tough questions that we are sometimes unable to ask ourselves. Years ago, I was at a development forum sponsored by the World Bank on what seems to be a challenge among Black communities everywhere—underachievement amongst Black boys. The numbers are stark in Jamaica—perhaps even starker than they are in the United States. Indeed, it is also why well-educated Jamaican women have such difficulty finding husbands. Over 70% of our university graduates are women—the boys start falling out at kindergarten, by grade 6 the numbers are greatly diminished, and by the end of high school, we have lost nearly half of them.

At this World Bank development forum, the Jamaican Minister of Education gave a very detailed presentation on a series of policy proposals to re-engage boys in the classroom. Her presentation was disproportionately focused on mechanisms to help boys prepare to assume their places as co-heads of households. The presentation included lots of Sowell-like language on instilling a "culture" of responsibility in boys. Indeed, Justice Thomas had recently published his memoir and I remember thinking that her whole presentation had a heavy dose of Sowell and Thomas.

But then there was a very interesting intervention. The World Bank representative observed that although we had spent a lot of time talking about the responsibilities of children, we had not spoken about the responsibilities of parents—especially of Jamaican fathers. Why was "My Mother Who Fathered Me" arguably our most famous text? Could there really be any hope for the boys if the fathers were missing in action?

I end these pages by returning to the assumption of the risk framework. The Jamaican Minister of Education had a very interesting response—it was essentially that Jamaican women had adapted to life without, in her words,

"performing men." Jamaican women continued to have children, raise families, head households, and so forth, and most importantly, our women— particularly those with access to some level of higher education— continued to have their children.

This is what I heard the Minister of Education saying: when West Indian women become pregnant, they price the risk, and they proceed knowing that they are likely to become single parents. That, is, the man (who may or may not be a husband) may be present today, but he could likely be gone tomorrow. If he is not present, a mother must ask herself: will I be willing and able to raise a child on my own? The answer to that question for West Indian women, is typically yes. For Banks' subjects, the answer to that question was typically no.[83]

83. This, of course, is eminently understandable in a U.S. context which is famously inhospitable to child-rearing in comparison to other rich countries (archaic policies on maternity leave, child-care arrangements, etc.). West Indians (both in their countries of origin and once they migrate to the U.S.) have communal subsidies, which perhaps make women more willing to assume this risk. Perhaps there are differential risk appetites in the two groups? If West Indian communities "cushion" single parenthood so well, perhaps there are also differential risks?