

An Alternative View of Immigrant Exceptionalism, Particularly As It Relates to Blacks: A Response to Chua and Rubinfeld

Eleanor Marie Lawrence Brown*

The contrast between Amy Chua and Jed Rubinfeld's The Triple Package (Chua & Rubinfeld 2.0) and Chua's previous work, World on Fire (Chua 1.0), is striking. Chua & Rubinfeld 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 & Rubinfeld 2.0 about the role that law might play in contributing to wealth acquisition among the 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 & Rubinfeld 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

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* George Washington Institute of Public Policy Fellow and Associate Professor of Law, George Washington University Law School; J.D., Yale Law School (1999); M.Phil. Politics, Oxford (1997) (Rhodes Scholar). Former Schwartz Fellow, New America Foundation; former Chairman of the Jamaica Trade Board; former Reginald Lewis Fellow, Harvard Law School; former Law Clerk to the Honorable Patricia Wald (ret.), U.S. Court of Appeals for the District of Columbia; former Law Clerk to the Honorable Keith Ellison, U.S. District Court for the Southern District of Texas. I am grateful for the aid of my research assistants, Jenna Brofsky, Jared Stipelman, and Shanellah Verna.

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 & Rubinfeld 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 & Rubinfeld 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 Rubinfeld, they are likely constrained by the dearth of scholarship on the pre- and post-migration trajectories of Nigerian Americans, who are largely 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 slaves 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.

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INTRODUCTION

The Triple Package (Chua & Rubenfeld 2.0), by Yale Law professors Amy Chua and Jed Rubenfeld, is ostensibly *not* about law, but about culture.¹ Chua and Rubenfeld therefore take on a difficult task. For instance, one well-known culture theorist, Lawrence Harrison, notes that “culture” arguments have a “bad odor” about them, and those who write in this area typically tread carefully.² Chua and Rubenfeld eschew this advice and do not employ the sober tone that academics usually use when writing about the importance of culture for the success of ethnic and religious groups. Moreover, Chua & Rubenfeld 2.0 is not a typical academic book. Instead, it emphasizes accessibility to a broad audience. For these reasons, law reviews would traditionally not discuss a book like this. Nonetheless, Chua & Rubenfeld 2.0 is significant, if only because, paradoxically, a book that says so little about law is a timely reminder of Chua’s previous work, which undoubtedly states that law matters.

I contrast the *Triple Package*’s emphasis on “culture” with the emphasis on “law” embodied in Chua’s previous work, particularly *World on Fire* (Chua 1.0).³ *The Triple Package*’s thesis, succinctly stated, is that some ethnic and religious groups (Jews, Indians, Iranians, Lebanese, Nigerians, Cubans, some Asians, and Mormons) have climbed the socioeconomic ladder in the United States with extraordinary speed because of a “triple package” of cultural traits. First, they possess a superiority complex—that is, the notion of being “chosen.” Second, they socialize their children well in impulse control. And third, they inculcate in their children a sense of insecurity.

However, Chua 1.0 clearly acknowledges the role of law in accounting for the comparative wealth of different groups. In contrast, Chua & Rubenfeld 2.0 does not mention the role that law might play in contributing to the asset acquisition patterns of the subject groups. If we imagine a continuum with culture on the one hand⁴ and institutions and law on the other,⁵ Chua &

1. AMY CHUA & JED RUBENFELD, *THE TRIPLE PACKAGE: HOW THREE UNLIKELY TRAITS EXPLAIN THE RISE AND FALL OF CULTURAL GROUPS IN AMERICA* (2014).

2. Lawrence E. Harrison, *Introduction: Why Culture Matters*, in *CULTURE MATTERS: HOW VALUES SHAPE HUMAN PROGRESS* xvii, xxx (Lawrence E. Harrison & Samuel P. Huntington eds., 2000).

3. *See generally* AMY CHUA, *WORLD ON FIRE: HOW EXPORTING FREE MARKET DEMOCRACY BREEDS ETHNIC HATRED AND GLOBAL INSTABILITY* (Anchor Books 2004) (2003).

4. E.B. Tylor, the founder of the field of cultural anthropology famously defined culture as “that complex whole which includes knowledge, belief, art, morals, law, custom and any other capabilities and habits acquired by man as a member of society.” 1 EDWARD B. TYLOR, *PRIMITIVE CULTURE* 1 (1871). Fukuyama has noted that “culture” is an amorphous concept. FRANCIS FUKUYAMA, *TRUST: THE SOCIAL VIRTUES AND THE CREATION OF PROSPERITY* 34–35 (1995) (noting that he uses the term “culture” to denote moral habits as opposed to rational choices); *see also* Orlando Patterson, *Taking Culture Seriously: A Framework and an Afro-American Illustration*, in *CULTURE MATTERS*, *supra* note 2, at 202, 208 (describing “culture” as a “repertoire of socially transmitted and intra-generationally generated ideas about how to live”).

Rubinfeld 2.0 comes down strongly on the side of culture. Chua & Rubinfeld 2.0 is a “hard” as opposed to a “soft” culture book.

In order to contextualize where Chua & Rubinfeld 2.0 and Chua 1.0 fall in relation to the broader literature, Part I begins with a brief background on the “culture” versus “law and institutions” debate. While economists generally focus on comparative wealth acquisition between countries (as opposed to religious and ethnic groups as used in Chua & Rubinfeld 2.0 and Chua 1.0), a consensus has developed regarding the importance of historical differentials in access to an institutional framework for the creation of wealth. Economists in this school might be termed the “institutionalists.” “Law,” specifically the protection of property and contract rights, is a fundamental feature of this institutional framework. Chua 1.0 draws on the work of institutionalists by recognizing the importance of formal law—and its absence—in perpetuating the economic dominance of particular ethnic groups.

Building on another concept often used in the legal scholarship, “order without law,” Part II articulates the importance of “law-in-culture”—the liminal space between “law” and “culture.” Law-in-culture consists of informal binding rules not imposed by state authority. Rather, law-in-culture exerts a lot of power by subjecting those that ignore its rules to ostracism by their co-ethnics, which are often their primary social group. Indeed, law-in-culture is more important in many countries than formal law. I highlight the importance of law-in-culture to market relations between members of ethnic minority groups in perilous environments where they cannot count on the rule of law. Law-in-culture was very much evident in Chua 1.0 but is absent from Chua & Rubinfeld 2.0. Perhaps because Chua and Rubinfeld focus on particular ethnic groups *within* the United States—the epitome of a country that prioritizes the protection of property and contract rights—they overlook the potential role of law-in-culture in accounting for wealth acquisition. This is a significant shortfall that leaves Chua & Rubinfeld 2.0 incomplete. Many of the ethnic

5. “Law” is used by many in the new institutional economics literature, as a proxy for an institutional framework that supports market-based activity; this framework may be formal (state-supported) or informal. For ease of reference I will refer to proponents of law/institutions-based theories as institutionalists. See Claude Ménard & Mary M. Shirley, *The Contribution of Douglass North to New Institutional Economics*, in INSTITUTIONS, PROPERTY RIGHTS, AND ECONOMIC GROWTH: THE LEGACY OF DOUGLASS NORTH 11, 12 (Sebastian Galiani & Itai Sened eds., 2014) (discussing the contribution of Douglass North to the modern recognition that property and contract rights mean little without institutions to enforce them); *id.* at 27–28 (noting that norms and beliefs, as well as laws and formal written codes, may be included within the concept of “institution”); see also *id.* at 27 (pointing out that institutions may include not only formal, but also informal, constraints). For academics in the modern law and development literature, “institutions” typically means a *formal* legal system, including a set of laws, practitioners, courts, and judges. See Tom Ginsburg, *Does Law Matter for Economic Development? Evidence from East Asia*, 34 LAW & SOC’Y REV. 829, 832–34 (2000) (book review) (noting the influence of North’s focus on the power of institutions to constrain bad behavior on the law and development literature).

groups analyzed in Chua & Rubenfeld 2.0 had contracting advantages provided by the law-in-culture (if not by the state authority) in their countries of origin.

Part III examines whether the presence of a robust rule of law framework in the United States—particularly in relation to contracting—renders the contracting advantages of particular ethnic groups in more perilous environments (before their arrival in the United States) irrelevant.

In Part IV, I note that I am particularly concerned about the absence of a discussion of institutions—whether underwritten by “law” or “law-in-culture”—when Chua and Rubenfeld write about Black people.⁶ Chua and Rubenfeld are especially taken with the success of Nigerian Americans. Given their focus on Nigerian American economic success, a comparison to African American success (or lack thereof) is foreseeable. The question is inevitable: if Nigerian migrants do so well in the United States, what does this success say about the continuing scholarly emphasis on institutional (as opposed to cultural) impediments to native Black (as opposed to migrant Black) success?

Chua and Rubenfeld acknowledge 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 constrained by the dearth of scholarship on the pre- and post-migration trajectories of Nigerian Americans. Thus, to explore the potential relevance of institutional factors, I consider the argument in Chua & Rubenfeld 2.0 through the lens of the original Black “triple package” group, West Indians. Happily, much more data is available on the pre- and post-migration trajectories of West Indian Americans than Nigerian Americans; indeed, sociologists have noted the “triple package” traits of West Indians for nearly a century. I contend that even the turn-of-the-century Black West Indian migrants gained exposure to an institutional context for wealth acquisition through the early extension of property and contract rights to Blacks in the West Indies. This institutional context in the West Indies stands in stark contrast to the one found in the pre-civil rights, southern United States, where most African Americans have resided for most of U.S. history.

Thus, despite the historical sociological focus on West Indian American success, I question the notion that West Indian Americans are necessarily a

6. It is important to differentiate between the two groups of Blacks to which I regularly refer. One group, African Americans, are also referred to as “native” Blacks. This group includes those descended from Africans who were enslaved in the United States. The second group consists of voluntary black migrants with a different historical heritage. Their migration to the United States is self-initiated; West Indians began to arrive shortly after the abolition of slavery in the United States, while Nigerians began to arrive in significant numbers after the passage of comprehensive immigration reform in 1965. See Calvin B. Holder, *West Indies: Antigua, Bahamas, Barbados, Grenada, Guadeloupe, Guyana, Martinique, St. Kitts, Trinidad*, in *THE NEW AMERICANS: A GUIDE TO IMMIGRATION SINCE 1965*, at 674, 674–75 (Mary C. Waters & Reed Ueda eds., 2007) (describing the migration of West Indians to the United States and identifying the group as racially diverse but predominantly Black). See generally JOHN A. ARTHUR, *INVISIBLE SOJOURNERS: AFRICAN IMMIGRANT DIASPORA IN THE UNITED STATES* (2000).

useful comparative sample simply because they are Black, particularly given the historical differential in access to institutions for the creation of wealth between West Indian Americans and African Americans. The same might be true of Nigerian Americans, particularly if they are disproportionately likely to originate from the economically successful Igbo⁷ group where law-in-culture rules underlie extraordinary economic success.

I.

CULTURE VERSUS LAW AND INSTITUTIONS

Chua and Rubinfeld are simply the latest combatants in a long-running skirmish between the “culture” and “law and institutions” schools. However, when economists talk about comparative wealth acquisition, they generally analyze countries, not ethnicities as Chua and Rubinfeld have. The basic question is: why are some countries poor and others rich?⁸

Among the many theories offered, the institutionalist theory has attracted increasing consensus.⁹ Economists in this school focus on historical disparities in access to an institutional framework for the creation of wealth.¹⁰ Economists Daron Acemoğlu and James Robinson’s work epitomizes this theory.¹¹ They emphasize the primacy of countries’ colonially bequeathed property and

7. See generally NICHOLAS AWDE & ONYEKACHI WAMBU, IGBO-ENGLISH, ENGLISH-IGBO DICTIONARY AND PHRASEBOOK (1999) (supporting the use of the term “Igbo” instead of “Ibo”); Email from Onyekachi Wambu, Director, The African Found. for Dev. (AFFORD), to Eleanor M. Brown, Associate Professor of George Washington University Law School (Feb. 25, 2015) (on file with author) (explaining that “Ibo was used by Europeans because they could not ‘hear’ or pronounce the ‘gb’ consonant, which is part of the Igbo orthography/alphabet. Since independence and the rise of Igbo studies (and nationalism), there has been a reclamation of ‘correct’ pronunciation (although, even this is further complicated by the number of Igbo dialects and contested orthographies). Igbo is now considered standard in Igboland for both the people and language.”).

8. A good summary of the basic literature in this area is included in Daron Acemoğlu, *Root Causes: A Historical Approach to Assessing the Role of Institutions in Economic Development*, FIN. & DEV., June 2003, at 27; Dani Rodrik & Arvind Subramanian, *The Primacy of Institutions (and What This Does and Does Not Mean)*, FIN. & DEV., June 2003, at 31; Jeffrey D. Sachs, *Institutions Matter, But Not for Everything: The Role of Geography and Resource Endowments in Development Shouldn’t Be Underestimated*, FIN. & DEV., June 2003, at 38, 38–39.

9. For a discussion of how theorists came to “converge” around institutionalist theories, see Rodrik & Subramanian, *supra* note 8; see also Daron Acemoğlu & James A. Robinson, *Political Losers as a Barrier to Economic Development*, 90 AM. ECON. REV. 126 (2000); Daron Acemoğlu, Simon Johnson & James A. Robinson, *Reversal of Fortune: Geography and Institutions in the Making of the Modern World Income Distribution*, 117 Q.J. ECON. 1231 (2002); Daron Acemoğlu, Simon Johnson & James A. Robinson, *The Colonial Origins of Comparative Development: An Empirical Investigation*, 91 AM. ECON. REV. 1369 (2001); Daron Acemoğlu, *Why Not a Political Coase Theorem? Social Conflict, Commitment, and Politics*, 31 J. COMP. ECON. 620 (2003).

10. The landmark scholarship motivating this school of study has been done by the Nobel laureate Douglass North, whose work has spawned the “new institutions” school. See generally DOUGLASS C. NORTH, INSTITUTIONS, INSTITUTIONAL CHANGE AND ECONOMIC PERFORMANCE (1990).

11. The best summary of their two decades of work in this area is the book-length treatment, DARON ACEMOĞLU & JAMES A. ROBINSON, WHY NATIONS FAIL: THE ORIGINS OF POWER, PROSPERITY, AND POVERTY (2012).

contract rights as the driver of their subsequent economic development.¹² As the theory explains, rich countries had legal systems that enforced the property and contract rights of the median citizen and constrained the power of elites at an early stage in their development trajectory; poor countries lacked such legal structures or any means to enforce them if they did.¹³

The institutionalist theory has moved from the realm of academic theory to a consensus among governmental and policy elites, as evidenced by the United Nations commission co-chaired by Madeleine Albright¹⁴ that recognized property and contract rights as critical antipoverty tools.¹⁵ This theory suggests that when countries respect property rights, entrepreneurs accumulate property because they know that their property cannot be taken from them. Where countries enforce contract rights, businesspersons enter into contracts to trade, knowing that if a contracting party defaults they can force compliance in a court of law. These entrepreneurs and businesspersons often become wealthy. They employ people and pay taxes, thereby allowing a modern state to develop.

Consequently, institutional theory posits that entire countries stand to benefit from the presence of strong institutions to enforce property and contract rights. The earlier a country institutionalizes these rights, the richer a country is likely to become. Under this view, for instance, an essential difference between Australia and Bolivia is that Australia institutionalized property and contract rights early on for the median citizen, while Bolivia did not.

Although a consensus has developed that the institutionalist theory may explain why some countries are poor and others are rich, no consensus exists on a far more provocative question: *why are some ethnic and racial groups poor and others rich?* To speak about a culture of wealth acquisition compared between different ethnic and racial groups has the aforementioned bad smell about it, implying that some cultures “understand” wealth acquisition and

12. Acemoğlu, *supra* note 8, at 27–29. For a discussion that focuses also on contract rights, see Paul G. Mahoney, *The Common Law and Economic Growth: Hayek Might Be Right*, 30 J. LEGAL STUD. 503 (2001) (discussing specifically how economic growth in common law countries is driven in part by the fact that the common law has historically provided better contract protections than other systems such as civil law). For a more comprehensive version of the same paper, see Paul G. Mahoney, *The Common Law and Economic Growth: Hayek Might Be Right* (Univ. of Va. Sch. of Law, Legal Studies Working Paper No. 00-8, 2000), available at <http://ssrn.com/sol3/abstract=206809>.

13. Acemoğlu, *supra* note 8, at 27–29.

14. *Justice and Development: Challenges to the Legal Empowerment of the Poor*, 49 U.N. CHRON. (2012), available at <http://unchronicle.un.org/article/justice-and-development-challenges-legal-empowerment-poor/>.

15. See U.N. Secretary-General, *Legal Empowerment of the Poor and Eradication of Poverty: Rep. of the Secretary-General*, ¶¶ 25, 73, U.N. Doc A/64/133 (July 2009); see also *How We Work*, U.N. DEV. PROGRAMME, http://www.undp.org/content/undp/en/home/ourwork/democraticgovernance/focus_areas/focus_justice_law/how_we_work.html (last visited Apr. 20, 2015) (describing the U.N. Development Programme’s initiatives within the “Access to Justice and the Rule of Law” focus area, including its Legal Empowerment Initiative).

others do not.¹⁶ Thus, while scholars have written about comparative wealth acquisition between countries, most scholars have avoided writing about comparative wealth acquisition between racial, ethnic, and religious groups.¹⁷

Chua, however, tackles the issue head-on. Chua 1.0 even coined a term for groups that successfully accumulate wealth: “market-dominant minorities.”¹⁸ These groups are different, yet they have all forged business success under near-impossible conditions in countries with difficult and unpredictable political and business climates. The Chinese in Malaysia are one example.¹⁹ Despite Chinese constituting a mere 33 percent of Malaysia’s population, Chinese holdings constitute over 70 percent of Malaysia’s private economy.²⁰ It bears emphasis that the level of market success of the Chinese population in Malaysia discussed in Chua 1.0 is inconceivable to most Americans—in relative terms, this is Warren Buffett plus Bill Gates and then some. Chua asks us to imagine what it would mean to regular Americans if all of the software billionaires and owners of General Electric, Exxon, and myriad other Fortune 500 companies were Chinese American.²¹ Moreover, the Chinese have replicated this success in many other countries, including the Philippines and Indonesia.

Although Chua has explored comparative wealth acquisition between groups before, Chua 1.0 notably focuses on something different: to explore the implications of the market dominance of ethnic minorities for Western-championed political and capital market liberalization in developing countries, as opposed to the ways these groups become market-dominant in the first place. Although her book is fundamentally about the real resentment that majority populations feel when they recognize that they cannot begin to replicate the market dominance of certain ethnic and religious minorities, Chua recognizes that she cannot account for this resentment without also accounting at least in part for how these groups came to their wealth in the first place. Thus, turning to Kenya, Chua asks why so many Kenyans are resentful of ethnic Indians and Kikuyus (a famously successful East African ethnic

16. See David Landes, *Culture Makes Almost All the Difference*, in *CULTURE MATTERS*, *supra* note 2, at 2–4.

17. *Id.* at 2. Harrison also makes this point. Harrison, *supra* note 2, at xvii.

18. Chua defines “market-dominant minorities” as “ethnic minorities who, for widely varying reasons, tend under market conditions to dominate economically, often to a startling extent, the ‘indigenous’ majorities around them.” CHUA, *supra* note 3, at 6. Scholars of ethnicity have criticized Chua’s use of ethnicity. See, e.g., Jill Goldenziel, *Fire Prevention: A Book Review of Amy Chua’s World on Fire*, 23 *UCLA PAC. BASIN L.J.* 78 (2005); Edmund Terence Gomez, *Introduction: Modernization, Democracy, Equity and Identity to THE STATE, DEVELOPMENT AND IDENTITY IN MULTI-ETHNIC SOCIETIES: ETHNICITY, EQUITY AND THE NATION* 1, 1–7 (Nicholas Tarling & Edmund Terence Gomez eds., 2008).

19. Other examples include Indians in Uganda, Jewish oligarchs in Russia, and the Igbo in Nigeria.

20. CHUA, *supra* note 3, at 35–36.

21. *Id.* at 18.

group).²² And for the Philippines, she asks why so many Filipinos are resentful of ethnic Chinese.²³ How did these groups come to their wealth in the first place?

A number of factors account for the extraordinary wealth acquisition of these market-dominant minorities. To Chua's credit, she acknowledges the potential importance of nebulous factors such as "culture."²⁴ But a primary rationale for their extraordinary success is law—or, more particularly, its absence. Prominent ethnic minority businessmen often strike deals with politicians that may appear to be "legal" privatizations but are in fact "land grabs." In other words, state assets are typically transferred to private businessmen for a fraction of their real market value with no regulatory oversight.

As an example of the resentment the majority populations feel toward the wealth of certain ethnic and religious groups, consider the famously corrupt former Kenyan president Daniel Moi. Ordinary Kenyans resented not only Moi but also certain ethnic Indian and Kikuyu minorities whom they perceived to be colluding with Moi.²⁵ Such anger, while reasonable when directed toward certain corrupt businesspersons, becomes problematic when it is generalized to larger ethnic groups. We need little reminder of the often-horrendous results of resentments directed toward particular ethnic groups. As Chua points out, one need only think of slogans like "Hutu power" in Rwanda, borne partly of the resentment of Tutsi economic success.²⁶

22. *Id.* at 105–07.

23. *Id.* at 152–55.

24. *Id.* at 165–66.

25. *Id.* at 157–58.

26. *Id.* at 113, 127. Sometimes, despite the extraordinary concentration of wealth among "market-dominant minorities," countries are able to proceed with some sense of normalcy. *See id.* at 180. For example, in my native Jamaica, twenty-one families (who came to be known as "the 21," following Stanley Reid's article) have historically dominated business. Stanley Reid, *An Introductory Approach to the Concentration of Power in the Jamaican Corporate Economy & Notes on its Origin*, in *ESSAYS ON POWER AND CHANGE IN JAMAICA* 15 (Carl Stone & Aggrey Brown eds., 1977). All of these families are of Chinese, Lebanese, Indian, English, or Jewish descent. Notably, Jamaica is over 90 percent Black. *The World Factbook*, CIA, (last updated Apr. 10, 2015) <https://www.cia.gov/library/publications/the-world-factbook/geos/jm.html>. As a Black child, I knew that ever hoping to achieve this level of business success in my homeland was unrealistic. Yet, Jamaica still works without major social dislocation. Somehow, as Reid noted, the resentment of these twenty-one families (who surely constitute "market-dominant minorities") has remained in check. REID, *supra* note 26. But Chua is nonetheless right: Jamaica is the exception. When corruption (and law-in-culture) perpetuates the dominance of long-time market-dominant minorities in many more countries, ethnic hatred becomes a real possibility. CHUA, *supra* note 3, at 1–23. Moreover, Western-championed democracy, which empowers a long-suffering majority (now with suffrage) to try to even the playing field, often legitimates this ethnic hatred. To return to the Kenyan example, ordinary Kenyans will simply realize how far ahead of them the Indians and the Kikuyu are. Resentment will inevitably ensue. Indeed, Chua tells a heartbreaking story from her own family in Chua 1.0: her Chinese aunt is murdered by her Filipino chauffeur, epitomizing precisely this kind of resentment. CHUA, *supra* note 3, at 1–6. Often, not only individual tragedies, but also systemic (and even

If contract enforcement is central to asset acquisition, the minority Indian and Kikuyu businesspersons were able to enter contracts and acquire assets at an advantage because of their business relations with the political elite. The Kenyan narrative repeats itself globally in Mexico, Russia, Burma, and elsewhere. Western-encouraged privatizations become an excuse for bad behavior in the absence of institutions, which act as constraints on bad behavior (a classic instance of law). Thus, Chua's narrative of wealth acquisition is largely about law.

Law (or its absence) matters even more in more oppressive contexts. Kenya at least has some pretense of consistent enforcement of the rule of law. Consider, however, Putin's post-communist Russia and Myanmar (Burma), neither of which even pretends to consistently respect property or contract rights.²⁷ One might think of Russia and Myanmar as Kenya on steroids. The land grabs are more extreme and the stakes are higher. In Russia, elites are disproportionately Jewish—as Chua notes with some ambivalence; in Myanmar, they are overwhelmingly Chinese. After the governmental seizure of Russia's largest privately owned oil company, every Russian oligarch knows that getting on the wrong side of Putin (for noncommercial reasons, even if they are disguised as commercial reasons) can land one in jail for a very long time.²⁸ In these conditions, it is best to have a second home (or maybe even your primary home) in London. Similarly, getting on the wrong side of the Burmese military junta can get one killed, even if one is very rich. Yet Russian Jews and Chinese Burmese have managed to negotiate even these perilous conditions, achieving spectacular degrees of business dominance.²⁹ It becomes even more important for market-dominant minorities to properly incentivize government elites to enforce contracts, and to contract within their small circle of fellow elites.

genocidal) tragedies occur—this potential for escalation is precisely the point of the Rwandan example.

27. CHUA, *supra* note 3, at 251 (referencing the absence of the rule of law in Burma). For a report on the absence of the rule of law in Myanmar, see INT'L BAR ASS'N HUMAN RIGHTS INST., *THE RULE OF LAW IN MYANMAR: CHALLENGES AND PROSPECTS* (2012). The most recent comprehensive academic treatment of the absence of the rule of law in Russia is KAREN DAWISHA, *PUTIN'S KLEPTOCRACY: WHO OWNS RUSSIA?* (2014).

28. CHUA, *supra* note 3, at 138–42. Mikhail Khodorkovsky, the former principal owner of Yukos, was famously jailed on fraud charges that were considered at least partly pretextual after he helped start a political party to challenge Putin. See Alison Smale, *Freed Russian Oligarch Leaves Germany for Switzerland with Family*, N.Y. TIMES, Jan. 5, 2014, <http://www.nytimes.com/2014/01/06/world/europe/freed-russian-oligarch-leaves-germany-for-switzerland-with-family.html>.

29. CHUA, *supra* note 3, at 24–31, 47–48, 238 (describing the business success of the Chinese Burmese); *id.* at 77–89, 91–94, 138–42 (describing the business success of Russian Jews).

II.

LAW-IN-CULTURE

Property scholars and those who write about the role of norms in supporting law might call conditions like those in Russia and Myanmar “order without law.”³⁰ But the term “order without law” may be misleading because it implies the absence of law. But is there really no law present in the role of norms? I would contend that something more nuanced is at play—a theory not entirely about law but nevertheless not entirely independent of it. This interplay of cultural norms with law-like enforcement is what I have termed “law-in-culture.” Law-in-culture is instinctive to culture, but is also enforceable—members of tightly knit ethnic minority groups can enforce these cultural norms against each other. For example, in the case of a breached contract, an Indian businessman in Kenya might prefer to resolve the problem through a council of Indian businessmen rather than through the Kenyan courts. Law-in-culture looks very much like legal fabrics. Moreover, in many countries with ineffective legal systems, law-in-culture matters more than “hard” law. Indeed, law-in-culture may intersect with and inform the kind of “hard” law about which we as law professors write more typically.

To illustrate the importance of law-in-culture, consider a hypothetical relationship between an ethnic minority businessman and President Moi. The repeated game-like nature of their interactions, in which Moi prizes the long-term access that he has to ethnic-minority capital (after all, it is not possible to purchase state assets even at knockdown prices without some cash), increases

30. See ROBERT C. ELLICKSON, *ORDER WITHOUT LAW: HOW NEIGHBORS SETTLE DISPUTES* 284 (1991) (focusing in particular on the role of norms). Outside of the economics literature, the norms literature has an interdisciplinary heritage, with contributions from the fields of anthropology and sociology. For a summary of the anthropology and sociology literature in this area, see Richard L. Abel, *What We Talk About When We Talk About Law*, in *THE LAW & SOCIETY READER 1* (Richard L. Abel ed., 1995); Sally Falk Moore, *General Introduction to LAW AND ANTHROPOLOGY: A READER 1*, 1–3 (Sally Falk Moore ed., 2005). For a summary of some of the early literature by Ellickson in particular addressing norms in economic terms, see generally ELLICKSON, *supra* (discussing the importance of social norms in behavioral control); Robert C. Ellickson, *A Critique of Economic and Sociological Theories of Social Control*, 16 J. LEGAL STUD. 67, 68 (1987) (“[L]aw-and-economics has exaggerated the role that the legal system plays in the overall system of social control.”); Robert C. Ellickson, *Of Coase and Cattle: Dispute Resolution Among Neighbors in Shasta County*, 38 STAN. L. REV. 623 (1986) (noting economic incentives for the development of norms among ranchers in Shasta County, California).

For some of the other literature in this area, see, e.g., ERIC A. POSNER, *LAW AND SOCIAL NORMS* (2000) (exploring how law fits in, when order is largely norms-based); Robert Cooter, *Expressive Law and Economics*, 27 J. LEGAL STUD. 585 (1998) (acknowledging the importance of norms); Lawrence Lessig, *Social Meaning and Social Norms*, 144 U. PA. L. REV. 2181, 2186–89 (1996) (noting how norms change); Lawrence Lessig, *The New Chicago School*, 27 J. LEGAL STUD. 661 (1998) (discussing alternative accounts of behavior—both economics-based and norms-based); Richard H. McAdams, *The Origin, Development, and Regulation of Norms*, 96 MICH. L. REV. 338, 339–50 (1997) (discussing the interaction of formal and informal rules); Cass R. Sunstein, *On the Expressive Function of Law*, 144 U. PA. L. REV. 2021, 2027–28 (1996) (describing norms and their expressive meaning); Cass R. Sunstein, *Social Norms and Social Roles*, 96 COLUM. L. REV. 903 (1996) (discussing how norms control behavior).

the likelihood that Moi will meet his commitments to ethnic minority businessmen to enforce their contracts.³¹ Yet, what happens when a businessman cannot depend on President Moi to enforce his contracts? Perhaps Moi is exiting office and his potential successor does not appear to be similarly reliable. How does the businessman, as a wealthy member of the ethnic minority, protect himself? He needs a Plan B, preferably involving contracting parties who have similar long-term incentives to be reliable.

Economic historian Avner Greif provides a narrative about the Jewish Maghribi traders, which illustrates how ethnic minorities may help ensure that their contracting parties are reliable.³² The Maghribis were Jewish traders from the “Muslim West” who traded in a broad area ranging from northern Africa west of Egypt to Muslim Spain and Italy. By the eleventh century, they were trading throughout the Muslim Mediterranean, from Iberia to Constantinople. In this period, long distances and poor transportation made such trading difficult. Yet business between traders could still be mutually beneficial. A Maghribi trader in Cairo could greatly decrease his trading costs by arranging for another Maghribi trader in Palermo to act as his agent in selling his goods in Sicily. However, the opportunities for dishonesty were great because long distances meant that principal traders were often unable to verify the contentions of their business partners. For example, the agent in Palermo might tell the principal in Cairo that the goods sold for a lower price than the agent actually sold them for. The agent would then make an easy buck by pocketing the difference. In this sort of situation, in the absence of a legal framework to adjudicate disputes, it would be virtually impossible to enter into long-term contracts for the sale of goods. What would one do if one’s business partner reneged on a deal?

The Maghribis had a remarkable mechanism for deterring this kind of dishonest behavior and enforcing contracts. Fellow Maghribis in different tribes would hold the collective community responsible for the dishonest behavior of one of their members. Thus, if the agent in Palermo cheated the principal in Cairo, no Maghribi trader in Cairo would trade with any Maghribi trader in Palermo until the agent in Palermo paid back the money that he had stolen from the principal in Cairo. That is, all of the Maghribi traders in Palermo would suffer through the loss of valuable business opportunities since their Cairo colleagues would not trade with them. Because of this principle of

31. The relationship between President Moi and an ethnic minority businessman calls to mind a classic iterated prisoners’ dilemma, in which the game is played repeatedly. See JOEL WATSON, *STRATEGY: AN INTRODUCTION TO GAME THEORY* 1–8 (3d ed. 2013) (providing a good summary for the nontechnical reader).

32. See Avner Greif, *Contract Enforceability and Economic Institutions in Early Trade: The Maghribi Traders’ Coalition*, 83 *AM. ECON. REV.* 525, 527–31 (1993); Avner Greif, *Reputation and Coalitions in Medieval Trade: Evidence on the Maghribi Traders*, 49 *J. ECON. HIST.* 857, 860–82 (1989); Avner Greif, *Contract Enforcement and Institutions Among the Maghribi Traders: Refuting Edwards and Ogilvie* (CESifo Group, Working Paper No. 2350, 2008).

collective responsibility, traders in Palermo had good reason to pressure the cheat to make good on his commitments.

Ultimately, the Maghribis utilized their close social ties to solve the problem of contract enforcement. The traders had a common ethno-religious origin and their natural ethno-religious boundaries reduced the transaction costs associated with doing business in difficult conditions, as they could easily penalize cheats. The Maghribis are the predecessors of Kenyan Indians who also have long-term incentives to be reliable which is particularly important in precarious environments such as Moi's Kenya, because they repeatedly contract with their co-ethnics. Here we see law-in-culture in action.

III.

LAW-IN-CULTURE *WITHIN* THE UNITED STATES

In perilous environments where property protections are poor and contract enforcement is minimal, ethnic minorities tend to contract only with co-ethnics. Consequently, they reduce their exposure to "bad" behavior such as contract defaults. Ethnic Indians and Kikuyus are thus the modern-day versions of the Maghribis. If one cannot depend, for example, on President Moi, the next best option is to depend on one's co-ethnics. How do we define the protections co-ethnics offer? Is this "law" or is this "culture?" In fact, the protection occupies the liminal space between—it is law-in-culture.

Chua understands law-in-culture; indeed, she recognizes the profound naivety of neo-liberal Westerners who assume that formal law will level the playing field in the capital markets because she appreciates how powerful law-in-culture is. As Chua sees it, Westerners are Pollyannas if they expect fledgling democracies and capital markets—however well they may be undergirded by newly written law—to challenge the power of law-in-culture that perpetuates the economic dominance of particular groups.³³ These are complicated matters that Chua successfully tackles. For good reason, Chua 1.0 will be assigned by law and development scholars for a long time to come.

Sadly, very little of the subtle understanding of law-in-culture in Chua 1.0 is on display in Chua & Rubinfeld 2.0. Given the importance of the rule of law to the economic dominance of certain groups outside the United States, one might expect a more fulsome consideration of whether law-based factors contribute to the success of certain ethnic and religious groups within the United States. Moreover, precedent exists for this type of analysis in the legal scholarship within the United States.

Lisa Bernstein's study of the dominance of Orthodox Jews in the diamond industry³⁴ and Eric Posner³⁵ and Lan Cao's research³⁶ on informal savings and

33. See generally CHUA, *supra* note 3.

34. Lisa Bernstein, *Opting Out of the Legal System: Extralegal Contractual Relations in the Diamond Industry*, 21 J. LEGAL STUD. 115, 138–41 (1992) (a study of how private law governs

lending clubs among Cantonese American and Japanese American migrants are written in this vein.³⁷ Posner, in particular, emphasizes the efficiencies associated with communal rulemaking and enforcement. When migrants come to the United States and behave badly (i.e., when migrants violate contractual arrangements that they are unlikely to have transgressed in their countries of origin and opt to take their chances in the courts of their new and litigious American homeland), Posner is concerned when U.S. courts intervene.³⁸ Although he does not explicitly use the term law-in-culture, one reading of Posner is that he recognizes its historical importance developed over generations where the intervention of U.S. courts will undermine the continued efficacy of law-in-culture rules.³⁹

Another example of how law impacts the success of ethnic and religious groups is Bernstein's New York-based Orthodox Jewish diamond traders.⁴⁰ One is hard pressed to find a better example of law-in-culture at play than the rules governing the diamond trade between Orthodox Jews. While this law-in-culture is not state-initiated or state-enforced, no ambiguity about its binding nature exists. Moreover, the sanctions for a breach of his contractual obligations by a diamond trader may go far beyond the realm of business and may include stigmatization by his peers. Stigmatization has serious implications for the entire family of the sanctioned, particularly if he marries, worships, or schools his children within the confines of a tight community.⁴¹

Despite the recognition of law-in-culture in Chua 1.0, Chua & Rubinfeld 2.0 omits any discussion of the topic even though Chua clearly recognizes the phenomenon. In fairness, Chua & Rubinfeld 2.0 is playing in a different field from Chua 1.0. The field is no longer crony capitalism in Yeltsin's Russia or Moi's Kenya but instead in the United States—considered by many the paragon of the rule of law. Perhaps because of this difference, Chua and

commerce among homogenous ethno-religious groups, particularly Orthodox Jewish diamond merchants).

35. Eric A. Posner, *The Regulation of Groups: The Influence of Legal and Nonlegal Sanctions on Collective Action*, 63 U. CHI. L. REV. 133, 165–75 (1996) (discussing informal contractual relationships in migrant communities, particularly in informal credit associations).

36. Lan Cao, *Looking at Communities and Markets*, 74 NOTRE DAME L. REV. 841, 874–92 (1999) (focusing on savings and credit associations in particular and commerce more generally among diverse immigrant communities).

37. See generally David Charny, *Nonlegal Sanctions in Commercial Relationships*, 104 HARV. L. REV. 373 (1990) (noting how ethnically homogenous communities can levy nonlegal sanctions with great efficiency); Janet T. Landa, *A Theory of the Ethnically Homogenous Middleman Group: An Institutional Alternative to Contract Law*, 10 J. LEGAL STUD. 349 (1981) (describing how tightly knit social relationships can substitute for law).

38. Posner, *supra* note 35, at 174.

39. See *id.* at 175.

40. See Bernstein, *supra* note 34.

41. Although I am writing here about Orthodox Jewish diamond traders in “first-world” settings like New York, notably many developing countries lack institutions that could even begin to simulate the seriousness of such law-in-culture sanctions.

Rubinfeld very quickly skip over the potential role of institutions in accounting for comparative wealth acquisition, which is a serious oversight. Many of the groups mentioned in Chua & Rubinfeld 2.0 had advantages in their countries of origin before they set foot in the United States. Are these advantages irrelevant when they arrive in the United States? Does the presence of a robust rule of law framework in the United States—particularly in relation to contracting—make the lessons from contracting that particular ethnic groups have gained in more perilous environments immaterial? On the contrary: for example, Bernstein’s Orthodox Jewish diamond traders, who are part of a cross-border community of entrepreneurs in the diamond business, remind us that communal rules in the United States replicate historical market practices that began outside the United States and across borders.⁴²

IV.

CHUA & RUBENFELD 2.0 ON BLACK PEOPLE

I am particularly concerned about the absence of a discussion of institutions—whether formal or informal—when Chua and Rubinfeld write about Black people. Chua and Rubinfeld make much of the prevalence of triple package traits among Nigerian Americans.⁴³ There is little doubt that Nigerian Americans are wonderfully accomplished. Yet, any discussion of the success of voluntary Black migrants (such as Nigerians) in the United States occurs implicitly in contrast to the descendants of involuntary Black migrants (henceforth African Americans).⁴⁴ The inevitable questions are clear: If this group of Black migrants does so well in the United States, why does the legal and post-civil rights scholarship more generally continue to focus on institutional (as opposed to cultural) impediments to native Black (i.e., African American) success? Let me ask bluntly what many believe is implicit in this discussion: What is wrong with African Americans?

I can hardly fault Chua and Rubinfeld for the inevitable comparison between voluntary Black migrants and African Americans—in the United

42. See Bernstein, *supra* note 34. Alejandro Portes has done some interesting work on the transnational nature of enterprise in some market-dominant minority communities. See Alejandro Portes, *Introduction: The Debates and Significance of Immigrant Transnationalism*, 1 GLOBAL NETWORKS 181, 183 (2001) (discussing, for example, transnational enterprise among ethnic Chinese in far-flung communities across the Pacific Rim). For a review of the sociological literature on ethnic enterprise more generally, see Howard E. Aldrich & Roger Waldinger, *Ethnicity and Entrepreneurship*, 16 ANN. REV. SOC. 111, 122–29 (1990).

43. Chua and Rubinfeld cite the extraordinary achievement of Nigerian Americans at elite institutions as evidence of this triple package success. Chua and Rubinfeld note, “[i]n 2010, there were some 260,000 Nigerians in the U.S., a mere 0.7 percent of the black American population. Yet in 2013, 20 to 25 percent of the 120 black students at Harvard Business School were Nigerian. As early as 1999, Nigerians were overrepresented among black students at elite American colleges and universities by a factor of about ten.” CHUA & RUBENFELD, *supra* note 1, at 42.

44. In contrast to involuntary migrants (enslaved African Americans in the United States), the migration of voluntary migrants to the United States is self-initiated. West Indians and Nigerians are cases in point. See *supra* note 6.

States, any discourse on why particular Black people are successful is sure to be deeply freighted. I fear, however, that by pivoting so quickly to culture, Chua and Rubinfeld have unnecessarily added fuel to the fire, while omitting potentially important and distinctly institutional contributors to Nigerian American success. Notably, Chua and Rubinfeld take pains to underline legal and institutional impediments to African American success. Thus, discussing any legal and institutional advantages that Nigerians may have had in climbing the socioeconomic ladder in the United States is similarly important.

The contracting advantages that certain ethnic groups have in Nigeria certainly figured in Chua 1.0—Chua focused on the Igbo and to a lesser extent the Yoruba.⁴⁵ But these advantages may have implications, not only for what happens once Nigerians arrive in the United States but also for *how* they arrive in the United States in the first place. The question necessarily arises: do the advantages that successful market-dominant minorities enjoy in Nigeria make them particularly well-placed to negotiate U.S. immigration laws that are so complex that they select (even if inadvertently) for elites?⁴⁶ My argument is that institutional context matters, *even at* the point of entry to the United States.

Not to mention the importance of institutional context *within* the United States. The fundamental problem with Chua and Rubinfeld's analysis is their implicit assumption that groups face roughly the same institutional environments within a single country (including, presumably, African Americans and Nigerian Americans).

But as seen with the North-South divide in the United States, this is not necessarily the case. If Chua & Rubinfeld 2.0 compares African Americans to Nigerian migrants (and I have argued that, at least implicitly, this is clearly so), African Americans historically faced an entirely different institutional context than their Black migrant peers *up to at least* the civil rights movement. Indeed, while most African Americans were still in the Jim Crow South, most (pre-civil rights) voluntary Black migrants (including a miniscule number of Nigerians) arrived in the North from overseas. Indeed, African Americans arguably faced

45. Chua, *supra* note 3, at 108–10.

46. I have made a similar argument in relation to early West Indian migrants; that is, that West Indian elites were uniquely well placed to negotiate the challenges of U.S. immigration law, particularly the nativist immigration policies that characterized the early twentieth century. See Eleanor Marie Lawrence Brown, *How the U.S. Selected for a Black British Bourgeoisie*, 27 GEO. IMMIGR. L.J. 311, 316–17 (2013). The theory of immigrant selectivity is summarized in Barry R. Chiswick, *Are Immigrants Favorably Self-Selected? An Economic Analysis*, in MIGRATION THEORY: TALKING ACROSS DISCIPLINES 63, 65–73 (Caroline B. Brettell & James F. Hollifield eds., 2d ed. 2008) (addressing economic models demonstrating immigrant self-selection). Mosi Adesina Ifatunji summarizes the concept of immigrant selectivity among Blacks, with a focus on Caribbean migrants. Mosi Ifatunji, *Socioeconomic Disparities Between African Americans and Afro Caribbeans: Re-Examining the Role of Immigrant Selectivity* 10–14 (2013) (unpublished manuscript) (on file with author) (summarizing recent data on socioeconomic disparities between African Americans and Afro Caribbean immigrants). It would be unsurprising if similar theories of immigrant selectivity were applicable to Nigerian migrants.

a different institutional context than voluntary Black migrants *even after* the civil rights movement, when racial immigration quotas were abolished and larger numbers of Nigerian migrants began to arrive.

To underline the point, I will return to the previously discussed work of Acemoğlu and Robinson. They emphasize the primacy of countries' colonially bequeathed property and contract rights as the driver of subsequent economic development.⁴⁷ European colonizers pursued widely different colonization strategies with varied institutional frameworks in their colonial outposts (mostly in the Caribbean and Latin America, Africa, and Asia). In some countries, colonizers set up "extractive" institutions.⁴⁸ Extractive institutions did not protect the property rights of the median person; moreover, they did not constrain elite power.⁴⁹ At the other end of the continuum, Europeans created "settler" societies. "Settler" institutions protected property and contract rights; the median citizen could expect that elite power would be held in check.⁵⁰

At first glance, there has been little controversy as to where the United States should be grouped, as one would expect the United States to be classified as firmly "settler" on the continuum between "settler" and "extractive" societies. Indeed, this idea of the "settler" society 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.⁵¹

Yet Acemoğlu and Robinson challenge this as an appropriate analysis of the entire United States. Rather, they argue that up until the 1960s, the United States consisted of two separate societies. They do not dispute the classification

47. Acemoğlu, *supra* note 8, at 27.

48. *Id.* at 28.

49. *Id.*

50. *Id.*

51. See Acemoğlu, *Why Not a Political Coase Theorem?*, *supra* note 9, at 632 n.18. Indeed, joining Acemoğlu and Robinson, law review literature has also focused on property rights protection as a core value of the early American colonies and the early American Republic. See Gregory S. Alexander, *Time and Property in the American Republican Legal Culture*, 66 N.Y.U. L. REV. 273 (1991) (noting that the framers prioritized the protection of small independent landholdings); Thomas W. Merrill, *The Landscape of Constitutional Property*, 86 VA. L. REV. 885, 886–88 (2000) (discussing property as a central constitutional matter from the early days of the Republic); Eduardo M. Peñalver, *Property as Entrance*, 91 VA. L. REV. 1889, 1890 (2005) (arguing that property rights have had "almost mythical status within American political thought"); Claire Priest, *Creating an American Property Law: Alienability and Its Limits in American History*, 120 HARV. L. REV. 385, 387–89 (2006) (emphasizing the inextricable tie between the importance of broadly based property rights, as viewed by early Americans and Republican political ideals); Carol M. Rose, *Property as the Keystone Right?*, 71 NOTRE DAME L. REV. 329, 331–33 (1996) (discussing the importance of property rights to the framers as they established a liberal constitutional order). *But see* Joseph William Singer, *Sovereignty and Property*, 86 NW. U. L. REV. 1 (1991) (noting the inherent contradiction between the prioritization of property rights in the early American Republic and the forcibly taking of property from Native Americans).

of the northern United States as “settler.”⁵² However, in their view, the South was paradigmatically extractive for most of its history.⁵³ Acemoğlu and Robinson contend that even after the Civil War and Emancipation, the South remained firmly extractive (with the exception of the brief respite of Reconstruction), as evidenced by the near-total absence of institutions for the protection of the property or contract rights of the median southern citizen (typically a former slave or the Black descendant of a slave).⁵⁴

For Acemoğlu and Robinson, the key indicator that an extractive society existed in the South even after Emancipation is the revocation of General Sherman’s Reconstruction-era promise to former slaves of “forty acres and a mule.”⁵⁵ The former slaves might have had a fighting chance of building inclusive political institutions if they had been able to decisively undermine extractive economic institutions by setting up a propertied class independent of the southern White plantation elite. But without property, they had no chance. The only clear break was when the civil rights movement broke the back of extractive political institutions.⁵⁶

Given this history, I contend that the notion that Nigerians are necessarily a useful comparative sample to African Americans is worthy of further thought. Most Nigerian migrants came to the United States *after* the civil rights movement, when discriminatory national origins quotas in immigration were abolished. Indeed, the long-term institutional effects of Jim Crow were so significant, that it is arguably true that African Americans faced a different institutional context than voluntary Black migrants *even after* the civil rights movement.

In fairness to Chua and Rubinfeld, the literature on Nigerian migrants is less well developed than that of other immigrant groups. Because the literature on Nigerian migrants remains scant, let us consider what institutional advantages successful Black migrants might draw upon through examining another Black migrant group, West Indians. Much more academic research exists on the pre- and post-migration socioeconomic trajectories of West Indians than on Nigerians (perhaps because Nigerians are much more recent migrants).⁵⁷ Notably, West Indians have also been “market-dominant

52. Acemoğlu, *Why Not a Political Coase Theorem?*, *supra* note 9, at 632 n.18.

53. ACEMOĞLU & ROBINSON, *supra* note 11, at 351–57.

54. *Id.*

55. The failure to meet the Reconstruction-era promise of “forty acres and a mule” is summarized in Eleanor Marie Lawrence Brown, *The Blacks Who “Got Their Forty Acres”: A Theory of Black West Indian Migrant Asset Acquisition*, 89 N.Y.U. L. REV. 27 (2014).

56. ACEMOĞLU & ROBINSON, *supra* note 11, at 414.

57. For a sample of the pre- and post-migration trajectories of Nigerians, see, e.g., ARTHUR, *supra* note 6 (exploring the reasons for Nigerians’ migration to the United States, including the Nigerian government’s sponsorship of top students and civil servants for education abroad); ALEJANDRO PORTES & RUBÉN G. RUMBAUT, *IMMIGRANT AMERICA: A PORTRAIT* (3d ed. 2006) (reporting on the Nigerian immigrant population, among other immigrant groups, with respect to education levels, English-speaking abilities, and labor force participation); PATRICIA NGOZI ANEKWE,

minorities” in many African American communities since early in the twentieth century.⁵⁸ While West Indians do not have the astronomical per-capita median incomes of other groups discussed in *The Triple Package* (such as Indian and Lebanese Americans), their median incomes are closer to those of White Americans than of African Americans.⁵⁹

Although Chua & Rubenfeld 2.0 does not classify them as such, West Indians are the original Black “triple package” group. Put more bluntly, West Indians are the original “model minority,” having arrived in the United States in significant numbers long before more recent “model minority” groups such as Koreans and Indians.⁶⁰ Indeed, the success of the original West Indian

CHARACTERISTICS AND CHALLENGES OF HIGH ACHIEVING SECOND-GENERATION NIGERIAN YOUTHS IN THE UNITED STATES (2009) (examining the educational experiences of Nigerian immigrant children); Dolapo Adeniji-Neill, *Failure is Not an Option: Parental Expectations of Nigerian Voluntary Immigrants to the United States*, in 3 ETHNICITY & RACE CHANGING WORLD: REV. J., Spring 2012, at 3; Blessing U. Mberu & Roland Pongou, *Nigeria: Multiple Forms of Mobility in Africa's Demographic Giant*, MIGRATION INFO. SOURCE (June 30, 2010), <http://www.migrationpolicy.org/article/nigeria-multiple-forms-mobility-africas-demographic-giant> (examining migration from Nigeria since the country's independence in 1960); Leila Rodríguez, *Economic Adaptation and the Self-Employment Experience of Nigerian Immigrants in New York City* (Aug. 2009) (unpublished Ph.D. dissertation, Pennsylvania State University) (on file with author) (discussing entrepreneurship among Nigerian migrants).

58. For example, as early as the 1920s West Indians were disproportionately likely to dominate Black business with particular success in the real estate, grocery, restaurant, and retail sectors. See Calvin Holder, *Making Ends Meet: West Indian Economic Adjustment in New York City, 1900–1952*, 1 WADABAGE: J. CARIBBEAN & ITS DIASPORA 31, 52–54 (1998) (emphasizing the entrepreneurial success of West Indian Blacks after 1920 particularly when compared to other Blacks). Indeed, Haynes's work notes that since as early as the first decade of the twentieth century, West Indians were disproportionately represented among business owners in Harlem. See George Edmund Haynes, *The Negro at Work in New York City: A Study in Economic Progress* 101, 108 (Apr. 1, 1912) (unpublished Ph.D. dissertation, Columbia University) (on file with author) (outlining the disproportionate share of West Indian businessowners in 1909 given to their proportion in the Black population). Recent studies indicate that West Indian business ownership in New York is disproportionate to their numbers. West Indians are less than one-third of the city's Black population. Reed Ueda, *West Indians*, in HARVARD ENCYCLOPEDIA OF AMERICAN ETHNIC GROUPS 1020, 1026 (Stephan Thernstrom et al. eds., 1980). Another recent study also confirms that Black Caribbean immigrants accounted for less than a third of New York's Black population. ARUN PETER LOBO & JOSEPH J. SALVO, N.Y.C. DEP'T OF CITY PLANNING, NYC DCP #13-10, THE NEWEST NEW YORKERS: CHARACTERISTICS OF THE CITY'S FOREIGN BORN POPULATION 196 (2013), available at http://www.nyc.gov/html/dcp/pdf/census/nny2013/nny_2013.pdf.

59. Brown, *supra* note 55, at 33 n.19; see Holder, *West Indies*, *supra* note 6, at 674, 683–84 (“The 2000 Census shows the median household income for West Indians . . . compares quite favorably with the median household income for the general population . . .”). More recently, West Indian Americans' median household income ranges from \$42,000 to \$54,000, depending on the island of origin. See U.S. CENSUS BUREAU, 2006–2010 AMERICAN COMMUNITY SURVEY SELECTED POPULATION TABLES (2010), available at <http://www.census.gov/acs/www/> (noting the median household income for Americans of Jamaican origin as \$49,634, of Trinidadian and Tobagonian origin as \$51,057, of Barbadian origin as \$53,978, and of Bahamian origin as \$41,925). Contrast these median household incomes with that of African Americans generally (\$40,946) and Americans generally (\$52,762). See *id.* Thus, Black West Indian incomes are generally closer to the American median than the African American median.

60. Unlike West Indians who have been migrating in significant numbers since the early 1900s, only miniscule numbers of Koreans and Indians migrated to the United States prior to 1965.

migrants and their descendants has been extensively studied. Secretary Colin Powell and his family are representative of this group; his family included J. Bruce Llewellyn, a multimillionaire who was the largest Black telecommunications entrepreneur of his time.⁶¹ The forebears of Eric Holder and Susan Rice are also included in this “triple package” group; their forebearers migrated from the Caribbean to the United States where they became property owners.⁶²

Not unlike Chua and Rubinfeld’s discussion of Nigerian cultural traits, earlier “culture” theorists cited this West Indian success to buttress their contentions about the importance of culture.⁶³ West Indians became a group of particular interest⁶⁴ in culture studies when they were featured in the

Both Koreans and Indians significantly increased their migration to the United States after 1965 when comprehensive immigration reform led to the removal of discriminatory national origin quotas. Since 1975, Korea and India are in the top ten countries of origin of lawful immigrants to the United States. See Winston James, *Explaining Afro-Caribbean Social Mobility in the United States: Beyond the Sowell Thesis*, 44 COMP. STUD. SOC’Y & HIST. 218, 229 (2002).

61. See COLIN L. POWELL WITH JOSEPH E. PERSICO, MY AMERICAN JOURNEY 3–38 (1995) (recounting his parents’ Jamaican origins and their early acquisition of a home in the United States). Powell’s cousin, J. Bruce Llewellyn, also a son of Jamaican immigrants, was very successful in business. Frank McCoy, *In Appreciation of J. Bruce Llewellyn (1927–2010)*, THE ROOT (Apr. 8, 2010, 3:25 PM), http://www.theroot.com/articles/culture/2010/04/rip_j_bruce_llewellyn.html. He was a prominent player in the telecommunications industry, president of the Overseas Private Investment Corporation, chairman of the board of Philadelphia Coca-Cola Bottling Company, and chairman of the board of Freedom National Bank. *Id.*; see also Douglas Martin, Obituary, *J. Bruce Llewellyn, Who Forged a Path for Blacks in Business, Is Dead at 82*, N.Y. TIMES, Apr. 10, 2010, at A21.

62. Holder and Rice also have West Indian forebears. Holder’s father was Barbadian. Javier C. Hernandez, *A High Achiever Poised to Scale New Heights*, N.Y. TIMES, Dec. 1, 2008, at A23. Rice’s grandfather was a Jamaican janitor who acquired a home shortly after he arrived in the United States. This home proved important to his family’s success; indeed, he financed the education of all of his children at Bowdoin College and Harvard University by repeatedly mortgaging his home. Kelley Bouchard, *Rice Family Enjoys a “Fantastic Journey,”* PORTLAND PRESS HERALD, Dec. 8, 2008, at A1.

63. See NATHAN GLAZER & DANIEL PATRICK MOYNIHAN, BEYOND THE MELTING POT: THE NEGROES, PUERTO RICANS, JEWS, ITALIANS, AND IRISH OF NEW YORK CITY 34–36 (2d ed. 1970) (comparing West Indians to “native” Blacks in America, and noting their success); see also IRA DE A. REID, THE NEGRO IMMIGRANT: HIS BACKGROUND, CHARACTERISTICS AND SOCIAL ADJUSTMENT, 1899–1937, at 113–24 (Arno Press reprint, 1969) (1939) (an early sociological study of West Indian immigrants to the United States, which discusses their large contributions to the business community). See generally James, *supra* note 60 (evaluating diverse factors that may have contributed to Afro-Caribbean immigrants’ relative social mobility and comparing the experiences of Afro-Caribbean migrants and African-American Blacks); Winston James, *New Light on Afro-Caribbean Social Mobility in New York City: A Critique of the Sowell Thesis*, in NEW CARIBBEAN THOUGHT: A READER 395 (Brian Meeks & Folke Lindahl eds., 2001) (a critical assessment of the theory that the market dominance of West Indian migrants is attributable primarily to culture).

64. The implication is clear: West Indians are useful as a comparative “sample.” Why? West Indians were arriving in northern cities at around the same time that significant numbers of African Americans were migrating from the South. Indeed, comparative studies have been conducted of West Indian (international) migrants and African American (internal) migrants. This literature is summarized in SUZANNE MODEL, WEST INDIAN IMMIGRANTS: A BLACK SUCCESS STORY? 84–90 (2008). Moreover, like African Americans, West Indians faced discriminatory barriers to property-related transactions in the North, such as exclusion from certain neighborhoods and red-lining in early iterations of mortgage programs. For a discussion of the discrimination faced by West Indians, with a

sociologists Nathan Glazer and Daniel Patrick Moynihan's widely read 1970 study of New York's ethnic groups. Glazer and Moynihan noted the "striking difference" between West Indians and "Southern Negroes."⁶⁵ They particularly emphasized the business ethic of West Indians, which (in contrast to the "Southern Negroes," i.e., African Americans) "emphasized saving, hard work, investment, [and] education."⁶⁶ These West Indian values reflect "triple package" traits.

A day in a West Indian household would leave one with the sense that West Indians are brimming with triple package traits. For example, West Indian children are imbued with a strong sense of exceptionalism early in life. West Indian parents spend much time over dinner tables discussing why the West Indies is special (as I am sure is also true of many other triple package groups, including Nigerians). Despite being a region with a tiny population (the region as a whole has fewer than thirteen million people), the West Indies has produced three Nobel laureates, including an economist (Lewis⁶⁷) and two highly renowned writers in the English language (Naipaul,⁶⁸ Walcott⁶⁹), a

particular focus on New York, see Holder, *supra* note 58, at 31–45. For sometimes controversial discussions of these issues, see REYNOLDS FARLEY & WALTER R. ALLEN, *THE COLOR LINE AND THE QUALITY OF LIFE IN AMERICA* 362–407 (1987) (using census data to compare native-born and black Caribbean immigrant Black populations); FUKUYAMA, *supra* note 4, at 295–306 (discussing discrimination faced by Blacks generally, with a particular emphasis on access to credit, and comparing this experience to that of other ethnic groups in the United States); PHILIP KASINITZ, *CARIBBEAN NEW YORK: BLACK IMMIGRANTS AND THE POLITICS OF RACE* 90–95 (1992) (discussing the economic and political success of West Indians in New York); THOMAS SOWELL, *RACE AND CULTURE: A WORLD VIEW* 254–57 (1994) (discussing the potential downfall of statistical abstractions of racial and ethnic groups); THOMAS SOWELL, *THE ECONOMICS AND POLITICS OF RACE: AN INTERNATIONAL PERSPECTIVE* 106–07 (1983) (discussing the coincident West Indian immigration to the United States and internal migration of American Blacks to northern cities and noting that West Indian immigrants were much more successful than the native Blacks). See generally GLAZER & MOYNIHAN, *supra* note 63 (noting historical information on African Americans and West Indian Americans and describing the social, political, and economic environment of these communities and groups); STEPHEN STEINBERG, *THE ETHNIC MYTH: RACE, ETHNICITY, AND CLASS IN AMERICA* (updated & expanded ed. 1989) (rejecting the view that cultural and ethnic traits and values are the dominant factors in creating and maintaining economic inequalities between American racial and ethnic groups); Sherri-Ann P. Butterfield, "We're Just Black": *The Racial and Ethnic Identities of Second-Generation West Indians in New York*, in *BECOMING NEW YORKERS: ETHNOGRAPHIES OF THE NEW SECOND GENERATION* 288 (Philip Kasinitz et al. eds., 2004) (discussing the interplay between race and ethnicity on second-generation West Indian views of self-identity); Suzanne Model, *Caribbean Immigrants: A Black Success Story?*, 25 *INT'L MIGRATION REV.* 248 (1991) (concluding that region of origin does not account for the income disparity between West Indians and native Blacks based on 1980 earnings and earnings attainment data).

65. GLAZER & MOYNIHAN, *supra* note 63, at 35.

66. *Id.*

67. *Sir William Arthur Lewis*, NAT'L ARCHIVES AUTHORITY SAINT LUCIA, (last updated Feb. 16, 2007) <http://www.stlucianobellaureates.org> (discussing Lewis's Saint Lucian heritage); see also ROBERT L. TIGNOR, W. ARTHUR LEWIS AND THE BIRTH OF DEVELOPMENT ECONOMICS 6–41 (2006) (discussing Lewis's early trajectory from St. Lucia to the United Kingdom).

68. Ian Buruma, *The Lessons of the Master*, N.Y. REV. BOOKS (Nov. 20, 2008), <http://www.nybooks.com/articles/archives/2008/nov/20/the-lessons-of-the-master>.

United States Secretary of State (Powell⁷⁰), civil rights icons (James Weldon Johnson,⁷¹ Stokely Carmichael⁷²), and extraordinary musicians (Belafonte,⁷³ Marley,⁷⁴ etc.). It has also contributed disproportionately to the *Black Enterprise* list of Blacks who have been extraordinarily successful in business.⁷⁵

69. *Biography, Derek Walcott*, POETRY FOUND. (last updated 2010) <http://www.poetryfoundation.org/bio/derek-walcott>.

70. See POWELL WITH PERSICO, *supra* note 61 (recounting his parents' Jamaican origins).

71. Claire A. Nelson, *Cultivating the Caribbean American Community*, CHAMPIONS OF CHANGE BLOG (July 27, 2012, 10:20 AM), <http://www.whitehouse.gov/blog/2012/07/27/cultivating-caribbean-american-community> (White House commemoration of Caribbean-American heritage month, citing James Weldon Johnson as a person of Caribbean heritage); see also JAMES WELDON JOHNSON, *ALONG THIS WAY: THE AUTOBIOGRAPHY OF JAMES WELDON JOHNSON* 3–6 (1933) (discussing his family's Bahamian heritage).

72. STOKELY CARMICHAEL WITH EKWUEME MICHAEL THELWELL, *READY FOR REVOLUTION: THE LIFE AND STRUGGLES OF STOKELY CARMICHAEL (KWAME TURE)* 11–21 (2003) (discussing his early roots in Trinidad).

73. HARRY BELAFONTE WITH MICHAEL SHNAYERSON, *MY SONG: A MEMOIR* 12–30 (2011) (discussing the author's roots in Jamaican poverty).

74. DAVID V. MOSKOWITZ, *BOB MARLEY: A BIOGRAPHY* xiii (2007) (discussing Marley's early roots in a rural Jamaican parish).

75. According to a recently released Pew study of foreign-born Blacks (Apr. 2015) based on the Census Bureau's 2013 American Community Survey with supporting information from the 1980, 1990 and 2000 decennial censuses, nearly 9 percent of the Black population is foreign born. See MONICA ANDERSON, PEW RES. CENTER, *A RISING SHARE OF THE U.S. BLACK POPULATION IS FOREIGN BORN* 5 (2015). Of these 9 percent, 64 percent originated in the non-Hispanic Caribbean; thus approximately 5.75 percent of the Black population are foreign-born Caribbean migrants. These would also be described as first-generation Caribbean migrants. See *id.* at 6.

While the raw Census data is available, the statistical analyses of this data by demographers lag and as such, I have not been able to find a publicly available statistical analysis (using the same Census data as that utilized by the Pew study) that includes *both* first- and second-generation Caribbean migrants. One would expect that if you include both first- and second-generation migrants, the numbers expand somewhat. See, e.g., KEVIN J.A. THOMAS, *MIGRATION POL'Y INST., A DEMOGRAPHIC PROFILE OF BLACK CARIBBEAN IMMIGRANTS IN THE UNITED STATES* (2012).

More dated figures cited by the demographer Douglas S. Massey indicate that if you include *both* first- and second-generation black migrants, they constitute approximately 13 percent of the college-age black population (defined as aged 18–19). 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 (2007). According to the analyses cited by Massey et al., the Caribbean population constituted 70 percent of foreign-born Blacks and as such constituted 9.1 percent of this younger cohort. See *id.* (I should note that one would expect that the Caribbean proportion of at least the first-generation black population would decline over time as African migrants have contributed larger numbers.)

It bears emphasis: even in the absence of recent statistical analyses including *both* first and second generation Caribbean migrants, it is clear that persons of Caribbean heritage are disproportionately represented among black elites in corporate America. This would be unsurprising since the figures cited by Massey et al. clearly demonstrate the disproportionate representation of Caribbean-heritage migrants in elite universities, which are likely feeders to elite corporate jobs. See *id.*

There are no publicly available statistical studies of the representation of Caribbean persons in this pool of black corporate elites (unsurprising given the tiny sample size), but there are suggestive data points. Consider, for example, the following *Black Enterprise* list of the 100 most powerful executives in corporate America. At least nine members of the list are of Caribbean heritage (using publicly available information) including very senior executives of American Express, Xerox, and Adobe. See Sonia Alleyne, *The 100 Most Powerful Executives in Corporate America*, BLACK ENTERPRISE (Feb.

To understand West Indian migrants and how they came to the United States, one must begin with the West Indies. The West Indies—Caribbean countries formerly colonized by the British—function well by most measures.⁷⁶ They are characterized by high per capita GDPs, stable Westminster parliamentary democracies, strong property and contract enforcement, and high levels of foreign direct investment.⁷⁷ While some West Indian countries (e.g., Barbados and the Bahamas) have clearly performed better than others (e.g., Jamaica and Guyana), little of the political, social, and economic chaos that is evident in many other formerly colonized countries that Chua 1.0 discusses exists. They perform particularly well in relation to the broader Latin American region and also in relation to the (largely sub-Saharan) Black diaspora countries.⁷⁸

Why is the West Indies, as a region, such an oasis of stability and good government? Scholars are now beginning to understand that the West Indies has historical law-based advantages—vestigial of British colonial investment—that help account for its strong development trajectory.⁷⁹ When the British granted political independence to, and exited, the West Indies, they left a full-fledged civil service, the elements of a decent educational and judicial system, and a common law that the West Indian people had fully internalized. It is little wonder that West Indians were sometimes called Afro-Saxons. Indeed, the British administered many of their other Black colonies (including the area that would subsequently become Nigeria) through a network of West Indian elites, who then returned to the West Indies to run the West Indian civil service.⁸⁰ Thus, in spite of a system of plantation slavery that supported the production of sugar cane, the West Indies experienced a degree of investment from their colonizers not replicated in many other colonies. Moreover, starting in the mid-

25, 2010), <http://www.blackenterprise.com/be-lists/the-100-most-powerful-executives-in-corporate-america>.

76. See INTER-AM. DEV. BANK, *THE MILLENNIUM DEVELOPMENT GOALS IN LATIN AMERICA AND THE CARIBBEAN: PROGRESS, PRIORITIES & IDB SUPPORT FOR THEIR IMPLEMENTATION* (2005), available at <http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=591088> (indicating that the Caribbean region has made progress in improving education, poverty, health, and other IDB markers discussed in the report).

77. See generally *id.*

78. See *id.*

79. Peter Blair Henry & Conrad Miller, *Institutions vs. Policies: A Tale of Two Islands* (Nat'l Bureau of Econ. Research, Working Paper No. 14604, 2008), available at <http://www.nber.org/papers/w14604.pdf> (discussing the importance of “law” in the “institutions” school developed by Douglas North, particularly in the context of the British West Indies).

80. Indeed, West Indian elites proved useful to the British, not only in the West Indies, but throughout the Empire. For example, it was from their ranks that colonial administrators were recruited, particularly for the African colonies. See NEMATA AMELIA BLYDEN, *WEST INDIANS IN WEST AFRICA, 1808–1880: THE AFRICAN DIASPORA IN REVERSE* 44–45 (2000) (exploring the history of colonial Sierra Leone).

1800s, the West Indies had the largest class of Black property owners (mostly small farmers and a petty merchant class) in the Western hemisphere.⁸¹

Indeed, my contention is that while the West Indies (as slave societies) might have appeared to be paradigmatic “extractive” societies⁸² with minimal property protections, a more nuanced look at the property holdings of Blacks indicates that West Indian societies had strong settler characteristics. Compared to the “forty acres” denied to African Americans and bemoaned by Acemoğlu and Robinson, West Indians were the Blacks who “got” their “forty acres” (metaphorically of course). Their early access to property rights—at first informal and supported by communal convention, but then institutionalized in “hard law”—enabled them to break down the classically extractive society in a way that was not possible on a wide scale in the Jim Crow United States.⁸³ Thus, when early West Indians came to the United States at the turn of the century, they had significant advantages—they were coming from countries that had many “settler” characteristics, and they were migrating largely to “settler” states in the northern United States. While West Indians faced discrimination in the North, this was of an entirely different character than that facing African Americans in the southern states where the overwhelming majority still resided. That is, at the turn of the century when West Indians started arriving to the United States in large numbers, most African Americans remained trapped in a classically extractive society.

In the early 1890s, when Black West Indians arrived in the United States in significant numbers, many were already property owners. They were more likely to be literate than the median migrant of the time (because of the strong British educational system in the West Indies), and they were well versed in the ways of free-market systems through their history of small farming and petty contracting. I use the word “elite” advisedly—these early West Indians were not comparable to later Nigerian PhD candidates (though West Indian educational elites would come later).⁸⁴ They were, however, better educated than the median European migrant, and arguably more experienced in capital markets.⁸⁵

81. This is summarized in Brown, *supra* note 55.

82. See Stanley L. Engerman & Kenneth L. Sokoloff, *Factor Endowments, Inequality, and Paths of Development Among New World Economies*, 3 *ECONOMIA* 41 (2002); Stanley L. Engerman & Kenneth L. Sokoloff, *Factor Endowments, Institutions, and Differential Paths of Growth Among New World Economies: A View from Economic Historians of the United States*, in *HOW LATIN AMERICA FELL BEHIND: ESSAYS ON THE ECONOMIC HISTORIES OF BRAZIL AND MEXICO, 1800–1914*, at 260 (Stephen Haber ed., 1997); see also Karen Ordahl Kupperman, *England’s Dream of Caribbean Empire*, in *MAJOR PROBLEMS IN AMERICAN COLONIAL HISTORY* 235 (Karen Ordahl Kupperman ed., 2d ed. 2000).

83. See Brown, *supra* note 55.

84. See Brown, *supra* note 46, at 316, 334–36; see also Brown, *supra* note 55.

85. See Brown, *supra* note 46, at 335.

Theories of immigrant selectivity are particularly resonant in the context of West Indians.⁸⁶ In part because of nativist immigration policies, migration was difficult for early Black migrants.⁸⁷ Early nativist immigration policies had a selection effect—they undoubtedly selected for Black West Indian migrant elites—and especially for people who came from families with a history of property ownership before their arrival in the United States.⁸⁸ Moreover, elite West Indians had other notable advantages. Most importantly, West Indians benefited from the extension of naturalization rights in the United States to persons of African descent following the Civil War.⁸⁹ Prior to this extension of naturalization rights, only Whites had been able to become citizens.⁹⁰ Indeed, well into the twentieth century, Asians, for example, were not typically viewed as candidates for naturalization.⁹¹ Thus, among immigrants of color, West Indian migrants were an unusual group.⁹² Unlike many other people of color whose inability to naturalize rendered them easily deportable, West Indians entered the United States with a real possibility of full-scale admission to the body politic.⁹³ In contrast to early Chinese and Japanese migrants, West Indians as a naturalized elite could invest in the United States without the threat of possible deportation hanging over their heads.⁹⁴ With the benefit of hindsight, it is unsurprising that early West Indian elites moved remarkably quickly up the socioeconomic ladder.

West Indian long-term migrants (as opposed to short-term farmworkers) generally remained elites until the whole-scale liberalization of immigration laws (and the removal of highly racist quotas) in 1965.⁹⁵ Long-term migrants soon became the primary business owners in Black enclaves like Harlem.⁹⁶ They were particularly successful in the real estate sector—in segregated housing markets, West Indians were the primary Black “middlemen.”⁹⁷ Partly because West Indian real estate agencies were so successful, Black West Indians were able to gain access to high-quality housing typically unavailable

86. *See generally id.*

87. *See generally id.*

88. Brown, *supra* note 55, at 42–48.

89. *See* Mae M. Ngai, *The Architecture of Race in American Immigration Law: The Reexamination of the Immigration Act of 1924*, 86 J. AM. HIST. 67, 72 (1999); *see also* THOMAS ALEXANDER ALEINIKOFF ET AL., IMMIGRATION AND CITIZENSHIP: PROCESS AND POLICY 53–89 (7th ed. 2012); STEPHEN H. LEGOMSKY & CRISTINA M. RODRÍGUEZ, IMMIGRATION AND REFUGEE LAW AND POLICY 1300–36 (6th ed. 2015).

90. *See* Brown, *supra* note 46, at 317–18.

91. Indeed, courts were adjudicating “Whiteness” in the naturalization context well into the twentieth century. For a brief summary of this literature, *see* Brown, *supra* note 46, at 317 n.26.

92. *Id.* at 316–19.

93. *Id.*

94. *Id.* at 318, 325 n.84.

95. *Id.*

96. Brown, *supra* note 55, at 30.

97. *Id.* at 38.

to African Americans.⁹⁸ And when Blacks were still excluded from the formal mortgage markets, West Indians used informal communal-based rotating savings and credit associations, underwritten by law-in-culture, to raise capital to purchase homes.⁹⁹ Undergirded by communal rules, these savings clubs resembled the aforementioned savings clubs celebrated by Posner. Here again, we see law-in-culture.¹⁰⁰ Unsurprisingly, the richest Black man in the United States and the largest Black real estate owner in New York City in the early twentieth century (only a few decades after West Indians started arriving in the United States) was a West Indian.¹⁰¹

If the earliest West Indians were elites, there are clues that the early Nigerians (who started arriving much later) were likely to be even more elite. One index of elite status is educational attainment. The demographer Douglas Massey has attempted to account for the high levels of representation of Black migrant children at elite American universities.¹⁰² Massey and colleagues make much of the elite educational level of the parents and grandparents of these Ivy League students.¹⁰³ Professor Lani Guinier has made a similar point.¹⁰⁴ Notably, Massey and other scholars emphasize that African immigrants are likely to be even *better educated* than their West Indian counterparts.¹⁰⁵

Moreover, although Chua & Rubinfeld 2.0 focuses very little on immigration policy, any thorough analysis of immigrant success must account for the institutional effects of immigration law. Under the pre-1965 quota system (a de facto if not de jure racialized system that heavily favored Europeans), it was very difficult for African migrants, including Nigerians, to

98. *Id.* at 51.

99. *Id.* at 53–54.

100. *See id.*

101. *See id.* at 51.

102. Massey et al., *supra* note 75, at 245–48 (noting Black immigrant academic achievement in the United States and discussing the various economic and social factors contributing to Black immigrant selectivity and corresponding levels of academic achievement).

103. *Id.*

104. Professor Lani Guinier emphasizes that many Black migrants have access to advantages not typically available to African Americans. For a brief summary of the controversy surrounding this contention, see Brown, *supra* note 46, at 313–16.

105. African migrants are the most likely group to have advanced degrees. *African Immigrants in the United States are the Nation's Most Highly Educated Group*, J. BLACKS HIGHER EDUC., Winter 1999–2000, at 60, 60. Census data from the late 1990s indicated that 19.4 percent of all African migrants held a graduate degree, as opposed to 8.1 percent of White and 3.8 percent of Blacks generally. *Id.* More specifically, a Rice University study of Houston-area residents found that Nigerians were the best-educated group. See Leslie Casimir, *Data Show Nigerians the Most Educated in the U.S.*, HOUS. CHRON., May 20, 2008, <http://www.chron.com/news/article/Data-show-Nigerians-the-most-educated-in-the-U-S-1600808.php>. One author argues that “brain drain,” namely the elite educational status of émigrés to developed countries such as the United States, is so extreme as to account in large part for the poor economic performance of many African states. See KOFI K. APRAKU, *AFRICAN EMIGRES IN THE UNITED STATES: A MISSING LINK IN AFRICA'S SOCIAL AND ECONOMIC DEVELOPMENT* (1991); see also *African-Born U.S. Residents are the Most Highly Educated Group in American Society*, J. BLACKS HIGHER EDUC., Autumn 1996, at 33, 33–34; *Black Like Me*, ECONOMIST, May 11, 1996, at 27.

come to the United States unless they were enrolled in university.¹⁰⁶ This is why U.S. President Barack Obama's father, the first African graduate student from the University of Hawaii, was such a rarity.¹⁰⁷ Even after 1965, when the government liberalized immigration laws in the aftermath of the civil rights movement,¹⁰⁸ African migrants were still disproportionately likely to be well educated. Moreover, because so few Africans had entered the United States before 1965, they were not well placed to benefit from family preferences in the early post-1965 migration streams. Africans more typically came on their own steam as elite university students, without the benefit of family to sponsor them.

To emphasize: I am speaking here only about elite educational credentials. Recalling the central theme of Chua 1.0, I have not yet addressed the question of market dominance. That is, it is unclear whether those Nigerians who migrate are disproportionately likely to come from market-dominant Nigerian ethnic groups. If so, Massey's instinct that Nigerian migrants are *more* elite than West Indians is even *more* likely to be accurate, since Nigerian migrants would be building on the advantages of an excellent education *and* market dominance.

Consider the Igbo, the market-dominant ethnic group of southeastern Nigeria that features prominently in Chua 1.0 discussed earlier.¹⁰⁹ The Igbo, known (stereotypically) as "the Jews of West Africa," have a reputation for their business prowess—so much so that the Bamileke next door in Cameroon (of similar reputation) are called "the I[g]bo of Cameroon."¹¹⁰ Chua 1.0 examines how commercial elites in Africa simulate law.¹¹¹ Chua is absolutely right—Igbos and Bamilekes are modern versions of the Maghribi Jewish

106. See KALU OGBAA, *THE NIGERIAN AMERICANS* 21–31 (2003) for a numerical breakdown by decade of the number of Nigerian immigrants to the United States. A summary by the same author is also available electronically at http://testaae.greenwood.com/doc_print.aspx?fileID=GR1964&chapterID=GR1964-92&path=books/greenwood. See also April Gordon, *The New Diaspora—African Immigration to the United States*, 15 J. THIRD WORLD STUD., Spring 1998, at 79, 85, 87; Elizabeth Grieco, *The African Foreign Born in the United States*, MIGRATION INFO. SOURCE (Sept. 1, 2004), <http://www.migrationpolicy.org/article/african-foreign-born-united-states>; Mberu & Pongou, *supra* note 57 (describing the migration of Nigerians to the United States). Early Nigerian migrants appear to have been largely Igbo and Yoruba (two of the larger ethnic groups). See APRIL A. GORDON, *NIGERIA'S DIVERSE PEOPLES: A REFERENCE SOURCEBOOK* 244 (2003). Rodríguez notes similar ethnic patterns in her study of self-employment among Nigerian immigrants in New York. Rodríguez, *supra* note 57, at 64.

107. SALLY H. JACOBS, *THE OTHER BARACK* 99–100 (2011).

108. See, e.g., 1 *ENCYCLOPEDIA OF IMMIGRATION AND MIGRATION IN THE AMERICAN WEST* 315–16 (Gordon Morris Bakken & Alexandra Kindell eds., 2006) (explaining that the Immigration Act of 1965, also known as the Hart-Cellar Act, was passed on the heels of the Civil Rights Act of 1964 and was designed to end racially and ethnically discriminatory immigration policies).

109. CHUA, *supra* note 3, at 95, 108–12 (generally discussing the Igbo and Bamileke, among others).

110. *Id.* at 108–12.

111. *Id.* at 95–125.

traders.¹¹² Even in the absence of conventional legal remedies, their tribal contacts allow them to minimize the likelihood that fellow contractors will fail to meet their commitments. Here again law-in-culture rules appear to matter.

There is little doubt among most Cameroonian migrants that Bamilekes are disproportionately represented among Cameroonian Americans. Could the same be true of Nigerians? And if so, do their contracting advantages in the more perilous Nigerian environment carry over to the United States?¹¹³ Although Chua & Rubinfeld 2.0's theory is constrained by the absence of academic work on the pre- and post-migration trajectories of Nigerian migrants, these questions need to be raised.

CONCLUSION

Even the most rabid institutionalists now concede that cultural traits may contribute to socioeconomic success.¹¹⁴ Chua and Rubinfeld need to repay the favor: they need to say more about law and institutions in a book on culture. Even if they are skeptical of the importance of “hard” law, shouldn't they consider whether “soft” law is relevant?

If we conceptualize a continuum between institutions and culture, Chua & Rubinfeld 2.0 is a “hard” culture book. Consider how a “soft” culture thesis—a quite reasonable extension of Chua 1.0—would have played out differently. Chua and Rubinfeld could quite reasonably have argued that the same networks that undergird informal law in market-dominant minority groups provide the basis for reinforcing the transmission of a particular constellation of cultural traits from one generation to another. Children understand that these values are important not only because they are learned in the family but also because a broader network of community organizations reinforces them. The social norms these networks transmit are exceptionally strong, so strong that they transcend national boundaries and bind community members even absent obvious mechanisms to enforce these norms. As ethnic groups move with their values, connections emerge, for example, between Lebanese merchants in West Africa and Central America and Lebanese strivers in Detroit. A book exploring this theme is one I would like to read.

Moreover, Chua and Rubinfeld could have gone further by making the following connections: institutions for the protection of property and contract rights are more likely to be successful if they are set against a background

112. *Id.* at 109.

113. Chua and Rubinfeld make much of the high Nigerian-American representation at Harvard Business School and Goldman Sachs. CHUA & RUBENFELD, *supra* note 1, at 42–43. What proportion of Nigerian-American HBS grads and Goldman bankers are Igbo? (As an aside, I cannot resist this anecdote given the Chua/Rubinfeld focus on both Nigerian-American and Mormon representation among elite investment bankers: one Nigerian friend calls the Igbo at HBS basically “Nigeria's Mormons”—so interesting!)

114. A good summary of these concessions to culture by institutionalists is included in Harrison, *supra* note 2.

normative framework in which people trust each other. Another word for these norms is “culture.” Culture is the mother, and institutions for the protection of property and contract rights are the children.¹¹⁵ In making these connections, Chua & Rubinfeld 2.0 would have come “full circle” with Chua 1.0.¹¹⁶

115. This is a play on a phrase used by Daniel Etounga-Manguelle in his controversial contribution to Huntington and Harrison’s anthology, *Culture Matters*. Daniel Etounga-Manguelle, *Does Africa Need a Cultural Adjustment Program?*, in *CULTURE MATTERS*, *supra* note 2, at 65, 75.

116. Meanwhile, a little modesty might be in order for those (my fellow Afro-Saxon West Indians included) prematurely celebrating their “triple package” traits. Even if culture is the mother, the children are institutions and they matter.

