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Recommended Citation

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**ON THE EVOLUTION OF PROPERTY OWNERSHIP
AMONG FORMER SLAVES, NEWLY FREEDMEN**

**(ACCEPTED BY THE JOURNAL OF LAW, PROPERTY AND SOCIETY
FOR PUBLICATION)**

ELEANOR MARIE LAWRENCE BROWN

Abstract

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

I focus on the era immediately after British Emancipation. During slavery planters were willing to grant slaves provisioning plots because the planters themselves exacted a benefit from doing so; they essentially “outsourced” the job of feeding the slaves to the slaves themselves. Once labor became free, this benefit vanished. Planters began to wonder how to handle ex-slaves farming provision grounds. Although provision grounds were de facto (perceived to be) slave

property, typically these lands were instead de jure planter property (plots at the edge of the plantations for which the planters held title).

The issue became particularly acute in the aftermath of Emancipation, when planters sought to “tie” former-slaves-turned-freedmen to the plantations to secure a reliable workforce. Newly freed, the former slaves had no obligation to accept planters’ “offers” of employment on the plantations.

Property acquisition during slavery (when there were no formal protections) turned out to be singularly important in determining who continued to remain in the employ of the plantation post-Emancipation. The irony is that the extensive nature of the provisioning system (which acculturated slaves to a form of “property-and-contract-lite”) made it less likely that ex-slaves continued to remain in the employ of the planters once leaving became a viable choice. West Indian freedmen who already had a taste of property ownership were typically not enamored with long-term plantation employment.

Following this logic, one might predict that planters in the U.S. South would ultimately prove more successful in maintaining a long-term plantation-like society (even after the abolition of slavery) than their West Indian counterparts because they never allowed provisioning to develop. This prediction is spot-on. In particular, the early demise of status relationships that undergirded plantation society in the West Indies had much to do with the general failure of share tenancy (and its most popular iteration, sharecropping) in the West Indies.

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

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

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I. THE WEALTH GAP

Why is African-American net worth so low? ¹ This is in large part because of home ownership:² a home is the largest asset that most Americans ever purchase and the disparities between black and white

¹ See, RAKESH KOCHHAR & RICHARD FRY., PEW RESEARCH CTR., WEALTH INEQUALITY HAS WIDENED ALONG RACIAL, ETHNIC LINES SINCE END OF GREAT RECESSION (2014) available at <http://www.pewresearch.org/fact-tank/2014/12/12/racial-wealth-gaps-great-recession/> (“White net worth is 13x greater...”); THOMAS M. SHAPIRO ET AL., BRANDEIS UNIV., INSTITUTE ON ASSETS AND SOCIAL POLICY, THE RACIAL WEALTH GAP INCREASES FOURFOLD I (2010) (graphing median wealth holdings of White and African American families over two decades);

² Laura Shin, The Racial Wealth Gap, Forbes, March 26, 2015 <http://www.forbes.com/sites/laurashin/2015/03/26/the-racial-wealth-gap-why-a-typical-white-household-has-16-times-the-wealth-of-a-black-one/> (“For most U.S. families, a home usually comprises the largest portion of their assets.”)

Americans in home ownership are significant.³ Thus, the impediments to acquiring homes among African-Americans remains a significant area of inquiry,⁴ with scholars focusing in particular on historical difficulties in real property acquisition, particularly in the South.⁵ Why the scholarly focus on land acquisition?⁶ Nearly seventy years ago, W.E.B. Du Bois and Gunnar Myrdal famously documented the paradox of landless African-American farmers in the South.⁷ In keeping with their observations, the modern economics of development asserts that a prevailing explanation for low levels of asset acquisition among African-Americans is the accumulated consequences of historical barriers to land acquisition.⁸

³ WILHELMINA LEIGH ET AL., JOINT CENTER FOR POLITICAL AND ECONOMIC STUDIES, ASSET BUILDING IN LOW-INCOME COMMUNITIES OF COLOR: PREDISPOSING FACTORS AND PROMISING PRACTICES (2009).

⁴ For a comprehensive casebook addressing issues of race and ethnicity in the context of property law, see ALBERTO LOPEZ, ALFRED BROPHY AND KALI MURRAY, INTEGRATING SPACES: PROPERTY LAW AND RACE (2011). *See, also*, Michael S. Barr, *Credit Where It Counts: The Community Reinvestment Act and Its Critics*, 80 N.Y.U. L. REV. 513 (2005); Anthony J. Taibi, *Racial Justice in the Age of the Global Economy*, 44 DUKE L.J. 928 (1995); A. Brooke Overby, *The Community Reinvestment Act Reconsidered*, 143 U. PA. L. REV. 1431 (1995); Keith N. Hylton & Vincent D. Rougeau, *Lending Discrimination: Economic Theory, Econometric Evidence, and the Community Reinvestment Act*, 85 GEO. L.J. 237 (1996); Rashmi Dyal-Chand, *Useless Property*, 32 CARDOZO L. REV. 1369 (2011); Adam Gordon, *The Creation of Homeownership: How New Deal Changes in Banking Regulation Simultaneously Made Homeownership Accessible to Whites and Out of Reach for Blacks*, 115 YALE L.J. 186 (2005).

⁵ *See, e.g.*, Ellen D. Katz, *African-American Freedom in Antebellum Cumberland County, Virginia*, 70 CHI.-KENT L. REV. 927 (1995); Thomas W. Mitchell, *Destabilizing the Normalization of Rural Black Land Loss: A Critical Role for Legal Empiricism*, 2005 WIS. L. REV. 557 (2005); Thomas W. Mitchell, Stephen Malpezzi & Richard K. Green, *Forced Sale Risk: Class, Race, and the "Double Discount"*, 37 FLA. ST. U. L. REV. 589 (2010).

⁶ The most comprehensive article in this area is by Thomas W. Mitchell, *From Reconstruction to Deconstruction: Undermining Black Landownership, Political Independence, and Community Through Partition Sales of Tenancies in Common*, 95 NW. U. L. REV. 505, 517-23 (2001). *See also* Hanoch Dagan & Michael Heller, *The Liberal Commons*, 110 YALE L.J. 549 (2001) for a shorter discussion.

⁷ GUNNAR MYRDAL, AN AMERICAN DILEMMA: THE NEGRO PROBLEM AND MODERN DEMOCRACY (1944) (in which the Nobel Laureate Myrdal discusses Du Bois's reflections on black landlessness). *See also* John Sibley Butler, *Myrdal Revisited: The Negro in Business*, 124 DAEDALUS 199, 205-06 (1995)

⁸ *See, e.g.*, Amartya Sen, *From Income Inequality to Economic Inequality*, in RACE, POVERTY, AND DOMESTIC POLICY 59-82 (C. Michael Henry ed., 2004). *See also* AMARTYA SEN, DEVELOPMENT AS FREEDOM 1-53 (2000); AMARTYA SEN, THE IDEA OF JUSTICE 1-27 (2009); Roberta Wedge, *Amartya Sen Tells International Lawyers to Read Mary*, A VINDICATION OF THE RIGHTS OF MARY, <http://avindicationoftherightsofmary.blogspot.com>

Moreover for African-Americans, even where acquisition was possible, land retention has posed a distinct challenge.⁹ While most former slaves never received what they believed to be their promised allocation of “forty acres and a mule”¹⁰ following the Civil War, many newly-freed men were nevertheless able to acquire portions of farmland in the rural South. Yet, few were able to retain this land: a particularly influential contributor to black land loss were partition sales of land held under tenancies in common.¹¹

In the public imagination, the blacks who “got their 40 acres” are epitomized by descendants of persons enslaved in the U.S. who were able to sidestep bars to property ownership shortly after Emancipation, and who are disproportionately likely to own property today.¹² Yet, the most successful subset of black property owners today are

/2011/03/amartya-sen-tells-international-lawyers.html (last visited August 20, 2011) (discussing the current implications of historical barriers to property ownership).

⁹ See, e.g., THE BLACK RURAL LANDOWNER—ENDANGERED SPECIES (Leo McGee & Robert Boone eds., 1979); see also Mark R. Schulte, *The Dream Realized?: African American Landownership in Central Georgia Between Reconstruction and World War Two*, 72 AGRIC. HIST. 298, 307 (1998); Jennifer R. Boone Hargis, *Solving Injustice in Inheritance Laws Through Judicial Discretion: Common Sense Solutions From Common Law Tradition*, 2 WASH. U. GLOBAL STUD. L. REV. 447 (2003); ROGER RANSOM & RICHARD SUTCH, ONE KIND OF FREEDOM: THE ECONOMIC CONSEQUENCES OF EMANCIPATION (1977); ERIC FONER, RECONSTRUCTION: AMERICA'S UNFINISHED REVOLUTION, 1863-1877 (1988); Mitchell, *supra* note , Dagan & Heller, *supra* note .

¹⁰ The failure to meet the Reconstruction-era promise of “Forty Acres and a Mule” is well documented in BLACK ECON. RESEARCH CTR., ONLY SIX MILLION ACRES: THE DECLINE OF BLACK OWNED LAND IN THE RURAL SOUTH, (Robert S. Browne ed., 1973). By way of background, in early 1865 General Sherman authorized freed slaves to establish forty-acre plots in parts of South Carolina and Georgia. He also provided them with former military mules. However, Sherman’s field order was later revoked, and the land restored to its Confederate owners. Although Sherman’s promised land-distribution was never enacted in law, rumors of “forty acres and a mule” quickly spread among the former slaves and have been part of American historical folklore ever since. *Id.*

¹¹ Mitchell, *supra*; Mitchell et al, *supra*; Dagan & Heller, *supra* note .

¹² The phrase “got their 40 acres” is Whoopi Goldberg’s as relayed by Skip Gates, in a New York Times op-ed. The phrase also appears to have been used by the late rapper, Tupac (Tupac, Letter to the President). Skip Gates argues that his highly successful African American interviewees in the PBS miniseries *African-American Lives* (February 2006) and *African American Lives 2*, (February 2008) are disproportionately likely to be descendants of freedmen who became property owners early. See Henry Louis Gates Jr., Op-Ed., *Forty Acres and a Gap in Wealth*, N.Y. TIMES, November 18, 2007, § 4, at 14.

descendants of free black migrants who originated outside the U.S.;¹³ these free black migrants, overwhelmingly British subjects, originating from the Caribbean islands known as the West Indies,¹⁴ are largely invisible in the legal scholarship. Before 1965, when comprehensive immigration legislation led to the removal of *de facto* “racial origins” quotas, it was very difficult for Africans to migrate to the U.S. Thus, black migrants to the U.S. were overwhelmingly West Indians, who had the advantage of easy transportation routes to the Eastern Seaboard and near-automatic classification as British subjects.¹⁵ Indeed, over eighty percent of black migrants to the U.S.

¹³ See, e.g., Winston James, *Explaining Afro-Caribbean Social Mobility in the United States: Beyond the Sowell Thesis*, 44 COMP. STUD. IN SOC’Y & HIST. 218 (2002) [hereinafter James, *Explaining Afro-Caribbean Social Mobility*]; see also 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 (Brian Meeks & Folke Lindahl eds., 2001) [hereinafter James, *New Light on Afro-Caribbean Social Mobility*]; IRA DE A. REID, *THE NEGRO IMMIGRANT: HIS BACKGROUND, CHARACTERISTICS, AND SOCIAL ADJUSTMENT, 1899-1937* (1969); NATHAN GLAZER & DANIEL PATRICK MOYNIHAN, *BEYOND THE MELTING POT* (1970); ETHNICITY: THEORY AND EXPERIENCE (Nathan Glazer & Daniel Patrick Moynihan eds., 1975).

¹⁴ I will regularly refer to two groups of blacks. The first group, African Americans, includes those descended from Africans enslaved in the U.S. The second group includes persons who were enslaved in the West Indies (hereinafter “West Indians”) and who later became migrants to the U.S., mostly after the abolition of slavery. The term is “shorthand” since, although West Indians are overwhelmingly the descendants of Africans enslaved in the West Indies, there are also West Indian immigrants to the U.S. of other ethnic backgrounds. I utilize the definition of West Indians that is conventionally used in the sociological literature, namely, Anglophone (formerly British-colonized) Caribbean nationals. The migrants were overwhelmingly descendants of slaves and “coloreds.” The sociologist-historian Orlando Patterson provides a summary of the significance of the West Indies from which the migrants originated and its social structure as follows:

“The sugar plantations, which became all-important by the turn of the eighteenth century, made the Afro-Caribbean societies the richest areas of the world. They also set the basic social structure and tone of these societies. African slaves were brought in on a large scale, resulting in the early demographic dominance of black people. Ruling them was a small minority of white planters . . . Between masters and slaves a third group soon emerged—the coloreds or people of mixed ancestry. This group formed a useful racial and socio-cultural buffer between the whites and blacks. By the end of the eighteenth century a substantial number of them were freedmen.” See Orlando Patterson, *Context and Choice in Ethnic Allegiance: A Theoretical Framework and Caribbean Case Study*, in ETHNICITY: THEORY AND EXPERIENCE, *supra* note [hereinafter Patterson, *Ethnic Allegiance*].

¹⁵I focus on an early population of black West Indian migrants who entered between 1890 and 1924, before comprehensive immigration reform (in 1924) brought their entry to a virtual halt. The immigration challenges faced by this early population are discussed in Eleanor Marie Lawrence Brown, *How The US selected for A Black Bourgeoisie: A Narrative of Inadvertent Institutional Design*, *Forthcoming GEO. IMMIGR L.J* (2014)

before 1960 were West Indian and fifty percent of all black migrants to the U.S. before 1960 originated from one island, Jamaica.¹⁶

My focus in this Article is on the evolution of property regimes within the West Indian islands both during plantation slavery and after Emancipation, as well as how West Indian migrants to the U.S.

And what of Africans from Africa? Prior to 1965, it was very difficult for blacks from Africa to migrate to the U.S. The typical African migrant was like President Obama's father – a highly skilled temporary migrant admitted to an elite graduate program on a short-term visa. For a long time, West Indians “slipped in,” escaping Congressional attention – largely because they were classified as British subjects and because of their tiny numbers (in relation to the larger immigrant pool). The relevance of race in immigration admission prior to 1965 has been the subject of extensive commentary in the legal scholarship. See IAN F. HANEY-LOPEZ, *WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE* 42-44 (1996) (discussing how performing “whiteness” often functioned as a prerequisite for admission and naturalization). The literature has comprehensively detailed the challenges that a variety of groups, including Mexicans, Japanese, Chinese, Indians, Puerto Ricans and Filipinos encountered in attaining admission and later naturalization. See KEVIN JOHNSON, *IMMIGRATION LAW AND THE U.S.-MEXICO BORDER: ¿SÍ SE PUEDE?* (2011); KEVIN JOHNSON, *HOW DID YOU GET TO BE MEXICAN?: A WHITE/BROWN MAN'S SEARCH FOR IDENTITY* (1999) (all books on Mexican immigrants in particular and Latinos more generally), IAN HANEY-LOPEZ, *supra* (discussing Latino, Asian and Arab immigrants), MAE NGAI, *THE LUCKY ONES: ONE FAMILY AND THE EXTRAORDINARY INVENTION OF CHINESE AMERICA* (2010) (on Chinese immigrants); Leti Volpp, *Obnoxious To Their Very Nature: Asian Americans and Constitutional Citizenship*, 8 *Asian L.J.* 71 (2001) (on Asian immigrants); Leti Volpp, *The Culture of Citizenship*, 8 *THEORETICAL INQ. L.* 571 (2007) (same); LAURA E. GÓMEZ, *MANIFEST DESTINIES: THE MAKING OF THE MEXICAN AMERICAN RACE* (2007) (on Mexican immigrants), PAUL R. SPICKARD, *JAPANESE AMERICANS: THE FORMATION AND TRANSFORMATIONS OF AN ETHNIC GROUP* (1996) (on Japanese immigrants); HIROSHI MOTOMURA, *AMERICANS IN WAITING*, Introduction (2006) (containing personal reflections on Japanese immigrants in particular).

¹⁶ Winston James has a comprehensive statistical summary of pre-1965 black immigration to the U.S. by region of origin. Early black immigrants were overwhelmingly of Caribbean origin. Prior to World War II, blacks known as “British West Indians” appeared to outnumber all other black migrant groups by a large margin, with Jamaica, the most populated British West Indian island, supplying the largest number of immigrants. Indeed, Jamaicans have been the largest group of black Caribbean immigrants to the U.S. since the mid-19th century, and have only recently been overtaken by Nigerians. James points out the following important caveat: in the late 19th or early 20th century, it is unclear whether dark-skinned persons of Spanish Caribbean origin (such as persons from the Dominican Republic or Cuba) would have been classified as “black” at the time of landing in the U.S. See, Winston James, *Explaining Afro-Caribbean Social Mobility in the United States: Beyond the Sowell Thesis*, 44 *COMP. STUD. IN SOC'Y & HIST.* 218 (2002) [hereinafter James, *Explaining Afro-Caribbean Social Mobility*]; see also 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* (Brian Meeks & Folke Lindahl eds., 2001) [hereinafter James, *New Light on Afro-Caribbean Social Mobility*].

translated their long-time experience in West Indian property markets to success in the U.S. Which islands do I include? I use the term “British West Indies,” “West Indies” or “West India” namely to refer to the Caribbean islands in the Greater and Lesser Antilles.¹⁷ Migrants from these islands shared the following characteristics. First, they were British colonized. Second they were dominated by sugar plantations.¹⁸ Third, the colonies were largely administered through a common governance structure, the Colonial Office, established by Westminster to govern the colonies. Importantly, the islands were generally operated under a legal “supra structure” – a common legal framework based heavily on the common law and statutes passed in Westminster.¹⁹

There is one more definitional point: I use the term plantation slaves to mean chattel slaves, who were purchased or inherited and owned as property, and who functioned as laborers on large agricultural plantations producing commodities—particularly sugar—primarily

¹⁷ The main members include Antigua and Barbuda (which were governed by the British as a political unit), St. Kitts and Nevis (same), St. Vincent and the Grenadines (same), Trinidad and Tobago (same), Barbados, St. Lucia, Dominica, Grenada, Jamaica, and Guyana. I also include one mainland sugar colony, British Guiana (now Guyana), from which many black migrants also originated.

¹⁸ British West Indian agriculture was generally dominated by sugar plantations staffed by slaves; however, there were a few islands where this was not the case (and which I exclude). For example, I exclude British Honduras (Belize) in Central America, which was not a sugar colony, although it was governed alongside the West Indies. Bermuda, Bahamas and the Cayman Islands as well as the British Virgin Islands are excluded for similar reasons. Although the West Indies were not exclusively British colonized, the British were the largest regional players – the French, Spanish, Danes, Dutch and Portugese were typically less influential. In any event early black migrants were overwhelmingly British subjects. Mintz provides a good summary of differential importance of sugar in different islands.

¹⁹ Why was this feature of island governance important? There is an extensive literature demonstrating that differences in the legal tradition that countries inherited from their colonial administrators may have a long-run impact on the economic opportunities available to their median resident. La Porta, Rafael, Florencio Lopez-de-Silanes, and Andrei Shleifer. (2008). “The Economic Consequences of Legal Origins,” *Journal of Economic Literature*, 46(2): pp. 285-332 For example, countries with English common law origins provide their median residents with stronger protection of property and contract rights and are less prone to government interference in private commercial relations than countries with civil law origins. *Id.* It is unlikely that differences in the access of the median resident to property in different islands may be attributed to differences in common law or statutory frameworks, since they were all generally operating under the same template, although from time to time there were legal idiosyncrasies in individual islands, due to regulations promulgated by local Governors or local representative legislatures.

for European markets.²⁰ I emphasize this because *plantation slavery* as an institution, and its effect on property acquisition among chattel slaves, is central to my thesis. I should emphasize I do not address property ownership among those who were subject to other forms of forced labor in the West Indies – including, for example, forced peonage and indentured servitude, although many West Indians of other racial and ethnic backgrounds, such as South Asian West Indians, were also victims of these practices.²¹

II. SLAVERY IN THE WEST INDIES: LAYING THE FOUNDATION FOR REAL (ESTATE) SUCCESS IN NEW YORK

I have previously argued in other work that West Indian property arrangements, first informal and later formal, provided a political and economic structure in which West Indians had time to finesse their abilities as property owners and contractors long before immigrating to the U.S.²² The most striking aspect of these property and contracting institutions, is that they first emerged under slavery, even as formal property ownership by slaves was not recognized legally. These institutions continued to form during the period of Apprenticeship, a transitional regime of mixed slave and free labor, and finally flower as a formal and full-fledged property regime during full Emancipation.

Despite the crucial legal importance of Emancipation—namely, that slaves who were once property themselves were free and could hold legal title—the literature addressing differences in the patterns of acquisition of property, particularly real property, between African Americans and West Indians migrants is almost entirely in the social

²⁰ This is the definition used by Mintz and Hall. Sidney Mintz and Douglas Hall, *The Origins of the Jamaican Internal Marketing System* (New Haven: Department of Anthropology, Yale University, 1960)

²¹ The Introduction to the Heuman and Walvin slavery reader contains an excellent discussion of the distinctions between these different forms of forced labor. GAD HEUMAN AND JAMES WALVIN, *THE SLAVERY READER* (2003).

²² 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).

sciences. Why are the landlords in Harlem and Brooklyn West Indian, the tenants African-American? ²³ These are tough questions.²⁴

A major assumption implicit in the literature, namely that West Indians and African Americans were in the “same boat” upon arrival in New York, needs to be called into question. It seems that before assuming that black migrants from the West Indies are a useful comparative sample to internal black migrants from the U.S. South, there are three basic questions to be addressed. First, what property did West Indians have before they came? Second, how did the U.S. immigration authorities decide which West Indians would be allowed to immigrate and do these immigration-related processes shed any light on what West Indian immigrants might have brought with them?

Before focusing on the processes by which the forebears of West Indian migrants came to own real property *before* they came to the U.S., I first briefly address the processes by which they were selected to come here. As I have noted in other work, alongside the disadvantages that black West Indians suffered inside a nativist immigration regime, there is a parallel history of West Indians generally, and elites in particular, enjoying peculiar benefits in immigration admission. The immigration institutions were clearly

²³RONALD SCHMIDT SR., ET AL., NEWCOMERS, OUTSIDERS, AND INSIDERS: IMMIGRANTS AND AMERICAN RACIAL POLITICS IN THE EARLY TWENTY-FIRST CENTURY 111 (2009); Kyle D. Crowder, *Residential Segregation of West Indians in the New York/New Jersey Metropolitan Area: The Role of Race and Ethnicity*, 33 INT’L MIGRATION REV. 79 (1999); see also EMILY ROSENBAUM AND SAMANTHA FRIEDMAN, THE HOUSING DIVIDE: HOW GENERATIONS OF IMMIGRANTS FARE IN NEW YORK’S HOUSING MARKET (2007).

²⁴ See THOMAS SOWELL, RACE AND CULTURE: A WORLD VIEW 250-258 (1994), *Three Black Histories*, in ESSAYS AND DATA ON AMERICAN ETHNIC GROUPS (Thomas Sowell ed., 1978), RHETORIC OR REALITY? (1984), THE ECONOMICS AND POLITICS OF RACE: AN INTERNATIONAL PERSPECTIVE (1983), THE SLAVE ECONOMY OF THE OLD SOUTH. See also FRANCIS FUKUYAMA, TRUST, THE SOCIAL VALUES AND THE CREATION OF PROSPERITY ch. 26 (1995); GLAZER & MOYNIHAN, *supra* note; REYNOLDS FARLEY & WALTER ALLEN, THE COLOR LINE AND THE QUALITY OF LIFE IN AMERICA (1989), esp. ch. 12; Suzanne Model, *Caribbean Immigrants: A Black Success Story?* 25 INT’L MIGRATION REV. (1991); PHILIP KASINITZ, CARIBBEAN NEW YORK: BLACK IMMIGRANTS AND THE POLITICS OF RACE 90-95 (1992); BECOMING NEW YORKERS (Philip Kasinitz et al. eds., 2004); STEPHEN STEINBERG, THE ETHNIC MYTH: RACE, ETHNICITY, AND CLASS IN AMERICA (1989) [hereinafter STEINBERG, THE ETHNIC MYTH]; ORLANDO PATTERSON, *Introduction* to RITUALS OF BLOOD: THE CONSEQUENCES OF SLAVERY IN TWO AMERICAN CENTURIES (1999) [hereinafter PATTERSON, RITUALS].

selecting for more moneyed black immigrants, even if this was being done inadvertently. Thus, it is not at all clear that early West Indians migrants to northern cities, like New York, are an appropriate comparative sample to early internal African American migrants arriving in New York at the turn of the century.²⁵

Pursuing the first question, West Indians have had a long and complex history in the property markets before they ever set foot in the United States. Critical to my thesis is the view that there were important institutional idiosyncrasies in the West Indies that played an important role in the evolution of slave property ownership during plantation slavery.²⁶ The background to this narrative is the particular political

²⁵ A relative question is whether African American internal migrants were also likely to be relative elites in relation to their Southern peers who stayed behind. For data in support of this position see NEIL FLIGSTEIN, *GOING NORTH* (1981). See also CAROLE MARKS, *FAREWELL, WE'RE GOOD AND GONE: THE GREAT BLACK MIGRATION* (1989); DANIEL JOHNSON AND REX CAMPBELL, *BLACK MIGRATION IN AMERICA: A SOCIAL DEMOGRAPHIC HISTORY* (1981).

²⁶ I should note that the literature was for decades focused on institutional similarities between plantation slavery in the U.S. and the West Indies. Prior to the American Revolution, as the narrative is conventionally told, the American colonies and the West Indies (as British colonies) had histories that were inextricably intertwined. It was in the West Indies that plantation slavery was “perfected” (to use the words of Ulrich Phillips, the controversial early historian of the U.S. South) before it was “exported” to other colonies (such as the Carolinas). Simply put, the genesis of slavery in the British Americas was West Indian. In Phillips words:

As regards Negro slavery the history of the West Indies is inseparable from that of North America. In them the plantation system originated and reached its greatest scale, and from them the institution of slavery was extended to the continent. The industrial system on the islands, and particularly on those occupied by the British, is accordingly instructive as an introduction and a parallel to the continental regime.

Whatever early institutional similarities there may have been between the plantation systems in the West Indies and the U.S. South, the institutional *differences* between the West Indies and the U.S. South will be clear to many readers of the larger book – even as I do not typically make overt comparisons to plantation slavery in the U.S. See ULRICH B. PHILLIPS, *AMERICAN NEGRO SLAVERY: A SURVEY OF THE SUPPLY, EMPLOYMENT AND CONTROL OF NEGRO LABOR AS DETERMINED BY THE PLANTATION RÉGIME* 46 (1918). As the historian Betty Wood establishes, most early African slaves who were imported into the English colonies (that later became the United States) came from the West Indies. Prior to the early 1700s, it was difficult to acquire slaves from Africa in the colonies that became the United States; most Africans were sold in the West Indies. One of the early large-scale importations of African slaves in the American colonies occurred when Barbadian planters—who played a significant role in the founding of South Carolina in 1670—imported slaves from Barbados. See BETTY WOOD, *THE ORIGINS OF AMERICAN SLAVERY* 64–65 (1997) (discussing

economy of the colonial West Indies. The critical fact about the West Indian colonies was their size and relative isolation. Extraordinarily well suited to sugar production but tiny and difficult to supply, West Indian sugar plantations were simultaneously very important to the Exchequer (British Treasury), and the source of significant discomfort to the Crown. The Crown was deeply disturbed by the instability of West Indian shipping routes,²⁷ easily disrupted by the vagaries of skirmishes with other European powers (particularly the French). Indeed, Jamaica at the peak of its productivity in the late eighteenth century was among the most valuable British colonies and worth more than all of the New England colonies combined.²⁸ The British were desperate to mitigate the impact of war on supplies generally and particularly fresh food supplies, not only for their British compatriots but also for the slaves.

These features of the political economy of the West Indies provided incentives for the plantocracy (with the support of the Parliament) to innovate in property and contracting arrangements with respect to the slave population. Given perennial shipping challenges and food shortages, their important task was to get the slaves to feed themselves. The critical interests of Parliament, the plantocracy, and the slavers were aligned in achieving this goal – there would be less of a stress on precious plantation working capital (no cash outlays needed to import food from London), Parliament would not need to entertain pained

the connection between the Lowcountry, as the English called present-day South Carolina, and settlers from Barbados). The classics in this area are too numerous to mention in a brief footnote. For a good introduction to the literature in the area, you can hardly do better than *The Slavery Reader*, ed. by Rigas Doganis, Gad Heuman, James Walvin, Routledge 2003, which has an extensive introduction to plantation slavery as an institution, particularly in the West Indies and the Southern U.S.

²⁷ The historian Selwyn Carrington is a particularly strong proponent of the influence of war and the instability of shipping routes on West Indian sugar. See Veront Satchell, *Slave Labour and Sugar Production in Jamaica 1760–1830*, at 11–12 (1997) (noting Carrington’s argument that the American Revolutionary War was deeply threatening to West Indian sugar as “Caribbean sugar producers were extremely dependent on British North America for all commodities necessary for them to produce sugar”).

²⁸ The islands had become important to the economic wellbeing of the British Empire as a major source of revenue for the British Treasury, which levied ample taxes on the planters’ profits. See SHERLOCK & BENNETT, *supra* note , at 281–82 (discussing the onerous tax regime).

reports from the colonies about how slave malnutrition was compromising plantation productivity, and the Treasury's coffers could continue to rely on plantation taxes. Moreover, slave were understandably eager for a system that would keep them better fed.

So, what sort of system did they create? As economists have long told us, secure entitlements incentivize effort; commerce increases the payoff from effort even more. The plantocracy understood this with respect to local food production; so they supported what came to be called a provisioning system. This system created "provision grounds," or informal slave entitlements in plots to grow food and to the produce that came from these plots. The result was the evolution of a slave culture involving increasingly complex forms of property arrangements, including inheritance-like devices. The thesis is very Demsetzian – property rights emerged in response to the demand for them. Moreover, perhaps also as an incentive to slave productivity, the English allowed slaves to increasingly engage in commerce; they were allowed to sell surplus produce and became the dominant players in the food economy.²⁹

By utilizing provision grounds, the British granted *de facto* property "rights" to West Indian slaves, qua slaves, thereby creating the largest "property-lite" owning class of blacks in the Americas (or property owners-in-waiting, as I call them).³⁰ In the absence of formal legal norms, slaves nevertheless developed a concept of property based on communal understandings. These communal understandings were tacitly acknowledged by both fellow slaves and the English, even in the absence of legal sanction. Indeed, the customary norms were so pervasive that the English plantation class rarely interfered with slave-owned property.³¹ Only later did this customary framework of property ownership among slaves evolve into formal law.

Not all members of the plantocracy, however, viewed these developments as positive. Some feared that the roots of the ultimate

²⁹ See e.g. Lorna Simmonds, *Slave Higglering in Jamaica 1780-1834*, 20 JAMAICA J. 31 (1987)

³⁰ Chapter 1

³¹ See *infra*

failure of plantation society would lie in the provisioning system. One need only consider the views of Henry Ross, a prominent English planter, barrister and legislator in the Eastern Caribbean who blamed the demise of plantation society and of sharecropping on provisioning. Ross felt that there was a fundamental contradiction between laboring on a plantation (whether as a slave or subsequently as a laborer) and planting provision grounds at the very edge of that same plantation. In his view, a laborer was either about the Master's business or he was about his own, but he could not do both. Thus, if the provision grounds were formally the property of the Master, the provisions that were proceeds also belonged to the Master. To allow slaves the benefit of selling the provisions in a market economy, and pocketing the proceeds blurred the distinction between what belonged to the Master and what belonged to the slave in a dangerous way.

Ross's predictions ultimately proved prescient.³² For example, after British Emancipation, planters in the West Indies were not successful (especially compared to planters in the U.S. South) in guaranteeing a

³² The clear implication of Ross's writings is that such provisioning arrangements would never have been allowed in societies that were serious about the maintenance of plantation slavery. Woodville, Marshall, *A 'Valued Pamphlet': Henry James Ross's Rationale for Sharecropping in the West Indies*. *SLAVERY & ABOLITION*, 2003, Vol. 24(3), p.82-111 Surely one such society would be the U.S. South. Dylan Penningroth's work would suggest the sporadic evolution of property ownership among slaves in certain Southern states. DYLAN PENNINGROTH, *THE CLAIMS OF KINFOLK, AFRICAN AMERICAN COMMUNITY AND PROPERTY IN THE NINETEENTH CENTURY* (2003); Dylan Penningroth, *The Claims of Slaves and Ex-Slaves to Family and Property: A Transatlantic Comparison*, 112 *AM. HIST. REV.* 1039, 1039-69 (2007).

Of course, some scholars have emphasized other factors that accounted for the low prevalence of sharecropping in the British West Indies in comparison to both the U.S. South and Caribbean islands colonized by other powers such as the Spanish, French and the Portugese or islands with a mixed colonial heritage such as St Lucia (French and English). Sharecropping was also alternatively known as metayage, metairie and mezzadria in Caribbean islands. For a discussion of some of these other factors, including legislative framework, demographic differences etc. see e.g., Marshall, *Metayage in the Sugar Industry of the British West Indian Islands*, 5 *THE JAMAICAN HISTORICAL REVIEW* 32 (1965); ADRIEN, *METAYAGE, CAPITALISM AND PEASANT DEVELOPMENT IN ST. LUCIA, 1840-1957* (1996) and Howard Johnson, *The Share System in the Bahamas in the Nineteenth and Early Twentieth Centuries* 5 *SLAVERY AND ABOLITION* 2 (1994). Among many titles, they cite particularly heavily to the following texts as providing a basis for a comparative review of sharecropping in the U.S. South and the West Indies. RANSOM AND SUTCH, *ONE KIND OF FREEDOM: THE ECONOMIC CONSEQUENCES OF EMANCIPATION* (1977) and Sholomowitz, *The Origins of Southern Sharecropping*, 53 *Agricultural History* 568 (1979).

continued cheap labor force through arrangements such as sharecropping. The root of the failure of the planters' efforts to tie former slaves to the plantations lay in the very food markets that planters had encouraged during slavery – slaves were already cash rich. Generally, as long as land was available former slaves were sceptical of sharecropping – they wanted to become freeholders. It is striking that despite its tiny size, the West Indies witnesses the emergence of the largest group of black owners of real property in the Americas within four decades of Emancipation in the British Empire.

In analyzing the development of this large propertied class, I focus particularly on the following roles that African slaves and their freedmen descendants held in relation to property:

- (1) slaves who “by their own labor” were acquiring property in their Master’s land during slavery;
- (2) “freedmen” who were *de jure* freeholders following Emancipation
- (3) “freedmen” who were *de jure* tenants on sugar cane estates following Emancipation

III. THE EXERTION OF PROPERTY RIGHTS BY SLAVES AND FREEDMEN

There are three general categories of property rights: the exclusive right to use an asset, the right to appropriate its economic value, and the right to alienate the asset.³³ As a matter of customary practice, West Indian slaves had the first two of these three rights, namely the exclusive right to use an asset and the right to appropriate its economic value, and even elements of the third: as long as a slave remained with the plantation the land set aside for his personal use was his alone to tend; it would not be allocated to someone else.³⁴ Thus, through these rights, a slave essentially had *constructive* control of the property. When the system first developed and prevailed, the slave’s control was

³³ THRÁINN EGGERTSON, ECONOMIC BEHAVIOR AND INSTITUTIONS 34–35 (1990).

³⁴ *See infra*

not codified in law. Rather, as a matter of law, the land remained under the control of the plantation owner. Therefore, the slave's "control" of the land was a matter of customary practice.³⁵ This control is further reflected in the fact that trespass by others (particularly other slaves) was systematically discouraged.³⁶ Hence, the system embodied the principle of exclusive control, even if this principle was not codified.

Second, slaves had the right to appropriate their land's economic value—whatever the slave farmed, she was allowed to keep.³⁷ Again, however, the operative principle is constructive benefit. The proceeds of the property were technically those of the plantation owner, given his formal ownership of the property. However, as a matter of practice, the proceeds of the slave's plot were his own. When slaves were later informally allowed to sell produce and livestock from their plot, the principle of constructive benefit was further augmented.

Finally, aspects of the principle of transfer—the third property right—were also featured in this system, if only constructively. If a slave had children, upon his death, the land was then allocated to his children.³⁸ While the slave may not have been able to formally transfer the land, in local parlance it was "passed down" upon his death to his children, who most likely remained with the plantation. In so doing, the system also approximated the property right principle of transfer, although without formal institutional support.³⁹ The real test of the "rights" of

³⁵ See Mintz & Hall, *supra* note , at 21–22 (pointing out that under slavery, Jamaican slaves were allowed much freedom in the cultivation of their lands).

³⁶ See *id.*

³⁷ See *infra* Part

³⁸ See BESSON, *supra* note , at 28–29 (noting a customary inheritance system amongst the slaves in which they could bequeath land rights to whomever they thought proper).

³⁹ It is perhaps useful to recall the work of Douglass North, the modern father of the "institutions school" who emphasized the importance of institutions to enforce these rights. See Claude Ménard and Mary M. Shirley, *The Contribution of Douglass North to New Institutional Economics*, in *ECONOMIC INSTITUTIONS, RIGHTS, GROWTH, AND SUSTAINABILITY: THE LEGACY OF DOUGLASS NORTH* (Sebastian Galiani & Itai Sened eds., forthcoming 2013) (manuscript at 2) (chronicling the contribution of Douglass North to the "development and institutionalization of NIE," New Institutional Economics). North explained that property rights mean little without institutions to enforce them. See *id.* at 10 (emphasizing the key role of institutions and contract enforcement in protection of property rights). North's definition of "institutions" is broad. See *id.* at 8, 23 (explaining that North included not only laws and formal written codes, but also social norms and beliefs in the umbrella concept of

these nascent property holders, however, was Emancipation which represented a sea-change in the relationship between the slaveholder turned employer and the slave turned employee.

Slavery was abolished in the British Empire in 1838.⁴⁰ Of the 800,000 slaves freed worldwide, the overwhelming majority were in the British West Indies.⁴¹ Around half of these slaves had previously been rural slaves employed on sugar estates.⁴² It was from this group of de facto property owners and contracting parties that real property owners and contractors soon emerged—the *de jure* freeholders mentioned above.⁴³

Implicit in the slave-owner/slave relationship are the reciprocal obligations of the slave to work to the advantage of the slave owner,

“institution”); *see also* NORTH, *supra* note , at 4 (explaining that his analysis of institutions includes both formal and informal constraints). Modern law and development literature, in contrast, equates “institutions” with a formal legal system, including a set of laws, practitioners, courts, and judges. Tom Ginsburg, Review Essay, *Does Law Matter for Economic Development? Evidence from East Asia*, 34 *LAW & SOC’Y REV.* 829, 832 (2000) (noting that North’s focus on constraining institutions resulted in a new wave of law and development). It is in precisely this sense that I argue that slaves were part of a property rights framework undergirded by an informal set of “rules.”

⁴⁰ There are several excellent histories of Slavery Abolition Act. Good introductions include Pollock (1997), Hague (2007), Tompkins (2007), Brown (2005) and Hobschild (2005). There are competing accounts of which factors most contributed to the demise of slavery including the decreasing dependence of the Treasury on taxes from sectors dependent on slavery, the declining interest of the plantocracy compared to other interests such as the free traders and the merchant class, the coalition of interests between the abolitionists and other sectors who for independent reasons sought to weaken the plantocracy, and the increasing influence of evangelical Christian abolitionists within the Church of England. Few dispute though that had it been left to the “West India” interests, abolition would have been – yet again – postponed. There was a widespread understanding among the slaves that they had been freed by the “Queen” (that is, the Crown), which they understood to be a distinct entity from local government, particularly given latter’s overwhelming domination by plantation interests. *See* HOLT, *supra* note , at 7–8 (explaining that in the early 1800s, “Great Britain took its first steps toward dismantling its Americas slave empire . . . [by] abolish[ing] the slave trade in 1807, requir[ing] . . . slaveowners to ameliorate the living and working conditions of slaves in 1823 . . . and proclaim[ing] complete emancipation in 1838”).

⁴¹ SHERLOCK & BENNETT, *supra* note , at 213 (noting that there were more than 300,000 slaves on the island).

⁴² HOLT, *supra* note , at 121.

⁴³ WILMOT, *supra* note , at 6–12 (describing the foundation of religious settlements and independent communities shortly after emancipation which resulted in 50,000 former Jamaican slaves owning an average of three acres each).

and for the slave-owner to provide means the slave such as food and shelter. The allocation of land to slaves allowed the planters an unconventional mechanism of meeting their obligation to provide food and shelter. One need only recall the reflections of the “planter-politician–man of letters” (and highly influential opponent of Emancipation), Bryan Edwards, in recommending the virtues of the “Jamaican system” to planters in other colonies:

The practice which prevails in Jamaica of giving the Negroes lands to cultivate, from the produce of which they are expected to maintain themselves (except in times of scarcity, arising from hurricanes and droughts, when assistance is never denied them) is universally allowed to be judicious and beneficial; producing a happy *coalition of interests* between the master and the slave. The Negro who has acquired *by his own labour a property* in his master's land, has much to lose, and is therefore less inclined to desert his work. He earns a little money, by which he is enabled to indulge himself in fine clothes on holidays, and gratify his palate with salted meats and other provisions that otherwise he could not obtain; and the proprietor is eased, in a great measure, of the expense of feeding him (emphasis added)⁴⁴

In Edwards’ reflections, it becomes clear that a system in which the “Negro acquired by his own labour a property in his master’s land” allows the master to meet his obligations to the slave, even as the slave meets his obligations to his master.

It was for good reason that Edwards was known as the “philosopher-planter.” You will note that his language describing the virtues of the Jamaican is highly reminiscent of Locke – never mind that we are dealing with forced labor.⁴⁵ His Lockian arguments against abolition were effective – he had the ear of many parliamentarians. He repeatedly insisted to great effect that a Jamaican slave “with property

⁴⁴ 2 BRYAN EDWARDS, *THE HISTORY, CIVIL AND COMMERCIAL, OF THE BRITISH COLONIES IN THE WEST INDIES* 371, 373 (3d ed. 1806).

⁴⁵ An excellent background discussion of the philosophy that would underlie a slave “acquiring property in his master’s property through his own labor” is included in Eric Claeys, “*Locke Unlocked: Productive Use in Trespass, Adverse Possession, and Labor Theory*,” http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1759551.

in his master's land" was better off than an English peasant on his Lord's land.⁴⁶

My point is that the system of allocating provision lands to slaves was widely supported at multiple levels of plantation society. Emancipation threatened to turn everything upside down. Once labor becomes free, this relationship of reciprocal obligation (which is fundamentally a status relationship) is completely severed. Any contractual relationship—be it one grounded in tenancy or employment—is fundamentally far more tenuous for the planter than a relationship grounded in status.

And what to do with the property which the slave occupies but which the planter legally owns? If the freedman continues to work for the planter, perhaps there is a continuing basis for his continuing to occupy provision grounds at the edge of the plantation. In such a case, the planter has a clear justification for the continuing occupation of the land by the former slave: labor can be understood as an in-kind rental payment. Indeed, such an arrangement may even be beneficial to the planter's cash flow. Theoretically he "pays" the freedman in kind, with less of a need for a cash outlay.

Suppose the freedman declines employment on the plantation? One can expect the planter to ask himself the following: Why is a former slave, now freedman, remaining on land that is formally mine, if I am no longer obligated to provide for him? What am I getting out of it? Predictably, there was a face-off between the planters and the freedmen.

The options that confronted West Indian freedmen when they sought to exercise their newfound freedom are reminiscent of Albert Hirschman's famous conceptual ultimatum ("voice/exit/loyalty").⁴⁷ They had three options. First, they could remain on the plantation in an employment relationship largely on the planter's terms ("loyalty") – for example, they could continue to accept wages that were planter-

⁴⁶ It is for good reason that one scholar notes that having read Edwards one wonders whether "our conceptions of freedom and unfreedom are too narrow." Edwards posed the question: how unfree could a slave really be if he is propertied?

⁴⁷ See ALBERT HIRSCHMAN, *EXIT, VOICE AND LOYALTY* (1970).

determined as stipulated by the regulations governing the Apprenticeship regime.

Second, they could remain on the plantation but with a more robust set of protections. These protections would include guaranteed leave (particularly for the women who ran the markets, and wanted guaranteed days off to prepare for weekend markets), assurances that they could reap crops planted even in the event of a later severing of the employment relationship and eviction, and market determined wages (which would theoretically be subject to some bargaining on the part of freedmen, particularly in those islands where labor was inclined to be short). This would approximate “voice.” Those exercising “voice” could extract concessions for their ongoing loyalty.

The final option of course is exit. Those who had assets could actually credibly threaten to exit undesirable plantation relationships, and could do so. My argument is that across the region, exit predominated; that is freedmen becoming *de jure* freeholders was the predominant choice.

The likelihood that slaves would exit depended largely on two factors – the availability of cash and the availability of land.⁴⁸ Certainly in the earliest days of Emancipation, any cash that the slaves had would have most likely been accumulated during slavery. The availability of cash with which they could buy land was in turn tied to the extensiveness of the provisioning system during slavery in a particular island.

A primary reason that the West Indies is such a wonderful place for a comparative study of the evolution of property regimes (in practice as opposed to just in law) is that there were distinct topological and size differences between the islands that had significant implications for land allocation, both during and after slavery. For example, some colonies (e.g. Guyana, Jamaica, Trinidad and Tobago) were larger

⁴⁸ Donald Harris, *The Circuit of Capital and the 'Labour Problem' in Capitalist Development*, SOCIAL AND ECONOMIC STUDIES, Vol. 37 (March-June 1988), pp. 15-31.

with more plentiful arable land.⁴⁹ And even when planters were unwilling to give arable land to slaves, there remained more marginal land in close proximity to the plantations on which the slaves could plant.⁵⁰ Other islands (e.g. Barbados, St. Vincent, St. Kitts) were much smaller – planters were less inclined to be generous, because every acre given to slave was an acre not available for sugar plantation.⁵¹ So in these islands, although provisioning did occur, it was more marginal – with garden “plots” as opposed to more fulsome lands.⁵² Particularly in Barbados, which is nearly entirely flat, nearly all land was consumed by the plantocracy.⁵³

Thus, in the larger islands, the provisioning system was much more extensive. Slaves grew more food and the food markets were more plentiful. There were myriad cash crops that would allow for slaves to accumulate assets. Moreover, since manumission was ongoing (certainly up to the beginning of Apprenticeship) there were real incentives to accumulate cash.⁵⁴ The bottom line: in the larger islands like Jamaica and Guyana, slaves were more likely to have cash because they had been serious market participants for some time.⁵⁵ Moreover, in these territories, there was more land to buy.⁵⁶

⁴⁹ A good description of the differences between the islands is in B.W. Higman, *A CONCISE HISTORY OF THE CARIBBEAN* (2011).

⁵⁰ For example, in Jamaica the more marginal lands were hilly (at the edge of the plantations). In Guyana, the more marginal lands were prone to flooding. For a discussion of the topographies of a few of the individual islands see PHILIP SHERLOCK & HAZEL BENNETT, *THE STORY OF THE JAMAICAN PEOPLE* (1998); R. Farley, *The Rise of the Peasantry in British Guiana*, *SOCIAL AND ECONOMIC STUDIES*, Vol. 2, No. 4, pp. 87-103; S. Mintz, *Reflections on Caribbean peasantries*, *New West Indian Guide* 57 (1983): no 1/2.

⁵¹ Woodville Marshall, *Provision ground and plantation labour in four windward islands: Competition for resources during slavery*, *SLAVERY AND ABOLITION*, 1991, Vol. 12 (1), p. 48-67.

⁵² Id.

⁵³ Id.

⁵⁴ One need only consider that the purchase of freedom (not to mention the freedom of family members) became more expensive as early as the late 1700s, when it became apparent that the abolition of the slave trade (as opposed to slavery) was imminent (it ultimately happened 30 years before Emancipation in 1808). With the imminent abolition of the slave trade, planters were less inclined to entertain manumission since they rightly feared that they could no longer easily replenish their stock.

⁵⁵ Rawle Farley, *Aspects of the Economic History of British Guiana 1781-1852* (Unpublished Dissertation, University of London, 1952)

⁵⁶ Id.

In sum my argument is that across the islands, one might envision a continuum, with “loyalty” and “voice” being more likely in the smaller islands and “exit” being more likely in the larger islands. The larger the likelihood was of “exit,” the more quickly we are likely to witness the evolution of more fulsome robust property regimes in which law came to approximate longtime land practices.

Not surprisingly, what happened with respect to property acquisition during slavery (when there were *not* formal protections) turns out to be singularly important. The irony is that the extensive nature of the provisioning system made it *less likely* that ex-slaves continued to remain in the employ of the masters once they had a choice. After all, they had already accumulated assets as slaves. Surely, more accumulation would be possible as proper free-holders. Why settle for the substitute “property-lite system” when one can have the real deal?

Another conceptual framework that sheds perspective on the relationship between freeman and planters is the classic “hawk/dove” scenario.⁵⁷ To achieve their goal of ensuring consistent access to low-cost labor, planters formed Associations (which looked like cartels) to pressure members not to sell lands to slaves. Moreover, in many islands the planter-controlled Colonial legislatures, introduced policies of restricting freedmen’s access to Crown (government) lands, essentially by pricing them out of the market.⁵⁸ Additionally, the Colonial Governor (appointed in London, but typically close to the plantocracy) was typically empowered to raise the reserve price of Crown lands with little notice.⁵⁹ Thus, if planters found themselves without access to consistent low-cost labor, the Colonial office would simply raise the price of land such that freedmen were no longer able to afford it.

⁵⁷ The hawk-dove game is a coordination game in which players may adjust their expectations such that they converge on a focal point – again, a choice that is more salient than others. The name “Hawk/Dove” comes from a fictional game between two persons who drive their cars directly at each other. The driver who swerves first loses face. The failure of either to swerve will result in a certain crash. This is well described in McAdams, Richard. 2000. *A Focal Point Theory of Expressive Law*. VA LAW REV., 86 (8), 1649-1729.

⁵⁸ Discussed *infra*

⁵⁹ Discussed *infra*

Simultaneously, groups of freedmen, determined to secure their own land, pooled their resources and banded together to locate lands to purchase. In determining whether freedmen would have access to land, the interactions between the plantocracy and the Colonial legislature on one hand, and the freedmen on the other are Hawk/Dove games: neither wants to swerve first; nor do they want a crash. As it turns out, the planters swerved.

Why did the planters swerve? To understand this we need some background on the political economy of the larger region, and its implication for planter power.⁶⁰ As it turns out the planters' power in the British Parliament and in the financial markets had been rapidly deteriorating. Moreover, the planter interests were divided.

For the planters to tie the slaves to the plantations, they needed to maintain a united front.⁶¹ More specifically, they needed to ensure that there was no land for the slaves to buy. But there was no sense in a strategy of precluding slave access to Crown lands if there were financially strapped defectors within the planters' associations who were willing to sell to slaves. Suffice it to say that within the plantocracy, defectors began to emerge.⁶² Because many of the freedmen had cash, a minority of financially strapped planters rightly viewed the policy of restricting freedmen's access to land as a case of 'shooting oneself in the foot.'⁶³ Many of these minority planters proceeded to sell to the freedmen.

Thus, freedman began to expand their holdings. They elected to leave their plantations, purchasing Crown lands when affordable; others purchased from white defectors. Regardless of the chosen method, these freedmen simultaneously started new lives and laid a foundation for the success of their descendants in property markets.

IV. THE COUNTER-INTUITIVE NATURE OF MY ARGUMENT

⁶⁰ Discussed infra

⁶¹ Discussed infra

⁶² Discussed infra

⁶³ Discussed infra

In this section, I highlight aspects of the argument that are counter-intuitive. The broader historical record provides plenty of evidence that the West Indies was hardly a propitious context for the development of a propertied black peasantry. There is good reason for plenty of skepticism that African laborers, former slaves, now freedmen, would be able to transition from “property-lite” to the “real deal.”

An important background to this section is the work of Daron Acemoglu and James Robinson: they are arguably the most important contributors to the literature emphasizing the primacy of countries’ colonially-bequeathed property rights as the driver of subsequent economic development.⁶⁴ Acemoglu and Robinson are generally of the view that slave institutions once established, are extraordinary challenging to overturn, and are fundamentally inimical to the widespread availability of property rights in the long-term (even after slavery has been abolished). Once slave institutions are in place, it is *difficult* for a society to transition from what they term “extractiveness” to “inclusiveness.”

By way of background, a distinguished body of academic work focuses on the correlation between a country’s institutions for the protection of property rights and the inclination of its citizens to accumulate assets.⁶⁵ In wealthier countries, the median investor can rely on secure property rights and effective contract enforcement.⁶⁶ In

⁶⁴ Simon Robinson is also a co-author on some of the articles. Acemoglu et al, *Root Causes: A Historical Approach to Assessing the Role of Institutions in Economic Development* in G. SECONDI, THE ECONOMICS DEVELOPMENT READER (2008) [“Root Causes”]

⁶⁵ ADAM SMITH, THE WEALTH OF NATIONS (1776); W. ARTHUR LEWIS, THE THEORY OF ECONOMIC GROWTH (1955); DOUGLAS C. NORTH, INSTITUTIONS, INSTITUTIONAL CHANGE, AND ECONOMIC PERFORMANCE (1990).

⁶⁶ Acemoglu, Johnson and Robinson, *The Colonial Origins of Comparative Development: An Empirical Investigation*, 91 AMERICAN ECONOMIC REVIEW 1369 (2001) [hereinafter, Acemoglu et al, “Origins”]; see also Rafael La Porta, et al., *Law and Finance*, 106 J. OF POL. ECON. 1113 (1998) [hereinafter La Porta, *Law and Finance*]; Rafael La Porta, et al., *The Consequences of Legal Origins*, 46 J. OF ECON. LITERATURE 285 (2008) [hereinafter La Porta, *Legal Origins*]; Paul Mahoney, *The Common Law and Economic Growth: Hayek Might be Right*, 30 J. LEGAL STUD. 503 (2001); Richard Posner, *Creating a Legal Framework for Economic Development*, 13 WORLD BANK RESEARCH OBSERVER 1 (1998); Dam, Land, *Law and Economic Development*, J M Olin Law and Economics Working Paper 472 (University of Chicago, 2006), Ginsburg, *Does Law Matter for Economic Development*:
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poorer countries, investors face the prospect of the arbitrary taking of property by either government or privileged elites, unconstrained by independent judges.

A more modern body of work (anchored by Acemoglu) moves beyond correlation to causal claims by contending that countries where colonizers established strong property rights have experienced much higher levels of economic growth when compared with countries with different colonial trajectories.⁶⁷ While a country's colonial origin—determined centuries ago—can hardly be said to “cause” its present-day level of income; the nature of countries' colonial origins enables researchers to estimate the causal impact of property rights on long-run economic outcomes.

I need to say a little more about Acemoglu and Robinson's argument to emphasize its relevance for the West Indies. European colonizers pursued widely different colonization strategies – with varied institutional frameworks. Among non-European countries colonized by Europeans during the last five centuries, those that were initially richer are paradoxically poorer today. Acemoglu and Robinson theorize that in formerly rich countries with dense native populations or slave populations, Europeans introduced institutions, such as forced labor which drained the natives and/or slaves of their labor and wealth. These institutions are classically “extractive;”⁶⁸ their primary goal was to facilitate the speedy transfer of wealth to the colonial powers.⁶⁹ Understandably, the associated institutions neither protected the property rights of the median person, nor constrained elite power.⁷⁰

Evidence From East Asia 34 *Law and Society Review* 829 (2000); Donald Clarke, *Economic Development and the Rights Hypothesis: The China Problem*, 51 *J. OF COMP. LAW* 89 (2002); Michael J. Trebilcock and Paul-Erik Veel, *Property Rights and Development: The Contingent Case for Formalization*, Legal Research Series No. 08-10 (Dec. 20, 2007); ROBERT D. COOTER AND HANS-BERND SCHAFFER, *SOLOMON'S KNOT: HOW LAW CAN END THE POVERTY OF NATIONS* (2011).

⁶⁷Acemoglu, *Origins*, *supra* note .

⁶⁸ Acemoglu, *Root Causes*. Extractive institutions are defined in the following way, namely, those “designed to extract incomes and wealth from one subset of society [the median resident – my words] to benefit a different subset [the elite].”

⁶⁹ Acemoglu, *Root Causes*.

⁷⁰ Acemoglu, *Root Causes*

Extractive institutions lie on one end of the curriculum. In other colonies, another set of institutions prevailed. In colonies with only small native populations (such as New England and Australia), European settlers had little choice but to work hard themselves (i.e. there was no one to enslave – setting aside the very poor treatment of the indigenous populations, a clear omission in Acemoglu and Robinson). For this reason, they developed institutional incentives rewarding work. Thus, in contrast to extractive institutions, at the other end of the continuum, Europeans created what they term “inclusive” or “settler” societies, in which they reproduced European institutions for the protection of property.⁷¹

What happened when the former colonies achieved independence? In some, they inherited the extractive institutions that coerced the common man to produce wealth for the governing elite. In others, they inherited settler institutions in which elites shared power and incentives for work were widespread. In sum: while extractive institutions are terrible for subsequent economic development, inclusive institutions are good. Herein, simply put, lies the difference between Bolivia and Massachusetts.

As I briefly noted the institution of slavery is critical to their argument. They believe that once the institution of slavery was established in a colony, it was very difficult for a different system to take root.⁷² Acemoglu and Robinson offer a plethora of historical examples to make this point. Their work is replete with former slave societies in which *de jure* slavery continues in a modified but essentially similar format (in which status relationships between the former slavers and

⁷¹Daron Acemoglu, *Why Not a Political Coase Theorem? Social conflict, commitment and politics*, 31 J. COMP. ECON. 620 (2003) [hereinafter Acemoglu, *Coase*].

⁷² One rationale for the persistence of sub-optimal political institutions is discussed in Acemoglu’s article “Why not a Political Coase Theorem.” Here’s a precis:

Do societies choose inefficient policies and institutions? An extension of the Coase theorem to politics would suggest the answer is no. This paper discusses various approaches to political economy and develops the argument that there are strong empirical and theoretical grounds for believing that inefficient policies and institutions are prevalent. We conclude that these inefficient institutions and policies are chosen because they serve the interests of politicians or social groups that hold political power at the expense of the rest. The theoretical case depends on commitment problems inherent in politics; parties holding political power cannot make commitments to bind their future actions because there is no outside agency with the coercive capacity to enforce such arrangements.

enslaved continue). One need only think of the post-Reconstruction emergence of Jim Crow, but there are so many other examples – in Cuba, Brazil and so forth. These are all classically extractive societies, well after the abolition of slavery.⁷³

The following paragraph encapsulates their argument well:

The United States, which underwent a transformation similar to the English Glorious Revolution, had already developed its own brand of inclusive political and economic institutions by the end of the eighteenth century. . . . Australia followed a similar path to inclusive institutions . . . Not so in most of the other European colonies. Their dynamics would be quite the opposite of those in Australia and the United States. Lack of a native population or resources to be extracted made colonialism in Australia and the United States a very different sort of affair, even if their citizens had to fight hard for their political rights and for inclusive institutions. . . as in the many other places Europeans colonized . . . in the Caribbean . . . citizens had little chance of winning such a fight. And there's more. Much has been written by property scholars about the evolution of early property protections among the Puritan settlers in Massachusetts Bay, and the broader introduction of institutions for the protection of property rights of white settlers more broadly in the American colonies.⁷⁴ Against this

⁷³ For a survey of the implications of extractive societies for the status of enslaved Africans in Latin America see FRANKLIN KNIGHT, *THE AFRICAN DIMENSION IN LATIN AMERICAN SOCIETIES* (1974); COLIN PALMER, *HUMAN CARGO: THE BRITISH SLAVE TRADE TO SPANISH AMERICA* (1981)

⁷⁴ Acemoğlu, *Coase*. Indeed, joining Acemoğlu and Robinson, property rights protection as a core value of the early American colonies and the early American Republic is also a central theme in the law review literature. See Gregory S. Alexander, *Time and Property in the American Republican Legal Culture*, 66 N.Y.U. L. REV. 273 (1991) (discussing the importance that the framers placed on the protection of small independent landholdings); Thomas W. Merrill, *The Landscape of Constitutional Property*, 86 VA. L. REV. 885, 886–88 (2000) (noting the elevated status of property as a constitutional matter from the earliest days of the Republic); Eduardo Peñalver, *Property as Entrance*, 91 VA. L. REV. 1889, 1890 (2005) (noting that historically 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, 387–88 (2006) (noting the historical ties between early American views of the importance of broadly-based property rights and Republican political ideals). Carol M. Rose, *Property as the Keystone Right?*, 71 NOTRE DAME L. REV. 329, 331–33 (1996) (noting that the framers considered property rights highly important in establishing a liberal constitutional order). *But see* 127

background, it is interesting that Acemoglu specifically contrasts the strikingly differing institutions set up for the protection of property rights by the Puritans in New England (inclusive) and their Puritan “cousins” in Providence Island in the Caribbean (extractive):

Thus, on the “settler . . . extractive continuum,” there has been little controversy as to where the West Indies should be grouped. Indeed, the West Indies, which “perfected” plantation slavery, were paradigmatic “extractive” societies, with minimal property protections embodied in law.⁷⁵ I would like to suggest an alternative narrative. I think that they have misplaced the British-colonized West Indies on their “extractiveness-inclusiveness” continuum, precisely because they misunderstand the widespread nature of property ownership achieved by former slaves in the aftermath of Emancipation.

I emphasize that aspects of the argument are counter-intuitive. In one sense the argument that the West Indies was a favorable locale for the development of a black propertied class seems deeply odd. Leaving aside Acemoglu and Robinson, the broader historical record provides plenty of evidence that the West Indies was hardly a propitious context for the development of a propertied black peasantry. In reviewing a broad range of typologies of slave societies, the sociologist of slavery Orlando Patterson has detailed the peculiarly cruel nature of West Indian slavery and the profound difficulties, even after Emancipation that freedmen experienced in asserting their personhood.⁷⁶ Indeed,

Joseph William Singer, *Sovereignty and Property*, 86 NW. U. L. REV. 1 (1991) (noting that despite the prioritization of property rights, much of early American real property was forcibly taken from Native Americans).

⁷⁵Engerman and Sokoloff, *New World 1997*, *supra* note ; *see also* Karen Ordahl Kupperman, *England's Dream of Caribbean Empire*, in MAJOR PROBLEMS IN AMERICAN COLONIAL HISTORY (Karen Ordahl Kupperman ed., 2000).

⁷⁶ORLANDO PATTERSON, *THE SOCIOLOGY OF SLAVERY: AN ANALYSIS OF THE ORIGINS, DEVELOPMENT AND STRUCTURE OF NEGRO SLAVE SOCIETY IN JAMAICA 70-71* (1967) [hereinafter PATTERSON, *SOCIOLOGY OF SLAVERY*].; *see also* ORLANDO PATTERSON, *SLAVERY AND SOCIAL DEATH: A COMPARATIVE STUDY* (1982) [hereinafter PATTERSON, *SOCIAL DEATH*]. For debates on the relative brutality of West Indian slavery, *see* B.W. HIGMAN, *SLAVE POPULATIONS OF THE BRITISH CARIBBEAN, 1807-1834* (1984) [hereinafter HIGMAN, *SLAVE POPULATIONS*]; RICHARD SHERIDAN, *DOCTORS AND SLAVES: A MEDICAL AND DEMOGRAPHIC HISTORY OF SLAVERY IN THE BRITISH WEST INDIES, 1680-1834* (1985) [SHERIDAN, *DOCTORS AND SLAVES*]; HILARY BECKLES, *NATURAL REBELS: A SOCIAL HISTORY OF ENSLAVED BLACK WOMEN IN BARBADOS* (1989); Mintz & Hall, *supra* note ; GENERAL

West Indian slave society and its offspring institutions were legendary for their brutality.⁷⁷ Some historians argue that this is why the West Indies was the place for “seasoning” or “breaking-in” slaves, who spent brief stints on West Indian plantations, en route to the Southern U.S.⁷⁸ Moreover, irrespective of the customary arrangements that may have existed to support slave ownership of property, it remains undeniable that the West Indies does not have a strong historical heritage of formal property rights protections for African slaves.⁷⁹ At first glance, this would hardly be a promising context for the early emergence of a broad class of black property owners.

By way of background, the following table highlights that for most of West Indian history, the islands were clearly extractive.⁸⁰

<p>1) <u>The beginnings of regional plantation slavery although minor in scope:</u> The first sugar-cane plantations in the Caribbean, located on the Greater Antilles, ca. 1500-1580, manned with enslaved</p>	<p>CLEARLY EXTRACTIVE</p>
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HISTORY OF THE CARIBBEAN, VOL. III: THE SLAVE SOCIETIES OF THE CARIBBEAN (Franklin W. Knight ed., 1997); and Jerome S. Handler & Arnold A. Sio, *Barbados, in NEITHER SLAVE NOR FREE* (David W. Cohen & Jack P. Greene eds., 1972).

⁷⁷A good summary of the peculiar brutality of West Indian slave institutions is in Knight and Liss’s collection. *ATLANTIC PORT CITIES: ECONOMY, CULTURE, AND SOCIETY IN THE ATLANTIC WORLD, 1650-1850* (Franklin W. Knight & Peggy K. Liss eds., 1991).

⁷⁸SHERIDAN, *DOCTORS AND SLAVES*, *supra* note .

⁷⁹See Caribbean Development Bank (CDB) Report on Constraints to Growth and Development Strategies in the Caribbean (January 2010); Acemoglu, *Root*, *supra* note .

⁸⁰By way of background, I have modified a table from the anthropologist of West Indian plantation society, Mintz. He schematizes Caribbean plantation society as falling into distinct periods. In the table, I have taken Mintz’s typologies, and interposed on it, Acemoglu and Robinson’s continuum of extractiveness versus inclusiveness.

aborigines, and en- slaved and imported Africans	
2) <u>The beginnings of the great expansion:</u> first <u>British</u> plantations in the Caribbean Lesser Antilles (e.g. Antigua, St. Vincent, Martinique, located in the Lesser Antilles, ca. 1640-1670), manned with enslaved aborigines, European indentured servants, and enslaved Africans;	CLEARLY EXTRACTIVE
3) <u>The great expansion:</u> British plantations based exclusively on enslaved African labor, at their apogee in English Jamaica (post-1655)	OVERWHELMINGLY EXTRACTIVE BUT WITH <u>DEGREES OF SETTLERNEESS IN ENGLISH JAMAICA, GUYANA, TRINIDAD as evidenced by the beginnings of a black property-owning class</u>
4) <u>Apprenticeship and Emancipation:</u> plantations based on free and "contracted" (that is, indentured) labor, successively throughout the sugar colonies after Emancipation (post 1834-1838, British.)	<u>MOVING TOWARDS GREATER SETTLERNESS IN THE BRITISH WEST INDIES, as evidenced by rapidly growing levels of property ownership among freedmen</u>

There is little disagreement regarding the classification of slave institutions. I am in agreement with Acemoglu and Robinson on Boxes 1 and 2 in the above table. Any potential disagreement is about degrees of "settleness" with respect to the property owning slave population (Box 3), and the freedmen population in Apprenticeship and Emancipation (Box 4).

V. THE U.S. SOUTH

To make the case that slave institutions are extremely hard to break, I will quickly switch my focus to the U.S. South. Acemoglu and Robinson argue that up until the 1960s, the U.S. consisted of two separate societies. They do not dispute that the Northern U.S. is properly classified as “settler.”⁸¹ However, in their view, for most of its history the South was paradigmatically extractive.⁸²

While one might not contest their classification of Southern slave societies as extractive, Acemoglu and Robinson contend that even after the Civil War and Emancipation, the South remains firmly extractive, save for Reconstruction. Notwithstanding the passage of the Reconstruction Amendments, with the Fourteenth Amendment as its centerpiece and the ratification of these amendments by Southern states as a condition of regaining Congressional representation (as well extensive supporting legislation passed by the Reconstruction Congress and state legislatures), I think few would dispute that the post Reconstruction backlash was extreme; or that the classic extractive characteristics of Southern plantation society were still on display.⁸³ These include the non-existence of institutions for the protection of the basic rights of the median Southern citizen (who in many southern states was typically a former slave or someone who was white and poor), including property and contract rights.⁸⁴ For good reason, the iconic black scholar, W.E.B. Du Bois, wrote “[t]he slave went free; stood a brief moment in the sun; then moved back again toward slavery.”⁸⁵

⁸¹ Acemoglu, *Coase*, *supra* note .

⁸² ACEMOGLU & ROBINSON, *WHY NATIONS FAIL* at 351-57.

⁸³ ACEMOGLU & ROBINSON, *WHY NATIONS FAIL* at 351-57 (citing ERIC FONER, *RECONSTRUCTION: AMERICA’S UNFINISHED REVOLUTION* (2001); ERIC FONER, *A SHORT HISTORY OF RECONSTRUCTION* (1990); W.E.B. DUBOIS, *BLACK RECONSTRUCTION IN AMERICA* (1999); JOHN HOPE FRANKLIN, *RECONSTRUCTION AFTER THE CIVIL WAR* (1995); JOSEPH RANNEY, *IN THE WAKE OF SLAVERY: CIVIL WAR, CIVIL RIGHTS AND THE RECONSTRUCTION OF SOUTHERN LAW* (2006))

⁸⁴ ACEMOGLU & ROBINSON, *WHY NATIONS FAIL* at 351-57.

⁸⁵ ACEMOGLU & ROBINSON, *WHY NATIONS FAIL* at 351-57.

For Acemoglu and Robinson, the critical period that confirms their “extractive” analysis is that there was minimal property ownership outside of the elite plantocracy. The key indication of the persistence of an extractive society even after Emancipation is the revocation of General Sherman’s Reconstruction-era promise to former slaves of “40 Acres and a mule.”

That is, the former slaves might have had a fighting chance of building inclusive political institutions if they had been able to break the back of extractive economic institutions by setting up a propertied class, independent of the Southern white plantation elite. But without property, as Acemoglu and Robinson see it, they had no chance. As they write:

“[T]here is more than one way of skinning a cat: as long as the planter elite was in control of its huge landholdings, and remained organized, it could structure a new set of institutions, Jim Crow instead of slavery to achieve the same objective. The vicious cycle turned out to be stronger than many, including Abraham Lincoln, had thought. The vicious cycle is based on extractive political institutions creating extractive economic institutions, which in turn support the extractive political institutions because economic wealth and power buy political power. When forty acres and a mule was off the table, the southern planter elite’s economic power remained untarnished.”⁸⁶

In Acemoglu and Robinson’s view, what was needed was a landed black peasantry – this was the only clear way to break the back of extractive political institutions.⁸⁷

I return to the West Indies . . .

VI. THE WEST INDIES

⁸⁶ ACEMOGLU & ROBINSON, *WHY NATIONS FAIL*, at 357.

⁸⁷ ACEMOGLU & ROBINSON, *WHY NATIONS FAIL* at 414.

For Acemoglu and Robinson, the emergence of a black peasantry is essential. Again an understanding of the background political economy of the post- Emancipation sugar industry is important for assessing the prospects for the emergence of a black landowning class.

Clear themes emerge in the literature on the political economy of the post-Emancipation period. They emphasize the increasing economic stress on sugar plantations who could no longer depend on protected access to the British market, as the “free trade” elements in the British Parliament gained traction for their efforts to import cheaper beet sugar from outside the British colonies. Their challenges were exacerbated by the importance of credit and increasing difficulty of obtaining credit from London bankers, alongside the increasing complexity of sugar production processes in light of declining soil quality.⁸⁸ All of this was taking place against the background of the passage of the Apprenticeship Act to “apprentice” former slaves in the ways of freedom.⁸⁹ The primary goal of this period governing the transition from slavery to freedom was to provide the plantocracy a period of adjustment in which they could utilize controlled (and cheaper) partly-free labor, prior to the full transition to free (and more expensive) labor.⁹⁰ The transition to free labor ultimately occurred with the passage of the Emancipation Act in 1838.⁹¹ These factors all constitute an important background to the arguments presented here.

A quick financial overview will give some sense of the significant impact of wage labor on the “cash flows” of already stressed plantations. A key feature of the West Indian plantation slave economy was, as one writer notes, “its extreme economy of working capital.”⁹² West Indian planters developed mechanisms of essentially running their operations with minimal cash flow. Slavery was very

⁸⁸ CURTIN, *TWO JAMAICAS*, Chapters 6 and 9 (1995); Lobdell, *Patterns of Investment and Sources of Credit in the British West Indian Sugar Industry 1838-1897*, 4 *JOURNAL OF CARIBBEAN HISTORY* 31 (1972); Hall, *The Apprenticeship Period*; Hall; HALL, *FREE JAMAICA, 1838-1865*, Chapters 2 to 3 (Yale, 1959); EISNER, *JAMAICA: A STUDY IN ECONOMIC GROWTH, 1830-1930*, Chapter 11 (1961)

⁸⁹ A good summary of the period leading up to the passage of the legislation is in Sherlock

⁹⁰ Id.

⁹¹ Again, a good summary is in Sherlock

⁹² Marshall, *supra*

important to running a near cash-less business, as was the provisioning system. As long as most of the slaves' food came from the slaves' own provision grounds, planters spent minimally on food.⁹³ With respect to other purchases (machinery) etc., a key feature of the marketing of West Indian sugar was the utilization of consignee- agents. Virtually every West Indian plantation relied on merchant-brokers in London to sell their sugar.⁹⁴ These merchants were willing to purchase supplies for the plantations (on credit), as long as they were consigned the sugar crop. So purchases made in London would become accounting entries to be offset against the later-arriving sugar crop. Among historians who have done detailed examinations of the financial accounts of plantations, they often note how little cash the planters actually required.⁹⁵

Against a background of credit constraints, what was the planter facing a new regime of paid labor to do? The economist, Donald Harris argues that there were three possible strategies for a planter to pursue.⁹⁶ The first would be to reduce the wage rate (although this strategy would be constrained by the lower acceptable boundaries of wages). The second would be to reduce the need for labor through innovation (new machinery, new agricultural techniques etc.) although this strategy would also be constrained since the planter, facing credit constraints, would likely have lacked access to the necessary capital. The third strategy would have been "to institute a system of tenancy rent on part of the available land alongside the system of wage labor on the rest of the land."

One popular iteration of this last strategy is sharecropping, a system of agriculture in which a landowner allows a tenant to use the land in return for a share of the crops produced on the land. Although now most widely associated with the U.S. South, it has a long historical heritage.⁹⁷ Tenancy rent was attractive to the West Indian planter, for the same reason that it was attractive to the Southern planter in the

⁹³ Cumper, *supra*

⁹⁴ Marshall, *supra*

⁹⁵ Marshall, *supra*; Cumper, *supra*, Lobdell, *supra*.

⁹⁶ Harris, *supra*

⁹⁷ Paige, *supra*

U.S. – primarily as a mechanism of reducing cash outflows associated with labor. More particularly, as Harris notes a system of tenancy rent is particularly attractive for credit-constrained planters:

“One obvious advantage of this strategy of combining rents and wages . . . is that it allows the planter to cover some or all of the working capital advanced as wages from the current flow of rents paid by the tenants. In effect, what the planter pays out in one hand as wages to the workers is what he gets as rents in the other hand from the tenants. Thereby is resolved, at least partially, the cash flow problem of the planter. Or, more generally, the existence of tenancy rent reduces the net cash requirements that the planter must meet and, hence, the credit obligations that he must incur. The second advantage of this strategy of combining land tenancy and wage-labour is that it allows the workers (and/or their families) to grow their own food (directly or through exchange of products) on the plots of tenanted land and thereby reduces the amount of cash the planter must advance as money wages to the workers. For this purpose, a system of sharecropping or of sharing labour service would do as well as a system of payment of rent (in cash or in kind). The third advantage of this arrangement, from the stand point of the individual planter, is that the planter is able to obtain an almost guaranteed access to a regular supply of labour through effectively tying the labour to his land through the granting of concessions and rights to the use of land by the family of the worker.”⁹⁸

It was precisely for these reasons that the system of sharecropping came to be widely utilized after Emancipation in the U.S. South. While share-contracting may have offered certain efficiencies to credit-constrained planters,⁹⁹ few would dispute Acemoglu and Robinson’s contention that the widespread nature of sharecropping in the U.S. South was a primary reason for the persistence of extractive institutions. These extractive institutions were ultimately inimical to

⁹⁸ Harris, *supra*

⁹⁹ Marshall (1920), Cheung (1969), Stiglitz (1974, 1988), Murrell (1983), Roumasset (1995), Allen and Leuck (2004), Hallagan (1978), Allen (1982), Muthoo (1998), Reid (1976), Eswaran and Kotwal (1985), Ghatak and Pandey (2000), Roy and Serfes (2001), Sen (2011), Shetty (1988), Basu (1992), Sengupta (1997), Ray and Singh (2001)

the enforcement of property rights (and ultimately the extension of voting rights) to freed Southern blacks.

In the aftermath of Emancipation, the British plantocracy were initially no different than their counterparts in the Southern U.S: they were seeking to preserve their access to a low-cost labor force at all costs, and widespread independent land ownership for freed blacks was inimical to this goal. In a particularly stark iteration of a hawk-dove game, there was vigorous attempt on the part of the plantocracy to institute systems of land tenancy. That their efforts were ultimately unsuccessful is due in large part for the fact that freedmen in the British West Indies were ultimately much more likely to become land-owners than blacks in the Southern U.S.

In the following sections, I discuss the post-Emancipation West Indian trajectory with a special focus on two different categories of colonies that further illustrate Hirschman's conceptual ultimatum discussed earlier—exit/voice/loyalty. The access that newly freedmen had to money and land abetted both voice and exit. They were better able to bargain ("voice") in part because their threats to exit were more credible. Moreover, when bargaining broke down, they had good options outside the plantation, facilitating exit. In some colonies (Jamaica and Guyana), "exit" became the default option. In other colonies, "voice" was the default option.

A. GUYANA

Despite its location in South America, the economy of British Guiana (henceforth referred to by its modern name, Guyana) was similar to the neighboring British West Indian islands. The major economic activity was sugar and its population was comprised primarily of black slaves. Its land mass is extraordinarily large but its interior (consisting of lands prone to flooding and forest) remained mostly unpopulated. Most of its sugar activity was concentrated on the Caribbean coastline plains – in proximity to several other British West Indian colonies. In the period before Emancipation, Guyana had been a reliable exporter of sugar and contributor to the British Treasury.

The economics literature is replete with situations in which land space exceeds the labor supply, and in such situations, labor typically seeks to establish itself independently on a peasant proprietorship basis. The economic historian, Evsey Domar's classic paper on serfdom in Russia is essentially a reflection on how serfdom evolved in the 15th century as a solution to the problem of labor-deprived Russian elites, who were seeking to secure labor where land was plentiful but labor was not.¹⁰⁰ Domar contended that serfdom evolved as a mechanism of restricting the mobility of labor to ensure its availability to servitors (that is essentially an equivalent class to the English mesne Lords). In the aftermath of Emancipation, the plantocracy in Guyana faced a similar problem to Russian elites – how to ensure a stable supply of labor.

Indeed, Guyana was the West Indian colony that presented the problem in particularly stark terms. It was much smaller than Jamaica in terms of population; it had a population of only 100,000. Yet, in terms of land mass it was by far the largest British West Indian colony; it covered 85,000 square miles.

While much of the terrain consisted of forests too forbidding for agricultural settlement,¹⁰¹ an economist would nevertheless recast this account as follows: in relative terms, the scarce factor of production was not land but labor; and owners could no longer depend on the ownership of labor. So to ensure consistent access to regular low-cost labor, the best strategy for the plantocracy was to decrease access of the newly freed slaves to land. One can imagine why for the planters this might have looked very much like a “zero sum” situation in which there could be only one winner – either the plantocracy or the former slaves. To the extent that there were alternative economic options for the freedmen, this would lead to a net reduction in available labor and correspondingly a net growth in the unit cost of their labor.

For most of slavery, African slaves were only able to become largescale peasant proprietors in defiance of legal restrictions. This is how the first black farmers emerged in Guyana. Runaway slaves

¹⁰⁰ Domar, *supra*

¹⁰¹ Indeed, significant proportions of the Amazon are found in Guyana.

(popularly known as “bush negroes”) set up large estates on which they grew ground provisions and rice away from the existing estates. Indeed, the first largescale rice farms in the entire Caribbean were managed by runaway slaves.¹⁰² However, under the then-prevailing pre-Emancipation legal framework, their actions were *ultra vires*. They had no permission to leave the plantation and they could not hold legal title.

Post-Emancipation, the plantocracy now faced an entirely different legal context – land ownership for slaves was now legal. Consider again the Amelioration Act of 1825, a compromise Act that was passed in the British Parliament, when the famous abolitionist parliamentarian, William Wilberforce, failed in his efforts to achieve full Emancipation.¹⁰³ The Amelioration Act permitted slaves who had accumulated sufficient cash reserves to buy their freedom.¹⁰⁴ This was a landmark change: prior to the passage of the act, manumission had been largely the individual prerogative of a planter – it was not provided for in law.

The agreement of the plantocracy to the passage of the Act was not coincidental: it was a recognition of the large amount of slave cash being kept under slave mattresses, and an attempt to facilitate planter access to this cash by bringing slave transactions into the formal system. Moreover, the Act permitted slaves to buy land, hold legal title, and open bank accounts. Indeed, slaves had sufficient cash at their disposal that, subsequent to the passage of the Act, a bank was established by the Colonial Office specifically for the slaves. Bottom line: having passed measures during slavery to bring slave transactions into the formal economy, the planters now had fewer legal tools at their disposal to ensure the availability of labor for their plantations.

Increasing the stakes was the fact that the slaves understood that the opportunities associated with independent farming were significant. The market for food was large. Moreover, the food market consisted

¹⁰² Farley, *supra*

¹⁰³ There is a good summary on the background to the passage of this Act in Sherlock, *supra*.

¹⁰⁴ Appendix (to be added)

not only of the newly salaried black labor force, there were also export possibilities. Indeed, food produced by slaves (for their own accounts) had been exported between British West Indian colonies prior to Emancipation. Moreover, while Africans operating within the constraints of the law, had been restricted to small scale plots, granted by the planters during the institution of slavery, and the necessarily limited proceeds of such plots, they were undoubtedly well aware that runaway slaves operating large-scale farms had achieved significant success. The planters quite rightly feared that large numbers of their workforce would follow their runaway predecessors by seeking to operate larger farms in “free villages.”

One need only consider a report written for the Colonial Office by Commander Charles Edmondson, who in the period immediately preceding Emancipation commanded a regiment patrolling for runaway slaves. The Commander underlined the agricultural (and implicitly financial) success of runaway slaves:

The quantity of rice the Bush Negroes have just rising out of the ground is very considerable, independent of yams, tannias, plantains, tobacco, etc., and as it will be three months before the rice is fit to gather in, I would recommend at that period another expedition to be sent and destroy the same.¹⁰⁵

He further noted:

It devolved on Major Brandt and Mr. Avery to destroy all the provisions that could be met with. This they did most effectually, fourteen houses filled with rice and several fields in cultivation being by their exertions totally destroyed ... I take upon me to say from these gentlemen's report that on a moderate calculation the quantity of rice that has been destroyed by them (independent of ground provisions) would have been equal to the support of seven hundred Negroes for twelve months.¹⁰⁶

¹⁰⁵ Colonial Office report (1836)

¹⁰⁶ Id.

Not all of these ground provisions were being consumed by runaway slaves. It is more likely that there was a black market (presumably involving slaves still resident on the plantations) that channeled these provisions into both internal markets and external export markets. Thus, in addition to the cash reserves acquired through the provisioning system, some slaves are likely to have accumulated further cash by facilitating “black market” access for the provisions of runaway slaves.

In sum, the plantocracy lacked the tool of *de jure* prohibition of land-purchase. Slaves were already formally admitted to the property markets and the beginnings of rudimentary financial intermediation for slaves was already in play. Thus to prevent widespread landholding among freedmen, they needed to find more subtle methods.

To achieve their goal of ensuring consistent access to low-cost labor, the planter-controlled Colonial legislature introduced a policy of restricting freedmen’s access to Crown lands by pricing them out of the market.¹⁰⁷ The policy dictated that Crown lands would be sold at public auction at a reserve price of one pound per acre. Moreover, the Crown would never sell less than 100 acres.¹⁰⁸ Thus, freedmen could not purchase Crown lands unless they had at least 100 pounds – a pricey sum even for frugal freedmen (a successful freedman might have netted 20 pounds a year from provisioning during slavery).

Additionally, the Colonial office was empowered to raise the reserve price of Crown lands further.¹⁰⁹ Thus, if planters found themselves without access to consistent low-cost labor, the Colonial office would simply raise the price of land to reduce affordability. Moreover, the penalties for squatting on Crown lands were increased significantly.

You will recall that I earlier argued that if we conceptualize the face-off between the planters and the slave population as a “hawk/dove,” game, the planters swerved first. Why did the planters swerve? Thirty

¹⁰⁷ Farley, *supra*

¹⁰⁸ Farley, *supra*

¹⁰⁹ Farley, *supra*

years earlier, when plantation interests were at the pinnacle of their power (and able to stave off abolitionists for several decades), there is little doubt that the planters could have tied the former slaves to the plantations. They had multiple mechanisms at their disposal – all of which were tried and eventually failed in the West Indies. Indeed, the mechanisms for tying slaves to plantations in other former slave plantation economies are well articulated in the historical literature.¹¹⁰

For the planters to tie the slaves to the plantations, they needed to maintain a united front. More specifically, they needed to ensure that there was no land for the slaves to buy. But there was no sense in a strategy of essentially precluding slave access to Crown lands if there were defectors. This is where the planter strategy broke down. Because many freedmen had cash, a minority of planters rightly viewed the policy of restricting freedmen's access to land as foolhardy. They accepted that the heyday of sugar was over. Sensible planters should be cashing out before bankrupting themselves, not choking off potential buyers. In the freedmen they saw potential buyers of their soon-to-be-defunct plantations.

Thus, there emerged two groups of planters. One group that refused to sell to former slaves, and sought to influence policy to price Crown lands out of their reach. A second group saw in the freedmen a

¹¹⁰ Mintz has a wonderful comparative paper which discusses strategies used to tie freedmen to the plantations. For example, in the U.S. South, significant numbers of freedmen found themselves indebted sharecroppers, forever in 'debt' to their former owners, with minimal prospects of liquidating their debts and exiting the plantation economies. Similar strategies were utilized by the planter class in the larger Hispanico-Caribbean region (including Cuba and Puerto Rico). In South America (primarily Brazil), former slaves later found themselves transformed into "indentured laborers." Like African-American sharecroppers, they were forever in debt to their former masters, but rather than seeking to liquidate debts through tenancy and crop-sharing arrangements, they paid off debts largely through labor – again, largely an exercise in futility. In all of these circumstances, the "status" relationships that had been prevalent during slavery continued to prevail. There is good reason for Acemoglu and Robinson's previously mentioned skepticism that institutions based on 'status' relationships (namely plantation slavery and the supporting background organizational framework) would easily transform into institutions based on respect for the property and contract. Overwhelmingly, the historical evidence is on their side.

welcome source of scarce cash, to whom they could off-load their failing plantations. This second group ultimately defected.

Which planters were brave enough to defect? The record reflects that a minority of planters sought to convince the Colonial Governor that choking off slave access to land was an exercise in futility. Take for example the cotton plantocracy in Guyana.¹¹¹ Cotton had also been a staple export product, but the cotton tariffs had been removed before the sugar tariffs - they found themselves unable to compete with the lower-cost American cotton flooding the British market. During the period of Apprenticeship and Emancipation, the cotton plantations, long poorly capitalized, buckled more quickly than the sugar plantations. The cotton plantocracy expended significant energies trying to influence the Colonial governor to bless their plan to sell freedmen land. When they failed in the political marketplace, they proceeded to exercise their rights as sellers in the regular marketplace.

Moreover, the first group of planters who refused to sell to former slaves made another strategic error. That cotton planters were defecting was not a secret: after all, former slaves were leaving the plantation in droves. Once they realized that the planter class was not maintaining a united front, they should have offered estate lands not currently under sugar cultivation to the slaves. In so doing, they would have had a fighting chance of keeping the former slaves close to the plantation and increased the likelihood that they would later be available for paid work.¹¹²

This was recognized by one absentee planter and English Member of Parliament, Henry Barkly, who implicitly criticized his fellow planters for their strategic error in testimony to a parliamentary committee on sugar and coffee.¹¹³ He knew the Guyanese economy well, not only

¹¹¹ Moohr, *supra*

¹¹² Ultimately the challenges of staffing the plantations were only mitigated through immigration of indentured laborers largely from India, but also from Java, China and West Africa. Moohr, *supra*

¹¹³ Report (Committee of 1842). See similar sentiments expressed by another planter Mr. Innes, in *The Sugar Question*, Vol. 2 and Mr. Hankey in the Third Report (Committee of 1848)

was he a plantation owner, he was a banker of sorts who provided mortgages to fellow planters and credit when merchants would not extend it.¹¹⁴

He felt that the planters' fears about the imminent loss of labor to the interior were entirely overwrought.¹¹⁵ For one, the primary industry in the interior was logging. While there were newly prosperous freedmen who had joined the logging industry and were operating their own sawmills, logging was a hard life.¹¹⁶ It was much more likely he felt that most freedmen would prefer cultivation on the coastal plains, an occupation and an area, with which they had long been familiar.¹¹⁷ In his words, the freedmen now had "too many wants and too luxurious habits to live in the bush."¹¹⁸ He noted that the freedmen had generally not remained on their previous estates, "except where land was sold to them immediately after Emancipation by the proprietors."¹¹⁹

In Barkly's view, this was largely the consequence of the stubbornness of those members of the planter class who refused to accept that freedmen's land ownership was inevitable.¹²⁰ Rather than seeking to fight the inevitable labor loss, he felt that the sugar plantation owners should have taken a different course, namely, try to "cultivate" the freedmen and provide incentives for them to remain close to the plantations.¹²¹ He felt that land at the edge of the plantations (much of which had already been allocated during slavery as provision grounds) should have been offered liberally to the newly freedmen, as an incentive for them to remain close to their former estates.¹²²

Barkly admired the practicality of the cotton plantocracy in Guyana, who would rather take the "black" money of freedmen, than face

¹¹⁴ Report (Committee of 1842)

¹¹⁵ Report (Committee of 1842)

¹¹⁶ Report (Committee of 1842)

¹¹⁷ Report (Committee of 1842)

¹¹⁸ The Sugar Question, Vol. 2

¹¹⁹ Report (Committee of 1842)

¹²⁰ Report (Committee of 1842)

¹²¹ Report (Committee of 1842)

¹²² Report (Committee of 1842)

bankruptcy and debtor's prison.¹²³ Too many proprietors refused to sell estate land to freedmen since in Barkly's words "they thought it would render the Negroes too independent of them. They therefore refused to sell, and the Negroes bought abandoned estates and land elsewhere and removed from the estates."¹²⁴ When they finally came to their senses and were willing to sell to the freedmen, it was too late – too many plantations had gone bankrupt and cheap land was abundant. Indeed, within a decade of Emancipation, more than 20 percent of former slaves had joined free villages constituted largely (if not entirely) of now defunct former plantations owned by the English plantocracy. Moreover, Barkly was right in another sense: the overwhelming majority of freedmen did not settle far from the plantations, even if their former masters had generally refused to sell to them.¹²⁵ Like the English, they settled primarily on the rich flat alluvial Caribbean coastlines.¹²⁶

Indeed, it was in taking over defunct plantations that we find the beginning of the freedmen's movement.¹²⁷ For example, in late 1839, a group of laborers combined their resources to purchase the abandoned Plantation Northbrook.¹²⁸ A sub-group of the laborers were elected to be title-holders who held the land in trust, with the land then being sub-divided to individual laborers in proportion to their contribution to the purchase price. One commentator noting the land acquisition practices of the Guyanese freedmen wrote of "the wisdom and initiative displayed in the acquirement of property from the early years of their freedom."¹²⁹ Moreover, those who did not have the cash "up front" were even financed by more cash-rich slaves, through quasi-formal financial intermediation, namely friendly societies.¹³⁰ One writer, Norman Cameron notes "societies for the mutual benefit

¹²³ Report (Committee of 1842)

¹²⁴ Report (Committee of 1842)

¹²⁵ Root, *supra*

¹²⁶ Beachey, *supra*

¹²⁷ Farley, *supra*

¹²⁸ Farley, *supra*

¹²⁹ Norman Cameron, *The Evolution of the Negro*, *supra*

¹³⁰ Cameron. The roll-out of friendly societies in the West Indies were analogous to the well-known highly successful expansion of credit unions in Germany by Raiffeissen, the modern cooperative banking movement.

which were operating with a certain degree of secrecy in slavery times began to rear their heads.”¹³¹

The new freedmen owners of the aforementioned Northbrook resolved to grow sugarcane. Their initial goals were essentially to grow goods for the export markets – while organizing themselves as a democratic cooperative. Each land-holder would grow sugar cane, and then they would market cooperatively. The cooperative model applied more broadly: for example, communal ground-works (draining, roads etc.) were supervised by an elected committee with each title-holder contributing labor to completion of the works.

Commenting on the practice of freedmen purchasing and subdividing estates one contemporaneous observer, Milliroux writes:

"Thus in 1840, the freed slaves, those so-called outlaws, set themselves peacefully to purchase land in parts of the colony nearest to large cultivations. Sedentary and industrious habits could be acquired even in the bosom of slavery. Twenty-five to fifty heads of families united and put their savings together. The sum reached ten, thirty, and nearly eighty thousand dollars they paid the whole or a large part of the price in cash and became proprietors of a property which they worked in shares or which they sub-divided into distinct lots"¹³²

Given that freedmen were creative in achieving their goals, planter mechanisms of constraining the free village movement also became more creative. For example one ordinance stipulated that collectively bought land could be purchased by no more than 20 persons.¹³³ Another ordinance stipulated that if more than ten persons purchased an estate it would be subject to partitioning, with each parcel being subject to compulsory taxes to be paid to the local government on a monthly basis.¹³⁴

¹³¹ Cameron, *supra*

¹³² Quoted in Farley, *supra*

¹³³ Farley, *supra*

¹³⁴ Farley, *supra*

Yet ultimately, the plantocracy seeking to tie labor to sugar estates proved no match for the forces of the market – estate owners seeking to cash out and freedmen seeking to buy. The efforts of the hold-outs were rendered even more futile by the emergence of a class of enterprising middle-men, namely broker-entrepreneurs among former slaves – they sought out planters on the verge of bankruptcy and brokered deals with slaves who were willing to buy. For example, one of the better known brokers, Cudjoe McPherson bought several plantations at what were perceived to be knockdown prices, subdivided them and sold lots to his fellow freedmen at a profit. Many missionaries also served as trustees buying land in trust for former slaves. Missionaries also encouraged slave access to financial intermediation. Indeed, the Wesleyan Benevolent society started in Guyana by missionaries, remains legendary in the Caribbean as a fast-growing “friendly society” (analogous to a credit union) which provided financial intermediation and was popular with former slaves.

A good measure of the rapidity of the spread of land ownership comes from the property tax rolls in one Guyanese county, Berbice, immediately preceding and shortly after Emancipation. As of the date of Emancipation, August 1, 1838, there were 20,000 persons in the county (that is, twenty percent of the overall population of the county).¹³⁵ Fully 15,000 of these persons were former slaves, not one of whom were legal title holders (as opposed to being de-facto owners of property).¹³⁶ Four years later, in 1842, of the 2,942 freehold properties, containing 3,017 families and 14,127 persons, fully 1,223 families, comprising 4,646 individuals were freedmen.¹³⁷

Across the entire country, as of the end of 1848, freedmen had acquired no less than 446 estates.¹³⁸ They had built 10,541 houses, which were occupied by 44,443 persons. This in a population of 100,000, in which 89,000 were former slaves or descendants of former slaves. Thus, only a decade Emancipation more than half of the

¹³⁵ Farley, *supra*

¹³⁶ Eisner, *supra*

¹³⁷ Eisner, *supra*

¹³⁸ Farley, *supra*

freedmen were living on freehold property!¹³⁹ It is little wonder that a somewhat exuberant planter-historian writing in 1858 declared the following of the newly property former slaves: "They present the singular spectacle to be witnessed in no other part of the world, and of which history affords no parallel, of a people just emerged from slavery, now enjoying property in houses and lands, for which they have paid no less than a million of money."¹⁴⁰

B. JAMAICA

In Jamaica, the themes are striking in their similarity to the Guyanese situation: the vindictiveness of a significant proportion of the planter class refusing to sell marginal estate land to former slaves, the enterprising nature of other planters, who recognized an opportunity to liquidate unprofitable plantation holdings before their creditors got the better of them, bluffing on the part of the planter-dominated Colonial legislature who sought to deny freedmen access to Crown lands, iterations of hawk-dove games in which the planters swerved first, the setting up of freedmen's villages often on formerly abandoned estates, and the rapid growth in the level of freehold ownership in a short time.

In Jamaica, the planter strategy to hold slaves to the plantations collapsed even more quickly than in Guyana. A major turning point was the widespread collapse of the local banking sector (driven in part by the refusal of London banks to continue to underwrite Jamaican banks). With the final calling of long-standing debts, a significant number of plantations were put on the auction block in several territories.¹⁴¹ Again, the primary buyers were freedmen.¹⁴²

Nowhere was it clearer that the success of the provisioning system during slavery was foundational to the slaves' land-acquisition strategy than Jamaica. On the eve of Emancipation, Jamaican slaves were cash rich – one estimate was that they were in control of close to

¹³⁹ Farley, *supra*

¹⁴⁰ Quoted in Farley, *supra*

¹⁴¹ Lobdell, *supra*

¹⁴² D.G. Hall, *supra*

50% of the cash in circulation in the island.¹⁴³ In Jamaica, the free village movement – operating on a similar model to Guyana, with slaves pooling resources to buy out fleeing estate owners – proved very popular. Within four years of Emancipation, nearly 15% of the formerly enslaved population were independent farm owners on abandoned estates.¹⁴⁴

Size of the Population Living in Villages Built since Emancipation in 1838, selected Dates, 1842-51			
Source: Calculated from data contained in Adamson, op. cit. Table 1, p. 16.			
Date	Numbers	Date	Numbers
November 1842	15,906	June 1849	40,038
December 1844	18,511	December 1849	41,303
June 1847	29,000	December 1850	42,755
December 1848	44,443	June 1851	46,368

The model was usually the same as the aforementioned Guyanese model – resources were pooled, land was bought in trust by an elected committee, with the land then being subdivided for proportional allocation to individual freedmen according to their contribution to the purchase price.

To the extent that the freedmen tried to grow sugar and cotton for the export market they met the same fate as their forebears in the plantocracy – they were capital constrained, and their likelihood of success was rendered even more minimal by their cooperative organization. They had to not only grow sugar cane, but to coordinate the complex processes needed to turn cane into sugar among many independent people – cutting, grinding, the operation of factories, and so forth. Those cooperatives that abandoned export goods such as

¹⁴³ Farley, *supra*

¹⁴⁴ Hall, *supra*

sugar, choosing instead to produce ground provisions (yams, cocoas etc.) for internal consumption (with lesser amounts being exported) did much better. For with these crops, the capital requirements were much more modest and the cooperative tasks were less demanding – there was no need, for example, for cooperative factory work.

In the end, there were mixed models of land-ownership. First, some freedmen remained in cooperatives. Second, some abandoned the cooperative approach becoming independent peasant farmers. And third, some pursued an approach of mixed wage labor (as workers on the plantations where they were formerly enslaved) and independent farming.

Yet even those who continued to do plantation work were able to bargain for increased wages, due to the scarcity of labor and were widely believed to be utilizing the proceeds of their labor to supplement sums saved so that they could purchase more land. As one magistrate wrote of laborers in his county: “[T]he labourers . . . evince a great desire and are making great efforts to become small freeholders; half-an-acre of land amply gratifies their wants and this quantity they can usually purchase in good situations for from 70 to 100 dollars, or, in other words, by the saving of six or nine months' industry.”¹⁴⁵

The Jamaican macroeconomic data for the relevant period bears out these themes. On the eve of Emancipation, slaves accounted for 27% of agricultural exports.¹⁴⁶ Yet in 1852 (fourteen years after Emancipation), the slaves accounted for 43% of agricultural exports.¹⁴⁷ Moreover, their contribution to the larger economy (percentage of GDP) had also increased significantly.¹⁴⁸

C. BARBADOS AND THE EASTERN CARIBBEAN

¹⁴⁵ Quoted in Hall, *supra*.

¹⁴⁶ Eisner, *supra*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

The first thing to underline about Barbados, St. Kitts, St. Vincent and nearby Eastern Caribbean islands are their small size. Land was extraordinarily scarce. In Barbados, for example, on the eve of Emancipation, 100,000 people occupied between 80,000 and 100,000 acres of land (that is less than an acre per person).¹⁴⁹ Moreover, the plantocracy had a monopoly on land. One showed that 441 of 508 estates controlled 81% of the total land.¹⁵⁰ Additionally, there were virtually no Crown lands available. Thus, the following reflections of a local Magistrate shortly after Emancipation are unsurprising:

Little progress has been made by the laborers in establishing themselves as freeholders, not from any disinclination on their part to become so, but, circumscribed as our island is, there is little probability of any great number being able to obtain freeholds. The reason is obvious; there is not in the whole island a spot of waste land fit for cultivation; and as the land is principally divided into plantations, the proprietors are not likely to sell off small plots for that purpose; and there being no public lands available, it is plain that freeholders to any extent cannot be established in this country.¹⁵¹

Unsurprisingly, during the institution of slavery, the provisioning system was far less extensive in these islands – rather than receiving fulsome plots, slaves instead cultivated “garden plots.”

Nevertheless, despite these conditions, some slaves accumulated assets and a small group of free holders were able to establish themselves in all of the islands. Where they existed, the free villages showed political potential. Constituencies were small, and thus, their influence was significant despite their small numbers. Indeed, in 1849 in Barbados, one free village is believed to have determined the outcome of a closely fought general election (for the local Colonial legislature)¹⁵²

¹⁴⁹ Marshall, *supra*

¹⁵⁰ Marshall, *supra*

¹⁵¹ Quoted in Marshall, *supra*

¹⁵² Marshall, *supra*

On the whole, however, slaves focused their efforts less on land acquisition in free villages, than on banding together to bargain collectively with planters. Their efforts led to significant changes in the organization of labor on the estates. For example, on several estates, women and children were largely removed from field labor, with some women working half-days to allow them to attend to their homes and children. In St. Vincent, women sought relief from field labor on Fridays to allow them to prepare for Saturday market.¹⁵³ Moreover, the wages received for paid time (as opposed to “slave” time) during Apprenticeship set a benchmark below which they would not fall in wage bargaining.¹⁵⁴

The planters sought long-term contracts, low wages and conditional occupancy of houses and gardens on the estate (conditioned on working a certain number of hours on the plantation).¹⁵⁵ In yet another face-off between the planters and freedmen, the planters bargained that the freedmen would recognize that the houses and garden plots belonged to the planters, that they did not have tenancy rights, but that their continued occupancy of these houses and gardens was conditioned on employment.¹⁵⁶ Moreover, some planters reserved the right to charge rent (typically implied rental rates were deducted from wages).¹⁵⁷ On some plantations, the freedmen faced the very real possibilities of eviction if they did not yield.

In many of the islands, planters who sought to evict faced strikes, sometimes lasting for several weeks. Many freedmen refused orders to vacate their houses and gardens, with some insisting that “the Queen had granted them the homes and gardens.”¹⁵⁸ Having faced violent resistance in the face of some attempted evictions, a general consensus emerged among the planters that it would be deeply unwise to proceed with evictions. And thus evolved what one writer terms “a fragile industrial peace.”¹⁵⁹

¹⁵³ Riviere, *supra*

¹⁵⁴ Riviere, *supra*

¹⁵⁵ Riviere, *supra*

¹⁵⁶ Riviere, *supra*

¹⁵⁷ Riviere, *supra*

¹⁵⁸ Marshall, *supra*

¹⁵⁹ Marshall, *supra*

Over time, marginal plantation lands became available to some freedmen, albeit for high rents. Even the system that evolved of “tenantry” was controversial among the planters. While some planters welcomed the opportunity to generate revenue from marginal lands, others warned of the “evil effects” of tenants becoming “small farmers” for the larger Barbadian society.¹⁶⁰ They were deeply ambivalent about slaves accumulating cash outside of the plantations, with one planter group deeming the practice “at variance with all rational views of a prosperous country” and urging the continued “concentration of capital and labour.”¹⁶¹ In summary, with so many freedmen tied to the plantations, “voice” emerged as the major strategy in these smaller islands. There were however “exit” opportunities; the major “out” was emigration. As Woodville Marshall writes “those ex-slaves who wanted to “better” themselves away from the estates had to think of emigration.”¹⁶²

VII. CONCLUSION

The root of the failure of West Indian planters to tie slaves to the plantations lay in the cash reserves that West Indian freedmen accumulated as slave provisioners. These slaves wanted to become freeholders. Faced with a choice between farming their own land (even if the land was marginal) and sharecropping, overwhelmingly they chose to become freeholders.

The irony is that the extensive nature of the provisioning system (which acculturated slaves in a form of “property-and-contract-lite”) made it *less likely* that ex-slaves continued to remain in the employ of the masters once they had a real choice. It made it more likely that they would have money to buy their own land and become *de jure* property owners and contractors. In the larger islands, in which land was plentiful, this choice predominated; in the smaller islands the freedmen were more constrained. The larger the likelihood was of

¹⁶⁰ Quoted in Marshall, *supra*

¹⁶¹ Quoted in Marshall, *supra*

¹⁶² Marshall, *supra*

slave “exit,” from plantations, the more likely *we* are to witness a quick and full transition of former slaves to freeholders.

Partial Bibliography:

Edward Brathwaite. *The Development of Creole Society in Jamaica. 1770-1820* (Clarendon Press, 1971).

BARCLAY, Alexander (1928) *A Practical View of the Present State of Slavery in the West Indies*. Smith, Elder and Co., London.

BECKFORD, William (1790) *A Descriptive Account of the Island of Jamaica*. Egerton, London.

BIGELOW, John (1851) *Jamaica in 1850*. George Putnam, London. 4.

BURN W. L. (1937) *Emancipation and Apprenticeship in the British West Indies*. Jonathan Cape, London.

W.H. Burnley, *Observations on the Present Condition of the Island of Trinidad and the Actual State of the Experiment of Negro Emancipation* (1842)

Curtin, P., *Two Jamaicas* (Cambridge, Mass., 1955)

Census Reports (1881, 1891, 1911, 1921; 1943) Government Printer, Kingston.

Central Bureau of Statistics, Jamaica. *Quarterly Digest*, 1947.

CUMPER, G. E. (1949) *Social structure of Jamaica*. Caribbean Affairs Series, Extra-Mural Department, University College of the West Indies.

CUMPER, G. E. (1953) *Two Studies in Jamaican productivity*. Social and Economic Studies, Vol. 1, No. 2; Institute of Social and Economic Research; University College of the West Indies.

David Cohen and Jack Greene, eds., *Neither Slave Nor Free* (Baltimore: The Johns Hopkins University Press, 1972)

DEERR, Noel (1949) *The History of Sugar*. Chapman and Hall, London.

DeLISSER, H. G. (1913) *Twentieth Century Jamaica*. Jamaica Times, Kingston.

DOMAR, E.D., "The Causes of Slavery or Serfdom: A Hypothesis", *Journal of Economic History*, Vol. 30, No. 1, March 1970, pp. 18-32.

Richard S. Dunn, *Sugar and Slaves: The Rise of the Planter Class in the English West Indies. 1624-1713* (Chapel Hill: University of North Carolina Press, 1972)

Bryan Edwards, *The History. Civil and Commercial, of the British Colonies in the West Indies*. 2 vols., (London: John Stockdale, 1793)

EDWARDS, Bryan (1807) *The History of the British Colonies in the West Indies*. Printed for John Stockdale, London.

Eisner, *Jamaica 1830-1930: A Study in Economic Growth* (Manchester 1961).

R. Farley, "The Rise of the Peasantry in British Guiana", *Social and Economic Studies*, Vol. 2, No. 4, pp. 87-103

Elsa V. Goveia, *A Study of the Historiography of the British West Indies to the End of the Nineteenth Century* (Mexico City: Instituto Panamericano de Geografia y Historia, 1956)

E. Goveia, "Comment," *Comparative Studies in Society and History*, Vol. 1, No. 3, March 1959, pp. 281-83.

Earl Grey, *The Colonial Policy of Lord John Russell's Administration*, London, 1853, pp. 54ff.

W.A. Green, *British Slave Emancipation* (Oxford, 1976)

GARDNER, W. J. (1874) *History of Jamaica*. Elliot Stock, London.

Handbook of Jamaica (1881) Kingston.

HARVEY and BREWIN (1867) *Jamaica in 1866*. A. W. Bennett, London.

HUGGINS, H. D. (1953) Employment, development and incentive financing. *Social and Economic Studies*, Vol. 1, No. 1, Institute of Social and Economic Research, University College of the West Indies.

D. G. Hall, *Free Jamaica 1838 1865*, New Haven, 1959.

Douglas Hall, "The Light from the Estates Reconsidered: The British West Indies, 1838-42," *Journal of Caribbean History* 10-11 (1978): 7-24.

Horowitz, "A Typology of Rural Community Forms in the Caribbean," *Anthropological Quarterly* 33:4:177-187, 1960

Jerome Handler, "The History of Arrowroot and the Origin of Peasantries in the British West Indies," *Journal of Caribbean History* 2 (1971): 86-93

Jerome Handler, *The Unappropriated People: Freedmen in the Slave Society of Barbados* (Baltimore: The Johns Hopkins University Press, 1974)

Hall, D., "The Social and Economic Background to Sugar in Slave Days," *Caribbean Historical Review*, Nos. III-IV, December, 1954

Government Printer, Kingston. 27. Report of Commission on Jamaica sugar industry (1945)

Government Printer, Kingston. 28. Royal Commission (1866) H.M.S.O., London.

Donald J. Harris, "The Circuit of Capital and the 'Labor Problem' in Capitalist Development," *Social and Economic Studies*, 37(1 & 2), March-June 1988, 15-31.

LEWIS, M. G. (1834) *Journal of a West Indian Proprietor*. Murray, London.

LONG, Edward (1774) *The History of Jamaica*. Printed for T. Lowndes, London.

Arthur W. Lewis, *The Evolution of the Peasantry in the British West Indies*, Colonial Office Pamphlet 656 (London: H.M.S.O., 1936)

Edward Long, *The History of Jamaica*, 3 vols. (London: T. Lowndes, 1774)

Lopez, A., "Land and Labour to 1900," *Jamaican Historical Review*, Vol. I, No. 3, December, 1948.

Woodville Marshall, "Notes on Peasant Development in the West Indies since 1938," *Social and Economic Studies* 17, No. 3, (1968): 252

Woodville Marshall, "Aspects of the Development of the Peasantry," in *Peasant Movements and Agrarian Problems in the West Indies, Part I: Department of History*, U. W.I., Barbados, 1969, mimeographed, pp. 1-22

Woodville Marshall, "The Peasantry and the Sugar Industry," Department of History, U.W.I., Barbados, 1970 (mimeographed)

Woodville Marshall, "The Ex-slaves as Wage Labourers on the Sugar Estates in the British Windward Islands, 1838-1846," XI Conference of Caribbean Historians, Curacao, April 1979.

Woodville Marshall, "The Establishment of a Peasantry in Barbados, 1840-1920", in T. Matthews, ed., *Social Groups and Institutions in the History of the Caribbean* (Puerto Rico, 1975), pp. 84-104

Woodville Marshall, "Rock Hall: the Search for the First Free Village in Barbados. 9th Annual Conference of Caribbean Historians, Barbados, 1977.

H. Merivale, *Lectures on Colonies and Colonization*, London 1841, (pp. 75-60)

W. K. Marshall, "Social and Economic Problems in the Windward Islands, 1838-1865" in Andic and Mathews (eds.) *The Caribbean in Transition*, Rio Piedras, 1965, pp 247

S. Mintz, "The Question of Caribbean Peasantries: A Comment", *Caribbean Studies*, Vol. 1, No. 3 (pp. 32-4.)

S. Mintz and D. G. Hall, "The Origins of the Jamaican Internal Marketing System", in *Papers in Caribbean Anthropology*, New Haven, 1960.

Mintz, Foreword to *Sugar and Society in the Caribbean*, by R. Guerra y

Sanchez, New Haven, 1964

S. Mintz, "Labor and Sugar in Puerto Rico and Jamaica, 1800-1850," *Comparative Studies in Society and History* I, No.3 (1959): 273-283.

S. Mintz, "Was the Plantation Slave a Proletarian? *Review* 2, No. I (1978): 81-98.

S. Mintz, "Historical Sociology of the Jamaican Church-Founded Free Village System," *De West Indische Gids* 38:46-70, 1958

Sidney Mintz, *The Question of Caribbean Peasantries: A Comment*, *Caribbean Studies* 1:31-34, 1961

S. Mintz, "Caribbean Marketplaces and Caribbean History," *Nova Americana*. I, No. I

S. Mintz, "Currency Problems in Eighteenth Century Jamaica and Gresham's Law," in Robert A. Manners, ed., *Process and Pattern in Culture* (1964)

OLIVIER, Lord (1936) *Jamaica, The Blessed Island*. Faber and Faber; London.

PAGET, Hugh (1945) *Church Settlements in Jamaica*. *Jamaica Historical Review*, Vol. I. No. I. 22.

Paget, H., "The Free Village System in Jamaica," *Caribbean Quarterly*, Vol. I, No. 4, n.d.

PARES, Richard (1950) *A West India Fortune*. Longmans, London.

Parliamentary papers relative to the West Indies, 1834-8 and to the abolition of slavery in the British Colonies, 1833-5.

PHILLIPPO, James M. (1843) *Jamaica, Its Past and Present State*. Snow, London.

H. Paget and R. Farley, "The Growth of Villages in Jamaica and British Guiana", *Caribbean Quarterly*, Vol. 10, No. I, pp. 38-61.

Orlando Patterson, *The Sociology of Slavery* (London: MacGibbon and Kee, 1967)

R. Redfield, *Peasant Society and Culture*, Chicago 1956, (pp. 27-29).

Emanuel W. Riviere, 'Labour Shortage in British West Indies after Emancipation': *Journal of Caribbean History* 4 (1972): 1-30

RAGATZ, L. J. (1928) *Fall of the planter class in the Caribbean*. Century Co., New York.

Report on Survey of Economic Conditions among Sugar Workers. Jamaica Labour Department (1938)

Royal Commission (1897) H.M.S.O., London.

Royal Commission (1930) H.M.S.O., London. 31. Royal Commission (1939) H.M.S.O., London.

Report of Select Committee on sugar and coffee plantations. Parliamentary Papers, 1848.

W. G. Sewell, *The Ordeal of Free Labour in the British West Indies*, New York, 186

Richard B. Sheridan. *Sugar and Slavery: An Economic History of the British West Indies. 1623-1775* (Barbados: Caribbean Universities Press, 1974).

C. Y. Shephard, *Peasant Agriculture in the Leewards Gild Windwards* (Trinidad: ICTA, 1945)

C. Y. Shephard, *Small Scale Farming in the Caribbean*. (Trinidad: Caribbean Commission, 1954)

West India Committee, London (1840).

SEWELL, William G. (1859) *The Ordeal of Free Labour in the West Indies*. Low, London

Statistics of Sugar Industry of Jamaica prepared for the use of the West Indies Sugar Commission (1929). Government Printer, Kingston

STEWART, J. (1823) A View of the Island of Jamaica. Edinburgh

UNDERBILL, Edward B. (1862) The West Indies. Hodder, London

UNDERHILL, Edward B. (1895) The Tragedy of Morant Bay. Alexander and Shepherd, London

Votes of the House of Assembly of Jamaica (1839-44)

WILLIAMS, Cynric R. (1826) A Tour through the Island of Jamaica. Printed for Hunt and Clarke, Covent Garden, London

WILLIAMS, Eric (1944) Capitalism and slavery. University of North Carolina Press.

YOUNG, Sir William (1807) The West India Commonplace Book. London.