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From Caliban to CARICOM: Encountering Legality in the Caribbean

Bill Maurer

MINDIE LAZARUS-BLACK. *Legitimate Acts and Illegal Encounters: Law and Society in Antigua and Barbuda*. Washington: Smithsonian Institution Press, 1994. Pp. 357. \$49.00 cloth; \$24.95 paper.

Until recently, research in sociolegal studies has tended to ignore the Caribbean region. Sociolegal scholars may have assumed that the Caribbean, like other places outside the United States, more properly deserved the attention of anthropologists than themselves—after all, “they” have “custom” while “we” have “law.”¹ Or, assuming that the colonial project represented an encounter between competing legal systems, sociolegal scholars may have left such studies to anthropologists interested in legal pluralism.² Caribbeanist anthropologists, who have tended to neglect legal processes in the region, may have assumed that the effects of law in Caribbean societies were self-evident: that slave era law helped maintain the plantation system, that indenture law ensured a pliant labor force after slavery ended, and that law in the colonial and decolonizing Caribbean simply did what its ideology claims it does by mediating disputes, administering

Bill Maurer is a lecturer in anthropology at Stanford University. The author thanks Jane Collier, Robin Balliger, and Elizabeth Mertz for their helpful comments and suggestions on earlier drafts. He takes full responsibility for any errors or inconsistencies that remain in spite of their patient and careful readings. He also thanks George Collier and Amy Burce for conversations that helped him develop some of the points made in section II.

1. See Peter Fitzpatrick, “Custom as Imperialism,” in J. M. Abun-Nasr et al., eds., *Law, Society and National Identity in Africa* 15-30 (Hamburg: Helmut Buske Verlag, 1990); *id.*, *The Mythology of Modern Law* (London: Routledge, 1992); Jane F. Collier, “Intertwined Histories: Islamic Law and Western Imperialism,” 28 *Law & Soc’y Rev.* 395 (1994); Sally E. Merry, “Legal Pluralism,” 22 *Law & Soc’y Rev.* 869; *id.*, “Law and Colonialism,” 25 *Law & Soc’y Rev.* 889.

2. See Merry, 22 *Law & Soc’y Rev.*

justice, and governing populations.³ Or they may have considered law to be a concern of Caribbean elites or colonial officials, not the stuff of popular class social and cultural life, and hence unworthy of the "thick description" that animates Caribbean village ethnography.⁴

The purpose of this essay is not to speculate on why Caribbean studies have shied away from law or why legal scholarship has overlooked the Caribbean, however. Instead, my goal is to show how the project of understand-

3. Much of this research represents the law as a relatively monolithic repressive arm of the colonial state. See Kim Johnson, "The Dialectics of Legal Repression in Neo-Colonial Capitalist Societies: Notes on the Caribbean," *Working Papers on Caribbean Society* ser. D, no. 1 (Dept. of Sociology, University of the West Indies, St. Augustine, Trinidad, 1980); A. Edwards, "The Evolution of Obeah Laws in Jamaica," *Jamaica L.J.*, April 1973; H. Fraser, "Law and Cannabis in the West Indies," *Jamaica L.J.*, April 1973; Eric Williams, *Capitalism and Slavery* (New York: Russell & Russell, 1944 [1961]); Elsa Goveia, *The West Indian Slave Laws of the 18th Century* (Bridgetown, Barbados: Caribbean Universities Press, 1970); David Cohen & Jack Green, eds., *Neither Slave Nor Free* (Baltimore: Johns Hopkins University Press, 1972).

Some of these works on slavery could be seen as part of a tradition of regional legal commentary on slave law and indenture, e.g., J. Stephen, *Slavery of the British West Indian Colonies Delineated as It Exists Both in Law and in Practice* (2 vols.; orig. London, 1824; New York: Kraus Reprint Co., 1969); William G. Sewell, *The Ordeal of Free Labour in the British West Indies* (New York: Harper & Row, 1861); Edward Jenkins, *The Coolie: His Rights and Wrongs* (New York: Routledge, 1871).

On contemporary Caribbean labor law, see Zin Henry, *Labor Relations and Industrial Conflict in Commonwealth Caribbean Countries* (Port of Spain, Trinidad: Columbus Publishers, 1972); and Walter Rodney, *A History of the Guyanese Working People* (Baltimore: Johns Hopkins University Press, 1981).

Contemporary research on land law also continues a tradition of regional literature. See R. J. Cust, *A Treatise on West Indian Incumbered Estates Act* (London, 1865); compare Jean Besson, "Symbolic Aspects of Land in the Caribbean: The Tenure and Transmission of Land Rights among Caribbean Peasantries," in M. Cross & A. Marks, eds., *Peasants, Plantations and Rural Communities in the Caribbean* 86–116 (Dept. of Sociology, University of Surrey, 1971); Besson, "Family Land and Caribbean Society: Toward an Ethnography of Afro-Caribbean Peasantries," in E. Thomas-Hope, ed., *Perspectives on Caribbean Regional Identity* 13–45 (Liverpool: Center for Latin American Studies, University of Liverpool, 1984). See also Charles Carnegie, "Is Family Land an Institution?" in C. Carnegie, ed., *Afro-Caribbean Villages in Historical Perspective* 83–99 (Kingston, Jamaica: African-Caribbean Institute of Jamaica, 1987).

More recent works include Cynthia Mahabir, *Crime and Nation Building in the Caribbean: The Legacy of Legal Barriers* (Cambridge, Mass.: Schenckman, 1985); Jerome Wendell Lurry-White, *Custom and Conflict on a Bahamian Out-Island* (Lanham, Md.: University Presses of America, 1987); and Bill Maurer, "Recharting the Caribbean: Land, Law and Citizenship in the British Virgin Islands" (Ph.D. diss., Stanford University, 1994).

This list is far from comprehensive. See generally the sources listed in Keith Patchett & Valerie Jenkins, *A Bibliographical Guide to Law in the Commonwealth Caribbean* (Mona, Jamaica: Institute of Social & Economic Research, University of the West Indies, 1973); and Velma Newton, *Commonwealth Caribbean Legal Literature* (Cave Hill, Barbados: Faculty of Law Library, University of the West Indies, 1987).

4. With the exception of C. Jayawardena's *Conflict and Solidarity on a Guyanese Plantation* (London: Althone, 1963), the "village ethnography" genre of Caribbeanist anthropology virtually ignores law and state-level political issues. Classic examples of this genre include M. & F. Herskovits, *Trinidad Village* (New York: Knopf, 1947); M. Herskovits, *Life in a Haitian Valley* (New York: Knopf, 1937); M. G. Smith, *Kinship and Community in Carriacou* (New Haven, Conn.: Yale University Press, 1962); Michael Horowitz, *Morne Paysan* (New York: Holt, Rinehart & Winston). For a critique of Horowitz, see Willie Baber, "Social Change and the Peasant Community: Horowitz's Morne-Paysan Reinterpreted," 21 *Ethnology* 227 (1982).

ing law and legal processes in the Caribbean poses important challenges for legal scholars interested in the rise of Western law and the critique of liberal legalism⁵ and for Caribbeanists puzzling over the region's traditional problematics of race, class, kinship, and gender. Mindie Lazarus-Black's *Legitimate Acts and Illegal Encounters: Law and Society in Antigua and Barbuda* makes this an exciting time to be an anthropologist interested in both the Caribbean and sociolegal studies. I hope to convey a sense of that excitement here.

Lazarus-Black's book is organized historically, tracing the inception and transformation of European law in Antigua from the early colonial period of the 17th and 18th centuries, to the emancipation of African slaves in 1834 and the post-emancipation period of colonial rule, to the period following political independence in 1981. In the first part of the book, her focus is on kinship codes that, by regulating marriages and reproduction, served to establish and maintain race and class hierarchies and the colonial rule that such hierarchies underwrote. A key point of the argument is that, because colonial Antiguan lawmakers had the power to draft laws independently of England, they were able to respond to local power dynamics and establish a local hegemony that long-distance rule would never have accomplished.

The historical narrative Lazarus-Black constructs is not, however, a story about the manufacture of a seamless hegemony. She documents common people's responses and resistances to the creation of hierarchy through law. Along the way, she also details the creation of an Antiguan popular-class kinship ideology developed alongside, but always in tension with, the official kinship ideology of the state. One of the most interesting chapters in the book documents shifting legal strategies adopted by the colonial state after the emancipation of the slaves in 1834. Elites' attention was directed toward controlling the newly freed population by "government through families" in the form of poor laws and social welfare legislation. Colonial elites used ideas about proper family forms to govern the newly freed and maintain control over the population. Lazarus-Black here finds evidence to support Fox-Piven and Cloward's argument⁶ "that welfare legislation is designed to regulate the poor while accommodating shifts in capital's need for labor" (at 15).⁷ At the same time, she shows, lawmakers' efforts to regulate populations through kinship codes led popular-class Antiguan to develop their own kinship ideologies and their own standards of moral worth

5. For example, Robert Gordon, "Critical Legal Histories," 36 *Stanford L. Rev.* 57 (1984); Alan Hunt, *Explorations in Law and Society: Towards a Constitutive Theory of Law* (New York: Routledge, 1993); David Kairys, ed., *The Politics of Law: A Progressive Critique* (New York: Pantheon, 1982); P. Fitzpatrick & A. Hunt, eds., *Critical Legal Studies* (Oxford: Blackwell, 1987).

6. Frances Fox-Piven & Richard Cloward, *Regulating the Poor: The Functions of Public Welfare* (New York: Vintage Books, 1971).

7. Citations to page numbers in the text are to Lazarus-Black's volume.

based on the relationships and respect afforded to kin. The final chapters of the book demonstrate the persistence of popular understandings of family and kinship after Antigua gained political independence from the United Kingdom in 1981. Lazarus-Black shows how people today negotiate kinship legalities as they use the courts to enforce their own sets of family norms and kinship ideologies.

This essay places Lazarus-Black's contribution within the wider framework of the history of legal orders in the Caribbean region and the impact of the Caribbean on Western law in general. I hope to demonstrate the importance of the Caribbean in the creation of Western law and the role the Caribbean could play in our attempts to understand contemporary legal processes.

The essay is divided into five parts. The first argues that investigating the Caribbean helps make more complex our understanding of power and resistance in colonial law. It argues that the Caribbean case makes problematic the distinction between "customary" and "colonial" law, since no legal discourses can be said to pre-date colonial conquest and the establishment of slave societies, and since any local ideologies of law or rights were developed in tandem with the ideologies of colonial law. Resistances to law, thus, have been figured in the very terms that the law provides.

As an initial step in demonstrating the connections between local and colonial ideologies, the second section explores the place of "the Caribbean" in European social thought during the rise of modern social contract doctrine and the foundations of liberal legalism, and asks how the European experience in the Caribbean helped shape legal philosophies at "home" in the metropolis. In particular, this section traces the trope of "the Caribbean" through late Renaissance and early modern European texts. Early liberal thinkers sought to make a case for the rights of 'men' over the right of divinely ordained kings and at the same time to lay the legal foundations for capitalism and private property—and the enslavement of humans. How did liberal legal ideology use the Caribbean to justify both the rights of "free men" to make contracts and the denial of these rights to the unfree? This in turn leads us to the question of Caribbean peoples' responses to the liberal legal order.

Hence, the third section returns to the Caribbean, where the entrenching of liberal legal ideologies led people to develop particular understandings of resistance to the legal order. I explore the idea of "freedom" contained in liberal legal ideologies, an idea that became a node for resistance to the colonial order in the pre- and post-emancipation period. What meanings of "freedom" were available to Caribbean populations? How do these meanings point up the kinds of resistances already contained within the logic of liberal law? I focus on the development of ideas about "individual" liberty and a "private" space supposedly free from the incursions of the

state. Central to the development of these ideas was the development of kinship construed as “blood” relatedness. Kinship was cast as a set of natural relations that ought to be left untouched by the state and market and that are held to be centrally defining of a person’s individuality.

Kinship ideologies are closely linked to those of race, and so the fourth section highlights the place of the Caribbean in the formation of modern racial ideologies. The focus here is on the conception of “nature” as determining people’s attributes and life chances that arose with social contract doctrine. I investigate the connection between the liberal egalitarian social order envisioned by social contract theory and the “biologizing” of social relations that accompanied it. Kinship and “blood” became central to people’s attempts to claim equality with others and, at the same time, to maintain inequality through the idea that some “bloods” were better than others. This section thus explores liberal law’s complicity in the establishment of modern racial ideologies.

The final section considers how understandings of difference generated by liberal law have changed or been maintained in the current era of transnational cultural flows and economic globalization. Creolization, a process that traditionally has characterized the Caribbean, is currently coming to characterize the world. This section explores the contribution of the Caribbean to discussions of the transnational legal spaces that affect of the movement of goods, people, and capital.

Throughout the sections, I use Lazarus-Black’s book as a touchstone to introduce the issues I explore and as a case study to illustrate the main points of the argument. I hope to show not only why the Caribbean should prove to be an important site for future sociolegal research but also why *Legitimate Acts and Illegal Encounters* makes such a worthwhile read.

I. WHY SHOULD SOCIOLEGAL SCHOLARS CARE ABOUT THE CARIBBEAN?

When Christopher Columbus landed in the Bahamas in 1492 he ushered in five centuries of continuous European colonization. As the first world region to be colonized by European powers and the last to be decolonized—and readers should be aware that much of the Caribbean is not yet “post”-colonial⁸—the Caribbean has witnessed and been subjected to all modern Western legal and political formations, from early modern

8. At present, the following territories are not politically autonomous from European or American powers: Anguilla, British Virgin Islands, Cayman Islands, Montserrat, Turks and Caicos Islands (all under the U.K.); Guadeloupe, Martinique, St. Martin, St. Barthelemy (all under France, although Guadeloupe and Martinique have status as *departements*); Aruba, Bonaire, Curacao, St. Maarten, Saba, St. Eustatius (under the Netherlands); Puerto Rico and the U.S. Virgin Islands (U.S. possessions).

social contract theory to 19th-century British utilitarianism to Ronald Reagan's Caribbean Basin Initiative, a centerpiece of U.S. foreign policy and neoliberal economic doctrine in the 1980s. Legal scholars concerned with the history and imposition of Western legal forms, with the development of legal consciousness in the colonial project, and with the incorporation of peoples into large-scale legal arenas will find much to discuss and debate in the Caribbean.

What would a study of the Caribbean have to offer sociolegal scholarship on colonialism and its traditional concerns with legal pluralism, customary law, and resistance? Unlike later colonial endeavors, European colonization of the Caribbean began with the near-total destruction of indigenous populations and the importation of foreign labor for colonial enterprises. The Caribbean thus provides an interesting site to test assumptions about the imposition of colonial law. While in much of the colonial world law was meant first and foremost to "civilize" indigenous populations,⁹ and only later to "govern," colonial law in the Caribbean, having no indigenous population to civilize, was always more concerned with governing, disciplining, and surveilling.

Traditional legal pluralism models are inappropriate in the Caribbean, since no "indigenous" legal system can be said to have survived conquest and since any new system created by imported Africans would have been forged during the enactment of law's violence over the bodies of the enslaved and from a mixture of elements from diverse African and Amerind traditions. In the Caribbean, there is no time "before" contact and conquest.¹⁰ This would later present a dilemma for 18th- and 19th-century British colonial officials, who in other colonial contexts sought to govern through "customary law."¹¹ The difficulty of discovering "customs" in the Caribbean is also perhaps responsible for 19th- and 20th-century social scientific avoidance of the region. As Trouillot remarks, "[w]ith a predominately nonwhite population, it was not 'Western' enough to fit the concerns of sociologists. Yet it was not 'native' enough to fit fully the Savage slot where anthropologists found their preferred subjects."¹² Just as the Caribbean challenges the dichotomy between "Western" and "non-Western," and as a result calls into question the epistemological premises of much anthro-

9. See Sally E. Merry, "Anthropology, Law and Transnational Processes," 21 *Ann. Rev. Anthropology* 357, 363 (1992); John Comaroff & Jean Comaroff, *Of Revelation and Revolution* (Chicago: University of Chicago Press, 1991).

10. See Michel-Rolph Trouillot, "The Caribbean Region: An Open Frontier in Anthropological Theory," 21 *Ann. Rev. Anthropology* 19 (1992); Richard Price, *Ethnographic History, Caribbean Pasts*, University of Maryland Working Paper No. 9.

11. On the invention of "customary law," see sources cited in Merry, 21 *Ann. Rev. Anthropology* under "Colonial and Postcolonial Situations" (at 363–66).

12. Trouillot, 21 *Ann. Rev. Anthropology* at 20.

pological inquiry,¹³ the Caribbean viewed in terms of law unsettles the distinction between “colonial” and “customary” law.

Furthermore, because Caribbean peoples may have first encountered “law” and legal ideologies in the act of conquest and enslavement, and because the law that justified their enslavement was a tangible and everyday aspect of their existence, the implied opposition between the “legal consciousness” of everyday folk and the “legal ideology” of the state at the heart of much work on resistance may soften when the Caribbean is taken into account. Scholars working in the United States have nicely complexified analyses of power and resistance in sociolegal studies, by breaking down the static opposition between oppressive structures and resisting agents and painting a picture of the complex and contradictory negotiations of actors engaged in specific struggles with the law. Sally Merry, among others, has argued that resistance “is mounted through the terms and frameworks of dominant ideologies.”¹⁴ In these conceptions of resistance, “the connection of the ‘personal’ to the ‘structural’ is both given and emergent.”¹⁵ These scholars have not, however, looked beyond the United States for similar enactments of resistance linked to specific forms of power. How have people made use of “imposed systems” in other contexts, and in contexts where the “imposed system” is the very system of liberal legality that structures and is structured by everyday consciousness in the United States?¹⁶ In the colonial world, scholars who might develop quite nuanced theories of the relationship between legal consciousness and legal ideology tend, I think, to see liberal law as an imposition that colonized peoples simply “react to,” rather than viewing liberal law as constitutive of colonial consciousness and constituted by colonial encounter and domination. But as Lazarus-Black elegantly summarizes for the case of Antigua, “the hegemony of law . . . is strengthened by the fact that commonsense understanding includes the knowledge that the system of legalities contains within itself means for resistance” (at 259–60).

A similar idea is put forth by Diane Austin-Broos to explain Caribbean religion, in an argument that is suggestive for sociolegal studies. She shows that religious conversion in the colonial Caribbean cannot be viewed simply as the imposition of an alien religious form on a subjugated people.

13. *Id.* at 21.

14. Susan Hirsch, “Subjects in Spite of Themselves: Legal Consciousness among Working Class New Englanders,” 17 *Law & Soc. Inquiry* 839, 843 (1992). See Sally Engle Merry, *Getting Justice and Getting Even: Legal Consciousness among Working-Class Americans* (Chicago: University of Chicago Press, 1990). See also Michel Foucault, *Power/Knowledge: Selected Interviews and Other Writings, 1972–1977* (New York: Pantheon, 1982), and Lila Abu-Lughod, “The Romance of Resistance: Tracing the Transformation of Power through Bedouin Women,” 17 *American Ethnologist* 4 (1990).

15. Barbara Yngvesson, *Virtuous Citizens, Disruptive Subjects: Order and Complaint in a New England Court* 10 (New York: Routledge, 1993).

16. On people’s use of “imposed systems,” see *id.* at 123, after Michel de Certeau, *The Practice of Everyday Life* (Berkeley: University of California Press, 1984).

Slaves “capture[d] the captor’s God” and engaged in local “interpretive struggles” over the moral order suggested by colonial Christian missionaries; the moral orders resulting from this struggle constitute contemporary Caribbean Christianity.¹⁷ One could apply Austin-Broos’s insight to the imposition of Western law and argue that Western law in the Caribbean is not properly viewed as an alien phenomenon but as a continually negotiated one.¹⁸

II. THE CARIBBEAN AND THE EUROPEAN IMAGINARY DURING THE RISE OF MODERN POLITICAL PHILOSOPHY

Lazarus-Black’s book covers nearly four centuries of Antiguan history, spanning three epochs: the late Renaissance; the modern period and the rise of social contract doctrine, capitalism, and bureaucratic governmentality; and a late 20th-century period of postcoloniality and transnationalism. In documenting Antiguan legalities and illegalities over time, she offers a glimpse of the Caribbean’s place, and its use by Europeans, during these epochs.

Conquered and occupied at a time when divinely ordained kings ruled tributary empires in Europe, the Caribbean remained under European political control as bourgeois revolutions swept kings off their thrones and ushered in liberal democracies. Scholars interested in liberal law’s contradictions could learn much by considering the place of the Caribbean in the transition to modernity. From the moment of its discovery by Europe, the Caribbean served as Europe’s “Other,” as that which it defined itself against, in late Renaissance and early Enlightenment social commentary and criticism. It also served as a site for the playing out of liberal law’s contradictions, for the same legality that established the rights of free men to form contracts also justified the enslavement of Africans and Indians.

But the history of “the Caribbean” in European philosophies begins perhaps with Sir Thomas More’s attack on the decadence of Europe in the early 16th century, in his *Utopia*. Recall that Utopia is an island in the Caribbean. In his fictionalized description of the voyage of Vesputius in the New World, he wrote:

[A]s they went farther, a new Scene opened, all Things grew milder, the Air less burning, the Soil more verdant, and even the Beasts less

17. Diane Austin-Broos, “Redefining the Moral Order: Interpretations of Christianity in Postemancipation Jamaica,” in S. Drescher & F. McGlynn, eds., *The Meaning of Freedom: Economics, Politics, and Culture after Slavery* 239–40 (Pittsburgh: University of Pittsburgh Press, 1992).

18. *Id.* at 222.

wild: And at last there are Nations, Towns, and Cities, that have not only mutual Commerce among themselves, and with their Neighbours, but trade both by Sea and Land, to very remote Countries.¹⁹

Of the inhabitants of the Island of Utopia, More wrote “that they do now far excel all the rest of Mankind” in their “politeness” and “good Government.”²⁰ Thomas More was writing during a period in Europe when kings derived authority from God and his worldly representative, the Pope. More used the “heathen” Caribbean natives as a foil to demonstrate the failures and inequities of a presumably God-given European social order.

Medieval and Renaissance legalities, of course, were based on a strict God-given hierarchy of social statuses. The Caribbean was colonized under this hierarchical legal order. Lazarus-Black’s book begins with the early period of colonization in the 16th and 17th centuries and notions of a hierarchical social order ordained by God. “To the early British settlers, it was ‘natural’ that there be different ranks of men” (at 12). In the 17th century, slaves, like servants, occupied an established social position in a hierarchy—as inferior persons, but as persons nonetheless. As in 17th-century Europe, lawmakers were concerned with the maintenance of hierarchy. Sexual unions among persons of different ranks posed a threat to the hierarchical order. In the Caribbean, 17th-century “legislators were anxious that sexual relationships, love, or marriage not threaten the boundaries between different categories of workers” (at 67).

In addition, the large-scale extraction of surplus for transport overseas peculiar to the emerging imperial projects required a legal framework regulating property rights and trade over an enormous region of the globe. This need became especially acute after the defeat of the Spanish Armada in 1588 as Britain and Holland perforated Spain’s empire in the Americas. Since they were not bound by the authority of the Vatican, the Protestant powers posed a serious threat to Spanish and Portuguese trade. Lewis notes, “a body of doctrine had to be stated which rested upon different sanctions” than those of the Church, a body of doctrine that both Catholic and Protestant powers would accept in order to guarantee secure maritime trade.²¹ Hugo Grotius’s secular theory of international maritime law, based on the rights of men to the “common property” of the sea, derives from this conflict between Catholic and Protestant powers over the open waters of the ocean.²² His “freeing” of law from the Church “made it possible for him to

19. Sir Thomas More, *Utopia, or The Happy Republic* 5 (Glasgow: Robert Foulis, 1743; orig. pub. 1516).

20. *Id.* at 45.

21. Gordon Lewis, *Main Currents in Caribbean Thought* 45 (Baltimore: Johns Hopkins University Press, 1985) (“Lewis, *Main Currents*”).

22. *Id.* at 62.

place the law outside the bitter opposition" between Protestant and Catholic sovereigns during the Reformation and Counter-Reformation.²³

After the Reformation challenged the authority of the Pope, new developments in Europe challenged the old hierarchical order. The notion of equality gradually replaced hierarchy in Europe, but elites found new ways of organizing and justifying inequality. Karen Fog Olwig notes a contemporaneous shift in agricultural production in the Caribbean, from yeoman farming organized around hierarchical patriarchal families that incorporated slaves into the household, to plantation agriculture organized around sharp divisions between slave and free.²⁴ Changes in productive relations, together with slaves' and others' challenges to hierarchy, begged new forms of domination and control. Lazarus-Black makes the important point (at 22–24) that Caribbean whites had the ability to draft laws independently of the Crown and thus were able to respond quickly to new dynamics of power and inequality. This is perhaps the beginning of a "creolization" of European legal ideas in the Caribbean: local elites, with a tool-kit of European legal ideas and a sensitivity to the needs of power in the Caribbean, drafted new laws to meet local Caribbean conditions. As I discuss below, these "creole" laws themselves then could be "repatriated" to Europe to control emerging working classes there.

With the rise of modernity, as Michel-Rolph Trouillot argues, the Caribbean "provided a nascent Europe with the material and symbolic space necessary to establish its image of the Savage Other."²⁵ Yet unlike the Caribbean natives in More's *Utopia*, these "savages" were not always or necessarily "noble" or free ones. Man Friday and Caliban exemplify the Savage created to serve the role of foil to European learned men in stories that question, yet end by affirming, man's reason. Defoe's Robinson Crusoe, a key figure in subsequent political economic thought,²⁶ is placed in an island near Trinidad. While he exemplifies Enlightenment man forced to rely on his own reason, he also depends, like Shakespeare's Prospero, on the labor of a subordinate Caribbean indigene in order to survive.²⁷

23. Carl Joachim Friedrich, *The Philosophy of Law in Historical Perspective* 65 (2d ed. Chicago: University of Chicago Press, 1963).

24. Karen Fog Olwig, *Global Culture, Island Identity: Continuity and Change in the Afro-Caribbean Community of Nevis* (Chur: Harwood Academic Publishers, 1993) ("Olwig, *Global Culture*").

25. Trouillot, 21 *Ann. Rev. Anthropology* at 20 (cited in note 9). See also Trouillot, "Good Day, Columbus: Silences, Power and Public History (1492–1992)," 3 (1) *Public Culture* 1 (1990), and *id.*, "Anthropology and the Savage Slot: The Poetics and Politics of Otherness," in Richard Fox, ed., *Recapturing Anthropology* 17 (Santa Fe, N.M.: School of American Research Press, 1991).

26. Most notably, in the work of Ricardo and his critic, Marx.

27. See Peter Hulme, *Colonial Encounters: Europe and the Native Caribbean, 1492–1797* (London: Methuen, 1986) ("Hulme, *Colonial Encounters*"); Daniel Defoe, *Robinson Crusoe* (orig. 1718; New York: Norton, 1994); William Shakespeare, *The Tempest* (orig. 1608–12; London: J. M. Dent, 1994).

The Caribbean did not just figure in the origins of modern literature and political commentary, however, but in the rise of modern social theory. The founders of social contract doctrine themselves invoked the Caribbean in their “fables of origin.”²⁸ Countering the Hobbesian view of man in the state of nature engaged in a “warre of each against all,” Rousseau declared that Carib Indians demonstrated man’s natural goodness:

[I]t is the more absurd to represent savages as continually cutting one another’s throats to indulge their brutality, because this opinion is directly contrary to experience; the Caribbeans, who have as yet least of all deviated from the state of nature, being in fact the most peaceable of people in their amours, and the least subject to jealousy, though they live in a hot climate which always seems to inflame the passions.²⁹

Others invoked the peoples of the Caribbean, both indigenous and enslaved African, in setting the philosophical foundations of liberal political and economic orders. Locke’s famous statement that “in the beginning, all the world was America” appears in the same section of the *Second Treatise of Government* (“On Property”) in which he notes the rights of the master to the products of his servant’s labor (chap. 5, sec. 28) and immediately after his justification of slavery (“On Slavery,” chap. 4). As Laslett reminds us, Locke “writes as the administrator of slave owning colonies in America.”³⁰ Adam Smith invoked the figure of the West Indian slave as evidence for his theory that, since labor is drudgery, men “conserve effort” and strive to work as little as possible: “a person who can acquire no property, can have no other interest but to eat as much, and to labor as little as possible.”³¹ But because man’s nature is to “domineer,” “whenever the law allows it, and the nature of the work can afford it, . . . he will generally prefer the service of slaves to that of freemen.”³² Smith, an opponent of slavery, paradoxically went on to argue that slavery would be successful in the Caribbean because the tremendous profits reaped by the sugar and tobacco trade were sufficient to support the extra expenditure of slave labor.

Sidney Mintz and Eric Wolf have placed the plantation-era Caribbean of the 18th and 19th centuries at the center of the rise of capitalist forms of

28. Hulme, *Colonial Encounters* 187.

29. J.-J. Rousseau, “Discourse on the Origin of Inequality,” in *The Social Contract and the Discourses* 78 (London: Everyman’s Library, 1990; orig. pub. 1755).

30. Peter Laslett, ed., *John Locke’s Two Treatises of Government* 325 (New York: Mentor, 1960). Laslett also notes: “The Instructions to Governor Nicholson of Virginia, which Locke did so much to draft in 1698 . . . , regard negro slaves as justifiably enslaved because they were captives taken in a just war” (at 326). See also Laslett, “John Locke, the Great Recoinage and the Board of Trade, 1695–1698,” 14 (3d ser.) *Wm. & Mary Q.* 3 July 1957; and Raymond Polin, *Le Politique Morale de John Locke* (Paris: Presses Universitaires de France, 1960).

31. Adam Smith, *The Wealth of Nations*, Books I–III, 488–89 (New York: Penguin, 1986, orig. pub. 1776).

32. *Id.* at 489.

production and work discipline.³³ The plantation, a model for organized industrial enterprise, gave an emerging class of capitalists new ideas to bring back home to the mills of central England. Capitalist work discipline was supported by new means of policing the working classes through law.³⁴ And because plantation slaves produced "low-cost, high-energy food substitutes" such as sugar, coffee, chocolate, tobacco, and rum for expanding European markets and the new European working classes, they played a vital role in the rise of industrialism in Europe itself by helping to keep the workers working at low cost to capitalists.³⁵

Because of its historical connections to and pride of place in the European imagination that produced social contract, the Caribbean case, more than any other perhaps, helps pinpoint contradictions in liberal doctrine. The European Enlightenment did not simply create Caribbean others whose simplicity and order were to serve as a model for an increasingly decadent and amoral (and increasingly capitalist) Europe. In the 17th and 18th centuries, legal principles based on the social contract doctrine that all "men" were equal and that no one was closer to God than any other came into being with laws underwriting slavery, and contracts regulating labor and business transactions came into being together with bonded servitude and markets in people. Social contract theorists defended the rights of men over the rights of gods or kings and gave rise to liberal law, but social contract doctrine also served to justify the rights of free men over slaves.³⁶

III. "RESISTANCE" IN A LIBERAL ORDER

At the same time that social contract doctrine justified slavery, it also provided a means for slaves to resist. Lazarus-Black does a nice job demonstrating the apparently contradictory nature of liberal law in providing the means of its own contestation.³⁷ Enslaved persons found possibilities in liberal law to protest masters' treatment of them even if they sometimes con-

33. See Sidney Mintz, *Caribbean Transformations* (New York: Columbia University Press, 1974); Eric Wolf, *Europe and the People without History* (Berkeley: University of California Press, 1982).

34. See Michel Foucault, *Discipline and Punish: The Birth of the Prison* (New York: Vintage, 1979).

35. Sidney Mintz, "The So-called World System: Local Initiative and Local Response," 2 (4) *Dialectical Anthropology* 253, 265 (1977).

36. And women, of course. See Carole Pateman, *The Sexual Contract* (Stanford, Cal.: Stanford University Press, 1988).

37. See Peter Fitzpatrick, *Law and State in Papua New Guinea* 29–30 (London: Academic Press, 1980); Jane Collier, Bill Maurer, & Liliana Suarez-Navaz, "Sanctioned Identities: Legal Constructions of 'Modern' Personhood," in 2 (1 & 2) *Identities: Global Studies in Culture and Power* 1 (1995) ("Collier et al., 'Sanctioned Identities'"); E. P. Thompson, *Whigs and Hunters: The Origin of the Black Act* 262–64 (New York: Pantheon Books, 1975); Rosemary Coombe, "Cultural and Intellectual Properties: Occupying the Colonial Imagination," 16 (1) *PoLAR: Political & Legal Anthropology Rev.* 8 (1993).

tinued to imagine themselves as part of a pre-Enlightenment corporate status group. A "justice" and "rights" ideology emerged among the enslaved (at 38). In a 1736 rebellion, Antiguan slaves used courts like good liberals to argue for justice and equality, but did so as a collectivity, like a good corporate status group (at 51). Lazarus-Black's highly original treatment of *obeah* (usually construed by Caribbean scholars as witchcraft) as a "system of illegalsities" or constructed "customary" law called forth by and shadowing the legal order demonstrates how people tried to manipulate hierarchy and acquire justice (at 43 ff). Slaves, in effect, were using "imposed systems" to create their own idiom of rights and justice. As Lazarus-Black shows, one of the possibilities offered by liberal law was the possibility of constituting social relations through families and kinship, conceived as natural relations that ought to be left alone by the state and law. If lawmakers wrote kinship codes to control populations, Caribbean peoples invented kinship ideologies to contest them by using the "imposed system" through which lawmakers sought to police individuals and families.

As noted in the first section, however, we must be careful to avoid too simple a reading of "resistance" and pay close attention to the interplay between imposed systems and the actions and consciousness of those on whom they are imposed. In his survey of Caribbean social thought, Gordon Lewis comments that ideas and ideologies affecting and adopted by Caribbean peoples "encompassed the whole of European intellectual history itself, in linear historical order: the late medieval humanism of the Hispanic Mediterranean; the rationalism of the French Enlightenment; English humanitarianism, most notably expressed in the campaigns for the abolition of the slave trade and slavery; 19th- and 20th-century Socialist thought."³⁸ Lewis also notes that a "creolization" of these modes of thought helped adapt them to "fit the special and unique requirements of Caribbean society as they developed from one period to the next." The Caribbeanization of European social thought had a profound impact on legal and political philosophies in the region. This fact calls on us to parochialize the categories of the European social theory we use to analyze Caribbean social realities. We cannot unproblematically examine Caribbean legal ideologies with the tools Western legal scholarship provides. Those tools themselves are part of the ideologies from which Caribbean peoples have crafted their own ways of being.³⁹

For example, Caribbeanist anthropologists have explored the so-called family land system of common tenure as an instance of resistance to the plantation regime.⁴⁰ Family land is usually held in common by a large

38. Lewis, *Main Currents* 27 (cited in note 21).

39. See, e.g., Sheldon Liss, *Fidel! Castro's Political and Social Thought* (Boulder, Colo.: Westview, 1994), and Bill Maurer, "Review of Liss," 27:3 *Rev. Radical Pol. Econ.* 111 (1995). On provincializing the categories of European social thought, see Dipesh Chakrabarty, "Provincializing Europe: Postcoloniality and the Critique of History," 6 *Cultural Stud.* 337 (1992).

40. See the works by Besson and Carnegie cited in note 3.

number of "blood" relatives who hold usufruct rights in it⁴¹ and is generally considered to be inalienable and to resist commodification. Scholars of family land are probably right to view it as a significant component of post-emancipation ideologies of "freedom" among the formerly enslaved. A system that permits large numbers of people to hold rights in a piece of land, however small, gives each person the sense that they all are property owners, hence equal to each other, and "free" in their capacity as proprietors. However, these scholars' characterization of family land as "resistance" seems to rely on a notion of resistance as a domain of action that is separate from the state and capitalist law because necessarily opposed to it. But this kind of resistance and the law that sparked it may have more in common than we might suspect at first glance.

The idea that resistance is separate from state law because it is opposed to it neglects the overarching system of legality within which "freedom" makes sense. As Trouillot summarizes, "the acquisition of family land and the labourer's rights to the product of his labour done on such land were the terms in which freedom was first formulated."⁴² In spite of the communalism of family land, then, and as R. T. Smith points out, "emancipation, when it finally came, was part of a broader movement toward the social definition of individual rights."⁴³ For the idea that freedom consists (in part) of the rights to enjoy the fruits of one's labor is of course central to the Lockean doctrine that property derives from the transformation of raw nature by individual effort: "whatsoever he removes out of the state that nature has provided and left it in, he has mixed his labor with, and joined to it something that is his own, and thereby makes it his property."⁴⁴ And the proprietarian self crucial to contract doctrine seems implicit in the ideology of freedom attached to family land. Hence in "family land" the very social contract doctrine that justified slavery is taken on as an articulation of freedom formerly denied the enslaved.

Emancipation in 1834 generated decisive changes in Caribbean social orders. "Lawmakers placed increasing emphasis on individuals' rights to enter into contracts and concomitantly developed a new relationship between individuals, families, and the state" (at 102). No longer a patriarchal status group, the "family" in this new order came to be construed as a set of contractual and blood relations among people, and the state's role became that of guaranteeing those contracts and providing sanction for their breach

41. That is, rights to specific kinds of use for specific time periods. For example, a restricted form of usufruct might permit a person to harvest coconuts from the trees growing on a piece of land but not to graze cattle there. With family land, usufruct is usually unrestricted; all persons have rights to use the land.

42. Trouillot, "Review of *Peasants and Poverty: A Study of Haiti*, by Mats Lundahl," 8 *J. Peasant Stud.* 112, 114 (1980).

43. R. T. Smith, "Race, Class, and Gender in the Transition to Freedom," in Smith, *The Meaning of Freedom* 257, 269 ("Smith, 'Race, Class and Gender'").

44. Locke, *Second Treatise*, ch. 5, sec. 27.

(at 107). "Poor laws were drafted to shift the burden of caring for the underprivileged from the state to the family. Statutory law stipulated exactly who constituted an individual's 'family' and who was, therefore, legally responsible" (at 103).

Emancipation thus led to new forms of what Foucault termed "bio-power": the regulation of peoples through appeals to certain "natural" characteristics like "blood" relatedness.⁴⁵ "Government through families"—employing censuses, birth and death registers, and other means of enumerating "populations"—was meant ostensibly to lower infant mortality but also served to maintain the labor force (at 111–12). New notions of "welfare" and "dependency" arose with state intervention in child care (at 112). Lazarus-Black notes the irony of the liberal doctrine of equality for the region's poor: all workers were "individuals," but "needy" individuals were seen as "parts of families." "The individualization of labor was accompanied by a program of government through families that redefined the state's role in managing formerly private affairs of kin" (at 126). The poor had to demonstrate that they belonged to a "family" in order to receive poor relief (at 116). Here the law elicited "natural" families while "helping" needy persons to stand alone as individuals.

In a society supposedly based on individual achievement rather than ascribed status, education became a means to mobility; whites wanting to maintain their position in society attempted to limit access to schools, and made "legitimacy" a litmus test for school entrance applications (at 115).⁴⁶ The new individualism also brought more people into the courts to seek justice and fostered the expansion of the new hegemonic legality throughout Caribbean society (at 109). It did so, however, in a contradictory manner. Individuals were "free" to obtain justice through courts. However, only "failed" individuals were seen as needing courts to intervene in their "private" affairs. Lazarus-Black observes that today people find going to court shameful—as do people today in other parts of the world influenced by the liberal law.⁴⁷ Investigating the contradictions of liberal law in the Caribbean thus helps identify the playing out of similar contradictions elsewhere.

IV. ON ETHNICITY, RACE, AND NATURE: SUBSTANTIVE AND FORMAL EQUALITY

To fully grasp the ideologies of individualism, kinship, and resistance that developed with the rise of liberal law, however, we must also attend to

45. Michel Foucault, 1 *The History of Sexuality* (New York: Pantheon, 1978).

46. Olwig, *Global Culture* 100–109 (cited in note 24).

47. Compare to Carol Greenhouse, "Interpreting American Litigiousness," in J. Starr & J. Collier, eds., *History and Power in the Study of Law* 252 (Ithaca, N.Y.: Cornell University Press, 1989).

the place of naturalized understandings of kinship in creating hierarchy. Kinship provides the basis for equality in a liberal order: persons are not placed by God in a social hierarchy but rather are conceptualized as having been made by the same kind of “natural” relations of “blood.” Yet kinship also provides the basis for inequality. If inequalities are not produced by God, they must be produced by nature: some “bloods” are better than others. Where hierarchical notions of social order justified inequality with reference to God-given statuses, liberalism justified inequality through reference to “nature.”⁴⁸ All people were considered equal by nature, but some had “faulty natures” making them less than “free men.” Lazarus-Black draws our attention to the role of 19th century liberal law in constructing “natural” families and individuals who, if they “failed,” had only themselves to blame for their problems and required the intervention of government agencies to “manage” them. In a similar fashion, Karen Olwig observes that the transition to liberal law led to new racisms. “While the colonizer tended to regard the early African slaves’ cultural practices with a mixture of incredulity and curiosity, the later slave culture became increasingly condemned as immoral and animal-like.”⁴⁹ Liberal law called forth an individualism at the same time it denied humanity to slaves and linked this denial not to socially constituted hierarchy but to “naturally” given difference figured in terms of “race.”

Lazarus-Black makes an important contribution to the understanding of inequality under liberal law by emphasizing kinship. If “nature” is used to justify both equality and inequality in liberal orders, “kinship,” as an expression of nature, can become both a site for legality and a space for illegality. Kinship becomes a site for legality when the state uses kinship to regulate populations. The state can do so in two contradictory fashions. First, it can claim that all persons are formally equal because they are all constituted by the same kinds of relations, as noted above. Second, it can justify inequalities and deny substantive equality by claiming that some people simply have “better natures” than others. Kinship becomes a space for illegality when common people use kinship to claim a space separate from the affairs of the state, law, and market. People can feel “free” in their homes and families, unrestricted and unregulated by outside forces—or they can use the hope and promise of that freedom to contest liberal legal orders that attempt to deny it to them.

As R. T. Smith has argued, colonization of the Caribbean in the 16th century represented a “formative stage of a worldwide phenomenon[:] the creation of multiracial, multicultural societies.”⁵⁰ Scholars of the region

48. Collier *et al.*, “Sanctioned Identities” (cited in note 37).

49. Olwig, *Global Culture* 7.

50. R. T. Smith, *Kinship and Class in the West Indies* 3 (Cambridge: Cambridge University Press, 1988) (“Smith, *Kinship*”).

have traced the emergence of modern racial ideologies to the Caribbean. These ideologies owe much to the 16th-century Spanish doctrine of *limpieza de sangre*, or purity of blood, which made religion an attribute of ancestry rather than choice during the Reconquest of Spain from the Moors, and which was imported into the New World as Spanish sought to regulate sexual unions between indigenous Americans and Europeans.⁵¹ The idea that races are discrete groups of people defined in terms of shared ancestry or region of origin; that race is a heritable attribute passed down by both parents (rather than just one); that the offspring of a child of parents of two "races" is a "mixed race" child; all have their genesis in the new reproductive economies that brought together Indians, Africans, and Europeans in the New World.⁵²

Racial formation in the Caribbean was closely linked to legal status. Spanish attempts to regulate reproduction had as their goal the maintenance of status hierarchies among nobles, commoners, and slaves.⁵³ Reproduction among the enslaved represented proprietary gain to European masters; yet children of slaves and freepeople posed problems for the strict division between slave and free that slave law and status hierarchies demanded. Jurists devised elaborate categorizations of persons based on ancestry and linked to notions of "blood" and biologized race to deal with this problem.⁵⁴ Liberal ideology did little to diffuse racial status categorizations, and probably even extended them. R. T. Smith notes that "the 'biologizing' of social relations . . . is perhaps an intrinsic part of the structure of egalitarian individualistic social orders."⁵⁵ I agree. In a world profoundly structured by the belief that "nature hath made all men . . . equal,"⁵⁶ Nature has the potential to make some unequal by virtue of their faulty natures: in Hobbes's dictum, Nature has the power to determine people's lives, for it—not God—has made all "men." "When Hobbes . . . declared that all 'men' were equal by Nature, . . . [he] constituted a realm of Nature apart from, and prior to, the laws men made to regulate themselves."⁵⁷ And if Nature made all men equal, it could make some "men" unequal, too.

51. Verena Stolcke, "Invaded Women: Gender, Race, and Class in the Formation of Colonial Society," in M. Hendricks & P. Parker, eds., *Women, "Race," and Writing in the Early Modern Period* 272 (London: Routledge, 1994) ("Stolcke, 'Invaded Women'").

52. Smith, *Kinship* 82–109; see also Verena Martinez-Alier, *Marriage, Class and Colour in Nineteenth Century Cuba* (Cambridge: Cambridge University Press, 1974) ("Martinez-Alier, *Marriage*").

53. See Stolcke, "Invaded Women," and Martinez-Alier, *Marriage*.

54. See Bryan Edwards, 2 *The History, Civil and Commercial, of the British Colonies in the West Indies* 16–18 (London: John Stockdale, 1794); Smith, *Kinship and Class* at 84; Barry Higman, *Slave Population and Economy in Jamaica, 1807–1834*, at 139 (Cambridge: Cambridge University Press, 1976); Martinez-Alier, *Marriage*.

55. Smith, "Race, Class and Gender" at 266 (cited in note 43).

56. Thomas Hobbes, *Leviathan* 86 (Cambridge: Cambridge University Press, 1994; orig. pub. 1651).

57. Collier *et al.*, "Sanctioned Identities" (cited in note 37).

In Antigua, the liberal ethos of the late 18th and early 19th centuries called forth “natural” relations of blood by emphasizing the fact that people lived in “families” as the basis for equality and hence suggesting that all persons were made by “nature” and not placed by God in a social hierarchy (at 58–59). As Lazarus-Black explains, the Amelioration Acts of 1798 in Antigua “gave . . . slaves a way to announce publicly, and force whites to acknowledge, that they were people living in families” (at 71); hence “after 1798, slaves began incorporating kinship legalities into their kinship practices.” The new legality thus conjured up a kinship system that “demonstrated” all persons to be equal in that they were all constituted by the same kinds of (“blood”) relationships: “the kinship system created in Antiguan law encompassed all of the island’s people: settler, servant, and slave. Kinship legalities had penetrated every rank of society” (*id.*). Liberal law called forth a “nature” that transcended social order. This “nature” provided the domain of substantive equality promised by liberal law. All people were equal in that they were all constituted by the same kind of “natural,” kinship relations. But as a consequence of this new substantive equality, and in the absence of formal equality, slaves and free persons found that they needed to “prove” their “good natures” to lessen the inequalities they faced—and they did so by emphasizing “good marriages,” “respectable living,” and “legitimate children” (chaps. 4 and 5).

What Lazarus-Black’s analysis suggests is that the kind of substantive equality encapsulated in the idea that all people share a certain natural humanity is conjured up by the same liberal legal discourse that supposedly guarantees formal, legal equality. It is in the moment when formal equality is denied that substantive equality becomes a means to contest the law.⁵⁸ But substantive equality and formal equality are bound together in liberal law’s creation of a “nature” that explains both the essential equality of human beings and the “natural” inequalities that they are subject to. This should lead legal scholars to investigate how constructions of “kinship” are linked to kinds of law and resistance to law. For example, in 19th-century slave narratives, kinship is the space of freedom denied. In these narratives, slaves are ripped from their families and denied a “private” sphere of social interaction: even the most “private” of affairs and intimacies are subject to the whim of the master. The denial of the family’s supposed inviolability is seen as one of the most abhorrent injustices of the slave system.⁵⁹ The concept of “family,” of course, itself witnessed incredible elaboration with the rise of 19th-century industrial capitalism in Europe and the United States.

58. Chandra Jayawardena, “Ideology and Conflict in Lower Class Communities,” 10 *Comparative Stud. Soc’y & Hist.* 413 (1968).

59. See Frederick Douglass, *Narrative of the Life of Frederick Douglass* (New York: Signet, 1968, orig. pub. 1845); Harriet Jacobs, *Incidents in the Life of a Slave Girl* (New York: Oxford University Press, 1988, orig. pub. 1861); Mary Prince, *The History of Mary Prince, A West Indian Slave* (Ann Arbor: University of Michigan Press, 1993, orig. pub. 1831).

Kinship was seen as the space capitalism supposedly does not penetrate, as capitalist work discipline leaves us “free” to discover our true selves only at “home” among our loved ones.⁶⁰

At the same time that law concocts kin as a space of resistance to and freedom from the state and the market, law also imagines families as requiring regulation (at 111) lest social disorder or individual pathology take root in “bad families.” Kinship emerges as a key site of the regulation of individuals and populations (and a central component of Foucault’s biopower, as noted above) at the same time that it becomes central to people’s self-perceptions and identities, a site of resistance, and the stuff of substantive equality against which formal legal equality is measured. In other words, kinship becomes both a site of legality and a space for illegality. Given that scholars of Caribbean kinship have all but ignored law and legal processes, Lazarus-Black’s contribution is truly significant. She redirects studies of family and kinship in the Caribbean to focus on how “kinship ideologies and structures encompass simultaneously the legal forms and forces of the state and the commonsense understanding of kin that evolves in local communities” (at 243).

The deep naturalization of “blood” relations also reinforces hierarchy through notions of heritable identity linking race or ethnicity to class.⁶¹ Many scholars of the Caribbean have taken the different “races” of the region for granted, however, and have equated “racial” difference with “cultural” difference. In the 1960s, scholars used “plural society” models to analyze the region’s multicultural social orders. They posited that Caribbean societies were composed of distinct cultural or ethnic groups which mapped on to “race” and which maintained their own institutional systems (such as kinship systems and legal systems). M. G. Smith, the central proponent of the plural society model, argued that Caribbean societies achieved coherence only through the dominance of a cultural minority who controlled government and regulated (through force or other means) cultural subunits.⁶²

Critics of the plural society model argued that it reflected the ideology of Caribbean ruling classes⁶³ but also, and more significantly, that it posited “cultural subsystems” as discrete units when they were, in fact, parts of over-

60. See Collier *et al.*, “Sanctioned Identities”; J. Collier, M. Rosaldo, & S. Yanagisako, “Is There a Family? New Anthropological Views,” in B. Thorne & M. Yalom, eds., *Rethinking the Family* 25 (New York: Longman, 1982); Eli Zaretsky, *Capitalism, The Family and Personal Life* (New York: Harper & Row, 1976).

61. See Diane Austin-Broos, “Race/Class: Jamaica’s Discourse of Heritable Identity,” 68 *Nieuwe West-Indische Gids/New West Indian Guide* 213 (1994); Verena Stolcke, “Is Sex to Gender as Race is to Ethnicity?” in T. del Valle, ed., *Gendered Anthropology* 17 (London: Routledge).

62. M. G. Smith, *The Plural Society in the British West Indies* (Berkeley: University of California Press, 1965).

63. D. Robothom, “Pluralism as an ideology,” 29 *Social & Econ. Stud.* 69 (1980).

arching systems of stratification and inequality.⁶⁴ The separate institutional systems of the segments of the plural society, critics argued, were produced through hegemonic cultural and state processes that called forth “ethnicities” and ethnic institutions as resistances to hegemonic forces. These authors trace the inception of “ethnicities” to 19th- and 20th-century consolidation of the colonial state apparatus through the attempts of an elite to justify their position by creating labor hierarchies that encouraged segments of society to see themselves as essentially different and unequal.⁶⁵ We are led, then, to question how liberal law—in spite of its doctrine of equality—helps conjure up “ethnicities” and “races” through its concoction of “nature.”

V. KINSHIP LEGALITIES IN A TRANSNATIONAL ORDER

In Caribbeanist scholarship, the set of concerns motivating scholars of the “plural society” for the most part has given way to new concerns over transnational cultural flows and globalization. If social thinkers in the 18th century could proclaim that in the beginning, all the world was America, scholars in the late 20th century claim that in the end, all the world is becoming “Caribbeanized.” In critiquing the traditional anthropological notion of culture as bounded, stable, and monolithic, for instance, James Clifford invoked “the Caribbean experience” as paradigmatic of current global cultural politics, where “the roots of tradition are cut and retied.”⁶⁶ The “fuzzy boundaries” that characterize the Caribbean⁶⁷ are increasingly coming to characterize the world, and anthropologists and others can ignore no longer the challenges heterogeneity poses for social analysis.⁶⁸ Creolization is not a phenomenon confined to the Caribbean; it characterizes the increasingly interconnected world.⁶⁹

64. See Trouillot, 21 *Ann. Rev. Anthropology* at 23–25 (cited in note 9); R. T. Smith, “Social Stratification in the Caribbean,” in L. Plotinov & A. Tuden, eds., *Essays in Comparative Social Stratification* 43 (Pittsburgh: University of Pittsburgh Press, 1970).

65. In addition to Robothom, Trouillot, and Smith cited in the notes above, see Brackette Williams, *Stains on My Name, War In My Veins: Guyana and the Politics of Cultural Struggle* (Durham, N.C.: Duke University Press, 1991).

66. James Clifford, *The Predicament of Culture* 15 (Cambridge: Harvard University Press, 1988).

67. Trouillot, 21 *Ann. Rev. Anthropology* at 19.

68. *Id.* at 25.

69. Renato Rosaldo, *Culture and Truth: The Remaking of Social Analysis* (Boston: Beacon Press, 1989); Ulf Hannerz, *Cultural Complexity: Studies in the Social Organization of Meaning* (New York: Columbia University Press, 1992); Akhil Gupta & James Ferguson, “Beyond ‘Culture’: Space, Identity, and the Politics of Difference,” 7 *Cultural Anthropology* 6 (1992); Arjun Appadurai, “Difference and Disjuncture in the Global Cultural Economy,” 7 *Theory, Culture & Soc’y* 295 (1990).

The Caribbean figures prominently in recent research on diasporas, transnational migrant communities, and deterritorialized nations. Studies of migration patterns established in the 1950s linking the Caribbean to New York, Toronto, London, and Miami today provide tools for the study of other transnational movements of people and reformulations of identity.⁷⁰ The problematics of modernity and postmodernity suggested by diaspora and transnationalism find expression in texts that identify the Caribbean as the ultimate “postmodern” space.⁷¹ Sociolegal scholarship is only beginning to investigate transnational legal spaces and the movements of goods and people that affect and are affected by them.⁷²

Lazarus-Black discusses the impact of 20th century emigration on Caribbean societies and the legal constitution of “diaspora.” For Antiguan, U.S. immigration law’s emphasis on “blood relations” encourages people to use adoption law to *create* “natural” families in order to facilitate the movement of persons across borders (at 185). As she writes (at 186), “the case of Antiguan adoption is a neat illustration of the power of transnational processes to reconstitute local kin relations.” Emigration, itself a transnational process brought about by global economic changes, has led Antiguan to “transnationalize” their legal consciousness by gaining an awareness of U.S. immigration law and the skills to manipulate it. But they do so, not to transform, but to reaffirm local ideas about kin and natural families.

The last chapters of Lazarus-Black’s book, which discuss the changes in Antiguan legalities since political independence in 1981, suggest interesting questions about the tensions and relationships between three distinct legal orders: a colonial one, a post-independence, postcolonial one, and a transnational one. The relationship between colonial and postcolonial legal orders comes through in her discussion of why women take men to magistrate’s court (chap. 8).⁷³ Lower-class Antiguan women take the fathers of their children to court not just to win financial support, but more important, to gain respect and to compel men to recognize duties to their kin (at 202). The courts become a way to affirm alliances and assert equality. The women’s use of the court is a “distinctly creole act,” Lazarus-Black asserts (at 219), for women bring men to court—the instrument of formal law—not to force men to acquiesce to the regulatory power of the state and to “support their families” financially, but to compel men to adhere to local kinship norms governing the relationships between men and women and parents

70. See Linda Basch, Nina Glick Schiller, & Cristina Szanton Blanc, *Nations Unbound: Transnational Projects, Postcolonial Predicaments and Deterritorialized Nation-States* (Langhorne, Pa.: Gordon & Breach, 1994), for a discussion and literature review.

71. See Antonio Benitez-Rojo, *The Repeating Island: The Caribbean and the Postmodern Perspective* (Durham, N.C.: Duke University Press); Daniel Miller, *Modernity: An Ethnographic Approach* (Oxford: Berg, 1994).

72. See recent issues of the *Indiana Journal of Global Legal Studies*.

73. See also Lazarus-Black, “Why Women Take Men to Magistrate’s Court: Caribbean Kinship Ideology and Law” 30 (2) *Ethnology* 119 (1991).

and children. Women seek “to right violations of norms that govern family, gender, and status hierarchy in the community” (*id.*). Of course, these are norms that have themselves been constituted by liberal legalities. In this apparent paradox Lazarus-Black identifies, correctly I think, a transformation from “colonial” to “creole” legality and kinship ideology (at 220). Women make effective use of law to affirm their “right” to the “respect” that should obtain among kin and affines—an outcome not predicted by liberal law, but one which liberal law and Caribbean kinship together, as co-constitutive parts of one overarching system, made possible.

The changes in Antiguan legalities and illegalities that have occurred since the territory gained independence also suggest questions about the relationship between postcolonial and transnational legal orders. Lazarus-Black investigates changes to kinship codes that abolished “illegitimacy” as a legal status (chap. 9).⁷⁴ The postcolonial political milieu differs from the colonial one in that political leaders and lawmakers are Antiguan-born “sons (and daughters) of the soil” with ties to the working classes and to popular class village life (at 226–27, 240). This class shift among the political leadership, together with the historical memory of slavery (and, I would add, the impact of two centuries of liberal legality), has placed an enormous rhetorical potential behind the concept of “equality.” The effort to banish bastardy “centered on equal rights” (at 222); “human equality” was emphasized during parliamentary debates (at 227).

Middle class women objected at first to the abolition of illegitimacy for they saw their own and their children’s class status at risk. They also felt that banishing bastardy would enable men more easily to transgress kinship norms that entitled women to the respect of their partners and their communities. A compromise worked out in the parliament ensured a wife’s property rights on the death of her husband and made provisions to protect both her children and his illegitimate children (at 233). But, as with women taking men to magistrate’s court, the issue was not merely a financial one but a moral one (*id.*).

The interesting thing about the debates to banish bastardy for my argument here, however, is that these efforts of the law essentially to legitimize popular class family and kin ideologies, in effect, linked ideas about *kin* and *blood ties* to political sovereignty, democracy, and “progress.” As Lazarus-Black notes, “[m]ost of the Senators [in the Antiguan Senate] . . . praised the acts as indispensable to a truly democratic nation and protective of the ‘real’ family” (at 236). Furthermore, she notes, legislators felt pressure to enact these laws “to follow in the footsteps of nations whose legal systems are considered ‘progressive.’ After all, not to do so is to run the risk of having the country and the local bar association judged backward” (at 214).

74. See also Lazarus-Black, “Bastardy, Gender Hierarchy, and the State: The Politics of Family Law Reform in Antigua and Barbuda,” 26 *Law & Soc’y Rev.* 863 (1992).

Note the connection forged between democracy, progress, sovereignty and civilization—all hallmarks of liberal legalism since the inception of modernity—and the “recognition” of the “natural” ties of “blood.” The abolition of illegitimacy served to legitimate the postcolonial leadership of an independent Antigua. It also deeply naturalized “blood” ties and made these ties central to identity. At the same time, it enabled legislators to place their sovereign nation squarely within the community of “civilized,” “progressive” nation-states.

In my own work on the British Virgin Islands, I have explored how narratives of national development that emphasize “progress” recapitulate dominant European and American ideas about difference and identity.⁷⁵ I have been interested in how new conceptions of national identity fit the requirements of certain emerging capitalist interests. For example, the British Virgin Islands became a tax haven shortly after the United Kingdom enacted changes to citizenship policy for itself and its colonies. The new citizenship law disaggregated an old citizenship category into several new categories and emphasized legal paternity and descent rather than place of birth. This is an interesting contrast to the Antigua case, whose lawmakers abolished legitimacy as a legal category.⁷⁶ The law encouraged British Virgin Islanders to position themselves against increasing numbers of immigrants from other Caribbean islands by imagining British Virgin Islander identity as an attribute of descent. Citizenship law also enabled legislators to craft tax haven services for a new class of foreigners—the British. Citizens and immigrants now recreate their families in order to guarantee the “stability” required by this new industry, while citizens monopolize the few good jobs created and shunt immigrants into menial work.⁷⁷ This example, like that of Antigua, draws attention to the interplay between local struggles and global forces, and points up the need to emphasize the integration of local peoples into larger legal orders in the global economy. It is important to listen to Lazarus-Black’s informant who stated, “You know what law plays the most significant role in the family here? It’s the U.S. immigration laws” (at 186).

Today, new transnational capitalist and legal processes have key nodes in the Caribbean. Experiments in export processing and tariff-barrier lowering took place first (and continue) in the Dominican Republic, Haiti, and

75. Bill Maurer, “Writing Law, Making a ‘Nation’: History, Modernity and Paradoxes of Self-Rule in the British Virgin Islands,” 29 *Law & Soc’y Rev.* 255 (1995).

76. But where, as in the BVI, paternity has nevertheless become invigorated: in a recent article, Lazarus-Black argues that the abolition of bastardy has led some men to reaffirm their paternity and has given men a new source of power in the gender hierarchy. See Lazarus-Black, “Alternative Readings: The Status of the Children Act in Antigua and Barbuda,” 28 *Law & Soc’y Rev.* 993 (1994).

77. See Bill Maurer, “Orderly Families for the New Economic Order: Belonging and Citizenship in the British Virgin Islands,” 2 (1 & 2) *Identities: Global Studies in Culture and Power* 149 (1995).

Puerto Rico.⁷⁸ Export processing zones (EPZs) developed alongside—and contributed significantly to—a new era in “offshore” and just-in-time production, a softening of trade barriers and legal regulation, and a neo-liberal shift in World Bank development policy.⁷⁹ Regional trade accords like the Caribbean Common Market (CARICOM) and the Caribbean Free Trade Agreement (CARIFTA) prefigured the North American Free Trade Agreement (NAFTA).⁸⁰ Offshore financial services—the booming tax haven businesses—flourish in the Caribbean and provide models for many small nation-states around the globe, posing regulatory dilemmas for national and international legal orders.⁸¹ The enormous shadow economy of the drug trade also poses legal dilemmas even as drug traders evolve their own notions of “justice,” “rights,” and “law.” As it has moved away from the production of agricultural products to provision of services like tourism and offshore finance, and as it has moved away from welfare-statism and state-controlled resource extraction industries to neo-liberal structural adjustment policies and EPZs, the Caribbean is at the crest of the wave of the contemporary global reorganization of capitalism. Legal scholars attempting to capture the complexity of these emerging transnational developments would do well to explore the Caribbean region—and heed its warning signals.

CONCLUSION

Legitimate Acts and Illegal Encounters is an important work that provides insight into the development of liberal legality in the Caribbean. It also raises questions about the contradictions of liberal legal orders more generally. A welcome addition to the Caribbean literature, which has tended to ignore law and legal processes, Lazarus-Black's book also highlights the im-

78. See James Ferguson, *The Dominican Republic: Beyond The Lighthouse* (New York: Monthly Review, 1992); Maurice Lemoine, *Bitter Sugar* (London: Zed, 1985); Kathy McAfee, *Storm Signals: Structural Adjustment and Development Alternatives in the Caribbean* (Boston: South End Press, 1991); Carmen Diana Deere, coordinator, *In the Shadows of the Sun: Caribbean Development Alternatives and U.S. Policy* (Boulder, Colo.: Westview, 1990).

79. In addition to the sources cited in Maurer, 29 *Law & Soc'y Rev.* (cited in note 75), see David Harvey, *The Condition of Postmodernity* (Baltimore: Johns Hopkins University Press, 1989); Ruth Pearson, “Gender and New Technology in the Caribbean: New Work for Women?” in Janet H. Momsen, ed., *Women and Change in the Caribbean* 287 (Bloomington: Indiana University Press, 1993); A. Lynn Bolles, “Kitchens Hit by Priorities: Employed Working-Class Jamaican Women Confront the IMF,” in J. Nash & M. P. Fernandez-Kelly, eds., *Women, Men and the International Division of Labor* 138 (Albany, N.Y.: SUNY Press, 1983).

80. CARIFTA was established in 1967; it became CARICOM in 1973.

81. On the offshore finance sector in the Caribbean, see Bill Maurer, “Law Writing, Immigration and Globalization in the British Virgin Islands,” 2 *Indiana J. Global Legal Stud.* 413 (1995); Anthony Maingot, “The Offshore Caribbean,” in A. Payne & P. Sutton, eds., *Modern Caribbean Politics* 259 (Baltimore: Johns Hopkins University Press, 1993); Ramesh Ramsaran, *The Commonwealth Caribbean in the World Economy* (London: Macmillan Caribbean, 1993).

portance of looking at the Caribbean to understand the legal orders we currently find ourselves in.

As I argued in section I, the Caribbean provides an excellent case to make more complex our understandings of colonial law and resistance. A region that unsettles the distinction between customary and colonial law, the Caribbean also compels us to explore how people make use of systems of law imposed from above in constituting their resistances from below.

Scholars interested in the development of Western legal orders would do well to consider the place of the Caribbean at the beginnings of modern liberalism and capitalism. As I argued in the second section, the Caribbean was colonized as Europe abandoned divinely ordained kings and embraced liberalism, and the Caribbean native and Caribbean slave figured in philosophical and literary assessments of the transition in Europe. Early social contract theorists gave the Caribbean special attention, either as the site of savage others against which to measure European reason, or the site of pure and uncorrupted humanity. And as social contract theorists sought to justify the rights of "men" to form contracts, they also upheld the rights of men to own slaves.

But social contract doctrine contained within it possibilities for resistance, and the "imposed system" provided slaves a space of freedom in the form of the private sphere and the family. The family emerged as a key place for common people to demand independence and as a key place for state regulation and intervention, as biopower and government through families replaced slavery and more repressive legal apparatuses. The idea of kinship encoded in liberalism's definition of a "nature" that determines "men's" equality yet also comes to explain their inequalities contributed to the rise of "race." Some "natures" were better than others, and these natures, figured in terms of kinship, were heritable. The Caribbean provides an excellent case to investigate the complicity of liberal law in the emergence of racial discourses.

Finally, the Caribbean, taken as a trope for the "beginning" of the world by Locke, has more recently been invoked by numerous scholars as archetypal of the current postmodern condition. As the world seems increasingly creolized, we would do well to investigate the processes of creolization, transnationalism, and globalization that are occurring in the Caribbean. Lazarus-Black's book provides a good starting point and an excellent road map.