

Alternative Readings: The Status of the Status of Children Act in Antigua and Barbuda

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More than 80% of the people of Antigua and Barbuda are born out of wedlock. In 1986 Antigua's Parliament passed new family laws to enable men to acknowledge legally their illegitimate children, to prevent discrimination against children whose parents have not wed, and to allow acknowledged children to inherit from their fathers' estates. How is the Status of Children Act, the keystone of the new measures, being interpreted and applied by legal professionals? To what degree can legal proclamations and judicial processes alter people's commonsense understanding of family? To what extent do social norms and everyday practices remake the meaning and practice of law? I explore law's role in the construction of personal and group identity and in relation to gender hierarchy. I find that Antigua's new kinship codes are both emblematic of a distinctly postcolonial kinship order and indicative of new tensions between certain powerful institutions—schools and churches—which previously enjoyed ideological support from the state.

What is law's role in the construction of personal and group identity, and in the transformation of kinship and gender organization?¹ I investigate here a "common sense of power" produced from "cognitive and affective experience in the interpersonal domains of family, religion, and work" (Linger 1993:7, 17), but in this case played out in a variety of legal codes and practices. I argue three central points: (1) kinship law is a critical

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¹ This article is part of an ongoing longitudinal study of family law as cultural code and everyday practice. In earlier research I traced the history of family law in Antigua from the first days of colonization until just after independence from Britain in 1981 (Lazarus-Black 1991, 1992, 1994a).

symbol and domain for expressing individual and group identity; (2) legal reform of kinship codes can signal important shifts in the distribution of power between the state and its supporting institutions; and (3) legal reform that ignores gender hierarchy is likely to perpetuate that hierarchy.²

The site of my investigations is Antigua, one of the Leeward Islands in the eastern Caribbean.³ English colonists settled Antigua in 1632. During the next century, they turned the island into a slave society known principally for the quantity and quality of its sugar.⁴ Slavery ended in 1834, but the vast majority of the working population remained tied to labor on the estates because there was little available land either to cultivate or to purchase. Planters ran the island's economy and its local government until almost the middle of the 20th century.

Since the 1950s the economy has shifted away from sugar and other agricultural crops and toward heavy dependence on tourism. Antigua gained full independence from Great Britain in 1981. When I first lived and worked there in 1985, it was a new nation in search of a new identity and new social legislation. Three family statutes had passed into law by 1987: (1) the Births Act,⁵ which allows men to easily register and thereby legitimize children born outside marriage and which potentially applies to some 80% of the island's population; (2) the Intestate Estates Act,⁶ which enables such legally acknowledged children to in-

² An anonymous reviewer remarked that legal innovation or reform will almost inevitably have consequences unintended or unanticipated by lawmakers. Fineman (1991) provides a poignant discussion of this point and of the way in which family laws encode symbolic content. I demonstrate that Antigua's newest family laws, like American matrimonial law, fail to contend with the realities of gender hierarchy and so allow women's continued subordination. I argue, in addition, that these Antiguan kinship codes are symbolic of a distinctly postcolonial kinship order, mark an important shift toward secularization, and indicate new tensions between schools and churches, which previously enjoyed complete ideological support from the state.

³ Following local practice, I refer to the nation of Antigua and Barbuda as "Antigua."

⁴ Antigua's free population was always quite small, both numerically and in relation to the number of slaves. Blacks, the vast majority of whom were slaves, accounted for 42% of the population in 1672, 81% in 1711, and 94% in 1774 (Gaspar 1985:83).

⁵ The Births and Deaths (Registration) (Amendment) Act (No. 19, 1986) makes it relatively simple for a man to place his name on his child's birth certificate, even if he is not married to the child's mother. The couple fill out appropriate affidavits, usually with the aid of an attorney, and see to it that the father's name is recorded in the permanent records at the courthouse. Once a man's name is on a birth certificate, he is legally responsible for the food, clothing, shelter, education, and general well-being of that child. Prior to the Births Act, the birth certificate of a child of an unmarried woman recorded that child as a bastard. The Births Act is also important for identifying national identity and citizenship. For example, a child born of a Dominican mother living in Antigua might want to claim Antiguan citizenship through his or her Antiguan father. *Ibid.*

⁶ The Intestate Estates (Amendment) Act (No. 35, 1986) recognizes every child's right to inherit from his or her father whether or not the parents are married; it specifically includes children born out of wedlock but legally acknowledged for distributing property on intestacy. Under the new law, "child" or "issue" in relation to the deceased means a child of the marriage, a person judged by a court to be the issue of the deceased, or a child acknowledged under the Births Act. The siblings of an intestate now include

herit from their father's estates—a right denied them under colonial law; and (3) the keystone of the three, the Status of Children Act,⁷ which outlaws discrimination against illegitimate children.

In short, Antigua is a community in which the legal definitions, rights, and responsibilities of kinship have been recently radically transformed. But to what extent can these legal proclamations and judicial processes transform people's commonsense understanding of family? What norms, practices, or legal processes will mitigate or otherwise modify the intentions lawmakers had when they framed these laws?

We should first establish the historical context of the Status of Children Act before seeking to understand how it is being interpreted and applied. In section I, I review briefly some of the legacies of colonialism, including the association between slavery and illegitimacy; the status of legal marriage in relation to other forms of conjugal unions; and the importance of Christianity to Antiguan. We can then appreciate better why a statute to protect children from discrimination was not only necessary but capable of being transformed into what one lawyer called a "weapon" in the struggle between men and women. In section II, I describe the nature and prevalence of discrimination against illegitimate children. I find that in practice the Status of Children Act does in fact protect children—mainly from their own clergy and teachers. We are witnessing a rather dramatic shift in the Antiguan state's intervention in people's everyday lives with significant consequences for the meaning and practice of familial and gender relationships.⁸ In addition, we are observing a shift in the distribution of power between the state, the churches, and the schools. In fact, certain institutions that historically created and sustained hegemony without opposition are now at ideological odds with each other.

I argue in section III that the potentially revolutionary impact of the move to end discrimination against illegitimate children is undermined by certain alternative readings of the law. In addition to protecting the status of illegitimate children, the Status of Children Act sometimes serves as a strategic device to contest parental rights, particularly men's rights over illegitimate children. In practice, it provides for men a new source of power with which

"any child of the father or mother of the intestate." The law also specifies the amount and type of property to be distributed to persons in various kinship statuses. The act covers only those cases in which the deceased has failed to make a legal will. *Ibid.* According to the lawyers I interviewed in Antigua, however, the vast majority of Antiguan die intestate. Thus the economic consequences of this new law may prove significant.

⁷ The Status of Children Act (No. 36, 1986) eliminates the legal disabilities of illegitimate children. The statute declares "the status and rights, privileges and obligations of a child born out of wedlock are identical in all respects to those of a child born in wedlock."

⁸ See also the recent work of Maurer (1993) on the British Virgin Islands and LaFont (1992) on Jamaica.

to control the lives of women and children. Importantly, this finding supports that of other scholars who have discussed the unintended consequences for women and children of Jamaica's 1976 Status of Children Act (Durant Gonzalez 1982; Jackson 1982; LaFont 1992; Senior 1991). Thus we find the question of the status of illegitimate children not only divides religious schools against the state, it also divides men against women, the married against the unmarried, fathers against mothers, and lawyers against each other. To make sense of the changing status of children, the change in the relationship between the state and its supporting institutions, and parental relations, we begin with Antigua's colonial heritage.

I. Kinship as Colonial Heritage

The status of children is, of course, partly a function of family, and family law has been a powerful and often-evoked device for constructing social order in Antigua. The colonial elite created and maintained rather rigid distinctions between people of different socioeconomic ranks and races through marriage, fornication, bastardy, inheritance, labor, and poor laws. These laws played a constituent role in the formation of class, kinship, racial, and gender hierarchies. By the end of the 18th century, for example, Antigua had three separate marriage laws corresponding to its three social ranks of persons: free individuals, indentured servants, and slaves. The codes and the practical exigencies of life in a slave society ensured a plethora of illegitimate children.

Throughout the slave period, Christian marriage was the ideal for free settlers and servants, but marriage rates nevertheless remained low. A variety of reasons explain this, including unbalanced sex ratios in the early years, the fact that only Anglican clergy were allowed to perform marriage ceremonies, the unavailability of legal separations and divorce, planters' preferences for employing bachelors, and the law that indentured servants could not wed without their masters' permission.

Not surprisingly, prostitution and concubinage flourished alongside the ideal. In Antigua, as elsewhere in the English-speaking Caribbean, a kinship system evolved in which free men of means legally married women of their own social and economic status. Those same men were engaged, before marriage, and very often afterwards, in unions with women of lower socioeconomic status (R. Smith 1982:121). "Respectable" free women and widows, in contrast, either married, remarried, or remained alone.

Legal marriage was initially denied to slaves. After 1798 the Leeward Islands General Legislature created a special form of

marriage for them.⁹ The few historical records that speak to the conjugal and reproductive practices of slaves in Antigua suggest there was never a single type of slave family. Certain slave men of unusual talent, privilege, and charisma formed and maintained multiple unions with slave women. The more usual pattern for both sexes was participation in serial monogamous relationships. Single and multiple unions coexisted in different proportions in different places and at different times because the contexts in which slaves labored influenced both the number and types of conjugal relationships. Slaves on large estates, for example, had access to a pool of potential partners on their own and nearby estates. On the other hand, many town slaves were domestics and they were more likely than field laborers to live in mother-children households (Higman 1984:371). Antigua's few free people of color¹⁰ mostly lived in the towns where they could find employment. They forged relationships with each other and with slaves. In the 1820s, some of them married at the Anglican church in St. John's, the largest town (Lazarus-Black 1994a: 83–85).

Town slaves and free people of color in Antigua were among the island's first Christian converts. The Anglicans, Moravians, and Methodists were very successful at proselytizing in the Leeward Islands.¹¹ By the end of the slave trade in 1807, the missions claimed to have converted 28% of the black and racially mixed population (based on Goveia 1965:307). Christianity therefore played a decisive role among the structural and personal variables influencing conjugal patterns. By the end of slavery, a legal church wedding had acquired a special meaning across the ranks of this society. Marriage was associated with what Antiguan call "arrivance" (Lowes 1993:231, 326). Socially, it was a mark of civility, education, financial stability, enduring love, and religious salvation. Pragmatically, it ensured certain legal protections. And in

⁹ A child of married slaves was not allowed to take the surname of the father or inherit whatever property he might have accumulated, but the law provided for a public declaration of the couple's intention to live together, monetary awards for marrying, and a ceremony in which the marriage was officially recorded in the estate records. Some Antiguan slaves married under this law (Flannagan 1967 [1844]:vol. 2, pp. 96, 97), but we do not know how many.

¹⁰ Freed slaves and free people of color in Antigua included very few persons during the slave era: only 1,230 in 1787 and 3,895 in 1821 (Gaspar 1985:162). Most resided in St. John's and were employed as domestics, servants, messengers, or on the docks. They were restricted by law from most of the rights held by free whites. For further discussion of their kinship practices see Lazarus-Black 1994a.

¹¹ There were two great waves of missionary activity in Antigua. The first occurred at the end of the 18th century, spurred by the arrival of Methodist and Moravian clergy to the island. My review of historical records and government reports suggests these established denominations were most successful in gaining converts in and around the towns. A second wave of proselytizing began around World War I and gained momentum during the Great Depression, as Anglicans, Methodists, Moravians, Catholics, Baptists, and some fundamentalist groups began spreading the word into rural communities (Lazarus-Black 1994a).

the system of symbols that comprises Antiguan culture (Schneider 1980:1), marriage belonged to “things white and European”—over and in opposition to things “black and African.” Legitimacy became “a cultural phenomenon consisting of beliefs that justify the exercise of power” (Alexander 1984:148).

Today, as in the past, the Antiguan marriage rate remains very low; 4.5 per 1,000 in 1987 (Antigua & Barbuda 1987:ii). Both men and women say marriage is an ideal to which they aspire “some day,” but parenting outside of marriage is also valued. Visiting “friends” and long-term nonlegal relationships are deeply rooted in the past, and these practices prevail alongside formalized unions. Moreover, a cultural prescriptive common throughout the region holds that men “by nature” love to love more than one woman and ensures that many men will father “outside” children even after they are wed (e.g., Alexander 1978, 1984; Austin 1979, 1984; Barrow 1986a; Clarke 1970; Douglass 1992; Senior 1991; M. Smith 1962; R. Smith 1956, 1982, 1987, 1988; White 1986). Antiguan acknowledge relationships through both blood and law. As in Jamaica, families are generally large and include complicated alliances that cross social class (R. Smith 1988). Hardly any one I met could say their family did not include illegitimate members. And nearly everyone was aware that in the past illegitimate children had suffered discrimination. I explain next why that discrimination existed and provide some examples of the forms it took.

II. Illegitimacy, Discrimination, and Contemporary Practice

It would not be an overstatement to say that until very recently legitimacy status, in combination with gender and skin color, defined a person’s life chances in Antigua (Lowe 1993:276). Many planters left the island when slavery ended. As the white community contracted, people of color gained new opportunities. But they gained access to the goods and services of their society only to the extent that they conformed to colonial signs of respectability, including legal marriage. The earlier correlations between social class and formal wedlock were therefore strengthened. Critically, legitimacy was a prerequisite for acceptance at the better schools. Social mobility was therefore almost impossible without it (*ibid.*, pp. 276–77). Clergy, of course, universally condemned fornication. Despite the fact that illegitimacy was normative, it was associated with lust, lack of responsibility, and low social status (Alexander 1984:160). The state, the church, and the schools all condemned it.

Older Antiguan remember explicit examples of discrimination against unmarried women and illegitimate children. During

the debates preceding the enactment of the Status of Children Act, one member of Parliament recounted:

[Y]ears ago when I was small. . . the bastard children were baptized before the [church] service. You could not mix them up at all. And the mothers who were married were blessed at a special service with a special hymn. And the mothers for the bastard children didn't get any blessing. (Antigua & Barbuda 1984.)

An attorney, about 35 years old, described another occasion when students become aware of illegitimate status:

[W]hen I was going to school . . . in the mid '60s, you didn't need . . . [a birth certificate]. People sort of walked and said my daughter Mary wants to come to this school and Mary was registered. But you would have needed it during the overseas examination. Because we use to do the London examination. And so that for registration you had to produce your birth certificate.

All the attorneys I interviewed praised Antigua's new Births Act for enabling people to amend easily the birth certificates of illegitimate children and so allow them to secure legal documents such as passports, visas, and American green cards. Some believed these reforms eliminated the last vestiges of discrimination against illegitimate children in Antiguan society.¹²

But Antigua's new social legislation has not met with universal approval. Four lawyers have encountered instances in which illegitimate children continue to face discrimination, especially regarding entrance to private secondary schools. Two of these schools are operated by denominations with long histories in Antigua; a third is run by a fundamentalist sect. One is a very prestigious school.¹³

An attorney visited by two parents who suspected discrimination against their children in 1987 and by two others in 1988 explained:

[T]he discrimination is not to the fore [obvious]. They ask you to bring your birth certificate in. And if in fact it is not regular in the sense that husband [and] wife . . . they would tend to

¹² This was not actually the case. A magistrate interviewed 8 Dec. 1992 reminded me: "That act, the Status of Children, seeks to eliminate the legal differences between children born in wedlock and those born outside of wedlock, but a very real difference is the fact that in the case of children born outside of wedlock the maximum sum paid in maintenance [cases of child support] is still 15 [Eastern Caribbean] dollars a week! [\$5.67 U.S. currency]. Whereas, in the case of children born inside wedlock, [and resolved] in the High Court, there's no fixed sum, it's according to means." For further discussion of how the organization of the courts reinforces class hierarchy see Lazarus-Black 1991. Antiguan lawmakers amended the ceiling on child support awarded at the magistrate's court in February 1993, although the law is oddly worded and seems designed to create a new, albeit higher, maximum for maintenance (Lazarus-Black, research in progress). The law continues to distinguish between married and unmarried persons for purposes of resolving certain familial disputes, funneling the former to High Court and the latter to magistrate's court.

¹³ There are only 11 secondary schools in Antigua.

wish to turn you back on some pretense such as no space, or some other reason.

A second attorney who spoke with an “extremely upset” father shortly after the passage of the Status of Children Act related:

I have at least one client who came to me because his child was promised a place; his child was born of a woman he was not married to. And his child was promised a place by the head . . . of [school’s name]. And a few days before the term started he was told that there was no room. And he said that he believed that it was because somebody else has a child, married, more “respectable,” and they bounced him off of the list to make room for a child born within a marriage. And he actually came to me wanting to write a letter complaining and so on. . . . I told him that I was willing to write a most irate letter, copy to the Minister of Education, etc., etc., etc. He said he would try to examine other avenues before he came back to me.

In this case, the father decided against pursuing any form of legal action, and the attorney lost track of him.

The first attorney’s response to the headmaster’s discrimination against an illegitimate child intrigues me both because it is an example of the power of law to command behavior that conflicts directly with once-common discriminatory practices, and because the Status of Children Act is for him a refutation of slavery and colonialism and symbolic of a distinctly West Indian identity:

I picked the telephone up and I called the principal and I said to him I believe slavery was abolished way back . . . and I told him also that after emancipation, that discrimination existed, but between the planters and the slaves, and since the planters left, we slaves took over. (*He laughs.*) And I can’t understand why you think that we should try to deprive a young boy of education. . . . And he said, “Oh Mr. [attorney’s name]. . . . I happen to know that you are trying to create a problem for me.” I said, “No I’m not. I just want you to do what is right.” Because when this act was passed, the whole intention was to put the . . . bastard child on the same footing. Recognition, that’s what we want. That’s why it was passed. . . .

. . . And I’m pleased to say that not only has my boy . . . gotten in and is doing very well, but I’m told, from information sources, that other children have succeeded because my client broke the ice. And he [the headmaster] recognized that provided the parents sought legal advice that it could be very nasty for him. Because he was flying in the face of Parliament and in the face of what the law intended. And that is to stop this discrimination against bastard children. That’s exactly what happened.

The content of this message is radical; it insists on the equality of all children in defiance of a hegemonic order that has traditionally stigmatized illegitimate children and denied them equal access to education. It speaks also to an emerging West

Indian identity that refuses to equate illegitimacy with subordinate status. Since the passage of the Status of Children Act in 1987, private threat of public exposure has forced the headmasters of at least three secondary schools in Antigua to enroll illegitimate children.

The need for an act to protect children born out of wedlock was therefore real. Discrimination against illegitimate children is still naturalized, institutionalized, and perpetuated in Christian schools and churches—in direct opposition to the state. As far as I know, this breach between church and state over the domain of kinship is without precedent in Antiguan history (Henry 1985:186).¹⁴ It suggests changes in the distribution of power in this society and in the ideological forms and forces that create hegemony. The Status of Children Act seems to be functioning as lawmakers intended: It is an instrument for protecting illegitimate children and a symbol of an emerging West Indian consciousness.

III. Alternative Readings

There are, however, other ways to read and apply the Status of Children Act. These alternative readings hold that the law redefines the parental rights of women and men who have illegitimate children. The case of Patty and Michael illustrates the point.

Patty and Michael fell in love in 1987 and saw each other regularly. She had his child the following year. By 1989, however, Michael was quarreling regularly with Patty and Patty's mother, who cared for the child after preschool and until Patty got home from work. Patty accused Michael of purposefully harassing them. He complained she wouldn't allow him to see his child. She offered to support the child entirely if he would just leave them alone. He said he wanted to maintain the child. Eventually, they both went to lawyers—who then offered them profoundly

¹⁴ Antiguan churches and schools have remained conservative. As Henry 1985:186 points out, statehood

gave control of the educational subsector to the new local government and control of the religious subsector to the local religious elites. Local control of the educational subsector resulted in a continuation of earlier trends in secondary education, while local control of the religious subsector produced the decolonization of the formal, administrative structures of the major Christian denominations. This decolonization resulted in the severance of controlling ties with parent bodies in the center but had little effect on the rituals and theology of these churches.

Henry also noted (p. 194), however, that the church has sometimes manifested an "ambivalent relationship to the state" over development issues. Interestingly, Maurer (1993:16 n.9) writes that in Tortola the impetus for eliminating the legal disabilities of illegitimacy has come from the Anglican and Methodist churches. Thus far, however, the British Virgin Islanders have not passed a status of children act.

different interpretations of how the Status of Children Act affected their parental rights.¹⁵

Michael's attorney argued that if Antiguan law held that no distinctions were to be drawn between legitimate and illegitimate children, then the unmarried parents of those children held equal rights to their care and custody. Why should the fact that he was not married to Patty deprive Michael of custody and control of his child?

Patty's attorney held the opposing view. In his mind, the Status of Children Act was never intended to, and did not, alter unmarried women's common law rights to care and custody of their illegitimate children. He explained: "The common law principle is that the father of a child born in wedlock is the legal guardian of that child [and] . . . the legal guardian of the child born out of wedlock is the mother."

The conflict between Patty and Michael dragged on for more than a year, with both attorneys wavering between trying to resolve the dispute out of court and wanting to force a test case of the meaning and consequences of the nation's new Status of Children Act. Unfortunately for us, they were persuaded to resolve the issue in the hallways of the court because the High Court judge who would have heard the test case was very reluctant to do so, fees were mounting, and Patty finally reluctantly agreed to allow Michael some visitation rights—rights that dwindled in importance to him over time.

By August 1993 about a dozen cases involving parental rights with respect to illegitimate children were being processed by Antiguan attorneys;¹⁶ none had yet reached the High Court. It was

¹⁵ In 1991, Antiguan attorney Sharon Walter (1991:42–43) reported:

Prior to the Status of Children Act, 1986, it was commonly accepted that the mother of an illegitimate child had the right to legal custody of that child unless the Court, in considering the welfare of the child, ordered that some other person should have custody. . . . That position may now have changed since the Status of Children Act provides that "the status and the rights and obligations of the parents . . . of a child born out of wedlock are the same as if the child were born in wedlock. . . ." This would seem to indicate that the parents would, as in the case of legitimate children, have joint custody of their offspring. This is a controversial issue and there are presently differing schools of thought on the issue.

In 1994, I found attorneys still divided on the meaning of the law, but no test case had been brought before the High Court.

¹⁶ These were cases I learned of in my interviews with Antiguan attorneys in 1992 and 1993. Another dispute between an unmarried couple involved Hilbourne and Theresa. Hilbourne had always played a major role in rearing his illegitimate daughter, in part because Theresa's job entailed much travel. In November 1992, however, Theresa abruptly sent their child to New York without Hilbourne's consent. She claimed she wanted the girl to benefit from an American education. Hilbourne's attorney filed papers to demand that Theresa return the child to Antigua and to grant him legal care and custody of his daughter. The case came before a judge in March 1993. At that time, Theresa and her lawyer convinced the other side that she would bring the child back from the States as soon as school ended for Easter break. She then failed to do so. Hilbourne went back to his attorney. During the summer, however, the couple with whom the child resided in America informed Theresa that her daughter would have to return to Antigua.

clear, however, that in addition to protecting children from discrimination, the Status of Children Act was being evoked to redefine the rights of fathers of illegitimate children. When I suggested this to Patty's attorney, he replied:

Yes, but you see this is the whole thing. The whole of these laws is based on a fiction that the welfare of the child is the paramount consideration. And I consider it to be a fiction because it cannot be a generalized statement that the welfare of the child is what is taken into account. It is the welfare of the child as seen through the welfare of the two parents. . . . This law which is supposed to break down barriers is being used as a weapon by one person or the other.

This "weapon" has been wielded elsewhere with some startling consequences. Investigating Jamaica's Status of Children Act, Jackson (1982:32) found:

Though it seems that the spirit of the act was intended to ease the burden on Jamaican women and their children it also gave consideration to the rights of fathers. Unlike the previous Guardianship and Custody Act which recognized only the mother with respect to children born out of wedlock, the Status of Children Act now makes both parents equally eligible for custody.¹⁷

In other words, if Antigua's High Court interprets the Status of Children Act as it has been interpreted elsewhere in the Commonwealth Caribbean, it will not only redefine the status of children, it will also rework the relations of unmarried men and women to their children. By the summer of 1993 informal discussions with his peers of the meaning and consequences of the law caused one attorney to alter significantly the way he presented a case for the adoption of a child to the High Court:

I did an adoption and I took the precaution of providing an affidavit by the mother as to why we . . . did not have the consent of the father. . . . He [the father] had never supported the child. The child is now four years of age. . . . We provided an affidavit as to why the father was not contacted and the judge was favorably [impressed], was happy to see that. Because he said he noticed that no mention was made of the father in these cases, which was the old position, that the child has no father.

Back in Antigua, the girl returned to spending part of the week living with Hilbourne, and formal legal action was not needed.

¹⁷ See also Durant Gonzalez (1982:5-7) and LaFont (1992) on this point. LaFont (1992:270) finds Jamaica's family codes used by baby-mothers "as tools to punish and manipulate their baby-fathers" and as "weapons by angry fathers to punish and manipulate women through their children. . . . In many ways the state has undermined women's power in Jamaica by promoting the nuclear family and with it ideals of male dominance. The Status of Children Act and its related amendments did much to remove legal discrimination against illegitimate children, yet it has also substantially eroded the unmarried woman's rights vis-a-vis her own children."

In this reading, then, the Status of Children Act implies that the fathers of illegitimate children are entitled to approve or disapprove of the adoption of their children. Previously, adopting parent(s) were not expected to obtain such permission.¹⁸

The meaning and practical consequences of the decision to reinterpret the relations of unmarried men and women to their children are complex. Antiguan law has historically placed the burden of care and custody of illegitimate children in the hands of women. The old law assumed women had fundamental responsibility for children and held women liable for children's welfare unless they were married. On the one hand, the new Status of Children Act offers relief from financial and social burdens that women may no longer want to bear. Yet this law takes away what has always been a legal certainty: that unmarried women have custody of their illegitimate children. What will such a reading imply for Antiguan kinship? What does it mean for the "common sense of power" that pervades relationships between men and women?

West Indians will tell you their mothers "fathered" them (Clarke 1970); that mothers wash, cook, clothe, clean, educate, discipline, and bring home the wages that "grow" children.¹⁹ Unmarried women generally rely on voluntary support from their children's fathers, although a man may be compelled by the court to support his child if paternity can be proved. A recent survey of Antiguan households attests to women's responsibility for raising children: women headed 59% of the 840 households sampled. Of these household heads, 58% were single/never married women (Ward-Osborne n.d.:9).²⁰

For the most part, Antiguan fathers do support their children. The extent, forms, and duration of such support, however, vary with his age, the number and ages of his children, his relationship(s) with the mother(s) of his children, his approval of

¹⁸ I encountered two other infrequent uses of the Status of Children Act. A couple of attorneys had invoked a provision of the law to petition the court on behalf of unmarried women who wished to have their children recognized as the legitimate children of their deceased fathers for purposes of inheritance. In addition, a few lawyers had had clients who doubted that they were the fathers of children and who wished to have blood tests taken. A provision of the act allows the court to "give direction for the use of blood tests to ascertain whether such tests show that a party to the proceedings is or is not thereby excluded from being the father of the subject." All the lawyers with whom I conferred were aware of the limitations of such tests for determining paternity.

¹⁹ Elsewhere (Lazarus-Black 1994b) I argue that despite the title of Clarke's classic monograph, *My Mother Who Fathered Me*, women in the English-speaking Caribbean have never and do not today "father" children.

²⁰ The survey covered 840 households, about 4% of all Antiguan households, and representing 3,192 persons, of whom 1,059 were women. In addition to the category of single/never married women who head households, it includes married women (17%), widows (12%), divorced women (4%), and separated women (4%) (Ward-Osborne n.d.:6, 9). As in the past, the survey found Antiguan women view marriage as "very important" (almost 50%) or as "important" (31%), but the reality is that the majority (58% of this sample) remain unwed (p. 10).

her behavior, pressure from other “friends,” the number and kinds of other claims made on his time, energy, and income, and his sensibility about what “fathering” should entail. In other words, kinship and gender norms mostly give men choices in parenting (see also Barrow 1986b). The irony of reading the Status of Children Act as one that gives men and women equal rights to parent is that it gives men another vehicle for wielding power over women and children. The conflict between Patty and Michael was a case in point. Michael demanded time with his child when he discovered Patty had left him for another man, not because he was seriously concerned about the child’s welfare, but because he sought to control Patty. Granting equal legal rights to illegitimate parents assumes the fiction that men and women are equal. It assumes gender equity rather than gender hierarchy.

IV. Conclusion

Antigua’s family and gender systems have been influenced historically by slavery, colonialism, missionary fervor, gender hierarchy, and rampant economic, social, and political exploitation of the working people. These systems have been marked by symbolic and very real oppositions between the legal and the illegal, between marriage and concubinage, between legitimacy and illegitimacy.

The Status of Children Act was specifically intended by lawmakers to end the disabilities of children born out of wedlock (Lazarus-Black 1992, 1994a). I find it has had some success in achieving that goal. Illegitimate children were still denied access to certain secondary schools in the late 1980s, as they had been historically. Interestingly, the role of protecting illegitimate children fell to certain lawyers who moved headmasters to rethink certain admissions decisions. The attorneys accomplished this task without publicity, in the name of protecting children, and conscious of asserting a new West Indian identity. That they could do so swiftly and successfully is testimony to a change in the “common sense of power” in Antigua and demonstrative of a shift in the hegemonic definition of family. In addition, this law signals both an emerging West Indian consciousness and an ideological rift between church and state over the “proper” definition of family, a rift that is being worked out in schools. Whether Antigua’s new Status of Children Act will also legally change the status of parents of illegitimate children still awaits testing. In the interim, some attorneys find in the code a strategic device that empowers men. The consequence is that the law that promotes a new individual and national consciousness also buttresses gender hierarchy. The failure to acknowledge that gender is a contested

domain of conflict and order, a venue for negotiating power, leads to legal reforms that reinforce gender hierarchy.

References

- Alexander, Jack (1978) "The Cultural Domain of Marriage," 5 *American Ethnologist* 5.
- (1984) "Love, Race, Slavery, and Sexuality in Jamaican Images of the Family," in R. T. Smith, ed., *Kinship Ideology and Practice in Latin America*. Chapel Hill: Univ. of North Carolina Press.
- Antigua & Barbuda (1984) House Debate on the Status of Children Act. St. John's, Antigua: Records at Parliament.
- (1987) *Statistical Yearbook*. St. John's, Antigua: Statistics Division, Ministry of Finance.
- Austin, Diane J. (1979) "History and Symbols in Ideology: A Jamaican Example," 14 *Man* 497.
- (1984) *Urban Life in Kingston, Jamaica: The Culture and Class Ideology of Two Neighborhoods*. New York: Gordon & Beach Science.
- Barrow, Christine (1986a) "Male Images of Women in Barbados," 35 *Social & Economic Studies* 51.
- (1986b) "Finding the Support: A Study of Strategies for Survival," 35 *Social & Economic Studies* 131.
- Clarke, Edith (1970) *My Mother Who Fathered Me: A Study of the Family in Three Selected Communities in Jamaica*. London: Allen & Unwin.
- Douglass, Lisa (1992) *The Power of Sentiment: Love, Hierarchy, and the Jamaican Family Elite*. Boulder, CO: Westview Press.
- Durant Gonzalez, Victoria (1982) "The Realm of Female Familial Responsibility," in Massiah 1982.
- Fineman, Martha Albertson (1991) "Societal Factors Affecting the Creation of Legal Rules for Distribution of Property at Divorce," in M. A. Fineman & N. S. Thomadsen, eds., *At the Boundaries of Law: Feminism and Legal Theory*. New York: Routledge.
- Flannagan, Mrs. (1967) [1844] *Antigua and the Antiguans: A Full Account of the Colony and Its Inhabitants from the Time of the Caribs to the Present Day, Interspersed with Anecdotes and Legends. Also, An Impartial View of Slavery and the Free Labour Systems; The Statistics of the Island, and Biographic Notices of Principal Families*. 2 vols. London: Spottiswoode, Ballantyne & Co.
- Gaspar, David Barry (1985) *Bondmen and Rebels: A Study of Master-Slave Relations in Antigua*. Baltimore: Johns Hopkins Univ. Press.
- Goveia, Elsa V. (1965) *Slave Society in the British Leeward Islands at the End of the Eighteenth Century*. New Haven, CT: Yale Univ. Press.
- Henry, Paget (1985) *Peripheral Capitalism and Underdevelopment in Antigua*. New Brunswick, NJ: Transaction Books.
- Higman, B. W. (1984) *Slave Populations of the British Caribbean 1807–1834*. Baltimore: Johns Hopkins Univ. Press.
- Jackson, Jean (1982) "Stresses Affecting Women and Their Families," in Massiah 1982.
- LaFont, Suzanne (1992) "Baby-Mothers and Baby-Fathers: Conflict and Family Court Use in Kingston, Jamaica." Ph.D. diss., Anthropology, Yale Univ.
- Lazarus-Black, Mindie (1991) "Why Women Take Men to Magistrate's Court: Caribbean Kinship Ideology and Law," 30 *Ethnology* 119.
- (1992) "Bastardy, Gender Hierarchy, and the State: The Politics of Family Law Reform in Antigua and Barbuda," 26 *Law & Society Rev.* 863.
- (1994a) *Legitimate Acts and Illegal Encounters: Law and Society in Antigua and Barbuda*. Washington, DC: Smithsonian Institution Press.

- (1994b) "My Mother Never Fathered Me: Rethinking Caribbean Kinship and the Governing of Families." Presented to Law & Society Association annual meeting, Phoenix, 16–19 June.
- Linger, Daniel T. (1993) "The Hegemony of Discontent," 20 *American Ethnologist* 3.
- Lowes, Susan (1993) "The Peculiar Class: The Formation, Collapse, and Reformation of the Middle Class in Antigua, West Indies, 1834–1940." Ph.D. diss., Teachers College, Columbia Univ.
- Massiah, Joycelin, ed. (1982) *Women and the Family*. Cave Hill, Barbados: Univ. of the West Indies.
- Maurer, Bill (1993) "'Belonging,' Citizenship and Flexible Specialization in a Caribbean Tax Haven (British Virgin Islands)," 16 *POLAR: Political & Legal Anthropology Rev.* 9.
- Schneider, David M. (1980) *American Kinship: A Cultural Account*. Chicago: Univ. of Chicago Press.
- Senior, Olive (1991) *Working Miracles: Women's Lives in the English-speaking Caribbean*. Bloomington: Indiana Univ. Press.
- Smith, M. G. (1962) *West Indian Family Structure*. Seattle: Univ. of Washington Press.
- Smith, Raymond T. (1956) *The Negro Family in British Guiana*. London: Routledge & Kegan Paul.
- (1982) "Family, Social Change and Social Policy in the West Indies," 56 *Nieuwe West Indische Gids* 111.
- (1987) "Hierarchy and the Dual Marriage System in West Indian Society," in J. F. Collier & S. J. Yanagisako, eds., *Gender and Kinship: Essays toward a Unified Analysis*. Stanford, CA: Stanford Univ. Press.
- (1988) *Kinship and Class in the West Indies: A Genealogical Study of Jamaica and Guyana*. Cambridge: Cambridge Univ. Press.
- Walter, Sharon (1991) "Legal Status of Women Report (Antigua)." Prepared for Caribbean Association for Feminist Research & Action (CAFRA). Presented to Women & the Law Project, Antiguan National Consultation, St. John's Antigua (20 July).
- Ward-Osborne, Faustina (n.d.) "Report: Research and Information on Women in Antigua and Barbuda. Analysis of Data of Household Survey on Women in Antigua and Barbuda." Prepared for Government of Antigua & Barbuda (available in St. John's, Antigua).
- White, Averille (1986) "Profiles: Women in the Caribbean Project," 35 *Social & Economic Studies* 59.

Statutes

- Births and Deaths (Registration) (Amendment) Act, Law No. 19, Laws of Antigua & Barbuda 1986 ("Births Act").
- Intestate Estates (Amendment) Act, Law No. 35, Laws of Antigua & Barbuda 1986 ("Intestate Estates Act").
- Laws of Antigua and Barbuda*. St. John's, Antigua: Government Printing Office, 1986.
- Status of Children Act, Law No. 36, Laws of Antigua & Barbuda 1986.