

THE RACE CASE IN CONTRACTS

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This Article develops a new framework for thinking about the place of race in Contracts. It argues that culture and context work in tandem in the form of “cultural scripts” to weave racial associations into texts where race is not explicitly identified. This suggests that the impact and influence of race in Contracts might have as much to do with the racialized stories that we tell about our consumer and commercial lives as it does with the racial identity of litigants.

To make this argument, this Article reconstructs the afterlives of one of Contracts’ most well-known cases, Williams v. Walker-Thomas Furniture Co. (1965). The case, now the foundation of unconscionability doctrine, pits Ora Lee Williams, a mother of seven living on welfare, against an exploitative furniture company. Although Williams’s race was not confirmed until 1997, students and teachers long before (and since) assumed that she was Black. This assumption stemmed from the ways in which casebooks talked about and framed Williams.

The Race Case in Contracts undertakes the first systematic analysis of Contracts casebooks—129 in total—to show how “cultural scripts” about urban poverty and welfare mothers tethered Williams to ideas about race generally, and Blackness specifically. In other words, stories told about and around Ora Lee Williams mattered as much as, if not more than, the fact of her racial identity. Williams illustrates that if we do not speak directly on the role of race in Contracts, these stories might speak for us.

INTRODUCTION	1071
I. SITUATING WILLIAMS	1084
II. ENTERING THE CONTRACTS CURRICULUM.	1087
A. <i>A Crisis in Legal Education</i>	1089
B. <i>Contracts Discovers Consumers</i>	1091

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III. WILLIAMS AND THE LOW-INCOME CONSUMER 1094

 A. *Contracts in Culture of Poverty* 1096

 1. *The Poor Pay More* 1098

 2. *Installment Contracts and Door-to-Door Sales* ... 1100

 B. *The Low-Income Consumer in Casebooks*..... 1103

 1. *Contracts amid a Culture of Poverty* 1104

 2. *Buying from Ghetto Merchants* 1108

IV. THE TRANSFORMATION TO “WELFARE MOTHER”..... 1111

 A. *The Moynihan Report* 1112

 B. *Williams and Welfare*..... 1117

 1. *From “Public Assistance” to “Welfare”* 1118

 2. *Welfare and Race* 1119

 3. *Williams and Welfare in Casebooks* 1120

 C. *Williams as Welfare Mother* 1124

 1. *The Welfare Queen and the Moynihan Report* ... 1125

 2. *Welfare Mothers in Casebooks* 1129

 3. *Racial Scaffolding*..... 1134

CONCLUSION..... 1136

APPENDIX 1138

INTRODUCTION

“It is my view that most students reading the case [Williams] believe that a woman on public assistance buying a stereo in these circumstances in the District of Columbia is very likely to be black, whether the case identifies her race or not . . . This is not a statement about some inherent capability of black women, but rests on the empirical observation that there are more black women on public assistance in the District of Columbia than there are white women on public assistance.”

—Professor Douglas Leslie, 1988¹

In the spring of 1988, a group of UVA law students circulated a petition asking the school’s administration to “investigate discriminatory remarks” allegedly made by a Contracts professor.² The professor in question—Douglas Leslie—was reported to have made “offensive comments” in his Employment Law and Contracts classes.³ According to the Virginia Law Weekly, students in Leslie’s Contracts class were

¹ Joe Pankowski, Jr., *Leslie’s Response Stirs Controversy*, VA. L. WEEKLY, Apr. 22, 1988.

² *Id.*

³ *Id.*

“particularly upset” that Leslie had identified Ora Lee Williams as “probably black.”⁴

Students were “especially” troubled by this probable racial identification because Williams had not been described as such in the case’s opinion.⁵ According to Leslie, the aggrieved students felt that it was “racist to identify Mrs. Williams . . . as black.”⁶ It took another nine years for someone to do the investigative work necessary to provide a concrete racial identification for Ora Lee Williams. In 1997, Professor Blake Morant confirmed what many had assumed: Williams was a Black woman.⁷

It is likely that hundreds of thousands of American law students have heard of Ora Lee Williams, the defendant in *Williams v. Walker-Thomas*.⁸ In the case, Williams tries to have a harsh consumer contract invalidated for reasons of unfairness. Williams had purchased furniture and household goods from Walker-Thomas Furniture on installment—meaning the purchase was on credit.⁹ After five years of on-time, monthly payments, Williams defaulted and Walker-Thomas repossessed the majority of the goods.¹⁰ What Williams had not understood, but the contract had dictated, was that her payments were being distributed proportionally among all of the purchased items. The consequence was that after five years, her original purchases still had not been fully paid off, thus allowing Walker-Thomas to repossess the items.¹¹ When the case reached the D.C. Circuit on appeal, the surprising and

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ Blake D. Morant, *The Relevance of Race and Disparity in Discussions of Contract Law*, 31 NEW ENG. L. REV. 889, 926 n.208 (1997). Morant was not the first author to describe Williams as Black in writing, however. Both Katheryn Russell and Anthony Chase wrote articles predating Morant’s that identify Williams as Black. Neither Chase, nor Russell, however, explain how they came to know Williams’s racial identity. Anthony R. Chase, *Race, Culture, and Contract Law: From the Cottonfield to the Courtroom*, 28 CONN. L. REV. 1, 39 (1995); Katheryn K. Russell, *Affirmative (Re)Action: Anything but Race*, 45 AM. U. L. REV. 803, 803 (1996). Interestingly, Russell’s article describes her experience learning the *Williams* case as a law student in a way that suggests that Russell’s 1L professor identified Williams as Black. Based on when Russell graduated law school, this would have been in 1983—three years before Douglas Leslie’s controversy.

⁸ *Williams v. Walker-Thomas Furniture Co.*, 350 F.2d 445 (D.C. Cir. 1965).

⁹ The leased items included: a wallet, drapes, an apron set, a pot holder, rugs, beds, mattresses, chairs, a bath mat, shower curtains, sheets, a portable fan, a portable typewriter, a washing machine, a stereo, and toy guns and holsters. Pierre E. Dostert, *Appellate Restatement of Unconscionability: Civil Legal Aid at Work*, 54 A.B.A. J. 1183, 1183 (1968).

¹⁰ *Id.*

¹¹ The clause essentially guaranteed that the balance could never be fully paid off. After five years of payments, Williams still owed 25¢ on her original \$46.65 purchase. Anne Fleming, *The Rise and Fall of Unconscionability as the “Law of the Poor”*, 102 GEO. L.J. 1383, 1396 (2014).

one-sided contract terms presented the court with an opportunity to create precedent in favor of consumer protection. As a result, the case has since become foundational to the doctrine of unconscionability and has been included in the majority of Contracts casebooks to date.¹²

Williams also has the dubious honor of being one of (if not the) most well-known cases involving race in the first year Contracts curriculum.¹³ In spite of this reputation, the overwhelming majority of Contracts casebooks do not identify *Williams* as a Black woman.¹⁴

This tension—between racial knowledge and racial identification—serves as this Article’s starting point. By analyzing 129 Contracts casebooks published after the *Williams* decision, as well as news articles, government reports, political speeches, and popular media, this Article maps the ways that racialized stories became (and continue to be) tethered to casebooks’ treatment of *Williams*, even though race is ostensibly absent from the case itself.

To return to Douglas Leslie’s classroom, Leslie’s probable guess was a good one even before Morant’s confirmation of *Williams*’s race. Washington, D.C. had long been a majority Black city. Given UVA Law School’s proximity to D.C.—just over a two-hour drive, and with a train

¹² By 1976, most major Contracts casebooks included Judge Wright’s D.C. Circuit Court opinion, as well as Judge Daneher’s dissent. For a discussion of which casebooks included *Williams*, see *infra* Section III.B.

By 1989—just under twenty-five years after being decided—*Williams v. Walker-Thomas* was being described in legal scholarship as part of the first-year Contracts canon. See Stewart Macaulay, *Bambi Meets Godzilla: Reflections on Contracts Scholarship and Teaching vs. State Unfair and Deceptive Trade Practices and Consumer Protection Statutes*, 26 Hous. L. Rev. 575, 579 (1989) [hereinafter Macaulay, *Bambi Meets Godzilla*] (“The *Williams* decision quickly became a favorite of law review and casebook authors. It still is. For example, my survey of fourteen casebooks published since 1980 shows that nearly everyone includes it.”).

¹³ For scholarship on the role of race in the teaching of *Williams*, see Chase, *supra* note 7, at 41–42; Kevin Davis & Mariana Pargendler, *Contract Law and Inequality*, 107 IOWA L. REV. 1485, 1495–96 (2022); Fleming, *supra* note 11, at 1387; Kris Franklin, *Meditations on Teaching What Isn’t: Theorizing the Invisible in Law and Law School*, 66 N.Y.L. SCH. L. REV. 387, 399–401 (2021); Duncan Kennedy, *The Bitter Ironies of Williams v. Walker-Thomas Furniture Co. in the First Year Law School Curriculum*, 71 BUFF. L. REV. 225, 229 (2023); Julian S. Lim, *Tongue-Tied in the Market: The Relevance of Contract Law to Racial-Language Minorities*, 91 CALIF. L. REV. 579, 594 (2003); Macaulay, *Bambi Meets Godzilla*, *supra* note 12, at 580–82; Morant, *supra* note 7, at 893–97; Blake D. Morant, *The Teachings of Dr. Martin Luther King, Jr. and Contract Theory: An Intriguing Comparison*, 50 ALA. L. REV. 63, 108 (1998); Muriel Morisey Spence, *Teaching Williams v. Walker-Thomas Furniture Co.*, 3 TEMP. POL. & C.R.L. REV. 89, 90 (1993); Amy H. Kastely, *Out of the Whiteness: On Raced Codes and White Race Consciousness in Some Tort, Criminal, and Contract Law*, 63 U. CIN. L. REV. 269, 306 (1994); Dylan C. Penningroth, *Race in Contract Law*, 170 U. PA. L. REV. 1199, 1201–02 (2022); Deborah Zalesne, *Racial Inequality in Contracting: Teaching Race as a Core Value*, 3 COLUM. J. RACE & L. 23, 33 (2013).

¹⁴ Only three out of the 129 casebooks analyzed here explicitly identify *Williams* as Black. For more on the absence of explicit racial language in the case, see *infra* Part III and note 280 and accompanying text.

line to boot—it seems likely that many of UVA Law’s students would have been familiar with the city’s racial demographics as well. Moreover, Williams was receiving a monthly government stipend—most likely in the form of Aid to Families with Dependent Children (AFDC)—and the vast majority of AFDC recipients in Washington D.C. were Black.¹⁵ This suggests that the perceived (in)accuracy of Leslie’s statement was not the driver of the students’ distress.¹⁶

Rather, the incident in Leslie’s Contracts classroom points toward a phenomenon that is more complicated than whether or not statements are empirically true. Knowingly or not, when Leslie suggested to his students that Ora Lee Williams’s race was relevant to the case, he tapped into powerful cultural scripts that cast Black women as irresponsible, immoral, and a burden on the economy.¹⁷ And they were scripts that the

¹⁵ *Williams v. Walker-Thomas Furniture Co.*, 350 F.2d 445, 448 (D.C. Cir. 1965). Fleming, *supra* note 11, at 1399 n.74 (describing other forms of financial assistance provided by the government during that era); Spence, *supra* note 13, at 90 (suggesting a fictionalized version of Williams might have been receiving money from the Social Security Administration and the Veterans Administration.).

In 1961, 92.9% of all families receiving AFDC assistance in Washington, D.C. were Black. U.S. DEP’T OF HEALTH EDUC. & WELFARE, *CHARACTERISTICS OF FAMILIES RECEIVING AID TO FAMILIES WITH DEPENDENT CHILDREN* (1963), <https://babel.hathitrust.org/cgi/pt?id=mdp.39015016200225&seq=1> [<https://perma.cc/S6YE-TMQZ>]. D.C.’s Black population only grew over the course of the 1960s. JOY PHILLIPS, D.C. STATE DATA CTR., *DISTRICT OF COLUMBIA BLACK POPULATION DEMOGRAPHIC CHARACTERISTICS 2* (2012), <https://planning.dc.gov/sites/default/files/dc/sites/op/publication/attachments/District%2520of%2520Columbia%2520Black%2520Population%2520Demographic%2520Characteristics.pdf> [<https://perma.cc/N5M6-HPLE>] (indicating that over the course of the 1960s, the Black population of Washington, D.C. increased from 53.9% to 71.1%).

¹⁶ For his part, Leslie is reported to have accused “some political activists” among students to have lodged false complaints of discrimination because they “object[ed] to his law and economics approach.” Pankowski, Jr., *supra* note 1, at 1.

¹⁷ There is a rich genealogy of Black feminist theory that has documented and unpacked these pathologizing representations of Black women. See, e.g., DAPHNE A. BROOKS, *BODIES IN DISSENT: SPECTACULAR PERFORMANCES OF RACE AND FREEDOM, 1850–1910*, at 8 (2006) (documenting Black women’s historical engagements with racist representations); PATRICIA HILL COLLINS, *BLACK FEMINIST THOUGHT: KNOWLEDGE, CONSCIOUSNESS, AND THE POLITICS OF EMPOWERMENT* 27 (2000) (describing them as “controlling images”); NICOLE R. FLEETWOOD, *TROUBLING VISION: PERFORMANCE, VISUALITY, AND BLACKNESS* 9 (2011) (discussing the relationship between U.S. visual culture and the hypervisibility of Black women); DOROTHY ROBERTS, *KILLING THE BLACK BODY: RACE, REPRODUCTION, AND THE MEANING OF LIBERTY* 40 (1997) [hereinafter ROBERTS, *KILLING THE BLACK BODY*] (discussing the relationship between pathologizing representations of Black mothers and the criminalization of Black mothers); Cheryl I. Harris, *Myths of Race and Gender in the Trials of O.J. Simpson and Susan Smith—Spectacles of Our Times*, 35 WASHBURN L.J. 225, 226 (1996) (explaining how hypervisibility impedes understanding because “visibility is heightened but our vision is obscured”); Wahneema Lubiano, *Black Ladies, Welfare Queens, and State Minstrels: Ideological War by Narrative Means*, in *RACE-ING JUSTICE, EN-GENDERING POWER: ESSAYS ON ANITA HILL, CLARENCE THOMAS AND THE CONSTRUCTION OF SOCIAL REALITY* 323, 323–63 (Toni Morrison ed., 1992) (describing how representations of Black women can operate as “cover stories” for the political power).

majority of students in Leslie's class—who would have come of age in an era where welfare was firmly racialized as Black—would have been aware of.¹⁸ As Ian Haney López and others have demonstrated, by the 1980s, the subject of welfare had become a conservative dog whistle in political conversations that pit the white middle-class against the “lazy” recipients of government assistance.¹⁹ By 1988, welfare mothers often served as the central characters in a set of potent cultural scripts about poverty, crime, and government spending.²⁰

Cultural scripts are inherited ways of thinking and can shape how we read and understand the world.²¹ In a legal context, these scripts make certain interpretations of a case's facts seem more likely than others. Scripts' interpretive force allows readers who are familiar with them to think that they know what is really going on behind the facts of

¹⁸ See, e.g., ROBERTS, KILLING THE BLACK BODY, *supra* note 17, at 120 (discussing cultural views on the connection between Black mothers and welfare). For more on news media's use of images of Black people when discussing poverty generally, see MARTIN GILENS, WHY AMERICANS HATE WELFARE: RACE, MEDIA, AND THE POLITICS OF ANTIPOVERTY POLICY (1999). Gilens's study of representations of poverty in news media over a forty-five-year period (1960–1995) demonstrated that “African Americans have generally dominated news media images of the poor since the late 1960s.” *Id.* at 114.

¹⁹ IAN HANEY LÓPEZ, DOG WHISTLE POLITICS: HOW CODED RACIAL APPEALS HAVE REINVENTED RACISM AND WRECKED THE MIDDLE CLASS 30–31 (2014) (explaining that “what had been liberal ‘programs’ when they helped whites became ‘welfare’ when extended across the colorline”). See also ANGE-MARIE HANCOCK, THE POLITICS OF DISGUST: THE PUBLIC IDENTITY OF THE WELFARE QUEEN 3 (2004) [hereinafter HANCOCK, POLITICS OF DISGUST]; FELICIA KORNBLOH, THE BATTLE FOR WELFARE RIGHTS: POLITICS AND POVERTY IN MODERN AMERICA 18 (2007); GWENDOLYN MINK, THE WAGES OF MOTHERHOOD: INEQUALITY IN THE WELFARE STATE, 1917–1942, at vii (1995) (asking how a “policy once praised for honoring motherhood bec[a]me the icon of the race-coded politics of the late twentieth century?”); PREMILLA NADASEN, WELFARE WARRIORS: THE WELFARE RIGHTS MOVEMENT IN THE UNITED STATES xvi (2004) (“Even though African Americans were a minority of welfare recipients, welfare increasingly came to be understood in racial terms and viewed as a program benefitting black women.”); JILL QUADAGNO, THE COLOR OF WELFARE: HOW RACISM UNDERMINED THE WAR ON POVERTY 4–8 (1994); ELLEN REESE, BACKLASH AGAINST WELFARE MOTHERS: PAST AND PRESENT (2005); ROBERTS, KILLING THE BLACK BODY, *supra* note 17, at 215.

²⁰ See, e.g., HANCOCK, POLITICS OF DISGUST, *supra* note 19, at 14–18; ROBERTS, KILLING THE BLACK BODY, *supra* note 17, at 16–17 (describing the “revival of . . . [the] castigation of Black single mothers” in the 1980s and ‘90s and the role of welfare in that castigation); Julilly Kohler-Hausmann, *Welfare Crises, Penal Solutions, and the Origins of the “Welfare Queen,”* 41 J. URB. HIST. 756, 756 (2015).

²¹ See JOHN BERGER, WAYS OF SEEING 7 (1972) (describing “ways of seeing” as “establish[ing] our place in the surrounding world”). See also RAYMOND WILLIAMS, MARXISM AND LITERATURE 132 (1977) (describing structures of feeling as “a cultural hypothesis” and as being “concerned with meanings and values as they are actively lived and felt”); Stuart Hall, *Encoding/Decoding*, in CULTURE, MEDIA, LANGUAGE 117, 120–27 (Stuart Hall, Dorothy Hobson, Andrew Lowe & Paul Willis eds., Routledge 2005) (1980) (explaining how “meaning structures” and “frameworks of knowledge” facilitate the decoding of media); Hortense Spillers, *Mama's Baby, Papa's Maybe: An American Grammar Book*, 17 DIACRITICS 65, 68 (1987) (explaining that she is referring to the “symbolic order” that she traces in the essay as an “American grammar”).

a case. They also are a framework for interrogating the myriad ways that colorblind thinking can simultaneously mask and mark the presence of ideas about race.²² To borrow a phrase from historian Noémie Ndiaye, cultural scripts engender a “kind of racial thinking that can hijack the mind to foster a sense of obviousness.”²³

In the Douglas Leslie example, the sense of obviousness cuts in multiple directions. To Leslie it may have seemed obvious that most of his students would assume that Ora Lee Williams was Black, and not only because she lived in a majority-Black city. As he described it, the fact that she was on public assistance and “buying a stereo in

²² I am indebted to both Devon Carbado and Cheryl Harris for helping me to articulate this point. For more on the dual masking/marking power of colorblindness, see, for example, Devon W. Carbado, *Colorblind Intersectionality*, 38 SIGNS 811, 823 (writing of colorblind intersectionality that “whiteness is doing racially constitutive work . . . but is unarticulated and racially invisible as an intersectional subject position”); Harris, *Myths of Race and Gender*, *supra* note 17, at 226; Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707, 1715 (1993) [hereinafter Harris, *Whiteness as Property*] (writing that colorblindness as a norm “enshrine[s] the status quo as a neutral baseline, while masking the maintenance of white privilege and domination”).

There is a rich literature examining the ways that colorblind discourse within the law can both enable and obscure racial discrimination and racism. See, e.g., Eduardo Bonilla-Silva, *The Structure of Racism in Color-Blind, “Post-Racial” America*, 59 AM. BEHAV. SCIENTIST 1358, 1364 (2015) (identifying color-blind racism as a “new racism” for the twenty-first century, one that “results in ‘raceless’ explanations for all sort of race-related affairs”); Neil Gotanda, *A Critique of “Our Constitution is Color-Blind,”* 44 STAN. L. REV. 1, 2 (1991) (arguing that “the United States Supreme Court’s use of color-blind constitutionalism—a collection of legal themes functioning as a racial ideology—fosters white racial domination”); Ian F. Haney López, *“A Nation of Minorities”: Race, Ethnicity, and Reactionary Colorblindness*, 59 STAN. L. REV. 985, 988 (2007) (tracking the development of reactionary colorblindness, which “accords race-conscious remedies and racial subjugation the same level of constitutional hostility”); Daniel S. Harawa, *Coloring in the Fourth Amendment*, 137 HARV. L. REV. 1533, 1560 (2024) (raising concerns about the extension of “colorblind constitutionalism to the Fourth Amendment”).

²³ NOÉMIE NDIAYE, *SCRIPTS OF BLACKNESS: EARLY MODERN PERFORMANCE CULTURE AND THE MAKING OF RACE* 17 (2022). Ndiaye references a line from Barbara and Karen Fields’s *Racecraft*. KAREN E. FIELDS & BARBARA J. FIELDS, *RACECRAFT: THE SOUL OF INEQUALITY IN AMERICAN LIFE* 5–6 (2012); see also Robert M. Cover, *Foreword: Nomos and Narrative*, 97 HARV. L. REV. 4, 10 (1983) (“The intelligibility of normative behavior inheres in the communal character of the narratives that provide the context of that behavior The part that you or I choose to play may be singular, but the fact that we can locate it in a common ‘script’ renders it ‘sane.’”).

Cultural theorists have used a range of terms to describe this phenomenon, from Raymond Williams’s “structure[s] of feeling,” to John Berger’s “ways of seeing,” to Hortense Spiller’s “American grammar,” to name a few. WILLIAMS, *supra* note 21, at 132; BERGER, *supra* note 21, at 10; Spillers, *supra* note 21, at 68. What unites these theories is a desire to identify the historic discourses and economic conditions that shape how people perceive and understand the world around them. The emphasis here is the structural explanations for the salience of certain narratives. For this reason, and in similar fashion, I use the phrase *cultural scripts* to refer to the deep, persistent narratives about who and what matters to the nation, narratives which permeate American law, policy, and popular culture.

these circumstances” would have contributed to students’ racial assumptions.²⁴ And of course, it is plausible that some students did assume Williams was Black. For students familiar with scripts about welfare mothers, the lower court’s first description of Williams could easily have conjured images of a Black mother. The court had described Williams as a mother with “limited education,” who was raising seven children on her own “by means of public assistance.”²⁵ Coupled with the fact that Williams’s final purchase from Walker-Thomas was a stereo—an item that many scholars and casebooks have characterized as “nonessential”—the court’s description dovetails almost seamlessly with representations of the welfare queen as a Black woman who is irresponsible (in her spending), immoral (for raising children without a father), and an economic burden (on taxpayers whose jobs fund her welfare checks).²⁶

In turn, believing it racist to identify Williams as “probably black,” would have required its own set of assumptions about obviousness. Because why would it be considered racist to suggest that a single mother on welfare was “probably black,” when said woman lived in a city wherein upwards of 90% of welfare recipients were Black? For one, if there was something inherently bad about being a single Black mother on welfare (as cultural scripts about welfare mothers had firmly established in national discourse by 1988) then assumptions about Williams’s race would be morally charged. Similarly, if Leslie’s assertion that Williams was “probably black” was informed by scripts about welfare mothers rather than empirical evidence, students’ concerns about racism become much more legible.

Just as Leslie may have believed that the students’ familiarity with certain cultural scripts would lead them to assume Williams was Black, so too might the students have thought that Leslie’s familiarity either, 1) informed his belief that Williams was “probably black,” and/or

²⁴ That Leslie highlights the stereo is significant because one part of the “welfare queen” narrative is that she often spends her unearned money on unnecessary luxuries. For more on the relationship between luxury goods and scripts about welfare mothers, see *infra* notes 274–76 and accompanying text.

²⁵ 198 A.2d 914, 915 (D.C. 1964). The students in Leslie’s class probably read both the lower court and D.C. Circuit Court’s opinions in the *Williams* case, as they were both included in Leslie’s *Contracts* casebook, which he co-authored with Bob Scott. The casebook was published in the same year as the controversy (1988), but as suggested in its acknowledgments, both authors had been teaching from its materials prior to its publication. ROBERT E. SCOTT & DOUGLAS L. LESLIE, *CONTRACT LAW AND THEORY IX* (1988) [hereinafter SCOTT & LESLIE 1988].

²⁶ For more on the characteristics associated with the “welfare queen” myth and the welfare mother script, see *infra* Section IV.C.

2) meant that Leslie believed the script wholesale, and thus agreed with its demeaning portrayal of Black women.

However you look at the situation, the welfare queen bedeviled both Leslie's and the students' interpretations of the facts, as well as the ways in which they related to each other about the case.²⁷ Indeed, it is extraordinarily difficult to talk about Black mothers in the United States without the conversation becoming haunted by cultural scripts about the welfare queen or pathological Black mothers. When Leslie introduced race into the conversation about *Williams*, he likely had not accounted for how easily these cultural scripts could overpower, and then overdetermine, such conversations. Indeed, even as we move further away from the 1980s, when the figure of the welfare queen was especially salient, scripts about irresponsible, undeserving, and immoral poor mothers persist.²⁸

As Douglas Leslie's story indicates, and as many current and former law students have experienced, race plays an obvious role in the *Williams* case. Yet, the majority of scholarship that examines the intersection of race and the law does so within the realm of public law.²⁹

²⁷ For more on the prevalence of the "welfare queen" trope in the U.S. public sphere in the '80s and '90s see Ange-Marie Hancock, *Contemporary Welfare Reform and the Public Identity of the "Welfare Queen"*, 10 RACE, GENDER & CLASS 31 (2003); ROBERTS, KILLING THE BLACK BODY, *supra* note 17, at 26 ("The media often connect the welfare debate to notorious cases of neglectful mothers, leaving the impression that all welfare mothers squander their benefits on their own bad habits rather than caring for their children.").

²⁸ See, e.g., KHIARA M. BRIDGES, *REPRODUCING RACE: AN ETHNOGRAPHY OF PREGNANCY AS A SITE OF RACIALIZATION* 130 (2008) (describing how a doctor's description of her patient "is informed by discourses of the 'welfare queen'"); DAWN MARIE DOW, *MOTHERING WHILE BLACK: BOUNDARIES AND BURDENS OF MIDDLE CLASS PARENTHOOD* 163 (2019) (in a study of Black mothers, finding that "the mothers in this research, particularly those who stayed at home, often believed they faced assumptions from the broader society that they were poor and on welfare"); Khiara M. Bridges, *Beyond Torts*, 121 COLUM. L. REV. 1017, 1031 (2021) ("Contemporary rhetoric about 'anchor babies' shares similarities to discourses about the welfare queen.").

²⁹ Tellingly, *Williams* is only included in one of the six race and law casebooks currently available. Its author, Dorothy Brown, is one of the pioneers in the field of race and private law. DOROTHY A. BROWN, *CRITICAL RACE THEORY: CASES, MATERIALS, AND PROBLEMS* 180 (4th ed. 2023).

For a discussion on the relative lack of race scholarship that engages private law subjects, see, for example, Dorothy A. Brown, *Fighting Racism in the Twenty-First Century*, 61 WASH. & LEE L. REV. 1485, 1493 (2004) (arguing that "the bulk of CRT literature addresses constitutional law concerns, to the exclusion of business law issues. . . . CRT therefore needs to turn a critical eye toward economic issues"); Margalynne J. Armstrong & Stephanie M. Wildman, *Teaching Race/Teaching Whiteness: Transforming Colorblindness to Color Insight*, 86 N.C. L. REV. 635, 667 (2008) (writing that race is not a "major theme" in courses such as contracts, property, or torts); Kim Forde-Mazrui, *Learning Law Through the Lens of Race*, 21 J.L. & POL. 1, 21 (2005) (providing an account of students' experiences of not discussing race in classes such as "Property, Contracts, or Environmental Law"); Cheryl L. Wade, *Attempting to Discuss Race in Business and Corporate Law Courses and Seminars*, 77 ST. JOHN'S L. REV.

By contrast, this Article joins the small but growing conversation about the place of race in private law in order to provide a new framework for thinking about the role of race in Contracts.³⁰ More specifically, it uses the example of Williams's representation in Contracts casebooks to examine the powerful role that culture and socio-political context play in shaping the racial meaning of cases.

To do so, I have crafted a novel archive of Contracts casebooks published since *Williams* was decided in 1965. This archive consists of three sub-parts.

The first is a collection of every American Casebook published in the first decade after the *Williams* decision: thirteen in total. Of these thirteen, ten included *Williams* as a principal case.

The archive's second component consists of every edition of the six most popular casebooks published since that first decade.³¹ The lead

901, 902 (2003) (describing the challenges of addressing race in business law courses by noting that “[i]n past years, I suspect that some of my students felt ambushed when I discussed race in both the basic corporations course and in the Corporate Accountability seminar”).

Patricia Williams has suggested that simply being a person of color who teaches and writes about commercial law (separate and apart from discussing race in the classroom) is anomalous, writing that “to speak as [a] black [sic], female, and commercial lawyer has rendered me simultaneously universal, trendy, and marginal.” PATRICIA J. WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS* 6–7 (1991) [hereinafter WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS*].

³⁰ For recent work that examines the place of race in private law, see Mehrsa Baradaran, *Jim Crow Credit*, 9 U.C. IRVINE L. REV. 887 (2019) (describing the history of legislative responses to the racially unequal credit market created by the New Deal); Carliss N. Chatman, *Teaching Slavery in Commercial Law*, 28 MICH. J. RACE & L. 1, 1 (2023) (explaining that teaching slavery in commercial law offers a way for business law faculty to engage with issues of race in their courses); K-Sue Park, *The History Wars and Property Law: Conquest and Slavery as Foundational to the Field*, 131 YALE L.J. 1062, 1135 (2022) (“This marginalization of race [in the property law curriculum] reflects a broader tendency in the legal academy to relegate the study of race to an optional elective rather than a central subject and a necessary element of the study of law.”); Penningroth, *supra* note 13, at 1201; Justin Simard, *Citing Slavery*, 72 STAN. L. REV. 79, 79 (2020) (demonstrating the role that slavery played in the development of commercial law); Chantal Thomas, *Reloading the Canon: Thoughts on Critical Legal Pedagogy*, 92 U. COLO. L. REV. 955 (2021) (exploring how the author makes use of critical legal pedagogy and critical race theory when teaching 1L Contracts).

This scholarship builds on the foundational work of critical race theorists Dorothy Brown, Adrienne Davis, Angela Harris, Cheryl Harris, Emma Coleman Jordan, and Patricia Williams, among others. See, e.g., Dorothy A. Brown, *Split Personalities: Tax Law and Critical Race Theory*, 19 W. NEW ENG. L. REV. 89 (1997); Adrienne D. Davis, *The Private Law of Race and Sex: An Antebellum Perspective*, 51 STAN. L. REV. 221 (1999); Angela P. Harris, *Rereading Punitive Damages: Beyond the Public/Private Distinction*, 40 ALA. L. REV. 1079 (1989); Harris, *Whiteness as Property*, *supra* note 22; Emma Coleman Jordan, *Ending the Floating Check Game: The Policy Arguments for Delayed Availability Reform*, 36 HASTINGS L.J. 515 (1985) (illustrating the unfairness of delayed availability of funds for bank customers and charting a path to reform); Patricia J. Williams, *On Being the Object of Property*, 14 SIGNS 5 (1988).

³¹ For more information on how I determined which casebooks were most popular, please see the Appendix.

authors of these six casebooks are Lon Fuller, E. Allan Farnsworth, John Dawson, John Calamari, Henry Knapp, and Randy Barnett. Together, these six casebooks have released forty-seven editions since 1976.

The third, and final, part of the archive is a selective sample of all other Contracts casebooks published after the first decade post-*Williams*. Up to three editions of each casebook has been included in this subpart: 1) the first edition post-1965, 2) the first edition after 1997, when Ora Lee Williams's racial identity was confirmed, and 3) the most recent edition. In all, these comprised seventy casebooks.

In total, my data set includes 129 casebooks. In each of these casebooks, I examined its section on unconscionability as well as any other areas where *Williams* appeared. A list of all examined casebooks is available in Table 1 in the Appendix.

This archive of Contracts casebooks—the first of its kind—reveals the porousness between political, popular, and legal culture. And as this Article will explain, it demonstrates the power of cultural scripts to weave racial meaning into Contracts.

Contracts can easily be understood as a course that has little to say about race or racism in the United States.³² There are several reasons

³² It was over thirty years ago that Critical Race Theorist Kimberlé Crenshaw critiqued the perspectiveless teaching commonly found in law schools. Kimberlé Williams Crenshaw, *Foreword: Toward a Race-Conscious Pedagogy in Legal Education*, 4 S. CAL. REV. L. & WOMEN'S STUD. 33 (1994); see also WILLIAMS, THE ALCHEMY OF RACE AND RIGHTS, *supra* note 29, at 83; Frances Lee Ansley, *Race and the Core Curriculum in Legal Education*, 79 CALIF. L. REV. 1511, 1515 (1991) ("Our basic core curriculum stands astoundingly unchanged and unexamined compared to that of the rest of the academy."); Lani Guinier, *Of Gentleman and Role Models*, 6 BERKELEY WOMEN'S L.J. 93, 93 (1990) ("If we were not already, law school would certainly teach us how to be *gentlemen*. *Gentlemen* of the bar maintain distance from their clients, are capable of arguing both sides of any issue, and, while situated in a white male perspective, are ignorant to differences of culture, gender and race.").

There has certainly been an increase in the range of perspectives incorporated into law classrooms in the intervening decades, nevertheless critical theories of race remain marginal. See, e.g., Vinay Harpalani, *Teaching Torts with a Focus on Race and Racism*, L. PROFESSORS BLOG NETWORK: RACE & L. PROF BLOG (Feb. 13, 2020) ("Casebooks now sometimes touch on issues of race and racism in torts and include some cases that raise issues of race. But there is much more to do."), <https://lawprofessors.typepad.com/racelawprof/2020/02/teaching-torts-with-a-focus-on-race-and-racism-by-professor-jennifer-wriggins-sumner-t-bernstein-pro.html> [<https://perma.cc/Z5LH-RHEP>]; Kennedy, *Bitter Ironies*, *supra* note 13, at 232 (writing of *Williams v. Walker-Thomas Furniture* that "[i]t doesn't seem an exaggeration to say it does important work in the construction of the race/class ideology of the legal profession").

For example, in 2020, Duke Law School held a year-long series of lectures titled "Race and the 1L Curriculum" in order to combat the marginalization of race within the first-year curriculum. *Yearlong Series Examines Race in the Context of Subjects Foundational to First-Year Curriculum*, DUKE L. (Nov. 20, 2020), <https://law.duke.edu/news/yearlong-series-examines-race-context-subjects-foundational-first-year-curriculum> [<https://perma.cc/6LCV-3LF8>]. Several other law school introduced similar programs in the way of 2020's protests. See, e.g., *Racial Bias, Disparities and Oppression in the 1L Curriculum: A Critical Approach to the Canonical First Year Law School Subjects*, B.U. SCH. OF L. (Feb. 28, 2020), <https://www>.

for this. First, Contracts is often described as a doctrine concerned with private obligations—meaning private bilateral relations between private actors.³³ By contrast, racism and racial discrimination tend to be understood as a matter of public concern and public law.³⁴ Second, there is little scholarship on race’s relevance to Contracts’ doctrinal development, especially as compared to doctrines like criminal or constitutional law.³⁵ In the absence of such scholarship, it can be difficult for law students, lawyers, and scholars to see the connections between race and Contracts. Third and finally, there is a “scholarly consensus that U.S. common law of contracts is overwhelmingly orthodox.”³⁶ This orthodoxy entails a belief that Contracts is indifferent toward questions of inequality and distributive justice.³⁷ And if distributive questions are beyond the bounds of Contracts’ concerns, then one might readily assume that race concerns are outside the scope of contracts as well.³⁸

Taken together, Contracts is primed for colorblind explanations and approaches. By which I mean, it is both easy to overlook, and

bu.edu/law/files/2019/12/BU-Symposium-Schedule-February-26th-.pdf [https://perma.cc/XZ7Z-8PSS]. I acknowledge that these are important first steps toward incorporating race more wholistically in legal education. Nevertheless, a lecture series or race-focused classes are not the same as integrating critical theories of race into foundational legal classes.

Perspectiveless teaching is particularly prevalent in private law subjects like contracts and property. As contracts professor and scholar Deborah Zalesne has written “most law school contracts classes feature the dominant economic paradigm of transactional law, disregarding critical legal theory.” Zalesne, *Racial Inequality in Contracting*, *supra* note 13, at 26; Deborah Zalesne, *The (In)visibility of Race in Contracts: Thoughts for Teachers*, CONTRACTSPROF BLOG (July 8, 2020), https://lawprofessors.typepad.com/contractsprof_blog/2020/07/deborah-zalesne-the-invisibility-of-race-in-contracts-thoughts-for-teachers.html [https://perma.cc/K75Q-L9GS]. Similar observations have been made about property and business law courses as well.

³³ See, e.g., Aditi Bagchi, *Other People’s Contracts*, 32 YALE J. ON REG. 211, 223 (“Unlike legal economists, philosophers of private law take the distinction between public and private law very seriously. They emphasize the bilateral structure of private law—i.e., that private law vindicates private rights held by private persons against one another.”).

³⁴ Gotanda, *supra* note 22, at 9 (“[T]he model of a private sphere within which racial discrimination is permissible, which first developed in freedom of contract cases, continues to influence constitutional doctrine.”).

³⁵ Legal historian Dylan Penningroth has found that race’s historical role in the development of contract law has been obscured since the doctrine’s “formative era in the 1870s.” Penningroth, *Race in Contract Law*, *supra* note 13, at 1199.

³⁶ Kevin E. Davis & Mariana Pargendler, *Contract Law and Inequality*, 107 IOWA L. REV. 1485, 1492 (2022).

³⁷ *Id.* at 1485 (“Does contract law have any role to play in tackling economic inequality, one of the most pressing problems of our time? The orthodox answer to this question is no.”).

³⁸ For example, when teaching contracts from a “critical race feminist Contracts casebook,” legal historian Ariela Gross discovered that her students “hated it. They hated that it was different. They hated that it appeared to have a perspective. And they hated every time our class appeared to depart from ‘black letter’ law.” Ariela J. Gross, *Teaching Humanities Softly: Bringing a Critical Approach to a First-Year Contracts Class Through Trial and Error*, 3 CALIF. L. REV. CIR. 19, 20 (2012).

challenging to assess, the role that race has played across the lifespan of any case or doctrine in particular. From the lead-up to litigation,³⁹ to the writing and reasoning of an opinion,⁴⁰ to a case's use as precedent,⁴¹ to the distributive consequences of a legal rule itself: Any and all of these moments are places where race or racism might be relevant.⁴² In other words, in *Contracts* (as in the law generally) there are multiple inflection points wherein racial ideology, discrimination, and/or subordination might play a constitutive role. Yet for the normative and scholarly reasons outlined above, these intersections of race and *Contracts* are not always obvious.

Thankfully, historical scholarship can help give color to the often colorless histories of *Contracts*. For example, Dylan Penningroth's pathbreaking *Race in Contract Law* was the first work of scholarship to systematically address the role of "African Americans and race in the development of modern contract law."⁴³ Historians of slavery have documented the centrality of contracts to the buying and selling of people and to the slave economy more broadly.⁴⁴ Twentieth-century

³⁹ For example, in *Race in Contract Law*, Penningroth uncovers that everyone involved in the classic case *Harrington v. Taylor* was Black and explains that the "bargain at issue in *Harrington* arose because, faced with a racist and sexist criminal justice system, private law was the only way to make Lee Walter Taylor pay for his violence." Penningroth, *Race in Contract Law*, *supra* note 13, at 1209.

⁴⁰ See, e.g., *Ricketts v. Pa. R.R.*, 153 F.2d 757 (2d Cir. 1946) (wherein Judge Learned Hand used an accident involving a Black railroad porter as a means of critiquing the objective theory of contract's ability to ignore unequal bargaining power). For a discussion of the role that race may have played in the reasoning of *Ricketts*, see Penningroth, *Race in Contract Law*, *supra* note 13, at 1258.

⁴¹ In my own research on sharecropping contracts in the Jim Crow South, I have found that cases involving descriptions of racist violence were cited much less often than similar cases without such descriptions. Brittany Farr, *Witnessing an Absent Presence: Bringing Black Feminist Theory to Traditional Legal Archives*, 52 BLACK SCHOLAR 64, 71 (2022); Brittany Farr, *Breach by Violence: The Forgotten History of Sharecropper Litigation in the Post-Slavery South*, 69 UCLA L. REV. 674, 718 (2022).

⁴² See, e.g., Aditi Bagchi, *Distributive Justice and Contract*, in PHILOSOPHICAL FOUNDATIONS OF CONTRACT LAW 193, 193–211 (Gregory Klass, George Letsas, and Prince Saprai eds. 2014) (explaining why "[p]rinciples of distributive justice may have a number of implications for contract law").

⁴³ Penningroth, *Race in Contract Law*, *supra* note 13, at 1202. Penningroth provides an even more in-depth history of Black Americans' use of private law (including *Contracts*) in *BEFORE THE MOVEMENT: THE HIDDEN HISTORY OF BLACK CIVIL RIGHTS*. DYLAN C. PENNINGROTH, *BEFORE THE MOVEMENT: THE HIDDEN HISTORY OF BLACK CIVIL RIGHTS* (2023). I owe much to Dylan's research.

⁴⁴ See, e.g., ARIELA J. GROSS, *DOUBLE CHARACTER: SLAVERY AND MASTERY IN THE ANTEBELLUM COURTROOM* 30–32 (2000) (describing the role of warranties in slave sales and the frequency of warranty litigation); SHARON ANN MURPHY, *BANKING ON SLAVERY: FINANCING SOUTHERN EXPANSION IN THE ANTEBELLUM UNITED STATES* 45 (2023) (uncovering the widespread use of enslaved people as collateral for mortgages with banks); CLAIRE PRIEST, *CREDIT NATION: PROPERTY LAWS AND INSTITUTIONS IN EARLY AMERICA* 6 (2021) (addressing the use of slaves in the expansion of the credit economy).

historians have demonstrated how the notion that contracts are private obligations has enabled both racial discrimination and exploitation in contracting.⁴⁵ This Article builds on this work by putting social and cultural history in conversation with a historical archive that is central to legal education: law school casebooks.⁴⁶

Even with these scholarly contributions, there remains an urgent need for more tools that can be used to theorize race's role in Contracts. At stake is a more complete understanding of Contracts itself. This Article puts forward cultural scripts as one such tool.⁴⁷ In the pages that follow, I show how the concept can be used to think about Contracts and Contracts casebooks. Nonetheless, my hope is that cultural scripts will be a useful tool for thinking about the law more broadly.

This Article proceeds in three parts. Part I introduces the cultural and educational context that existed when *Williams* entered the first-year Contracts curriculum. The case was decided in a moment when the nation was paying close attention to the problems of the poor. It also coincided with the adoption of the Uniform Commercial Code (UCC), which included a provision on unconscionability. Consequently, when *Williams* reached the D.C. Circuit Court, it created an opportunity to use the new UCC provision in service of protecting the poor. This background helps to explain why *Williams* was so quickly and widely incorporated into Contracts casebooks.

Parts II and III focus on the two cultural scripts that have most shaped *Williams*'s racialization: scripts about the low-income consumer and the welfare mother. Focusing exclusively on the thirteen casebooks published in the first decade after the *Williams* decision, Part II demonstrates how these early casebooks presented *Williams* as a case primarily about poor consumers. It then explains how the available cultural scripts about low-income consumers would have tethered the case to contemporaneous ideas about Blackness.

Part III shifts its focus to the Contracts casebooks published after that first decade and walks readers through the ways that *Williams* took on the additional weight of the cultural scripts about welfare mothers.

⁴⁵ See, e.g., ANNE FLEMING, CITY OF DEBTORS: A CENTURY OF FRINGE FINANCE (2018) (exploring the role of race in "fringe finance"); RICHARD R. W. BROOKS & CAROL M. ROSE, SAVING THE NEIGHBORHOOD: RACIALLY RESTRICTIVE COVENANTS, LAW, AND SOCIAL NORMS (2013) (charting the use of racially restrictive covenants).

⁴⁶ Casebooks are often overlooked as a *historical* archive. For two notable exceptions, see generally Park, *supra* note 30 (examining property doctrine); Alice Ristroph, *The Curriculum of the Carceral State*, 120 COLUM. L. REV. 1631 (2020) (examining criminal law curriculum).

⁴⁷ As Karen Tani writes in her *Foreword* to the *Harvard Law Review*, history as a discipline is well suited to highlighting and interrogating the "non-neutrality" of the narratives that the law chooses to tell about itself. Karen M. Tani, *Foreword: Curation, Narration, Erasure: Power and Possibility at the U.S. Supreme Court*, 138 HARV. L. REV. 1, 12 (2024).

It sketches the conservative political discourse about welfare, Blackness, and family values, which gained increasing popularity in the 1980s. From there it highlights the resonances between this discourse and the framing of *Williams* that can be found in dozens of Contracts casebooks. It ends by considering the ways in which this layering of racial meaning might inform how one thinks about the legal questions that arise from *Williams*.

I

SITUATING *WILLIAMS*

Before proceeding to Part I's discussion of *Williams*'s entrance into Contracts casebooks, however, some additional background on Ora Lee Williams and the Walker-Thomas Furniture store is warranted.

In spite of how well known *Williams* has become since its 1965 decision, relatively little is known about its eponymous litigant, Ora Lee Williams. What little we do know primarily comes from the case's filings. The sparse details are as follows: Williams was born in the South and completed the eighth grade before dropping out of school.⁴⁸ At some point prior to 1957, she moved to Washington, D.C., making her one of the millions of Black Americans who left the south as part of the Great Migration.⁴⁹ We don't know whether she married and had children before or after moving to D.C., only that by 1964 she was living apart from her husband and had seven children. She received government support, likely through the Aid to Families with Dependent Children (AFDC) program, in the form of \$218 per month—roughly \$2,200 in today's terms.⁵⁰ AFDC had assigned her a social worker, whose name would eventually end up on the back of some of Walker-Thomas's contracts. According to Walker-Thomas's appellate brief, Williams also had an additional source of income, though the brief does not specify the source or amount.⁵¹ Searches of census records, marriage licenses, phone books, obituaries and local newspapers offer no additional information about Williams's life.⁵²

⁴⁸ Fleming, *supra* note 11, at 1392.

⁴⁹ For more on the Great Migration, see generally ISABEL WILKERSON, *THE WARMTH OF OTHER SUNS* (2010).

⁵⁰ *CPI Inflation Calculator*, U.S. BUREAU OF LAB. STAT., https://www.bls.gov/data/inflation_calculator.htm [<https://perma.cc/27UV-DMBG>] (last visited May 25, 2024); *Williams v. Walker-Thomas Furniture Co.*, 350 F.2d 445, 448 (D.C. Cir. 1965).

⁵¹ Brief for Appellee at 25, *Williams v. Walker-Thomas Furniture Co.*, 350 F.2d 445 (D.C. Cir. 1965) (No. 18604).

⁵² I found one record from the 1950 Census that identifies a twenty-three-year-old "Ora Williams" living in Washington, D.C. and married to a "William H. Williams," with four children. There is also a 2001 obituary for a "Willie H. Williams," who was survived by a wife

By contrast, we know far more about the Walker-Thomas Furniture Company and its business practices. After *Williams*'s 1965 decision, Walker-Thomas and other similar retail stores were the subject of several scholarly and government investigations.⁵³ These investigations cast Walker-Thomas as a business predicated on coercion, obfuscation, and exploitation. It is not clear how many of Walker-Thomas's unconscionable business practices Ora Lee Williams experienced personally. Nevertheless, understanding how the business operated is perhaps the best way that we currently have available to gain insight into Ora Lee Williams's circumstances.

We know that Walker-Thomas almost exclusively served consumers like Ora Lee Williams—poor Black residents of Washington, D.C., who likely did not have much mobility in their shopping.⁵⁴ This is part of the reason why most customers (including Williams) conducted business with Walker-Thomas through its corps of door-to-door salesmen. As David Greenberg explained in his 1975 study of Walker-Thomas, even those customers who were dissatisfied with Walker-Thomas's goods and services continued to shop there because they felt they had “nowhere else” to go.⁵⁵ For her part, Ora Lee Williams purchased items from Walker-Thomas for over five years before their consumer relationship fell apart.⁵⁶

It is plausible, if not likely, that from Williams's very first transaction with Walker-Thomas, their relationship was marked by deceptive business practices. Several studies have shown that many of the items Walker-Thomas sold as “new,” had in fact been previously owned by other customers.⁵⁷ In many instances items that had been returned by customers or repossessed after default were placed back into the rest of the store's inventory and “intermingled with new merchandise.”⁵⁸

“Oralee [] Williams.” *Willie Williams*, THE STATE, 4 (Columbia, S.C.), Oct. 21, 2001. The names of Williams's surviving children do not match the names on the 1950 Census. Moreover, it is not possible to confirm whether or not the 1950 Census is the same Ora Williams as in the case.

⁵³ See, e.g., Eben Colby, *What Did the Doctrine of Unconscionability Do to the Walker-Thomas Furniture Company?*, 34 CONN. L. REV. 625 (2002); David L. Greenberg, *Easy Terms, Hard Times: Complaint Handling in the Ghetto*, in NO ACCESS TO LAW: ALTERNATIVES TO THE AMERICAN JUDICIAL SYSTEM 379, 379–91 (Laura Nader ed., 1980); FEDERAL TRADE COMMISSION, ECONOMIC REPORT ON INSTALLMENT CREDIT AND RETAIL SALES PRACTICES OF DISTRICT OF COLUMBIA RETAILERS (1968) [hereinafter *INSTALLMENT CREDIT REPORT*]; U.S. NAT'L ADVISORY COMM'N ON CIV. DISORDERS, REPORT, 139–40 (1968) [hereinafter *KERNER COMMISSION REPORT*]; *In re Walker-Thomas Furniture Co.*, 87 F.T.C. 26 (1976).

⁵⁴ See Greenberg, *supra* note 53, at 381–82.

⁵⁵ *Id.* at 382.

⁵⁶ *Williams*, 350 F.2d at 447.

⁵⁷ Brief for Appellee, *supra* note 51, at 9; see, e.g., Greenberg, *supra* note 53, at 385; *INSTALLMENT CREDIT REPORT*, *supra* note 53, at 9; *KERNER COMMISSION REPORT*, *supra* note 53, at 140.

⁵⁸ *In re Walker-Thomas Furniture Co.*, 87 F.T.C. at 28.

After this point, the store did not keep records of whether the merchandise in its stock had been previously owned.⁵⁹

In addition, Williams was nearly guaranteed to end up in a credit relationship with the store if she transacted with them exclusively. For any items over \$100, Walker-Thomas required customers to purchase said items on credit.⁶⁰ For the store, it was good business to do so. Items purchased via installment sales contracts were not only priced higher but were also vulnerable to repossession in the event of a customer's default. That Walker-Thomas was subsequently able to re-sell some of these repossessed items as new suggests that repossession was an important feature of its business model. To that end, a 1968 Federal Trade Commission investigation of "ghetto market retailers" in D.C. found that stores like Walker-Thomas used "actions against default as a normal matter of business rather than as a matter of last resort."⁶¹ Walker-Thomas also made a practice of "coerc[ing]" its customers into "voluntarily" returning their merchandise.⁶² A later FTC investigation also found many instances where Walker-Thomas removed items from customers' homes "when no adult [was] present."⁶³

Importantly, much like Ora Lee Williams, many of the company's customers were unaware of their legal rights and obligations. To be sure, some of this was due to consumers' general lack of knowledge about their rights. Nevertheless, some of Walker-Thomas's customers' legal ignorance was the direct result of the store's business practices.⁶⁴ For example, customers regularly paid out-of-pocket for repairs on items that were still under warranty. This was due to a combination of customer service strategies, which sought to convince customers that they were the ones at fault for the damage, as well as the company's practice of illegally putting repair charges on customers' monthly bills.⁶⁵ Moreover, the company employed six men "known in store jargon as 'pimps,'" whose job was to collect information on Walker-Thomas customers that could later be used to intimidate those who sought to exercise their consumer rights.⁶⁶

⁵⁹ *Id.*

⁶⁰ Greenberg, *supra* note 53, at 381.

⁶¹ INSTALLMENT CREDIT REPORT, *supra* note 53, at xv.

⁶² *In re* Walker-Thomas Furniture Co., 87 F.T.C. at 31.

⁶³ *Id.*

⁶⁴ See Greenberg, *supra* note 53, at 384 (describing the ways in which the store's practices "obscure[] the governing legal rules").

⁶⁵ *Id.* at 387.

⁶⁶ *Id.* at 390–91 (describing an incident where one of these agents told a customer that if she reported Walker-Thomas's business practices to the FTC, he would tell her social worker that her estranged husband's whereabouts were not "unknown," threatening the customer's AFDC eligibility and thus the family's sole source of income).

One wonders how much of this information the D.C. Circuit Court had at the time of its decisions. As Anne Fleming uncovered in her detailed history of the case, Judge Skelly Wright's first draft of the opinion focused on Walker-Thomas's business practices as "the root of the problem."⁶⁷ According to Fleming, Wright strongly suspected that Walker-Thomas sold used furniture as "new" and had a business model that relied upon customers' defaults.⁶⁸ Nevertheless, due to concerns about the opinion having an overbroad effect, the final opinion focused far more on the specific relationship between Walker-Thomas and Williams than Wright's initial draft had.

In the end, Wright held that the Walker-Thomas contract should be read in light of the concept of unconscionability articulated by the UCC, and he reversed and remanded the case.⁶⁹ It was for the lower court to decide whether the contract was in fact unconscionable. It never did. Instead, the parties settled, and Williams received \$200 for the items that Walker-Thomas had repossessed.⁷⁰

For Ora Lee Williams, a \$200 settlement after three years of litigation may have seemed like an anticlimactic ending. But as Williams's involvement in the story was ending, the life of *Williams* as a case began. As the following Section describes, *Williams* spoke to several conversations that Contracts scholars were already having. Consequently, it had immediate relevance to Contracts curricula and within ten years had become a regular feature of Contracts casebooks.

II

ENTERING THE CONTRACTS CURRICULUM

Williams entered the 1L Contracts curriculum at a time when Contracts professors were reevaluating both the form and substance of their first-year teaching.⁷¹ Incited by changes in consumer

⁶⁷ Fleming, *supra* note 11, at 1417.

⁶⁸ *Id.*

⁶⁹ *Williams v. Walker-Thomas Furniture Co.*, 350 F.2d 445, 450 (D.C. Cir. 1965).

⁷⁰ Fleming, *supra* note 11, at 1432.

⁷¹ Similar conversations were happening across doctrinal areas as law faculty reassessed the nature of legal education generally, and the 1L curriculum in particular. As Robert Stevens and Laura Kalman have documented, these conversations were spurred by law student activism of the 1960s and 1970s. LAURA KALMAN, *YALE LAW SCHOOL AND THE SIXTIES: REVOLT AND REVERBERATIONS* 30 (2005) ("United in their condemnation of their education as sterile, dissatisfying, and needlessly competitive, law student agitators sought to end hierarchy and alienation. They agitated for community, citizenship, democracy and relevance."); ROBERT STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S*, at 234 (1983) (explaining that "students were becoming openly hostile to legal

contracts,⁷² the widespread adoption of the UCC,⁷³ as well as concerns about the efficacy of the casebook method of teaching,⁷⁴ throughout the late 1960s and early 1970s, Contracts faculty were discussing whether and how first-year Contracts should be reorganized.⁷⁵ Among the topics of discussion was whether the course should be organized chronologically (and begin with offer and acceptance) or functionally (and start with remedies).⁷⁶ There were differing perspectives on just how much context casebooks should provide for students, which translated into different authorial approaches to the notes and excerpts provided after cases. In addition, a cohort of scholars worried that the increase in government regulation of certain kinds of contracts—such as employment and insurance contracts, for example—was making the subject of 1L Contracts increasingly obsolete.⁷⁷

It was against this backdrop that casebook authors incorporated *Williams v. Walker-Thomas* into their casebooks. In the decade after the case was decided (1966–1976), ten out of the thirteen published Contracts casebooks, or roughly seventy-five percent, included *Williams v. Walker-Thomas* as a major case.⁷⁸

education, especially to the case and the Socratic method”); see also Lawrence M. Friedman & Stewart Macaulay, *Contract Law and Contract Teaching: Past, Present, and Future*, 1967 Wis. L. REV. 805 (“The winds of change are sweeping through some areas of teaching and research in law.”); Frederick M. Hart, *Cases and Materials on Commercial Transactions Under the Uniform Commercial Code*, 1 CONN. L. REV. 343, 343 (1968) (“Most commentary on the changing law school curriculum has centered on the dramatic proliferation of courses and the growing emphasis on public law.”).

⁷² Hart, *supra* note 71, at 343; John Montague Steadman, *Commercial and Consumer Transactions—Cases and Materials*, 120 U. PA. L. REV. 1013, 1015 (1972) (explaining that “the past twenty years in the United States have seen an increasingly clear recognition” of the diverging “legal needs and expectations” between commercial and consumer transactions).

⁷³ Prior to 1960, only five states had incorporated the UCC. Hart, *supra* note 71, at 344. By 1965, only one state—Louisiana—had not. Alan W. Schefflin, *Review of Monroe Freedman, Cases on Contracts*, 56 GEO L.J. 407, 412 (1967).

⁷⁴ See Quintin Johnstone, *Student Discontent and Educational Reform in the Law Schools*, 23 J. LEGAL EDUC. 255, 265–67 (“[The] overworking of the case method [has] meant diminishing returns from what it does satisfactorily and its extension to learning functions it does badly . . .”); see also KALMAN, *supra* note 71, at 19–27.

⁷⁵ See Richard Speidel, *Contract Law: Some Reflections upon Commercial Context and the Judicial Process*, 20 J. LEGAL EDUC. 474, 478 (1968).

⁷⁶ See Scott D. Gerber, *Corbin and Fuller’s Cases on Contracts (1942): The Casebook That Never Was*, 72 FORDHAM L. REV. 595, 625 (2003).

⁷⁷ See LAWRENCE M. FRIEDMAN, *CONTRACT LAW IN AMERICA: A SOCIAL AND ECONOMIC CASE STUDY* 17 (1965) (describing the law of contract as “residuary”); GRANT GILMORE, *THE DEATH OF CONTRACT* 3 (1974) (“We are told that Contract, like God, is dead. And so it is.”).

⁷⁸ The ten casebooks are as follows: JOHN P. DAWSON & WILLIAM BURNETT HARVEY, *CASES ON CONTRACTS AND CONTRACT REMEDIES* (2d. ed. 1969) [hereinafter DAWSON & HARVEY 1969]; FRIEDRICH KESSLER & GRANT GILMORE, *CONTRACTS: CASES AND MATERIALS* (1970) [hereinafter KESSLER & GILMORE 1970]; EDWARD J. MURPHY & RICHARD E. SPEIDEL, *STUDIES IN CONTRACT*

A. *A Crisis in Legal Education*

In the mid to late 1960s, legal educators—much like educators in other institutions—found themselves grappling with what the country’s many social movements would mean for legal education.⁷⁹ There was a clash between two forces: on the one hand, the narratives that legal educators and administrators told themselves about law schools’ place in, and value to, the social order; and on the other, the changing social order itself as embodied by the young students enrolling in these self-same law schools. As one commentator described it, “American legal education is in difficulty and the situation may become more serious.”⁸⁰

This difficulty owed largely to students’ growing belief that law schools were out of touch with contemporary social movements.⁸¹ High among students’ complaints were schools’ 1) perceived privileging of wealth,⁸² 2) meagre offerings on subjects like civil rights, poverty

LAW (1970) [hereinafter MURPHY & SPEIDEL 1970]; IAN R. MACNEIL, CASES AND MATERIALS ON CONTRACTS: EXCHANGE TRANSACTIONS AND RELATIONSHIPS (1971) [hereinafter MACNEIL 1971]; ADDISON MUELLER & ARTHUR ROSETT, CONTRACT LAW AND ITS APPLICATION (1971) [hereinafter MUELLER & ROSETT 1971]; E. ALLAN FARNSWORTH, WILLIAM F. YOUNG, JR. & HARRY W. JONES, CASES AND MATERIALS ON CONTRACTS (2d ed. 1972) [hereinafter FARNSWORTH, YOUNG & JONES 1972]; LON L. FULLER & MELVIN ARON EISENBERG, BASIC CONTRACT LAW (3d ed. 1972) [hereinafter FULLER & EISENBERG 1972]; JOHN HOWARD JACKSON, CONTRACT LAW IN MODERN SOCIETY: CASES AND MATERIALS ON LAW OF CONTRACTS, SALES, AND LEGAL METHODOLOGY (1973) [hereinafter JACKSON 1973]; CHARLES L. KNAPP, PROBLEMS IN CONTRACT LAW: CASES AND MATERIALS (1976) [hereinafter KNAPP 1976]; JOHN EDWARD MURRAY, CASES AND MATERIALS ON CONTRACTS (2d ed. 1976) [hereinafter MURRAY 1976]. For the full list of casebooks, see Table 1 in the Appendix.

⁷⁹ Though as Robert Stevens notes, “there had been much talk of change, but little change had occurred.” STEVENS, *supra* note 71, at 232.

⁸⁰ Johnstone, *supra* note 74 at 255. Johnstone, a Yale Law School professor, continued, writing “[t]he most obvious evidence that the law schools are in trouble is their principal constituency, their students. Widespread dissatisfaction among law students is threatening with obsolescence the way law schools are organized, how they teach, and much of what they teach.” *Id.*

⁸¹ See, e.g., E. Hunter Taylor, Jr., *Wealth, Poverty, and Social Change: A Suggestion for a Balanced Curriculum*, 22 J. LEGAL EDUC. 227, 227 (1969) (“The current forms and methods of American legal education have been repeatedly challenged as inefficient, unproductive, and irrelevant to contemporary social problems.”).

⁸² See, e.g., Charles E. Ares, *Legal Education and the Problem of the Poor*, 17 J. LEGAL EDUC. 307, 307 (1965) (“Despite great ferment and considerable improvement, law school curricula continue to reflect the fact that the legal profession is organized around the profit system.”); Henry W. McGee, Jr., *Universities, Law Schools, Communities: Learning or Service or Learning and Service?*, 22 J. LEGAL EDUC. 37, 38 (1969) (“Law schools, as have the other colleges in university systems, are undergoing the now rhetorically trite, but painfully current ‘agonizing reappraisal’ of their relationship to the community.”); Anthony J. Mohr & Kathryn J. Rodgers, *Legal Education: Some Student Reflections*, 25 J. LEGAL EDUC. 403, 426 (1973) (quoting a student who said that “[t]he emphasis [in coursework] is heavily on business, and if you are not interested in that, I doubt that you belong here. For a person interested in public service, I would recommend that he go to graduate school in political science and concentrate on the judicial system.”); Taylor, *supra* note 81, at 229 (“A quick glance at the

law, and consumer justice,⁸³ and 3) reliance on the Socratic method.⁸⁴ Contemporaneous commentary on legal curricula, clinical offerings, and teaching methods indicate that many legal educators were taking these concerns seriously.⁸⁵

The conversation among Contracts scholars largely tracked these more general discussions about legal education. Cultural and economic changes were altering the place of contracts in society, which in turn was complicating professors' efforts to make Contracts relevant to first-year students. One pair of casebook authors dramatized this challenge in their casebook, in a scripted scene titled "Confrontation at the Law School." The lighthearted (if bizarre) interlude presents a Contracts professor named Fuzzy arguing with a student named "Mr. Now-Generation" about whether Contracts teaches students anything "relevant to real problems in the real world."⁸⁶ The two talk across each other for several beats before the scene ends with the student walking off frustrated and the professor hoping he isn't about to "sit-in at the American Law Institute."⁸⁷

Professor Fuzzy's fears were unfounded, of course. There never were any sit-ins at the American Law Institute. Nevertheless, this scene—both its content, and the mere fact of its existence and inclusion in a casebook—is instructive. It offers a window into how some legal scholars were reckoning with the relationship between the culture "out there" (in the world beyond their institutions) and the doctrinal study happening inside of law schools.

courses in any law school curriculum bears out the validity of the claim that the greatest amount of weight is given courses which concern the 'wealth process.'").

⁸³ See STEVENS, *supra* note 71, at 234 (writing of law schools in the early 1970s, that "[d]espite a decade of civil rights, women's rights, and antipoverty agitation, the law schools had been little influenced by these developments in society").

⁸⁴ See Robert B. Stevens, *Law Schools and Legal Education, 1879–1979: Lectures in Honor of 100 Years of Valparaiso Law School*, 14 VAL. U. L. REV. 179, 256 (1980) (describing the "Socratic version of the case method" as "a major cause of hostility among law students"); see also Johnstone, *supra* note 74, at 256 ("Objections are growing to the socratic interrogation method of teaching as too often abusive or superficial."); Mohr & Rodgers, *supra* note 82, at 410 (quoting a student who stated, "After you cut through all the cobwebs about the Socratic method, it basically amounts to teaching on the principle of fear.").

⁸⁵ For examples of such commentary, see articles from the *Journal of Legal Education* cited *supra* notes 81–82. The *Journal of Legal Education* was published by the Association of American Law Schools (AALS). The AALS also held several roundtables focused on curriculum during this time period, the proceedings of which reflect many of these student concerns. See, e.g., *infra* note 88; see also STEVENS, *supra* note 71, at 232–35 (offering a history of the ways in which '60s-era social movements impacted legal education); KALMAN, *supra* note 71, at 30 (providing a history of the ways that "law student activists" helped change legal education at Yale Law School).

⁸⁶ MURPHY & SPEIDEL 1970, *supra* note 78, at 250–51.

⁸⁷ *Id.*

B. *Contracts Discovers Consumers*

When the Association of American Law Schools (AALS) held a panel discussion on Contracts' curricular reform in 1966, Lawrence Friedman and Stewart Macaulay—leading scholars in both Contracts and the law and society movement—sounded the alarm: Contract law, research, and teaching were stuck in the past.⁸⁸ According to Friedman and Macaulay, Contracts had become isolated from “socially important problems,” including a “range of consumer problems” as well as the “exploitation of the poor by certain kinds of businessmen.”⁸⁹ Other panelists agreed with Macaulay and Friedman's diagnosis.⁹⁰ In the words of one commentator, instructors were dealing with a “whole change in the basic social and economic context . . . that form[ed] a background study of our contract law.”⁹¹

One of the biggest of these contextual changes was the increased cultural awareness of consumer problems. As historian Lizabeth Cohen and others have demonstrated, the emergence of mass consumption after World War II reshaped American culture, politics, and political economy.⁹² Consumerism and citizenship grew increasingly intertwined as mass consumption became a way of bolstering the postwar

⁸⁸ The roundtable was held as part of the annual AALS meeting, the theme of which was “Legal Education for a Free Society: Our Collective Responsibility.” See Eugene F. Mooney, *Preface*, 20 J. LEGAL EDUC. 379, 380 (1968). In the preface to the *Journal of Legal Education* issue which published many of the conference proceedings, Eugene Mooney wrote of a “ferment of change in legal education” owing in part to the “challenges presented the legal institutions of this country by the Detroit riot and political assassination, the Poor Peoples March on Washington and the Columbia University student disorder, the Pueblo seizure and the War in Vietnam.” *Id.* at 381–82; see also Quintin Johnstone, *Roundtable on Curricular Reform: Introduction*, 20 J. LEGAL EDUC. 387, 387 (1968) (writing that law schools “increasingly see themselves as independent centers of learning charged with responsibility for objective inquiry into a broad range of social problems”).

All five panelists—Lawrence Friedman, Stewart Macaulay, Ron Speidel, Albert Mueller, and Lon Fuller—were leading Contracts scholars, and by 1976, all had created their own casebooks or teaching materials. Macaulay and Friedman's materials were never widely circulated, however. See Mark H. Van Pelt, *Law, Private Governance and Continuing Relationships: Introduction*, 1985 WIS. L. REV. 461, 461 (“The lead author of these [Wisconsin Contract] materials, which had the air of being an underground publication, was Stewart Macaulay.”).

⁸⁹ Stewart Macaulay, *Contract Law and Contract Research (Part II)*, 20 J. LEGAL EDUC. 460, 466 (1968). Macaulay's remarks were later revised and combined with Lawrence Friedman's and published with the title *Contract Law and Contract Teaching: Past, Present, and Future*. Friedman & Macaulay, *supra* note 71, at 818–19.

⁹⁰ For his part, Addison Mueller, who spoke after Friedman and Macaulay stated that he had “long been convinced that men like Macaulay and Friedman and Speidel have the right approach to the law of contract.” Addison Mueller, *Contract Remedies, Business Facts and Legal Fantasy*, 20 J. LEGAL EDUC. 469, 469 (1968).

⁹¹ Speidel, *supra* note 75, at 476.

⁹² See, e.g., LIZABETH COHEN, *A CONSUMERS' REPUBLIC* (2003).

economy and reaffirming democratic values in the midst of the Cold War.⁹³ Between 1946 and 1970, the country's gross domestic product quadrupled.⁹⁴ Similarly, the consumer credit market exploded.⁹⁵

It was not until the 1960s, however, when the "third wave" of this consumer movement took place, that concern about consumers' safety and rights become widespread.⁹⁶ President Kennedy's 1962 speech to Congress about "Protecting the Consumer Interest" is emblematic of the spirit of this '60s-era consumer movement. "Consumers, by definition, include us all," Kennedy began.⁹⁷ Yet, as Kennedy pointed out, consumers were rarely given the information necessary to make informed choices. As a result,

The consumer typically cannot know whether drug preparations meet minimum standards of safety, quality, and efficacy. He usually does not know how much he pays for consumer credit; whether one prepared food has more nutritional value than another; whether the performance of a product will in fact meet his needs; or whether the "large economy size" is really a bargain.⁹⁸

The solution, according to Kennedy, was greater "legislative and administrative action" in order to protect consumers' rights to safety, information, choice, and being heard.⁹⁹

As Kennedy's speech intimates, the figure of the "victimized consumer" played a key role in the era's consumer advocacy.¹⁰⁰ To be sure, there had been concern for consumer safety and rights prior to the 1960s. It was not until Ralph Nader's 1965 book, *Unsafe at Any Speed*,

⁹³ *Id.* at 127 ("Faith in a mass consumption postwar economy . . . stood for an elaborate, integrated ideal of economic abundance and democratic political freedom, both equitably distributed, that became almost a national civil religion from the late 1940s into the 1970s.").

⁹⁴ *See id.* at 121 ("National output of goods and services doubled between 1946 and 1956, and would double again by 1970, with private consumption expenditures holding steady at two-thirds of gross national product . . .").

⁹⁵ *Id.* at 123–24; *see also* LOUIS HYMAN, *DEBTOR NATION: THE HISTORY OF AMERICA IN RED INK* 148–56 (2011) (describing the pivotal role of department stores in the consumer credit market); Christine Zumello, *The "Everything Card" and Consumer Credit in the United States in the 1960s*, 85 BUS. HIST. REV. 551, 555 (2011) (explaining that between 1956 and 1967 consumer debt increased by 133% and installment credit increased by 146%).

⁹⁶ *See* COHEN, *supra* note 92, at 345 (noting the launch of "a third wave of the consumer movement in the twentieth century" in 1962).

⁹⁷ Special Message to the Congress on Protecting the Consumer Interest, 1962 PUB. PAPERS 235, 235 (Mar. 15, 1962). The speech would later come to be known as having put forward a "Consumer Bill of Rights," though Kennedy does not actually use that phrase in the speech itself. *See, e.g.*, COHEN, *supra* note 92, at 352.

⁹⁸ *Id.* at 236.

⁹⁹ *Id.*

¹⁰⁰ COHEN, *supra* note 92, at 345–46.

however, that there was the “spark needed to turn a hundred small consumer fires into a major conflagration for greater legislative and regulatory protection.”¹⁰¹ Nader’s book revealed the extent to which car manufacturers were willing to trade consumer safety for company profits. Populated with countless examples of disability and death caused by “designed-in dangers,” *Unsafe at Any Speed* put consumers’ stories on center stage.¹⁰² The victimized consumer became the “new protagonist” in the consumer movement.¹⁰³

In many ways, Ora Lee Williams was a victimized consumer par excellence. She was a mother taken advantage of by a pushy door-to-door salesman. Like the fictional consumer that Kennedy described, Williams did not know exactly how much she was paying for the credit that Walker-Thomas had extended. Gender bias would have made it even easier for those reading the case to imagine a woman succumbing to hard-nosed sales tactics, as compared to a male counterpart. Moreover, several of the items that Williams was leasing from Walker-Thomas Furniture, such as her washing machine and stereo, were products that had come to symbolize consumption and prosperity in the post-war era.¹⁰⁴

The fact that Williams was also poor only made her a more potent symbol of the victimized consumer. The mid-twentieth century consumer protection movement had brought a new level of attention to the plight of poor consumers.¹⁰⁵ Studies of poor consumers began

¹⁰¹ *Id.* at 354–55.

¹⁰² See, e.g., RALPH NADER, *UNSAFE AT ANY SPEED: THE DESIGNED-IN DANGERS OF THE AMERICAN AUTOMOBILE* 2, 34, 182–83 (1965) (describing specific examples of consumer automobile accidents).

¹⁰³ COHEN, *supra* note 92, at 346.

¹⁰⁴ See *id.* at 147, 293 (explaining how “durables of cars, houses, and appliances” became “critical goods” in “the mass consumption economy of the postwar era” and how marketers stimulated consumption). Washing machines took on an added layer of symbolism after the 1959 “kitchen debate” between then-Vice President Nixon and Soviet Premier Khrushchev during which Nixon “extoll[ed] American freedom of choice,” asking “Isn’t it better to talk about the relative merits of washing machines than the relative strength of rockets? . . . Isn’t this the kind of competition you want?” THOMAS HINE, *POPULUXE* 130 (1986).

¹⁰⁵ Indeed, there is ample evidence to suggest that Ora Lee Williams was the kind of compelling consumer victim whose circumstances influenced consumer protection legislation. As Anne Fleming described, the case “catalyzed a process of local legislative reform.” Fleming, *supra* note 11, at 1424. The D.C. Board of Commissioners had a committee created to draft legislation responsive to the “factual situation in the *Williams* case.” *Id.* (quoting a committee member). Subsequently, Williams and her case were invoked by name several times in the Senate debates on implementing consumer protection legislation in D.C. *Id.* at 1424–25.

Advocates outside of D.C. took interest in the case as well. Just one month after Judge Wright’s decision was published, a law student organizing a conference on “Consumer Credit and the Poor” requested a copy of the case file from the D.C. Circuit. The letter is dated September 10, 1965, and the case was decided on August 11. According to the letter, the

in earnest in the early 1960s. These studies cast the "low-income consumer" as the ultimate consumer victim.¹⁰⁶

III

WILLIAMS AND THE LOW-INCOME CONSUMER

Several key texts helped create recognizable cultural scripts about low-income consumers. Written by journalists, social scientists, and government commissions alike, these reports on the plight of poor consumers crafted a narrative about poverty and purchasing wherein poor people were uniquely vulnerable to the harms of the marketplace.¹⁰⁷ These reports identified several key challenges, including inflated prices, exploitative credit practices, a captive market, and low-income consumers' general ignorance of their legal rights.¹⁰⁸ To be sure, not all of these problems were unique to poor people, but as the myriad books, articles, and reports of the era demonstrated, poor consumers experienced these problems acutely.¹⁰⁹

conference was "devoted to the development of new legal remedies for the debtor." As such, the organizers were "extremely invested in the decision of your court in *Williams v. Walker-Thomas Furniture Co.*" Letter from Barbara J. Hillman, Conf. Plan. Comm., Univ. of Chicago L. Sch., to Clerk of the Ct., U.S. Ct. of Appeals, D.C. Cir. (Sept. 10, 1965) (on file with the New York University Law Review).

¹⁰⁶ See COHEN, *supra* note 92, at 355 (describing the emergence in the 1960s of studies about the "low-income consumer" that "exposed the worst kinds of consumer exploitation").

¹⁰⁷ See, e.g., DAVID CAPLOVITZ, *THE POOR PAY MORE* (1967); WARREN G. MAGNUSON & JEAN CARPER, *THE DARK SIDE OF THE MARKETPLACE: THE PLIGHT OF THE AMERICAN CONSUMER* (1968); *THE GHETTO MARKETPLACE* (Frederick D. Sturdivant ed., 1969).

The following government reports and hearings focused primarily on the challenges faced by low-income consumers: INSTALLMENT CREDIT REPORT, *supra* note 53; THE PRESIDENT'S COMM. ON CONSUMER INTS., *The Low Income Consumer*, in A SUMMARY OF ACTIVITIES 1964-1967, at 17-20 (1967); *Consumer Credit and the Poor: Hearing on the Federal Trade Commission Report on Credit Practices Before the Subcomm. on Fin. Insts. of the S. Comm. on Banking & Currency*, 90th Cong. (1968) [hereinafter *Consumer Credit and the Poor*].

For examples of the journalistic coverage of low-income consumers, see *Gouging the Poor*, N.Y. TIMES, Aug. 13, 1966, at 41; Will Lissner, *Harlem Furniture Shops Scored by Business Bureau as Gougers*, N.Y. TIMES, Dec. 14, 1968, at 36; *Miss Furness Links Riots to Swindling of the Poor*, N.Y. TIMES, Apr. 19, 1968, at 16; John D. Morris, *Merchants Found Deceiving the Poor*, N.Y. TIMES, July 9, 1968, at 19.

¹⁰⁸ See George S. Day & David A. Aaker, *A Guide to Consumerism*, J. MKTG., July 1970, at 12, 16. According to Day and Aaker, low-income consumers were the least likely to comparison shop, the least informed of their "post-sale" rights, and the most likely to be exploited. *Id.*

¹⁰⁹ David Caplovitz's *The Poor Pay More* is likely one of the most recognizable of these works. CAPLOVITZ, *supra* note 107. Michael Harrington's *The Other America* also figured prominently in the national conversation about poverty. MICHAEL HARRINGTON, *THE OTHER AMERICA: POVERTY IN THE UNITED STATES* (1962).

Caplovitz's work, however, was more focused on the consumer aspect of poverty. See CAPLOVITZ, *supra* note 107, at xv (explaining that his research on the poor as consumers "provides some balance to the view set forth by Michael Harrington in *The Other America*. . .

Importantly, even though these works focused primarily on class, race was ever-present. This was largely because the majority of research and reports that purported to (re)discover poverty in the 1960s were primarily focused on urban poverty.¹¹⁰ And, as numerous historians of the era have written, by the mid-1960s urban poverty was racialized as Black.¹¹¹ It was common knowledge that urban poverty meant ghettos and that ghettos meant racial minorities.¹¹² Or to put it in the parlance of the time, “the ghetto marketplace was found to be a milieu in which its participants . . . were often victimized by the interactive forces of economic deprivation and racism.”¹¹³ In this way, both the social scientific literature and the popular press represented the paradigmatic “low-income consumer” as someone who resided in an urban “ghetto,” and, more often than not, was Black.¹¹⁴

[H]is poor were very different from the rest of us. To see the poor as consumers is to see them as part of the main stream of America . . .”).

¹¹⁰ See, e.g., CAPLOVITZ, *supra* note 107, at 1 (explaining that the book “is about urban poor people”).

¹¹¹ See, e.g., MICHAEL B. KATZ, *THE UNDESERVING POOR: AMERICA’S ENDURING CONFRONTATION WITH POVERTY* 17 (2d ed. 2013) (explaining that, after 1964, “[p]overty increasingly appeared an urban problem most seriously afflicting [B]lack, even though most poor people were white.”); SUSAN D. GREENBAUM, *BLAMING THE POOR: THE LONG SHADOW OF THE MOYNIHAN REPORT ON CRUEL IMAGES ABOUT POVERTY* 1–2 (2015) (describing how Moynihan’s 1965 Report, *see infra* note 203, linked poverty to stereotypes about Black families); ELIZABETH HINTON, *FROM THE WAR ON POVERTY TO THE WAR ON CRIME* 42 (2016) (“[T]he intellectual foundations of national antidelinquency programs . . . viewed [B]lack cultural pathology as the driving force of inequality.”); KHALIL GIBRAN MUHAMMAD, *THE CONDEMNATION OF BLACKNESS: RACE, CRIME, AND THE MAKING OF MODERN URBAN AMERICA* 35–87 (2010) (describing how the links between Blackness and urban poverty developed in an earlier era); ALICE O’CONNOR, *POVERTY KNOWLEDGE: SOCIAL SCIENCE, SOCIAL POLICY, AND THE POOR IN TWENTIETH-CENTURY U.S. HISTORY* 16 (2001) (noting the development of a “racialized nature of poverty” involving, by the 1960s, “an unrelenting, heavily psychologized imagery of [B]lack cultural deviance and pathology”).

A good example of this phenomenon can be found in Frederick Sturdivant’s edited collection *The Ghetto Marketplace*, which includes several chapters that focus on Black urban poverty. *THE GHETTO MARKETPLACE*, *supra* note 107, at 108–17, 129–57, 171–74, 257–68. This is true, even though Sturdivant explains in the preface and introduction that he used “ghetto” as a race-neutral term, and “nearly 60 per cent of the nation’s urban poor are white.” *Id.* at ix, 7.

¹¹² See MUHAMMAD, *supra* note 111, at 7.

¹¹³ Frederick D. Sturdivant & A. Benton Cocanougher, *Low-Income Consumers in Non-Urban Marketplaces*, 55 Soc. Sci. Q. 131, 131 (1974). According to the authors, even though poverty is “widespread” in small towns and rural areas, “it has been largely overlooked in spite of its relationship to urban problems.” *Id.* at 131–32.

¹¹⁴ See *id.* at 136 (“[M]ost previous studies dealing with problems of the poor in the marketplace have concentrated on the [B]lack experience.”); *see also Consumer Credit and the Poor*, *supra* note 107, at 1 (beginning with a statement from Senator William Proxmire conflating “the poor” and “ghetto residents,” and stating that the “problem of obtaining adequate consumer credit in the ghettos . . . is becoming one of national concern. . . . I have long been concerned with the special credit problems of the poor.”); KATZ, *supra* note 111,

If the low-income consumer had an archetype in Contracts casebooks during this period, she came in the form of Ora Lee Williams. *Williams* was a principal case in ten of the thirteen casebooks published between 1966 and 1976.¹¹⁵ And in fact, one of the three casebooks that did not include *Williams* as a principal case—John Edward Murray’s 1969 *Cases and Materials on Contracts*—did include *Williams* as a principal case in its second edition, which was published in 1976.¹¹⁶

Two things are notable about these inclusions. First are the ways in which the case’s framings in casebooks engage with scripts about poor consumers’ subjection to a culture of (urban) poverty.¹¹⁷ Second is the fact that in three of the casebooks, *Williams* is used as a springboard for conversations about ghetto merchants, the ghetto marketplace, and occasionally the social problems of “the ghetto” more broadly.¹¹⁸ Urban poverty and “the ghetto” were racialized subjects in the 1960s and ’70s.¹¹⁹ Because of this, rhetoric about the culture of poverty and urban ghettos linked *Williams* to contemporaneous ideas about Blackness. As the pages to follow will demonstrate, casebooks did so in ways that further bolstered the racialization to come.

A. *Contracts in Culture of Poverty*

For as long as America has had poor people, it has had moralizing narratives that dictated the deservingness of those living in poverty.¹²⁰ The difference, however, in the 1960s cultural scripts about poverty was the idea that there existed a “culture of poverty.”¹²¹

The culture of poverty thesis posited that the material conditions of poverty created a distinct culture, which would continue on in a

at 17 (explaining that the shift to urban, Black poverty occurred in the mid-1960s, due to both the civil rights movement and the urban uprisings).

¹¹⁵ For the list of the ten casebooks that included *Williams*, see *supra* note 78. The second most common unconscionability case was *Jones v. Star Credit Corp.*, 298 N.Y.S.2d 264 (Sup. Ct. 1969), followed by *Frostifresh Corp. v. Reynoso*, 274 N.Y.S.2d 757 (Dist. Ct. 1966), *rev’d on other grounds*, 281 N.Y.S.2d 964 (App. Term 1967)—neither had the staying power of *Williams*, however.

¹¹⁶ Compare JOHN EDWARD MURRAY, JR., *CASES AND MATERIALS ON CONTRACTS* 191 (1969) (citing to *Williams* in a note without discussing the case), with MURRAY 1976, *supra* note 78, at 614–19 (excerpting *Williams* as a principal case).

¹¹⁷ See *infra* Section III.B.1.

¹¹⁸ See *infra* Section III.B.2.

¹¹⁹ See *supra* note 114 and accompanying text.

¹²⁰ See KATZ, *supra* note 111, at 1–49.

¹²¹ GREENBAUM, *supra* note 111, at 20–21; KATZ, *supra* note 111, at 9–17; O’CONNOR, *supra* note 111, at 117–23. The phrase was first used by anthropologist Oscar Lewis. GREENBAUM, *supra* note 111, at 20–21.

“vicious circle” unless an outside force intervened.¹²² This idea—that the poor possessed a distinct and self-perpetuating culture—flourished in the decades after World War II, ultimately getting widely taken up by both researchers and liberal reformers in the early to mid-1960s.¹²³ Michael Harrington’s *The Other America* played a large part in securing the culture of poverty’s place in the public sphere.¹²⁴ As Harrington wrote, the poor were “a different kind of people. They think and feel differently.”¹²⁵

Culture of poverty theories emphasized the behavioral and psychological differences of poor people, attributing these differences to an inherited culture. In so doing, these theories kept the representational focus on individual poor people and family units, rather than the political and economic structures that engendered their poverty. As Alice O’Connor and other historians of the era have documented, this way of thinking about poverty would become an animating force of the Johnson administration’s War on Poverty.¹²⁶

Envisaged by President Kennedy, and later initiated by President Johnson in 1964, the War on Poverty sought to take a “comprehensive” approach to the problem of poverty in the United States.¹²⁷ From the outset, those in charge of the program recognized that protecting and educating low-income consumers was “essential to the realization of the goals of the War on Poverty.”¹²⁸ To that end, the administrative agency in charge of the War on Poverty (the Office of Economic Opportunity) and the President’s Committee on Consumer Interests jointly held a conference on “consumer action and the war on poverty,” in August of 1965.¹²⁹

¹²² O’CONNOR, *supra* note 111, at 123.

¹²³ *See id.* at 121–23.

¹²⁴ *See* CAPLOVITZ, *supra* note 107, at xv (describing how “Harrington’s best seller shocked America”).

¹²⁵ HARRINGTON, *supra* note 109, at 138.

¹²⁶ *See* O’CONNOR, *supra* note 111, at 123. The culture of poverty thesis was, at its heart, “an argument for reform,” championed by liberal and leftist reformers. *Id.* at 122.

¹²⁷ KATZ, *supra* note 111, at 102–03. For more on the history of the War on Poverty, see generally, HINTON, *supra* note 111 (overviewing the War on Poverty and its connections to the War on Crime); O’CONNOR, *supra* note 111 (discussing shifts in thinking about poverty from the Progressive Era through the end of the twentieth century, including the War on Poverty).

¹²⁸ OFF. OF ECON. OPPORTUNITY CMTY. ACTION PROGRAM & PRESIDENT’S COMM. ON CONSUMER INTS., CONSUMER ACTION AND THE WAR ON POVERTY: EXCERPTS FROM CONFERENCE PROCEEDINGS 1 (1965) [hereinafter CONSUMER ACTION]. The Office of Economic Opportunity (OEO) was a federal agency that had been created to implement the War on Poverty programs. KATZ, *supra* note 111, at 103.

¹²⁹ *See* CONSUMER ACTION, *supra* note 128 (providing excerpts from the proceedings of this conference). In her closing remarks, the Committee Chair Esther Peterson stated that “the poor are not just rich people temporarily out of money. Poverty is, instead,

David Caplovitz, sociologist and author of *The Poor Pay More*, was the keynote speaker.¹³⁰

1. *The Poor Pay More*

Caplovitz's *The Poor Pay More* defined what the culture of poverty thesis looked like in the context of mass consumption.¹³¹ Originally published in 1963, *The Poor Pay More* was a sociological study of the "consumer practices of low-income families" in three different New York City communities.¹³² The book revealed the enormous structural challenges, disproportionately high prices,¹³³ and rampant marketplace exploitation faced by low-income city residents.¹³⁴ And as its title suggested, Caplovitz's work demonstrated that poor consumers were often paying more money for lower-quality items than their more affluent counterparts.¹³⁵

Caplovitz presented a detailed portrait, with multiple complex reasons for why the poor paid more. Chief among these reasons were: 1) the high costs associated with setting up shop in poor neighborhoods,¹³⁶ 2) opportunistic and deceptive merchants who

a concerned way of life, and a fractured world populated almost entirely by people broken or being broken." Peterson continued, "[M]any are caught and held in poverty and gradually grow so accustomed to it that it is an uncomfortable business for them to break away." *Id.* at 63 (quoting from a "person who had been working with low-income people in Detroit").

¹³⁰ See *id.* at 5.

¹³¹ It is worth noting that Caplovitz's mobilization of the culture of poverty thesis could accurately be described as culture-lite, especially as compared to the work of someone like Michael Harrington. In his preface to the book's 1967 edition, Caplovitz explicitly distinguished his work from Michael Harrington's. Whereas Harrington's "poor were very different from the rest of us," Caplovitz sought to see the poor as "part of the main stream of America." CAPLOVITZ, *supra* note 107, at xv.

Nevertheless, a cultural throughline can still be found in Caplovitz's efforts to explain the behavior of low-income consumers. See, e.g., *id.* at 73–75 ("The practice of buying from peddlers appears to be more closely related to cultural differences . . . rather than to economic differences. . . . Indeed, some families in our sample had 'inherited' peddlers from their parents . . ."). But see *id.* at xxvi ("[T]here is one respect in which I also was less than just to the poor consumer. I greatly regret the use of the word 'apathy' . . . [it] implies 'not caring,' and this is not an accurate description of the response of the people we interviewed to their consumer problems.").

¹³² CAPLOVITZ, *supra* note 107, at title page & copyright page.

¹³³ See, e.g., *id.* at 19 ("[Merchants] can sell inferior goods at high prices because, in their own words, the customers are not 'price and quality conscious.'").

¹³⁴ See, e.g., *id.* at 141–54 (describing various sales practices that exploited low-income consumers).

¹³⁵ *Id.* at 81 ("[L]ow-income families . . . pay much more for a given quality of durables than do consumers in higher income brackets. . . . [T]hey obtain considerably less value for their dollar.").

¹³⁶ See *id.* at 15–20 (describing the risks and costs of "[m]erchandising in a [l]ow-[i]ncome [a]rea").

sought to take advantage of a relatively captive market,¹³⁷ and 3) the cultural and psychological characteristics distinct to low-income consumers themselves.¹³⁸ It is in this last characteristic where the culture of poverty thesis was most evident. As Caplovitz wrote in the introduction to *The Poor Pay More*,

[T]hese consumers are for the most part products of a comparatively traditional culture. Their place of origin, their race and ethnicity, and their level of education all suggest that their early training was not geared to life in highly urbanized and bureaucratic society. This fact underlies much of their behavior as consumers.¹³⁹

In other words, poor consumers were ill-suited to the practices of consumption found in modern life. Their desire for a more personalized consumer-merchant relationship—common in a “traditionalistic” culture—made low-income consumers vulnerable to the less savory tactics of merchants and door-to-door salesmen who were willing to capitalize on this preference.¹⁴⁰ Moreover, Caplovitz found that because of racial, ethnic, language, and other cultural differences, many poor consumers felt uncomfortable and/or unwelcome in the more mainstream, downtown stores frequented by the middle-class.¹⁴¹ According to Caplovitz, low-income consumers were up against a “commercial jungle in which exploitation and fraud are the norm rather than the exception.”¹⁴²

2. *Installment Contracts and Door-to-Door Sales*

Installment sales contracts and door-to-door sales were two of the more harmful features of the “jungle confronting the impoverished consumer.”¹⁴³ The story of “two women on welfare” living in New York City, which Caplovitz told in his keynote speech, illustrates many of the problems with these practices.¹⁴⁴ A door-to-door

¹³⁷ See *id.* at 18–31, 137–54 (overviewing the “[s]hady [s]ales [p]ractices” of merchants to low-income consumers).

¹³⁸ See *id.* at 170–78 (examining why “most low-income families are ill-prepared to cope with their consumer problems”).

¹³⁹ *Id.* at 11.

¹⁴⁰ *Id.* at 181; see also *id.* at 191 (“Poorly educated, intimidated by complex urban society, bombarded by ‘bait advertising,’ they are no match for high-pressure salesmen urging heavy burdens of debt upon them.”).

¹⁴¹ See *id.* at 181 (“[S]ome of these consumers, because of their manners, dress, and language problems, find themselves greeted with suspicion rather than with carefully contrived courtesy.”).

¹⁴² CONSUMER ACTION, *supra* note 128, at 7 (Caplovitz’s keynote address).

¹⁴³ *Id.* at 11.

¹⁴⁴ *Id.* at 9.

salesman claiming that his firm “specialized in selling to welfare families” convinced each woman to buy a television for \$200 at ten dollars every two weeks.¹⁴⁵ When the products arrived, however, hidden fees (including credit charges) put the cost of the sets at \$600. Both women made regular payments for months before the company ultimately found reasons to repossess the products. In one case, the woman had stopped making payments after the company refused to repair it (though repairs had been guaranteed).¹⁴⁶ In the other, the woman paid what she believed to be the full price of the set only to later discover that her final receipt, which indicated that she had paid in full, was in fact meaningless.¹⁴⁷

It is not hard to see how these two stories resonate with the facts of *Williams*.¹⁴⁸ In all three situations, a woman bought an expensive “luxury” item after transacting with a door-to-door salesman. Each of the three women initially made regular payments in good faith before the company found her in default. All three women were receiving government assistance, and therefore had fixed, limited incomes. Each of the women could also be characterized as an “unsophisticated” consumer, insofar as they signed contracts that they did not understand. The two women in Caplovitz’s story misunderstood the contract’s price terms, whereas for *Williams* it was the contract’s pro-rata clause.¹⁴⁹

Moreover, the women purchased the items using installment contracts, which contributed both to the items’ high prices, as well as to the women’s confusion surrounding the terms of their respective contracts. Installment contracts typically led to the consumer paying

¹⁴⁵ *Id.* at 10.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* at 10–11.

¹⁴⁸ Caplovitz would go on to refer to the facts of *Williams* in his preface to the 1967 edition of *The Poor Pay More*. CAPLOVITZ, *supra* note 107, at xvii n.4; *see also* Fleming, *supra* note 11, at 1422 n.248 (identifying this reference as *Williams*). In a weird coincidence of history, *Williams* was decided one day before the start of the conference at which Caplovitz was speaking. *See* CONSUMER ACTION, *supra* note 128 (listing August 12, 1965 as the first day of the conference); *Williams v. Walker-Thomas Furniture Co.*, 350 F.2d 445 (D.C. Cir. 1965) (decided on August 11, 1965).

¹⁴⁹ *See, e.g.*, Craig Horowitz, *Reviving the Law of Substantive Unconscionability: Applying the Implied Covenant of Good Faith and Fair Dealing to Excessively Priced Consumer Credit Contracts*, 33 UCLA L. REV. 940, 945 (1986) (“*Williams*, a poor, unsophisticated consumer, simply did not understand the provision.”).

As Dylan Penningroth has written, discourse about Ora Lee *Williams*’s lack of consumer sophistication (and by extension, low-income consumers, generally) dovetailed with the pre-existing trope of the “ignorant negro,” that existed in contract doctrine in the late nineteenth and early twentieth centuries. *See* Penningroth, *supra* note 13, at 1263.

significantly more for the item in question.¹⁵⁰ The stereo set that Ora Lee Williams purchased cost \$514.95¹⁵¹—equivalent to approximately \$5,300 today¹⁵²—undoubtedly more than what it was worth. For the women in Caplovitz’s story, hidden fees tripled the cost of the television sets.¹⁵³ The ability of installment contracts to mask a purchase’s true price was one of the reasons that many consumers, advocates, and scholars considered them exploitative.¹⁵⁴

In addition to their ability to obfuscate the true price of a product, installment sales contracts concerned scholars and advocates like Caplovitz because of the broader problem of “easy credit.” “Easy credit” generally referred to consumer credit that had been awarded without regard to a customer’s credit risk.¹⁵⁵ It was also central to the business model of merchants that catered to low-income consumers.¹⁵⁶ At stores like Walker-Thomas, easy credit was also required credit. Store policy dictated that any purchase over one hundred dollars be made on credit.¹⁵⁷ Easy credit and installment contracts made it easy for merchants to overcharge for products. In Caplovitz’s account, however, low-income consumers were also less sophisticated and thus more “susceptible to the appeal of easy credit.”¹⁵⁸

In particular, “housewives” who were transacting with door-to-door salesmen were especially vulnerable to easy credit schemes

¹⁵⁰ See *INSTALLMENT CREDIT REPORT*, *supra* note 53, at xii–xiii (describing charges on installment contracts and higher prices for items purchased on installment credit in the 1960s Washington, D.C. furniture and appliance market).

¹⁵¹ See *Williams*, 350 F.2d at 447. This was likely well above the general market value for the stereo. See, e.g., *INSTALLMENT CREDIT REPORT*, *supra* note 53, at 47 (explaining that the average price range for stereos at low-income retailers was \$340 to \$505, whereas at general market retailers, three-quarters of stereos were sold for under \$200, and in only two instances out of fifty was a store’s most popular stereo model priced over \$400).

¹⁵² See *CPI Inflation Calculator*, BUREAU OF LAB. STATS., <https://data.bls.gov/cgi-bin/cpicalc.pl?cost1=514.95&year1=196401&year2=202504> [<https://perma.cc/9N48-RVLG>] (calculating that \$514.95 in January 1964 has the same buying power as \$5,346.06 in April 2025).

¹⁵³ *CONSUMER ACTION*, *supra* note 128, at 10.

¹⁵⁴ See, e.g., *INSTALLMENT CREDIT REPORT*, *supra* note 53, at xii (lamenting the “real cost of this ‘easy credit’”); *CONSUMER ACTION*, *supra* note 128, at 46 (noting instances of furniture sold on credit at a 400% markup, and stating “[t]he credit system is generally legal but also exploitative in nature”); *KERNER COMMISSION REPORT*, *supra* note 53, at 139 (finding that “exploitative practices flourish” in installment buying situations).

¹⁵⁵ See, e.g., *INSTALLMENT CREDIT REPORT*, *supra* note 53, at xiii (describing easy credit as “credit to consumers who do not seek or are unable to obtain credit from regular . . . stores”).

¹⁵⁶ See, e.g., *FLEMING*, *supra* note 45, at 159–60 (referencing a consumer advocate who opined that half of sellers that sold goods on credit would immediately go out of business if they could not collect high default charges).

¹⁵⁷ See *supra* note 60 and accompanying text (describing store policy).

¹⁵⁸ *CAPLOVITZ*, *supra* note 107, at 165.

according to Caplovitz. It is in these discussions of “housewives” and their consumption habits that gender’s role in the plight of low-income consumers becomes most apparent.¹⁵⁹ Caplovitz found that it tended to be women, rather than men, doing the purchasing in the context of door-to-door sales.¹⁶⁰ “Peddlers” (Caplovitz’s term for door-to-door salesmen) tended to visit when husbands were not home, and women were therefore freed from the “usual constraints upon consumption.”¹⁶¹ In this account, without the moderating influence of a husband’s presence, women were also more likely to engage in impulse buying.¹⁶² Thus, not only were poor women at risk of consumer exploitation by virtue of the traditionalistic culture common among low-income consumers, but as women they were also uniquely vulnerable to the unscrupulous schemes of door-to-door salesmen.

Of course, *The Poor Pay More* was not the only text to offer cultural explanations for the plight of low-income consumers. Oscar Lewis—the anthropologist who first introduced the phrase “culture of poverty”¹⁶³—delineated said culture into seventy different traits, many of which could easily worsen a poor consumer’s situation.¹⁶⁴ For example, some of these traits included “present-time orientation, lack of impulse control . . . and the inevitable inability to defer gratification.”¹⁶⁵ If one believed the culture of poverty theory, it was likely easy to imagine how such qualities could exacerbate financial problems and make one even more vulnerable to consumer exploitation.¹⁶⁶

¹⁵⁹ Throughout the book, Caplovitz discusses women consumers as well as “housewives.” By contrast, any references to men are merchants and salesmen. *Compare id.* at 54 (describing where “women in these households tend to shop”), *with id.* at 59 (describing peddlers as “men [who] use installment contracts and depend upon legal controls to insure payments”).

This is not to say that men are entirely absent from the households in Caplovitz’s study. He does reference “husbands” when describing the identity of some of his interviewees. *E.g., id.* at 61, 168, 172. Nevertheless, the only men who get discussed as a group are merchants and salesmen.

¹⁶⁰ *Id.* at 66 (“All this assumes that the wife rather than the husband usually buys from the peddler. There is evidence to support this.”). Caplovitz defines peddlers as “door-to-door credit merchants.” *Id.* at 59.

¹⁶¹ *Id.* at 66.

¹⁶² *See id.*

¹⁶³ GREENBAUM, *supra* note 111, at 20–21.

¹⁶⁴ *See* O’CONNOR, *supra* note 111, at 117 (noting that Lewis’s list of traits “over the years expanded from thirty-six to seventy”).

¹⁶⁵ *Id.* at 117–18; *see also* Oscar Lewis, *The Culture of Poverty*, in ON UNDERSTANDING POVERTY 187, 188 (Daniel P. Moynihan ed., 1968) (“[The culture of poverty] can be described in terms of some seventy interrelated social, economic, and psychological traits.”).

¹⁶⁶ Perhaps unsurprisingly then, there is evidence that Lewis’s theories directly influenced Daniel Patrick Moynihan, who would author several influential reports as part of the War on Poverty. GREENBAUM, *supra* note 111, at 22 (“Lewis knew Moynihan personally, and they directly exchanged ideas and written work. . . . Moynihan reportedly said, ‘I love your culture of poverty concept.’”).

Relative to other culture of poverty scholarship, Caplovitz's research was, however, uniquely influential on studies of low-income consumers as well as in discussions of consumer protection. As I will discuss in greater depth in the following Sections, many Contracts casebooks in the 1960s, '70s, and into the '80s excerpted Caplovitz's work in the casebooks' coverage of unconscionability and/or consumer protection. And even for those that did not, the idea (and phrase) that "the poor pay more" was an idea that the majority of casebook authors grappled with in their framing of *Williams v. Walker-Thomas*.

B. The Low-Income Consumer in Casebooks

"The existing schemes [to regulate consumer credit] have often been criticized as constituting middle class solutions to what has increasingly become lower class problems."

—*Contracts: Cases and Materials*, 1970¹⁶⁷

As discussed above, by the mid-to-late 1960s recognizable scripts about low-income consumers had emerged in consumer advocacy literature, poverty research, and legal scholarship. The general shape of the low-income consumer script looked something like the following:

She was often a welfare recipient, and her traditionalistic upbringing made her particularly vulnerable to the personalized, yet deceptive, practices of "ghetto merchants" especially when they came in the form of door-to-door sales or "easy credit." She was not necessarily Black, but it was unlikely that she was white either. The purchases—sometimes ill-advised, sometimes necessary, and sometimes both—represented a greater share of her overall income than it would be for middle-class consumers, thus making her less able to absorb the economic loss if and when the transaction went south.

The low-income consumer script could be moralized in different ways, depending on which beats were emphasized. In some versions, the low-income consumer was a victim of circumstance, captive in a hostile urban marketplace, and subjected to the exploitation and prejudices that such economic and geographic immobility entailed. In others, she had more agency and thus was also more blameworthy. This consumer lived too much in the present, was unwilling to comparison shop, and spent money they did not have on luxury items that they did not need.

¹⁶⁷ KESSLER & GILMORE 1970, *supra* note 78, at 473 (internal quotations omitted) (quoting Robert L. Jordan & William D. Warren, *A Proposed Uniform Code for Consumer Credit*, 8 B.C. INDUS. & COM. L. REV. 441, 449 (1967)).

At their core, both of these scripts were updates to well-worn narratives about the deserving and the undeserving poor.¹⁶⁸

1. *Contracts amid a Culture of Poverty*

In the majority of the early casebooks that included *Williams*, the case featured prominently in the casebook's section on unconscionability. Yet, the unconscionability doctrine was still developing in this early era of *Williams*'s inclusion. Compared to other areas of contract doctrine, which tended to be relatively stable, unconscionability was remarkably unsettled. It varied by jurisdiction, the standard outlined by Judge Wright in *Williams* was flexible at best, and there remained an open question about the extent to which the doctrine licensed judicial intervention.¹⁶⁹ Consequently, in unconscionability's early days in the late 1960s through '70s, jurists, scholars, practitioners, and, of course, casebook authors were all trying to make sense of how the developing doctrine was likely to be applied in situations that differed from the one presented in *Williams*.

The unsettled nature of the doctrine also meant that there was a significant degree of variability with respect to how casebooks framed *Williams*'s doctrinal significance. One commonality across nearly all of these early casebooks, however, was that *Williams* was included alongside other consumer credit cases, which more often than not involved low-income consumers. Authorial notes and questions frequently made these linkages quite explicit.¹⁷⁰

¹⁶⁸ See JOEL F. HANDLER & YEHESKEL HASENFELD, *THE MORAL CONSTRUCTION OF POVERTY: WELFARE REFORM IN AMERICA* 7 (1991) (“[H]istorically, poor able-bodied men, particularly from racial and ethnic minorities, have been viewed as extraordinary threats to the economic and social order . . .”); KATZ, *supra* note 111, at 1 (“The undeserving poor have a very old history.”).

¹⁶⁹ Colleen McCullough, *Unconscionability as a Coherent Legal Concept*, 164 U. PA. L. REV. 779, 795–99 (2016) (describing the doctrine's ambiguity in its first fifty years).

¹⁷⁰ See, e.g., MURPHY & SPEIDEL 1970, *supra* note 78, at 539 (explaining the concerns around low-income consumers and credit transactions and that this was “of course, the situation in *Williams*”); FULLER & EISENBERG 1972, *supra* note 78, at 592 (explaining the harms caused by replevin in a consumer credit context, which was “[o]ne of the underlying problems in [*Williams*]”). The epigraph to this Section—about middle class solutions to lower class problems—is another such example. It can be found in the authorial note following *Williams* in Friedrich Kessler and Grant Gilmore's 1970 casebook. Earlier in that same note, the authors explained that “increasing awareness” of the riskiness of consumer credit transactions had led to recent legislative interventions. KESSLER & GILMORE 1970, *supra* note 78, at 473. Kessler and Gilmore made it clear, however, that consumer credit problems were also low-income consumer problems by citing scholars who critiqued the legislation for being insufficiently responsive to the specific challenges of poor consumers. See *id.* at 473–74 (discussing criticism of the legislation as “too complex and complicated” and providing examples of the “not always favorable” scholarship on consumer credit legislation).

In addition to the notes themselves, the companion cases told a story about the kind of litigant most likely to need the unconscionability doctrine: a low-income consumer entering into credit transactions. Professor Charles Knapp's 1976 casebook provides a useful example of what this looked like.¹⁷¹ The first edition of Knapp's now well-known and well-used *Problems in Contract Law* was among those that featured *Williams* as the first case in the casebook's section on unconscionability.¹⁷²

Problems in Contract Law's unconscionability section was relatively substantial, and included six principal cases in addition to *Williams*, all of which involved consumer credit transactions.¹⁷³ Five of these other cases involved installment sales contracts specifically.¹⁷⁴ And three of those five purchasers were contracting with a door-to-door salesman.¹⁷⁵ Many of these cases were featured in the decade's other casebooks as well.¹⁷⁶ In all six cases, one of the underlying problems was the extension of "easy credit."

¹⁷¹ For more on the popularity and success of Knapp's casebook, see, for example, Carol L. Chomsky, *Casebooks and the Future of Contracts Pedagogy*, 66 HASTINGS L.J. 879, 880 (2015) (explaining that many Contracts professors learn Contracts from teaching from the Knapp casebook because of its "widespread adoption"); Harry G. Prince, *Contract Law Present and Future: A Symposium to Honor Professor Charles L. Knapp on Fifty Years of Teaching Law: Foreword*, 66 HASTINGS L.J. 871, 873 (2015) (describing the casebook as "innovative" and influential).

¹⁷² KNAPP 1976, *supra* note 78, at 671; see also MACNEIL 1971, *supra* note 78, at 248; MUELLER & ROSETT 1971, *supra* note 78, at 50; JACKSON 1973, *supra* note 78, at 964.

¹⁷³ KNAPP 1976, *supra* note 78, at 670–706.

¹⁷⁴ Among the items sold in these five other installment sales contracts: two freezers (*Frostifresh* and *Jones*), a television (*Patterson*), a dinette set (*Patterson*), multiple pieces of furniture (*Morris* and *Patterson*), jewelry (*Patterson*), and a set of encyclopedias (*Kugler*).

¹⁷⁵ See *Jones v. Star Credit Corp.*, 298 N.Y.S.2d 264 (Sup. Ct. 1969) (involving a door-to-door salesman and an installment contract); *Capitol Furniture & Appliance Co. v. Morris*, 8 UCC Rep. Serv. 321 (D.C. Ct. Gen. Sess. 1970) (involving an installment contract); *Patterson v. Walker-Thomas Furniture Co.*, 277 A.2d 111 (D.C. 1971) (involving installment contracts); *Frostifresh Corp. v. Reynoso*, 281 N.Y.S.2d 964 (Sup. Ct. App. Term 1967) (involving a door-to-door salesman and an installment contract); *Kugler v. Romain*, 279 A.2d 640 (N.J. 1971) (involving a door-to-door salesman and an installment sales contract). The one case that did not involve door-to-door sales or installment contracts was *American Home Improvement v. MacIver*, which involved home improvements that were financed by a third-party financing corporation. 201 A.2d 886 (N.H. 1964).

¹⁷⁶ See DAWSON & HARVEY 1969, *supra* note 78, at 594 (including *Frostifresh* as a squib case after *Williams*); KESSLER & GILMORE 1970, *supra* note 78, at 466 (including *MacIver*); MURPHY & SPEIDEL 1970, *supra* note 78, at 525 (including *Jones*); MACNEIL 1971, *supra* note 78 at 261, 266 (including *Jones* and *Frostifresh*); MUELLER & ROSETT 1971, *supra* note 78, at 54 (including *Jones*); FARNSWORTH, YOUNG & JONES 1972, *supra* note 78, at 379 (including *Jones*); FULLER & EISENBERG 1972, *supra* note 78, at 609, 611 (including *Morris* and *Jones*); JACKSON 1973, *supra* note 78, at 961, 973, 976, 978, 982 (including *Frostifresh*, *Jones*, *Morris*, *MacIver*, and *Kugler*); MURRAY 1976, *supra* note 78, at 582, 594 (including *Kugler* as a note case and *Jones*).

Perhaps even more narratively resonant with the low-income consumer script than the cases included alongside *Williams*, however, were the authorial notes and questions included after the principal cases. The following example is instructive. The text below is taken from a note that followed *Capitol Furniture & Appliance Co. v. Morris*, a case that involved a poor consumer's installment contract with Capitol Furniture, another D.C. area home goods store. In the note immediately preceding the one below, the casebook asks students to compare the buyer in *Morris* to the buyer in *Williams*. It then asks students about "comparative shopping," and explains:

Numerous studies have indicated that the typical shopper in a low-income urban area is either unable or unwilling to engage in the sort of comparative shopping which supposedly characterizes the ideal self-reliant middle class consumer; typically he buys from one of a number of neighborhood stores . . . for a complex of practical and psychological reasons, not the least of which is the availability of "easy" (-to-get) credit. The classic study is Caplovitz, the Poor Pay More.¹⁷⁷

As presented in the note, low-income consumers are vulnerable to exploitative consumer transactions for personal as well as structural-economic reasons. It is low-income consumers' purported "unwilling[ness]" to engage in comparative shopping as well as the "psychological" appeal of easy credit that leads them to enter into the bad deals seen in the *Morris* and *Williams* cases. Both of these explanations are outgrowths of the cultural and psychological explanations provided by Caplovitz in *The Poor Pay More*. The note even cites Caplovitz directly.

Several of the early *Williams* casebooks include authorial notes like the one above.¹⁷⁸ Others include references to, or excerpts from, Caplovitz's *The Poor Pay More*.¹⁷⁹ Some include notes that encourage

¹⁷⁷ KNAPP 1976, *supra* note 78, at 686. It is also worth noting that this language persisted in later editions. This stands in contrast to the *Maughs* case and its associated note on race and contracts, both of which were included in Knapp's first edition, but omitted from later editions. See Prince, *Contract Law Present and Future*, *supra* note 171, at 872-73 (writing that Professor Knapp thought that he and his co-author Nathan Crystal might have been "too timid" in deleting the case and its note).

¹⁷⁸ See, e.g., MUELLER & ROSETT 1971, *supra* note 78, at 54; FARNSWORTH, YOUNG & JONES 1972, *supra* note 78, at 346.

¹⁷⁹ See, e.g., FULLER & EISENBERG 1972, *supra* note 78, at 594; JACKSON 1973, *supra* note 78, at 995; KNAPP 1976, *supra* note 78, at 686. Two other casebooks reference a different Caplovitz study—of defaulting debtors in Philadelphia. In both instances, the references occurred in the context of *Swarb v. Lennox*, 405 U.S. 191 (1972), a 1972 Supreme Court case which declared Pennsylvania's confession of judgments procedures were in violation of the Fourteenth Amendment. FARNSWORTH, YOUNG & JONES 1972, *supra* note 78, at 353 (explaining that

students to think about whether the reasoning in *Williams* applies (or should apply) to poor consumers more broadly.¹⁸⁰ And in many of these casebooks are echoes of the culture of poverty thesis, which attributes the exploitation of poor consumers to their own behavioral and psychological pathologies.¹⁸¹

To be clear, one can only read but so much authorial intent into case choices and authorial notes. I call attention to these elements not to make arguments about what the authors intended to accomplish. Rather, my interest is in the functional consequences of these decisions.

In the example of Knapp's 1976 casebook, an important consequence of the case selection is that any Contracts professor who chose to teach the unconscionability doctrine with Knapp's materials would necessarily have assigned a case about consumer credit, and more likely than not, consumer credit taken out by a low-income consumer. A casebook's case selection provides a framework for meaning-making and within that framework certain cultural scripts will be more intelligible than others.¹⁸² Cases such as the ones included in *Problems in Contract Law*, which share certain key details with the facts of *Williams*, worked to make scripts about low-income consumers all the more salient. As will be discussed in Part IV, many of these scripts remained in casebooks'

the court relied upon Caplovitz's survey in *Swarb*); MACNEIL 1971, *supra* note 78, at 273 (including the text of the district court's opinion in *Swarb*, which extensively quoted the Caplovitz study).

¹⁸⁰ See, e.g., MURPHY & SPIEDEL 1970, *supra* note 78, at 544 (including a problem titled "Mrs. Williams and the UCC," which asks if the "basis of the court's decision to remand . . . [was] that a merchant cannot sell a high priced 'frill' to a woman on relief?"); FARNSWORTH, YOUNG & JONES 1972, *supra* note 78, at 391 (asking students whether "the principle of unconscionability be regarded as defining a new class of persons lacking the capacity to contract").

¹⁸¹ See, e.g., MURPHY & SPEIDEL 1970, *supra* note 78, at 540 (writing that while creditors have a limited ability to take advantage of middle-class consumers, "in the low-income groups, the basic problem of inadequate resources is often compounded by other factors: they do not comparison shop; they lack the technical knowledge to pick the best buy; they shop in a 'captive' neighborhood market . . . ; they lack knowledge of their legal rights and liabilities and sources of legal assistance; years of frustration have blunted incentives and crippled motivation"); MUELLER & ROSETT 1971, *supra* note 78, at 54 ("Is Mrs. Williams less responsible for her voluntary acts than other adults?"); MURRAY 1976, *supra* note 78, at 582 (quoting language from *Kugler* in its introduction to unconscionability that "[t]he need for application of the standard [of unconscionability] is most acute when the professional seller is seeking the trade of those most subject to exploitation — the uneducated, the inexperienced and the people of low incomes").

¹⁸² For more on the framing that casebooks provide, see, for example Chomsky, *supra* note 171, at 880 (arguing that "contracts teaching follows the casebooks rather than the other way around"); Park, *supra* note 30, at 1062 (writing that casebooks' "selection of featured cases creates a largely unchallenged narrative about what is significant about and in that area of law").

later editions for decades, ultimately laying foundations that could evoke racial ideas and associations without naming race directly. This palimpsest of potential scripts can create fertile ground for the simultaneous masking and marking of race.

2. *Buying from Ghetto Merchants*

Between 1964 and 1969, over 150 cities across the United States erupted in violence. These uprisings, which were characterized as riots by policymakers and news media, were moments of enormous racial upheaval.¹⁸³ President Johnson formed the Kerner Commission as a direct response to this widespread unrest. Formally known as the National Advisory Commission on Civil Disorders, the Kerner Commission was tasked with investigating the causes of the “racial disorders.”¹⁸⁴

Among the Commission’s diagnoses was the fact that retailers in low-income Black neighborhoods were exploiting their customers. The Report even included a section specifically addressing the problem of installment contracts, like the one at issue in *Williams*.¹⁸⁵ In contrast to studies on poor consumers like Caplovitz’s *The Poor Pay More*, the Kerner Commission Report focused primarily on race (specifically Black Americans) and the urban “crisis.”¹⁸⁶ According to the Report, “many residents of disadvantaged Negro neighborhoods believe they suffer constant abuses by local merchants.”¹⁸⁷ These abuses were of a piece with Walker-Thomas’s business practices: opaque pricing schemes, high-pressure sales tactics, substandard goods, and so on. The Report even used the example of installment buying as a way to illustrate the “complex situation” facing Black consumers.¹⁸⁸

The Kerner Commission was far from the only source linking exploitative “ghetto merchants” to the violent uprisings taking place in urban centers in the 1960s. In 1969, the Banking and Business Law Section of the American Bar Association held a conference and published a special issue on “Business Law in the Ghetto.”¹⁸⁹ As

¹⁸³ See, e.g., HINTON, *supra* note 111, at 14 (discussing “250 separate incidents of urban civil disorder—what policymakers, journalists, and most of the public at large called ‘riots’”).

¹⁸⁴ KERNER COMMISSION REPORT, *supra* note 53, at 1.

¹⁸⁵ *Id.* at 139.

¹⁸⁶ *Id.* at 183. For more on the “urban crisis” of the 1960s, see, for example, HINTON, *supra* note 111, at 25 (discussing “the very real fact of urban crisis”).

¹⁸⁷ KERNER COMMISSION REPORT, *supra* note 53, at 139.

¹⁸⁸ *Id.*

¹⁸⁹ See Ray D. Henson, *Foreword*, 25 BUS. LAW. 1, 1 (1969) (explaining that at the second National Institute of the ABA’s Banking and Business Law Section “the subject was ‘Business in the Ghetto.’ Approximately 390 lawyers and law students attended the meeting.”).

economic historian Lizabeth Cohen has written, “efforts to understand ghetto dwellers’ anger latched onto their victimization as consumers.”¹⁹⁰ The legal profession was no exception.

It makes sense, then, that this discourse about consumer exploitation in the ghetto would also show up in some of the Contracts casebooks considered here. The most notable example can be found in the 1972 edition of the Farnsworth casebook, which included an excerpt from the Kerner Commission Report in its unconscionability section. The Report’s excerpt was part of a note titled “Ghetto Market Improvement.”¹⁹¹ And among other things, it explained that “while higher prices are not necessarily exploitative in themselves, many merchants in ghetto neighborhoods take advantage of their superior knowledge of credit buying by engaging in various exploitative tactics.”¹⁹² The “Ghetto Market Improvement” note remained in the Farnsworth casebook for over twenty years.¹⁹³

One other casebook from the early era included an explicit reference to the Kerner Commission Report. In John Jackson’s 1973 *Contract Law in Modern Society*, he began a note on consumer protection by explaining that the unconscionability doctrine had helped courts respond to the problems created by “unfair or misleading contracts.”¹⁹⁴ Jackson continued, “[t]hat these problems have important and far-reaching public policy ramifications is illustrated by the President’s Commission on Civil Disorders [the Kerner Commission], and by a study by Caplovitz entitled *The Poor Pay More*.”¹⁹⁵

This account of consumer protection situates both *The Poor Pay More* and the Kerner Commission Report as necessary context for understanding the value of the unconscionability doctrine, and the precedential import of *Williams*.

Lon Fuller and Melvin Eisenberg’s *Basic Contract Law*, published in 1970, is the only other early casebook that explicitly referenced the “ghetto.” It appears in an excerpt from Caplovitz’s updated 1967 preface to *The Poor Pay More*, wherein he discussed “ghetto areas”

¹⁹⁰ COHEN, *supra* note 92, at 356.

¹⁹¹ FARNSWORTH, YOUNG & JONES 1972, *supra* note 78, at 389.

¹⁹² *Id.*

¹⁹³ It was not removed until the 2001 edition. FARNSWORTH & YOUNG 1980, at 517–18; FARNSWORTH & YOUNG 1988, at 428; FARNSWORTH & YOUNG 1995, at 437 (renaming the note “Poverty and Price” and rewording slightly); E. ALLAN FARNSWORTH, WILLIAM F. YOUNG & CAROL SANGER, CASES AND MATERIALS ON CONTRACTS 407–09 (6th ed. 2001) [hereinafter FARNSWORTH, YOUNG & SANGER 2001] (excluding any references to the Kerner Commission Report after the *Williams* opinion).

¹⁹⁴ JACKSON 1973, *supra* note 78, at 995.

¹⁹⁵ *Id.*

and “ghetto merchants.”¹⁹⁶ For readers already familiar with Caplovitz’s *The Poor Pay More*, however, quotes and references to Caplovitz’s work generally likely provided resonances with scripts about ghetto merchants and the exploitation of poor, Black consumers.¹⁹⁷

Vestiges of this discourse can also be found in more recently published casebooks. For example, there was a reference to “ghetto merchants” in Stewart Macaulay’s casebook from 1992.¹⁹⁸ And although the 2016 edition of Macaulay’s casebook no longer mentioned “ghetto merchants,” its section on unconscionability instead provides a version of the history discussed above. Macaulay and his co-authors wrote that “during the late 1950s and early 1960s, wealthy and middle-class Americans ‘discovered’ the poor. President Lyndon Johnson even waged a ‘war on poverty.’”¹⁹⁹

The Macaulay casebook is just one example of the ways that ’60s-era discourse about poverty persisted in Contracts casebooks well past the 1960s.²⁰⁰ The following Part explores how narratives about

¹⁹⁶ FULLER & EISENBERG 1972, *supra* note 78, at 596. The Caplovitz excerpt is one of several that the authors include after the *Williams* opinion. Though not included in Fuller and Eisenberg’s excerpt, elsewhere in the updated preface, Caplovitz writes, “The investigations of the recent riots in Negro ghettos in various parts of the country have suggested that resentment against consumer exploitation is one of the many grievances that find expression in riots.” CAPLOVITZ, *supra* note 107, at xviii–xix.

¹⁹⁷ At least two casebook reviewers lamented a Contracts casebook’s failure to engage more directly with these issues. In a review of John Calamari and Joseph Perillo’s 1970 casebook, the reviewer noted that “there is an omission which strikes me as infelicitous. The authors have generally ignored civil rights and consumer protection materials . . . [T]hey cannot be dismissed as insignificant exceptions [to freedom of contract] or relegated solely to civil rights or consumer protection seminars.” Max A. Pock, *Review III*, 39 *FORDHAM L. REV.* 814, 819 (1971) (reviewing JOHN D. CALAMARI & JOSEPH M. PERILLO, *THE LAW OF CONTRACTS* (1970)). Similarly, in his scathing review of Curtis Reitz’s 1975 casebook, Stanley Henderson wrote that “many of the striking developments in contract are occurring in areas heavily burdened with history. To remove the underpinnings of these developments is to deprive the student of insight that comes with discovery.” Stanley D. Henderson, *Some Thoughts on Ordinary Contract*, 124 U. PA. L. REV. 1466, 1479 (1976) (reviewing CURTIS R. REITZ, *CASES AND MATERIALS ON CONTRACTS AS BASIC COMMERCIAL LAW* (1975)).

¹⁹⁸ STEWART MACAULAY, JOHN KIDWELL, WILLIAM WHITFORD & MARE GALANTER, *CONTRACTS: LAW IN ACTION* 642 (1st ed. 1992) [hereinafter MACAULAY ET AL. 1992].

¹⁹⁹ STEWART MACAULAY, WILLIAM WHITFORD, KATHRYN HENDLEY & JONATHAN LIPSON, *CONTRACTS: LAW IN ACTION* 650 (4th ed. 2016) [hereinafter MACAULAY ET AL. 2016].

²⁰⁰ For additional examples, see STEVEN J. BURTON, *PRINCIPLES OF CONTRACT LAW* 272 (1995) [hereinafter BURTON 1995] (offering a critique of the low-income consumer narrative); JAMES F. HOGG & CARTER G. BISHOP, *CONTRACTS: CASES, PROBLEMS, AND MATERIALS* 732 (1997) [hereinafter HOGG & BISHOP 1997] (“Unconscionability is a legal doctrine currently undergoing a rapid evolution. Most parties who have successfully asserted it in the past have been consumers, and frequently, have also been poor or otherwise disadvantaged.”); MARCO J. JIMENEZ, *CONTRACT LAW: A CASE & PROBLEM-BASED APPROACH* 152 (2016) [hereinafter JIMENEZ 2016]; AMY HILSMAN KASTELY, DEBORAH WAIRE POST & SHARON KANG HOM, *CONTRACTING LAW* 638, 643–50 (1996) [hereinafter KASTELY, POST & HOM 1996]; AMY HILSMAN KASTELY, DEBORAH WAIRE POST & SHARON KANG HOM, *CONTRACTING LAW* 616, 621–28 (2d ed.

poverty transformed in the decades that followed. Ora Lee Williams did not stop being a low-income consumer, but her status as a welfare recipient and as a mother took on a new cultural weight.

IV THE TRANSFORMATION TO “WELFARE MOTHER”

“Judge Wright quotes the lower court opinion noting that Williams was a welfare recipient with seven children. Why is this information relevant to the outcome? Would the case be substantially different if Williams had been a woman of means? What social assumptions underlie the decision in this lawsuit?”

—*The Modern Law of Contracts*, 2005²⁰¹

2000) [hereinafter KASTELY, POST & HOM 2000]; CHRISTINA L. KUNZ, CAROL L. CHOMSKY, JENNIFER S. MARTIN & ELIZABETH R. SCHILTZ, *CONTRACTS: A CONTEMPORARY APPROACH* 448–49 (3d ed. 2018) [hereinafter KUNZ ET AL. 2018]; DANIEL MARKOVITS & GABRIEL RAUTERBERG, *CONTRACTS: LAW, THEORY, AND PRACTICE* 859 (2018) [hereinafter MARKOVITS & RAUTERBERG 2018] (“[A] contract may be thought procedurally unconscionable simply because of the poverty of the buyer. But it is difficult to vindicate this view without making strong—quite possible unpalatably strong—assumptions about the correlation between poverty and analytic incapacity.”); NADELLE GROSSMAN & ERIC ZACKS, *CONTRACTS IN CONTEXT: FROM TRANSACTIONS TO LITIGATION* 537 (2023) [hereinafter GROSSMAN & ZACKS 2023] (describing unconscionability as the go-to defense for Legal Aid attorneys).

²⁰¹ BRUCE W. FRIER & JAMES J. WHITE, *THE MODERN LAW OF CONTRACTS* 420 (2005) [hereinafter FRIER & WHITE 2005]; *see also* BRUCE W. FRIER & JAMES J. WHITE, *THE MODERN LAW OF CONTRACTS* 501 (4th ed. 2019) [hereinafter FRIER & WHITE 2019] (including the same text).

For a non-exhaustive list of similar rhetorical questions, *see*, for example, FRIEDRICH KESSLER, GRANT GILMORE & ANTHONY T. KRONMAN, *CONTRACTS: CASES AND MATERIALS* 603 (3d ed. 1986) [hereinafter KESSLER, GILMORE & KRONMAN 1986] (“Is the true ground of the decision that Walker-Thomas sold a ‘luxury item,’ a stereo, to a welfare recipient, whose status was well known to the plaintiff? Apart from the fact that a stereo is not a necessity, does it matter that Mrs. Williams was on welfare with seven children?”); E. ALLAN FARNSWORTH, CAROL SANGER, NEIL B. COHEN, RICHARD R.W. BROOKS & LARRY T. GARVIN, *CONTRACTS: CASES AND MATERIALS* 645 (2019) [hereinafter FARNSWORTH ET AL. 2019] (explaining Arthur Leff’s critique of the doctrine’s tendency toward the “stereotyping of parties” and asking if that is a fair criticism of the case in a discussion that first appeared in the fourth edition of the 1988 Farnsworth casebook); CHARLES L. KNAPP, NATHAN M. CRYSTAL & HARRY G. PRINCE, *PROBLEMS IN CONTRACT LAW: CASES AND MATERIALS* 645 (9th ed. 2019) [hereinafter KNAPP, CRYSTAL & PRINCE 2019] (“While the court does not reveal Williams’s race or ethnicity, educational background, or work experience, the majority opinion reports her monthly income of \$218 and the dissent indicates that she received ‘relief funds.’ What common assumptions about Williams might be made . . . and how might they affect the resolution . . . ?”); CHARLES L. KNAPP, NATHAN M. CRYSTAL & HARRY G. PRINCE, *PROBLEMS IN CONTRACT LAW: CASES AND MATERIALS* (4th ed. 1999) [hereinafter KNAPP, CRYSTAL & PRINCE 1999] (including same language for the first time in the fourth edition of the Knapp casebook, published in 1999); MARCO J. JIMENEZ, *CONTRACT LAW: A CASE & PROBLEM-BASED APPROACH* 154 (2d ed. 2021) [hereinafter JIMENEZ 2021] (explaining that Williams has been critiqued as overly paternalistic, asking students whether they think it is, and asking, “In answering this question, do you think the fact that Williams was financially strapped, on welfare, or had seven children was (or should have been) relevant in deciding this dispute?”); JIMENEZ 2016, *supra* note 200,

Why would or should a law student make note of the fact that Ora Lee Williams was receiving “welfare”? Or that she had seven children? Presumably, the authors call attention to these facts in order to help their student-readers interrogate the “social assumptions” embedded in the *Williams* case.²⁰² But which social assumptions are the authors assuming that their imagined student-readers know? This Part focuses on the answer to this question—namely, the cultural scripts about welfare mothers.

A. *The Moynihan Report*

“The United States is approaching a new crisis in race relations.”

—Daniel Patrick Moynihan, *The Moynihan Report*, 1965²⁰³

So began Daniel Patrick Moynihan’s report, *The Negro Family: The Case for National Action*. The Moynihan Report is one of the most well-known reports about race to have been released by the U.S. government.²⁰⁴ Leaked to the press only a few weeks before the *Williams* decision, it incited a firestorm of debate about matriarchal Black families and the purported dependency of Black mothers on welfare.²⁰⁵

The report’s professed goal—fulfilling the promise of the civil rights movement—was an admirable one. As written in its first chapter, there was no social movement more important than civil rights.²⁰⁶ As such, society’s priority should be bringing the “revolution forward to a successful conclusion.”²⁰⁷ For Moynihan, this “successful conclusion” looked like ensuring real equality for Black Americans, not just liberty or equality of opportunity.²⁰⁸

at 149–50 (including same language); DAVID G. EPSTEIN, BRUCE A. MARKELL & LAWRENCE PONOROFF, *CASES AND MATERIALS ON CONTRACTS: MAKING AND DOING DEALS* 478 (6th ed. 2022) [hereinafter EPSTEIN, MARKELL & PONOROFF 2022] (asking in “Questions Before the Case” if the court “rule[s] that it is unconscionable to sell a \$514 stereo to mothers with seven children on public assistance”); DEBORAH WAIRE POST, THOMAS W. JOO, DEBORAH ZALESNE & NANCY OTA, *CONTRACTING LAW* 465 (6th ed. 2023) [hereinafter POST ET AL. 2023] (writing in the “Practice Points” after the case: “One scholar has confirmed that Ora Lee Williams was African-American. The *Williams* opinion did not mention Williams’s race. Should it have?”).

²⁰² Unanswered questions such as these are a staple of casebook notes and comments.

²⁰³ DANIEL PATRICK MOYNIHAN, *THE NEGRO FAMILY: THE CASE FOR NATIONAL ACTION* (1965) [hereinafter MOYNIHAN REPORT].

²⁰⁴ See RODERICK FERGUSON, *ABBERATIONS IN BLACK: TOWARD A QUEER OF COLOR CRITIQUE* 123 (2003).

²⁰⁵ See KATZ, *supra* note 111, at 17–23 (describing how the report positioned welfare-dependent Black mothers as both symptom and cause of urban pathology); see also *supra* notes 18–20.

²⁰⁶ MOYNIHAN REPORT, *supra* note 203, at 1.

²⁰⁷ *Id.*

²⁰⁸ *Id.* at 2–4.

Yet, rather than focus on the structural barriers that Black Americans faced, the report instead identified Black “social structure” and the Black family as the main impediments to Black progress.²⁰⁹ For Moynihan, slavery was to blame for the problems with Black families.²¹⁰ In his accounting, slavery’s disruption of Black families led to a matriarchal family structure, which over time had become the cause of the Black community’s “tangle of pathology.”²¹¹

In this way, Black women became central to Moynihan’s diagnosis of the “fundamental problem” with Blackness.²¹² According to the report, Black women had more children and at a younger age, they led broken homes, they thwarted Black urban migrants from benefitting from the promise of the city, and they were welfare dependent regardless of Black male unemployment rates.²¹³ This is the story that Moynihan told about Black women even before he named Black matriarchy as the root of the tangle of pathology. By the time the report got to its chapter on “The Tangle of Pathology,” wherein Moynihan infamously discussed Black matriarchy,²¹⁴ Black women had been established as a site and source of dysfunction in Black communities. At every turn, Black women were the hypervisible indices of Black family pathology.²¹⁵

Moynihan used a range of sociological and statistical evidence to establish Black women and girls as the problem. Quotations from, and citations to, sociological studies of Black families were included alongside analyses of demographic data, presented in a wide range of eye-catching percentages, tables, and graphs.²¹⁶ The statistics he used included rates of “broken homes,” “illegitimacy” ratios, unemployment numbers, fertility rates and family size, percentage of female-headed households, welfare support rates, and numbers of boys enrolled in school.²¹⁷ For many researchers and policymakers, these metrics have

²⁰⁹ *Id.* at 4. (“[I]t has to be said that there is a considerable body of evidence to support the conclusion that Negro social structure, in particular the Negro family . . . is in the deepest trouble.”).

²¹⁰ *Id.* at 15.

²¹¹ *Id.* at 29.

²¹² *Id.* at ii.

²¹³ *See, e.g., id.* at 25–27 (discussing fertility rates of Black women); *id.* at 40 (describing demographics of “broken homes”).

²¹⁴ *Id.* at 30–34.

²¹⁵ *See supra* note 17 for scholarship on hypervisibility.

²¹⁶ It is important to note, however, that many of Moynihan’s qualitative sources, such as E. Franklin Frazier and Margaret Mead, do not actually make this claim about matriarchal family structure. E. FRANKLIN FRAZIER, *THE NEGRO FAMILY IN THE UNITED STATES* (1932); MARGARET MEAD, *MALE AND FEMALE* (1962); *see also* FERGUSON, *supra* note 204, at 28 (explaining how Moynihan misquoted anthropologists and Black sociologists).

²¹⁷ MOYNIHAN REPORT, *supra* note 203, at 31.

persisted as touchstones for the kinds of evidence that matters for understanding Black communities.²¹⁸

Importantly, three of these metrics—fertility, “broken” or female-led households, and welfare—find close parallels in the facts and framing of the *Williams* case. They also re-emerge and are re-constituted in subsequent incarnations of the bad Black mother mythos. Indeed, they are constitutive elements of the archetype.

From its very first pages, the report established family structure as “the fundamental problem” in the “Negro American community.”²¹⁹ According to Moynihan, “the evidence—not final, but powerfully persuasive [was] that the Negro family in the urban ghettos is crumbling” and without a strong family structure, the Black community would be trapped in a “cycle of poverty and disadvantage.”²²⁰ Moynihan described this cycle of poverty and disadvantage as being characterized by high unemployment rates for Black men, lower rates of education for Black boys, high rates of delinquency and crime in Black communities, lower IQ scores for Black children, and—importantly, for any discussion of *Williams*—a “startling increase in welfare dependency” among single Black mothers.²²¹

Much of the report was dedicated to walking readers through the data that Moynihan considered to be “powerfully persuasive” evidence of a crumbling Black family structure. The first piece of this evidence addressed Black Americans’ failure to adhere to the norms of white heterosexual marriage.²²² For Moynihan, this failure

²¹⁸ See FERGUSON, *supra* note 204, at 123 (identifying the report as an “important genealogical node in successive and hegemonic discourses about minority communities within the United States”). For example, in 2009, *The Annals of the American Academy of Political and Social Science* dedicated an entire volume to The Moynihan Report. The volume, which was titled “The Moynihan Report Revisited: Lessons and Reflections after Four Decades,” sought to “encourage [the] systematic study of the sorts of difficult, sensitive, and often explosive issues that Moynihan first addressed in his 1965 report.” Douglas S. Massey & Robert J. Sampson, *Moynihan Redux: Legacies and Lessons*, 621 ANNALS AM. ACAD. POL. & SOC. SCI. 6, 19 (2009).

²¹⁹ MOYNIHAN REPORT, *supra* note 203, at ii.

²²⁰ *Id.*

²²¹ *Id.* at 12.

²²² Moynihan is quite explicit about using white families as the benchmark against which he is measuring Black families. In the section on marriage—as well as throughout the report—Black or “nonwhite” rates are compared to those of the white population. His belief in a white benchmark is not merely an implication of the demographic categories that Moynihan uses for his analysis, he explicitly states it in the body of the report as well. For example, in the introduction to the first chapter, Moynihan writes that “the white family has achieved a high degree of stability By contrast, the family structure of lower-class Negroes is highly unstable, and in many urban centers, is approaching complete breakdown.” *Id.* at 5. Throughout the rest of the chapter, white family stability is the ideal against which

had two different indices: 1) the dissolution of Black marriages and 2) numbers of Black children born outside of marital couples, a.k.a. “illegitimacy ratios.”²²³ Using data from the 1960 Census on white and non-white marriages, Moynihan deduced that “nearly a quarter” of Black urban marriages were “dissolved.”²²⁴ Moynihan’s concern about the number of ever-married Black women who were “divorced, separated, or [were] living apart from their husbands”²²⁵ has clear implications for the *Williams* case. Ora Lee Williams would have fallen into this category of concern, given that she was “separated from her husband” and lived in the “urban frontier” where Moynihan believed Black families were crumbling fastest.²²⁶

The report continued to underscore the seriousness of this “high rate of divorce, separation, and desertion,” by explaining that it was the direct cause of the “large percent” of female-led Black households.²²⁷ Within the language and logic of the report, female-led households were synonymous with “fatherless families,” and “broken homes.” For Moynihan, children living in female-led households were by definition growing up in broken homes and without a lifelong paternal influence. In this way, Moynihan coupled marital dissolution and fatherlessness and defined both phenomena as familial breakdowns. Again, Ora Lee Williams’s family fits the bill here. She was living apart from her husband *and* raising their children without his assistance—a fact that both of the published *Williams* opinions noted. In addition, and consistent with Moynihan’s concerns about families like hers, Williams was receiving assistance from AFDC.

Williams’s receipt of government support matters, of course, because “welfare dependency” was the final link in the chain of Moynihan’s argument about Black family instability.²²⁸ Moynihan stated quite directly—and in a section heading, no less—that “the

Black families are compared, even though Moynihan himself acknowledges that some ethnic groups as well as middle-class Black Americans might put an even “higher premium on family stability and the conserving of family resources than does the white middle-class family.” *Id.* at 6. Nevertheless, at no point does Moynihan suggest that these non-white families should be the standard.

²²³ *Id.* at 6–9. As Melissa Murray has demonstrated, racialized scripts about illegitimacy were also working their way through the courts at this time. However, unlike scripts about welfare mothers, illegitimacy and its scripts have largely been excluded from popular constitutional law casebooks. Melissa Murray, *Legitimizing Illegitimacy in Constitutional Law*, 99 WASH. U. L. REV. 2063 (2022).

²²⁴ MOYNIHAN REPORT, *supra* note 203, at 6.

²²⁵ *Id.* at 6.

²²⁶ *Id.* at 8.

²²⁷ *Id.* at 9. This “large” number was twenty-one percent in 1960, up from eighteen percent ten years prior. *Id.* at 11.

²²⁸ *Id.* at 12.

breakdown of the Negro family has led to a startling increase in welfare dependency.”²²⁹ Side-by-side graphs visually reinforced Moynihan’s point by illustrating two correlated trends: 1) the increase in nonwhite female-led households and 2) the increase of children on AFDC with absent fathers.

Many scholars have pointed out the flaws in Moynihan’s reasoning, most significantly his mistaking of correlation for causation.²³⁰ As historian Susan Greenbaum and others have explained, the “startling” rise in welfare enrollment that Moynihan described, coincided with the loosening of eligibility requirements for AFDC, which increased the number of people able to receive support in the first place.²³¹ Nevertheless, Moynihan interpreted the “steady expansion” of AFDC and other forms of public assistance as a “measure of the steady disintegration of the Negro family structure.”²³² In so doing, Moynihan tethered the idea of households led by single Black mothers to concerns about welfare use and government welfare spending. And as I discuss in the Sections below, this linkage of single Black mothers to welfare has become one of the most familiar and well-documented legacies of the Moynihan Report.

To be clear, Moynihan did not invent the report’s image of a broken Black family and pathological Black communities whole cloth. Rather, like a patchwork quilt, he pieced it together from cultural narratives borne of slavery,²³³ from early sociological studies that sought to quantify and consequently contain the “race problem,”²³⁴ and from culture of poverty theses that were gaining popularity in the 1960s.²³⁵ In other words, Moynihan was hardly the first person to make any of the claims presented in his report. Be that as it may, the Moynihan Report remains one of the most influential

²²⁹ *Id.*

²³⁰ See DANIEL GEARY, *BEYOND CIVIL RIGHTS: THE MOYNIHAN REPORT AND ITS LEGACY* 71 (2015); see also GREENBAUM, *supra* note 111, at 3–4; FERGUSON, *supra* note 216, at 119–23; HANCOCK, *supra* note 19.

²³¹ GREENBAUM, *supra* note 111, at 33.

²³² MOYNIHAN REPORT, *supra* note 203, at 14.

²³³ See, e.g., DOROTHY ROBERTS, *SHATTERED BONDS: THE COLOR OF CHILD WELFARE* 59–61 (2002) [hereinafter ROBERTS, *SHATTERED BONDS*] (explaining that “[c]harges of Black mothers’ carelessness emerge from the institution of slavery”); see also the Black feminist theories cited *supra* at note 17.

²³⁴ See, e.g., FERGUSON, *supra* note 216, at 121 (comparing the Moynihan report to Gunnar Myrda’s *An American Dilemma* and writing that “Moynihan actually inherited his thesis about the African American family from E. Franklin Frazier’s writings on black families and the problems of black matriarchies.” MUHAMMAD, *supra* note 111, at 14–34 (discussing the earliest iterations of sociology’s articulation of “The Negro Problem or Race Problem”).

²³⁵ See *supra* Section III.A.

texts in US culture to pathologize Blackness in general, and Black women in particular.

B. *Williams and Welfare*

“Is there something wrong with a lady on welfare having a \$500 stereo set? Is it wrong to sell such a lady such a set?”

—*Contract Law and Its Application*, 1971²³⁶

These questions are taken from the “Questions and Notes” that follow the *Williams* case in a Contracts casebook published in 1971. Written by Addison Mueller and Arthur Rosett—two well-known and well-respected Contracts scholars—*Contract Law and Its Application* is the earliest example of Williams’s transformation into a “welfare mother” by casebook authors.

This transformation was a two-step process. The first occurred when casebook authors emphasized the fact that Williams was on public assistance and used the word “welfare” to do so. The second occurred when Contracts casebooks knitted together Williams’s identity as a mother with the term “welfare.” Whereas the association of *Williams* and “welfare” dates as early as 1972, this second step—linking welfare and motherhood in the context of *Williams*—did not take place in casebooks until the 1980s.²³⁷ These two rhetorical moves helped to weave cultural scripts about Black “welfare mothers” into the texture of some Contracts casebooks.

1. *From “Public Assistance” to “Welfare”*

The majority of Contracts casebooks that include *Williams* as a principal case associatively link either *Williams* the case or Williams the person with the subject of welfare. Yet, neither of the *Williams* opinions use the word welfare to describe Ora Lee Williams’s circumstances. Rather, the opinions state that Williams was receiving

²³⁶ MUELLER & ROSETT 1971, *supra* note 78, at 54. Mueller and Rosett were both professors at UCLA at the time the book was published. In 1974, in an essay written in honor of Professor Mueller’s retirement, Grant Gilmore would go on to describe the Mueller and Rosett casebook as “remarkable.” Grant Gilmore, *The Truth About Addison Mueller*, 22 UCLA L. REV. 1013, 1014 (1975). Notably, in the most recent 2023 edition of the casebook, the term “welfare” has been excised. DANIEL J. BUSSEL, *CONTRACT LAW AND ITS APPLICATION* 415 (10th ed. 2023) [hereinafter BUSSEL 2023].

²³⁷ The earliest use of the term “welfare” in the notes and materials surrounding *Williams* can be found in the 1972 Fuller and Eisenberg casebook, which includes an excerpt from the FTC’s “Report on Installment Credit and Retail Sales Practices of District of Columbia Retailers,” that mentions “welfare recipients.” FULLER & EISENBERG 1972, *supra* note 78, at 598. For a discussion of the first casebook to describe Williams as a “welfare mother,” see *infra* note 277.

“public assistance,”²³⁸ on “relief,”²³⁹ and had a social worker.²⁴⁰ In 1965, as now, a range of state programs could have been characterized as “public assistance” or “relief.” These include Supplemental Security Income (SSI), Medicaid, and housing assistance,²⁴¹ among others.²⁴² By contrast, in common parlance, welfare tends to refer to state-run programs that provide financial support to poor families, particularly poor mothers, rather than these other forms of government assistance.²⁴³

By linking *Williams* and welfare, casebook authors are de facto identifying her as an AFDC recipient. By the mid-1960s, activists, politicians and national media outlets alike had cemented “welfare recipients” as a cognizable (and politically charged) classification in national discourse.²⁴⁴ And it remains a cognizable political category to this day.²⁴⁵ Often, the recipients being invoked or imagined are recipients of Temporary Aid to Needy Families (TANF)—the successor

²³⁸ *Williams v. Walker-Thomas Furniture Co.*, 198 A.2d 914, 915, 916 (D.C. 1964) (writing that Williams was “maintaining herself and her seven children by means of public assistance” and that the back of the contract “listed the name of appellant’s social worker and her \$218 monthly stipend from the government”).

²³⁹ *Williams v. Walker-Thomas Furniture Co.*, 350 F.2d 445, 450 (D.C. Cir. 1965) (Danaher, J., dissenting) (describing Williams as a “relief client”).

²⁴⁰ The D.C. Circuit Court opinion quoted the passage from the lower court’s opinion, which stated that the “reverse side of the stereo contract listed the name of appellant’s social worker and her \$218 monthly stipend from the government.” *Id.* at 448.

²⁴¹ See GILENS, *supra* note 18, at 13, 21 (describing SSI, Medicaid, housing assistance, and food stamps as “public assistance”).

²⁴² See KORNBLUH, *supra* note 19, at 217 n.25 (“Home Relief was the term in many states for the assistance program for adults who had no children, or who did not qualify for AFDC.”).

²⁴³ As Martin Gilens explains, “the term ‘welfare’ refers most clearly to the state-run General Assistance (GA) programs for the poor and the federal/state program . . . formerly known as Aid to Families with Dependent Children (AFDC).” GILENS, *supra* note 18, at 12.

²⁴⁴ See KORNBLUH, *supra* note 19, at 2 (documenting how the “welfare rights movement changed the national conversation about public benefits”); see also *supra* notes 18–20.

²⁴⁵ See, e.g., Allysia Finley, *The Welfare-Industrial Complex is Booming*, WALL ST. J. (Dec. 31, 2023), <https://www.wsj.com/articles/the-welfare-industrial-complex-is-booming-3a7ad15c> [<https://perma.cc/TRR9-ZVBJ>] (“The tens of thousands of migrants pouring into big cities need to be tended to. So do the hundreds of thousands of drug-addled and mentally ill homeless living on the streets.”); Matthew Desmond, *Americans Want To Believe Jobs Are the Solution to Poverty. They’re Not*, N.Y. TIMES (Sept. 11, 2018), <https://www.nytimes.com/2018/09/11/magazine/americans-jobs-poverty-homeless.html> [<https://perma.cc/5QX9-WR2E>] (describing a 2016 survey in which over one-third of respondents “believed that most welfare recipients would prefer to stay on welfare”); see also Derek A. Epp & Jay T. Jennings, *Inequality, Media Frames and Public Support for Welfare*, 84 PUB. OPINION Q. 629, 634 (2020) (analyzing media representations of welfare recipients and noting a “dramatic rise” in articles that emphasize the personal failings and negative characteristics of people living in poverty).

program to AFDC.²⁴⁶ And while readers knowledgeable about the forms of government assistance available in 1965 may deduce that Ora Lee Williams was enrolled in AFDC, there were public assistance programs other than AFDC that Ora Lee Williams could have been participating in.²⁴⁷ Significantly, even though these programs are part of the American welfare state, they generally have not been characterized as “welfare” in the public sphere.²⁴⁸

2. *Welfare and Race*

As historian of poverty Michael Katz has written, the Moynihan Report and its focus on impoverished Black families and welfare greatly contributed to the association of welfare with Blackness. The Moynihan Report argued that Black single mothers and their “welfare dependency” helped to explain the increase in AFDC enrollment in the 1960s.²⁴⁹ News media’s representations of welfare recipients in the late ’60s and ’70s only further bolstered this understanding. For example, in newsmagazine coverage of the “welfare mess” in 1972 and 1973, seventy-five percent of the people pictured in stories were Black, a significant overrepresentation.²⁵⁰

This belief in the Blackness of welfare recipients has persisted. For example, a recent study found that eighty-six percent of the study’s nearly ten thousand participants “greatly overestimate[d] the share of welfare recipients who are Black.”²⁵¹ On average, respondents overestimated the number of Black welfare recipients by “almost a

²⁴⁶ See, e.g., Michele Estrin Gilman, *The Return of the Welfare Queen*, 22 AM. U. J. GENDER SOC. POL’Y & L. 247, 258 (2014) (describing representations of TANF and the role of the welfare queen myth in the 2012 U.S. election); Maura Kelly, *Regulating the Reproduction and Mothering of Poor Women: The Controlling Image of the Welfare Mother in Television News Coverage of Welfare Reform*, 14 J. POVERTY 76 (2010) (analyzing images of welfare mothers in television news coverage of welfare reform from 1992–2007).

²⁴⁷ Muriel Spence explores this possibility with a fictionalized version of *Williams* based upon the actual facts of the actual case. In this account, Williams “lived on her social security disability payments and a modest pension she received as a widow.” Spence, *supra* note 13, at 93.

To explain the presence of the social worker, Spence writes that the “Veterans’ Administration hospital where her husband died provided a social worker to give [Williams] and her family periodic assistance coping with their many pressures.” *Id.* at 93–94.

²⁴⁸ GILENS, *supra* note 18, at 12 (explaining that “none of the dozens of different government antipoverty programs bears the title ‘welfare,’” but that as it is usually understood, the term “welfare has a fairly clear ‘center’ but rather fuzzy ‘borders’”).

²⁴⁹ MOYNIHAN REPORT, *supra* note 203, at 12.

²⁵⁰ GILENS, *supra* note 18, at 122–25 (finding that newsmagazines “dramatically exaggerated [Black Americans’] numbers among those on welfare (75 percent in magazine pictures versus 43 percent in reality during 1972–73)”).

²⁵¹ Jesper Akeson, Robert W. Hahn, Robert D. Metcalfe & Itzhak Rasooly, *Race and Redistribution in the United States: An Experimental Analysis*, at ii (Nat’l Bureau Econ. Rsch.,

factor of two.”²⁵² Americans’ over-association of welfare with Blackness is such a well-known phenomenon that there is virtually a cottage industry of research dedicated to understanding it: both the continued overrepresentation of Blackness in media coverage of welfare, and the persistently distorted public perceptions of how many Black Americans are on welfare.²⁵³

For these reasons, using the word “welfare” to describe Ora Lee Williams adds yet another tether between her identity and Blackness (beyond the associations with urban poverty discussed in Part III above). Williams was participating in precisely the kind of welfare program upon which too many Black families were (and according to some still are) “dependent.”²⁵⁴

3. Williams and Welfare in Casebooks

This linkage of *Williams* and welfare most often occurs in one of three ways. First, “welfare” is mentioned in shorthand descriptions of Ora Lee Williams as either a “welfare recipient,”²⁵⁵ or person “on welfare.”²⁵⁶ This Section’s epigraph is one such example.

Working Paper No. 30426, 2022), https://www.nber.org/system/files/working_papers/w30426/w30426.pdf [<https://perma.cc/XW8J-2GJW>].

²⁵² *Id.* at ii, 14 (“On average, respondents estimate that 37% of welfare recipients are Black These average estimates, however, are quite far from the truth: for example, data from the Survey of Income and Program Participation suggest that the share of welfare recipients who are Black is around 21 %.”).

²⁵³ See, e.g., sources cited *supra* notes 18–20.

²⁵⁴ For a recent example of this discourse, see, for example, Nicholas Kristof, *The One Privilege Liberals Ignore*, N.Y. TIMES, (Sept. 13, 2023), <https://www.nytimes.com/2023/09/13/opinion/single-parent-poverty.html> [<https://perma.cc/94SB-F98U>].

²⁵⁵ See, e.g., JIMENEZ 2016, *supra* note 200, at 24 (“Consider . . . a case in a which relatively uninformed welfare recipient bargains with a furniture store Should the welfare recipient be allowed to get out of her bargain?”); WILLIAM MCGOVERN, LARY LAWRENCE & BRYAN D. HULL, *CONTRACTS AND SALES: CONTEMPORARY CASES AND PROBLEMS* 300 (2d ed. 2002) (“Is the provision in [*Williams*] always objectionable? Only in cases where a welfare-recipient is involved?”) [hereinafter MCGOVERN, LAWRENCE & HULL 2002]; see also *infra* note 299 (listing casebooks that describe Williams as a “welfare recipient” and mother of seven children).

²⁵⁶ See, e.g., MARTHA M. ERTMAN, WILLIAM K. SJOSTROM, JR. & DEBORA L. THREEEDY, *CONTRACT LAW: AN INTEGRATED APPROACH* 503 (2020) [hereinafter ERTMAN, SJOSTROM & THREEEDY 2020] (“Some of the judge’s comments could be read as suggesting that Walker-Thomas did something wrong in selling consumer goods, especially a stereo, to a person on welfare.”); MUELLER & ROSETT 1971, *supra* note 78, at 54; ARTHUR I. ROSETT & DANIEL J. BUSSEL, *CONTRACT LAW AND ITS APPLICATION* 368 (6th ed. 1999) [hereinafter ROSETT & BUSSEL 1999]; WALTER W. MILLER, *CONTRACTS: PROBLEMS, CASES AND MATERIALS* 372 (1999) [hereinafter MILLER 1999] (“Who is Judge Wright to tell her that just because she’s on welfare she can’t spend her money the way she wants?”); JIMENEZ 2016, *supra* note 200, at 144 (“In the next case, we will read about a welfare recipient who defaulted on payments pursuant to a contract containing difficult-to-understand terms.”); see also *infra* note 299 (listing casebooks that describe Williams as both “on welfare” and a mother of seven children).

Of course, one of the central projects of legal education is teaching students how to distill complex facts into their most salient details. Indeed, being able to filter and winnow the complexities of social life and legal practice into “neat legal questions” is part of what it means to be a lawyer.²⁵⁷ Given this, the fact that many casebook authors distill the facts of *Williams* for their students is hardly surprising.²⁵⁸ Nevertheless, the way *Williams*’s identity is often reduced to “welfare recipient” in casebooks suggests that it is important to pay close attention to the ways in which certain distillations might unintentionally invoke or reinforce certain cultural scripts.

Second, casebooks link *Williams* to welfare by pairing the case with excerpts and/or other legal opinions that discuss welfare. Consider, for example, *Jones v. Star Credit*. The case was a popular unconscionability case in Contracts casebooks published in the first decade after *Williams*, and its popularity has persisted.²⁵⁹ *Jones* can be found in many Contracts casebooks published after 1976. Like *Williams*, *Jones* is about an installment sales contract entered into after a visit from a door-to-door salesman. Unlike *Williams*, however, the *Jones* opinion begins by announcing that the plaintiffs are “welfare recipients.”²⁶⁰

In addition to *Jones*, there are two²⁶¹ secondary sources which address welfare that casebooks frequently put into conversation with

²⁵⁷ As Risa Goluboff has written, doctrinal distillation is also an important part of the appeals process. RISA L. GOLUBOFF, *THE LOST PROMISE OF CIVIL RIGHTS* 238–39 (2007) (explaining that doctrinal distillation is the filtering and winnowing of the complexities of social life and legal practice into “neat little questions”).

Similarly, Dylan Penningroth has labeled the distillation of litigants’ racial identities “doctrinal passing.” Penningroth, *supra* note 13, at 1206.

²⁵⁸ Nor is it necessarily misleading either. There is evidence to suggest that the fact that *Williams* was on government relief did matter a great deal to Skelly Wright. *See, e.g.*, Fleming, *supra* note 11, at 1417.

²⁵⁹ *See supra* note 175 (involving a door-to-door salesman and an installment contract).

²⁶⁰ *Jones v. Star Credit Corp.*, 298 N.Y.S.2d 264, 264 (1969). The freezer would have cost the plaintiffs \$1,439.69. *Id.* at 265. In actuality, the freezer was valued at \$300. *Id.*

²⁶¹ The FTC’s 1968 report on installment credit contracts, discussed in Part III, *supra*, can also be found in several case books. The fact that *Williams* was also poor only made her a more potent symbol of the victimized consumer. The mid-twentieth century consumer protection movement had brought a new level of attention to the plight of poor consumers. Studies of poor consumers began in earnest in the early 1960s. These studies cast the “low-income consumer” as the ultimate consumer victim. Even though the 1968 report itself discusses how many purchasers were enrolled in welfare, the excerpted passages in Contracts casebooks do not include that discussion. *INSTALLMENT CREDIT REPORT*, *supra* note 53, at 40. Instead, the FTC report is more frequently excerpted or cited for the argument that low-income retailers charge more because they have slimmer profit margins. *See, e.g.*, E. ALLAN FARNSWORTH & WILLIAM F. YOUNG, *CASES AND MATERIALS ON CONTRACTS* 436 (5th ed. 1995) [hereinafter FARNSWORTH & YOUNG 1995]; FARNSWORTH, YOUNG & SANGER 2001, *supra* note 193, at 412; E. ALLAN FARNSWORTH, WILLIAM F. YOUNG, CAROL SANGER, NEIL B.

Williams: 1) David Greenberg's 1980 chapter on Walker-Thomas's disreputable business practices,²⁶² and 2) Alix Freedman's 1993 *Wall Street Journal* article about how Rent-A-Center uses "aggressive marketing tactics" to profit off of "America's urban and rural poor."²⁶³ Both of these texts emphasize the ways that Walker-Thomas and Rent-A-Center, respectively, exploit poor consumers generally, and welfare recipients in particular.²⁶⁴ Greenberg identifies Walker-Thomas as a "ghetto retail store" whose business is "derived almost completely from a very narrow clientele: welfare, Social Security, and Supplemental Security Income recipients; unemployed people; and segments of the working poor."²⁶⁵ Similarly, Freedman's article on Rent-A-Center suggests that a significant portion of Rent-A-Center's clientele is on welfare.²⁶⁶

COHEN & RICHARD R.W. BROOKS, *CASES AND MATERIALS ON CONTRACTS* 506 (7th ed. 2008) [hereinafter FARNSWORTH ET AL. 2008]; E. ALLAN FARNSWORTH, WILLIAM F. YOUNG, CAROL SANGER, NEIL B. COHEN, RICHARD R.W. BROOKS & LARRY T. GARVIN, *CASES AND MATERIALS ON CONTRACTS* 534–35 (8th ed. 2013) [hereinafter FARNSWORTH ET AL. 2013]; FARNSWORTH ET AL. 2019, *supra* note 201, at 644; E. ALLAN FARNSWORTH, WILLIAM F. YOUNG, CAROL SANGER, NEIL B. COHEN, RICHARD R.W. BROOKS & LARRY T. GARVIN, *CASES AND MATERIALS ON CONTRACTS* 688 (10th ed. 2023) [hereinafter FARNSWORTH ET AL. 2023]; LON L. FULLER & MELVIN ARON EISENBERG, *BASIC CONTRACT LAW* 67–69 (7th ed. 2001) [hereinafter FULLER & EISENBERG 2001].

²⁶² Greenberg, *supra* note 53. Many casebooks excerpt or paraphrase Greenberg's piece. See, e.g., MACAULAY ET AL. 1992, *supra* note 198, at 611–13; MACAULAY ET AL. 2016, *supra* note 199, at 657–58; KASTELY, POST & HOM 1996, *supra* note 200, at 638; KASTELY, POST & HOM 2000, *supra* note 200, at 615–16.

In addition, all four editions of the Farnsworth casebook that have been published since 2008 do the same. See FARNSWORTH ET AL. 2008, *supra* note 261, at 502; FARNSWORTH ET AL. 2013, *supra* note 261, at 529–30; FARNSWORTH ET AL. 2019, *supra* note 201, at 642–43; FARNSWORTH ET AL. 2023, *supra* note 261, at 688–89.

²⁶³ Alix M. Freedman, *Peddling Dreams: A Marketing Giant Uses Its Sales Prowess to Profit on Poverty*, WALL ST. J., Sept. 22, 1993, at A-1; see IAN AYRES & GREGORY KLASS, *STUDIES IN CONTRACT LAW* 568–71 (2017) [hereinafter AYRES & KLASS 2017]; RICHARD E. SPEIDEL & IAN AYRES, *STUDIES IN CONTRACT LAW* 543–46 (2003) [hereinafter SPEIDEL & AYRES 2003]; IAN R. MACNEIL & PAUL J. GUEL, *CONTRACTS: EXCHANGE TRANSACTIONS AND RELATIONS* 479–83 (3d ed. 2001) [hereinafter MACNEIL & GUEL 2001].

²⁶⁴ Rent-A-Center, along with the rent-to-own industry more broadly, is positioned in some casebooks as the inheritor of Walker-Thomas's legacy of consumer exploitation. See, e.g., FARNSWORTH, YOUNG & SANGER 2001, *supra* note 193, at 409; FARNSWORTH ET AL. 2008, *supra* note 261, at 503; FARNSWORTH ET AL. 2013, *supra* note 261, at 531–32; FARNSWORTH ET AL. 2019, *supra* note 201, at 644; FARNSWORTH ET AL. 2023, *supra* note 261, at 690; MACNEIL & GUEL 2001, *supra* note 263, at 472–73 (providing materials intended to illustrate the types of questionable business practices that may warrant societal intervention, as well as the various forms such intervention might take).

²⁶⁵ Greenberg, *supra* note 53, at 379, 381.

²⁶⁶ Freedman, *supra* note 263, at A-10 ("Rent-A-Center says . . . just 15% [of its customer base] are on welfare or government subsidies. But former store managers consistently maintain that the total on government assistance is more than 25%, with some claiming up to 70%.").

Lastly, casebooks rhetorically link *Williams* to welfare when they raise welfare in the authorial notes and comments for *Williams* the case (as opposed to the identity of *Williams* the litigant) more generally.²⁶⁷ For example, in the 1980 edition of John Jackson's casebook, the introduction to *Williams* states: "As one reads the following cases and materials, consider what tacit assumptions and stereotypes underlie the use of such terms as 'debtors,' 'creditors,' 'welfare recipients,' 'the poor,' 'consumers' and the like."²⁶⁸ Notably, there is no mention of "welfare recipients" in the first edition of that same casebook, which was published seven years earlier in 1973.²⁶⁹

There are also examples of casebook authors calling attention to the fact that *Williams* was receiving "public assistance" without using the word "welfare." These descriptions similarly frame William's enrollment in AFDC as a significant element of the case, albeit in a somewhat less racialized way than doing so with the word welfare. For example, one 1995 casebook states that the buyers in contracts like those seen in *Williams* "are often unemployed and on government assistance."²⁷⁰ This characterization appears in that casebook's "Note on 'Easy Credit' in Consumer Transactions," which glosses the major findings of the FTC's 1968 study of installment credit practices of DC-area retailers.²⁷¹

²⁶⁷ See, e.g., MACAULAY ET AL. 1992, *supra* note 198, at 612 ("[Walker-Thomas's] business derived almost completely from welfare, Social Security, and Supplemental Security Income recipients If a customer complained to a legal services or social agency, Walker-Thomas responded using its power. . . . For example, a customer complained to the Federal Trade Commission about Walker-Thomas practices. The management called the customer and threatened to tell her social worker that her husband was working on a construction site in Virginia. *The customer's status could change from 'husband's whereabouts unknown' to that of an ex-welfare recipient.*" (emphasis added)); MACAULAY ET AL. 2016, *supra* note 199, at 657–58 (including the same text); see also E. ALLAN FARNSWORTH & WILLIAM F. YOUNG, CASES AND MATERIALS ON CONTRACTS 427 (4th ed. 1988) [hereinafter FARNSWORTH & YOUNG 1988] (writing of *Jones v. Star Credit Corp.*, which immediately follows *Williams*, that "in a comparable case [*Patterson v. Walker-Thomas Furniture Co.*, 277 A.2d 111 (D.C. 1971)] the court noted that the buyer had to claim welfare benefits while paying for the goods. Do these observations suggest any appropriate basis for classifying buyers?"); FARNSWORTH ET AL. 2008, *supra* note 261, at 502 (quoting Greenberg, *supra* note 53, at 379, 381–84).

²⁶⁸ JOHN H. JACKSON & LEE C. BOLLINGER, CONTRACT LAW IN MODERN SOCIETY: CASES AND MATERIALS 965 (2d ed. 1980) [hereinafter JACKSON & BOLLINGER 1980].

²⁶⁹ JACKSON 1973, *supra* note 78, at 963–68 (discussing FTC report showing low-income retailers had higher expenses but only slightly higher profits, among other topics).

²⁷⁰ BURTON 1995, *supra* note 200, at 272; see also STEVEN J. BURTON, PRINCIPLES OF CONTRACT LAW 257 (2d ed. 2001) [hereinafter BURTON 2001] (including the same Note); STEVEN J. BURTON & CHRISTOPHER R. DRAHOZAL, PRINCIPLES OF CONTRACT LAW 279 (5th ed. 2018) [hereinafter BURTON & DRAHOZAL 2018] (including the same Note).

It would, however, have been accurate to write that "such buyers" are often *perceived* to be unemployed and on government assistance.

²⁷¹ BURTON 1995, *supra* note 200, at 272.

This assertion that buyers in installment contracts are “often” jobless and receiving government assistance inaccurately characterizes the study upon which it relies. According to the 1968 report, the “principal source of income” for poor consumers who purchased goods using installment contracts was “wages from occupations.”²⁷² Moreover, of the 486 participants in the study, only thirty one (6.3%) were receiving welfare payments.²⁷³ In other words, only a minority of purchasers of installment sales contracts were unemployed and on government assistance.

Rather than reporting the facts as they were described in the FTC report, the casebook instead tells a story about buyers “like” Ora Lee Williams that echoes scripts about welfare mothers who are unemployed, and by extension, undeserving. In this way, the casebook’s note has more in common with the political rhetoric surrounding welfare mothers in the 1980s and ’90s—discussed in the following Section—than it does with the research it purports to characterize.

C. *Williams as Welfare Mother*

Welfare mothers were easy to find in national discourse in the late 1960s and early 1970s. Journalists were already reporting on the pathology of “welfare mothers” when the *Williams* case was making its way through the courts.²⁷⁴ The Moynihan Report, which was contemporaneous with the case, had both confirmed and reinforced existing negative beliefs about welfare mothers. In addition, the sustained activism of the National Welfare Rights Organization (NWRO)—an organization consisting primarily of Black mothers—kept welfare rights and welfare mothers in the spotlight.²⁷⁵ When, in 1970, the NWRO occupied the Department of Health, Education, and Welfare, anti-welfare rhetoric increased and intensified.²⁷⁶ And yet,

²⁷² INSTALLMENT CREDIT REPORT, *supra* note 53, at 40.

²⁷³ *Id.*

²⁷⁴ See, e.g., Austin Scott, NWRO, *NLS Add Thousands to Welfare*, LOWELL SUN (Mass.), Jan. 19, 1972, at 52 (including the subheading “Mostly welfare mothers”); *The Mystery of Rising Relief Costs*, THE DAILY STANDARD (Sikeston, Mo.), July 14, 1965, at 12 (“The big problem, as these officials see it, is the massively growing number of ‘welfare babies,’ for each of whom the mother receives a monthly support payment.”); see also GILENS, *supra* note 18, at 116–25 (describing the shift in media coverage of poverty from predominantly white to increasingly racialized portrayals, culminating in the “welfare mess” discourse of the early 1970s that made welfare mothers a prominent fixture in pathologizing national coverage).

²⁷⁵ REESE, *supra* note 19, at 113–15.

²⁷⁶ See KORNBLUH, *supra* note 19, at 154; see also REESE, *supra* note 19, at 115–21 (describing racialized backlash against welfare in the 1960s); Allison Page, “A Matter of Survival”: *The National Welfare Rights Organization, Black Feminism, and a Critique of Work*, in *ANTI-FEMINISMS IN MEDIA CULTURE* 46, 55 (Michele White and Diane Negra eds., 2022).

even though “welfare mothers” were a cognizable political identity in the 1960s and ’70s, it was not until 1980 that any Contracts casebook distilled Williams’s identity into welfare recipient *and* mother.²⁷⁷

1. *The Welfare Queen and the Moynihan Report*

This stitching together of welfare and motherhood in Contracts casebooks coincided with an increase in political rhetoric about traditional family values and concerns about absent fathers.²⁷⁸ The 1980s and ’90s witnessed a rightward shift in electoral politics generally, and on social issues in particular.²⁷⁹ Welfare programs and policies became an important axis of this rightward shift. All too often, the figure of the “undeserving” welfare recipient served as the synecdoche of the problems with the welfare state as a whole.²⁸⁰

The welfare queen was the most visible and potent of these negative representations of welfare recipients.²⁸¹ First introduced to the national stage in Ronald Reagan’s 1976 presidential campaign speeches, the so-called welfare queen was a woman in Chicago who had thoroughly defrauded several different government assistance programs.

²⁷⁷ *Contracts: Contemporary Cases and Materials*, written by Michael Closen, Paul Ferber, Richard Perlmutter, and Jeffrey Wittenberg, was the first casebook to do so. The authors included a short description of *Williams* in their introduction to unconscionability, which began: “Buyer, who was a welfare recipient and mother of seven children, bought a stereo set . . .” MICHAEL L. CLOSEN, PAUL S. FERBER, RICHARD M. PERLMUTTER & JEFFREY D. WITTENBERG, *CONTRACTS: CONTEMPORARY CASES AND MATERIALS* 314 (1980) [hereinafter CLOSEN ET AL. 1980].

The earlier absence of discussions of welfare in Contracts casebooks’ framing of *Williams* may be explained by the existence of poverty law casebooks, which *were* discussing *Williams* and welfare in the 1960s and 1970s. Law schools only offered classes on the law of the poor for a relatively short period, however. By the late-1970s they had become a rarity. It is possible, then, that as fewer discussions of *Williams* and welfare were happening in law of the poor classrooms, these conversations shifted to Contracts. See Fleming, *supra* note 11, at 1436 n.347.

²⁷⁸ REESE, *supra* note 19, at 148–49.

²⁷⁹ *Id.* See also LISA DUGGAN, *THE TWILIGHT OF EQUALITY?: NEOLIBERALISM, CULTURAL POLITICS, AND THE ATTACK ON DEMOCRACY* 9 (2003); DAVID HARVEY, *A BRIEF HISTORY OF NEOLIBERALISM* (2005) (examining the origins of neoliberalism and its global proliferation after the 1970s); GEORGE LIPSITZ, *THE POSSESSIVE INVESTMENT IN WHITENESS: HOW WHITE PEOPLE PROFIT FROM IDENTITY POLITICS* 15–16 (2d ed. 2006) (describing how neoconservative welfare policies and emphasis on traditional social values reinforced the value of whiteness); HANEY LÓPEZ, *supra* note 19, at 65–71 (identifying the Reagan administration’s opposition to welfare and affirmative action as a form of dog whistle politics).

²⁸⁰ See HANCOCK, *POLITICS OF DISGUST*, *supra* note 19, at 12 (describing the post-1970s emergence of a politics of disgust that placed blame for poverty and reliance on welfare on individuals); Lubiano, *supra* note 17, at 335 (“The lesson implied by the *Moynihan Report* . . . is that the welfare-dependent single mother is finally the synecdoche, the shortest possible shorthand, for the pathology of poor, urban, black culture.”).

²⁸¹ Hancock, *supra* note 27, at 31–36 (explaining that the welfare queen “crystallized into a political symbol during the Reagan administration”).

The woman—Linda Taylor—had been dubbed the “welfare queen” by Chicago newspapers.²⁸² As Reagan described her, Taylor held the “record” for welfare fraud and was collecting a “tax-free cash income” of over \$150,000.²⁸³ Taylor’s fraud tapped into many Americans’ concerns about the possibility of widespread welfare fraud and its resulting cost to taxpayers.²⁸⁴ She proved an effective symbol, helping Reagan to get his supporters fired up about “welfare chislers.”²⁸⁵ When Reagan ran for President again in 1980, the welfare queen returned to the campaign trail.²⁸⁶

Of course, it was not only Reagan’s campaign speeches that brought the welfare queen and welfare into the national spotlight. Conservative pundits, politicians, and scholars played a significant role as well. Beginning in the early 1980s, conservative intellectuals exhumed Moynihan’s claims about welfare’s negative effect on Black families and held the Moynihan Report up as a “prescient” critique of the liberal welfare state.²⁸⁷

In line with the report’s pathologization of Black women, the ‘80s-era conservative revivals similarly scapegoated Black women.²⁸⁸ In these formulations, unwed Black mothers who were dependent on welfare exemplified the problems with liberal politics.²⁸⁹ The myth of the

²⁸² Kohler-Hausmann, *supra* note 20, at 762.

²⁸³ ‘Welfare Queen’ Becomes Issue in Reagan Campaign, N.Y. TIMES (Feb. 15, 1976), <https://www.nytimes.com/1976/02/15/archives/welfare-queen-becomes-issue-in-reagan-campaign-hitting-a-nerve-now.html> [<https://perma.cc/82SM-EUP7>] (reporting that Reagan had “referred to her at nearly every [campaign] stop”).

²⁸⁴ See Kohler-Hausmann, *supra* note 20, at 762 (explaining that even though welfare fraud was only one among many (far more serious) crimes that Taylor committed, politicians and news media “positioned her as a representative of AFDC recipients and a product of the welfare bureaucracy”).

²⁸⁵ ‘Welfare Queen’ Becomes Issue, *supra* note 283.

²⁸⁶ See Kohler-Hausmann, *supra* note 20, at 763 (“Despite critics’ claims that Reagan misrepresented the details of the story, the welfare queen returned for a starring role in the 1980 presidential campaign and remained a mainstay of his politics and campaigns over the following decade.”).

²⁸⁷ GEARY, *supra* note 230, at 207 (writing that on the report’s thirtieth anniversary, “Republican cultural warrior William Bennett . . . praised *The Negro Family* as ‘prescient’”). Some of these early ‘80s conservative works include GEORGE GILDER, *WEALTH AND POVERTY* (1981), and Glenn C. Loury, *The Moral Quandary of the Black Community*, PUB. INT., Spring 1985, at 9, https://www.nationalaffairs.com/public_interest/detail/the-moral-quandary-of-the-black-community [<https://perma.cc/ZG4Y-E9MJ>], for some of these early ‘80s conservative works.

²⁸⁸ See, e.g., CHARLES MURRAY, *LOSING GROUND: AMERICAN SOCIAL POLICY, 1950–1980*, at 18 (1984) (writing of popular resentment of AFDC that “[b]y the fifties it had become embarrassingly, outrageously clear that most of these women [on AFDC] were not widows . . . Worst of all, they didn’t stop having babies after the first lapse. They kept having more. . . . The most flagrantly unrepentant seemed to be mostly black, too.”).

²⁸⁹ This echoes rhetoric around the *Williams* case itself. For more on the discourse of “harming the people you are trying to help,” see Kennedy, *supra* note 13, at 228–29.

welfare queen—a Black woman who was falsifying welfare claims and defrauding the government—dovetailed nicely with this conservative reimagining of the Moynihan Report.

One consequence of the conservative embrace of the Moynihan Report was that concerns about welfare queens and bad Black mothers dogged national conversations about welfare through the 1970s and '80s and continued to shape legislative debates about welfare reform in the 1990s. The '90s would also bear witness to the criminal prosecution of Black mothers for their maternal failings. These prosecutions drew upon scripts about poor Black mothers, adding an ever more punitive twist to these preexisting narratives.²⁹⁰

For decades, the figure of the welfare mother has been adapted to different political exigencies. As a result, her cultural script is multiple, complex, occasionally contradictory, and looks something like the following:

She is an unmarried mother of multiple children and lives in public housing. She is unemployed and un- or undereducated. Most often she is Black. Welfare (typically AFDC or TANF) is her only, or primary, source of income. She has more children in order to be able to collect a larger check from the government. Her spending is frivolous, and more likely to be on luxuries than on everyday necessities. She does not make good decisions.²⁹¹

She is often described as a bad mother—the type to feed her children highly processed foods. If her children are obese, it is the result of her poor mothering.²⁹² There is no father figure in the household.

²⁹⁰ Black feminist theorists have examined these scripts at length. See, e.g., HANCOCK, *POLITICS OF DISGUST*, *supra* note 19, at 30–31; ROBERTS, *KILLING THE BLACK BODY*, *supra* note 17, at 8–19; WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS*, *supra* note 29, at 20; Spillers, *supra* note 21, at 65; Lubiano, *supra* note 17, at 335.

²⁹¹ As Dorothy Roberts and others have written, the welfare mother figure is an iteration of the longer-standing archetype of the “bad Black mother.” ROBERTS, *KILLING THE BLACK BODY*, *supra* note 17, at 10 (“[Black women’s] maternity was blamed for Black people’s problems. Contrary to the ideal white mother, Black mothers had their own repertory of images that portrayed them as immoral, careless, domineering, and devious.”); see also Ann Cammett, *Welfare Queens Redux: Criminalizing Black Mothers in the Age of Neoliberalism*, 25 S. CAL. INTERDISC. L.J. 363 (2016); Jan Mendes, *A Treason Against Goodness and an Argument for Death: Re-visiting the Trope of the “Bad Black Mother”*, 39 HYPATIA 812 (2024); Nicole Rousseau, *Social Rhetoric and the Construction of Black Motherhood*, 44 J. BLACK STUD. 451 (2013) (analyzing representations of Black mothers in popular U.S. films between 1990 and 2013 and the ways they engage with welfare mother rhetoric).

Examples of foundational works of Black feminist theory, which address the myth of the “welfare queen,” include COLLINS, *supra* note 17; HANCOCK, *POLITICS OF DISGUST*, *supra* note 19; Lubiano, *supra* note 17.

²⁹² For example, Jerri Gray, a single Black mother from South Carolina, was arrested in 2009 on charges of child neglect because she was unable to help her fifteen-year-old son lose weight. For media coverage of Gray’s arrest, see Ron Barnett, *S.C. Case Looks on Child*

The children have multiple fathers. The baby's father is incarcerated. This poor choice in father(s) will serve as further evidence of her faulty decision-making.²⁹³

In some representations, she is also on drugs and is not actually her children's primary caretaker.²⁹⁴ In this version, she likely used drugs while pregnant, which has since led to the behavioral problems that her children exhibit.²⁹⁵ To the extent that Black children are "super predators," she is their mother.²⁹⁶

In the most politicized of these representations, her lifestyle comes at the expense of hardworking Americans whose tax dollars fund her welfare checks.²⁹⁷

Obesity as Child Abuse. But Is It?, USA TODAY (July 20, 2009), https://usatoday30.usatoday.com/news/health/weightloss/2009-07-20-obesityboy_N.htm [https://perma.cc/QCL5-6PJ2]; David Person, *No Southern Comfort in Obesity*, USA TODAY (Sept. 30, 2009), https://www.pressreader.com/usa/usa-today-us-edition/20090930/282905201606297?srsltid=AfmBOopAqAQZ_8vznMF0NHS_IDTWd9DnPAyXJkQU0ECSvUJ3drwliAkU [https://perma.cc/7BA8-KNPP].

For more on the relationship between Blackness and obesity, see generally SABRINA STRINGS, *FEARING THE BLACK BODY: THE RACIAL ORIGINS OF FAT PHOBIA* (2019).

²⁹³ Barack Obama's "My Brother's Keeper" program was widely criticized for the ways in which it rested upon tropes of single Black mothers and the harms caused by their single parent status. The most notable of these critiques was written by Kimberlé Crenshaw. Kimberlé Williams Crenshaw, Opinion, *The Girls Obama Forgot*, N.Y. TIMES (July 29, 2014), <https://www.nytimes.com/2014/07/30/opinion/Kimberl-Williams-Crenshaw-My-Brothers-Keeper-Ignores-Young-Black-Women.html> [https://perma.cc/CGL5-GTC8].

See also ROBERTS, *SHATTERED BONDS*, *supra* note 233, at 59 (explaining that, because most Black families are headed by single mothers, protective child services penalize them for deviating from the ideal of the white, middle-class nuclear family); Adriane Bezusko, *Criminalizing Black Motherhood: How the War on Welfare Was Won*, 15 SOULS 39, 47 (2013) (describing paternity verification programs and policing of poor Black families in the 1980s and '90s based on the belief that non-nuclear, female-headed households caused poverty and inequality).

²⁹⁴ Dorothy Roberts has written extensively on the criminalization of Black mothers who were addicted to crack-cocaine. As Roberts writes, "The monstrous crack-smoking mother was added to the iconography of deprived Black maternity, alongside the matriarch and the welfare queen." Dorothy E. Roberts, *Unshackling Black Motherhood*, 95 MICH. L. REV. 938, 950 (1997); see also ROBERTS, *KILLING THE BLACK BODY*, *supra* note 17, at 157.

²⁹⁵ The most well-known representation of this nature can be found in the 1995 movie *Losing Isaiah*, which starred Halle Berry as a crack-addicted Black mother who abandons her baby in a dumpster. As a toddler, Isaiah is shown to have behavioral problems caused by his mother's drug usage while pregnant. *LOSING ISAIAH* (Paramount Pictures 1995).

²⁹⁶ For more on the "super-predator" myth that took hold in the 1990s and its connection to the welfare mother script, see James Forman, Jr., *Community Policing and Youth as Assets*, 95 J. CRIM. L. & CRIMINOLOGY 1 (2004); Lezlie Frye, *Crippling the "Crack Baby" Epidemic: A Feminist Disability Genealogy of Welfare Reform*, 34 FEMINIST FORMATIONS 69, 75–76 (2022).

²⁹⁷ Political scientist Ange-Marie Hancock's *THE POLITICS OF DISGUST* documents this phenomenon in the context of the debate over welfare reform in the 1990s. HANCOCK, *POLITICS OF DISGUST*, *supra* note 19. Similarly, Black studies scholar Wahneema Lubiano writes, "The welfare queen represents moral aberration and an economic drain . . . [She is]

That this script appears contradictory is part of why it has been so culturally persistent. For example, the welfare queen is characterized as lazy (in her refusal to work and subsistence on welfare checks) but also entrepreneurial in her ability to defraud the welfare system. She is both a bad mother because of her absence from her children's lives and because of her presence as a negative role model. Contradictions such as these are cause and consequence of the narrative's capaciousness. Rather than supplanting prior iterations of the welfare mother script, new incarnations become incorporated, allowing the figure of the welfare mother to remain salient in whatever recombinant form she is needed.²⁹⁸

2. *Welfare Mothers in Casebooks*

Thus, it should be unsurprising that many of the Contracts casebooks that have included *Williams* since 1980 have, to some extent, characterized Ora Lee Williams as a welfare mother.²⁹⁹ As discussed in the prior Section, describing Williams as someone who is both a mother and a recipient of welfare is an example of the doctrinal distillation that is integral to the common law.³⁰⁰

one of those drawing the nation down into the depths of despair." Lubiano, *supra* note 17, at 338.

²⁹⁸ Or, as Hortense Spillers wrote in her canonical essay *Mama's Baby, Papa's Maybe*, "I describe a locus of confounded identities, a meeting ground of investments and privations in the national treasury of rhetorical wealth. My country needs me, and if I were not here, I would have to be invented." Spillers, *supra* note 21, at 65.

²⁹⁹ See, e.g., JOHN P. DAWSON, WILLIAM B. HARVEY & STANLEY D. HENDERSON, CASES AND COMMENT AND CONTRACTS 712 (6th ed. 1993) [hereinafter DAWSON, HARVEY & HENDERSON 1993] (including *Williams* only as a note case and writing "defendant Williams who supported herself and seven children" and "[t]he back of the stereo contract listed the name of Williams'[s] social worker and her \$218 monthly stipend from the government"); EPSTEIN, MARKELL & PONOROFF 2022, *supra* note 201, at 478 ("Does the United States Court of Appeals for the District of Columbia rule that it is unconscionable to sell a \$514 stereo to mothers with seven children on public assistance?"); FRIER & WHITE 2019, *supra* note 201, at 501 ("Judge Wright quotes the lower court opinion noting that Williams was a welfare recipient with seven children. Why is this information relevant to the outcome?"); JIMENEZ 2016, *supra* note 200, at 149–50 ("[D]o you think the fact that Williams was financially strapped, on welfare, or had seven children was (or should have been) relevant in deciding this dispute?"); KESSLER, GILMORE & KRONMAN 1986, *supra* note 201, at 603 ("[D]oes it matter that Mrs. Williams was on welfare with seven children?"); MACAULAY ET AL. 2016, *supra* note 199, at 661 ("One of the ways the myth [of the welfare mother] may enter into the reasoning of the court is in the quote . . . to the effect that it was outrageous . . . to sell Ms. Williams a \$514 stereo when she was a welfare mother . . ."); MILLER 1999, *supra* note 256, at 372 (writing that Williams "had seven kids running around the house" and was "on welfare"); ROBERT E. SCOTT & JODY P. KRAUS, CONTRACT LAW AND THEORY 70 (6th ed. 2023) [hereinafter SCOTT & KRAUS 2023] (describing Williams as "a mother of seven, who is on welfare").

³⁰⁰ GOLUBOFF, *supra* note 257, at 238–39.

The presence of cultural scripts about welfare mothers goes beyond mere doctrinal distillation, however. Many casebooks have more parallels with the cultural scripts about welfare mothers than simply describing Williams as a mother receiving welfare payments. The following are just some of the resonances between casebooks' treatment of *Williams* and cultural scripts about welfare mothers:

- references to the number of children Williams had in authorial notes and comments,³⁰¹
- adjacent cases featuring litigants who are on “welfare,”³⁰²

³⁰¹ For examples of casebooks that mention that Williams had seven children in their authorial notes, see FRIER & WHITE 2019, *supra* note 201, at 501; FRIER & WHITE 2005, *supra* note 201, at 420; JIMENEZ 2016, *supra* note 200, at 150; MARKOVITS & RAUTERBERG 2018, *supra* note 200, at 850 (“*Williams* involved a retailer who specialized in selling to the poor and who, by means of aggressive sales tactics, sold a series of household goods to a mother of seven ‘of limited education separated from her husband.’”); DANIEL MARKOVITS, CONTRACT LAW AND LEGAL METHODS 1695 (1st ed. 2012) [hereinafter MARKOVITS 2012]. For additional examples, see *infra* notes 304–05 and accompanying text.

³⁰² *Jones v. Star Credit Corp.* remains one of the commonly included cases with *Williams*, though its popularity waned in the 1990s. 298 N.Y.S.2d 264 (Sup. Ct. 1969). In *Jones*’s first sentence, the plaintiffs are described as “welfare recipients.” *Id.* at 264. For a list of casebooks that included *Jones* and were published in the first decade after *Williams*, see *supra* note 176 and accompanying text.

Since 1976, eleven (out of a possible forty) casebooks have included *Jones* in the unconscionability section with *Williams* in at least one of their editions. The casebooks are as follows: AYRES & KLASS 2017, *supra* note 263, at 572; THOMAS D. CRANDALL & DOUGLAS J. WHALEY, CASES, PROBLEMS, AND MATERIALS ON CONTRACTS 700 (1987); FARNSWORTH ET AL. 2013, *supra* note 261, at 532; JACKSON & BOLLINGER 1980, *supra* note 268, at 982; KESSLER, GILMORE & KRONMAN 1986, *supra* note 201, at 607; CHARLES L. KNAPP & NATHAN M. CRYSTAL, PROBLEMS IN CONTRACT LAW: CASES AND MATERIALS 555 (1987) [hereinafter KNAPP & CRYSTAL 1987]; MACAULAY ET AL. 1992, *supra* note 198, at 617; MARKOVITS & RAUTERBERG 2018, *supra* note 200, at 844; MCGOVERN, LAWRENCE & HULL 2002, *supra* note 255, at 302; MATTHEW C. MCKINNON, THE LAW OF CONTRACTS 8–22 (1993); ROBERT S. SUMMERS & ROBERT A. HILLMAN, CONTRACT AND RELATED OBLIGATION: THEORY, DOCTRINE, AND PRACTICE 606 (4th ed. 2001).

Two other notable cases are *Kugler v. Romain*, 279 A.2d 640 (N.J. 1971), also discussed in Section III.B.1. *supra*, and *Remco Enterprises v. Houston*, 677 P.2d 567 (Kan. Ct. App. 1984). *Kugler* involved door-to-door sales of fraudulent educational books that “were consciously directed toward minority group consumers and consumers of limited education and economic means. Persons with incomes of less than \$5000 a year were favored; some buyers were welfare recipients.” 279 A.2d at 643. The post-1976 casebooks that include *Kugler* are: KESSLER, GILMORE & KRONMAN 1986, *supra* note 201, at 611; MACAULAY ET AL. 1992, *supra* note 198, at 646; SCOTT & LESLIE 1988, *supra* note 25, at 455–56 (including a problem based on the facts of *Kugler* and using language from the case).

The language in *Remco*, which involves a rent-to-own contract for a television, is the most evocative of welfare mother scripts. In the opinion’s second paragraph, the court writes that “the defendant was a 20-year-old single mother of three who had completed only the ninth grade in school and was dependent upon aid to dependent children welfare payments of \$320 per month.” *Remco*, 677 P.2d at 569. For the post-1976 casebooks that include *Remco*, see MACNEIL & GUDDEL 2001, *supra* note 263, at 473; MCGOVERN, LAWRENCE & HULL 2002, *supra* note 255, at 306.

- discussions of “inner-cities,” “the urban poor,” or “ghettos,”³⁰³
- discussions of the (ir)responsibility of Williams’s consumer choices,³⁰⁴

³⁰³ For casebooks that use the language of “inner cities,” the “urban poor,” and “ghettos,” see, for example, JOHN P. DAWSON, WILLIAM BURNETT HARVEY, STANLEY D. HENDERSON & DOUGLAS G. BAIRD, *CONTRACTS: CASES AND COMMENTS* 922 (11th ed. 2019) (“How can we ever be confident that the waiver is a deliberate and knowing one? Can there ever be a fully informed waiver on the floor of an inner-city furniture store?”); JOHN P. DAWSON, WILLIAM BURNETT HARVEY, STANLEY D. HENDERSON & DOUGLAS G. BAIRD, *CONTRACTS: CASES AND COMMENT* 696 (10th ed. 2013); FARNSWORTH & YOUNG 1995, *supra* note 261, at 437 (“Urban rioting in the 1960s prompted the formation of [the Kerner Commission] [T]he report enumerated tactics by which ‘a special kind of merchant’ take advantage of inner-city residents who have low and unstable incomes and little understanding of the ‘pitfalls of credit buying.’”); FARNSWORTH & YOUNG 1988, *supra* note 267, at 428 (tinting a similar note “Ghetto Market Improvement”); E. ALLAN FARNSWORTH & WILLIAM F. YOUNG, *CASES AND MATERIALS ON CONTRACTS* 517–18 (3d ed. 1980); FARNSWORTH, YOUNG & JONES 1972, *supra* note 78, at 389; GEORGE W. KUNEY & ROBERT M. LLOYD, *CONTRACTS: TRANSACTIONS AND LITIGATION* 323–24 (5th ed. 2020) [hereinafter KUNEY & LLOYD 2020] (“[S]ubstantive unconscionability . . . came to full flower after enactment of the U.C.C. in the turbulent 1960’s and 1970’s. During this period, corporate enterprise expanded into previously un- and underserved sectors of society, especially the inner city”); GEORGE W. KUNEY & ROBERT M. LLOYD, *CONTRACTS: TRANSACTIONS AND LITIGATION* 312–13 (1st ed. 2006) [hereinafter KUNEY & LLOYD 2006]; KUNZ ET AL. 2018, *supra* note 200, at 450 (quoting Judge Skelly Wright’s *The Courts Have Failed the Poor*, in which he wrote that “our most pressing social, moral and political imperative is to liberate the urban poor from their degradation”); CHRISTINA L. KUNZ & CAROL L. CHOMSKY, *CONTRACTS: A CONTEMPORARY APPROACH* 466 (1st ed. 2010); BEN TEMPLIN & DAVID H. SPRATT, *CONTRACTS: A MODERN COURSEBOOK* 401 (3d ed. 2023) (writing in the “Comments for the Case” before *Williams*, “The Walker-Thomas Furniture Company’s customers were the urban poor who could not typically get credit from any mainstream store”); BEN TEMPLIN, *CONTRACTS: A MODERN COURSEBOOK* 361 (1st ed. 2017) (“The Walker-Thomas Furniture Company’s customers were the urban poor who could not typically get credit from any mainstream store. Many of the customers were unemployed and receiving government assistance.”). For more on the discourse about “ghetto merchants” and the urban upheaval of the 1960s, see also *supra* notes 183–200 and accompanying text.

³⁰⁴ For cases that draw additional attention to Williams’s decision-making as a consumer, see, for example, EPSTEIN, MARKELL & PONOROFF 2022, *supra* note 201, at 482–83 (“On remand, what evidence would you try to introduce if you represented Ms. Williams? Would it be helpful to show her education and economic situation? Would it be helpful to show why she purchased a \$514 stereo?”); DAVID G. EPSTEIN, BRUCE A. MARKELL & LAWRENCE PONOROFF, *MAKING AND DOING DEALS: CONTRACTS IN CONTEXT* 335 (1st ed. 2002) [hereinafter EPSTEIN, MARKELL & PONOROFF 2002]; ERTMAN, SJOSTROM & THREEDY 2020, *supra* note 256, at 503 (contrasting Williams with an “ordinary consumer” in a question asking “[d]o you think that the ordinary consumer would choose not to enter into a transaction with a vendor who had such a policy, even assuming the consumer was aware of and understood the provision?”); KNAPP, CRYSTAL & PRINCE 2019, *supra* note 201, at 644 (asking after an excerpt from Arthur Leff’s article about *Williams* “is it possible that unfairness likes in selling ‘this expensive item’ (the stereo) and others as well, ‘to a poor person, knowing of her poverty,’ pursuant to a contract with an add-on clause?”); CHARLES L. KNAPP, NATHAN M. CRYSTAL & HARRY G. PRINCE, *PROBLEMS IN CONTRACT LAW: CASES AND MATERIALS* 607 (7th ed. 2012) [hereinafter KNAPP, CRYSTAL & PRINCE 2012]; CHARLES L. KNAPP, NATHAN M. CRYSTAL & HARRY G. PRINCE, *PROBLEMS IN CONTRACT LAW: CASES AND MATERIALS* 591 (6th ed. 2007) [hereinafter KNAPP, CRYSTAL & PRINCE 2007]; CHARLES L. KNAPP, NATHAN M. CRYSTAL & HARRY G. PRINCE, *PROBLEMS IN CONTRACT LAW: CASES AND MATERIALS* 571 (5th ed. 2003) [hereinafter KNAPP, CRYSTAL & PRINCE 2003]; KNAPP, CRYSTAL & PRINCE 1999, *supra* note 201, at 675; CHARLES

- discussions of Williams's maternal decisions,³⁰⁵
- Aposing questions about whether race or stereotypes, might be relevant to the case,³⁰⁶ and
- addressing the welfare queen myth head-on.³⁰⁷

L. KNAPP & NATHAN M. CRYSTAL, *PROBLEMS IN CONTRACT LAW: CASES AND MATERIALS* 667 (3d ed. 1993) [hereinafter KNAPP & CRYSTAL 1993]; KNAPP & CRYSTAL 1987, *supra* note 302, at 552; KESSLER, GILMORE & KRONMAN 1986, *supra* note 201, at 603 (describing the stereo as “not a necessity”); ROBERT E. SCOTT & JODY P. KRAUS, *CONTRACT LAW AND THEORY* 70 (6th ed. 2023) [hereinafter SCOTT & KRAUS 2023] (“You may think that as a mother of seven, who is on welfare, Ms. Williams was less capable of knowing what is in her best interest than is a judge . . . Are you comfortable making that argument?”); ROBERT E. SCOTT & JODY S. KRAUS, *CONTRACT LAW AND THEORY* 61 (5th ed. 2013) [hereinafter SCOTT & KRAUS 2013]; ROBERT E. SCOTT & JODY S. KRAUS, *CONTRACT LAW AND THEORY* 60 (4th ed. 2007) [hereinafter SCOTT & KRAUS 2007]; ROBERT E. SCOTT & JODY S. KRAUS, *CONTRACT LAW AND THEORY* 63 (3d ed. 2002) [hereinafter SCOTT & KRAUS 2002]; ROBERT E. SCOTT & DOUGLAS L. LESLIE, *CONTRACT LAW AND THEORY* 56 (2d ed. 1993) [hereinafter SCOTT & LESLIE 1993] SCOTT & LESLIE 1988, *supra* note 25, at 63.

³⁰⁵ For discussions of Williams's behavior and decision-making in her capacity as a mother, see, for example, KNAPP, CRYSTAL & PRINCE 2019, *supra* note 201, at 645–46 (referencing Muriel Spence's article about *Williams* and asking “Would it make a difference to the outcome of the case if Williams happened to be an educated person with business experience who suddenly found herself with seven children to raise as a single parent because of the accidental death of her husband?”); CHARLES L. KNAPP, NATHAN M. CRYSTAL & HARRY G. PRINCE, *PROBLEMS IN CONTRACT LAW: CASES AND MATERIALS* 629 (8th ed. 2016) [hereinafter KNAPP, CRYSTAL & PRINCE 2016]; KNAPP, CRYSTAL & PRINCE 2003, *supra* note 304, at 572; KNAPP, CRYSTAL & PRINCE 2007, *supra* note 304, at 592; KNAPP, CRYSTAL & PRINCE 1999, *supra* note 201, at 676; MILLER 1999, *supra* note 256, at 372 (“If you had seven kids running around the house I bet you'd want a stereo too, a loud one. Who is Judge Wright to tell her that just because she's on welfare she can't spend her money the way she wants?”); SCOTT & KRAUS 2023, *supra* note 304, at 70 (“Ms. Williams'[s] seven children were probably adversely affected by the loss of the furniture, and perhaps Ms. Williams inadequately considered their interests when she bought the stereo.”); SCOTT & KRAUS 2013, *supra* note 304, at 61; SCOTT & KRAUS 2007, *supra* note 304, at 60; SCOTT & KRAUS 2002, *supra* note 304, at 58; SCOTT & LESLIE 1993, *supra* note 304, at 55–56; SCOTT & LESLIE 1988, *supra* note 25, at 63.

³⁰⁶ For casebooks that pose questions about the relevance of race or stereotypes to the case, see, for example, FARNSWORTH ET AL. 2013, *supra* note 261, at 529 (“Is the court concerned with the terms of the deal, the bargaining process, or characteristics (or assumptions about characteristics) of Mrs. Williams in relation to the transaction?”); KNAPP, CRYSTAL & PRINCE 2007, *supra* note 304, at 592 (“While the court does not reveal Williams's race or ethnicity, educational background, or work experience, the majority opinion reports her monthly income of \$218 and the dissent indicates that she received ‘relief funds.’ What common assumptions about Williams might be made on the basis of that information . . . ?”).

³⁰⁷ For casebooks that address the welfare queen myth more directly, see, for example, KNAPP, CRYSTAL & PRINCE 2019, *supra* note 201, at 646 (explaining briefly Muriel Spence's argument about the role of stereotypes in *Williams*); KNAPP, CRYSTAL & PRINCE 2003, *supra* note 304, at 572; KNAPP, CRYSTAL & PRINCE 1999, *supra* note 201, at 675–76; MACAULAY ET AL. 2016, *supra* note 199, at 661 (writing that the myth of the welfare queen appears in the District Court's reasoning when it states that “it was outrageous . . . to sell Ms. Williams a \$514 stereo when she was a welfare mother with a stipend of \$218 a month to support herself and seven children”); KASTELY, POST & HOM 2000, *supra* note 200, at 617–21 (including a long excerpt from Muriel Spence's article on *Williams*, which discusses the welfare queen myth); KASTELY, POST & HOM 1996, *supra* note 200, at 639–43.

In different ways, each of these listed characteristics tethers *Williams* to cultural scripts about welfare mothers. And in turn, these scripts tether the case to ideas about race generally and Blackness specifically. The following quotes, taken from a casebook published in 2006, provide an example of what this can look like. In the chapter's introduction to unconscionability, the authors explain that

substantive unconscionability . . . came to full flower after enactment of the UCC in the turbulent 1960's and 1970's. During this period, corporate enterprise expanded into previously un- and under-served sectors of society, especially the inner-city, whose inhabitants had been rendered dependent on government transfer payments by the failed experiments of the Johnson administration's war on poverty. . . . In the wake of cases like *Williams v. Walker-Thomas Furniture Co.*, the first case in this chapter, which uses substantive unconscionability to invalidate aggressive, unfair financing practices in the inner city, commentators were, variously, ecstatic or horrified, depending on their perspective.³⁰⁸

This passage links *Williams*, *Williams*, and the doctrine of unconscionability as a whole to the inner city. The case *Williams* involved "unfair financing practices in the inner city," and by implication, Ora Lee Williams herself was an inner-city resident. Moreover, according to the authors, the contemporary doctrine of unconscionability owes to the plight of inner city "inhabitants."

Where the welfare mother cultural script resonates most strongly, however, is in the authors' description of inner-city residents as "*rendered dependent* on government transfer payments."³⁰⁹ According to this historical account, the poor (implicitly Black) city dwellers of the 1960s and '70s were dependent on welfare. But not only that, these imagined welfare recipients were not even the agents of their own dependency. The authors' use of the passive voice "rendered" further serves to underscore a presumed acceptance of their impoverishment.

The block quote above appears on the page immediately before the *Williams* opinion. Thus, *Williams* is quite directly situated as a case involving a poor, Black, welfare-dependent litigant. The facts of the case then make clear that Williams was also a mother who had to "feed, clothe and support both herself and her seven children," and who was on "relief." These facts only serve to further tether the case to the welfare mother script. The more of these tethers that are present, the

³⁰⁸ KUNEY & LLOYD 2006, *supra* note 303, at 313; *see also* KUNEY & LLOYD 2020, *supra* note 303, at 323–24 (using similar language).

³⁰⁹ KUNEY & LLOYD 2006, *supra* note 303, at 313 (emphasis added).

more likely it is that race will seem salient to the case. These narrative resonances perform a kind of layering of racial meaning, within which race's presence is often simultaneously masked and marked.

3. *Racial Scaffolding*

In this way, cultural scripts and their casebook resonances work in tandem to provide a scaffolding for racial thinking. And if there is enough of this scaffolding for race-based thinking, it starts to more actively provide a framework for thinking through other legal questions. For an example of what this looks like, consider the following problem, which follows *Williams* in this same casebook.

Problem 12-1

You Need \$3,000 Wheels!

Christy Chenney lived four days with her car's plastic hubcaps. On day five, armed with three of her boyfriend's pay stubs, a bank statement and the names of references, the unemployed mother of three drove to a strip mall in the suburbs and outfitted her new used-car with a set of gleaming, \$57-a-week, rent-to-own chrome wheels. If she makes her payments on time for the next 52 weeks, every 11th payment will be forgiven. In the end, she will have paid \$27,736 for a set of \$1,800 wheels.

Nothing's worse than plastic hubcaps.³¹⁰

This problem includes several additional tethers to the welfare mother cultural script. Chenney is unmarried and unemployed. She has several children. And she spends money on frivolous luxury items—in this instance, chrome hubcaps—which, as a frequent symbol in the iconography of rap and hip-hop music, are themselves a racialized luxury good.³¹¹ Moreover, by describing Chenney as “armed with her boyfriend's pay stubs,” the casebook also suggests that Chenney is

³¹⁰ *Id.* at 318. Problem 12-1 is the only text between *Williams* and the casebook's next principal case, *Weaver v. American Oil Co.*, 276 N.E.2d 144 (Ind. 1971).

³¹¹ See, e.g., SHABOOZEY, *Chrome*, on WHERE I'VE BEEN ISN'T WHERE I'M GOING: THE COMPLETE EDITION (Empire 2025) (singing “Chrome, chrome, chrome, chrome”); WU-TANG CLAN, *Chrome Wheels*, on IRON FLAG (Loud Records 2001) (singing “Rollin’ on Chrome Wheels”); 2PAC, *Picture Me Rollin’*, on ALL EYESZ ON ME (Death Row 1996) (singing “In front of black Lexus, Chevy's on the roam, '96 big body, sittin' on chrome”); MASTA ACE INCORPORATED, *Sittin' on Chrome*, on SITTIN' ON CHROME (Firehouse Records 1995) (singing “I'm sittin' on C-H-R-O-M-E”).

For more on Blackness and the history of hip-hop, see TRICIA ROSE, *BLACK NOISE: RAP MUSIC AND BLACK CULTURE IN CONTEMPORARY AMERICA* 22–41 (1994) (discussing imagery in rap music and music videos).

perhaps making this purchase without her boyfriend's approval. In so doing, it aligns her more closely with the fraud of the welfare queen myth. After setting the scene with Chenney, the casebook then asks students about whether Chenney might have an unconscionability claim.

As with any problem of this sort, the expectation is that students will use the provided facts in the answering of this legal question. For unconscionability in particular, evaluating the problem requires "consider[ing] all the circumstances surrounding the transaction."³¹² In other words, context is important here. And what are cultural scripts if not context that may or may not be relevant?

Of course, most casebooks do not place such evocative problems immediately after the text of *Williams*. Nevertheless, a similar (though less extreme) mechanism is at play in some of the question-asking commonly found in authorial notes. For example, one casebook asks in sequence: 1) Is it wrong to sell "a woman on welfare" an expensive stereo? 2) Did Williams not have other choices such as simply not buying the stereo, borrowing money, or waiting until she could afford it? and 3) "Should Mrs. Williams be held less responsible for her contractual obligations than other adults *not* on welfare?"³¹³

Taken together these questions tell their own story, and it is a story that has several of its own resonances with the welfare mother cultural script. The first question explicitly ties Williams's identity as a "woman on welfare" to her purchase of an "expensive stereo." The questions that follow underscore the (ir)rationality and (ir)responsibility of buying something one cannot afford. The final question links her potential (ir)responsibility back to her receipt of welfare and suggests that it would be unfair to non-welfare recipients for Williams to be let out of her contractual obligation. This final question presumes that the court's decision rested on her identity as a welfare recipient. It also pits welfare recipients against those not on welfare, as though contract doctrine is some sort of zero-sum game of fairness. This opposition echoes the ways in which welfare recipients, and welfare mothers especially, have been represented as benefitting at the expense of taxpayers.

The resonances between these doctrinal questions and the cultural scripts I have outlined throughout this Part speak to the porousness between pedagogical and political discourse. Cultural scripts are one of the mechanisms that tether these discourses to one another. And their

³¹² GEORGE W. KUNEY & ROBERT M. LLOYD, *TEACHER'S MANUAL TO CONTRACTS: TRANSACTIONS AND LITIGATION* 170 (5th ed. 2020).

³¹³ ROSETT & BUSSEL 1999, *supra* note 256, at 369 (emphasis added).

presence makes it possible for ideology about race, gender, and welfare to frame or supplement doctrinal lessons.³¹⁴

The cultural script framework offers a way of thinking about race and racism beyond the realm of facts about litigants, lawyers, and jurists or their intentions. The presence of cultural scripts helps explain why it is that writing or speech can sometimes sound in racial registers, even when that was not the author's or speaker's aim. Simply, cultural scripts offer an entry point into the question implicitly posed by the *Williams* case: How do we feel or know that race matters, even when race is not necessarily visible?³¹⁵

CONCLUSION

This Article has unpacked the ways in which at least two layers of racial meaning have sedimented onto one of Contracts' most canonical cases.³¹⁶ Through an analysis of 129 total casebooks—representing 40 unique configurations—it has demonstrated how cultural scripts about poor consumers and welfare mothers allow *Williams* to sound in the register of race, even though Ora Lee Williams's race is not named in the case itself.

Williams's afterlives help to illustrate that the extent to which a case invokes race is sometimes less about bodies than it is about epistemologies.³¹⁷ That Ora Lee Williams was in fact a Black woman is almost never mentioned in any Contracts casebook. Indeed, only three out of the 129 casebooks analyzed here explicitly identify her as

³¹⁴ Of course, casebooks are just one element of the pedagogy taking place in law school classrooms. There are as many ways of teaching from the same casebook as there are professors who assign it. Nevertheless, casebooks play an important framing role. They set the stage. It is worth understanding whether the stage has race standing off in the wings, or playing front and center. See ALLISON PAGE, *MEDIA AND THE AFFECTIVE LIVES OF SLAVERY* 13 (2022) (writing that authoritative classroom texts “work alongside and within political discourse to guide [students] toward norms of thought, behavior, and affect”).

³¹⁵ For more on the relationship between race, feeling, and presence, see FRED MOTEN, *IN THE BREAK: THE AESTHETICS OF THE BLACK RADICAL TRADITION* 10 (2003).

³¹⁶ Devon Carbado & Jerry Kang, *Taking Implicit Bias Seriously* 5 (Jan. 7, 2024) (unpublished manuscript) (on file with author). Though I am using the metaphor of sedimentation differently than Devon Carbado and Jerry Kang, the central premise remains the same. The social meaning and material consequences of race in the present bear the burdens of the historical meanings and effects that came before them. See also Spillers, *supra* note 21, at 443 (writing that the representations of Black women are “[e]mbedded in [a] bizarre axiological ground . . . so loaded with mythical prepossession that there is no easy way for the agents buried beneath them to come clean”).

³¹⁷ This framing builds on Saidiya Hartman's foundational concept of the “afterlife of slavery.” SAIDIYA HARTMAN, *LOSE YOUR MOTHER: A JOURNEY ALONG THE ATLANTIC SLAVE ROUTE* *passim* (2007).

such.³¹⁸ This suggests that the “fact” of her racial identity matters less to determining whether the case invokes race than the stories that we tell about how race operates in the context of poverty, consumption, and Contracts.

Moreover, the story of *Williams*’s scripting offers at least one important lesson for those of us concerned with the intersection of race and the law: If we do not speak on race ourselves, its scripts will be speaking for us, in our scholarship and in our classrooms.

³¹⁸ POST ET AL. 2023, *supra* note 201, at 465; MACAULAY ET AL. 2016, *supra* note 199, at 660–61; MCGOVERN, LAWRENCE & HULL 2002, *supra* note 255, at 301.

APPENDIX

I examined a total of 129 casebooks, all published after *Williams* was decided in 1965. The full list can be found in Table 1. An explanation of how the casebooks were identified is below.

The following Contracts casebooks were included in my analysis:

- 1) every casebook published in the decade after *Williams* was decided, i.e., from 1966 to 1976,
- 2) every edition of the six most popular Contracts casebooks published after 1976,
- 3) up to three editions of all other first-year Contracts casebooks published after 1976.

A. Creating the Master List

The casebooks on this list were identified using HeinOnline's Bibliography of American Law School Casebooks using two different search methods. The first entailed searching all casebooks catalogued under the subject "Contracts," and excluding those whose titles clearly indicated that the casebooks were designed for specialized or upper-level contracts courses. Second, because not all of the Contracts casebooks have been properly indexed as such, the full bibliography was searched by title using the search string ["Contract!"]. The same exclusion rules applied.

For those looking to replicate these results, Table 2 provides a list of casebooks that were identified using these search methods but ultimately excluded from my final analysis. A brief explanation of the reason for the exclusion is provided in Table 2 as well.

From there, for all casebooks (other than the six identified as popular), I pulled the unconscionability sections and/or sections with *Williams* in it in up to three different editions: 1) the first edition of the casebook that was published, 2) the first edition published after 1997 (when Ora Lee Williams's race was officially identified by Blake Morant, and 3) the most recent edition of the casebook. Sometimes these conditions were not met, or were met by the same casebook edition.

1. A Note on Casebook Authorship

For some of the longer-running casebooks, lead authors changed. One example is *Studies in Contract Law*, which was originally authored by Edward Murphy and Richard Speidel, and is now authored by Ian Ayres, Rebecca Stone, and Greg Klass. Subsequent editions with new

lead authors were still treated as belonging to the same lineage as the original casebook and not as new casebooks.

2. *Identifying the Popular Casebooks*

Because the market share of Contracts casebooks is not publicly available, I crafted a best estimate by 1) assessing law libraries’ holdings (on WorldCat FirstSearch) and 2) consulting university bookstore websites in order to see which casebooks were being assigned at different law schools. For most law schools, university bookstore websites identify textbooks by the professor who assigned them, thus allowing me to identify if multiple professors at a law school were assigning the same casebook.

In total, I was able to find information on the casebooks assigned at forty-five law schools, nearly a quarter of all accredited law schools in the United States. These forty-five schools represent schools across the full range of rankings, just in case schools of different rankings assigned different casebooks.

TABLE 1

AUTHORS	TITLE	YEAR
John P. Dawson & William B. Harvey	Cases on Contracts & Contract Remedies	1969
Friedrich Kessler & Grant Gilmore	Contracts: Cases & Materials	1970
Edward J. Murphy & Richard E. Speidel	Studies in Contract Law	1970
Ian R. Macneil	Contracts: Exchange Transactions & Relations	1971
Addison Mueller & Arthur I. Rosett	Contract Law & Its Application	1971
E. Allan Farnsworth, William F. Young, Jr. & Harry W. Jones	Cases & Materials on Contracts	1972
Lon L. Fuller & Melvin Aron Eisenberg	Basic Contract Law	1972
Monroe H. Freedman	Cases & Materials on Contracts	1973
John Howard Jackson	Contract Law in Modern Society: Cases & Materials on Law of Contracts, Sales & Legal Methodology	1973
J. Stirling Mortimer	Cases on the Law of Contracts	1975
Curtis R. Reitz	Cases & Materials on Contracts as Basic Commercial Law	1975

AUTHORS	TITLE	YEAR
Charles L. Knapp	Problems in Contract Law: Cases & Materials	1976
John Edward Murray	Contracts: Cases & Materials	1976
John P. Dawson & William Burnett Harvey	Cases & Comment on Contracts	1977
John D. Calamari & Joseph M. Perillo	Cases & Problems on Contracts	1978
Michael L. Closen	Contracts: Contemporary Cases & Materials	1980
E. Allan Farnsworth & William F. Young	Cases & Materials on Contracts	1980
John Howard Jackson & Lee C. Bollinger	Contract Law in Modern Society: Cases & Materials	1980
William M. McGovern	Cases, Statutes & Readings on the Law of Contracts	1980
David H. Vernon	Contracts: Theory & Practice	1980
John P. Dawson, William Burnett Harvey & Stanley D. Henderson	Cases & Comment on Contracts	1982
Daniel W. Fessler & Pierre R. Loiseaux	Contracts: Morality, Economics, & the Marketplace: Cases & Materials	1982
Robert W. Hamilton, Alan Scott Rau & Russel J. Weintraub	Cases & Materials on Contracts	1984
Friedrich Kessler, Grant Gilmore & Anthony T. Kronman	Contracts: Cases & Materials	1986
Thomas D. Crandall	Cases, Problems, & Materials on Contracts	1987
John P. Dawson, William Burnett Harvey & Stanley D. Henderson	Cases & Comment on Contracts	1987
Charles L. Knapp & Nathan M. Crystal	Problems in Contract Law: Cases & Materials	1987
Robert S. Summers & Robert A. Hillman	Contract & Related Obligation: Theory, Doctrine, & Practice	1987
E. Allan Farnsworth & William F. Young	Cases & Materials on Contracts	1988
Robert E. Scott & Douglas L. Leslie	Contract Law & Theory	1988
John D. Calamari, Joseph M. Perillo & Helen Hadjiyannakis Bender	Cases & Problems on Contracts	1989

AUTHORS	TITLE	YEAR
John Edward Murray	Contracts: Cases & Materials	1991
Michael L. Closen, Richard M. Perlmutter & Jeffrey D. Wittenberg	Contracts: Contemporary Cases, Comments, & Problems	1992
Robert W. Hamilton, Alan Scott Rau & Russell J. Weintraub	Cases & Materials on Contracts	1992
Stewart Macaulay, John Kidwell, William Whitford & Marc Galanter	Contracts: Law in Action	1992
Matthew C. McKinnon	Cases & Materials on Contracts	1992
John P. Dawson, William Burnett Harvey & Stanley D. Henderson	Cases & Comment on Contracts	1993
Charles L. Knapp & Nathan M. Crystal	Problems in Contract Law: Cases & Materials	1993
Matthew C. McKinnon	The Law of Contracts	1993
Robert E. Scott & Douglas L. Leslie	Contract Law & Theory	1993
Randy E. Barnett	Contracts: Cases & Doctrine	1995
E. Allan Farnsworth & William F. Young	Cases & Materials on Contracts	1995
Steven J. Burton	Principles of Contract Law	1995
Amy Hilsman Kastely, Deborah Waire Post & Sharon Kang Hom	Contracting Law	1996
James F. Hogg & Carter G. Bishop	Contracts: Cases, Problems, & Materials	1997
Gerald E. Berendt, Michael L. Closen, Doris Estelle Long, Marie A. Monahan, Robert J. Nye & John H. Scheid	Contract Law & Practice	1998
John P. Dawson, William Burnett Harvey & Stanley D. Henderson	Contracts: Cases & Comment	1998
Randy E. Barnett	Contracts: Cases & Doctrine	1999
Thomas D. Crandall & Douglas J. Whaley	Cases, Problems, & Materials on Contracts	1999
Charles L. Knapp, Nathan M. Crystal & Harry G. Prince	Problems in Contract Law: Cases & Materials	1999
Walter W. Miller	Contracts: Problems, Cases & Materials	1999

AUTHORS	TITLE	YEAR
Arthur I. Rosett & Daniel J. Bussel	Contract Law & Its Application	1999
John D. Calamari, Joseph M. Perillo & Helen Hadjiyannakis Bender	Cases & Problems on Contracts	2000
Amy Hilsman Kastely, Deborah Waire Post & Sharon Kang Hom	Contracting Law	2000
E. Allan Farnsworth, William F. Young & Carol Sanger	Contracts: Cases & Materials	2001
Lon L. Fuller & Melvin Aron Eisenberg	Basic Contract Law	2001
Stephen J. Burton	Principles of Contract Law	2001
Ian R. Macneil & Paul J. Gudel	Contracts: Exchange Transactions & Relations: Cases & Materials	2001
John Edward Murray	Contracts: Cases & Materials	2001
Robert S. Summers & Robert A. Hillman	Contract & Related Obligation: Theory, Doctrine, & Practice	2001
David G. Epstein, Bruce A. Markell & Lawrence Ponoroff	Making & Doing Deals: Contracts in Context	2002
William M. McGovern, Lary Lawrence & Bryan D. Hull	Contracts & Sales: Contemporary Cases & Problems	2002
Robert E. Scott & Jody S. Kraus	Contract Law & Theory	2002
Randy E. Barnett	Contracts: Cases & Doctrine	2003
Brian A. Blum & Amy C. Bushaw	Contracts: Cases, Discussion, & Problems	2003
John P. Dawson, William Burnett Harvey & Stanley D. Henderson	Contracts: Cases & Comment	2003
Charles L. Knapp, Nathan M. Crystal & Harry G. Prince	Problems in Contract Law: Cases & Materials	2003
Edward J. Murphy, Richard E. Speidel & Ian Ayres	Studies in Contract Law	2003
John D. Calamari, Joseph M. Perillo & Helen Hadjiyannakis Bender	Cases & Problems on Contracts	2004
Bruce W. Frier & James J. White	The Modern Law of Contracts	2005
George W. Kuney & Robert M. Lloyd	Contracts: Transactions & Litigation	2006

AUTHORS	TITLE	YEAR
Gerald E. Berendt, Rebecca A. Cochran, Doris Estelle Long, Robert J. Nye & John H. Scheid	Contract Law & Practice	2007
John D. Calamari, Joseph M. Perillo & Helen Hadjiyannakis Bender	Cases & Problems on Contracts	2007
James F. Hogg, Carter G. Bishop & Daniel B. Barnhizer	Contracts: Cases & Theory of Contractual Obligation	2008
Charles L. Knapp, Nathan M. Crystal & Harry G. Prince	Problems in Contract Law: Cases & Materials	2007
Robert E. Scott & Jody S. Kraus	Contract Law & Theory	2007
Randy E. Barnett	Contracts: Cases & Doctrine	2008
John P. Dawson, William Burnett Harvey, Stanley D. Henderson & Douglas G. Baird	Contracts: Cases & Comment	2008
E. Allan Farnsworth, William F. Young, Carol Sanger, Neil B. Cohen & Richard R.W. Brooks	Contracts: Cases & Materials	2008
Michael Hunter Schwartz & Denise Riebe	Contracts: A Context & Practice Casebook	2009
Christina L. Kunz & Carol L. Chomsky	Contracts: A Contemporary Approach	2010
John D. Calamari, Joseph M. Perillo, Helen Hadjiyannakis Bender & Caroline N. Brown	Cases & Problems on Contracts	2011
Randy E. Barnett	Contracts: Cases & Doctrine	2012
Tracey E. George & Russell Korobkin	K: A Common Law Approach to Contracts	2012
Charles L. Knapp, Nathan M. Crystal & Harry G. Prince	Problems in Contract Law: Cases & Materials	2012
Daniel Markovits	Contract Law & Legal Methods	2012
John P. Dawson, William Burnett Harvey, Stanley D. Henderson & Douglas G. Baird	Contracts: Cases & Comment	2013
E. Allan Farnsworth, Carol Sanger, Neil B. Cohen, Richard R.W. Brooks & Larry T. Garvin	Contracts: Cases & Materials	2013

AUTHORS	TITLE	YEAR
Robert E. Scott & Jody S. Kraus	Contract Law & Theory	2013
John Edward Murray, Jr.	Contracts: Cases & Materials	2015
Charles L. Knapp, Nathan M. Crystal & Harry G. Prince	Problems in Contract Law: Cases & Materials	2016
Stewart Macaulay, William Whitford, Kathryn Hendley & Jonathan Lipson	Contracts: Law in Action	2016
Randy E. Barnett & Nathan B. Oman	Contracts: Cases & Doctrine	2017
Marco J. Jimenez	Contract Law: A Case & Problem-Based Approach	2016
Ian Ayres & Gregory Klass (<i>previously</i> Edward J. Murphy & Richard E. Speidel)	Studies in Contract Law	2017
James Steven Rogers & Katharine G. Young	The Law of Contracts: Cases & Materials	2017
Ben Templin	Contracts: A Modern Casebook	2017
John D. Calamari, Joseph M. Perillo, Helen Hadjiyannakis Bender & Caroline N. Brown	Cases & Problems on Contracts	2018
Lawrence A. Cunningham & Miriam A. Cherry	Contracts: A Real World Casebook	2018
Christina L. Kunz, Carol L. Chomsky, Jennifer S. Martin & Elizabeth R. Schiltz	Contracts: A Contemporary Approach	2018
Daniel Markovits & Gabriel Rauterberg	Contracts: Law, Theory, & Practice	2018
Steven J. Burton & Christopher R. Drahozal	Principles of Contract Law	2018
John P. Dawson, William Burnett Harvey, Stanley D. Henderson & Douglas G. Baird	Contracts: Cases & Comments	2019
E. Allan Farnsworth, Carol Sanger, Neil B. Cohen, Richard R.W. Brooks & Larry T. Garvin	Contracts: Cases & Materials	2019
Bruce W. Frier & James J. White	The Modern Law of Contracts	2019
Nadelle Grossman & Eric Zacks	Contracts in Context: From Transaction to Litigation	2019

AUTHORS	TITLE	YEAR
Charles L. Knapp, Nathan M. Crystal & Harry G. Prince	Problems in Contract Law: Cases & Materials	2019
Martha M. Ertman, William K. Sjostrom, Jr. & Debora L. Thredy	Contract Law: An Integrated Approach	2020
George W. Kuney & Robert M. Lloyd	Contracts: Transactions & Litigation	2020
Michael Hunter Schwartz & Adrian J. Walters	Contracts: A Context & Practice Casebook	2020
Randy E. Barnett & Nathan B. Oman	Contracts: Cases & Doctrine	2021
Miriam A. Cherry	Contracts: A Real World Casebook	2021
Tracey E. George & Russell Korobkin	K: A Common Law Approach to Contracts	2021
Carter G. Bishop, Daniel D. Barnhizer & George A. Mocsary	Contracts: Cases & Theory of Contractual Obligation	2021
Marco J. Jimenez	Contract Law: A Case & Problem-Based Approach	2021
Daniel P. O’Gorman	Contracts: The Law of Promises	2021
Robert S. Summers, Robert A. Hillman & David A. Hoffman	Contract & Related Obligation: Theory, Doctrine, & Practice	2021
Brian A. Blum & Amy C. Bushaw	Contracts: Cases, Discussion, & Problems	2022
David G. Epstein, Bruce A. Markell & Lawrence Ponoroff	Cases & Materials on Contracts: Making & Doing Deals	2022
John D. Calamari, Joseph M. Perillo, Helen Hadjiyannakis Bender & Michael P. Malloy	Cases & Problems on Contracts	2023
Douglas J. Whaley & David Horton	Cases, Problems, & Materials on Contracts	2023
E. Allan Farnsworth, Carol Sanger, Neil B. Cohen, Richard R.W. Brooks & Larry T. Garvin	Contracts: Cases & Materials	2023
Lon L. Fuller, Melvin Aron Eisenberg & Mark P. Gergen	Basic Contract Law	2023

AUTHORS	TITLE	YEAR
Nadelle Grossman & Eric Zacks	Contracts in Context: From Transaction to Litigation	2023
Deborah Waire Post, Thomas W. Joo, Deborah Zalesne & Nancy Ota	Contracting Law	2023
Charles L. Knapp, Nathan M. Crystal, Harry G. Prince, Danielle K. Hart & Joshua M. Silverstein	Problems in Contract Law: Cases & Materials	2023
Daniel J. Bussel	Contract Law & Its Application	2023
Robert E. Scott & Jody S. Kraus	Contract Law & Theory	2023
Ben Templin & David H. Spratt	Contracts: A Modern Casebook	2023

Though it did not exist at the time I began my research, many of the older casebooks listed here can now be accessed in HeinOnline’s West Academic Casebooks Archive.

TABLE 2. CASEBOOKS IDENTIFIED BUT EXCLUDED FROM ANALYSIS

AUTHORS	TITLE	YEAR	REASON EXCLUDED
Alan W. Schefflin	Cases & Materials on Civil Obligations: Contracts, Torts, & Restitution	1968	Not intended for first year Contracts.
Robert J. Desiderio & Frederick M. Hart	Cases & Materials on Contracts	1970	Not formally published.
Addison Mueller & Arthur I. Rosett	Cases & Materials on Contracts	1970	Incorrect catalogue entry. Does not exist.
Kamilla M. Mazanec & Alphonse M. Squillante	Cases & Materials on Contracts	1971	Bespoke publication.
J. Stirling Mortimer	Cases on the Law of Contracts	1975	Bespoke publication.
William T. Major	Cases in Contract Law	1977	Published in England.
Christopher Columbus Langdell	A Selection of Cases on the Law of Contracts	1983	Reprint of original 1871 casebook.
John C. Weistart, Girardeau A. Spann & Jefferson Powell	The Contracts Experience	2003	Incorrect catalogue entry. Not a casebook.
Gerald E. Berendt	Contract Law & Practice	2009	Incorrect catalogue entry. Does not exist.
David Zarfes & Michael L. Bloom	Contracts & Commercial Transactions	2011	Not intended for first year Contracts.