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How to Sue an Asue? Closing the Racial Wealth Gap Through the Transplantation of a Cultural Institution

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HOW TO SUE AN ASUE? CLOSING THE RACIAL WEALTH GAP THROUGH THE TRANSPLANTATION OF A CULTURAL INSTITUTION

Cyril A.L. Heron†*

Asues, academically known as Rotating Savings and Credit Associations (or ROSCAs for short), are informal cultural institutions that are prominent in developing countries across the globe. Their utilization in those countries provide rural and ostracized communities with a means to save money and invest in the community simultaneously. Adoption of the asue into the United States could serve as the foundation by which to close the racial wealth gap. Notwithstanding the benefits, wholesale adoption of any asue model runs the risk of cultural rejection because the institution is foreign to the African American community.

Drawing upon principles of cultural and legal transplantation, successful transplantation of cultural institutions is possible where parameters that provide contextual stability are put in place. Given that the most prominent drawback to ROSCAs is the risk of default and embezzlement, the contextual stabilizer to prevent cultural rejection should be one that secures the ROSCA from said default and nefarious members. Therefore, I propose that trust law can be that context stabilizer because it would provide legal recourse and mitigate the inherent risks involved in asue participation.

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† J.D. & LL.M in International and Comparative Law from Cornell Law School. It is oft said that it takes a village to raise a child; I find that adage equally applicable to writing a paper. First, I dedicate this Article to Marsha Hadassah Curry whose generosity, altruism, and zest for life are sorely missed. To my mother whose lessons on our culture have shaped both me and this Article. To Chan Tov McNamarah: an editor, a peer, a tireless friend. Finally, I dedicate this Article to Anneliese Heron and La'Tise Tangherlini, both of whom patiently entertained my prattling and musings and helped this paper get off the ground.

* Disclaimer: The opinions and statements contained herein are mine alone and do not represent the opinion or interest of my employer or any state agency.

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INTRODUCTION

Marsha Hadassah Curry was a force of a woman. Born into a household of modest means in a “third-class British Colony” known as the Bahamas,¹ she nevertheless proved an eager and inventive entrepreneur. Curry owned a barber shop, apartment complexes, and, her crowning achievement, a women’s home for victims of domestic violence. While she did not attain the fame and prominence that mark other entrepreneurs across the globe, Marsha Curry deserves no fewer accolades. Curry, a woman without any tertiary education, built her empire out of nothing through the use of an ingenious cultural tool: the *asue*.²

“Asue” is the Bahamian word for an informal association of people who pool their money for budgeting and saving purposes.³ The group chooses a set contribution rate, a custodian who holds and distributes the amalgamated money for the group (known as the “pot”), a set timetable to determine when to pay into the pot, and an order in which to receive

¹ So described by the Duke of Windsor, Edward VIII. MICHAEL BLOCH, *THE DUKE OF WINDSOR’S WAR* 364 (1982).

² Marsha Curry was a close family friend whose family has been as close as blood to my own for at least four generations. Growing up, a favorite story to hear about Marsha Curry was how she managed to accomplish so much. Those stories more often than not featured asues.

³ Quinton Lightbourne, *What is an Asue?*, NASSAU GUARDIAN (Nov. 9, 2018), reproduced in the INTERNET ARCHIVE WAYBACK MACHINE, <https://web.archive.org/web/20200807005009/https://thenassauguardian.com/2018/11/09/what-is-an-asue/> [<https://perma.cc/X3G6-BTYX>]. See, e.g., Therese Turner-Jones, *Three Ways the Caribbean Can Strengthen Financing for Private Companies*, INTERAMERICAN DEV. BANK: CARIBBEAN DEVTRENDS (May 16, 2016), <https://blogs.iadb.org/caribbean-dev-trends/en/three-ways-the-caribbean-can-strengthen-financing-for-private-companies/> [<http://perma.cc/LV9K-A438>] (“Growing up in The Bahamas, I remember my grandmother’s asue. There weren’t any banks where she lived on the island of Inagua, and even if there had been, it wasn’t customary for women to frequent them. To adapt, women (and sometimes men) formed their own informal savings groups, known as *asues*.”).

the draw—the specific pay period when a single member is entitled to take the pot.⁴ Each member of the asue gets a single draw until all members have received the pot, at which point the asue may start over or dissolve, according to the whims of the members.⁵

Interestingly, the savings club is not unique to the Bahamas or even the wider Caribbean. Although the asue is the version unique to the Bahamas, it is one iteration of what scholars call Rotating Savings and Credit Associations (ROSCAs).^{6,7} ROSCAs are arguably ubiquitous in the developing world⁸ and serve the needs of people who either have no access to, or are geographically isolated from, formal financial institutions.⁹ African Americans in the United States similarly often lack financial empowerment by, or are ostracized from, the formal financial sector. Thus, the ROSCA is primed for importation into the African American context.¹⁰

In a 2019 study on the economic impact of closing the racial wealth gap, researchers found four major indicia of unmet needs in family wealth-building in the African American community: (1) Community Context; (2) Family Wealth; (3) Family Income; and (4) Family Savings.¹¹

4. See Lightbourne, *supra* note 3.

5. Lihle Z. Mtshali, *Everything You Ever Wanted to Know About Those Sou-Sou Savings Clubs African and Caribbean Women Love*, ESSENCE (Jan. 18, 2017), <https://www.essence.com/lifestyle/money-career/what-is-a-sou-sou-savings-club-facts/> [<http://perma.cc/VTB7-6EPS>]. While “asue” is the Bahamian term derived from the word “partner” in many African languages, the change in language and the spread of African slaves throughout the Caribbean naturally resulted in divergent words for the informal institution, which we can see with the term “susu” or “sousou” used in the article. *Compare id.*, with Lightbourne, *supra* note 3. See also, Turner-Jones, *supra* note 3 (“Asues, susus or panderos, as they are known in Spanish-speaking countries . . .”).

6. Cf. Sudhanshu Handa & Claremont Kirton, *The Economics of Rotating Savings and Credit Associations: Evidence from the Jamaican ‘Partner’*, 60 J. DEV. ECON. 173, 174 (1999) (describing what a ROSCA is).

7. Henceforth, the terms “ROSCA” and “asue” will be used interchangeably throughout the paper. For purposes of distinguishment, ROSCA is the general term whereas asue is the more specific term. The two will be explained in depth in Part I.

8. See Handa & Kirton, *supra* note 6, at 193; F.J.A. Bouman, *Indigenous Savings and Credit Societies in the Third World. A Message*, 1 SAVINGS & DEV. 181, 181 (1977). See, e.g., Rotating Savings and Credit Associations, WIKIPEDIA, https://en.wikipedia.org/wiki/Rotating_savings_and_credit_association [<http://perma.cc/CB66-7ZKR>] (last modified Aug. 24, 2020) (listing the various names for ROSCAs in different languages around the world).

9. See Handa & Kirton, *supra* note 6, at 193; Bouman, *supra* note 8, at 183.

10. African American is used to be more specific, since according to the U.S. Census Bureau, “Black” can also refer to Americans with Caribbean or African ethnicity as well. U.S. CENSUS BUREAU GLOSSARY, https://www.census.gov/glossary/#term_BlackorAfricanAmerican [<http://perma.cc/HC6V-NNWH>] (last visited Sept. 15, 2020).

11. Nick Noel, Duwain Pinder, Shelley Stewart III & Jason Wright, McKenzie & Co., *The Economic Impact of Closing the Racial Wealth Gap 8-9* (2019) <https://www.mckinsey.com/~media/McKinsey/Industries/Public%20Sector/Our%20Insights/The%20economic%20impact%20of%20closing%20the%20racial%20wealth%20gap/The-economic-impact-of-closing-the-racial-wealth-gap-final.pdf> [<https://perma.cc/C6Q3-LZW3>].

Respectively, community context refers to the public and private assets held by a community; family wealth refers to the wealth accumulated by a single family, including financial and nonfinancial assets; family income refers to the cash flow a family receives; and family savings refers to how families interact with the rules and the tools that govern savings and wealth creation.¹² Most dishearteningly, the authors note that African American families have not only less access to affordable financial tools but also less of a support network, because most of them are poorer to the point where they would not know someone who could lend them \$3,000.¹³

This is where ROSCAs could fill a vital role. African Americans could take the first step to improving their financial stability through ROSCAs, which are ideal for individuals who lack access to trust-inspiring or proper financial facilities,¹⁴ and where quick access to funds is necessary.¹⁵ For example, if one had to pay an impending school fee, a ROSCA could expeditiously provide those funds without the drawn out process of applying for a loan and facing possible rejection. In this way, the asue could help one gain a little more control over one's financial situation.

Amongst the myriad considerations regarding the African American population's use of ROSCAs, one comes to the fore: how does one inspire a population to take up this informal, and largely culturally-specific, institution that is completely alien to them? That question is even more critical when one considers that ROSCAs operate on trust and social connectedness to ensure continued payment into the pot past one's draw.¹⁶ While the literature argues that there are inherent protections that ensure the sustainability of ROSCAs once formed, other sources reveal a modern reality where ROSCAs are plagued by deceitful and dishonest members and custodians.¹⁷

12. *Id.* at 9.

13. *Id.* at 17.

14. Bouman, *supra* note 8, at 183.

15. See Handa & Kirton, *supra* note 6, at 176 ("Roscas provide a solution to the 'lumpiness' problem in societies where capital markets are incomplete or fragmented, so that the only alternative is to save individually for a length of time to mobilize the funds required to purchase a particular (usually durable) commodity."); Timothy Besley, Stephen Coate & Glenn Loury, *The Economics of Rotating Savings and Credit Associations*, 83 AM. ECON. REV. 792, 793 (1993) ("[T]hey seem more appropriate for dealing with significant, idiosyncratic events, rather than the hump saving required for old age.").

16. See Besley et al., *supra* note 15, at 794 ("Since those who receive the pot early are effectively in debt to the other group members, Roscas too would seem vulnerable to problems of nonrepayment, with individuals refusing to honor their membership commitment after winning the pot.").

17. *E.g.*, Lightbourne, *supra* note 3 ("But in recent times this once reliable way of saving money for Bahamians has been plagued with dishonest and deceitful people who don't put their money in the asue for every draw, or, even worse, the asue holder goes missing and steals the money out of the pot. It's an unfortunate reality we have come to live with."); Denise

In addition, like all plans of mice and men, transplanting an institution between two contexts tends to have unpredictable outcomes. That is especially so when transplanting what is essentially a cultural institution without the transference of ingrained cultural safeguards.¹⁸ In the Bahamas, the long history with asues has ensured the presence of safeguards, both cultural and legal, for the institution.¹⁹ Hence, the central thesis of this Article becomes apparent: ROSCAs are informal financial institutions that are prominent in the developing world across the globe. Their adoption into African American culture writ large would allow African Americans to progress further down their road to financial freedom. Notwithstanding the benefits, wholesale adoption of any ROSCA model cannot be directly imported without an intervening construct that fills the gap left by the culture of ROSCA-practicing groups that ensures adherence to the duty of payment into the pot. Thus, I propose that trust law could be the contextual stabilizer necessary to facilitate adoption by African Americans because it provides an avenue for legal recourse without stifling the informality that is a central feature and benefit of the institution.

This Article shall proceed in three parts. First, the Article will explore ROSCAs in more depth. Over the past three decades, researchers have conducted a plethora of studies of ROSCAs, from economic to sociological. An analysis of those studies will lay bare the ostensible benefits and detriments of the ROSCA model. Second, the Article shall pivot to general cultural transplantation theory and legal transplantation theory, both of which provide examples of pitfalls that arise when cultures adopt institutions from one another. Transplanting institutions from one culture to another cannot occur with the desired effect, without the inclusion of a context stabilizer. The necessary context stabilizer for this solution is addressed in the third Part of this Article. Notwithstanding the unanimity of ROSCAs across the developing world, they are still culturally specific, and the safeguards that ensure success of ROSCAs rely on cultural punishments to prevent the dishonest from defaulting or attempting to abscond with the pot. Instituting legal recourse via trust law could provide the added layer of protection necessary to transplant ROSCAs into the

Maycock, *Women Demanding Money from Failed Asue After Court Ruling*, TRIBUNE (Jul. 29, 2016), <http://www.tribune242.com/news/2016/jul/29/women-demanding-money-failed-asue-after-court-ruli/> [<http://perma.cc/67AM-8YZY>] (recounting a court case brought by members of a failed asue).

18 Cf., e.g., William T. Pizzi & Luca Marafioti, *The New Italian Code of Criminal Procedure: The Difficulties of Building an Adversarial Trial System on a Civil Law Foundation*, 17 YALE J. INT'L L. 1 (1992), <https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1585&context=yjil> [<http://perma.cc/SRU9-RKZS>] (discussing the tension created by the new Italian Criminal Code based on the adversary system and the lingering civil-law philosophical outlook).

19. See e.g., Maycock, *supra* note 17 (describing that the failed asue became the subject of a court action); Telephone Interview with Marsha H. Curry (July 3, 2019) (corroborating that there is loss of face and social repercussions for those who cause the failure of an asue).

American context. The Restatement Third of Trusts will demonstrate that ROSCAs already operate as effective trusts.

I. OF ROSCAs AND MEN

As mentioned previously, ROSCAs are near ubiquitous in the developing world.²⁰ From Taiwan to the Caribbean and everywhere in between, ROSCAs have long been a way for the rural and underserved communities of the world to access savings.²¹ ROSCAs around the world share similar features as collective efforts of people who contribute to a common fund at regular intervals and who in turn receive that fund.²² The existence across so many regions and cultures almost assures that there is no single ROSCA model.²³ Indeed, while ROSCAs around the world share many similarities—enough to be encapsulated by a single term—the differences between them can be stark.²⁴ Beginning with a more in-depth description of ROSCAs, this Part will then examine the benefits, detriments, and applicability of ROSCAs to African American communities.

A. *The Different Types of ROSCAs*

Two dominant types of ROSCA models exist: the random ROSCA and the bidding ROSCA.²⁵ A random ROSCA, as the name implies, is characterized by a randomly-determined draw.²⁶ On the other hand, a bidding ROSCA involves a draw that is determined by how much an individual bids on a position in the queue.²⁷ In the Taiwanese context, bidding ROSCAs schedule meetings where members who have not yet received the pot get the chance to bid for their turn.²⁸ The person

20. Bouman, *supra* note 8, at 181.

21. Besley et al., *supra* note 15, at 792.

22. See, e.g., Alvin Etang, David Fielding & Stephen Knowles, *Trust and ROSCA Membership in Rural Cameroon*, 23 J. INT'L DEV. 461, 461 (2011); Shirley Ardener, *The Comparative Study of Rotating Credit Associations*, 94 J. ROYAL ANTHROPOLOGICAL INST. GR. BRIT. & IR. 201, 201 (1964); Clifford Geertz, *The Rotating Credit Association: A "Middle Rung" in Development*, 10 ECON. DEV. & CULTURAL CHANGE 241, 243 (1962).

23. See Ardener, *supra* note 22, at 201-09.

24. Compare Handa & Kirton, *supra* note 6, at 174 with Jonathan Bauchet & Vance Larsen, *ROSCA Composition and Repayment: Evidence from Taiwanese Bidding ROSCAs*, 54 J. DEV. STUD. 1483, 1485 (2018).

25. See Besley et al., *supra* note 15, at 792-93.

26. *Id.* at 792-93 ("In a random ROSCA, members commit to putting a fixed sum of money into a 'pot' for each period of the life of the ROSCA. Lots are drawn, and the pot is randomly allocated to one of the members.")

27. *Id.* at 793.

28. Bauchet & Larsen, *supra* note 24, at 1484.

offering the most money is the winning bidder.²⁹ In ROSCAs operating under the discount-bid rule, like the Taiwanese bidding model mentioned above, the remaining ROSCA members have their contributions reduced according to the amount of the winning bid.³⁰ Other bidding ROSCAs determine the position *ex ante* where one's bid is the amount one must pay for the life of the ROSCA.³¹

The Bahamian *asue*, however, is slightly different than the previous two. Like its Jamaican and Caribbean counterparts, one's draw in a Bahamian *asue* is determined by request or by the organizers.³² These pre-determined ROSCAs are said to work best when the members meet frequently, the draw cycles are shorter, and the membership is stable.³³

B. Benefits of ROSCA Membership

No matter the determination of the draw, every type of ROSCA provides documentable benefits to those who participate.³⁴ Primarily, ROSCAs are a mechanism for saving.³⁵ Intuitively, it does not seem like paying into a pot that benefits another is equivalent to putting money in a savings account or under one's mattress for safe keeping³⁶ (also known as "autarky"),³⁷ but it is.³⁸ One's guaranteed pot can be characterized as the sum of one's savings over the life of the ROSCA,³⁹ particularly when one is in the latter half of the draws.⁴⁰ When one's draw is in the first

29. *Id.*

30. *Id.* at 1485 ("For example, in the ROSCAs we study, if the winning bid in a certain meeting was 150, and each member was originally designated to contribute 1000 at every meeting, those members who had not yet received the pot would only have to contribute 850 that meeting, while those who had already received the pot would contribute 1000 and the winning bidder would receive that particular pot (made up of a mix of 850-contributions and 1000-contributions depending how many members have already bid) without contributing.").

31. Besley et al., *supra* note 15, at 797; Ardener, *supra* note 22, at 212.

32. Lightbourne, *supra* note 3; Handa & Kirton, *supra* note 6, at 175 (mentioning that a majority of the ROSCAs in their sample were allocated by the banker or by request).

33. Bauchet & Larsen, *supra* note 24, at 1485 (positing that the incentive to default in a pre-determined ROSCA is drastically reduced when the meetings are more frequent, the draw cycles are shorter, and membership is stable).

34. See Ardener, *supra* note 22, at 217-21.

35. *Id.* at 217.

36. While this may seem glib, 61 percent of adults—more than 250 million people—in Latin American and the Caribbean remain outside the formal financial system. ASLI DEMIRGUC-KUNT, LEORA KLAPPER & DOUGLAS RANDALL, THE GLOBAL FINDEX DATABASE: FINANCIAL INCLUSION IN LATINA AMERICA AND THE CARIBBEAN 1 (2012), <http://pubdocs.worldbank.org/en/921241483987545446/N5lacEN-08202012.pdf> [https://perma.cc/MYU2-Y5DW].

37. Besley et al., *supra* note 15, at 794.

38. Handa & Kirton, *supra* note 6, at 176.

39. Besley et al., *supra* note 15, at 795-96.

40. Handa & Kirton, *supra* note 6, at 176.

half, the pot acts more as an interest-free loan where one is given earlier access to the capital needed to make important purchases.⁴¹ To put a finer point on the matter, autarky is inefficient, and ROSCAs remedy that inefficiency by shortening the waiting period for most members between saving for the good and purchase of the good.⁴² Indeed, one of the most prominent features of the random ROSCA is that members save at a lower rate over a longer period of time and can often expect to obtain the money for a supposed durable good earlier than under autarky.⁴³ Thus, ROSCAs not only provide a tangible benefit to the members, but they also provide a benefit to the economy by ensuring that capital is never idle.⁴⁴

Perhaps more importantly, ROSCAs can provide emergency funding in crises.⁴⁵ Those who receive the pot in the earlier rounds of the draw are net creditors and therefore have access to a sort of loan whereby immediate purchase or payment can be made.⁴⁶ Thus, if an emergency arose, joining a ROSCA could provide the money one would need to cover the expenses.⁴⁷ For example, the costs associated with fixing a burst pipe can range from \$1,000 to \$4,000.⁴⁸ With approximately seventy-eight percent of American workers living paycheck to paycheck,⁴⁹ an additional expense of \$1,000 can devastate a household. Joining a bidding or predetermined ROSCA can provide the quick infusion of cash necessary to remain above water.⁵⁰ But that supposes one is not already in a ROSCA. If one is already participating in a ROSCA, the emergency-fund benefit is still available because one can then bid⁵¹ or negotiate for

41. *Id.*; Bauchet & Larsen, *supra* note 24, at 1485.

42. Besley et al., *supra* note 15, at 795.

43. Besley et al., *supra* note 15, at 796-97.

44. Ardener, *supra* note 22, at 217 (“Members could save their contributions themselves at home and accumulate their own ‘funds,’ but this would withdraw money from circulation: in a rotating credit association capital need never be idle.”).

45. See ZNSNetwork, *Covid and Asue in the Bahamas*, YOUTUBE (Apr. 21, 2020), https://www.youtube.com/watch?v=Rf-SlB6JP_M (proposing the asue model as a crisis mitigator for the entirety of the Bahamas).

46. Handa & Kirton, *supra* note 6, at 176.

47. See, e.g., *id.* at 192 (reporting that fourteen percent of survey subjects who answered the question about ROSCA fund use stated that they used their ROSCA funds for “unplanned expenses”).

48. Plumbing Cost Estimator, HOME ADVISOR, <https://www.homeadvisor.com/cost/plumbing/#leak> [<https://perma.cc/FJK4-LBFE>] (last visited Apr. 19, 2020).

49. Zach Friedman, *78% of Workers Live Paycheck to Paycheck*, FORBES (Jan. 11, 2019, 8:32 AM), <https://www.forbes.com/sites/zackfriedman/2019/01/11/live-paycheck-to-paycheck-government-shutdown/#74955e6b4f10> [<https://perma.cc/K37U-QXVT>] (citing a 2017 survey conducted by CareerBuilder).

50. See Handa & Kirton, *supra* note 6 at 192 (reporting that fourteen percent of survey subjects who answered the question about ROSCA fund use stated that they used their ROSCA funds for “unplanned expenses”).

51. Supposing one chooses to join a Taiwanese-style discount-bid ROSCA. Bauchet & Larsen, *supra* note 24, at 1485.

an earlier draw.⁵² McKinsey & Company's study on closing the racial wealth gap mentions family savings as an important component to close.⁵³ The aforementioned benefits of ROSCAs not only demonstrate their potential to act as tools for African Americans to secure family savings, but also demonstrate their potential to act as tools for changing the community context,⁵⁴ as they both economically and socially empower the communities in which they operate.

One of the four components of wealth generation for a family mentioned in the McKinsey study is community context.⁵⁵ In their description, the authors point out that the collection of private and public assets in a community is one of the factors that has the power to reinforce socioeconomic patterns.⁵⁶ The example given is that "communities with high levels of economic activity and rich social networks tend to produce more affluent families and contain assets" that attain higher values.⁵⁷ When one considers how the wealthy maintain social circles of other wealthy people who invest in one another, the truth of the example becomes more apparent.⁵⁸

ROSCAs prevent capital from lying fallow⁵⁹ and encourage and maintain community ties, particularly when ROSCAs successfully complete their cycle.⁶⁰ By contributing to the pot that is immediately distrib-

52. Anecdotal evidence from users of predetermined asues corroborate the idea that one can negotiate with other members for earlier positions in the draw. This also supposes that one had not received one's pot earlier in the draw and used that pot immediately. Telephone Interview with Marsha H. Curry (July 3, 2019); Telephone Interview with Julian D. H. Fountain (Apr. 23, 2020).

53. Noel et al., *supra* note 11, at 6-9.

54. *Id.* at 9. ("Community context refers to where families begin the wealth-building process. Each community is composed of the collection of public and private assets in a given community. These assets overlap with the economic, social, cultural, and political networks and institutions that tend to reinforce existing socioeconomic patterns.")

55. *Id.* at 8.

56. *Id.* at 9 ("These assets overlap with the economic, social, cultural, and political networks and institutions that tend to reinforce existing socioeconomic patterns.")

57. *Id.*

58. See Lewis Hower, *Friends and Family Shares: Startup Funding Tips*, SILICON VALLEY BANK, <https://www.svb.com/blogs/lewis-hower/raising-startup-funds-friends-and-family> [https://perma.cc/XNE2-3LTS] (last visited Aug. 19, 2020); *Types of Investors*, FUNDABLE, <https://www.fundable.com/learn/resources/guides/investor/types-of-investors> [https://perma.cc/48RJ-L4Y2] ("[F]riends and family invest the most money in startups in aggregate, investing over \$60BB per year. In fact, 38% of startup founders report raising money from their friends and family.")

59. Ardener, *supra* note 22, at 217.

60. Bouman, *supra* note 8, at 188 ("But Jellicoe's case material from East Africa illustrates that mutual aid societies and ROSCAs flourish in urban environments and are instrumental in the maintenance of group cohesion."). Completion of the ROSCA cycle means every member in the ROSCA has received their draw, at which point the ROSCA is free to disband or renew. Bauchet & Larsen, *supra* note 24, at 1483 ("The ROSCA cycle ends when all members have received the pot."). While information on happiness and completed ROSCAs are scant, likely because ROSCA success is rather unremarkable, one can extrapolate from firsthand ac-

uted to a ROSCA member, money that would normally languish under the figurative mattress instead goes into the stream of commerce as the pot-winner obtains the funds to spend on her good of choice. By multiplying the amount of money in a pot by the interval of the draws, one can calculate how much money is reintroduced into a community by a single ROSCA. Even more importantly, business owners can also enter into ROSCAs and funnel the money into their business or even start new ones.⁶¹

Pivoting to the power of ROSCAs to empower communities, F.J.A. Bouman asserts in his influential paper that ROSCAs are capable of maintaining group cohesion, solidarity, and interaction.⁶² ROSCA meetings act as a forum to facilitate interaction between members and encourage the exchange of news, help members locate employment or lodgings, celebrate members' successes, and more.⁶³ Guyanese women interviewed by Caroline Hossein noted that ROSCAs restore "personal pride" and morale to Black business owners.⁶⁴ Corroborating Bouman's solidarity assertion, Hossein reports that people in her community of focus, the slums of Kingston, Jamaica, are "very close and intent on helping one another," and that the ROSCAs help do that.⁶⁵ Extrapolating from Hossein's points, a ROSCA provides two-fold gratification: personal pride in community perseverance, and altruistic mirth. Thus, ROSCA participation encourages broader community involvement and identity through mutual support between the individual and the community at large.

ROSCAs serve as an alternative to rigid and formal financial systems.⁶⁶ Participants benefit from ROSCAs as a means to save money, as a source for an emergency loan, and as a method of community socioeconomic development. They are powerful vehicles for financial inclusion of those excluded or willfully removed from formal financial institutions. Their informality, however, does have drawbacks that warrant discussion as well.

counts of people satisfied with ROSCAs that their experience was positive and involved ROSCAs that successfully concluded. See, e.g., Caroline Shenaz Hossein, *Fringe Banking in Canada: A Study of Rotating Savings and Credit Associations (ROSCAs) in Toronto's Inner Suburbs*, 8 CAN. J. NONPROFIT & SOC. ECON. RSCH. 29, 36-37 (2017) (documenting the story of Natla, a Sudanese woman who credits a community inclusion and involvement to her participation in a ROSCA).

61. Caroline Shenaz Hossein, *Perseverance of Banker Ladies in the Slums*, 84 ANNALS PUB. & COOP. ECON. 423, 436 ("Nee, a 28-year-old mixed-race female who owns a hair and nail salon, stated, 'Box help[ed] me start my business . . . [It has been] passed down from generation to generation, from grandmother's time and [Box-hand bank] helps me.'").

62. Bouman, *supra* note 8, at 188.

63. *Id.* at 188-89.

64. Hossein, *supra* note 61, at 436.

65. *Id.* at 433.

66. See *id.* at 428.

C. *Detriments of ROSCA Membership*

Though ROSCAs provide glowing benefits in many countries and could provide the same if exported to the African American context, there are cognizable detriments to the system. First, ROSCAs do not grow one's wealth, unlike formal financial institutions. Because ROSCAs do not normally incorporate interest,⁶⁷ one can only get the money one puts into the system.⁶⁸ Additionally, some ROSCAs include fees or gratuity to the custodian for their role in organizing the association, acquiring the pot, and doling it out.⁶⁹ Paying the custodian is an added expense for ROSCA participants, who tend to have limited means,⁷⁰ which could inconvenience members who are particularly strapped for cash. The most inhibitive drawback to ROSCAs, however, is the "trust factor," i.e., trusting the other members and the custodian to continue to participate in the ROSCA and not leave with the money or disappear after their draw.⁷¹

ROSCAs have two primary mechanisms built in to ensure repayment: (1) social constraints⁷² and (2) intra-ROSCA preventive measures.⁷³ Social constraints are one of the most powerful protections the ROSCA offers. In many communities, membership comes with a "solemn duty" to repay.⁷⁴ Public opinion, therefore, is a weapon often employed to keep those who seek to default in check.⁷⁵ Should one's default come to light, social sanctions include ostracization from any future ROSCA and a loss of social standing.⁷⁶ ROSCAs prevail in areas where community ties are

67. See Ardener, *supra* note 22, at 219 (remarking on the absence of charging interest in Nigeria). Interest can be built into a ROSCA model through the use of a "sliding scale" where those who receive their draw earlier have to pay higher amounts than those who receive the pot towards the end of the ROSCA's life. *Id.* at 213.

68. See *id.* at 219.

69. See *id.* at 203. Anecdotal evidence of asues mention payments to the handler for their role that Bahamians call a "tip." Telephone Interview with Julian D. H. Fountain (Apr. 23, 2020).

70. See Besley et al., *supra* note 15, at 792, 805 (describing the typical ROSCA participants as individuals who tend to lack reliable forms of collateral).

71. See Ardener, *supra* note 22, at 216; Bauchet & Larsen, *supra* note 24, at 1483, 1490 (calculating that ten percent of the ROSCAs the authors studied encountered payment issues and failed to complete their cycle).

72. Ardener, *supra* note 22, at 216.

73. *Id.* at 217.

74. *Id.* at 216.

75. See *id.*; Bauchet & Larsen, *supra* note 24, at 1483 ("[P]eer pressure and social sanctions are the two most important mechanism to enforce contributions, particularly of those members who have already received the pot.").

76. See Ardener, *supra* note 22, at 216 ("In Japan there 'is nothing dishonourable in a debt as such,' but to have a debt in a rotating credit association and be unable to pay is 'very dishonourable indeed.'").

relatively strong.⁷⁷ Ergo, loss of social standing could affect everything from marriage prospects to community involvement to livelihood.⁷⁸ Moreover, in many places ROSCAs are entrenched in the economic system such that exclusion from them could cause severe economic consequences.⁷⁹ The fact that members in some extreme instances have been driven to steal or to sell a daughter into prostitution merely to meet their ROSCA obligations demonstrates the power of social constraints.⁸⁰ Some have even chosen suicide rather than default.⁸¹ The severe measures mentioned are neither common nor inherent to ROSCA membership; however, their existence demonstrates the cascade of serious consequences of ROSCA default or failure.

ROSCA members also ensure payment through other mechanisms, including: placing any suspicious person toward the end of the rotation; requiring members to sign a contract; providing some form of security or collateral in exchange for membership; paying a fine upon defaulting; or, if all else fails, taking the matter to court.⁸² All of this notwithstanding, ROSCAs sometimes still fail.

The trust factor is the crux of ROSCA operation. In his article discussing this system in Cameroon, Alvin Etang notes that, absent trustworthiness, a ROSCA cannot exist and indeed is more likely to fail.⁸³ One must be able to trust that the custodian and the other members will not abscond with one's hard-earned money, and that the punitive measures are enough to prevent this theft or default.

The costs of losing community trust are high. Quinton Lightbourne of the *Nassau Guardian* advised against joining asues, the Bahamian ROSCA,⁸⁴ writing that "in recent times this once reliable way of saving money for Bahamians has been plagued with dishonest and deceitful people who don't put their money in the asue for every draw, or, even worse, the asue custodian goes missing and steals the money out of the pot."⁸⁵ Indeed, that very scenario happened in 2016 to an asue in Grand

77. See *id.* at 202-08 (listing the regions where ROSCAs are found); see also Geert Hofstede, *The 6-D Model of National Culture*, <https://geerthofstede.com/culture-geert-hofstede-gert-jan-hofstede/6d-model-of-national-culture/> [<https://perma.cc/5N33-N4K9>] (last visited Apr. 20, 2020) (discussing Hofstede's research on collectivist and individualist countries across the world).

78. See Ardener, *supra* note 22, at 216 ("The member who defaults in one association may suffer to such an extent that he may not be accepted as a member of any other. In some communities the rotating credit institution has become so rooted in the economic and social system that exclusion would be a serious deprivation.").

79. Ardener, *supra* note 22, at 216 (giving examples of communities where ROSCAs have become embedded in the economy).

80. *Id.*

81. Besley et al., *supra* note 15, at 805.

82. Ardener, *supra* note 22, at 217.

83. Etang et al., *supra* note 22, at 462.

84. Lightbourne, *supra* note 3.

85. *Id.*

Bahama when four women took their asue custodian to court, arguing she had stolen the \$6,000 they paid into the asue.⁸⁶ Luckily, the women were able to secure a favorable judgment from the local magistrate court.⁸⁷ But their win was marred by the inability of the custodian to pay back all of the money: Patricia Collie had invested \$1,625, Nishka Shepherd \$1,750, Shikia Saunders and Keisa Pinder invested \$1,500 and \$1,750 respectively.⁸⁸ At the time of the article none of the ladies had recovered their full investments.⁸⁹ Collie said that she had since lost her house.⁹⁰ Shepherd was unemployed and raising an eleven-year-old son as a widowed single mother.⁹¹ These two women highlight the high stakes of joining a ROSCA: should the ROSCA fail, what little means the members had are wasted, and custodians may not be in a position to repay that debt themselves.

One tenth of the ROSCAs documented in Jonathan Bauchet and Vance Larsen's survey on bidding ROSCAs in Taiwan ended up failing.⁹² Timothy Besley and his co-authors note that custodians in Cameroon reported a rate of delinquency of up to fifty percent.⁹³ Whether those ROSCAs failed due to excusable default or nefarious machinations is not discussed; however, in either case, trust was breached, and the trust factor may have been misplaced.

Given the danger that default and theft present to ROSCA participants, how can one argue for importation into the African American context? Well, risk exists even when utilizing formal financial institutions. Just look at the devastation the subprime mortgage crisis caused the African American community.⁹⁴ African Americans disproportionately held subprime mortgages.⁹⁵ When the market imploded, they were left ravaged: the crash wreaked havoc on the credit scores of African Americans and ushered in a potentially decades-long period of continued financial disadvantage.⁹⁶ The counterargument that there are other means of restitution for those harmed by the activities of the formal financial institutions should not be overlooked. Particularly in the wake of the financial crisis, the Dodd-Frank Wall Street Reform and Consumer Protection

86. Maycock, *supra* note 17.

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.*

92. Bauchet & Larsen, *supra* note 24, at 1490.

93. Besley et al., *supra* note 15, at 805.

94. Ylan Q. Mui, *For Black Americans, Financial Damage from Subprime Implosion Is Likely to Last*, WASH. POST (Jul. 8, 2012), https://www.washingtonpost.com/business/economy/for-black-americans-financial-damage-from-subprime-implosion-is-likely-to-last/2012/07/08/gJQAwnmzWW_story.html.

95. *Id.*

96. *Id.*

Act (hereinafter “Dodd-Frank”) established the Consumer Financial Protection Bureau.⁹⁷ Dodd-Frank also tasked the Securities and Exchange Commission, Federal Deposit Insurance Corporation, and the Federal Insurance Office with the regulation and protection of consumers and the financial industry.⁹⁸ Despite these institutions, the inherent risk of investing is not mitigated.⁹⁹ Rather, predatory practices and consumer-exploiting behavior are curtailed thereby.¹⁰⁰ Thus, this preemptively advances the discussion to the object of Part Three: trust law should be used as the safeguard for potential African American ROSCAs. With a safeguard in place to offer protection and recompense to ROSCA members, the risk of joining an association is reduced to that akin to any other investment.

D. *How ROSCAs Can Benefit African Americans in the United States*

Therese Turner-Jones, General Manager of the Country Department Caribbean Group of the Inter-American Development Bank, noted in 2016 that ROSCAs promote financial education, savings, social inclusion, and investment.¹⁰¹ Gowon Bowe, Chief Financial Officer of Fidelity Bank (Bahamas), has been calling for a return to the *asue* mentality where Bahamians trust one another and pool resources to successfully jump start the Bahamian economy in the wake of the COVID-19 pandemic.¹⁰² Both financial experts succinctly answer the question of how ROSCAs can benefit African Americans in the United States: (1) ROSCAs promote financial savvy that would lay the necessary foundation for financial savings, and (2) ROSCAs encourage community investment that would lay the necessary foundation for wealth empowerment.

There is no indication that African Americans have historically practiced ROSCAs,¹⁰³ leaving the community ripe for importation of the

97. Mark Koba, *Dodd-Frank Act: CNBC Explains*, CNBC (May 11, 2012), <https://www.cnbc.com/id/47075854> [<https://perma.cc/WFL4-PCSM>]; 12 U.S.C. § 5481 (2018).

98. Koba, *supra* note 97; *Selected Sections of the Dodd-Frank Wall Street Reform and Consumer Protection Act*, FED. DEPOSIT INS. CORP. https://www.fdic.gov/regulations/reform/dfa_selections.html [<https://perma.cc/9NFV-DBCF>] (last updated Dec. 8, 2011).

99. See Harlan Landes, *Four Risks of Investing*, FORBES (Jun. 15, 2012), <https://www.forbes.com/sites/moneybuilder/2012/06/15/four-risks-of-investing/#2bc2917b38f9> [<https://perma.cc/EYH6-VNVT>] (“No investment is without risk.”).

100. Koba, *supra* note 97.

101. Turner-Jones, *supra* note 3.

102. Neil Hartnell, *Bahamas Needs ‘Asue’ Mentality’ for Its Recovery*, TRIBUNE (Apr. 6, 2020), <http://www.tribune242.com/news/2020/apr/06/bahamas-needs-asue-mentality-for-its-recovery/> [<https://perma.cc/ANP8-KQRB>].

103. Ardener, *supra* note 22, at 208 (stating that notwithstanding the presence of other forms of mutual benefit associations, there is seemingly no documentation of African American ROSCAs); SIMON C. PARKER, *THE ECONOMICS OF ENTREPRENEURSHIP* 282 (2d ed.

institution. As already explored in this Article, ROSCAs provide benefits of improved savings, emergency funds, and community empowerment and investment.¹⁰⁴ Applying those benefits to the African American context, ROSCAs could help mitigate the McKinsey factors mentioned in Subpart B of this Part not merely by one but by two, which would make a world of a difference.

To exemplify the point, one ROSCA currently operates out of Miami. The membership of the ROSCA includes nurses who work together and their friends and family.¹⁰⁵ The membership is about twelve strong.¹⁰⁶ The pot is distributed every month, and one of the nurses is the custodian.¹⁰⁷ The custodian determined the draw at the outset, but trading draw dates between members is an option with this ROSCA.¹⁰⁸ Members pay at a rate of \$200 per pot, i.e., members pay \$200 every month.¹⁰⁹ Subsequently, the person who holds the draw for the month of August can expect to receive \$2,400. With that \$2,400 the person who holds the August draw is free to spend it on anything. One of the members got married in the fall. That member expressed that she would spend her draw on paying down money related to the wedding.¹¹⁰ That is one example of how someone may use a ROSCA draw, but other examples abound: one ROSCA member spends her draw on any outstanding home repairs; another user spends the money derived from her ROSCA on mortgage payments; yet another times the draw on her monthly ROSCA to coincide with the holidays to ensure she has money for Christmas gifts.¹¹¹ These examples display the convenience and usefulness of this scheme; notwithstanding the economic crisis that the pandemic brought about, members know they have a means of paying, or keeping up with, their most pressing bills. In the event one receives an unexpected expense, a simple trading of the draws can secure the money in time to avoid any further harm. What should one do, however, if one's draw came earlier than the unexpected expense? According to one of the members of the Miami ROSCA, she would simply join another ROSCA.¹¹² In her case, she has said she has been a part of as many as three simultaneously operating ROSCAs.¹¹³ In her case, none of the

2018) ("African Americans have not emulated ROSCAs which have proven popular among some Asian immigrant groups in the USA.").

104. See Turner-Jones, *supra* note 3; Ardener, *supra* note 22, at 217; Hossein, *supra* note 61, at 436.

105. Telephone Interview with Michele A. Morin (Apr. 5, 2020).

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.*

113. *Id.*

ROSCAs required the same amount of money, thus she did not feel overburdened by membership in multiple ROSCAs.¹¹⁴

With that example in mind, the benefits of ROSCA adoption by the African American community become apparent. Adoption by the African American community would mean acceptance and utilization of ROSCAs amongst African Americans in the same way we see the practice executed in the Caribbean. One could imagine neighborhoods like Brownsville in Brooklyn, Bankhead in Atlanta, the Lower Ninth Ward of New Orleans, Oakland, and the Southside of Chicago becoming a patchwork of ROSCAs where any given person has access to or membership in a ROSCA. Thereby, African Americans would not only obtain a level of financial stability thanks to ROSCA membership but also strengthen community ties and reinvigorate community investment, particularly so when one recalls the example of ROSCAs operating between businesses as well.

ROSCAs could also provide African Americans with benefits by serving dually to empower communities and invest in their members.¹¹⁵ In the African American context, like in African and Caribbean immigrant communities in Canada, ROSCAs could help organize communities and build flourishing social economies in a society where the formal institutions reject or cast wary glances at people of color in the same way the society at large does.¹¹⁶

The COVID-19 pandemic provides an apt demonstration for the impact a ROSCA could have on the African American community. Early figures from the crisis indicate that African Americans are disproportionately harmed by the pandemic-induced layoffs and furloughs.¹¹⁷ Economists have suggested that minorities are undoubtedly getting hit harder because they often work in hotels, restaurants, and retail businesses that are being forced to shut down or reduce service.¹¹⁸ William Rodgers, an economist at Rutgers, speculates that the true figure for African American unemployment stands at 20.7 percent rather than the official rate of 4.1 percent.¹¹⁹ This data highlights the vulnerability of African

114. *Id.*

115. See Hossein, *supra* note 61, at 436.

116. Cf. Hossein, *supra* note 61, at 38 (quoting Black Canadian women who share their experiences with rejection by financial institutions).

117. Deborah Barfield Berry, *Coronavirus Layoffs Disproportionately Hurt Black and Latino Workers: 'It's Almost like Doomsday Is Coming'*, USA TODAY (Mar. 24, 2020), <https://www.usatoday.com/story/news/nation/2020/03/24/coronavirus-unemployment-layoffs-blacks-latinos/2900371001/> [<https://perma.cc/FGH7-JYMX>]; Chris Isidore, *Early Coronavirus Job Losses Hitting Minorities, Women, Teens Particularly Hard*, CNN BUS. (Apr. 4, 2020), <https://www.cnn.com/2020/04/04/economy/minority-job-losses-coronavirus/index.html> [<https://perma.cc/24QT-HX45>].

118. Isidore, *supra* note 117.

119. *Id.*

American households, 24 percent of which were unbanked in 2009.¹²⁰ In addition, most American households lack sufficient funds to withstand an emergency bill or sudden job loss as of 2016.¹²¹

Given these numbers, many African Americans being laid off in the midst of this pandemic may not have the means to weather the storm. ROSCAs could help. One already participating in a ROSCA before the pandemic could adjust to the new situation and reserve one's pot for paying rent even if they had other plans for money initially. If a new ROSCA is formed during the crisis, the net creditors (those who receive their draw in the initial half of the ROSCA cycle) would receive the cash infusion necessary to manage the fallout and prepare for the future.

In both scenarios, there are groups of people who could ostensibly be worse off: (1) those who were in a ROSCA before the crisis hit and received their pot early, and (2) those who join a ROSCA during the crisis and receive a later draw. But that is not the case. To the contrary, both groups are better off. First, the former group would potentially have cash to join a second ROSCA; and second, the latter group would have the opportunity to negotiate for earlier draw positions amongst one another. The specific ROSCA model used could alleviate specific difficulties as well, creating a predetermined ROSCA for those who join together during the crisis or a ROSCA where one can obtain a second pot by adding an extra hand to the pot.¹²²

Naturally, the issue of default remains. ROSCA default is a thorn even for the cultures that have traditionally used these funds. Moreover, cultural sanctions such as ROSCA-membership exclusion, ostracization from the community economy, and loss of social status are rendered impotent to a population that has greater access to formal financial institutions,¹²³ that has access to an economy beyond its locality, and that places

120 INSIGHT CTR. FOR CMTY. ECON. DEV., THE RACIAL GAP IN SAVINGS AND INVESTMENTS 2 (2009), <https://insightcced.org/old-site/uploads/CRWG/Racial%20Gap%20in%20Savings%20and%20Investments%20Spring%202009.pdf> [<https://perma.cc/N5AV-9SPB>].

121 Gillian B. White, *Not All Money Troubles Are Created Equal*, ATLANTIC (Apr. 21, 2016), <https://www.theatlantic.com/business/archive/2016/04/racial-inequality-money-problems/479349/> [<https://perma.cc/L6NJ-KUNR>].

122 See, e.g., Ardener, *supra* note 22, at 211 (describing the South African *stokfel*, which allows one to make multiple contributions and receive multiple pots commensurate with the contributions). This mechanism follows the same rules of reciprocity that defines the South African ROSCA and others; i.e., receiving a second fund will require giving double one's regular contribution to make up for the receipt of additional monies. See *id.*

123. Compare DEMIRGUC-KUNT ET AL., *supra* note 36, at 1 (recording that the number of unbanked persons in Latin America and the Caribbean was 61 percent back in 2012) with DIV. OF DEPOSITOR AND CONSUMER PROT., FED. DEPOSIT INS. CORP., 2017 FDIC NATIONAL SURVEY OF UNBANKED AND UNDERBANKED HOUSEHOLDS 3 (2018) (finding that 20.6 percent of African Americans were unbanked in 2013, 18.2 percent were underbanked in 2015, and 16.9 percent were underbanked in 2017).

less importance on community social status.¹²⁴ As demonstrated by the German *Mittelstand*, Germany's highly regarded small to medium-sized family owned enterprises,¹²⁵ such a specific cultural institution may not be successful when exported to a new environment.¹²⁶ Examples in comparative law, however, demonstrate that faithful transplantation of a cultural institution can be ensured if safeguards are introduced as well.¹²⁷ Therefore, to arrive at trust law as the mechanism for ensuring the potential future success of ROSCAs in the African American community, one must consider legal transplantation theory.

II. IMPORTING ASUES INTO THE AMERICAN CONTEXT: CULTURAL AND LEGAL TRANSPLANT THEORIES AT WORK

ROSCAs are already operating in the United States.¹²⁸ However, they have not ventured into the African American community or farther than the ethnic groups that brought them to American shores.¹²⁹ Why the institution has not been adopted by African Americans is up for speculation, but the fact remains it is an institution that could find a welcome home in the community.¹³⁰

But there is a problem. Asues, and all other variations of ROSCAs, arose in communities to fill a gap. In the Caribbean context, ROSCAs address the exclusion of women, Black people, and the lower class from traditional means of wealth generation.¹³¹ To wit, the histories, politics,

124. See Rhett Jones, *Individualism: Eighteenth Century Origins – Twentieth Century Consequences*, 21 W. J. BLACK STUD. 20, 25 (1997) (noting that African Americans display a sort of selfish individualism which is highlighted by folk tales such as Brer Rabbit).

125. Brian Blackstone & Vanessa Fuhrmans, *The Engines of Growth*, WALL ST. J. (Jun. 27, 2011), <https://www.wsj.com/articles/SB10001424052748703509104576329643153915516>.

126. Sarah Marsh, *Insight: The Mittelstand – One German Product That May Not Be Exportable*, REUTERS (Nov. 14, 2012), <https://www.reuters.com/article/us-germany-mittelstand/insight-the-mittelstand-one-german-product-that-may-not-be-exportable-idUSBRE8AD0KV20121114> [<https://perma.cc/229P-DYPX>].

127. See, e.g., Maximo Langer, *From Legal Transplants to Legal Translations: The Globalization of Plea Bargaining and the Americanization Thesis in Criminal Procedure*, 45 HARV. INT'L. L. J. 1, 46-47 (2019) (comparing the German plea-bargaining system, which is vastly different from the American model, to the Italian system, which is more faithful to the American plea-bargaining system due to the implementation of the practice with broader criminal reforms).

128. See, e.g., Besley et al., *supra* note 15, at 805 (giving the example of ROSCAs being used by ethnic communities in the United States).

129. See *id.*; Ardener, *supra* note 22, at 208; Mtshali, *supra* note 5; PARKER, *supra* note 103, at 282.

130. See Carl Joseph-Black, *The Modern-Day SouSou: Community Economics and Financial Growth*, YOUTUBE (Oct. 9, 2019), <https://www.youtube.com/watch?v=ev62yf6x-Mc> (discussing why people should use asues).

131. Hossein, *supra* note 61, at 426-29; Turner-Jones, *supra* note 3.

and will of the people created ROSCAs and laid the foundation for its success.¹³²

This is similar to the *Mittelstand* phenomenon, where nations seek to emulate Germany's unique small to medium enterprise model without success.¹³³ Researchers posit that the quintessential German institution is well informed by Germany's history, politics, and economic developments.¹³⁴ First, they attest that Germany's disunity as a patchwork of independent states, principalities, duchies, and kingdoms from the Middle Ages until 1871 led to a pluricentric system of educational, vocational, and industrial hubs.¹³⁵ Second, the *Mittelstand* model was fomented in the aftermath of World War II where the larger corporations that were largely located in major cities were devastated by the Allied bombing and besmirched for their association with the Nazis.¹³⁶ The *Mittelstand* were left to fill the void.¹³⁷ In short, the essence of German culture produced and expanded the *Mittelstand* model to the enviable position it holds today.¹³⁸ Because of this, scholars argue it cannot be emulated anywhere else.¹³⁹ Those who seek to reproduce *Mittelstand*, even within Germany itself,¹⁴⁰ seem to face the same problem: the importing cultures lack one or two things that might otherwise ensure its success.¹⁴¹

Therein lies the problem for ROSCA importation into the African American context: one cannot try to import a foreign cultural institution into a new cultural context and expect it to work at all, let alone work as well as it did in the original context. This Part begins by examining the theory of cultural transplantation and its more granular cousin, legal transplantation. As the name suggests, legal transplantation is the importation of foreign legal practices and ideas.¹⁴² These theories lay the foundation for the assertion that absent an intervening framework, the asue model would fail in the African American context. Then, the discussion turns to the cultural discrepancies between the ROSCA cultures and African American culture that could challenge the transplantation of the institution.

132. See Hossein, *supra* note 61, at 424-27.

133. Marsh, *supra* note 126.

134. *Id.*

135. *Id.*

136. *Id.*

137. *Id.*

138. See *id.*

139. *Id.*

140. *Id.* (citing Jacqueline Henard's study that argues Germany has failed to emulate the *Mittelstand* model in its former-Eastern states).

141. *Id.* ("Olga Vaulina, who organized a visit this year of Russian regional officials to *Mittelstand* firms, said most agreed the factor lacking in Russia after decades of communism was entrepreneurial spirit - something that is not easy to copy or impose.").

142. Langer, *supra* note 127, at 6.

A. Cultural and Legal Transplantation

Just as with goods, ideas are exchanged, transmitted, adopted, and shunned. This is even more prominent in the current era where technology and interconnectedness spread memes, jokes, films, and other media faster than a speeding bullet.¹⁴³ Scholars such as Anna Malinowska have analyzed the processes, mechanisms, and systems of this cultural transmission. Malinowska notes that “difference” is the defining concept in culture today.¹⁴⁴ Cultures define themselves through their differences.¹⁴⁵ While these differences can also act as measuring tools for similarity, across cultures, they more often serve as points of contrast to what is local, common, and comfortable within a culture.¹⁴⁶ In that way, the concept of differences both explains and corroborates the finding that cultural transplants face high rates of rejection.¹⁴⁷ The intangibility of culture notwithstanding, inserting cultural institutions into the figurative cultural body¹⁴⁸ of a group requires a compatible body as a starting point.¹⁴⁹ If a foreign cultural transplant is unsuitable, it is met with rejection.¹⁵⁰

However, Malinowska discusses cultural transplantation in terms of spontaneous transmission between cultures.¹⁵¹ Legal transplantation, on the other hand, provides examples of planned transmission of cultural institutions from one legal culture into another.¹⁵² There, unsuitability is

143. See Anna Malinowska, *Cultural Transplantation and Problems of Transferability*, 2 J. LITERARY STUD. & LINGUISTICS 24, 25 (2014).

144. *Id.* at 27.

145. See *id.*

146. *Id.*

147. See *id.* at 29.

148. When talking about culture as a whole, as opposed to the granular elements that compose a culture, the forest can be lost for the trees. Therefore, the term “cultural body” is used metaphorically to better illustrate the amorphous concept of a single culture of a group. See *id.* For example, the culture of the Jewish-Americans includes a host of traditions, practices, and history. Rather than using the term “culture” as is, attaching the term “body” or “corpus” should evoke a unified whole. Moreover, the metaphor of culture as a body composed of many integrated systems lends itself well to the discussion of cultural transplantation because cultures reject foreign transplants in the same way a body would reject an organ transplant that is unsuitable. See *id.*

149. *Id.*

150. *Id.*

151. See *id.* (“In contrast to medical transplants, cultural grafts are not necessarily conscious and meticulously planned acts.”).

152. I use “cultural transplant” here liberally. It is my belief that, in this context, laws, legal ideologies, and legal institutions are but landmarks in the cultural landscape of a group rather than something separate and apart therefrom. See generally Paul Schiff Berman, *The Enduring Connections Between Law and Culture: Reviewing Lawrence Rosen, Law as Culture, and Oscar Chase, Law, Culture, and Ritual*, 57 AM. J. COMPAR. L. 101 (2009); Robert Post, *Law and Cultural Conflict*, 78 CHI.-KENT L. REV. 485, 486 (“Law is thus figured as the arm of a coherent antecedent culture that is the ultimate source of society’s identity and authority.”). Indeed, even this mentality can be said to be culturally preconditioned. Cf. *id.* at 486 (“The common

met not with outright rejection but with adaptation, or forced change, of the transplant for better accommodation into the importing culture.¹⁵³

One example of such legal transplantation between cultures is the Italian adoption of the American plea-bargaining system.¹⁵⁴ Italy is a civil law nation boasting legal ancestry tracing back to the Ancient Roman codes. Italy's legal system, in contrast to the Anglo-derived adversarial system used in America, conducts criminal trials in an inquisitorial manner.¹⁵⁵ In an inquisitorial system, the judge helms the official civil or criminal investigation as an impartial actor of the state.¹⁵⁶ On the other hand, in an adversarial system, an active prosecutor aims to prove guilt beyond a reasonable doubt before a passive judge.¹⁵⁷ In short, the inquisitorial system of justice is one where judges actively helm inquiries by more impartial prosecutors and defense counsels to determine the truth, whereas the adversarial system is one where impartial judges more passively mediate aggressive arguing by opposing sides, the end result of such arguing being the revelation of the truth.¹⁵⁸ The discrepancies between the two systems thus become apparent. How then, did Italy fare when it sought to transplant portions of the American adversarial system into its inquisitorial system, given that the two are nearly antithetical?¹⁵⁹ The answer is it did quite well because the drafters cunningly morphed the Americanisms into a form palatable to the Italians.¹⁶⁰

The *applicazione della pena su richiesta delle parti* (hereinafter "*patteggiamento*"¹⁶¹) is an agreement between the prosecution and the defense to a particular sentence for a criminal defendant.¹⁶² They only bargain for the length of the sentence because the Italian system does not incorporate the idea of additional charges, and even then, the bargaining process only applies to offenses with maximum sentences of five years.¹⁶³ Sentences can be reduced by as much as one-third and no longer than two years.¹⁶⁴

law in particular self-consciously embodies the "experience" and "custom" of the surrounding community. Every time the common law requires a jury to reach a verdict based upon the judgment of the "reasonable person," it seeks to enforce "the general level of moral judgment of the community, what it feels ought ordinarily to be done.").

153. See generally Langer, *supra* note 127.

154. See generally Pizzi & Marafioti, *supra* note 18.

155. Langer, *supra* note 127, at 6.

156. *Id.* at 4; See Pizzi & Marafioti, *supra* note 18, at 7.

157. Pizzi & Marafioti, *supra* note 18, at 7.

158. See Langer, *supra* note 127, at 4.

159. Langer, *supra* note 127, at 46.

160. See *id.* at 27-28, 46-53.

161. Pizzi & Marafioti, *supra* note 18, at 22 ("[It] is even referred to by Italian lawyers as a *patteggiamento* . . .").

162. *Id.*

163. Langer, *supra* note 127, at 50.

164. Pizzi & Marafioti, *supra* note 18, at 22.

The *patteggiamento* and the other criminal reforms in Italy were instituted to remedy the inefficiency that was rampant in Italy's older system.¹⁶⁵ Notwithstanding that reasoning, scholarly reaction to the Italian plea bargain was so extreme that it resulted in a slew of articles decrying the procedure as compromising the truth-seeking mission of criminal trials.¹⁶⁶ In fact, the Italian Constitutional Court declared the law that regulates *patteggiamento* unconstitutional for failing to expressly grant judges power to control, which they found contravened Article 27.3 of the Italian Constitution.¹⁶⁷

However, the constitutional court's ruling did not eliminate *patteggiamento*;¹⁶⁸ in fact the procedural tool has been used in 17 to 21 percent of misdemeanor-like cases and in 34 to 42 percent of other criminal cases, save the most serious.¹⁶⁹ Ostensibly, these figures show acceptance and utilization of *patteggiamento* at a healthy rate, but they come from the forced change in the plea bargaining system to better suit the Italian palate.¹⁷⁰ The initial resistance to *patteggiamento* shows exactly what Malinowska suggested: that exchange of foreign cultural institutions causes immune responses in the importing culture.¹⁷¹ Had the *patteggiamento* been introduced informally, rejection would have been highly likely because, as the scholars argued, it is not in the nature of the inquisitorial system to fast track a case when there is truth to be found.¹⁷² But for the careful hand of the drafters of the new Italian Criminal Code, the new adversari-

165. *Id.* at 6; Langer, *supra* note 127, at 47.

166. Langer, *supra* note 127, at 52; e.g., LUIGI FERRAJOLI, DIRITTO E RAGIONE: TEORIA DEL GARANTISMO PENALE (Laterza ed., 1st ed. 1989); Paolo Ferrua, *La Giustizia Negoziata nella Crisi della Funzione Cognitiva del Processo Penale*, 3 STUDI SUL PROCESSO PENALE 131, 134 (1997).

167. Langer, *supra* note 127, at 52 ("The ruling by the constitutional court found the law that regulated *patteggiamento* unconstitutional because it did not expressly give the judge the power to control the congruence between the sentence agreed upon by the parties and the seriousness of the offense."). Article 27.3 of Italy's constitution establishes that the goal of punishment is the rehabilitation of the convicted person.

168. Compare Corte cost., 26 giu. 1990, n.313, 96 Racc. uff. corte cost. 1990 (dating the court's decision to 1990), with ARMANDO CAPUTO ED., STATISTICHE GIUDIZIARIE PENALI: ANNO 2004, SISTEMA STATISTICO NAZIONALE 15-16 (2006) http://www.ristretti.it/areestudio/statistiche/penali_2004.pdf [<https://perma.cc/568E-5HSK>] (describing what *patteggiamento* is, basic rules governing its application, and its inapplicability in cases concerning juveniles).

169. Langer, *supra* note 127, at 52-53 (documenting the rate of utilization for *patteggiamento* by parties between 1990 and 1998).

170. See Langer, *supra* note 127, at 53 ("This indicates that the model of the dispute, understood as a structure of interpretation and meaning, has been accepted and internalized, at least to ascertain extent, by a substantial number of Italian legal actors.").

171. See Malinowska, *supra* note 143, at 29.

172. Cf. Langer, *supra* note 127, at 4, 36-37 (elucidating the concept that few practices are more "incompatible with the inquisitorial system" than plea bargaining.).

al practices introduced would have failed to change anything.¹⁷³ In short, the drafters ensured the success of *patteggiamento* by introducing it in a framework that provided the proper adoptive conditions to ensure the accommodation of the foreign cultural institution.

B. *Cultural Discrepancy and the Need for an Additional Framework*

In comparative law, one school of thought believes that law and legal concepts form a continuum that ranges from those that are easier to transplant from their original context to those that are harder.¹⁷⁴ Most importantly, the continuum theory offers insight into what it would take to make a transplantation successful: the harder the legal concept to transplant, the more detailed the knowledge that may be required to ensure the transplantation.¹⁷⁵ That theory fits with transplantation of cultural institutions as well; *e.g.*, on the one end cultural staples such as literature would prove to be easier to transplant¹⁷⁶ and are transferable, whereas on the other end cultural institutions such as *Mittelstand* would be more difficult to transplant.¹⁷⁷ ROSCAs, it would seem, sit closer to the easy end of the transplantation scale because they have proven highly mobile and transplantable.¹⁷⁸ In the interest of having the ROSCA take hold and flourish in the African American cultural body (*i.e.*, not face cultural rejection), perhaps some understanding of the original context in which the institution arose is necessary.

Interestingly, the concept of pooling community resources is not novel to African Americans, which may help further the transplantation. For example, the Greenwood district of Tulsa, Oklahoma emerged as “Black Wall Street” because of the efforts of O.W. Gurley, a Black land-

173. *See id.* at 46-47, 52 (“Italian legal translators had much more power than German translators in advancing their reform, and were able to introduce Italian plea bargaining as part of deeper and broader criminal procedure reforms inspired by the American adversarial system.”).

174. Basil C. Bitas, *Comparative Theory, Judges and Legal Transplants: A Practical Lesson from Singapore and Its Relevance to Transnational Convergence*, 26 *SING. ACAD. L.J.*, 50, 54 (2014).

175. *Id.* (“Again, whether the success of the transplant would require detailed knowledge of the donor country’s legal system and political economy is open to question.” But the example comparing commercial law and constitutional/public law is illustrative of the continuum theory: “His continuum runs from certain types of commercial law that may in some way lie on the periphery of a system involving the acquiescence of only a few key stakeholders in order to become effective to public or constitutional law which may require broader acceptance from the public at large in order to take root in the soil of the recipient country.” *Id.*).

176. *Cf.* Malinowska, *supra* note 143, at 32 (providing the example of the Polish translation of *50 Shades of Grey*, which encountered problems when translators tried to provide Polish equivalents to the salacious terms, but ultimately was popular amongst Poles).

177. *See* Marsh, *supra* note 126.

178. *See* Ardener, *supra* note 22, at 208-09 (explaining that ROSCAs have not developed independently in each community, which was the case for the *Ibibio* of Nigeria).

owner who purchased the land and named it Greenwood.¹⁷⁹ Gurley lured fellow African Americans with boarding houses and furnished them with loans to start businesses. Soon, other Black entrepreneurs followed suit.¹⁸⁰ J.B. Stradford, a prominent Black entrepreneur and Greenwood resident, is said to have believed that “blacks had a better chance of economic progress if they pooled their resources.”¹⁸¹ These concepts are the heart of the ROSCA model and serve as added evidence that ROSCAs not only would be welcomed into the African American context but would flourish in the same way Greenwood did, especially considering that businesses can also form ROSCAs amongst themselves. While such a background may allow for the successful transplantation of ROSCAs, it may not be enough guarantee that ROSCAs will operate in the same way, and thus retain the same benefits, as they do in the originating cultures.

Shirley Ardener recounts that the Ibibio people of Nigeria borrowed their ROSCA system from the Ibo people fifty years prior to her writing.¹⁸² Still, the Ibibio ROSCA system is vastly different from that of the Ibo people.¹⁸³ Therein lies the crucial point: ease of transplantability does not ensure one-to-one transplantation where the transplant is a substantially similar entity to the originating culture’s incarnation.

The one case where we have seen the benefits of the original system carried over was the measured and contextualized transplantation of the plea bargain into the Italian criminal system. The goal of transplanting the American plea bargain into the Italian criminal system was to introduce a mechanism to reduce the perennial backlog of court cases,¹⁸⁴ and the data shows that *patteggiamento* is indeed succeeding.¹⁸⁵

Therefore, like in the Italian example, proper controls must be put in place to prevent the rejection of ROSCAs in the African American context, and to ensure that ROSCAs’ benefits of inducing savings, providing credit, and incentivizing community investment remain part and parcel of the transplanted institution. Because the largest drawbacks to ROSCA use are the potentials for default and absconding, introducing a legal framework to curtail those possibilities would serve to prevent transplant rejection while still encouraging the natural adaptation of ROSCAs to the African American context.

179 Alexis Clark, *Tulsa’s ‘Black Wall Street’ Flourished as a Self-Contained Hub in Early 1900s*, HISTORY: HISTORY STORIES (Sept. 4, 2019), <https://www.history.com/news/black-wall-street-tulsa-race-massacre> [<https://perma.cc/FN4B-SCS2>] (last updated Jan. 2, 2020).

180. *Id.*

181. *Id.*

182. See Ardener, *supra* note 22, at 208.

183. *Id.* at 209.

184. Pizzi & Marafioti, *supra* note 18, at 17 (“The new Code was, in significant part, intended to provide the Italian criminal justice system with new, efficient procedures to combat its perennial case backlog.”).

185. Langer, *supra* note 127, at 52.

III. TRUSTS 'R' US

One of the key aspects of ROSCAs is their informality. The grassroots nature of the institution legitimizes it more in the minds of the disenfranchised because it stems from the locality and the casual human connections between community members.¹⁸⁶ Indeed, the history of discrimination and predation on African Americans by formal financial institutions explicably serves to keep the community wary of them.¹⁸⁷ Therefore, this Article should not be construed as seeking to introduce ROSCAs into the American context with formal institutionalization because their informality is their strength. Rather, the argument is that to better ensure the adoption of the ROSCA into African American culture, controls should be introduced to prevent the loss of ROSCA benefits and to limit ROSCA drawbacks. By using trust law as a stabilizing mechanism, African Americans could utilize ROSCAs without fear of forfeiting their money on a fool's errand.

Trust law should be used over other branches of civil law because trust law best maps onto the ROSCA scheme. In other countries, legal recourse for ROSCAs is based in contract law.¹⁸⁸ In the Bahamas, for example, the previously mentioned case of the failed ROSCA involved four women who paid over \$6,000 into an asue that subsequently failed.¹⁸⁹ The women brought the custodian of the asue to court relying upon the law of obligations.¹⁹⁰ In that case, the women were able to produce contracts and receipts given to them by the custodian.¹⁹¹ The victory by the Bahamian women is the best case for contract law because it illustrates a successful suit under a valid contract between asue members and the custodian. Further, the law of obligations could work well because it can cover even oral agreements between members and evidence of payment can be corroborated to provide even the most basic of the equitable remedies.¹⁹²

186 See Hossein, *supra* note 61, at 431-32.

187. See R. Robin McDonald, 'Banking While Black:' Lawsuit Claims Wells Fargo Called Police Instead of Cashing Woman's Check, LAW.COM (Dec. 4, 2019), <https://www.law.com/dailyreportonline/2019/12/04/banking-while-black-lawsuit-claims-wells-fargo-called-police-instead-of-cashing-womans-check/?slreturn=20200827233902> [<https://perma.cc/F3ET-M682>]; Matt Egan, *Wells Fargo Accused of Preying on Black and Latino Homebuyers in California*, CNN BUS. (Feb. 27, 2018), <https://money.cnn.com/2018/02/27/investing/wells-fargo-sacramento-lawsuit-discriminatory-lending/index.html> [<https://perma.cc/9UB2-B97F>]; SARAH BURD-SHARPS & REBECCA RASCH, IMPACT OF THE US HOUSING CRISIS ON THE RACIAL WEALTH GAP ACROSS GENERATIONS, SOC. SCI. RSCH. COUNCIL 9-14 (2015), https://www.aclu.org/sites/default/files/field_document/discrimlend_final.pdf [<https://perma.cc/RG9Q-ACE7>].

188 See Ardener, *supra* note 22, at 217; Maycock, *supra* note 17.

189. Maycock, *supra* note 17.

190. *Id.*

191 See Maycock, *supra* note 17.

192. See, e.g., *id.*

However, a passing comment by Shirley Ardener provides an apt counter: “The legal validity of the contract between a member and an association may vary.”¹⁹³ It stands to reason that to have the best chance of winning a contract case, one should have a formal written document that explicitly lays out the terms, conditions, and minutiae governing the parties’ activities.¹⁹⁴ While that is entirely possible to achieve, the more intricate a contract, the higher the possibility that the community will reject it.¹⁹⁵ As seen in the comments by Jamaican ROSCA participants documented by Caroline Hossein, the lack of paperwork is seen as one of the factors that endear them to the ROSCAs rather than formal institutions.¹⁹⁶ The preferred lack of such “rigamarole” likely stems from the distrust of the formal financial institutions that are seen as for the rich, educated, and the “big man.”¹⁹⁷ Hence, contract law, while applicable, may serve to stifle the African American ROSCA project in its infancy rather than secure its growth into maturity.¹⁹⁸

But there is another option: trust law. If we want immediate implementation of ROSCAs into the community, particularly given the current state of affairs with the devastation the pandemic is causing the African American population,¹⁹⁹ trust law can quickly retain the informality of ROSCAs, encompass any permutation that African Americans introduce to the ROSCA model, and align with the Restatement Third of Trusts no matter the iteration.

193. Ardener, *supra* note 22, at 217.

194. Andrew C. Vredenburg, *Get It in Writing: The Importance of Written Agreements in Business*, FOSTER SWIFT COLLINS & SMITH PC (Oct. 13, 2015), <https://www.fosterswift.com/communications-Written-Business-Agreements.html> [<https://perma.cc/Y782-SLZ6>].

195. See Hossein, *supra* note 61, at 432.

196. See *id.* at 431.

197. See *id.* at 432.

198. This is certainly the case when one considers that a written contract implicates the parol-evidence rule.

199. See Oliver Laughland & Lauren Zanolli, *Why Is Coronavirus Taking Such a Deadly Toll on Black Americans?*, GUARDIAN (Apr. 25, 2020), <https://www.theguardian.com/world/2020/apr/25/coronavirus-racial-disparities-african-americans> [<https://perma.cc/C96K-2SVG>] (investigating how the virus has ravaged the African American community physically); Berry, *supra* note 117 (documenting how the virus has ravaged the African American community financially); Isidore *supra* note 117 (documenting how the virus has ravaged the African American community financially).

A. *The Restatement (Third) of Trusts and ROSCAs*

1. Background on Trusts

A trust is defined as a fiduciary relationship in which one person holds a property interest subject to an equitable obligation to keep or use that interest for the benefit of another.²⁰⁰ A fiduciary relationship is one where a person is under a duty to act for the benefit of another as to matters within the scope of the relationship.²⁰¹ The Restatement (Third) of Trusts notes that in some circumstances fiduciary duties may technically exist but may not be “effectively enforceable.”²⁰² In those cases, the trustee holds powers such as revocation or an exercisable power of appointment or withdrawal.²⁰³ The creator of a trust is known as a settlor,²⁰⁴ and a trust may have more than one.²⁰⁵ The property held in trust is managed by the trustee²⁰⁶ and is known as trust property or trust res.²⁰⁷ The one for whom the property is held in trust is known as the beneficiary.²⁰⁸ The settlor and trustee can both be beneficiaries of a trust unless the trustee is the sole beneficiary of the trust.²⁰⁹

An entity is considered a trust if it fulfills three elements: (1) presence of a trustee who holds the trust property and is subject to duties to manage it for the benefit of one or more others; (2) one or more beneficiaries, to whom and for whose benefit the trustee owes the duties with respect to the trust property; and (3) trust property, which is held by the trustee for the beneficiaries.²¹⁰

There must also be a proper manifestation of intention by the settlor to create a trust,²¹¹ whether the settlor knows the relationship is called a trust is immaterial.²¹² Oral *inter vivos* trusts (trusts created orally and during the life of the settlor rather than via a will) are recognized and enforceable so long as the Statute of Frauds does not apply.²¹³ Further, to create a trust by a mechanism other than a will there must be either: (1) a transfer *inter vivos* by a property owner to another person as trustee for one or

200 Restatement (Third) of Trusts § 2 (Am. L. Inst. 2012) (citing George G. Bogert & George T. Bogert, *The Law of Trusts and Trustees* § 1 (rev. 2d ed. 1984)).

201 *Id.* § 2(b).

202 *Id.*

203 *Id.*

204 *Id.* § 3(1).

205 *Id.* § 3 cmt. a (“A trust may have more than one settlor.”).

206 *Id.* § 3(3).

207 *Id.* § 3(2) cmt b.

208 *Id.* § 3(4).

209 *Id.* § 3 cmt. d.

210 *Id.* § 2-3 (including property as an element of the definition of a trust).

211 *Id.* § 13.

212 *Id.* § 13 cmt. a.

213 *Id.* § 20.

more persons;²¹⁴ (2) a declaration by a property owner that he or she holds that property as trustee for one or more persons;²¹⁵ (3) an exercise of a power of appointment by appointing property to a person as trustee for one or more persons who are objects of that power;²¹⁶ or (4) a promise or beneficiary designation that creates enforceable rights in a person who immediately or later holds those rights as trustee, or who pursuant to those rights later receives property as trustee, for one or more persons.²¹⁷ The drafters of the Restatement took care to note that in situations where there are multiple beneficiaries, a trustee or settlor-trustee may also be a beneficiary.²¹⁸

2. Trust Applicability to ROSCAs

To exemplify how trust law could apply to ROSCAs, we shall revisit the previously mentioned case of the failed asue in the Bahamas—although with the slight change of supposing that the women did not have a written contract for the asue. Recalling the facts of the case, at least four women—Patricia Collie, Nishka Shepherd, Shikia Saunders, and Keisa Pinder—joined together to pool money into an asue overseen by custodian Juanita Stubbs.²¹⁹ The asue started on September 24, 2015 and was set to end on February 28, 2016.²²⁰ Collie invested \$1,625, Shepherd invested \$1,750, Saunders likely invested \$1,500,²²¹ and Pinder likely invested \$1,750 as well.²²² Collie, Shepherd, and Pinder were given the draw dates of December 18, 2015 and January 8, 2016.²²³

Stubbs, as the asue custodian, was in charge of gathering the contributions from all members, collecting them into a single pot, and then giving the pot to the owner of each draw.²²⁴ In essence, Stubbs had a duty to ensure (1) the existence of the pot and (2) that the pot was given to the designated recipient.²²⁵

In the American trust law context, this falls exactly into the definition of a fiduciary relationship because Stubbs operated as custodian on

214. *Id.* § 10 (b).

215. *Id.* § 10 (c).

216. *Id.* 10 (d).

217. *Id.* § 10 (e).

218. *Id.* § 10 cmt. a.

219. Maycock, *supra* note 17.

220. *Id.*

221. *See id.* The article stipulates that she was owed a balance of \$1,200 after she received a \$300 payment from Stubbs.

222. *See id.* The same math as mentioned in the previous footnote guides the figure I used above: i.e., Stubbs paid Pinder \$300 and the outstanding balance was \$1,450.

223. *Id.*

224. *See id.*

225. *See id.*

behalf of the asue members.²²⁶ Her collection and disbursement of the pot were to the benefit of the asue members in ensuring the continuance of the asue and fulfilling its purpose. Therefore, Stubbs was effectively a trustee, which was exactly what opened her up to liabilities when the asue failed.

In this framework, the pot was the trust property because it was what the trustee, Stubbs, held for the asue members. The four members, Collie, Shepherd, Saunders, and Pinder, were the beneficiaries because Stubbs managed the pot for their benefit. In this example, Collie, Shepherd, Saunders, and Pinder also served jointly as the settlors because they were the ones who put forth the money to create the pot, or trust property. Additionally, it is the members' decision to join together into an asue that serves as the manifest intention to form a trust. The act of disbursing the money the first time serves as the *inter vivos* transfer that creates the asue and the trust. As a final point, because the pot does not pertain to real estate or the sale of goods nor the asue extend beyond the lifetime of the members, the Statute of Frauds and could therefore remain a hypothetical oral *inter vivos* trust.²²⁷

It is clear that trust law is well applicable to asues when conceptualized as standard trusts where the custodian is the trustee. However, that conceptualization does little to prevent or ensnare beneficiaries seeking to abscond with the pot without paying their dues. A bit more radical of an interpretation of trust law, notwithstanding its contortion, would capture the nefarious asue member while still in line with the Restatement of Trusts: that is, considering the asue members to be trustees, in addition to settlors and beneficiaries.

The Restatement includes the word "settlor-trustee" in its description of possible beneficiaries.²²⁸ Hence, it is entirely cognizable that one person may wear all three hats of settlor, trustee, and beneficiary provided that there are multiple beneficiaries such that the doctrine of merger²²⁹ does not apply.²³⁰ With that in mind, one can return to the facts of the Bahamian asue and slot the facts into place.

In this iteration, Collie, Shepherd, Saunders, and Pinder are settlors that give to each other a draw in trust. The draw is essentially an interest in the asue, or more specifically an interest in the pot. Therefore, the

226. See *id.* § 2 cmt. b.

227. See U.C.C. § 2-201 (AM. L. INST. 2012); see also Statute of Frauds, LEGAL INFO. INST. https://www.law.cornell.edu/wex/statute_of_frauds [<https://perma.cc/QE8R-M34M>] (last visited Oct. 22, 2020). See, e.g., CAL. CIV. CODE § 1624 (a); N.Y. GEN. BUS. LAW § 5-701 (a); MO. REV. STAT. § 432.010.

228. Restatement (Third) of Trusts § 10 cmt. a (Am. L. Inst. 2012).

229. The doctrine of merger in trust law is the rule that states that a trust will end if the same person holds all of the legal and equitable title. See CHARLES E. ROUNDS, JR. & CHARLES E. ROUNDS, III, LORING AND ROUNDS: A TRUSTEE'S HANDBOOK § 8.7 (Wolters Kluwer ed. 2013).

230. See Restatement (Third) of Trusts § 69.

draw is a secondary trust res. Another way to conceive of the asue is as two overlapping trusts operating as one: the first trust involving the custodian holding the pot in trust for the members, the second trust involving the members holding a draw in trust, where the asue members themselves are the trustees who are granted their draws from the collectivity. In the first trust, the pot is the trust res, the securing of which assures that the beneficial interest, the sum of the pot, is passed to the member-beneficiaries by the custodian-trustee. In the second trust, the draw is the trust res where it serves as the interest in the pot.²³¹ Hence, the asue members need not function as custodians to be considered trustees because their overlapping interest in the pot, represented by the draw, is sufficient to attach fiduciary duties.

To better understand it, Collie, Shepherd, Saunders, and Pinder all have a lot in the draw, which means they each hold an interest in the pot. The absence of one draw holder breaks the asue because it is predicated upon all members being present and paying the contribution.²³² Thus, if Collie were to defect from the asue, the pot could no longer continue, and the asue would default. There is thus a clear fiduciary relationship between asue members where the duty to one another is a duty of care to ensure the existence of the pot by continued participation.

Moreover, for the purpose of the second trust, the duty attached to the members does not extinguish with one's acquisition of the pot. One obtainment of the pot does not mean the pot disappears. If anything, the pot is in existence from the moment the asue is created until the moment it ends. That idea follows from the fact that the draws of the other member-beneficiaries remain after one of the members receives her pot. In other words, one attainment of the pot does not cease its existence precisely because that act does not do away with the other draws and one's obligations to the other members of the asue. Therefore, the asue can be easily secured by trust law from nefarious members if one were to regard the members as settlor-trustee-beneficiaries. With the asue established as a private *inter vivos* trust, all of the remedies available to beneficiaries when there is a breach of trust become available in case of default or theft such as specific performance (compelling a trustee to continue payments from the trust)²³³ and injunction.²³⁴

In summation, ROSCAs, and asues specifically, operate well within the bounds of trust law. Arguably, knowing trust law applies to ROSCAs would induce the view that they are actually trusts in another form. Laws

231. See *id.* § 3 cmt. b (“The term ‘trust property’ denotes things or the interests in things that are held in trust.”) (“Although property held in trust usually consists of legal interests in tangible or intangible things, equitable interests also can be held in trust.”).

232. See Ardener, *supra* note 22, at 211 (“Regularity in the payment of contributions has been singled out as one of the criteria distinguishing rotating-credit from some other institutions.”).

233. Restatement (Third) of Trusts § 95.

234. *Id.*

have the power to shape attitudes and perceptions, and this case would be no different.²³⁵ Certainly knowing something is illegal changes one's perception of the act, thus it stands to reason that such a concept extends to how one views institutions themselves. In the case of ROSCAs, using the framework of trust law to highlight the illegality and disfavor of default and asportation primes the entire conceptualization of a ROSCA to bring it closer to something culturally American. Utilizing trust law to frame African Americans' conceptualization of ROSCAs equivocates to a new understanding of ROSCAs as trusts by African Americans. As seen with the influence of fake news, initial information informs perceptions which shape reality and incline people toward the initial information offered.²³⁶ By characterizing ROSCAs as trusts, the cognition of the institution may change two-fold: first, it may turn an amorphous concept into one that is readily cognizable, i.e., swapping the unknown ROSCA for the widely recognized trust; and, second, it would prime the perception of the ROSCA. To put the second point in a different way, in the same way a watermelon grown in a box will grow to fill the box, so too might characterizing ROSCAs (the watermelon) as trusts (the box) allow the perception of the institution to grow into the trust mold in the minds of African Americans. The results, then, are clear: trust law as the transplantation stabilizer secures the ROSCA from cultural rejection because it mitigates the known drawback of the institution and explains the institution in a way familiar to the culture so that its perception is both recognizable and understandable.

CONCLUSION

Marsha Curry may have grown up humbly in the Bahamas, but her ingenuity with the tools given to her allowed her to reach a point where she could secure herself, her children, and even her grandchildren. Through her cunning and crafty use of asues, Curry was able to buy multiple houses, invest in land, and put her children through school. While her resourcefulness was all her own, the opportunity came through the ROSCA scheme. Similar opportunities could be potent in the African American context. Even the least sagacious user receives benefits from ROSCAs, and in the hands of the gifted there is no telling how much they could achieve.

235. See Cevat G. Aksoy, Christopher S. Carpenter, Ralph D. Haas & Kevin Tran, *Do Laws Shape Attitudes? Evidence from Same-Sex Relationship Recognition Policies in Europe*, 124 *EUR. ECON. REV.* 1, (2020); René D. Flores, *Do Anti-Immigrant Laws Shape Public Sentiment? A Study of Arizona's SB 1070 Using Twitter Data*, 123 *AM. J. SOCIO.* 333, 366 (2017).

236. Peter J. Jost, Johanna Pünder & Isabell Schulze-Lohoff, *Fake News – Does Perception Matter More Than the Truth?*, 85 *J. BEHAVIORAL & EXPERIMENTAL ECON.* 1, 2 (2020) (finding both in the literature and their experiment that people rely heavily on an initial piece of information offered to make subsequent judgments during decision making).

The COVID-19 pandemic has highlighted the plight of the African American financial situation. The necessity for emergency savings or emergency funds is now more present than at any time after the 2008 Financial Crisis.²³⁷ Transmission of ROSCAs into the African American community, however, could change this tragic narrative into a comeback-kid tale. Wherever they are used, ROSCAs induce savings, provide potential for interest-free loans, act as emergency funds, and empower communities—particularly ostracized ones. The drawbacks of lack of interest on the money one puts in and fees to the custodian are mitigated by the built-in benefits: the money one puts in remains in circulation in the community's economy (a bigger boon collectively than five cents of interest generated on a savings account), and fees can be factored into the systematic payments one puts into the pot. The main drawbacks are the risks of default and theft, which stand to be the biggest impediment to cultural transplantation.

Trust law is the solution to the draw back and should thus be used as the context stabilizer. When a legal institution is transplanted from one culture to another, it needs a transplant stabilizer to prevent cultural rejection by the importing community. Like the Italian plea bargain, the stabilizer should frame the transplant in a way that is cognizable to the importing culture while ensuring the benefits seen in the originating culture. Having identified the risks of default and asportation as the most prescient drawbacks to importing ROSCAs to America, trust law can neatly fill the void that socio-cultural punishments of ROSCA cultures leave behind.

ROSCAs already operate as trusts. Custodians act as trustees who hold the pot in trust, and the members of the ROSCA are simultaneously settlor-trustee-beneficiaries by virtue of the fact they all receive the benefit of the ROSCA while holding duties to the ROSCA and to one another. Consideration of ROSCAs as trust for legal purposes thus doubly secures the institution from cultural rejection: the legal remedies available to beneficiaries for breach of trust are made available to prevent or rectify default or asportation, and the imagining of the institution as a trust makes it more recognizable and less foreign to the African American community.

Greenwood, Oklahoma was razed to the ground, but the ideas that led to its foundation and flourishing as Black Wall Street did not leave this earth. If anything, ROSCAs are antecedents and continuations of that ideology of community empowerment. Introducing ROSCAs into the African American community will serve as a boon to a people who have been ostracized by formal institutions for their entire history. With the transplantation of ROSCAs into African American communities, the

237. See Paul Krugman, *Coming Next: The Greater Recession*, N.Y. TIMES (Aug. 6, 2020), <https://www.nytimes.com/2020/08/06/opinion/coronavirus-us-recession.html>.

attainment of financial savings and community context are sureties, and the potential for emergence of an army of Marsha Currys is infinite.

