

THE HEIRS' PROPERTY PROBLEM: RACIAL CASTE ORIGINS AND SYSTEMIC EFFECTS IN THE BLACK COMMUNITY

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I. INTRODUCTION

Desiree is heir to her mother's home in the Hurricane Katrina-ravaged Ninth Ward of New Orleans. Like so many partitioned properties there, Desiree's recently inherited property was severely damaged by the hurricane and needs a lot of repairs to become habitable. Unfortunately, before she can do any of these repairs, she must show proof of her ownership of the property, which is virtually impossible because the inherited home is heirs' property. Without proof of ownership, Desiree cannot qualify for Federal Emergency Management Agency ("FEMA") funds or other financial assistance, or even a bank loan. As a result, the home is destroyed before Desiree can save it.

Desiree is a minor character on the HBO series Treme, which follows the interconnected lives of a group of New Orleans residents after Hurricane Katrina.¹ However, she could very well be one of many heirs' property owners who are denied assistance for properties damaged after natural disasters in the United States.

In another, real-life example penned by Sarah Sax in The Guardian, an independent news publication, the story of Margaret Alston, an heir to her grandmother's home in the Hurricane Matthew-ravaged town of Bucksport, South Carolina, rings even louder.²

Margaret lived in the home, originally bought by her grandmother, undisturbed until Hurricane Matthew tore through South Carolina in

¹ See *Treme: Careless Love* (HBO television broadcast Oct. 28, 2012) (discussing property issues around minute markers 23:58 and 45:30); see also *Treme: Official Website for the HBO Series*, HBO.COM, <https://perma.cc/SA7P-RFUK>.

² See Sarah Sax, *Black Families Passed Their Homes from One Generation to the Next. Now They May Be Lost*, GUARDIAN (Oct. 6, 2021, 5:00 AM), <https://perma.cc/H7F2-SUDU> (written with support from the Economic Hardship Reporting Project).

1999. There was tremendous damage done to the house, and it was uninhabitable. Though she did qualify for some FEMA funds, because the home and the land on which it sits is heirs' property, which by its nature has a murky title, Margaret could not qualify for sufficient assistance to repair the property. As of the time of the story, Margaret was still living in Conway with her sister, and the house still sits abandoned, storm-ravaged and mold-infested. The funds for Hurricane Matthew victims have dried up, and private loans are not available. Margaret is not eligible for any of these funds because she is not listed on the deed as owner of the property—one of the quirks of heirs' property ownership.³

Josh Walden, an attorney with the Center for Heirs' Property Preservation, has noted, "If you don't have a clear title, you can't make the land work. If you're a farmer . . . if you're a forester you need that [legal] recognition in order to have access to governmental programs to be successful at getting the land to work for you."⁴

Briefly, "[h]eirs' property is family owned land that is jointly owned by descendants of a deceased person" by intestacy.⁵ While these heirs "have the right to use the property . . . they do not have a clear or marketable title to the property since the estate issues remain unresolved."⁶ Further, things become increasingly complicated as the number of heirs grows each generation and as people pass away.⁷ Because there is no will or deed and a nebulous class of heirs, it is oftentimes difficult for heirs to obtain financing to maintain the property and prevent forced partition sales by third parties or other heirs,⁸ impeding individual (and, consequently, generational) wealth and resulting in land loss.

As the elders of families die and the next generation takes up the mantle of heirs' property management, the travails of heirs' property

³ See *id.*

⁴ Sarah Mellote, 'Land Rich, Cash Poor' – How Black Americans Lost Some of the Most Desirable Land in the U.S., THE DAILY YONDER: AGRICULTURE (July 11, 2022), <https://perma.cc/CF8V-VCRS>.

⁵ USDA, *Heirs' Property Landowners*, FARMERS.GOV, <https://perma.cc/M6UQ-D8NH> (last visited Apr. 19, 2023) (discussing heirs' property more in depth). Intestacy is defined as "[t]he quality, state, or condition of a person's having died without a valid will." *Intestacy*, BLACK'S LAW DICTIONARY (11th ed. 2019).

⁶ USDA, *supra* note 5.

⁷ *Id.*

⁸ See *id.* Partition laws are those state laws that control the manner by which a concurrent estate, like a co-tenancy under heirs' property ownership, is dissolved and each co-owner, or heir, can own or enjoy the property severally. *Partition*, CORNELL L. SCH. LEGAL INFO. INST., <https://perma.cc/6AAD-XGGY> (last visited May 7, 2023). Partition may be compulsory (through judicial action) or voluntary. *Id.* Historically, as hinted throughout this article, state laws have favored partition by sale. See *infra* Section IV.B.2.

ownership, along with its limited rights and all of its responsibilities, increasingly come to the fore. Historically, this mechanism for passing down property without a will was the only viable way for freed slaves to ensure that the property remained in the family.⁹ And while this mechanism worked well with the communal style of living and shared wealth that originated from native Africa, very soon after Reconstruction, the costs quickly began to outweigh the benefits.¹⁰

Examining American laws and systems, it becomes clear that the heirs' property ownership model, born out of necessity for a people who were previously property themselves, was never meant to result in the same wealth as that of the majority population. Indeed, history shows that white America never intended post-slavery Black landowners to attain the same wealth as them. Initially, I looked at heirs' property as a principal cause of Black land loss. But after looking through an historical lens at American government, laws, and social constructs, I modified my thesis: Heirs' property is more a product of the deeply entrenched racial caste system of racist governmental processes and laws that have militated against Black land ownership and wealth. Indeed, regardless of the modality (whether through the heirs' property ownership model or other means), America's racial caste system—a byproduct of systemic racism, and biased government policy and social and business practices—has caused Black land loss and thereby denied African Americans equitable access to wealth in American society. In short, property—the very thing that is supposed to be a vehicle to wealth—is instead an impediment to wealth.

In this article, I hope to further elucidate the history, as well as the rights, roles, and responsibilities, of Black property ownership and uncover the systemic impediment to wealth (rather than the source of wealth that majority populations enjoy) that Black land ownership has become to so many African Americans. I also discuss some of the solutions (current and aspirational) to these problems. And while there is a proliferation of heirs' property (and the accompanying problems) in many areas of the United States,¹¹ this article examines the phenomenon as it occurs in the

⁹ See Madison W. Cates, *The Knife's Edge of Ruin: Race, Environmentalism, and Injustice on Hilton Head Island, 1969–1970*, 27 S. CULTURES 98, 113 (2021).

¹⁰ See Avanthi Cole, *For the "Wealthy and Legally Savvy": The Weaknesses of the Uniform Partition of Heirs Property Act as Applied to Low-Income Black Heirs Property Owners*, 11 COLUM. J. RACE & L., 343, 350–53 (2021) (discussing various financial hurdles of heirs' property). Notably, only 50 years after Reconstruction, Black land loss began to occur, with significant quantities of farmland and other land lost by the mid-twentieth century. See *id.* at 352–53.

¹¹ See, e.g., Jennie L. Stephens, *The Struggle for Black Land: Preserving Heirs' Property by Building Trust*, NONPROFIT Q.: NARRATIVES TO BUILD COLLECTIVE ECONOMIC POWER (June

Low Country of South Carolina, where the Gullah/Geechee culture lives.¹² This focus is based upon my own personal struggle as an only child of a now-deceased mother whose family owned numerous tracts of land in that part of the country. I knew a lot about my family's struggle to acquire and keep the land, and for that reason, I struggled with my new role as one of probably hundreds of heirs to property on which they would likely never live. But I did not want to lose the land or my family's ties to that land—the culture.

Following this introduction, Part II will discuss some general precepts of American property law and the history of the Low Country, which will in turn explain the history of Black property ownership and the unique characteristics of the heirs' property model of ownership that is so prevalent in this region. Part III will highlight the obstacles to Black land ownership and the reasons for Black land loss in the South, which include the federal government, commercial developers, and the heirs' property model of land ownership. Looking at the historical component of this problem and the systemic nature of racism in America, Part III also highlights the loss of the Gullah/Geechee culture, which accompanies the loss of Black land in the Low Country. In Part IV, the article discusses possible solutions to these problems with a brief conclusion that follows in Part V.

II. THE AMERICAN PROPERTY OWNERSHIP MODEL VERSUS THE BLACK PROPERTY OWNERSHIP MODEL

Unlike many other areas of the law, property law has remained largely unchanged since feudal times.¹³ To that end, many of the

22, 2022), <https://nonprofitquarterly.org/series/narratives-to-build-collective-economic-power/> (on file with CUNY Law Review) (noting, in a piece published in partnership with Common Future, that the heirs' property problem persists wherever there are "large communities of underserved people" and highlighting particularly Appalachia and Native American lands, as well as urban areas like Philadelphia). I posit that the challenges presented by Low Country heirs' property owners discussed here are probably the same seen in other areas of the country.

¹² The Low Country region includes Allendale, Bamberg, Beaufort, Berkeley, Calhoun, Charleston, Colleton, Dorchester, Hampton, Jasper, and Orangeburg counties. *Lowcountry*, SC.GOV, <https://perma.cc/36BT-C8Q4> (last visited Apr. 19, 2023). As discussed in this article, the Gullah/Geechee culture is the culture, born out of the vestiges of slavery, of the Black inhabitants of the Low Country. See *The Gullah Geechee: The Gullah Geechee People*, GULLAH GEECHEE CULTURAL HERITAGE CORRIDOR COMM'N, <https://perma.cc/P2FZ-LCNG> (last visited Apr. 19, 2023).

¹³ Nat'l Paralegal Coll., *Introduction to the Estate System*, LAWSELF EDUC. MEDIA: REAL PROP., <https://perma.cc/KE4H-G886> (last visited Apr. 20, 2023) ("The Estate System . . . is based on the real property ownership system that existed during feudal times, and it has not developed much in spite of the obsolescence of some of its aspects."); see also

ownership principles in property law's Estate System¹⁴ are hierarchical in nature and are antithetical to shared wealth principles of more modern times.¹⁵ As explained below, the American property ownership model is quite different from the Black property ownership model. In fact, these traditional ownership principles support a continued system of racism and "othering"¹⁶ of Black people in the United States to this day.

A. *The American Property Ownership Model*

Under the traditional property ownership model in America, property rights are often described in terms of a "bundle of sticks" (with the sticks being a metaphor for individual property rights).¹⁷ The full "bundle of sticks" includes "the rights of possession, use and enjoyment, the right to change or improve the property, and the right to alienate the property" at will.¹⁸

Undoubtedly, one of the most important precepts of property ownership is the right to use and enjoy that property.¹⁹ Particularly, ownership and the right to use property are distinct in that use is just one of the rights enjoyed by a property owner.²⁰ A property owner may hold on to one of the "sticks" and give away others, which diminishes the estate (and the value of the property, depending on which of the "sticks" the owner gives away). To that end, the concepts of space, occupancy, and time²¹ in property law come into play. Under the concept of space, a property can be shared among owners or divided into parcels with separate owners.²² The

Marianne M. Jennings, *Real Property Could Use Some Updating*, 24 REAL EST. L.J. 103, 103-07 (1995) (noting the antiquated terminology and concepts of the estate system).

¹⁴ See generally Nat'l Paralegal Coll., *supra* note 13 ("The Estate System deals with the levels and types of ownership that are possible with regard to real property.").

¹⁵ See *id.* (referring to the obsolescence of various aspects of real property).

¹⁶ GABRIELE GRIFFIN, A DICTIONARY OF GENDER STUD., *Othering* (1st ed. 2017) (ebook) ("Othering is a process whereby individuals and groups are treated and marked as different and inferior from the dominant social group.").

¹⁷ See Sue Farran, *A Bundle of Sticks in My Garden*, 8 PÓLELOS 235, 237 (2014) (Ger.), available at *Northumbria Research Link*, NORTHUMBRIA UNIV., <https://perma.cc/GYA6-ZQRB>, at 2-4 (last visited July 29, 2023); see also *United States v. Craft*, 535 U.S. 274, 278 (2002) ("A common idiom describes property as a 'bundle of sticks'—a collection of individual rights which, in certain combinations, constitute property.").

¹⁸ See *Southern Owners Ins. Co. v. Cooperativa de Seguros Multiples*, 143 So. 3d 439, 442 (Fla. Dist. Ct. App. 2014).

¹⁹ See Denise R. Johnson, *Reflection on the Bundle of Rights*, 32 VT. L. REV. 247, 253 (2007).

²⁰ *Id.*

²¹ Nat'l Paralegal Coll., *supra* note 13.

²² Johnson, *supra* note 19, at 252. The Estate System addresses the occupancy, while the concurrent ownership principles of property address the time. See also Nat'l Paralegal Coll.,

Estate System specifically encompasses the concept of time, as it accounts for instances during which property is owned (and used) at different times and by different people.²³ Finally, the concept of occupancy includes the idea that many owners may occupy, or be entitled to occupy, a particular property at the same time.²⁴

A fee simple absolute is the ultimate possessory interest in real property, and it entitles an owner to the full bundle of rights to that property: title, exclusive right of possession, and right of use for any lawful purpose.²⁵ Lesser interests like life estates and concurrent estates such as co-tenancies include fewer sticks in the bundle. For example, a life estate, which encompasses the concept of time, gives a person (the life tenant) the right to possess, mortgage, and utilize (or enjoy) the property for a limited time (either measured by the life tenant's life or another person's).²⁶ The life tenant, however, cannot alienate the property or allow it to fall into disrepair.²⁷ These restrictions mean that the life estate may be less valuable than a fee simple interest.

Indeed, heirs' property ownership includes co-tenancies formed under state intestate succession laws.²⁸ Co-tenants all own the property jointly and must share the sticks in the bundle.²⁹ Each and every co-tenant has the right to occupy, sell, improve, or encumber the property *at the same time*.³⁰ However, in order to alter the property in any way—which includes selling, improving, or otherwise encumbering the property—each and every co-tenant must agree.³¹ That is, they all have the right to occupy the property without necessarily agreeing on the terms of occupation, but they all have to agree to sell or otherwise alienate the property. This is quite different from the property owner with a full bundle of rights at any particular time.³² Further, since co-tenants under the heirs' property model may not be identified, any transactions involving the shared

supra note 13 (“The Estate System deals with the levels and types of ownership that are possible with regard to real property.”).

²³ Nat'l Paralegal Coll., *supra* note 13.

²⁴ Johnson, *supra* note 19, at 257.

²⁵ *Id.* at 250 (referring to fee simple absolute as “absolute dominion”).

²⁶ See 2 POWELL ON REAL PROPERTY § 15.03 (2023).

²⁷ Jeffrey A. Baskies, *The New Homestead Trap: Surviving Spouses Are Trapped by Life Estates They No Longer Want and Can No Longer Afford*, 81 FLA. BAR J. 69, 69, 71 (2007).

²⁸ See Jessica A. Shoemaker, *Fee Simple Failures: Rural Landscapes and Race*, 119 MICH. L. REV. 1695, 1737 (2021); see also 123 AM. JUR. PROOF OF FACTS 3D § 8 (2011).

²⁹ Will Breland, *Acres of Distrust: Heirs Property, The Law's Role in Sowing Suspicion Among Americans and How Lawyers Can Help Curb Black Land Loss*, 28 GEO. J. ON POVERTY L. & POL'Y 377, 388 (2021).

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

property are extremely difficult and oftentimes costly.³³ As detailed in Section III.B *infra*, oftentimes the sheer number of unknown heirs, and the requirement that they all agree to a particular action regarding the sale or improvement of property, makes any such action time-consuming and costly, with or without the efforts of legal counsel.³⁴

As acknowledged by property law scholars, these principles are antiquated, as most originated from England's constitutional and property principles of old.³⁵ To add, because of the characteristics of this antiquated Estate System, Black land ownership in America is less valuable, as Black people hold many of the less valuable property interests. Most relevantly, the Estate System ensures that heirs' property ownership, which is illustrative of a co-tenancy interest, is an impediment, and not a vehicle, to wealth. It is against this backdrop that this article looks at Black property ownership in the Low Country.

B. *The History of Black Property Ownership in the South*

As proclaimed by former president Barack Obama in 2011, "The first enslaved Africans in England's colonies in America were brought to this peninsula on a ship flying the Dutch flag in 1619, beginning a long ignoble period of slavery in the colonies and, later, this Nation."³⁶ Ignoble indeed—for more than 400 years African lands were looted of their human resources, and African people were brought in the bowels of overcrowded ships to the eastern—primarily southeastern—ports of this country, stripped of all human dignity, and forced to live well beneath their former privilege.³⁷ One of the largest ports was in Charleston, South

³³ See *id.* at 389.

³⁴ See *infra* Section III.B (citing Breland, *supra* note 29, at 388); Faith Rivers, *Inequity in Equity: The Tragedy of Tenancy in Common for Heirs' Property Owners Facing Partition in Equity*, 17 TEMP. POL. & C.R. L. REV. 1, 3 (2007).

³⁵ See Francis R. Crane, *The Law of Real Property in England and the United States: Some Comparisons*, 36 IND. L.J. 282, 283 (1961) (recognizing in an address at Indiana University School of Law that many of the principles of real property that had been abandoned in England were still retained in American real property law).

³⁶ Olivia B. Waxman, *The First Africans in Virginia Landed in 1619. It Was a Turning Point for Slavery in American History—but Not the Beginning*, TIME (Aug. 20, 2019), <https://perma.cc/6MMQ-3V8W>.

³⁷ See *Jim Crow Museum Timeline, Part 1 (3100BCE-1618CE): Africa Before American Slavery*, JIM CROW MUSEUM, <https://perma.cc/UR84-T7PM> (last visited July 29, 2023). While the exact numbers will never be known, it is estimated that the transatlantic slave trade "forcibly displaced some 12.5 million Africans between the [seventeenth] and [nineteenth] centuries," with "some 10.6 million surviv[ing] the infamous Middle Passage across the Atlantic." Sarah Pruitt, *What Part of Africa Did Most Enslaved People Come From?*, HIST. CHANNEL (Apr. 25, 2022), <https://perma.cc/RMU6-R9X2>. It is well documented that Africans stolen from their homelands were of various cultures and were forced to inculcate those cultures with

Carolina,³⁸ where approximately 150,000 to 200,000 slaves were brought in and sold.³⁹ As slaves, African Americans were bought by white slave masters and made to live and work on the plantations of South Carolina.⁴⁰

Once seen as property ourselves, it was not until after the Civil War that African Americans were actually able to own it.⁴¹ During Reconstruction, through a myriad of events and governmental acts, freed slaves had the fleeting opportunity to own property.⁴² When defeated white landowners fled their properties located in the Sea Islands of South Carolina,⁴³ the government granted some of those properties to the freed slaves.⁴⁴ However, that land was later taken away by the very government that

those of their slave masters to survive plantation life. *E.g.*, *African Diaspora Culture, SLAVERY AND REMEMBRANCE*, <https://perma.cc/KRQ5-VZXJ> (last visited July 29, 2023).

³⁸ See Faith R. Rivers, *The Public Trust Debate: Implications for Heirs' Property Along the Gullah Coast*, 15 SE. ENV'T L.J. 147, 151 (2006) (citing BERNARD E. POWERS, BLACK CHARLESTONIANS: A SOCIAL HISTORY, 1822-1885 2-3 (1994)); see also Nat'l Park Serv., *Africans in the Low Country: Time, Space, & People*, PARK ETHNOGRAPHY PROGRAM, <https://perma.cc/XR6A-YXHT> (last visited May 7, 2023) (noting that more than 40 percent of the Africans coming to America before the American Revolution passed through South Carolina, with virtually all of them entering the Charleston Port, and thereafter being sold in Charleston slave markets and immediately put to work in Low Country rice fields).

³⁹ Nic Butler, *Nearly 1,000 Cargos: The Legacy of Importing Africans into Charleston*, CHARLESTON CNTY. PUB. LIBR. (Oct. 5, 2018), <https://perma.cc/G5PX-J55L>.

⁴⁰ Nat'l Park Serv., *supra* note 39.

⁴¹ Milfred C. Fierce, *Black Struggle for Land During Reconstruction*, 5 BLACK SCHOLAR 13, 13 (1974).

⁴² *Id.* at 13-15.

⁴³ *Id.* at 13. The Sea Islands lie between Savannah, Georgia and Charleston, South Carolina, *id.*, and are somewhat isolated and less desirable because of their low, marshy characteristics. Rivers, *supra* note 39, at 150.

⁴⁴ Fierce, *supra* note 42, at 13.

originally granted it.⁴⁵ Despite the trickery and failures of governmental actions, freed slaves began to acquire land.⁴⁶

Because of the volume of slaves brought through Charleston's port, the Low Country region became "the seat for the most Africanized slave communities in America."⁴⁷ Indeed, "[b]y the end of Reconstruction 16,000 [B]lack families had obtained 'at least 50,000 acres' in the Low-country, creating a landscape of freedom."⁴⁸ Those slave communities formed the backbone of land ownership for Blacks in the Low Country after Reconstruction.

In the Low Country, the history of Black property ownership informs its unique character—the location, arrangement of its communities, and its language. Unsurprisingly, most of this land was located in the most undesirable areas of the Low Country—the lowest, marshiest lands of the lowlands.⁴⁹ Historically, most of these lands were used for farming, which was the primary occupation of Black people in the South during the twentieth century.⁵⁰ During slavery, most of the lower, marshier lands were rice plantations, which looked quite different from "upland" cotton

⁴⁵ Breland, *supra* note 30, at 384 n.45 (detailing a historical overview of post-slavery society, where the federal government "denied African Americans promised federal land grants"; state legislatures enacted "discriminatory laws that hindered the accumulation of wealth among African Americans; freed slaves and their descendants fell victim to violence in an effort to rob Black property owners of wealth; and early efforts to include freed slaves in the formal economy resulted in property loss through deceit."); see also Trymaine Lee, *A Vast Wealth Gap, Driven by Segregation, Redlining, Evictions and Exclusion, Separates Black and White America*, N.Y. TIMES MAG. (Aug. 14, 2019), <https://www.nytimes.com/interactive/2019/08/14/magazine/racial-wealth-gap.html> (on file with CUNY Law Review) (explaining that the Freedman's Bureau, dismantled in 1872, was never meant to be permanent, and that "[m]ore than 60,000 black people deposited more than \$1 million into the Freedman's Savings Bank, but its all-white trustees began issuing speculative loans to white investors and corporations . . . [W]hen it failed in 1874, many [B]lack depositors lost much of their savings.").

⁴⁶ See Breland, *supra* note 29, at 384 ("A survey of the history of Black landownership supports the proposition that the acquisition of real property among African Americans occurred despite the law rather than because of it.").

⁴⁷ POWERS, *supra* note 38, at 2-3.

⁴⁸ Terry Yasuko Ogawa, *Wando-Huger: A Study of the Impacts of Development on the Cultural Role of Land in Black Communities of the South Carolina Lowcountry* 2-1 (Dec. 2008) (M.S. thesis, University of Michigan) (on file with author) (citations omitted). Significantly, this "landscape of freedom" did not necessitate wealth. Interestingly, in 1950, almost half of South Carolina's farmers were Black, but by 2012, only 7% were Black. Leah Douglas, *African Americans Have Lost Untold Acres of Land Over the Last Century*, NATION (June 26, 2017), <https://perma.cc/9W2S-8DNH>. Further, in Beaufort County, the population went from 57% Black in 1950 to 77% white today. *Id.*

⁴⁹ See Stephens, *supra* note 11.

⁵⁰ Douglas, *supra* note 48. ("By 1920, there were 925,000 [B]lack-owned farms, representing about 14 percent of all farms in the United States.")

plantations.⁵¹ It was common on those rice plantations for white owners to leave Black slave drivers to run the plantations because of oppressive heat and rampant disease on the marsh-front plantations.⁵² As a result, slaves on these Low Country plantations developed systems of organization amongst themselves, “building their own dwellings and incorporating African influence ‘in material and form.’”⁵³ Often, freed slaves worked together to purchase property.⁵⁴ Furthermore, following old slave patterns, most houses were arranged in compounds centered around genealogical relationships.⁵⁵ Archaeological research shows that the diets of the slaves in the Low Country were also similar to that of their native Africa to the extent possible.⁵⁶ They ate the fish and shellfish that they caught and the meat from the animals that they hunted.⁵⁷ Food was prepared in large cauldrons and eaten with their hands from smaller ceramic bowls crafted from clay.⁵⁸ The language spoken in the area, Gullah, was also developed out of necessity, as slaves from various African countries had to devise a method of communication after being wrested from their

⁵¹ Ogawa, *supra* note 48, at 3-2.

⁵² *Id.*

⁵³ *Id.* at 3-1. For this reason, there was more attachment to that land—something that makes Black land ownership different. *Id.*; see also Nat’l Park Serv., *supra* note 38. Slaves used their knowledge of African building materials and methods along with local materials to construct buildings along the southeast coastal areas, and the buildings themselves were similar in size and settlement patterns to those found in their native Africa, with some Eurocentric modifications being seen in those buildings constructed by second- and third-generation slaves. Specifically, “[t]hey constructed buildings of mud, ‘tabby’ and palmetto leaves. Tabby, a building material made from burnt lime and seashells as [sic] used to construct wide areas of walls or made into bricks for the construction of walls.” Nat’l Park Serv., *Africans in the Low Country: Cultural Patterns*, PARK ETHNOGRAPHY PROGRAM, <https://perma.cc/M4GG-ZT2M> (last visited June 19, 2023). Moreover, “[e]arl[ier] structures had no chimneys and evidence of interior fireplaces was absent in all cases,” and slave (and later freed slaves’) homes were built in closer proximity than seen in typical European settlements. *Id.*

⁵⁴ Breland, *supra* note 29, at 393 (noting scholarly nod to “the interplay between land and kinship,” which was a “‘defining feature’ of post-Civil War African Americans’ views toward land,” meaning that “the term ‘kinship’ referred to more than just blood relation. Instead, kinship referred to other freed slaves from the same plantation or those who sought refuge in the same post-emancipation refugee camps”).

⁵⁵ Ogawa, *supra* note 48, at 2-1. This configuration, born of the relative “independence” of slaves on the Low Country rice plantation, was “important to slave culture for both cooking and socializing,” and this relative “independence allowed slaves to develop attachment to the very land upon which they were enslaved,” leading many freed slaves to try to purchase property “in close proximity to where they had been in servitude.” *Id.* at 2-1, 3-1.

⁵⁶ See Nat’l Park Serv., *Africans in the Low Country: Material Culture: Subsistence & Foodways*, PARK ETHNOGRAPHY PROGRAM, <https://perma.cc/HS27-YLME> (last visited June 19, 2023).

⁵⁷ *Id.*

⁵⁸ *Id.*

native lands.⁵⁹ And so the land of the freed slaves of the Low Country became an integral part of the culture and remains so today.

Experts agree that “[u]ses of space and settlement patterns were ways that enslaved Africans [in the Low Country], when left to their own devices, could and did recreate[] dwelling places with familiar spatial social organization that forged ties of family, friendship, kinship real and fictive, and community.”⁶⁰ Hence, for Black property owners in the Low Country, the land is more than just “metes and bounds.”⁶¹ It is the culture. As the land is lost, so too is the culture. Much has been written about land loss in the Black community, but few scholars are attentive to this companion loss of culture. I posit that this loss (of property and culture) is due in large part to the systemic racism that undergirds the American property system and, indeed, the legal system, which perpetuates the denigration of Black property interests in the Low Country and leads to Black land loss, ultimately impeding wealth.

III. BLACK LAND LOSS AND IMPEDIMENTS TO BLACK LAND OWNERSHIP (AND WEALTH)

Our pathway to land ownership is just as storied as our pathway to freedom. Since Reconstruction—the end of legal slavery—American laws and institutions have impeded Black property ownership. In fact, the dictates of American property law are a major contributor to many of the misfortunes suffered by Black landowners. As Will Breland has written, “A survey of the history of Black landownership supports the proposition that the acquisition of real property among African Americans occurred despite the law rather than because of it.”⁶²

⁵⁹ Nat’l Park Serv., *supra* note 38. Though the slaves brought to the Low Country were of diverse ethnic origins, Kongos and Angolas dominated the initial populations of African slave trade, while most slaves brought to America in the eighteenth century were from the traditional rice-growing region of West Africa, extending from Senegal to Sierra Leone and Liberia (a.k.a. the “Rice Coast” or “Windward Coast”). *Id.*

⁶⁰ Nat’l Park Serv., *supra* note 53.

⁶¹ “Metes and bounds are the boundaries of a parcel of real estate that [are] identified by its natural landmarks.” *Metes and Bounds*, CORNELL L. SCH. LEGAL INFO. INST., <https://perma.cc/93CV-6QQE> (last visited May 7, 2023). In fact, “metes and bounds are considered as the most accurate description of a piece of land in some jurisdictions.” *Id.* Generally, a metes-and-bounds description of property “starts from a point of beginning, then traces the outline of the property’s boundary lines until there is closure in the legal description.” *Id.* Notably, natural monuments (rivers, mountains, trees, etc.) and artificial monuments (buildings, roads, fences, etc.) can be used as metes and bounds. *Id.*

⁶² Breland, *supra* note 29, at 384.

The wealth gap persists in America;⁶³ the health disparities in terms of care and outcomes persist despite the lack of any biological differences between Black and white Americans;⁶⁴ and the social outcomes that over-police our communities and engender prejudices and stereotypes are rampant.⁶⁵ Dania Francis and her co-authors posit that “[t]his racial chasm has its origins in numerous governmental policies.”⁶⁶ And nothing better illustrates these unbalanced wealth and power dynamics in America than the race-based inequities seen in real property ownership. This inequity begins with the manner in which capitalist society views property.⁶⁷

For example, my grandfather, a railroad laborer and Low Country farmer, repeatedly told me that land is the only property that appreciates in value. He owned land and encouraged me to do so, as well. What I did not understand at that time, and what neither he nor many others understood, was that the manner in which property is owned (as described in Section II.A *supra*) dictates whether that property is a true wealth builder. As with so many American institutions and traditions, the pathway to property ownership has been difficult (and different) for Black people. And once obtained, it is even more difficult to retain.

As AARP attorney Tina Nelson said, “To keep what you own in the family and preserve that wealth for the next generation is of utmost importance, especially for communities of color.”⁶⁸ While building wealth has been the dream for most Americans, systems in America have made that extremely difficult for Black people. These systems are unrepentantly white-dominated and based on historically racially discriminatory

⁶³ See Heather Long & Andrew Van Dam, *The Black-White Economic Divide Is as Wide as It Was in 1968*, WASH. POST (June 4, 2020, 9:19 AM), <https://www.washingtonpost.com/business/2020/06/04/economic-divide-black-households/> (on file with CUNY Law Review).

⁶⁴ See generally Ichiro Kawachi et al., *Health Disparities by Race and Class: Why Both Matter*, 24 HEALTH AFFS. 343 (2005).

⁶⁵ See, e.g., *Radtalks: What Could Be Possible if the Law Really Stood for Black Lives*, 19 CUNY L. REV. 91 (2015) (discussing many of the social justice ills suffered by minoritized populations at the hands of American systems).

⁶⁶ Dania Francis et al., *How the Government Helped White Americans Steal Black Farmland*, NEW REPUBLIC (May 5, 2022), <https://perma.cc/D9WW-PB9G> (referencing “the general exclusion of Black veterans from the G.I. Bill, political disenfranchisement, widespread denial of home loans, failure to enforce equal hiring, mass incarceration—and . . . merciless white violence against Black people, including reprisals against organizing agricultural workers and farmers” in both the 1889 Leflore Massacre and 1919 Elaine Massacre, and noting the pattern throughout history of “the white establishment” taking away any “relative progress” made by Black Americans).

⁶⁷ See Bela August Walker, *Making Room in the Property Canon*, 90 TEX. L. REV. 423, 425 (2011).

⁶⁸ Matt Reynolds, *Fractured: How Jim Crow-Era Laws Still Tear Families from Their Homes*, 107 A.B.A. J. 52, 58 (2021) (internal quotations omitted).

practices. Importantly, these systems continue to deny Black people the access to wealth that white Americans enjoy. Indeed, as discussed in Section III.B *infra*, these systems have made land ownership a drain—another “Black Tax”⁶⁹—on Black people in America. This is particularly true in the Low Country of South Carolina.

A. *White Hands in Black Land Loss in the South*

Since Reconstruction, farming has been the primary source of income for Black landowners in the Low Country.⁷⁰ That is, however, changing because of land loss.⁷¹ As Thomas W. Mitchell has noted, land loss among Black southern farmers has been trending downward for the last 100 years (or more).⁷² At its peak in 1920, there were 949,889 Black farmers; in the twentieth century, that number dropped dramatically,⁷³ and “[b]y 1975, just 45,000 [B]lack-owned farms remained.”⁷⁴ Around that time, the Black southern farmer was referred to by some scholars as an “endangered species.”⁷⁵ Indeed, by the end of the twentieth century, Black farmers had lost over 90% of their land,⁷⁶ and “[t]oday, African Americans compose less than 2 percent of the nation’s farmers and 1 percent of its rural landowners.”⁷⁷

Indeed, it has been previously acknowledged that “[c]urrent property disparities originated in historic property disparities.”⁷⁸ I propose that this property disparity goes back to post-slavery Reconstruction with a great

⁶⁹ Commonly used in South Africa, the term ‘Black Tax’ refers to “the financial support that [B]lack professionals are expected to give their extended families. In the U.S. it also describes the racial dimensions that perpetuate a cycle of inequality such as lower pay and a lower standard of education.” Dana George, *The Black Tax: Why African Americans Must Work Harder to Build Wealth*, THE ASCENT (last updated July 17, 2021), <https://perma.cc/88T5-PSY8>.

⁷⁰ Douglas, *supra* note 48.

⁷¹ *Id.* (“Implicit in the decline of [B]lack farming was the loss of the land those farmers once tilled.”); see also Margaret Newkirk, *How Generations of Black Americans Lost Their Land to Tax Liens*, BLOOMBERG BUSINESSWEEK (June 29, 2022, 4:00 AM), <https://www.bloomberg.com/news/features/2022-06-29/tax-liens-cost-generations-of-black-americans-their-land> (on file with CUNY Law Review).

⁷² Thomas W. Mitchell, *Destabilizing the Normalization of Rural Black Land Loss: A Critical Role for Legal Empiricism*, 2005 WIS. L. REV. 557, 563 (2005).

⁷³ Summer Sewell, *There Were Nearly a Million Black Farmers in 1920. Why Have They Disappeared?*, GUARDIAN (Apr. 29 2019, 4:00 AM), <https://perma.cc/2TKL-DH7P>.

⁷⁴ Douglas, *supra* note 48.

⁷⁵ Mitchell, *supra* note 72, at 563 (internal quotations omitted).

⁷⁶ *Id.* at 564.

⁷⁷ Douglas, *supra* note 48.

⁷⁸ Walker, *supra* note 67, at 428 (citing Palma Joy Strand, *Inheriting Inequality: Wealth, Race, and the Laws of Succession*, 89 OR. L. REV. 453, 457-68 (2010)).

deal of government complicity.⁷⁹ They continue today with commercial developers purchasing the land of slave descendants because of loopholes and pathways in our laws and government systems. Alas, without some concerted effort on the part of the very systems that caused them, these property disparities will persist and the Gullah/Geechee culture of the Low Country will die.

1. The USDA and Black Land Loss

The United States Department of Agriculture (“USDA”) and its federal and state affiliates caused the majority of Black land loss, with a well-documented history of systemic discrimination in lending to Black farmers. As far back as Reconstruction (and maybe farther), the very government institutions that were supposed to support Black people often harmed them. Still known as “the Last Plantation,”⁸⁰ the USDA was no exception. Anecdotally, the very building that houses this federal agency’s civil rights office is named after Congressman (and white supremacist) Jamie Whitten, who did quite a bit in terms of improving the lives of white farmers but little for Black farmers.⁸¹

During Whitten’s rather storied career,⁸² he and his colleagues from both sides of the aisle subsidized commercial farming operations owned almost entirely by white men.⁸³ Tracking the racist actions of state governmental bodies and programs, the federal government began issuing subsidies in 1929 based upon the farm size, subsidizing larger farming operations (most often owned by white men) at 3% of farm income to as much as 31% by 1940.⁸⁴ They poured millions into these operations, often deliberately excluding Black farmers from these funding opportunities.⁸⁵

⁷⁹ See *The 1619 Project: The Land of Our Fathers, Part 1*, N.Y. TIMES (Oct. 4, 2019), <https://perma.cc/Q7WW-9BS4> (featuring a Louisiana Black farmer discussing the government’s complicity in his family’s land loss).

⁸⁰ Francis et al., *supra* note 66.

⁸¹ *Id.* Jamie Whitten was “a member of Congress who started his career by eliminating a federal agency because its studies encouraged ‘racial intermingling’ and ended it by referring to Mike Espy, a Black member of Congress and future secretary of agriculture, as ‘boy.’” *Id.*

⁸² Francis details how Whitten, “as head of a key House committee, . . . used his influence over the budget to control USDA offices and staffing,” killing any efforts to obtain data regarding Black farmers or to assist Black southerners. *Id.* Whitten, a known white supremacist, “cut staff from projects he disliked, while he secured political appointments for friends and cronies.” *Id.* Francis and co-authors posit that “Whitten successfully institutionalized his vision of aristocratic racial hierarchy at the USDA.” *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ See *id.*

As white farmers received these subsidies not to plant, there was no need for their Black tenant farmers,⁸⁶ and they were, therefore, evicted. White farmers bought farm machinery to replace their labor, and by the 1950s, the modern agricultural system was firmly entrenched in the South. For the smaller Black farm owner, this was a death knell. As recently as the Trump administration, these inequitable practices continued in the USDA. In a recent *Washington Post* article, Laura Reiley noted that “almost all of President Donald Trump’s \$28 billion bailout for those affected by the China trade war went to [w]hite farmers.”⁸⁷

As noted by Francis and her co-authors, “Black farmers not only lost out on these massive subsidies—they [were] effectively disenfranchised within the modern agricultural system.”⁸⁸ Additionally, local USDA offices “charged with distributing loans . . . frequently . . . [denied] Black farmers access to credit and . . . ignore[d] or delay[ed] loan applications.”⁸⁹ Several articles on the subject place the blame for the decline of Black farm ownership squarely on the USDA.⁹⁰ It appears that the USDA was the playing field of the “good ole boys” system of government that was so pervasive in our nation’s past.⁹¹ In the quid pro quo for political

⁸⁶ The tenant farming system (also known as sharecropping) has been referred to as “slavery by another name.” *Slavery by Another Name: Sharecropping*, PBS, <https://perma.cc/2K2G-5MU5> (last visited May 1, 2023). Under the tenant farming system, “the landlord/planter allow[ed] a tenant to use the land in exchange for a share of the crop. This encouraged tenants to work to produce the biggest harvest that they could, and ensured they would remain tied to the land and unlikely to leave for other opportunities.” *Id.* Additionally, “[h]igh interest rates, unpredictable harvests, and unscrupulous landlords and merchants often kept tenant farm families severely indebted, requiring the debt to be carried over until the next year or the next.” *Id.* These laws, which favored landowners, “made it difficult or even illegal for sharecroppers to sell their crops to others besides their landlord, or prevented sharecroppers from moving if they were indebted to their landlord.” *Id.* See also Breland, *supra* note 29, at 396.

⁸⁷ Laura Reiley, *Relief Bill Is Most Significant Legislation for Black Farmers Since Civil Rights Act, Experts Say*, WASH. POST (Mar. 8, 2021, 8:15 PM), <https://www.washingtonpost.com/business/2021/03/08/reparations-black-farmers-stimulus/> (on file with CUNY Law Review) (noting that due to the heirs’ property phenomenon, “[m]any Black farmers don’t have clear title to their land, which makes them ineligible for certain USDA loans to purchase livestock or cover the cost of planting, and they have seldom benefited from subsidy payments or trade mitigation compensation”).

⁸⁸ Francis et al., *supra* note 66.

⁸⁹ Reiley, *supra* note 87.

⁹⁰ Francis et al., *supra* note 66; see also Reiley, *supra* note 87.

⁹¹ See Francis et al., *supra* note 66 (noting that the New Deal liberals bargained with Southern legislators to pass their agendas, giving “the South’s elite immense control over legislation”). As “[t]hese elites were determined to maintain the South racial order,” they worked together to block “any program that threatened it,” specifically programs that supported Black farmers. *Id.*

power in Washington and the southern states, Black farmers, and the culture that they supported, were the losers.

Francis and her co-authors describe it best: “This enormous loss not only cost the families who saw their land and dreams taken from them, but destroyed a rural Black middle class that had, by sheer will, emerged in the aftermath of slavery.”⁹² In fact, they tie this land loss to the “enormous Black-white wealth gap” that persists today.⁹³

Historically, land and farming played an integral part in Black culture. It is well noted that “[l]andowning farmers and entrepreneurs . . . reorganized rural society by founding fraternal societies and building schools, churches, and businesses to cater to a [B]lack clientele.”⁹⁴ The descendants of Black farmers—even if they never farmed themselves—used their humble beginnings to become leaders and forge a pathway toward independence from the “white power structure.”⁹⁵ They were heavily involved in the civil rights movement, supporting and hiding civil rights activists who assisted local people in gaining a voice in politics during the 1960s.⁹⁶ In many ways, Black landowners were “the secret weapon” of the civil rights movement.⁹⁷

For their trouble, Black farmers were targeted because of their involvement in the civil rights movement. Francis and her co-authors explain that significantly, after *Brown v. Board of Education*,⁹⁸ “Southern white politicians and elites—fearful that their Black constituents would threaten their power”—used the USDA’s power in the “still heavily agricultural South” to effectively destroy the southern Black farmer.⁹⁹ In his book *Dispossession*, historian Pete Daniel, also quoted in Francis’s recent article, noted that post-*Brown*, “USDA programs were sharpened into

⁹² *Id.* The article notes that the federal government’s actions cost Black families “at least 14 million acres after 1910” and conservatively estimated that “the portion lost between 1920 and 1997, along with the lost income from that land, would be worth around \$326 billion today.” *Id.*

⁹³ *Id.* (noting that the Black-white wealth gap in America is “more than 10 times larger than the income gap between Black and white families” and that “even white high school dropouts have twice as much average wealth as Black college graduates”).

⁹⁴ *Id.* (quoting historian Deborah Reid).

⁹⁵ *See id.*

⁹⁶ *Id.*

⁹⁷ *Id.* (internal quotations omitted).

⁹⁸ *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954). *Brown* was the groundbreaking Supreme Court decision that signaled the end of legalized racial segregation. In its decision, the Court ruled that separating children in public schools on the basis of race was unconstitutional, overruling the longstanding “separate but equal” principle set forth in *Plessy v. Ferguson*, 163 U.S. 537 (1896).

⁹⁹ Francis et al., *supra* note 66.

weapons to punish civil rights activity.”¹⁰⁰ With unrelenting animus, “USDA agents refused loans to Black farmers, interfered in elections for county committees that distributed federal funds, restricted the crops Black farmers could grow, and sometimes participated in outright theft.”¹⁰¹

In fact, this loss “has reverberated down the generations.”¹⁰² To this day, Black farmers are aware of the government’s part in their land loss. As Francis and her co-authors note in their article, “Black farmers still say that the government decided to enact policies and enable discrimination that dispossessed previous generations of their land.”¹⁰³ The loss of land at the hands of the USDA in the South has been accompanied by a loss of a way of life, particularly in the Low Country, where the culture is uniquely tied to the land. This loss of land, which started with the ruthless acts of the USDA, continues with the threat of large commercial developers, who have sought to buy the remaining land that Black farmers (or their descendants) own.¹⁰⁴

2. Low Country Development and Black Land Loss

Since the first commercial developers created Sea Pines Plantation on Hilton Head Island, the trend of “spatial segregation” in the South Carolina Low Country has been proliferating.¹⁰⁵ Despite the efforts of native son Emory Campbell and the Penn Center, a longtime local incubator for social justice activism,¹⁰⁶ “by 1980, Black Hilton Headers had lost around

¹⁰⁰ PETE DANIEL, DISPOSSESSION AGAINST AFRICAN AMERICAN FARMERS IN THE AGE OF CIVIL RIGHTS (2013), *quoted in* Francis et al., *supra* note 66.

¹⁰¹ Francis et al., *supra* note 66.

¹⁰² *Id.*

¹⁰³ *Id.* As told in a 2013 *New York Times* article, John Boyd, a Black farmer from Virginia and President of the National Black Farmers Association, once recounted to President Bill Clinton during a White House visit “how a loan officer denied him \$7,500 and then handed a \$150,000 check to a white farmer who had not even filled out an application.” Sharon LaFraniere, *U.S. Opens Spigot After Farmers Claim Discrimination*, N.Y. TIMES (Apr. 25, 2013), <https://perma.cc/7TEU-D8ZQ>. Boyd explained that “[t]he same loan officer spat at him” but “later claimed that he had missed a spittoon.” *Id.* Mr. Boyd described the incident as “the most degrading thing that ever happened to [him].” *Id.* The *Times* article details the history of systemic discrimination in lending practices through federal and state affiliates of the USDA negatively impacted the land ownership and, resultantly, the wealth of Black farmers in the South and throughout the United States. *Id.*

¹⁰⁴ *See* Francis et al., *supra* note 66.

¹⁰⁵ Melissa D. Hargrove, *The Spatial Dimensions of White Supremacy: Reinventing the Lowcountry Plantation in the Gullah/Geechee Nation*, 28 TRANSFORMING ANTHROPOLOGY 139, 140 (2020).

¹⁰⁶ Ken Otterbourg, *Being Gullah or Geechee, Once Looked Down On, Now a Treasured Heritage*, NAT’L GEOGRAPHIC (Oct. 16, 2014), <https://perma.cc/R2HX-QWA7>.

one thousand acres of land to tourism-related development.”¹⁰⁷ Author and Low Country historian June Manning Thomas framed this development trend on the Sea Islands, which began in the 1970s and continues to the present day, as “corporate tourism.”¹⁰⁸ Land speculators have entered and taken advantage of local poverty and relatively unfettered access to the land that is afforded by the heirs’ property ownership model.¹⁰⁹ Of late, “rapid increases in waterfront property values have combined with large-lot suburban sprawl and population growth to create rapid development.”¹¹⁰ This “corporate tourism” has been ongoing on the Sea Islands since the 1970s¹¹¹ and has been hugely responsible for the loss of land in the Low Country.¹¹² Melissa D. Hargrove observes that “[t]his exploitative maneuver has become standard in the region’s acquisition game, representing how modern property law has emerged in tandem with ‘colonial modes of appropriation.’”¹¹³

In her master’s thesis, Terry Yasuko Ogawa notes that “[t]he settlement patterns that persist in Lowcountry slave-descendant communities today . . . have changed little from the system of inheritance and house construction that developed out of the rice culture plantations and are influenced by the strength of familial relationships and traditional cultural values.”¹¹⁴ The “traditional clustered housing patterns [and] non-subdivided tenancy-in-common lots” fostered by “a lack of socio-economic resources” often lead to “multiple families liv[ing] on the same large lots and rely[ing] on the same septic tanks and wells for water.”¹¹⁵ Notably, these “traditional settlement patterns of Gullah-Geech[e] descendant communities” rarely coalesce with planning and zoning designations.¹¹⁶

¹⁰⁷ Cates, *supra* note 9, at 113.

¹⁰⁸ Ogawa, *supra* note 48, at 3-3 (citing June Sheralyn Manning Thomas, *Blacks on the South Carolina Sea Islands: Planning for Tourist and Land Development* (1977) (Ph.D. dissertation, University of Michigan) (ProQuest)).

¹⁰⁹ *Id.* at 2-4. As discussed throughout this article, the very nature of the heirs’ property model allows monied developers and speculators to force partition sales of heirs’ property with the permission of a single heir, regardless of the wishes (or actual knowledge) of the other heirs. Additionally, these partition sales often result in low sale prices at auction, despite higher market value of the property—again, because of the nature of the public auction (few attendees, cash poor family members versus rich developers and speculators) and the land (often un- or underdeveloped and in poor, rural communities). See April Simpson, *New Laws Help Rural Black Families Fight for Their Land*, STATELINE (June 18, 2019, 12:00 AM), <https://perma.cc/ZN6B-4BNC>.

¹¹⁰ Ogawa, *supra* note 48, at 2-11.

¹¹¹ *Id.* at 3-3.

¹¹² Hargrove, *supra* note 105, at 140.

¹¹³ *Id.*

¹¹⁴ Ogawa, *supra* note 48, at 3-3.

¹¹⁵ *Id.* at 2-12.

¹¹⁶ *Id.*

To that end, these communities are not included in the planning and zoning maps in a way that will encourage their organic growth.¹¹⁷ Water and sewage lines are often not extended to these areas, and no real thought is given to how best to support these existing settlement patterns.¹¹⁸ Indeed, there seems to be a preference for commercial development that often adulterates those Gullah/Geechee settlement patterns into cookie-cutter subdivisions or larger commercial undertakings.¹¹⁹

During the 1970s, Black Sea Island residents “organized against development on Hilton Head and Kiawah islands and shared stories with Manning Thomas” about some of the unkept promises and resulting feelings of betrayal after their dealings with developers and legal authorities as their land was lost through partition sale.¹²⁰ These memories persist to this very day in modern Black Low Country communities.

Despite Black landowners' resistance, the proliferation of development in the Low Country has led to an influx of wealthy white residents, which represents a cultural change for the area. Further, the reality is that “there is little interaction between the new residents and the surrounding [B]lack community.”¹²¹ This lack of interaction generally means that there is little understanding between the two, and inevitably, the majority culture will begin (or continue) to encroach on the native Black culture.¹²²

B. Heirs' Property: Cause and Effect

As noted by Thomas W. Mitchell, “[B]lack rural property owners have been mostly invisible to the wider society within the United States.”¹²³ Indeed, it seems as if the Black person's ownership runs counter to American stereotypes for the Black race, and therefore, our ownership of property is often denigrated or outright ignored. Moreover, our country's institutions have formed impediments to owning the full bundle of property rights and building wealth in the same way that white Americans have been able to do. The heirs' property ownership model is one such impediment to full ownership rights and building wealth in America. In fact, heirs' property ownership in the Black community is both a cause and effect of Black land loss; the loopholes and vulnerability of such ownership end up allowing for more land loss (and resultant culture loss), and the very existence and persistence of this type of ownership is rooted in

¹¹⁷ See *id.* at 2-5 to 2-6.

¹¹⁸ See *id.*

¹¹⁹ *Id.*

¹²⁰ *Id.* at 3-3.

¹²¹ *Id.* at 2-12.

¹²² See *id.*

¹²³ Mitchell, *supra* note 72, at 557.

America's racial caste system—a coalescence of systemic racism, biased governmental policies, and social and business practices. Accordingly, the heirs' property ownership model is yet another Black Tax on an already over-taxed and over-burdened people.¹²⁴

Heirs' property ownership, though not exclusive to Black people or the Low Country, is especially concentrated in this area because of the history of Black land acquisition during and after Reconstruction. This history is important, as it determines the manner in which many properties in the Low Country are owned by Black people in the area today. Indeed, because of distrust of the white establishment and lack of legal counsel,¹²⁵ these properties were often passed down through intestate succession,¹²⁶ giving birth to "the heirs' property conundrum."¹²⁷

Heirs' property ownership is a product of "default" intestate succession laws, and in legal terms, it is a tenancy in common.¹²⁸ And while at one point it was the only mechanism that freed slaves had for passing along their realty,¹²⁹ it is not (nor was it ever) a sustainable model to build wealth.¹³⁰ As noted in Section II.A *supra*, there is a shared bundle of rights amongst co-tenants. Professor Faith Rivers explains that the hallmark of co-tenancy is "unity of possession," under which all of the tenants "share undivided fractional interests in property," with each heir enjoying the right to possess the whole parcel of land.¹³¹ Although this is "an 'undivided' interest . . . their ownership interests are only 'fractional' shares of a whole parcel of land."¹³²

¹²⁴ See George, *supra* note 69; see also Conner Bailey & Ryan Thomson, *Heirs Property, Critical Race Theory, and Reparations*, 87 RURAL SOCIO. 1219, 1219-21 (2022).

¹²⁵ Breland, *supra* note 29, at 384.

¹²⁶ If a person dies without a will (intestate), the probate court, using the applicable state intestate succession statute, will determine how the assets of the deceased person's estate are passed on to the decedent's heirs. Heirs are, of course, determined by the relevant state's definition. *Intestate Succession*, CORNELL L. SCH. LEGAL INFO. INST., <https://perma.cc/W5G6-KJ8G> (last visited May 7, 2023).

¹²⁷ Ogawa, *supra* note 48, at 2-2; see also Reynolds, *supra* note 68, at 54.

¹²⁸ Rivers, *supra* note 34, at 3, 9.

¹²⁹ See Ogawa, *supra* note 48, at 3-4. Post-slavery Black landowners failed to make formal provision to pass along their property due to lack of financial resources and legal advice, and distrust in the very system that always seemed to rob them of their property and rights. See also *id.* at 2-4 (noting that "[a] low level of understanding of legal rules governing inheritance of land contributes to the loss of land").

¹³⁰ It is doubtful that such a model, when juxtaposed against the traditional property laws and systems in America, was intended to grow wealth, though it did maintain property ownership during the 50 years post-Reconstruction before Black land loss began. See Breland, *supra* note 29, at 396.

¹³¹ Rivers, *supra* note 34, at 2.

¹³² *Id.*

The heirs' property ownership model includes a "traditional valuation of land" along with a convergence of Black people's "high cultural values of family," as well as our "emotional attachment" to the land and the historical "lack of access to legal resources, and . . . high rates of illiteracy."¹³³ Bamidele Agbasegbe Demerson aptly captured the peculiar nature of heirs' property and draws attention to the extended kinship relations it encompasses:

In a community where wills are rarely made . . . one could conceivably have claims to many tracts of land from many different foreparents. . . . The third or fourth generation urbanites whose progenitor was a migrant to New York City, for example, may simply be content to be able to point with pride to the fact that their island kinfolk own "family land. . . ." But having no intention of ever living in the rural setting, they may not pay taxes on the "family land" and may have no intentions of every [sic] pressing their claim to its use and ownership. It is also possible that a deceased female's descendants may perceive no obligation to pay taxes on land that would by law accrue to them. And with the passage of time, her third or fourth generation descendants may not even conceive of such land as belonging to them.¹³⁴

Unlike the tenancy in common created by volition, i.e., by will or other conscious action, which most often includes relatives that know each other, the estate created by intestate succession "bundles together groups of people who may possess little actual connection to one another and perhaps lack even knowledge of one another's identity."¹³⁵ Regarding heirs' property in the Wando-Huger area of South Carolina, Ogawa submits that "[o]ver time, the numbers of heirs increase and divergent interests emerge as people hold property across multiple generations with different concepts of cultural, economic, and land valuations and who are strewn geographically."¹³⁶

¹³³ Ogawa, *supra* note 48, at 2-2 (citing PATRICIA JONES-JACKSON, *WHEN ROOTS DIE: ENDANGERED TRADITIONS ON THE SEA ISLANDS* (1987)). See generally Thomas W. Mitchell, *From Reconstruction to Deconstruction: Undermining Black Landownership, Political Independence, and Community Through Partition Sales of Tenancies in Common*, 95 NW. U. L. REV. 505 (2001).

¹³⁴ Ogawa, *supra* note 48, at 2-3 (quoting Bamidele Agbasegbe Demerson, *Family Patterns on Wadmalaw Island*, in *SEA ISLAND ROOTS: AFRICAN PRESENCE IN THE CAROLINAS & GEORGIA* (Mary A. Twining & Keith E. Baird eds., 1991)). Note that in a patriarchal culture, a deceased female's descendants may not do so because much of the family business is conducted by the male family members.

¹³⁵ Mitchell, *supra* note 133, at 517.

¹³⁶ Ogawa, *supra* note 48, at 2-3.

This far-flung hodgepodge of co-tenants, along with the limitations on how they may engage the property, creates several problems in terms of property ownership. For example, the heirs' property model of ownership creates several inequities, as no one tenant has an unfettered interest in the land. Unlike other ownership models, Breland notes, "tenants in common have certain restrictions on how they can utilize their real property and who they can restrict from making use of the land."¹³⁷ And while "[a]ny tenant has the right to utilize and occupy the property as a whole," they "cannot deny other tenants the right to do the same."¹³⁸ Breland further explains, "Maintenance obligations may be, and often are, shared unequally. Due to the fractional nature of such ownership and the lack of clear title inherent to heirs['] property interests, one's ability to 'sell, improve, renovate, and repair the property' is highly limited."¹³⁹ Although a co-tenant has an ownership interest in heirs' property, they cannot use that fractionalized interest in the property as collateral on a loan as one must have the agreement of all before such an encumbrance may be made against the property.¹⁴⁰

Notably, while heirs' property is the most common model of co-tenancy, its hallmark is instability.¹⁴¹ Further, this instability affects the true value of the property as an asset to its common tenants. Instead of the full bundle of property rights, Rivers describes the bundle accompanying heirs' property ownership as "half empty."¹⁴² For these reasons, heirs' property owners are often described as "land rich but cash poor."¹⁴³ Indeed, there are more costs than benefits. Oftentimes, the family homestead is located on the property.¹⁴⁴ One of the heirs may live there, but

¹³⁷ Breland, *supra* note 29, at 388.

¹³⁸ *Id.*

¹³⁹ *Id.* (quoting Joan Flocks et al., *The Disproportionate Impact of Heirs' Property in Florida's Low-Income Communities of Color*, 92 FLA. BAR J. 57, 57 (2018)).

¹⁴⁰ See Rivers, *supra* note 34, at 30. Note, however, that a co-tenant may sign away their interest in the property without any similar restriction. This is something that is often done, which forces a partition sale of the property and ultimate land loss in the Black community. Breland, *supra* note 29, at 389 (citing Heather K. Way, *Informal Homeownership in the United States and the Law*, 29 ST. LOUIS U. PUB. L. REV. 113, 154 (2009)).

¹⁴¹ Breland, *supra* note 29, at 389. Along those lines, it has been noted that "[h]eirs' property is vulnerable to loss of the land due to potential conflict among multiple heirs" over several generations who have "different concepts of cultural, economic, and land valuations and who are strewn geographically." Ogawa, *supra* note 48, at 2-3.

¹⁴² Rivers, *supra* note 34, at 51.

¹⁴³ Breland, *supra* note 29, at 389 (quoting J. Blanding Holman IV, *Time to Move Forward on Heirs' Property*, 18 S.C. LAW. 19, 22 (2006)).

¹⁴⁴ *Homestead Exemption*, S.C. DEP'T OF REVENUE, <https://perma.cc/PE9L-NL8Y> (last visited May 7, 2023) (explaining that legislation was passed in 2007 to exempt "school operating taxes for all owner occupied legal residences that qualify under [South Carolina] Code of Laws Section 12-43-220(c)[,]" with the Homestead Exemption credit remaining in place to

more often than not, the homes and other buildings on the property are dated and may have fallen into disrepair. If the homestead is uninhabitable or has been torn down, one (or more) of the heirs may have put a mobile home on the property. Ogawa notes that “[t]he most common types of housing . . . on heirs’ property are mobile homes because they can be purchased without land collateral.”¹⁴⁵ Conversely, the property may be old farmland that has been in the family for years.¹⁴⁶ Though there are homestead and farmland exemptions for property owners in South Carolina, heirs’ property ownership, which is hallmarked by unclear title, may mean that the properties do not meet the requirements for those exemptions.¹⁴⁷

Further, as described in the opening vignette of the HBO series *Treme*,¹⁴⁸ many heirs’ property owners have found after natural disasters that they cannot avail themselves of federal disaster aid.¹⁴⁹ Moreover, heirs’ property owners cannot qualify for property insurance to protect against such disasters.¹⁵⁰ And without signatures of all the heirs (co-

“exempt all the remaining taxes for the first \$50,000 of value for all purposes except for school operating taxes”).

¹⁴⁵ Ogawa, *supra* note 48, at 2-3.

¹⁴⁶ In South Carolina, farmers are entitled to a tax exemption if the property is “used for agricultural purposes, such as to: [r]aise and harvest crops[,] [b]reed or manage livestock[,] [k]eep other farm animals[,] [or g]row plants and trees. . . . For a property to qualify as agricultural, at least 50% of its area must be used for agricultural purposes.” *South Carolina Agricultural Property Tax Exemption*, DoNOTPAY, <https://perma.cc/QY5S-2P3Z> (last visited May 7, 2023). The property is not eligible for the agricultural (or farmland) exemption if it is “a residential property of the owner,” a property used for recreation, a fishing or hunting club, or just vacant land. *Id.*

¹⁴⁷ When the property is owned by various unidentified heirs, not even their ages (much less their names) are known. For the homestead exemption, not only must the property be a “homestead,” the person living on the land must be 65 years old or older. S.C. Dep’t of Revenue, *supra* note 144. As for the farmland exemption, there must be a person who will apply for the exemption and keep that information updated. *South Carolina Agricultural Tax Exemption*, S.C. DEP’T OF AGRIC., <https://perma.cc/B2QW-2T8Q> (last visited July 29, 2023). Because of the nature of heirs’ property ownership, this may be difficult as elderly populations, those who have taken care of these matters, die and younger heirs, who are not familiar with the exemption requirements, are left to manage the property. See Skipper G. StipeMaas, *The Georgia Heirs Property Law Center, Inc.: Addressing Tangled Title and Economic Security for Georgians*, in U.S. DEP’T OF AGRIC., HEIRS’ PROPERTY AND LAND FRACTIONATION: FOSTERING STABLE OWNERSHIP TO PREVENT LAND LOSS AND ABANDONMENT 103 (Cassandra Johnson Gaither et al. eds., 2019) [hereinafter Gaither et al.].

¹⁴⁸ *Treme: Do You Know What It Means* (HBO television broadcast Apr. 11, 2010).

¹⁴⁹ See, e.g., Sax, *supra* note 2 (noting that “[a]fter Hurricanes Katrina and Rita hit New Orleans in 2005, 25,000 heirs’ property owners were denied [FEMA] assistance” and detailing another owner’s experience post-Hurricane Matthew); Stephens, *supra* note 11 (referencing the inaccessibility of disaster relief to “[o]wners of unresolved heirs’ property”).

¹⁵⁰ See Flocks et al., *supra* note 139, at 58 (discussing the difficulty that heirs’ property owners encounter in obtaining title insurance). See generally Stephens, *supra* note 11; B.

tenants), who are often multitudinous and unidentified, they cannot qualify for bank loans to improve the property.¹⁵¹ On top of this, property values are continuing to escalate in the Low Country, which also increases the heirs' tax burden.¹⁵² And with the older generation dying out, that burden rests with young, distant, and often unidentified heirs who commonly have little attachment to the land and, consequently, to the culture.¹⁵³ They might be unaware that taxes are even due on the property or unwilling (even unable) to pay them.¹⁵⁴ These realities continue to accelerate Black land loss in the Low Country.

While the numbers are not certain, "roughly a third of all [B]lack-owned land in the [S]outh is heirs['] property . . . some 3.5 million acres, worth roughly \$28 billion."¹⁵⁵ However, in terms of use, for all of the reasons previously enumerated, heirs' property is not optimal for building wealth—certainly not in today's economy. As more Low Country slave descendants move away from home, fewer of us live "on the hill."¹⁵⁶ As developers continue their march inland, property values continue to increase and tax burdens do also.¹⁵⁷ Further, oftentimes there are more distant heirs than local ones, which creates a disconnection from the very land that embodies our culture.¹⁵⁸ The increased tax burden, along with this emotional disconnection from the land, leads to a greater readiness to sell to sometimes unscrupulous developers.¹⁵⁹ All of these factors collide to increase the loss (though some would call it legalized theft) of lands

James Deaton & Jamie Baxter, *Towards a Better Understanding of the Experience of Heirs on Heirs' Property*, in Gaither et al., *supra* note 148, at 45.

¹⁵¹ Cassandra Johnson Gaither, *Appalachia's "Big White Ghettos": Exploring the Role of Heirs' Property in the Reproduction of Housing Vulnerability in Eastern Kentucky*, in Gaither et al., *supra* note 147, at 49.

¹⁵² Otterbourg, *supra* note 106.

¹⁵³ Ogawa, *supra* note 48, at 4-10.

¹⁵⁴ See Conner Bailey et al., *Heirs' Property and Persistent Poverty Among African Americans in the Southeastern United States*, in Gaither et al., *supra* note 147, at 14.

¹⁵⁵ Michelle Chen, *Black Lands Matter: The Movement to Transform Heirs' Property Laws*, THE NATION (Sept. 25, 2019), <https://perma.cc/3J66-9BLH>.

¹⁵⁶ See Ogawa, *supra* note 48, at 3-3 (describing unique settlement patterns of Black Low Country communities). While many may take the term "on the hill" to refer to Capitol Hill in Washington, D.C., those familiar with the Gullah/Geechee culture know that it refers to the traditional manner in which former slaves built their communities based upon kinships, which is often referred to as living "on the hill."

¹⁵⁷ See Otterbourg, *supra* note 106; see also RORY FLEMING ET AL., SPLITTING HEIRS: THE CHALLENGES POSED BY HEIRS' PROPERTY OWNERSHIP TO COASTAL RESILIENCE PLANNING 2 (2016). This is what has happened in the Low Country, and particularly, in my family.

¹⁵⁸ See Mitchell, *supra* note 133, at 532.

¹⁵⁹ See *id.* (explaining that "family members who disperse and lose all meaningful connection to the land and those who maintain meaningful ties to the land" often "c[o]me to value their common property holdings differently," causing distant owners to be more likely to sell).

owned by freed slaves in the Low Country. Ultimately, this loss of land will effectuate a loss of culture as well.

C. *The Loss of Land Equals a Loss of Culture*

The Gullah/Geechee culture—the culture of the Black people who inhabit the Low Country—is inextricably tied to the land. When the land is lost, the very culture of the people who once dwelled there is threatened. As noted in Sections III.A and B *supra*, various legal, economic, and social inequities in American systems have resulted in Black land loss, especially in the Low Country of South Carolina. Particularly, Section III.B highlighted just one vestige of those inequities: the heirs' property ownership model. Although heirs' property ownership is innocuous on its face, upon further examination, its utility in establishing a racial caste system and blocking Black landowners' hard-fought path to property ownership and wealth becomes clear. This section explains the link between the Gullah/Geechee culture and the land, and the culture that is at stake as Black landowners continue to lose their land in the Low Country.

1. The Culture

The Gullah/Geechee culture rose out of the vestiges of slavery and was a part of the very land that the freed slaves were able to cobble together to make their community.¹⁶⁰ While some freed slaves acculturated to European/English life, those in the South Carolina Low Country were firmly entrenched in African life ways described as Gullah/Geechee Culture.¹⁶¹ As noted above in Section II.B.1 *supra*, history binds Low Country Black landowners to the land. After being torn from their native homeland in Africa and transported to new lands, freed slaves clung to the lands where they were once held captive. With the ties to their African homeland severed by time and circumstances, freed slaves formed attachments to their new homeland in America; to survive, they formed language, cuisine, communities—in short, an entire culture.¹⁶² Historically, the Gullah/Geechee people shared some common values: “belief in a God, community above individuality, respect for elders, kinship bonds and ancestors; respect for nature[;] and honoring the continuity of life and the

¹⁶⁰ See Bradford Botwick, *Gullah-Geechee Settlement Patterns from Slavery to Freedom: Investigation of a Georgia Plantation Slave Quarter*, 39 N. AM. ARCHAEOLOGIST 198, 199 (2018).

¹⁶¹ See *id.* at 202.

¹⁶² See Cates, *supra* note 9, at 99 (acknowledging that the Gullah/Geechee people are recognized by scholars for origins in the southern Sea Islands, their unique language, traditions, and cuisine, which originate from their West African culture).

afterlife.”¹⁶³ They also tended to be more insular.¹⁶⁴ In fact, “[c]ultural evidence, anthropometric, serologic studies, and now genetic studies, have all indicated a lower European genetic contribution to the Gullah Sea Islanders than to other African American populations in the United States.”¹⁶⁵ To that end, the Gullah/Geechee culture has not been watered down by “acculturation to Euro-American customs.”¹⁶⁶ Indeed, this isolation preserved the culture.¹⁶⁷

Prior to Hilton Head Island’s development in the 1960s, Black people on the Island existed in “self-contained fishing and farming communities.”¹⁶⁸ And their propensity to cluster their buildings in traditional African village-like communities persists to this very day.¹⁶⁹ Sea Island residents used the islands as geographic boundaries, while those further inland used church parishes and other community markers (creeks and old plantations) as geographic markers.¹⁷⁰ The Gullah/Geechee people lived off the land—whether it was through fishing, farming, or both—which reinforced the unique nature of the culture. The land was a place to live, but it also shaped the Black landowners’ way of life. They knew their land intimately; it provided income and sustenance.

The crops that they grew and the seafood that they caught were not only their livelihood but also the food they ate. Like many African American traditions, our food choices were born out of the need to improvise to survive in the new land. The same is true today for many of the native Black landowners. Rice, which was grown in the lowlands, is still a staple of Gullah/Geechee menus, as is the corn-based grits.¹⁷¹ Fried fish and Low Country boils—a mix of shrimp or crab, potatoes, corn, and seasoning—are staples to this day.¹⁷² Animals were used to provide sustenance as well. Oxen and mules were used to plow the field; chickens and other

¹⁶³ Gullah Geechee Cultural Heritage Corridor Comm’n, *supra* note 12.

¹⁶⁴ Nat’l Park Serv., *supra* note 38. The reasons for their more insular existence include the geographical isolation of the Sea Islands, as well as the disease that led to many white slave owners turning much of the day-to-day operation of the rice plantations over to the slaves, who had more knowledge of rice farming from their African homeland and better ability to withstand the heat. *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.* (noting that the isolation of the Sea Islands led to the preservation of “African systems of meaning expressed in language, cosmological beliefs, religious ceremonies, funerary and burial practices, music, other expressive cultural forms, foodways, and selected material cultural features”).

¹⁶⁸ Cates, *supra* note 9, at 104 (internal quotations omitted).

¹⁶⁹ Ogawa, *supra* note 48, at 3-3.

¹⁷⁰ *Id.* at 3-3 to 3-4.

¹⁷¹ See *Gullah Geechee: A Coastal Culture That Continues to Stand the Test of Time*, SOUTHERN CAST IRON (Feb. 25, 2019), <https://perma.cc/MS3B-WD8P>.

¹⁷² *Id.*

fowl provided eggs and were then slaughtered for their meat; goats and cows were raised for their milk and meat; and pigs were raised for their meat, while the fat from slaughtered pigs was used to make lye soap.¹⁷³

The Gullah/Geechee people also created a unique language. This language is a variation of African dialects and English because slaves were from various tribes, cultures, and regions of Africa.¹⁷⁴ Today, for those native Low Country members who live in the more isolated parts of the Sea Islands, the accent is more pronounced than those who live further inland and have been more acculturated to Eurocentric culture.¹⁷⁵ The Gullah/Geechee dialect is the only distinctly “African creole language” in the United States, and, without a doubt, “it has influenced traditional [s]outhern vocabulary and speech patterns.”¹⁷⁶

No matter how far one travels away from the land, the culture of our beginning in the Low Country goes along with us. As noted in my linguistic profiling article, *We Speak the Queen's English: Linguistic Profiling in the Legal Profession*, even those who have moved away may bear traces of the Gullah dialect in their speech.¹⁷⁷ Moreover, we still cook the same recipes that our grandmothers and those matriarchs before them cooked—stewed chicken, fried okra (without the breading, just cut and fried), rice, grits. We often gather at the old family homestead or someplace close by to have our family reunions. While it may present itself differently depending on a person's proximity to their Low Country homestead, we are all inextricably tied to the lands of our formerly enslaved ancestors and the culture that it supported.

2. The Loss of Culture

Many heirs' property articles focus on the forced partition by one or more of the co-tenants to the surprise and dismay of the others, which has caused the loss of heirs' property in the Low Country. Indeed, as Breland has noted, “[t]his history of intestacy, along with the efforts of

¹⁷³ See generally Carolyn Baker Lewis, *The World Around Hampton: Post-Bellum Life on a South Carolina Plantation*, 58 AGRIC. HIST. (1984) (describing plantation life in the Low Country during slavery and thereafter); NAT'L PARK SERV., LOW COUNTRY GULLAH CULTURE: SPECIAL RESOURCE STUDY AND FINAL ENVIRONMENTAL IMPACT STATEMENT (2005), <https://perma.cc/G5YY-N49W> (discussing the diet and sustainability Gullah/Geechee people); Michael W. Twitty, *Hog Killing Time—Comments and Commentary on a Southern Plantation Tradition*, AFROCULINARIA, (Jan. 24, 2013), <https://perma.cc/NXY5-73WH>.

¹⁷⁴ Salikoko Sangol Mufwene, *Gullah*, ENCYC. BRITANNICA (July 25, 2016), <https://perma.cc/MP8V-NJKB>.

¹⁷⁵ See *Gullah Hilton Head Island: Stories & Recollections*, BLUFFTON CHAMBER OF COM., <https://perma.cc/7FXR-UHC8> (last visited May 7, 2023).

¹⁷⁶ Gullah Geechee Cultural Heritage Corridor Comm'n, *supra* note 12.

¹⁷⁷ Brenda D. Gibson, *We Speak the Queen's English: Linguistic Profiling in the Legal Profession*, 88 BROOK. L. REV. 601, 615 (2023).

speculators, developers, and their attorneys to exploit heirs['] property law, resulted in a precipitous decline in Black landownership beginning in the latter half of the twentieth century.”¹⁷⁸ Researchers have put this economic loss in the billions. A team of researchers conducted a study of historical data from 1920 to 1997 to determine the value of land and income lost by Black landowners, and they determined that figure to be around \$326 billion—“roughly the size of Hong Kong’s annual gross domestic product.”¹⁷⁹

Of late, however, a lesser-known problem with heirs’ property ownership has come to the forefront as property values along with property taxes have been skyrocketing. Property values everywhere have been increasing since the 2008 market crash,¹⁸⁰ which initially seems positive because it increases a landowner’s wealth. However, in poorer regions like the Low Country, this means an accompanying increase in taxes that many poorer people (majority Black people) cannot bear. As a result, they face the loss of land due to escalating taxes—or, more specifically, tax sales—when delinquent taxes go unpaid by heirs.¹⁸¹ This problem is particularly pervasive in areas like the Low Country, where the property is held jointly as heirs’ property.¹⁸²

When the “original” owners of the property die and the property passes through intestacy to other named owners or heirs, and then when those named owners die and pass their interest in the property through intestacy to other unnamed owners, there is oftentimes a loss in communication about who is responsible for certain property-related tasks.¹⁸³ This is where the problem begins. Oftentimes, the property taxes will go unpaid, and as a result, the property is sold for taxes at auction.¹⁸⁴ This allows untold thousands of acres to be forcibly bought out from under Black rural families—often second-, third-, or fourth-generation landowners whose ancestors were enslaved—by real estate developers and speculators.¹⁸⁵ Developers and others, who are able to purchase the property and bring the taxes current, become the new owners and extinguish hundreds of years of Black property ownership.¹⁸⁶

¹⁷⁸ Breland, *supra* note 29, at 384.

¹⁷⁹ Francis et al., *supra* note 66.

¹⁸⁰ John Csiszar, *How US Home Values Have Changed over the Last 20 Years*, GOBANKINGRATES (June 19, 2023), <https://perma.cc/V8DX-F8XM>; *see also* Alvin Chang, *How Finding a Home in America Became So Absurdly Expensive*, GUARDIAN (May 10, 2023, 6:00 AM), <https://perma.cc/TB5S-3JDH>.

¹⁸¹ Ogawa, *supra* note 48, at 2-6, 4-5.

¹⁸² *Id.*

¹⁸³ *Id.* at 2-2 to 2-3.

¹⁸⁴ *Id.* at 2-6.

¹⁸⁵ *Id.* at 2-4.

¹⁸⁶ *Id.*

When looking at Black land ownership and loss in the Low Country, we see that loss threatening the very culture of a people. The Low Country region is home to the Gullah/Geechee culture, discussed in Section II.B.2 *supra*, and is touted as one with a “unique culture” and “rich heritage.”¹⁸⁷ In fact, in a 2021 ABC News story, it was noted that “[t]he Gullah[/]Geechee land has been designated by Congress as a Cultural Heritage Corridor. But [the Gullah/Geechee people and their allies] are now fighting to save a region rich in history and generational roots.”¹⁸⁸ Additionally, as Madison Cates poignantly said in his recent essay, “the past, present, and future of Hilton Head is indivisible from the African American lives and communities that have known and loved and labored on its land and waters.”¹⁸⁹

While the principal “land ethic[.]” in American capitalist society views land as a source of wealth, for the descendants of slavery in the Low Country, land is also seen as “a tangible legacy of the post-slavery struggle for survival.”¹⁹⁰ Accordingly, the symbolic value assigned to land by slavery descendants in the Low Country is quite different from the value that the white populace assigns to their land.¹⁹¹ Furthermore, although property ownership in the Low Country exists, it is entangled in the rules of heirs’ property and impacted by systemic racial inequity, making it difficult for families to establish generational wealth.¹⁹² Therefore, despite land ownership, education is below national standards and poverty is pervasive in Black communities in the Low Country.¹⁹³ With a low tax base in many of the Black communities, the school systems are underfunded and deficient.¹⁹⁴ To add, the storied acquisition of their land has led to a deep distrust of the government and the legal system.¹⁹⁵ Hence, Black landowners have avoided the legal system and been reticent to involve white people in their property matters and estate planning.¹⁹⁶ This

¹⁸⁷ Gullah Geechee Cultural Heritage Corridor Comm’n, *supra* note 12.

¹⁸⁸ John Kapetaneas et al., *South Carolina Sea Islands Families Facing Land Loss from Climate Change, Development*, ABC NEWS (Nov. 12, 2021, 5:02 AM) <https://perma.cc/A8ZS-VQ3G>.

¹⁸⁹ Cates, *supra* note 9, at 114.

¹⁹⁰ Ogawa, *supra* note 48, at 3-4.

¹⁹¹ *Id.* at 2-4.

¹⁹² Conner Bailey et al., *Heirs’ Property: Where, How Much, and Why Does It Matter?*, S. RURAL DEVELOPMENT CTR., <https://perma.cc/HLZ5-E47P> (last visited July 29, 2023).

¹⁹³ Lillian Donahue, *Study of SC Poverty Rates Show High Evictions, Food Insecurity and Childhood Poverty*, WCSC (Jan. 28, 2021, 4:21 PM), <https://perma.cc/BY5V-VCUW>; Deanna Pan, *South Carolina Ranks Last in Education in U.S. News & World Report Study*, POST & COURIER, <https://perma.cc/D4V6-V7XS> (Sept. 14, 2020).

¹⁹⁴ Brooke Rakowski, *Amid Rural Lowcountry Fields, Education is Desolate Landscape*, CAROLINA NEWS & REPORTER (Mar. 4, 2019), <https://perma.cc/3RGW-QPDV>.

¹⁹⁵ Breland, *supra* note 29, at 266.

¹⁹⁶ *Id.*

has led to the proliferation of intestacy and heirs' property ownership in the Low Country, which exacerbates its poverty issues.¹⁹⁷

As Ogawa recognizes, "The history of the land and community are integral to the understanding of attachment to place in [B]lack communities in the Lowcountry."¹⁹⁸ Further, social scientists have found that "[a]ttachment to place can center around kinship ties, social networks and institutions, and the land itself."¹⁹⁹ Ogawa also notes that the term "'place' includes formation of [a] relationship to a place through local interactions with people and the desire to stay within safe range of familiar places."²⁰⁰ As a part of that "place attachment," people form "a positive affective bond" with a particular place, and there is a "tendency . . . to maintain closeness to [that] place."²⁰¹ Likewise, the term "place identity" "refer[s] to the ways in which residents shape their identity around their land and community."²⁰² Place attachment and place identity are undeniably strong amongst the descendants of slavery in the Low Country. Regardless of their current proximity, there is often a yearning to return to the place that first furnished one's identity.²⁰³ For that reason, when there is a loss of land, there is undoubtedly going to be an accompanying loss of culture.

In the Low Country, where there are high poverty and low education rates, especially amongst Black people, the loss of property and culture is particularly detrimental. As developers create pockets of industry that are divergent from the culture of the Black locals, they will be further marginalized, and their culture further diluted. Without the land, families that may already be scattered will lose their roots in their Low Country "homeland," to which they have been bonded for hundreds of years. Without the land, family members who hope to one day return to the "homeland" and farm the land or fish the waterways will no longer be able to do so.

¹⁹⁷ Stephens, *supra* note 12 (discussing the deprivation of economic opportunity felt by heirs' property owners in the Low Country).

¹⁹⁸ Ogawa, *supra* note 48, at 2-1.

¹⁹⁹ *Id.* at 3-1 (noting that "[p]lace has been defined as a geographical area imbued with socially constructed values"). Though "[a]ttachment theory originates in mother-child bond theories," it has been used in discussions about a person or people's attachment to a place. *Id.* at 3-1 to 3-2 (citing Marc Fried, *Continuities and Discontinuities of Place*, 20 J. ENV'T PSYCH. 193 (2000)).

²⁰⁰ *Id.* at 3-1 to 3-2 (citing Fried, *supra* note 200).

²⁰¹ *Id.* at 3-2 (quoting M. Carmen Hidalgo & Bernardo Hernández, *Place Attachment: Conceptual and Empirical Questions*, 21 J. ENV'T PSYCH. 273 (2001)).

²⁰² *Id.* "Place identity differs from place attachment in that it includes construction of interpretations of self that engender a sense of being 'at home' and 'uses environmental meaning to symbolize or situate identity,' often including 'affiliation of self with place.'" *Id.* (emphasis omitted) (quoting Lee Cuba & David M. Hummon, *Constructing a Sense of Home: Place Affiliation and Migration Across the Life Cycle*, 8 SOCIO. F. 547 (1993)).

²⁰³ See *id.* at 3-5.

Already, Black locals are losing the ability to access what were once free waterway access points as developers are buying these same family lands. For example, I have fond memories of Singleton Beach, which was once a Black beach on Hilton Head Island, where my husband and I, as college-aged kids, along with other young Black locals, would hang out at a beach shack on Sunday nights. However, when my husband and I attempted to take our young son to Singleton Beach in 2005, public access had been cut off. In fact, the roadway leading to the beach, once peppered with Black-owned low-slung bungalows, now boasts a line of million-dollar beach houses. Looking quite out of place alongside all the multi-story beach mansions was one remaining small bungalow, owned by the last Singleton family member “holdout” against developers.²⁰⁴ Alas, there are too many stories like this across the Low Country.²⁰⁵ While all development should not be eschewed, it cannot be at the expense of the culture that is so integral to the Low Country.

IV. SOLUTIONS

A. *Existing Measures: Organizations and Laws*

Despite great losses, in 2018, it was estimated that some 108,000 acres of heirs' property remained just in the 15 counties served by the Charleston-based nonprofit Center for Heirs' Property Preservation.²⁰⁶ Currently, there are several non-profit organizations working to ameliorate the heirs' property conundrum and consequent Black land loss—with mixed results. These organizations both lobby for legislative change and work in the Low Country communities to educate and assist heirs' property owners.

²⁰⁴ This term is being used to refer to those few families or people who are able to retain their property despite large swaths of development in the Low Country.

²⁰⁵ My aunt by marriage lives on what was once an unpaved road on St. Helena Island in Beaufort County, and her property is one of a very few remaining low slung brick homes on a now-paved road filled with multi-level mini-mansions. She receives constant calls from developers and their agents about selling her property. The property taxes on the home, once reasonable, are astronomical. *See generally* Adam Parker, *Last Black Homeowners Leave Charleston's Ansonborough Neighborhood*, POST & COURIER (Charleston) (Aug. 6, 2022) <https://perma.cc/UXQ2-7LMD> (describing yet another story of a historic neighborhood in Charleston, South Carolina, which was once occupied by Black families, being “gentrified” to the point of losing its last Black family).

²⁰⁶ Opinion, *End Sad Legacy of Heirs Land Lost*, POST & COURIER (Charleston) <https://perma.cc/9YFT-UDG7> (Sept. 14, 2020), *reprinted in* PHILA. TRIB. (Dec. 23, 2018), <https://perma.cc/CC87-N76B>.

1. Organizations

a. Center for Heirs' Property Conservation

Founded in 1999 as the Heirs' Property Preservation Project with funds from the Ford Foundation,²⁰⁷ the mission of the Center for Heirs' Property Conservation was "to educate the South Carolina community about heirs' property, to provide [pro bono] legal services to families trying to clear title on their heirs' property . . . and to preserve the historic communities and development patterns in which heirs' property is prevalent."²⁰⁸ The Center was led by a program manager from South Carolina's Coastal Community Foundation and an attorney.²⁰⁹

In line with the founders' original intent, the Heirs' Property Preservation Project subsequently became the Center for Heirs' Property Conservation, a 501(c)(3) organization led by an executive director and an attorney.²¹⁰ Its primary work involves "educat[ing] those working in the judicial system, nonprofits serving heirs' property owners, and the general community about heirs' property as well as . . . provid[ing] education and legal services to heirs' property owners who do not intend to sell their land after clearing title."²¹¹ To be a client, you must own property that is within the 22-county service area and want to keep the land.²¹²

b. The Heirs' Property Law Firm

In 2006, the principal attorney who had worked for the Heirs' Property Preservation Project and the Center for Heirs' Property Conservation left the Center and founded the Heirs' Property Law Firm, a for-profit law firm.²¹³ Unlike the Center, the Law Firm's mission includes helping families clear title and develop their heirs' properties.²¹⁴ At that time, the Law

²⁰⁷ Ogawa, *supra* note 48, at 2-16. Note that the Heirs' Property Preservation Project was initially a joint project of several local organizations: the South Carolina Coastal Community Foundation (previously the Community Foundation Serving Coastal South Carolina), the Coastal Conservation League (previously the South Carolina Coastal Conservation League), the South Carolina Bar, the South Carolina Bar Foundation, the South Carolina Appleseed Legal Justice Center, and the South Carolina Centers for Equal Justice. *Id.*

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² *Protect Your Land*, CTR. FOR HEIRS' PROP. PRES., <https://perma.cc/5X28-Y5AR> (last visited May 7, 2023).

²¹³ Ogawa, *supra* note 48, at 2-16.

²¹⁴ *Id.* As reflected in older writings, the Heirs' Property Law Firm was originally founded as the Heirs' Property Law Center. *See, e.g., id.* Ogawa notes that the development part of the Firm's mission is "specifically outside the mission of the Center for Heirs' Property Preservation." *Id.* (emphasis added).

Firm also boasted community education and outreach programs similar to those offered by the Center for Heirs' Property Preservation.²¹⁵ Ogawa specifically mentions (without further explanation) the tension between the two organizations in her thesis, noting that “[b]ecause The Heirs’ Property Law [Firm] was founded without the knowledge of the Center for Heirs’ Property Preservation and because its stated work mirrors some of the Center’s work, there is little collaboration between the two organizations.”²¹⁶

c. Coastal Conservation League

Originally a partner in forming the Heirs’ Property Preservation Project, the Coastal Conservation League is “a membership-based non-profit focused on conservation, and it is by far the most influential and well-connected environmental organization in the Lowcountry.”²¹⁷ The League is staffed by “highly educated, savvy lobbyists and analysts” who “focus[] primarily on issues of ecosystem conservation, climate change, and urban sprawl.”²¹⁸

d. Other Farmer-Centric Organizations

- South Carolina Black Farmers Coalition

Formed in 2020, this group of Black South Carolina farmers came together to “provide support [and] community through coalition meetings and conferences, farm business resources and training, needs assessments, social media support, and sustainability strategies” for its members.²¹⁹ On its website, the group explains that it works “to train, equip, support and advocate for existing, returning and budding generations of Black farmers in South Carolina.”²²⁰ The website also notes that it is in

²¹⁵ *Id.* The Law Firm has continued to do teach-ins, etc. in recent years, though they are no longer advertised on the firm’s website. See, e.g., *Dirt Rich Community Teach-In with Attorney Willie Heyward*, ACRES OF ANCESTRY INITIATIVE, <https://perma.cc/PW9L-6VSK> (last visited May 7, 2023); Queen Quet, *De Will fa Keep @GullahGeechee Land*, GULLAH/GEECHEE NATION (Aug. 26, 2020), <https://perma.cc/F64A-K8VT>; Penn Center, *Video: Penn Center Community Conversations, Spring 2022*, UNIV. OF GA. (May 20, 2022), <https://perma.cc/4596-YXBW>.

²¹⁶ Ogawa, *supra* note 48, at 2-16. After some research, it is noted that Willie Heyward, a managing attorney for the Heirs’ Property Preservation Project when it was just a pilot project, makes no mention of this role on his law firm website or other social media.

²¹⁷ *Id.* at 2-16 to 2-17.

²¹⁸ *Id.* at 2-17.

²¹⁹ S.C. BLACK FARMERS COAL., <https://perma.cc/N8GG-8R6Z> (last visited June 22, 2023); see also David Travis Bland, *Black Farmer in South Carolina Wants New Land to Be “A Place to Heal,”* L.A. SENTINEL (July 6, 2021), <https://perma.cc/2RWJ-M8Z7>.

²²⁰ *Membership*, S.C. BLACK FARMERS COAL., <https://perma.cc/8YDR-6NU6> (last visited May 7, 2023).

need of funding for training programs, land trusts, Black-led food hubs, and funding for Black-led urban farms.²²¹ In terms of leadership, the organization has a president, vice president, and treasurer, as well as several regional leaders and outreach coordinators to assist its members in the areas noted above.²²² There are various levels of membership, depending upon what types of benefits you need.²²³

- The LEAP Coalition

In 2020, John Deere partnered with the National Black Growers Council (“NBGC”) and the Thurgood Marshall College Fund (“TMCF”) to establish the Legislation, Education, Advocacy and Production Systems (“LEAP”) coalition to assist in eliminating barriers created by heirs’ property and “provide resources to advance the lives and livelihoods of Black farmers.”²²⁴ According to its website, “LEAP is dedicated to ensuring the long-term sustainability of less than 5 million acres of land currently owned or farmed by Black farmers.”²²⁵

Through the work of the above-listed organizations and others, including various community leaders, there have been incremental changes in laws involving heirs’ property and Black land loss. The most prominent is the Uniform Partition of Heirs Property Act,²²⁶ which was proposed by the Uniform Law Commission in 2010 at the behest of the American Bar Association (“ABA”) to address the loss of Black land to unscrupulous developers.²²⁷

2. Current Laws That Address Black Land Loss

a. *Uniform Partition of Heirs Property Act*

Some states, including South Carolina,²²⁸ have adopted the Uniform Partition of Heirs Property Act, the brainchild of law professor Thomas W. Mitchell, who worked with the ABA Real Property, Trust, and Estate Law Section to “curtail partition law abuses that robbed the disadvantaged

²²¹ *Id.*

²²² *Leadership*, S.C. BLACK FARMERS COAL., <https://perma.cc/4PSJ-J5T4> (last visited June 23, 2023); @scblackfarmers, INSTAGRAM (Aug. 24, 2021), https://www.instagram.com/p/CSJQonZLDf/?utm_source=ig_web_copy_link (on file with CUNY Law Review).

²²³ S.C. Black Farmers Coal., *supra* note 219.

²²⁴ *The LEAP Coalition*, JOHN DEERE, <https://perma.cc/AMA6-PHQ3> (last visited May 7, 2023).

²²⁵ *Id.*

²²⁶ *Partition of Heirs Property Act*, UNIF. L. COMM’N, <https://perma.cc/UF56-4P2R> (last visited May 7, 2023).

²²⁷ Reynolds, *supra* note 68, at 58-59; Thomas W. Mitchell, *Restoring Hope for Heirs Property Owners: The Uniform Partition of Heirs Property Act*, AM. BAR ASS’N (Oct. 1, 2016), <https://perma.cc/J94Z-VS9B>.

²²⁸ Mitchell, *supra* note 227.

of millions of acres of land and property.”²²⁹ Though far from perfect, the Act “levels the playing field” a bit inasmuch as it gives heirs the right of first refusal when courts order a partition sale.²³⁰ Heirs also have “the chance to secure financing to buy out a competing interest.”²³¹

Notably, South Carolina adopted its Partition of Heirs Property Act in 2016 and named it after the late Senator Clementa C. Pinckney.²³² Pinckney was born and raised in the Low Country and, alongside many others, opposed the partition laws, which disproportionately impacted Black landowners in the Low Country.²³³ The lone opposition to the bill came from former Republican state senator Paul Thurmond, the son of long-serving U.S. senator and staunch segregationist Strom Thurmond (R-SC).²³⁴ The passage of the Act in South Carolina encouraged other states to do the same, but there are still some states that have been slow to pass it.²³⁵

More recently, in June 2022, the South Carolina House and Senate presented a joint resolution to establish the Heirs' Property Study Committee to examine current and prospective methods to address heirs' property issues in South Carolina.²³⁶ The resolution required that the

²²⁹ Reynolds, *supra* note 68, at 53-54, 59.

²³⁰ *Id.* at 59 (quoting K. Scott Kohanowski, director of the Homeowner Stability Project at the City Bar Justice Center in New York City).

²³¹ *Id.*

²³² See Opinion, *Despite a Win, SC Heirs' Properties Still Threatened*, POST & COURIER (Charleston) (Sept. 27, 2019), <https://perma.cc/J3WN-HZL4>. Pinckney's life was unfortunately cut short by a racist when he and eight others were killed during a 2015 mass shooting at the Emanuel African Methodist Episcopal Church in Charleston. Kevin Sack, *Clementa Pinckney, Called to Pulpit and Politics in a Life Cut Short*, N.Y. TIMES (June 25, 2015), <https://perma.cc/GM38-GVRJ>.

²³³ See Sack, *supra* note 232; see also Mitchell, *supra* note 227; Prof. Mitchell Attends Signing of a Property Act He Helped Write, TEX. A&M UNIV. SCH. OF L. (Sept. 22, 2016), <https://perma.cc/Z2UP-WR3H>.

²³⁴ Simpson, *supra* note 110. Notably, despite being known as a segregationist, Thurmond purportedly fathered a child with a Black woman and funded that child's education at South Carolina State University, an HBCU (historically Black college or university) located in Orangeburg, South Carolina. Ken Cummins, *Strom's Secret*, POINT (Oct. 16, 1996), <https://perma.cc/M3SK-HBFF>. Thurmond, Sr. was also reportedly an “abiding support[er]” of the university during his lifetime. Jesse Jackson & Janice Mathis, *Jesse Jackson: Adequately Fund SC State, Don't Kill It*, GREENVILLE NEWS (Feb. 23, 2015, 11:54 AM), <https://perma.cc/K443-BJPA>. See generally *Segregationist Past Far Removed from Thurmond These Days*, ORLANDO SENTINEL (Aug. 15, 1999, 4:00 AM), <https://perma.cc/8HQM-5R2H> (last updated July 29, 2021, 6:23 P.M.) (noting Thurmond's support of HBCUs in general).

²³⁵ Gabriel Kuris, “A Huge Problem in Plain Sight”: Untangling Heirs' Property Rights in the American South, 2001-2017, PRINCETON UNIV. INNOVATIONS FOR SUCCESSFUL SOC'YS., at 13; see *Partition of Heirs Property Act*, *supra* note 226.

²³⁶ S. 246, 124th Gen. Assemb., Reg. Sess. (S.C. 2022) (“A Joint Resolution to Establish the Heirs' Property Study Committee to Examine Current and Prospective Methods to Address Heirs' Property Issues in South Carolina, to Provide for the Membership of the Committee, to

committee ultimately prepare a report for the General Assembly, and that report was submitted for review on December 30, 2022.²³⁷ Subsequently, in 2023, the General Assembly voted to establish a permanent Heirs' Property Commission

to address the legal and economic issues associated with heirs' property, to provide for membership of the Commission, to provide for reporting requirements of the Commission, and to provide for the executive director of the South Carolina State Housing Finance and Development Authority to chair the Commission and the agency to provide administrative support to the Commission.²³⁸

b. 2018 Farm Bill

The 2018 Farm Bill,²³⁹ introduced by Senators Tim Scott (R-SC) and Doug Jones (D-AL) and signed into law in December 2018, targets past discriminatory practices of the USDA and is intended to prevent such discrimination in the future.²⁴⁰ Specifically, the law includes (1) "provisions for heirs to qualify for a USDA Farm Service Agency ([']FSA[']) farm number," which has been described as "a driver's license for agriculture,"²⁴¹ as it gives them access to crucial programs and allows them to participate in local FSA elections; and (2) a mandate that the agriculture secretary devise alternative forms of documentation for heirs who lack clear title to property, i.e., heirs' property owners.²⁴² Significantly, to take full advantage of the new law's protections, the states in which the heirs dwell must have adopted a Uniform Partition of Heirs Property Act.²⁴³

Require the Committee to Prepare a Report for the General Assembly, and to Dissolve the Study Committee").

²³⁷ HEIRS' PROP. STUDY COMM. REPORT TO THE GEN. ASSEMBLY (2022), <https://perma.cc/P5F9-HT3V>. The subcommittee was to have dissolved on the date that the report was due, December 31, 2022. No published review of the subcommittee's report has been found, but by S. 436, 125th Gen. Assemb., Reg. Sess. (S.C. 2023), the Heirs' Property Commission was established.

²³⁸ S. 436, 125th Gen. Assemb., Reg. Sess. (S.C. 2023).

²³⁹ H.R. 2, 115th Cong. (2018).

²⁴⁰ David Slade, *Sen. Tim Scott's Provisions in Approved Federal Farm Bill to Aid SC Heirs' Property Owners*, POST & COURIER (Dec. 12, 2018), <https://perma.cc/C9MW-WG46> (last updated Sept. 14, 2020).

²⁴¹ Simpson, *supra* note 109.

²⁴² *Id.*

²⁴³ *Id.*

c. *President Biden's COVID-19 Relief Package*

In what is a little-known element of President Biden's COVID-19 relief package, Black farmers were to be paid billions of dollars in stimulus funds.²⁴⁴ This payment was lauded as perhaps the biggest piece of social legislation for Black farmers since the Civil Rights Act of 1964.²⁴⁵ As Laura Reiley summarized in her 2021 *Washington Post* article:

The stimulus bill provides grants and loans to improve land access and address heirs' property issues (such as when a farmer dies without a will and [their] land is divided up between all legal heirs), establishes a racial equity commission to address systemic racism at the USDA, and provides financial support for research and education at historically Black colleges and land grant universities.²⁴⁶

In sum, "[t]he money would provide debt relief as well as grants, training, education and other forms of assistance aimed at acquiring land."²⁴⁷

Many civil rights advocates saw this payment as "reparations"²⁴⁸ for historical systemic racism and the role that the federal government played in it.²⁴⁹ Others, however, saw it as a drop in the bucket when compared to the loss suffered by Black farmers at the hands of the federal government.²⁵⁰

Notably, the framework for this part of Biden's COVID-19 relief package is found in the Emergency Relief for Farmers of Color Act, introduced by Senator Raphael G. Warnock (D-GA) and co-sponsored by Democratic Senators Cory Booker (NJ), Ben Ray Lujan (NM), Debbie

²⁴⁴ Reiley, *supra* note 87 (noting that although only half of the legislation's \$10.4 billion dollars is geared towards "disadvantaged farmers," it is projected that Black farmers total a quarter of that category and would receive a proportionate share of the stimulus monies).

²⁴⁵ *See id.*

²⁴⁶ *Id.*

²⁴⁷ *Id.*

²⁴⁸ *See id.*

²⁴⁹ *See id.* (noting that Black farmers "have lost more than 12 million acres of farmland over the past century" due to "a combination of systemic racism, biased government policy, and social and business practices that have denied African Americans equitable access to markets").

²⁵⁰ *See id.* "William Darity, a professor of public policy at Duke University who has studied reparations extensively, says that a \$5 billion allocation is a 'pittance,' at most 2 percent of the lost wealth, and that it does not constitute reparations." *Id.* Darity explains that "[t]he notion that this approaches a program of reparations is nonsense. Reparations for Black American descendants of slavery must be designed to eliminate the gulf in Black and [w]hite wealth." *Id.*; *see supra* Section III.A (detailing how the federal government has played a large role in the loss of Black land and generational wealth in America).

Stabenow (MI), Patrick Leahy (VT), and Amy Klobuchar (MN).²⁵¹ Warnock's bill bears many similarities to Cory Booker's Justice for Black Farmers Act,²⁵² which is the framework for the bill pending in South Carolina's legislature to benefit Black farmers who have suffered at the hands of the federal government for so long.²⁵³ Both of these bills failed due to Republican opposition.²⁵⁴ Similarly, there was some opposition to the part of Biden's COVID-19 relief package that would benefit "disadvantaged farmers" as well.²⁵⁵

Many Black people were pessimistic about this historic step being any different from the long history of the federal government's passive and active perpetuation of systemic racism and inequities for Black farmers and landowners.²⁵⁶ As it turns out, this pessimism was well founded, as white farmers successfully sued the federal government and are now entitled to share in the relief dollars originally earmarked for Black farmers who had been disenfranchised by the USDA and its local subsidiaries long ago.²⁵⁷

B. Suggested Modifications Going Forward

1. Legal Representation and Wills

In his article, *Time to Move Forward on Heirs' Property*, attorney J. Blanding Holman IV acknowledges the efforts of the South Carolina General Assembly to address land loss and heirs' property inequities, but he also notes that the issue requires more work by lawyers and other experts who often know the tensions between existing laws and the local people.²⁵⁸ As noted in Section III.B *supra*, in the past, it was the lack of legal representation and knowledge about (and trust of) the legal system that prevented many Black families from making wills and formally devising family property.²⁵⁹ And while there have been strides toward increasing

²⁵¹ See S. 278, 117th Cong. (2021); Reiley, *supra* note 87.

²⁵² H.R. 1393, 117th Cong. (2021).

²⁵³ *Id.*; see *supra* Section III.C.2.a.

²⁵⁴ Oliver Willis, *GOP Obstruction Is Preventing Vital Debt Relief for Black Farmers Facing Foreclosure*, AM. INDEP. (Feb. 22, 2022), <https://perma.cc/2RGX-GUHK>.

²⁵⁵ Reiley, *supra* note 87.

²⁵⁶ See *id.* (discussing the failures of the *Pigford* settlements, two class-action lawsuits against the USDA, under which the federal government was to pay disenfranchised Black farmers \$2.3 billion for "alleged racial discrimination in the department's allocation of farm loans and assistance beginning in 1983").

²⁵⁷ Khristopher J. Brooks, *Black Farmers Might Not Receive Their Own Debt-Relief Funding*, CBS NEWS (June 24, 2021, 4:01 PM), <https://perma.cc/YN3L-N4JG>.

²⁵⁸ Holman, *supra* note 143, at 23-25.

²⁵⁹ See Ogawa, *supra* note 48, at 2-4 (noting that "[a] low level of understanding of legal rules governing inheritance of land contributes to the loss of land").

access to justice in the legal profession, it has not yet achieved its diversity goals in terms of ensuring that there is sufficient legal representation for the minoritized and marginalized populations of this country.²⁶⁰ In fact, as of 2021, there were only “1.12 civil legal aid lawyers per 10,000 poor [people], compared to 40 attorneys per 10,000 people.”²⁶¹ To that end, the optics of the profession, being homogeneously white in these current times of social and political unrest, are not positive. Although appearances can be deceiving, as one of the “mirrortocracies”²⁶² in current American society, the legal profession as a whole appears uninterested in the poor and the marginalized, who are most often minoritized populations.²⁶³ Attorneys, and the legal system in which we operate, continue to foster distrust from within minoritized communities.²⁶⁴ For that reason, many minoritized populations still do not have wills, and the problem with heirs' property persists.²⁶⁵

In his article, Will Breland discusses the need for lawyers and judges to have cultural competence—to know the history of the land and its owners and their prior interaction with the white institutions in this country.²⁶⁶ This move to cultural competence will require effort on the part of a profession that has touted color (read cultural) blindness.²⁶⁷ Recently, the ABA made revisions to Standard 303 of the Standards and Rules of Procedure for Approval of Law Schools that are meant to facilitate this move to cultural competence in the profession. First, Standard 303(b) was revised to add that “[a] law school shall provide substantial opportunities to students for: . . . (3) the development of a professional identity.”²⁶⁸ Additionally, a new subsection (c) has been added to Standard 303, which

²⁶⁰ FLEMING ET AL., *supra* note 157, at 7-8.

²⁶¹ *NCAJ Launches Updated Justice Index*, NAT'L CTR. FOR ACCESS TO JUST. (May 18, 2021), <https://perma.cc/KG7J-GQ6W>.

²⁶² Carlos Bueno, *Inside the Mirrortocracy*, CARLOS.BUENO.ORG., <https://perma.cc/6FQG-4EE> (last visited May 7, 2023). A “mirrortocracy” is the phenomenon that occurs when people exclusively hire or associate with people who look like themselves and share similar backgrounds (same school, same ethnicity, same gender, same age, etc.). *Id.*

²⁶³ See Kathleen Nalty, *Strategies for Confronting Unconscious Bias*, 45 COLO. LAW. 45, 46-47 (noting that “the legal profession can best be described as a ‘mirrortocracy’[—]not a meritocracy”).

²⁶⁴ See Breland, *supra* note 29, at 401-02. In fact, one study on why low-income individuals did not seek legal service determined that 75% of the white respondents stated that “they trusted courts,” but “only 22% of the African American respondents stated that they trusted the legal system.” *Id.* (citing Sara Sternberg Greene, *Race, Class, and Access to Civil Justice*, 101 IOWA L. REV. 1263, 1301-02 (2016)).

²⁶⁵ See Breland, *supra* note 29, at 401-02.

²⁶⁶ *Id.* at 403-06.

²⁶⁷ *Id.*

²⁶⁸ STANDARDS AND RULES OF PROC. FOR APPROVAL OF L. SCHS. § 303(b) (AM. BAR ASS'N 2022).

states that “[a] law school shall provide education to law students on bias, cross-cultural competency, and racism: (1) at the start of the program of legal education, and (2) at least once again before graduation.”²⁶⁹

Based on the new “Interpretations” that accompany these two revisions to Standard 303, the ABA is interested in moving the legal profession toward a greater awareness of the importance of diversity and inclusion.²⁷⁰ To do so, revised Standard 303(b) speaks to the lawyer’s role in securing justice for their client and the greater society.²⁷¹ In requiring that law schools include instruction regarding professional identity and cultural competence in their curricula, the ABA once again acknowledges the role that the legal profession has played in the systemic racism in this country and the role that it can play in dismantling these systems. In fact, after explaining what “professional identity” means in new Interpretation 303-5,²⁷² the ABA explicitly notes in new Interpretation 303-6 that “the importance of cross-cultural competency to professionally responsible representation and the obligation of lawyers to promote a justice system that provides equal access and eliminates bias, discrimination, and racism in the law should be among the values and responsibilities of the legal profession to which students are introduced.”²⁷³

As social engineers and thought leaders in our society, lawyers can indeed lead a move towards a more diverse and inclusive society. As now recognized by the ABA, educating minoritized populations about the legal system should be a byproduct of law practice.²⁷⁴ As a part of their community service obligations, practicing attorneys should perform outreach activities to inform minoritized and marginalized communities about the legal system and their rights. Instead of expecting those populations to come to them, attorneys should go to those populations. Those feelings of distrust could be overcome if lawyers utilized their education in cultural competence to partner with minoritized and marginalized communities to explain helpful legal concepts. Notably, post-pandemic,

²⁶⁹ *Id.* § 303(c).

²⁷⁰ *See id.*, Interpretation 303-6, 303-7.

²⁷¹ *Id.*, Interpretation 303-5.

²⁷² New Interpretation 303-5 states that “[p]rofessional identity focuses on what it means to be a lawyer and the special obligations lawyers have to their clients and society.” Additionally, this development “should involve an intentional exploration of the values, guiding principles, and well-being practices considered foundational to successful legal practice. Because developing a professional identity requires reflection and growth over time, students should have frequent opportunities” to develop this identity “in a variety of courses and co-curricular and professional development activities.” *Id.*

²⁷³ *Id.*, Interpretation 303-6.

²⁷⁴ *Id.*, Interpretation 303-3 (encouraging attorneys “to provide pro bono legal services primarily to persons of limited means or to organizations that serve such persons”).

attorneys are becoming more familiar with the benefits of technology in deploying such knowledge to rural areas like the Low Country.²⁷⁵

Providing legal representation to the Black population in the Low Country is probably the simplest solution to the heirs' property conundrum, but it cannot undo the damage already done. As Breland noted in his seminal article, "[a]lthough will writing cannot reverse the consequences of land fractionation over many years, the practice can still assist in the retention of family land."²⁷⁶ To the extent that the legal profession can (or chooses to) address its diversity problem, attorneys can educate and represent those Black landowners who are still fighting to retain their land so they can avoid the legal traps, such as heirs' property ownership because of intestacy, that have historically led to Black land loss in the Low Country. Low Country lawyers can provide will clinics and other estate planning advice, in-person or virtually, in the more rural areas of South Carolina to ensure that property ownership leads to wealth for Black landowners, just like their white counterparts.

2. A "Deeper"²⁷⁷ Bench, New Laws, and Reparations

Courts, too, as much as practicable, must "emphasize more holistic judicial approaches that include historical analyses, the weighing of potential adverse social consequences, and the scrutinization of economic factors"²⁷⁸ that have been favored historically. In his article, Breland suggests that a partition in kind rather than a partition by sale is a better model when heirs' property must be divided.²⁷⁹ Breland tells the story of several court actions in which the court employed a more holistic judicial approach to partition a jointly held property.²⁸⁰ In all of the cases, there were several commonalities: family property passed down through intestacy leading to heirs' property ownership (as tenants in common); a developer wanting to purchase the shared property; and at least one of the siblings not wishing to sell based upon some attachment to the land, whether the sibling lived on the property, planned to return to live there at some point, or just had an emotional attachment to the property.²⁸¹ In those cases, despite the fact that partition by sale is the more common partition ordered

²⁷⁵ See generally Raymond H. Brescia, *Lessons from the Present: Three Crises and Their Potential Impact on the Legal Profession*, 49 HOFSTRA L. REV. 607 (2021).

²⁷⁶ Breland, *supra* note 29, at 401.

²⁷⁷ This is a deliberate play on the word "deeper," meaning a more culturally competent, empathetic judiciary.

²⁷⁸ Breland, *supra* note 29, at 407.

²⁷⁹ See *id.* at 407-08.

²⁸⁰ *Id.* (detailing the facts of *Gibbs v. Kashak*, 883 N.E.2d 825 (Ind. Ct. App. 2008); *Eli v. Eli*, 557 N.W.2d 405 (S.D. 1997); and *Ark Land Co. v. Harper*, 599 S.E.2d 754 (W. Va. 2004)).

²⁸¹ See Breland, *supra* note 29, at 407-08.

in courts, the courts balanced the equities and considered the “soft factors” so often ignored in such cases.²⁸²

But this is the exception and not the rule. Too often, even when it is not necessary, in South Carolina, “courts commonly sell the entire parcel to satisfy the lien.”²⁸³ In fact, in a 2001 South Carolina Supreme Court case, the court held that even though the applicable statute “permit[ted] the partition of property in order to avoid selling the entire parcel at a tax sale, the pre-sale burden to determine the ‘divisibility of the property’ rests with the property owner or the party seeking divisibility, not the county or tax collector.”²⁸⁴ However, with the adoption of the Uniform Partition Act, this will hopefully no longer be the case, as that Act specifically allows the court to divide the property between the owners as well as sell the property and divide the proceeds equitably between the owners.²⁸⁵ Moreover, the Act requires that the court reach its decision as to whether it mandates partition in kind or by sale based upon economic and non-economic factors “such as the land’s sentimental, cultural or historic value or whether one or more co-tenants would be homeless without the property.”²⁸⁶ Finally, in accordance with the Act, auctions are no longer the preferred mechanism, as the Act states a preference for open market sales to yield a higher sale price for the land.²⁸⁷

It does not appear that South Carolina has any particular training beyond the standard rules of judicial conduct that are geared towards cultural competency or diversity, equity, and inclusion for its judiciary. However, that type of training in conjunction with the new ABA standards discussed above will undoubtedly go a long way toward deepening the bench and paving the way for more equitable judicial rulings in partition actions.

Without knowledge of the law, legal representation, or an empathetic bench, heirs’ property owners will lose more land than is necessary in sales to satisfy tax liens.²⁸⁸ In an effort to address some of the past harms visited upon Black farmers in South Carolina, the legislature has

²⁸² *Gibbs*, 883 N.E.2d at 829 (basing decision in part on a parcel of land’s “great sentimental value”); *Eli*, 557 N.W.2d at 410 (basing decision in part upon “sentimental attachment to the land”); *Ark Land Co.*, 599 S.E.2d at 339 (basing decision in part upon “emotional desire to keep [an] ancestral home within the family”).

²⁸³ *Ogawa*, *supra* note 48, at 2-6.

²⁸⁴ *Id.* (citing *Folk v. Thomas*, 543 S.E.2d 556 (2001)).

²⁸⁵ *Simpson*, *supra* note 109.

²⁸⁶ *Id.*

²⁸⁷ *Id.*

²⁸⁸ *See Ogawa*, *supra* note 48, at 2-6; *see also Breland*, *supra* note 29, at 409.

introduced the Black Farmer Restoration Program, which was still pending at the time that this article was being drafted.²⁸⁹

a. Pending Bill: The Black Farmer Restoration Program

Currently, a House Bill titled the Black Farmer Restoration Program is pending in the South Carolina House of Representatives.²⁹⁰ This Bill would amend the South Carolina statutes to add, in pertinent part, a mandate that the USDA “establish the Black Farmer Restoration Fund to purchase farmland on the open market and grant it to eligible individuals, . . . establish certain requirements and limitations for the program, . . . [and] establish the ‘Farm Conservation Corps’ to provide training in an on-field environment for socially disadvantaged residents.”²⁹¹ This bill, however, may simply die in committee as its federal equivalent did.²⁹²

As often noted, economic growth in the South Carolina Low Country can mean sacrifice on the part of the Black community.²⁹³ However, “[i]f diversity and the survival of [Low Country Gullah/Geechee] culture are of importance to the larger community, then further legislation must be enacted that recognizes cultural values of land that differ from those of the dominant population.”²⁹⁴ Ogawa posits in her thesis that “[a] windfall to the community and real estate investors of enacting such legislation could be preservation of much more green space and thus a much more desirable community than would be possible with market-driven development alone.”²⁹⁵ However, legislation to preserve the Black-owned lands in the Low Country is not a potential “windfall”; it is a necessary step to preserve one of the most historically recognized cultures in America.

²⁸⁹ H.R. 3540, 125th Gen. Assemb., 1st Spec. Sess. (S.C. 2023) (pending in Committee on Agriculture, Natural Resources & Environmental Affairs).

²⁹⁰ H. 3543, 124th Sess. (S.C. 2021).

²⁹¹ *Id.*

²⁹² A similar bill, entitled the Justice for Black Farmers Act of 2020, was introduced by Senator Cory Booker (D-NJ) and co-sponsored by Senators Elizabeth Warren (D-MA) and Kirsten Gillibrand (D-NY) in the United States Senate during the 2019-2020 session. S. 4929, 116th Cong. (2020). After two readings, the bill was referred to the Finance Committee, after which there was no action, meaning that the bill “died” in committee. *Id.*

²⁹³ See, e.g., Darryl Fears & John Muyskens, *Black People Are About to Be Swept Aside for a South Carolina Freeway—Again*, WASH. POST (September 8, 2021, 8:00 PM), <https://www.washingtonpost.com/climate-environment/interactive/2021/highways-black-homes-removal-racism/> (on file with CUNY Law Review).

²⁹⁴ Ogawa, *supra* note 48, at 2-6.

²⁹⁵ *Id.*

b. New Laws to Quiet Title and Family Trusts

In some northern jurisdictions where heirs' property ownership is also troublesome, laws have been enacted to speed up and decrease the costs of actions to quiet title in cases involving heirs' property.²⁹⁶ Because of provisions that allow for the "class" of heirs to be closed after a certain number have been identified, rather than requiring the usual exhaustive search for all heirs to the property, these laws make the costs of quiet title proceedings more reasonable for the heirs' property owners.²⁹⁷

In addition, after the title is cleared, a family trust can be established to delineate the duties of the heirs—who will pay the taxes, who will pay for property insurance, who will inhabit the homestead, etc.²⁹⁸ Significantly, additional heirs can be added as owners after the quiet title action has concluded and the family trust has been established.²⁹⁹ In fact, this can be one of the established duties of the trust itself.³⁰⁰ Such a mechanism would be impactful in the South Carolina Low Country to prevent additional loss of Black-owned property.

²⁹⁶ See, e.g., Sarah Breitenbach, *Heirs' Property Challenges Families, States*, STATELINE (July 15, 2015, 12:00 AM), <https://perma.cc/56PZ-SEUT>. A quiet title action is a court action filed for the purpose of establishing the rightful owners of a property. See Hugo A. Pierce III, *Heirs Property the Problem Pitfalls and Possible Solutions*, 25 S.C. L. REV. 151, 154-55 (1973). The goal of these actions is to provide "clear title" to the property in question. See *id.* at 151. Significantly, as early as 2015, approximately 30 states and the District of Columbia had adopted "transfer-on-death laws" that make it possible for owners to designate someone who will acquire the deed to their property when they die. Jennie Lin, *States That Allow Transfer-on-Death Deeds for Real Estate*, NOLO, <https://perma.cc/WVM3-AWQK> (last visited May 5, 2023). Neither North Carolina nor South Carolina has adopted these new "transfer-on-death" laws. *Id.*

²⁹⁷ See, e.g., Intestate Succession Act, N.C. GEN. STAT. § 29-7 (1959); Uniform Partition of Heirs Property Act, 755 ILL. COMP. STAT. 75 (2019); 20 PA. CONS. STAT. §§ 2101-14. "[Prof. Thomas W.] Mitchell has asked the Uniform Law Commission to consider a new reform that would allow heirs to shift to a more stable form of ownership without the consent of all the owners who hold a fractional interest." Reynolds, *supra* note 68, at 59. "At present," according to Mitchell, "if someone wants to stabilize ownership through a limited liability company, for example, [they] may have to get dozens of people to agree The unanimity requirement is locking these families into this dysfunctional ownership structure." *Id.* (internal quotations omitted). "[Mitchell's] proposal would require a lower percentage of owners to reach a consensus to change a property's ownership structure," and although he "has not established what the threshold percentage would be . . . it would require the creation of a new law rather than amendments to the Uniform Partition of Heirs Property Act." *Id.*

²⁹⁸ Bailey et al., *supra* note 154, in Gaither et al., *supra* note 147, at 17.

²⁹⁹ See 65 AM. JUR. 2D *Quieting Title* § 61 (2023).

³⁰⁰ *Id.*

c. *Reparations*

The call for reparations—atonement for the evils of chattel slavery, civil rights abuses, and other systemic racist inequities visited upon Black people in America—has been growing.³⁰¹ By its very meaning, such a remedy is clearly not one that can be had at law; rather, reparations are an equitable remedy.³⁰² In the case of Black land loss, equity would look back at the past harms visited upon descendants of slaves and seek to redistribute resources accordingly.³⁰³ As my former research assistant once wrote, “Black people cannot work themselves out of the results of institutional racism, rather there must be concerted policy action to eliminate disparities in the same way policy action created them.”³⁰⁴

It would be tremendous if, as a form of reparations, those properties lost by Black landowners in the Low Country due to historical (and continued) systemic inequities were returned to their families. Although it was once thought impossible or certainly impracticable, recently, California returned the historically Black-owned Bruce’s Beach to the family from which it had been seized.³⁰⁵ In that case, Charles and Willa Bruce bought a property called Bruce’s Beach in 1912 in what would later become the city of Manhattan Beach, California.³⁰⁶ The Bruces built a resort for Black families where they would not have to contend with racist harassment.³⁰⁷ However, in 1924, city officials “condemn[ed] the land through eminent domain, claiming to need it for a public park.”³⁰⁸ This taking was admittedly motivated by racial animus in an attempt to drive out Black-owned business and its patrons.³⁰⁹ Under action that was taken

³⁰¹ Kindaka Jamal Sanders, *Re-Assembling Osiris: Rule 23, the Black Farmers Case, and Reparations*, 118 PENN ST. L. REV. 339, 342 (2013). Reparations are “relief afforded to members of a racial, cultural, or ethnic group to repair the presumed harm caused by a historic injustice. African[]American reparations are, more particularly, defined as a debt owed to African Americans to repair the presumed harm caused by slavery and its vestiges.” *Id.* Sanders goes on to explain, “The Black Farmers case qualifies as a reparations case in part because of the historical circumstances justifying relief. The idea of reparations connotes past injuries not redressed at the time of their creation but left to fester over time.” *Id.* at 353.

³⁰² *See id.*

³⁰³ *Id.* at 353–55, 365.

³⁰⁴ Precious N. McLaughlin, Atonement or “Special Treatment”? Why the 14th Amendment Demands Black Reparations (paper written for Race & the Law and supplied for research of the article) (on file with author).

³⁰⁵ Jesus Jiménez, *Los Angeles County Votes to Return Beach Seized in 1924 from a Black Family*, N.Y. TIMES (June 28, 2022), <https://perma.cc/2UHW-CK59>.

³⁰⁶ *Id.*

³⁰⁷ *Id.*

³⁰⁸ *Id.*

³⁰⁹ *Id.* Though the Bruces hired attorneys and fought the eminent domain action, they lost. *Id.* Jiménez writes in his article that “[t]he city of Manhattan Beach paid them \$14,500, and kept the land until it was transferred in 1948 to the state, which transferred it to Los Angeles

in an attempt to “right the wrongs of the past,” after an escrow process, the property will be transferred back to the family, “and the county will then rent the property for \$413,000 a year while maintaining a lifeguard training facility there.”³¹⁰ Additionally, the family also has the option to sell the land back to the county for an estimated value of \$20 million.³¹¹

This same process would be welcomed in the Low Country, where similar takings and loss at the hands of the USDA and other governmental agencies are tangible and demonstrable. While naysayers see it as merely aspirational, this equitable remedy is certainly workable. With the aid of technology, claims for reparations by Black landowners could certainly be researched—spearheaded by legal counsel or non-profit organizations—and verified by the appropriate local officials before lands were returned or some form of monetary recompense paid if the land could not be returned.³¹² Looking back at the last 150 years since Reconstruction, such a remedy may be the only way to close the wealth gap, born of the unlawful practices of our government institutions so long ago.

V. CONCLUSION

If we are our ancestors’ dream, we must be better caretakers of their legacy. In the Low Country (and, perhaps, so many other places), our legacy is our land. Our culture is our land. Hence, we must act strategically to preserve both our land and our culture. Moreover, what becomes clearer every day and with each acre lost is that history informs the future, and the future is now. Organizations, federal and state governmental agencies, the bar, and the bench must all come together to remove historical impediments to Black wealth.

The racial caste system, which so long ago brought African slaves to this country and has consistently supported institutions and social and economic policies that impeded their path to wealth even after hard-fought freedoms, must be disemboweled. What is incumbent upon us all is to identify and deploy all stakeholders in our land and cultural

County in 1955. The county ultimately developed a public park on the nearly 7,000-square-foot parcel.” *Id.*

³¹⁰ *Id.*

³¹¹ *Id.*

³¹² While most of the records supporting claims of Black farmers being denied USDA (and local affiliate) loans were reportedly discarded three to seven years after the application date, other methods to support such claims for reparations do exist, e.g., affidavits of the farmer’s descendants (or others) with memories of the past events leading to the loss of the land, along with land sale or transfer records of Black farmers’ property corresponding to that time. See Megan Buechler, Note, *The Never-Ending Drought for Black Farmers: The Lasting Effects of Pigford and the Continuance of USDA Discrimination*, 61 U. LOUISVILLE L. REV. 223, 238 (2022).

preservation efforts. The alarm has been sounded; all affected parties must heed the clarion call.