

HEIR PROPERTY: LEGAL AND CULTURAL DIMENSIONS OF COLLECTIVE
LANDOWNERSHIP IN ALABAMA'S BLACK BELT

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Janice Frew Dyer

Certificate of Approval:

Robert Zabawa
Adjunct Professor
Agricultural Economics
and Rural Sociology

Conner Bailey, Chair
Professor
Agricultural Economics
and Rural Sociology

Mark Dubois
Associate Professor
Forestry and Wildlife
Sciences

Charles Faupel
Professor
Sociology, Anthropology and
Social Work

Joe F. Pittman
Interim Dean
Graduate School

HEIR PROPERTY: LEGAL AND CULTURAL DIMENSIONS OF COLLECTIVE
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Janice Frew Dyer

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Signature of Author

Date of Graduation

VITA

Janice Frew Dyer, daughter of Charles and the late Nancy Frew, was born February 14, 1981, in Savannah, Georgia. Janice graduated from Grissom High School in Huntsville, Alabama, in 1999. After graduating *magna cum laude* with a Bachelor of Arts degree in Journalism from Auburn University in August of 2003, Janice went to work for the *Mobile Register*. She entered graduate school at Auburn University in May 2005 in the Department of Agricultural Economics and Rural Sociology.

THESIS ABSTRACT

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LANDOWNERSHIP IN ALABAMA'S BLACK BELT

Janice Frew Dyer

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When a landowner dies without a will, his or her descendents inherit the property as a communal interest. Heir property, as it is often called, is a common form of landownership among African Americans in the rural South. Because title to the land is not clear, there are many legal complications: ineligibility for housing programs, inability to secure a mortgage or sell timber, and vulnerability to land loss through partition and tax sales. Despite these problems, heir property is still common and many families make no attempts to clear their titles. While the legal implications of heir property are well documented, the cultural side to this phenomenon has been largely ignored. Based on

personal interviews with heir landowners and others, this thesis examines why, despite the numerous problems associated with it, heir property persists and how it may serve as a source of social, cultural, and familial security.

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I. INTRODUCTION

When a landowner dies without a will, state law regulates what happens to the property, which may be passed down communally to family members. The existing literature describes heir property, as land held in this form is commonly referred to, as a cause of land loss among African Americans, and as a constraint to economic development in predominantly black communities. In his book, *The Mystery of Capital*, economist Hernando de Soto (2000) illustrates how informal property systems hinder economic development and stifle capitalism. Most people and organizations interested in this subject view the presence of heir property in rural areas as inconsistent with modernity and unhealthy to economic stability and growth (Thomas et al. 2004; Gilbert et al. 2002; Zabawa et al. 1990). I will review literature supporting these arguments and, based on face-to-face interviews with heir landowners and other knowledgeable respondents, provide a culturally-based explanation for the persistence of heir property in Alabama's Black Belt.

Using literature that explains the benefits of black landownership (Brown and Christy 1994; Gilbert et al. 2002; Nelson 1979; Salamon 1979) and the different land use objectives of black landowners (Gan 1999; Gan et al. 2003; Zabawa 1991), I argue that heir property serves a number of purposes and that it may be a source of security and a home in a time of struggle. Heir property must be evaluated in the context of poverty and

power structures, as well as adaptive cultural mechanisms involving familial relations, ownership rights, and community socialization. Literature on common property demonstrates how land held communally can achieve balance, benefiting both the ecosystem and those with vested interests in the property. The works of Batteau (1982, 1983), Falk (2004), and Stack (1996) lay the groundwork for cultural connections between land, family, and power structures in rural America.

Whether the advantages of heir property, such as keeping land in the family or having a place to live that allows for flexibility, outweigh the risks involved in living on and owning such property is dependent on individual situations. So many factors – including economic, political, and social – need to be considered. Another consideration is the number of actors, or stakeholders, who may be affected by the presence of heir property. Each one may have a different perspective on its usefulness. Developers and real estate speculators may think heir property is a waste of space. Bureaucrats may view it as inconvenient and the source of legal problems. Residents may view heir property as a place to call home and a traditional way to keep familial ties strong. Even within families there may be differing levels of functionality, especially since not all the landowners live on or near the land (see Gilbert et al. 2004; Thomas et al. 2004; Zabawa 1991).

While many may view clearing the title to the land as the obvious solution to the challenges presented by heir property, researchers should examine the consequences of such action. The land loss literature details various ways land is lost – or taken – from African American families. For decades, the amount of land owned by black landowners declined while the size of landholdings owned by absent, white, upper class individuals

increased (Zabawa et al. 1990). However, statistics show that this trend may slowly be reversing.

Between the 1950s and early 1980s there was a significant decrease in the number of farms operated by both whites and blacks (See Table 1). However, black and nonwhite populations experienced the brunt of the decrease. For the United States in 1954, there were 4,298,766 white-operated farms, compared to only 2,186,609 white-operated farms (a -49.1 percent change) less than three decades later (U.S. Bureau of the Census 1956b, 1983b). In that same time frame in the state of Alabama, the number of black-operated (or nonwhite-operated; see Table 1) farms experienced a -94 percent change – from 46,032 farms to 2,759 (U.S. Bureau of the Census 1956a, 1983a).

Statistics released by the USDA's Census of Agriculture (USDA 1992, 2002) show that the trend toward black land loss may have turned a corner in the 1990s. Between 1982 and 1992 the number of black-operated farms nationwide dropped from 33,250 to 18,816, representing a -43.4 percent change in 10 years. For the state of Alabama, there was a -50 percent change during that time (from 2,759 to 1,381). The next 10 years marked a drastic increase in black-operated farms. In 2002, there were 29,090 black-operated farms nationwide and 2,350 in Alabama. While the numbers for 2002 were still lower than those reported in 1982, they offer hope that black farm loss may have subsided. Statistics from these years also demonstrate that the amount of acres owned by black farmers has followed similar trends at both state and national levels – with negative percent changes between 1982 and 1992, and positive percent changes between 1992 and 2002.

However, as Gilbert et al. (2002) note, in 1997 the USDA took over the Department of Commerce's duties and conducted the Census of Agriculture for the first time. The authors say that because of this, the 1997 census provided the most accurate count of black farmers that had been done in some time. Therefore, the authors argue, "the trend line is misleading; in all likelihood, the number of black farmers continued to decline sharply in the 1990s as in previous decades" (2002:4).

These statistics reveal a need for more research and updated literature that can account for the changes in the past several decades, as well as determining what factors led to such changes. And as positive as these changes are, the numbers of black-owned farms and farm acreage are still not at their former levels. Black land loss still remains a concern and heir property still an important component in that concern. Heir property is commonly cited as the "traditional form of farmland ownership among blacks" (Zabawa et al. 1990:113), so as long as heir property exists, there are black landowners.

Many African Americans living in the rural South continue to struggle against inequalities on a daily basis long after the Civil Rights Movement (see Duncan 1999; Stack 1996). Many feel there has been a systematic effort to remove black farmers and landowners from their land, and in many cases, their livelihood (McIver 2003). Whether the persistent poverty found in Alabama's Black Belt is the result of attitudes and values passed down through generations (Lewis 1970) or institutional and social mechanisms that contribute to an oppositional culture (Wilson 1987), victims become socially dislocated. They are forced to find ways to survive within society's structure.

Those living in the geographical or social isolation that often accompanies poverty remain vulnerable to political and economic structural changes. They must

adapt, utilizing the tools their culture has equipped them with (Duncan 1999). As demonstrated by Batteau (1982; 1983), value placed on land and landownership relates to class and status. Land may represent certain values to one person and very different values to another. A developer may view a piece of property as an economic opportunity while a low income family may see that land as a source of political, social or psychological stability. For many families, deep cultural roots, tradition, stability and social ties are more important than the possible economic advantages associated with clearing the title or selling the land.

Objectives

The purpose of this study is to explain the persistence of heir property as a prominent form of African American landownership despite risks and limitations associated with this form of collective ownership. A better understanding of the cultural side of heir property ownership may help a number of organizations, such as housing programs, farmers' cooperatives, and tax collectors, to better serve the public. The answer to the "problem" of heir property may not be to eliminate it, but to understand why it persists, what advantages it may offer, and how to protect those who prefer this form of landownership. The following is a list of specific objectives pursued.

Objective 1: Develop a clear understanding of what heir property is and the legal processes involved.

Objective 2: Examine what kind of legal constraints a communally-held deed presents to heirs, especially regarding harvesting timber and housing program eligibility. (I use the terms *heir*, *heir landowner*, and *co-owner*

interchangeably to represent a landowner's descendent who shares possession of property with other descendants.)

Objective 3: Examine how partition sales are forced and conducted, as well as the outcomes of such sales on the heirs.

Objective 4: Develop a multidimensional characterization of heir landowners in Alabama's Black Belt with an emphasis on a cultural approach to land.

Objective 5: Identify further research opportunities and propose ways in which this research can be used to improve services available to low-income heir landowners and to help combat African American land loss.

Research under Objective 1 examined the technical definition of heir property.

The task was to review literature on the subject, most of which is in reference to African American land loss in the South. Research included an examination of legal terminology, processes and definitions. Research under Objective 2 was similar to that under Objective 1, relying heavily on literature and legal documents. I examined connections between legal constraints and the social and economic statuses of those who face them.

Research under Objective 3 involved examining consequences of partition sales, both those forced by outside developers and those sought by heir landowners. This information was collected through interviews with lawyers and courthouse personnel.

Research under Objective 4 was the most involved and extensive. Through personal interviews, a number of variables were examined and interpreted. Because no form of sampling frame exists for the research population, sampling units were selected through purposive sampling. Research under Objective 5 included examining what programs are in place already to help individuals at risk for land loss.

What is Heir Property?

Few African Americans living in rural areas have estate plans. A study conducted by the Emergency Land Fund in the 1980s revealed that about 80 percent of African American rural landowners did not have such plans (Thomas et al. 2004). There are several possible explanations for this: distrust of the legal system, superstition, lack of education, and reluctance to do something that may cause friction between family members (Zabawa 1991).

When an individual dies intestate – or without a properly probated will – his or her property becomes heir property. According to state laws of descent and distribution, property is passed down to the deceased landowner's family members, who inherit the land communally. Individuals each receive a fractional portion of the land based on how many generations removed from the deceased they are. The land is not divided, nor is the deed to the property. All decisions regarding use of the land, such as building permanent structures, using the land as collateral for loans, harvesting timber or leasing plots, must be agreed upon by all those entitled to the land. Thus, the economic value of heir property as a source of income or repository of wealth is limited because of difficulties in collective ownership.

These difficulties increase with each passing generation of landowners who die without wills. Landowners' ownership interests decrease in size, but the number of landowners increases. Heirs may not live on the land, know one another or know how to get in contact with each other. Often the land is managed by one heir or by a small group of heirs. Management of heir property is difficult because of confusion about who owns what and how much. Poor management leads to other problems, for example, taxes may

not get paid and the land taken away (Thomas et al. 2004). Because it is difficult to keep track of who is (or should be) paying taxes, the land may be lost to the tax office or to real estate speculators, who acquire the land through “adverse possession” by paying the taxes themselves. Landowners have trouble contacting one another and organizing to save the property and it may be sold to recoup unpaid taxes.

One study reviewed by Gilbert et al. suggested that “poor quality farmland, inefficient use of land, and input cost increases all contribute to the inability to pay property taxes” (2002:8). But not all land loss because of taxes is the result of the irresponsibility of owners: “Procedures for notifying landowners when their taxes are due are often lax – sometimes purposely so when it comes to blacks – and vast amounts of black-owned land have been intentionally lost via this tactic” (Brooks 1979:121).

Heir landowners may also fall victim to partition sales. A co-owner may decide to have the land sold and does not need the consent of the other heirs before seeking such a sale. One or several co-owners sue the remaining heirs, forcing a court-ordered sale of land (usually at a fraction of its true value) to the highest bidder. Family members who live on the land are usually unable to out-bid others, such as developers or real estate speculators (Brooks 1979; Thomas et al. 2004). Proceeds are distributed among the co-owners according to their fractional interests, but only after the costs of conducting the sale and attorney fees are deducted (Thomas et al. 2004). In some cases, developers may purchase a distant relative’s share, then ask to have this share sold – forcing the whole tract of land to be sold (Zabawa 1991).

One option landowners have to clear the deed to the land while keeping it in the family is to perform a partition in kind. Through this type of partition, land is physically

divided up among co-owners based on fractional interests. After the land is surveyed, property lines are drawn for each person. Each co-owner then receives a deed for his or her portion of the land. Partitions-in-kind are performed under a written agreement that is signed by all of the co-owners and is filed and recorded in the local courthouse. In the agreement, each subdivided parcel is described. Partitions-in-kind may be done by court order if an heir petitions the court to divide the property. Individuals can also petition the court to have his or her undivided interest “carved out” of the whole parcel (Thomas et al. 2005).

In his study, Zabawa (1991) examines the impact multigenerational landownership has on farmland. His article, subtitled “Strategies to Preserve a Scarce Resource,” is concerned with how black-owned land is passed on to succeeding generations and what effects it may have on access to participation in commercial agriculture. “Problems associated with heir property,” he states, can “hinder farm productivity” (1991:74). Holding land in heir title may prevent farmers from improving the land for fear that other heirs may decide to sell their shares and investments would be lost. Also, with each succeeding generation, the number of shares increase, while the size of shares decrease – making it more difficult to farm or reach consensus about land-use decisions. Zabawa concludes that farmers must be informed about many of the issues found in this thesis – partition sales, tax sales, and wills – as well as their options, to have any hope of preserving such a scarce resource.

II. METHODS AND SETTING

This research relies heavily on qualitative data – mostly personal interviews conducted in casual settings. The names of heir landowners and one community have been changed. The population I have worked with includes African American heir landowners who own land in Bullock and Hale counties in Alabama, as well as people in professional positions with exposure to the types of problems caused by heir property. Names of interview subjects were initially collected through interviews with the Bullock County Cooperative Extension System agent and the Hale County Housing Resource Center director. At the end of each interview, I would ask the respondent who else they would recommend to interview. Through this snowball approach, I identified more names. Snowball sampling is a technique in which the researcher asks initial participants to identify or recommend other individuals who may be appropriate, interested, or willing to participate in the research. This method of sampling is prone to introducing bias because participants are likely to recommend those with similar interests. To help counter this, I asked participants to identify individuals who may have different viewpoints.

My primary data collection technique was detailed semi-structured personal interviews with heir landowners and those knowledgeable about the legal implications of heir property. Information was provided by 31 respondents, including 12 people holding

(or have held in the past) ownership interests in heir property, as well as lawyers, housing program counselors, workers in the Revenue Commissioner's office, probate judges, a circuit clerk, and more. Secondary analysis of literature helped to frame the research historically and theoretically. Initial stages of the research were spent reviewing literature on issues relevant to heir property, especially land loss and benefits of landownership.

I allowed participants' responses to direct and shape interviews as they proceeded. The questions I asked were intended to gather factual information and attitudinal data about the respondent's socioeconomic status and cultural approaches to land and landownership. Factual information included type of home, size of property, number of heirs (when known), length of residency, and number of co-owners residing on the land. Attitudinal data included opinions about housing services, importance of landownership, benefits sought from landownership, and expectations of the future. My research focus is on how heir landowners view their land and what role different variables play in their approach to land management.

The interviews with individuals in professional positions were semi-structured, with questions based on their specific occupational duties. Because interviews were held in public offices during working hours, they were kept short, ranging from 20 minutes to an hour. Those interviewed spoke about the topic from both a professional standpoint (sharing on-the-job information) and a personal standpoint (sharing stories about their friends or members of the community). The informants were asked to generalize about people in the community – both their personal acquaintances and those they interact with through their work. Handwritten notes were taken during the interview sessions with

additional notes added within 24 hours. Snowball sampling was used to identify these informants. When deemed necessary, follow-up interviews were conducted to answer more questions or clarify earlier statements.

With each interview, I followed the procedure outlined by the Institutional Review Board (IRB) to ensure that human subjects were not harmed or put in any risk. Each respondent was given a letter containing information about the research project. For those respondents interviewed over the telephone, the letter was mailed to them. Names, telephone numbers and e-mail addresses of those conducting the study were provided in the letter if the respondent had any questions or concerns about his or her participation in the research. The letter also guaranteed the respondent's answers would be kept confidential. This is especially important when dealing with a population who is vulnerable in many ways and for whom protections must be put in place to protect their most valued resource – land. Respondents were also assured their participation was entirely voluntary and they could stop the interview at any point. For this thesis pseudonyms are given to landowners and any real names used are done so with the consent of the respondents.

A key informant in Hale County provided sources for interviews with heir property residents. These interviews usually lasted from about 30 minutes to an hour and a half and kept informal. In an attempt to keep the interviews as comfortable as possible, no schedule was followed. Questions were asked based on the information already provided and the comfort level attained. Handwritten notes were taken during the interview sessions. During the car ride after several interviews, a tape recorder was used to record notes, ideas, opinions, comments, or any information not written down. This

proved to be very helpful and a convenient way to pass the time on the long car rides home. I completed as many interviews as I felt necessary in order to secure a good grasp on the legal issues as well as a more holistic understanding of the personal and cultural dimensions involved. I spoke with co-owners who viewed heir property as something good that should be protected, as well as with heirs who thought heir property was a problem that needed to be addressed or even eliminated.

Because many co-owners do not think of their land in terms of communal ownership, but rather as their own land, gathering the names of individuals with interests in heir property was difficult. How owners hold their land does not become an issue or something they even think about until something needs to be done, like applying for funding for home repairs, getting a mortgage, or going to court to settle a partition action. For many people, the land they live on, pay taxes for, and take care of is their land. Everyone's situation is different and I realized early on that making generalizations about all heir property owners would be a mistake. I decided instead to develop a series of mini-case studies, trying to find heir property owners who had managed their land in different ways. Case studies allow for richness in description and a more nuanced understanding of the complexities of every situation. Through each person's story another piece of the puzzle takes shape. While the puzzle is not complete, the compilation of these narratives allows the reader to get a clearer picture of what heir property is and how it affects individuals in different ways.

Research Setting and Demographics

Bullock and Hale counties were selected as the sites of my research for several reasons. Bullock County was appealing because of its proximity – it is located less than an hour from Auburn, saving time and money. Also, little research has been conducted in Bullock in comparison to other Black Belt counties. As one source in Union Springs lamented, the county is often “ignored” by researchers, who often focus only on counties in West Alabama.

Hale County was selected because of contacts already in place that have been established by my colleagues during their research. Hale County is also home to Auburn University’s Rural Studio – an important component in the project funding this research. Because of the School of Architecture’s innovative program, and the worldwide attention it receives, the residents of Hale County are accustomed to visits from outsiders interested in the houses and living conditions of the county’s poorest citizens.

Bullock and Hale counties are considered two of Alabama’s Black Belt counties because of the high number of African Americans living there, many in poverty. A lot of literature has been devoted to the Black Belt, examining education, joblessness, landownership and a number of other factors. This region of Alabama is “home of persistent poverty, poor employment, low incomes, low education, poor health, high infant mortality and dependence” (Bukonya 2005:2). In 1998 data, the Black Belt region was shown to have an estimate of 28 percent of its residents living in poverty – compared to 15.7 percent for Alabama and 12.7 percent for the nation (Bukonya 2005). The region has lower educational attainment rates compared to those of Alabama. There are low high school graduation rates in the Black Belt, and because a high school diploma is often

the minimum requirement for jobs, this is one obstacle to employment “and thus a factor in the social construction of poverty” (Bukonya 2005:7). Many people living in Alabama’s Black Belt region rely on forms of income other than salaries and wages, including pensions, social security, and welfare and disability checks. According to data from 1999, almost 30 percent of Black Belt residents’ personal income is in the form of these “transfer payments” (Bukonya 2005).

Some counties have received more attention than others, understandably so. Sumter County has been the focus of many articles, even a television series, because of the controversial waste landfill there. Hale County has been the subject of interest because of the progressive Rural Studio operated by Auburn University’s School of Architecture. Macon County boasts Tuskegee University and the Airmen National Historic Site. Wilcox County is home to Gee’s Bend, a small town famous for its quilters and the unique works they have produced over the decades, fighting against the injustices of poverty, racism and regionalism. Regardless of their levels of recognition, all of the counties in Alabama’s Black Belt struggle against these and other challenges.

Bullock County

Bullock County is located in southeastern Alabama, wedged beneath Macon County and to the east of Montgomery County. Bullock County is within an hour’s drive of a number of fast-growing metropolitan areas including Montgomery, Auburn-Opelika, and Columbus, Georgia. Because of this, it has the potential to be the site of future development. The county, named after a Confederate colonel, Edward C. Bullock, has a history of land struggles. Creek Indians were the original inhabitants of the area, but in

1814, with the adoption of the Treaty of Fort Jackson, they were forced to surrender the western half of the area to settlers. Less than 20 years later, because of the Cusseta Treaty, the rest of the area was taken away from the Creeks. Bullock County became home to a number of settlers, many from Georgia and the Carolinas, who took advantage of the fertile soil, setting up plantations (“Union Springs” 2005). In 1866, the Alabama Legislature formed Bullock County from parts of four surrounding counties: Pike, Macon, Barbour and Montgomery. Union Springs is the county seat and known as the “Bird Dog Field Trial Capital of the World” (“Union Springs” 2005). Approximately 73 percent of the land in Bullock County is under forest coverage and much of it is owned or managed by African Americans (Gan 1998). Farming and timber production are among the largest industries in the county.

Bullock County is one of the least populated counties in the state, with fewer than 12,000 residents spread out over 626 square miles. According to the U.S. Census Bureau, in 2000, 73.1 percent of Bullock County’s residents identified themselves as Black or African American (See Table 2). This high number of blacks in the county is only one statistic that characterizes the county as part of the state’s Black Belt. Economic characteristics collected by the Bureau reveal how Bullock lags behind the rest of Alabama and the nation in many ways. Nationwide, 9.2 percent of families lived below the poverty level – compared to 29.8 percent of families in Bullock County. Of the 811 families in the county that lived below poverty level, 740 of them were black (about 91 percent). The median household income in 1999 in the U.S. was \$41,994. For African Americans in Bullock County, it was \$15,979.

One factor in low income communities nationwide is education. For the U.S. in 2000, 80.4 percent of Americans had high school degrees. For residents of Bullock County, 60.5 percent had high school degrees. Of those with high school degrees, about 61 percent were black. As noted by Bukenya (2005), many in Bullock County rely on forms of income other than wages and salaries. Nationwide, in 2000, 19.3 percent of Americans qualified for disability status. In Bullock County, 29.5 percent of its residents qualified and about 86 percent of those were black.

Hale County

Hale County is located in west-central Alabama, south of Tuscaloosa County. While still considered a part of Alabama's Black Belt, Census Bureau statistics suggest that Hale County is less poor (fewer people living below poverty level) than its counterparts (See Table 2). Also, its proximity to Tuscaloosa and Birmingham has likely allowed for a larger population. Like Bullock County, Hale was also named after a Confederate officer: Lieutenant Colonel Stephen Fowler Hale, who originally hailed from Greene County (located to the west of Hale County). Also similar to Bullock, Hale was created from four surrounding counties. Portions of Perry, Marengo, Tuscaloosa, and Greene counties formed Hale. Most of the county was part of Greene County before being created by Alabama Legislature in 1867 ("History" 2006). Now the two counties are separated by the Black Warrior River.

The demographic profile of Hale County is slightly better than that of Bullock, but Hale still lags far behind the rest of the nation in many respects. Hale County has a population of more than 17,000 and a total area of 656 square miles. In response to the

2000 Census, 59 percent of the county's residents identified themselves as Black or African American. Compared to 9.2 percent nationwide, 22.2 percent of the families in Hale County lived below poverty level – 83.1 percent of those families were black. The median household income in Hale County was \$25,807 and for blacks in Hale County it was \$17,565 (less than half the U.S. median). In comparison to 80.4 percent nationwide, only 65.2 percent of residents in Hale County had high school degrees and less than half of those respondents were black (47.9 percent). In 2000 in Hale County, 29.7 percent of respondents had disability status (slightly more than Bullock County) and of those respondents, 59.2 percent were black.

III. BLACK LANDOWNERSHIP – HISTORICAL CONTEXT

Racism in the past and present is a major contributor to black land loss (Gilbert et al. 2002). Factors in land loss identified by the Land Loss Fund (Land Loss Fund 2005) and the Federation of Southern Cooperatives (Thomas et al. 2004) include lack of estate planning resulting in heir property, tax sales, partition sales, land sales to non-African Americans, limited access to legal counsel, forceful land takings, discrimination by public and private institutions, and failure of the USDA and the land grant complex to provide adequate information and resources to small farmers.

Land has been taken from African Americans through unlawful means, involving violence, legal exploitation and trickery (Thomas et al. 2004; McIver 2003). “Torn From the Land,” a three-part web documentary, was the product of an 18-month investigation in which Associated Press reporters examined tax records, deeds, mortgages, and estate papers, and interviewed, among others, families who had lost land (McIver 2003). The AP discovered instances in which land takings involved murder, intimidation, threats, arson, and even arrests of African Americans on trumped up charges in order to force families to sign over their land. In some cases, the government even took part in the land takings, and in others it approved or stood idly by (McIver 2003). Dr. Marcus Tillery, a lead activist with the Land Loss Fund, states that “African Americans should understand

that land loss is not by accident. It is a conscious effort to rid Blacks of income-producing abilities” (McIver 2003:101).

Fighting back in an unjust system can be difficult, especially for African Americans. Blacks living in rural areas often don't have access to legal counsel (Thomas et al. 2004; Gilbert et al. 2002). Lacking knowledge about their legal rights, they often fall prey to speculators and lawyers (Land Loss Fund 2005). This is one of the problems several organizations are trying to solve through public education and assistance.

Studies have shown that lending agencies, public and private, have been unresponsive to the needs of rural black farmers. Individuals were often misinformed by lending agencies, received less money than requested or did not receive it in a timely manner. Requests for loans were denied at a much higher rate than those made by white applicants (Gilbert et al. 2002). The Land Loss Fund reports that between 1984 and 1985 the USDA distributed \$1.3 billion to 16,000 farmers nationwide. Only 209 of those farmers were black (Land Loss Fund 2005).

Black Landownership in the 19th and Early 20th Centuries

There is a long history of land loss among African Americans. To fully appreciate the implications of heir property for today's rural African American, it is important to understand this history and the role it plays in forming attitudes toward landownership.

Before the Civil War, landownership was not a privilege available to most blacks in America. Slavery was a way of life and even those fortunate enough to be free were

still often restricted to lives of hard labor and few rights. When slavery was abolished it was quickly replaced with a new form of subjugation – sharecropping.

The Reconstruction era (usually considered to be 1865 to 1877) was a time of radical change in a racially charged country. Americans were forced to build a new political, social and economic system to replace that which had been destroyed (Gilbert and Eli 2000). Approximately four million freed slaves had to figure out where they belonged in this new system. While those who had sided with the Union army had been promised freedom and their own land, legal measures (as well as illegal) were taken to ensure they did not receive these privileges. There began numerous debates about what was to be “done about the Negro.” Prominent abolitionist and author Frederick Douglass had a simple answer: Nothing. Freed slaves had a right to work, receive an education and shape their own futures. Many former slaves understood the importance of landownership and viewed possession of property as a way to protect their families, assert their newfound freedom and rights, and “secure the goodwill of whites” (Schweninger 1990:77). Buying a small lot of land upon which to build a home and live in peace became the ambition of many freedmen. To own the land they once tilled and harvested for someone else was more than just an economic investment – it was a symbol of independence. For some, landownership “released them from the control of their former masters” (Schweninger 1990:145).

Thaddeus Stevens, a congressman from Pennsylvania, proposed what would eventually become known as the “40 Acres and a Mule” program. The idea was that freed slaves were to be given 40 acres of land to farm and a mule to pull the plow. Stevens introduced the bill (which made no mention of mules) in 1867, but it was

eventually defeated by Congress. Much of the land that had been assigned to freed slaves was rescinded and returned to the white plantation owners. Since that time, the expression “40 Acres and a Mule” has come to represent broken promises of the Reconstruction era.

However, during this time (1860s and 1870s) a significant number of blacks were able to acquire small portions of land, particularly in remote and infertile regions and in places where military authorities or missionaries assisted former slaves (Schweninger 1990). One such place was Beaufort County, South Carolina, where by 1870 about 1,200 former slaves owned land – the highest number for any county in the South. About a decade later (a time when many whites were losing land) approximately one-fifth of blacks who operated farms in the South had become landowners (Schweninger 1990). However, blacks tended to own smaller tracts of land worth less per acre than those owned by whites (a trend that, in some places, has not ceased). In the decades that followed, the number of black farmers who owned land began to increase – rising from 21 to 24 percent between 1890 and 1910. During this 20-year span the percentage of whites who owned their farms dropped from 65 to 60 percent. Schweninger sums up this increase of black landownership:

“It is difficult to view this period [1860-1915] without being struck by the remarkable expansion of black property owning. In rural and urban areas, in the Lower and in the Upper South, former slaves and their children continued to purchase land, homes, and businesses during periods of depression, racial hostility, and violent intimidation. Considering the political, economic, and institutional barriers they faced, the prejudices of

whites, and the general backwardness of the South itself, it is not surprising that most Negroes remained landless, but it is surprising that by the early twentieth century at least 426,449 blacks in the South were farm owners and homeowners” (1990:184).

Acquiring land during this time was no easy feat. Blacks were not the only ones who were the subjects of threats and harassments. In some places, if a white person sold land to a black, he or she may have been physically attacked (Schweninger 1990). Also, in some cases, even if a freed person was able to purchase property, his or her name may not have appeared on the deed. During the early 1800s it was illegal for blacks in Savannah, Georgia, to own land, so they had to hold their real estate in the name of whites or buy buildings on a white person’s land. Other barriers faced by blacks may have led to complications regarding deeds and passing land to succeeding generations. For example, it was illegal to teach slaves to read and write, so many freed people were unable to leave proper wills. Also, Jim Crow laws, which mandated discrimination against blacks, prevented many from access to legal assistance. A combination of these factors no doubt contributed to the tradition of verbal bequeaths among black landowners.

Sharecropping

Sharecropping, by 1868, was “well on its way toward becoming the principal replacement for slavery and the dominant economic arrangement in postbellum southern agriculture” (Royce 1993:2). There are several different explanations for the rise of southern sharecropping – which employed white farm workers as well as former slaves –

but certain conditions undoubtedly played a role and cannot be ignored. After the Civil War there existed a class of large landholders, often with immense political power. The South continued to rely on cotton cultivation while there was a lack of demand for black labor in the North. There were many poor, black (and white) workers for whom mobility was limited or uneconomic. At this point in time, technology was not advanced enough for there to be incentive toward mechanization. Some authors (citing the “good-reasons” argument) state that sharecropping emerged because it represented what was in the best interests of both the freed people and the landlords (Royce 1993). Authors even debate who emerged “victorious” from this arrangement. There is no doubt, however, that tenancy was a difficult way to earn a living – backbreaking work that often yielded few rewards. Laborers farmed land owned by whites and worked under conditions controlled by whites. For many in the South, sharecropping was not much of an improvement over slavery.

Outmigration

After the Civil War, there began an exodus of African Americans out of the South. For 1922, the Department of Agriculture reported that 324,000 blacks left farms of the South for towns and cities elsewhere during that year. The move was to industrial centers “almost exclusively” – usually in the North and East (Davis n.d.). Davis cites a number of reasons for the exodus, including poor schools and homes, boll weevils, unfair suffrage laws, “extortionate charges of creditors,” low wages, and “cheating in the handling of cotton” (n.d.:401). But, he says, the exodus was “largely due to low returns for labor on southern farms and high returns for labor in industrial cities” (n.d.:401). In

1913, the average annual income for a black tenant was \$290 (less than a dollar a day), versus several dollars (usually between \$4 and \$7) per eight-hour day in industrial centers.

Davis cites boll weevils as another cause of the exodus. Destruction caused by the spread of the boll weevil, he says, was paralleled by the migration of black farmers from the South. He states migration from rice and sugar-cane sections of the South was small in comparison. Davis also cites changes in immigration laws as cause for the exodus. Arrivals from foreign countries dropped from 1,200,000 annually to 350,000 – creating a shortage of labor. Black tenants were often eager to fill this shortage. However, Davis states, few black landowners left the South. They owned land and had the means to support themselves. It wasn't until the early 1970s that the exodus “gradually dried up” and a reverse migration began to pick up speed (Stack 1996).

Federal Involvement

On April 30, 1935, Roosevelt issued an executive order creating the Resettlement Administration. The Resettlement Administration was formed to help solve “the problems of poor people and poor land” (Staten 1987:171). Its aim was to help families who had been hit by the Depression, giving them a chance to make a living off their land. The Resettlement Administration had three main functions: “to relocate destitute families from unsuitable agricultural lands or from areas that were depleted of timber or mineral resources; to carry out land conservation projects, stanching soil erosion and restoring fertility; and to help struggling farm families in areas suitable for agriculture by providing them with both loans and technical assistance” (Beardsley et al. 2002:24). The

Resettlement Administration chose to focus on tenant farming. Tenant farming, despite its obvious hindrance of economic and social progress, increased steadily, especially during the Reconstruction era and through the Great Depression. The Administration hoped to reverse the trend and oriented its focus on self-sufficiency through individual farm ownership (Beardsley et al. 2002).

In 1937, the Resettlement Administration was abolished by Congress, prohibiting the government from buying any more land for resettlement projects. In September of that year, the Farm Security Administration was created by the Secretary of Agriculture. The FSA assumed the responsibility of completing and managing projects that were already under way (Cannon 1996). Credited with helping the U.S. meet demands for food around the world during World War II, the FSA, like many other Resettlement programs, became obsolete soon after. In 1947 the organization was replaced by the Farmers Home Administration. The FmHA, referred to by some as the “lender of last resort,” was a product of the New Deal era (Staten 1987). It was designed to give loans to farmers who could not obtain them elsewhere. The program’s objective was to provide credit to borrowers in rural areas who might not be eligible for loans within the private sector (Staten 1987). Congress authorized the FmHA to provide funding for housing, community facilities and business ventures in rural areas.

As participants of the Resettlement project, farmers were kept under the watchful eye of the government. Their financial affairs and agriculture endeavors were closely monitored. The government had become their landlord and creditor (Cannon 1996). There were farmers’ groups throughout the nation that expressed discontent with Roosevelt’s New Deal programs. The Farmers Independence Council did not believe

there should be any governmental regulation of farmers and ranchers at all. Groups felt federal regulation should be in the form of controlling prices and cost production. Choate explains: “All felt that the New Deal farm program was not working, showed favoritism, and was an intrusion on traditional agrarian independence” (2002:190).

The image of these programs as instigators of black ownership is problematic itself. “The landless status of southern blacks can be traced directly to the failure of the land-reform movement during Reconstruction,” Nelson (1979:85) states, “[i]n the absence of federal policy undergirded by federal pressure, only limited amounts of confiscated federal property passed into black hands.” Even years after these programs were created and many later abolished, a large number of rural African American farmers continued to suffer under the double handicap of being small producers and black.

Contemporary Issues

Black-operated farms are usually smaller in size than their white counterparts, with almost half of the former being smaller than 50 acres (Land Loss Fund 2005). African American farmers usually specialize in livestock and have lower farm incomes. Most depend on off-farm income, with farming as their secondary source of income (Gilbert et al. 2002). African American farmers are usually over 55 years old (Brown and Christy 1994). The Land Loss Fund says that in the late 1980s, there were fewer than 200 African American farmers under the age of 25 (Land Loss Fund 2005). Black farmers are also often poor and educationally disadvantaged and therefore face institutional barriers when applying for loans or entering product markets (Brown and Christy 1994). Economically disadvantaged farmers find it very difficult to enter

production agriculture because of high start-up costs. The trend in production agriculture is toward larger farm sizes and technology today is geared toward such enterprises (Brown and Christy 1994). A common goal among many black farmers is to own a portion of the land they farm (Zabawa 1991), but many barriers stand in the way.

The Farmers Home Administration is repeatedly mentioned in literature for its failure to serve those who needed their help most. Brown and Christy state that “many recent studies concluded that FmHA’s programs failed to advance, and in some cases may have hindered, the efforts of African American farmers to remain a viable force in agriculture” (1994:5). Without adequate credit, African American farmers cannot invest in machinery, land or other production inputs that would help increase production and profits. They are often forced to farm less productive land repetitively, depleting the soil. These factors, along with lack of access to information about market opportunities and technological developments and assistance, weaken the farmers’ competitive position and many leave agriculture production (Brown and Christy 1994).

In 1994, through a reorganization of the USDA, the FmHA was disbanded. A new Farm Service Agency took over the farmer programs and the housing programs became part of the Rural Housing Service, a Rural Development Agency. “The FmHA programs have been expanded and diversified,” Collings (1999:102) states, “but have essentially maintained the basic ‘no credit elsewhere’ concept.”

In 1997 a class action lawsuit (now *Pigford v. Johanns*) was filed against the USDA for discrimination against black farmers. The farmers said they had been denied loans because of their race – there was a higher rejection rate of black applicants than their white counterparts (Gilbert et al. 2002). Sometimes when loans were granted to

minority farmers, they were received long after planting season or they were for reduced amounts – with no explanation. If farmers made official complaints of discrimination, they were often ignored or processed slowly and the USDA would continue with foreclosure proceedings in the meantime. Employees who discriminated against black farmers were not being held accountable for their illegal actions.

Two years after the lawsuit was filed a settlement was reached through which the USDA issued \$900 million in payments to black farmers who could prove they had been discriminated against (Hardin 2006). The payments averaged \$50,000, with the more extreme cases receiving much higher payments. As of January 2006, about 22,400 claims had been decided – 14,300 of which were approved for payments. In addition to payments to farmers, the USDA also sent additional monies to the IRS to cover past taxes (Phelps 2006). However, more than 70,000 farmers who submitted their claims past the filing deadline were left out of the settlement.

The National Black Farmers Association feels the campaign to inform potential litigants of the settlement (which included advertisements on television and in newspapers and magazines) was not properly designed and many were left uninformed. In June 2006, a bipartisan House bill was introduced to give those farmers a second chance (Hardin 2006). The bill, which was sponsored by Alabama Congressman Artur Davis, would allow farmers who submitted claims late to have those claims heard and considered on their merits (Quaid 2006; Hardin 2006).

The USDA in general, not just its funding programs, has also come under attack for its failure to respond to farmers' needs. Critics argue that the USDA does not provide adequate technical, marketing and research assistance to limited-resource farmers (Land

Loss Fund 2005). In their review of studies, Gilbert et al. state that critics also “accused the USDA of ignoring research that would help small-scale and limited-resource farmers and of failing to include minority populations in outreach efforts to raise awareness of federal programs” (2002:11).

Land grant universities have also been the targets of much criticism for their allocation of research resources. They have been accused of focusing their efforts on large corporations and ignoring the needs of the independent family farmer (Gilbert et al. 2002). The land grant college complex has played a large role in transferring control over food production from the farmer to the industry (Hightower 1978). One explanation of this trend is offered by Berry: “That the colleges of agriculture should have become colleges of ‘agribusiness’ – working, in effect, against the interests of the small farmers, the farm communities, and the farmland – can only be explained by the isolation of specialization” (1977:154). Agribusiness corporations have been the primary beneficiaries in a system that prioritizes efficiency, automation, and a highly and vertically integrated and corporatized agriculture (Hightower 1978).

As Berry and Hightower explain, land grant universities have failed to meet educational goals and the expectations of a desperate public. Berry observes differences in the educational ideals of Thomas Jefferson and Justin Smith Morrill, the Vermont representative who first envisioned a “collegiate institution” dedicated to the education of farmers and mechanics. Morrill, Berry says, lowered the “educational standard from Jefferson’s ideal of public or community responsibility to the utilitarianism of Morrill” (1977:147). Because of this emphasis on practicality, the purpose of the land grant colleges “has shifted from usefulness to careerism” (1977:147). Curricula in land-grant

colleges are geared around the job market, resulting in agribusiness-oriented classes. Only a small percent of students in colleges of agriculture plan on being farmers – most plan on entering the corporate side. The land grant complex continues to pursue goals of production at the expense of rural communities instead of utilizing expert knowledge to serve public ideals. Hightower states: “The public has a right to expect that those intellectual and scientific resources be more than a subsidy for corporate agribusiness” (1978:6).

Because most African American farmers are small producers, they are already at risk for land loss. For them, farming is not just a form of income, but a way of life. With today’s emphasis on big farms and major technological advancements, small farmers walk a fine line. Accessibility to funds, technical assistance and research are crucial to the future of agriculture and black landowners.

Benefits of Landownership

When examining the causes and ramifications of African American land loss, it is important to explore what kind of benefits landownership provides that may be difficult to acquire through other means. The value associated with land comes in more forms than just dollar signs: “Most importantly, it is the use of the land, leading to a sense of personal power and independence, that makes land ownership valuable” (Zabawa 1991:68).

Objectives of landownership vary significantly. Land may be used for farming – growing crops or raising livestock. One study of forestland owners in the Black Belt discovered their objectives were split between timber and nontimber production (Gan et

al. 2003). Land can be used for hunting, recreation or watershed protection. In a 1994 study, the researcher found that almost half of the minority forest landowners surveyed in Macon and Bullock counties identified timber production or wildlife (hunting) as their ownership objectives (Gan 1998). Fuel wood was another popular objective. However, this study also revealed that many landowners did not manage or fully utilize their resources, citing lack of capital, labor, and knowledge of forest management and marketing practices as major constraints.

In some cases, landowners have multiple objectives – many of which are not income-producing. The notion of land as more than an economic resource is not a new one. In recent decades, the importance of landownership as a source of political and social strength and stability for rural African Americans has been well documented (Brown and Christy 1994; Gilbert et al. 2002; Nelson 1979; Salamon 1979; Zabawa 1991; Zabawa et al. 1990).

Landownership provides a level of independence difficult to achieve otherwise. Because of this independence, black landowners are more inclined toward political and civic actions. In the Civil Rights Movement of the 1950s and 1960s, landowners often emerged as local contacts and leaders of grassroots movements. They were often the first to register to vote and were active in civil rights organizations and protests (Salamon 1979). They had a sense of stability and there was no fear of being kicked out of rental property. Landowners could also offer their land as a refuge to weary civil rights workers. This form of hospitality “proved as vital to the movement’s success as any sit-in, speech, demonstration or march” (Gilbert and Eli 2000:146).

Landownership provided a sense of security and independence to blacks long before the Civil Rights Movement as well. In his book, which focuses on black landowners during the late 18th through early 20th centuries, Loren Schweninger (1990) explains how self-confidence derived from the acquisition of property: “Owning sizable tracts of land, competing successfully with whites in the marketplace, building up impressive herds of livestock, and purchasing slave laborers themselves, some free black colonists acquired a sense of well-being” (1990:16). Schweninger states that those who owned property were more likely to assert themselves in their communities, even in states that had been under British control. Black landowners who felt their property was threatened would voice their opposition to government authorities.

Studies provide insight to other ways in which landownership contributes to rural life: property taxes and shopping at local businesses contribute to the local economy; instills stronger feelings of value and self-worth among farmers; helps to develop a political power base; and leads to a stronger sense of community and shared values (Gilbert et al. 2002). In their article, Gilbert et al. state that landownership is important “because it is a form of wealth, not just income. As such, it can provide a spur to economic development and broader investment, including the education of children” (2002:5). Widespread ownership of land also ensures a more equal distribution of power and wealth.

Nelson discusses the importance of landownership in a society where property is power: “In a society based on capitalism, landownership becomes an essential and unalterable prerequisite for economic development and the exercise of substantial political influence” (1979:83). If the land is used correctly, Nelson states, it can become a

significant tool in the political empowerment of a black community. Lack of such a valuable resource, however, “can have a crippling effect on the mobilization potential of the black community in the political process” (1979:85).

Much of the land loss literature focuses specifically on the loss of African American owned farms, perhaps because of the vital role they play in their communities. Zabawa states that family farmland is the “initial source of human capital (i.e., on-the-job training)” for children in the family (1991:70). The land also, he says, “allows a person to start farming earlier in life, and together family land and early entry increase the potential for future success” (1991:72). Brown and Christy (1994) examine the importance small farms and farmers play in community stability. Small farms, they say, “fill an economic need by providing local market niches and establishing a competitive yardstick against which prices and quality of products of the commercial farm sector can be judged by the consumers” (1994:2). The authors found that small farmers are more supportive of community growth than large-scale farmers and their farms may serve as a stable source of labor and can attract new businesses to rural areas.

Without some form of economic stability, rural African Americans remain at the mercy of local elites. As the number of black farmers dwindles and landholdings by absent, white, upper class individuals increase, the significance of black landownership, and the security it provides, remains strong. In Alabama’s Black Belt, many residents face challenges described by Batteau (1982; 1983), Duncan (1999), Falk (2004), and Stack (1996). Heir property, and associated benefits of landownership, may be one adaptive mechanism individuals use to gain independence and to strengthen familial relations, create community, and provide a home. But the consequences of keeping land

under heir ownership – substandard housing, lack of a timber market, and vulnerability to land loss – cannot be ignored.

IV. THEORETICAL FRAMEWORK

Like most social, environmental, and economic systems, heir property is not one-dimensional. No one theory can explain why it persists in some places and not in others. There's no easy explanation for why it leads to family conflict in some situations and family cohesion in others. The best researchers can hope for is to use theories as a map – as a tool to explore different directions and understand the outcomes and possibilities individual cases represent. Families are so different and to assume each one will follow certain patterns is naïve. Instead of trying to understand why certain outcomes happened, researchers should first examine what factors – social, cultural, economic – may have played a role in decisions and actions leading to those outcomes.

Mystery of Capital

In his book, *The Mystery of Capital*, Hernando de Soto (2000) tries to explain just what his subtitle says: “Why Capitalism Triumphs in the West and Fails Everywhere Else.” De Soto, a Peruvian economist, argues that success at capitalism is not due to cultural differences, but determined by legal structures of property and property rights. De Soto views capitalism as the “only game in town” (Federal Reserve Bank of Minneapolis 2001) and it is clear that as an economist, Hernando de Soto's primary concern with property is how it can be leveraged for economic wealth. While his work

fails to consider the cultural side of informal ownership systems, it does provide insight to how such systems can inhibit economic development. He also offers a glimpse into the West, what it values, and, more importantly, *how* it values it.

In 1999, *Time Magazine* selected de Soto as one of its five leading Latin American innovators of the century. During the late 1980s and early 1990s, de Soto and the Institute for Liberty and Democracy (ILD) worked together to modernize Peru's economic system through laws and regulations. This included a land reform through which property titles were given to more than 1.2 million families ("Hernando de Soto" 2006).

His 2000 book, *The Mystery of Capital*, was based on five years of research by the ILD. In his book he details a history that many in the West have forgotten – the transformation from a system of informal, extralegal ownership to a formal, integrated property system. According to de Soto, because many countries in the Third World lack a formal, unified property system, the poor are unable to leverage their property into economic wealth. De Soto estimates that five-sixths of those living in the Third World possess the assets – but not the representational process – to create capital and escape from poverty: "They have houses but not titles; crops but not deeds; businesses but not statutes of incorporation" (de Soto 2000:7). De Soto estimates that approximately 80 percent of assets in countries like Egypt, Venezuela and Mexico are outside the legal system (Federal Reserve Bank of Minneapolis 2001). De Soto argues that if government and authorities in developing countries legally recognized the property held by the poor, they would be able to get out of poverty:

“But [the poor] hold these resources in defective forms: houses built on land whose ownership rights are not adequately recorded, unincorporated businesses with undefined liability, industries located where financiers and investors cannot see them. Because the rights to these possessions are not adequately documented, these assets cannot readily be turned into capital, cannot be traded outside of narrow local circles where people know and trust each other, cannot be used as collateral for a loan, and cannot be used as a share against investment” (de Soto 2000:5-6).

De Soto terms those assets that remain unrepresented as “dead capital.” By contrast, de Soto states, in the West, all properties (land, buildings, equipment) are represented by documents – pieces of paper that connect those assets through an intricate, hidden process to the larger economy. De Soto views property as the connection between capital and modern money. Because property requires people to be accountable and assets to be interchangeable, he says, it provides the mechanisms needed for the banking system and investments to function. It is within a formal property system that the existence of, transactions of, economic features of, and codes of conduct regarding assets are recorded and represented. Through such a system, a shared concept of value arises. Any assets that exist outside of that system become difficult to move in the market: “Without such a system, any trade of an asset, say a piece of real estate, requires an enormous effort just to determine the basics of the transaction: Does the seller own the real estate and have the right to transfer it? Can he pledge it? Will the new owner be accepted as such by those who enforce property rights?” (de Soto 2000:47). In

developing countries, exchanges of extralegal property are restricted to local circles. This property, de Soto says, remains an “untapped stock of potential energy” (2000:48).

De Soto does not define capital as money – though it can be represented and captured by money – but as “all those values that are hidden in assets and that come forth when property is well defined” (Federal Reserve Bank of Minneapolis 2001). Capital is the capacity to “bring out surplus value” from an asset defined in a property system (Federal Reserve Bank of Minneapolis 2001). Representational devices, such as paper documents, add additional surplus value to assets because they cut down transaction costs and can be inserted into a larger legal system. Property, de Soto argues, is a concept – a social contract that designates an object’s owner. What makes property valuable, he says, is how well defined that social contract is (Federal Reserve Bank of Minneapolis 2001). A well-defined contract that organizes and identifies assets in a property system allows for an increase in value. Property can then be used to generate solid money.

De Soto states that in the countries that were the focus of his investigation, the legal system often “breaks” migrants, forcing them to find ways of working outside the system: “Their only alternative is to live and work outside the official law, using their own informally binding arrangements to protect and mobilize their assets” (2000:21). In places where property rights are not legally, but socially, defined, it’s the “people’s law” (or “Hukum Adat”) that can be used to develop property systems. “Hukum Adat” is an Indonesian phrase meaning “cultural law” – where the state recognizes that such laws are legitimate and reflect important values found in society. De Soto says that in all places “people have agreed on some form of law on how they’re going to relate to each other regarding their assets” (Federal Reserve Bank of Minneapolis 2001). Property systems

should be built up around those realities, those social contracts, already in place. Instead of copying others' legislation, he asserts, public opinion should be taken into consideration.

De Soto uses United States history to illustrate his points, comparing pre-colonial and colonial U.S. to present-day Latin America. He argues that the disorder of 19th-century U.S. was little different from that found in developing countries today. De Soto states that the U.S. was once a Third World country itself, before a new law was structured and built. He asks his readers to consider 19th-century United States – a time when citizens were carving out for themselves a society that would later flourish under capitalism. Pioneers and squatters decided land value and ownership – not the government: “They believed that if they occupied the land and improved it with houses and farms, it was theirs” (de Soto 2000:17). Like official titles of today, these extralegal rights were bought, sold and transferred. Settlers and immigrants scratched out a path for the U.S. and the country's formal property system began to be built from the ground up. It was through interpretation of the “people's law” that the United States built up its property system. De Soto argues that developing countries need to do the same: “To integrate all forms of property into a unified system, governments must find out how and why the local conventions work and how strong they actually are. ... these extralegal social contracts ... (can) be assembled to build a property and capital formation system that will be recognized and enforced by society itself” (2000:162).

Common Property

While many would not identify heir property as common property, much of the theoretical framework applies. Common property, sometimes called community ownership, emerged as a catchphrase in the 1980s and 1990s development theory (Bennett 1996). Under a common property regime, natural and other resources are collectively owned and used by a group of people, usually community members. Preservation and consumption are regulated by that group and outsiders are barred from access. Users in a common property system view coordination of strategies as more beneficial than dividing the property up among private owners with clear land titles. Private ownership, Otsuka and Place explain, “may create an inequitable distribution of benefits from natural resources. Furthermore, farmers may not be able to protect their own properties if it is costly to exclude other users” (2001:5).

Under common property systems, a balance is sought between overexploitation of the resources and unnecessary reduction of benefits available. Each system has its own rules of accessibility. Different criteria, such as age, kinship or citizenship, determine whether someone may become a member of the organization. Common property systems, Bennett (1996:168) explains, do not exist in a vacuum and must “function within larger institutional contexts, like markets, trade associations, or government bureaus, that present a variety of constraints and opportunities.” It is theorized that if a resource is the responsibility of a group of users, they will be less inclined to exploit what is available. However, Bennett points out, “the treatment of resources is rarely dependent exclusively on the users but also on external forces and agencies” (1996:168).

Bennett discusses several implications for common property regimes in his book *Human Ecology as Human Behavior*. He points out that such institutions go “against the grain” of most socioeconomic organizations, thus requiring special indoctrination systems and social reinforcement (1996:187). Another challenge Bennett reflects on is the accumulation of wealth, which may lead to possessiveness and greed. If such behavior goes unchecked, he states, it can lead to “cyclical disintegration” (1996:188). A common property system does not, he says, guarantee equality among the members. Outside cultural patterns or religious beliefs may influence an individual’s status, as well as more common criteria such as age, sex and skill level.

Common property systems, Bennett explains, are not immune to change. They, like most institutions, go through cycles of decline and rehabilitation. Tensions may arise in response to changes that challenge existing rules. The type of property and extent of communal ownership both play roles in determining the success or failure of the system. Finally, Bennett observes, there exists a link between collective organization and resource conservation. However, he notes, that link “is by no means a simple causal relation” (1996:189). Resource practices vary and respond to larger institutional contexts – the outside world. Market pressures, Bennett says, will induce exploitation of the resource, but the concerns of resource sustainability and future generations remain consequential.

In their article “The Emergence and Outcomes of Collective Action: An Institutional and Ecosystem Approach” Fudemma et al. (2002) examine individual incentives to participate in collective action – specifically in a communal floodplain. The authors state that a social analysis of those who choose to participate in common property

regimes can offer insight as to *why* they elect to collaborate with others. Individual household assets as well as perceptions guide such decisions. In the authors' study area, collective action was initiated by a group of local leaders who had an interest in maintaining access to the land – the area had a history of threats to that access. The leaders, the authors state, had strong kinship ties. Management of such property requires groups to share information, resolve conflicts, and coordinate actions. Through these group activities, the authors state, “the development of trust and reciprocity contributes to an enhanced social structure that strengthens relations among individuals and thus helps to build social capital” (2002:504).

Cultural Value of Land

In his work, de Soto clearly depicts the economic ramification of holding land in an informal, undocumented manner. However, in his discussion of “capital” he strictly refers to economic capital and fails to consider that those who own such land may have a relationship with it that excludes monetary considerations. After all, land is not a piece of paper – it is the ground one builds a home on, the soil one tills or the grass one's children play ball on. As the common property literature seeks to explain, relationships are formed not only with the land, but between individuals regarding the land. Environmental, social, familial, and cultural values are formed, instilled, and cultivated through the land. Different forms of capital – social, human, cultural – may be nurtured by land and the activities that take place upon it. Values, norms, and goals manifest themselves through individuals' land-use decisions.

Culture is not something specific that can be pinpointed and specified by geographic location. It is a culmination of ideas, norms, rules, behaviors, beliefs, and much more that provide the tools necessary for civilization to survive and to thrive. These tools allow individuals to adapt, diversify, conform, and evolve in order to best respond to changes and utilize resources in their social and physical environment. In discussing something as personal and defining as land, it would be an injustice to ignore the cultural aspects of ownership. The works of Batteau, Falk, and Stack provide insight into such aspects and help readers understand that for those with little else, land can mean so much.

Batteau

Allen Batteau (1982; 1983) explores how the value placed on land is closely related to an individual's class and status within his or her community and society. As a cultural anthropologist, his research focuses on Appalachia – another region noted for its persistent poverty and high rate of welfare dependency. Appalachia, like many parts of the South, is also known for its natural resources. In “Rituals of Dependence in Appalachian Kentucky” Batteau states that “the paradox of ‘rich land, poor people’ that many have noted for Appalachia is no paradox at all, for it is precisely those regions richest in natural resources that are the most inviting targets for outside capital and consequent underdevelopment” (1983:143). Like many in the rural South, people's lives in Appalachia are often dependent on the success of industries reliant on (and often destructive of) those natural resources. But, Batteau emphasizes, this pattern of dependence goes beyond commercial relationships, often “exerting a pervasive influence

on all areas of life” (1983:144). Families, he says, “dangle from multiple dependencies on country stores, politicians, welfare offices and landlords” (1983:154). This manipulation is an instrument of control, a way in which the “superiors” gain economic, political, and social clout at the expense of the subordinates. One way to escape dependency, Batteau explains, is through landownership – provided one is willing to forgo opportunities for substantial income. But even if someone owns land, its value may be lessened by certain characteristics, such as not having a road.

In “Mosbys and Broomsedge: The Semantics of Class in an Appalachian Kinship System,” Batteau (1982) emphasizes that land is not just an economic commodity to the people of Appalachia. The amount of land one owns is less important than the personal relationships associated with that land: “The conflict over land in Appalachia is not simply an economic dispute; it is a conflict over the values and integrity of groups and communities” (1982:463). Batteau states that conceptions of locality and different values assigned to land represent a systematic arrangement of the class status and struggles of those involved. Landowners are perceived as upstanding members of the community, while renters are viewed as unstable and deceptive.

Decisions about land use have political and social implications: “[A]ny decision as to the use of the land, whether as homeplace or factor in production, is a political statement of affiliation with one group or another. ... The mountain people’s relationship to the land organizes their group structures internally ... and externally” (1982:461-62). For a group of people who have so little, land represents so much. Control over land has been a main issue in the struggle between the mountain people and more powerful groups in society. Part of the struggle, Batteau says, is over the very definition of the value of

land. Unlike real estate speculators or developers, the people of Appalachia view the land as integral in maintaining familial ties and passing on values to succeeding generations.

To help illustrate his point, Batteau develops the notion of *set*: “[T]he *set* is not simply a category of kinship but rather an entity established by the intersection of kinship and local and personal identities and statuses” (1982:457). The *set* involves the “control of kin, marriage, reputation, and localities” (1982:453). Family land is important in the supervision of kinsmen, making sure they vote right and uphold the family reputation.

While there is so much to struggle against when living in poverty, a monetary value cannot be placed on family relations, reputation and stability. Oftentimes land is the glue that holds these together. Batteau states: “In Appalachia, the socially valued good is land ... land is *not* a commodity. It takes on other meanings – as a status resource, a tie between neighbors, and a homeplace. In this patrimonialization of land, in redefining it as ‘family land,’ one sees an effort to secure it against market competition and use it in the mobilization of political and status resources” (1982:463).

Falk

In *Rooted in Place*, William W. Falk (2004) tells the story of an extended family that has lived in the Georgia-South Carolina Lowcountry for generations. He shares anecdotes about work, education, race, religion, and family. He seeks to understand why African Americans in this Black Belt community would chose to stay in a place afflicted by racism and economic disadvantage. What he finds is a connection between race and place. Through familial and social ties, as well as their personal histories, residents form

deep cultural roots with land, which becomes part of their identity and they a part of its identity.

Falk talks about how many of the local black people in the area felt their land had been “stolen” by white developers. For white developers, he says, land transfer “is a simple business transaction” – a way to make money. But, Falk says, “For local black folk, it is anything but this: it is taking something from families whose roots in America are found there, usually back to the Reconstruction era. For them, the issue is not dollars and cents but rather a cultural identity tied to the land” (2004:131).

Falk believes that rural people of all ethnic backgrounds experience connections to their homeplaces; but he also believes there is an especially unique connection between land and identity for African Americans. They were the only ethnic group to be bought and sold in the U.S. “For blacks,” Falk says, “working the land, especially owning it ... was a reflection of self-determination and freedom” (2004:176-177). The land serves as a reflection of who they are and what they endured to get where they are. In some ways, it can also serve as a reminder of how far they still must go. The land connects African Americans to family, identity, their past and their future.

Stack

In her 1974 book *All Our Kin*, Carol Stack looks at family life among urban-dwelling African Americans – particularly those whose parents had migrated to the city from the South. Many of those she studied had been raised on welfare and were raising their children on welfare. She witnessed complex networks among friends and family members who supported one another through an exchange system of goods and services.

These networks were adaptive mechanisms allowing those at severe economic disadvantage to survive. Reciprocity was not a social formality – it was a necessity. What few resources there were available to residents of “The Flats” were distributed, shared, and exchanged through these social-cultural networks. Poverty, Stack says, creates a need for families who cannot survive independently to rely on one another. These kinship circles do not occur by accident – members are actively sought out and reciprocal obligations made clear. Standard definitions of “family” and “household” become obsolete, replaced by culturally specific definitions that allow for a better understanding of how those in Stack’s work were able to survive against the odds.

Family networks, sharing sparse resources, and struggling against racial barriers are common themes in Stack’s later work, *Call to Home*. In this book, Stack (1996) discusses the story of a reverse exodus – African Americans returning to the South – many hoping to make profound changes in their poverty-stricken communities. Through a series of narratives, Stack demonstrates the importance of relationships and human capital. Many found that the education and experience they acquired up North did not translate to immediate success back home. They continually faced bureaucratic barriers and resistance by the white community. Like many rural Americans, they recognized the problems in their communities, but felt there was little they could do to change the situation. Some individuals and communities made efforts to address those problems, but structural barriers often stood in the way of progress.

In one chapter of her book, titled “Unlovable Land,” Stack discusses the importance of landownership and the harsh realities that accompany ownership. Many of the subjects of Stack’s chronicle were the children and grandchildren of sharecroppers.

Stack tells the story of one woman who saved money for three years, finally leaving her husband and the North to return home with their children. They lived with no electricity on a piece of land so overgrown she couldn't walk the perimeter. She never figured out exactly how much land she owned, but it was home. Stack tells another story of how land was so significant to one family, when their ownership was threatened, the father killed himself to provide his wife with enough income to hold on to the land.

Stack also tells the story of "Nora," a woman who was the envy of her neighbors because her mobile home had been bricked up along three sides, and because she had inherited her father's land – ten acres. But one stipulation was that Nora could not sell the land. "Nora believed that this limitation was a great comfort for her and all the family. The land tied them all together. It gave focus and purpose to family relationships – the land itself was a family relationship" (Stack 1996:31). For Nora, the land was much more than a place to live, it was a bedrock supporting her family for as long as she could remember. "Thank God my parents made me a landmark," Nora says, "Without land, a person is at the mercy of the white community" (1996:32).

The works of Batteau, Falk, and Stack all illustrate the importance of landownership for rural Americans living in poverty. While cultural values of these groups may differ, commonalities exist between marginalized landowners fighting against elites who control local policies and economies.

V. LEGAL ISSUES RELATED TO HEIR PROPERTY

Legal difficulties encountered by co-owners are probably the most well-documented aspects of heir property. On the Internet and in non-profit and academic literature, discussions of partition and tax sales dominate what information there is. Because these are perhaps the most harmful ramifications of heir property, it is no wonder they appear to be at the forefront of communication about the topic. When I told one lawyer that I was researching heir property he had only one thing to say: “It’s a disaster.” Among the legal community, this appears to be the consensus. However, what doesn’t appear to be in consensus is just how big a problem heir property is. While everyone in the legal sector agreed it is a problem that needs to be fixed, there were varying opinions about how to fix it, why it persists, or how significant of an impact it has on the community.

One lawyer took care to explain that there is no legal term for property passed down once someone dies intestate. Heir property is a term used by people who know what it is, but, he says, “There’s no such animal.” This lawyer knows full well the impact that heir property can have on families, having participated in several partition sales cases. “Quite often,” he says, “people up North come back and want to use their homeplace.” This is where much of the trouble begins.

Another attorney, who is also white, works in an office next to the Bullock County courthouse. She says she doesn't know how much land in the county (much of which is owned by paper companies) is held under heir title and figuring it out would be difficult. "I don't believe it's a big percentage, but it is a problem," she says. Even if there was only one land holding in the county under heir title, though, she says that would be a problem. She doesn't believe that people intentionally keep land under heir title: "As long as I have been practicing, I do not see a deliberate effort ... to keep heir property in limbo." She believes the issue just simply doesn't come up until someone does something or seeks something that requires a clear title. But until that kind of situation arises, the issue remains ignored. People who own their land in heir title do not talk about it in terms of being heir property. "The only thing they know for sure," she says, "is that they own a piece of property." That they own an undivided interest "doesn't sink in." As time goes by titles become more entangled: "That's the problem – when folks start dying off, (family members) forget that interest out there."

This lawyer does not believe that heir property is a leading cause of African American land loss. She says she doesn't see heir property as being as vulnerable to land loss: "I think what it is vulnerable to is confusion ... and inability to resolve anything short of a lawsuit." Although she knows that developers can and have bought heirs' interests in order to force sales of properties, "I don't think there's a concerted effort to deprive blacks of property," she says. But, she asserts, if she "thought for one minute that an injustice" was being done – that there was a deliberate attempt to take land from African Americans – she would be the first person "screaming in Washington."

A well-spoken, laid back black man works as a cartographer in the Revenue Commissioner's office developing maps for Bullock county. According to him, the two biggest problems contributing to heir property are a lack of education among landowners and the absence of heirs. He says that often, original landowners' children will move away, leaving remaining relatives to watch after the land, but those relatives do not have sole interest or control over the land. "The older ones are not told" what to do, he says, "and the younger ones don't have time" to deal with it. He also suspects that the younger folks don't appreciate and understand the value of land. All they're interested in is money, so they often sell land at a fraction of its value. Unfortunately, he says, "you can't grow more land."

Through my interviews with people in the legal community and through my visits with heir property owners, it is clear there is a lot of confusion surrounding deeds and ownership rights. In some cases, there is a deliberate effort by co-owners to keep land under heir title and these efforts stem from misunderstanding about the law. One attorney says he frequently has people come into his office wanting to write a will or a trust in such a way that the land can never be sold. "They just do not understand distribution and ownership of land," he says, and they get frustrated. But, he says, the rule against perpetuities states that real estate cannot be tied up forever.

Some people think that heir property is one way to tie real estate up forever. When they hear that the title is going to get worse and worse, they think that the more it gets tied up, the harder it's going to be for someone to sell it or the less likely it will be that it will be divided up or lost outside the family. To some extent, that may be the case. Most lawyers will not accept cases in which the number of interests is high and the parcel

size is small. The amount of work involved in identifying and tracking down each heir may not be worth whatever amount the land is sold for. However, no matter how divided up the land gets, one person still has the power to force the entire tract of land to be sold – even if everyone’s portions are miniscule.

In her past positions as a paralegal and as a housing counselor, one woman has seen the confusion surrounding heir property and its associated ownership rights. She says a lot of people don’t realize that the land is held communally: “They think: there’s 10 acres and 10 people” so each person gets one acre, “they don’t realize it’s undivided.” She also says that many people, especially the older folks, think that if they live on the land and pay taxes, then the property is solely theirs: “They don’t know there are brothers’ and sisters’ children in other states” also entitled to the property. She says she tries to tell people that if they don’t clear up the title, it is only going to get worse and worse. She says it doesn’t get through to them. “(Heirs) think that by keeping it heir property” it can never be sold and it is kept in the family. “It’s sad because every time someone dies it gets worse and worse.”

When an individual dies without a will, the deed to the land remains the same, under his or her name. The chief clerk of a probate office, a black woman, says people often come in wanting to put their name on a deed, unaware that they must go through a process with a lawyer. She also says that many people think that if they pay the taxes, they should be able to just put their name on the deed.

In her position as the Montgomery County Archivist, a white woman describes her position as the “collector and preserver of records” for the county. She also acts as supervisor for the recording office where people perform title searches regularly. It is

also where people file deeds. “There are a number of ways people are vulnerable to losing their land and they don’t know it,” she says. Part of this is “sheer ignorance of the law.” She gets frustrated that there is no one educating the public about legal issues: “That would be a really good thing if there was some kind of service that tells people how to do things like fill out a deed.” She says that Office Depot sells Quit Claim deeds (see glossary), but many people bring them into the office filled out incorrectly. “How are they supposed to know?” she asks rhetorically. She says they will sign their names in the wrong places on forms. But the clerks cannot correct them. “These clerks here are not attorneys and cannot give legal advice,” she says. And even if they could, they do not know enough to be able to give it properly. She says that lots of people cannot afford lawyers, but they don’t know how to do things themselves: “I’m sure that ignorance and fear of the law is what we see here – people trying to handle things on their own.”

Family members that communicate frequently, the cartographer in the Revenue Commissioner’s office says, are more likely to clear the title less expensively. However, hiring a lawyer and following the paper trail are both necessary steps in the process. According to an attorney and Auburn University professor, it is crucial that landowners understand they need a will and that an attorney is necessary when trying to clear titles to heir property. To go through the probate process without a lawyer is expensive and timely – probate judges will not walk individuals through the process. He believes many heir property owners choose not to clear the title to their land because they don’t understand that they have to go through the probate process or they feel it is too expensive.

The probate judge for Bullock County says that sometimes people will buy land without doing a title search or making sure that there are not any outstanding liens on the property: “People will lose property because they didn’t pay to make sure everything’s ok.” But these types of problems are less common than they used to be, he says. He always encourages people to hire lawyers when trying to handle these types of situations: “If you do your own (legal stuff) and something happens – it’s your fault.”

The probate judge for Montgomery County says his office sees more cases of heir property in the form of tax sales, “where somebody quits paying taxes or it gets passed along so many times, they forget they own it.” The judge believes that because of the high number of tax sales, heir property is “a common cause of land loss” among African Americans. If someone has failed to pay taxes on some property, the tax assessor’s office first sends out a letter, then a certified letter, then puts an ad in the newspaper announcing the delinquency for three weeks. Tax sales of property are then advertised in the newspaper. Once the land has been sold, families have up to three years to get their land back.

In Falk’s book, *Rooted in Place*, one subject talks about how people are constantly on the lookout for land they can acquire because someone has failed to pay their taxes: “Some of them older white people – take a lot of them right now don’t let a week pass and they goin’ through the books [to find buyable land]. See who don’t pay their taxes, and they buy it up. That’s what happen on a lot of land. Still happen, a lot of places” (2004:129).

Alabama is one such place. “I think the laws are so outdated,” the probate judge says of tax sales laws, “It’s awfully hard for these people to get their property back –

financially and legally.” Others who don’t own the land know this is the case. “(The law) encourages people to come in and take advantage” of those who are vulnerable or have slipped up on paying taxes. He believes that new policies could help heir property owners protect their land: “I would definitely encourage our legislative delegation to take a look at it.”

Heir landowners are not just vulnerable to tax and partition sales, but also to underhanded dealings involving other property rights as well. One heir property owner I spoke to said that a man who owned land adjacent to her family’s property had restricted them access to their own land. According to the cartographer in the Revenue Commissioner’s office, it is not developers who take advantage of heir property and other land as much as it is adjoining landowners. Showing possession, he says, is nine-tenths of the law. If an adjoining landowner can show he has possession of a portion of land – by enclosing it in a fence or building a structure on it – he will likely gain ownership of it. Adjacent landowners are also the ones who frequently purchase land through partition sales. The cartographer encourages people to have their land surveyed, otherwise they are more vulnerable to having an adjacent landowner creep over. In their 2005 landownership manual, Thomas et al. encourage landowners to choose a caretaker to check their land periodically for trespassers and squatters. The authors acknowledge that because many heir property owners do not live on or near their land, they are particularly vulnerable to adverse possession (see glossary). They advise that if heir property owners do discover someone illegally taking ownership of the land, they should avoid taking matters into their own hands and file a legal action against the perpetrator. Adjacent landowners taking land through adverse possession happens more frequently out in rural

areas because there are larger pieces of land that are less likely to be fenced in and landowners don't walk the perimeter of their property on a regular basis.

Heir property also often leads to vacant land. The probate judge of Montgomery County says that heir property results in lots of vacant lots and abandoned property in the region. Vacant land, as demonstrated in *Streets of Hope* (Medoff and Sklar 1994), is vulnerable to disinvestment as well as becoming dumping sites for trash. There are dilapidated homes and vacant lots scattered throughout Hale County. "Nine times out of 10 it's because of heir property," a housing counselor says. The probate judge says that land under heir title in Bullock County is also often abandoned: "They leave the property when somebody is deceased and they just leave it like it is."

Wills

A young black lawyer speaks like he's standing behind a pulpit in a crowded church on Sunday morning. While addressing a group of senior citizens during "Older Americans Month," the attorney acknowledged that there is a lot of discomfort about discussing elder law and, especially, wills. But, he says, "If we don't talk about it, the consequences can be far greater" in the future. The lawyer, a legal consultant with the Alabama Cooperative Extension System, invokes the old adage that an ounce of prevention is worth a pound of cure.

Statistics show Americans are living longer and, with scores of baby boomers reaching retirement age, the percentage of older Americans is increasing as well. "As Alabamians live longer," the lawyer says, "the legal issues associated with aging will increase." He realizes there's a bit of superstition regarding writing wills. "(People

think) it's like saying 'Hey Death! I'm ready!' ... but that's not the case," he says, "By doing it doesn't bring death and by not doing it doesn't keep death away." He also knows that some people are hesitant to draft wills or other legal documents because they worry about family conflict. "You don't owe anyone an explanation" regarding these decisions, he tells people, "Think about the right thing to do, not what you're pressured to do – it will work out better in the end for you."

There's a misconception, the lawyer says, that estate planning is only for rich people with lots of land. "If you have five dollars to your name," he says, "you should be doing estate planning." When asked why many people don't have wills, landowners I spoke with mirrored his statement that people don't think they have enough wealth to leave a will. Gwen, an open, warm woman who recently returned to the South to look after her elderly mother, who suffers from Alzheimer's, said that her sister is planning to help their mother write a will, but, Gwen says, her mother "don't really have anything to will that I can see." Samuel, a well-respected man in his community, responded similarly: "Most the folks I know didn't have anything anyhow. There's no need for a will." Samuel suspects, though, that most people who don't have wills don't make them because they lack education, not intelligence.

The cartographer who works in the Revenue Commissioner's office says that African Americans are hesitant to sign anything. He says they are often afraid that someone is trying to take something away from them. But, he warns, the lack of a will can be more costly in the long run and frequency of family communication may affect those costs.

The attorney and Auburn University professor says that heir property owners must realize that because the deed to their land is not clear does not mean a will is unnecessary. Even if a title to property is not clear, heir landowners can still leave interest to future generations through wills. If someone in the future decides to file a suit for partition or clear the title, the title search should eventually reach the individual who left a probated will. In their 2005 landownership manual, Thomas et al. encourage co-owners of heir property to leave their interests in wills because it can prevent further fractionation of interests.

The Case of Samuel

Samuel is an energetic black man who arrives at work before most people get out of bed. He wears many hats in his various civic and political positions in the county where he lives. Samuel's grandparents, when they died, left a house down in Florida. While legally the house belongs to a number of children and grandchildren, only one heir lives in the house with her family. "I don't see a benefit for us in that situation – it's nothing but a house," he says. While the deed to the property is not clear, the relative continues to pay taxes and live in the house.

But it is not this property under heir title in Florida that concerns Samuel. It is land left to him and his siblings through a probated will that gives him so much grief. Samuel's father had several hundred acres of property when he died. In an effort to keep the land in the family, he bequeathed the property as an undivided interest to his nine children in his will. Samuel's sister was selected as the executor of the will, but refused to distribute the property among the siblings as was stipulated in the estate plan. Five of

the nine siblings hired a lawyer to force her to execute the will as it was supposed to be. The probate judge agreed with the siblings and it was eventually settled. “The purpose of the will is so you don’t have to do all that stuff,” Samuel says. There was a will and it was eventually carried out, but not without costly effort.

Even now, there are still disputes over the land. The siblings cannot agree on what the land is to be used for. All but one wanted to rent farmland out. “It’s just sitting there right now, no income coming in.” Samuel fears the property is going to be lost “because we cannot agree [what to do with it]. So we are going to have to sell it.” Samuel’s father, who endured difficult times while trying to keep the land for the family, took the proper steps by writing a will. But in effect, he made it easier for the children to sell the land than if there had been no will at all. “I never would have thought I’d be in this situation,” Samuel says, “Never, ever, ever.”

Lawyers warn of the danger in leaving land in a will in such a way that it would be passed down in the same manner as if the landowner had died intestate – as an undivided interest. While Samuel’s father protected the land to some extent and the children held clear title to the land, it remained vulnerable in some of the same ways had it been left as heir property. Consensus is a necessity when managing common property and any deviant expectations or actions can lead to legal problems.

While Samuel knows it is important to have a will, and is currently researching options concerning his own will, he can’t help but be pessimistic about the benefits of having a will. As he saw with his father’s will, complications can still arise and property can still be lost. “What purpose does the will serve?” he asks, if the expectations and plans of the deceased are not fulfilled. “He [Samuel’s father] wanted to keep (the land)

in the (family) name ... (but) eight of us can't agree on who gets what out of 200 acres."

Samuel has reservations concerning leaving property to his children in his own will:

"What are they going to do with it? Are they going to sell it? Shoot, I can sell it now!"

Despite his own frustrations concerning wills, he says he would encourage people to make wills, as long as they make sure the executor is "balanced." Samuel says it is important to get someone who knows for certain what the individual wants done.

"I know for a fact," Samuel says, "Daddy didn't want us to sell his property." But Samuel cannot afford to buy the land from his siblings at several thousand dollars an acre. So Samuel is trying instead to figure out what to do with his share of the money once they sell the property. He says he's not going to spend it on just anything. He's considering investing in some more land, since that's what his dad had left for him in the first place.

Only wills that have been probated or deeds can transfer land. If a landowner writes a will and it is not probated, then it is considered invalid and the court decides what happens to the deceased landowner's property. "Land cannot pass by word of mouth – it has to be on paper," an attorney explains. And on official paper, he notes, not "some little scrap of paper (that says) 'Mama said I get this.'" Another lawyer says that decades ago it was expensive to write a will and have it probated. Landowners, she says, "thought it was an unnecessary expense." Many did not leave wills or they were not probated. And as time passed, the problems with land titles became compounded. "The problem," she says, is that "we've got these unknown heirs out there" who have interest in property, but either don't know it or don't care. If someone does manage to clear a

title to their land, she says she urges the landowner to write a will immediately: “Do anything, but don’t let it just hang out there.”

Samuel says that a lot of people are affected by problems caused when individuals die intestate. “That’s a real issue for a lot of people,” he says, “but you just don’t know it unless they verbalize it.” He acknowledges that there is a responsibility to make sure people know about wills and why they are important. “We as leaders of the community are responsible,” he says, “All these (governmental) agencies are responsible.” Samuel suggests that anyone who receives a social security check should be informed at some point about their rights and the benefits of leaving a will. “There ought to be somebody talking to me, telling me what benefits are available.” He also suggests that social security representatives be given a checklist of questions and issues to be addressed whenever someone applies for social security. They should be asked if they have property and if they have a will, among other things. “No one should be left out of the process,” he says, “Educate them about what wills are about. Don’t make (the wills), educate them!” Samuel thinks Social Security can play a large role in spreading information to older people: “We’ll listen to social security more than (anybody else).” Educating property owners about wills and the kinds of protections they provide (or not) may help prevent landowners from making the same mistake Samuel’s father made when he was trying to do what he thought was best for his family.

There is one organization that is trying to make a difference for elderly people throughout Alabama. All Area Agencies on Aging provide free legal services to senior citizens. While some have attorneys on staff, others contract their services out. For example, the South Central Alabama Development Commission, which serves Bullock

County, contracts its legal services through Davis & Neal, a law firm with an office in Montgomery. Davis & Neal also have an office in Opelika that services the Lee-Russell Council of Governments. While they will not act as individuals' attorneys, they do provide legal assistance and guidance regarding wills, insurance and other issues. While Davis & Neal do not have any lawyers working in their Montgomery office, the location is available for them to meet with those referred to them by the Area Agency on Aging.

Partition Sales

One way to clear the deed to the land is to force a sale for division. Such sales are not always pursued by family members. Sometimes an outsider has bought a co-owner's interest and forced the sale. Also, during a partition in kind, if land cannot be divided equitably, the probate judge can order a sale of the land. If an heir property owner has decided to file for a sale for division, the chain of ownership must be researched and any remaining title issues, such as outstanding liens, must be cleared up. Everyone entitled to a share of the land is notified of the lawsuit and the court orders an appraisal of the land. Once the suit is filed, there is a time limit within which family members may buy the whole tract of land at fair market value before it becomes available to public buyers. If a family member cannot be reached when a suit for partition is filed, the court will appoint a guardian *ad litem* to act in the interest of the missing relative.

Partition sales are advertised in the Legal section of the classifieds. They include the case CV number and the names of the plaintiffs and defendants (although if there are numerous defendants, only one name plus "et al." may be listed). The ad may read as such: "I will sell to the highest bidder for cash at (time) on (date) the following described

tract or parcel of land lying and being situated in the County of Bullock, State of Alabama, to wit:” followed by a description of the land. Though it is submitted by the lawyer, the ad is signed off by the circuit clerk.

Once the land is sold to the highest bidder, state law determines how the money is split up. Title 43, Chapter 8, Article 3 of the Code of Alabama specifies how property is to be dispersed if someone dies intestate – without a valid will. For example, if someone dies without a will leaving only a spouse and no parents or lineal descendants, then the spouse receives the entire intestate estate. If someone dies with a spouse and children, the spouse receives the first \$50,000 in value, plus one-half of the balance of the estate. The Code of Alabama also specifies that half-blood relatives are entitled to receive the same portion of the estate were they whole-blood. The law also provides protection for adopted children, those born out of wedlock (paternity must be established if the person is a child of the father), those conceived before the deceased’s death, and those with alien status.

In a Bullock County case in 2005, three sons of a landowner sued the other heirs for a division of land sale. The original deed to the property, which amounted to about 60 acres, was dated in 1937. The landowner died intestate in 1970. The defendants were served with a summons and a copy of the complaint by publication in the *Union Springs Herald* on four different days. The defendants were also sent letters by certified mail. They were given 30 days, upon receiving the letters, to respond to the summons and complaint. They were asked to file an answer, by mail or in person, with the county’s circuit clerk. The defendants who could be reached each responded to the clerk. Many with letters stating something to the effect of, “I, (name), agree with the sale and division

of the property listed in the above case number.” For those who could not be reached, the lawyer presented to the court the unclaimed certified letters as evidence of his efforts.

The sale was conducted on the courthouse steps after being advertised in the *Union Springs Herald* for three consecutive weeks. According to the clerk’s deed, the highest bidder paid \$80,000 for the property. The law firm received ten percent of the sales price (\$8000). The firm spent \$1,142.51 on postage, court costs, legal ads, copies, and taxes. There was also a court fee for a judicial sale (in compliance with section 12-19-23 of the Code of Alabama) of \$800. Once all these fees were taken out, \$70,057.49 was left to be divided among the plaintiffs and the defendants. The largest interest was 1/8, valued at \$8,757.19. The smallest portion was 1/48, valued at \$1,459.53. The locations of two of the descendents were unknown and their checks are still at the attorney’s office.

The attorney who handled this case says that often one or two heirs will come into his office and say “I want my part.” Heirs will come to him when they can’t get anyone to help them pay the property taxes. Some come to him because they are trying to get a mortgage, but are unable to because the title is not clear. The first step in the legal process is to identify all of the heirs and their relations to the deceased. “Normally you’re looking at 10, 15, 20 folks or more,” he says, “You do the best you can to find every one of them.” Some heirs may be dead and others scattered across the country. He says attorneys will use obituaries, testaments of individuals outside the family, funeral programs, and even private investigators, to identify heirs. “You just have to make a family tree. That’s what it amounts to – figure out who owns what.” Finding the heirs

and figuring out what their interest is, he says, is the difficult part: “The more people there are, the more work you’ve got to do.”

If there are only a few people entitled to the property, the attorney says, they can usually work it out themselves. It is when there are a lot of people that the situation usually ends up in the circuit court. But sometimes, he says, “it’s not even worthwhile for the lawyer to fool with it.” There may be many people involved with a small parcel of land. In that situation, the amount of work involved to identify all the heirs and the percentage of each share, is not worth what little the land may be valued at. When a partition sale is held, the attorney receives a percentage of the sale, like a real estate agent. So, like a real estate agent, attorneys work to get the most money out of a sale.

Another attorney explains that “there usually has to be some sort of catalyst” before people seek sales for division. She says a number of things can spur landowners, but often conflicts between family members play a role. “Either there was a reason there was no communication (with distant relatives) or somebody close by ... has got a bone to pick” with another family member. But even if someone decides to pursue a sale, it doesn’t always go through. She says that many people, once they begin the process of determining who the heirs are and how to get in contact with them, just give up trying to construct the family tree. “It becomes overwhelming to think about that procedure” and they choose not to clear the title. The process to construct the family tree and get relatives’ contact information is expensive and time consuming. “They say ‘to heck with it, my kids are going to get it anyway.’” While she has never had a case with so many heirs that she had to give up, she has been appointed guardian *ad litem* on cases that stretched on for years and were eventually abandoned.

The former paralegal and housing counselor says that she has seen families destroyed over sales for division. Usually, she says, partition sales are sought when one person wants to do something where they have to get financing. She says that many heir property owners are under the impression that no one in their family would seek a partition sale: “They just don’t think their families are going to do it, but families do it all the time.” She has seen cases in which people have built homes on heir property with money out of their own pocket, only later to have them taken away when someone realizes the property is under heir title. In one case, she says, a man returned to Hale County from up North with some money. He paid out of pocket to build a \$100,000 home on his family’s heir property. “It was family,” she says, “so he didn’t worry about it.” He then wanted to borrow a small amount of money for a renovation, but was denied at the bank because he lacked a clear title. He tried to clear the title up himself by contacting relatives. One of them decided to file a suit for partition, forcing the land – and the house built upon it – to be sold. “He did get his property in his name,” she recounts, “but it cost him a lot.”

She says that oftentimes, heirs located in other parts of the country have different ideas about the value of land. “Ten acres in California is worth half a million (dollars),” she says, “10 acres in Hale County is worth \$40,000 at best.” People elsewhere think they’re going to get a lot of money if they force a sale, unaware that with the court costs, lawyer fees, and low property values, they will actually end up with very little. Another housing counselor agrees, saying that often people who have moved away think the land in Hale County is worth more than it actually is: “A lot of them don’t live here and have a different idea of land value” so they don’t want to sign over their shares to the heirs that

live on the land. But not all people have such misguided notions about land value. The former paralegal says many people don't think it is worth it to have a sale for division, which she understands since she has seen cases in which people have been paid \$2.70 for their miniscule interest in the land. "It's just not feasible," she says, for some people in Hale County to clear up the title to their land. Sometimes it costs more to perform a Quiet Title action (a court proceeding to identify heirs and "quiet" any claims or challenges to the title) than they would end up receiving.

Elizabeth is a co-owner of a piece of property in Hale County left by her great-grandmother. Elizabeth, who lives in Ohio, and her brother would like to sell the property. They have been paying taxes on the land for years, though they haven't lived on it since they were kids. Elizabeth moved from Hale County when she was a teenager, but still returns regularly to visit friends in the area. A few years ago, there were trailers on the land. Those living in the trailers didn't pay rent and had no authorization to be there. She doesn't know why they thought they could live there: "There was really no reason (for them) to be there," she says, because they were not family members. She took legal action and had them removed.

Although she says it is "nice land," she has no interest in keeping it. "We're not reaping any benefits from (the land)," Elizabeth says. But selling the land is not a viable option either. Elizabeth doesn't know who the other heirs are, where they are, or how to get in contact with them. "They never participated in paying taxes," she says, and as far as she knows, no one in the family has any interest in keeping the land. But none has pursued a sale for division either. "We just continue to pay the taxes and keep it in the

family,” she says. But at least, she notes, unlike Ohio, property taxes are reasonable in Alabama.

The Bullock County probate judge says he doesn’t see too many sales for division and that when they do occur, it’s usually because there is a conflict in the family. “If you’ve got unscrupulous kin, they can mess you up,” warns another white man, who works as a trailer-home inspector in the Revenue Commissioner’s office, “If people want money, they don’t care anything about the sentimental value (of land).”

The Case of Jo Ellen

Jo Ellen’s family owned 80 acres of land first acquired by her great-grandparents. She remembers as a child making frequent visits to her great-grandparents and spending time on their land. When her great-grandparents passed away, the land was passed on to her grandmother and three great-uncles. Jo Ellen says the four siblings “were a close group (and) never bothered to divide (the land) up. ... Oh, what a mess now.” When her grandmother died, Jo Ellen and her relatives inherited the land, as well as another 13-acre tract that included the grandmother’s house, jointly. Jo Ellen laments that the original bond that existed among her grandmother and her great-uncles did not get passed on to the grandchildren as well. People don’t live the way they used to, she says, and do not share in the same experiences her grandparents did. “They lived in a different era so they would have never even imagined ... that their land was ever in danger,” she says. “Sibling conflict, sure, but some sort of outside threat? No way.” Jo Ellen didn’t know very much about heir property and never even gave the land a second thought until her grandmother died. “After she died, this all began to unfold,” she says. Her family has

since learned the reality of the danger in possessing heir property and not taking measures to protect it.

Several years ago Jo Ellen's brother decided that he wanted to sell his interest in the property. She offered her brother, who is estranged from the family, \$15,000, which he turned down, stating he wanted \$70,000 for his share. Jo Ellen couldn't pay that amount, nor could she continue to pay lawyers to battle over the matter. Her brother hired a lawyer and filed a suit for partition. Jo Ellen was not at the auction for the 80 acres. Her husband had just died and she "was just out of it," she says, "I was barely in this world myself." When the auction of the 80 acres was held, her family believed that the other 13-acre parcel, the one with her grandmother's house, was going to be auctioned that same day. They had decided that the latter tract was their priority so they didn't put in a bid for the 80 acres. It wasn't until after the 80 acres was sold that the family learned the other property wasn't going to be auctioned off. The lawyer handling the case, Jo Ellen says, withheld that information from the family.

The land was bought by the father of another lawyer at that firm, who paid \$8,100 for the property. So Jo Ellen's brother, who initially turned down \$15,000 because he wanted more money, settled for his share, which totaled \$800. Jo Ellen says the description of the land itself was strictly legal and unappealing. "If you read the description of the land, you wouldn't have wanted to buy it," Jo Ellen says, "The court is the one that's selling it, if it were a private auctioneer, it would be described in more marketable terms." It upset her that the land sold for such a miniscule amount – and that the judge allowed it to happen. During the time the 80 acres were in her family's possession, it had never been farmed or lived on. She says that in the county where they

are located, that type of land is usually worth between \$2,000 and \$3,000 per acre. The market value for her family's land was somewhere between \$160,000 and \$240,000. The family was "mystified" by the judge's decision to allow the sale. In most cases, lawyers get 10 percent of the sale price and therefore have an interest in getting the best price possible, but her brother's lawyer made no effort to get a fair price.

A few months later, the buyer filed a Quit Claim deed that gave the property to Jo Ellen's brother's lawyer. Jo Ellen now understands why the lawyer did not seek a fair price for her family's land. "He should have objected to the sale on behalf of his client," but "his mind was on acquiring (the land) – he was getting a deal," she says, "His interests completely defeated those of his client." However, it was years before Jo Ellen and her family learned that the lawyer had acquired the land – and only by chance did they discover it. Jo Ellen went to the courthouse to pay taxes on a separate piece of property. While she was there, she says, "I was just troubled by something." She decided to look up the 80 acres by the parcel number to make sure that whoever owned it was paying taxes on it. "I really don't know what was prompting all of this," she says, but she got a major shock when she found out who owned the land. The property was recorded under a slightly misspelled version of the lawyer's name, she says, "which effectively separated it from all of his other property." Jo Ellen believes that his name was not entered that way as a mistake. If she had done a search under the lawyer's (properly spelled) name – it never would have come up. "Do you see how incredible that find was?" she asks. "It was concealed well ... nobody knew that this lawyer owned this land."

Jo Ellen was upset. This anger prompted her to do some research and learn more about her own family's case as well as those experienced by others. She says the transaction undertaken by the lawyer and his partner's father was deceitful: "This was the lawyer's way of getting by his conflict of interest." She began doing Google and keyword searches on the Internet to understand what was happening to her family's land and how it could happen. She spoke to her ex-husband, a lawyer, about the situation. During her research she stumbled across the Associated Press series "Torn from the Land," which documents how generations of black families have had their land taken through deceitful and unlawful means. "That was the beacon of light; that told me everything," she says. "This has been going on for years and years and years. This is part of a pattern." She began writing e-mails and looking to various organizations for help. She also started a personal blog as a way to collect information on the topic and to narrate her own story. It was also a way, she says, to target the law firm that took advantage of her family; to ensure the "exposure of these crooks."

Jo Ellen was on a mission: "To make (the lawyer) regret the day he acquired those 80 acres." But she knew doing so would be an uphill battle. "I had a hell of a time trying to get a lawyer that was actually going to represent me fairly. They all know each other," she says of the local lawyers. She says they wouldn't want to challenge one another. "I had to go outside of that network." One organization Jo Ellen got in touch with, the Federation of Southern Cooperatives, referred her to a lawyer in Alabama who could help her. Jo Ellen knew she had a tough battle ahead of her. Her brother's lawyer, she says, is "quite well established" and she feared she "didn't have much of a chance." She also knew that small-town politics were a barrier as well. "It can be really stacked against

you,” she says. “Unless you have the funds and the know-how to get out of that system, you’ll have to pay ... to get out of the reach of local politics.”

Jo Ellen says that there is no record of the proceedings from the day of the sale. When she went to court with her lawyer, there was no court reporter – her lawyer had to demand one. The court, she says, only does the bare minimum, never going beyond that. “Everybody is a part of all of this,” she says, “and these (judges) are (the lawyers’) buddies. ... It’s a system the black families aren’t a part of.” Jo Ellen’s lawyer was able to get the sale of the land set aside and the case has moved to the appellate court in Montgomery. “I’m determined to take this all the way,” she says, “Of course, the appellate court is comprised of five white guys – (all) Republican.” But she has faith that they will do the right thing. In the meantime, she continues her research on the topic of black land loss and partition sales. She wants to do anything she can to help others avoid going through what her family has. “It requires a lot to first figure out what the hell just happened here and to find the help you need and often the help you need comes too late – the damage has been done,” she says. She knows she is lucky in some ways – that she found out about what had happened to the land and that, because she has a computer and Internet service, she has access to information that many don’t. She also knows that hard work played a large part in getting the sale set aside and the case back in court: “If I hadn’t sat at the computer and ... made these contacts and pushed and pushed and pushed – it would not have gotten done.”

For many families, she says, their land is their only asset, and to have that land taken away and not be given a fair price for it: “It’s not the American way.” She says that families in rural areas are especially vulnerable to and unaware of this pattern of land

loss. She says they often don't have the money or access to the kind of help they need. When something does happen, she says, "I can see where this really is an education for many of these families tucked away in the country." She considers the actions taken by unscrupulous developers, real estate speculators, and lawyers as "criminal": "It's taking advantage of a group of people who don't have the resources and have no idea what they're up against." She blames legislators, who she says have a duty to their constituents to educate and inform them. She says that for many, land is the glue that holds their families together and that certain protections must be put in place. All sorts of measures are taken to conceal these situations and ties between local people and politics often take center stage. But she knows getting the word out about the kind of deceitful actions taken by such people is challenging. "In this country you have to make the issues attractive," she says, in order to gain media attention.

Land loss through partition sales, Jo Ellen says, destroys communities. "I'm still stunned that this is actually happening and that there isn't a greater outcry about it," she says, "It is a process of deceit. This isn't legitimate ethical business (and) it is supported by the legal system and the judicial system." Jo Ellen wants to get more people talking about the issues and hopes that by doing so, it will deter some from participating in such deceitful actions. "It's difficult fighting the outsiders (who are) eyeing an opportunity," she says. However, "it's been ... a process of renewal," Jo Ellen says, as the family members have had an opportunity to "reunite under a really stressful process." She also hopes that her family's story can help others avoid such a travesty.

Partition in Kind

There are different ways to handle clearing the title that avoid having the property sold to or acquired by someone outside the family. While these ways may be less divisive in many cases, they are still complicated. Family trees and ownership histories must still be established. One respondent I spoke to said that when his grandmother died intestate, her land was left to multiple heirs. Everyone except two family members signed their portion of the land over to the respondent's brother, who had performed a Quiet Title action on the property. The respondent says it made sense for all the family members to relay their land – “There was so many (co-owners), you probably wouldn't have got three or four hundred (dollars).” They, unlike many, were able to settle the situation out of court.

Another way families can clear the title without going to court (but usually requiring a lawyer) is to perform a partition in kind. Based on their fractional interests, each co-owner receives a deed for a portion of the land. The land remains in the family, but instead of being held as an undivided interest, each family member holds clear title to their individual shares. Some people view this as the best option for heir property owners who don't want to lose their land or want to do something (like secure a mortgage) that requires clear title. The Bullock County trailer-home inspector believes that the only advantage to heir property lies in its potential: “If you have it divided up and one person wanted to sell it, it doesn't keep you from losing the whole darn thing.”

One respondent I spoke to had grown up on a piece of property in Hale County. The road he lives on shares his family name. When his parents died, their land passed down to their five sons and one daughter. The respondent's brother decided he wanted

the land split up, so he hired a lawyer to conduct a partition in kind. “He wanted to avoid problems in the future,” the respondent says. He also says there were “no problems” in settling who got what portion of the property. While this is not always the case – sometimes if an agreement can’t be reached the land is sold – many in the legal sector encourage families to consider this route when trying to clear deeds.

The Bullock County probate judge says that most of the time land that is held in heir title – if it gets settled at all – is settled by laws of intestacy. He regularly encourages people who hold land communally to have the property divided through an administrator’s deed. The way this most commonly occurs is an heir will hire an attorney who petitions the court. An administrator is appointed by the court – it is usually an heir or a spouse, but in rare cases can be a creditor. For several consecutive weeks, a public announcement is put in the paper seeking heirs – known or unknown – who may have interest in the land. Heirs who have a claim against the property have six months to come forth. If no one shows up and there is no disagreement between the known heirs, the property can be divided up. The family must pay to have the land surveyed. Once it is surveyed and everyone has identified their portions, the attorney draws up separate deeds for each parcel, which are then signed by the probate judge. A legal description for each deed is recorded and the land is transferred. The new deed should reference any previous deeds, creating, the judge says, “a line of ownership.” If property with a lien on it is disbursed among heirs, then so is the responsibility of the lien. Normally though, he says, whoever has a lien on the property files a claim beforehand and it is cleared up prior to the division.

Timberland

Any decisions regarding the use of the land must be agreed upon by all co-owners – regardless of the size of their share or whether they help pay the taxes. This also includes decisions that may reap financial benefits for the owners. If timber is harvested from the property and sold, then each heir must receive payment. However, that is not always what happens. While most timber companies won't accept timber from land that does not have a clear deed, some (usually those less scrupulous) will. One lawyer in Bullock County explained that small loggers often don't do title searches on land before purchasing the timber. But, she says, "It doesn't appear to be that prevalent anymore because there's not as many small loggers" as there were in past decades.

Another lawyer explains that if a company purchases timber from an heir landowner without paying all owners entitled to the property, the other heirs may sue the timber company. It is the responsibility of the timber company to conduct a title search before purchasing timber from privately owned land. Many heirs are unaware of their rights and do not seek compensation they're due. Gwen, the heir property owner who returned home to look after her ailing mother, has experienced the frustration of being shortchanged: "I heard my grandma [whose name is on the deed] say if anyone ever get into need" the timber is there. But, Gwen says, when she and her sister needed some financial help, their brother refused to harvest the timber. Later, when he needed some money, he sold some timber, but didn't share the money with the rest of the heirs.

An Extension specialist in urban and community forestry, a young white man, used to work for a consulting firm in Opelika, Alabama. While there the firm was contacted by an individual who wanted to sell the timber off his 40 acre tract. The

company evaluated the land and prepared a sale of the timber, but had never done a title check on the land. Whenever people contacted the consulting firm about selling timber on land they claimed was theirs, the Extension specialist explains, “we pretty much took people at their word. . . . We had never had a problem with it.” When a timber buyer performed a search of this man’s land, the company realized the land was heir property. The man was told that in order to sell the timber, he had to acquire signatures from his co-owners, of which there were about 13. “I think it was a thing where he was the only one left in the area” and wanted to manage the land, the forestry specialist says, but he didn’t know that his actions had to be approved by all his co-owners. Because the family was spread out across the country, he wasn’t able to get those signatures and the sale fell through. “After that we started being more careful” about checking titles, the Extension specialist says. Timber buyers, who generally work for or with mills, typically have someone who goes to courthouses and performs title searches for the company. If they don’t confirm the land is under clear title, they could find themselves in a legal mess. “Most timber buyers,” he says, “they won’t touch it unless they can get everyone’s signature.” He says that smaller or untrustworthy companies may disregard their legal duties, but notes that “bigger, more reputable buyers won’t touch (heir property).” Because of the legal contingencies involved, many heir property owners who have timber are left without a market. “(Heir property) limits (co-owners) in that they have a very difficult time selling their timber,” the forestry specialist says. Also, the tracts tend to be smaller, and, depending on the number of heirs, the profits from the sale may be divided up among many people.

Housing

United States Census Bureau statistics for Bullock and Hale counties provide some insight to housing conditions found in Alabama's Black Belt. Much of the Black Belt falls in West Alabama – an area prone to hurricane-related damage. Storms can be especially destructive in the region because of the prevalence of substandard housing and mobile homes in the area. In Hale County 35.6 percent of the housing units are mobile homes. About one-third (33.6 percent) of owner-occupied homes in the county are valued at less than \$50,000 (the national median is \$119,600). Bullock County, which is smaller and has fewer housing programs, reflects similar conditions: 32.8 percent of housing units are mobile homes and 42.8 percent of owner-occupied homes are valued at less than \$50,000.

In his fieldwork for the completion of his Master's thesis, Patrick Kennealy, now the coordinator of the National Healthy Homes program for the Alabama Cooperative Extension Service, discovered a high occurrence of heir property in Greene, Hale, and Sumter counties. Land held in such title has significant implications for housing in Alabama's Black Belt, as well as provides "unique character to the local community capacity systems" (Kennealy 2005:85). More than half of his respondents were residents of heir property and were unable to secure Rural Housing Services Section 502 home loans because they lacked clear titles. Respondents in Kennealy's work "had a neutral attitude about heir land and described it quite nonchalantly" (2005:86). While respondents he spoke to said they had no problems with heir property, housing service providers felt quite differently about the subject, viewing it more as a detriment to economic development in the Black Belt.

Kennealy attempts to explain in his thesis why the rural West Alabama Black Belt region struggles to address substandard housing issues and the role housing service providers play. He states that many businesses in Alabama want to invest, for tax purposes, in local nonprofit organizations. If they have a choice to invest in more urban areas, such as Birmingham or Tuscaloosa, or in rural areas, such as Hale County, they choose the urban areas. Lots of programs have been established to address the “urban need” and tax credits create incentives to address those needs. “Programs can function much more efficiently in an urban area,” Kennealy says in an interview, with many funding the construction of multi-family housing, such as apartment buildings. “Obviously there’s not a need for apartment buildings in Hale County,” he says, explaining why rural areas often do not receive attention. The U.S. Department of Housing and Urban Development also has rental assistance programs. Because most residents in poor, rural areas do not live in rental units, but own substandard housing, these programs do not meet their needs. Kennealy explains that most housing programs function primarily within their own communities, even if they aim to serve a larger region. For example, the Rural Development office in Tuscaloosa serves several surrounding counties. But, Kennealy says, in order to be eligible for housing programs, people must first visit the office and fill out an application. “Somebody in Green County isn’t going to ride 40 minutes to get there,” he says.

The Organized Community Action Program, headquartered in Troy, Alabama, is a self-help agency that provides services to low-income, disabled, and elderly people in seven counties. The coordinator of Bullock County’s regional OCAP office, a white woman, says that in many ways Bullock County is the poorest of the poor in Alabama:

“Anything that’s bad – we’re number one; anything that’s good – we’re number 62” of the 62 counties in the state. She says a large part of that is the lack of employment opportunities. There are two main sources of employment in the county – a plant farm, which is seasonal, and the poultry plant. She says 38 percent of the county’s labor force goes outside the county for work. “Bullock County is becoming more and more an elderly county – the young people are leaving, going to other counties because lack of employment,” she says.

One service OCAP offers is the weatherization program, which helps lower energy costs for families. When people fill out forms for this program, they have to specify what their housing situation is – whether they rent or own. On the form, there is an ‘Other’ category. The coordinator says that when people check this, it’s usually an indication that they live on heir property. “Home house” is how many refer to the place they live on heir property, which may be a house or a trailer. Up until recently, living on heir property has not prevented individuals from receiving OCAP’s services. “That [not having clear title] doesn’t make any difference to us ... they can still get energy assistance or food vouchers,” she says. However, beginning October 1, 2006 (the beginning of the fiscal year), the application to participate in OCAP’s programs required proof of ownership, either a deed or a bill of sale.

The OCAP coordinator is also part of a housing board in Midway, a small town in Bullock County. She says the board has a rehabilitation grant, but that those who live on heir property are not eligible for it. One family in particular is in bad shape: “These people live in ghetto – I would call it – conditions.” One co-owner of the property is a Vietnam veteran who lost an eye. Two other residents are handicapped. Most live in

trailers on the property and one lives in a camper – all on only a few acres of land.

There's also a house – “just a shack, really” – that the residents have added on to for the handicapped residents. “It's appalling to see how they live,” she says, but there is nothing she can do. “With all the housing grants that we've gotten ... we have never been able to help these people because they don't have clear title.” She says she doesn't understand how people like these folks can pay taxes on their property for so many years and still not have clear title.

The coordinator says that before she started working with OCAP, she had never heard of heir property and was unaware of the problems it can cause. When she joined the housing board in Midway, she became much more familiar with it. “The vulnerability of it would just drive me nuts,” she says, “you don't really own (the property).” She says up until now, though, heir property hasn't affected many rural folks in the area, probably “because we don't have any rehab grants available for them anyway.” But that has changed. For the first time, Bullock County has been awarded the Housing Preservation Grant from USDA's Rural Development. The coordinator says she has been badgering OCAP for years to get the grant in Bullock County and her work has finally paid off. They only have money for nine houses, “but nine is better than none.” She suspects that because of this new grant – and OCAP's recent change in program requirements regarding proof of ownership – that she will begin to see a lot more cases of heir property. “Statistically, we will probably know more a year from now or six months from now” about heir property and how much it affects the residents of Bullock County.

The OCAP coordinator says she wishes more information was available to heir property residents, explaining the law to them and how to protect themselves. She

understands why heir property owners are confused about deeds and taxes and she does her best to help people. “When I do any talks, I tell them ... ‘When you inherit something, don’t let it go – do something!’” she says, “I’ve tried and tried to explain to them about heir property; what a catch-22 it is.”

A HUD-certified housing counselor working in Hale County estimates that about half of the land in that county is heir property. In her position as director of Hale County Housing Resource Center, she and her coworkers encounter heir titles on a daily basis. The nonprofit organization helps low-income residents of the community by providing information to about 500 families each year about home repair, home ownership and rental assistance. The Hale County Housing Resource Center is a component of the Hale Empowerment and Revitalization Organization (HERO) and is funded by the HUD Rural Housing and Economic Development Grant for Capacity Building, Alabama Women’s Commission, and the Fannie Mae Foundation. It also acts as the local Habitat for Humanity chapter.

The housing program director has faced challenges trying to buy lots of land for Habitat for Humanity to build a house on. There’s none for sale, she says, and “that’s because of heir title.” Heir property results in vacant homes and vacant lots, which drive property values down. Hale County, unlike many Black Belt counties, has not seen a decrease in its population in recent years. But neither has it seen a significant increase. People don’t move to Hale County, she says, they commute. “What we have left is people who don’t work,” such as the elderly or disabled or those who chose illegal means of income, like drug dealers. She says: “It won’t be until the population starts to increase

will it be” an interest to those buying land. As land value goes up, there becomes more incentive to clear heir titles. In the meantime, few wish to make efforts to clear titles.

When the director first became aware of heir property and the legal problems it causes, she says, “I was convinced people would want to clear their titles.” She recruited a lawyer from Alabama’s law school, but she never got to use him – no one was interested in clearing their title.

Landowners without a clear deed cannot access federal or state funding for housing. Because of this, the director says, heir property is “one of the reasons we have so much substandard housing” in Hale County. “Normally in a town you build wealth through homeownership,” she says, but with an heir title, property owners do not have access to the financial capital needed to build that wealth. She encounters people on a daily basis seeking help through housing programs, many living in dilapidated homes beyond repair. When she explains that without a clear title to their land they are not eligible for funding, many lose interest and choose to buy trailer homes with inflated interest rates and decreasing equity. “It makes sense for people to have a vested interest” in their homes, she says, so she encourages them to consider the options for homeownership available to them, if only they spend a little bit of money first to clear up their title. “They say ‘Nah, that’s all right,’” she explains, “It’s not ‘I don’t have the money’” or that they don’t want to go through the process. “That innate poverty ... really dictates choice,” she says.

Della lives on heir property left by her parents. Her home was damaged by multiple hurricanes in recent years and is in need of repairs. She has been waiting three years to get a grant to fix up her house: “I would like to get my house fixed up without

waiting.” She says as time goes by, the damage to her home gets worse and the costs required to fix it continue to rise. “I’m praying and hoping that they do get here before winter,” she says. She tried to get money from Rural Development to repair her home, but was unable to because the home was built on heir property. She has a clearer understanding than most about how heir property works. But one thing she doesn’t understand is how her sister, who lives next door on the same property, was able to get a \$7,500 grant from Rural Development for repairs to her home. A title search revealed that in 2005, a Quit Claim deed was filed by one of Della’s sisters, who was entering a nursing home and didn’t want her interest taken when she died. Perhaps when Rural Development performed a title search, this deed was mistaken as the only one necessary for Della’s sister to have clear title.

Ronnie, an heir property owner, lives in the Taylor’s Hollow community with his wife and young children on a piece of heir property he says his dad gave to him. They live in a cozy little house with a welcoming front entrance adorned with wooden hearts and a sign that says “Home is where the heart is.” A window air conditioning unit is used to keep their small home cool during the summer. Ronnie built the house himself: “Me coming up with my dad – anything we lived in, he built.” Ronnie’s father passed those skills on to his children. “Everything he did – you had to learn.” Ronnie and his wife manage a small, fenced-in garden alongside the house. There they grow “greens,” tomatoes, peppers, squash and cucumbers. Ronnie says his father used to farm the land, but now it primarily serves as a place for Ronnie and his relatives to live. According to a housing counselor, Ronnie will occasionally come to the Housing Resource Center to get materials to repair his house. She says that sometimes there are leftover materials from

Auburn University's Rural Studio so the housing organization will give them to Ronnie and his family because they "are so dedicated to doing their work."

Ronnie says the family members who live on the land – he estimates about nine do so – all pitch in and give his sister money to pay the taxes on the land. While he doesn't know the exact size of the property, he estimates that there is about three acres. When asked if having an heir title has caused any conflicts with family members, he says "No problem with me ... as long as they leave me a place."

Shortly after my interview with Ronnie and his wife, they went to the Housing Resource Center seeking money for repairs on their small house that Ronnie built. Because of their good credit and monthly income, they were eligible for a house – provided they had a clear deed to land. The program's director says she made a "hard sell" but that they were not interested. She says that staying in the small, close-knit community on heir property was more important to them than having a house that would build equity. A housing counselor for the organization says that they were also uncomfortable with the idea of making a monthly payment on a new home, even though their budget allowed for it. Instead, Ronnie and his wife chose to accept a used trailer home from a Birmingham-based organization, Friends of Hale County. They have attached the trailer to the back of their house.

One housing counselor says that it is not uncommon for people to choose trailer homes over new homes. Aside from not being required to have clear title to the land, amenities, such as a washer and dryer, are big selling points for trailers. But, she says, many people don't realize the financial downside to trailers: "Lack of education about interest is a big problem."

Another housing counselor says she is amazed by how many people refuse to clear their titles. She suspects that many heir property residents are afraid of change or of instigating family conflict: “They’re like ‘No, I don’t want to take my family to court,’ so they just drop it.”

VI. PERSONAL AND CULTURAL DIMENSIONS OF HEIR PROPERTY

Family Land, Family Conflict

The legal and bureaucratic challenges of heir property have been well-documented. Heir property can also be a source of conflict within families as well. Those heir landowners interviewed who are experiencing difficulties all share one thing: disbelief that such conflict could arise among their family members. Conflict does not happen in any one particular situation.

Willie Mae, a white, college-educated heir property owner in her 60s, shares 520 acres of land in Bullock County with her two half-brothers. She and her husband, who holds a Master's degree, have spent their life together on the farm and they still raise cattle. Willie Mae's parents, grandparents and great-grandparents were all farmers in Bullock County. A recent addition to the county's Soil and Water Conservation District board, Willie Mae is very proud of her past and the work she has done to preserve that lifestyle. Despite their health problems, she and one of her brothers take care of the land, bush-hogging and clearing timber off the property. They own and operate a sawmill to process timber felled by storms – Willie Mae hopes to build a cabin with the wood on her other property where she lives.

Willie Mae and her brother would like to lease the land, which she calls “the estate,” to hunters to help pay for operating costs, but they cannot get their other brother

to agree. Their other brother, who lives with his wife in Mobile, rarely visits them and seems unconcerned about keeping the property in the family. “All I know is,” she says, “they just live in a different world from us.” While she and her brother have worked hard to take care of the land, their other brother never visits to see the efforts they have made – yet he reaps the benefits. When Willie Mae and her brother had the timber thinned on their property, the money was split three ways. Their brother is now calling for a sale for division of the land, knowing his two siblings cannot afford to buy the land they don’t want to see sold outside the family. “My brother said ‘I never thought it would happen to my family,’” Willie Mae says, clearly disappointed that her brother was wrong.

In some cases, disagreements arise among siblings about what to do with the land, but instead of escalating to a point where someone forces a sale or takes others to court, the issue just gets dropped. Della, the woman who has been waiting years for Rural Development to pay for repairs to her home, has considered trying to clear up the title to the land. When she asked her sisters about dividing the land, they couldn’t all agree, “so I just didn’t worry about it.” She wants to clear up the deed so that she will be eligible for federal funding. “If the other siblings agree, it would be no trouble” to clear up the deed, but she knows her sisters won’t agree to it, “They just wanted to leave it like momma and daddy – they just didn’t want to divide it up.”

Family members often resist change – especially regarding something as valuable and crucial to family identity as land. It’s clear that some would rather forgo the freedoms of clear title in favor of what they see as the security of an undivided deed. One subject of Falk’s *Rooted in Place* expresses similar ideas about keeping land in a communal interest. AC is a 66-year-old black man and lifetime resident of

“Lowcountry,” the marshy lands of South Carolina and Georgia heavily affected by the 40 Acres and a Mule program of the Reconstruction period. Like other parts of the country’s Black Belt, this is one area where much of the land is held under heir title. At one point, AC laments to Falk about how his mother and aunt dealt with their family land: “They messed me up [by willing pieces of it rather than the entire amount]. As long as we all split up, everybody will start sellin’. If you keep it together, you all right” (2004:129). AC acknowledges there are generational differences regarding the value of land. “This crew now, they want money,” he says, “The young crew won’t have no land around here. They sell it all off” (2004:129).

As demonstrated by Samuel’s story earlier (his father willed the family land as an undivided interest), concerns about losing land through sales to people outside the family dictate decisions about wills and deeds. In the case of Alexis, her father took a different route from Samuel’s father in hopes of protecting his family’s land. Alexis and her husband, Bobby, live in Taylor’s Hollow. Bobby says he was a “wild city boy” before he met Alexis. Three days after meeting her, Bobby proposed to Alexis, leaving his city life behind in favor of the country. Now, several decades later, the two are pastors of a church they founded in a nearby town. They have three children and live on the same road as many members of Alexis’s family.

While most of the land in the Taylor’s Hollow community is heir property, the tract that Alexis and Bobby live on is one exception. Before he died, Alexis’s dad deeded a tract of land to her and her husband. “He didn’t want the land sold,” Bobby says, “he knew she wasn’t going to sell it.” The rest of the land Alexis’s dad owned, was never deeded to anyone and when he died, it became heir property. Several of Alexis’s family

members live on the land in trailers and homes built by the Rural Studio. Alexis says she wishes her father had deeded the rest of the land to someone, but she thinks he was worried that they would sell it. “I thank God that he did do it [draft a deed] for me,” she says. Alexis thinks it bothered her siblings that she got the land while no one else was given a deed. “Me and my father – we used to be real close,” Alexis says. When asked why Alexis’s dad gave her the land, her husband says that it was “because she wouldn’t go out there and be easily talked into selling anything.” Bobby says her father probably worried that the other children would have let others live on the land. Alexis, even though she is not the oldest, was the first of her siblings to buy a car and a home. “I always tried to work and have something ... that’s something he instilled in me,” she says. Alexis and Bobby also believe that Alexis’s father deeded the land as a way to protect her. “He didn’t want me to go through that,” Alexis says of heir property.

Alexis believes that her siblings wished their father had deeded the rest of the land. She and Bobby worry that because the deed is not clear, there is likely to be conflict among the siblings that live on the land. For a while, there was a dispute between her brother and sister because he didn’t want her to build a house out by “his area.” “When we was younger, we each picked out a spot,” Alexis says, “We always had our little spot, our little ground to build a house.”

Even though they have a clear deed to their land, Alexis and Bobby have still faced challenges. Someone wanted to put a trailer on their land. They said they have given up trying to clear the weeds away on the land up by the road because they’re afraid people will keep trying to put a trailer there. So they just let the property get overgrown. Alexis and Bobby say they would like to see the land and their house stay in the family.

It is clear that they are proud of their home, which was designed by the Rural Studio. They also stated how proud they are of the “gifted” and “smart” architecture students who built it. Bobby helped them install the floors and insulation of the house. In their living room, there is a picture of Alexis and Bobby’s oldest son and Alexis’s father with Samuel Mockbee, the creator of the Rural Studio. With tall ceilings and a large front porch, there is plenty of space for their children. Since it was built, Alexis added some personal style with interior decorating and Bobby installed a raised floor to set the dining room apart from the living room. While they have not drafted a will yet, they plan to leave their house to their oldest daughter, who is a “little more mature” than the other children. “I don’t think we would sell it to someone who is not in the family,” Bobby says. In the meantime, they are planning to pave the ground beside their home and do some landscaping out front.

Gwen wishes she could improve the home she shares with her children. She is frustrated that because she lives on heir property, she is not eligible for federal funding for housing. She insists that there would be no problem with her co-owners if she were to build a house. But she does admit that there has been some conflict among her family members, including that over the sale of timber. “Everybody just sort of stays to themselves, but,” she says, her brothers “want to be the boss.” When her father passed away, he put her uncles in charge to handle the taxes, but then they passed away, leaving that responsibility to her brother.

Gwen says that at one point her niece wanted to build a fence around her home, but her father told her she couldn’t. Gwen says she told her niece that it was her home and could do anything she wanted to. Although Gwen believes that everyone should be

able to decide for themselves what to do with their homes, she admits that one disadvantage to heir property is that “it’s got to be everybody’s say so.”

For Gloria, an heir property owner in Hale County, getting “everybody’s say so” has proved challenging. Although she is a great-grandmother, her sharp mind and spunky personality defy her age. Active in local politics, she attends city council and county commission meetings, letting her voice be heard and, occasionally, she stirs things up a bit. She lived in Detroit for a while, moving back to the place she grew up to look after her mother. Before her mother died, Gloria says, she told Gloria: “I’m going to take you uptown and get you your deed to your land.” Gloria didn’t want to upset the other siblings and have them think she forced their mother to give her a deed to her portion. Her mother died less than six months later. Looking back at her mother’s offer, Gloria says, “that is what should have happened.”

Gloria has seen what can happen to heir property as co-owners die off and interests split even further. She has interest in heir property in two different locations in Hale County. One tract was left by her grandparents. There are too many co-owners of that land to count and some of the folks living on the property aren’t even legitimate family members. “Once it gets into that third generation,” she says, “it’s almost impossible to divide it up.” The other land, which is 48 acres held in two parcels, she shares with her siblings – all of whom are still alive. “I chopped and picked cotton right out here on this land,” she says, pointing outside. Her family also grew potatoes, watermelons, okra, and corn on the property. She says that although her dad stipulated in the will that the land be divided six ways and distributed on a first come, first serve basis, the land was never divided and fell under heir title. She says her older sister convinced

the siblings not to divide the land up. They agreed, she says, because at that time “ain’t nobody thinking about getting 70 years old” and that their situations – and expenses – may change.

Gloria is the only one who lives on the property and wants to get a clear deed to the portion of the tract her home sits on. “We’ve got to cut it off now,” she says, “before it gets out of control.” She lives in a clean, spacious, and nicely-decorated manufactured home that is in good condition. With a clear deed, she could refinance her home and save money by reducing her loan from 30 years to 15. She is trying to clear the deed to a portion of the 25-acre tract, which she lives on and pays the taxes for (her brother pays the taxes on the 23-acre tract). Gloria paid someone to survey the land surrounding her home. Then she went to a lawyer to have a deed drawn up giving her 3.57 acres out of the tract. Two of her siblings have signed, but the other three refuse to sign. “I can’t go up there and get *my* deed to *my* land if everybody doesn’t sign it,” she says. She suspects that her siblings are reluctant to sign over the land because it was important to their father.

Gloria gave her two brothers and sister a deadline, threatening to take them to court. And then, she says, if she still does not get her deed, she’s going to move. She’s worried about what will happen if the deed isn’t cleared up. She has five children, 11 grandchildren and three great-grandchildren. “Can you imagine if one of them comes down here 20 years from now what a mess it will be?” Gloria doesn’t see “the problem” of heir property going away any time soon. She says there is a lot of it in Hale County and “if (residents) keep the mind set they have – it will all be heir property. ... One more generation and they will lose control of it.” She recommends her own solution: after the

third generation of heirs, the county or state should claim the land, then sell it back to a member of the family.

Family Land, Family Pride

Family land is a source of pride for rural African Americans, particularly for those who own little else. African Americans' struggles with landownership spanning hundreds of years have been well documented. Many, particularly those with low income, still face such struggles as they continue to suffer from land loss or are denied financial support because of racism. Landownership holds different meanings to those whose ancestors went to great lengths to secure it. For many, a Bullock County Extension agent explains, "their land is all that they have that is of value."

The circuit clerk for Bullock County is an easy-going black man with a thick Southern drawl. He says that keeping land in the family is especially important to older folks. Land holds different values for different people, but for many its true value cannot be quantified in dollar amounts: "Land for the older (folks) – that was something for people to take pride in – 'This is *mine!*'" Because they bought it and take pride in it, he says, they want to keep it in their family. He acknowledges that many younger people today don't have the same regard for land that their parents or grandparents did. "People don't realize how important land is," he says, "That is something we as old, gray adults have to pass on to our kids."

The circuit clerk realizes that land is a precious commodity – one that has no substitutes. "First of all, they ain't making anymore land," he says, comparing land to a car. If you have a Cadillac, he explains, and wreck it, you can get parts to replace it or

even buy a new car altogether; not so with land. Aside from its sentimental value, he also professes the economic benefits of landownership. Land, he says, is important in how it can allow owners to get other amenities. “If I didn’t have any land – what am I going to (use) as collateral?” Land, cattle, and even timber can be used as collateral, he says, “but it takes the land to grow the trees.”

The trailer-home inspector for the Revenue Commissioner’s office says he’s seen up to seven or eight families living on one piece of heir property: “They don’t know who is entitled to what – they just know it’s a place for them to live.” In some places, such as Tyson’s Hollow, there are communities *on* heir property as well as communities *of* heir property. People will live on one another’s tracts of property, unsure of where one person’s land ends and another’s begins. These communities are often located on poorly marked, unpaved roads – far from conveniences such as gas stations and grocery stores.

In many cases, people that live on heir property just seem to make it work for them; each person has his or her own little section. To them, having a place of their own in a community of family and friends is worth more than getting whatever little money they may get if the land were sold. They have a place to build a house (or, more likely, place a mobile home) and to raise a family. They don’t bother one another – they know to respect each others’ areas – and they all pitch in and pay the taxes.

Many who live on heir property take the view that the people who are there, who live on the land and pay the taxes, are the ones who get to decide what happens to the property. Because they are physically present on the land, no one can tell them what to do – not even the other people that live on the land. Each is entitled to his or her own

little spot and whatever they say goes. It doesn't occur to them that distant relatives might have any interest in the property – financial or otherwise.

Della lives on heir property that was deeded to her mother in 1958. Her father originally owned the property and when he died her mother paid off the lien on the land, securing ownership. Della now shares the property, which consists of about 20 acres, with her children, living siblings, and the children of those who have passed on. Because her mother had nine daughters and three sons there a large number of heirs entitled to the property (one of her brothers had 12 children and a sister had 10). Della grew up in a house on the land that later burned down. When she was a child, Della, along with her siblings, helped her father grow corn and cotton. She now lives with her youngest son in a house that her uncle built for her and her mother. The house sits on a road that shares her family name – it was given her father's last name when 911 addresses were issued in the area. Those that live on the land all pitch in to pay taxes.

Della, whose daughter lives in a mobile home on the land, likes having family members so close by – and the flexibility heir property offers them: “If any one of them wants to put a house on the land, they can – as long as there is enough room!” Della understands the challenge of finding suitable housing – as demonstrated earlier by her own struggles to get repairs done. “The only catch to (heir property) is most companies want you to have a clear title to a tract where you can build a house,” Della says, “with a mobile home, they'll just put it on the property.” While she would prefer the family's deed to the land be clear, she acknowledges that having the land under heir property ownership form can eliminate at least some of the burden for family members trying to

find somewhere to live. “The advantage of (heir property),” she states, “is that whoever wants to put a home here can; they don’t have to look for property anywhere else.”

A housing counselor in Hale County makes similar statements regarding the flexibility of heir property. In her position with the housing program, as well as being a former paralegal, she has seen the negative effects of heir property: substandard housing, land loss, and families torn apart over suits for partition. However, “if there’s a bright side to heir property,” she says, it’s that heirs “have a place to live.” They can put a trailer on the property or build a “shack or shanty.” For many, she acknowledges, they do not have any other options. “No matter how small that interest,” she states, “they have just as much right to it as anybody else.”

Some believe that people purposely leave their land in heir property ownership form. Heirs think that their grandparents or great-grandparents left land that way in order to keep it in the family – that may be the case, but it is difficult to determine what was going through the minds of those who have passed on. Gwen left Michigan to look after her mother, who suffers from Alzheimer’s. She lives next door to her mother with her two children and their significant others in her mother’s old trailer on land left by her grandparents. At one time her father farmed the land, growing cotton, peas, corn, and okra. Now the land serves as home to seven family members. Her brother, mother, and niece all have gardens. There is also, along the side of the road leading to her home, a cemetery where her father and sister are buried. “The land is never to be sold,” she says, “because my grandparents fixed it so it can never be sold.”

The circuit clerk for Bullock County has heard similar statements from older folks; he says they will say “once it’s heir property, can’t nobody sell nothing.” While

this isn't true – the land is always vulnerable to being sold through partition – this mind set clearly dictates certain decisions about clearing titles.

Despite this apparently conscious effort to keep land under heir title, many heir property owners don't understand why they can't get loans or funding to build a home on their land. As far as they're concerned it's their property and they will deal with whatever problems arise. They say they will deal with things themselves and if they want to build a house, they will simply build a house and no one can tell them what to do.

These heir property owners are left out of a property rights system that ignores their needs and their preferred way of life. This population has adapted, finding a way for family members to support one another and provide a constant homeplace. Falk's connection between race and place can be found here. The soil holds more than the foundations to their homes – it holds the foundations to their identities. Heir property owners I spoke to showed me the places where they picked cotton or grew okra as children growing up on their families' land. Keeping the land in heir title is a way to hold on to these memories and to create new ones as relatives who left for the industrialized cities decades ago return. The notions of reciprocity explored by Stack (1974) are also apparent here as heirs return home to take care of ailing parents and brothers and sisters live next door to one another, raising their children together.

This form of adaptation is not conducive to building equity or establishing credit. What it builds instead is something less tangible – relationships, values, social ties, and identities. However, as long as heir property remains on the outskirts of our property rights system, these things may eventually come at a cost.

VII. INSTITUTIONAL ALTERNATIVES TO HEIR PROPERTY

The potential for change can come in several forms. The first is legislative – policymakers can make a difference by examining what laws are in place that may encourage unscrupulous behavior. Residents in Alabama have at least one thing working in their favor. The state is one of few with a “first right of refusal” law. South Carolina recently passed a similar law as well. Blacks in the Lowcountry of South Carolina are among those who have suffered the most from land loss due to heir property ownership. South Carolina was one state heavily affected by Sherman’s 40 Acres and a Mule program, which awarded “worthless” land along the coast to black families – land that is now highly prized by developers. In 2006 in South Carolina, lawmakers took a step toward avoiding land lost to developers and others through partition sales. Senators Clementa Pinckney, D-Jasper, and Robert Ford, D-Charleston, introduced a state law that grants families “a right of first refusal” if another co-owner forces a sale (Burriss 2006). In other words, the law requires that if an heir decides to force a partition sale of the whole parcel, he must first offer his individual share of the property to family members. Family members are given 10 days to notify the court of their intention to buy out the family member. The land is appraised and they are given 45 days to pay fair market value of that share. That time also allows co-owners the chance to agree on a sales price prior to court intervention. However, the heir who wants to sell his or her land can refuse

to sell it if he or she does not think the price is fair. At that point the court may force the sale if the land has been appraised and the family members are willing to pay the appraised amount. Without this law, family members are left on the courthouse steps bidding against developers who may later pocket millions from the land.

Legal Services Alabama

Potential for change can also come in the form of community organizations and programs. Carl Sallé is the Community Economic Development Advocacy Director for Legal Services Alabama, a statewide nonprofit organization 501(c)(3) corporation that provides free legal assistance in civil cases to qualified low-income residents. Often, when cases are over, clients show their appreciation to LSA advocates with hugs and occasionally a family picture, giving what they have to give. LSA estimates that there are 720,000 people in Alabama living at or below the federal poverty level. The American Bar Association, Sallé says, estimates that at any one time, half of those living in poverty have pending legal problems. Based on this estimation, LSA's potential client base is estimated to be 360,000 residents.

Legal Services Alabama has traditionally represented clients with civil legal problems in areas such as domestic violence (about half of LSA's cases), public benefits denials or terminations, collection suits and other consumer issues, and housing cases (mainly evictions from publicly-held or privately-owned properties). In 2005, LSA began its Community Economic Development practice to help people obtain and retain assets. The program also helps in forming nonprofit corporations that address systemic economic problems that lead to poverty, help entrepreneurs start up micro-enterprises,

develop sources of financing as alternatives to predatory loans, and engage in land loss prevention.

Guidelines and practice standards used by Legal Services Alabama to help low income property owners avoid land loss include:

1. The use of wills to avoid heir property issues
2. The use of Family Land Trusts to avoid heir property issues
3. Representing clients in partition actions
4. Defending clients with interests in real property tax sales actions
5. Representing clients in Actions to Quiet Title
6. Educating individuals about Real Property issues, including but not limited to:
Warranty Deeds, Quit Claim Deeds, the dangers of executing wills that do nothing more than pass property as it would be conveyed through intestate succession, the effects of judgments and liens, the difference between a deed and a bond for title, and the need for surveys and appraisals when real property is to be conveyed

Land loss issues, Sallé says, are especially prevalent in rural counties in which a disproportionate number of residents survive on poverty-level incomes. Since the populations of these counties are predominantly African American, this segment of society is at significant risk of losing its most important asset. Sallé says that nationwide, African Americans make up about 12.5 percent of the population, yet they only hold about 5 percent of the nation's assets. Through legal assistance to low-income residents, and particularly African Americans in the state's Black Belt, LSA hopes to ensure more equitable distribution of assets.

Most of the land loss prevention work performed by Legal Services Alabama and its predecessors (in 2003 three legal aid programs in the state were consolidated into LSA) has been done through the organization's office in Selma to assist clients throughout the Black Belt. LSA is in the process of making land loss prevention a core issue for advocates to pursue throughout the state. One challenge in expanding the practice, Sallé says, is lack of staff. Land loss prevention work requires title searches, which are time consuming, even when performed by trained, experienced staff members. Heir property cases often require searches on titles that extend several generations. For the past year and a half, Sallé and LSA's Resource Development Director have been applying for grants, trying to get funding necessary to fully implement the land loss prevention practice. This practice, Sallé says, would include teams made up of an attorney, a paralegal and an administrative assistant. LSA hopes to get funding for four such teams.

One legal means Legal Services Alabama uses to help families that want to protect their property as an undivided interest is the formation of family land trusts. Through a family land trust, a donor or donors (those whose names are on the deed) form a trust. A trust can also be created as part of a will. A trustee (who may or may not be a family member) is designated and makes decisions regarding the property on behalf of and for the benefit of the beneficiaries (the remaining family members). It is important that the donor take care in selecting a trustee. Since the trust holds title to the land and it is not divided among heirs, the title remains clear, and the land is less likely to be lost through neglect or suits for division than were it left as heir property. Although the beneficiaries might change as families expand or heirs die, the land remains the property

of one grantee – the trust – and there is no confusion about who pays the taxes and is responsible for maintenance. These responsibilities are stipulated in the trust agreement. The trust agreement also specifies how any income generated by the land is to be disbursed.

Forming a family land trust, Sallé says, “can preserve that piece of property a lot longer” than having the land partitioned off. Sallé understands that people are not comfortable having the land divided up or sold outside of the family: “One thing that I see is that ‘homeplace’ mindset” – people don’t want to lose a place where family members can come and go as their needs warrant. But Sallé warns that a family land trust “should not be considered ... a one size fits all solution, but it is one of many vehicles that can be used by families in an attempt to keep real property from being encumbered with title issues created as a result of no prior planning.”

Another concern Sallé has is that he sees many African American farmers in the Black Belt acquiring lots of land through Quit Claim deeds. He says the farmers don’t understand that these deeds are not the same as Warranty deeds (which transfer full ownership of the property) and carry many restrictions. Education about deeds and landownership issues, he says, needs to be at the forefront of his and other organizations’ missions. (The above paragraphs have been reviewed by, and changes made based on the recommendations of, Carl Sallé.)

Center for Heirs’ Property Preservation

In March of 2005 a new nonprofit organization formed in South Carolina to provide educational and legal assistance to heir property owners (Lynn 2006). The

Center for Heirs' Property Preservation (CHPP), located in North Charleston, began three years earlier as a public awareness project. The Center's director, Jennie Stephens, says that it "started out as a conversation with the community." Several years ago, the Coastal Community Foundation of South Carolina (CCF) was awarded two Ford Foundation grants totaling \$300,000. The Ford Foundation wanted urban community foundations to reach beyond their urban core and consider rural economic development, explains Stephens, who at that time worked for CCF. CCF staff conducted focus groups in the area and found that the topic of heir property and barriers to its development kept coming up. CCF commissioned the local Urban League to prepare a report on heir property in Wadmalaw Island, SC. This report was then used to aid a committee in developing a project that would address the issues that affect heir property owners from a holistic perspective.

They realized that there were a lot of legal issues that remained unresolved. Many in the area sought legal assistance in the form of pro-bono cases. However, because of how time-consuming heir property cases are, Stephens says, "It's not one of the first things lawyers want to select as a pro-bono case." In 2002 the Heirs' Property Preservation Project was created. Through this project, the CCF staff partnered with several other organizations in the area. After much debate about how much effort to put toward legal assistance during the planning stage, it was decided the primary goal of the project would remain on educating the public, with providing legal services being secondary. The project gained significant local, state and national attention to the work that was being done by one lawyer and one paralegal, who were receiving support from

an advisory committee. However, Stephens says, “We had a lot of cases, but they weren’t moving very quickly.”

Due to upper level management changes within the agency that housed the project, the advisory committee decided to create a separate entity. This was not an option at the initial development of the project, Stephens says, because the planning committee wanted to avoid the “growing pains” experienced by start-up nonprofits.

Initially, the Center was funded by several foundations and government organizations, including The Ford Foundation. Coastal Community Foundation managed grant funds for the Center for its first couple of years. After its inception, the organization raised additional money, allowing its staff to increase to five: two attorneys, a paralegal, an administrative assistant, and Stephens serving as executive director. The Center serves five counties in South Carolina: Beaufort, Berkeley, Charleston, Dorchester and Georgetown. The Center works with local leaders on planning and development efforts, promoting equitable growth throughout the region (“Center for Heirs’ Property Preservation” 2006). Along with serving the community at large, the Center provides educational and legal services to heir property owners and nonprofit organizations and attorneys serving heirs, as well as judges hearing heir property cases.

The Center serves low-income heir property owners who are at risk of losing their land. The Center’s goal is to make sure those co-owners are aware of and exercise their full rights as property owners. The organization informs heirs of alternative ways to clear titles to their land; it even provides representation through attorneys from other organizations or private firms. They conduct educational seminars, draft legal documents

(such as pleadings, complaints, and wills and deeds), and help clients research titles and genealogy.

Stephens estimates that about 40 percent of the staff's efforts go toward educational services. She guesses about another 35 percent goes toward legal services, 10 percent toward what she calls community education or organization, and the remainder toward administrative duties. However, since the Center hired its second attorney in August of 2006, Stephens expects the amount of time devoted to legal services to increase.

Even though they have expanded their legal capacity, "education has always been our major focus," Stephens says. Educational tools used by the Center include a booklet written at an eighth-grade level that reflects on the facts about heir property versus the myths surrounding it. The Center also produced a 19-minute video to provide information to heir property owners, particularly those who cannot read. Attorneys will also go into the community to do two-hour seminars. Recently, the organization has also been doing presentations at the many festivals held in the area. Stephens says that people will approach the Center, requesting that someone do a seminar in their community. "A lot of it is word of mouth," she says. The Center does not really do any advertising, but they remain busy. In the early stages of the organization, Stephens says, "We didn't really want to advertise – we were inundated as it was."

Through public presentations the Center tries to let people in the community know their options. However, Stephens stresses that 'preservation' is part of the Center's name: "Because we don't charge for our legal services, we don't accept clients who tell us they are going to sell their property." But beyond that restriction, the Center does not

apply a cookie-cutter solution to every heir property case. When making recommendations about how to handle the land and the title, Stephens says, “It depends upon the needs of the family.”

One thing the Center and its managing attorney have recently encouraged some families to consider is forming limited liability companies. “Why should you sell your land when you can develop it yourself?” Stephens asks. Existing family members form such companies. The family owns the company, which owns the land. Family members who want out can choose to sell their interests, but only to the company or family members. The LLC can then develop the property any way it wants – even build condominiums that could generate ongoing revenue for the family.

The requirements to create limited liability companies are less complicated than those placed on corporations (“Limited Liability Company” 2006). They are not required to conduct annual meetings of shareholders, nor are they required to draft bylaws. Their articles of organization do not need to list members or managers. Because the company is limited liability, members are protected from actions and debts incurred by the company. Members may even deduct losses of the company on their individual tax returns. Limited liability companies also have the luxury of deciding how they are to be treated for federal and state income tax purposes. However, some states, including Alabama, levy a franchise or capital values tax on limited liability companies – a fee paid for the benefit of limited liability. This is also a less-understood form of business, so finding investors willing to put up capital for it may be more difficult. Along the South Carolina coast, tourism abounds. “That’s prime real estate,” Stephens says. Although

they encourage people to consider forming LLCs, the Center's lawyers do not handle such cases, but refer people to private firms.

Not all cases go smoothly, Stephens admits. She says that in some legal cases where families are trying to clear the title to their land, they have encountered people who resisted. It's usually "the little old lady who has always had the land in that capacity, not wanting to change it," she says, "It's what they have always known and are comfortable with." There are also cases where distant relatives have no interest in doing anything with the land and refuse to cooperate. Stephens says the organization puts an emphasis on mediation: "We want the family to have a discussion before it is required to go to court."

Stephens says the response to the Center has been positive: "People would love to see us grow within the state." She has also received phone calls from people outside South Carolina who would like to "transplant" the organization to their states. "We will grow, the extent to which we grow and when is yet to be decided," she says. She is aware of the potential, but understands that it takes more than just one person or one small staff to make big changes: "I've got to get people to buy into the vision or we're not going to expand." For now, their focus remains on educating the people of that five-county region. The local planning office will sometimes refer people to the Center who cannot get permits because their land is maintained as heir property. The Center has a board and an advisory committee made up of lawyers, nonprofit service providers, government planners, and heir property owners. "The alliances we have created with some of them has allowed the Center to provide holistic services to meet the needs of the

Lowcountry's heirs' property owners," says Stephens. (The above paragraphs have been reviewed by, and changes made based on the recommendations of, Jennie Stephens.)

Houses on the Move

One organization that has taken notice of heir property and made efforts to counter some of its negative effects is the Houses on the Move program ("Houses on the Move" 2006). This program was implemented by the United Methodist Relief Center. The UMRC provides homes to rural, low-income residents of Charleston, Berkeley, and Dorchester counties of South Carolina – three of the counties served by the Center for Heirs' Property Preservation. The housing conditions of these counties mirror those found in Alabama's Black Belt – lack of basic necessities, and serious health threats caused by insects or inadequate waste disposal systems. In the program's target area in South Carolina, about half of the applicants live on heir property. Through the Houses on the Move program, the UMRC is able to side-step many of the legal problems caused by heir property, as well as the issues surrounding manufactured homes (decreasing equity, expensive repairs). Homes are donated to the UMRC, which moves and rehabilitates those homes, while the donors receive tax deductions. If a house is too large for a family to afford utilities and maintenance, then it is sold to generate funds for the program. In its first three years, with no advertising, the Housing on the Move program received 32 donated homes.

While this program is a cost effective way to provide single family housing for those who could not afford it otherwise, it has its limitations. First, there must be enough suitable houses in the area. This model is appropriate for places, like the South Carolina

Lowcountry, with rapid suburban growth into rural areas. Rural tourism destinations are ideal because of the development and rebuilding that takes place – and the number of older homes being replaced.

VIII. CONCLUSION

In order for heir property to “work,” and because of its communal nature, the informal rules guiding management of the land must be followed by all those who are entitled to it. Even if just one family member plays by different rules, conflict can arise that may be costly and time-consuming. Many living in the rural South abide by rules that can’t be found in books. Verbal assurances are treated as valid, contractual agreements. But America’s 21st-century society does not operate by the same set of standards. Bureaucratic processes and red tape often prevent those who cannot afford lawyers, do not have access to information or technical assistance, or are illiterate from exercising their rights as property owners.

It is clear that land held under heir ownership has economic consequences. Substandard housing and empty lots are proof of this. Yet the high numbers of people who live on heir property and chose to remain there suggest that there are still individuals in the 21st century who prefer this communal arrangement. Raising their children in a close-knit community where their ancestors once labored may provide a more real sense of security than any amount of money could give them. It would be wrong to assume that heir property persists simply because of ignorance or indifference. While few respondents were fully aware of all the ramifications of holding land in this capacity,

most understood that there were consequences and that they were sacrificing certain opportunities by keeping their land under heir title.

Each person I asked said they had plans to write a will – though none had done so already. Each heir property owner had plans for their land and homes – usually to leave them to one or all of their children. Each believed their land had value and most had spent their childhoods farming the land alongside their parents and siblings. Those with young children wanted to pass on not only the land, but the values associated with the land, such as hard work and family pride.

However, the majority of the commentary found in these pages is critical of heir property. Many view this institution as a problem that needs to be addressed or even eliminated. The legal and economic ramifications of property held in this form are clear – lawyers, housing services coordinators, community program directors, and even heir property owners themselves testify to this. However, heir property residents – those who live on the land and share a common space with their loved ones – demonstrate how heir property is a form of communal property that is supportive of certain cultural values held by some of the state’s poorest citizens. This common property system meets the needs of a sub-set of the rural population in ways that formal, individualist-centered property regimes cannot. However, as with other common property regimes, communal solidarity is necessary for heir property to “work.”

Many of the respondents working in the legal sector and with housing services said that trouble often starts when someone who has moved away decides to do something regarding the land they no longer live on. Family members are scattered about and many live in urban areas, far from rural life. It is these co-owners, who have become

part of the “modern” society, that appear more likely to force partition sales. These heirs are living lives among capitalists and see property different from those who still reside at their “homeplace.” As African Americans are brought into mainstream and oriented around merit and capitalism, their fidelity to collective responsibilities are bound to lessen. They live in opposition to rural traditionalism and see property as Hernando de Soto (2000) does, an asset that, well-defined, can be transformed into something they can use more readily in their daily lives – cash.

Of the respondents in this study who do not own heir property, most of them also appear to consider property the way Hernando de Soto does. Any property that falls outside the capitalistic, individualist-oriented, formal system of the United States is considered worthless. If land cannot be treated as a commodity, it has no value – at least not the kind of value the respondents think heir landowners would benefit from the most. De Soto argues that he ignores the cultural side of capitalism because it is not something tangible he can get a grasp on. Yet de Soto argues that “Hukum Adat” – or “cultural law” – should provide guidelines around which to build up property systems. Why shouldn’t existing laws guiding property systems continue to evolve to serve those on the fringes of society who need such protections?

The fate of rural African Americans is undeniably bound to their ability to secure strong footholds in today’s political and economic systems. Landownership is an important way to do this. Because of this connection, consequences of eliminating heir property must be carefully considered. While most common property systems are considered outdated and inconsistent with modern socioeconomic organizations, they may be the most viable form of land and resource management for particular groups.

Programs designed to combat land loss need to understand such systems and the social and cultural ramifications of eliminating them.

Many argue that common property regimes should be considered legitimate and deserve protection. Throughout the world, common property systems exist to protect and regulate the consumption and use of natural resources, like fish or a communal floodplain. The goal is equal distribution of benefits without overexploitation. A common property system is not restricted to agrarian communities or to places dependent on the environment for employment. Such a system can be used to protect more than the environment. It can be used to preserve family values, traditions, and social ties. However, like all common property systems, it needs to find a way to work within larger contexts – like the capitalist markets of the 21st-century.

Heir property serves as a source of stability – a home for those who may have nowhere else to go. Batteau, Falk, and Stack all demonstrate why land must be considered as more than an economic entity. In order to fully understand the persistence of heir property, a balanced understanding must be sought – one that considers cultural value. Land is personal – it is personal wealth, personal history, personal identity, personal heartache, personal accomplishment, and personal reminders of what has happened and what is yet to come. To treat land as nothing but an economic commodity is to do injustice to those who struggled to secure land and the liberties associated with it.

The United States property rights system does not recognize heir property as a legitimate form of ownership deserving of the protections other forms enjoy. Getting this existing system to change to reflect the needs of heir property owners is not a likely outcome. If heir property owners employ strategies, like forming family land trusts, to

work within the existing system, they may have a better shot at preserving this communal lifestyle. Limited liability companies offer a way for families to even reap economic benefits from landownership, while still keeping the land in the family.

Institutions like family land trusts and limited liability companies may serve as more modern forms of common property regimes – forms that can fit better into our Western, capitalistic notions of property. They may be a way for people to maintain that sense of “homeplace,” yet still be able to enjoy the opportunities available for those with clear title. However, like more traditional forms of common property regimes, these “modern” forms would also have to adhere to those rules specified by Otsuka and Place (2001) – all interest holders must be in agreement about how the land is used and managed. Outsiders with varying intentions must remain barred.

To successfully implement these institutions, families must seek legal assistance. However, many African Americans in the rural South do not trust the legal system and lawyers. It may be the responsibility of organizations they do put their trust in to first explain their rights and responsibilities as landowners, then to discuss legal options. Family members must also be willing to work with one another and engage in discussions. One lawyer I spoke to said that family reunions are ideal venues through which to facilitate such discussions. They are also good ways to begin the process of piecing together family trees. Any legal strategy used to clear title must first figure out exactly who owns what. If families can gather this information before they ever step foot in a lawyer’s office, a lot of time and money can be saved.

The Center for Heirs’ Property Preservation is a step in the right direction. But it is only one organization serving a handful of counties in one state. The Center can serve

as a blueprint for other organizations. With community education at the forefront of its mission, the Center has started the most important step in achieving change – awareness. As landowners, community services, and policymakers become more aware of the effects of heir property and what options are available, alliances can begin to form. Individually-oriented property ownership laws and policies should also be examined to determine how they neglect the needs of this vulnerable population. If African Americans hope to achieve a more equitable distribution of assets, they must first take the step of ensuring the future of those they already have. After all, heir property owners are just that – owners – and they need to maintain control over the future of their land and their lives.

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APPENDIX

Glossary

Administrator's Deed: Deed drawn up by an administrator (who is appointed by the state) for land left by someone who has died intestate.

Adverse Possession: Process through which someone acquires property without paying for it, usually by occupying it exclusively, openly, and continuously.

Family Land Trust: Agreement where a trustee holds ownership of land for the benefit of the family members; specifies how land is to be used and maintained.

Guardian Ad Litum: Someone appointed to make decisions on behalf of a minor, an incompetent person, or an absent party.

Partition in Kind: Division of property held communally by more than one owner; each owner receives a deed to his or her interest.

Partition Sale: Forced sale of property held communally by more than one owner; each owner receives a portion of the money collected by the sale, based on his or her interest.

Quiet Title Action: Court proceeding to identify heirs and “quiet” any claims or challenges to the title.

Quit Claim Deed: Deed that relinquishes whatever interest the seller has in the property.

Tax Sale: Court-ordered sale of land to recoup unpaid taxes on the property.

Warranty Deed: Deed that transfers full ownership and assures clear title to the property.

Table 1. Number of farms by race of operator, Census of Agriculture

	1954		1964		1974		1982		1992		2002	
	White	Black	White	Black	White	Black	White	Black	White	Black	White	Black
United States	4,298,766	483,650	2,957,905	199,952	2,314,013	59,371	2,186,609	33,250	1,881,813	18,816	2,067,379	29,090
Alabama	130,924	46,032	71,579	20,951	52,716	3,962	45,635	2,759	36,370	1,381	42,176	2,350

*Starting in 1982, the Census of Agriculture was taken every five years for years ending in a 2 or a 7.

** For 1954 and 1964, race was classified as "white" or "nonwhite"; for 1974, race was classified as "white" or "black and other races".

Source: U.S. Bureau of the Census (1956a; 1956b; 1967a; 1967b; 1977a; 1977b; 1983a; 1983b). USDA (1992; 2002).

Table 2. Demographics at nation, state, and county levels, Census 2000

	United States	Alabama	Hale County	Bullock County
Population	281,421,906	4,447,100	17,185	11,714
Percent black	12.3	26	59	73.1
Median household income in 1999 (dollars)	41,994	34,135	25,807	20,605
Median household income in 1999 for blacks (dollars)	29,423	21,782	17,565	15,979
Percent families below poverty	9.2	12.5	22.2	29.8
Percent of those families below poverty who are black	26.8	52.9	83.1	91.2
Percent with high school degree	80.4	75.3	65.2	60.5
Percent of those with high school degree who are black	9.8	20.2	47.9	61.4
Percent with disability status	19.3	23.2	29.7	29.5
Percent of those with disability status who are black	14.8	29.6	59.2	85.7

Source: U.S. Bureau of the Census (2000)