

Heirs' Property and Persistent Poverty among African Americans in the Southeastern United States

Conner Bailey, Robert Zabawa, Janice Dyer, Becky Barlow, and Ntam Baharanyi

Abstract—Historically, relatively few African Americans in the Southeastern United States (the “South”) wrote wills; there were few African-American lawyers, and most White lawyers of the courthouse gang did not inspire trust. As a result, upon death, property in the form of homes and land was distributed as undivided shares among surviving kin. As generation followed generation, title to such property became ambiguous or “clouded,” sometimes with scores or even hundreds of claimants. This phenomenon, known as heirs’ property, is an overlooked contributing factor to persistent poverty among African Americans in the South. We identify three factors that we believe connect heirs’ property and persistent poverty: (1) insecurity of ownership; (2) disincentives to make improvements that increase productive use and value of heirs’ property; and (3) the absence of collateral value of property. Using secondary data, we conservatively estimate over 1.6 million acres of heirs’ property having a value of \$6.6 billion in counties of the demographically defined Black Belt of the South. We discuss the need for additional research and for policy changes that would make it possible for heirs’ property owners to access programs designed to improve housing conditions and productivity of farmland and timberland.

Keywords: African Americans, Black Belt, heirs’ property, land, persistent poverty, South.

INTRODUCTION

Ownership of land represents many things to African Americans in the rural Southeastern United States (U.S. “South”). For farmers, ranchers, and forest landowners, land is a productive asset that generates income and is a storehouse of wealth (Geisler 1995, Zabawa 1991). Beyond its economic importance, and because of their unique struggle to obtain and retain land in the American South, for African Americans, ownership of land provides personal security and a sense of independence and satisfaction (Gilbert et al. 2002, King et al. 2018, Nelson 1979, Salamon 1979). Ownership and management of land affects employment and income at the individual level and can promote or impede economic and community development (Deininger and Kirk 2003, Dudenhefer 1993, Nelson 1979). Land ownership translates into political power while landlessness results in vulnerability and marginality (Copeland 2013, Gaventa 1998, Raper 1936). In the rural South, African-American landowners played a key role in

the Civil Rights movement because they had a measure of personal security that sharecroppers did not have (Shimkin et al. 1978). “Property ownership was more than a mere status symbol for African Americans. Land ownership represented independence, self-sufficiency and served as evidence that some African Americans possessed the will to overcome economic, legal obstacles, and even the threat of violence to become property owners” (Copeland 2013: 661).

By 1910, African Americans had accumulated a high of almost 16 million acres of land held in full ownership, a figure that reached a low of 2.3 million acres by 1992 (Gilbert et al. 2002, USDA 1992, USDC 1920). The most recent U.S. Department of Agriculture (USDA) data show African-American farmers owned 3.9 million acres in 2017 (USDA 2019). The causes of this decline are many but include vulnerabilities associated with heirs’ property (Mitchell 2005, 2014). Heirs’ property refers to land and other real property passed down across generations in the absence of a probated will. Heirs’ property is a

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multi-generational issue that can span decades or more and include potentially hundreds of relatives. Schulman et al. (1985: 41) noted that heirs' property has become "the traditional form of farmland ownership" among African Americans and is an issue likely to persist into the future given that many African Americans still do not write wills (Zabawa and Baharanyi 1992, Zabawa et al. 1994).

There has been considerable research on the legal complications and struggles of families dealing with heirs' property, but there has been almost no research on the connection between heirs' property and persistent poverty. The most recent USDA Economic Research Service definition of persistent poverty identifies those counties where 20 percent or more of all residents are considered poor through the 1980, 1990, and 2000 census counts plus the 2007–2011 American Community Survey (USDA ERS 2018). The contribution of this paper is to explain why heirs' property represents an important causal factor in the persistence of poverty among African Americans in counties of the demographically defined Black Belt South. We use available data to estimate the extent in acres and value in dollars of heirs' property in that region. We apply the concept of "dead capital" to heirs' property because title to such property is clouded and therefore cannot be leveraged to generate additional capital. Dead capital provides a useful and broadly heuristic framework for a detailed examination of those attributes of heirs' property that are specifically linked as causal factors to

persistent poverty. We point out needs for future research to provide a stronger empirical foundation to document this connection.

PERSISTENT POVERTY IN THE BLACK BELT SOUTH

The Black Belt of the South stretches from the coastal counties of Virginia south through Georgia and thence westward along the Coastal Plain as far as eastern Texas, as well as north up the Mississippi River as far as Missouri. Booker T. Washington defined the Black Belt of the South as those counties where African Americans outnumbered Whites (Washington 1901: 56), a definition echoed by Raper (1936). More recently, Wimberley and Morris (1997) mapped the Black Belt by distinguishing counties where 12 percent or more of the population was African American (12 percent being the national average at the time of their study). In 2010, African Americans made up 12.6 percent of the national population, 55 percent of whom lived in the South (Rastogi et al. 2011). For present purposes, we will define the Black Belt South as those counties in 10 States (Alabama, Arkansas, Georgia, Florida, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia) where African Americans make up 25 percent or more of the population, roughly double the U.S. average (fig. 1). Out of a total 848 counties, there are 365 Black Belt counties in these 10 States.

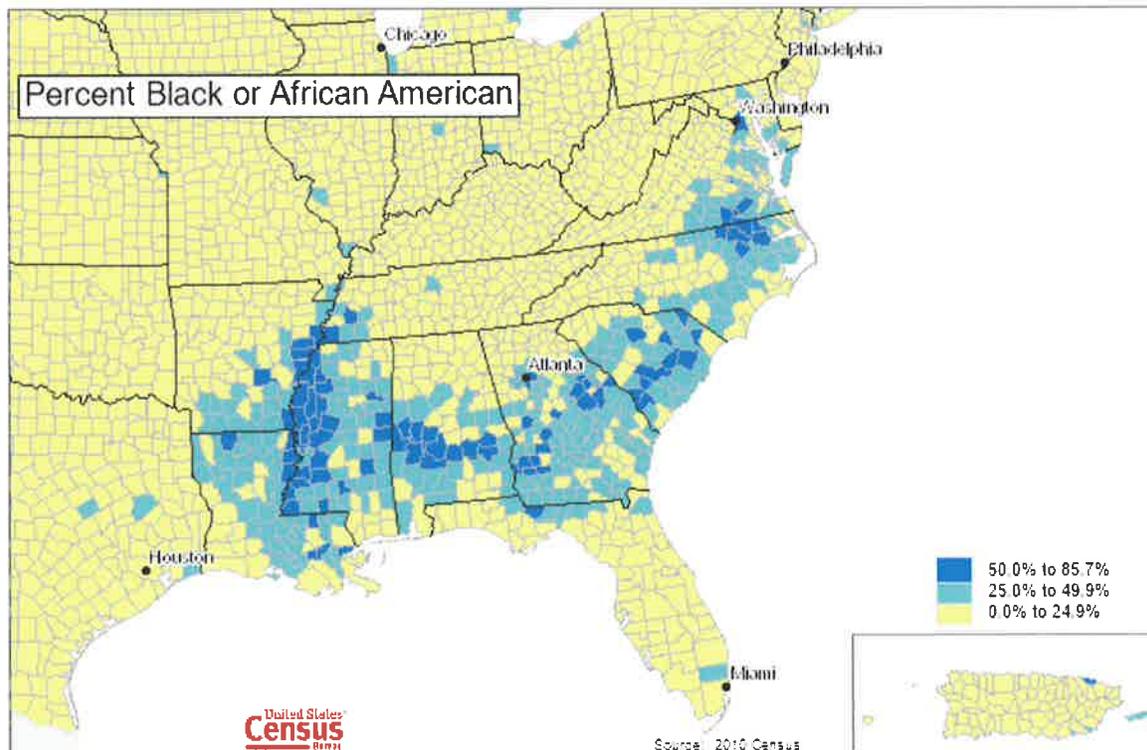


Figure 1—Percent of population that is Black or African American by county, 2010.

In 2014, within all non-metropolitan counties of the United States, African Americans had the Nation's highest poverty rate of any racial or ethnic group (36.9 percent), and virtually all of this poverty was located within the Black Belt (USDA ERS 2016). The Black Belt is also home to most of the Nation's 472 persistently poor counties. Running from Virginia to Texas, 323 of those counties (66.3 percent) are considered persistently poor (USDA ERS 2016). Persistent rural poverty in the Black Belt stems from a complex set of problems rooted in a history of slavery and racial discrimination, the vestiges of which continue to influence life today (Duncan 2014, King et al. 2018, Litwack 1998). Heirs' property is a phenomenon deeply rooted in this history and is an enduring legacy of a legal and political system built around racial and economic oppression.

HEIRS' PROPERTY AS DEAD CAPITAL

Historically, African-American property owners' decisions not to write wills are understandable in the context of local "courthouse gangs" of White lawyers who were not trusted (see Dyer 2007: 20–22). This sense of distrust was captured by a political leader in south Alabama, who described "vulture-like white people [who], through various dubious legal schemes, too often actually steal land from unknowing blacks ..." (Figures 1971: B-7). There are few African-American lawyers working in the rural South even today, and White courthouse gangs are still viewed with understandable suspicion (Duncan 2014; Dyer and Bailey 2008; USDA 2007, 2008).¹

In the absence of a probated will, each State regulates how property is passed to a decedent's heirs, who become tenants-in-common with undivided shares of the property as a whole. With each passing generation that dies without a will, the number of co-owners increases. After several generations, there could be hundreds of owners, many of whom may have little if any connection to the property while others may have strong emotional ties to the property. Family members who have moved away and may have lost contact with the rest of the family still retain ownership rights. Title to heirs' property is considered to be "clouded" because no one person or clearly defined set of persons has clear title and legal decision-making authority over the property. This greatly complicates decision making, frequently leads to disputes among kin, and is the underlying reason why banks, title companies, and others consider title to heirs' property to be clouded title.

In contemporary capitalist societies, clear and secure property rights provide an important basis for

accumulation and intergenerational transfer of wealth (Kotlikoff and Summers 1981). Land is a productive resource that can be used to generate wealth, provides personal and economic security, and allows for the pursuit of personal happiness (Geisler 1995). Because title to heirs' property is unclear, it has little if any value as collateral and so cannot be used to establish businesses, fund a university education, or leverage other investments. Decisions on repairing a home, improving the productivity of farmland, or replanting timberland all are complicated by the difficulty of getting all heirs to agree and contribute towards such investments. Heirs' property represents a serious constraint to the accumulation and intergenerational transfer of wealth.

DeSoto (2000) coined the term "dead capital" to describe property lacking clear and legally enforceable title and the inability to leverage such property to generate wealth and income. DeSoto developed the dead capital concept to explain underdevelopment in non-industrialized nations, and there are critics who challenge the appropriateness of extending private property rights from industrial to non-industrialized settings (Bromley 2008). Deaton (2005) has applied the concept of dead capital to the constraints affecting the ability of heirs' property owners in the United States to accumulate and transfer wealth across generations. Acknowledging the appropriateness of Bromley's critique, we believe this use of the dead capital concept is appropriate and heuristically useful in understanding how heirs' property contributes to persistent poverty in the Black Belt South.

MILLIONS OF ACRES, BILLIONS OF DOLLARS

In this section, we provide an estimate of total acres and economic value of heirs' property owned by African Americans in the demographically defined Black Belt counties of the South. Obtaining data on the extent and value of heirs' property is a serious challenge which involves digging through both digital and non-digital records from individual county courthouses. Researchers with the Federal Reserve Bank of Atlanta note that "the difficulty in identifying the scope of the problem lies in the inconsistent methods of data collection and reporting among county tax assessors" (Carpenter et al. 2016). Even where land ownership data are available electronically, relying solely on digital data is problematic because there is no standard nomenclature used for denoting the presence of heirs' property. Dyer et al. (2009) found that cross-referencing electronic data with paper records provided the most reliable method of identifying heirs' property. Such an approach is extremely laborious, however. The

¹ The history of race relations is central to understanding heirs' property in the South, but it is important to note that other marginalized populations in the United States, including Whites in Appalachia, Hispanics in the Southwest, and Native Americans in the West, also have had limited access to the legal system and share with African Americans of the South the vulnerabilities and constraints of heirs' property (Bobroff 2001, Deaton 2005, Sladd 2005). This suggests that economic and political forces, and not just racial prejudice, are at play.

absence of quality data on the extent and value in dollars of heirs' property makes it difficult to argue effectively for legal and policy changes that would benefit heirs' property owners or the larger rural economy of the Black Belt South (Mitchell 2005).

Two early studies of heirs' property made an effort to quantify the extent of heirs' property for African Americans in the South. Based on a study of 10 counties in five States (Alabama, Georgia, Mississippi, North Carolina, and South Carolina), Graber (1978) estimated one-third of all land owned by African Americans was held as heirs' property. The Emergency Land Fund (ELF 1980) used a team of researchers with a clearly articulated research plan in selected counties of Alabama, Louisiana, Mississippi, South Carolina, and Tennessee and found that African Americans in those States owned 9.1 million acres; of this total, 3.8 million acres (41 percent) were held as heirs' property. The USDA (2007) conducted a study in one county in eastern Arkansas and found that

40 percent of all land owned by African Americans was heirs' property.

Other studies on heirs' property help give us a sense that heirs' property is widespread (Johnson Gaither 2016). Rivers (2007) reported that 17,000 acres of Berkeley County, SC, was held as heirs' property, representing 2.2 percent of the county total. The Southern Coalition for Social Justice (2009) reported that heirs' property made up 2 percent of the land in Orange County, NC. A 2011 study by the Center for Heirs' Property Preservation cited in Johnson Gaither (2016) identified 41,000 acres in six coastal counties of South Carolina, representing 1 percent of total land. Data from these counties in North and South Carolina suggest that, on average, 2 percent of the land is held as heirs' property.

In table 1, we present data from 12 counties that provide number of acres and appraised value of heirs' property based on county tax records. The 12 counties include five

Table 1—Heirs' property in 12 counties of Georgia, Alabama, and North Carolina

Counties	Setting	Population, 2017	Population density (sq. mi.)	African American, 2016 (percent)	Heirs' property (acres)	Land in heirs' property (percent)	Value of all heirs' property (\$ million)	Value per acre (\$)
Chatham, GA	Metro, coastal	290,501	622	39.8	923	0.3	22.3	24,176
Chattooga, GA	Rural	24,770	83	10.7	271	0.7	0.8	3,024
Dougherty, GA	Urban	89,502	288	68.5	1,551	.01	8.9	5,736
Evans, GA	Rural	10,775	60	29.5	93	0.9	0.4	4,150
McIntosh, GA	Metro, coastal	14,106	34	35.1	2,377	0.1	26.2	11,039
Macon, AL	Rural	18,755	35	82.1	15,971	4.1	44.3	2,771
Calhoun, AL	Urban	114,728	196	20.5	4,468	1.1	30.4	6,806
Pickens, AL	Rural	20,176	22	41.8	6,519	1.1	13.4	2,059
Wilcox, AL	Rural	10,719	12	71.9	8,064	2.8	16.4	2,036
Wake, NC	Metro	1,072,203	1,251	20.6	8,713	1.6	454.9	52,207
Orange, NC	Metro	144,946	363	11.5	5,623	2.2	34.9	6,201
Durham, NC	Metro	311,640	183	37.6	752	0.4	16.0	21,318
Totals					55,325		668.9	
Totals, Black Belt					36,250		147.9	

Sources: Data for the five Georgia counties were found in Georgia Appleseed (2013). Data for Macon County are from Dyer et al. (2009). Data for Calhoun and Pickens Counties are from Alabama Appleseed (2009a, 2009b). Data for Wilcox County are from Patterson (2018). Data for Wake County are from Bartels (2012). Data from Orange County are from Southern Coalition for Social Justice (2009). Data from Durham County are from Sean Mason.¹ Demographic data are from U.S. Census Bureau (2018).

¹ Personal communication. 2018. S. Mason, Graduate Student, Duke University, Durham, NC 27708.

from Georgia, four from Alabama, and three from North Carolina. Eight of 12 counties fit within our definition of the demographically defined Black Belt (over 25 percent African-American). The counties include a mix of rural (five), urban (two), and metropolitan (five) settings with populations ranging from under 11,000 to over 1 million. Population size and density influence appraised values which range from \$2,000 to over \$52,000 per acre. Data from these 12 counties were collected for studies conducted during the period 2009–2018.

The most detailed and carefully articulated study in terms of research methodology was that of Dyer et al. (2009) in Macon County, AL. This study began with an examination of electronic tax rolls and then extended the search to include archival research, expanding the number of heirs' property parcels. Heirs' property in Macon County totaled nearly 16,000 acres of land representing 4 percent of the county with an appraised value of \$44.3 million. Data for the other three Alabama counties (Calhoun, Pickens, and Wilcox) relied exclusively on electronic tax records, which included notations indicating that parcels were heirs' property. Heirs' property in these three counties represented, on average, 1.7 percent of all land. On average, per-acre appraised value of heirs' property for the three rural counties (Macon, Pickens, and Wilcox) was approximately \$2,300, less than half the \$6,800 values found in urban Calhoun County.

Data for the five Georgia counties come from a Georgia Appleseed (2013) study conducted by real estate lawyers and are based on examination of electronic tax records. Heirs' property accounted for an average of only 0.4 percent of land in these five counties, but the average values per acre were higher than in Alabama. Most noticeable among the Georgia counties are the high appraised values for the two coastal metropolitan counties.

Data for three metropolitan counties in North Carolina (Wake, Orange, and Durham) also are based on electronic tax records and show that appraised values of heirs' property can be quite high, as in the case of Wake County which includes the city of Raleigh. On average, 1.4 percent of these three North Carolina counties are owned as heirs' property.

In these 12 counties, a total of 55,325 acres with an appraised value of \$668.9 million are owned as heirs' property. When we focus only on the eight demographically defined Black Belt counties, the totals are 36,250 acres with an appraised value of \$147.9 million. On average for these eight counties, we find roughly 4,500 acres of heirs' property with an appraised value of \$4,000 per acre. There are 365 counties (fig. 1) in the 11 States of the South where African Americans made up 25 percent

or more of the population in 2010 (U.S. Census Bureau 2017). A simple extrapolation of these averages across all 365 counties would give an estimate of 1,642,500 acres valued at \$6.57 billion.

There is wide variability in number of acres and appraised value per acre among the eight Black Belt counties in table 1, so any estimates must be treated with caution. That said, Dyer et al. (2009) considered their estimate for Macon County, AL, to be conservative. Data for the other seven rural Black Belt counties may be even more conservative as they are based on electronic tax records alone, without the extra effort of identifying additional cases through archival research. Moreover, these estimates only consider 365 out of 848 counties in the South. We know from table 1 that there is heirs' property in non-Black Belt counties, and, as these counties often are more wealthy, the values associated with heirs' properties outside the Black Belt may be higher.

With these caveats in mind, we feel confident that our estimates of 1.6 million of acres of land worth \$6.6 billion held as heirs' property in the 365 counties of the Black Belt South are reasonable. We do not think that these estimates will be the final word on the extent and value of heirs' property and hope that others will add to the data on heirs' property. We present the data here to provide an empirical context to the discussion of economic constraints associated with heirs' property which follows. These constraints not only affect individual families but also economies of rural Black Belt counties in the South.

CONNECTION BETWEEN HEIRS' PROPERTY AND PERSISTENT POVERTY

In the preceding section, we estimated that 1.6 million acres valued at \$6.6 billion are held as heirs' property in the 365 demographically defined Black Belt counties of the South. As such, this property represents dead capital—a form of capital that cannot be used to generate additional capital. The inability to accumulate wealth through direct use or leveraging of heirs' property represents a hindrance not only for individual families but also on the larger regional economy. Homes are allowed to deteriorate because there are no incentives to maintain them and increase their value. Farm and forest land often is left idle, generating neither employment, income, nor wealth. The property cannot be used for collateral to start a business or send a child to college.

In this section we identify and discuss three factors that make heirs' property a contributing factor to persistent poverty among African Americans in the South: (1) insecurity of ownership; (2) constraints to improvements that increase productive use and value; and (3) the absence of collateral value of heirs' property.

Insecurity of Ownership

Significant challenges faced African Americans wanting to buy property in the late 19th and through much of the 20th centuries. They had to accumulate enough money to make the purchase, and they needed to find an owner, almost invariably White, willing to sell land. In far too many cases, an even larger challenge has been to hold on to the land in the face of multiple challenges, including discriminatory practices of the USDA and anti-Black physical and economic violence, particularly in areas where there was (and is) direct economic competition such as the Sea Islands of South Carolina and Georgia (King et al. 2018, Lewan et al. 2001, Litwack 1998). Two sources of insecurity are particularly pertinent to owners of heirs' property: failure to pay property taxes and forced sale of land known as partition sales.

Failure to Pay Property Taxes

Heirs' property is vulnerable to loss through failure to pay property taxes and the efforts of speculators and developers who know how to use the tax system to their advantage. In a situation where many individuals own a share in heirs' property, and where many of these individuals have moved away and lost connection to the land, it is sometimes difficult to ensure that property taxes are paid. Dyer et al. (2009) found that 30 percent of the people paying property taxes on heirs' property in Macon County, AL, lived outside the State. Such physical separation from the land may increase the possibility that property taxes would not be paid, resulting in the land being sold at public auction.

Often but not always, one or more members of the family live in a home located on or near land owned as heirs' property. In such cases, these family members have a direct connection to the land and are likely to pay property taxes in a timely manner (Dyer 2007). Where there are no family members living on or in proximity to the land, it is not uncommon for connection to the land to fade and for property taxes to remain unpaid. In virtually every county, there are people who watch lists published in local newspapers of properties with delinquent taxes. In Macon County, AL, tax lien certificates are sold at auction on the third Tuesday in April, and these tax sales are always well attended by local citizens as well as out-of-county investors and developers. In some States, county revenue offices will accept tax payments on a property from anyone, and, over a matter of a few years, if the deeded owners do not pay their taxes but someone else has done so, the person paying the taxes is able to obtain what is known as a tax deed on the property. The family has a window of time in which they can regain possession if they have the means to do so, but all too often the land is lost to the family.

Partition Sales

A second mechanism through which heirs' property may be lost to the family is through a partition sale ordered by a judge as a result of a legal action brought by one or more of the tenants-in-common (Dyer and Bailey 2008, Mitchell 2014). A partition sale also may be initiated by an outsider who is able to buy a family member's share. This outsider, who is motivated to gain ownership of the land, now owns a fractional share of the heirs' property and can petition the court for a partition sale. Rural African Americans often are unable to compete in an auction setting with those who forced the partition sale. There is abundant literature documenting not only the loss of family land but also that the property often is sold for a fraction of its true value (Casagrande 1986, Chandler 2005, Craig-Taylor 2000, Dyer 2007, Mitchell et al. 2010). To add insult to injury, the family whose land was sold is required to pay court costs and lawyers' fees, including the costs of the lawyer representing the person forcing the partition sale (Dyer 2008).

Such partition sales are most common where heirs' property has a high market value, for example along the "Gullah-Geechee coast" of South Carolina (Rivers 2007). African-American populations were established there long before beachfront property in places like Hilton Head became a valuable commodity. The Coastal Community Foundation in Charleston, SC, estimated that 14 million acres of heirs' property throughout the "lowlands" of South Carolina and Georgia have been lost since the Civil War through partition sales to speculators or legal takings for failure to pay taxes (Jonsson 2007).

Vulnerability to partition sales is a disincentive to make home improvements. Dyer et al. (2009) reported that structural improvements made to houses held as heirs' property in Macon County, AL, were far less common than for houses with clear title, reflecting a pattern of non-investment. In the event of a partition sale, the value of any improvements would accrue to all heirs' property owners and not to the heir making the investment. A judge might be willing to consider investments made when distributing proceeds of a partition sale if careful records were kept, but there are no guarantees. As Rivers (2007: 7) says, owners of heirs' property are "a disadvantaged class of property ownership."

The Uniform Law Commission (n.d.) developed a Uniform Partition of Heirs Property Act (UPHPA) designed to provide heirs' property owners some protections against predatory acts by developers and speculators. Acting as a "uniform" act as opposed to State-specific legislation, the major reforms of the UPHPA include (1) a "buy-out" provision by co-tenants of the heir who wants to partition;

(2) a preference for partition in kind over partition by sale; and (3) partition sales based on open-market value versus auction value (ABA 2016). As of this writing (August 2019), 12 States and the U.S. Virgin Islands have enacted the uniform code, and 10 other States plus the District of Columbia have had the bill introduced in the legislature.

Constraints to Increasing Productive Use and Property Value

The absence of clear title and vulnerability to partition sales act as disincentives not only to housing improvements but also to investments that would increase productivity of farmland and timberland. This problem was first identified in a study of rural land owned by African Americans conducted by the Emergency Land Fund (1980). That study found heirs' property was being used less productively than non-heirs' property and that while 85 percent of heirs' property owners had never obtained a loan on the land, 97 percent of non-heirs' property owners had. Zabawa (1991) reported that farmers operating heirs' property were less likely to invest in productivity-enhancing improvements than farmers holding clear title to their land. A recent study of African-American farmers in Alabama found a significant difference in terms of land size and value, land productivity, and investment in land, with heirs' property owners comparing unfavorably with those who owned titled property (Baba 2010).

From the perspective of an heir who farms or grows trees on family land, heirs' property is at least a complication if not a source of uncertainty. Legally, this heir should lease the land from the family and the contract should be signed by all heirs, with an agreed-upon mechanism for sharing the proceeds. In practice, informal arrangements are common, where one heir simply takes on responsibility for managing the land and keeps the proceeds of any farm sales. On a small farm with limited productivity, this arrangement may not provoke questions or concerns. However, investing in improvements that would increase productivity may increase value of the land and cause other heirs to think that their interests would be best met by selling the land and distributing the proceeds.

The same set of disincentives applies to investments to increase productivity of timberland, which can exceed \$200 to establish 1 acre of loblolly pine (Dooley and Barlow 2013), the most important tree species for the forest products industry in the South. From time of planting to harvest may be 2 decades or more, so any individual heir who invests will be vulnerable to a partition sale during that whole period. At time of harvest, a timber buyer will require a contract documenting the legal right of the owner to sell the timber. This would require the signature of all heirs, and some heirs may think they deserve a share of the sale price without having

contributed to any of the production costs. There are of course cases where one heir will sell the timber without getting approval of or sharing the proceeds with other heirs (Dyer and Bailey 2008, Schelhas et al. 2017). Such sales create tensions within the family and increase the difficulty of making collective decisions in the future.

Absence of Collateral Value

Because, by definition, title to heirs' property is clouded, financial institutions and government agencies are reluctant to proceed with loans or grant programs. Technically, a mortgage or contract could be signed by all heirs, but the likelihood of that happening declines as the number of heirs increases. Distinctions based on age, residence, economic status, degree of connection to the land, and other factors complicate the process of consensus building. Moreover, banks and government agencies may be concerned that additional heirs may be identified, resulting in legal or other complications. As a consequence, clouded title means such property has little or no collateral value. Heirs' property cannot serve as collateral for loans to purchase or improve farmland or timberland, to obtain a mortgage to build a home, to either establish or expand a business, or to pay expenses of sending a daughter or son to college. In short, heirs' property is an impediment to wealth generation.

Unable to obtain a conventional mortgage to build a home, heirs' property owners often decide to purchase mobile homes which are less expensive to purchase, initially. However, loans on mobile homes carry higher interest rates because they are classified as unsecured personal loans. Because mobile homes tend to deteriorate and decline in value over time, unlike conventional homes, many heirs' property owners are locked into paying higher interest rates for a depreciating asset compared to site-built homes financed through a conventional mortgage. For many Americans, the home where they live represents a high proportion of their total wealth; the inability to gain access to a conventional mortgage market represents a serious obstacle to wealth generation for owners of heirs' property.

DISCUSSION

We believe that heirs' property is an important factor in explaining persistent poverty among African Americans in the South. Heirs' property does not affect everyone, but as researchers working on this topic, we can report that we rarely find African-American friends or acquaintances in the South who have no direct experience with the phenomenon.

We do not want to consider heirs' property only from a monetized perspective. There are positive cultural features of heirs' property, and the land itself can represent a

source of family and community stability as well as a source of personal independence (Dyer and Bailey 2008). We also acknowledge that using property as collateral can lead to loss of land if the borrower defaults on the loan. That said, the inability of heirs' property owners to access financial assets to build a home, start a business, send a child to university, or address any number of other needs and opportunities that families in the United States experience represents an obstacle to wealth generation and accumulation and contributes to persistent poverty. The estimate we provide that there is \$6.6 billion in heirs' property in the Black Belt South, and much more across the South as a whole, helps frame the dimension of the problem but does not speak to the lived experience of the people involved, whose economic opportunities are limited and who experience the vulnerabilities associated with clouded title over land.

The issue of heirs' property reveals that ownership and the ability to enjoy the benefits of property are not the same. Limitations to ownership rights and benefits affecting African-American owners of heirs' property strike at a whole population of owners who have been disempowered, systematically and through conscious and calculated efforts on the part of White elites at local and State levels. Ownership of land should represent an important form of security, but, for generations, the legal and the wider political system has worked against the interests of African Americans. The disconnect between ownership and benefits is a legacy of asymmetrical power relationships tied to specific historical conditions. "In a society based on capitalism, land ownership becomes an essential and unalterable prerequisite for economic development and the exercise of substantial political influence" (Nelson 1979: 83).

Heirs' property does not only affect the present but has acted as a restraint on the full use and benefit from property since the property was first acquired. Land loss has been a common experience, undermining economic fortunes of many African-American families (Gilbert et al. 2002, King et al. 2018), and there is a general consensus that heirs' property has contributed to land loss through tax and partition sales (USDA 2007). Where land has not been lost but is entangled in the web of heirs' property, its productive potential has been limited for reasons described above. The difficulty of managing farmland and timberland held as heirs' property means that land often is left unmanaged or the house left to become increasingly derelict year after year, generating little economic benefit or becoming incapable of providing shelter to the family. Heirs' property cannot be used for collateral for the kinds of investment and wealth-generating purposes those with clear title are able to make, giving meaning to the phrase "dead capital."

Our estimate of \$6.6 billion representing the value of heirs' property in the Black Belt South may seem like a small sum for a large region. But for the families involved, this property is an important part of their overall net worth. The prevalence of heirs' property also has wider community and societal impacts. Instability in ownership and the inability to fully utilize thousands of acres in county after county means that income, wealth, and employment from the land are diminished. Land values and the value associated with houses and other improvements also will be diminished, affecting tax revenues of local governments used to support schools, roads, and other needs. Historically, there is a strong connection between the ownership of land and community leadership in African-American communities, and the insecurity of heirs' property ownership weakens the foundation of that leadership. "At the individual and group level, the connection to family history and community and the sense of freedom and independence that is associated with land ownership often has extraordinary, perhaps incalculable value" (Georgia Applesseed 2013: 8).

Resolving Problems Associated with Heirs' Property

The topic of heirs' property has begun to attract increased attention within the USDA and other Federal agencies. In 2007, USDA Rural Development posted a request for information in the Federal Register (USDA 2007), noting that absence of clear title was an obstacle for heirs' property owners to gain access to USDA programs. The USDA (2008) followed up with a second Federal Register notice of funds available to established cooperative working relationships with community organizations to address heirs' property issues as they relate to USDA programs. Through the Southern Research Station, the USDA Forest Service has taken a strong interest in the topic of heirs' property, partnering with the Natural Resources Conservation Service, the U.S. Endowment for Forestry and Communities, the Federation of Southern Cooperatives, and the Center for Heirs' Property Preservation (Schelhas et al. 2017).

Passage of the 2018 Farm Bill created opportunity for heirs' property owners who can document they have controlling interest in farm or forest lands to gain access to a variety of USDA programs, including the Conservation Reserve Program that pays landowners to remove environmentally sensitive land from production (Bailey et al. 2019). This is an important breakthrough in Federal policy but, as with all policies, how the new policy will be implemented at the local level remains to be seen. USDA programs to improve low-income housing (e.g., Section 502 direct loan and loan guarantee programs, and Section 504 home improvement loan and grant programs) were not included in the 2018 Farm Bill. Heirs' property owners of homes continue to face constraints to maintaining the value of their properties.

Significant action is also being taken at the local and regional levels. Research supported by a Ford Foundation grant directed by Baharanyi (n.d.) registered over two dozen organizations that assist individuals and communities with heirs' property issues, including the Arkansas Land and Farm Development Corporation, the North Carolina Association of Black Lawyers, the Land Loss Prevention Project, and the Center for Heirs' Property Preservation. Another community-based organization, the Federation of Southern Cooperatives/Land Assistance Fund also has a grant from the USDA that supports their Regional Heirs Property and Mediation Center.

The Historically Black Land Grant Universities, or 1890s institutions, have heirs' property programs as well, often directed through their Cooperative Extension Programs, their Agricultural Experiment Stations, or with support from local, State, and Federal grants such as the Socially Disadvantaged and Veteran Farmers and Ranchers Program and the Beginning Farmer and Rancher Development Program. Through USDA support, Alcorn State University in Mississippi has the Socially Disadvantaged Farmers and Ranchers Policy Research Center that also examines heirs' property issues.

Finally, at the regional level, the Southern Rural Development Center (SRDC) is initiating heirs' property research as well. The SRDC, a consortium of land grant universities (1862 and 1890 institutions), other public universities and colleges, community-based organizations, and government agencies, added heirs' property into its 2018 plan of work under emerging issues. To date, a survey of interested members has taken place as well as an inventory of organizations working on the heirs' property issue. Future actions include applying for grant support and convening a regional meeting to focus on research, outreach, and policy issues related to heirs' property.

Protecting the interests of heirs' property owners almost always involves clearing title to the property. The first step in this process is to identify all heirs. This can be a challenge when upwards of 200 heirs may be associated with a particular property. The impetus to clear title usually comes from one person or a small group of heirs, but they may not know everyone. A process of due diligence, with notices published in newspapers and other efforts to identify heirs, must be followed. Once all heirs have been identified, a consensus needs to be reached among heirs as to what should be done with the property. There are a number of options that can be considered, including (1) do nothing, (2) sell the land and distribute the proceeds according to shares, (3) let one or more heirs buy out the interest of the others, (4) create a family trust where the trustee takes on a fiduciary responsibility for managing the property on behalf of all members of the family, (5) create a formal partnership, or (6) create a

Limited Liability Corporation (LLC) which owns the land and, through formal bylaws, determines to whom shares in the land can be sold (typically only to family members making up the LLC). The process of clearing title can take several years and involve lawyers. Because success depends on unanimity among all heirs on the chosen course of action, there is no foregone conclusion once the process has started.

CONCLUSIONS

Land and improvements on the land represent productive assets for farmers, ranchers, and timberland owners, as well as sanctuary and security for homeowners and communities. Because title is clouded, heirs' property represents a multi-generational obstacle to the accumulation of wealth among African Americans in the South and in this way contributes to persistent poverty. We made three points to support this view. First, heirs' property is vulnerable to loss through tax or forced partition sales, which undermines a key source of a family security, status, and wealth. Second, the collective nature of heirs' property ownership represents a disincentive for individual investment in property improvements that would increase productivity of farm, pasture, and timber lands, or to repair houses, barns, and other structures. Until recently, the absence of clear title meant that heirs' property owners were not eligible for government programs designed to help farmers and timberland owners. How provisions of the 2018 Farm Bill are implemented will be an important topic for future research. The 2018 Farm Bill does not provide heirs' property owners of homes to access USDA programs designed to help homeowners with limited incomes. Finally, the clouded nature of title to heirs' property means that such property has no collateral value. The land cannot be used as collateral for a mortgage to build a home or start a business or for other productive use. The cumulative effect of \$6.6 billion in clouded title represents a significant impediment on the economic prospects of African Americans in the Black Belt South.

We believe a strong case can be made that heirs' property contributes to persistent poverty, but more research in more counties is needed to solidify this argument. What we need at this point is research documenting the extent and value of land that is tied up as dead capital. Such data would provide a stronger case for policy reforms within Federal and State agencies that would allow heirs' property owners to make improvements to their homes and increase the productivity of farm, pasture, and timber lands. FEMA and the State of Louisiana have identified mechanisms to give heirs' property owners access to government program benefits, and various USDA agencies have been engaged in direct work with heirs' property owners, attempting to understand the needs of such owners and to consider the legal adjustments necessary to meet those needs. Such data could persuade Congress to find legislative solutions to

constraints faced by heirs' property owners and encourage States to adopt the UHPA and other legislation that would transform heirs' property into productive assets that can be used to reverse the persistence of poverty in many Black Belt counties of the South.

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