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RESEARCH ARTICLE

Envisioning the Beloved Community: Racial Justice, Property Law, and the Social Mortgage

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Abstract

The Reverend Dr. Martin Luther King, Jr. was concerned about both poverty and race, inextricably linked because of the long and brutal history of racial injustice in housing, employment, and education. What Dr. King called the *beloved community* reflected a vision of a world built on peace, human dignity, and shared material abundance for all people. To explore this linkage of poverty and race, I employ two related Christian theological concepts: the universal destiny of the goods of the earth and the social mortgage that encumbers all private property to ensure the equitable provision of those goods to all and for all generations. I analyze the ways in which the universal destiny of goods can be mediated through U.S. property law by structuring the ownership and use of land and buildings within the context of social obligation. But while the law has the *capacity* to ensure ownership, security, and infrastructure for all, U.S. society has failed to make the necessary payments on the social mortgage that would create this reality—a failure due primarily to severe racial and economic injustices, both historical and contemporary. Yet there is hope: I present examples that offer glimpses of the beloved community.

Keywords: Catholic social teachings; common good; human flourishing; universal destination of goods; social mortgage; housing segregation; homeownership wealth; exclusionary zoning

Introduction

The Reverend Dr. Martin Luther King, Jr. was concerned about both poverty and race, inextricably linked because of the long and brutal history of racial injustice in housing, employment, and education. Yet he sought to improve the social and economic conditions for *all* poor people. He offered a critique of the excesses of capitalism and believed fervently that poverty could be eliminated, both domestically and globally, with a commitment of political will and the redirection of resources. What King called the "beloved community" reflected a vision of a world built on peace, human dignity, and shared material abundance, where power is exercised in service of love.[1]

This linkage of poverty and race in the United States can be understood through two related Christian theological concepts—the *universal destiny* of the goods of the earth and the

[1] Martin Luther King, Jr., *Facing the Challenge of a New Age*, address delivered at the First Annual Institute on Nonviolence and Social Change, The Martin Luther King, Jr. Research and Education Institute, Stanford University (December 3, 1956), https://kinginstitute.stanford.edu/king-papers/documents/facing-challenge-new-age-address-delivered-first-annual-institute-nonviolence ("But the end is reconciliation; the end is redemption; the end is the creation of the beloved community.").

social mortgage that encumbers all private property to ensure the equitable provision of those goods. These concepts, rooted in concerns of distributive and contributive justice, are often applied to topics like taxation and spending, a living wage and workers' rights, and the global distribution of life-saving medications. I add U.S. property law to that list of topics because of its capacity to mediate the universal destiny of goods through the social mortgage whenever it structures the ownership and use of land and buildings under norms of social obligation.[2]

Clearly expressed in the Hebrew and Christian scriptures and articulated throughout the patristic and medieval periods (with Aquinas as a prominent voice), the *universal destiny of goods* refers to the sharing of resources that God gifted to all people and all generations to promote the common good and its corollary, the flourishing of the human person.[3] Those resources include land, water, air, and natural resources, and the fruits of human skill, knowledge, technology, and culture. In Catholic social thought, where there has been sustained reflection on the topic for over a century, this sharing is "the first principle of the whole ethical and social order."[4] Following from the universal destiny of goods is the *social mortgage*, a term coined by Pope John Paul II and so called because it refers to society's claim on all property owners to steward their property by way of a "mortgage payment" to ensure the material welfare of all, especially the poor.[5] It is not surprising that Dr. King affirms these insights, even if not the same terminology, as he drew deeply from both the Bible and Thomistic natural law.[6] For him, those with power, authority, and means are under a moral imperative to establish the material conditions necessary for human flourishing.

[2] *See generally* Angela C. Carmella, *Christianity and Property Law*, *in* Oxford Handbook of Christianity and Law 448 (Rafael Domingo and John Witte Jr. eds., 2024).

[3] For a general analysis of biblical, patristic, and Thomistic approaches, *see* David W. Opderbeck, *Christian Thought and Property Law*, *in* Christianity and Private Law 54 (Robert F. Cochran Jr. and Michael P. Moreland eds., 2021). For a discussion of the Jewish legal requirement in Leviticus 23:22 that owners leave the edges of their fields unharvested so that widows, orphans, and foreigners could gather food for themselves, *see* Joseph William Singer, The Edges of the Field: Lessons on the Obligation of Ownership 38–62 (2000). For a description of Augustine's thinking, *see* William S. Brewbaker III, *Augustinian Property*, *in* Christianity and Private Law, *supra*, at 77.

[4] Francis, Laudato Si' [Encyclical on Care for Our Common Home] § 93 (2015), https://www.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco_20150524_enciclica-laudato-si.html (quoting John Paul II, Laborem Exercens [Encyclical on Human Work] § 19 (1981), https://www.vatican.va/content/john-paul-ii/en/encyclicals/documents/hf_jp-ii_enc_14091981_laborem-exercens.html). These themes began to be articulated in the late nineteenth century and continued into the early twentieth century. *See* Leo XIII, Rerum Novarum [Encyclical on Capital and Labor] (1891), https://www.vatican.va/content/leo-xiii/en/encyclicals/documents/hf_l-xiii_enc_15051891_rerum-novarum.html; Pius XI, Quadragesimo Anno [Encyclical on Reconstruction of the Social Order] (1931), https://www.vatican.va/content/pius-xi/en/encyclicals/documents/hf_p-xi_enc_19310515_quadragesimo-anno.html. The documents of the Second Vatican Council (1962–1965) continued to develop these themes in connection with the common good and human rights. *See* David Hollenbach, *Commentary on Gaudium et spes (Pastoral Constitution on the Church in the Modern World)*, *in* Modern Catholic Social Teaching: Commentaries and Interpretations 275, 289–90 (2nd ed., Kenneth R. Himes ed., 2018). Popes John Paul II and Francis have been prolific contributors to this sustained reflection. *See infra* notes 17–21 and accompanying text. For a recent (and urgent) addendum to Laudato Si', *see* Francis, Laudate Deum [Apostolic Exhortation on the Climate Crisis] (2023), https://www.vatican.va/content/francesco/en/apost_exhortations/documents/20231004-laudate-deum.html.

[5] John Paul II, Sollicitudo Rei Socialis [Encyclical on the Social Concern of the Church] § 42 (1987), https://www.vatican.va/content/john-paul-ii/en/encyclicals/documents/hf_jp-ii_enc_30121987_sollicitudo-rei-socialis.html. The mortgage metaphor is quite helpful because while a mortgage does not interfere with ownership, it encumbers that ownership with "the senior creditor claim on the ownership of goods necessary to ensure that all members of a society possess the material circumstances necessary to pursue their own authentic development." Edward D. Kleinbard, *The Social Mortgage on Business*, *in* Business Ethics and Catholic Thought 181, 184 (Daniel K. Finn ed. 2021). *See also* Edward O'Boyle, *Blessed John Paul II on Social Mortgage: Origins, Questions, and Norms*, 17 Logos: A Journal of Catholic Thought and Culture 7 (2014).

[6] *See, e.g.*, Martin Luther King Jr., Letter from Birmingham Jail (1963), https://billofrightsinstitute.org/primary-sources/letter-from-birmingham-jail.

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In my review of U.S. property law as it affects land ownership and use, I find deeply embedded social norms that aspire and press legal doctrine toward material generosity and inclusion of all members of society.[7] Property and land use laws are capable of promoting the government's stewardship of its own property on behalf of the public and, in connection with private property, generating widespread ownership, equitable land uses, and a panoply of duties to restrict, sacrifice, and share property for the benefit of others. This normative legal framework reflects the social mortgage and is thus critical to advancing a more economically and racially just society.

At every turn, however, I find progress toward paying the social mortgage debt thwarted not only by contempt for poor people but quite specifically by racial injustice, historic and ongoing: housing segregation, predatory lending, noxious facilities in minority neighborhoods, exclusionary zoning, disinvestment in infrastructure, and severe burdens resulting from nearly every land use innovation—including, ironically, those purportedly crafted to provide relief for poor, minority communities, like urban renewal, public housing, and housing vouchers.[8] These result from "the drive toward private opulence and public squalor," as sociologist Matthew Desmond put it, with the resource-rich increasingly turning toward private solutions and public spaces left to rot.[9] The peculiar U.S. history of race-based property and zoning laws that have supported this privatization has created complexities that exacerbate, and indeed exceed, class disparities. The resulting burdens have been felt most persistently and acutely by African Americans.[10] Thus, while a *commitment and capacity* to encumber real property with the social mortgage might pervade U.S. property law, avarice and discrimination often derail the payments.

Yet there is hope. While the norms of social obligation within property law are, in property scholar Greg Alexander's words, "under-theorized,"[11] they are now being articulated in the context of class and race by countless engaged legal scholars and committed practitioners. I offer the concepts of the universal destiny of goods and the social mortgage as the Christian language (in the Catholic tradition) for radical inclusion and as a bridge for dialogue with law professors and lawyers doing this normative work.[12] Indeed, I look to law because both Pope Francis and Dr. King note its centrality in achieving economic justice.[13] For Francis, law is the primary tool to address issues of both environmental degradation and material poverty, perhaps "the only force strong enough and comprehensive enough to serve as a bulwark against an economic system that he believes has been destructive of

[7] Many scholars have described these norms. *See, e.g.*, Singer, *supra* note 3; Eduardo Peñalver, *The Illusory Right to Abandon*, 109 Michigan Law Review 191 (2010); Gregory S. Alexander, Property and Human Flourishing (2018); Gregory S. Alexander, *The Social-Obligation Norm in American Property Law*, 94 Cornell Law Review 745 (2009).

[8] *See generally* Richard Rothstein, The Color of Law: A Forgotten History of How Our Government Segregated America (2017). For a powerful critique of race and the U.S. economy, *see* Jeff Fuhrer, The Myth That Made Us: How False Beliefs about Racism and Meritocracy Broke Our Economy (and How to Fix It) (2023).

[9] Matthew Desmond, Poverty, By America 111 (2023).

[10] The story told in this article tracks the particular laws and policies targeted primarily at African Americans. It is not intended to diminish the historic and contemporary burdens on other communities of color, especially Indigenous peoples.

[11] Alexander, *Social-Obligation Norm*, *supra* note 7, at 748.

[12] The Catholic intellectual tradition holds no monopoly on these principles. Given the long history of concern over sharing material welfare, many Christian communities have engaged in related ethical and theological reflection. *See, e.g.*, William Schweiker & Charles Mathewes, eds., Having: Property and Possession in Religious and Social Life (2004).

[13] I use the term *law* in its broadest sense: in the United States, property and land use laws include not just the common law and equity, but also private, customary, statutory, regulatory, and constitutional law, in all their interpretations, iterations, and evolutions. Joseph William Singer, *Democratic Estates: Property Law in a Free and Democratic Society*, 94 Cornell Law Review 1009 (2009).

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human and natural ecology."[14] For Dr. King, unjust laws had to be dismantled and just laws put in their place.

Catholic Thought and the Social Mortgage Encumbering Real Property

Catholic social thought begins with the person at the center of concern. It asks: What does the person need for full flourishing? And it answers: She needs access to the goods of creation, that is, her share of the resources of the world that God gifted to all people and all generations. This flourishing is not individualistic as Americans might understand it but is closely tied to the common good. In Catholic thought, the common good is "the totality of goods that create the conditions in which persons flourish," conditions that include housing, health care, education, employment, robust economic opportunity, and a legal system that protects rights, duties, and civic order.[15] The common good thus incorporates the moral imperative to share resources—to ensure this universal destination of earthly goods. Aquinas put it succinctly: "Man ought to possess external things, not as his own, but as common, so that, to wit, he is ready to communicate them to [that is, share them with] others in their need."[16]

These goods of creation are rooted in notions of biblical abundance, not Locke's or Hobbes's notions of scarcity. And because their universal destiny is "the first principle of the whole ethical and social order," property is considered to have an intrinsically *social* function: property rights are inherently indeterminate, dynamic, regenerative, and redistributive—both protected *and* limited—in order to meet the material needs of all. Indeed, as recent popes have emphasized, those limits are "inscribed in [the] very nature" of the right to private property.[17] Thus, a private property system is legitimate only as a means to this ultimate moral end of the universal destiny of goods. In my experience with the body of U.S. property and land use law, these protections and limits are continually being calibrated and recalibrated. Law is not simply understood as rights and the restriction of rights, but rather as mechanisms with the capacity to structure, incentivize, harness, direct, relax, subsidize, elevate, or subordinate the ownership and use of property in a variety of ways to advance the continual distribution and redistribution of the goods of creation so that they reach all income classes.

To describe this social function, Catholic social thought offers an apt metaphor: all property is encumbered by a social mortgage. This mortgage refers to the obligation "to

[14] Lucia A. Silecchia, *"Social Love" as a Vision for Environmental Law:* Laudato Si' *and the Rule of Law*, 10 Liberty Law Review 371, 376 (2016).

[15] Angela C. Carmella, *A Catholic View of Law and Justice*, *in* Christian Perspectives on Legal Thought 255, 266 (Michael W. McConnell, Robert F. Cochran, Jr., & Angela C. Carmella eds., 2001).

[16] Thomas Aquinas, Summa Theologiae, pt. II-II, q. 66, art. 2 (Fathers of the English Dominican Province trans., 1947), http://www.ccel.org/ccel/aquinas/summa.i.html. For an explication of these themes, *see* Anthony M. Annett, Cathonomics: How Catholic Tradition Can Create a More Just Economy (2022).

[17] Francis, Laudato Si', *supra* note 4, § 93, (quoting John Paul II, Laborem Exercens, *supra* note 4, § 19. The right to private property "which is fundamental for the autonomy and development of the person, has always been defended by the Church up to our own day. At the same time, the Church teaches that the possession of material goods is not an absolute right, and that its limits are inscribed in its very nature as a human right." John Paul II, Centesimus Annus [Encyclical on the Hundredth Anniversary of Rerum Novarum] § 30 (1991), https://www.vatican.va/content/john-paul-ii/en/encyclicals/documents/hf_jp-ii_enc_01051991_centesimus-annus.html; *see also* Francis, Fratelli Tutti [Encyclical on Fraternity and Social Friendship] §§ 118, 120 (2020), https://www.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco_20201003_enciclica-fratelli-tutti.html ("For my part, I would observe that 'the Christian tradition has never recognized the right to private property as absolute or inviolable, and has stressed the social purpose of all forms of private property.' ... The right to private property can only be considered a secondary natural right, derived from the principle of the universal destination of created goods. This has concrete consequences that ought to be reflected in the workings of society.").

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pay off the *senior* claim that society legitimately places on ... wealth."[18] In the context of real property, this calls people to identify the duties that owners owe to their neighbors and beyond to orient their property toward the common good. Those duties involve sharing "surplus" property with others, especially the poor,[19] and making property available in situations of urgent need.[20] Because property owners might hoard resources far beyond their legitimate needs, Christianity teaches that surplus resources must be held in a kind of stewardship for the poor so that the needs of all are met. At bottom, then, owners become stewards who share their property and its fruits not simply as a matter of charity, but as an exigence of justice that requires immediate attention and action. Pope Francis has put the universal destiny of goods and the social mortgage at the center of the social teachings, measuring society's political, economic, social, and legal systems by how well they ensure the material welfare and opportunity of the impoverished, the vulnerable, and the marginalized, especially now that climate change batters "our common home" and, most severely, its poorest residents.[21]

Dr. King's idea of the beloved community coincides closely with these Catholic social teachings. Noting the moral significance of material welfare, he says that "[t]he words of the Psalmist—'the earth is the Lord's and the fullness thereof'—are still a judgment upon our use and abuse of the wealth and resources with which we have been endowed."[22] He was committed to helping all people out of poverty, regardless of race, stating emphatically that everyone should have "a good job, a good education, a decent house, and a share of power," as well as social and cultural opportunities.[23] The King Center summarizes his profound vision of peace and prosperity in this way:

> The Beloved Community was for him a realistic, achievable goal that could be attained by a critical mass of people committed to and trained in the philosophy and methods of nonviolence. .... Dr. King's Beloved Community is *a global vision, in which all people can share in the wealth of the earth. In the Beloved Community, poverty, hunger and homelessness will not be tolerated because international standards of human decency will not allow it.* Racism and all forms of discrimination, bigotry and prejudice will be replaced by an all-inclusive spirit of sisterhood and brotherhood. In the Beloved Community,

[18] Kleinbard, *supra* note 5, at 182.

[19] John Finnis, *Aquinas as Primary Source of Catholic Social Teaching*, *in* Catholic Social Teaching: A Volume of Scholarly Essays 14, 24–25 (Gerard V. Bradley & E. Christian Brugger eds., 2019). *See also* Samuel Gregg, *The Financial Sector in Catholic Social Teaching*, Catholic Social Thought (last visited July 15, 2023), https://catholicsocialthought.org.uk/course_unit/the-financial-sector-in-catholic-social-teaching ("Private property is not an end in itself. It is *for* something. Christianity therefore not only insists that we should use our 'surplus goods' (what each person has left over once they have used their property to meet their own and their families' needs) to assist others, but that we should be ready to use our essential wealth to serve others. A number of qualifications need to be made here. Firstly, the precise distinction between essential and surplus property is not exactly the same for every person. ... But it does mean that any Christian should be deploying this segment of his wealth to aid the flourishing of the less fortunate. What matters is that we put our wealth to work so that the conditions that promote the flourishing of every person and each community are enhanced.").

[20] Aquinas, *supra note* 16, at II-II, q. 66, art. 7 ("[E]ach one is entrusted with the stewardship of his own things, so that out of them he may come to the aid of those who are in need. Nevertheless, if the need be so manifest and urgent, that it is evident that the present need must be remedied by whatever means at hand (for instance, when a person is in some imminent danger, and there is no other possible remedy) then it is lawful for a man to succor his own need by means of another's property, by taking it either openly or secretly: nor is this properly speaking theft or robbery."). *See also*, Shaun P. Martin, *Radical Necessity Defense*, 73 University of Cincinnati Law Review 1527, 1549 (2005).

[21] Francis, Laudato Si', *supra* note 4.

[22] Martin Luther King, Jr., Where Do We Go from Here: Chaos or Community? 198 (1986).

[23] *Id.* at 95, 138.

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> international disputes will be resolved by peaceful conflict-resolution and reconciliation of adversaries, instead of military power. Love and trust will triumph over fear and hatred. Peace and justice will prevail over war and military conflict.[24]

Both Dr. King and Pope Francis would agree on the urgent need for efforts to achieve property stewardship and economic justice in the United States. In fifty years, the nation has seen an intense concentration of wealth, power, and influence among those at the top. The highest 1 percent of earners in the United States now possess more wealth than the entire middle class, and the numbers of billionaires continue to increase rapidly.[25]

The Social Mortgage Embedded in American Property Law

Because human nature is both fallen and redeemed, Christians understand the human propensity for avarice, violence, and cruelty. Laws protecting and preserving a private property system are capable of—and often do—countenance unfettered acquisition, domination, exploitation, and degradation of people, nature, and resources.[26] The African American story is one of uniquely brutal and violent treatment, with its origins in the ownership of a human person. The list of injustices is long: the broken promises of land ownership post-Reconstruction; Jim Crow segregation and restrictive covenant segregation; redlining and inaccessible suburbs; urban renewal; predatory lending; deliberate denials of credit; disinvestment and noxious facilities in minority neighborhoods; racial income and wealth disparities; and dangerous and decayed living conditions in rentals.[27] Indeed, law has created or compounded every one of these, with attention paid to repair and restoration only in the last few decades.

In light of the human capacity for such abuses of a private property system, it may be surprising to learn that for both Catholic social thought and U.S. property law, private property is considered the gold standard for human flourishing.[28] For Aquinas, private property (and the positive laws that govern it) provide an effective mechanism for protecting each person's natural right to access the goods of creation. Along with Aquinas, the secular law supports and justifies private ownership for its role in meeting basic needs, for providing autonomy, security, rational ordering, and civic peace, and for incentivizing entrepreneurial uses, innovation, and productive investments. Beyond material abundance and social stability, property rights are connected to self-governance. Indeed, in its decision striking down racially restrictive covenants, the U.S. Supreme Court announced that "equality in the enjoyment of property rights" is "an essential pre-condition to the realization of other basic civil rights and liberties."[29] Thus, in both theological and legal

[24] *The King Center's Definition of Nonviolence*, The King Center, https://thekingcenter.org/about-tkc/the-king-philosophy (last visited July 18, 2023) (emphasis added).

[25] Alexandra Tanzi & Mike Dorning, *Top 1% of U.S. Earners Now Hold More Wealth than All of the Middle Class*, Bloomberg (Oct. 8, 2021), https://www.bloomberg.com/news/articles/2021-10-08/top-1-earners-hold-more-wealth-than-the-u-s-middle-class; Willy Staley, *How Many Billionaires Are There, Anyway?* New York Times (June 15, 2023), https://www.nytimes.com/2022/04/07/magazine/billionaires.html.

[26] Eric T. Freyfogle, Laudato Si' *and Private Property*, *in* Laudato Si' and the Environment: Pope Francis' Green Encyclical 21, 24–25, 35 (Robert McKim ed., 2020).

[27] *See generally* Rothstein, *supra* note 8.

[28] *See generally* Carmella, *supra* note 2, and Opderbeck, *supra* note 3. Of course, early Christians shared property in common, a practice which continues in some communities like the Amish; likewise, other communities, like America's Indigenous population, rejected the privatization of resources. These methods of property stewardship provide an important critique of the position discussed here, which unfortunately is outside of the scope of this article.

[29] Shelley v. Kraemer, 334 U.S. 1, 10 (1948).

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understandings, the positive laws of society are tasked with protecting property rights to achieve multiple moral ends. There exist *a commitment and capacity* within property law to ensure access to material goods, especially for the most marginalized, and in so doing to build the foundation for democracy.

While the redistributive obligations of the social mortgage align neatly with taxation of income and of property,[30] here my focus is on the norms of social obligation found within the laws that govern the ownership and use of real property: land and buildings. Redistribution of money is critical, of course, but it is not sufficient for achieving a just economy. Given the moral significance of individuals, families, and communities and of specific natural and built environments, property scholar Eduardo Peñalver argues that people need meaningful and secure access to unique physical spaces and places in which to live and work and thrive.[31] And so the recalibration of property rights and obligations will often be the only way to advance the universal destiny of goods and create the conditions for human flourishing, giving the notion of surplus property particular salience in the land context. Nonmonetary transfers—to enable excluded groups to achieve ownership, occupancy, and use of real property—thus become necessary avenues for repaying the social mortgage.

Building on the work of contemporary property theorists noted throughout this article, I identify three categories in which the social mortgage is expressed in U.S. property law—or perhaps more accurately stated, in which the commitment and capacity for the social mortgage payments dwell and for which the social mortgage offers a principled basis of explanation:[32] first, in laws that generate widespread, decentralized, and secure ownership; second, in laws that provide pathways to ownership, including land use laws that create the proper preconditions of availability and affordability; and finally, in laws that require private owners to sacrifice, restrict, or share property for the benefit of others. There are the numerous ways in which law has the *capacity* to both protect and limit the use and ownership of property to advance the universal destiny of goods. While each has its shortcomings, they serve as a basis for developing a larger normative picture.

Pushing Power and Material Welfare Downward: Growth and Redistribution through Dispersed and Secure Ownership

The *estate* system—the rules of land ownership and transfer—might sound like an antiquated and esoteric topic of interest to law students only, but it is critical to the economic and political health of the nation. Real property ownership is well known to be central to building intergenerational wealth. It is also inextricably connected to the underlying structures supporting democracy. In the founding period, the land ownership and use patterns—from the earliest colonial white settlements and developed thereafter—reflected and supported the nation's political identity as, in the words of property scholar Joseph Singer, an "egalitarian democracy."[33] As he posits, the history of the British estate system, and the American appropriation of it, have revealed a continuous move to "push power

[30] Kleinbard's analysis, *supra* note 5, emphasizes taxation and spending policies as the primary mechanisms for payment of the social mortgage debt.

[31] Eduardo Peñalver, *Land Virtues*, 94 Cornell Law Review 821, 880–82 (2009).

[32] A fourth category, which I omit from this article due to space constraints, involves the government's stewardship of its lands and buildings. For public lands, *see generally*, John D. Leshy, Our Common Ground: A History of America's Public Lands (2021) (describing governmental priorities of recreation, inspiration, wildlife protection, environmental restoration, scientific study, and preserving cultural heritage, with increasing emphasis over time on protection rather than exploitation and greater cooperation with Native Americans).

[33] Singer, *supra* note 3; *see also*, Singer, *Democratic Estates, supra* note 13.

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downwards"—in other words, to decentralize and democratize land ownership and governance.[34]

From the time of the Revolution and since, the Americanized estate system encouraged widely dispersed ownership and easily transferable properties.[35] The founders rejected the British practice of primogeniture, the fee tail estate, restraints on alienation, and burdensome feudal incidents, and preserved the rule against perpetuities—all to prevent the creation of family dynasties and ancestor-controlled land use decisions. At least among whites, the estate system dispersed political and economic power and rejected a system built on privileged inheritance and land wealth. The homestead movements westward during the nineteenth century were built on these notions of dispersal and decentralization, settling vast areas of the country.[36] Federal efforts in the New Deal and post-World War II eras continued to disperse ownership, as white suburbs were built and populated. Today, almost 79 million households, nearly two-thirds of all households, own their home; renters, with important exceptions, tend to rent from landlords who also have small holdings.[37]

Pathways to Ownership, the Creation of Surplus Spaces, and the Moral Allocation of Land Uses to Ensure Affordability

In addition to the moral worth of widespread ownership and secure possession, the universal destiny of goods and the social mortgage mean that *everyone* is entitled to enjoy the benefits of real property. And so, law is capable of creating pathways for a variety of income classes to own their homes (or possess better quality rentals) and facilitating social mobility, as when government creates incentives to build affordable housing; presses lenders to invest in struggling communities; and aggressively enforces fair housing and antidiscrimination laws and fair lending laws, especially to combat modern-day redlining.[38]

[34] Singer, *supra* note 3, at 21–22, 26.

[35] *See, e.g.*, Midkiff v. Hawaii Housing Authority, 467 U.S. 229 (1984) (land reform necessary to break up property concentration to create healthy economic and political systems); *accord*, Pontifical Council for Justice and Peace, Distribuzione Terra [Towards a Better Distribution of Land: The Challenge of Agrarian Reform] § 27 (1998) https://www.vatican.va/roman_curia/pontifical_councils/justpeace/documents/rc_pc_justpeace_doc_12011998_distribuzione-terra_en.html (arguing that the prevalence of concentrated landholdings is a scandal, as it "deprives a large part of humanity of the benefits of the fruits of the earth").

[36] Gary D. Libecap, *Defining Ideas: The Consequences of Land Ownership*, Hoover Institution at Stanford University (Aug. 29, 2018), https://www.hoover.org/research/consequences-land-ownership; Ezra Rosser, *Destabilizing Property*, 48 Connecticut Law Review 397, 450–51 (2015) (arguing that the government "could have sold off the frontier to the highest bidder, but instead it helped create a robust and deep system of family farming," which "served as a hedge against property becoming overly concentrated in the hands of industrial employers and land barons").

[37] According to publicly available data, the homeownership rate in 2022 was around 66 percent, while more than 43.9 million households rented (around 34 percent), mostly from private landlords. Joint Cener for Housing Studies of Harvard University, The State of the Nation's Housing 2023, at 27, 32 (2023); Drew DeSilver, *As National Eviction Ban Expires, A Look at Who Rents and Who Owns in the U.S.*, Pew Research Center (August 2, 2021), https://www.pewresearch.org/fact-tank/2021/08/02/as-national-eviction-ban-expires-a-look-at-who-rents-and-who-owns-in-the-u-s/. According to 2018 census data, "fewer than one-fifth of rental properties are owned by for-profit businesses of any kind. Most rental properties—about seven-in-ten—are owned by individuals, who typically own just one or two properties." DeSilver, *supra. But see* Terri Montague, *The Elusive Quest for a Legal Right to Housing in the U.S.*," Canopy Forum, May 9, 2024, https://canopyforum.org/2024/05/09/the-elusive-quest-for-a-legal-right-to-housing-in-the-u-s/ (discussing increasing corporate acquisition).

[38] *See generally* Alex Nguyen & Amy Pollard, *Berkshire's Trident Mortgage to Pay Over $20 Million on Redlining Claims*, Bloomberg (July 27, 2022); Rashmi Dyal-Chand & James V. Rowan, *Developing Capabilities, Not Entrepreneurs: A New Theory for Community Economic Development*, 42 Hofstra Law Review 839 (2014); Rashmi Dyal-Chand, Collaborative Capitalism in American Cities: Reforming Urban Market Regulations (2018) (discussing community banks and their holistic services to communities in lending and investing, creating neighborhood stability and thriving employees).

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Mechanisms to facilitate ownership and to secure rentals for a variety of income levels can be effective only if there is ready access to actual, physical spaces for housing and employment. The availability of these physical options in the built environment is largely controlled by zoning and planning officials and professionals. Their decisions regarding land use allocation are among the most profound moral choices governments make to advance the common good. That is because human flourishing requires space enough to live, work, recreate, and worship; areas for education and health care, governance and social life, agriculture and manufacture; and preserved land and natural resources. If town after town is zoned primarily for half-acre single-family lots, those properties will likely be unaffordable for most income classes. If, instead, towns support a variety of uses, lot sizes, and building dimensions and allow denser, mixed development, they create *surplus* space for housing and other necessary uses. Moreover, such innovative approaches can be tailored to meet real needs. At bottom, the social mortgage encumbers the entire regulatory framework for zoning and land-use planning.

Sacrificing, Restricting, and Sharing Property for Human Flourishing and Dignity

The social mortgage is paid when government (through law or policy) ensures the creation and maintenance of three interrelated types of infrastructure: physical,[39] environmental,[40] and cultural.[41] In order to flourish, people need bridges and roads, clean air and water, wetlands and beaches, architecture and history. This infrastructure makes human settlement and social interaction possible, facilitating creation of neighborhoods, protecting human health, transmitting culture, and casting its benefits widely to people of all income levels.[42] To create and manage this infrastructure, some privately held property must be sacrificed, restricted, or shared.

Under federal and state powers of eminent domain, government or its delegee pays for and takes private property to create physical infrastructure: roads, bridges, rail lines, airports, canals, seaports, utility lines, pipelines, communications systems, military bases, parks and preserves, prisons, schools, and post offices, courthouses, and other government buildings. Without transportation, energy, and the like, society could not function.[43]

[39] Physical infrastructure, also known as *hard* or *gray* (for pipes) infrastructure, includes everything needed to establish systems to build and manage transportation, water delivery, drainage, solid waste and sewerage, telecommunications, and the power grid. The definition now includes *green* infrastructure, which copies and utilizes natural materials. *See, e.g.*, *Green and Grey Infrastructure Research*, U.S. Environmental Protection Agency, https://www.epa.gov/water-research/green-and-gray-infrastructure-research#:~:text=Gray%20infrastructure%20is%20traditional%20stormwater,%2C%20pipes%2C%20and%20retention%20basins (last visited August 5, 2023).

[40] Environmental infrastructure includes the physical elements needed to establish a safe water supply, waste disposal, recycling, pollution control, climate adaptation and resiliency, and the generation of renewable energy. It also includes natural resources management, including parks and recreation, open spaces and conserved lands, agricultural lands, brown and abandoned lands, trees, forests, rivers and waterways, wetlands, and coastal areas. *See*, *e.g.*, Jerry Nathanson, *Environmental Infrastructure*, Britannica, https://www.britannica.com/technology/environmental-infrastructure (last visited July 18, 2023). There is some overlap with physical infrastructure (for instance, the pipes and aqueducts for water supply), but environmental infrastructure goes beyond the gray infrastructure to ensure human health and environmental protection.

[41] Cultural infrastructure includes libraries, museums, performing arts centers, galleries, theaters and movie houses, and civic and cultural buildings and spaces, as well as structures with historic, architectural, cultural significance, including houses of worship and religio-cultural sites. *See, e.g.*, *AEA Consulting Releases the 2022 Cultural Infrastructure Index*, Art Dependence Magazine (July 27, 2023), https://www.artdependence.com/articles/aea-consulting-releases-the-2022-cultural-infrastructure-index/.

[42] *See generally* Gregory S. Alexander, works cited *supra* note 7.

[43] In addition to taking an owner's property for some specific public use, the court has allowed local and state governments to act as parcel assemblers, taking and then transferring properties to private developers for large-scale economic redevelopment. Kelo v. City of New London, 545 U.S. 469 (2005).

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In addition to these explicit takings, other property laws serve to restrict or condition an owner's use of their property for good cause.[44] The U.S. Supreme Court long ago announced the golden rule: "All property in this country is held under the implied obligation that the owner's use of it shall not be injurious to the community."[45] And so, the common law prohibits public and private nuisances, which embodies the obligations owed to neighbors not to create a health hazard and not to interfere unreasonably with use and enjoyment of nearby properties.[46]

Building upon the nuisance prevention rationale, federal and state environmental laws restrict or otherwise impact private rights in order to create needed infrastructure for individual and community safety, health, and well-being—that is, for the common good. Ensuring clean air, water, and land, and the protections for all life forms—by legal restrictions and obligations, and by market-based incentives—undoubtedly limits many uses of privately owned real property.

Further, many other laws support the creation of civic and cultural infrastructure as defined in large part by local civic and charitable organizations; cultural, artistic, educational, and religious institutions; and other entities of memory and meaning. This infrastructure is heavily dependent upon real property and could not flourish without the legal framework that designates historic landmarks and districts; facilitates the creation and care of public art, artifacts, museums, parks, and monuments; protects the siting of houses of worship; and preserves spaces for civic, cultural, and patriotic remembrance.

In addition to the property restrictions necessary for infrastructure creation, the right to exclude, which is often portrayed as the most significant property right, must at times yield to the common good.[47] Often this means that an owner must allow others to access property for some significant necessity, like ensuring access to the benefits or services to which all persons are entitled, for their basic dignity.[48] Examples of the most fundamental rights

[44] Conditions are often imposed to require the developer to mitigate negative impacts of their projects. Sometimes that involves the payment of related and proportional impact fees or property rights for public use. *See* Sheetz v. County of El Dorado, 144 S. Ct. 893 (2024); Koontz v. St. Johns River Water Management District, 570 U.S. 595 (2013); Nollan v. California Coastal Commission, 483 U.S. 825 (1987); Dolan v. City of Tigard, 512 U.S. 374 (1994).

[45] Mugler v. Kansas, 123 U.S. 623 (1887).

[46] Nuisances may include noxious fumes, noise, dust, odors, vibration, flooding, excessive light, various types of air and water pollution, hazardous waste migrating to nearby parcels, and hazardous substances such as lead paint.

[47] Sometimes a court, using its equitable powers, recognizes or implies a property right—often an easement—in a person who has no formal title. See Rashmi Dyal-Chand, *Sharing the Cathedral*, 46 Connecticut Law Review 647, 697–98 (2013).

[48] The ancient concept of necessity, discussed *supra* note 20, is used in U.S. law:

> The communitarian nature of the necessity defense [to trespass, among other torts and crimes] is easily identified. Necessity inherently authorizes the deprivation from a few to benefit the greater good of the many. The central canon of this principle is that the social community benefits as a whole when individual interests are allowed to be subordinated to collective desires in times of need, thereby raising the average level of utility of the citizenry. The necessity defense is thus inherently founded upon the vision of an interdependent community in which social obligation may be employed to override even those contrary individual desires that are categorically protected by law. This underlying social construct—philosophically disturbing to some—also highlights the manner in which the necessity doctrine is employed to alleviate individual privations either through the allocation of diffuse social resources to those in need or through the direct expropriation from 'haves' for distribution to the 'have-nots.' Necessity is in this manner a fairly radical (and somewhat surprising) component of an American economic and political system that has historically abhorred, and has largely been thought to preclude, the legally compelled subordination of individual liberties to the mantle of a greater collective good.

Martin, *supra* note 20, at 1549.

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include Title II of the 1964 Civil Rights Act,[49] which prohibits racial, ethnic, sex-based, and other forms of discrimination by owners of "public accommodations," like hotels, restaurants, theaters, and retailers, and the 1968 Fair Housing Act,[50] which likewise limits the right to exclude. The Fair Housing Act prohibits a wide array of discrimination in private sales and rentals, and it applies not only to private owners but to the entire real estate industry: banks, title companies, property insurers, appraisers, advertisers, and brokers.[51] The public trust doctrine plays a similar civil rights role in opening public (and some private) beaches to all and to giving public access to private waterfront spaces in many urban areas.[52]

Echoes of necessity are also embedded in other restrictions on the rights to exclude, especially when the landowner is using monopoly power over real property to assert harmful dominion over other people's lives. When a farm owner sought to prohibit medical and legal personnel from visiting migrant farmworkers who lived on his property, the New Jersey Supreme Court rejected the claim that their entrance was in any way a trespass and announced: "Property rights serve human values. They are recognized to that end and are limited by it."[53] In an analysis that hews closely to social mortgage obligations, the court found that this most vulnerable social group, the seasonal farmworkers, were entitled to these visitors and the services they offered.

How Contempt for the Poor and Racial Injustice Obstruct the Social Mortgage

The very legitimacy of a private property system depends on its generating benefits for all—safe, secure, and affordable housing and physical, environmental, and cultural infrastructure that serves people well. But we know that in reality, the benefits inure primarily and often exclusively to those who already enjoy financial resources, in stark opposition to the common good. Thus, despite the capacity of the private property system to disperse ownership, guide orderly development, and build necessary infrastructure, the payment of the social mortgage to ensure the universal destiny of these goods is repeatedly thwarted by greed and by racism, past and present.

Widespread, Dispersed Ownership? Segregation and Housing Insecurity Instead

To this day, despite the progress of U.S. property law to push land ownership to broad swaths of the population—with accompanying political power and wealth creation—egregious failures exist in connection with minority and lower-income communities. Note the contrast: in the nineteenth century, the federal government gave 160-acre land grants to 1.5 million whites, incentivizing a massive population movement westward; after the Civil War, formerly enslaved persons were promised 40-acre parcels, but with Lincoln's assassination, "the land given to Black families would be rescinded and returned to White Confederate landowners."[54] An estimated 45 million white Americans continue to benefit from those historic homestead laws; no comparable source of land ownership

[49] 42 U.S.C. §§ 2000a–2000a-6.

[50] 42 U.S.C. §§ 3601–19

[51] 42 U.S.C. §§ 3604–06.

[52] Marc R. Poirier, *Environmental Justice and the Beach Access Movements of the 1970 in Connecticut and New Jersey: Stories of Property and Civil Rights*, 28 Connecticut Law Review 719 (1996) (describing how beach access was framed entirely as a property and environmental matter in New Jersey, but additionally as a civil rights issue of race and class and subset of exclusionary zoning in Connecticut).

[53] State v. Shack, 277 A.2d 369 (N.J. 1971).

[54] DeNeen L. Brown, *40 Acres and a Mule: How the First Reparations for Slavery Ended in Betrayal*, Washington Post (April 15, 2021), https://www.washingtonpost.com/history/2021/04/15/40-acres-mule-slavery-reparations/.

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came to Blacks.[55] Instead, millions of Blacks left Jim Crow states for northern cities during the Great Migration of the early twentieth century, only to discover continued housing segregation and exclusion from homeownership.[56] And those who did own property in the South lost much of it to white investors and speculators over the last century.[57]

Discriminatory denial of financing for most of the twentieth century has created a major obstacle to homeownership.[58] Governmental redlining of the 1920s and 1930s ensured that government-guaranteed loans would not be available to purchasers in any area with Black residents—even a solidly middle-class, single-family residential zone—or even near an area where Blacks lived. This continued into the post-WWII era, when government-guaranteed construction financing for massive postwar suburban developments was limited to whites-only housing.[59] Indeed, between 1940 and 1965, the growth in the nation's homeownership rate from 45 percent to over 65 percent was almost entirely limited to whites.[60] The story of increasing segregation in urban areas is connected to this profligate financing of white real estate development in the suburbs and attendant neglect and disinvestment in Black areas.[61] Indeed, the legacy of redlining can be seen in the nationwide evidence of persistent segregated land use patterns—so much so that urban Black neighborhoods in cities, which have more pavement and few trees, are demonstrably hotter in the summer.[62]

It is well documented that those who own their homes—even a modest one—have greater wealth than those who rent. As Richard Rothstein points out, "The value of white working- and middle-class families' suburban housing appreciated substantially over the years, resulting in vast wealth differences between whites and blacks that helped to define permanently our racial living arrangements. Because parents can bequeath assets to their children, the racial wealth-gap is even more persistent down through the generations than income differences."[63] As a consequence of these sustained disruptions of Black property ownership, about 46 percent of young white families own their home, compared to only 17 percent of young Black families.[64] Additionally, home values differ significantly by race and ethnicity, with the typical white families' home valued at $230,000 and the typical Black families' home valued at $150,000.[65] Even "ubiquitous and persistent" disparities in

[55] Cristin Jordan, *A Framework for Reparations: Scholars Worked Years to Develop Detailed, "Feasible" Plan*, ABA Journal (July 5, 2023), https://www.abajournal.com/web/article/a-framework-for-reparations.

[56] Rothstein, *supra* note 8, at 45.

[57] *See infra* notes 93–95 and accompanying text for a discussion of the loss of heirs' property.

[58] *See, e.g.*, Alicia H. Munnell, et al., *Mortgage Lending in Boston: Interpreting HMDA Data*, 86 American Economic Review 25 (1996).

[59] Rothstein, *supra* note 8, at 63–72.

[60] Rick Jacobus & David M. Abromowitz, *A Path to Homeownership: Building a More Sustainable Strategy for Expanding Homeownership*, 19 Journal of Affordable Housing & Community Development 313 (2010).

[61] Most urban areas have grown more, not less, segregated over time. "More than 80% of large metropolitan areas in the United States were more segregated in 2019 than they were in 1990." *See* Alana Semuels, *The U.S. Is Increasingly Diverse, So Why Is Segregation Getting Worse?*, Time (June 21, 2021), https://time.com/6074243/segregation-america-increasing/; *see also* Ailsa Chang, et al., *Black Americans and the Racist Architecture of Homeownership*, National Public Radio (May 8, 2021), https://www.npr.org/sections/codeswitch/2021/05/08/991535564/black-americans-and-the-racist-architecture-of-homeownership.

[62] Brad Plumer & Nadja Popovich, *How Decades of Racist Housing Policy Left Neighborhoods Sweltering*, New York Times (August 24, 2020), https://www.nytimes.com/interactive/2020/08/24/climate/racism-redlining-cities-global-warming.html.

[63] Rothstein, *supra* note 8, at 179.

[64] Neil Bhutta, et al., *Disparities in Wealth by Race and Ethnicity in the 2019 Survey of Consumer Finances*, Board of Governors of the Federal Reserve (September 28, 2020), https://www.federalreserve.gov/econres/notes/feds-notes/disparities-in-wealth-by-race-and-ethnicity-in-the-2019-survey-of-consumer-finances-20200928.html.

[65] *Id.*

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appraisals have been found, with homes that are identifiably Black-owned receiving substantially lower appraisals than white-owned homes on the market.[66]

With more Blacks as renters, there is greater dependence on owners to provide suitable, habitable housing, especially among those with lower incomes. So much for the tenant "rights revolution" of the last sixty years: the shocking lack of safe, adequate, and secure rental housing has been widely documented, as well as overcrowding, high rents, units far from good schools and jobs, and the prevalence of landlords who continue to bully, blacklist, and retaliate against tenants.[67] Unsurprisingly, housing instability during the COVID-19 pandemic disproportionately affected minority communities.[68] Adding to the grim picture is the massive dispossession of tenants from affordable housing that is occurring in many parts of the United States due to a new breed of landlord: private equity investors.[69]

Few Pathways to Ownership, Compounded by Exclusionary Zoning

Against this backdrop, it was supremely ironic that banks engaged in racially targeted subprime lending in the 2000s on the pretext that this would increase Black homeownership. Banks attempted this "reverse" redlining, marketing predatory loans in poor neighborhoods, knowing full well that the properties had been grossly overvalued and that massive delinquencies would occur once the interest rates adjusted upward.[70] About 8 percent of Black and Latino owners lost homes to foreclosure, as compared to 4.5 percent of whites.[71] Sadly, reverse redlining continues.

With favorable mortgage financing unavailable to low-income borrowers, another type of predatory lending has been commonly used: the installment land contract. The deed to a parcel is withheld until the last rent payment is made; no equity is gained through payments. Under this arrangement, the seller can retake the property at the first default on rent, even if the buyer has been making steady payments for many years and is close to the purchase

[66] Vanessa Romo, *Black Couple Settles Lawsuit Claiming Their Home Appraisal Was Lowballed Due to Bias*, National Public Radio (Mar. 9, 2023), https://www.npr.org/2023/03/09/1162103286/home-appraisal-racial-bias-black-homeowner slawsuit#:~:text=Disparities%20in%20home%20appraisals%20are,whites%20to%20get%20low%20appraisals. *See also*, Jonathan Rothwell & Andre M. Perry, *Biased Appraisals and the Devaluation of Housing in Black Neighborhoods*, Brookings Institute (Nov. 17, 2021), https://www.brookings.edu/articles/biased-appraisals-and-the-devaluation-of-housing-in-black-neighborhoods/.

[67] David Super, *The Rise and Fall of the Implied Warranty of Habitability*, 99 California Law Review 389 (2011). As of 2022, three states and thirteen cities have established a right to counsel for tenants faced with evictions. The evidence is clear that with such laws, eviction filing rates are down, and significant percentages of tenants are avoiding eviction. Paula A. Franzese & Cecil J. Thomas, *Disrupting Dispossession: How the Right to Counsel in Landlord-Tenant Proceeding Is Reshaping Outcomes*, 52 Seton Hall Law Review 1255, 1302–10 (2022). Note that landlords are suing to stop programs that provide tenants with free legal counsel. Mark Koosau, *Landlord Group Sues to Stop Jersey City's New Tenant Right-to-Counsel Program*, Jersey Journal (July 27, 2023), https://www.nj.com/hudson/2023/07/landlord-group-sues-to-stop-jersey-citys-new-tenant-right-to-counsel-program.html.

[68] Michelle D. Layser, et al., *Mitigating Housing Instability During a Pandemic*, 99 Oregon Law Review 445 (2021).

[69] See Montague, *supra* note 37.

[70] Rothstein, *supra* note 8, at 109–13; *see generally* Linda E. Fisher and Judith Fox, The Foreclosure Echo: How the Hardest Hit Have Been Left Out of the Economic Recovery (2019); *see also* Keeanga-Yamahtta Taylor, Race for Profit: How Banks and the Real Estate Industry Undermined Black Homeownership (2019).

[71] Courtney Connley, *Why the Homeownership Gap Between White and Black Americans Is Larger Today than It Was over 50 Years Ago*, CNBC (August 21, 2020), https://www.cnbc.com/2020/08/21/why-the-homeownership-gap-between-white-and-black-americans-is-larger-today-than-it-was-over-50-years-ago.html. *See also*, *Just Economy Conference*, National Community Reinvestment Coalition (discussing guidance from CFPB and HUD), https://web.cvent.com/event/addc08ef-8241-4704-9b34-9d0ffe9ce60e/websitePage:645d57e4-75eb-4769-b2c0-f201a0bfc6ce (last visited July 19, 2023).

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date. Long an arrangement involving individual lenders and borrowers, it is now used even by institutional lenders.[72] Just like subprime lending, it gives an appearance of a pathway to ownership, but actually leads to significant loss of housing.

Along with disrupted access to financing, the greatest obstacle to Black homeownership has been and continues to be the lack of affordable housing, the legacy of twentieth-century zoning. Zoning laid the groundwork for economic and racial segregation, initially offering a mechanism for centralized control of uses and idealizing single-family residential neighborhoods unaffordable to poor whites and inaccessible even to Blacks who could afford it.[73] The cumulative impact of a century of this "exclusionary" zoning has been the allocation of suburban, exurban, and rural lands to single-family uses and the consignment of multifamily uses to urban areas, with attendant racial segregation; to complicate the picture, many of those older segregated neighborhoods have been gentrified, which results in the displacement of lower-income racial minorities.[74] These impacts mark a massive failure to pay the social mortgage: the persistent refusal to address obvious housing needs and to allocate land uses in such a way as to create a physical surplus—through small lots, middle housing, accessory housing, and overall denser development—that can be shared with a variety of income classes and that could promote community, stability, affordability, and racial and ethnic diversity.

Undoing exclusionary zoning and replacing it with inclusionary norms have been difficult. In New Jersey, an early leader of the affordable housing movement fifty years ago, the goal of access to and integration of the suburbs by all races and all income classes has been marred by acute municipal resistance and the need for repeated judicial intervention to enforce the social mortgage.[75] After decades of foot dragging and administrative failures, almost all local governments have finally agreed to their "fair share" obligations, but only because of direct and aggressive involvement from the state Supreme Court starting in 2015.[76]

The persistence of exclusionary zoning has precipitated quite a bit of scholarly criticism and proposals for legal reform. The predominant forms of municipal experimentation involve the use of density bonuses and mandatory set-asides: if affordable units are built as part of a project, the developer is rewarded with more square footage; alternatively, towns can require that a developer set aside a certain percentage of affordable units (usually

[72] Sarah Mancini and Margot Saunders, *Land Installment Contracts: The Newest Wave of Predatory Home Lending Threatening Communities of Color*, Federal Reserve Bank of Boston (April 13, 2017), https://www.bostonfed.org/publications/communities-and-banking/2017/spring/land-installment-contracts-newest-wave-of-predatory-home-lending-threatening-communities-of-color.aspx.

[73] The U.S. Supreme Court struck down explicitly racially segregated zones in Buchanan v. Warley, 245 U.S. 60 (1917), but racially restrictive housing covenants emerged to promote the segregation goal. Less than a decade later, the Court held zoning to be constitutional in Village of Euclid v. Ambler Realty Co., 272 U.S. 365 (1926). But the district court had noted that the zoning code "furthered class tendencies," finding that "the result to be accomplished is to classify the population and segregate them according to their income or situation in life." Ambler Realty Co. v. Village of Euclid, 297 F. 307, 316 (N.D. Ohio 1924).

[74] One hundred and thirty-five thousand people were displaced from 230 neighborhoods between 2000 and 2013. Alyssa Wiltse-Ahmad, *Study: Gentrification and Cultural Displacement Most Intense in America's Largest Cities, and Absent from Many Others*, National Community Reinvestment Coalition (March 18, 2019), https://ncrc.org/study-gentrification-and-cultural-displacement-most-intense-in-americas-largest-cities-and-absent-from-many-others/. *See also* Norrinda Brown Hayat, *Urban Decolonization*, 24 Michigan Journal of Race and Law 75 (2018) (criticizing programs emphasizing integration and mobility as having failed low-income Blacks).

[75] Southern Burlington County NAACP v. Township of Mount Laurel, 336 A.2d 713 (N.J. 1975). *See also* Editorial, *Towns That Defy Fair-Housing Law*, New York Times (July 26, 2016), https://www.nytimes.com/2016/07/27/opinion/towns-that-defy-fair-housing-law.html; Paula A. Franzese, *An Inflection Point for Affordable Housing: The Promise of Inclusionary Mixed-Use Redevelopment*, 52 UIC John Marshall Law Review 581 (2019).

[76] In re Adoption of N.J.A.C. 5:96 & 5:97 ex rel. New Jersey Council on Affordable Housing, 110 A.3d 31 (N.J. 2015).

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10–20 percent), with the remaining sold or rented at market rate. Other options include the low-income housing tax credit, which usually incentivizes developers to build multifamily apartments, and Section 8 vouchers, which subsidize landlords and enables recipients to live in market rate housing at an affordable rent.

While those might seem like innovative options, they are in fact anemic responses to a massive crisis of unaffordable housing; further, they tend to absolve local governments from the obligation to devise more effective measures. With gentrification proceeding apace, and housing costs rising, holding out a small number of units per project in no way meets the great demand, nor does it create truly racially and economically integrated spaces. The lack of coordination among multiple municipalities creates haphazard development. Section 8 has its limitations as well: since there are so few apartments in suburbs, low-income tenants end up in poor urban neighborhoods anyway; or if there *are* suburban apartments, many landlords refuse to accept the vouchers.[77]

Sacrificing, Restricting, and Sharing Property: Racist Actions, Inadequate Efforts

The story of twentieth-century urban renewal is a well-documented saga of racial and ethnic removal.[78] The U.S. Supreme Court green-lighted the practice in *Berman v. Parker*, emphasizing that blighted areas should be rebuilt so that poor people can enjoy neighborhoods that are safe, clean, and beautiful.[79] But that was never how urban renewal worked. The development in the *Berman* case itself chased out most of the 5,000 impoverished residents and in twenty years turned the area "from nearly all Black to mostly white."[80] This was easy to predict, given that the affordability requirements in the original plan were removed.

Eminent domain condemnations have also been used intentionally to prevent the integration of white neighborhoods.[81] One particularly striking example involved Howard Venable, an African American ophthalmologist, who in 1956 purchased land in a white neighborhood in Creve Coeur, Missouri, where he began to build a home. Local racism was so virulent that the town simply took Dr. Venable's property by eminent domain for use as a public park.[82] A plaque now memorializes the loss.

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[77] Kayla Canne, *"We Don't Take That:" Why Illegal Discrimination Toward Section 8 Tenants Goes Unchecked in NJ*, Asbury Park Press (October 25, 2021), https://www.app.com/in-depth/news/investigations/2021/10/26/section-8-nj-housing-choice-voucher-discrimination-law-new-jersey/5602044001/.

[78] The Civil Rights Implications of Eminent Domain Abuse (Briefing Report), U.S. Commission on Civil Rights (Jan. 27, 2014), https://www.usccr.gov/files/pubs/docs/FINAL_FY14_Eminent-Domain-Report.pdf; *see also* Kelo v. City of New London, 545 U.S. 469, 511 (2005) (Thomas, J., dissenting).

[79] Berman v. Parker, 348 U.S. 26 (1954).

[80] Residents had relied on the redevelopment plan's requirement for new construction of low- and moderate-income housing—one-third of units in one area and one-quarter of units throughout the remaining acreage. While some moderately priced housing was built, by 1960 these affordability requirements had been removed from the redevelopment plan. By 1970, most residents had been "permanently displaced." Amy Lavine, *Urban Renewal and the Story of* Berman v. Parker, 42 Urban Lawyer 423, 467 (2010).

[81] Rothstein, *supra* note 8, at 24, 106, 107.

[82] Gabrielle Hays, *Decades after a Missouri Town Seized a Black Doctor's Home, His Relatives Sought to Reclaim His Land—and His Story*, PBS Newshour (October 14, 2021), https://www.pbs.org/newshour/nation/decades-after-a-missouri-town-seized-a-black-doctors-home-his-relatives-sought-to-reclaim-his-land-and-his-story. Even today, some local governments use takings under the pretext of creating "open space," but the goal is to prevent the building of affordable housing, senior housing, and housing for families with children, which is often code for racial minorities or lower-income populations. David L. Schwed, *Pretextual Takings and Exclusionary Zoning: Different Means to the Same Parochial End*, 2 Arizona Journal of Environmental Law and Policy 53 (2011).

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Stories abound of continued displacement of vulnerable populations and the private benefits reaped at the expense, or even exclusion, of public goals.[83] In contrast, innovative uses of eminent domain, aimed at helping the most marginalized, have been thwarted. Some cities attempted to take underwater mortgages after the 2008 housing crisis to ameliorate the negative effects of foreclosures on neighborhoods. Mortgage industry resistance was overwhelming.[84]

In addition to eminent domain abuses, severe disinvestment and neglect of poor Black communities have resulted in the failure to build and maintain necessary infrastructure. Neighborhoods continue to suffer from a lack of clean drinking water, air, and land. The recent stories of Flint, Michigan, and Lowndes County, Alabama, involving the lack of clean water and functioning sewer systems, are directly linked to decades of such disinvestment.[85] In the mid-twentieth century, highway planners often singled out majority-Black areas, destroying cultural centers and bringing decades of economic isolation and environmental harm.[86] Indeed, the Biden administration's infrastructure bill aimed to repair the damage from the long "history of racial disparities in how the government builds, repairs and locates physical infrastructure."[87]

As if crumbling infrastructure were not enough, it is also the case that nuisance harms fall disproportionately on disenfranchised, lower-income communities. Lawmakers have often located noxious, dangerous, or unattractive facilities like prisons, landfills, incinerators, sludge and solid waste operations, and the like[88] in or near minority racial or ethnic communities. The government's failure to restrict such harmful private uses in these areas, together with its failures to invest in necessary infrastructure, is the quintessential meaning of *environmental racism.* As Pope Francis notes with great moral outrage, these burdens that now fall disproportionately on poor, vulnerable groups will grow even more severe as climate change proceeds.[89]

And even if the required "sharing" of fair housing and fair lending laws is vigorously enforced to ensure nondiscriminatory access to existing housing, there are limits to what can be accomplished in terms of the creation of affordable, integrated housing.[90] Surely, it is good news that the Biden administration has restored two rules the Trump administration had abandoned: the Affirmatively Furthering Fair Housing rule (local governments taking

[83] Ilya Somin, *The American Experience with Eminent Domain—and Its Possible Lessons for Others*, Washington Post (May 26, 2017), https://www.washingtonpost.com/news/volokh-conspiracy/wp/2017/05/26/the-american-experience-with-eminent-domain-and-its-possible-lessons-for-others/; Justin B. Kamen, *A Standardless Standard: How A Misapplication of Kelo Enabled Columbia University to Benefit from Eminent Domain Abuse*, 77 Brooklyn Law Review 1217 (2012).

[84] Thomas J. Miceli and Katherine A. Pancak, *Using Eminent Domain to Write-Down Underwater Mortgages: An Economic Analysis*, 24 Journal of Housing Research 221 (2015).

[85] Misbah Husain & Melissa K. Scanlan, *Disadvantaged Communities, Water Justice & The Promise of the Infrastructure Investment and Jobs Act*, 52 Seton Hall Law Review 1513 (2022); Nick Tabor, *The Homes of Lowndes County, Ala., Are Waiting*, New York Times (June 19, 2023), https://www.nytimes.com/2023/06/19/opinion/environmental-racism-justice.html?smid=nytcore-ios-share&referringSource=articleShare; Dennis Pillion, *Alabama Black Belt Becomes Environmental Test Case*, Al.com (June 7, 2023), https://www.al.com/news/2023/06/alabama-black-belt-becomes-environmental-justice-test-case-is-sanitation-a-civil-right.html. *See also* Vulnerable Communities Initiative, https://www.vulnerablecommunities.org (last visited July 24, 2023).

[86] Zolan Kanno-Youngs and Madeleine Ngo, *Racial Equity in Infrastructure, a U.S. Goal, Is Left to the States*, New York Times (Nov. 16, 2021), https://www.nytimes.com/2021/11/16/us/politics/racial-equity-states-government.html?login=email&auth=login-email.

[87] *Id.*

[88] Environmental Protection Agency, Population Surrounding 1,877 Superfund Sites (2020), https://www.epa.gov/sites/default/files/2015-09/documents/webpopulationrsuperfundsites9.28.15.pdf.

[89] *See generally* Francis, Laudato Si', *supra* note 4.

[90] Rothstein, *supra* note 8, at 177–83. *New Report Analyzes 50 Years of the Fair Housing Act and Calls for Stronger Enforcement of Fair housing Laws*, National Fair Housing Alliance (April 30, 2018), https://nationalfairhousing.org/new-report-analyzes-50-years-of-the-fair-housing-act-and-calls-for-stronger-enforcement-of-fair-housing-laws/#:~:text=The%20Fair%20Housing%20Act%20has,Development%20(HUD)%20and%20Department%20of.

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federal housing money must review policies and pursue efforts to reverse segregation) and the disparate impact rule (banning "neutral" housing and lending policies that have discriminatory impacts).[91] But their efficacy at the local level remains to be seen.

Property Law Stories: Taking Seriously Social Mortgage Obligations to Address Economic and Racial Injustice

The social mortgage in American property law, in all the ways it encumbers property, inevitably touches on race, whether indirectly in terms of alleviating poverty or directly by addressing racial inequities head-on. In other words, some social mortgage obligations will assist lower income groups and in turn the racial minorities disproportionately represented within those groups. But other law reforms designed to pay that debt will be specifically targeted at race-based conduct to (1) undo the lasting destructive impacts of historical practices, and (2) end contemporary practices with similarly destructive impacts. The regenerative and redistributive impulses of the social mortgage are necessary to ensure the universal destiny of goods and human flourishing.

These Christian concepts, which align with Dr. King's thoughts on the beloved community, might serve as a bridge between Christians and secular scholars and activists, all of whom are committed to racial inclusion and equity in property ownership and use. The ground is shifting in many positive ways:[92] more aggressive enforcement of fair lending laws and settlements that put money into communities; the return of Obama era fair housing regulations; the innovative use of land banks to create affordable housing; environmental justice regulations that mitigate the addition of harsh uses in already-burdened minority areas; and realistic proposals for reparations. Below are just a few examples of the work being done by African American property theorists and advocates who are leading the way to understand the problems and offer profound and practical solutions.

Dispersed and Secure Ownership: Preventing Further Loss of African American Heirs Property

Numerous property rules exist to ensure the ease of transferability, which generates the widely dispersed ownership so critical to paying the social mortgage, as noted earlier. Some of those rules govern the co-ownership of land by *tenants in common*, where each owner has the right to (1) enjoy possession of the entire parcel, (2) convey their individual interest, or (3) force a sale of the entire parcel and split the proceeds among all owners based on their percentage of ownership. Whenever a landowner dies without a will and leaves multiple heirs, those heirs hold as tenants in common.

This seemingly neutral set of rules has had devastating consequences for African American landownership in the South: enormous losses of what is known as "heirs property."[93] Given that land-owning Blacks historically did not use wills to dispose of

[91] Kriston Capps, *Trump Scrapped Two Fair Housing Rules; Biden Is Bringing Them Back*, Bloomberg (April 13, 2021), https://www.bloomberg.com/news/articles/2021-04-13/biden-to-restore-two-obama-era-fair-housing-rules.

[92] For instance, in 2020, New Jersey became the first state in the nation to enact an Environmental Justice Law, which requires permitting agencies to evaluate the public health and environmental impacts of proposed facilities on nearby poor and/or minority neighborhoods. N.J.S.A. §§ 13:1D-157 to 13:1D-161; *see also* Jordan, *supra* note 55.

[93] *See generally* Thomas W. Mitchell, *Restoring Hope for Heirs Property Owners: The Uniform Partition of Heirs Property Act*, 40 State and Local Law News 6 (2016); Thomas Mitchell, *Reforming Property Law to Address Devastating Land Loss*, 66 Alabama Law Review 1 (2014); Thomas Mitchell, *From Reconstruction to Deconstruction: Undermining Black Ownership, Political Independence, and Community Through Partition Sales of Tenancies in Common*, 95 Northwestern University Law Review 505 (2001). *See also* Greg Barlow, *Defying Great Odds—Mitigating Property Loss Through Historic Partition Law Reform in the U.S.*, Law and Society Association, https://lawandsociety.site-ym.com/news/523353/Defying-Great-Odds–Mitigating-Property-Loss-Through-Historic-Partition-Law-Reform-in-the-U.S.html (last visited August 5, 2023).

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property at death, a decedent's heirs would co-own the parcel as tenants in common. Over the generations, as heirs died and passed their interests to their own heirs, the shares would become increasingly fractionated, often resulting in a parcel owned by hundreds of individuals. Because any single co-tenant is entitled to force a partition sale of the entire parcel, speculators, investors, and developers (often white) have made it a practice to buy some of the heirs' shares and then force a sale of the entire property at absurdly low prices. Family members typically cannot compete (or may not even be aware of the sale) and are outbid and lose title; those in possession are forced off the land. In the last hundred years, Blacks have lost millions of acres of farmland worth about $326 billion to these methods.[94]

Property scholar Thomas Mitchell, professor and director of the Initiative on Land, Housing & Property Rights at Boston College Law School, brought these patterns to light over two decades ago. Through his leadership of what has become a national reform movement, the Uniform Partition of Heirs Property Act was drafted, which makes the sales process more transparent and more difficult for outsiders, denies sales in some circumstances, and offers a variety of other protections for heirs.[95] As of 2021 seventeen states had enacted this legislation, and more are considering it.

This model legislation is an example of the social mortgage in action: protecting vulnerable communities from being stripped of land, and the wealth it represents, by giving them the tools to participate in the market on fairer and more equalized terms, even taking some of the property off the market in certain circumstances. These laws benefit not only African Americans but poor whites in Appalachia and Latinos in the Southwest who have encountered the same type of exploitation.

Pathways to Ownership and the Moral Allocation of Land Uses: State and Local Experiments in Housing for All Income Levels

Undoing entrenched segregated and exclusionary land-use patterns by reorienting the allocation of land uses is difficult and complicated, but some states have tried with some success to incorporate active inclusion of lower income groups (especially racial minorities) into zoning and land allocation decisions. What seems to be critical to the success of any of these efforts is attention paid to the social mortgage concept of surplus property—that is, reconceptualizing land and buildings in ways that emphasize abundance rather than scarcity in order to provide greater housing opportunities.

Fifty years ago, the township of Mount Laurel in southern New Jersey became the symbol of exclusionary zoning, choosing fiscal zoning, that is, keeping property taxes low by limiting the amount of residential development (and especially the numbers of children). Like many towns in less developed parts of the state, Mount Laurel was agricultural but moving toward greater development. Of its 14,000 acres, 10,000 were zoned predominantly for middle- and upper-income single family homes, and about 4,000 were vacant but zoned for industry—with no intention of ever using it for that purpose. The zoning ordinance provided no opportunities for apartments where lower- and moderate-income groups, especially those with families, could be accommodated.

The New Jersey Supreme Court—explicitly reframing the issue as one of class and not race—found this type of zoning code in violation of the state constitution because it did not take into

[94] Sean Doolittle, *The Truths of Black Land Loss*, Boston College Law Magazine (April 12, 2023), https://lawmagazine.bc.edu/2023/04/the-truths-of-black-land-loss/.

[95] The Uniform Partition of Heirs Property Act allows the co-owner not seeking partition to buy the partitioning co-tenant for a court-determined amount, with time to arrange for financing; courts can make in kind partitions to protect value and homesteads; and courts can promote a bidding process that generates a fair market value. Jesse Dukeminier, et al., Property 423–24 (10th ed. 2022).

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account the welfare of state residents who were *outside* the township's borders.[96] The near-total ban on multifamily housing had the effect of excluding lower-income persons from the town's borders. As for lower-income persons already inside its borders, in the historically Black neighborhood of Springville, the town treated them with outright hostility, rejecting "any opportunity for decent housing for the township's own poor living in substandard accommodations."[97] The Mount Laurel doctrine, in short, requires local governments to zone in ways that create a range of housing for all incomes, including lower- and moderate-income residents. In so doing, the assumption is that communities will also enjoy racial and ethnic diversity and integration.

The notion that a municipality with surplus land must zone in a way that meets the housing needs of all income classes within the society was—and remains—a stunning statement of the universal destiny of goods and the social mortgage. Today, to achieve affordability and inclusion, we now see a new land use movement emerging in some states and cities that eschews the single-family zone in order to create surplus physical space by allowing the subdivision of large lots into smaller ones, by allowing the construction of middle housing (such as two- and three-family homes) and accessory dwellings on formerly single-family lots, and by accommodating many types of multi-family dwellings on very large lots.[98] This type of "upzoning" is undoubtedly controversial, but it provides lawyers and policy makers with examples of experimentation and innovation in the discourse over affordable and inclusive housing.[99]

Property scholar Shelby Green, professor and co-counsel of the Land Use Law Center at Pace Law School, goes farther still, arguing that to effectively develop affordable housing, zoning restrictions must be radically revised. She urges that zoning codes allow all housing types (including accessory dwellings, tiny homes, and mobile and manufactured homes, as well as multifamily buildings) as of right in all zones, except heavy industry; that subdivision rules allow residential subdivision as of right, with objective square footage requirements; and that zoning codes allow mixed uses in all zones. Moreover, Green argues that zoning and planning rules must provide that any development, whether commercial or residential, be conditioned on adding a range of housing options, and pave the way for the adaptive residential reuse of abandoned buildings.[100]

Sacrificing Property: California Reparations for Eminent Domain Abuse in the Case of Bruce's Beach

Racially motivated takings, as noted above with the case of Dr. Venable's Missouri home, were not uncommon. The same ruthless action was directed against the Bruce family in Los

[96] Southern Burlington County NAACP v. Mt. Laurel, 336 A.2d 713 (N.J. 1975). Zoning laws must promote public health, safety, morals, or the general welfare. The state delegates the zoning power to towns, and local zoning inevitably has impacts outside town borders, particularly exclusionary impacts. Therefore, local zoning codes must recognize and serve the welfare of the state's citizens beyond the town's borders.

[97] NAACP, *supra* note 96, at 722.

[98] Yonah Freemark, et al., *Bringing Zoning into Focus*, Urban Institute (June 6, 2023), https://www.urban.org/research/publication/bringing-zoning-focus. For instance, in Connecticut, "only 2% of [the state's] land is zoned to allow by-right construction of multifamily buildings with 3 or more units per parcel, while 91% of its land allows only the construction of single family housing by right." *Id.*

[99] Margaret Barthel and Jennifer Ludden, *The U.S. Needs More Affordable Housing—Where to Put It Is a Bigger Battle*, National Public Radio (February 11, 2023), https://www.nprillinois.org/2023-02-11/the-u-s-needs-more-affordable-housing-where-to-put-it-is-a-bigger-battle.

[100] Shelby D. Green, *Adaptive Rezoning for Social Equity, Affordability and Resilience*, 52 Seton Hall Law Review 1325, 1343–50 (2022). *See also*, Shelby D. Green, *Zoning Neighborhoods for Resilience: Drivers, Tools, and Inputs*, 28 Fordham Environmental Law Review 41 (2016); Shelby D. Green, *Equitable, Affordable, and Climate Cognizant Housing Construction*, 75 Arkansas Law Review 363 (2022); Shelby D. Green, *The Intentional Community: Toward Inclusion and Climate Cognizance*, 62 Washburn Law Journal 243 (2022–2023).

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Angeles in the 1920s, but this Black family, a century later, did not have to settle for a plaque.[101] Willa and Charles Bruce purchased two oceanside lots in Manhattan Beach and established a beachfront resort for African Americans. Blacks began purchasing lots in the area. Whites, incensed by the success of this resort and the increase in Black-owned lands, tried everything to induce Black owners and businesses to leave—from arson, cross burnings, and explosives to ordinances restricting resort and beach uses. When these did not work, the city simply took the Bruce family lots by eminent domain for use as a public park, but not without a protracted fight with the Bruces. Perhaps predictably, no park was built for almost thirty years. The property was later used for a government building.

Manhattan Beach became a fabulously wealthy white area. Persistent efforts in the early 2000s to rename the area "Bruce's Beach" were finally successful, and a plaque was placed on the property. But after George Floyd's murder, some in government realized this recognition was woefully inadequate. County officials looked at the history of the taking and concluded that the taking had been, quite simply, land theft. Had the Bruce family been able to hold onto the property, they would have been in possession of an asset worth $20 million. And so, the county set to work to return the land to the Bruces' descendants, an enormously complex legal effort, which was accomplished by 2022.

Attorney George Fatheree III has an impressive track record of tireless efforts to support African American causes.[102] While a partner at Sidley & Austin, he worked with the Bruce family and the various governments to ensure that the family was protected. The re-transfer was structured so that the family could opt to sell the land back to the government for its current fair market value. And so, when they realized that they could not develop the land due to zoning restrictions, the family opted to sell the land back, receiving $20 million. The legal framework used for the Bruces' property has become a model for reparations. Given Mr. Fatheree's expertise in helping families build wealth through homeownership, many continue to reach out to him for assistance.

Conclusion

Both Pope Francis and Dr. King understand deeply the tragic loss of human vitality and development caused by poverty. Francis notes that the poor are "sacrificed at the altar of money and profit" while the rich worship "an economic model which is idolatrous."[103] These words echo the critique of Dr. King, who calls on people to "honestly admit that capitalism has often left a gulf between superfluous wealth and abject poverty, has created conditions permitting necessities to be taken from the many to give luxuries to the few, and has encouraged smallhearted men to become cold and conscienceless so that, like Dives before Lazarus, they are unmoved by suffering, poverty-stricken humanity."[104]

[101] Soumya Karlamangla, *The Debate Around Bruce's Beach*, New York Times (March 9, 2023), https://www.nytimes.com/2023/03/09/us/california-bruces-beach.html; Los Angeles County Government, Chief Executive's Office, Bruce's Beach, https://ceo.lacounty.gov/ardi/bruces-beach/ (video) (last visited August 5, 2023); Clyde McGrady, *Bruce's Beach Was Hailed as a Reparations Model. Then the Family Sold It*, New York Times (February 20, 2023), https://www.nytimes.com/2023/02/19/us/bruces-beach-sold-reparations.html#:~:text=Then%2C%20in%20January%2C%20the%20heirs,at%20universities%20and%20local%20governments.

[102] *The Lawyer Who Saved a Black Cultural Treasure: Activist George C. Fatheree III*, Loyola Law School, https://www.lls.edu/hybridgeorgefatheree-v2/ (last visited August 5, 2023).

[103] Daniel Burke, *Pope: Poor are Sacrificed on the "Altar of Money,"* CNN (July 11, 2015), https://www.cnn.com/2015/07/10/living/pope-notes-prison/index.html.

[104] King, *supra* note 22, at 197.

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Yet engaged lawyer-scholars like Terri Montague, who guest edited this symposium. Thomas Mitchell, Shelby Green, and George Fatheree, along with many law professors, lawyers, and professionals in property-related fields, are building the intellectual foundation for social mortgage payments, and leading U.S. society toward the beloved community. In my view, these efforts, whether religious or secular, give expression to the universal destiny of goods—the notion that all people, of all races and incomes, have the right to the material resources they need to flourish. Catholic social thought, reinforced by long-standing Christian notions of surplus and necessity, demands that a private property system be *properly ordered* to achieve the just distribution of these resources. That proper ordering requires constant vigilance to promote the common good and the obligations of the social mortgage, not only by way of laws and policies that ensure the inclusion of "the least of these" (Matthew 25:40; NIV) in society's benefits but also by way of laws and policies that continually recalibrate property rights through restriction, redirection, elevation, and subordination. The result? Property rights, both protected and limited, that serve the human person.

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