

REPARATIONS AND THE RIGHT TO RETURN

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ABSTRACT

American slavery was a system of theft — theft of life, of human dignity, of family, of safety, of identity, of property, and of home. After the abolition of slavery, that theft continued through Jim Crow and state-sponsored racial terror. As Black families acquired land and other property despite that institutionalized terror, they frequently had their property stolen. One result of this legacy of theft is America's profound racial segregation and wealth inequality. As America responds to the renewed momentum in the fight for Black reparations, the country must grapple with how to address the full legacy of the land theft and displacement born from slavery.

The right to return has long been used internationally as a legal and conceptual framework to protect ethnic minorities who were the victims of ethnic cleansing. It is a demand for people who have been displaced from their country, community, or home to return with safety, dignity, and support. This Article explores how the right to return framework can be used to advance reparations for slavery, Jim Crow, and the decades of racial violence that forced Black people out of their homes, businesses, and communities. Reparations grounded in this right would acknowledge the centuries of harm to Black people who were driven from their homes through America's ethnic cleansing. These reparations would endeavor to bring those people, their descendants, and members of the community home, assist them in rebuilding their lives, or compensate them for their losses.

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Why is the right to return so fundamental? It is because exile is a fundamental deprivation of homeland, a deprivation that goes to the heart of those immutable characteristics that comprise our personal and collective identities. We have a right to our homeland, to live in peace and security in the places of our birth, of our ancestors, our culture, our heritage.

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I. INTRODUCTION

Slavery was a system of theft.² It was theft of life as people were stolen, enslaved, and brutalized. It was theft of property and product through forced labor. It was theft of identity and home, as people were repeatedly ripped from the communities³ and cultural practices that are central to the human experience. It was theft of happiness, dignity, and potential. Long after emancipation, the theft that began with slavery continued as Black⁴ people were systematically robbed of their property and their emotional, cultural, and economic investments in their

1. Bill Frelick, *The Right of Return*, 2 INT'L J. REFUGEE L. 442, 444 (1990).

2. See generally Kaimipono David Wenger, *Slavery as a Takings Clause Violation*, 53 AM. U. L. REV. 191 (2003) (arguing that slavery was a violation of the Takings Clause because of enslaved people's right of self-ownership); Keith Hylton, *Slavery and Tort Law*, 84 B.U. L. REV. 1209 (2004) (discussing the injuries inflicted on slaves, including conversion, and the extent to which descendants of slaves should be able to collect damages).

3. Throughout this Article, the word "community" is used both to describe a group of people living in the same place or having a particular characteristic in common, and the feeling of fellowship, belonging, and connection shared by a group of people.

4. I choose to capitalize the word Black when describing people and communities because it reflects a shared sense of identity and community.

communities through systems of white supremacy. This “extraction . . . of wealth”⁵ from Black bodies and Black communities occurred through government action and inaction,⁶ a century of racial terror, and outright theft.⁷ Indeed, as stated by reparations⁸ scholar Randall Robinson, “no race, no ethnic or religious group, has suffered so much over so long a span as [B]lack have, and do still, at the hands of those who benefited, with connivance of the United States government, from slavery and the century of legalized American racial hostility that followed it.”⁹

Land ownership has always been a priority for Black people. In the days before emancipation, a group of formerly enslaved Black people met with General Sherman and told him what they needed to make a new life in the United States: “The way we can best take care of ourselves is to have land.”¹⁰ However, many

5. *Ta-Nehisi Coates: Reparations Are Not Just About Slavery but Also Centuries of Theft & Racial Terror*, DEMOCRACY NOW! (July 4, 2019), https://www.democracynow.org/2019/7/4/ta_nehisi_coates_reparations_are_not [<https://perma.cc/EAV6-29E3>] (describing, as an “extraction of wealth,” the continuous process of systematic racism and racist policies originating in slavery and extending beyond it that generated wealth from Black bodies for white individuals and white-dominated institutions).

6. See RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA*, at vii–viii (2017). (“[U]ntil the last quarter of the twentieth century, racially explicit policies of federal, state, and local governments defined where whites and African Americans should [and could] live. . . . The polic[ies] were] so systemic and forceful that [their] effects endure to the present time.”)

7. See, e.g., Andrew W. Kahrl, *Black People’s Land Was Stolen*, N.Y. TIMES (June 20, 2019), <https://www.nytimes.com/2019/06/20/opinion/sunday/reparations-hearing.html> [<https://perma.cc/2WEP-CH9D>] (exploring theft through tax liens); David Love, *From 15 Million Acres to 1 Million: How Black People Lost Their Land*, ATLANTA BLACK STAR (June 30, 2017), <https://atlantablackstar.com/2017/06/30/from-15-million-acres-to-1-million-how-black-people-lose-their-land> [<https://perma.cc/5CTC-TNLN>] (examining one study’s findings that 406 Black landowners lost over 24,000 acres of land in the 13 states in the study).

8. Throughout this Article, the term “reparations” refers to redress for the modern-day descendants of enslaved Black people for injuries and harm inflicted on their ancestors and themselves and strives for corrective justice. Lolita Buckner Inniss, *A Critical Legal Rhetoric Approach to “In Re African-American Slave Descendants Litigation,”* 24 J. C.R. & ECON. DEV. 649, 650 (2010); Eric Miller, *Reconciling Reparations: Multiple Strategies in the Reparations Debate*, 24 B.C. THIRD WORLD L.J. 45, 45 (2004) (“At the heart of the reparations debate are the issues of accounting and reckoning.”); Eric K. Yamamoto, *American Reparations Theory and Practice at the Crossroads*, 44 CAL. W. L. REV. 1, 15–39 (2007).

9. RANDALL ROBINSON, *THE DEBT: WHAT AMERICA OWES TO BLACKS* 8 (2000).

10. Lizzie Presser, *Kicked Off the Land*, NEW YORKER (July 22, 2019), <https://www.newyorker.com/magazine/2019/07/22/kicked-off-the-land> [<https://perma.cc/UJ62-JJK5>] (quoting Reverend Garrison Frazier, the spokesperson for the group of twenty Black ministers that met with General Sherman); Khalil Gibran Mohammad, *The Sugar That Saturates the American Diet Has a Barbaric History as the “White Gold” that Fueled Slavery*, N.Y. TIMES (Aug. 14, 2019), <https://www.nytimes.com/interactive/2019/08/14/magazine/sugar-slave-trade-slavery.html> [<https://perma.cc/TVV7-7KSG>] (“Many African-Americans aspired to own or rent their own sugarcane farms in the late 19th century, but faced deliberate efforts to limit [B]lack farm and land owning.”).

promises by the U.S. Government to provide land to formerly enslaved Black people never came to be.¹¹

As Reconstruction ended and the age of Jim Crow began, formerly enslaved Black people and their heirs owned a significant amount of land. Indeed, despite constant and comprehensive efforts—both legal and extrajudicial—to dispossess them of their land, by 1910, Black people owned nearly 16 million acres of land in the United States, an area roughly the size of West Virginia.¹² Many of these Black-owned acres were farmland, and by 1920 there were an estimated 925,000 Black farms.¹³ In 1920, Black people constituted 9.9% of the U.S. population,¹⁴ but owned 14% of the farms in America.¹⁵

This success was met with a “white-supremacist backlash” around the country.¹⁶ One historian has explained, “[t]here is this idea that most [Black people] were lynched because they did something untoward to a young woman. That’s not true. Most [B]lack men were lynched between 1890 and 1920 because whites wanted their land.”¹⁷ The United States has condemned similar land theft as a crime when committed by other countries, yet has failed to condemn the practice

11. See Presser, *supra* note 10 (describing how “white-supremacist backlash” ended Congressional and other attempts to compensate formerly enslaved people, despite the Southern Homestead Act’s promise of “forty-six million acres of public land for Union supporters and freed people”); see also KATHERINE FRANKE, REPAIR: REDEEMING THE PROMISE OF ABOLITION (2019) (discussing the reversal of efforts to provide reparations to formerly enslaved Black people). Of course, there are also many examples of Black land ownership and dispossession that predate the Civil War. See, e.g., Lisa W. Foderaro, *Unearthing Traces of African-American Village Displaced by Central Park*, N.Y. TIMES (July 27, 2011), <https://www.nytimes.com/2011/07/28/nyregion/unearthing-an-african-american-village-displaced-by-central-park.html> [<https://perma.cc/8PZG-CETV>] (detailing a thriving Black community that was destroyed in the 1850s in order to build part of Central Park).

12. Thomas W. Mitchell, *Destabilizing the Normalization of Rural Black Land Loss: A Critical Role for Legal Empiricism*, 2005 WIS. L. REV. 557, 563; Love, *supra* note 7; *Land Ownership*, W. VA. ENCYCLOPEDIA, <https://www.wvencyclopedia.org/articles/1293> [<https://perma.cc/J967-9YNA>] (last visited May 13, 2021).

13. Leah Douglas, *African Americans Have Lost Untold Acres of Land over the Last Century*, NATION (June 26, 2017), <https://www.thenation.com/article/archive/african-americans-have-lost-acres> [<https://perma.cc/8Q83-6YGR>].

14. FRANK HOBBS & NICOLE STOOPS, U.S. CENSUS BUREAU, DEMOGRAPHIC TRENDS IN THE 20TH CENTURY 77 (2002), <https://www.census.gov/prod/2002pubs/censr-4.pdf> [<https://perma.cc/3EEG-X5VU>].

15. Love, *supra* note 7.

16. Presser, *supra* note 10. Backlash motivated by white supremacy broadly, and in response to Black land ownership specifically, can be seen throughout the nation’s history, before and after emancipation. See Lawrence Glickman, *How White Backlash Controls American Progress*, ATLANTIC (May 21, 2020), <https://www.theatlantic.com/ideas/archive/2020/05/white-backlash-nothing-new/611914/> [<https://perma.cc/5RJJ-TV TG>] (arguing that “a general pattern” of “solicitousness to white fears” has endured as “a hallmark of backlashes ever since [the Civil War]”). See generally LOREN SCHWENINGER, BLACK PROPERTY OWNERS IN THE SOUTH 1790–1915 (1997) (describing white efforts to take Black property throughout the South).

17. Presser, *supra* note 10 (quoting Ray Winbush, Director of the Institute for Urban Research at Morgan State University).

here.¹⁸ By 1975, only 45,000 Black farms remained.¹⁹ Today, Black people are only one percent of rural landowners in the United States, and of the one billion acres of arable land in America, Black people only own just over one million acres.²⁰

The story of the theft of Black land is not just about farmland. The driving out of Black people from their homes and communities; the theft of their farms, their businesses, and their livelihoods—these are all part of the history of American ethnic cleansing.²¹ The countless violent acts of “racial cleansing”²² throughout the 19th and early 20th centuries are also part of white America’s always-evolving and never-ending efforts to exile and exclude Black people in order to claim communities and property as their own. Sometimes these efforts focused on destroying thriving Black communities or stealing sources of Black wealth. Other times, these efforts involved violence that kept Black people from moving into formerly all-white communities. In all of these scenarios, white people, driven by white supremacy and hatred for Black people, used violence, intimidation, the law, and deception to rid their communities of Black people and separate Black people from their property.

The resulting impact on Black people was about more than the loss of land, assets, or access to communities with better educational and economic opportunity. Nor was the impact limited to the reduced ability of Black communities to build wealth. Black people also lost their homes and livelihoods, their culture and communities, and their sense of place and belonging.²³ One Black farmer describes losing his family’s farm in 2015 after years of discrimination, harassment, intimidation, and fraud: “They took my livelihood, my family’s legacy. . . . They took what I love.”²⁴

18. For example, there was systematic confiscation of Jewish property throughout the Holocaust. CTR. FOR ADVANCED HOLOCAUST STUD., CONFISCATION OF JEWISH PROPERTY IN EUROPE 1933–1945 (2003).

19. Love, *supra* note 7.

20. *Id.*

21. *Banished: American Ethnic Cleansing*, PBS, <https://www.pbs.org/independentlens/banished/harrison.html> [<https://perma.cc/2M9W-AYC7>] (last visited May 30, 2020).

22. Kahrl, *supra* note 7.

23. See Lolita Buckner Inniss, *A Domestic Right of Return?: Race, Rights, and Residency in New Orleans in the Aftermath of Hurricane Katrina*, 27 B.C. THIRD WORLD L.J. 325, 334 (2007) (“Long-term residency imbues a sense of place involving individual as well as collective or communal rights.”). See generally Nadia Lovell, *Introduction* to LOCALITY AND BELONGING (Nadia Lovell ed., 1998) (exploring the relationship between cultural identity and territory).

24. Debbie Weingarten, “*It’s Not Fair, It’s Not Right*”: *How America Treats Its Black Farmers*, GUARDIAN (Oct. 30, 2018, 6:00 AM), <https://www.theguardian.com/world/2018/oct/30/america-black-farmers-louisiana-sugarcane> [<https://perma.cc/GXA9-UWWK>]. See generally Mitchell, *supra* note 12 (recounting the history of Black rural property owners and forced sales of Black-owned property).

The renewed momentum in the century-long fight for reparations²⁵ offers America the opportunity to grapple with how to address the full legacy of the land theft and displacement born from slavery.²⁶ However, Government-sponsored efforts to redress land theft, exile through terror, and government actions that drove Black people from their homes have been few and sporadic.²⁷ This Article argues that, to help redress America's systemic racial exclusion and theft of Black peoples' life, land, wealth, home, and culture, reparations should include a "right to return" for the victims of dispossession. The concept of the right to return has traditionally been used in international law to protect refugees driven from their homes through violent conflict or social exclusion.²⁸ More recently, the concept has been expanded and applied to the right of individuals to return to their homes

25. See, e.g., Sheryl Gay Stolberg, *At Historic Hearing, House Panel Explores Reparations*, N.Y. TIMES (June 19, 2019), <https://www.nytimes.com/2019/06/19/us/politics/slavery-reparations-hearing.html> [<https://perma.cc/M67K-XSRU>] (detailing the first Congressional hearing on reparations since the Reconstruction era).

26. See Charles J. Ogletree, Jr., *Repairing the Past: New Efforts in the Reparations Debate in America*, 38 HARV. C.R.-C.L. L. REV. 279, 283 (2003) ("America must engage in a process of acknowledging its past and repairing the enduring injustices it has created at home."); *HR 40: Seize the Time!*, NAT'L COAL. BLACKS REPARATIONS AM., <https://www.ncobraonline.org/wp-content/uploads/2018/01/HR40-Primer-1.pdf> [<https://perma.cc/KYG3-JUMF>] (last visited May 30, 2020) (calling for restitution for stolen land, reparations in the form of social and economic development, and affordable housing); Kahrl, *supra* note 7 (arguing that remedying land-taking should be centered in the reparations debate); *Black Land and Liberation Initiative*, BLACKOUT COLLECTIVE, <https://web.archive.org/web/20200513204542/https://www.blackoutcollective.org/projects/black-land-and-liberation-initiative/> [<https://perma.cc/G5HR-LPK6>] (last visited May 19, 2021) (advocating for land reclamation and reparations); Chuck Collins, *This Is What Reparations Could Actually Look Like in America*, QUARTZ (June 23, 2017), <https://qz.com/1012692/this-is-what-reparations-could-actually-look-like-in-america> [<https://perma.cc/QMN2-ZRSC>] (endorsing a program for first-time homebuyers as a form of reparations).

27. In 1997, survivors of the Rosewood massacre were paid between \$375 and \$150,000 to make up for the murder and destruction of the Black town in 1923. Alfred L. Brophy, *Reconsidering Reparations*, 81 IND. L. J. 811, 816 (2006) [hereinafter Brophy, *Reconsidering Reparations*] (citing Eric Posner & Adrian Vermeule, *Reparations for Slavery and Other Historical Injustices*, 103 COLUM. L. REV. 689, 696 (2003)). From 1998–2003, the City of Tulsa and the state of Oklahoma studied and released recommendations on what was owed to survivors of the Tulsa Race Massacre in the Tulsa Race Riot Report. The report recommended minimum payments of \$20,000 for the destruction of Tulsa's Black community by a mob, although no one was paid. ALFRED BROPHY, RECONSTRUCTING THE DREAMLAND: THE TULSA RIOT OF 1921 (2002) at 108 [hereinafter BROPHY, RECONSTRUCTING].

28. See, e.g., FOOD AND AGRIC. AGENCY OF THE UNITED NATIONS (FAO), HANDBOOK ON HOUSING AND PROPERTY RESTITUTION FOR REFUGEES AND DISPLACED PERSONS: IMPLEMENTING THE 'PINHEIRO PRINCIPLES' 24–27 (2007) https://www.ohchr.org/Documents/Publications/pinheiro_principles.pdf [<https://perma.cc/GY3D-65QZ>] [hereinafter FAO, HANDBOOK] (dissecting the Pinheiro Principles, which are based on existing international law, which provide for the right of displaced persons "to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived," and which prioritize the return to one's original home).

after being forced out because of government or private development efforts,²⁹ gentrification,³⁰ and natural disasters.³¹

The right to return offers an internationally understood framework that can provide a strong policy and moral argument to advance reparations for Black people who lost their land or were forced from their homes. Furthermore, a right to return can also justify specific remedies to families whose home or land was destroyed or stolen, whose businesses were stolen, or who were driven out of their communities. Displaced people or their descendants might not be able to return to the exact homes that were stolen from them, but they could receive compensation for the value of lost homes and assistance to rebuild their lives in those communities. Recognizing a right to return would be a modest step towards recognizing and redressing the theft and violence of slavery, racial terror, Jim Crow, and decades of government-sanctioned housing and property discrimination.³²

This Article provides a starting point for discussing what should and can be done. It proceeds in three parts. Part II discusses reparations generally as well as

29. See, e.g., U.S. DEP'T OF HOUS. & URBAN DEV., H 2016–17 PIH 2016–17, RENTAL ASSISTANCE DEMONSTRATION (RAD) NOTICE REGARDING FAIR HOUSING AND CIVIL RIGHTS REQUIREMENTS AND RELOCATION REQUIREMENTS APPLICABLE TO RAD FIRST COMPONENT — PUBLIC HOUSING CONVERSIONS 41 (Nov. 10, 2016), https://www.hud.gov/sites/documents/16-17HSGN_16-17PIHN.pdf [<https://perma.cc/FY8H-3L6C>] (emphasizing the “right to return” for “[a]ny public housing or Section 8 assisted resident that may need to be relocated temporarily to facilitate rehabilitation or construction” and forbidding “[p]ermanent involuntary displacement” at RAD-covered projects).

30. See, e.g., Audrey McGlinchy, *Portland Is Trying to Help People Return to Gentrified Areas. Austin Has Similar Plans*, KUT (Nov. 16, 2018, 12:52 PM), <https://www.kut.org/post/portland-trying-help-people-return-gentrified-areas-austin-has-similar-plans> [<https://perma.cc/NS5T-CWFQ>] (exploring the Portland policy that gives preference in affordable housing to residents who can prove that they, their parents, or their grandparents used to live in the neighborhoods where the city is investing in new affordable housing units).

31. See generally Inness, *supra* note 23 (highlighting the lack of support for low-income Black communities after Hurricane Katrina and suggesting the need for a right to return based in part on concepts from international law). In the United States, the right to return has been raised as an argument in defense of the right of New Orleans residents who were displaced by Hurricane Katrina to return to their homes and rebuild their communities, as their homes were being condemned and destroyed in the name of “revitalization.” See Tram Nguyen, *Pushed out and Pushing Back in New Orleans*, COLORLINES (Apr. 7, 2010, 12:00 PM), <https://www.colorlines.com/articles/pushed-out-and-pushing-back-new-orleans> [<https://perma.cc/EU5Y-T2X9>] (delineating how the housing crisis in New Orleans made it unlikely that former residents would be able to return); Darryl Lorenzo Wellington, *New Orleans: A Right to Return*, DISSENT (2006), <https://www.dissentmagazine.org/article/new-orleans-a-right-to-return> [<https://perma.cc/RL9A-DAZ3>] (relaying the state of residents’ lives less than a year after Katrina).

32. The modest proposal discussed in this Article would not address all dimensions of potential land-based reparations claims. See generally Maxine Burkett, *Reconciliation and Nonrepetition: A New Paradigm for African-American Reparations*, 86 OR. L. REV. 99 (2007) (arguing that nonrepetition is the most important dimension of reparations); Mitchell, *supra* note 12 (documenting the full costs of land loss to rural Black property owners); BORIS I. BITTKER, *THE CASE FOR BLACK REPARATIONS* 23–24 (1972) (asserting that any reparations must “serve to redress [a variety of] injuries suffered under a legal system” that “institutionalized [the] deprivation of a group’s constitutional rights”). Instead, this Article offers a possible framework for thinking about how to address one significant aspect of the harm.

the specific need for reparations in the context of housing discrimination and land theft. Part III explores the American system of racial cleansing and the exile of Black people in an attempt to claim and protect “white spaces.” This Part pays particular attention to the use of violence and intimidation to keep Black people in “their place,” physically and economically. Part IV connects that history with the right to return, exploring applications of the right to return in both international and domestic contexts. This Part concludes with a brief discussion of the opportunities to advance justice by adopting a right to return as a component of Black reparations.

II.

THE CASE FOR REPARATIONS

Reparations seek to redress historic injustices, whether those injustices were committed during chattel slavery, Jim Crow, or episodes of racial violence and exclusion.³³ Traditional calls for reparations have demanded apologies, investigatory commissions, community economic development and investment programs, and individual payments.³⁴ Regardless of the form, calls for reparations seek more than a token acknowledgment of the suffering inflicted on Black people.³⁵ Their underlying purpose is to redress the lasting damage done to Black people and Black communities and provide the resources necessary to rebuild those lives and communities.³⁶

Professor Charles Ogletree has argued that reparations should focus “on repairing the harm that has been most severe and correcting the history of racial

33. See Brophy, *Reconsidering Reparations*, *supra* note 27, at 816; Ogletree, *supra* note 26, at 281.

34. See Brophy, *Reconsidering Reparations*, *supra* note 27, at 816. See generally Robert R. Weyeneth, *The Power of Apology and the Process of Historical Reconciliation*, 23 PUB. HISTORIAN 9 (2001) (questioning if historical apologies are able to facilitate reconciliation); Kelebogile Zvobgo, *Designing Truth: Facilitating Perpetrator Testimony at Truth Commissions*, 18 J. HUM. RTS. 92 (2019) (exploring how truth commissions facilitate reconciliation and accountability); INT’L. CTR. TRANSITIONAL JUST., *Reparations*, <https://www.ictj.org/our-work/transitional-justice-issues/reparations> [<https://perma.cc/7VYS-FJMT>] (last visited May 13, 2021) (“It is important to remember that financial compensation . . . is only one of many different types of material reparations Other types include restoring civil and political rights, erasing unfair criminal convictions, physical rehabilitation, and granting access to land, health care, or education.”).

35. Ogletree, *supra* note 26, at 282.

36. See Brophy, *Reconsidering Reparations*, *supra* note 27, at 824–25; Mari Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323, 392–97 (1987); Ogletree, *supra* note 26, at 284. See generally Anthony E. Cook, *King and the Beloved Community: A Communitarian Defense of Black Reparations*, 68 GEO. WASH. L. REV. 959 (2000) (arguing that Dr. Martin Luther King’s call for reparations was consistent with his socio-spiritual vision of a transformed America); Christian Sundquist, *Critical Praxis, Spirit Healing, and Community Activism: Preserving a Subversive Dialogue on Reparations*, 58 N.Y.U. AN. SURV. AM. L. 659 (2003) (arguing that spiritual healing of African-Americans from historical trauma requires a subversive dialogue around reparations that critically examines the principles of individualism, equal opportunities and meritocracy).

discrimination in America where it has left its most telling evidence.”³⁷ By this measure, housing and land loss should be central in any reparations discussion. Indeed, housing discrimination against Black people can be understood as a badge of slavery that violates the Thirteenth Amendment to the Constitution.³⁸ Some of the most telling evidence of the injuries of Jim Crow, theft of Black property, and racial terror campaigns are in the housing segregation and wealth inequalities that are a regular fixture in America’s landscape.³⁹ As a result, America is profoundly segregated along racial lines, with white communities having greater access to wealth and opportunities. The rigid racial segregation feeds social, economic, and resource inequality, with white communities having opportunities on the one hand, and many Black communities without access to quality education, employment, or transportation on the other.⁴⁰

37. Ogletree, *supra* note 26, at 284.

38. See ROTHSTEIN, *supra* note 6, at viii (“Actions that made African Americans second-class citizens, such as racial discrimination in housing, were included in the [Thirteenth Amendment’s] ban.”); Baher Azmy, *Unshackling the Thirteenth Amendment: Modern Slavery and a Reconstructed Civil Rights Agenda*, 71 *FORDHAM L. REV.* 981, 1012 (2002) (citing ERIC FONER, *THE STORY OF AMERICAN FREEDOM* 100 (1998)) (arguing that the Thirteenth Amendment is more than the “bare privilege of not being chained”). The Supreme Court did not always agree with this. See *The Civil Rights Cases*, 109 U.S. 3, 24–25 (1883) (finding that the “badges and incidents” of slavery that fell under Thirteenth Amendment protections were limited and did not include housing discrimination). However, in 1968, the Court determined that the Thirteenth Amendment’s protections against the “badges and incidents” of slavery granted Congress the power to prohibit racial discrimination in property acquisition. *Jones v. Alfred H. Mayer, Co.*, 392 U.S. 409, 439 (1968). The exclusion of Black people from white neighborhoods, the destruction of Black communities, and the terrorization of Black people who tried to integrate have their roots in slavery. See ELIZABETH STORDEUR PRYOR, *COLORED TRAVELERS: MOBILITY AND THE FIGHT FOR CITIZENSHIP BEFORE THE CIVIL WAR* 46 (2016) (“Slavery was about confining black laborers within prescribed locations, and the mission of slaveholders and lawmakers was to restrict people of color within those physical spaces.”); ROTHSTEIN, *supra* note 38, at ix (“[It is] reasonable to understand that if government actively promoted housing segregation, it failed to abide by the Thirteenth Amendment’s prohibition of slavery and its relics.”); Herman N. Jr. Johnson, *From Status to Agency: Abolishing the Very Spirit of Slavery*, 7 *COLUM. J. RACE & L.* 245, 249 (2017) (“[T]he Thirteenth Amendment exists to aggrieve the diminished status suffered by persons under . . . slavery . . . in the United States[,] . . . chattel slavery . . . and civil slavery, the state of one group being subordinate to other groups in society.”).

39. See, e.g., Ogletree, *supra* note 26, at 284 (including “discriminatory insurance and lending practices” and “barriers preventing equal access to housing” among the practices that had the most profound impact); Deborah N. Archer, “*White Men’s Roads Through Black Men’s Homes*”: *Advancing Racial Equity Through Highway Reconstruction*, 73 *VAND. L. REV.* 101 (2020) [hereinafter Archer, *White Men’s Roads*] (describing efforts to enforce racial segregation and the resulting wealth inequalities).

40. See Deborah N. Archer, *The New Housing Segregation: The Jim Crow Effects of Crime-Free Housing Ordinances*, 118 *MICH. L. REV.* 173, 178 (2019) [hereinafter Archer, *The New Housing Segregation*] (explaining how modern housing segregation is amplified by exclusionary local laws).

III.

THE AMERICAN SYSTEM OF RACIAL CLEANSING

Following the abolition of slavery, new systems of white supremacy evolved to continue the theft and racial terror that were at the core of chattel slavery. One motivation among many was to keep Black people “in their place” physically and economically. A core strategy white supremacists use to enforce racial subjugation is to violently claim communities, property, and spaces as their own—as white spaces. This is the uniquely American system of ethnic cleansing.⁴¹

One result of this long history of property theft has been profound segregation and racial wealth inequality. This Part follows the thread that links the post-slavery quest to claim white spaces and protect white privilege with the United States’ long and violent history of racial segregation in housing enforced through public policies, individual acts of theft and discrimination, and mob violence. While examples of this include outright land theft, legal subterfuge,⁴² the theft of Black farms,⁴³ and predatory lending practices,⁴⁴ this Part focuses on the historic roles of racial terror, infrastructure development projects, and urban “revitalization” in dispossessing Black people of their homes and communities.

41. *Banished*, *supra* note 21.

42. *See, e.g.*, Bernadette Atuahene, *Predatory Cities*, 108 CALIF. L. REV. 107, 107–08 (2020) (elucidating how “state actors have used illegal methods to augment public coffers” via a case study on illegal property tax assessments in Detroit).

43. *See* Love, *supra* note 7 (“During the Obama administration, the U.S. Department of Agriculture settled with Black farmers for \$2.3 billion for their longstanding claims of discrimination in farm loans and other government programs.”); TADLOCK COWAN & JODY FEDER, *THE PIGFORD CASES: USDA SETTLEMENT OF DISCRIMINATION SUITS BY BLACK FARMERS* 7 (2013).

44. *See* Charles Lewis Nier, III, *The Shadow of Credit: The Historical Origins of Racial Predatory Lending and Its Impact upon African American Wealth Accumulation*, 11 U. PA. J.L. & SOC. CHANGE 131, 134 (2007) (asserting that one of the largest factors in the homeownership gap between Black and white Americans is the lack of credit or increased cost of credit available to Black communities).

The United States has a deep-rooted history of exiling or banishing “undesirable” people from the community, particularly people of color.⁴⁵ Americans have embraced the tradition of exile for centuries—from the forced migration and genocide of Native Americans to facilitate America’s westward expansion to the American Colonization Society’s campaign to exile formerly enslaved Black people to Africa to remove a threat to the institution of slavery.⁴⁶ Indeed, exile was also once embraced in the United States as a potential compromise to end slavery and address the racial discrimination and violence that plagued the country as increasing numbers of enslaved people were being emancipated. President Lincoln himself supported repatriation of Black people to Africa:

You and we are different races. We have between us a broader difference than exists between almost any other two races. Whether it is right or wrong I need not discuss, but this physical difference is a great disadvantage to us both, as I think your race suffer very greatly, many of them by living among us, while ours suffer from your presence. In a word we suffer on each side. If this is admitted, it affords a reason at least why we should be separated.⁴⁷

Specific proposals to expatriate Black people—both enslaved and free—first came about in the colonial era.⁴⁸ But the increasing numbers of free Blacks in the

45. See *Korematsu v. United States*, 323 U.S. 214, 223–24 (1944) (upholding the exclusion of Japanese Americans from certain parts of the United States during World War II); Archer, *The New Housing Segregation*, *supra* note 40, at 179 (discussing how policing-based housing policies exclude stable and affordable housing for many people of color); Sara K. Rankin, *The Influence of Exile*, 76 MD. L. REV. 4, 6 (2016) (“American history shows a persistent commitment to exiling ‘undesirable’ people from public space: Jim Crow, Anti-Okie, and Sundown Town laws are among many notorious examples.”); Corey Rayburn Yung, *Banishment by a Thousand Laws: Residency Restrictions on Sex Offenders*, 85 WASH. U. L. REV. 101, 106–07 (2007) (“[B]anishment in the United States is most often found as a condition for probation or parole. Convict[ed people] infrequently challenge probation and parole conditions for fear that they will be denied release.”); Melissa Fares, *75 Years Later, Japanese Americans Recall Pain of Internment Camps*, REUTERS (Feb. 17, 2017, 5:29 PM), <https://www.reuters.com/article/us-usa-japanese-anniversary/75-years-later-japanese-americans-recall-pain-of-internment-camps-idUSKBN15W2E2> [<https://perma.cc/NL9T-HTS8>] (noting that about 120,000 Japanese Americans were incarcerated in internment camps in remote desert locations during World War II because of fear that many were spies for Japan); Briana L. McGinnis, *Exile in America: Political Expulsion and the Limits of Liberal Government* at iii (Apr. 22, 2015) (Ph.D. dissertation, Georgetown University) (on file with Digital Georgetown, Georgetown University), https://repository.library.georgetown.edu/bitstream/handle/10822/760863/McGinnis_georgetown_0076D_12992.pdf?sequence=1 [<https://perma.cc/3ZJH-XMC9>] (“[A] survey of American history indicates that although communities may not openly ostracize, outlaw, or exile, they have not suppressed the desire to purge their membership rolls. Rather, they have become more adept at disguising it, draping illiberal exile practices in the language of law, consent, and contract.”).

46. See THE AMERICAN COLONISATION SOCIETY: AN AVENUE TO FREEDOM? 71 (2006).

47. Abraham Lincoln, *Address on Colonization to a Deputation of Negroes* (Aug. 24, 1862), in 5 COLLECTED WORKS OF ABRAHAM LINCOLN 371 (Roy P. Basler ed., 1953), <https://quod.lib.umich.edu/l/lincoln/lincoln5/1:812?rgn=div1;view=fulltext> [<https://perma.cc/8AD7-WRPG>] (last visited May 13, 2021).

48. ERIC BURIN, SLAVERY AND THE PECULIAR SOLUTION: A HISTORY OF THE AMERICAN COLONIZATION SOCIETY 6–8 (2005).

North during the 1700s raised concerns in the South and elevated the urgency of the conversation, with more and more commentators calling for the forced exile of Black people to various parts of Africa.⁴⁹ In *Notes on the State of Virginia*, Thomas Jefferson wrote that slavery was morally and politically wrong,⁵⁰ but he also believed it would be ill-advised to free enslaved people unconditionally.⁵¹ Jefferson believed unconditional emancipation “would surely and tragically culminate in either blood-letting or blood mixing,” with neither being tolerable.⁵² He viewed forced expatriation and colonization as a solution.⁵³ Other prominent Southerners shared his view that exile of all Black people would be the best solution.⁵⁴

Although some members of the Black community originally supported the idea of repatriation, most quickly realized that slaveholder members of the ACS “want[ed] to get rid of them . . . so as to make their property more secure.”⁵⁵ The resolution adopted by Philadelphia’s Black leaders on January 15, 1817 powerfully summarized the community’s feeling about exile and forced colonization:

[W]hereas our ancestors (not of choice) were the first successful cultivators of the wilds of America, we their descendants feel ourselves entitled to participate in the blessings of her luxuriant soil, which their blood and sweat manured; and that any measure . . . having a tendency to banish us from her bosom, would not only be cruel, but in direct violation of those principles which have been the boast of the republic.⁵⁶

America never abandoned the idea of removing Black people through exile. The embrace of exile was evident in Jim Crow policies around the country, where white people created white-only spaces—schools, neighborhoods, parks,

49. *See id.* at 7–10 (identifying several colonists who proposed sending enslaved people to Africa).

50. THOMAS JEFFERSON, NOTES ON THE STATE OF VIRGINIA 87 (William Peden ed., Univ. of N.C. Press 1996) (1787) (referring to slavery as a “great political and moral evil”).

51. *Id.* at 137–38.

52. BURIN, *supra* note 48, at 9–10.

53. *See* Letter from Thomas Jefferson to Jared Sparks (Feb. 4, 1824), in Nat’l Hist. Publ’n & Rec. Comm’n, FOUNDERS ONLINE, <https://founders.archives.gov/documents/Jefferson/98-01-02-4020> [<https://perma.cc/KL3Y-PSEE>] (“The . . . object . . . is to provide an Asylum to which we can, by degrees, send the whole of that population from among us, and establish them under our patronage and protection, as a separate, free and independent people, in some country and climate friendly to human life and happiness.”).

54. *See id.* (noting that individuals such as James Madison agreed with proposals to send enslaved people to distant lands).

55. GARY B. NASH, FORGING FREEDOM: THE FORMATION OF PHILADELPHIA’S BLACK COMMUNITY, 1720–1840, at 238 (1988) (quoting James Forten, a Black abolitionist and leader in Philadelphia); *see also* BURIN, *supra* note 48, at 16 (“Like their counterparts in the North, most southern free [Black people] opposed the ACS.”).

56. James Forten, Absalom Jones, Richard Allen, Robert Douglass, Francis Perkins, John Gloucester, Robert Gorden, James Johnson, Quamoney Clarkson, John Summersett & Randall Shepherd, *A Voice from Philadelphia*, in 1 CLASSICS OF AMERICAN POLITICAL & CONSTITUTIONAL THOUGHT: ORIGINS THROUGH THE CIVIL WAR 951, 951 (Scott J. Hammond, Kevin R. Hardwick & Howard L. Lubert eds., 2007).

restaurants—by excluding Black people.⁵⁷ Exile has been closely linked to notions of citizenship. America has a history of excluding people who were never accepted as citizens of a community or removing those who were deemed to have forfeited aspects of their citizenship. In *Dred Scott v. Sandford*, the Supreme Court held that Black people “had no rights which the white man was bound to respect” and were “not included, and were not intended to be included, under the word ‘citizens’ in the Constitution, and [could] therefore claim none of the rights and privileges which that instrument provides for and secures to citizens of the United States.”⁵⁸ This holding made discussions and acts of exile acceptable. In 1868, with the ratification of the Fourteenth Amendment to the United States Constitution, Black people were finally recognized as citizens.⁵⁹ Immediately afterwards, laws began to criminalize Blackness, chipping away at Black citizenship and belonging, and exiling Black people from various communities and forums of civic engagement.⁶⁰

The embrace of exile to protect white spaces is also evident in the long history of racial exclusion of Black people through “sundown town” ordinances and policies, exclusionary covenants, threats, and harassment by local law enforcement officers.⁶¹ Hundreds of cities across America have been sundown towns at some point in their history.⁶² Not only were Black people barred from living in these towns, but Black people who entered the town or were found there after sunset

57. MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 30–35 (2010) (discussing the rise of Jim Crow laws as a response to the abolition of slavery and as an attempt to put American Blacks into subordinate positions).

58. 60 U.S. 393, 404, 407 (1857).

59. U.S. CONST. amend. XIV, § 1.

60. *See, e.g.*, DAVID W. OSHINSKY, *WORSE THAN SLAVERY* 34 (1996) (arguing that in the mid-nineteenth century, Blackness became criminalized and Southern prisons and jails became means of controlling the Black population and their labor. “As convictions mounted, Southern prisons turned [B]lack. . . . By 1866, the Natchez city jail held sixty-seven [B]lack prisoners and just eleven whites. In Grenada, to the north, there were seventeen [B]lacks and one white. In Columbus, to the east, there were fifty-three [B]lacks and no whites. Almost overnight, the jailhouse had become a ‘negro preserve.’”).

61. *See* ROTHSTEIN, *supra* note 7, at 42; JAMES W. LOEWEN, *SUNDOWN TOWNS: A HIDDEN DIMENSION OF AMERICAN RACISM* 4 (2005)

62. *See* LOEWEN, *supra* note 61, at 4–7 (revealing that sundown towns have existed everywhere in the United States).

were subject to harassment, threats, and acts of violence.⁶³ As summarized by one historian, “many towns drove out their [B]lack populations, then posted sundown signs. . . . Other towns passed ordinances barring African Americans after dark or prohibiting them from owning or renting property; still others established such policies by informal means, harassing and even killing those who violated the rule.”⁶⁴

A. *Mob Rule and Racial Terror*

Modern state-sanctioned violence focused on robbing Black people of their property and preventing integration began at the turn of—and prevailed throughout—the 20th century.⁶⁵ These campaigns were focused on both communities and individuals. Sometimes, whole communities were terrorized and destroyed. Even more frequently, individual Black families who moved into historically white communities were terrorized by white mobs. These instances deprived Black people of their homes and forced them to leave their community and the accompanying opportunities for economic prosperity and stable, flourishing lives. In both cases, government entities and the police failed to protect Black people and, in many situations, promoted and encouraged lawlessness.⁶⁶

The most widely known example of this kind of racial terror against a Black community may be the Tulsa Race Massacre of 1921, also known as the Tulsa Race Riots.⁶⁷ The destruction of the Black community of Greenwood during the Tulsa Race Massacre is a deeply tragic example of exile through racial terror and the complete destruction of a Black community. On May 31, 1921, word spread through the Black community of Tulsa, Oklahoma that Dick Rowland, a 19-year-

63. See ROTHSTEIN, *supra* note 7, at 42 (stating that “police and organized mobs” enforced policies “forbidding African Americans from residing or even from being within town borders after dark”); see also LOEWEN, *supra* note 61, at 219 (invoking the names of several African American individuals and families targeted with violent enforcement of unwritten rules of racial exclusion). Black people were not the only people driven out of communities by sundown laws and related harassment. LOEWEN, *supra* note 61, at 51. In the late 1800s, Chinese people were driven out of Idaho. In 1870, Chinese people constituted approximately one-third of Idaho’s population. *Id.* By 1910, almost none remained. *Id.* In Gardnerville, Nevada, the town blew a whistle at 6:00 pm each day to alert Native Americans of the need to leave the town by sundown. *Id.* at 23. In parts of Colorado, signs were posted that read “No Mexicans After Night.” Peter Carlson, *When Signs Said “Get out,”* WASH. POST (Feb. 21, 2006), <http://www.washingtonpost.com/wp-dyn/content/article/2006/02/20/AR2006022001590.html> [<https://perma.cc/Z5RB-TCB4>].

64. LOEWEN, *supra* note 61, at 4.

65. ROTHSTEIN, *supra* note 7, at 143–44 (“During much of the twentieth century, police tolerance and promotion of cross burnings, vandalism, arson, and other violent acts to maintain residential segregation was systematic and nationwide.”). See generally HENRY LOUIS GATES, JR., *STONY THE ROAD: RECONSTRUCTION, WHITE SUPREMACY, AND THE RISE OF JIM CROW* (2019) (discussing how the Ku Klux Klan have organized to resist and reverse Reconstruction since 1865, including through the theft of Black land in order to restore white supremacy).

66. ROTHSTEIN, *supra* note 7, at 143 (noting how attacks on African Americans were sanctioned by elected officials and law enforcement officers).

67. See generally BROPHY, *RECONSTRUCTING*, *supra* note 27 (presenting a detailed history and analysis of the 1921 Tulsa massacre).

old Black man accused of assaulting a white woman, would be lynched.⁶⁸ That evening, a group of approximately 50 Greenwood residents went to the courthouse to protect Mr. Rowland. A group of white residents gathered to confront those Greenwood residents and a fight erupted. After shots were fired, the Tulsa police deputized and armed hundreds of white men, while the mayor of Tulsa called in local components of the National Guard.⁶⁹ The deputized white citizens and the National Guardsmen worked in concert to target and destroy Greenwood. Throughout the night a small group of Black war veterans attempted to fight off the rioting white mob. The next morning, the National Guard moved in and transported the Greenwood residents to the outskirts of town.⁷⁰ Then, the white mob burned the empty buildings to the ground. Not only did the police fail to protect Black residents of Greenwood, but officers chose to “join in with the white mob under the pretext of trying to restore order, and not only kill every [B]lack person they find, but steal their belongings and burn their homes.”⁷¹

In the end, the rioting white mob killed up to 300 Black people and destroyed more than 1200 homes and businesses.⁷² What happened in Greenwood was one example of the so-called “nigger drives” that took place around Oklahoma in the 1910s and 1920s with the goal of forcing Black people out of “desirable towns or other pieces of land.”⁷³

On an even larger scale, this episode exemplified the nationwide, sustained campaign of racial terror: “Between the 1860s and the 1920s, white Americans drove thousands of Black residents from their communities.”⁷⁴ This expulsion was followed by sustained efforts to keep those communities white once all of the

68. Ogletree, *supra* note 26, at 295–97; BROPHY, RECONSTRUCTING, *supra* note 27, at 65; SCOTT ELLSWORTH, DEATH IN A PROMISED LAND: THE TULSA RIOT OF 1921, at 46–49 (1982); Alfred L. Brophy, *Assessing State and City Culpability: The Race and the Law*, in TULSA RACE RIOT: A REPORT BY THE OKLAHOMA COMMISSION TO STUDY THE TULSA RIOT OF 1921, at 153 (2001) [hereinafter Brophy, *Assessing Culpability*].

69. Ogletree, *supra* note 26, at 295–97. *See also* BROPHY, RECONSTRUCTING, *supra* note 27, at 84 (“The response of the Tulsa Police Department to the ‘thing coming on’ was to commission about 250 men, to help in putting down what they viewed as a ‘negro uprising.’”); ELLSWORTH, *supra* note 68, at 32 (explaining that “[t]he tangible evidence is conclusive that the Tulsa Police worked in close concert with the ‘Knights of Liberty,’” a white vigilante group); Brophy, *Assessing Culpability*, *supra* note 68, at 160–62 (recounting the role of the National Guard in the riots devolving).

70. Ogletree, *supra* note 26, at 295–97. *See also* BROPHY, RECONSTRUCTING, *supra* note 27, at 90 (discussing the larger effect of the National Guard on Greenwood, working in the early morning to disarm and arrest residents); ELLSWORTH, *supra* note 68; Brophy, *Assessing Culpability*, *supra* note 68, at 162 (explaining that the National Guard facilitated Greenwood’s destruction by moving residents who had no desire to leave).

71. BROPHY, RECONSTRUCTING, *supra* note 27, at 87.

72. Ogletree, *supra* note 26, at 296; Maxine Horner, *Epilogue to OKLA. COMM’N STUDY TULSA RIOT 1921*, TULSA RACE RIOT: A REPORT TO STUDY THE TULSA RIOT OF 1921, at 177 (2001).

73. Ogletree, *supra* note 26, at 297.

74. Becky Little, *In 1912, This Georgia County Drove out Every Black Resident*, HISTORY CHANNEL (Aug. 20, 2019), <https://www.history.com/news/georgia-racial-expulsion-stacey-abrams> [<https://perma.cc/99H4-AE7B>] (describing how white vigilantes in Forsyth County, Georgia drove out all the Black people living there in 1912 and noting that “white Americans drove thousands of [B]lack residents from their communities [throughout the country]”).

Black residents had been murdered or driven out.⁷⁵ The story of Harrison, Arkansas is a tragic example. As described by historian James Loewen:

In late September of 1905, a white mob stormed the jail, carried several [B]lack prisoners outside the town, whipped them and ordered them to leave. The rioters then swept through Harrison's [B]lack neighborhood, tying men to trees and whipping them, burning several homes and warning all African Americans to leave that night. Most fled without any belongings. Three or four wealthy white families sheltered servants who stayed on, but in 1909, another mob tried to lynch a [B]lack prisoner. Fearing for their lives, most remaining African Americans left.⁷⁶

Harrison continued to be a sundown town—excluding Black people through policy, practice, and intimidation—until 2002.⁷⁷ Today, 97% of Harrison's residents are white.⁷⁸

Even more common were the instances of individual families being targeted and driven out of their homes. Sadly, these occurrences were relatively commonplace.⁷⁹ There was, for example, a decades-long campaign of racial terror in Chicago to enforce segregation. In 1897, white residents drove out all Black families from the Woodlawn section of Chicago using intimidation and threats of violence.⁸⁰ Between 1917 and 1921, 58 Black homes in white neighborhoods, even if they were on the outskirts, were firebombed to enforce the boundaries between the two communities.⁸¹ Although two Black residents were murdered, no one was arrested or prosecuted.⁸²

This pattern of racial violence continued through the mid-1900s. In the five years directly following World War II, there were 357 reported incidents of violence and intimidation against Black people “attempting to rent or buy in

75. See generally PATRICK PHILLIPS, *BLOOD AT THE ROOT: A RACIAL CLEANSING IN AMERICA* (2017) (highlighting how over 1,000 Black residents were violently run out of Forsyth County, Georgia); Little, *supra* note 74.

76. *Banished*, *supra* note 21.

77. *Id.*

78. *Id.*

79. ROTHSTEIN, *supra* note 7, at 141; see DOUGLAS MASSEY & NANCY DENTON, *AMERICAN APARTHEID* 23–25, 29–30 (1993) (describing how Black Americans often lived in mixed-race communities until the 1920s); STEPHEN GRANT MEYER, *AS LONG AS THEY DON'T MOVE NEXT DOOR: SEGREGATION AND RACIAL CONFLICT IN AMERICAN NEIGHBORHOODS* 6 (2000) (emphasizing the role of private racial resentment, or racial resistance, in excluding Black people from white neighborhoods and stating “[r]esistance against African Americans moving into white districts occurred more commonly as thousands of small acts of terrorism”); Gregory Smithsimon, *Are African American Families More Vulnerable in a Largely White Neighborhood?*, *GUARDIAN* (Feb. 21, 2018, 6:00 AM), <https://www.theguardian.com/books/2018/feb/21/racial-segregation-in-america-causes> [https://perma.cc/CU9S-6837] (“African Americans were forced . . . [to] retreat into large all-[B]lack neighborhoods that could provide some measure of protection from marauding whites and dangerous forces of law and order.”).

80. ROTHSTEIN, *supra* note 7, at 143–44.

81. *Id.* at 144.

82. *Id.*

Chicago’s racial border areas.”⁸³ From 1944 to 1946, there were 46 attacks on the homes of Black people living in historically white communities that bordered over-crowded Black communities, resulting in at least three deaths.⁸⁴

In Detroit immediately following World War II, there were more than 200 documented acts of racial violence and intimidation that drove Black people from white neighborhoods.⁸⁵ In Philadelphia, the first half of 1955 saw 213 violent incidents aimed at keeping Black people confined to North Philadelphia.⁸⁶ In the Los Angeles area, Black families who found housing outside of long-standing Black neighborhoods were greeted with cross burnings, bombings, rocks through their windows, telephone threats, and vandalism.⁸⁷ An entire family was murdered in 1945 when their “new home in an all-white neighborhood was blown up.”⁸⁸ This violence was carried out with virtual impunity. As Richard Rothstein explains:

Of the more than one hundred incidents of move-in bombings and vandalism that occurred in Los Angeles between 1950 and 1965, only one led to an arrest and prosecution—and that was because the California attorney general took over the case after local police and prosecutors claimed they were unable to find anyone to charge.⁸⁹

Of course, behind these numbers are actual families who were terrorized and driven from their homes. In 1951, Harvey and Johnetta Clark rented an apartment for themselves and their two small children in Cicero, a then all-white Chicago suburb.⁹⁰ The police immediately tried to force them out of their house, telling their real estate agent, “[d]on’t come back . . . or you’ll get a bullet through you.”⁹¹ The Clarks sought and received an injunction against police occupying their home.

83. *Id.* at 144–45.

84. *Id.*

85. ROTHSTEIN, *supra* note 7, at 146; see also *Prelude to 1967: Detroit’s Racial Clashes of 1942–43*, DETROIT NEWS (July 10, 2017, 3:01 PM), <https://www.detroitnews.com/story/news/local/michigan-history/2017/07/07/detroit-riots-1942-43/103482496> [<https://perma.cc/4GWC-VWWD>] (detailing how “white protesters . . . harassed the [B]lack families and threw rocks at them” when Black families attempted to move into the neighborhood).

86. ROTHSTEIN, *supra* note 7, at 147; JOHN F. BAUMAN, PUBLIC HOUSING, RACE, AND RENEWAL 161 (1987) (outlining incidents of racial violence in Philadelphia).

87. ROTHSTEIN, *supra* note 7, at 147; Leonard S. Rubinowitz & Imani Perry, *Crimes Without Punishment: White Neighbors’ Resistance to Black Entry*, 92 J. CRIM. L. & CRIMINOLOGY 335, 418–20 (2002).

88. ROTHSTEIN, *supra* note 7, at 147.

89. *Id.*; see also Stanley G. Robertson, *Police Reveal ‘Leads’ in Bombings: Local, State, National Agencies Delve into West Adams Blasts*, L.A. SENTINEL, Mar. 20, 1952, at A1 (recounting police activity in response to bombings of Black homes and neighborhoods).

90. ROTHSTEIN, *supra* note 7, at 145; Isabel Wilkerson, *July 11, 1951: Cicero Riot over Housing Desegregation*, ZINN EDUC. PROJECT, <https://www.zinnedproject.org/news/tdih/cicero-riot> [<https://perma.cc/BT3C-9U69>] (last visited May 13, 2021).

91. ROTHSTEIN, *supra* note 7, at 145; LIONEL KIMBEL JR., A NEW DEAL FOR BRONZVILLE: HOUSING, EMPLOYMENT, AND CIVIL RIGHTS IN BLACK CHICAGO 1935-1955, at 116 (2015).

The police ignored it.⁹² When the Clarks continued to exercise their right to live in that neighborhood, a mob of about 4,000 people rioted, raided the family's apartment, and threw the Clark's belongings out of the window and set them on fire.⁹³ *Time* magazine reported that police officers were present, but "acted like ushers politely handling the overflow at a football stadium."⁹⁴

In 1952, Wilbur Gary, a Black war veteran, sought to move his family out of a public housing project that was slated for demolition.⁹⁵ The Garys bought a home in Rollingwood, California.⁹⁶ Four years prior to their purchase, the U.S. Supreme Court ruled that racially restrictive covenants were not enforceable,⁹⁷ thereby invalidating the racially restrictive covenant that had previously prevented Black families from moving to Rollingwood.⁹⁸ The Rollingwood Improvement Association still insisted that the covenant gave it the right to evict the Gary family and demanded that they leave.⁹⁹ Shortly after the Garys moved in, a mob of approximately 300 whites surrounded their home, threw bricks at the house and through the front window, shouted racial slurs, and burned a cross on the lawn. This went on for several days while local police officers and the county sheriff's department refused to protect the Gary family.¹⁰⁰ The family was eventually protected by private guards organized by the NAACP.¹⁰¹ This was not uncommon: when local law enforcement failed to provide the equal protection of the law required by the Fourteenth Amendment, Black communities often organized their own self-defense. California Governor Earl Warren and California Attorney General Robert W. Kenney eventually stepped in after repeated demands by the

92. ROTHSTEIN, *supra* note 7, at 145.

93. ARNOLD R. HIRSCH, MAKING THE SECOND GHETTO: RACE AND HOUSING IN CHICAGO 1940–1960, at 53 (1983) (discussing the Cicero "riot"); ROTHSTEIN, *supra* note 7, at 145; Ta-Nehisi Coates, *The Case for Reparations*, ATLANTIC (June 2014), <https://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631> [<https://perma.cc/PQF3-GKN2>] (detailing how "thousands of whites . . . attacked [the] apartment building . . . throwing bricks and firebombs through the windows and setting the apartment on fire.").

94. *Illinois: Ugly Nights in Cicero*, TIME (July 23, 1951), <http://content.time.com/time/subscriber/article/0,33009,890143,00.html> [<https://perma.cc/93AK-KATC>]; ROTHSTEIN, *supra* note 7, at 145.

95. ROTHSTEIN, *supra* note 7, at 139; Jovanka Beckles, *The Gary Family of Richmond: Fighting for Equality and Standing for Their Rights, Part 1*, RADIO FREE RICHMOND, http://www.radiofreerichmond.com/jovanka_beckles_the_gary_family_of_richmond_fighting_for_equality_and_standing_for_their_rights_part_1 [<https://perma.cc/JUT9-3G2X>] (last visited May 13, 2021).

96. ROTHSTEIN, *supra* note 7, at 139; Beckles, *supra* note 95.

97. *Shelley v. Kraemer*, 334 U.S. 1, 20 (1948).

98. ROTHSTEIN, *supra* note 7, at 139; Beckles, *supra* note 95.

99. ROTHSTEIN, *supra* note 7, at 139; Beckles, *supra* note 95.

100. SHIRLEY ANN WILSON MOORE, TO PLACE OUR DEEDS: THE AFRICAN AMERICAN COMMUNITY IN RICHMOND, CALIFORNIA, 1910–1963, at 117 (2000); ROTHSTEIN, *supra* note 7, at 140.

101. MOORE, *supra* note 100, at 117; ROTHSTEIN, *supra* note 7, at 140.

NAACP.¹⁰² However, no one was ever arrested for the vandalism or harassment suffered by the Garys.¹⁰³

In 1954, Andrew Wade purchased a home in Shively, Kentucky, an all-white suburb of Louisville.¹⁰⁴ Shortly after Mr. Wade and his family moved in, a crowd of white people burned a cross on an empty lot next door and a rock crashed through their front widow wrapped in a note that said “Nigger Get Out.”¹⁰⁵ On the same night that a rock was thrown through their window, ten rifle shots were fired through their kitchen door.¹⁰⁶ While police watched on, the harassment continued for a month, culminating in the house being blown up with dynamite. Although the people who blew up the house and burned the cross accepted responsibility, they were never indicted. Eventually, the Wades moved out and returned to a Black neighborhood in Louisville.¹⁰⁷

IV.

DEFINING THE RIGHT TO RETURN

The right to return is a policy framework and moral demand that supports the right of refugees and other people who have been displaced from their country, community, or home to return with safety, dignity, and support.¹⁰⁸ The right to return has long been used internationally as a framework to protect ethnic minorities who were the victims of ethnic cleansing.¹⁰⁹ As will be discussed below, the right to return framework has the potential to advance the reparations discussion in the United States regarding both why and how to redress the loss of property, community, and home, and to respond to the history of racial discrimination and terror discussed in the previous Section. In the context of reparations, a right to return could be used to give Black people the opportunity to regain the value of stolen homes and land, live in previously forbidden communities, and create meaningful opportunities to rebuild lost wealth.

102. MOORE, *supra* note 100, at 117.

103. ROTHSTEIN, *supra* note 7, at 140; Jovanka Beckles, *The Gary Family of Richmond: Fighting for Equality and Standing for Their Rights, Part 2*, RADIO FREE RICHMOND (Mar. 2, 2015), http://www.radiofreerichmond.com/jovanka_beckles_the_gary_family_of_richmond_fighting_for_equality_and_standing_for_their_rights_part_2 [https://perma.cc/Q28B-FEZ7].

104. ROTHSTEIN, *supra* note 7, at 148–50; Rick Howlett, *Louisville Remembers a Tumultuous Time 60 Years Ago*, WBUR (Dec. 1, 2014), <https://www.wbur.org/hereandnow/2014/12/01/louisville-civil-rights> [https://perma.cc/C2NR-YYM4].

105. ROTHSTEIN, *supra* note 7, at 148–50; Howlett, *supra* note 104 (recounting Anne Braden’s experience).

106. ROTHSTEIN, *supra* note 7, at 148–50; Howlett, *supra* note 104.

107. ROTHSTEIN, *supra* note 7, at 150; Howlett, *supra* note 104.

108. See Kathleen Lawand, *The Right to Return of Palestinians in International Law*, 8 INT’L J. REFUGEE L. 532, 545 (1996) (discussing the history of the development of the right to return in United Nations proceedings).

109. See, e.g., Eric Rosand, *The Kosovo Crisis: Implications of the Right to Return*, 18 BERKELEY J. INT’L L. 229, 231 (2000) (observing “the developing principal that those dislocated during ‘ethnic cleansing’ campaigns have the right to return to their home of origin under international law” within the context of ethnic cleansing in Kosovo in the late 1990s).

There are several examples of how the right to return has been used or claimed to advance justice internationally and domestically for internally displaced people (IDPs).¹¹⁰ Elements of the right to return are reflected in various federal public housing policies.¹¹¹ The concept was also invoked when residents of New Orleans, Louisiana were displaced by Hurricane Katrina and blocked from returning by “revitalization” efforts.¹¹² However, the right to return’s potential to advance arguments in favor of reparations is most clear in how it has been framed in the international law context, as well as how it has been adopted by cities around the country in response to widespread displacement of low-income people.¹¹³ This Part explores how the right to return has been defined in the international context and tested in Portland, Oregon. This Part also discusses how the right to return can be used to advance reparations for slavery, Jim Crow, and the decades of racial violence that forced people out of their homes and communities.

A. International Context

The Universal Declaration of Human Rights contains the earliest formulation of the right to return in modern human rights laws.¹¹⁴ After World War II, the world saw a drastic increase in the number of displaced persons and refugees, “often [as] the result of practices specifically intended to promote the creation of ethnically homogeneous states by driving entire ethnic groups from their homes.”¹¹⁵ Around the world, the increasing recognition of the right to housing also fed a growing recognition of the need to reverse the impact of human rights violations

110. Jessica Wyndham, *A Developing Trend: Laws and Policies on Internal Displacement*, 14 HUM. RTS. BRIEF 7, 7 (2006) (defining internally displaced persons as “those who have been forced from their home but, unlike refugees, remain with the borders of their own countries”).

111. See, e.g., U.S. DEP’T OF HOUS. & URBAN DEV., *supra* note 29, at 41.

112. See, e.g., Inniss, *supra* note 23, at 325 (discussing the problems facing low-income Black communities after Hurricane Katrina and suggesting the need for a right to return); *Battle over Right to Return: Housing Advocates Occupy New Orleans Public Housing Office*, DEMOCRACY NOW! (Sept. 4, 2007), https://www.democracynow.org/2007/9/4/battle_over_right_to_return_housing [<https://perma.cc/QAP2-2SUB>] (detailing the experience of Stephanie Mingo, a former resident of the St. Bernard Housing Development, who was unable to access her former housing despite being willing to pay for repairs); Nguyen, *supra* note 31 (describing the “disastrous impact of public housing demolitions and redevelopment policies” on New Orleans residents displaced by Hurricane Katrina).

113. See, e.g., McGlinchy, *supra* note 30 (elucidating Portland policy that gives preference in affordable housing to residents who can prove that they, their parents, or their grandparents used to live in the neighborhoods where the city is investing in new affordable housing units); Dirk VanderHart, *Portland’s Trying to Bring Displaced Residents Back to Their Old Neighborhoods*, PORTLAND MERCURY (Feb. 28, 2018), <https://www.portlandmercury.com/news/2018/02/28/19706866/portlands-trying-to-bring-displaced-residents-back-to-their-old-neighborhoods> [<https://perma.cc/2CMX-GMMH>] (noting that Portland’s efforts to give preference to displaced residents have proven “largely unsuccessful in helping former residents of North and Northeast Portland come back as homeowners”).

114. G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948).

115. Eric Rosand, *The Right to Return Under International Law Following Mass Dislocation: The Bosnia Precedent?*, 19 MICH. J. INT’L L. 1091, 1096 (1998).

and other public and private actions that have led to displacement and the theft of property.¹¹⁶ In furtherance of that recognition, the concept of a right to return to one's country or home for refugees and other displaced people is recognized in many foundational human rights laws and policies.¹¹⁷ Increasingly, this concept has expanded to encompass not only return to one's country or region, but also the right of IDPs to return to their original home or property.¹¹⁸ Indeed, since the 1990s, millions of refugees and IDPs "have recovered and re-inhabited"¹¹⁹ their property or land. Still others have received restitution "in lieu of return."¹²⁰

The right to return is articulated most comprehensively in the Principles on Housing and Property Restitution for Refugees and Displaced Persons, also known as the Pinheiro Principles.¹²¹ After a seven-year-long process, in 2005, the Pinheiro Principles were endorsed by the United Nations Sub-Commission on the Promotion and Protection of Human Rights.¹²² The Pinheiro Principles provide guidance to governmental and non-governmental authorities on developing and implementing housing and property restitution laws, policies, and programs to help ensure protection of the right to housing and property restitution.¹²³ The Principles are designed to be broadly applied to "all cases of involuntary displacement resulting from international or internal armed conflict, gross human rights violations such as 'ethnic cleansing,' development projects, forced evictions, and natural and manmade disasters. Whenever a person or community is arbitrarily displaced from their homes and lands the Principles can be used as guidance."¹²⁴

The right to return is enumerated in numerous provisions that overlap to create broad protections. For example, Principle 1 states that the Pinheiro Principles apply to "all refugees, internally displaced persons and to other similarly situated displaced persons" to assist with "land and property restitution in situations where displacement has led to persons being arbitrarily or unlawfully deprived of their former homes, lands, properties or places of habitual residence."¹²⁵

Principle 2 speaks to the mechanics of restoring displaced persons, calling for "the right to have returned to them any housing, land and/or property which they were arbitrarily or unlawfully deprived, or to be compensated for any housing, land/or property that is factually impossible to restore as determined by an

116. FAO, HANDBOOK, *supra* note 28, at 10.

117. Rosand, *supra* note 115, at 1121.

118. FAO, HANDBOOK, *supra* note 28, at 54.

119. *Id.* at 10.

120. *Id.*

121. *Id.* The Principles were named after the Special Rapporteur, Paulo Sérgio Pinheiro, of the U.N. Sub-Commission on the Promotion and Protection of Human Rights. *Infra* note 125.

122. FAO, HANDBOOK, *supra* note 28, at 11.

123. *Id.*

124. *Id.* at 16.

125. Paulo Sérgio Pinheiro (Special Rapporteur on the Protection and Promotion of Human Rights), *Final Rep. on Housing and Property Restitution in the Context of the Return of Refugees and Internally Displaced Persons*, §1, U.N. Doc. E/CN.4/Sub.2/2005/17 (July 11, 2005).

independent, impartial tribunal.”¹²⁶ This principle further requires the prioritization of “the right to restitution as the preferred remedy for displacement and as a key element of restorative justice.”¹²⁷

Principle 3 links the right to return to the underlying rights to housing and property restitution.¹²⁸ Significantly, Principle 3 states the right must be protected from discrimination on the basis of race, among other factors.¹²⁹ It further notes that the right to return and restitution “is particularly fundamental given the fact that many instances of displacement are clearly rooted in the intentional discrimination against certain groups—especially racial, ethnic, national and religious minorities.”¹³⁰ Finally, it notes that “when displacement is demonstrably discriminatory in nature, such as when certain ethnic, racial or other groups are specifically targeted for removal from their homes, these prohibited acts will have the cumulative results of actually strengthening the future restitution claims of those displaced in this manner.”¹³¹

Finally, Principle 10 provides a right to return in safety and dignity.¹³² The Sub-Commission’s commentary under Principle 10 once again specifies the “corollary” rights that extend from the Principles, including the right of displaced people to return to their original homes or to receive adequate compensation for any losses they suffered.¹³³

The United States has tacitly endorsed the right to return. The United States has ratified the International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination.¹³⁴ Both treaties recognize the principles on which the right to return is based, and the right to return itself. Indeed, the Committee on the Elimination of Racial

126. *Id.* § 2.1.

127. *Id.* § 2.2.

128. FAO, HANDBOOK, *supra* note 28, at 32.

129. *Id.*

130. *Id.*

131. *Id.*

132. Pinheiro, *supra* note 125, § 10.1.

133. FAO, HANDBOOK, *supra* note 28, at 54–55. Human rights law in relation to the right to adequate housing has evolved significantly over the past decade. The right of a refugee to return to her/his country is now increasingly coupled with her/his right to adequate housing. In this context, the right to adequate housing has developed to extend to the right not to be arbitrarily deprived of housing and property in the first place. As a corollary to this, refugees have the right to return not only to their countries of origin but also to recover the homes from which they were previously evicted (restitution). If this is not possible, then the right to adequate compensation for any loss suffered comes into play. *Id.*

134. G.A. Res. 2200A (XXI), International Covenant on Civil and Political Rights (Dec. 16, 1966); G.A. Res. 2106 (XX), International Convention on the Elimination of All Forms of Racial Discrimination (Dec. 21, 1965).

Discrimination has discussed the application of the right to return to protect racial and ethnic minorities in a variety of contexts over several decades.¹³⁵

A foundational, and often contentious, question in the debate about Black reparations is why this country should compensate the descendants of slaves or other victims of racial terror centuries after the abolition of slavery.¹³⁶ A related question is why any acts of racial discrimination and terror, beyond slavery itself, should form the basis for reparations. The right to return offers an internationally recognized framework in favor of reparations for all Black Americans as well as those with specific evidence that they or their ancestors were robbed of property or driven from their homes. The right also provides a framework for contextualizing racial terror in America within ethnic cleansing around the world and within the movement to redress its deep and lasting harm.¹³⁷

Through its framing of the fundamental right to remain in one's home, however broadly or focused one chooses to define home, and the articulation of the deep and lasting harms of ethnic cleansing through racial terror, the right to return also provides a strong moral imperative to address America's history of racism. The right to return offers a framework to respond to the interweaving of public

135. See, e.g., Rep. of the Comm. on the Elimination of Racial Discrimination 23–24, U.N. Doc. A/53/18, at 23–24 (1998) (regarding the return of refugees to the Balkans following the Dayton Accords in 1995, which ended the war in Bosnia, concluding that the response to “ethnic cleansing” must include a voluntary and safe return of people); Comm. on the Elimination of Racial Discrimination, Concluding Observations on the Combined Seventeenth to Nineteenth Reports of Israel, CERD/C/ISR/CO/17-19, at 5 (Dec. 12, 2019) (emphasizing the challenges of family reunification involving Palestinian claims of the right to return to Israel).

136. There is also a debate on whether reparations should be reserved only to Black Americans who can prove their lineage to enslaved people. See Wesley Lowery, *Which Black Americans Should Get Reparations?*, WASH. POST (Sept. 18, 2019, 11:49 AM), https://www.washingtonpost.com/national/which-americans-should-get-reparations/2019/09/18/271cf744-cab1-11e9-a4f3-c081a126de70_story.html [<https://perma.cc/5GY6-HM92>] (explaining that while some reparations advocates argue that “reparations be strictly reserved for those who can trace their lineage to enslaved people held in the United States,” others “see any effort to delineate among various groups of [B]lack Americans as having the potential to fuel xenophobia”).

137. The right to return potentially also offers a legal right to Black people and Black communities who were victims of American ethnic cleansing. The United States has ratified the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, and other relevant treaties on which the right to return and the rights of IDPs are based. See, e.g., G.A. Res. 2200A (XXI), *supra* note 134; G.A. Res. 2106 (XX), *supra* note 134. Ratification presents an opportunity to argue that the United States has engaged in or is continuing to engage in ethnic cleansing in violation of these international obligations. A finding that the United States is violating these treaties requires that the country cease the practices; ensure that the violations will not be repeated, including through policy reforms or prosecution of perpetrators; and provide remedies to those who have been harmed, including through the right to return. However, the United States has imposed significant limitations on the domestic applicability of international treaties, which must also be overcome. See, e.g., Audrey Daniel, *The Intent Doctrine and CERD: How the United States Fails to Meet Its International Obligations in Racial Discrimination Jurisprudence*, 4 DEPAUL J. SOC. JUST. 263, 273–281 (2011) (describing how the United States limited the enforcement power of the Convention on the Elimination of All Forms of Racial Discrimination); David Kaye, *State Execution of the International Covenant on Civil and Political Rights*, 3 U.C. IRVINE L. REV. 95, 96 (2013) (“Despite its status as a treaty . . . the [International Covenant on Civil and Political Rights] enjoys a tenuous foothold in American law.”).

and private discrimination that came together to terrorize Black people for centuries. In the case of the theft of Black land, the violations of rights were either taken directly by government officials or were committed by private actors enabled by government action or inaction.

Moreover, the Principles that come together to form the right to return provide guidance on the type of reparations that should be made available to victims of racial terror, including when actual return to former homes or communities is not feasible. As scholar Eric Miller notes, a reparations framework should not pre-determine what relief is necessary to sufficiently acknowledge the harm.¹³⁸ Instead it must “vary with each accounting for the wrong done.”¹³⁹ Therefore, victims of racial violence and their children who are not able to return to the homes that were stolen from them can nonetheless receive compensation for the value of lost homes and assistance to rebuild their lives and return to the communities that were stolen.

B. Domestic Examples of a Right to Return

Several communities around the United States have adopted or explored programs akin to right to return policies in response to widespread displacement by government seizure of property through condemnation or eminent domain to facilitate infrastructure projects, or in response to displacement and gentrification by “urban renewal” efforts.¹⁴⁰ A leading example is the North/Northeast Housing Strategy Preference Policy adopted in Portland, Oregon in 2015 (the “Portland Preference Policy”). The Portland Preference Policy advances a nominal right to return for former residents of Portland’s historically Black communities, namely

138. Miller, *supra* note 8, at 46.

139. *Id.*

140. In November 2018, the Austin, Texas Anti-Displacement Task Force released its first major report, which recommended that the City Council adopt a “right to remain and right to return” ordinance. Philip Jankowski, *Austin Task Force Trumpets ‘Right to Return’ Policy to Fight Gentrification*, STATESMAN (Nov. 28, 2018, 6:47 AM), <https://www.statesman.com/news/20181128/austin-task-force-trumpets-right-to-return-policy-to-fight-gentrification> [https://perma.cc/2AVG-XYC8]. In Oakland, California, displaced residents receive priority consideration for the city’s first-time homebuyer mortgage assistance fund and for affordable housing funded by city money. Mark Hedin, *Oakland Gives Displaced Residents Priority for Affordable Housing Programs*, EAST BAY TIMES (July 14, 2016, 10:42 AM), <https://www.eastbaytimes.com/2016/07/14/oakland-gives-displaced-residents-priority-for-affordable-housing-programs> [https://perma.cc/H9X8-BLZ3]. Community activists have argued for a “community resident preference policy” for residents of high-displacement communities in Seattle, Washington. Natalie Bicknell, *Community Resident Preference Policy and the Fight Against Displacement in Seattle*, URBANIST (July 23, 2018), <https://www.theurbanist.org/2018/07/23/community-resident-preference-policy-and-the-fight-against-displacement-in-seattle> [https://perma.cc/DD9Q-3Q6W]. Similar plans have been advocated for in Berkeley, California. See Natalie Orenstein, *Not Enough or Too Much? Neighbors React to 20-Year South Berkeley Plan*, BERKELEYSIDE (May 30, 2019, 1:50 PM), <https://www.berkeley-side.com/2019/05/30/not-enough-or-too-much-neighbors-react-to-20-year-south-berkeley-plan> [https://perma.cc/TZX5-ULM5] (exploring a draft development plan that would include “a local preference program, wherein people who live or have a history in the neighborhood would be prioritized for the new affordable units”).

North and Northeast Portland.¹⁴¹ The Policy was adopted in recognition of the range of actions the City has taken to directly and indirectly displace marginalized communities in North and Northeast Portland.¹⁴² The program provides a tool for Portland to address the legacy and generational impact of displacement, and to help the City prioritize impacted individuals for access to affordable housing.¹⁴³ As described by the City, the policy “is an effort to address the harmful impacts of urban renewal by giving priority placement to applicants who were displaced, are at risk of displacement, or who are descendants of households that were displaced due to urban renewal in North and Northeast Portland.”¹⁴⁴ Although the Portland Preference Policy is not restricted to Black people, the City believes that by targeting “marginalized communities with historic ties” to these historically Black neighborhoods, those predominantly Black families who were displaced will now be able to return.¹⁴⁵

Applicants for the preference program get points according to their historical ties to the community and whether their current or former address falls within one of the identified areas where City plans had a destabilizing effect on long-term residents.¹⁴⁶ In order to capture the generational effects of government development and housing policies and practices, preference for housing and financial support is given to people who can prove that they, their parents, or their grandparents lived in the targeted neighborhoods.¹⁴⁷ Furthermore, some addresses within the targeted neighborhoods get top priority because the actions that displaced those residents are considered especially egregious.¹⁴⁸ These areas include the roughly 300 homes torn down in the 1970s when the City expanded Legacy Emanuel Medical Center, and those affected by the waves of displacement that drove out families to build Interstate 5 and the Memorial Coliseum.¹⁴⁹

141. VanderHart, *supra* note 113.

142. *North/Northeast Neighborhood Housing Strategy: Preference Policy Waitlist Frequently Asked Questions*, PORTLAND HOUS. BUREAU, <https://www.portlandoregon.gov/phb/article/671059> [<https://perma.cc/J2AM-QE5H>] (last visited May 13, 2020) [hereinafter *North/Northeast Neighborhood Housing Strategy*].

143. *Id.*

144. *Id.*

145. Andrew Theen, *Gentrification: Can Portland Give Displaced Residents a Path Back?*, OREGONIAN (Dec. 23, 2015), https://www.oregonlive.com/portland/2015/12/gentrification_can_portland_gi.html [<https://perma.cc/Y9CL-MBQJ>].

146. *Id.*

147. VanderHart, *supra* note 113.

148. *North/Northeast Neighborhood Housing Strategy*, *supra* note 142 (“Preference points are based on current or historic residency in North/Northeast Portland. Up to three points are possible if your current or former address falls within one of the identified areas where City plans displaced and/or gentrified households in North/Northeast Portland. Up to three additional points are possible if the current or former address of your ancestor or guardian falls within one of the identified areas, for a maximum possible of six points.”).

149. *Id.* See also McGlinchy, *supra* note 30 (describing destruction of 300 homes when Emanuel Hospital expanded its property); VanderHart, *supra* note 113 (noting displacement driven by the Memorial Coliseum, Interstate 5, and the Legacy Emanuel Medical Center).

The forms of assistance provided to these current and former residents of Portland include affordable rental housing, zero-interest home loans, land banking, and down payment assistance for first-time homebuyers.¹⁵⁰ These elements are designed to bring people back to their community and help them rebuild their lives as new homeowners or renters. In the context of reparations for Black people, similar forms of assistance and support could help redress the lasting harm to Black people and Black communities, providing the resources to rebuild lives, wealth, and communities.

C. *Elements of Reparations as a Right to Return*

Recognizing a right to return as a component of reparations for Black people would provide redress to individuals and families who were robbed of their land or driven from their homes through government-sponsored or supported racial terror and other segregative policies, such as development programs that harmed or destroyed Black communities. Ultimately, a right to return as reparations must begin with the full participation of the impacted people in the planning and management of their own return and reintegration. It should be informed by the Pinheiro Principles and the international law governing displaced peoples, and the experiences of initiatives such as the Portland, Oregon program. A reparations-grounded right to return would acknowledge the decades of harm to Black people who were driven from their homes through America's ethnic cleansing. But it would also move beyond acknowledging harm and redress it by bringing Black people and their ancestors home, assisting Black people in rebuilding their lives, and appropriately compensating them for their loss. Broad assistance and support are needed to help impacted Black people reclaim their land, culture, and community.

In order to be effective, a reparations-grounded right to return must address the current economic realities of people who were exiled from their communities. For example, despite its well-intentioned right to return program, Portland's efforts thus far have helped few current and former residents access affordable housing, particularly in securing financial assistance from the city in order to buy homes in those communities.¹⁵¹ As of 2018, only nine houses had been purchased under the loan assistance program as many of the impacted families are not sufficiently financially stable to qualify for the home loans under the program.¹⁵²

Finally, a reparations-grounded right to return should include initiatives to reinvest in historically Black communities that were impacted or harmed. This

150. See *North/Northeast Neighborhood Housing Strategy*, *supra* note 142 (“PHB funds the development of affordable rental housing, homeownership opportunities, and down payment assistance for first-time homebuyers.”); Andrew Theen, *Portland Will Spend Millions on N/NE Housing Efforts*, OREGONIAN (Jan. 9, 2019), https://www.oregonlive.com/portland/2015/12/portland_will_spend_millions_o.html [<https://perma.cc/2E74-F6YB>] (discussing the various components of assistance under the Preference Policy).

151. McGlinchy, *supra* note 30.

152. *Id.*

component is particularly important in Black communities facing the economic and social conditions which development projects played a central role in creating. The ability to return to and remain in a community requires more than just housing; it requires support for the full range of things that make a community vibrant, including broad economic investment, high quality schools, infrastructure, and the ability to access meaningful employment. It is important for a right to return to support the cultural and economic redevelopment of Black communities and redress the cumulative impact of the long history of targeted discrimination.

V. CONCLUSION

The call for reparations reflects an insistence that this country provide compensation and reparative measures that will help to finally make the idea of America held and experienced by white people real for Black people. This demand was eloquently expressed by Langston Hughes in his poem *Let America be America Again*:

O, let America be America again—
 The land that never has been yet—
 And yet must be—the land where every man is free.
 The land that's mine—the poor man's, Indian's, Negro's, ME—
 . . .
 O, yes,
 I say it plain,
 America never was America to me,
 And yet I swear this oath—
 America will be!¹⁵³

Our national conversation about reparations offers an important opportunity for America to redress its history of land theft, exile, and displacement that was born from slavery and that continues through a century of racial terror. As a moral demand and policy framework, a right to return could be an important step forward in the construction of reparations for Black people. A right to return could be used to give Black people the opportunity to regain the value of stolen homes and land, live in previously forbidden communities, and create meaningful opportunities to rebuild lost wealth.

153. Langston Hughes, *Let America Be America Again*, *ESQUIRE*, July 1, 1936, at 92.