

A CRITIQUE OF THE BLACK COMMONS AS REPARATIONS

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ABSTRACT

The systemic dispossession of land owned by Black Americans has largely been ignored, legitimized, normalized, and left uncompensated by the American legal system. In recent discussions surrounding compensation for these losses, critics and advocates of reparations alike frequently fail to take into account the well-documented history of the uncompensated dispossession of land held by Black individuals. Instead of reparations that put property in the hands of individual Black people, reparationists have called for repayment to the collective—the Black Commons. This article argues that proposals for the Black Commons only obscure the actual uninterrupted history of Black landholding, perpetuate anti-Black landholding narratives, and contribute to a legal legacy that disenfranchises Black Americans from the right to hold property for the sole purpose of accruing wealth. This article further argues that reparations proposals that call for collective land ownership, though morally appealing for their anti-neoliberal, anti-capitalistic attributes, fail as a tool for repair for those very same reasons: they will not result in the intergenerational wealth attainment that is needed to disrupt the pattern of the Black underclass.

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I. INTRODUCTION.....	371
II. BLACK LAND DISPOSSESSION	376
A. Burning and Looting: <i>Alexander v. Oklahoma</i>	376
B. Discrimination in Lending to Black Farmers: <i>Pigford v. Glickman</i>	379
C. Mortgage Lending Crisis: <i>United States v. Countrywide</i>	383
III. THE BLACK COMMONS AS REPARATIONS.....	385
A. Theorizing the Black Commons.....	386
B. Contemporary Experiments in Black Commons	392
1. Moms4Housing & the Oakland Community Land Trust.....	392
2. Fruit Belt Community Land Trust in Buffalo	394
3. Atlanta Land Trust Around the BeltLine	395
IV. APPRAISING THE BLACK COMMONS AS REPARATIONS	396
A. Reparationist Goals	396
B. Black Commons, a Blunt Tool for Black Economic Empowerment..	400
V. CONCLUSION	403

I.

INTRODUCTION

After Emancipation, against all odds, formerly enslaved Black persons within the United States succeeded in acquiring a remarkable amount of land.¹ By 1910, a mere 45 years post-Emancipation, Black people claimed ownership of over 16 million acres of land.² Black people would continue to acquire land only to be ultimately dispossessed of it, often forcibly, and sometimes with the aid of the government.³ Some of these takings are now well-known and well-

1. ABIGAIL CASTRO & ZOE WILLINGHAM, CENT. FOR AM. PROGRESS, PROGRESSIVE GOVERNANCE CAN TURN THE TIDE FOR BLACK FARMERS 1 (2019), <https://cdn.americanprogress.org/content/uploads/2019/04/01094605/USDA-Failed-Farmers-of-Color-report.pdf> [<https://perma.cc/XV9U-PRVS>] (“At the height of [B]lack farming in 1920, [B]lack farmers operated 925,710 farms, about one-seventh of all farm operations in the United States. As of 2012, [B]lack farmers make up less than 2 percent of all farmers.”).

2. VICE News, *Losing Ground (Clip)*, YOUTUBE, (Apr. 24, 2020), <https://www.youtube.com/watch?v=HKTctHCXp-M&feature=youtu.be> [<https://perma.cc/957U-6PAC>].

3. See Todd Lewan & Dolores Barclay, *Torn from the Land: Black Americans’ Farmland Taken Through Cheating, Intimidation, Even Murder*, ASSOCIATED PRESS (Dec. 2, 2001), <http://www.hartford-hwp.com/archives/45a/393.html> [<https://perma.cc/992M-6GE5>]. In 2001, the Associated Press conducted an investigation of Black land loss. Van R. Newkirk II, *The Great Land Robbery*, ATLANTIC (Sept. 29, 2019), <https://www.theatlantic.com/magazine/archive/2019/09/this-land-was-our-land/594742/> [<https://perma.cc/2XBY-TPJS>]. As part of that investigation, reporters interviewed more than 1,000 people and reviewed massive amounts of public records, which documented “107 land-takings in 13 Southern and border states.” Lewan & Barclay, *supra* note 3. Among those cases, “406 black landowners were found to have lost more than 24,000 acres of farm and timber land plus 85 smaller properties, including stores and city lots.” *Id.* Almost all of this lost property, which is worth “tens of millions of dollars,” is now owned by corporations and white people. *Id.*

documented.⁴ In the Greenwood District of Tulsa, Oklahoma, for example, a self-sufficient Black community that encompassed 35 square blocks, including a financially thriving business district known as “Black Wall Street,” was burned to the ground in a racial massacre that lasted for two days in the summer of 1921.⁵ Estimates suggest up to 300 Black people died in the Tulsa Massacre and an estimated 8,000 Black people were left homeless.⁶ The property loss, estimated at nearly \$2 million (which would have amounted to \$25 million in 2020), was never recovered.⁷ Between 1919 and 2007, Black farmers lost 80 percent of their land largely due to discrimination at the hands of agents and employees of the United States Department of Agriculture.⁸ In the Mississippi Delta, as an example, “[a] war waged by deed of title has dispossessed 98% of [B]lack agricul-

4. Robin D.G. Kelly reminds us that the part of the false narrative surrounding the Tulsa massacre is that it was hidden. In a hard-hitting interview with *Truthout*, he states:

For one thing, we keep repeating the mantra that this story is unknown. Although it was front page news in 1921, and although a resident/survivor Mary E. Jones Parrish self-published an eyewitness account in 1923, and although Black residents filed 193 unsuccessful lawsuits against the city and various insurance companies for just compensation, we still talk as if this is all new and shocking knowledge. The Oklahoma Commission to Study the Tulsa Race Riot of 1921 (now called the 1921 Tulsa Race Riot Centennial Commission) was created 24 years ago. The indefatigable historian, Eddie Faye Gates, spent years collecting oral histories of survivors. “60 Minutes” ran a devastating segment on the massacre in 1999, and I swear, every year since, journalists (print and broadcast) have announced the discovery of this terrible history and found some Black person to interview who has never heard of it. Meanwhile, literally dozens of books have appeared on the Tulsa race massacre, going back at least to the 1970s. . . .

....

The fact is, the Tulsa race massacre is the most thoroughly studied and discussed incident of all of the 20th century racial pogroms, with the possible exception of the East St. Louis massacre of 1917. . . . [T]he issue *has never been about not knowing*; it is about a refusal to acknowledge genocidal, state-sanctioned racist violence in the United States, a refusal to recognize the existence of fascism in this country.

See George Yancey, *Robin D.G. Kelley: The Tulsa Race Massacre Went Way Beyond “Black Wall Street,”* TRUTHOUT (June 1, 2021), <https://truthout.org/articles/robin-kelley-business-interests-fomented-tulsa-massacre-as-pretext-to-take-land> [https://perma.cc/R6SJ-X3ZA].

5. Elizabeth Findell & Alejandro Lazo, *Former ‘Black Wall Street’ Aims to Rebuild as Tulsa Comes into National Spotlight*, WALL ST. J. (June 19, 2020), <https://www.wsj.com/articles/former-black-wall-street-aims-to-rebuild-as-tulsa-comes-into-national-spotlight-11592564404> [https://perma.cc/CA57-SHYC]; *1921 Tulsa Race Massacre*, TULSA HIST. SOC’Y & MUSEUM, <https://www.tulsaehistory.org/exhibit/1921-tulsa-race-massacre/> [https://perma.cc/4JUV-WLD7] (last visited June 16, 2021).

6. Maggie Astor, *What to Know About the Tulsa Greenwood Massacre*, N.Y. TIMES (June 20, 2020), <https://www.nytimes.com/2020/06/20/us/tulsa-greenwood-massacre.html> [https://perma.cc/8R6Q-P849].

7. DREISEN HEATH, HUMAN RIGHTS WATCH, *THE CASE FOR REPARATIONS IN TULSA, OKLAHOMA 11* (2020), <https://www.hrw.org/news/2020/05/29/case-reparations-tulsa-oklahoma> [https://perma.cc/QY9H-TGJB].

8. Abril Castro & Zoe Willingham, *Progressive Governance Can Turn the Tide for Black Farmers*, CTR. FOR AM. PROGRESS (Apr. 3, 2019, 9:03 AM), <https://www.americanprogress.org/issues/economy/reports/2019/04/03/467892/progressive-governance-can-turn-tide-black-farmers/> [https://perma.cc/XF86-AFXB]. See also Newkirk, *supra* note 3 (noting that Black agricultural landowners have lost 12 million acres of land over the past century).

tural landowners in America.”⁹ The affected Black farmers there have lost possession of approximately 12 million acres over the last one hundred years.¹⁰ Still more acts of dispossession have been obscured despite the magnitude of their scale. In 1924 Manhattan Beach, California, city officials invoked eminent domain and condemned the land of Willa and Charles Bruce, which was the site of a Black resort, allegedly to build a city park.¹¹

Most of these land losses have occurred “within living memory.”¹² Still, the systemic dispossession of land owned by Black Americans has largely been ignored, legitimized, normalized, and left uncompensated by the American legal system.¹³ Where penalties have been meted out under the law, they have been weak and failed to address the harm that they are meant to redress. For example, the Pigford Litigation, a discrimination lawsuit brought by dispossessed Black farmers against the United States, has been harshly criticized, including by the farmers themselves, for failing to remediate the loss of property.¹⁴ No farmer’s land was ordered to be returned, and although money damages were awarded to class of claimants, it was in amounts far less than what would be needed to acquire new land.¹⁵

9. Newkirk, *supra* note 3.

10. *Id.*

11. Jacey Fortin, *California Beach Seized in 1924 from a Black Family Could Be Returned*, N.Y. TIMES (Apr. 18, 2021), <https://www.nytimes.com/2021/04/18/us/bruces-beach-manhattan-california.html> [<https://perma.cc/C4WB-8842>]. White neighbors sought to run the Bruce Beachgoers out by slashing their tires, setting their property on fire, posting fake “10 minutes only” parking signs to deter Black out-of-town folk and lining the way to the ocean with “No Trespassing” signs. When this harassment failed, the city resorted to eminent domain. *Id.*

12. *Id.*

13. *Id.*

14. *In re Black Farmers Discrimination Litig.*, 953 F. Supp. 2d 82, 84–85 (D.D.C. 2013) (detailing numerous problems with the *Pigford v. Glickman* consent decree in terms of delivering justice to prospective claimants). Justice for the *Pigford v. Glickman*, *see infra* note 15, claimants is not complete. On December 11, 2020, the Southern Economic Advancement Project (SEAP) and the Black Belt Justice Center (the fiscal sponsor for the Acres of Ancestry Initiative/Black Agrarian Fund) held a webinar on the Justice for Black Farmers Act of 2020 with Senator Cory Booker, Representative David Scott, and Stacey Abrams to discuss farmer narratives and advocacy works with Carolyn Jones (Farmer and Executive Director of the Mississippi Minority Farmers Alliance), Angela Provost (Farmer-Advocate of Provost Farms, LLC), and Attorney Tracy Lloyd McCurdy (Executive Director of the Black Belt Justice Center). Acres of Ancestry Initiative – Black Agrarian Fund, *Justice for Black Farmers Act Webinar with Sen. Cory Booker, Rep. David Scott, and Stacey Abrams*, YOUTUBE, (Dec. 25, 2020), <https://www.youtube.com/watch?v=8vun78bpqWc> [<https://perma.cc/HGJ5-XCX7>]. The Justice for Black Farmers Act would: 1) initiate policies to end discrimination within the USDA, 2) protect remaining Black farmers from losing their land, 3) provide land grants to create a new generation of Black farmers and support existing Black farmers, and 4) implement systemic reforms to help family farmers across the United States. *Id.*

15. *Pigford v. Glickman*, 185 F.R.D. 82 (D.D.C. 1999).

Black reparations is now being discussed amongst a broader segment of the American public than it has been in decades,¹⁶ yet, in many of those discussions, critics and advocates of reparations alike frequently fail to take into account the well-documented history of the uncompensated dispossession of Black-held land.¹⁷ Instead, these commentators choose to focus on disqualification or unqualification narratives suggesting Black Americans may be regulated or educated into landholding—that is, that the harm needing repair is in being unable to attain property in the first instance, either because the market is not free and fair, or because Black Americans do not know they should be holding land in the first place. Actual loss of land and the attendant loss of intergenerational wealth should be accounted for in any plan for Black reparations.

Reparations proposals that call for land transfer at all tend to argue for repair through collective land holding or, as one set of scholars puts it, the creation of the “Black Commons.”¹⁸ Commons are lands or resources belonging to an entire community.¹⁹ There is a long history of Black landowning in commons in both

16. In a 2016 report, the United Nations’ Working Group of Experts on People of African Descent concluded that the U.S. government owes reparations to Black Americans. See P.R. Lockhart, *The 2020 Democratic Primary Debate Over Reparations, Explained*, VOX (June 19, 2019), <https://www.vox.com/policy-and-politics/2019/3/11/18246741/reparations-democrats-2020-inequality-warren-harris-castro> [https://perma.cc/87XD-RTFF]. The Democratic contenders for President in the 2020 election were each confronted with the question of whether they supported reparations. Marianne Williamson “fervently” supported reparations, proposing \$200 billion to \$500 billion for a program. Senators Cory Booker, Kamala Harris, and Elizabeth Warren also expressed varying degrees of support. *Id.* On June 16, 2019, Congress held its first hearing on H.R. 40 in ten years, which would establish a commission to study the impact of slavery on Black Americans. See *Here’s What Ta-Nehisi Coates Told Congress About Reparations*, N.Y. TIMES (June 19, 2019), <https://www.nytimes.com/2019/06/19/us/ta-nehisi-coates-reparations.html> [https://perma.cc/7NJ6-U3D4].

17. While reparations discussions do focus on continued harms to Black Americans, they lack even a mention of land restoration. See, e.g., Eric Posner & Adrian Vermeule, *Reparations for Slavery and Other Historical Injustices*, 103 COLUM. L. REV. 689, 691–92 (2003). (“First, whereas an ordinary legal remedy typically effects [sic] a transfer from an identified individual wrongdoer to an identified individual victim of the wrong, we will say that a reparations scheme typically relaxes one condition or the other, or both It might even relax both constraints, as in proposals for living taxpayers to pay money to living African Americans based on harms inflicted by dead people (antebellum whites) on dead people (antebellum blacks).”). See also Kevin Hopkins, *Forgive U.S. Our Debts? Righting the Wrongs of Slavery*, 89 GEO. L.J. 2531, 2541, 2547–51 (2001) (“In a capitalistic society in which whites continue to control almost all of the wealth and the political power base, it is not only reasonable but also plausible to conclude that only those claims for [B]lack reparations that will result in some direct or indirect economic benefit to whites will have even the slightest chance of moving out of a legislative committee and onto the floor for congressional hearings. Thus, I concur with Robinson and others who advocate the more utilitarian approach of awarding a group reparation administered through a trust fund.”).

18. Susan Witt, *Proposal for a “Black Commons,”* SCHUMACHER CTR. FOR A NEW ECON. (Jan. 11, 2018), <https://centerforneweconomics.org/publications/proposal-for-a-black-commons/> [https://perma.cc/2A6R-EZ2D].

19. Webster’s Dictionary describes the “commons” as “[a] piece of land subject to common use: such as undivided land used especially for pasture.” *Commons*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/commons?src=search-dict-hed> [https://perma.cc/98WC-Z7WD] (last visited June 16, 2021).

the rural and urban contexts.²⁰ Collective land ownership, though morally appealing for its anti-neoliberal, anti-capitalistic attributes,²¹ fails as a tool for repair for those very same reasons—it will not result in wealth attainment. Reparations proposals that favor establishment of the Black Commons, however well-intentioned, only obscure the actual uninterrupted history of black landholding, perpetuate anti-Black landholding narratives, and contribute to a legal legacy that disenfranchises Black Americans from the right to hold property for the sole purpose of accruing wealth.

This Article makes the claim that contemporary discussions of reparations should be expanded beyond the failure of Black people to attain hypothetical wealth and should contemplate the actual systemic dispossession of valuable land once held by individual Black people for which repair is urgently overdue. As an initial descriptive matter, in Part II this Article seeks to establish the pervasiveness of Black land dispossession, beginning immediately prior to Emancipation with a through-line to the foreclosure crisis in the early aughts. In Part III, the paper examines modern experiments in land return to the collective, in the form of community land trusts (CLT), a type of commons, which have been proposed as a pathway towards reparations. Part III attempts to theorize the Black Commons by mapping race onto the urban commons. Part IV draws from the literature on reparationist goals, especially that of “community empowerment,” offered by Darity, Mullen, and Robertson, to evaluate the commons as an effective tool for repair. It argues that Black people who have been dispossessed of their land through violence and systemic racism—economic violence—cannot collectively be made whole merely through the ceremonial re-establishment of the Black Commons because doing so will render Blacks no more than a “land holding peasantry.”²² This paper concludes by arguing that proposals that advocate for reparations while failing to contemplate the return of equity-generating land to individuals further obfuscate the legacy of economic violence against Black landowners. In lieu of the Black Commons, the paper urges recognition of Black people as legitimate wealth-generating landholders and calls for reverse-engineering policy prescriptions that center return of land to Black individuals from that starting place in the manner proposed by the 2020 Justice for Black Farmers Act, which would have provided land grants to existing and aspiring Black farmers.

20. Historians trace the Black Commons back to the plots shared amongst enslaved people during the antebellum period. *See, e.g.,* J.T. Roane, *Plotting the Black Commons*, 20-3 *SOULS, A CRITICAL J. OF BLACK POL., CULTURE, & SOC'Y* 1, 4-6 (2018). Note that “commons” is both the singular and plural form of the noun.

21. AMANDA HURON, *CARVING OUT THE COMMONS* 138 (2018) (“The urban commons . . . is marked by contradiction. One of the primary contradictions is how the commons works in relation to the pressures of the capitalist city. The benefit of the commons . . . is that it allows its members to live lives that are not quite as bound by capitalist strictures. In this sense, the commons can be seen as something of an oasis, as many alterglobalizations theorize. But the commons always exists in relation to capitalism, and in the hypergentrifying city, this is even more evident.”).

22. KATHERINE FRANKE, *REPAIR: REDEEMING THE PROCESS OF ABOLITION* 38 (2019).

II. BLACK LAND DISPOSSESSION

To understand the economic violence that has been carried out against Black people and sustained by the courts, this part examines three cases of Black land dispossession and the litigation that followed them—the 1921 Tulsa Massacre, the United States Department of Agriculture’s (“USDA”) discrimination against Black farmers, and the Foreclosure Crisis. In each case, thousands of identifiable Black landholders were found to have been illegally dispossessed of their property by identifiable perpetrators, and yet these victims were denied sufficient remedy in the courts, notably including the return of their property.²³

A. *Burning and Looting: Alexander v. Oklahoma*

At the beginning of the twentieth century, Black Tulsans were segregated into a neighborhood called Greenwood, which ultimately developed a thriving business district known as “Black Wall Street.”²⁴ Greenwoods’ residents had access to numerous grocery stores, hotels, nightclubs, billiard halls, doctor’s offices, schools, churches, and local newspapers.²⁵ On the afternoon of May 31, 1921, a Black man was falsely accused of raping a white woman, which set off conflict between Black and white residents of Tulsa.²⁶ By the afternoon of June 1, 1921, a white mob, including individuals deputized by the Chief of Police of the City of Tulsa and activated members of the Oklahoma State National Guard, burned the Greenwood neighborhood to the ground, destroying what had taken years to build.²⁷ Within hours, 8,000 Greenwood residents were exiled from

23. In two cases, monetary relief was granted, but it was insufficient to put plaintiffs back in a wealth generating position. And in one, *Alexander*, no relief was granted at all. *Alexander v. Oklahoma*, No. 03-C-133-E, 2004 U.S. Dist. LEXIS 5131 (N.D. Okla. Mar. 19, 2004).

24. WORLD CHANGING HISTORY, TULSA RACE MASSACRE OF 1921: THE HISTORY OF BLACK WALL STREET, AND ITS DESTRUCTION IN AMERICA’S WORST AND MOST CONTROVERSIAL RACIAL RIOT 3 (2020); SCOTT ELLSWORTH, AN AMERICAN CITY AND ITS SEARCH FOR JUSTICE 14–15 (2021).

25. ELLSWORTH, *supra* note 24, at 14.

26. *Id.* at 18.

27. Charles J. Ogletree, Jr., *Tulsa Reparations: The Survivors’ Story*, 24 B.C. THIRD WORLD L.J. 13, 17 (2004) [hereinafter Ogletree, *Tulsa Reparations*]. It is important to note that Tulsa was preceded two years earlier by a months-long period of white mobs violently attacking Black people and communities, known as “Red Summer.” During the summer of 1919, some 24 race riots broke out in 26 cities. One of the worst of these riots occurred in Chicago, Illinois, beginning on July 27, 1919 and continuing for eight days after a Black teenager, Eugene Williams, floated his raft into the whites-only section of Lake Michigan. William Lee & E. Jason Wambsgans, *‘Ready to Explode’: How a Black Teen’s Drifting Raft Triggered a Deadly Week of Riots 100 Years Ago in Chicago*, CHI. TRIB. (July 21, 2019, 4:45 PM), <https://www.chicagotribune.com/history/ct-1919-chicago-riots-100th-anniversary-20190719-k4dexppvd5c6bkqbfwhgxfiacy-story.html> [https://perma.cc/4QC7-FSWK]. A white man threw rocks at Williams until the teen drowned. At the end of the Chicago riot, people were dead and 500 Black people were left homeless after white rioters burned down their homes. Blacks pushed back against these aggressions and laid the groundwork for the civil rights movement. *Red Summer*, THE NAT’L WWI MUSEUM AND MEM’L, <https://www.theworldwar.org/learn/wwi/red-summer> [https://perma.cc/G96B-7WJV] (last visited June 16, 2021).

their homes.²⁸ By the end of the riot, an estimated 300 Black Americans had been murdered and over 1,200 residences had been burned to the ground.²⁹ The property damage caused by the Tulsa Massacre was estimated to be \$20 million, by 2004 metrics.³⁰ About two weeks after the Massacre, Judge Loyal J. Martin was quoted as stating that “Tulsa can only redeem herself . . . by complete restitution and rehabilitation of the [B]lack belt.”³¹ In 1929, eight years after the Massacre, a commission created by the state to study it wrote, “[r]eparations are the right thing to do.”³² Yet neither the state nor the city paid any damages, then or since, to repair for the harm that came to Greenwood’s residents.³³

Decades later, in February 2001, the Tulsa Race Riot Commission, under authority granted to it by the State of Oklahoma, issued “A Report by the Oklahoma Commission to Study the Tulsa Race Riot of 1921” (the Commission Report).³⁴ The Oklahoma State Legislature adopted many of the Commission’s findings, including that the “staggering cost of the Tulsa Race Riot included the deaths of an estimated 100 to 300 persons, the vast majority of which were African American, the destruction of 1,256 homes, virtually every school, church and business, and a library and a hospital in the Greenwood area, and the loss of personal property caused by rampant looting by white rioters.”³⁵ The 2001 commission estimated that the losses totaled \$1.8 million by 1921 dollars and \$16,752,600 in 1999 dollars.³⁶ The report acknowledged there were no prosecutions or convictions of any actors in the Massacre and “no insurance payments to the African American property owners who lost their homes or personal property.”³⁷ Importantly, the Report also noted the role government played in the Riot and its aftermath, including that local officials attempted to block the rebuilding of Greenwood by amending the Tulsa building code.³⁸ The 48th Oklahoma State Legislature subsequently passed the 1921 Tulsa Race Riot Reconciliation Act of 2001, which recognized “that there were moral responsibilities at the time of the riot which were ignored and has [sic] been ignored ever since.”³⁹ The Reconcili-

28. Ogletree, *Tulsa Reparations*, *supra* note 27, at 17.

29. Heath, *supra* note 7.

30. Ogletree, *Tulsa Reparations*, *supra* note 27, at 17.

31. *Id.*

32. *Id.* at 18 (alteration in original).

33. *Id.*

34. OKLA. COMM’N TO STUDY THE TULSA RACE RIOT OF 1921, TULSA RACE RIOT (2001), <https://www.okhistory.org/research/forms/freport.pdf> [<https://perma.cc/D9RF-WHD7>] [hereinafter TULSA RACE RIOT REPORT].

35. Okla. Stat. tit. 74, § 8000.1(3) (2014).

36. Larry O’Dell, *Riot Property Loss*, in TULSA RACE RIOT REPORT 143, 149 (2001) <https://www.okhistory.org/research/forms/freport.pdf> [<https://perma.cc/D9RF-WHD7>].

37. Complaint at 23, *Alexander v. Oklahoma*, No. 03-C-133-E, 2004 U.S. Dist. LEXIS 5131 (N.D. Okla. Mar. 19, 2004).

38. *Id.*

39. Okla. Stat. tit. 74, § 8000.1(6) (2014).

ation Act did not direct any monetary relief to the survivors or descendants of the Massacre.⁴⁰

In 2004, in light of the failure of Oklahoma's Legislature to develop a plan for restitution, 120 living survivors of the Massacre and additional descendants of persons affected by the Massacre brought "claims against the State of Oklahoma, the City of Tulsa, the Chief of Police, the Tulsa Police Department, and John Does 1 through 100 for damages they sustained in the Riot," and "claims against the City of Tulsa, the Chief of Police, and the Tulsa Police Department for deprivation of liberty in violation of the Fourteenth Amendment of the United States Constitution . . . for deprivation of property in violation of the Fourteenth Amendment . . . and for deprivation of their right to equal protection under the law in violation of the Fourteenth Amendment."⁴¹ With respect to the deprivation of property claim, some Plaintiffs "allege[d] they had real and personal property burned, looted or otherwise destroyed in the Riot."⁴² The city ultimately moved to dismiss the complaint in *Alexander* on timeliness grounds, arguing, inter alia, that Plaintiffs' claims were barred by the applicable statute of limitations, which is two years.⁴³ The city's motion to dismiss was granted and the *Alexander* plaintiffs' claims for relief were never heard in court.⁴⁴ To date, no victim of the Massacre or their descendant has been compensated for their losses.

40. See *id.* at § 8000.1.

41. See *Alexander*, 2004 U.S. Dist. LEXIS 5131, at *2–*3.

42. *Id.* at *3.

43. *Id.* The *Alexander* plaintiffs made four arguments to overcome the time bar argument raised by the city: 1) concealment and equitable estoppel, 2) reliance on the City's promises of restitution, 3) "extraordinary circumstances," and 4) vindication of the public interest. *Id.* at *10–*13. With respect to estoppel, the court determined "more than one hundred lawsuits were filed against the City and insurance companies" (though no recovery was had) and that "[B]lack Tulsans, strongly condemned, in no uncertain terms, the actions of both the Tulsa Police Department and the local National Guard" after the Riot. *Id.* at *28 (citation omitted). The court also concluded that any promises of restitution were insufficient to equitably estop the claims. *Id.* at *29. Plaintiffs argued the hostility that they faced in the legal system at the time presented "extraordinary circumstances" preventing them from raising a timely claim. *Id.* at *30. While the court found there were extraordinary circumstances because the "political and social climate after the riot simply was not one wherein the Plaintiffs had a true opportunity to pursue their legal rights," it also held that those circumstances changed when the Jim Crow era ended in the 1960s. *Id.* at *31. Finally, with respect to the vindication of the "public interest" under *Town of Cyril v. Mobil Oil Corp.*, 11 F.3d 996, 998 (10th Cir. 1993), the Court disagreed that the city and state failed to act. *Alexander*, 2004 U.S. Dist. LEXIS 5131, at *33–*34. According to the court, "[w]hile Plaintiffs have not received any restitution or reparations, a Commission was established and legislative findings were made." *Id.* at *34.

44. *Id.* at *37. Today, the survivors of the Tulsa Massacre continue to advocate for national recognition of the horror that they faced, but also for reparations. On May 19, 2021, on the eve of the centennial of the Riot, survivors shared their trials. Viola Fletcher, a 107-year-old survivor of the Massacre, testified that she only finished school through fourth grade and was a domestic worker most of her life as a result of the devastation the Massacre wrecked on her family. *Hearing on Centennial of 1921 Tulsa Race Massacre*, C-SPAN (May 19, 2021), <https://www.c-span.org/video/?511795-1/hearing-centennial-1921-tulsa-race-massacre> [<https://perma.cc/569R-3Z2X>].

*B. Discrimination in Lending to Black Farmers: Pigford v. Glickman*⁴⁵

As a result of intentional, systemic discrimination by the USDA, its predecessors, and its agents, “the number of African American farmers has declined from 925,000 in 1920 to approximately 18,000 in 1992,” with many Black farms being foreclosed on.⁴⁶ Black farmers who were able to hold onto their farms witnessed similarly situated white farmers receiving preferential treatment.⁴⁷ While theoretically both the Secretary of Agriculture and the Office of Civil Rights Enforcement and Adjudication (OCREA) at the USDA provided avenues to file discrimination claims, these systems were “functionally nonexistent” for a large part of the relevant time period, and in 1983, OCREA was shut down and stopped processing claims altogether.⁴⁸

In 1997 Black people who 1) had farmed or attempted to farm, between January 1, 1981 and December 31, 1996; 2) had applied to the USDA for credit or other benefits; 3) believed that they were discriminated against on the basis of race; and 4) had filed a complaint of discrimination complaint before July 1, 1997 organized into a class for the purposes of litigation.⁴⁹ The class of Black farmers sued the USDA for violations of the Equal Credit Opportunity Act (ECOA).⁵⁰ Their complaint alleged (a) that the USDA willfully discriminated against the Black farmers on the basis of their race when it denied their applications to credit and/or benefit programs or delayed processing their applications and (b) that, when the Black farmers filed complaints of discrimination with the USDA, the latter failed to properly investigate and resolve those complaints.⁵¹ The Black farmers’ case, *Pigford v. Glickman I*, settled without a trial.⁵² An order was entered on April 14, 1999, after a finding that the settlement was “fair, adequate and reasonable.”⁵³

45. The focus of this article is Black reparations and Black land dispossession. As such, this section is focused on Black farmers. It is acknowledged that similar economic violence that stripped Native and Latino farmers of their land, as recounted in the complaints *Keepseagle v. Vilsack*, No. 99-0319 (EGS) [17][127], 2001 U.S. Dist. LEXIS 25220 (D.D.C. December 11, 2001) and *Garcia v. Vilsak*, 563 F.3d 519 (D.C. Cir. 2009), *cert. denied*, 130 S. Ct. 1138 (2010), is beyond the scope of this article.

46. *Pigford v. Glickman*, 185 F.R.D. 82, 87 (D.D.C. 1999).

47. *Id.* at 87–88.

48. *Id.* at 88.

49. *Id.* at 92.

50. *Id.* at 82. Some thought the class definition was too strict, claiming the class should be widened to encompass all Black farmers who claim to have faced discrimination whether or not they filed a complaint of discrimination at the time. The court concluded statute of limitations issues precluded the broadening of the class. *See id.* at 100.

51. *Id.* at 86. Plaintiffs also contended that the USDA infringed upon constitutional and other statutorily given rights; however, both sides ultimately agreed that the case primarily dealt with infractions under the ECOA. *Id.*

52. *Id.* at 90–91.

53. *Id.* at 82, 99.

Almost immediately, the settlement in *Pigford I* faced criticism from the very farmers it was supposed to relieve because the agreement did not provide for automatic payment to any class members, but was structured so that class members had to take additional steps to opt into the settlement.⁵⁴ According to the terms of the settlement agreement, under the first option (“Track A”) farmers received:

- (1) a cash payment of \$50,000; (2) forgiveness of all debt owed to the USDA . . . ; (3) a tax payment directly to the IRS in the amount of 25% of the total debt forgiveness and cash payment; (4) immediate termination of any foreclosure action that USDA initiated in connection with the loan(s) . . . ; and (5) . . . one time priority loan consideration.⁵⁵

Class members who elected the second option (“Track B”), which did not set a cap on the amount that could be recovered, were required to submit to a lengthier, fact-specific inquiry and prove their claims by a preponderance of the evidence, a higher standard.⁵⁶ If a class member who elected Track B was successful in meeting this burden, the farmer was supposedly awarded the full amount of damages necessary to compensate them for their losses.⁵⁷

Objectors to the settlement alleged that it was unfairly structured to steer class members into Track A and insufficient to compensate most farmers for their losses, since relief was capped at \$50,000.⁵⁸ Notably, under neither track did the Consent Decree provide for returning land to successful claimants.⁵⁹ During one pre-confirmation hearing, class member Willie Head queried the court, “imagine that your home has been taken, your land has been taken, your automobile has been taken, and then you make a decision and see if \$50,000 will be enough for you.”⁶⁰ The court acknowledged that “[i]t is quite clear, as the objectors point out, that \$50,000 is not full compensation in most cases.”⁶¹ Objectors also challenged the high standard for satisfying Track B and the concern that the individual relief, even under Track B, would not make the class members whole.⁶² In an example of how the legal system normalizes Black land dispos-

54. *Cf. id.* at 95 (claiming Track A offers a “virtually automatic cash payment of \$50,000”). However, the court’s claim does not take into account the evidence required for Track A or the Track B participants.

55. *Id.* at 97.

56. *Id.* at 97, 107.

57. *Id.* at 97 (including money damages, property return, and an opportunity for a priority loan).

58. *Id.* at 105, 108.

59. *Id.*

60. *Id.* at 108–09.

61. *Id.* at 108. The court asserted that the average settlement from debt recovery was \$187,500, which according to it is “a significant amount of money,” before ultimately concluding that the settlement amount was fair and reasonable. *Id.* at 108–09.

62. *Id.* at 109.

session, the *Pigford I* court found that the consent decree was “fair” over these objections.⁶³

More than 22,700 completed claim packages were submitted as of December 31, 2011.⁶⁴ Of the submitted claims, 99% elected to choose Track A relief,⁶⁵ only 169 claimants elected to pursue Track B relief.⁶⁶ Over \$1 billion was awarded to approximately 15,700 successful claimants.⁶⁷ The number of successful claimants paled in comparison to the number of individuals who sought to submit claims late.⁶⁸ By September 15, 2000, more than 61,000 individuals had petitioned the Arbitrator for leave to submit untimely claims packages.⁶⁹ The Arbitrator generally denied claimants’ requests for permission to file late claims, granting requests only under extraordinary circumstances, such as serious illness or damage from Hurricane Floyd.⁷⁰ Permission was denied to those who had failed to timely file written requests to file late claims in *Pigford I*.⁷¹ Ultimately, only 2,585 late filers were permitted to move forward with their claims for relief in *Pigford II*.⁷²

Black farmers continue to advocate for full relief. Recent efforts, if successful, have the ability to contribute to community empowerment as identified by some reparatationists. In November 2020, Senators Cory Booker, Elizabeth Warren, and Kirsten Gillibrand introduced Senate Bill 4929, the Justice for Black Farmers Act.⁷³ Under the Black Farmers Act, up to a total of 32 million acres of farmland would be transferred back into the possession of Black Americans, and

63. *Id.*

64. Monitor’s Final Report on Good Faith Implementation of the Consent Decree and Recommendation for Status Conference at 1, *Pigford v. Glickman*, 185 F.R.D. 82 (1999) (Nos. Civ. A. 97–1978, Civ. A. 98–1693).

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.* at 21.

69. *Id.* at 19, 21.

70. *Id.* at 23.

71. U.S. DEP’T DEP’T OF AGRIC., OFF. OF ADVOCACY & OUTREACH, PIGFORD II: THE BLACK FARMER SETTLEMENT UPDATE, <http://www.ncagr.gov/SmallFarms/PigfordIISettlementdox031011.pdf> [<https://perma.cc/MVF6-J9BK>] (last visited July 7, 2021).

72. *Id.* at 21. In 2008, after extensive hearings on the *Pigford* case and the resulting consent decree, Congress resurrected the late filed claims. *Id.* Under the Food, Conservation, and Energy Act of 2008 (“2008 Farm Bill”), “[a]ny *Pigford* claimant who has not previously obtained a determination on the merits of a *Pigford* claim may, in a civil action brought in the United States District Court for the District of Columbia, obtain that determination.” Food, Conservation, and Energy Act of 2008, Pub. L. No. 110–246, § 14012, 122 Stat. 936. The 2008 Farm Bill provides similar though not identical relief to *Pigford I*. 40Approximately 40,000 additional claims were represented in the consolidated cases known as *Pigford II*. U.S. Gov. Accountability Off., GAO-13-69R, Civil Rights: Additional Actions in *Pigford II* Claims Process Could Reduce Risk of Improper Determinations (2012), <https://www.gao.gov/products/gao-13-69r> [<https://perma.cc/9H7B-JV8U>]. On November 30, 2010, Congress passed the Claims Resolution Act of 2010, making \$1.25 billion available to resolve the claims covered by the Farm Bill. Claims Resolution Act of 2010, Pub. L. No. 111–291, § 201, 124 Stat. 3064.

73. Justice for Black Farmers Act, S. 4929, 116th Cong. (2020).

individual Black farmers would be able to acquire up to 160 acres each.⁷⁴ In addition, the Act would seek to protect existing Black farmers from land loss by “increasing the funding authorization for the USDA relending program created in the 2018 Farm Bill to resolve farmland ownership and succession, or ‘heirs property,’ issues.”⁷⁵ Further, the law would create a conservation corporation, providing access to the ability to learn farming skills to “young adults from socially disadvantaged communities.”⁷⁶ As another example, on March 11, 2021, Congress enacted the American Rescue Plan Act (ARPA).⁷⁷ Under section 1005(a)(1) of the ARPA, Congress appropriated “such sums as may be necessary” to pay the cost for loan modifications for farmers and ranchers that are members of “socially disadvantaged groups.”⁷⁸ “Socially disadvantaged group” is defined as “a group whose members have been subjected to racial or ethnic prejudice because of their identity as members of a group without regard to their individual qualities,” which has been interpreted to mean “Black/African-American, American Indian, Alaskan native, Hispanic/Latino, Asian or Pacific Islander.”⁷⁹ There is no cap on the amount allocated, but it is estimated that 0.2% of the total \$3.9 trillion plan or \$3.8 billion dollars will be used the pay eligible farmers’ loan balances and associated debt, including tax liabilities.⁸⁰ Both pieces of legislation would appear to meet reparationist goals more successfully than Black Commons because they compensate individual Black farmers for past, systemic economic violence with actual land return and eradication of debt. But even the ARPA program, which already has appropriations, is not inevitable. In moves that only serve to underscore how systemic economic violence is

74. *Id.* at § 203(c). Each of the 20,000 land grants would consist of 160 acres.

75. Press Release, U.S. Senator Tina Smith, U.S. Senator Tina Smith Teams up with Senate Colleagues to Introduce Justice for Black Farmers Act (Feb. 10, 2021), <https://www.smith.senate.gov/us-senator-tina-smith-teams-senate-colleagues-introduce-justice-black-farmers-act> [<https://perma.cc/ZK3Y-SEL3>].

76. *Id.*

77. H.R. 1319, 117th Cong. (2021).

78. *Id.*

79. 7 U.S.C. § 2279(a)(6) (2018).

80. U.S. DEP’T OF AGRIC., *American Rescue Plan Debt Payments*, Farmers.gov, <https://www.farmers.gov/americanrescueplan> [<https://perma.cc/G367-FER5>] (last visited June 24, 2021).

lodged at Black people, white farmers and the banks have moved to block the program.⁸¹

C. Mortgage Lending Crisis: United States v. Countrywide

From 1995 through the mid-2000s, minority homeownership was increasing rapidly.⁸² Blacks and Latinos were more likely to borrow in the subprime market where loans were priced higher.⁸³ This was not by accident. Lenders were preying on Black and Hispanic borrowers to purchase these loans, many of which were ultimately defaulted upon.⁸⁴ For example, in 2006, the Federal Reserve System initiated a review of Countrywide Financial Corporation's ("CFC") mortgage pricing practices and determined "it had 'reason to believe that [Countrywide] engaged in a pattern or practice of discrimination based on race and ethnicity in violation of Section 701(a) of the Equal Credit Opportunity Act and

81. It remains to be seen whether these efforts will be successful. *Id.* at n.83. On June 15, 2021, Judge William C. Griesbach of the Eastern District of Wisconsin enjoined the USDA from issuing payments to eligible farmers under the ARPA's socially disadvantaged relief program in response to a filing by twelve plaintiffs, who reside in nine states, including Wisconsin, claiming that the program is discriminatory against white farmers in violation of the equal protection clause. *Id.* at 3-4. The court was compelled by plaintiffs' argument that the government lacked a compelling interest, having only asserted generally "that there has been a pattern of discrimination in the industry." *Id.* at 4. Banks, too, are challenging the program arguing that providing an opportunity for the farmers to pay their debt early will cut into the banks' profits and are threatening to lend less to minority borrowers in the future as a result. Alan Rappeport, *Banks Fight \$4 Billion Debt Relief Plan for Black Farmers*, N.Y. TIMES (May 19, 2021), <https://www.nytimes.com/2021/05/19/us/politics/black-farmers-debt-relief.html> [<https://perma.cc/P9H9-KV9U>]. One of the ironies of this opposition, is the fact that in July 2018, the Trump administration issued aid through the Market Facilitation Program ("MFP"), in the amount of \$12 billion, to largely white farmers who it said were suffering as a result of the trade war with China and was met with little to no resistance. Nathan Rosenberg & Bryce Wilson Stucki, *USDA Gave Almost 100 Percent of Trump's Trade War Bailout to White Farmers*, THE COUNTER (July 29, 2019, 10:05 AM), <https://thecounter.org/usda-trump-trade-war-bailout-white-farmers-race/> [<https://perma.cc/3NDL-GPXH>]. MFP also deepened the disadvantage to Black farmers at the hand of the United States government. *See e.g.*, Donald Carr, *Trump's Farm Bailout Plan Continues USDA's Racist Legacy*, EWG (July 11, 2019), <https://www.ewg.org/news-insights/news/trumps-farm-bailout-program-continues-usdas-racist-legacy> [<https://perma.cc/2V93-LSQC>]. The court's reasoning in the white farmer's lawsuit is based on an interpretation of the Fourteenth Amendment's equal protection clause that Robin West describes as a "guarantee of rationality," which holds that distinctions based on race can never be "rational" and which gives no leeway to reverse patterns of subordination. Robin West, *Towards an Abolitionist Interpretation of the Fourteenth Amendment*, 94 W. VA. L. REV. 111 (1991).

82. PEW RESEARCH CENTER, MINORITIES, IMMIGRANTS AND HOMEOWNERSHIP: THROUGH BOOM AND BUST (2009), <https://www.pewresearch.org/hispanic/2009/05/12/through-boom-and-bust/> [<https://perma.cc/5MMZ-QGU2>].

83. *Id.* at n.79.

84. Two events are most often necessary for a mortgage to default. The first is that monthly payments become unaffordable. This is because of loss of income or because the payments increase. Secondly, the home's value becomes less than the debt owed, resulting in the home having negative equity. STANFORD LAW SCH., FIN. CRISIS INQUIRY COMM'N, *The Foreclosure Crisis*, in *The Financial Crisis Inquiry Report* 402, 402-03.

the Fair Housing Act.”⁸⁵ The complaints were transferred to the United States Department of Justice (“DOJ”).⁸⁶ DOJ found CFC had engaged in a pattern or practice of discriminating against minority loan applicants in the pricing of home loans by placing African-American and Hispanic borrowers in sub-prime loans at more than twice the rate at which they offered those loans to similarly situated non-Hispanic white borrowers.⁸⁷

Under a consent decree, CFC agreed to pay \$335 million into a settlement fund to compensate for damages aggrieved persons may have suffered as a result of CFC’s alleged discriminatory conduct.⁸⁸ The United States had just 120 days to identify hundreds of persons and designate the amount each person was to receive.⁸⁹ Any funds that were not allocated to identified aggrieved persons were to be “distributed to qualified organization(s) that provide services including credit and housing counseling (including assistance in obtaining loan modification and preventing foreclosure), financial literacy, and other related programs targeted at African-American and Hispanic potential and former homeowners in communities where . . . significant discrimination occurred against African-American and Hispanic borrowers.”⁹⁰ The return of foreclosed property was not an element of the consent decree.⁹¹

Other major loan servicers engaged in identical practices. From 2004 until 2009, Wells Fargo Bank, N.A., allegedly engaged in a pattern or practice of discrimination against qualified Black and Hispanic borrowers in its mortgage lending.⁹² Among other things, during that time, Wells Fargo charged approximately 30,000 Black and Hispanic borrowers higher fees and rates than white borrowers not due to the borrowers’ credit worthiness or other objective criteria related to borrower risk, but because of race or national origin.⁹³ In July 2012, the Department of Justice entered into a settlement with Wells Fargo resolving these fair lending allegations.⁹⁴ Wells Fargo was made to pay \$125 million dollars in monetary damages for the aggrieved persons.⁹⁵ Under the Wells Fargo consent

85. *United States v. Countrywide Fin. Corp.*, No. CV11 10540-PSG (AJWx), 2011 U.S. Dist. LEXIS 150263, at *2 (C.D. Cal. Dec. 28, 2011). Between 2004 and 2008, Countrywide Financial Corporation (CFC) was one of the largest single-family mortgage lenders in the United States. *Id.* at 2. During this same period, Countrywide originated over 4.4 million residential mortgage loans through its retail and its wholesale divisions. *Id.*

86. *Id.*

87. *Id.* at *3.

88. *Id.* at *5.

89. *Id.* at *8.

90. *Id.* at *7.

91. *See id.* at *4–*11 (indicating none of the remedial order includes return of land).

92. Complaint at 1–2, *United States v. Wells Fargo*, Case No. 1:12-cv-01150 (D.D.C. July 12, 2012).

93. *Id.* at 1–2.

94. Consent Order, *United States v. Wells Fargo*, Case No. 1:12-cv-01150, 1 (D.D.C. July 12, 2012).

95. *Id.* ¶ 17.

decree, the bank was required to undergo training on the Equal Credit Opportunities Act and agree to desist from future discriminatory practices.⁹⁶ These programs, “Wells Fargo Borrower Assistance Programs,” included grants allotting up to but not going past \$15,000 “in the form of a 0% interest loan, 20% of which were to be forgivable each year for five years.”⁹⁷ No land was returned to the homeowners who had lost their homes as a result of this discriminatory conduct.⁹⁸

In March 2012, the Justice Department, the Department of Housing and Urban Development (HUD), 49 state Attorneys General and the nation’s five largest mortgage servicers entered into a \$25 billion settlement to address mortgage loan servicing and foreclosure abuses, including failure to follow proper foreclosure procedures and unfair and deceptive practices.⁹⁹ The agreement was criticized by some as being too weak considering the “\$700 billion in negative equity” and the \$8.8 trillion in outstanding mortgage debt.¹⁰⁰ One of the most significant criticisms was that the maximum direct recovery for any claimant was between \$1800 and \$2000 regardless of how much financial damage they suffered.¹⁰¹

III. THE BLACK COMMONS AS REPARATIONS

In this section, the Article discusses the commons more generally and how it manifests in the urban environment, where accumulated capitalism and state regulation of a particular kind can lead to rivalrousness, congestion, intensity, and incompatibility over shared resources, resulting in the degradation of those resources. It then compares the characteristics of the

96. *Id.* ¶¶ 4, 14. The order also required Wells Fargo to establish a new homebuyer assistance program to be implemented in jurisdictions within the following Metropolitan Statistical Areas (“MSAs”) (as defined by 2005 U.S. Census Bureau data): Washington-Arlington-Alexandria, DC-VA-MD-WV; Chicago-Naperville-Joliet, IL-IN-WJ; Philadelphia-Camden-Wilmington, PA-NJ-DE-MD; San Francisco-Oakland-Fremont, CA; New York-Northern New Jersey-Long Island, NY-NJ-PA; Cleveland-Elyria-Mentor, OH; and Riverside-San Bernardino-Ontario, CA. Wells Fargo will also implement a new homebuyer assistance program in the City of Baltimore, Maryland. *Id.* ¶¶ 29–30.

97. *Id.* ¶ 30.

98. *Id.* There is no provision explicitly stating this fact, but rather the absence of a return of the homes is what is telling.

99. Press Release, Dep’t of Justice, Office of Pub. Affairs, Federal Government and State Attorneys General Reach \$25 Billion Agreement with Five Largest Mortgage Servicers to Address Mortgage Loan Servicing and Foreclosure Abuses (Feb. 9, 2012), <https://www.justice.gov/opa/pr/federal-government-and-state-attorneys-general-reach-25-billion-agreement-five-largest> [<https://perma.cc/5R7L-AAKP>].

100. Susanna Kim, *What the \$25B Foreclosure Settlement Means for You*, ABC NEWS (Feb. 9, 2012), <https://abcnews.go.com/Business/25-billion-mortgage-settlement-step/story?id=15548516> [<https://perma.cc/8T4A-HPHW>].

101. JAMES H. CARR, KATRIN B. ANACKER, & INES HERNANDEZ, NAT’L ASS’N OF REAL ESTATE BROKERS, *THE STATE OF HOUSING IN BLACK AMERICA* 9 (2013), https://issuu.com/jenningslj/docs/shiba_report_for_posting [<https://perma.cc/V898-4EY8>].

Black Commons against the reparationist goal of “community empowerment.”

A. Theorizing the Black Commons

“The classic commons,” as David Bollier describes them, “are small-scale and focused on natural resources.”¹⁰² Nearly 2 billion people rely on natural commons for their everyday subsistence, including forests, water, animals, and other ecological resources.¹⁰³ India’s total land area, for example, is comprised of more than one third commons.¹⁰⁴ There, commons include “grazing grounds, some forest land, ponds, rivers and other areas that all members of a rural community can access and use.”¹⁰⁵ The commons provide food, water, fodder, sustenance, firewood, and livelihood to rural communities, particularly the poor.¹⁰⁶ Roughly half of India’s rural households rely on forests and common land for their survival.¹⁰⁷ Over the past five decades, “loss of commons [in India] has hurt farmers, weavers, and potters, and triggered migration to the cities for jobs.”¹⁰⁸ Residents of Hastinapur village in the Indian state of Rajasthan spent three years petitioning, mapping and demarcating boundaries, and petitioning local officials to regain control of their traditional common land.¹⁰⁹ That work led to 87 acres of land being registered to the community, which enhanced the lives of approximately 50 families who became “able to safely graze their cattle, meet most of their need of fodder and firewood, and supplement their incomes.”¹¹⁰

More recently, the notion of the commons has been expanded to include the urban. In the neighborhood of La, an indigenous Ga community in east Accra, urban squatters have reclaimed land owned by the Ghanaian state for subsistence food cultivation.¹¹¹ The land, taken decades ago for development, was never built on, so unemployed and underemployed residents reoccupied the land to grow tomatoes, cassava, and other food to survive and buoy their inadequate incomes.¹¹² An “informal proletariat” that is mostly excluded from housing and

102. David Bollier, *The Commons, Short and Sweet*, DAVID BOLLIER: NEWS AND PERSP. ON THE COMMONS (July 15, 2011, 2:25 AM), <http://www.bollier.org/commons-short-and-sweet> [<https://perma.cc/R7Q6-4H3M>].

103. *Id.*

104. Rina Chandran, *Villagers in India’s Rajasthan Reclaim Common Lands with Maps, Petitions*, REUTERS (Oct. 10, 2017), <https://www.reuters.com/article/us-india-landrights-idUSKBN1CF1FX> [<https://perma.cc/D359-A79W>].

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.*

111. Tom Gillespie, *Accumulation by Urban Dispossession: Struggles over Urban Space in Accra, Ghana*, TRANSACTIONS OF THE INST. OF BRIT. GEOGRAPHERS (Oct. 7, 2015), <https://rsgs-ibg.onlinelibrary.wiley.com/doi/10.1111/tran.12105> [<https://perma.cc/WWN2-R9GC>].

112. *Id.*

jobs “has (had) to create ‘urban commons’ in order to reproduce itself.”¹¹³ The farms of Ga are a response to “state-led accumulation by urban dispossession.”¹¹⁴

The urban commons arises as well in the contemporary “Western city completely enmeshed in capitalism.”¹¹⁵ Sheila Foster and Christian Iaione have identified urban resources of varying degrees, such as neighborhood streets and gardens, managed collaboratively with minimal state involvement by different groups of users.¹¹⁶ These examples and others represent an emergence of democratic innovation around “user-managed, but not user-owned” common urban assets.¹¹⁷ Foster and Iaione also bring attention to the fact that “progressive urban reformers” are reaching further than the government to “sublocal forms of resistance, and cooperation” to attempt to turn these less-than-ideal urban environments into a form of commons.¹¹⁸ These reformers are not solely fighting for individualized resources, but also for a “common stake . . . as a way for resisting the privatization and/or commodification of those resources.”¹¹⁹ Such claims subvert traditional property law frameworks to ensure that the property rights that benefit a greater portion of society are secured.¹²⁰

At first, the “urban commons” may seem oxymoronic. Commoners have historically resorted to the city only after having been forced off their lands and because they can no longer make a living in the countryside.¹²¹ Urban commons certainly differ from their rural counterparts. First, cities are densely populated with mutual strangers, making them necessarily ripe for conflict.¹²² Second, cities have evolved historically as sites of capital accumulation and wage labor.¹²³ Theorizing urban commons, then, requires a reckoning with the particular role the city plays in wealth accumulation.¹²⁴ Finally, the city has been seen as the site of a good deal of state regulation.¹²⁵ Some theorists of the commons are crit-

113. *Id.*

114. *Id.*

115. HURON, *supra* note 21, at 7 (2018).

116. Sheila R. Foster & Christian Iaione, *The City as a Commons*, 34 YALE L. & POL’Y REV. 281, 289 (2016).

117. *Id.* Public housing is proof of concept.

118. *Id.* at 284.

119. *Id.*

120. David Super, *A New, New Property*, 113 COLUM. L. REV. 1773, 1773 (2013).

121. HURON, *supra* note 21, at 58 (noting this dynamic in general and using rural Mexico as a specific example) (citing HILARY KLEIN, *COMPAÑERAS: ZAPATISTA WOMEN’S STORIES* 92 (2015)).

122. *Id.* at 45, 55.

123. *Id.* at 43, 57. Huron outlines Karl Marx’s argument that “the violent taking of land through colonization, enslavement and other means . . . la[id] the groundwork for the development of capitalism: this theft provided the original, wildly uneven store of wealth from which capitalism could evolve.” *Id.* at 57. This process Marx deemed “primitive accumulation.” *Id.*

124. *Id.* at 57, 64.

125. *Id.* at 43. It is worth noting here first that in some respect, all commons are public property. But in the urban environment the commons confronts the state, not the public.

ical of the state and see the commons as necessarily distinct from the state,¹²⁶ but the urban commons must directly confront the relationship between the commons of transformed public property and the state as a regulator.¹²⁷ Urban studies scholar Leif Jerram offers the use of public restrooms by gay men in 1930s Berlin and London as meeting places as example of this tension between the people and the state in connection with the formation and maintenance of the urban commons.¹²⁸ Jerram contends that “the state did not intend to create an urban gay sex commons through building public restrooms . . . Commoners—gay men—made a commons of the restrooms through their own[,] particular, sexual practices.”¹²⁹ The commons thrive, as Gidwani and Baviskar describe, “by dancing in and out of the State’s gaze, by escaping its notice, because notice invariably brings with it the desire to transform commons into state property or capitalist commodity.”¹³⁰

Limited equity cooperatives (LECs) are another example of the urban commons that sits at the intersection of private and public goods in the space occupied by the urban commons.¹³¹ In Washington, D.C., these cooperatives began to arise during the 1970s in the context of two historical circumstances, described by Professor Huron in *Carving Out the Commons*.¹³² First, the city, long majority black and disenfranchised, was finally able to elect its own mayor and city council.¹³³ Second, while “Home Rule”¹³⁴ was taking shape, the impacts of gentrification were increasing, including the displacement of existing residents.¹³⁵ These scenarios prompted those facing displacement to coordinate collective action strategies.¹³⁶ For example, multiple local tenant organizations joined together to produce a “day-long public forum,” which they dubbed “Blockbustin-1974 Style,” to speak about the issues community members were facing.¹³⁷ Other groups activated the community to support new city regulations

126. Leif Jerram, *The False Promise of the Commons: Historical Fantasies, Sexuality and the ‘Really-Existing’ Urban Common of Modernity*, in *URBAN COMMONS: RETHINKING THE CITY* 47, 54–56 (Christian Borch & Martin Kornberger eds., 2015).

127. *Id.* at 52–53.

128. *Id.* at 50, 53.

129. HURON, *supra* note 21, at 52–53.

130. Vinay Gidwani & Amita Baviskar, *Urban Commons*, *ECON. & POL. WKLY.*, Dec. 10, 2011, at 42, 42.

131. HURON, *supra* note 21, at 73–76, 82.

132. *Id.* at 69.

133. *Id.* at 72.

134. “Home Rule” refers to a process of self-government and representation that the residents of the District of Columbia have undertaken over many decades as a pathway to full statehood. See *D.C. Home Rule*, Council of D.C., <https://dccouncil.us/dc-home-rule/> [<https://perma.cc/L3WN-WSSJ>] (last visited July 7, 2021) The residents of D.C. continue to be overseen by Congress and fight for full statehood. *Id.*

135. HURON, *supra* note 21, at 73.

136. *Id.*

137. *Id.* at 73–74.

to aid indigent tenants.¹³⁸ All of these groups protested, pressured local elected government officials, and occupied empty structures to emphasize the incipient housing emergency.¹³⁹

One piece of legislation that emerged from the aforementioned activism was the Tenant Opportunity to Purchase Act (TOPA) of 1980, which created a right to first refusal for tenants in the District when their landlord intended to sell the housing the tenant rented.¹⁴⁰ A challenge in implementing this progressive law, however, was financing for low-income tenants.¹⁴¹ The plan to solve this financing issue was to give low-cost financial help to low-income tenants' associations so they would have enough resources to purchase buildings.¹⁴² In exchange for low- or no-interest loans, cooperatives were required to affirm that the properties would remain limited equity for life.¹⁴³ These "blanket mortgages" allowed tenants to "buy into the co-op for \$800–\$1500."¹⁴⁴ These cooperatives amounted to a kind of commons in the urban built environment.¹⁴⁵ Gaining "collective, non-speculative control over housing and land"¹⁴⁶ was an integral step in the fight for racial equity and equality because "land was the economic basis for life and for freedom from white supremacist control over [B]lack labor."¹⁴⁷ In the urban context, then, control over land became synonymous with control over housing.

Beyond the challenges of establishment, maintaining the urban commons can be fraught. The challenges encompass financial viability, access and exclusion, participation, and what Professor Huron describes as the "temptation of dissolving the commons in favor of market-rate ownership structure."¹⁴⁸ On this last point, being located at the site of capital accumulation puts the urban commons under near constant threat of "wealth extraction."¹⁴⁹ Ultimately, some members of LECs, recognizing the value of their homes, consider realizing that potential by bringing the building to the market.¹⁵⁰ Huron describes the story of an "immigrant leader of a successful LEC in the Adams Morgan neighborhood" who spearheaded the sale of her co-op to a condominium association.¹⁵¹ She then sold her stake and used the money to buy a plot of land in her home country of El Salvador.¹⁵² Huron calls this path "something of a personal feat" for some-

138. *Id.* at 74.

139. *Id.*

140. D.C. Code § 42-3404.02 (1980).

141. HURON, *supra* note 21, at 75.

142. *Id.*

143. *Id.*

144. *Id.* at 75–76.

145. *Id.*

146. *Id.* at 76.

147. *Id.* at 77.

148. *Id.* at 111.

149. *Id.* at 126.

150. *Id.* at 127.

151. *Id.*

152. *Id.*

one who had been of limited means all of her life, but still characterizes this move as less than desirable because the commons ceases to exist.¹⁵³

The racial demographics of the neoliberal city suggests that urban commons are often also Black Commons. The urban commons identified by Huron, for example, are all utilized by poor people of color in a city where a largely white proletariat class is occupying the land and laying claim to what was formerly held in Black hands for private wealth-generating activities.¹⁵⁴ Mapping race onto the urban commons goes well beyond mere geography and demographics. The Black Commons is plagued by the same perilous characteristics as the urban commons, which also provokes mapping race onto the urban commons. Foster's description of "neighborhood commons"—streets, parks, and vacant lots—that become subject to too much usage either in volume or intensity, resulting in congestion, incompatible uses, and degradation and destruction over time,¹⁵⁵ is illustrative here. Foster describes these neighborhood commons as "once thriving," yet now overrun and degraded "in a classic tragedy of the commons scenario."¹⁵⁶ Here the reader can see every "Chocolate City" in their mind's eye.¹⁵⁷ Foster attributes the degradation of the neighborhood commons to "regulatory slippage" or a lack of local governance the cure for which is "assertion of government control, through the criminal law, some form of private governance or a private-public partnership."¹⁵⁸ Important, here, is to be reminded that residents of Black neighborhoods (even those located in chocolate cities governed by Black people) are the primary targets of the criminal legal system, making reliance on it for the Black Commons to flourish unrealistic.¹⁵⁹ When you consider the deg-

153. *Id.*

154. In addition to the examples above, there are Addisu, an Ethiopian immigrant who helped found the Walnut Cooperative in the Columbia Heights neighborhood, and Mr. and Mrs. Green, "an elderly Caribbean couple . . . who bought into their [one-bedroom] co-op for a relatively low amount—\$1700—back in in 1999," who see the limited-equity coops as an alternative to poorly maintained rental housing. HURON, *supra* note 21 at 111, 154.

155. Sheila Foster, *Collective Action and the Urban Commons*, 87 NOTRE DAME L. REV. 57, 60 (2013).

156. *Id.* at 59.

157. "Chocolate City" is a term coined by the music group Parliament-Funkadelic on their 1975 album *Chocolate City*, referring both to actual cities, like Newark, Gary, Atlanta, Los Angeles, Harlem and Washington, D.C., and a recognition that "without direct collaboration, Black people were doing and experiencing a lot of the same everywhere—block parties, unemployment, pan-African festivals, family reunions, Black faces in high places, shootouts and fistfights, resistance organizing, police brutality." MARCUS ANTHONY HUNTER AND ZANDRIA F. ROBINSON, *CHOCOLATE CITIES: THE BLACK MAP OF AMERICAN LIFE* xii (2018). Chocolate cities represent a racialized organization of space and place resulting from post-war suburbanization. They stand in juxtaposition to the "vanilla suburbs." Though Parliament used the phrase to articulate pride, chocolate cities can also be seen as zones in which Black city-dwellers experience deprivation and persecution. *Id.* at x.

158. Foster, *supra* note 155, at 59.

159. See, e.g., JAMES FORMAN, *LOCKING UP OUR OWN* (2017) (articulating the role of Black officials in the Washington, D.C. criminal legal system in doling out harsh, punitive sentences to other Black people).

radation inherent in each, their fraught relationship with the state, a certain type of urban commons and the Black Commons present as virtually identical.

Historian J.T. Roane offers somewhat of a counternarrative of the Black Commons as rebel space by tracing it to the historical establishment of the “plot” in enslaved communities.¹⁶⁰ Roane offers multiple definitions of the plot to express one theme: the funeral plot, the garden parcel, and the “insurgent cartography whereby enslaved and freedpeople used the other modes of plotting to articulate geographic identities laden with epistemological possibilities and horizons for the future outside the parameters of white dominance and control and through the ecstatic, beyond the theology of dominion.”¹⁶¹ Further, Roane offers the plot as “hidden time and space expressed in the outdoors invoc[ing] the opacity of Black sociality.”¹⁶² Along the Anacostia River, which runs from Bladensburg, Maryland to the Potomac, ending at the Black working-class neighborhood of Anacostia in Washington, D.C., sits another example of the Black Commons.¹⁶³ The Black residents of Anacostia have long relied on the river for food and recreation.¹⁶⁴ There, Black residents boat in an attempt to “self-fashion” a small-scale economy built in fish as currency.¹⁶⁵ This, Roane urges us to imagine, is rebelliousness.¹⁶⁶ Yet, suburban sprawl in the state of Maryland, including highway projects, housing developments, and shopping centers (largely inhabited by the white monied class), has “choked” the river “with heavy sedimentation.”¹⁶⁷ In fact, research done by the U.S. Fish and Wild-

160. Roane, *supra* note 20, at 4–6. In this same vein, Hunter and Robinson explain the paradox of the “triumphant takeover tenor” of Parliament’s song and the fact that the very existence of the “Chocolate City” is due to the fact that “Black people inherited neglected space” having been systemically “denied resources afforded to Whites, and were entering a period of mass incarceration.” HUNTER & ROBINSON, *supra* note 157, at ix–x. And still for Parliament, Hunter, Robinson and many other Black people, chocolate cities themselves stand as “a form of reparations and . . . an opportunity to make something out of nothing. . . . Black neighborhoods, places on the other side of the tracks, the bottoms—had been the primary locations of the freedom struggle, the sights and sounds of Black art and Black oppression, and the container for the combined ingredients of pain, play, pleasure, and protest that comprise the Black experience.” *Id.* at x.

161. Roane, *supra* note 20, at 4–5.

162. *Id.* at 5–6.

163. *Id.* at 1–4.

164. *Id.* at 1–2. *Cf.* Adrienne Marie Brown, *the river*, in OCTAVIA’S BROOD: SCIENCE FICTION STORIES FROM SOCIAL JUSTICE MOVEMENTS 23, 24 (Adrienne Marie Brown & Walidah Imarisha eds., 2015) (describing the conundrum of deciding between food drawn from a toxic river and hunger: “this was a good river for boating. you wouldn’t jump in for any money. no one would. she felt the same about eating out of the river, but it was a hungry time. that morning she’d watched a fisherman reel in something, slow, like he didn’t care at all. what he pulled up, a long slender fish, had an oily sheen on its scales. she’d tried to catch his eye with her disgust, offer a side eye warning to this stranger, but he turned with his catch, headed for the ice box”).

165. Roane, *supra* note 20, at 3. This poor Black community’s persistence even in the face of toxification presents to Roane as an expression of resistance. It also reveals the community’s precarity in that its residents need even toxic fish for survival.

166. Roane also acknowledges that the Black Commons is born out of Black people’s vulnerabilities. *Id.* at 2.

167. *Id.* at 1–2.

life Service in Chesapeake Bay found that, between 2001 and 2002, over half of Anacostia's large brown bullhead catfish had liver cancer.¹⁶⁸ Ongoing development despite the cost to the people and the land in this region is attributed to “a pattern of characteristically (racial) capitalist landscape defined by radical, racialized inequality mapped over uneven, delicate ecologies.”¹⁶⁹ This sounds like the degradation Foster warns of.¹⁷⁰

The Black Commons then is not merely a resource shared by Black people in the city. Black Commons are resources shared under the same rivalrous conditions as the degraded urban commons—density/congestion and intensity of incompatible uses—but also amidst the unique brand of accumulated capitalism and severe government regulation that singularly plague Black people.

B. Contemporary Experiments in Black Commons

In this section, the Article briefly describes three community land trusts operating today, ranging from grassroots efforts to major campaigns: three homeless mothers who negotiated an arrangement with a bank to purchase one house with the aid of a local CLT in Oakland; Black residents forming their own CLT to fight back from the negative impacts to their community as a result of highway construction, the mortgage crisis, and medical complex development over decades in Buffalo; and corporate and political interests attempting to offset rapid gentrification and displacement caused by a park development project in central Atlanta. In each case, the CLTs make critical contributions to the location's affordable housing footprint, but they fall far short of fueling the economic independence of the Black community they serve.

1. Moms4Housing & the Oakland Community Land Trust

In November 2019, a collective of “unhoused or insecurely housed” Black women activists called Moms4Housing moved into an empty house on Magnolia Street in West Oakland with their children.¹⁷¹ The house was purchased the previous summer by Wedgewood Property Management (“Wedgewood”), a speculative real estate organization, and had been vacant for much of that time.¹⁷² Shortly after moving in, the moms received an eviction notice which they then challenged, arguing that housing is a human right as codified in the Universal

168. *Id.* at 2.

169. *Id.* at 3.

170. Foster, *supra* note 155, at 60.

171. Johnny Coleman, *How a Collective of Mothers Flipped the Script on Housing*, NATION (Jan. 24, 2020), <https://www.thenation.com/article/activism/moms-4-housing-oakland/> [<https://perma.cc/6XB9-S5UF>].

172. *Id.*

Declaration of Human Rights.¹⁷³ The judge was unpersuaded by the argument and ordered the moms out, but the moms refused to leave.¹⁷⁴ At dawn, on January 14, 2020, dozens of the Alameda County sheriff's deputies moved to enforce the eviction order;¹⁷⁵ public outcry ensued.¹⁷⁶ Ultimately, with assistance from Oakland's mayor and California's governor, in May 2020, the Oakland Community Land Trust purchased the Magnolia Street house for about half a million dollars for the benefit of low-income residents.¹⁷⁷ In addition, Wedgewood announced that going forward, it would give the right of first refusal to Oakland's Housing and Community Development Department and the Oakland Community Land Trust for any properties it plans to sell in the city.¹⁷⁸ Wedgewood owned at least 125 properties in the Bay Area as of December 2019.¹⁷⁹ Like many investors, it had purchased foreclosed homes after the market crash.¹⁸⁰ A 2012 report by Urban Strategies Council noted that between 2007 and 2011, investors had purchased 42% of all foreclosed properties in the Bay area, and 93% of those homes were located in the lower-income neighborhoods in Oakland's flatlands.¹⁸¹ According to census data, roughly at this same time, Oakland's Black population declined by 25%.¹⁸²

173. See Kate Wolffe, *Moms 4 Housing Group Reaches Agreement to Buy Vacant House*, KQED (Jan. 20, 2020), <https://www.kqed.org/news/11797001/moms-4-housing-group-reaches-agreement-to-buy-vacant-house> [<https://perma.cc/8AP6-QAVS>]; G.A. Res. 217 (III) A., UNIVERSAL DECLARATION OF HUMAN RIGHTS (Dec. 10, 1948).

174. Rachel Hahn, *These Moms Fought for a Home—And Started a Movement*, VOGUE (May 12, 2020), <https://vogue.com/article/moms-4-housing> [<https://perma.cc/7AKV-6Z2U>].

175. *Id.* (“[D]ozens of armed deputies from the Alameda County Sheriff’s Department, complete with an armored vehicle, AR-15 rifles, and a robot sent in to scout for potential threats, descended upon the home and arrested Cross on misdemeanor charges of resisting and obstructing the eviction.”).

176. *Id.*

177. *Id.* (“After the eviction, as part of a deal brokered by Oakland mayor Libby Schaaf and Governor Gavin Newsom, Wedgewood agreed to sell the home to the Oakland Community Land Trust (OCLT).”). See also Marisa Kendall, *Oakland: Moms 4 Housing Home Sells for \$587,500, Will Become Homeless Housing*, MERCURY NEWS (Oct. 9, 2020), <https://www.mercurynews.com/2020/10/09/oakland-moms-4-housing-home-sells-for-587500-will-become-homeless-housing/> [<https://perma.cc/6W8K-TNPA>] (stating that Mayor Schaaf announced that Wedgewood would have to sell to Oakland’s Community Land Trust, the City, or affordable housing organizations before other parties).

178. Coleman, *supra* note 171.

179. Katie Ferrari, *The House on Magnolia Street*, CURBED S.F. (Apr. 29, 2020), <https://sf.curbed.com/2020/4/29/21240456/moms-4-housing-oakland-house-history> [<https://perma.cc/T46B-JXWM>].

180. *Id.*

181. Jennifer Inez Ward, *New Report Shows Foreclosed Flatland Homes Being Snapped Up by Outside Investors*, GREENLINING (July 2, 2012), <https://greenlining.org/press/news/2012/new-report-shows-foreclosed-flatland-homes-being-snapped-up-by-outside-investors> [<https://perma.cc/EFP6-LJ8F>]; STEVE KING, URBAN STRATEGIES COUNCIL, WHO OWNS YOUR NEIGHBORHOOD? THE ROLE OF INVESTORS IN POST-FORECLOSURE OAKLAND (Jun. 2012), <https://community-wealth.org/sites/clone.community-wealth.org/files/downloads/report-king.pdf> [<https://perma.cc/4Z6D-2EZW>].

182. *City of Oakland, Alameda County*, BAY AREA CENSUS, <http://www.bayareacensus.ca.gov/cities/Oakland.htm> [<https://perma.cc/UL7A-3ZNF>] (last visited July 77, 2021).

The houses that Wedgewood owns were inhabited by lower-income families of color in the years leading up to the foreclosure crisis. As in many cities, Oakland's communities of color were targeted by predatory home loans, which often led to defaults, evictions, and foreclosures: "Oakland neighborhoods where 80% or more of the residents were people of color made up less than half of all housing units in the city, but they counted nearly 80% of all foreclosures."¹⁸³ Tens of thousands of longtime residents, primarily Black and Latinx families, were displaced as a result of the mortgage foreclosure crisis, creating opportunities for corporate real estate agencies, like Wedgewood, to usher in gentrification.¹⁸⁴

2. Fruit Belt Community Land Trust in Buffalo

White flight and a massive influx of Black newcomers to the city of Buffalo, New York in the 1960s led to a dramatic racial transformation of a neighborhood known as the Fruit Belt. By 1970, 81% of the Fruit Belt population was Black.¹⁸⁵ In 1972, a portion of the Fruit Belt was taken to create a medical corridor, which is today Buffalo Niagara Medical Campus.¹⁸⁶ Two events resulted in the decimation of thirty city blocks in the historic center of Black Buffalo: construction of the Kensington Expressway in 1960 and an urban renewal project on Buffalo's lower East Side. As Henry Louis Taylor explains, the destruction to clear the way for these projects was "massive":

[City officials] engage[d] in this massive, massive demolition of housing in this margin. . . . Close to three or four hundred housing units, stimulating a loss of almost five to six thousand residents. They completely wiped that shit out.¹⁸⁷

That was then. But history repeats. More recently, faced with the twin threats of gentrification and displacement that accelerated with the development of the medical complex, some of the Fruit Belt's Black working-class residents organized to purchase vacant lots in advance of developers.¹⁸⁸ These residents

183. Hahn, *supra* note 174.

184. *Id.*

185. *Id.*

186. Will Doig, "How Do We Get More Power?", VOICES (May 4, 2020), <https://www.opensocietyfoundations.org/voices/how-do-we-get-more-power/episode/fruit-belt> [<https://perma.cc/7VGQ-2ENZ>]. The Model Neighborhood Area (MNA), a part of the Urban Renewal Program, set its sights on the worn-down residential buildings in the Fruit Belt, arguing that better housing was the most key component of the neighborhood's regeneration. *Id.* But the MNA believed that housing *rehabilitation* was too expensive. Instead, it advocated for tearing the homes down and building anew, which was the conventional wisdom of the time. *Id.* However, the city was only able to build a fraction of the number of houses that it destroyed. *Id.*

187. Will Doig, *A Grassroots Movement in Buffalo's Fruit Belt*, OPEN SOC'Y FOUND. (May 4, 2020), https://www.opensocietyfoundations.org/voices/how-do-we-get-more-power/episode/fruit-belt?fbclid=IwAR3gL5u1344ZL53gq3rv9IgoFGUL_neRERUHUcHbigOfX4-nSf4FIm154Cs [<https://perma.cc/7QP4-8H5B>] (alteration in original).

188. Doig, *supra* note 186.

purchased land specifically to hold it in trust.¹⁸⁹ The Fruit Belt Community Land trust leases the lots to residents for affordable amounts, so the lessees own the houses, yet the trust continues to own the land beneath.¹⁹⁰

3. Atlanta Land Trust Around the BeltLine

In an ongoing project that began in 2005, the City of Atlanta partnered with business interests to develop 22 miles of parks and trails into a single loop, the BeltLine, that borders both sides of its central business district.¹⁹¹ As anticipation for the BeltLine grew, property adjacent to it surged in price and property taxes rose, putting financial pressure on the historic community.¹⁹² Homes within one-half mile of the BeltLine rose in value between 17.9% and 26.6% between 2011 and 2015.¹⁹³ The neighborhoods that abut the BeltLine are historically Black and low-income.¹⁹⁴ The Atlanta BeltLine, Inc., the company developing the project, agreed to also develop 5,600 units of affordable housing in connection.¹⁹⁵ By 2017, with half of the project completed, 785 units had been built.¹⁹⁶ Even then, an Atlanta Journal-Constitution investigative piece found those homes were built on the southern end of the loop not near schools and jobs.¹⁹⁷ It must be said that the critiques of the siting of Atlanta Land Trust's ("ALT") projects is itself revealing of the fact that they are not reparative, but a continuation of systemic underclassing representative of an economic strata where Black people are last. The historic community began to protest the displacement associated with the project.¹⁹⁸ It is also against this backdrop that ALT, a nonprofit organization, was formed to develop and manage affordable housing in the community land trust model. Despite many references to the "community land trust model," ALT does not appear to be led by the community

189. *Id.*

190. *Id.* ("The Fruit Belt's population skews older; many residents are in their 60s and 70s and have lived in the neighborhood their entire lives. Many are on a fixed income, making them particularly vulnerable to a rise in property taxes.").

191. See *What Is the Atlanta BeltLine?*, ATLANTA BELTLINE, <https://beltline.org/faqs/> [<https://perma.cc/8C7A-LZ4K>] (last visited Sep. 3, 2021).

192. Willoughby Mariano, Lindsey Conway & Anastacia Ondieki, *How the Atlanta Beltline Broke Its Promise on Affordable Housing*, ATLANTA JOURNAL-CONSTITUTION (Dec. 13, 2017), <https://www.ajc.com/news/local/how-the-atlanta-beltline-broke-its-promise-affordable-housing/0VXnu1BIYC0IbA9U4u2CEM> [<https://perma.cc/E34H-ZSN3>] (highlighting the story of 90-year-old Helene Mills, a lifelong resident of the Fourth Ward who saw her property taxes double in a single year).

193. Jamiles Lartey, *Nowhere for People to Go: Who Will SurviveGo: Who Will Survive the Gentrification of Atlanta?*, GUARDIAN (Oct. 23, 2018), <https://www.theguardian.com/cities/2018/oct/23/nowhere-for-people-to-go-who-will-survive-the-gentrification-of-atlanta> [<https://perma.cc/H3A2-ZAMB>].

194. *Id.*

195. *Id.*

196. *Id.*

197. Mariano, Conway & Ondieki, *supra* note 192.

198. *Id.*

at all. ALT's Executive Director, Amanda Rhein, is a white woman with a professional background in real estate development,¹⁹⁹ and as a review of its website revealed, only two members of its 12-member board are members of the community.²⁰⁰

IV. APPRAISING THE BLACK COMMONS AS REPARATIONS

This section of the Article examines the goals of reparations, particularly “community empowerment,” and argues that they call for redress that will lead to the elimination of the racial economic wealth gap. It evaluates the Black Commons against this desired outcome, revealing the challenges of achieving this goal through commons-based reparations measures.

A. Reparationist Goals

One way of conceptualizing reparations is as a mechanism for undoing past harms causing current inequity.²⁰¹ Under the widely respected Darity and Mullen model there are three goals of reparations—acknowledgment, redress, and closure.²⁰² Acknowledgment is the admission of responsibility for the atrocious acts by the perpetrator that is also accompanied by a guarantee to make restitution in an expedient manner.²⁰³ Redress refers to the provision of restitution, most often in the form of monetary compensation as was done by the United States in the case of Japanese internment and in Germany in the case of Jewish survivors of the Holocaust.²⁰⁴ Closure refers to the acknowledgment by the culpable party that the debt has been paid.²⁰⁵ According to Darity and Mullen, in the case of Black reparations, redress will be demonstrably “effective if an improved position for [B]lacks is associated with sharp and enduring reductions in racial disparities, particularly economic disparities like racial wealth inequality, and corresponding sharp and enduring improvements in [B]lack well-being.”²⁰⁶ Alfred Brophy takes a substantially similar view on the goals of reparations, call-

199. *Stewards of Permanently Affordable Housing*, ATLANTA LAND TRUST, <https://atlantalandtrust.org/who-we-are/team> [<https://perma.cc/J7XJ-RS3N>] (last visited July 7, 2021).

200. *Id.*

201. Professor Charles Ogletree has stated, “[t]he broader goal of reparations . . . is to develop ways of crafting forward-looking initiatives for racial reconciliation.” Charles Ogletree, *Repairing the Past: New Efforts in the Reparations Debate in America*, 38 HARV. C.R.-C.L. L. REV. 279, 307 (2003) [hereinafter Ogletree, *Repairing the Past*].

202. WILLIAM DARITY, JR. & A. KIRSTEN MULLEN, ROOSEVELT INST., RESURRECTING THE PROMISE OF 40 ACRES: THE IMPERATIVE OF REPARATIONS FOR BLACK AMERICANS 4 (2020), https://rooseveltinstitute.org/wp-content/uploads/2020/07/RI_Report_ResurrectingthePromiseof40Acres_202005.pdf [<https://perma.cc/Z7F4-P5KM>] [hereinafter DARITY, JR. & MULLEN, RESURRECTING THE PROMISE].

203. *Id.*

204. *Id.*

205. *Id.*

206. WILLIAM DARITY, JR. & A. KIRSTEN MULLEN, FROM HERE TO EQUALITY 3–4 (2016).

ing for the acknowledgment of past contributions and harms,²⁰⁷ evolving the public's conceptions about the impact of past injustices²⁰⁸ and empowerment of the Black community.²⁰⁹ Community empowerment, as used in this context, includes economic liberation in the form of significant cash payments both to individuals and to groups to reduce the racial wealth gap.²¹⁰ In their research on wealth and racial stratification, Oliver and Shapiro remind us that wealth and income are not equivalent:²¹¹

Income is what the average American family uses to reproduce daily existence in the form of shelter, food, clothing, and other necessities. In contrast, *wealth* is a storehouse of resources, it's what families own and use to produce income. . . . In this sense, wealth is a special form of money not usually used to purchase milk and shoes or other life necessities; rather, it is used to create opportunities, secure a desired stature and standard of living, and pass class status along to one's children.²¹²

Drawing on Oliver and Shapiro's analysis, Alfreda Robinson argues that in order to eradicate the racial wealth gap, Black Americans "must acquire a greater share of the nation's wealth: the nation's wealth is based on shares of corporate stock."²¹³ Put another way, eliminating the Black-white wealth gap is a central objective of the redress component of a plan for reparations.²¹⁴ It is the racial wealth gap that best reflects the cumulative impact of the "trajectory of American white supremacy from slavery to the present[, especially g]iven that the disparity began with the wealth that white people accumulated through extraction from enslaved [B]lack people, which grew exponentially with each generation, closing the gap requires *direct* redistribution."²¹⁵

Reparations can take five forms listed here from least to most controversial: truth commissions, apologies, civil rights legislation, cash or in-kind payments to groups/communities, and cash or in-kind payments to individuals.²¹⁶ The first

207. Alfred L. Brophy, *Reconsidering Reparations*, 81 IND. L.J. 811, 835 (2006) (citations omitted).

208. *Id.*

209. *Id.*

210. *Id.* The "racial wealth gap" is the difference between white wealth and Black wealth. "Data from the 2016 Survey of Consumer Finances . . . indicate that Black Americans possess 2.6 percent of the nation's wealth while constituting 13 percent of the population. The average Black household has a net worth \$800,000 lower than the average white household." William "Sandy" Darity & Kirsten Mullen, *Black Reparations and the Racial Wealth Gap*, Brookings (June 15, 2020), <https://www.brookings.edu/blog/up-front/2020/06/15/black-reparations-and-the-racial-wealth-gap/> [<https://perma.cc/N7LK-S2M3>] [hereinafter Darity & Mullen, *Black Reparations*].

211. Alfreda Robinson, *Corporate Social Responsibility and African American Reparations: Jubilee*, 55 RUTGERS L. REV. 309, 380 (2003).

212. *Id.* (quoting Melvin L. Oliver & Thomas M. Shapiro, *Wealth and Racial Stratification*, in *AMERICA BECOMING: RACIAL TRENDS AND THEIR CONSEQUENCES: VOLUME II* 222, 222 (Neil J. Smelser, William Julius Wilson & Faith Mitchell eds., 2001).

213. *Id.*

214. DARTY, JR. & MULLEN, *RESURRECTING THE PROMISE*, *supra* note 202, at 8.

215. *Id.* at 10 (footnote omitted).

216. Brophy, *supra* note 207, at 836.

two forms of reparations, truth commissions and apologies, do not involve cash payments, but they are integral to reparationist goals because they can shape the public's conception of history.²¹⁷ Once previously unknown histories are revealed, the hearers, including the public, judges, legislatures, and corporate actors, have the potential to respond in the present in ways that lead to further redress.²¹⁸ In 2005, for example, upon the revelation that one of its predecessors had held slaves, "J.P. Morgan Chase apologized for the actions of two of its predecessors: . . . accept[ing] nearly 13,000 slaves as collateral and . . . [owning] approximately 1250 people when the loans went into default."²¹⁹ Along with the apology, Chase pledged "\$5 million for college scholarships for [B]lack students from Louisiana."²²⁰ Studies reveal that our collective and selective memory of the Civil War and Reconstruction have shaped legal doctrine, cultural thought, and current behavior, including negative perceptions of reparations.²²¹ Counter-narratives about the Civil War and Reconstruction, but also lending and banking practices and Black industriousness and property-owning, such as those offered in the 1619 Project on the 400th anniversary of the beginning of American slavery, then have the ability to shift belief systems and action in the opposite direction towards favorable perceptions of reparations.²²²

The third type of reparations, civil rights legislation such as the Civil Rights Acts of 1964 and 1968, "permits those who have suffered to gain access to the courts [and] grants additional rights to inclusion."²²³ This form of reparations theoretically benefits Black plaintiffs who are able to pursue—and succeed in pursuing—rights enforcement. But remember the Tulsa plaintiffs who were time-barred from bringing their theoretically legitimate claims.²²⁴ Critical race theory challenges the utility of rights discourse, arguing that it has marginal value or even disutility largely because of its dogged insistence on incremental progress.²²⁵ Richard Delgado and Jean Stefanic propose that critical race theory is itself marked not only by "a deep discontent with liberalism," but also by frustration with a system of civil rights litigation and activism characterized by incremental progress.²²⁶ Girardeau Spann urges minorities to abandon court-based efforts altogether, in light of the "veiled majoritarian" nature of the courts, and to

217. *Id.*

218. *Id.* at 836–37.

219. *Id.* at 838.

220. *Id.*

221. *Id.* at 826.

222. See Nikole Hannah-Jones, *Our Democracy's Founding Ideals Were False When They Were Written. Black Americans Have Fought to Make Them True*, N.Y. TIMES (Aug. 14, 2019), <https://www.nytimes.com/interactive/2019/08/14/magazine/black-history-american-democracy.html> [<https://perma.cc/ML5Z-CAGA>].

223. Brophy, *supra* note 207, at 840.

224. See Section A, I, *supra*.

225. RICHARD DELGADO & JEAN STEFANIC, *CRITICAL RACE THEORY: THE CUTTING EDGE* 2 (2d ed. 1999).

226. *Id.* at 7.

instead concentrate on pluralist politics.²²⁷ Spann ultimately acknowledges the reality that there are also limitations in the redress that the representative branches provide and recognizes the dilemma posed by the fact that none of the branches is truly effective at advancing minority interests.²²⁸

It is through the final two forms of reparations—transfers of wealth to communities and individuals—that Black populations can experience progress and restoration most effectively and efficiently.²²⁹ These two forms of reparations are also “the most costly and the most controversial.”²³⁰ Prominent reparatologists, such as Charles Ogletree and Robert Westley, advocate for community investment, suggesting that many more people could be helped this way than can be named in lawsuits.²³¹ As opposed to pursuing money damages through individual Jim Crow-era litigation, Ogletree proposes redress in the form of “business funds to aid African Americans and broad-ranging educational, housing, and health care initiatives” that would benefit additional persons and the community as a whole.²³² Assets that are part of Black cooperative economies, including community land trusts, can be said to fall into this fourth category.

For reparations to transcend incrementalism in order to eradicate the racial wealth gap, return of wealth to individuals is mission-critical.²³³ Under the “corporate reparations investment remedy” model, stocks of ‘blame-worthy’ corporations—ones that were unjustly enriched during slavery and Jim Crow—would be redistributed to “descendants of victimized African Americans.”²³⁴ This is one example of how a structured reparations plan could address the racial wealth gap resulting from generations of racism and empower Black communities. The goal would be to transfer “assets of potentially appreciating value.”²³⁵ The potential value of the Corporate Reparations Investment Remedy, according to Robinson,

227. Girardeau A. Spann, *Pure Politics*, 88 MICH. L. REV. 1971 (1990).

228. *Id.*

229. Brophy, *supra* note 207, at 840.

230. *Id.*

231. Ogletree, *Repairing the Past*, *supra* note 201, at 306–07.

232. *Id.* at 298–99, 307. Ogletree appears to stop at collective reparations in light of the challenges overcoming individual remedy difficulties as a way to “assist in combating racial inequality.” *Id.* at 307. But collective reparations are not the same as eradicating the wealth gap.

233. Robinson, *supra* note 211, at 376.

234. *Id.* at 381.

235. *Id.* Robinson explains that because stock, as opposed to cash, can appreciate in value, this remedy has greater potential value than a purely cash-oriented reparations plan. Further, encouraging stock ownership in Black communities would be useful: “Although African Americans’ activity in the stock market is increasing, the vast majority of the nation’s business equity is still held by whites.” *Id.* at 380–81.

meets all reparationists' goals and is therefore greater than even that of the cash remedy.²³⁶

Darity and Mullen also suggest that the elimination of the racial wealth gap created by the forced decumulation of Black wealth during Jim Crow is best accomplished by the provision of direct payments to eligible recipients as a way of "capturing the cumulative, intergenerational economic impact of the long trajectory of American White supremacy."²³⁷ Individual payments under the Darity Mullen model can take on several forms: 1) lump sums to individuals; 2) creation of trusts to provide grants for various "asset-building projects," including homeownership, education, and capital for entrepreneurship; 3) vouchers for "asset-building projects," such as obtaining financial assets; 4) "reparations in kind" for items such as advanced education and health insurance; and 5) creating new institutions to support the "collective well-being [of] the [B]lack community."²³⁸ None of these remedies are mutually exclusive and they all come with the caveat that structure is critical to avoid direct payments used merely for the purchase of goods and services, which will not impact the racial wealth gap and may, rather, exacerbate it.²³⁹

B. Black Commons, a Blunt Tool for Black Economic Empowerment

Community empowerment, if you accept Robinson's definition, necessitates reparations proposals that will eliminate the economic wealth gap resulting from the obliteration, through both de facto and de jure takings, of Black-held land. Simply stated, it is imperative that reparations proposals (re)produce appreciating assets within the Black community. The commons, then, is not community empowerment. Commons have been described in ways that are suggestive, even romantic, in that they reflect a spectrum of opportunities in which people can exist in community with each other.²⁴⁰ Whether this image of the commons is real or quixotic is irrelevant to the fact that commons operate to the exclusion of wealth generation. This is especially the case as it relates to the Black Commons, which most often arise amid "tragic" conditions of life (as a poor person of color) in the neoliberal city—congestion, rivalrousness, and over-regulation.²⁴¹ Consider again the poor Black community along the Anacostia River that con-

236. *Id.* at 380 ("[C]ompensation to [b]lacks for the injustices suffered by them must first and foremost be monetary' . . . [but that] [r]eparations in the form [of] currency alone will be a temporary solution to a persistent and entrenched economic problem. . . . African Americans must invest at higher levels and at levels comparable to that of white Americans." (second alteration in original) (footnote omitted)).

237. Darity & Mullen, *Black Reparations*, *supra* note 210.

238. William A. Darity, Jr. & Dania Frank, *The Economics of Reparations*, 93(2) AM. ECON. REV. 334, 336 (2003), *reprinted in* C.A. CONRAD J. WHITEHEAD, P. MASON, & J. STEWART, *AFRICAN AMERICANS IN THE U.S. ECONOMY* 326 (2005).

239. *Id.* at 336.

240. Foster & Iaione, *supra* note 116, at 331–32 (2016).

241. *Id.* at 283. The "tragic" conditions I am referring to here are congestion and rivalrousness. *See* Foster, *supra* note 155.

tinues to look to the surrounding waterways for fish even though a substantial majority of those fish are known to be inedible. There is no wealth-generating potential to be realized in a commons along the Anacostia River. In the absence of wealth-generating potential for the Moms (even once they are legal residents of the house on Magnolia Street), the residents of the Fruit Belt, or even the members of the Atlanta Land Trust, reparationist goals are not met.²⁴²

The Black Commons, here the community land trust, has been pressure-tested in the past and failed to achieve community empowerment as defined by reparationists. In 1967 in Albany, Georgia, New Communities, Inc., the first community land trust in the United States, was formed with the purpose of holding land in perpetual trust for the use of rural communities.²⁴³ New Communities purchased a 5,000-acre farm with the hopes of developing a settlement of homes and farm buildings for local residents to hold under common ownership.²⁴⁴ It was owned collectively by a group of Black farmers from 1969 until 1985.²⁴⁵ New Communities was also foreclosed on as a result of drought and at the hands of the USDA.²⁴⁶ Civil rights activist Fannie Lou Hamer began “Freedom Farms” about half a century ago.²⁴⁷ The farm gave land access to Black people, with the goal that they would grow food as a cooperative.²⁴⁸ Hamer and her cohort grew vegetables and created a “pig bank” on 680 acres of Mississippi Delta land.²⁴⁹ However, the Freedom Farm Cooperative was unable to sustain itself.²⁵⁰ The point here is that, historically, the Black Commons has not redressed the land dispossession and wealth extraction that Black people suffered

242. Glazier, *supra* note 194.

243. New Communities was founded in the state of Georgia by Robert Swann, who later founded the Schumacher Center for New Economics, and Slater King, President of the Albany Movement. Witt, *supra* note 18.

244. Witt, *supra* note 18.

245. *New Communities in 1970s*, New Communities Inc., <https://www.newcommunitiesinc.com/about.html> [<https://perma.cc/3NSV-J694>] (last visited July 7, 2021).

246. *Id.*

247. Witt, *supra* note 18.

248. *Id.*

249. *Id.*

250. *Fannie Lou Hamer Finds Freedom Farm Cooperative*, SNCC DIG. GATEWAY, <https://snccdigital.org/events/fannie-lou-hamer-finds-freedom-farm-cooperative/> [<https://perma.cc/2YPX-GPGJ>] (last visited July 15, 2021).

because by definition it explicitly rejects the commodification of land for wealth attainment.²⁵¹

In a 2018 paper, *Proposal for the 'Black Commons'*, the Schumacher Center proposed adopting “the community land trust structure to serve as a national vehicle to amass purchased and gifted lands in a Black Commons with the specific purpose of facilitating low cost access for Black Americans hitherto without such access . . . [as] one piece of a Black Reparations Movement.”²⁵² It encouraged, in “[the] rich tradition in the Black community of farming cooperatives,” purchasing farmlands to lease.²⁵³ The Schumacher proposal anticipates that donors of land to a Black Commons would be discouraged to give if land was merely to be given over to individuals who might “then quickly cash in on its value, placing the land again in the open market.”²⁵⁴ The proposal goes on to define the underlying feature of the Black Commons was that the land and its value would remain in the Commons.²⁵⁵ Herein lies the failure of the fourth form of reparations, including cooperative projects such as community land trusts: their ability to empower the community is limited in that they fail to transfer equity-bearing assets into the hands of individual Black people who can grow wealth and instead urge a form of ownership that perpetuates Black poverty into perpetuity. In terms of reparationist goals, community land trusts are suspect.

In contrast to community land trusts (and perhaps counterintuitively, given its focus on the individual) it is the fifth form of reparations, direct payments to individuals, that is more aligned with the reparationist goal of community empowerment. Direct land grants and payments to individuals first have the potential to generate the kind of wealth that was actually taken, but also will make recipients economically self-sufficient, thus closing the racial wealth gap and improving the life outcomes of their recipients generally. The Justice for Black Farmers Act, introduced in the Senate in November 2020, seeks to return land to the hands of individual experienced Black farmers and those interested in learning the farming trade. The Act was co-sponsored by Senators Cory Booker, Elizabeth Warren, and Kirsten Gillibrand.²⁵⁶ Under the Act, up to a total of thirty-

251. See, e.g., Tara Raghuv eer, *From Commodification to Public Good: Changing Our Housing Narratives*, THE FORGE (July 22, 2020), <https://forgeorganizing.org/article/commodification-public-good-changing-our-housing-narratives> [https://perma.cc/YJ7A-9H42] (calling for the de-commodification of housing as a necessary step towards reparations); Choctaw & Chickasaw Freedmen (@ChoctawFreedmen), TWITTER (Nov. 13, 2020, 11:42 AM), <https://twitter.com/ChoctawFreedmen/status/1327290169637138433> [https://perma.cc/PQ7W-JJ6Z] (“We need to stop acting like Tulsa is some story about the success of Black capitalism or respectability politics.”); Giampaolo Baiocchi & H. Jacob Carlson, *Housing Is a Social Good*, BOSTON REV. (June 2, 2020), <http://bostonreview.net/class-inequality-law-justice/gianpaolo-baiocchi-h-jacob-carlson-housing-social-good> [https://perma.cc/BBT8-N2J6] (arguing that housing should not be seen as a vehicle for wealth creation but instead as a social good).

252. Witt, *supra* note 18.

253. *Id.*

254. *Id.*

255. *Id.*

256. Justice for Black Farmers Act, S. 4929, 116th Cong. (2020).

two million acres of farmland²⁵⁷ could be transferred back into the possession of Black Americans, and individual Black farmers would be able to acquire up to 160 acres each.²⁵⁸ In addition, the Act would seek to protect existing Black farmers from land loss by “increasing the funding authorization for the USDA relending program created in the 2018 Farm Bill to resolve farmland ownership and succession, or ‘heirs property,’ issues.”²⁵⁹ Further, the Black Farmers Act would create a conservation corporation, providing access to learn farming skills to “young adults from socially disadvantaged communities.”²⁶⁰ Additional private and publicly funded transfers of land are essential to remedying the economic harm that has been created by systemic Black land dispossession.

V. CONCLUSION

*“Harlem is life dying inside a closet, an excrescence beginning where a green park ends, a self-perpetuating disintegration of walls, ceilings, doorways, lives. It is also, of course, a political embarrassment for which no political solution is adequate. A housing project planted in the middle of a slum is not an answer.”*²⁶¹

In 1965, the poet, activist, and architect June Jordan conceived “Skyrise for Harlem,” a redesign of Harlem’s built environment that consisted of 15 concentric towers of apartments with athletic fields, tree-lined pathways, and practice studios for musicians.²⁶² Jordan considered Skyrise “a form of federal reparations to the ravaged people of Harlem.”²⁶³ Jordan chose the name “Skyrise” to reflect not only the physical structures but also her belief that the project would “transform[] . . . [the] ghetto”²⁶⁴ and elevate its people and their environment af-

257. Chuck Scott, ‘Justice’ Bill Would Transfer up to 32 Million Acres to Black Farmers, SUCCESSFUL FARMING (Nov. 20, 2020), <https://www.agriculture.com/news/business/justice-bill-would-transfer-up-to-32-million-acres-to-black-farmers> [<https://perma.cc/55C5-VVUU>].

258. *Justice for Black Farmers Act*, supra note 256, at § 203(c).

259. Press Release, Tina Smith, U.S. Senator, U.S. Senator Tina Smith Teams up with Senate Colleagues to Introduce Justice for Black Farmers Act (Feb. 10, 2021), <https://www.smith.senate.gov/us-senator-tina-smith-teams-senate-colleagues-introduce-justice-black-farmers-act> [<https://perma.cc/ZK3Y-SEL3>].

260. *Id.*

261. June Meyer, *Instant Slum Clearance*, ESQUIRE, Apr. 1, 1965, at 109, 109, <https://classic.esquire.com/article/1965/4/1/instant-slum-clearance> [<https://perma.cc/95FH-3XD6>]. Others have noted that the text of the piece was written nearly one year after the murder of a fifteen-year-old Black student, James Powell, by a white police officer, Thomas Gilligan, that set off six nights of unrest. See Doreen St. Félix, *June Jordan’s Vision of the Black Future*, in BLACK FUTURES 64–66 (Kimberly Drew & Jenna Wortham eds. 2020) (ebook); Hansi Lo Wang, *New York’s ‘Night of Birmingham Horror’ Sparked a Summer of Riots*, NPR (July 18, 2014), <https://www.npr.org/sections/codeswitch/2014/07/18/330108773/new-yorks-night-of-birmingham-horror-sparked-a-summer-of-riots> [<https://perma.cc/Xx8P-DVR4>].

262. Jordan developed the blueprint for “*Skyrise Harlem*” with architects Richard Buckminster Fuller and Shoji Sadao. Félix, supra note 261, at 64–66.

263. *Id.* at 66.

264. Meyer, supra note 261, at 109.

ter a “half century of despair.”²⁶⁵ Then, as now, affordable housing projects (even under the moniker “community land trusts”) are just affordable housing—not reparations. Reparations ought to transform the entire lived environment.

* * *

A vast amount of equity-generating land that that Black people once held, then were dispossessed of through various legal and extra-legal means, must be accounted for in a reparations program. In many if not all cases, the dispossessed land has proven extremely profitable for its white successor owners. Remedies that forgive that debt outright with apologies or accept partial payment in the form of land with no equity, such as community land trusts, do not remedy the actual harm caused and manifested in the form of the racial wealth gap. Nonetheless, the idea of compensating Black land dispossession through non-equity generating “assets” (if they can be called assets) is gaining traction in current reparations discussions, especially within liberal circles. When the historical and modern Black Commons is interrogated more closely, it becomes clear that it does not meet a central goal of reparations: community empowerment. Indeed, while “culturally rich,” the tradition of the Black Commons has oftentimes been economically unsupportable, in some cases almost to the point of foreclosure.

This Article has sought to intervene in the discussion surrounding Black-Commons-as-reparations by identifying that these proposals neglect to account for actual Black land dispossession suffered by identifiable individuals in recent history and the failure of the commons as remedy to achieve economic empowerment in the future. This Article has also sought to critique the Black Commons’ usefulness as a tool of community empowerment. This critique should not be taken to imply that post-reparations, Black individuals should abandon cooperative economics, such as the Freedom Georgia Initiative, a Black-woman led initiative that seeks to develop cooperatively a “safe haven for Black families” to live and thrive together.²⁶⁶ Nor do I mean to imply that Black folx should not ideate and build together for the Afro-future as Joan Jordan did in the case of “Skyrise for Harlem.” The Article speaks only to how the debt owed is paid and not how the repayment is later spent. On the matter of repayment, a program of reparations must successfully bring Black people into full economic citizenship on par with white people through equity-generating assets that are identical in character and terms to the assets that the latter hold and that are also similar to those assets the former were dispossessed of, through proposals akin to the Black Farmers Act, and not merely through the creation of affordable housing.

265. *Id.* at 111.

266. *About*, FREEDOM GEORGIA INITIATIVE, <http://thefreedomgeorgiainitiative.com/about> [<https://perma.cc/XZF8-YDN2>] (last visited July. 8, 2021).