

Journal of Rural Social Sciences

VOLUME 38, ISSUE 1

ISSN 2151 - 4178

Introduction to the Special Issue on Heirs' Property

Robert Zabawa
Tuskegee University

John J. Green
*Southern Rural Development Center &
Mississippi State University*

Elizabeth Young Sweeney
University of Mississippi

ABSTRACT

This essay presents a brief introduction to the special issue of the *Journal of Rural Social Sciences* focused on heirs' property. Real property transferred over generations without a proper will or other transfer device, heirs' property and heirs' property owners are vulnerable to a range of challenges, from limited productive land use to the actual loss of land. A situation that is national in scope, heirs' property rates are particularly high in the southern region of the United States and among African Americans. Articles in this special issue address operationalizing and measuring heirs' property at the county-level, describing the characteristics of people seeking assistance with heirs' property, and the situation and implications faced in a state with limited protections of families with heirs' property.

INTRODUCTION

Since the height of African American land ownership as recorded in the 1910 Census of Agriculture at around 16 million acres (U.S. Department of Commerce 1914), most succeeding census counts have registered a steep decline. And even with recent modest up-ticks in African American owned land, the overall result is a 75 percent decline over 100 years later as recorded in the 2017 Census of Agriculture (U.S. Department of Agriculture 2019). There are many reasons for this decline (Marable 1979a, 1979b; Gilbert, Sharp, and Felin 2002; McGee and Boone 1979; U.S. Commission on Civil Rights 1982). Among them are the push of being forced off the land through Jim Crow laws, violence, intimidation, and discriminatory practices by state and federal governments, as well as the pull to the North in the Great Migration.

Another major cause is the intergenerational transfer of land without an effective will resulting in heirs' property.¹ And while this disproportionately affects African Americans in the rural South, other racial, ethnic, and economic groups are negatively affected by heirs' property as well, including rural whites in Appalachia, Latinx communities in the Colonias of Texas, Spanish land grants in the Southwest, and Native Americans near reservation communities.

In heirs' property cases the descendants of the original owner do not own a specific acreage, but rather an undivided interest in the whole, and are called co-tenants in common. If this land continues to be passed down as heirs' property, after several generation, tens, if not hundreds, of heirs all have varying interests in the land. Because all the co-tenants must agree on any kind of change to land use management, heirs' property cannot be used as collateral for mortgages, and there is difficulty in harvesting timber or accessing mineral rights, as well as accessing many government programs. The lack of development opportunities posed by heirs' property also impacts local community income from taxes and the services that are dependent upon them. Due to the lack of secured title of heirs' property, it is also the target for partition sales, tax sales, adverse possession, and eminent domain. Land, as a major factor in terms of individual wealth and community asset building, is at risk as heirs' property, with economic, political, and social implications.

There have been numerous efforts to provide outreach, education, and policy and legal changes to help address the challenges faced by heirs' property owners and their communities, coupled with efforts to prevent heirs' property in the future. Early and continued work has been led through nonprofit organizations working at the community, state, regional, and national levels. Starting in the late 1960s, African American-focused organizations such as the Federation of Southern Cooperatives, the Black Economic Research Center, and the Emergency Land Fund, highlighted the need for policy initiatives and land promotion strategies that focused on acquisition, retention, and development efforts along with a commitment to legal, financial, and technical assistance. Key was attention to curbing land loss from tax sales, partition sales, foreclosures, and intestacy, coupled with the need for African American attorneys (see Brooks 1983; Browne 1973; The Emergency Land Fund 1980; and Figures 1971). This work continues today through the efforts of organizations such as the Federation of Southern Cooperatives/Land Assistance Fund (merged in 1985 and headquartered in Georgia); Land Loss Prevention Project in North Carolina; Center for Heirs Property Preservation in South Carolina; various Appleseed organizations across the Southeast; LiKEN Knowledge in Kentucky; Mississippi Center for Justice; Rural Coalition, which works nationally; and finally, the more recently established Socially Disadvantaged Farmers and Ranchers Policy Research Center, located at Alcorn State University in Mississippi but having a national scope, has focused considerable attention on research concerning contemporary heirs' property issues.

In the early years, African American applied scholars highlighted the historic nature of land acquisition and eventual loss including the economic, legal, and political implications of inaction in response to heirs' property (see Copeland 1984; Marable 1979; and Tinubu and Hite 1978). Important efforts through the 1890 Historically Black Land-Grant University System followed, for example, the seminal work *The Black Rural Landowner: Endangered Species* (1979) edited by McGee and Boone at Tennessee State University and publications by Beauford and Nelson (1988) at Fort Valley State University, Demissie (1990) at the University of Maryland Eastern Shore, and Zabawa (1991) and Zabawa and Baharanyi (1992) at Tuskegee University. Scholars at 1862 Land-Grants have also gotten involved, starting, for example, with Schulman et al. (1985) at North Carolina State University, Dyer and Bailey (2008) at Auburn University, and Mitchell (2001) formerly at the University of Wisconsin and currently at Boston College. Researchers at other universities are joining this scholarly community at a rapid pace. The contributors in this issue represent renewed interest in heirs' property of the last 10 to 15 years.

Finally, there has been expanded efforts on behalf of African American farmers, land loss, and heirs' property among federal agencies, in particular the U.S. Department of Agriculture's Economic Research Service (see Banks 1986; Hoppe et al. 1986; and Lewis 1976); the United States Commission on Civil Rights (1967, 1982); the U.S. Forest Service (see, for example, the works by Johnson Gaither 2016, Johnson Gaither et al. 2019, and Schelhas et al. 2017); and other federal entities like the Federal Reserve Bank of Atlanta (see Stein and Carpenter 2022). Law schools are also engaged, for example those at Southern University, Texas A&M University, Vermont Law and Graduate School, Boston College, and Harvard, as well as private law firms and practicing attorneys.

In addition to awareness raising, educating families, and practicing attorneys providing direct legal assistance, broader advances have included the Uniform Partition of Heirs' Property Act (UPHPA) (Uniform Law Commission 2010; Mitchell and Powers 2022), changes in ownership and documentation requirements with the Federal Emergency Management Agency (FEMA) and the United States Department of Agriculture (USDA), and several efforts with USDA offices and sub-agencies with advancements made via the 2018 Farm Bill. These make it possible for farms with heirs' property to receive a farm number, and, therefore, access to USDA programs, as well as support for a re-lending program to assist heirs to resolve title issues. There is much to celebrate in these efforts integrating community-based engagement, research, data-informed decision making, and policy and legal change that is highlighted by the researchers and service providers in this issue area. However, there are still many issues in need of attention, and this special issue helps make some of the advancements.

ARTICLES IN THIS SPECIAL ISSUE

To direct more attention towards heirs' property, this special issue of the *Journal of Rural Social Sciences* focuses on heirs' property, especially in the South. Articles draw from multiple disciplines and use a range of methodological and analytical approaches.

The first set of articles in this collection seeks to operationalize and measure the extent of heirs' property using secondary data sources. Dobbs and Johnson Gaither (2023) utilize LightBox data – a commercial parcel dataset product derived from county tax offices – for estimating the extent of heirs' property in terms of parcels, acreage, and value. Across states and DC, they estimate the combined national area of heirs' property at 9,247,452 acres worth \$41,324,318 billion. They also use spatial analysis techniques to identify clustered patterns at various scale levels, from census tracts to counties. Thomson and Bailey

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(2023) use a different data source – CoreLogic, a company that aggregates county-level data also derived from county tax offices – to estimate heirs’ property in 11 states in the Southern and Appalachian Regions. In a separate comparison of the two approaches (Bailey et al. 2023), they note that while compatible, the two approaches provide different estimates partially because there are no standards for how heirs’ properties are reported between states and even between counties within states.

The third article in the issue utilizes a unique data source to explore the pathways and service connections pursued by heirs’ property owners in South Carolina (Stephens and Simington 2023). Drawing on administrative data from the Center for Heirs’ Property Preservation®, the authors analyze the demographic characteristics, types of legal services, and referral pathways landowners sought from 2017 through 2021. Noting the combined importance of personal networks, word of mouth, and more organized efforts through the Center and its networks, Stephens and Simington argue there are opportunities for designing targeted approaches to serving heirs’ property owners. They also point to interest in estate planning education and assistance.

The fourth and final contribution is a research note focused on the connections between heirs’ property and poverty concerns in Louisiana. Connecting historical legacies, contemporary socioeconomic concerns, and legal analysis, Hall and Davis (2023) point to the need for reforms such as the Uniform Partition of Heirs’ Property Act in states that have yet to adopt it.

SUMMARY AND LOOKING TO THE FUTURE

The articles presented in this special issue of the *Journal of Rural Social Sciences* make important contributions to our understanding of heirs’ property. From conceptualizing, measuring, and reporting on the extent of heirs’ property to reporting the characteristics and lived experiences of people and places facing associated vulnerabilities and looking for assistance, they can help inform outreach, education, and policy and law. In addition to expanding the knowledge base around heirs’ property, we hope this collection helps to inform future research.

As this special issue was in process, the editors and several of the authors were also pursuing formalization of a multi-state working group focused on heirs’ property. Building from a previously organized and mobilized network that has been evolving over several years, including the construction and delivery of an Extension program (Welborn and Kelly 2022), this year their work was transformed to a Southern Region Extension/Research Activity (SERA) entitled “Heirs’ Property: Impacts at Family, Community, and Regional Levels.” (See SERA 49 with the National Information Management and Support System, <https://www.nimss.org/>). The editors invite readers to learn more about SERA 49, consider joining, and continue this important conversation.

ENDNOTES

- 1 There are several key sources for the broad-based, generalized knowledge review of heirs’ property research in this section. Sources of particular use here include Emergency Land Fund (1980); Johnson Gaither et al. (2019); Mitchell and Powers (2022); and Schulman et al. (1985).

DISCLOSURE STATEMENT

The authors have no conflicts of interest to disclose.

FUNDING

The Southern Rural Development Center (SRDC) receives base funding from the USDA National Institute of Food and Agriculture (NIFA) and heirs' property project support from the Agricultural and Food Research Initiative Competitive Program of USDA NIFA, grant number 2021-67023-34425. Comments do not reflect funding partners.

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