CHAPTER 2

Property Law and Its Contradictions

Contradictions in the Property Regime of the United States

Despite its ubiquity, "property" is a difficult legal concept to pin down. The property regime and case law regarding property encompass many different forms of tangible and intangible property such as land and structures, intellectual property, hunting rights, personal possessions, and much more. Even when only thinking about land and structures, which pertain to resettlement planning most immediately, defining property can be challenging. For example, sometimes property is described as a set of entitlements, protected by laws, for the rights of exclusion from a physical space at the discretion of the person or people who hold title. Under this explanation, each title holder is comparable to a sovereign, and finds metaphorical support in the naming of legislation like "Castle Doctrines," which are state-designated laws that permit a property owner, in some circumstances, to use force to remove an intruder from their property. Alternatively, property is described as reflecting the social norms of the time, with protections in place to prevent property owners from causing harm to non-owners through activities described as nuisances. This can include the rights of all citizens affected by ownership to have some reasonable say on what the title holder(s) may or may not do. Zoning as a method of urban planning, EPA regulations on dumping, and prohibitions on who you may or may not exclude are indications that property entitlements are malleable to current conceptualizations of the rights of

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non-property owners in relation to property owners. These conceptualizations are not static, but change over time through social (including legal and regulatory) encounters, that are themselves mediated by access to justice and by focusing events such as disasters (Sylves, 2020).

Broadly, we can understand property law as a negotiation, contestation, and compromise between rights of exclusion and rights of inclusion across title and non-title holders, or the rights of the individual property owner weighed against the rights of the common good (Fitzpatrick, 2006). For example, the doctrine of private necessity in tort law allows for some trespass such as in the event of a life threatening emergency, but what constitutes an emergency is mediated by a history of jurisprudence. In some states, laws of adverse possession, commonly known as squatter laws, are "the transfer of a legal interest in property from the original owner to one who has acted as if she owned the land for a certain period of time," particularly when the legal owner is absent (Clarke, 2005). These laws focus on the value of *use* of property, and on retaining property within a marketplace instead of, for example, allowing it to sit derelict. Laws also protect the established rights of owners from being impinged upon by other owners, such as liabilities incurred by an owner who builds a dam and floods a neighbors property. Additionally, nuisance laws broadly protect non-title holders from even being unreasonably "annoyed" by a title-holder's actions on their own property. For example, noise ordinances limit a property owner's ability from conducting any activity that makes too much of a racket. The most prominent example of the malleability of property ownership to the common good is that the federal government can take any property, with "just compensation," to be put to public use via eminent domain, following due process. Property law and the property regime, therefore, have always been bound by the responsibility the law assigns to a title holder to uphold the rights of others, and the power the law grants to a non-title holder on their right to access, put limits on, or make demands on the rights of a title holder.

Property rights are sometimes described as being like a bundle of sticks, or firewood, a metaphor often credited to Justice Benjamin Cardozo (Ellickson, 2011). This metaphor is useful in describing rights that accompany title, as being possible to aggregate or disaggregate among different owners (Wyman, 2018). Under this metaphor, there are three primary types of rights: the use of the property (such as occupancy), the right to its fruits (such as agricultural products or rental income), and the right to sell (market exchange) or encumber the property (such as burdening

a property with a mortgage). These rights can be legally disaggregated in specific ways. For example, an owner may grant usage rights to their property through a mechanism such as leasing the "fruits of the property" to a farmer to develop agricultural products, while the original owner retains the ability to occupy and sell the property. An owner may also sell future development rights or grant a conservation easement. In this case, the owner sells future "fruits" of the property, while maintaining the right to sell the underlying land. The law typically provides some protections for the legally recorded owner of such rights, such as timber rights, when the land rights are connected to changes hands. Another common right is a usufruct granted to a widow or widower, where a property title may pass to children, but the right to occupy the house remains with the living spouse. Perhaps the most common example of disaggregated property rights is that an owner may give the rights of occupancy to a renter, earning the "fruits" of the property and retaining a right to sell. These disaggregated rights create complex webs of property rights and relationships, which include and implicate non-owners.

As prefaced in the introductory chapter, we outline four contradictions in the application of U.S. property law that we have seen come to bear on efforts to resettle from flood hazards associated with climate change:

1. An ethic of the right to land has co-existed with settler state expropriation of land;
2. Despite privileging the rights of the individual, an individual's right to act communally is discouraged and rendered difficult to exercise;
3. At times, the rights of current property owners are privileged above community protective measures, despite the reality that those rights will in many cases be undermined by climate change and that the actions of current property owners may increase the risk to themselves and others; and,
4. U.S. law has consistently been a tool to undermine the rights of individuals and groups through violent displacement, genocide, and dispossession, but it is also seen as a primary mechanism for harm reduction and the restoration and expansion of rights.

Contradictions within the property regime, within disaggregated rights holders, and within the legal system broadly which then serve to interpret whose rights hold precedent, all mediated by access and power, have

had important implications for the histories of displacement and relocation throughout the history of the United States, including relocations occurring now under conditions of, and hazards stemming from, climate change.

An ethic of the right to land has co-existed with settler state expropriation of land

A recent analysis geospatially referenced and quantified the amount Indigenous dispossession of lands and changes in resource base that accompanied colonization of the United States (Farrell et al., 2021). Farrell and colleagues found a 98.9% reduction in cumulative coextensive lands and a 93.9% reduction in non-coextensive lands (Farrell et al., 2021) from the early colonial period compared to today. This was despite the fact that protection of private property ownership was integrated into both the U.S. Constitution and the Bill of Rights. Both documents were inspired by the Magna Carta, which codified the responsibility of governments to compensate their citizens for any land taken (Ely, 2008; Epstein, 1985). In one of many legal decisions that justified dispossession from Indigenous peoples, the founding fathers and U.S. courts embraced the Doctrine of Discovery, a set of principles that European colonial nations (including then the United States) had the right to dispossess millions of Indigenous peoples of the land and ecosystems that sustained them, in part because according to the racist and ethnocentric lens of European and U.S. settlers, the land was not put to so-called productive use (Barker, 2008).

While we often take this theft as inevitable, it is interesting to point out that international law at the time typically required a conqueror to integrate members of the conquered population while maintaining their property rights. In the case of the colonies that would become the United States, European powers chose to ignore this precedent on the grounds that Indigenous peoples could not be readily integrated into the social life of the nation and did not make the *fullest use* of the property (Kades, 2000). This contradiction (right to land/dispossession of land) has often been justified by a Lockean view that land holds little to no value prior to the expenditure of labor on its development and improvement (Epstein, 1985). Settlers who codified liberal property relations into law largely misrecognized, ignored, and displaced Indigenous ways of relating to land and existing forms of land tenure despite widespread sophisticated forms of land cultivation and productive ecological relationships maintained by Indigenous peoples throughout the continent during both pre-

and post-Columbian times (Denevan, 1992; Newcomb, 2008). While this misrecognition included misunderstanding Indigenous agricultural communities, the law is particularly blind to land relations that included seasonal migration or informal ownership without clearly demarcated property lines. As Carol Rose (1994) has noted: "It is doubtful whether the claims of any nomadic population could ever meet the common law requirements for establishing property in land. Thus, the audience presupposed by the common law of first possession is an agrarian or a commercial people – a people whose activities with respect to the objects around them require an unequivocal delineation of lasting control so that those objects can be either managed or traded" (Rose, 1994, 19).

Modes of seasonal settlement, shifting settlement, and mobile infrastructure, conflict with fixed, enclosed forms of private property (Bhandar, 2018; Marino, 2015). These biases against multi-locality or seasonal settlement are present in our case studies. In Chapter 7, Indigenous Alaskan modes of mobility are current and traditional solutions to coastal changes, but are difficult to fund through existing policy mechanisms. Nicholas Blomley has also noted that the colonial "conjunction of permanence and possession" continues to delegitimize mobile populations, such as renters, in urban environments (2004, 92), and in Chapter 6 we see that renters and other populations with precarious relationships to property are marginalized in relocation scenarios. Throughout the case studies, we also see a legal preference for a narrow, ethnocentric conceptualization of highest and best use re-emerge in the way land management and hazard mitigation is prioritized. For example, state and local governments in Louisiana continue to issue land use permits for industrial actors and for the engineering of mega-projects along a sinking coastline, while the inland migration and largely uncompensated abandonment of traditional lands by Indigenous, Black, and other marginalized communities is treated as a foregone conclusion (Esealuka, 2022). In coastal Alaska, sea wall revetments and other infrastructure projects that protect coastlines are used specifically to protect homes and businesses and not subsistence equipment or land and seascapes that are critical to Alaska Native ways of life (Marino, 2015). These prioritizations create the ecological and socio-political conditions which lead to relocation.

Historically, dispossession and expropriation of Indigenous land by the United States was also persistently insisted upon as legal, voluntary, and protective of communities, even when those protections were demonstrably false. The Indian Removal Act of 1830 practically enabled the

forced displacement of hundreds of thousands of people, dispossession of millions of acres of land, and the mass killing of many thousand citizens from the Cherokee, Choctaw, Creek, Seminole, Chickasaw, and other nations who traditionally inhabited land east of the Mississippi River (Thornton, 1984), but was passed by Congress under the auspices that it would be entered into voluntarily by tribes and that they would be adequately compensated (Cave, 2003). The legislation reads:

> Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That it shall and may be lawful for the Presidents of the United States to cause so much of any territory belonging to the United States, west of the river Mississippi to be divided into a suitable number of districts, for the reception of such tribes or nations of Indians ***as may choose*** to exchange lands where they now reside, and remove there [our emphasis].

In accordance with the Lockean understanding of best use and value, the Act furthermore states,

> Sec. 4. And be it further enacted, That if, upon any of the lands now occupied by the Indians, and to be exchanged for, there should be such improvements as add value to the land claimed by any individual or individuals of such tribes or nations, it shall and may be lawful for the President to cause such value to be ascertained by appraisement or otherwise and to cause such ascertained value to be paid to the person or persons rightfully claiming such improvements.

The Act codified a long-standing policy of forced removal that had begun centuries prior and continued well after the 1830s by local militias and national forces (Bowes, 2014), but contains language that frames the exchanges as "voluntary," and following the payment of an appraised value. The law, in that case, created cover for violent displacement. That such a globally condemned historical act has a similar legal structure to contemporary buyouts, including a similarly fraught understanding of voluntariness, should give us pause. As legal historian Stuart Banner (2005) writes, conquest and contract should be seen as a spectrum upon which at various places lies the transfer of land from Indigenous peoples to settlers.

Histories of forced displacement are partially why buyouts and acquisitions must be "voluntary" today, and that there are protections in place

to make them such. However, as we'll see in the case studies in this book, contemporary relocation is still framed as a success when there is full "participation," i.e., the removal of everyone, or almost everyone, and that participation can be subjectively experienced by communities and individuals as coercive even when individuals formally choose to go. As legal scholar Stuart Banner wrote, "There is no sharp distinction between voluntariness and involuntariness. The difference between them is one of degree, not kind (2005, 5)." Though these historical examples are used here to be instructive, and not conflated, we want to point out that some of our collaborators in Louisiana who identify as Choctaw see direct parallels between the Trail of Tears and contemporary development-forced relocations, and talk about contemporary relocations as such. Some scholars and local tribal leaders along the Gulf Coast, have in fact explicitly referred to the current patterns of government supported displacement as a "modern day trail of tears" orchestrated via land use regulations and property laws, coupled with the violence of a tribal acknowledgment process that renders tribes invisible in the eyes of the law (Sand-Fleischmann, 2019).

Despite privileging the individual, the individual's right to act communally is discouraged

Another contradiction lies in the law's inability to reconcile the well-being of locally meaningful communal social structures, and communal ownership, with the legal primacy of the individual or household as social and property-holding units. U.S. legal forms and planning conventions have historically discouraged collective, social approaches to land tenure. In some cases, the friction is imposed intentionally. For example, assimilationist movements within the U.S. government advanced the 1887 General Allotment Act, also known as the Dawes Act, to convert Tribal lands into individually owned parcels under the assumption that individuation of land would promote industriousness and that unused land should be made available for agricultural use. In practice, the policy undercut Tribal sovereignty and created real estate markets out of Tribal territories, expropriating approximately 100 million acres from Indigenous nations and created checkerboard patterns of ownership. Melissa Watkinson-Shutten has written that the Bureau of Indian Affairs (BIA) is still trying to make up for the error of Allotment by working with tribes to buy back allotments that have since become fractionated, or owned by multiple (in some cases, up to 90) heirs. In some cases, this buyback program is a method of asserting sovereignty so that tribes can

plan for climate change adaptation, including relocation, to contiguous, tribally-held land (Watkinson-Shutten, 2022).

Throughout the history of Indigenous/U.S. relations, it has been difficult to integrate legal protections of property with notions of land held collectively. During the Alaska Native Claims Settlement Process, enacted in 1971, these complexities were attempted to be reconciled by making tribal members shareholders in a corporate structure, as the easiest way to hold property and assets as a group. In Alaska, there is often significant respect given to the elder Indigenous statesmen and women who implemented ANCSA, given the difficulty of their position, and how quickly they had to organize. The ANCSCA example is instructive to see how difficult it was under U.S. law to protect collective holdings, and that the corporate structure seemed like the only legal option under which to organize Tribes without the land ultimately being held in trust by the federal government, as is the case on reservations.

The propensity toward individuation can also be seen through the exporting of collectively-held risk onto individuals, as evidenced in the suggested solutions for rising national losses from flooding and flood-prone development. Construction of homes in the floodplains was facilitated by the construction of levees by the U.S. Army Corps of Engineers (USACE), and by local permitting decisions. These same homes were then marketed to families as being free from risk by developers and local officials. The availability of insurance through the National Flood Insurance Program (NFIP) also directly contributed to that development. Families that purchased these homes have since experienced repeat flooding, are expected to pay rising flood insurance premiums and to bear a portion of the financial costs of relocation from the floodplain. The NFIP continues to be subsidized by the government and rates are not actuarially priced, but there are repeated calls for reform across the political spectrum (Teirstein, 2022), including from the Biden administration. Reorganization or changes to the NFIP are likely inevitable, however, it is useful to point out that this is an individual market solution to risks incurred by collective development and land management decisions. It is also important to point out that without accounting for the historical patterns of risk creation, any effort to charge actuarial rates will disproportionately harm lower-income homeowners. We already see lower-income homeowners opting out of flood insurance because of rising rates, and recognize that this has implications for recovery following future flooding, including the loss of a great deal of federal assistance.

In Chapters 3 and 5, we'll describe the difficulty Isle de Jean Charles had in claiming collective ownership of relocation processes. Both there and in Kinston, North Carolina, which we encounter in Chapter 4, we see that "community" itself is challenging to identify and involves negotiation and contestation within and among groups. It is also the case that it is often seen as "easier" or "more equitable" from a governance perspective to buy-out multiple individual properties as an adaptive response to climate change, rather than resettling or relocating a community. We want to suggest that this is not "natural" or the result of logic, but that it is due to the particular way property and use is conceptualized within laws and norms in the United States. And yet, as discussed in Chapters 3 and 7, there are real reasons that communities need and want to stay together. In Chapter 8, we propose some legal formations that could encourage this possibility but that have been overlooked or sidelined in the resettlements we have observed.

The rights of current (or future) property owners to develop their property for economic gain are privileged above community protective measures, despite the reality that those rights will, in many cases, be undermined by climate change and that the actions of current property owners may increase the risks to themselves and others

Another contradiction appears when we consider the clear need for land use constraints that would limit development to avoid risk, but may impinge upon the immediate economic enjoyment of some current property owners. In other words, at the same time, some communities are being pushed toward relocation, there is development occurring continuously along the coast which is largely protected by laws that have prioritized development without undue interference from the government. As summarized in the writings of Platt, Joseph L. Sax has pointed to a fundamental tension between requiring land to be left in its natural, undeveloped condition, and the goals of private property law (Platt, 1999). As a result, property interests related to development are almost always privileged above allowing property to remain in a natural state. These property dynamics happen via decisions by government agencies when they choose to protect tourist areas using beach nourishment, for example (Marino, 2018). The relatively few cases, where property is left in an undeveloped state, or returned to a more natural state, tend to occur through mechanisms that exclude human habitation and interaction, such as nature preserves.

In Chapter 8, we tell the story of an elder who flooded multiplied

times on the coast of Louisiana. Her insurance rates increased and the flood damage became overwhelming. She sold her mostly undeveloped land to the highest bidder who put up a bigger house and subdivided the remaining property. Is this climate relocation? We would argue, but with the overlay of our 3rd contradiction, that the right to develop property is so prioritized that even under conditions of risk that would drive *some* people out of a landscape, development retains a foothold and then expands. In some cases, development then becomes "too big to fail" or enjoys the benefits of insured protection or armorment. There are currently plans to try and limit development in the floodplain by withholding flood insurance through NFIP (Teirstein, 2022), and changes to building regulations have been suggested by FEMA as a way for local governments to offset risk (FEMA, 2021), but it is difficult to put restrictions on development.[1] It is particularly difficult for the federal government to restrict coastal development as land use decisions occur at the state and local level, and municipal finance is deeply impacted by limitations on development.

This difficulty was rendered most visible in the case of Lucas vs. South Carolina Coast Council. Here, a local land owner purchased two residential lots on a barrier island in 1986. In 1988, the state passed a law which prohibited development and Lucas sued the government for a per se Takings case, arguing that the state law was essentially a government taking of the "fruits" of his property without compensation. The case went to the Supreme Court, where the court sided with Lucas that this did constitute a Taking and Lucas received compensation. This case and other cases related to takings are further described in Chapter 8. The case suggests however, as Platt (1999) observes, that states have an incentive to avoid the political burdens of regulating land use, especially when such regulations might render the land less valuable. Municipal governments are particularly vulnerable to resisting limiting development via zoning because they are more likely to need the tax funding that comes from development and are less likely to have the funds to pay for a Takings violation. In this contradiction, we recognize that land use regulations are a tool that can transfer the financial costs of avoiding disaster

[1] Homeowner's insurance, including catastrophic wind coverage, is beyond the scope of this book but also presents some challenges to habitation along coasts. Coastal states have created various programs and policies to attempt to ensure continued availability of coverage for residents and to limit price increases.

impacts to the property owner or developer, by limiting development, however, this also protects future owners, renters, and neighboring residents. Finally, developers may be in a better financial position to bear the costs of limiting development compared to the homeowners who, following development, are left to bear the costs of continually rising insurance payments.

An exception to privileging development may be the increasing use of conservation easements in large undeveloped portions of the northern United States. Conservation easements originated as a way for national parks to purchase development rights from adjacent land holdings as a means of preserving the viewscape (Teicher, 2021). However, most recently conservation easements have been used more by the wealthiest Americans as a pledge to limit development on their vast landholdings. The top 1% of wealthiest Americans currently hold 40% of the "non-home real estate" (Teicher, 2021). These conservation easements protect wealthy homesites and offer tax credits for large parcels of land that are being used for recreational purposes by their owners. We revisit conservation easements in Chapter 9, as we think through who is being paid "not to develop." It is instructive to consider here the elder we write about in the beginning of this section that wants to remain on less developed land in the floodplain, or the Indigenous communities in Alaska that are fighting mining developments, such as pebble mine (Greenfield, 2021), and compare them to the tax break for wealthy landowners to not develop recreational property.

Overall, privileging development is one means of prioritizing government decisions that can be justified using cost-benefit analysis models that are blind to the impacts to people and persons. These decisions habitually prioritize economic uses and economic gain, particularly in relation to property, and often without consideration of historical culpability for previous decisions, or long-term culpability for future harm. The longitudinal aspects of this contradiction are present in arguments with regard to what constitutes just compensation and the emphasis on market value. Chapters 7 and 9 explore this further.

U.S. law has consistently been a tool to undermine the rights of individuals and groups through violent displacement, genocide, and dispossession, but is also seen as a primary mechanism for harm reduction and the restoration of rights

There are, and have always been, examples where government interference with property rights are seen as permissible when in support

of "societal" goals, or the goals of the powerful (Ely, 2008). This is true when the U.S. government found it permissible to confiscate land from Indigenous land holders, or for example, or in the Civil Rights Act of 1866, which granted equal rights to own property regardless of race, or legislation in the 1960s which allowed women to possess equal rights to marital property. All three of these examples illustrate legislative interference in property rights. The former as a means of undermining Indigenous rights, and the latter as a means of limiting the ability to discriminate in the sale, use, and ownership of properties. None of these legislative acts entirely accomplished their purported ends. Indigenous peoples have worked tirelessly to hold lands and property remains highly segregated across race and gender. However, these attempts to both eradicate and protect the rights of certain citizens did have an impact and made substantive changes to the property regime.

This history of interference with property rights suggests that property law in the United States is at least in part based, and reflects, norms and values that can change (Singer, 2014). As Singer points out, "property is about the social order; it reflects and enables our conception of what it means to live in a free and democratic society" (Singer, 2014, 1299). If property is always a permeable boundary of exclusion and inclusion, rendered differently at different moments in social history, then the law may change in order to bring about, and respond to, shifting understandings of the public good. This is the hope that many people, including ourselves, bring to climate-driven relocations: that the law can change sufficiently enough, and fast enough, to bring about greater climate justice in relocation scenarios so that individuals, families, and communities that need to relocate will be able to do so in a dignified way with minimal disruption. We build on this hope in Chapters 8 and 9 when we discuss novel ways of using existing legal structures and areas where change might lead to improved outcomes.

What all of these legal formations of property have in common, however, is ultimately that legislation reflects an assumption that citizenship within the democratic system should generate the ability to own property, seen as fundamental to democracy (Singer, 2014). As we've shown before, the Constitution protects property from government overreach just as it ensures protections of life and liberty, and the tax system in the United States is set up to encourage owning a home. Legislation like the ones mentioned above prohibits discrimination within the property regime, but does not question its overall good. We trace this protection

back to the philosophical and metaphysical orientations of the founders of the country, and stemming back to the legal, philosophical, and metaphysical orientations of much of Western Europe. Locke organized his view on property through natural law, which he locates as stemming from the relationship between inheritance, Adam, and God as described in the Bible (Locke, 1948).

Cash Ahenakew and colleagues have noted that the institutions that organize modern life make it difficult to "provincialize the West" (Chakrabarty, 2009). They write that "modernity's epistemological trap" (Ahenakwe et al., 2014, 217) is that even struggles against oppressive forces must be legible in the "grammar of modernity that is bound by specific metaphysical choices" (217). Land as property is among these metaphysical choices. A real question for us is, Does the law have the capacity to protect social norms that exist outside of Euro-centric and ethnocentric assumptions? While philosophical and epistemological in origin, these "traps" are not abstract. In Chapters 3 and 6, we discuss the potential dangers of market orientation and what Keeanga-Yamahtta Taylor (2019) calls "predatory inclusion." In these chapters, we encounter the impacts of state-enforced reimagining of traditional territory into real estate and generational wealth into home value. These struggles raise the question of whether or not U.S. law is ever capable of protecting values that exist among other epistemological traditions (though these boundaries are fuzzy), and, if not, whether conditions of extreme climate change and relocation will make these misalignments in value and worldview lead to ongoing harms and climate injustice, during solution-making processes.

Finally, we wonder whether any legal formation is ultimately determined, not by the structure of the law itself, but by the power dynamics of access to the law. The same body of law, for example, that held up the rights of freedom of the individual has been used as a tool for genocide and dispossession. Is it possible, then, to expect the law to protect a different set of actors now? Climate change, erosion, disasters, and development all push relocation. These are sometimes direct, but often indirect. For example, land grabs are a socio-political formation that can be a significant driver of displacement during both development investments and following a disaster. Land grabs can also lack visibility in legal and policy mechanisms (Manda et al., 2019), and be treated as an inevitable part of development (Deininger et al., 2011). If the law protects displacement as an outcome of development, can it be rendered useful to

protect the human rights of displaced communities in Alaska linked to erosion?

Many people, including the authors, look to the law and legal structures to uphold societal goals of mitigating climate change, adapting to climate change, and seeking climate justice. We consider both how the law and legal structures might be used, and also might be changed. This is done despite the fact that we, along with many other academics, affected communities, journalists, and the American public at large, also recognize that the government is largely ineffectual and/or inequitable at preventing, managing, or distributing risk and benefit through law and policy. This lack of effectiveness is due in part to the many levels of government that interact with each other, as well as their interactions with broader societal pressures and histories of inequity.

There is reason to be circumspect of the law's capacity to render justice. The history of internal displacements within the United States includes both climate-induced migrations, such as during the Dust Bowl era of the 1930s, and those driven by socio-economic factors and racializing policies, such as the Great Migration, which spanned a period of over fifty years and resulted in the movement of millions of Black workers and their families (Wikerson, 2010). It also includes Japanese Internment, managed by the War Relocation Authority, which moved over 100,000 people without any compensation for the loss of land and properties (Tulane, 2014; although reparations were later paid to some families). It includes the displacement of African American communities for urban renewal and highway projects (Fullilove, 2005; Ronald & Lindell, 1997), and the repeated displacement of Native American Communities including, more recently, the Bureau of Indian Affairs Urban Relocation Program of the 1950s (Keene, 2017). Indigenous communities in Alaska and Louisiana, described in Chapters 3, 5, and 7, who are facing the choice of relocation now because of repetitive flooding, have homes in precarious places, in part as a result of histories of forced relocations linked to colonial decision-making that moved Tribes to geographically vulnerable landscapes and imposed forms of development in those locations that limited their ability to adapt to changing ecological conditions (Maldonado et al., 2013; Marino, 2015). In these cases, the law largely did not protect people from the risks that pushed relocations as a result of colonial intrusion, or the risks communities incurred because of the outcomes of those intrusions.

There are also, however, important reasons for hope, and inspiration to push for change. While civil rights laws and protections have not eradicated racial injustice within the court system itself (Clair, 2020), they have been used to successfully render justice for plaintiffs bringing suit against discriminatory practices. The following chapters will show that real harms are being done in communities that are facing displacement as a result of relocations that stem from socio-political circumstances and climate change impacts. However, we believe that ongoing legal work to point out the inconsistencies in application of the law, and promoting legal formations that support climate justice for people going through relocation, are critical and may have material impacts, even if these relocations have ongoing disparities and challenges.

Gregory Alexander argues that there is a demonstrable legal obligation to foster the capabilities essential to human flourishing (Alexander, 2009). In other words, the law could be put in service of remedying harms. While historical efforts to do so have often failed, it isn't wasted time to point toward legal possibilities that address systemic injustices which take these historical lessons into account as part of broader strategies geared toward addressing current challenges. This includes legal and property possibilities that repair historical harm. As Singer points out: "… property rights are justified if they are part of a political and economic system that enables every person to become an owner, and if it is not possible for every person to use self-help to enter the property-owning class, then it follows that refusing to share one's property with the poor deprives them of resources needed for human life" (2006, 327).

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