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Takings as a Sociolegal Concept: An Interdisciplinary Examination of Involuntary Property Loss

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Annu. Rev. Law Soc. Sci. 2016. 12:171–97

First published online as a Review in Advance on July 27, 2016

The *Annual Review of Law and Social Science* is online at lawsocsci.annualreviews.org

This article's doi: 10.1146/annurev-lawsocsci-110615-084457

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Keywords

property, dignity takings, dignity restoration, new legal realism, reparations, adverse possession, squatting, eminent domain, dispossession, displacement

Abstract

This review seeks to establish takings as a respected field of sociolegal inquiry. In the legal academy, the term takings has become synonymous with constitutional takings. When defined more broadly, however, a taking is when a person, entity, or state confiscates, destroys, or diminishes rights to property without the informed consent of rights holders. Adopting a more expansive conception of takings lays the groundwork for a robust interdisciplinary conversation about the diverse manifestations and impacts of involuntary property loss, where some of the most valuable contributions are made by people who do not consider themselves property scholars. This review starts the conversation by bringing together the empirical literature on takings published between 2000 and 2015 and scattered in the fields of law, economics, political science, sociology, psychology, geography, and anthropology. Most importantly, a robust understanding of property's multiple values is required to fully comprehend the magnitude of the loss associated with takings, and this creates a space in which scholars can rescue property's political, cultural, emotional, and social value from the sizeable shadow cast by the overly dominant focus on its economic value.

INTRODUCTION

When asked about their property's value, most people would respond by reciting its economic value. But, in reality, property has economic value as well as social, emotional, political, and cultural value. Economically, property is a commodity, and its value is determined by market exchange. Accordingly, property—such as a house owned by a property developer and intended for resale—involves economic gains and losses and is the basis of livelihoods. Socially, property establishes the spatial boundaries in which interpersonal and community engagement occurs (Singer 2000a,b). A home is more than a physical structure; it is a claim to a specific space that places a person in proximity to particular people with whom they are likely to form positive or negative relationships. Additionally, property is one important way that people communicate their social status to the larger community. Emotionally, property has nonmaterial value based upon sentimental attachments (Radin 1982). A childhood home, a wedding ring, and a family heirloom are all typical examples of material things that exist in tandem with emotional landscapes, which suffuse them with significant intangible value. Politically, property serves as a bulwark against state encroachment on individual autonomy (Reich 1964). Although people cannot remodel a public building to reflect their individual style, walk around naked in a federal building, or exclude other citizens from a public park at will, all of these activities are allowed in privately owned property, where citizens have greater autonomy to live the kinds of lives they have reason to value. Also, since states exercise control over bounded territories, without property there is no effective political sovereignty. Culturally, individual and group identities are often closely tied to a particular geographic space, and so it is not uncommon for a neighborhood or city to become an indispensable part of a person's identity. Individual and group identity can also arise from a physical thing like a home, which can reflect a person's unique personality and become intertwined with their sense of self (Radin 1982). In addition, cultural belief systems at times infuse certain pieces of property with deep meaning, rendering these material things sacred.

When sociolegal scholars transgress disciplinary boundaries, they can obtain a more nuanced understanding of property's numerous values. The same piece of property can have different meanings to different people, and the meaning can be singular or multilayered. A house, for instance, could be solely an economic commodity to one person, but to another it could have economic, cultural, and emotional value. When meaning is contested in this way, one set of meanings is not right and the other wrong. Instead, it is important to embrace the full range of meanings. Research conducted within the confines of one discipline, however, is not conducive to this comprehensive approach because different disciplines emphasize different aspects of property's value and have developed literatures that accord with these focal points. For instance, economists typically focus on property's economic value, whereas anthropologists have developed a substantial literature emphasizing its cultural, social, and emotional value.

Using the rich and ample literature concerning involuntary property loss, this review places studies from disparate disciplines and methodological orientations in conversation with one another to shed light on property's multiple values with the hope of rescuing its political, cultural, emotional, and social value from the sizeable shadow cast by the prevalent, singular focus on its economic value. More specifically, this review brings together the empirical literature on involuntary property loss published between 2000 and 2015, and scattered in the fields of law, economics, political science, sociology, psychology, geography, and anthropology.[1] For present purposes,

[1] History is excluded only because there is a significant literature that examines property through a historical lens, and hence this topic warrants a separate article. Also, although the empirical literature explored covers only the last 15 years, the normative and doctrinal work discussed has no date limitations.

discussion is limited to empirical articles (and some books) on involuntary property loss that used qualitative or quantitative data to answer an explicitly stated research question, and that included substantial information about methods of data collection and analysis. Although this review is not intended to be exhaustive, it highlights the key questions that scholars have examined, illustrates how the use of different methodological approaches can more effectively illuminate the answers to these key questions, reports the major findings, and explores opportunities for future research by locating the gaps in the existing literature.

This review has two main goals. The first is to broaden our understanding of takings and convince readers that the widespread phenomenon of involuntary property loss should become a key focus area for sociolegal scholarship. One form of involuntary property loss is constitutional takings. In the legal literature, the term takings is used interchangeably with the term constitutional takings (Epstein 1985), but this review considers takings more broadly. A taking is when a person, entity, or state confiscates, destroys, or diminishes rights to property without the informed consent of rights holders. Takings differ in terms of who is doing the taking, what types of property rights are taken, how those rights are taken, what constitutes lack of consent, who is the person or community experiencing the taking, and what rights these people have to the property. Takings sometimes involve one actor unjustly confiscating the property of another, whereas other times takings involve conflicting property rights (i.e., two different parties with legitimate claims to the same property). Takings can deprive people of dignity, and also confer people with dignity. That is, takings are complex.

The expanded takings framework allows scholars from different disciplines and methodological orientations to enter into a generative dialogue about involuntary property loss. This crucial conversation includes anthropologists using ethnography to study how inheritance laws strip Indian woman of their rights to control and own property (Kamei 2011); economists using regression analysis to measure the economic impact of giving squatters title to the lands they illegally occupy in Peru (Field 2007); political scientists using public opinion surveys to understand the circumstances under which owners of assets gained through Russia's corruption-riddled privatization programs can increase the perceived legitimacy of their ill-gotten gains (Frye 2006); psychologists using controlled experiments to investigate the circumstances under which American citizens believe that constitutional takings are just or unjust (Nadler & Diamond 2008); psychiatrists using semi-structured interviews to document the emotional, social, and cultural consequences of losing one's home and entire community as a result of urban renewal programs (Fullilove 2004); geographers using surveys of households in Northern Mozambique to evaluate the circumstances under which people returning to their lands are most likely to upend post-war peace (Unruh 2001); lawyers using semi-structured interviews and ethnography to chronicle the destructive policies of US family courts, which are penalizing and imprisoning indigent fathers who are withholding child support payments because they are unable to pay (Brito et al. 2015); and historians using archival records to describe the full extent of the looting, burning, and destruction of African American property during and after the Tulsa race riots (Brophy 2016). The one thing that these wildly different topics from various regions and historical periods have in common is that they each involve some form of involuntary property loss. The takings framework allows these researchers to enter into a systematic and important conversation about involuntary property loss although they may not be property scholars.

The second goal of this review is to argue that a focused discussion about involuntary property loss gives critical insight into property's manifold values. A taking brings loss, and fully comprehending the magnitude of the loss requires a robust understanding of the lost property's value. In addition, research shows that people consistently value items they possess more than things they have yet to acquire, often without even realizing this is the case. This phenomenon goes by

different names: Thaler (1980) calls it the endowment effect, Samuelson & Zeckhauser (1988) use the term status quo bias, and Kahneman & Tversky (1984) refer to it as loss aversion. Regardless of the moniker used, for things we possess, value is intensified. Consequently, when property in someone's possession is taken against that person's will, this presents a unique opportunity to understand the property's full value, which includes its market as well as its often unrecognized nonmarket values.

To accomplish these two goals, this review is divided into five sections. The first section discusses new legal realism (NLR), which is an intellectual movement that has championed an interdisciplinary approach to the empirical study of the law. The remaining sections illustrate why adopting NLR's interdisciplinary approach can enrich the conversation about involuntary property loss. The second section reviews the existing empirical literature on the most prominent type of takings—constitutional takings. The third section expands the takings conversation beyond constitutional takings by introducing the concept of a dignity taking and the body of work associated with it. The section shows how scholars from different disciplines have used the idea of a dignity taking to discuss wide-ranging cases of involuntary property loss previously thought to be unrelated. To further develop the idea of takings as a sociolegal concept, the fourth section explores the various mechanisms by which involuntary property loss occurs, including through trespass, families, markets, and natural or man-made disasters. The fifth section highlights areas where future research is necessary.

NEW LEGAL REALISM

NLR is an inclusive intellectual movement initiated a decade ago by a group of sociolegal scholars who were looking for an alternative to the law-and-economics discourse that currently dominates the empirical study of law (Erlanger et al. 2005, Macaulay 2005, Macaulay & Mertz 2013, Mitchell 2005, Nourse & Shaffer 2009, Suchman & Mertz 2010). Moving beyond disciplinary work is one of the defining characteristics of NLR. Scholars that identify with the movement come from a variety of disciplines, such as law, political science, sociology, psychology, economics, geography, anthropology, and history, and there is an ongoing debate about how researchers from different disciplines should address common questions or problems. There are several existing approaches, including disciplinary research ("projects that take place within the boundaries of currently recognized academic disciplines"), multidisciplinary research ("different academic disciplines that relate to a shared goal, but with multiple disciplinary objectives. Participants exchange knowledge, but they do not aim to cross subject boundaries to create new integrative knowledge and theory"), interdisciplinary research ("disciplines integrate disciplinary knowledge to create new knowledge and theory and achieve a common research goal"), and transdisciplinary research ("academic researchers from different unrelated disciplines as well as nonacademic participants . . . create new knowledge and theory and research a common question") (Tress et al. 2005, p. 488). Without taking a position about whether multidisciplinary, interdisciplinary, or transdisciplinary research is best, this review encourages scholars who think about involuntary property loss to look beyond their chosen disciplines and favored methodologies.

Disciplinary as well as methodological diversity are pivotal tenets of NLR (Erlanger et al. 2005). Because a foundational principle of NLR is that a scholar's research question should drive her chosen methodology, not vice versa, it makes room for qualitative methods like interviews, ethnography, content analysis, case study, and discourse analysis, as well as quantitative methods, including statistical analysis, modeling, structured surveys, and experiments. Like its predecessor—legal realism (Cohen 1931, Kalman 1986, Llewellyn 1931)—NLR emphasizes the centrality of facts and empirical evidence and posits that doctrine and formal laws are not enough to arbitrate

legal disputes and answer legal questions. But, the new realists are actually involved in generating sophisticated empirical evidence in a variety of areas, instead of just encouraging its use or generating makeshift evidence primarily in the area of judging, as did the original realists (Schlegel 1979). NLR stands in the gap, translating empirical social science for legal professionals while also translating law for social scientists (Erlanger et al. 2005).

Another principle of NLR is that interdisciplinary research should be conducted from the bottom up as well as from the top down (Erlanger et al. 2005). Bottom-up research (also known as law in action) involves reaching beyond legal documents and adopting methods that allow scholars to see how the law actually works in practice. It also requires scholars to hear from the people most affected by the law or policy in question, and to amplify voices that have traditionally been silenced in discourse and in practice. In contrast, top-down research (also known as law in the books) focuses on analyzing the formal documents and policies used to create, enforce, and interpret the law. NLR posits that the most holistic way to explore legal phenomena is by embracing both parts of this two-sided approach. As the following sections show, NLR can contribute to cross-disciplinary conversations about takings, just as these conversations can contribute to the development of NLR.

CONSTITUTIONAL TAKINGS

There are many categories of takings. One is constitutional takings, which includes both physical and regulatory takings. Most constitutional democracies allow the state to take property so long as it is for a public use or purpose and the state pays just, fair, or appropriate compensation (Van der Walt 1999). There is a significant legal literature on the topic, and the main debates revolve around the questions of what constitutes a public purpose and what factors should be included or excluded in calculations of just compensation (Epstein 1985, Garnett 2006, Michelman 1967, Radin 1982, Rose 1996). In the area of regulatory takings, scholars have debated the point at which a law or regulation that drastically diminishes a property's economic value crosses the line and becomes a constitutional taking (Byrne 1995, Fischel 1995, Miceli & Segerson 1994). There are similar discussions about when regulatory action activates the takings clauses in investment treaties (Cohen & Radnoff 1998, Dearden 1995). All these debates are most often based on doctrinal analysis and normative propositions with no bottom-up, empirical investigation of what citizens view as a legitimate public purpose, how they think just compensation should be calculated, and when they believe regulation crosses the line. But our understanding of constitutional takings is deeply enriched once we identify, analyze, and have a coherent discussion about the empirical literature on constitutional takings from different disciplines.

There has been much empirical work examining the controversial US Supreme Court decision in *Kelo v. City of New London*, which allows states to use their eminent domain powers to take private property without owner consent and give it to private-sector developers, so long as the state pays just compensation and the planned development has the potential to generate economic growth for the city. *Kelo* caused uproar in the legal academy and the media, as well as in national and state legislatures. A review of various public opinion polls showed that most people surveyed disliked the *Kelo* decision despite their party affiliation, race, socioeconomic status, and level of educational attainment (Nadler et al. 2008). *Kelo*'s controversial expansion of the Fifth Amendment's public purpose requirement caused 46 states to pass legislation or constitutional amendments restricting their recently expanded eminent domain powers. Empirical analyses conducted by a pair of political scientists and an economist trained in law have attempted to account for variation in the substance of the various statutes passed.

Through multivariate tests of several leading theories, Sharp & Haider-Markel (2008) found that interest groups, the perception of prior eminent domain abuse, and reform origination (i.e.,

voter-initiated ballots versus legislative reform) explained significant variation in state-level responses to *Kelo*, whereas citizens' ideological orientation, crowded legislative agendas, and a lapsed year due to legislatures not being in session did not. Using logistic regression, Morriss (2009) conducted a more refined study, which revealed that substantive restrictions—those that actually constrained the state's power to use eminent domain on paper and in practice—were more likely to be enacted in states with higher economic growth, less spending and revenue restrictions, and a Republican-dominated legislature with a Democratic governor. The electorate's overall ideology concerning environmental, liberal, or conservative causes, as well as higher levels of inequality and higher percentages of African Americans in the state's population, had no impact on the type of response legislatures adopted. Although the two studies used different quantitative approaches and the authors had different disciplinary starting points, one conclusion emerges from both studies: The ideological orientation of the electorate did not impact the nature of the legislative response. This is surprising because conservative groups like the Castle Coalition spearheaded the state-level legislative responses to *Kelo*; nevertheless, it seems that their message resonated with liberals and conservatives alike. But if it was not ideology driving the backlash, then what was it?

To better understand the specific factors at play, Nadler & Diamond (2008) use experiments and a follow-up survey to investigate the circumstances under which average citizens believe that constitutional takings are just or unjust. They find that what matters even more than the purpose of the taking is how long the person owned the property, and the degree of autonomy owners had in the process. Similarly, Becher (2014) uses mixed methods to explore how people in Philadelphia decide whether the city's use of eminent domain is legitimate or illegitimate. To understand the big picture, she compiled a census of 7,000 properties that the city took using eminent domain over 16 years and analyzed their qualities compared with the city's 550,000 private properties. Then, for a more fine-grained analysis of the issue, she interviewed various stakeholders. Becher finds that most often dissatisfaction arises when decision makers do not abide by the complex logic of "property as investment," which values and rewards a broad range of economic, emotional, and temporal investments made by owners, renters, and neighbors. She also finds that claims about the sacredness of property rights resonate with conservatives and liberals alike, but these arguments are deployed only after conflict develops over a specific taking. So, what makes constitutional takings legitimate or illegitimate in the popular imagination? Becher, a sociologist, uses mixed methods to develop an intricate and multilayered hypothesis, whereas Nadler & Diamond, trained in law and psychology, test discrete hypotheses and isolate causation using quantitative methods. It would be productive if Nadler & Diamond tested Becher's hypotheses using their experimental methods. But this type of productive, intellectual leapfrogging happens only when takings scholars are in conversation with one another; this is why NLR and its call for more interdisciplinary, empirical work is so important.

In addition to exploring popular reactions to eminent domain, it is important to understand the practical impacts of constitutional takings jurisprudence. *Nollan v. California Coastal Commission* and *Dolan v. City of Tigard* are the leading Supreme Court decisions concerning exactions, which are the conditions and payments that municipalities impose on developers who want to obtain development permits and other approvals. In deciding when exactions become subject to the takings clause, the Court transformed local land use policy and practice by creating a new standard: Exactions must bear an essential nexus and be roughly proportional to the development's impact. Without empirical evidence about the impact of *Nollan* and *Dolan*, legal scholars have been relegated to speculation, and one scholar assumes that "given the variable political, economic, and environmental contexts of local land use regulation, the Court's exactions doctrine is unlikely to achieve its apparent purposes of protecting robust property rights and restraining municipalities' tendencies to overregulate" (Fenster 2004, p. 652). But only by

empirically testing the Court decisions' effect on regulation can we more clearly understand the impacts of the Supreme Court's takings jurisprudence.

Using surveys, interviews, archival research, and case studies, Carlson & Pollak (2001) perform a comprehensive, multi-method inquiry into how urban planners—who create and manage the exactions levied by various California municipalities—have responded to *Nollan* and *Dolan*. They found that once these urban planners had a discrete legal standard to follow, they adjusted their best practices to ensure legal compliance and avoid legal disputes. Many of these planners now prepare reports to justify and document their rationale for the exactions, and thus the majority of planners surveyed viewed the court decisions as establishing good planning practices rather than as unduly narrowing their discretionary powers. Also, in communities with large amounts of developable land, planners reevaluated their policies in light of the new standard and concluded that higher fees were justified because, without a discrete legal standard consecrated by the Supreme Court, they were cautiously undercharging. So the empirical evidence suggests that, in certain circumstances, the problem was too much caution and not overregulation, as certain scholars assumed (Fenster 2004). If, in the NLR tradition, legal scholars rethought their normative and doctrinal positions in light of empirical evidence such as this, more rigorous legal analysis would result.

There are other empirical analyses of the impact of constitutional takings; namely, there is a significant literature on the racialized impacts of urban renewal (Avila & Rose 2009, Gotham 2001, Sugrue 2014). After the Supreme Court decided that eliminating blight was a constitutionally acceptable public purpose in *Berman v. Parker*, many local governments began using their powers of eminent domain to condemn and demolish entire communities located in America's inner cities. African Americans were most severely impacted, and the damage done was not only economic but also social, emotional, cultural, and political. In her acclaimed article, "Property and Personhood," Radin (1982) argues that people often develop sentimental attachments to property, which gives it considerable intangible value and allows it to become bound up with their identities. As a result, depriving people of this property can have serious emotional and cultural consequences. Mindy Fullilove—a board-certified psychiatrist and public health professor at Columbia—provided robust empirical documentation of the emotional, social, and cultural consequences of losing one's home and entire community, validating Radin's arguments. Through in-depth interviews with people subjected to urban renewal during the 1950s and 1960s, Fullilove found that these displaced populations often suffered from what she calls root shock: "the traumatic stress reaction to the destruction of all or part of one's emotional ecosystem" (Fullilove 2004, p. 11). Root shock can result from urban renewal, as well as from other forms of state-led displacement, natural disasters, war or conflict, and the simmering effects of gentrification. Fullilove finds that when people have been displaced from their homes and property, this can create psychological trauma; anxiety; destabilized anchoring relationships; and weakened communities more vulnerable to negative forces, chronic illness, and even death. More significantly, these consequences can extend to multiple generations of people.

In sum, it is only through interdisciplinary examination that we can begin to fully understand the psychological, professional, political, racial, social, and economic impacts of constitutional takings. An interdisciplinary examination of constitutional takings also brings to light the value of property, which goes well beyond its economic worth. In *Kelo*, despite the fact that the state paid just compensation for the condemned properties, legislators and citizens were nevertheless united in their disdain for the decision. People of all ideological orientations were averse to giving the state the power to take someone's house to promote economic development because this would undermine the tangible and intangible investments it took to transform those physical houses into homes, which are often saturated with emotional and cultural value. In the area of exactions,

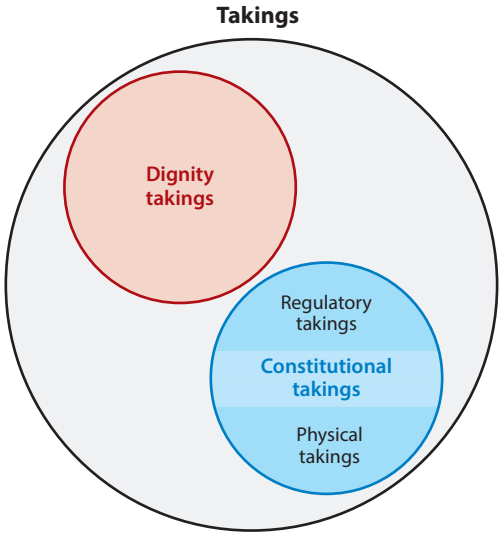

Figure 1

Different types of takings.

property serves as a buffer against the state, foregrounding property's political value. The Supreme Court standard established by *Nollan* and *Dolan* draws a line that helps the urban planners who create exactions understand when they have exceeded their power to negotiate a legally acceptable economic quid pro quo and have instead encroached upon an owner's freedom to develop her property as she sees fit. The research on urban renewal emphasizes property's social, emotional, and cultural values because the demolition of physical communities destroyed important social bonds, along with the emotional and cultural investments made in the homes and neighborhoods dismantled. This brief review of the empirical literature on constitutional takings exhibits the diverse values of property.

DIGNITY TAKINGS

Although there are different mechanisms by which takings occur (see **Figure 1**), in the legal academy, the scholarship on involuntary property loss has been dominated by discussions of constitutional takings. Consequently, I developed the concept of dignity takings to expand the conversation and encourage scholars to systematically identify and explore instances where individuals or communities are deprived of their property as well as their dignity. In my book, *We Want What's Ours: Learning from South Africa's Land Restitution Program* (Atuahene 2014b), I use the South African case to empirically develop the concept of a dignity taking, which I define as when a state directly or indirectly destroys property or confiscates various property rights from owners or occupiers and the intentional or unintentional outcome is dehumanization or infantilization (Atuahene 2014a, 2016). To qualify as a dignity taking, there must be involuntary property loss as well as evidence of the intentional or unintentional dehumanization (the failure to recognize an individual's or group's humanity) or infantilization (the restriction of an individual's or group's autonomy based on the failure to recognize and respect their full capacity to reason) of dispossessed or displaced individuals or groups, which scholars can prove through top-down or bottom-up empirical investigation. In the NLR tradition, statements of authorities, court

records, laws, and policy documents constitute top-down evidence, whereas interviews, oral histories, newspaper stories, diaries, and meeting transcripts that reflect the views of dispossessed people serve as bottom-up evidence. The dignity takings framework accomplishes four primary objectives: (*a*) It moves beyond the dominant yet narrow dialogue around constitutional takings and provides a vocabulary to describe and analyze the more egregious takings that vulnerable populations have routinely been subjected to across the globe and in different historical periods; (*b*) it stitches together events of property dispossession that were previously thought unrelated; (*c*) it allows people who do not consider themselves property scholars to participate in a generative conversation about involuntary property loss; and (*d*) it captures the material impacts of property confiscation as well as the intangible ones that, in public discourse, have become invisible.

In *We Want What's Ours*, I argue that when there has been a dignity taking, the remedy must move from mere reparations (compensation for material things confiscated) to dignity restoration, which is a remedy that seeks to provide dispossessed individuals and communities with material compensation through processes that affirm their humanity and reinforce their agency (Atuahene 2009; 2011; 2014a,b; 2016). The concept of dignity restoration provides a language and space to discuss how to best remedy a dignity taking, while reimagining the purpose and potential of redress. Dignity takings and dignity restoration are concepts birthed through labor-intensive data collection and analysis, including 150 interviews conducted with South Africans whom colonial and apartheid authorities forcibly removed from their properties, as well as nine months of participant observation within the South African Land Restitution Commission (see **Table 1**).

In a *Law & Social Inquiry* symposium, several scholars from various disciplines have moved beyond the South African case to empirically examine and extend the concepts using a wide array of other cases, including the separation of Hopi people from their sacred lands (Richland 2016); the dispossession and displacement of Israel's Arab citizens (Kedar 2016); the looting, burning, and destruction of African American property during and after the Tulsa race riots (Brophy 2016); the taking of Jewish property in France and the Netherlands during World War II (Veraart 2016); the forced evictions in China intended to create space for its rapidly expanding cities (Pils 2016); the racially restrictive covenants in the United States (Rose 2016); the property taken from the loyalists after the American Revolution (Hulsebosch 2016); and the requirement that all married women give their property to their husbands under the laws of coverture (Hartog 2016). Through

Table 1 Dignity takings versus dignity restoration—the South African case

	Dignity taking: the harm	Dignity restoration: the remedy
Property	Confiscation of ownership or tenancy rights	Return of confiscated property, provision of alternative property, financial compensation, or other equitable remedies
Equal human worth	Dehumanization—failure to recognize an individual's or group's humanity	Establish that dispossessed people are respected members of the political community with voices capable of being heard
Autonomy as independence	Infantilization—restriction of an individual's or group's autonomy based on the failure to recognize and respect their full capacity to reason	Give dispossessed people agency in the process, allowing them to have a significant role in deciding how they are made whole
Autonomy as interdependence	Community destruction—community members are dehumanized or infantilized, involuntarily uprooted, and deprived of the social and emotional ties that define and sustain them	Provide resources and opportunities for uprooted communities to meaningfully reconnect through the restorative process

rigorous empirical work, these scholars have greatly improved and clarified the dignity takings and dignity restoration frameworks (Atuahene 2016).

The case studies on takings from Arabs in Israel and the Hopi people in the United States underscore the origins of many dignity takings, which is the subjective determination of what constitutes property and who owns it (Kedar 2016, Richland 2016). By claiming that native peoples never owned the land in the first place, property confiscation is rendered invisible in a game of legal smoke and mirrors played by many conquering nations. The experiences of the Hopi also illuminate the iterative potential of dignity takings because they were subject to multiple takings in the gradual erosion of their property rights (Richland 2016). In addition, scholars have pointed out the limits of the dignity takings framework. A dignity taking has two necessary elements: (*a*) loss of property and (*b*) loss of dignity (defined as dehumanization or infantilization). Consequently, as highlighted by the case of racially restrictive covenants (Rose 2016), dignity takings apply only to the confiscation of property and not to the taking of an opportunity to acquire property. Also, from the case study on coverture—which is a legal doctrine dismantled during the twentieth century that prohibited a wife from owning property or entering into contracts in her own name—we come to understand that institutions like marriage can be simultaneously dignity degrading and dignity enhancing (Atuahene 2016, Hartog 2016). Without close examination, a dignity taking can quietly lurk behind this duality, hiding in plain sight. As the case of coverture shows, although the dignity takings framework can bring conceptual clarity to messy realities, this is not always true. While it may be accurate to describe a wife's extinguished property rights as a dignity taking, the larger, more invidious problem is the invisible, constant, and normalized oppression of women.

Scholars have also elaborated on dignity restoration, which is about putting dispossessed individuals and groups in the driver's seat and allowing them to have significant say in how they are made whole. Dignity restoration is a remedy for dignity takings, but not exclusively so. It is also a remedy for other types of takings. Also, because dignity takings most often occur alongside a slew of non-property-related dignity deprivations, such as rape, detainment, death, disappearance, and violence, it is crucial that dignity restoration occurs in tandem with other measures of redress. If not, property confiscation will be exalted over other types of suffering, and those who never had an opportunity to own property in the first place will be unjustly disadvantaged.

In addition to the *Law & Social Inquiry* symposium, there will be a second symposium in the *Chicago-Kent Law Review* in which anthropologists, ethnomusicologists, lawyers, sociologists, political scientists, historians, and education scholars will use disparate cases to empirically explore whether a dignity taking has occurred and to assess what type of dignity restoration may be required. Contributors will use their discipline's methodological tools and analytic frameworks to examine the two concepts in contexts such as criminal punishment, labor relations, war, and collective property. First, scholars in the symposium will clarify which forms of criminal punishment qualify as a dignity taking. The cases explored are the hidden sentences of criminal punishment (Kaiser 2017), criminal punishment in the Massachusetts Bay Colony (Acevedo 2017), incarceration in modern America (Alexander & Miller 2017), the Chicago police torture reparations ordinance (Baer 2017), and gang injunctions in American cities (Yuille 2017). Second, scholars participating in the symposium also investigate how dignity takings arise in the context of labor relations. During chattel slavery, slaveholders stole the wages of African Americans (Henderson 2017), and it is not uncommon today for unscrupulous employers to steal the wages of undocumented citizens by providing only partial payment (Rosado Marzán 2017). The symposium also explores when and how employers subject foreign-born workers to dangerous working conditions that lead to bodily injuries and fatalities (Rathod & Nadas 2017). Third, war and political conflict have caused massive dispossession all over the world. Colombia's ongoing civil war has displaced millions of its citizens (Guzmán-Rodríguez 2017); civilian property has been damaged and

destroyed in the West Bank and Gaza Strip by the Israeli military (Bachar 2017); and Iraqi Kurds have been subjected to multiple waves of violent, state-led displacement under both Hussein's Baath regime and ISIS (Albert 2017). Fourth, people have been deprived of important collective property through various mechanisms. This is evident in the case of the closure of King-Drew hospital in Los Angeles (Ossei-Owusu 2017), the shuttering of gay bathhouses in New York at the height of the HIV/AIDS epidemic (Engel & Lyle 2017), the controversial closure of public schools in Chicago (Shaw 2017), the demolition of Japantown in Sacramento due to urban renewal (Joo 2017), and the unconsented taking and transformation of the Native American image into a savage mascot used by many sports teams (Phillips 2017). The concepts of dignity takings and dignity restoration were created through a bottom-up analysis of South Africa's land restitution program, and these concepts are now being revised and strengthened through case-specific, empirical interrogation. This interdisciplinary, multi-method approach to building a theoretical framework is a nice example of NLR at work.

In sum, the very purpose of the dignity takings framework is to highlight the importance of reaching beyond the economic value of property to investigate the role of dignity. Likewise, dignity restoration is about providing compensation for the economic losses as well as the dignity harms involved. Like with urban renewal, social, cultural, and emotional damage occurs when a dignity taking entails the destruction of an entire community and the various intangible investments made in those spaces. Dignity takings can also entail estrangement from buildings and artifacts that constitute one's identity as well as other physical things that have sentimental value, which can cause emotional damage. Additionally, when individuals or entities confiscate property, dispossessed populations are deprived of an important political buffer against state incursions on their autonomy. Consequently, fully understanding the harms implicated in a dignity taking requires recognition of property's multiple values.

TAKINGS EFFECTED THROUGH VARIOUS MECHANISMS

In addition to constitutional takings and dignity takings, there are a variety of other types of takings effected through various mechanisms. Based on a close examination of the empirical articles I identified for this review, I discovered four specific mechanisms: trespass, families, markets, and natural or man-made disasters. The goal of this section is not to provide a comprehensive list of all types of takings; rather, the goal is to bring attention to the work on involuntary property loss that scholars from various disciplines have completed using diverse methods and, more importantly, to put the articles in conversation with each other to better understand how each mechanism operates. Although the subject matter examined in some of the following articles may qualify as a dignity taking, the authors did not make this argument, and so it is up to future researchers to make this determination through empirical investigation.

Takings by Trespass

Squatting is the illegal occupation of property, and thus squatters are performing takings. Many studies have examined the impacts of formalizing illegal property arrangements by giving squatters title to the lands upon which they are trespassing, and Hernando de Soto (1989, 2000) has been a controversial yet dominant voice in this debate. He argues that capitalism is flourishing in the West but failing everywhere else because people have formal legal title to their property in the West, whereas in the developing world, many people are squatting on land they do not own. These assets are dead capital because they are trapped in the informal sector where people cannot safely use them as collateral for productive investments. De Soto's call for massive titling programs has

spurred a large body of work about not only the economic impacts of giving squatters title to the lands they occupy, but also the emotional, social, political, and cultural impacts of titling.

In terms of economic impacts, some scholars have found that titling improves tenure security (Do & Iyer 2008, Gilbert 2002, Schweigert 2006, Varley 1987), spurs investment (Alston et al. 1996, Deininger & Ali 2008, Field 2005), improves productivity (Do & Iyer 2008, Field 2007, Schweigert 2006), and increases property values (Jimenez 1982, Lanjouw & Levy 2002), whereas others have found that these economic impacts do not exist, especially where informal property rights serve as an effective substitute for formal rights (Besley 1995, Gilbert 2002, Jacoby & Minten 2007, Lanjouw & Levy 2002, Omura 2008, Payne et al. 2009, Van Tassel 2004, Ward et al. 2011, Williamson & Kerekes 2011). To explore how tenure security is obtained without title, Van Gelder (2010) uses interviews and field observations in a Buenos Aires squatter settlement. He finds that although this informal settlement initially resisted the state, in the settlement's gradual march toward legality, it alternated strategies of noncompliance and compliance. Incrementally, informal rules were replaced by formal law, the state granted the infrastructure and services so desperately needed, the settlement's legitimacy increased, and tenure became more secure, even though the squatters never received formal titles.

Moving beyond titling's economic impacts, scholars have also explored the social, political, emotional, and cultural impacts of titling programs on women. The literature details how women's land rights have been protected and undermined in various titling processes and cautions that there is no one right way to protect the interests of women; instead, gender protective efforts should be context specific (Deere & Leon 2011, Joireman 2008, Varley 2010). In addition, studies have found that the tenure security achieved through titling led to increased self-esteem and expanded civic involvement (Ward et al. 2011). But a study of squatters-cum-owners found that titling did not promote residential mobility and the social benefits entailed therein. Researchers conducted interviews within eight squatter settlements in Bogotá and Mexico City in the 1970s (Gilbert & Ward 1985), and Ward (2012) conducted a restudy of 300 of the occupants. Ward found that more than 80% of the original families are still living on the lots 30 years later, and the densities of the lots have increased because they are now shared in Mexico with adult children and in Bogotá with both kin and renters. The lack of residential mobility is explained by inheritance expectations and high lot prices, which make selling difficult.

Another intangible impact of receiving title is its effect on the former squatters' ideologies. Due to exogenous circumstances, some squatters in a Buenos Aires settlement received title, while some of their neighbors did not. Using this natural experiment, Di Tella et al. (2007) found that those with titles developed market-friendly beliefs, whereas people without titles did not. Although the respondents are neighbors, have similar life experiences, and share information networks, those who received title are approximately 34% more likely to have materialist beliefs (such as that money is important for happiness) and approximately 30% more likely to have individualist beliefs (such as that people can succeed on their own). In contrast, those without land title are approximately 17% more likely to believe that people cannot be trusted. Even though it is not clear exactly why these beliefs developed, it is clear that transforming squatters into owners can affect their worldviews.

In addition to the impact of titling on self-esteem, civic involvement, residential mobility, and worldviews, squatting can improve democracy (Atuahene 2006). Since squatters are by definition breaking the law, it is easy to view them as miscreants who are not contributing to society, but Peñalver & Katyal (2010) counterintuitively argue that squatters are providing a great public service by actually improving democracy. They argue that the law of ownership prioritizes stability and predictability and protects preexisting property arrangements, resulting in a built-in status quo bias, which can morph into a liability when it causes property law to become irrelevant and

ineffective because it is resistant to changing circumstances. Although people can change the status quo through the democratic process, this is most likely when there is a politically empowered, organized group seeking change. When those who want change are unorganized, then property outlaws (people who intentionally disobey property laws) can buttress democracy and improve the law by highlighting illegitimate, outdated, or unclear laws for authorities. Although Peñalver & Katyal (2010) provide principled normative arguments for how squatters and other property outlaws can foment change, they do not empirically confirm their intuitions about the effects of squatters on authorities' perceptions, and nor have other scholars.

There have been a plethora of studies on titling, and nearly all agree on one point: The impact of titling is highly context specific. Generalized declarations that titling is good or bad are misguided, which is why NLR encourages caution and attention to context when translating empirical data for various audiences. After considering their specific circumstances, states that choose to convert squatters from trespassers to owners can use various mechanisms. Some squatters have occupied public lands, which many states have transferred to them at no cost. But other squatters have occupied private lands, and so states have either purchased the occupied land from owners in the open market, used their eminent domain powers and paid landowners just compensation to acquire the lands occupied, or relied upon the doctrine of adverse possession to acquire the land.

Adverse possession is a legal doctrine that transfers valid title from owner to trespasser, if the trespasser fulfills certain common law requirements, such as exclusively occupying the property without permission and in an open manner for the uninterrupted statutory period. Adverse possession is a type of involuntary property loss and thus is properly considered a taking. As encouraged by NLR, adverse possession is an area in which scholars doing empirical, normative, and doctrinal work have been in productive conversation with each other. For example, Stake (2000) used findings from experimental psychology to argue that the adverse possession doctrine correctly places the loss on parties not in occupation because they will suffer the least psychologically, and Radley-Gardner (2005) used archival evidence to trace the origins of the *animus possidendi* doctrine, which requires the adverse possessor to occupy the property with the intention of excluding the owner and others. The most generative conversation, however, was started by Helmholz (1983), who empirically explored the hostility requirement of adverse possession. Under the common law, although adverse possessors cannot have the permission of the owner, it does not matter whether the adverse possessor holds the land in bad faith (she knows that the property is not hers but possesses it anyway) or in good faith (she mistakenly occupies another's land). That is, her subjective intent is irrelevant. Nevertheless, empirical analysis shows that the law on the books is markedly different than the law in practice. Helmholz (1983) conducted a survey of all reported adverse possession cases published since 1966 and used court records to show that judges actually do consider subjective intent when it can be proven or inferred from the evidence and systematically prefer good faith over bad faith possessors. This impressive study reinvigorated scholarly discussion about adverse possession and resurrected the topic from the cobweb-festooned intellectual basement where it had for decades kept residence.

Legal scholars writing within the law-and-economics tradition have debated how an adverse possessor's state of mind should effect the case outcome (Epstein 1986, Fennell 2006, Miceli & Sirmans 1995). Merrill (1984) proposed that courts use a liability rule for bad faith adverse possessors—forcing them to pay for the land they adversely possess—but suggested that good faith adverse possessors be protected by a property rule, giving them title without payment. Merrill stated that he would not have suggested altering the age-old doctrine of adverse possession but for the strong empirical evidence put forth by Helmholz about what judges are actually doing. That is, his liability rule proposal is an alternative to the habitual judicial disregard of common

law doctrine. So here we have normative and doctrinal scholars responding to empirical evidence to improve the theory and practice of law, just as NLR intends.

Also as intended by NLR, economists and lawyers have engaged in an interdisciplinary examination of the statutory period required to adversely possess land. There is a tradeoff: Shorter statutes guard current possessors against claims from past owners, and longer statutes reduce monitoring costs. Ellickson's (1986) utilitarian analysis of the optimal statutory period for adverse possession delineated the costs involved for landowners, adverse possessors, and future transferees of land as well as litigation costs. Based on his intellectually sound, but empirically untested model, he concluded that utilitarian analysis supports the current trend of shortening the statutory period because various technologies have reduced landowner monitoring costs and transferee inspections costs. The very same year that Ellickson (1986) published his article, Netter et al. (1986) were reaching beyond normative assessments of what statutory period states should adopt to empirically explore the factors that determined the actual statutory period chosen at the time of statehood.

Based on 19 states with available data, Netter et al. (1986) found that states with higher property values had lower statute lengths, indicating that the certainty of title that comes with shorter statutory periods becomes more important as the economic stakes increase. They also found that, as the proxy for monitoring costs (population density) increased, the statute length increased to counter these elevated monitoring costs. In a similar project, Baker et al. (2001) attempted to explain the difference in statutory periods for adverse possession, using 1916 as the measuring year to compare data from 46 states. They found that states with higher farm output and lower urban growth rates had longer statutes of limitations, whereas states with more efficient legal systems had shorter statutes.

Most importantly, a review of the empirical work on trespass-related takings provides insight into property's compound values. Economists focus on property's economic value, finding that "the groups that codified the [adverse possession] laws responded to economic forces in setting the statute of limitations" (Netter et al. 1986, p. 225) and that titling sometimes results in increased productivity, investment, and property values. But, the literature on trespass also reveals property's noneconomic values. Politically, squatters may improve democracy. Also, titling provides protection from political backlash because, although the state can remove squatters at will, owners have more protection. Property's emotional, social, and political value is demonstrated by the changed worldviews, higher self-esteem, and expanded civic involvement that result when people become owners of the lands they once illegally occupied. Additionally, achieving tenure security without title requires thick social bonds and substantial social coordination, as demonstrated by the Argentine case discussed. Thus, by placing the empirical work on trespass in dialogue, property's manifold values emerge.

Takings by Families

Families are often celebrated because they are a source of care, support, and stability, but it is less often noted that family conflicts are a major mechanism through which people are displaced from their homes and other property. Widows are a group particularly vulnerable to displacement, especially in cultures where women leave their homes or villages to join their husbands' families. Quantitative methods can best establish the scope of dispossession, and a nationally representative survey of 5,342 rural households in Zambia painted a nuanced and detailed picture of the problem. It found that one-third of widows controlled less than half of the land they had prior to their husbands' deaths, but one-fourth controlled at least as much or even more land as when their husbands were alive (Chapoto et al. 2011). Widows from relatively wealthy households, as well as younger widows, lost the most land. In contrast, qualitative methods help us to understand why and

how families determine who does and does not belong on family lands. In South Asia, HIV-positive widows are often rendered outcasts who are unwanted and no longer belong. Swaminathan et al. (2009) described how in-laws evict the widows from their marital homes outright or indirectly by publicizing their HIV status to the extended family and community, prompting the disgraced widow to leave in shame.

Another mechanism by which women are deprived of property is through formal and informal inheritance laws. In the face of gender inequality and customary laws that disfavor them, the Kabui Naga women of northeastern India often do not take the position of passive victim, but rather they resist by doing everything in their power to either creatively use the law for their own benefit or mitigate its negative impacts (Kamei 2011). Kabui Naga women, as well as women from all over the world, have developed coping mechanisms to blunt the effects of inheritance laws that undermine their right to control property. The question is, how does a nation once and for all reform inheritance laws that discriminate against women and thereby make a decisive move toward gender equality? Rosenblum's (2015) empirical analysis of inheritance patterns in India is telling. Most states in India give only sons the right to inherit their parents' ancestral lands, but in 2005, five states gave daughters the same rights. Using a difference-of-difference analysis, Rosenblum found that although the reforms had no effect on fertility rates, they increased female child mortality as parents reduced investment in their daughters' health to maximize the bequests given to their sons. This detrimental outcome was clearly not what policy makers intended. Also, taken out of context, Rosenblum's analysis could hinder inheritance law reform, so this is a prime example of why NLR insists upon careful translation of empirical work for policy makers.

In addition to discriminatory inheritance laws, the geographic dispersion of families can also be a catalyst for land deprivation. An ethnography done in Malawi demonstrates how acrimonious family quarrels sometimes lead one segment of the matrilineal family to move to a different area, relinquishing family lands in the process. Those who migrate become strangers who no longer belong on their ancestral land (Peters 2002). Likewise, familial dispersion has been one driving force behind involuntary black land loss in America's rural South (Mitchell 2005). The mass exodus of African Americans from the South during the Great Migration, along with the low incidence of wills in the black community, has resulted in family land that is owned by several geographically dispersed family members as tenants in common. If one family member wants to cash out and the family cannot afford a buyout, then the entire parcel of land is sold in a judicial sale (often for below its market value) and the proceeds divided among the joint owners. This pattern of selling family land at fire sale prices is one reason why African Americans currently own only 10% of the rural land they once owned in 1910 (Mitchell 2005). Involuntary black land loss in the American south has also been caused by racial violence, discriminatory practices of the US Department of Agriculture, discriminatory taxing that results in tax foreclosure, and the replacement of small farm owners with larger conglomerates (Kahrl 2012, 2017; Mitchell 2001, 2005).

Although family dispersal and disagreement can be a powerful mechanism of displacement, it is important to note that family solidarity can prevent dispossession. In the early stages of China's market reform, kin solidarity and trust played an important role in protecting private entrepreneurs' property rights (Peng 2004), just as strong kinship networks in rural China currently protect villagers from governmental takings (Zhang & Zhao 2014). In fact, in the Chinese village of Wukan, communal resistance to land grabs organized around extended kinship networks has had significant success (He & Xue 2014). But when describing family-related outcomes, complicated is often a more appropriate adjective than successful.

In the Santal community located in eastern India, the state has failed to service the community's needs, so it has come to more heavily rely on its customary practices and institutions, which has curtailed women's right to inherit land (Rao 2005). But kin elders sometimes assist women

in bringing their land and other grievances to formal courts. In other contexts, formal courts can worsen rather than facilitate family-based justice. In US family courts, the system is set up to penalize "dead beat" dads who do not want to pay child support, but instead it often ends up penalizing and imprisoning indigent fathers who have no means to pay (Brito et al. 2015). Depending on the context, well-intentioned courts can be a safe haven or a liability, revealing the complexities of family and culture.

It is no coincidence that the empirical literature on family-related takings is written principally by anthropologists and sociologists rather than economists, and thus the cultural and social value of property is accentuated. The literature indicates that family land serves several cultural and social functions: It connects future generations with past ones, serves as the basis of important cultural traditions, and is the convening place where family and community relationships are solidified. As seen in Malawi, once people move away, they lose access to family lands and become strangers who are no longer part of the community's social fabric. Or, as in the American South, once people move away, a family's ability to maintain control of its land is weakened and a family of geographically dispersed strangers often lacks the unity necessary to save the family land. The literature also shows us that family is complicated. Families can take land, and widows are particularly vulnerable to displacement. But families also defend land against expropriation by the state or other outsiders, as witnessed in China. In a similar paradox, cultural norms disadvantage women but also provide avenues for redress, as demonstrated by the Santal community in India. The NLR assertion that context matters greatly holds true in the area of family-related takings, so totalizing assumptions are unwise.

Takings by Markets

The market is another mechanism by which individuals and communities are involuntarily ousted from their properties. In market-driven displacement, voluntariness is often at issue because—although people may have consented to a market transaction—they often did not consent to the discriminatory policies, deceit, theft, and illegal pressure tactics in which the transaction is embedded. Also, their poverty may have undermined their ability to give or withhold consent for a particular transaction. A prime example is the 2006 foreclosure crisis ignited by the explosion of subprime loans. Mortgages marketed as subprime (cumulative loan-to-value ratio of 90% or more) accounted for 10% of all originations in 2000 but over 50% in 2006 (Gerardi et al. 2008). In a study of Baltimore, sociologists find that African Americans were disproportionately targeted for subprime loans, which were more costly and risky. In addition, they find that due to subprime loans, approximately $2.1 billion of wealth was lost to foreclosure; about $2.0 billion of this wealth loss came from high-income black households, and over 90% of all black wealth lost derived from majority black neighborhoods (Rugh et al. 2015). Economists have also examined various factors causing the steep rise in foreclosure rates during the Great Recession. Using counterfactual experiments, Corbae & Quintin (2015) suggested that approximately 60% of the rise in foreclosure rates was caused by the increase in high-leverage loans. Another study explored how different state foreclosure laws (such as judicial review requirements, deficiency judgments, and state assistance programs for distressed borrowers) impacted default rates and found that the cost of default is a key factor in whether borrowers exercise their default option (Demiroglu et al. 2014).

Another market-related source of involuntary property loss is the global land rush or global land grabs (Pearce 2012). As food prices rose in 2007 and 2008, so did the global demand for agricultural land in developing nations. To secure food production, foreign countries and corporations have been buying land directly from governments, who often procure the land by usurping the communal land rights of its citizens (Arezki et al. 2015). On the continent of Africa, for example, an

estimated 90% of foreign land purchases are sold by the government rather than by private parties, so current occupants are not directly receiving sales funds, if they receive any monies at all (Arezki et al. 2015, p. 218). Using case studies of North Sudan and Ghana, ElHadary & Obeng-Odoom (2012, p. 59) found that "the state grabs land and sells it to amass wealth and power."

Even when the state attempts to protect vulnerable populations from takings rather than facilitating takings, market forces can overwhelm good-intentioned state initiatives. Through ethnography, Sullivan (2014) investigated how mobile home park redevelopment can lead to the mass eviction of residents who own their mobile homes, but do not own the ground on which the mobile homes sit. Although Florida is one of the few states with laws protecting mobile home residents from eviction—requiring a six-month notice period, relocation assistance, and city council approval for land use changes—private-sector actors charged with implementing the laws exert both overt and covert pressure to make residents move according to their dictates. In a similar vein, using case studies of Kigali and Phnom Pehn, Durand-Lasserve (2006) found that state provision of land titles, which is intended to promote tenure security, can instead lead to market-driven displacement. More specifically, in Kigali, Rwanda, residents of informal settlements received land title following the promulgation of the 2005 land law, but many renters were eventually priced out of the settlements where they had for decades lived, just as many poor people in other gentrifying neighborhoods have been forced out (Herzfeld 2010, López-Morales 2010). In addition, Rao (2005) examined the case of the adivasis, an ethnic group residing in the area of India known as the Santhal Parganas. In response to the legacy of adivasi exploitation and land loss, Section 20 of the 1949 Tenancy Act makes all land in the region nontransferable. Using individual and group interviews, Rao discovered that adivasi land loss continues, nevertheless, owing in part to exploitative private lease arrangements. By reaching beyond the law on the books to examine the law in action, an approach greatly encouraged by NLR, Rao (2005), Durand-Lasserve (2006), and Sullivan (2014) bring to light land loss rendered invisible by well-intentioned state initiatives.

Another area of market takings is when, without the consent of existing rights holders, collective property is privatized and made available for exchange on the open market—a process known as decollectivization. Sociologists Davis & Lu (2003) examined the privatization of occupied urban real estate in Shanghai to understand the logics of entitlement ordinary people use to determine who should own the newly privatized property. Using focus group debates, they found there were four prevailing logics—family estate, family justice, state regulation, and the market—and the rules in operation at the time the dwelling became a family home largely determined which of the four logics were applicable to that situation. In certain contexts, the logics of entitlement are subverted by corruption. By examining public opinion about assets obtained through corruption-tainted privatization programs, political scientist Timothy Frye (2006) explored how beneficiaries of ill-gotten market gains can sanitize them. He conducted an experiment embedded within a survey of 660 business managers in Russia and found that assets obtained through corruption-tainted privatization programs were viewed as illegitimate, but the perceived illegitimacy decreased when the asset holder did two things: used the assets efficiently and provided public goods (Frye 2006). Although privatization sometimes involves corruption, it also entails so much more. Based on extensive fieldwork, Verdery (2003), an anthropologist, explained how occupied and unoccupied lands were privatized and valued in post-Communist Romania, described the various groups vying for the land, and chronicled why decollectivization rendered much of the land unproductive. One of her most interesting findings is that decollectivization disrupted the social order: "It completely reconfigured the connections among persons, things, and the values attributed to them. It transformed notions of what *persons* are and provided new resources for constituting them" (Verdery 2003, p. 158). As demonstrated, much is revealed when studies about privatization done by sociologists, anthropologists, and political scientists are discussed in tandem.

Even a brief review of the literature concerning market-related takings exposes property's multiple values. Decollectivization can upend the social order, highlighting the social value of property. In terms of property's political value, private property protects individual autonomy from state encroachment, but in the process of privatization, there are several opportunities for the state to undermine an individual's ability to obtain property and its attendant protections. To decollectivize, the state must develop a rationale for selecting who will own the property, which presents opportunities for corruption, as in Russia, and other forms of inefficient allocation, as in Romania. In terms of maintaining property's economic value, homeowners who cannot pay their mortgage will default, renters who cannot pay the increasing rent demanded in gentrifying neighborhoods have to move to a more affordable area, mobile homeowners have to move when their mobile home park is remodeled, communities must relocate when their land is sold to foreign nations and corporations, and economically vulnerable adivasi people can leave their land and lease it in the free market to obtain much-needed cash. But, in all these instances, moving away from the geographic space called home entails relinquishing sentimental attachments developed to the house; reconfiguring identities related to that place; and disrupting the social bonds developed with the neighbors, schools, and religious institutions in that community. That is, a property's value consists of more than just the tangible house, it also includes the web of intangible emotional, social, and cultural significance in which the house is entangled.

Takings by Natural or Man-Made Disasters

Natural disasters are often responsible for displacing people from their communities, homes, and other property. Although natural disasters are acts of God, state action or inaction can amplify the resulting damage and lead to further displacement. Burby (2006) assessed state and federal politics and found that—based on 25 years of National Flood Insurance Program claims and payments in coastal counties—lower per capita flooding losses resulted when states adopted comprehensive planning requirements. Nevertheless, less than 50% of states require local governments to prepare plans, and less than 10% require planning for natural hazards. Although it is important to discuss the politics that amplify flood-induced property damage, it is also crucial to understand the psychological consequences involved when floods displace people from their homes, jobs, communities, schools, and support networks. Using interviews of adolescents relocated to Colorado in the wake of Hurricane Katrina, Reich & Wadsworth (2008) found that relocation can have benefits, but it can also limit a family's ability to function and can cause displaced teens to experience significant emotional turmoil and stress. Only through an interdisciplinary assessment can we understand both the politics and psychology of flood-related displacement.

Like floods, in many countries, resource scarcity has also led to displacement. Scholars have found that overexploitation threatens customary access to community property resources, alienating many vulnerable people from the lands they need to survive (Beck & Ghosh 2000, Gowda & Savadatti 2004). In Ivory Coast, land with no title is considered part of the national domain and is distributed by the state instead of the market. More importantly, this property rights system was a principal cause of the Ivorian civil war because the state gave foreigners cheap access to virgin forests, which for a time increased production of the country's primary export (cocoa), but eventually led to overexploitation, scarcity, and then conflict with natives over rapidly diminishing land resources (Woods 2003). Politicians capitalized upon the conflict by taking land from long-established foreigners and promising to give it to their supporters (Boone 2009). Just as in Ivory Coast, resource scarcity is one cause of interethnic conflict between the Ittu and Issa people in eastern Ethiopia. Beyene (2009) reports that customary institutions have historically been able to manage conflict over the grazing commons, but resource scarcity, livestock raids, land use changes,

power asymmetries, and violation of customary norms have undermined their ability to mediate, leading to an increase in both the frequency and intensity of conflict.

The disciplines of political science, geography, and sociology can help us to better understand the interlocking factors causing land-based conflict. Using a variety of quantitative data sets, Theisen (2008, p. 801), a political scientist, attempted to explain civil violence, finding that "scarcity of natural resources has limited explanatory power in terms of civil violence, whereas poverty and dysfunctional institutions are robustly related to conflict." Based on a survey of 521 households in Northern Mozambique, Unruh (2001), a geographer, evaluated the ability of land tenure dispute-resolution mechanisms to maintain postwar peace. He found that tenure-related tensions are most likely to be acute where there is competition between large and small landholders, as well as an influx of migrants or returnees. He also found that the failure to account for the different evidentiary constructs for determining ownership ascribed to by competing groups can result in outcomes widely viewed as illegitimate, which can ultimately undermine the peace process. Using a sample of rural municipalities in Mexico, Villarreal (2004), a sociologist, used quantitative methods to explore the structural origins of violence and found that unequal land distribution and insecure property rights are among the most prevalent factors explaining the variation in rural homicide rates. Given this, one may expect that the epicenter of urban violence would be where property rights are most insecure and inequality most severe—squatter settlements. But context matters.

The relationship between land and conflict manifests differently in rural versus urban areas, and it also depends on the country. Based on 80 interviews with squatters in a Delhi slum, Datta (2012) explained how people from different religions, castes, and ethnicities have maintained strong ties, especially in moments when the city around them is erupting in violence. To create a home in an exclusionary city, she found that squatters form a genuine openness to others, which is normalized and durable in moments of communal violence. Other scholars have also found that shared norms can keep disorder at bay in the absence of state-imposed legal order. An ethnographic inquiry found that, after the conflict in East Timor, the long-standing principle of ancestral first possession served as the stable basis for the allocation and trade of property rights in Babulo and averted the potentially destructive race for control over land (Fitzpatrick & Barnes 2010). As demonstrated, scholars from diverse disciplines have explored the relationship between land and conflict using qualitative and quantitative methods, just as NLR intends.

The drawing and redrawing of boundaries is another mechanism by which people are estranged from their homes and other property during conflicts. Using regression analysis, Simmons (2005) tested the effects of a disputed border on bilateral trade and found that settled borders promote certainty, secure property rights, and encourage cross-border trade and investment, whereas territorial disputes cause uncertainty and can lead to violence and war. By focusing on how disputed lands changed hands (peaceful, overwhelming victory, or violent but no overwhelming victory), Tir (2003) further explored the phenomenon of disputed borders. He found that post-transfer conflict is most likely when the disputed land has economic and strategic value and the victory is violent, but short of overwhelming.

In addition, there has been significant empirical scholarship concerning the boundary dispute in the West Bank. The Ottoman Land Code is in effect in the West Bank, and article 78 states that those who cultivate land for 10 years without dispute can acquire it through adverse possession. Using ethnographic methods, Braverman (2008) found that tree planting has thus become an extension of the war over land in the West Bank, with Palestinians planting olive trees and Israelis planting fir trees in the struggle to establish boundaries that usurp or reclaim land. Consequently, the uprooting of olive trees in this proxy war results in the destruction of three important things: physical property, legal claim to land, and cultural presence. The border war in the West Bank

involves the destruction of trees and also buildings. In East Jerusalem, 85% of Palestinian homes do not have the necessary building permits and are thus illegal; consequently, the state of Israel demolished 400 of these illegal homes between 1987 and 2004 (Braverman 2007). While the act of demolition is highly visible, there is a secondary mechanism of dispossession hidden in the background: the seemingly innocuous planning laws and mundane bureaucratic procedures used to establish illegality.

Another prominent and controversial boundary in the West Bank is the security fence that demarcates the border between Israel and Palestine. To build the fence, the Israeli government expropriated land from Arabs (Falah 2004), and although Israel has offered compensation, many Arabs have not accepted it. For this and many other reasons, the security fence is unpopular among Arabs living on the side controlled by the Palestinian Authority. To uncover attitudes of people living on the Israeli side of the fence, Gelbman & Keinan (2007) conducted a survey of 400 people and follow-up interviews with 25 people. They found that the majority of Jews polled were in favor of the fence because they thought it provided security and stability, but the vast majority of Arabs were opposed to the fence because it unduly interfered with their familial and economic ties on the Palestinian side.

A coherent discussion about the empirical literature concerning land takings that result from natural or man-made disasters underscores property's multiple values. Flood-related displacement has economic ramifications as well as social, cultural, and emotional ones because people's identities are refigured as they are separated from their bygone communities and the social and emotional ties developed therein. The literature states that land-based conflict is caused by several context-specific factors, including poverty, dysfunctional institutions, competition between large and small landholders, influx of migrants or returnees, failure to account for customary norms, unequal land distribution, and insecure property rights. More importantly, the multiple causes of land-based conflict reveal the multiple functions that property serves. Property's social and cultural value is most apparent in East Timor, India, and Ethiopia, where customary and community norms play an essential role in preventing land-related violence. In Ivory Coast, immigrants were initially given land to promote the nation's economy, but when land became scarce, property's social, cultural, and political value was accentuated when the government reneged by taking back the land, worsening social and cultural divisions and robbing the immigrants of their autonomy. The literature also tells us that while border conflicts depress economic trade, they also divide cultural groups, ignite social strife, and challenge political sovereignty. Thus, a discussion of property takings related to natural and man-made disasters provides a holistic view of property's many values.

FUTURE RESEARCH

Although the term property value is most commonly associated with property's economic value, a review of the empirical literature on takings provides a comprehensive look into property's economic value as well as its political, social, emotional, and cultural value. Lawyers, psychologists, political scientists, geographers, economists, and sociologists have all examined takings using a variety of methods, but only when these scholars are placed in conversation with each other, as in this article, do we have a more robust understanding of property's value. There is, however, much room for further research.

The constitutional takings literature would benefit from more empirical work in two areas. The first would be an evaluation of popular perceptions concerning the relationship between the Fifth Amendment takings clause and the First Amendment right to free speech, which arises when private property owners are required to allow political activity (such as petitions or rallies) on their

properties. Second, the Supreme Court uses a complicated three-part balancing test to determine whether government laws or policies have effected a regulatory taking, but there is little research on the standard that average citizens believe is required for a fair result.

The dignity takings literature is a new contribution to sociolegal studies, and it is important to fully understand the possibilities and limits of this conceptual framework. Although many scholars have already tested its applicability to various case studies across a range of geographic locations and time periods, further investigation is necessary, especially in the areas of corporate law, deportation, environmental justice, rape and other bodily violations, end of life issues, intangible property, and access to important physical domains like religious spaces.

The area of trespass-related takings would profit from exploration of Peñalver & Katyal's (2010) intriguing, but empirically untested, assumption that property outlaws can foment change. More specifically, future research should assess the beliefs of lawmakers and authorities to determine whether squatters do, in fact, highlight illegitimate, outdated, or unclear laws for them. Also, the topic of trespass presents an opportunity to explore poor and vulnerable populations as the perpetrators of takings instead of its victims. Most significantly, it is important to understand the role that dignity plays in a squatter's decision to illegally occupy space, which is a topic that has yet to be comprehensively explored.

The literature on takings by families, markets, and natural or man-made disasters would profit from a power analysis of dispossession, which describes the complex ways in which vulnerable populations can be the perpetrators or the victims of a taking, depending on the circumstances. In addition, family is both the source of dispossession and protection against it, so more work should be done to explicate this duality. Much of the literature on market-related takings, especially the work done on foreclosure, is quantitative, so more interdisciplinary, multi-method work in the NLR tradition should investigate the political, social, emotional, and cultural consequences of foreclosure. Additionally, empirical work on the beneficiaries of ill-gotten market gains is scant, and so this is also fertile ground for future research. In the area of takings related to natural and man-made disasters, anthropologists have done significant work on resource scarcity, but more empirical investigation of everyday boundary disputes and land-related conflict would be beneficial.

Last, but not least, in future, theoretical and empirical scholars need to work together to grow the burgeoning field of takings. Although, by design, this review focuses almost exclusively on empirical work, the value and importance of theoretical and normative work on takings are acknowledged and embraced. Theoretical work is often the foundation of empirical scholarship, just as empirical findings can be the starting point from which theorists begin their inquiries (Dagan et al. 2015). NLR encourages the marriage of legal theory and empirical research (Erlanger et al. 2005, p. 337) because the offspring of this formidable union is a more robust understanding of the law.

Legal problems are often like foggy mirrors, and interdisciplinary conversations help us to wipe off the condensation so that we can see what has been standing before us the entire time. This is why it is high time that scholars from different disciplines who write about involuntary property loss begin to converse with each other, which is the first step on the journey toward generating more research on takings and establishing it as a respected field of sociolegal inquiry. The hope is that one day takings will earn a distinguished place in the canon of sociolegal studies beside frameworks like legal consciousness and procedural justice.

DISCLOSURE STATEMENT

The author is not aware of any affiliations, memberships, funding, or financial holdings that might be perceived as affecting the objectivity of this review.

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