THE PROPERTY COURSE: A MANIFESTATION OF SYSTEMS OF DOMINATION

Florence Wagman Roisman

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Panel 8: Brick by Brick: Understanding Systems of Domination in the Core Curriculum

It is ironic – perhaps intentionally – that the title of this panel is “Brick by Brick,” for that is the title of an excellent film about government-imposed racial segregation in housing, one of the principal systems of domination that deprives people of color in the United States of equal access to opportunities – not only opportunities to live in decent housing, but also opportunities for good educations, jobs, transportation, environmental conditions, and recreational and commercial facilities.

To whatever extent property is or is not theft, it certainly is domination: every property standard and every property dispute is about allocating resources and power. Teaching Property without illuminating systemic domination seems to me virtually impossible. The really difficult challenge is deciding which forms of systemic domination to address, and how to do that.

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1William F. Harvey Professor of Law, Indiana University School of Law - Indianapolis; 2011 Chancellor’s Professor, Indiana University Purdue University Indianapolis; John S. Grimes Fellow.


Particularly now that Property usually is a four credit course, the Property professor has to make hard choices. I outline below some that I recommend.

Before I get to substance, let me say a word about materials. I have assembled materials to teach about the issues in Property; my book, Property and Human Rights (PHR), soon will be published by Carolina Academic Press. I would be glad to provide copies of the contents to people who want to use them before publication. Also, Al Brophy, Alberto Lopez, and Kali Murray recently published Integrating Spaces: Property Law & Race, which, as the subtitle says, focuses on the intersection of race and property law. Other useful material is in two Foundation Press books, Property Stories and Civil Rights Stories, and in my article, Teaching About Inequality, Race, and Property.

1. Teach About the Current Foreclosure Crisis.

The foreclosure crisis has been especially, and brutally, devastating for households of color. Between 2005 and 2009, the net worth of African Americans dropped by 53 percent, the net worth of Asians dropped by 54 percent, and the net worth of Latinos dropped by 66 percent— all due largely to the disasters in the mortgage market. I hope that all Property teachers will include material about basic mortgage financing, the deliberate distortions that led to the mortgage meltdown, the targeting of households and neighborhoods of color, and the racially disparate impact of those activities. A wealth of material is available, much of it from current

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5Joanne Martin, The Nature of the Property Curriculum in ABA-Approved Schools and its Place in Real Estate Practice, 44 Real Property, Trust & Estate L.J. 385, 391 (2009) (reporting that a 2006 review showed that “the predominant course-hour allocation for the initial Property course was four credit hours – almost half of the ABA-approved law schools had adopted this approach”).


7Gerald Korngold & Andrew P. Morriss, eds., Property Stories (Foundation Press 2004); Myriam E. Gilles & Risa L. Goluboff, eds., Civil Rights Stories (Foundation Press 2008).

8Florence Wagman Roisman, Teaching about Inequality, Race, and Property, 46 St. Louis U. L.J. 665 (2002).

9See Sabrina Tavernise, Recession Study Finds Hispanics Hit the Hardest, N.Y. Times, July 26, 2011; Douglas S. Massey, Isolated, Vulnerable and Broke, N.Y. Times, Aug. 4, 2011; Cornel West, Dr. King Weeps From His Grave, N.Y. Times, Aug. 23, 2011.

10This is an especially important point because “the principal property topic that receives less coverage as credit hours [in the Property course] decline is real estate transactions.” Roger
media reports. For a SALT conference and book, I prepared a chapter about teaching this material in the Property course: “Teaching to Address the Foreclosure Crisis,” in Vulnerable Populations and Transformative Law Teaching: A Critical Reader, and material about foreclosures is in my book, Property and Human Rights (PHR).

2. Teach About Slavery.

The system of domination known as chattel slavery in the United States has been the foundation for much of the economic inequality we experience to this day. I open my Property course with Dred Scott, partly to show that definitions of “property” change with time but mostly to start students thinking about racial oppression at the very beginning of the course. Both PHR and Integrating Spaces have material about slavery.

3. Teach About Racial and Ethnic Discrimination and Segregation.

I teach a unit on Race, Inequality, and Property, which includes material on explicit racial zoning, racially restrictive covenants (including their use as recently as 2005), public accommodations, and racial discrimination and segregation in federal housing programs and


See, e.g., Eric Foner, Inhuman Bondage, 293 The Nation 27 (Sept. 5, 2011) (reviewing Robin Blackburn, The American Crucible: Slavery, Emancipation and Human Rights (Verso 2011) (stating that “the slave plantation underpinned the extraordinary expansion of Western power and the region’s prosperity in relation to the rest of the world”).

Dred Scott v. Sandford, 60 U.S. 393 (1856).

Buchanan v. Warley, 245 U.S. 60 (1917) and related material on racial zoning cases, including City of Birmingham v. Monk, 185 F.2d 859 (5th Cir. 1950); see Garrett Power, Apartheid Baltimore Style: The Residential Segregation Ordinances of 1910-13, 42 Maryland L. Rev. 289 (1982).


Heart of Atlanta Motel, Inc. v. United States, 379 U.S. 241 (1964); Katzenbach v. McClung, 379 U.S. 294 (1964). When I teach this material, I use excerpts from two episodes of
“private” housing. One of the cases in my landlord-tenant unit involves racial discrimination. In addition, these issues appear elsewhere in the curriculum. Thus, for example, when I teach defeasible fees, I include Charlotte Park and Recreation Commission v. Barringer, which involves a park dedicated to use by whites only, and Hermitage Methodist Homes v. Dominion Trust Co., which enforces loss of a gift because a school admits non-white students. A servitude case, Lobato v. Taylor, offers an analysis of claims based on Mexican law. Whether Berman v. Parker is taught on its own, or through references to it in Kelo, it is the basis for a discussion of the depredations of the federal urban renewal program; the racial implications of Belle Terre and Moore v. City of East Cleveland are brought out by the dissents and separate opinions. The racial implications of Euclid are illuminated by the trial court opinion and the relationship to Buchanan v. Warley.


18Jancik v. HUD, 44 F.3d 553 (7th Cir. 1995). This is one of my favorite teaching cases, as it involves a landlord who asks a prospective tenant what kind of name hers is, and when she replies that it is Norwegian, asks “whether ‘that’s white Norwegian or black Norwegian’ . . . .”


Many of the cases that appear in most casebooks illustrate systemic oppression: the points are there to be made if one wants to make them. State v. Shack provides the basis for a discussion of farmworkers (I supplement the decision with two short films).\textsuperscript{24} Johnson v. McIntosh and Hodel v. Irving (and many other cases) provide the basis for consideration of the oppression of Native Americans.\textsuperscript{25}

\textsuperscript{24}State v. Shack, 277 A.2d 369 (N.J. 1971).