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Introduction

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INTRODUCTION

SANDRA H. JOHNSON*

Curiosity. Creativity. Imagination. I would guess that most law students anticipating their introductory course in property law do not expect that these traits will be central to their study. Instead, most seem to expect that a facility for rote memorization and a tolerance for historical irrelevancies would be more helpful tools. Perhaps for some of us teachers of Property, their expectations matched our own when we began studying the field some years ago. Yet, as this Symposium so ably illustrates, curiosity, creativity and imagination imbue the teaching of Property at its best. It happens as well that those traits are also present in the quivers of the best lawyers. For property law, however, the creative work depends on a mastery of centuries-old tools. Creativity unleashed from doctrine is not very useful in property law. This is perhaps what I liked best about teaching Property myself. Moreover, from the point of view of someone who has spent more time as client rather than as lawyer over the past several years, I expect my attorneys to be able to work on both fronts in getting us where we need to go.

Only with a deep understanding of this relationship between past and future, between creation and replication, and between patient detail and soaring “big picture,” is the beauty of property law revealed. No matter where one starts in teaching the basic property course, the aim is the same. We want the students to learn the tools of the trade—whether it be finders or chain of title or freehold estates—but we want them to learn more. It seems well accepted among Property teachers that students should be guided to see the historical context that produced and the social and economic context that sustains these apparently archaic tools. Most property casebooks provide at least some materials to support that goal; but beyond that point, we Property teachers diverge. The articles in this Symposium demonstrate very effectively that there is so much more to learn—so much, in fact, that some argue that there is no “there” in Property any longer.

Professor Singer begins the Symposium by illustrating what most of us love about teaching Property: even though it is a tradition-bound course and we share a common canon of caselaw, we need not all approach it in the same

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way. Professor Singer goes so far as to reorder what is presented in his own casebook. Just as John's Gospel starts with "In the beginning was the Word,"¹ most property casebooks accept that "in the beginning was possession." Professor Singer provides an insightful analysis of what he considers a more appropriate "beginning" of the property course. His attack on first possession and the cases used to illustrate the principle gives legitimacy to all of the student questions we have fielded over the years concerning those cases.

Professor Friedland identifies a problem that all Property teachers confront. While we have become enamored of property law over the course of years of personal investment of time and effort, our students do not have that relationship with the field. At worst, they may dread the course or be ready to tolerate it as an unnecessary evil perpetrated on them by a curriculum requirement or the bar exam. At best, most will find it hard to relate to the acquisition of the U.S. territories or the fox or even home ownership. Professor Friedland shares several helpful techniques he has developed for reaching students across that distance. My own approach is to tell students on the first day of class: "This course will be your favorite course this year! It's got something for everyone. It's got lots of rules you can memorize; lots of stories to entertain you; history; drama; creative flights of legal fancy." The key, as Professor Friedland illustrates, is to make Property inviting and relevant to their own experience.

There is a dark side to the individuality—or idiosyncrasy—of property law courses, and Professors Menell and Dwyer clearly identify its negative impact. The variability in the content and focus of property courses has eroded the position that the course has enjoyed as a part of the required first-year curriculum. Fortunately, Professors Menell and Dwyer do not accept the diminution in status and instead offer an alternative organizing theory for the course. I can't imagine a practicing lawyer without an understanding of the basic concepts of property law that are so useful in ordering voluntary relationships. For example, the venerable concept of the "bundle of sticks," which I know some have described as the cause of the demise of property rights, can be quite useful in resolving competition over distance learning products between faculty and university.

Professor Salsich, who is my dear colleague and co-author, rightly emphasizes that Property is essentially about human relationships. It is most certainly not about things and dirt, nor is it only about the relationship of people to things; rather, property law mediates relationships among persons with different interests. Viewing property law as ordering human relationships leads Professor Salsich to highlight the disproportionate power possessed by the lawyer and by the client with legal representation. This is clearest in the landlord-tenant situation, but exists as well in freehold estates and future

1. *John* 1:1

interests. In fact, teachers and students alike wonder whether that esoteric system is sustained by generations of former law students who, having suffered the burden of mastering the system, preserve it as a sort of rite of initiation for those who follow. In his essay, as in his class, Professor Salsich raises ethical issues that confront the practicing lawyer.

In the second section of this Symposium, Professor Shaffer, another co-author of our casebook,² provides a compelling argument in favor of the pervasive teaching of ethics, including in the introductory property class. Although Professor Shaffer is one of the leading lights in the field of professional ethics, his essay invites all of us, amateurs though we may be, to engage in the teaching of ethics. In one of the student essays included in this symposium, Amanda Altman writes that the treatment of the legal ethics issues in her property course was one of the most important lessons she learned. Professor Shaffer certainly contributed greatly in the conceptualization of our property casebook with his emphasis on professional ethics. Professor Shaffer also discusses another lawyering aspect of property law that is worth noting seriously. In his essay and in the casebook, he describes Professor Louis Brown's theory of "preventive law." He makes the important point that in preventive law, "law comes before fact." Because we use court cases to teach an area of law that is mostly a preventive law practice, this distinction is quite important. It helps us to take a case with "dead facts" and turn it into a learning opportunity for planning and preventing disputes.

To illustrate "Teaching Important Property Concepts," Professor Carbone's treatment of intellectual property clearly demonstrates that property law is less an "historical artifact" than it is a "work in progress." Her use of intellectual property as a teaching platform reaches back into important notions of "what is property?" Professor Roisman's article powerfully and relentlessly details the legal structures that were required to create and sustain the segregation of home ownership that persists today. Her deep research illustrates that the history of segregation is not a "natural history" but a "legal history," and one that every law student should know. Professor Brophy provides several useful hypotheticals for teaching the concept of "running with the land," a concept that has entertained law students with its obscurity. Professor Brown offers a fascinating analysis of successor interests in property law, and one can easily see how that concept could orient and relate several of the seemingly unrelated doctrines taught in the course. Professor Hulsebosch argues in favor of teaching regulatory takings as a vehicle for teaching the student doctrine, problem-solving and policy analysis in one package and demonstrates exactly how that can be done.

2. SANDRA H. JOHNSON, PETER W. SALSICH JR., THOMAS L. SHAFFER & MICHAEL BRAUNSTEIN, *PROPERTY LAW: CASES, MATERIALS AND PROBLEMS* (2d ed. 1998)

In the section on “Great Property Cases,” Professor Sealing shares an insight that we often forget as we rely extensively on casebooks with edited judicial opinions as he describes teaching *Moore v. Regents of the University of California* in his Property class and later in his Torts class. Although law is a “seamless web,” it is the contrasts among property rights and contractual rights and torts that first-year students should learn to increase their repertoire for problem-solving and dispute resolution. Professor Jim analyzes the application of *Johnson v. M’Intosh* to the dispute over “Sue,” the Tyrannosaurus Rex, using a familiar technique for making old cases new. I only wish I had been aware of the case when I visited “Sue” at the Field Museum. Professor Lee’s essay on the *Amistad* case observes that discussions of race “tend to provoke controversy,” and thereby identifies a subject worthy of its own symposium on teaching; meaning, the teaching of controversial issues. Perhaps the *Saint Louis University Law Journal* can add this topic to its successful series on law teaching.

I have saved Professor Wendel’s article for last. His lively essay captures the joy and passion that all of the law teachers in this symposium bring to their work. While Professor Wendel argues very persuasively that Property is an essential first-year course because it is a good vehicle for teaching law students to “think like a lawyer,” I disagree with him on one point. Professor Wendel says that we professors “tend to overanalyze everything, taking the fun out of everything.” One might say that a symposium issue of this length on the teaching of property law proves Professor Wendel’s point, but I had fun reading it and hope that you will, too.