

Law 1675
Land, Dispossession, and Displacement: Topics in Property Law

Fall 2019
Thursdays 9-11am
McDonough 344

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COURSE OVERVIEW

This seminar revisits the foundations of American Property law by examining its precepts and some seminal cases in the contexts of conquest and gentrification. More specifically, it explores the relation between historical processes of commodifying land in the U.S. and the creation of mechanisms for dispossessing and displacing the people who inhabit it. By examining the roots of the Takings Clause in the doctrine of discovery, “development” goals in the labor theory of value, and the practice of foreclosure in the right of possession, it also seeks to help students understand the line of continuity that legal practices and concepts draw between the past and present.

COURSE WEBSITE AND MATERIALS

The course website is on Canvas. All course readings will be available through the site. The site also contains sign-up sheets for meetings with me about paper milestones (topics, outlines, drafts), and other course materials, including handouts and presentation schedules.

COURSE REQUIREMENTS

This course is designed to develop your skillset for critical thinking, presenting ideas, facilitating discussion, and writing about legal issues.

1. Attend class and participate in class discussions. You should treat class time as a special opportunity for active engagement with the readings and with one another. Everyone should participate regularly. Your contributions should reflect your preparation for class and ability to tie the materials for the week together, to the themes of the course, and to the ongoing class discussion, as it has developed so far.
2. Present and facilitate on the course material during one class. Each week, two students will be responsible for leading the class discussion. You will sign up for this presentation and facilitation when we meet for the first class. During the class of

your choosing, the two of you will present on the course materials and facilitate the class discussion in whatever fashion you choose. You may bring in outside materials but you must also address the readings for the week. Together, you will lead the class for 35-40 minutes, and you should *each* plan to present material for 8-10 minutes. You can combine or split your time, or plan activities and small group break outs for the class. You should meet to discuss your plan for the class independently and send me an email describing the plan you have agreed upon for your class facilitation by 5pm on the **Monday before class**. You should also plan to meet with me on Tuesday prior to class so that we can touch base about your plan.

3. Give an in-class presentation on your research paper for the seminar during class on November 14th or 21st. These presentations are an important part of the course. They provide the whole class with a chance to learn about a wider variety of issues related to land, dispossession, and displacement than we can cover in other class sessions. Like the class presentation, this presentation is intended to give you an opportunity to practice oral presentation of a subject you have studied carefully, which is an important skill for lawyers of all kinds. Plan to speak for 10-15 minutes. You may use PowerPoint if you wish, but do not feel compelled to do so.
4. Write a research paper that satisfies the upper-class writing requirement. Law school policy requires that the papers be at least 6,000 words long (approximately 25 pages), excluding footnotes. Law school policy also requires submission of an outline, draft, and final papers. See below for other specific requirements related to the paper.

PAPER GUIDANCE AND REQUIREMENTS

1. Guidance for paper topics. For your paper topic, you will choose an example of a development dispute in the United States from the last fifty years. Your task is to tell a geographically specific story that clearly explains the legal issue in a way that communicates what is at stake in the dispute. Many lawyers are tasked with explaining a highly technical legal issue in a way that also captures the bigger and shows a judge or the public why the issue matters and how it will affect their client or the broader community. In choosing a topic, you should take care to choose a problem that is not only interesting, but one that is possible for you to research, i.e. that concerns materials accessible to you that will answer the questions you put forth. You should examine primary source materials, such as case filings, and summarize the legal issues and actions relevant to the example. You should also conduct other research to provide background information on the land and community affected, as well as of the development plan, including from newspapers and scholarly articles and documents prepared by local governments and organizations, for example.

Your assignment is to undertake a grounded, contextual analysis of the issue. You must clear your topic with me by October 3rd.

2. Guidance for outlines and bibliographies. The more information you include in your outline, the more helpful I can be in my response. You should therefore provide as much information as you can about the organization and content of your paper, your thesis, and how you intend to rely on your sources. At a minimum, your outline should include a thesis statement and a description of each major part of the paper. The preliminary bibliography need not encompass more than a list of titles and documents.

Your annotated bibliography should include at least 5-10 sources, with a brief description that clearly identifies the source and its relevance to your paper. This range is a floor, not a cap. You should distinguish the primary documents you will analyze-- the law(s), case(s) or regulations that you will focus on-- from the secondary texts that you will use to describe or explain the context of the legal question. Your primary sources can include cases, rules or regulations, or documents like community benefit agreements, or interviews. You should also be looking at newspaper articles, government or organizational reports, journal articles, and in some cases, books, to provide background information and context. This is not a comprehensive list of the kind of sources you can use, but suggestions about the range of sources you might explore.

Come to class on October 17th prepared to talk briefly about your topic with your classmates.

3. Guidance for drafts. I will read only one draft of your paper. I can be more helpful the more complete the draft you submit is. Although I will read only one draft, I will remain available to discuss your paper with you.
4. Feedback on topics, outlines, and drafts. I will provide oral feedback to you on your paper topics, outlines, and drafts, in one-on-one meetings that will occur after each assignment is submitted. You will sign up for these meetings on Canvas. In my experience, these meetings are superior to written feedback because they facilitate an exchange of ideas and allow for follow-up questions from students.
5. Guidance for final papers. Your paper should state and defend a thesis. It should be original, not only in the sense of being your own work, but also in the sense that no one else has covered this topic in this way before. The paper should reflect a mastery of the relevant literature and use of a diverse range of credible sources. The best papers are also stylish; they are well written and engaging, and they omit irrelevant details.

6. Deadlines. The paper-related deadlines are designed to allow you to develop your paper with plenty of time to prepare for each stage of writing and to incorporate feedback. You should submit the outline and preliminary bibliography, annotated bibliography, draft, and final paper to me via the “Assignment Drop Box” on the Canvas site.

The paper-related deadlines for the course are as follows:

Topic: cleared with me by Thursday, October 3
Outline and preliminary bibliography: due Thursday, October 17
Annotated bibliography: due Thursday, November 7
Paper presentations: The week of November 21
Draft: due Monday, November 25
Final paper: due December 20th by 5pm

The final paper deadline is firm. I will not grant an extension for the final paper unless the extension is required because an emergency arose at the last minute before the deadline. I will not grant any extension for a longer period than is necessary to respond to that emergency. If your paper is late and you have not received an extension, I will reduce your grade by half a grade for every day that the paper is late.

*Your task in your final paper is *not* to summarize class readings or to reproduce the arc of the course. While you may draw upon course material if you find it especially helpful, you will not be penalized for not doing so. The primary way that I will evaluate your engagement with course material is through your class participation, presentation and facilitation.

7. Format for draft and final papers. Please paginate your draft and final papers, and include a cover page with the paper title and your name. You need not obsess about conforming citations to Bluebook rules, but you should cite sources in a manner that is accurate, makes it possible for me to find them, and use a consistent format throughout the paper.
8. Do not engage in plagiarism. Before beginning work on your paper, please read the discussion of plagiarism in the Georgetown Law Student handbook. Please remember it is not difficult to spot instances of plagiarism and that this course is designed so that I can follow the organic development of your thinking and expressive skills. Effort and growth matter a great deal to me as an instructor.

GRADING

70% of your final grade will be based on your research paper. I will rely largely on the final work product, but I will also take into account the quality of your work on the outline, draft, and in-class presentation.

The rest of your grade will be based on your class participation and presentation and facilitation. You should expect that exemplary or egregious attendance and participation in class discussions will affect your grade.

TECHNOLOGY IN CLASS

Please consider setting aside your laptop for this class. Studies have shown that handwriting notes facilitates learning better than taking notes on the computer; I have posted some articles presenting research on this topic on the Canvas site. The smaller the class, the more distracting others' use of laptops can be, particularly when students are using them for purposes unrelated to class. In order to build the kind of open, engaged, and focused discussions that I hope to have, I encourage you to experience this class without your laptop.

ACCOMODATIONS

Law students who need reasonable accommodations under the Americans with Disabilities Act should contact the law school's Office of Student Services. Non-law students should contact the Office for Students with Disabilities.

PART I: Foundational Theories of Property

Week 1: **Introduction to Course**
9/5 Listen to Podcast: "Citations Needed," Ep. 15: The Real Estate Page as Colonial Dispatch, **to min. 24:40 only**

DOCTRINE OF DISCOVERY:

Conquest as the Basis of Sovereign Land Claims

Pope Alexander VI, *Intercaetera*, Papal Bull of May 4, 1493

The Requerimiento

Robert A. Williams, *The American Indian in Western Legal Thought*,

Chapter 2: "The Perfect Instrument of Empire," **pp. 74-108**

Chapter 5: "The English Conquest of Virginia," introductory section **pp. 193-94; 199-221**

Week 2: **LABOR THEORY OF VALUE:**
9/12 **Considering "Development"**
John Locke, *The Second Treatise* (selections on property and money)
Stuart Banner, *How the Indians Lost Their Land*, Chapter 1: "Native Proprietors"

Williams, Chapter 6: "The Norman Yoke," pp. **233 through first paragraph 242; 245-51; 255-62; 265-top of 273; second to last paragraph on 279-280**

Week 3:
9/19

POSSESSION:

Pierson v. Post, 3 Cai. R. 175, 2 Am. Dec. 264 (N.Y. 1805) (skim/refresh your memory)

Richard Epstein, "Possession as the Root of Title," **first three paragraphs only**

Carol Rose, "Possession as the Origin of Property"

K-Sue Park, "Money, Mortgages and the Conquest of America," **pp. 1025-1029**

Winona LaDuke, "Who Owns America? Minority Land and Community Security"

Further Reading:

Bethany R. Berger, "It's Not About the Fox: The Untold History of *Pierson v. Post*"

David Seipp, "A Very Brief Legal and Social History of the Mortgage," from
Mortgage Across Cultures

Practice note on the doctrine of adverse possession: Shrestha, "Hey, That's My Land!" (Wisconsin)

PART II: Foundations of the U.S. Property System

Week 4:
9/26

THE SURVEY SYSTEM

Linklater, Chapter 11: "The End of Putnam," Chapter 12: "The Immaculate Grid"

Cadle, *Georgia Land Surveying History and Law*, pp. 29-59

Podcast: *There Goes the Neighborhood*, "They Want My House"

Further Reading:

Linklater, Chapter 1: "The Invention of Landed Property"

Cadle, *Georgia Land Surveying History and Law*, pp. 75-120, 124-149 (see images)

Week 5:
10/3

LEGAL FOUNDATION

Johnson v. M'Intosh, 21 U.S. (8 Wheat.) 543 (1823).

Banner, Chapter 4: "A Revolution in Land Policy" and Chapter 5: "From Ownership to Occupancy"

Further Reading:

Malcolm Rohrbough, *The Land Office Business*, Chapter 1:

"The Early Administrative Experience" and Chapter 2: "Albert Gallatin and the Expansion of the Land System, 1801-1812"

Singer, "Indian Title: Unraveling the Racial Context of Property Rights, or How to Stop Engaging in Conquest"

Week 6:
10/10

FORCED REMOVAL

Indian Removal Act, 1830

Deborah Rosen, *American Indians and State Law*, Introduction pp. 7-15 (review) and Chapter 1: "Tribal Sovereignty and State Jurisdiction"

Banner, Chapter 6: "Removal"

Further Reading:

Cherokee Nation v. Georgia, 30 U.S. 1 (5 Pet. 1) (1831).

Worcester v. Georgia, 31 U.S. (6 Pet.) 515 (1832).

Phil Frickey, "Marshalling Past and Present"

PART III: The Market in Land

Week 7: **The Real Estate Market: A Global Problem**

10/17 **Class Discussion: Final Paper Topics**

De Soto, *The Mystery of Capital*, pp. 1-12, 44-67

UN Report on the Financialization of Housing by the Special Rapporteur on Adequate Housing

Further Reading:

Mortgage Across Cultures: Land, Finance and Epistemology, Boston University Land Mortgage Working Group Research Report (2017)

10/21 **Film Screening:** Michael Galinsky and Suki Hawley, *Battle for Brooklyn* (2011)

McDonough 109, 5:45-7:45pm

Week 8: **TAKINGS/EMINENT DOMAIN**

10/24 **Exploring "Public Use": Stadium battles, Border Wall, Pipelines**

Kelo v. New London, 545 U.S. 469 (2005).

Tee-Hit-Ton Indians v. United States, 348 U.S. 272 (1955).

Kelli Dudley, "Without Due Process of Law: Deprivation and Gentrification in Chicago."

Further Reading:

Peter Montine, "Forced Turnovers: Using Eminent Domain to Build Professional Sports Venues."

Singer, "Indian Title: Unraveling the Racial Context of Property Rights, or How to Stop Engaging in Conquest"

Week 9:

10/31 ***** NO CLASS*****

Week 10: **Land and Debt**

11/7 Kenneth Jackson, *Crabgrass Frontier: The Suburbanization of the United States* (1985), Chapters 11 and 12

Ann Burkhart, "Lenders and Land," **pp. 271-286 only**

Further Reading:

Elizabeth Blackmar, "Inheriting Property and Debt: From Family Security to Corporate Accumulation."

***Annotated bibliographies due**

Week 11: **FORECLOSURE CRISIS**
11/14 Cedric Durand, *Fictitious Capital*, Chapter 1: “Beyond Greed,” pp. 7-19
Emma Coleman Jordan, “The Hidden Structures of Inequality: The Federal Reserve and a Cascade of Failures” (2017) **pp. 117-152 only**
Max Ehrenfreund, “It’s time to stop blaming poor people for the financial crisis,”
The Washington Post
Further Reading:
Jacob Rugh and Douglas Massey, “Racial Segregation and the American Foreclosure Crisis.”
Manuel Adelino, Antoinette Schoar, and Felipe Severino, “Loan Originations and Defaults in the Mortgage Crisis: The Role of the Middle Class,” *Oxford University Press* (March 28, 2016).
Stefania Albanesi, Giacomo De Giorgi, and Jaromir Nosal, “Credit Growth and the Financial Crisis: A New Narrative,” *National Bureau of Economic Research* (August 2017).

Week 12: ****MAKE-UP CLASS****
11/18 Class presentations
 Hotung 6006, 4:00-5:30pm

11/21 Class presentations, cont’d

****THANKSGIVING BREAK****

Week 13: **Course Conclusion: AFTER THE CRISIS?**
12/5 Alana Semuels, “Who Can Go After Banks for the Foreclosure Crisis?” *The Atlantic* (May 3, 2016).
 Bank of America, et al. v. City of Miami (2017).
Julian Brave Noise-Cat, “America’s Forgotten Crisis: over 50% of one Native American tribe are homeless,” *The Guardian*, April 6, 2017.
“Report Shows African Americans Lost Half Their Wealth Due to Housing Crisis and Unemployment,” April 30, 2019, National Low Income Housing Coalition (<https://nlihc.org/resource/report-shows-african-americans-lost-half-their-wealth-due-housing-crisis-and-unemployment>; follow embedded link to find further reading in the report itself)
Michael Hobbes, America’s Housing Crisis is a Ticking Time Bomb,” June 19, 2018, *The Huffington Post*
Further Reading:
City of Cleveland v. Ameriquest Mortgage Securities, Inc., et al., 621 F.Supp.2d 513 (N.D. Ohio 2009).
Skim Consent Orders Obtained by U.S. against Banks
(www.nationalmortgagesettlement.com)

Nelson D. Schwarz, "The Recovery threw the Middle-Class Dream Under a Benz,"
Sept. 12, 2018, *NY Times*

Patrick Sisson, "Hey middle class, the housing crisis is coming for you next," June
11, 2019, Property Lines, Curbed.com