Teaching Property Law and What It Means to Be Human

Rose Cuison Villazor

Follow this and additional works at: http://scholarship.law.berkeley.edu/clrcircuit

Recommended Citation
http://scholarship.law.berkeley.edu/clrcircuit/35

This Article is brought to you for free and open access by the California Law Review at Berkeley Law Scholarship Repository. It has been accepted for inclusion in The Circuit by an authorized administrator of Berkeley Law Scholarship Repository. For more information, please contact jcera@law.berkeley.edu.
Teaching Property Law and What It Means to Be Human

Rose Cuison Villazor*

INTRODUCTION

In the 2009 Disney/Pixar movie, Up, grumpy old man Carl Fredricksen refused to sell his house to commercial developers. Technically not a holdout, Carl eventually becomes the last person to remain in the neighborhood, with his modest home surrounded by new buildings being constructed. Eventually forced by a court to leave his house and move to a retirement home, Carl, who does not want to lose his house, came up with a plan. Having been a balloon-seller for years, Carl decided to tie thousands of balloons to his house, causing the house to go up to the sky and taking Carl with it.

---

1. See Up (Walt Disney Pictures, Pixar Animation Studios 2009).
2. In property terms, Carl is not a “holdout” because his refusal to sell is not designed to obtain more money from the developers. See Mayor and City Council of Baltimore City v. Valsamaki, 916 A.2d 324, 345 n.18 (Md. 2007) (referring to holdouts as “one or more property owners [who] resist selling, wanting to be the last owner of a parcel or among the last, in order to be able to demand higher prices for their property because they are holding up a large project”); see also Kelo v. City of New London, 545 U.S. 469, 495–96 (2005) (O’Connor, J., dissenting) (stating that the petitioners in the case “are not holdouts” because “they do not seek increased compensation,” “none is opposed to new
Those who have seen the movie would likely attest that *Up* is a wonderful story about love, friendship, and adventure. To me, it also tells a great story about property rights, so on the first day of my property law class last year I showed a picture of Carl’s house to my students. Like many professors, I use the standard “bundle of sticks” metaphor to explain the various rights and privileges that owners have with respect to their property. These sticks include the right to exclude, the right to possess, the right to use, and the right to transfer. How does Carl’s decision to send his house up in the air relate to the bundle of property rights? Even those who have not seen the movie are generally able to answer the question. By rejecting the developer’s offers to purchase his house, Carl simultaneously exercised his rights to exclude (by excluding the developer from his property), to possess the property (choosing to stay in the house), to use it (tie the house to balloons), and to refuse to transfer the property to developers (as evidenced by his decision to cause his house to go up in the air). Carl’s actions concretely showed the different protected rights that owners have with respect to their property.

*Up* is one of the sources from the humanities that I have used in the classroom to either introduce or underscore doctrinal, theoretical, and normative points about property law. Other films that I have referenced include *There Will Be Blood* (to examine the rule of capture), *Rent* (to explain landlord/tenant law), *Up for Grabs*, a documentary about the legal fight over Barry Bonds’s historic 73rd home run baseball (to illustrate another example of the rule of capture). In addition to films, I have also used art, such as Norman Rockwell’s painting *New Kids in the Neighborhood* (to examine racial covenants), and novels, such as Jane Austen’s *Pride and Prejudice* (to exemplify the fee tail). Now in my sixth year of teaching property law, I fully intend to continue to use these materials as well as incorporate other ones, including J.K. Rowling’s *Harry Potter and the Chamber of Secrets* (to discuss slavery) and the play *Raisin in the Sun* (to discuss the Fair Housing Act).

Why do I include films, art and novels in the study of property law? The

---

4. Navajo Const., Inc. v. Brigham, 608 S.E.2d 732, 734 (Ga. App. 2004) (“[T]he owner of real property has the right ‘to possess, use, enjoy, and dispose of it, and the corresponding right to exclude others from the use.’”) (internal citations omitted).
reason for this, as I argue in this Essay, is quite simple. I contend that deploying these materials in the classroom deepens my students’ understanding of property law. The study of property law, as scholars have noted, is essentially what it means “to be human.” Indeed, one of the established conceptual views of property is that it is a system of law that “concern relations among people regarding control of valued resources.” Through the use of movies, books, and paintings, I am able to delve more deeply into people’s lives and relationships and the various factors that influenced their competing claims to property. Specifically, through these cultural media, I emphasize the role that different factors—social, cultural, historical, economic and legal—play in shaping people’s interactions with each other regarding things that each contends to be her own. In other words, films, novels, and art, among others, highlight the human stories behind the cases and provide context to the conflicting sense of entitlement to property in the cases that students are learning. This deeper understanding about the legal issues and the forces that led to the property conflict help to prompt more robust discussions about property law.

To be perfectly clear, the majority of the semester is spent analyzing case law, statutes, property theories, and legal and social norms in property law. Like many law professors, I use the Socratic method to teach cases and use hypotheticals and problems to analyze the case law’s application to a new set of facts and understand the nuances of property rules and doctrines. Yet, I have also chosen to blend traditional teaching approaches with cultural materials. Similar to the Socratic method and hypotheticals, these resources also help to elucidate legal opinions, explore theoretical foundations of property law and articulate property rules and doctrines. However, they go beyond the traditional pedagogical approach by also bringing in the relevant contextual and relational issues that, in my view, the Socratic method and hypotheticals are simply unable to do. Films, novels, and art highlight people and their relationships, thereby complementing quite well the rule-centered approach of hypothetical questions. In other words, including cultural materials in the classroom enables me to provide a holistic approach to understanding property law.

In what follows, I discuss four examples—two drawn from films, one from a novel, and another from art—to illustrate the ways in which some nontraditional resources have helped me to underscore to my students key doctrinal, theoretical and normative points about property law.

---

I. EXPLORING PROPERTY RULES: THERE WILL BE BLOOD AND THE RULE OF CAPTURE

In the Oscar-nominated film, There Will Be Blood,15 the main character, Daniel Plainview, an oil businessman, seeks to purchase land that is owned by Eli Sunday because of oil located underneath the property. Set in the late 1800s, one particular scene offers a useful illustration of property law. In this scene, Eli is finally ready to lease his land to Daniel. Daniel, however, is no longer interested in the land, as the following dialogue explains:

Eli Sunday:
If you would just take this lease, Daniel . . .

Daniel Plainview:
Drainage! Drainage, Eli you boy. Drained dry. I’m so sorry. Here, if you have a milkshake, and I have a milkshake, and I have a straw. There it is, that’s a straw, you see? You watching? And my straw reaches across the room, and starts to drink your milkshake . . . I . . . drink . . . your . . . milkshake!
(sucking sound)
I drink it up!16

Known as the “milkshake” scene, the foregoing exchange between Daniel and Eli explained Daniel’s disinterest in Eli’s land. As it turned out, Daniel purchased lands surrounding Eli’s and he had been draining oil under Eli’s property. Invoking an image of a milkshake, Daniel explains that he slurped all the oil below Eli’s land. Using plain language, Daniel essentially explained a rule that many students eventually learn in property law—the rule of capture. Generally, the rule of capture provides that one gains ownership of a particular thing (in this case, oil) based on capturing, acquiring, or possessing it.17 Here, Daniel believes that he is the owner of the oil that he seized from Eli’s land because, as the old adage goes, “possession is nine-tenths of the law.”18

The dialogue between Daniel and Eli in There Will Be Blood provides an extremely valuable pedagogical tool for exploring property doctrine. At the outset, as a descriptive matter, Eli’s actions exemplify one of the ways in which property is acquired. There are different ways of owning property (both real and personal) including ownership through adverse possession,19 capture,20

15. There Will Be Blood, supra note 5.
16. See id.
17. Burford v. Sun Oil Co., 319 U.S. 315, 322 (1943) (describing the rule of capture as to oil ownership where “the surface owner is entitled not only to the amount of oil under his land but to all other oil which he can drain from under his neighbor’s land to his own”).
18. U.S. v. One 1985 Cadillac Seville, 866 F.2d 1142 (9th Cir. 1989) (acknowledging familiarity with the maxim that “possession is nine-tenths of the law”); see also United States v. Sid-Mars Restaurant & Lounge, Inc., 654 F.3d 521, 524 (5th Cir. 2011).
conquest, gift, government grant, labor and investment, and purchase. In *There Will Be Blood*, at least two methods of property acquisition are reflected—labor and investment, and capture. Initially restricted by Eli’s refusal to sell or lease his property, Daniel eventually found alternative means of getting the oil that he desired. Although not fully explained in the “milkshake” scene, there is no doubt that Daniel invested money, time, labor, and resources in drilling the oil through, presumably, an oil rig that he had built.

Doctrinally, *There Will Be Blood* allows a closer examination of the law of capture and its varied permutations. To introduce the general understanding of the rule, I usually first assign the famous “fox” case, *Pierson v. Post*. Those who remember *Pierson* might recall that in this case, the court had to determine the rightful owner of a fox being hunted—was it Lodowick Post, the hunter who first saw and followed the fox, or was it Jesse Pierson, the hunter who eventually wounded and captured the fox? Reversing the lower court, which ruled in favor of Post, the court concluded that Pierson was the true owner of the fox. According to the court, this was the appropriate outcome because Pierson manifested “an unequivocal intention of appropriating the animal to his individual use, has deprived him of his natural liberty, and brought him within his certain control.” In other words, Pierson owned the fox because he was the one who seized or captured it.

*There Will Be Blood* provides a constructive way of understanding how the rule of capture applies in situations outside of animals that are *ferae naturae*. Specifically, it raises a number of questions that focus on the boundaries of the rule. Does the rule articulated in *Pierson* apply similarly in this case because Daniel captured the oil just like Pierson seized the fox and thus makes Daniel the rightful owner? How should a court address Eli’s claims to the oil because it was, after all, located beneath his land? Is oil sufficiently analogous to wild animals for purposes of the rule such that the rule should be applied in the same manner?

Of course, the answers to these questions may vary. Yet, it should be quite evident that the facts of *Pierson* are meaningfully distinct from the “milkshake”

---

23. *Singer*, *supra* note 14, at 127 (discussing the Homestead Act of 1861, which conferred land to certain heads of families who were over twenty-one years old).
27. *Id.* at 177 (presenting the issue as, “whether Lodowick Post, by the pursuit with his hounds in the manner alleged in his declaration, acquired such a right to, or property in, the fox as will sustain an action against Pierson for killing and taking him away?”).
28. *Id.* at 180 (concluding that the judgment below must be reversed).
29. *Id.* at 178.
30. *Id.* at 178.
scene such that a different rule of capture should be adopted. For one thing, the locations of the contested properties are different. In \textit{Pierson}, the fox was found in an “uninhabited, unpossessed and waste land, called the beach.”31 Located in a public place, the fox, a wild animal, does not have a presumptive owner. In \textit{There Will Be Blood}, by contrast, the oil was underneath Eli’s privately owned land. Many jurisdictions recognize that private property owners have absolute ownership of oil (and other resources) below the surface of their property.32 Eli is thus presumed to own the oil that Daniel later acquired.

However, unlike wild animals that tend to move around, oil usually stays in place in a common reservoir beneath the land until pressure from drilling disrupts its static state.33 When drilling occurs, oil migrates across property lines towards the pressure area created by the drilling production, enabling the person conducting the drilling to obtain the oil.34 In Eli’s case, the oil that used to be below his land has migrated to Daniel’s property. Importantly, unlike the fox in \textit{Pierson} or wild animals in general, oil is considered a precious natural resource and commodity that require a special set of rules. These three factors illustrate the limited application of the rule of capture of wild animals that was developed in \textit{Pierson} in situations involving acquiring oil.

Indeed, courts adopted different rules of capture to settle disputes regarding ownership of oil.35 Generally, courts recognized that one’s absolute ownership of land (and any oil below the surface) is, in fact, not absolute. Instead, it is qualified by the rule of capture, enabling non-owners to become owners of oil underneath someone else’s land.36 Thus, through \textit{There Will Be Blood}, I am able to differentiate the varied forms rules governing acquiring property by capture.

To be sure, one could perhaps pose a hypothetical without showing the “milkshake” scene from \textit{There Will Be Blood} or mentioning the film at all. The hypothetical could go something like this: Suppose A, an oilman, finds out that there is significant oil underneath B’s land. A offers to buy B’s land but B refuses. A decides to buy land surrounding B’s land and begins to drill oil underneath those lands. During the process, he ends up acquiring oil that was located underneath B’s lands. B sues A for the value of oil taken from him by A. Based on these facts, what result under the rule adopted in \textit{Pierson}? How should the court rule?

Arguably, class discussions of this hypothetical might yield answers similar to those noted earlier. Yet, \textit{There Will Be Blood} achieves a number of

---

31. \textit{Id.} at 175 (quoting from Post’s declaration to the court).
32. \textit{See Burford}, 319 U.S. at 322.
34. \textit{See id.}
35. For further understanding of the different rules adopted in the oil industry with respect to ownership of oil, see \textit{id.} at 372–75.
36. \textit{See id.}
things that the hypothetical cannot do as effectively. First, and most obviously, the film concretizes the hypothetical. Students do not need to imagine the story because the film illustrates the scenario for them. Second, and more important, it provides historical and social context to the ways in which people interacted with each other with respect to gaining ownership of oil. Historically, because the film is set in the early 1900s, it situates the legal issue of ownership of oil within a period in U.S. history of considerable development and innovation in the oil industry. Daniel was among those businessmen who had the financial means to deploy resources that enabled him to seize oil not only below his land but Eli’s property as well. Legally, courts and legislators during this time were striving to develop rules that would adequately address competing claims to oil by property owners, investors, and many others, including those concerned with wasteful and negligent drilling of oil.37

Importantly, the “milkshake” scene from There Will Be Blood fosters questions designed to ask about the motivations and sentiments behind each of the characters’ actions regarding their competing property interests. Why was Daniel talking to Eli in this way? How does Eli react to Daniel? In what ways are the two similar? In what ways do they differ? From a broad perspective, the dialogue between the two reveals an unequal bargaining position between a wealthy oilman and a property owner desperate to sell his land. Upon closer examination, the conversation illustrates that the two are quite similar because, arguably, what is motivating both their actions is their desire—indeed greed—for wealth. Critically, exploring the underlying reasons for Daniel and Eli’s behavior towards each other prompts normative questions about the role that law—here, the rule of capture—should play in encouraging or curbing the accumulation of wealth of a select few to the detriment of others.38

II. ILLUSTRATING PROPERTY THEORIES: HARRY POTTER AND THE CHAMBER OF SECRETS, UP, AND PERSONHOOD THEORY OF PROPERTY

One of the minor yet important characters in J.K. Rowling’s Harry Potter series is Dobby, a house elf. As readers of Harry Potter will remember, house elves owe their masters complete loyalty and fealty and must do everything their masters tell them to do.39 Under magical law, house elves may be freed from slavery only if their master gives them an article of clothing.40 In Harry Potter and the Chamber of Secrets, Harry Potter cleverly facilitates Dobby’s freedom from slavery by inserting one of his socks in a book that Dobby’s

38. Indeed, the issue of law’s role in wealth accumulation is particularly relevant today.
39. See ROWLING, supra note 12, at 14 (“Dobby is a house elf—bound to serve one house and one family forever,”).
40. See id. at 177 (“Dobby can only be freed if his masters present him with clothes, sir. The family is careful not to pass Dobby even a sock, sir, for then he would be free to leave their house forever.”).
master, Lucius Malfoy, hands over to Dobby. Upon opening the book and seeing the sock, Dobby says, “Master has given a sock. . . . Master threw it, and Dobby caught it, and Dobby—Dobby is free.”41 Critically, Lucius recognizes Dobby’s freedom, as evidenced by his statement, “You’ve lost me my servant, boy!”42 His attempt to hurt Harry Potter failed because Dobby (who is apparently magically powerful) stopped him from doing so.43

Without doubt, Dobby’s story of freedom from enslavement offers a valuable starting point for discussing slavery and the law. To me, it prompts a useful tool for exploring one of the property theories that I cover in class: the personhood theory of property. Typically associated with the work of Margaret Radin, the personhood theory of property notes that certain “objects are closely bound up” with the “way we constitute ourselves.”44 A subtle yet notable moment during Harry’s valiant move to free Dobby from slavery is the link between property and personhood. J.K. Rowling describes Dobby’s reaction to receiving the sock as one of shock. His reaction then turns to one of deep appreciation. He looked at the sock “as though it were a priceless treasure”45 as he realized that it represented his freedom. Indeed, in the instant Dobby acquired his first piece of property—Harry’s sock—he acquired his new identity as a free elf. In this inconspicuous moment, Dobby sees his identity bound up with the sock.

However, the personhood theory of property goes beyond linking objects to one’s sense of identity or self. It also explains that the link between the two may have become so strong that the loss of such object could cause “pain that cannot be relieved by the object’s replacement.”46 From this vantage point, it is perhaps helpful to return to the movie Up because this film offers yet another way of concretizing personhood theory of property.

In particular, personhood theory helps to explain why Carl was so adamant about refusing to sell his home to the developers. Carl first met his wife, Ellie, in this house—at the time an abandoned house—when they were both kids. Later, after getting married, they moved into the house and began renovating it. Carl and Ellie, who were not able to have children, spent many years in the house. When Ellie died, Carl stayed in their home. The house represented a part of himself for it contained many memories that she shared with Ellie. Agreeing to sell the house would be akin to losing not only his identity but also the most meaningful thing that reminds him of his wife. Examined through the lens of personhood theory of property, the pain and loss that Carl would experience from losing the house is palpable.

41. See id. at 338.
42. Id. Assuming that the magical world recognizes western “Muggle” property rights, Lucius’s reaction is understandable. Harry not only outsmarted him but also caused him to lose his property, denying him his right to dispose or transfer his property at will.
43. See id. (explaining that Dobby prevented Lucius Malfoy from hurting Harry Potter).
44. Margaret Radin, Property and Personhood, 34 STAN. L. REV. 957, 960 (1982).
45. See ROWLING, supra note 12, at 338.
46. See Radin, supra note 41, at 960.
Using personhood theory to explain Carl’s refusal to sell his house offers a more robust understanding of *Kelo v. City of New London*. At the outset, one can analyze the similarities and differences between Carl and Suzette Kelo, the plaintiff in *Kelo*. No doubt, the main similarity between the two is the connection between the house and the landowners. Like Carl, Suzette did not want to sell the house in which she had lived for many years. Her little pink house is the home she wanted to keep in the same way that Carl wanted to keep the house in which he lived with his wife. Yet, Carl and Suzette’s situations differ. In Suzette’s case, there was no private developer, as was the case in *Up*. Instead, it was Suzette’s municipal government, not a sole private developer, which sought to purchase her property in order to further a comprehensive urban redevelopment plan. Despite the municipal/private distinction, the consequence would have been the same. That is, Carl and Suzette were both in danger of losing their homes. The personhood theory of property shines a light on the wrenching feeling one gets from losing something so valuable such that no amount of money can compensate its loss. Seen from this vantage point, one can gain a deeper understanding of why Suzette refused to sell her home and Carl tied balloons to his house.

Finally, the personhood theory of property also underscores the importance of having control over property. As Radin noted, “[t]he premise underlying the personhood perspective is that to achieve proper self-development—to be a person—an individual needs some control over resources in the external environment.” The need to have control over things that surround us as a measure of being a person is illustrated well in Carl and Suzette’s conviction to keep their homes. Carl was forced by a judge to leave his home and move to a nursing home. Eminent domain forced Suzette to lose her home. In other words, the law is playing a part in reducing their power over their homes and, in so doing, making them feel less human. By contrast, Dobby, as a free slave, acquired control over his own body and destiny. By gaining power over his own destiny, this magical non-human character began to feel what it is like to be a human being.

---

47. 545 U.S. 469 (2005).
48. *Id.* at 475 (explaining that one petitioner had lived in the area since 1997, made extensive improvements to her home, and prized it for its water view, while another petitioner was born in her Fort Trumbull house in 1918 and had lived there her entire life).
49. *Id.* at 472 (explaining that the City of New London approved the development plan in question). Interestingly, Suzette, like Carl, actually got to keep her house because it was moved to another area. See JEFF BENEDICT, LITTLE PINK HOUSE: A TRUE STORY OF DEFIANCE AND COURAGE 376 (2009) (explaining how Ms. Kelo’s pink house was disassembled and moved elsewhere in the city and declared a historic landmark).
III.
ANALYZING PROPERTY LAW AND SOCIAL NORMS: NEW KIDS IN THE NEIGHBORHOOD, THE RIGHT TO EXCLUDE, AND THE LIMITS OF PROPERTY RIGHTS

One of Norman Rockwell’s famous paintings is New Kids in the Neighborhood.51 Five children—two African American children and three white children—are staring at each other. Two of the white boys and one of the black children, a little boy, are holding baseball gloves. There is a parked moving truck behind them. A man is partly inside the truck and is carrying a big container. There is a bunch of furniture on the ground, behind the African American children. Although not readily noticeable, one of the curtains in the window of the house near where the children are standing is slightly open. The owner of that house is looking outside her window, seemingly observing what is taking place outside.

This painting provides a useful tool for introducing a topic that is difficult to discuss in the classroom: the intersection of race and property.52 In particular, the painting, which Norman Rockwell painted in 1967, suggests a neighborhood dealing with racial integration. Graphically showing black and white children in a neighborhood looking at each other (instead of, perhaps, playing together), the painting intimates the reactions and feelings of the children and the woman behind the curtain caused by the changing make-up of the neighborhood. Indeed, the painting represents what many in the United States might have been experiencing in the wake of the 1964 Civil Rights Act53 and the ensuing 1968 Fair Housing Act.54 These laws sought to dismantle the legally and socially embedded norms, policies, and practices that were designed to segregate people along racial lines. Property law was among those laws that were an integral part of the overall legal system that created racialized differences in wealth, social status, and ownership of land and other different forms of property. Accordingly, it is important to examine property law’s significant role in the construction of racial differences in society and the ways in which laws, including property law itself, sought to undo legal discrimination.

One approach to exploring the ways in which property law impacted racial hierarchies is through a closer examination of both the right to exclude and limits imposed on this right. The right to exclude a person from her own property has long been viewed as one of the strongest sticks in the bundle of property rights.55 However, courts have placed limits and exceptions on the right to exclude.56 One case that makes this particularly evident is Shelley v. Kraemer.57

56. See, e.g., PruneYard Shopping Center v. Robins, 447 U.S. 74, 82 (1980) (holding that the right to exclude is limited by the exercise of free expression and petition rights on shopping center property).
In Shelley, a group of neighbors sought to prevent African Americans from moving into their neighborhood. Signing a private covenant, the neighbors agreed not to sell or lease their houses to “people of the Negro or Mongolian race.” Notably, their agreement to prevent certain groups from residing in their neighborhood demonstrates their desire to exercise their right to exclude.

The Supreme Court, however, held that the racial covenant could not be enforced by the state. It recognized at the outset that the covenants sought to exclude a particular class of people “wholly in terms of race or color” from owning or possessing property. Holding that state courts cannot enforce the covenant without violating equal protection law, the Court explained that, “among the civil rights intended to be protected from discriminatory state action by the Fourteenth Amendment are the rights to acquire, enjoy, own and dispose of property.” In so doing, the Court underscored the limits of the right to exclude that had been established not only under the U.S. Constitution but also by federal statutes.

Shelley, however, failed to fully address racial discrimination in property law. Notably, the Supreme Court held that voluntary private agreements that are not enforced by the state do not violate the Fourteenth Amendment. In so doing, the Court carved out constitutional space for private discrimination that could still enable racial exclusion from neighborhoods. The Constitution only barred public discrimination and not those that occur within the private sphere that are inhabited by people’s interactions and relationships.

Norman Rockwell’s painting enables an effective medium through which to explore the relationship between racial exclusion and limits to the right to exclude. In particular, the painting arguably may be interpreted in at least two ways that help to explain the Supreme Court’s opinion in Shelley. One view of the painting is that it depicts racial integration in a neighborhood made possible by Shelley. The two African American children, as the title of the painting suggests, are the “new kids in the neighborhood.” They appear to have moved into the neighborhood as evidenced by the moving truck behind them and a man seemingly carrying a big household item out of the moving truck. The neighbor hiding behind the curtain further supports the interpretation that the African American family has recently moved in. Her action (hiding behind the curtain) suggests apprehension about the new family. By contrast, the three white children are outside and, indeed, right in front of the black children. Although the children appear to be cautiously staring at each other, the baseball

57. 334 U.S. 1 (1948).
58. Id. at 5.
59. Id. at 10.
60. Id.
61. See id. (citing federal law barring race discrimination in inheriting, leasing, selling, holding and conveying real and personal property).
62. See id. at 13 (stating that “so long as the purposes of those agreements are effectuated by voluntary adherence to their terms, it would appear clear that there has been no action by the State and the provisions of the Amendment have not been violated”).
gloves on the black boy and one of the white boys suggest that perhaps they may play together.

This interpretation of the painting provides a positive account of Shelley. Seen from this perspective, the painting shows that the promise of the Fourteenth Amendment, as articulated by Shelley, was on its way to being achieved. Here, a black family had been able to purchase a home in a white neighborhood. It shows through the white woman behind the curtain that living in this new neighborhood would not be easy; however, the children looking at each other holds promise for a racially integrated neighborhood.

A more critical interpretation of the painting suggests a less than optimistic view of Shelley and racial integration. The African American children would still be considered the new kids in the neighborhood. However, the moving truck is not theirs. Rather, the truck is there to move the white children away out of the neighborhood. That is, what the painting is depicting is white flight that had been precipitated by the new family who had just moved in. The neighbor behind the curtain is peering outside her window, perhaps fearing that she would eventually become the only white resident in the neighborhood.

Both interpretations of Rockwell’s painting—racial integration and white flight—describe what has occurred in neighborhoods across the United States since Shelley was decided. The proscription against state enforcement of racial exclusion in the private market had led to neighborhoods becoming more racially integrated. Shelley helped pave the way (still a very bumpy road at the time) towards enabling African American families to buy homes in white neighborhoods. Yet, the increased presence of African American families and other families of color have prompted white families to leave their neighborhoods and move elsewhere. Because Shelley only prohibited public enforcement of a racially discriminatory private conduct, it failed to address those social norms and practices that enabled private individuals to segregate African Americans.

CONCLUSION

In the last couple of years, the first case that I have taught is State v. Shack. The case held that a farmer who employed migrant farm workers could not exclude from his property a lawyer who sought to enter the property and give advice to the workers who were working and residing in the farmer’s land. In restricting the farmer’s property rights, the court explained that “property rights serve human values.” This case demonstrates effectively the relationship between property law and humanity. As I hoped to emphasize in this Essay, property law is about understanding human relationships, interests, needs, wants, and values. Using film, novels, and art in the classroom thus allows me to underscore how property law facilitates what it means to be human.

63. I am grateful to Melissa Murray for suggesting this alternative interpretation of the painting.
64. 277 A.2d 369 (N.J. 1971).
65. Id. at 372.