



**SCHOOL OF LAW**  
TEXAS A&M UNIVERSITY

Texas A&M University School of Law  
**Texas A&M Law Scholarship**

---

Faculty Scholarship

---

6-2023

## Foreword: Property and Education

Timothy M. Mulvaney

Texas A&M University School of Law, [tmulvaney@law.tamu.edu](mailto:tmulvaney@law.tamu.edu)

LaToya Baldwin Clark

Follow this and additional works at: <https://scholarship.law.tamu.edu/facscholar>



Part of the [Law Commons](#)

---

### Recommended Citation

Timothy M. Mulvaney & LaToya Baldwin Clark, *Foreword: Property and Education*, 123 Colum. L. Rev. 1189 (2023).

Available at: <https://scholarship.law.tamu.edu/facscholar/2071>

This Article is brought to you for free and open access by Texas A&M Law Scholarship. It has been accepted for inclusion in Faculty Scholarship by an authorized administrator of Texas A&M Law Scholarship. For more information, please contact [aretteen@law.tamu.edu](mailto:aretteen@law.tamu.edu).

# COLUMBIA LAW REVIEW

VOL. 123

JUNE 2023

NO. 5

## FOREWORD

### PROPERTY AND EDUCATION

*Timothy M. Mulvaney\** & *LaToya Baldwin Clark\*\**

I. EDUCATIONAL BOUNDARIES .....	1191
II. EDUCATIONAL JUSTICE.....	1194
III. EDUCATIONAL RESOURCES .....	1199
IV. CONCLUSION .....	1200

Education policy is today a flashpoint in public discourse at both the national and state levels.<sup>1</sup> This focus is for good reason. Public schools are highly segregated.<sup>2</sup> School spending is stratified.<sup>3</sup> The need for

---

\* Professor of Law, Texas A&M University School of Law.

\*\* Professor of Law, University of California, Los Angeles School of Law. The authors collectively thank Erika K. Wilson, Rachel F. Moran, Nicole Stelle Garnett, Yuvraj Joshi, Peter K. Yu, Lange Luntao, and Michelle Wilde Anderson for their thoughtful contributions to this Symposium issue. They also thank Symposium Editor Alex Vasques and her colleagues on the *Columbia Law Review* for their tremendous efforts in bringing this issue to fruition. Finally, they express gratitude to Texas A&M School of Law and Columbia Law School for their financial support.

1. Ashley Jochim, Melissa Kay Diliberti, Heather Schwartz, Katharine Destler & Paul Hill, Ctr. on Reinventing Pub. Educ., *Navigating Political Tensions Over Schooling: Findings From the Fall 2022 American School District Panel Survey 2* (2023), [https://crpe.org/wp-content/uploads/ASDP\\_Navigating-Political-Brief\\_v6.pdf](https://crpe.org/wp-content/uploads/ASDP_Navigating-Political-Brief_v6.pdf) [<https://perma.cc/X8NB-QHTM>]; Trip Gabriel, *Education Issues Vault to Top of the G.O.P.'s Presidential Race*, N.Y. Times (Feb. 6, 2023), <https://www.nytimes.com/2023/02/06/us/politics/education-republicans-elections.html> (on file with the *Columbia Law Review*); David A. Hopkins, *Why America's Schools Are Getting More Political*, Wash. Post (Feb. 14, 2023), [https://www.washingtonpost.com/business/why-americas-schools-are-getting-more-political/2023/02/14/e82a5874-ac66-11ed-b0ba-9f4244c6e5da\\_story.html](https://www.washingtonpost.com/business/why-americas-schools-are-getting-more-political/2023/02/14/e82a5874-ac66-11ed-b0ba-9f4244c6e5da_story.html) (on file with the *Columbia Law Review*).

2. U.S. Gov't Accountability Off., *GAO-22-104737, K-12 EDUCATION: Student Population Has Significantly Diversified, But Many Schools Remain Divided Along Racial, Ethnic, and Economic Lines* (2022), <https://www.gao.gov/assets/gao-22-104737.pdf> [<https://perma.cc/KVK2-LUJT>] (reporting that in 2020–2021 “[m]ore than a third of students (about 18.5 million) attended a predominantly same-race/ethnicity school—where 75 percent or more of the student[s] [were] . . . of a single race/ethnicity” and “14 percent . . . attended schools where 90 percent or more of the students were of a single race/ethnicity”).

3. Students in the poorest schools receive only 71% of funding that would be needed to provide those students an adequate education. Sylvia Allegretto, Emma García & Elaine

infrastructural renovations is extensive and expanding.<sup>4</sup> Student debt has reached historic highs.<sup>5</sup> For-profit companies are exploiting school districts' limited resources for everything from curricular content<sup>6</sup> to lunch menus.<sup>7</sup> The list goes on.

This moment presents an opportunity to highlight a threshold issue on which it seems prudent for this discourse to direct greater attention: the interconnections between education and property law. Indeed, decisions surrounding property—crafting district-mapping formulae; devising zoning schemes; setting the baseline conditions for housing and mortgage loans; investing in infrastructure; facilitating teacher and other public employee unionization efforts; and the like—determine in considerable respects the very architecture of our educational system. Whether the extant connections between education and property *should*

---

Weiss, Econ. Pol'y Inst., Public Education Funding in the U.S. Needs an Overhaul 8 fig.B (2022), <https://files.epi.org/uploads/233143.pdf> [<https://perma.cc/F6NC-EYHV>] (showing that the poorest schools would need \$18,000 per student per year to provide an adequate education, but that those schools are only spending approximately \$13,000 per student per year). Students in the most affluent schools receive 23% more funding than needed to provide those students an adequate education. *Id.* (showing that the most affluent schools would need \$8,300 per student per year to provide an adequate education, but that those schools are spending approximately \$10,200 per student per year); Ivy Morgan, Educ. Tr., Equal Is Not Good Enough 4 (2022), <https://edtrust.org/wp-content/uploads/2014/09/Equal-Is-Not-Good-Enough-December-2022.pdf> [<https://perma.cc/PM3B-JKR6>] (reporting that “[a]cross the country, districts with the most students of color on average receive substantially less (16%) state and local revenue than districts with the fewest students of color”).

4. Victoria Jackson & Nicholas Johnson, Ctr. on Budget & Pol'y Priorities, America's School Infrastructure Needs a Major Investment of Federal Funds to Advance an Equitable Recovery 1 (2021), <https://www.cbpp.org/sites/default/files/5-17-21sfp.pdf> [<https://perma.cc/8L7L-4Z2D>] (“Due in part to longstanding federal inaction, the estimated cost of bringing all schools to good condition . . . reached nearly \$200 billion by 2013 . . . [N]eed for improvements is particularly acute in schools with high populations of students from low-income families and of Black, Indigenous, Latino, and other children of color.”).

5. See Brett Holzhauser, Student Loan Debt Hits Another Record High Despite Payment Forbearance, CNBC (May 10, 2022), <https://www.cnbc.com/select/student-debt-hits-another-record-high-what-you-need-to-know/> [<https://perma.cc/P23G-J7K5>] (“Student debt hit another all-time high in the first quarter of 2022, reaching \$1.59 trillion, according to data released by the Federal Reserve Bank of New York . . .”).

6. For example, analysts have suggested that career and technical education, also known as CTE, is being captured by for-profit businesses who sell districts branded curricula. See Jeff Bryant, How Corporations Are Forcing Their Way Into America's Public Schools, Salon (Feb. 11, 2020), [https://www.salon.com/2020/02/11/how-corporations-are-forcing-their-way-into-americas-public-schools\\_partner/](https://www.salon.com/2020/02/11/how-corporations-are-forcing-their-way-into-americas-public-schools_partner/) [<https://perma.cc/6THQ-NUEC>] (“[C]orporations like these can use the rush to CTE to flood schools with new course offerings that require technology the schools have to buy.”).

7. For example, PepsiCo provides school lunches to school districts nationwide. See K-12 Passion to Please, PepsiCo FoodService, <https://pepsicoschoolsource.com/> [<https://perma.cc/3Z7L-DYAH>] (last visited Mar. 27, 2023); see also Jaden Urbi, How Big Brands Like Tyson and PepsiCo Profit From School Lunches (Nov. 14, 2018), <https://www.cnbc.com/2018/11/14/how-big-brands-like-tyson-and-pepsico-profit-from-school-lunches.html> [<https://perma.cc/V3MC-6YRN>].

exist, and, if so, in what shape and form, is a complex question that implicates not only the traditional confines of education and property law but related elements of state and local government law, tax law, immigration law, constitutional law, human rights law, and more. This Symposium brings together a diverse collection of scholars from these and adjacent fields to grapple with this question from various perspectives and research methodologies.

In this Foreword, we classify the Essays in this Symposium issue into three thematic categories: “Educational Boundaries,” “Educational Justice,” and “Educational Resources.” The first features work by LaToya Baldwin Clark, Rachel Moran, and Erika Wilson; the second includes writings of Timothy M. Mulvaney, Nicole Stelle Garnett, and Yuvraj Joshi; and the third comprises scholarship by Peter Yu, Michele Wilde Anderson, and Lange Luntao. We introduce these authors’ Symposium contributions before offering a brief reflection on the intersections between and the role of these thematic categories in education discourse moving forward.

#### I. EDUCATIONAL BOUNDARIES

Contrary to popular perception, the lines that divide the nation into thousands of school districts are not incontrovertible. Instead, these lines are what one scholar characterizes as “contingent . . . features of the legal and political landscape.”<sup>8</sup> They are, in other words, affirmative choices about the content of property law. The Essays summarized in this Part emphasize that these government choices on how and where to draw boundaries shape the allocation of social and economic power.<sup>9</sup>

In *Whose Child Is This? Education, Property, and Belonging*, Professor LaToya Baldwin Clark discusses how a child’s access to educational property (i.e., education within a specific school district) relies not only on residence and real property but also on the extent to which the district sees that child as someone who belongs.<sup>10</sup> Baldwin Clark argues that law and policy constrain children’s access to educational property even when the children have a legitimate legal claim to education.<sup>11</sup> The Essay examines the circumstances of four hypothetical children claiming educational property in one predominantly white, middle-class, and highly sought-after school district in which attendance connects to residence: first, a middle-class white girl who is a bona fide resident; second, a Black

---

8. Aaron J. Saiger, *The School District Boundary Problem*, 42 *Urb. Law.* 495, 507 (2010).

9. Cf. Robert Hale, *Freedom Through Law: Public Control of Private Governing Power* 3–12 (1952) (contending that by “assigning and enforcing legal rights” of property and contract, the law not only protects economic claims but also contributes to economic inequality).

10. LaToya Baldwin Clark, *Whose Child Is This? Education, Property, and Belonging*, 123 *Colum. L. Rev.* 1201, 1205 (2023).

11. *Id.* at 1210–11.

girl who lives part-time with her grandmother who is a bona fide resident; third, a Black boy who is not a bona fide resident but who has a permit to attend the district's schools; and fourth, a Black boy who is a bona fide resident and receives special education services.<sup>12</sup>

Baldwin Clark describes how all four children have a claim to attend this district's schools, but the basis of those educational property claims—and the likelihood of success of those claims—are related to more than mere residence.<sup>13</sup> She argues that these children's experiences implicate “belonging” as the key to accessing an education.<sup>14</sup> “Belonging” invokes a spatial relationship through which these children's claims are recognized and supported.<sup>15</sup> Even among those who have a colorable legal claim to education, students must establish that they are part of a group of *acceptable* claimants.<sup>16</sup> To do so, they must navigate the property rules of the district that “hold up” their claims.<sup>17</sup> Just because a child is a resident or has a nonresident claim to education does not mean that this child's claim is on equal footing with the claims of others.<sup>18</sup> Instead, the strength of a child's claim to educational property depends on the extent to which the child belongs.<sup>19</sup>

In *White Cities, White Schools*, Professor Erika Wilson details the creation of sundown towns, white spaces characterized by the threat of violence against nonwhite people who remained within the town's borders after the sun set.<sup>20</sup> While the explicit threat of violence in sundown towns is primarily relegated to history, Wilson theorizes how the relationship between sundown towns and the racial segregation resulting from that classification continues to affect children's educational lives today.<sup>21</sup> Wilson refers to sundown towns as “microclimates of racial meaning” that largely have gone underexamined in the discourse surrounding property and education.<sup>22</sup> Specifically, law and policy do not adequately account for the racial terror associated with sundown towns, which helped shape regional geographic places.<sup>23</sup>

Wilson uses Grosse Pointe, Michigan, as an example of the phenomenon she describes. Grosse Pointe is (in)famous for rejecting interdistrict remedies for unconstitutional racial segregation by the State

---

12. *Id.* at 1202–04.

13. *Id.* at 1204–05.

14. *Id.* at 1205–06.

15. *Id.* at 1215–16.

16. *Id.* at 1220.

17. *Id.*

18. *Id.* at 1216.

19. *Id.* at 1205–06.

20. Erika Wilson, *White Cities, White Schools*, 123 *Colum. L. Rev.* 1221, 1235–38 (2023).

21. *Id.* at 1241–44.

22. *Id.*

23. *Id.* at 1253–58.

of Michigan.<sup>24</sup> In *Milliken v. Bradley*, the Supreme Court invalidated a plan to reduce segregation in Detroit through interdistrict busing programs.<sup>25</sup> The Court held that because Grosse Pointe, and other suburban Detroit-area districts, did not themselves practice racial segregation, they could not be held responsible for ameliorating segregation in Detroit.<sup>26</sup>

Wilson argues that the Court's finding that Grosse Pointe did not engage in racial segregation fails historical muster.<sup>27</sup> In a prior era, people of color, and especially Black people, were expected to evacuate the town before night fell.<sup>28</sup> In these racialized spaces—white spaces—like Grosse Pointe, racial subordination was practiced and tolerated.<sup>29</sup> Given this history, school district boundaries like that between Grosse Pointe and Detroit are not devoid of racism and discrimination; they cannot be when the district lines themselves are historical markers of racial exclusion.<sup>30</sup> Wilson's Essay sets forth a framework for rethinking the maintenance of school district boundary lines around geographic areas that encompass formerly whites-only municipalities and that explicitly kept nonwhite people out.<sup>31</sup>

In *Person, Property, and Public Education: The Case of Plyler v. Doe*, Professor Rachel Moran revisits the seminal case in which the Supreme Court struck down a Texas law that denied education to undocumented students, the vast majority of whom were of Mexican descent.<sup>32</sup> While the Court did not declare education a fundamental right or alienage a suspect classification, the *Plyler* Court recognized a constitutional right to attend a public school on the basis of residency.<sup>33</sup>

Moran describes how residency-based claims typically create educational-opportunity hoarding in affluent, predominantly white neighborhoods.<sup>34</sup> She acknowledges that the more inclusive understandings of property that have been advanced by scholars of the progressive property movement could hold promise in the realm of education.<sup>35</sup> She focuses here, though, on contributing to the work of scholars and advocates searching for non-property frameworks to achieve meaningful access to public education.<sup>36</sup> Specifically, Moran seeks to

---

24. Id. at 1255–56.

25. *Milliken v. Bradley*, 418 U.S. 717, 745 (1974).

26. Id. at 744–45.

27. Wilson, *supra* note 20, at 1222–23, 1244–48.

28. Id. at 1244.

29. Id. at 1244–48.

30. Id. at 1253–65.

31. Id. at 1266–69.

32. Rachel F. Moran, *Personhood, Property, and Public Education: The Case of Plyler v. Doe*, 123 Colum. L. Rev. 1271, 1289–90 (2023).

33. Id. at 1288–89.

34. Id. at 1279–83.

35. Id. at 1276–78.

36. Id. at 1282–86.

elevate a conception of childhood innocence as a potentially viable source of an inclusive, non-property-based claim to education.<sup>37</sup>

## II. EDUCATIONAL JUSTICE

Property rights reflect state-derived decisions that shape some of society's most meaningful social and economic relationships. The Essays in this Part underscore how these decisions rest on federal, state, and local lawmakers' normative judgments as to which relationships are legitimate and which, instead, are beyond the pale in the face of changing times and conditions.

In *Beneath the Property Taxes Financing Education*, Professor Timothy M. Mulvaney explains that, while select states lean heavily on state income and sales taxes to fund public schools, most states continue to turn to local property taxes for this purpose.<sup>38</sup> The Essay sheds light on the reality that the property values against which these property taxes are levied are not simply created and earned by individual efforts but instead are attributable in sizable part to myriad government choices that are reflected in our property laws.<sup>39</sup>

In an effort to illuminate how these government choices influence property values in a variety of different ways, Mulvaney classifies them into three categories: *structural choices* relating to infrastructure and land use (such as building highways, zoning land, and drawing district boundaries),<sup>40</sup> *financial choices* relating to subsidies and exemptions (such as allowing mortgage interest deductions, offering homestead exemptions, and subsidizing flood insurance),<sup>41</sup> and *protective choices* relating to forestalling natural and human-induced adversities (such as allowing nonconforming uses to continue, constructing erosion-control devices, and providing disaster relief).<sup>42</sup>

Mulvaney emphasizes that these choices about the content of property rights are not neutral choices.<sup>43</sup> Rather, they confer power on some people—including in the form of augmenting their property values—at the expense of others.<sup>44</sup> It follows, according to Mulvaney, that if the government made different choices surrounding the content of property rights, those different choices would produce different property values and, thus, different distributions of the property tax revenues that

---

37. Id. at 1317–22.

38. Timothy M. Mulvaney, *Beneath the Property Taxes Financing Education*, 123 Colum. L. Rev. 1325, 1326–27 & n.4 (2023).

39. Id. at 1339–44.

40. Id. at 1345–50.

41. Id. at 1350–52.

42. Id. at 1352–56.

43. Id. at 1357–58.

44. Id.

finance public education.<sup>45</sup> His thesis, then, is that critically evaluating the justice of the government's normative choices about property laws that influence property values should be part of the discourse about whether it is just, in a given jurisdiction, to tax those values to finance an essential public service like education.<sup>46</sup>

Building off a framework he crafted in a new article with Professor Joseph W. Singer,<sup>47</sup> Mulvaney brings to bear three norms that can serve as a helpful starting point in undertaking this evaluation: (i) sensitivity to the circumstances of how property law operates in a given community, rather than dependence on assumptions about "typical" communities;<sup>48</sup> (ii) acknowledgment of the current effects of both prior and present-day discriminatory practices surrounding property;<sup>49</sup> and (iii) attention to the ways that property laws exist not in isolation but are intricately integrated with each other.<sup>50</sup>

Centering as it does on deepening the discourse on the prospect of financing education through local property taxes, Mulvaney's piece does not undertake a comparative assessment of the justice of alternative education finance schemes. In this light, his Essay at least leaves open the possibility of a given jurisdiction maintaining a connection between property and education for school financing purposes under the right circumstances.<sup>51</sup>

In her Symposium Essay, though, Professor Nicole Stelle Garnett calls for a full-scale disassociation of the two in *Decoupling Property and Education*.<sup>52</sup> According to Garnett, offering families the opportunity to send their children to school outside the geographic area of their residence through various school choice programs advances urban economic development.<sup>53</sup>

Garnett first offers a helpful tour through the changing landscape of school choice options, ranging from open enrollment in public school districts to charter schools to private-school choice programs.<sup>54</sup> She has been a leading figure in the school choice literature for two decades,<sup>55</sup> and

---

45. Id. at 1356.

46. Id. at 1328–29.

47. Timothy M. Mulvaney & Joseph William Singer, *Essential Property*, 107 *Minn. L. Rev.* 605 (2022).

48. Mulvaney, *supra* note 38, at 1358–61.

49. Id. at 1361–64.

50. Id. at 1364–65.

51. Id. at 1330–31.

52. Nicole Stelle Garnett, *Decoupling Property and Education*, 123 *Colum. L. Rev.* 1367, 1369 (2023) [hereinafter Garnett, *Decoupling Property and Education*].

53. Id.

54. Id. at 1374–83.

55. See Margaret F. Brinig & Nicole Stelle Garnett, *Catholic Schools, Urban Neighborhoods, and Education Reform*, 85 *Notre Dame L. Rev.* 887 (2010); Nicole Stelle Garnett, *Are Charters Enough Choice?: School Choice and the Future of Catholic Schools*,



she does not take this occasion to recount each and every aspect of what she describes as her “maximalist view” in favor of the types of universal school choice programs recently endorsed by the state legislatures in Arizona and West Virginia.<sup>56</sup> Instead, Garnett focuses here on three economic development advantages of school choice programs, each of which, she contends, will be more extensive the closer a school choice policy gets to universality.<sup>57</sup>

First, she points to reduced incentives for wealthy families in city centers to move out to the suburbs in pursuit of higher-performing schools for their children.<sup>58</sup> These families can, instead, stay put in their urban homes and have their children commute to wherever their preferred high-performing school is located. According to Garnett, cities’ retention of middle-class families in this manner is important in light of the fact that “overall resident wealth is one of the most important indicators of urban success.”<sup>59</sup>

Second, Garnett contends that school choice programs reduce the likelihood that Catholic schools in urban areas will close by “leveling the competitive playing field” between these tuition-driven private schools and tuition-free public district schools and charter schools.<sup>60</sup> This result, she suggests, would be advantageous economically for urban areas in light of what she sees as Catholic schools’ presence as “important, stabilizing community institutions.”<sup>61</sup> Further, Garnett contends that “poor, minority students” will be the primary beneficiaries of efforts to prevent the closure of Catholic schools in light of Catholic schools’ achievement successes across socioeconomic and racial groups.<sup>62</sup>

Third, she contends that school choice programs offer the promise of reducing inequality within metropolitan regions by removing barriers to

---

87 Notre Dame L. Rev. 1891 (2012); Nicole Stelle Garnett, *Disparate Impact, School Closures, and Parental Choice*, 2014 U. Chi. Legal F. 289; Nicole Stelle Garnett, *Sector Agnosticism and the Coming Transformation of Education Law*, 70 Vand. L. Rev. 1 (2017).

56. Garnett, *Decoupling Property and Education*, supra note 52, at 1369–71.

57. *Id.* at 1369.

58. *Id.* at 1388–90.

59. *Id.* at 1390.

60. *Id.* at 1369. “Universal parental-choice policies, which pair public-school-choice options with charter schools and private-school choice, reduce the sticker shock facing families who would choose to remain in urban neighborhoods if private schools were a realistic option.” *Id.* at 1398.

61. *Id.* at 1369, 1400–02 (citing Margaret F. Brinig & Nicole Stelle Garnett, *Lost Classroom, Lost Community: Catholic Schools’ Importance in Urban America* 9–75 (2014)).

62. Garnett believes that Catholic schools’ achievement successes are a product of what she sees as their being “intentional communities with high levels of trust and social capital and high expectations for achievement for all community members, regardless of race or class.” *Id.* at 1399 n.179. She acknowledges, though, that others deem this “success” a result of selection bias. *Id.*

mobility within a given region.<sup>63</sup> In Garnett's view, concerns about maintaining school district quality often drive exclusionary zoning policies that have the effect of driving up housing prices and limiting supply.<sup>64</sup> With such zoning schemes in place, writes Garnett, lower-income residents are unable to secure affordable housing in communities with academically proficient public schools, "fuel[ing] economic and racial segregation."<sup>65</sup> De-linking educational opportunities from residential addresses will, in Garnett's view, disincentivize zoning policies that contribute to such invidious discrimination. Such a course, she asserts, is apt to decrease property values in academically higher-performing suburban areas and increase property values in academically lower-performing urban areas, thereby "weakening the residential stratification of the current public school system."<sup>66</sup>

Professor Yuvraj Joshi's Symposium contribution speaks to a distinct tool of stratification in the educational arena, one he calls the "weaponization of peace." In *Weaponizing Peace*, Joshi draws on both social movements and Supreme Court doctrine to recount claims that peace and harmony justify opposition to racial equality in education and beyond.<sup>67</sup> To Joshi, these appeals are "concerned only with the threat to peace posed by *changes to the status quo*, not with the threat to peace resulting from a *continuation of the status quo*."<sup>68</sup>

The matter of *Cooper v. Aaron* offers one of Joshi's many illustrations. The school board in Little Rock, Arkansas, had proposed a phased integration plan to comport with the Supreme Court's declaration in *Brown v. Board of Education* that racial segregation in public schools is unconstitutional.<sup>69</sup> When a local segregationist group helped to persuade Arkansas's governor to forgo implementing the plan for fear that it would instigate a "breach of the peace," President Dwight D. Eisenhower deployed federal troops to protect the Black students entering Little Rock's previously segregated schools.<sup>70</sup> Mississippi Senator John Stennis wrote to the President deploring the integration plan, asserting that it would eviscerate "generations of peaceful and harmonious cooperation

---

63. Id. at 1402–06.

64. Id.

65. Id. at 1404 (internal quotation marks omitted) (quoting Jonathan Rothwell, Brookings Inst., *Housing Costs, Zoning, and Access to High-Scoring Schools* 1–2 (2012), [https://www.brookings.edu/wp-content/uploads/2016/06/0419\\_school\\_inequality\\_rothwell.pdf](https://www.brookings.edu/wp-content/uploads/2016/06/0419_school_inequality_rothwell.pdf) [<https://perma.cc/LD22-EUKJ>]).

66. Id. at 1406 (internal quotation marks omitted) (quoting María Marta Ferreyra, *Estimating the Effects of Private School Vouchers in Multidistrict Economies*, 97 *Am. Econ. Rev.* 789, 791 (2009)).

67. Yuvraj Joshi, *Weaponizing Peace*, 123 *Colum. L. Rev.* 1411, 1412 (2023).

68. Id. at 1421.

69. Id. at 1424–25.

70. Id. at 1425 (internal quotation marks omitted) (quoting *Courts*, 2 *Race Rels. L. Rep.* 931, 937 (1957) (reprinting Arkansas Governor Orval Faubus's proclamation)).

among the people of the two races.”<sup>71</sup> When the case made its way to the Supreme Court, the United States highlighted the fact that, of course, the Black children had not caused the unrest.<sup>72</sup> The Court ultimately agreed, rejecting, in Joshi’s words, “an exclusionary negative peace” that would result in the denial of a constitutional right to equality.<sup>73</sup>

Joshi describes how the tactics of the segregationists in *Cooper* are on display today in the form of opposition to antiracism education and racial inclusion in schools.<sup>74</sup> He describes how an Ohio law banning the teaching of “divisive . . . concepts” such as “intersectional theory” and “diversity, equity, and inclusion learning outcomes” gained traction through dominant groups’ press for “racial harmony.”<sup>75</sup> Similarly, he cites a Texas state legislator’s defense of the state’s anti-critical-race-theory law as fending off “lawlessness, violence, and destruction of private property” that was spawned by protests in support of racial justice.<sup>76</sup> Similar claims, Joshi notes, have been made in the run-up to the Supreme Court’s addressing two affirmative action cases in the current term.<sup>77</sup> Those opposed to affirmative action have deemed the practice “inherently divisive.”<sup>78</sup> According to Joshi, opposition to antiracism education and affirmative action programs allow current and future generations of students to ignore our Nation’s historical truths and dismiss the “salience of race and racism in people’s lives.”<sup>79</sup>

After critiquing these weaponizations of peace, Joshi sets out four questions to help us contemplate “more emancipatory understandings of peace.”<sup>80</sup> They include inquiries into whether a genuine threat to peace exists in a given context, the actual source of any extant unrest, the consequences of accepting claims of weaponized peace, and whether there are alternative claims to “an enduring, positive” peace that outweigh or override the dominant group’s claims to peace.<sup>81</sup> Joshi concludes that “[t]he American experience shows that conflict can be constructive and

---

71. *Id.* (internal quotation marks omitted) (quoting Telegram from Senator John Stennis to President Dwight D. Eisenhower (Oct. 1, 1975) (on file with the *Columbia Law Review*)).

72. *Id.* at 1427.

73. *Id.* at 1426.

74. *Id.* at 1435–37.

75. *Id.* at 1441 (internal quotation marks omitted) (quoting H.B. 616, 134th Gen. Assemb., Reg. Sess. (Ohio 2022)).

76. *Id.* at 1442 (internal quotation marks omitted) (quoting Steve Toth, A Plea for Racial Harmony, Tex. Pub. Pol’y Found. (May 6, 2021), <https://www.texaspolicy.com/a-plea-for-racial-harmony/> [<https://perma.cc/948V-TE67>]).

77. *Id.*

78. *Id.* at 1443 (internal quotation marks omitted) (quoting Transcript of Oral Argument at 34, *Students for Fair Admissions, Inc. v. Univ. of N.C.*, No. 21-707 (U.S. Oct. 31, 2022)).

79. *Id.*

80. *Id.* at 1443–47.

81. *Id.* at 1444–46.

even necessary to the achievement of a more just society—and . . . not every peace is worth preserving.”<sup>82</sup>

### III. EDUCATIONAL RESOURCES

The Essays in this final Part present new lenses through which to view both the denial of education based on residency and the prospects of curricula to help students understand more about the communities in which they live.

In *Rethinking Education Theft*, Peter Yu applies insights from intellectual property (“IP”) law and human rights law to the debates about the relationship between property and education. He advocates broadening the discourse on “education theft,” which currently emphasizes residency-related infringements, to include a conversation on all forms of deprivation of educational opportunities, especially from members of marginalized and disadvantaged communities.<sup>83</sup> Yu describes how copyright and patent laws incentivize knowledge production, the creation of innovative materials, and the development of new technologies.<sup>84</sup> Yu argues, however, that IP laws also restrict access to these kinds of educational resources by allowing IP holders to charge exorbitant prices in a less-than-competitive space, making much of what IP law protects inaccessible and unaffordable to many districts and individuals alike.<sup>85</sup>

In questioning the commodification and propertization of education, Yu ultimately makes three interrelated points. First, he describes the poor fit between IP law and traditional property law and highlights how IP law in its current form threatens access to public education.<sup>86</sup> Second, he suggests that human rights norms regarding access to education can help us unpack the poorness of that fit and open new avenues for advocacy in the educational access space.<sup>87</sup> Third, Yu contends that an IP law reimagined through the lens of human rights law can shed further light on the follies of criminalizing violations of property-based rules, such as school district residency requirements.<sup>88</sup>

In their Essay, *Ethnic Studies as Anti-Segregation Work: Lessons From Stockton*, Professor Michelle Anderson and community activist Lange Luntao argue that ethnic studies curricula offer students and teachers an

---

82. Id. at 1447–48.

83. Peter K. Yu, *Rethinking Education Theft Through the Lens of Intellectual Property and Human Rights*, 123 Colum. L. Rev. 1449, 1491–93 (2023).

84. Id. at 1451.

85. Id. at 1451–52, 1458–61.

86. Id. at 1454–64.

87. Id. at 1475–88.

88. Id. at 1493–99.

accurate history of the spaces they call home.<sup>89</sup> The Essay meditates on how an ethnic studies curriculum thrived in one of the most diverse cities in the nation: Stockton, California.<sup>90</sup>

Anderson and Luntao focus on the personal narratives of three Stocktonites, each of whom is a generational leader who shaped curricula in ways that reflect their own experiences.<sup>91</sup> These narratives show that ethnic studies can be part of a city's healing from past and present effects of racial segregation in housing and education.<sup>92</sup> Ethnic studies, that is, according to Anderson and Luntao, provide a lens through which students can see themselves and understand others.<sup>93</sup> This mirroring is particularly important in racial majority-minority districts, where students often cannot envision themselves in curricula.<sup>94</sup> Ethnic studies present a diverse set of authors and trailblazers, bringing to the classroom needed context and a rethinking of historical facts that affect these young people's lives.<sup>95</sup> While ethnic studies cannot, on their own, desegregate public schools, they can diversify the curriculum in ways that allow young people to better understand their own experiences.<sup>96</sup>

#### IV. CONCLUSION

The *boundaries* that characterize our district-based educational system are not the result of natural or market-generated processes but, rather, the history-laden product of the exercise of legal powers within the institution of property. And, indeed, drawing boundary lines is just one of the myriad property-related choices that impact the provision of education. As these choices structure the educational system that serves as the backbone of our social and economic lives, we must evaluate them against our contemporary understandings of what constitutes a *just* society. And, in important respects, the *resources* we dedicate to educational opportunities and delivery—be they financial, infrastructural, curricular, or otherwise—help shape that evaluation. A single symposium cannot possibly unpack every aspect of the stratifying challenges that plague public schooling in America; however, these frames—of *boundaries*, of *justice*, and of *resources*—and the contributions thereto that are presented in this collection of Essays offer an essential step toward an improved discourse on education moving forward.

---

89. Lange Luntao & Michelle Wilde Anderson, *Ethnic Studies as Anti-Segregation Work: Lessons From Stockton*, 123 Colum. L. Rev. 1507, 1514–16 (2023).

90. *Id.* at 1511–12. California was the first state to require an ethnic studies course for high school graduation. *Id.* at 1510.

91. *Id.* at 1518–30.

92. *Id.* at 1531–32.

93. *Id.* at 1530–32.

94. *Id.*

95. *Id.* at 1511.

96. *Id.* at 1530–32.