

**Workshop on Remedies: Justice and the Bottom Line  
Session on Social Inequality and Monetary Relief**

**Does Race Impact Prices Obtained in Forced Sales of Agricultural  
Property?:  
Outline for Professor Thomas W. Mitchell**

**I. Overview**

- A. The question of whether the race of a property owner can impact the sales price generated in a forced sale such as a partition sale or a foreclosure sale has been unaddressed in any empirical scholarship, including scholarship in law, real estate economics, and agricultural economics
- B. Partition sales of property owned under the tenancy in common form of ownership have been particularly understudied
  - 1. Most broadly, partition sales must be considered in light of the fairness of the *ex ante* property rights that are implicated. Unlike others who own property in fee simple who can maintain their property irrespective of whether they are willing to condition their continued ownership to being the winning bidder at an auction of their property, those who own tenancy in common or joint tenancy property may have their property sold at an auction even if the co-tenants owns their property free and clear. Most courts that construe partition statutes do not take into account a range of non-economic values co-tenants seeking to maintain their property assert in seeking to convince a court to partition the property as opposed to ordering a sale of the property and a distribution of the proceeds
  - 2. Setting aside the fairness of the default rules that allow for a partition sale to be ordered so routinely in the first instance, legal and economic scholars have undertheorized the economic impact such sales may have upon property owners -- irrespective of the race of the property owner -- because these scholars assume that partition sales are conducted in a manner that mirrors a private sale

3. A partition sale has few, if any, attributes of a private sale.

a) A partition sale is a type of forced sale and must be analyzed accordingly

b) The sales process that is used must be considered given that forced sales can occur in a number of different ways and under a number of different types of conditions. Normally, land sold at a partition sale is sold at an auction

c) Moreover, the transaction costs the parties are forced to incur must be taken into account in order to evaluate whether the parties' are left economically whole after a partition sale is conducted

C. In order to assess whether particular types of forced sales yield differential sales prices for minority property owners as compared to white property owners, my research team that includes two real estate economists is conducting an empirical study of sales of farmland owned by minority and white landowners.

1. Our field site consists of one of 45 New Deal agricultural communities established in the mid-1930s to provide poor farm families with the opportunity to acquire a small farm of their own. This site was the only such community established that had a white section and a black section, sections which were located within twelve miles of one another

2. Our research design is longitudinal in nature. We have built a data set that includes every sale involving each of the 200 original New Deal properties from the time the first settler family acquired title to the property in the 1940s through sales that occurred in 2003, a sixty-year period. This data set contains more than 1,500 sales, including a large number of voluntary sales and a smaller number of forced sales of one type or another

3. We are conducting quantitative analysis of many of the sales in our data set using the method of hedonic, statistical regression analysis

4. In addition, we are conducting case studies of a selected sample of sales in our data set to better understand the “law in action” of these forced sales, including the role, if any, that the race of the landowner plays at various stages in the forced sales process

## **II. The Unaddressed Economic Valuation Issues Implicated in Forced Sales of Minority-Owned Agricultural Property Are Prominently Addressed in Many Other Legal Contexts**

### **A. Distinguishing Fair Market Value from Liquidated or Distressed Value**

#### **1. Fair market value**

- a) Fair market value defined
- b) Method for determining value subject to aggressive lawyering with those with access to better legal services better positioned to maximize the value they receive from the sale of any particular asset

#### **2. Liquidation Value**

- a) Liquidation value defined
- b) Liquidated value applies to sales of both real and personal property

### **B. In many areas of the law, whether an asset should be valued at its fair market value or its liquidated value is highly contested given that serious, negative wealth impacts may flow from such sales**

1. Partnership dissolution cases are very analogous to partition cases in that courts can order a division in kind or a liquidation sale. Courts often address the “fire sale” nature of liquidation sales of partnership assets

2. A central point of disagreement between parties in bankruptcy proceedings of one kind or another is whether a particular asset should be valued at its fair market value or its liquidated value

3. Legal scholarship on foreclosure sales has often considered whether forced sales of foreclosed properties that return below market prices are fair in those circumstances in which a defaulting mortgagor's equity is not protected given the manner in which the forced sale was conducted

### **III. Review of Empirical Studies of Different Type of Sales**

A. Property sold at foreclosure sales is often sold at a discount

B. The small number of studies on property acquired under eminent domain demonstrates that properties are often acquired below fair market value with lower valued properties most susceptible to being acquired at a significant discount. Such below market acquisitions occur despite the requirement that just compensation be paid

C. Empirical results on prices obtained at auctions

### **IV. Literature Review of the Role that Race Plays in Housing and Lending Markets**

A. Review of scholarship on whether minorities pay more for rental and owner-occupied housing

B. Review of scholarship on role that discrimination plays, if any, on housing finance

### **V. Empirical Study on Whether the Race of the Landowner Impacts Farmland Prices**

A. Research Design

B. Report of Preliminary Results