
PREFACE

The turbulent events of the last ten years have changed what was a key claim of the first edition of this Casebook: Race is often seen in property law but not heard in the property curriculum. We now hear our students asking why. If “Black Lives Matter,” do we live in communities still scarred by the landscapes formed by racially restrictive covenants and highway removal? How can we fully recognize the sovereignty of Native communities shaped by the conflict between Native Americans and European settlers over land during the initial settlement of the United States? Should property law be used to shape the experience of immigrant communities, for instance, by forbidding Japanese immigrants from purchasing property? Most fundamental of all, should law school courses confront the ways in which property law prevents or, more hopefully, aids in achieving social justice?

The first edition of *Integrating Spaces: Property Law and Race* sought to tell a new story in property law. As we noted, “this book is inspired by students who have asked two questions. First, why don’t we hear more about the role of race in property law in the first-year course? And, why aren’t there more cases involving racial minorities (whether or not race is a factor in the outcome of the case) in our property casebook?”

We were proud to answer those questions. And in doing so, new questions emerged. Whose stories do we tell in property law? And if we tell new stories, how would that impact how property law is taught? To address these questions, we assembled a set of readings to show that race is not a topic confined to courses in constitutional law or criminal law. Through this set of readings, we showed race has played a vital role in the development of property law and continues to affect property law today. We also intended to show that issues of property law are relevant to people of different economic, racial, and ethnic backgrounds. We hoped that the cases included in the first edition would allow students to talk explicitly about the impact of race on property law and see the property course populated by a greater range of voices and interests. And we also insisted that the issue of race was central to the identity of property law, helping us to answer a series of questions: Where do property rights come from? How important are long-settled agreements that a person owns property (or, in the case of slavery, is property)? Part of property law is about the

boundaries of property rights; on the edges of those property rights are often other people's civil rights. Thus, as we talked about the centrality of race, we picked up other major themes of property law.

In the first edition of *Integrating Spaces*, we were proud of the ways in which telling new stories permitted us to shift how property law is taught and understood. What does it mean to tell new stories? Property law often tells the stories of winners: The person who wins possession over other claimants, the triumphant property owner's subsequent rights to exclude, use, and transfer that property, and how the property owner may simultaneously benefit and suffer state action. By telling new stories in *Integrating Spaces*, we performed ground-breaking work in decentering dominant narratives in a way that hopefully helped students from many different backgrounds to recognize the pervasive ways that property law can structure their own experiences. In this way, *Integrating Spaces* had an ambitious goal of expanding what it means to "think" like a lawyer. For us, "thinking" like a lawyer is more expansive than conquering syllogisms. In particular, thinking like a lawyer requires interrogating how we as a society construct the solutions to problems. By telling new stories, we help our students think less of property law as about winners and so-called "losers" and more about how to construct property rules that work for us all.

In our second edition of *Integrating Spaces*, we build on the first lessons of *Integrating Spaces*—that new stories need to be told in property law—in two key distinct ways. First, instead of focusing on one social identity—race—we decided to expand the focus on property law to a range of social identities including, for instance, race, gender, citizenship, and sexual orientation. The broader perspective of 2nd Edition comes from hearing so many of you say that property has a relationship with so many different social identities that are not fully captured by the experience of a person's racial identity.

Second, we explore the issues raised by the intersection of property and social identity through thematic "frames" which bind the diverse topics into a coherent whole. Exploring the ways in which diverse social statuses are linked to property law also can shift what topics are considered important in property law. For instance, when most property law casebooks address constitutional law, they offer substantive treatment of the Taking Clause of the Fifth Amendment of the U.S. Constitution, which offers compensation for governmental intrusion into property while ignoring the equally vital Thirteenth Amendment. The Thirteenth Amendment is an ideal vehicle to explore how group identity can acquire property status in two ways. First, as this edition of *Integrating Spaces* explains, the Thirteenth Amendment eliminates the "group identity" of slaves and indentured servants. Indeed, we link the Thirteenth Amendment to Joseph Singer's work in titles of nobility, which discusses the role of the Constitution in seeking to manage certain "caste" status that may expand an individual's property rights or, in the case of

enslavement, may preclude an individual's property rights. Second, as this Edition will explore, we can teach how citizenship is often intertwined with both property rights and racialized definitions of group identity by connecting the Thirteenth Amendment to the subsequent passage of the Civil Right Act of 1866, which allowed enslaved persons the ability to "to inherit, purchase, lease, sell, hold, and convey real and personal property, and to full and equal benefit of all laws and proceedings for the security of person and property, as is enjoyed by white citizens."

Notably, then this Edition of *Integrating Spaces* will not be organized in chronological fashion (as was the first edition). Rather, we will explore these themes through a series of frames. These frames—in the order that they will be covered in the text—are dispossession/possession, disruption/reordering, space/place/social identity, and repair.

Chapter One introduces the intersections between social identity, status, and property law. It explores how social status such as race or sexual orientation can itself serve as a property interest. In this Chapter, we further analyze how property law operates to maintain boundaries between certain social status. For example, using the frame of citizen/alien, we show how property law can mark the boundaries between citizen and non-citizen in a democratic state. In particular, the Chapter demonstrates the extent to which democratic societies have made citizenship itself a property status, drawing a boundary between a citizen's ability to own property as opposed to a non-citizen's ability to own property. Additionally, the Chapter considers how democratic states have used property regimes to control broad-scale internal and external migrations of people, through use of property vehicles such as limits on the right to transfer and the use of racially restrictive covenants.

Chapter Two deploys the frame of dispossession and possession, the "twins" that shape the property experience. In this Chapter, we highlight that as much as there is a law of possession, there is also a law of dispossession. That is, there are particular acts of dispossession, which depend on enforceable legal mechanisms. Through the frame of dispossession and possession, we examine a diverse collection of common law, statutory, constitutional law, and international treaties on diverse subjects of slavery, indigeneity, and territoriality and empire.

Chapter Three investigates the frame of disruption/reordering. A disruption in a property regime can range from a relatively minor shift in the law (e.g., a shift from a prior appropriation regime to a reasonable use regime) to a major re-organization of property system, such as what happened after the Civil War of the United States, or Eastern Europe's transition from communism to a free market regime, or South Africa's attempts to redress the economic, political, and social consequences of apartheid. In this Chapter, we explore how comparative constitutional law attempted to reform inequalities that have arisen because of caste status associated with race, class, and other social identities, or how various statutory regimes

attempted to confront re-orderings in family status at the end of, for instance, segregation or bans on same-sex marriages.

Chapter Four examines the frame of space/place. As discussed in the relevant theory, space is an abstract conception of a place; place is an individual's experience of space in an embodied location. We can name all sorts of space/places that matter in property law:

- The space of the *plantation* and the *place of a given plantation*
- The space of the *reservation* and the *place of a given reservation*
- The space of the *ghetto* and the *place of a given ghetto*
- The space of the *neighborhood* and the *place of a given neighborhood*
- The space of the *farm* and the *place of a given farm*

This Chapter investigates how law imbues abstract space with meaning and, in doing so, creates inextricable links between individual social identities in any given place. We explore how constitutional law, statutory law, and international law engage with the neighborhood, although these lessons can be applied to other spaces as well. Thus, we analyze specific issues such as redlining, covenants, and easements, the incorporation of towns, environmental justice, fair housing, and nuisance.

Chapter Five explores the frame of repair—how property law can be used to rectify currently existing inequality based on solutions available in property law. In particular, we engage with the right of repair using models available from three distinct areas. First, we consider how the model of repair exists in the common law itself, varying from easements that recognize indigenous rights to access sacred spaces to the easing of default common law rules as is related to partition. Second, we analyze how statutory law models, such as the Fair Housing Act and the Community Reinvestment Act, can be used to rectify pre-existing property harms. Third, we examine how constitutional and international law models seek to repair pre-existing property harms.

There is another difference between the first edition and this edition. The new cover depicts the interior of the National Memorial for Peace and Justice, which is located in Montgomery, Alabama. The National Memorial for Peace and Justice is the first memorial to consider the legacy of racial terror campaigns in the United States. A key feature of the memorial is depicted on the cover of this text, a structure of over 800 corten steel monuments, that depicts the place, space, and names of victims of lynching. We think the cover is an appropriate place to begin the process of centering students in the questions of social identity, social justice, and repair that animate *Integrating Spaces*. We thank April Grayson, a noted documentarian of film and photography, for her gracious permission to use her photograph of the memorial.

Before we conclude, we want to acknowledge the tremendous help that influenced our work. At the outset, in developing the first and second

edition, we have benefitted mightily from the extraordinary scholarship on property and social identity that has been produced in recent years. We also benefitted from the talented group of progressive property scholars who are remaking the field of property as well as from our students. Diverse disciplines such as critical legal studies and its progeny, critical race studies, feminist theory, anthropology, geography, and various sub-disciplines such as social, cultural, and socio-cultural history taught us how to interrogate the ways in which property regimes manifest political, social, and economic hierarchies within different societies.

We want to thank adopters of this textbook such as Marc Roark, Professor of Law, Southern University School of Law, and John Lovett, Professor of Law, Loyola University New Orleans, whose comments and organization of their courses inspired our revision of this edition.

We would also like to acknowledge the research assistants that supported our work. In Kali's case, she would like to thank Ariel Dade, Kennedy Furnace, Annie Gonring, Annie Grove, Andre Jackson, Sydney Lawrence, Jennifer Morales, Tara Ortner, Azene Seifoddini, Shakia Smith, Michelle Svilpe, Austin Wesner, and Jordan Zollicoffer, who stuck with this project despite everything (including a worldwide pandemic!). Kali would like to thank her perceptive Property Law and Social Identity seminar for their welcome feedback and comments. As for Rose, she benefitted tremendously from the support and research assistance of Joseph Lin, Samantha Hing, and Hudson Cleveland and comments and feedback from students in her Property, Race, and Social Identity seminar in the fall 2022 semester.

Importantly, we wish to note one more development. Along with Alberto Lopez, Alfred Brophy is stepping away from the ongoing project that is *Integrating Spaces*. We want to extend a special thanks to "Al" Brophy; so much of our work in this edition is shaped by Al's gifts of mentoring us in our teaching and our scholarship. His research and insight inform every page of this new edition of *Integrating Spaces*, and we wish to extend our thanks for his profound gifts to us both.

Kali Murray
Rose Cuison-Villazor

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