

FOREWORD: EXPANDING THE BOUNDARIES OF KNOWLEDGE ABOUT SLAVERY AND ITS LEGACY

LOLITA BUCKNER INNIS*

I taught Property Law for over twenty years before becoming the Dean of the University of Colorado Law School in 2021. In those years I covered the legal, economic, and social aspects of property, both historic and modern, and along the way addressed property in many of its iterations and forms. In my discussions of property law, I not only interrogated the traditional, typically descriptive aspects of property law but also argued for critical, sometimes prescriptive stances that looked beyond standard property law formulations. In these discussions, I often explored both metaphoric and literal spatial dynamics, an especially apt approach given that both property itself and the laws that govern it are frequently about drawing lines and setting boundaries.¹ Among the cases I taught were those exploring the meaning and nature of U.S. slavery. During these years I fielded a lot of questions on property law in much of its glorious diversity. But one of the queries that came up with a startling degree of frequency, at more than one of the law schools where I taught over the years, was: “Why do we have to learn about slavery? This is a property law class.”

In my early years as a law professor, I was inclined to assume that this question grew from a misapprehension of the broad nature of property law. Maybe, I thought, the students who posed this question were under the assumption that property law was starkly circumscribed and had to do only with

* Dean and Provost’s Professor of Law, University of Colorado Law School; JD, University of California, Los Angeles; LLM, PhD, Osgoode Hall Law School, York University. Dean Inniss can be contacted at linniss@colorado.edu.

1. See generally Lolita Buckner Inniss, *From Space-Off to Represented Space: A Review of Reimagining Equality: Stories of Gender, Race, and Finding Home by Anita Hill*, 28 BERKELEY J. GENDER L. & JUST. 138 (2013) (discussing the literal and figurative aspects of space and place in the context of Black women’s searches for “home”). In recent decades there has been a decidedly “spatial turn” in a wide array of disciplinary areas, property law not least among them. Lolita Buckner Inniss, *Roxanne Shante’s “Independent Woman”: Making Space for Women in Hip Hop*, in FIGHT THE POWER: LAW AND POLICY THROUGH HIP-HOP SONGS 175, 176 (Gregory S. Parks & Frank Rudy Cooper eds., 2022).

real property, that is, with land and the things attached to it. It didn't take very long before I realized that this question did not grow from a narrow understanding of property law's boundaries. These students, it turned out, perfectly well understood that property law also included personal property—things other than land and its attachments. Moreover, they also understood that some people, mostly Black people, had been deemed property for much of the history of the United States. What this question betrayed was not racial innocence or ignorance of the bounds of property law but rather an unwillingness to include the topic of slavery and its legacy within the bounds of property law.

Resistance to painful or difficult aspects of the past is not unusual. Though Shakespeare wrote that “what's past is prologue,” there are two ways of understanding that expression.² One way is to see the past as merely a milestone on the road to better places, a blur briefly sighted along a journey that is soon left behind and forgotten. All too often slavery, for some, is one of those blurs. However, another way of interpreting past as prologue is to recognize that we must continually look back and sharpen our understanding of and our focus upon what has come before to have any possibility of going forward in a sure and true direction. It is this latter meaning that guides my own work and the work of the scholars writing in this Symposium Issue.

My attention to the history and legacy of the enslavement of people of African ancestry has long been a part of my teaching and my research. My most in-depth foray into this topic to date is my book, *The Princeton Fugitive Slave: The Trials of James Collins Johnson*.³ In the book, I tell the story of a man, James Collins Johnson, who fled Maryland enslavement in 1839, arrived in Princeton, New Jersey, and obtained menial employment at what is now Princeton University. He worked without major incident until 1843, when he was recognized as a fugitive, arrested, tried, found to have escaped,⁴ and slated for

2. WILLIAM SHAKESPEARE, *THE TEMPEST* act 1, sc. 2, l. 287 (“We all were sea-swallow'd, though some cast again, / And by that destiny to perform an act / Whereof what's past is prologue, what to come / In yours and my discharge.”).

3. LOLITA BUCKNER INNISS, *THE PRINCETON FUGITIVE SLAVE: THE TRIALS OF JAMES COLLINS JOHNSON* (2019).

4. Note that the word here is not “convicted.” Enslaved people were subject to return to slavery if apprehended and proven to be the escapee sought. Fugitive enslaved people were considered more in the nature of property to be returned than as people to be held accountable for violations of law. As a result of this “non-people” status, enslaved people (and even free Black people in many jurisdictions) were not

return to slavery. He was saved when a local, wealthy White woman paid his slave price. He then lived on in Princeton, perhaps not happily, but ever after in the six decades that followed. My book is an intensive look back at the life of a Black man who was a small actor but whose story represented many larger concepts in law and society. Looking at the context of higher education, this book queries how Johnson's story was remembered and told, including the not-so-subtle blurring of the boundaries between fact and law, freedom and slavery.

The authors writing in this symposium, in like fashion, address how the history and legacy of slavery have often been relegated to narrow spaces and closely limited boundaries, either misremembered, or altogether unremembered. These essays, articles, and transcripts also, in their various approaches, query the limits and boundaries erected in considering the possibilities for redress of slavery's harms. Like my work in *The Princeton Fugitive Slave*, author Christopher L. Mathis also considers slavery's legacy in higher education.⁵ Professor Mathis, however, takes a new approach to the topic: how higher education redress statutes attempt to create mechanisms for investigation or remediations of the harms of slavery. He asserts that such statutes are often far too narrowly drawn and therefore fail to include some groups of Black people. Gabriel J. Chin, in his essay "Slave Law, Race Law," reminds readers how baneful slavery-era law and law enforcement practices are paralleled in modern law and police practices.⁶ Professor Chin also asserts that historic legal norms that limited Black rights were not only aimed at enslaved Black people, but also at free Black people and other non-White people. Professor Chin notes that U.S. racism was pervasive and, while it was clearly expressed in the context of laws concerning the enslavement of people of African descent, that racism exceeded the boundaries of slavery.

In a discussion also touching upon the legacy of slavery in police practices, F. Michael Higginbotham writes about the relevance of slavery in the contemporary law enforcement

permitted to testify in court, even on their own behalf. The prohibitions on "negro testimony" were widespread. See INNIS, *supra* note 3, at 52.

5. Christopher L. Mathis, *Higher Education Redress Statutes: A Preliminary Analysis of States' Reparations in Higher Education*, 94 U. COLO. L. REV. 387 (2023).

6. Gabriel J. Chin, *Slave Law, Race Law*, 94 U. COLO. L. REV. 551 (2023).

practice of racial profiling.⁷ Professor Higginbotham asserts that the practice of racial profiling, where law enforcement officials target individuals for suspicion of crime based on the individual's characteristics such as race, is based in a historical presumption of slave status. There has long been a conflation of race and crime, especially in the context of Black people and Black communities.⁸ Though racial profiling is too often emblematic of modern policing, some of its legacy harkens back to regulatory practices in the antebellum era that were intended to control both enslaved and free Black people. Such regulations, Professor Higginbotham notes in discussing the 1806 case of *Hudgins v. Wright*, policed not only behavior but the boundaries of Whiteness itself.⁹

Three other symposium authors, Eric J. Miller, Adjoa A. Aiyetoro, and Rev. Dr. Robert Turner, take up the topic of the Tulsa Race Massacre and call for reparations, both within the context of the harms caused by the Massacre and more broadly. Discussions of Black reparations have occurred since before the general emancipation of Black people, and even with the potent and compelling rationales for reparations, it remains a topic that is fraught with unease and conflict.¹⁰ Professor Miller writes that crafting reparations for anti-Black oppression requires creating a very particular kind of space: one that “loves Blackness.”¹¹ This is an approach that requires more than mere tolerance or even respect. Professor Aiyetoro argues for another type of spatial relation related to racism, one that reframes the description of White on Black violence.¹² The essay centers a discussion of the Massacre and how the Massacre was

7. F. Michael Higginbotham, *Shades of Justice: Racial Profiling Then and Now*, 94 U. COLO. L. REV. 533 (2023).

8. See, e.g., Lolita Buckner Inniss, *A Domestic Right of Return?: Race, Rights, and Residency in New Orleans in the Aftermath of Hurricane Katrina*, 27 B.C. THIRD WORLD L.J. 325, 350–51 (2007) (discussing the relationship between race, crime, and urban residency).

9. In *Hudgins v. Wright*, 11 Va. 134, 139–40 (1806), the court considered whether claimants were to be deemed White based upon their appearance.

10. Much of this discussion has even occurred in the context of legal claims in courts seeking reparations. Lolita Buckner Inniss, *A Critical Legal Rhetoric Approach to In Re African-American Slave Descendants Litigation*, 24 ST. JOHN'S J. LEGAL COMMENT. 649, 653–54 (2010).

11. Eric J. Miller, *Loving Reparations*, 94 U. COLO. L. REV. 395 (2023).

12. Adjoa A. Aiyetoro, *Social Construction of Race Undergirds Racism by Providing Undue Advantages to White People, Disadvantaging Black People and Other People of Color, and Violating the Human Rights of All People of Color*, 94 U. COLO. L. REV. 415 (2023).

emblematic of how White supremacy both created the segregated spaces to which Black people were relegated and thereafter often destroyed those spaces when they thrived against all odds. As Rev. Dr. Turner notes in his personal essay, one of the most shocking aspects of the Massacre is that it occurred, not as an extralegal project of a few people, but rather as a mass, racially instantiated harm undertaken within the boundaries of law.¹³

Author Tom I. Romero, II addresses how the state of Colorado's property law regime has often been considered "colorblind."¹⁴ Colorado, like many states formed just before or after the U.S. Civil War, has often seen itself as a place of equality and freedom that lacks many of the harms of more famously anti-Black parts of the United States.¹⁵ Property law in Colorado, Professor Romero notes, however, did not escape the blight of racism. Black and Brown communities in Colorado have long suffered harms of racist practices, including, among other things, racially restrictive covenants. Such covenants are formal legal promises to police the boundaries of Whiteness within certain neighborhoods.¹⁶

This Symposium, in summary, not only queries the boundaries of slavery and its legacy, but also calls for an embrace of what I have described as the three Rs: recognition, reconciliation, and reparation.¹⁷ This symposium invites readers to broaden the bounds of conversations about slavery and its legacy and, in that process, to craft questions in good faith with a sincere purpose of attaining knowledge and reaching fair resolutions.

13. Robert Turner, *Roundtable: The 1921 Tulso Race Massacre; The Quest for Accountability*, 94 U. COLO. L. REV. 445 (2023).

14. Tom I. Romero, II, *The Color(blind) Conundrum in Colorado Property Law*, 94 U. COLO. L. REV. 449 (2023).

15. Lolita Buckner Inniss & Skyler Arbuckle, *Slavery and the Postbellum University: The Case of SMU*, 74 SMU L. REV. 723, 725 (2021) ("Even where there is an acknowledgement of the extensive social, legal, and financial structures governing American slavery, there has still been a tendency to think of slavery as being constrained in another way: by geography. Slavery is often framed as an institution that existed only in the 'Deep South' region of the United States.").

16. Inniss, *supra* note 1, at 144–46 ("Real covenants barring blacks from owning or renting property in certain neighborhoods were a common device to maintain racial separation.").

17. Inniss, *supra* note 3, at 131.