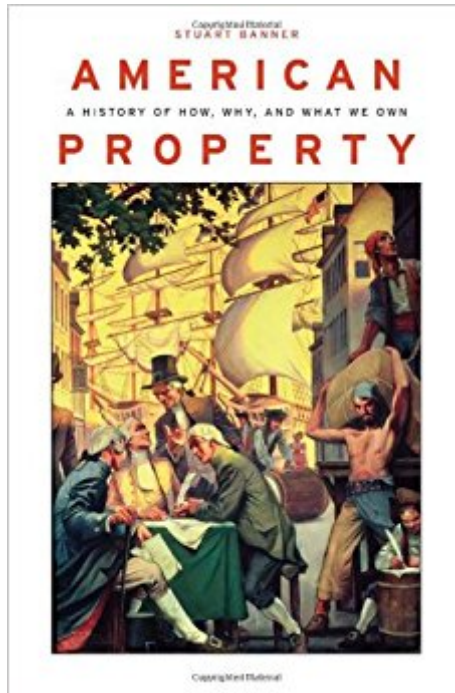




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# American Property: A History Of How, Why, And What We Own



## Synopsis

In America, we are eager to claim ownership: our homes, our ideas, our organs, even our own celebrity. But beneath our nation's proprietary longing looms a troublesome question: what does it mean to own something? More simply: what is property? The question is at the heart of many contemporary controversies, including disputes over who owns everything from genetic material to indigenous culture to music and film on the Internet. To decide if and when genes or culture or digits are a kind of property that can be possessed, we must grapple with the nature of property itself. How does it originate? What purposes does it serve? Is it a natural right or one created by law? Accessible and mercifully free of legal jargon, *American Property* reveals the perpetual challenge of answering these questions, as new forms of property have emerged in response to technological and cultural change, and as ideas about the appropriate scope of government regulation have shifted. This first comprehensive history of property in the United States is a masterly guided tour through a contested human institution that touches all aspects of our lives and desires. Stuart Banner shows that property exists to serve a broad set of purposes, constantly in flux, that render the idea of property itself inconstant. Despite our ideals of ownership, property has always been a means toward other ends. What property signifies and what property is, we come to see, has consistently changed to match the world we want to acquire.

## Book Information

Hardcover: 384 pages

Publisher: Harvard University Press (March 1, 2011)

Language: English

ISBN-10: 0674058054

ISBN-13: 978-0674058057

Product Dimensions: 6.3 x 1.3 x 9.7 inches

Shipping Weight: 1.7 pounds (View shipping rates and policies)

Average Customer Review: 4.2 out of 5 stars 4 customer reviews

Best Sellers Rank: #776,448 in Books (See Top 100 in Books) #194 in Books > Law >

Business > Property #480 in Books > Law > Intellectual Property #1071 in Books > Law > Legal History

## Customer Reviews

This is one of those books whose title doesn't really give you much of a clue about the wonders within. What sounds like it might be a staid look at a dry subject turns out, in fact, to be an

exciting and captivating journey along a fascinating side road in American history: property and its ownership. Around the time of the American Revolution, when the country was divorcing itself from England, a massive change took place: the old British laws concerning property were not merely tweaked but, instead, demolished and rebuilt from the ground up. From the fundamentals—ownership of land, which was a revolutionary idea in the eighteenth century—to more esoteric subjects, such as whether it's possible to own less-tangible kinds of property (sounds or the news or parts of your own body), the author, a professor of law at the UCLA, explores the occasionally labyrinthine legal and political processes that, as America was defining itself as a country, began to define one of its residents' most basic (yet complex) rights. --David Pitt

In this masterful survey, Stuart Banner documents the evolution of property rights. Brimming with fresh vignettes and insights, *American Property* will enlighten and delight both general readers and specialists in these issues. (Robert Ellickson, Yale Law School) *American Property* deftly explores the many ways that we rely on property to achieve human ends, tailoring the law to suit new places and changing technology. (Sarah Barringer Gordon, author of *The Spirit of the Law*) Stuart Banner's elegantly written tour of American property law leads its reader to a startling conclusion. There is no such thing as a unified singular law of property. There are only laws of property that have shaped where we live, the news we read, the inventions we use, the celebrities we watch, and the music we listen to. Our ideas of property won't ever look quite the same. (John Fabian Witt, author of *Patriots and Cosmopolitans: Hidden Histories of American Law*) We have never had a comprehensive synthesis of the history of property and property law in the United States. Now Stuart Banner fills this major gap with an original and insightful work. (Gregory S. Alexander, Cornell University) In this tightly written book, Banner tackles an admittedly expansive topic, illustrating that our ideas about what property is, how it is regulated, and what it is meant to do are in constant flux and have been historically contested. Partly an examination of law, partly of culture, politics, economics, and even religion, Banner successfully shows how our notions of property and so-called "natural property" in essence sketch the shifting borders of what Americans deem appropriate government regulation. "Our conceptions of property have always been molded to serve our particular purposes," Banner writes, using examples ranging from zoning laws (which were often used to enforce racial and economic boundaries); eminent domain and personal property disputes; as well as new, thorny notions of intellectual property in the digital age (digital copying makes some property rights harder to enforce, he notes, but creates new opportunities as well). Banner even addresses biological

breakthroughs (can a company own a genetically engineered hybrid or a cell line?). (Publishers Weekly 2011-01-24)What sounds like it might be a staid look at a dry subject turns out, in fact, to be an exciting and captivating journey along a fascinating side road in American history: property and its ownership...[Banner] explores the occasionally labyrinthine legal and political processes that, as America was defining itself as a country, began to define one of its residents' most basic (yet complex) rights. (David Pitt Booklist 2011-01-24)Banner provides an expansive survey on the evolution of property rights and protections in the U.S. Using the background of technological advances and shifting social perspectives, the author highlights the mutable nature of American property. (A. H. Cooley Choice 2011-10-01)Ostensibly a history of the ways judges and other legal actors have argued about what constitutes "property," [American Property] offers a generally persuasive and always accessible reconstruction of how particular claimed resources--waterpower at one moment, copyright at another, clean air, the airwaves, access to beaches, the capacity of suburbanites to sustain a homogeneous racial community at others--have become and remain contested in the law. Unlike most historians of property, who usually pick a single critical standpoint or truth about who owns what in America (natural right, inequality, exploitation, beggaring the environment), or who track particular phrases or positions as they have been mobilized throughout American history, Banner builds a portrait of property in the United States by exploring transitory conflicts and settlements...American Property is not just a revelation of the secret knowledge of American property law but a chronicle of how that knowledge was amassed, told through a sequence of exemplary tales and moments. (Hendrik Hartog The Nation 2012-07-16)

This well-written and substantial book is so important. If only the majority of U.S. citizens understood how changeable the law can be--and the forces arrayed to influence those changes--then citizen activism to influence the lawmaking process would receive an important boost. Those who do not study history must live as if what happens today has never happened before--a paraphrase of a much better known concept. I heartily encourage others to read this book.

Good book. The writing is a bit dry but it gives a large (and mostly interesting) survey of property law. Don't buy the Kindle version. The references aren't linked (they just appear as plain superscript numbers), the font is bad and unchangeable (but this can be changed by stripping the DRM, which I did to make the book readable), the index isn't linked, and where there should be images it just shows "[to view this image, please refer to the print version of this title]."

Banner's book is a highly readable survey combining the general with the specific. While he covers a wide variety of aspects and things in property law, he preserves some threads from one chapter to another, such as the notion that property is defined by the goals of litigants and governments. There are many useful accounts of familiar incidents in American law, such as the "Right to Privacy" article by Warren and Brandeis. (Read the book to find out how privacy evolved into a property right.) But even more valuable are the histories of epochal shifts through court cases that are little known among the general public. I found Banner to be generally fair to all sides. It is probably a tribute to say that he does not establish easy choices, but shows the dilemmas inherent in almost any legal decision.

This book is on the Rorotoko list. Professor Banner's interview on "American Property" ran as the Rorotoko Cover Feature on June 6, 2011 (and can be read in the Rorotoko archive).

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