

ARTICLES

PROPERTY AND PERSONHOOD REVISITED

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This Article revisits Professor Margaret Jane Radin's seminal article, Property and Personhood, published almost thirty years ago in the Stanford Law Review. In that article, Professor Radin makes a compelling case that proper self-development, or personhood, requires individuals to have secure control over certain things (e.g., one's home residence) in their external environment in the form of property rights. As intuitive as Professor Radin's argument was then, however, it remains mainly a philosophical argument. In the intervening thirty years since Radin's article the subject of object relations has become important in areas as diverse as anthropology, sociology, social psychology, consumption economics, and business marketing. There is even today an entire discipline—"material culture studies"—dedicated to knowing the relationships between people and things. Scholarship in these areas has yielded new data on psychological attitudes toward property, the consequences of property loss, the roles of modes of property acquisition, disposition and ownership history, and the ontological functions that things can perform. In doing so, the social science on object relations has made the operation of property for personhood more transparent.

This Article presents a theory of property for personhood grounded in social science. The Article is responsive to re-

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cent calls by scholars for greater research in the social psychology of property as it pertains to property law. The theory follows the framework established by Professor Radin, but uses material culture studies and other social science data to develop enriched accounts of personhood and object relations. The result is an entirely new personhood perspective and theory of property for personhood, including the types of property eligible for legal protection. Part I develops a new personhood perspective, that is, new accounts of personhood and object relations. Using this new personhood perspective, Part II introduces a new theory of property for personhood.

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INTRODUCTION

Almost thirty years have passed since publication of Margaret Jane Radin’s seminal work, *Property and Personhood*, in the *Stanford Law Review*.¹ Since publication, the article has been cited over 700 times.² The doyens of property law and theory, and leading

1. Margaret Jane Radin, *Property and Personhood*, 34 STAN. L. REV. 957 (1982).
 2. See Fred R. Shapiro, *The Most-Cited Law Review Articles Revisited*, 71 CHI.-KENT L. REV. 751, 773 (1996); Brian Leiter, *Most Cited Law Professors by Specialty, 2000–2007*, http://www.leiterrankings.com/faculty/2007faculty_impact_areas.shtml (last modified Dec. 18, 2007) (both listing Professor Radin as among the most often cited scholars).

scholars in other subject areas, have readily called upon Professor Radin's piece: Bruce Ackerman,³ Gregory Alexander,⁴ Craig Arnold,⁵ Jane Baron,⁶ Ben Barros,⁷ Derrick Bell,⁸ Abraham Bell,⁹ Jeremy Blumenthal,¹⁰ Michael Blumm,¹¹ Guido Calabresi,¹² Michael Carrier,¹³ Mary Clark,¹⁴ Hanoch Dagan,¹⁵ Nestor Davidson,¹⁶ Jay

3. See Bruce Ackerman, *Liberating Abstraction*, 59 U. CHI. L. REV. 317, 345 (1992).

4. See Gregory S. Alexander, *Property as a Fundamental Constitutional Right? The German Example*, 88 CORNELL L. REV. 733, 747 (2003); Gregory S. Alexander, *Dilemmas of Group Autonomy: Residential Associations and Community*, 75 CORNELL L. REV. 1, 11 (1989); Gregory S. Alexander & Eduardo M. Peñalver, *Properties of Community*, 10 THEORETICAL INQUIRIES L. 127, 159 (2009).

5. See Craig Anthony Arnold, *Clean-Water Land Use: Connecting Scale and Function*, 23 PACE ENVTL. L. REV. 291, 329 (2006); Craig Anthony Arnold, *The Reconstitution of Property: Property as a Web of Interests*, 26 HARV. ENVTL. L. REV. 281, 317, 322–27 (2002); Craig Anthony Arnold, *The Structure of the Land Use Regulatory System in the United States*, 22 J. LAND USE & ENVTL. L. 441, 464 (2007).

6. See Jane B. Baron & Jeffrey L. Dunoff, *Against Market Rationality: Moral Critiques of Economic Analysis in Legal Theory*, 17 CARDOZO L. REV. 431, 463–65 (1996); Jane B. Baron, *Intention, Interpretation, and Stories*, 42 DUKE L.J. 630, 676 n.196 (1992); Jane B. Baron, *Property and "No Property"*, 42 HOUS. L. REV. 1425, 1426 n.9, 1445–47 (2006); Jane B. Baron, *Winding Toward the Heart of the Takings Muddle: Kelo, Lingle, and Public Discourse About Private Property*, 34 FORDHAM URB. L.J. 613, 631 n.108 (2007).

7. See D. Benjamin Barros, *Home as a Legal Concept*, 46 SANTA CLARA L. REV. 255, 257 n.10, 276–300 (2006) [hereinafter Barros, *Home as a Legal Concept*]; D. Benjamin Barros, *Legal Questions for the Psychology of Home*, 83 TUL. L. REV. 645, 645 n.1, 652–55 (2009) [hereinafter Barros, *Legal Questions*].

8. See Derrick Bell & Preeti Bansal, *The Republican Revival and Racial Politics*, 97 YALE L.J. 1609, 1616–17 (1988).

9. See Abraham Bell, *Private Takings*, 76 U. CHI. L. REV. 517, 575 (2009); Abraham Bell & Gideon Parchomovsky, *Taking Compensation Private*, 59 STAN. L. REV. 871, 880–81 (2007); Abraham Bell & Gideon Parchomovsky, *A Theory of Property*, 90 CORNELL L. REV. 531, 550–51 (2005).

10. See Jeremy A. Blumenthal, *Introduction to the Symposium: A Psychological Perspective on Property Law*, 83 TUL. L. REV. 601 (2009) [hereinafter Blumenthal, *Introduction to the Symposium*]; Jeremy A. Blumenthal, *"To Be Human": A Psychological Perspective on Property Law*, 83 TUL. L. REV. 609 (2009).

11. See Michael C. Blumm, *Property Myths, Judicial Activism, and the Lucas Case*, 23 ENVTL. L. 907, 912–13 (1993).

12. See Guido Calabresi, *An Introduction to Legal Thought: Four Approaches to Law and to the Allocation of Body Parts*, 55 STAN. L. REV. 2113, 2141 n.117 (2003).

13. See Michael A. Carrier & Greg Lastowka, *Against Cyberproperty*, 22 BERKELEY TECH. L.J. 1485, 1494 n.64 (2007); Michael A. Carrier, *Cabining Intellectual Property through a Property Paradigm*, 54 DUKE L.J. 1, 32 n.117 (2004); Michael A. Carrier, *Resolving the Patent-Antitrust Paradox Through Tripartite Innovation*, 56 VAND. L. REV. 1047, 1050 n.7 (2003); Michael A. Carrier, *Unraveling the Patent-Antitrust Paradox*, 150 U. PA. L. REV. 761, 766 n.6 (2002).

14. See Mary L. Clark, *Keep Your Hands Off My (Dead) Body: A Critique of the Ways in Which the State Disrupts the Personhood Interests of the Deceased and His or Her Kin in Disposing of the Dead and Assigning Identity in Death*, 58 RUTGERS L. REV. 45, 48 n.5 (2005); Mary L. Clark, *Reconstructing the World Trade Center: An Argument for the Applicability of Personhood Theory to Commercial Property Ownership and Use*, 109 PENN ST. L. REV. 815, 815–16 (2005); Mary L. Clark, *Treading on Hallowed Ground: Implica-*

Feinman,¹⁷ William Fisher,¹⁸ Eric Freyfogle,¹⁹ Wendy Gordon,²⁰ Cheryl Harris,²¹ Michael Heller,²² Morton Horwitz,²³ Louis Kaplow,²⁴ Sonia Katyal,²⁵ Mark Kelman,²⁶ Daphna Lewinsohn-Zamir,²⁷ Peter Linzer,²⁸ Lydia Loren,²⁹ Catharine

tions for Property Law and Critical Theory of Land Associated with Human Death and Burial, 94 KY. L.J. 487, 491 n.7, 523–24 (2005–2006).

15. See Hanoch Dagan, *The Distributive Foundation of Corrective Justice*, 98 MICH. L. REV. 138, 147 n.42 (1999); Hanoch Dagan, *Restitution in Bankruptcy: Why All Involuntary Creditors Should Be Preferred*, 78 AM. BANKR. L.J. 247, 267 n.127 (2004) (citing *Property and Personhood* as reprinted in MARGARET RADIN, *Property and Personhood*, in REINTERPRETING PROPERTY 35 (1993)); Hanoch Dagan, *Restitutory Damages for Breach of Contract: An Exercise in Private Law Theory*, 1 THEORETICAL INQUIRIES L. 115, 135 n.80 (2000); Hanoch Dagan, *The Social Responsibility of Ownership*, 92 CORNELL L. REV. 1255, 1260 n.31 (2007).

16. See Nestor M. Davidson, *The Problem of Equality in Takings*, 102 NW. U. L. REV. 1, 12 n.54 (2008); Nestor M. Davidson, *Property and Relative Status*, 107 MICH. L. REV. 757, 769–71, 794, 799 (2009); Nestor M. Davidson, *Standardization and Pluralism in Property Law*, 61 VAND. L. REV. 1597, 1620–21 (2008).

17. See Jay M. Feinman, *Hegel and Modern Contract Theory: A Comment on Benson and Rosenfeld*, 10 CARDOZO L. REV. 1271, 1278 (1989); Jay M. Feinman, *The Jurisprudence of Classification*, 41 STAN. L. REV. 661, 678 n.68 (1989); Jay M. Feinman, *The Significance of Contract Theory*, 58 U. CIN. L. REV. 1283, 1283 n.3 (1990).

18. See William W. Fisher III, *Reconstructing the Fair Use Doctrine*, 101 HARV. L. REV. 1659, 1692 n.162 (1988); William W. Fisher III, *The Significance of Public Perceptions of the Takings Doctrine*, 88 COLUM. L. REV. 1774, 1788–89 (1988); William W. Fisher III, *The Trouble with Lucas*, 45 STAN. L. REV. 1393, 1398–99 (1993).

19. See Eric T. Freyfogle, *Vagueness and the Rule of Law: Reconsidering Installment Land Contract Forfeitures*, 1988 DUKE L.J. 609, 647 n.170 (1988).

20. See Wendy J. Gordon, *An Inquiry into the Merits of Copyright: The Challenges of Consistency, Consent, and Encouragement Theory*, 41 STAN. L. REV. 1343, 1388 n.204, 1389 n.208 (1989); Wendy J. Gordon & Anne E. Gowen, *Mandated Access: Commensurability and the Right to Say “No”*, 17 HASTINGS COMM. & ENT. L.J. 225, 242 n.55 (1994); Wendy J. Gordon, *On Owning Information: Intellectual Property and the Restitutory Impulse*, 78 VA. L. REV. 149, 247 n.376 (1992); Wendy J. Gordon, *Reality as Artifact: From Feist to Fair Use*, 55 L. & CONTEMP. PROBS. 93, 102 n.44 (1992).

21. See Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707, 1725 n.63, 1730 (1993).

22. See Michael A. Heller, *The Boundaries of Private Property*, 108 YALE L.J. 1163, 1165 n.2 (1999).

23. See Morton J. Horwitz, *Constitutional Transplants*, 10 THEORETICAL INQUIRIES L. 535, 554 n.50 (2009).

24. See Louis Kaplow, *An Economic Analysis of Legal Transitions*, 99 HARV. L. REV. 509, 597 n.274 (1986).

25. See Sonia K. Katyal, *Semiotic Disobedience*, 84 WASH. U. L. REV. 489, 565 n.373 (2006); Eduardo M. Peñalver & Sonia K. Katyal, *Property Outlaws*, 155 U. PA. L. REV. 1095, 1131 nn.174–75, 1132 n.178 (2007).

26. See Mark G. Kelman, *Progressive Vacuums*, 48 STAN. L. REV. 975, 999 n.63 (1996).

27. See Daphna Lewinsohn-Zamir, *Contemporary Property Law Scholarship: A Comment*, 2 THEORETICAL INQUIRIES L. 97, 98 n.4 (2001); Daphna Lewinsohn-Zamir, *Identifying Intense Preferences*, 94 CORNELL L. REV. 1391, 1432 n.212 & nn.214–15 (2009); Daphna Lewinsohn-Zamir, *The Objectivity of Well-Being and the Objectives of Property Law*, 78 N.Y.U. L. REV. 1669, 1719 n.238 (2003).

MacKinnon,³⁰ Mari Matsuda,³¹ Thomas Merrill,³² Frank Michelman,³³ Michael Moore,³⁴ Stephen Munzer,³⁵ Ralph Nader,³⁶ Jennifer Nedelsky,³⁷ Eduardo Peñalver,³⁸ J. E. Penner,³⁹ Richard Posner,⁴⁰ Jedediah Purdy,⁴¹ Edward Rabin,⁴² Judith Resnick,⁴³ Reginald Robinson,⁴⁴ Carol Rose,⁴⁵ Jeanne Schroeder,⁴⁶ Joseph

28. See Peter Linzer, *The Decline of Assent: At-Will Employment as a Case Study of the Breakdown of Private Law Theory*, 20 GA. L. REV. 323, 331 (1986); Peter Linzer, *Law's Unity—An Essay for the Master Contortionist*, 90 NW. U. L. REV. 183, 193 (1995); Peter Linzer, *Uncontracts: Context, Contorts and the Relational Approach*, 1988 ANN. SURV. AM. L. 139, 163–64 (1988).

29. See Lydia Pallas Loren, *The Pope's Copyright? Aligning Incentives with Reality by Using Creative Motivation to Shape Copyright Protection*, 69 LA. L. REV. 1, 5 n.14 (2008).

30. See Catharine A. MacKinnon, *Not a Moral Issue*, 2 YALE L. & POL'Y REV. 321, 341 n.62 (1984).

31. See Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323, 390 (1987).

32. See Thomas W. Merrill & Henry E. Smith, *The Morality of Property*, 48 WM. & MARY L. REV. 1849, 1858 n.27 (2007); Thomas W. Merrill, *Property Rules, Liability Rules, and Adverse Possession*, 79 NW. U. L. REV. 1122, 1127 n.19 (1984).

33. See Frank I. Michelman, *Liberties, Fair Values, and Constitutional Method*, 59 U. CHI. L. REV. 91, 99 n.33 (1992); Frank Michelman, *Private Personal but Not Split: Radin Versus Rorty*, 63 S. CAL. L. REV. 1783, 1795 n.51 (1990).

34. See Michael S. Moore, *Four Reflections on Law and Morality*, 48 WM. & MARY L. REV. 1523, 1563 (2007).

35. See Stephen R. Munzer & Kal Raustiala, *The Uneasy Case for Intellectual Property Rights in Traditional Knowledge*, 27 CARDOZO ARTS & ENT. L.J. 37, 71 n.97 (2009).

36. See Ralph Nader & Alan Hirsch, *Making Eminent Domain Humane*, 49 VILL. L. REV. 207, 215 n.64, 216 n.70 (2004).

37. See Jennifer Nedelsky, *Reconceiving Autonomy: Sources, Thoughts and Possibilities*, 1 YALE J.L. & FEMINISM 7, 20 n.29 (1989).

38. See Eduardo M. Peñalver, *Is Land Special? The Unjustified Preference for Landownership in Regulatory Takings Law*, 31 ECOLOGY L.Q. 227, 266–68 (2004); Eduardo M. Peñalver, *Land Virtues*, 94 CORNELL L. REV. 821, 834 n.51 (2009); Peñalver & Katyal, *supra* note 25, at 1131–32; Eduardo M. Peñalver, *Regulatory Taxings*, 104 COLUM. L. REV. 2182, 2213–16, 2252 (2004).

39. See J. E. Penner, *Misled by 'Property'*, 18 CAN. J.L. & JURISPRUDENCE 75, 76 n.4 (2005).

40. See Richard A. Posner, *Hegel and Employment at Will: A Comment*, 10 CARDOZO L. REV. 1625, 1628 (1989).

41. See Jedediah Purdy, *People as Resources: Recruitment and Reciprocity in the Freedom-Promoting Approach to Property*, 56 DUKE L.J. 1047, 1054 n.11 (2007).

42. See Edward H. Rabin, *The Revolution in Residential Landlord-Tenant Law: Causes and Consequences*, 69 CORNELL L. REV. 517, 520 n.4 (1984).

43. See Judith Resnik, *Due Process: A Public Dimension*, 39 U. FLA. L. REV. 405, 429 (1987).

44. See Reginald Leamon Robinson, *Teaching from the Margins: Race as a Pedagogical Sub-Text*, 19 W. NEW ENG. L. REV. 151, 168 n.75 (1997).

45. See Carol M. Rose, *Canons of Property Talk, or, Blackstone's Anxiety*, 108 YALE L.J. 601, 628 (1998); Carol M. Rose, *Mahon Reconstructed: Why the Takings Issue is Still a Muddle*, 57 S. CAL. L. REV. 561, 562 n.5 (1984); Carol M. Rose, *The Moral Subject of Property*, 48 WM. & MARY L. REV. 1897, 1918 n.95 (2007); Carol M. Rose, *Property as the Keystone Right?*, 71 NOTRE DAME L. REV. 329, 347 n.347 (1996).

Singer,⁴⁷ Patricia Smith,⁴⁸ John Sprankling,⁴⁹ Stewart Sterk,⁵⁰ Lior Jacob Strahilevitz,⁵¹ Kathleen Sullivan,⁵² Cass Sunstein,⁵³ Gerald Torres,⁵⁴ Laura Underkuffler,⁵⁵ Jeremy Waldron,⁵⁶ Stephen Yeazell,⁵⁷ and Jonathan Zittrain,⁵⁸ to name only a few.

In the article, Professor Radin makes a compelling case for two claims. First, proper self-development, or personhood, requires

46. See Jeanne L. Schroeder, *Chix Nix Bundle-O-Stix: A Feminist Critique of the Disaggregation of Property*, 93 MICH. L. REV. 239, 241 n.8 (1994); Jeanne L. Schroeder, *Is Article 8 Finally Ready This Time? The Radical Reform of Secured Lending on Wall Street*, 1994 COLUM. BUS. L. REV. 291, 353 (1994); Jeanne L. Schroeder, *Never Jam To-day: On the Impossibility of Takings Jurisprudence*, 84 GEO. L.J. 1531, 1534 n.12 (1996); Jeanne L. Schroeder, *Pandora's Amphora: The Ambiguity of Gifts*, 46 UCLA L. REV. 815, 887 (1999); Jeanne L. Schroeder, *Rationality in Law and Economics Scholarship*, 79 OR. L. REV. 147, 353 n.156 (2000); Jeanne L. Schroeder, *Subject: Object*, 47 U. MIAMI L. REV. 1, 24 n.60 (1992); Jeanne L. Schroeder, *Three's a Crowd: A Feminist Critique of Calabresi and Melamed's One View of the Cathedral*, 84 CORNELL L. REV. 394, 404 n.31 (1999); Jeanne L. Schroeder, *Unnatural Rights: Hegel and Intellectual Property*, 60 U. MIAMI L. REV. 453, 457–58 (2006) [hereinafter Schroeder, *Unnatural Rights*] (discussing Radin's thesis, but not directly citing her subject work); Jeanne L. Schroeder, *The Vestal and the Fasces: Property and the Feminine in Law and Psychoanalysis*, 16 CARDOZO L. REV. 805, 814 n.31 (1995).

47. See Joseph William Singer, *The Ownership Society and Takings of Property: Castles, Investments, and Just Obligations*, 30 HARV. ENVTL. L. REV. 309, 336 n.98 (2006); Joseph William Singer, *The Player and the Cards: Nihilism and Legal Theory*, 94 YALE L.J. 1, 10 (1984); Joseph William Singer, *The Reliance Interest in Property*, 40 STAN. L. REV. 611, 661–62 (1988).

48. See Patricia Smith, *Commentary on Terrell: Definition and Metaphor in Legal Analysis*, 39 U. FLA. L. REV. 387, 401 n.36 (1987).

49. See John G. Sprankling, *The Antiwilderness Bias in American Property Law*, 63 U. CHI. L. REV. 519, 587 n.332 (1996); John G. Sprankling, *An Environmental Critique of Adverse Possession*, 79 CORNELL L. REV. 816, 872 n.275 (1994).

50. See Stewart E. Sterk, *Foresight and the Law of Servitudes*, 73 CORNELL L. REV. 956, 964 n.25 (1988); Stewart E. Sterk, *Minority Protection in Residential Private Governments*, 77 B.U. L. REV. 273, 326 n.207 (1997); Stewart E. Sterk, *Neighbors in American Land Law*, 87 COLUM. L. REV. 55, 84 n.104 (1987); Stewart E. Sterk, *Restraints on Alienation of Human Capital*, 79 VA. L. REV. 383, 450–53 (1993).

51. See Lior Jacob Strahilevitz, *The Right to Destroy*, 114 YALE L.J. 781, 802 n.76 (2005).

52. See Kathleen M. Sullivan, *Rainbow Republicanism*, 97 YALE L.J. 1713, 1723 n.44 (1988); Kathleen M. Sullivan, *Unconstitutional Conditions*, 102 HARV. L. REV. 1413, 1485 n.317 (1989).

53. See Cass R. Sunstein, *Routine and Revolution*, 81 NW. U. L. REV. 869, 888 n.73 (1987).

54. See Gerald Torres, *Taking and Giving: Police Power, Public Value, and Private Right*, 26 ENVTL. L. 1, 7 n.32 (1996).

55. See Laura S. Underkuffler, *On Property: An Essay*, 100 YALE L.J. 127, 130 n.13 (1990); Laura S. Underkuffler-Freund, *Takings and the Nature of Property*, 9 CAN. J.L. & JURISPRUDENCE 161, 185 n.128 (1996).

56. See Jeremy Waldron, *Settlement, Return, and the Supersession Thesis*, 5 THEORETICAL INQUIRIES L. 237, 260 (2004).

57. See Stephen C. Yeazell, *Personal and Impersonal Litigative Forms: Reconceiving the History of Adjudicative Representation*, 70 B.U. L. REV. 213, 300 n.207 (1990).

58. See Jonathan Zittrain, *Privacy 2.0*, 2008 U. CHI. LEGAL F. 65, 117 (2008).

individuals to have secure control over some things in their external environment in the form of property rights.⁵⁹ Professor Radin calls property in service of personhood “personal” (versus “fungible”) property.⁶⁰ Second, the necessity of property for personhood is one justification for property rights in general, but also for some current schemes of property entitlement.⁶¹ Professor Radin cites special protections accorded to home residence,⁶² rules governing eminent domain power,⁶³ and free speech limitations on private property⁶⁴ as examples of existing property rights that align with property for personhood. Professor Radin calls this legal justification for special protection of personal property the “personality theory of property.”⁶⁵

This Article presents a theory of property for personhood grounded in social science. This Article is responsive to recent calls by scholars for greater research in the social psychology of property as it informs property law.⁶⁶ The theory follows the framework established by Professor Radin, but uses material culture studies and other social science data to develop enriched accounts of personhood and object relations. Part I develops a new personhood perspective, that is, new accounts of personhood and object relations. Using this new personhood perspective, Part II introduces a new theory of property for personhood.

Against Professor Radin, the Article concludes that there is no case for the special protection of individual personal property that is constitutive of personhood. But such a case may be made for certain kinds of group property. In fact, the Article concludes that this latter kind of property for personhood currently exists in several forms in the United States.

59. Radin, *supra* note 1, at 957.

60. *Id.* at 959–60.

61. *Id.* at 957–58.

62. *Id.* at 991–1000.

63. *Id.* at 1005–07.

64. *Id.* at 1008–10.

65. *Id.* at 958.

66. See Blumenthal, *Introduction to the Symposium*, *supra* note 10, at 601–02 (noting a dearth of social science research relating to property and presenting ripe questions on law, theory, and policy).

I. THE NEW PERSONHOOD PERSPECTIVE

“[T]he dominant premise” of Professor Radin’s personality theory of property is the “personhood perspective.”⁶⁷ The personhood perspective consists of two parts: an *account of personhood* and also an *account of “object relations,”* that is, how people interact with their property to create meaningful forms of self-identification.⁶⁸ The accounts of personhood and object relations which comprise the personhood perspective perform a necessary function. Those accounts provide the objective criteria used to identify which property is “personal” in the legally relevant sense, and which personal property relationships deserve legal recognition.⁶⁹ In Radin’s words,

[S]elf-identification through objects varies from person to person. But if property for personhood cannot be viewed as other than arbitrary and subjective, then personal objects merely represent strong preferences, and to argue for their recognition by the legal system might collapse to a simple utilitarian preference summing. To avoid this collapse requires objective criteria differentiating good from bad identification with objects in order to identify a realm of personal property deserving recognition. The necessary objective criteria might be sought by appeal to extrinsic moral reality, to *scientific truths of psychology*, or to the concept of person itself.⁷⁰

Professor Radin’s observation that social science might ground a theory of property for personhood reveals the option that is exercised in this Article. Radin did not explore social science research bearing upon property for personhood in her article. Radin instead used “the concept of person itself” to derive accounts of both personhood and

67. Radin, *supra* note 1, at 958.

68. *Id.* at 967. Professor Radin’s theory does not clearly separate the personhood perspective from a theory of object relations. Instead, the two seem melded together in her description of “the intuitive view” of property for personhood. However, she comes close to separating the two when describing the need for “objective criteria differentiating good from bad identification with object . . .” *Id.* at 961–62.

69. *Id.*

70. *Id.* (emphasis added) (citation omitted).

object relations.⁷¹ But in the intervening thirty years since Radin's article, the subject of object relations has become important in areas as diverse as anthropology,⁷² sociology,⁷³ consumption economics,⁷⁴ and business marketing.⁷⁵ There is even today an entire discipline—"material culture studies"—dedicated to the relationships between people and things.⁷⁶ Scholarship in these areas has yielded new data on psychological attitudes toward property;⁷⁷ the consequences of property loss;⁷⁸ the roles of modes of property acquisition, disposition, and ownership history;⁷⁹ and the ontological functions things can perform.⁸⁰ The recent social science on object relations has made the operation of property for personhood more transparent.⁸¹

Before turning to the social science data, however, the next section substitutes Professor Radin's philosophical account of personhood with a material culture studies account of the same, as developed by Professor Daniel Miller.⁸² It is good fortune, and no coincidence, that (parts of) Hegel's political philosophy is central to

71. *Id.*

72. See ARJUN APPADURAI, *THE SOCIAL LIFE OF THINGS: COMMODITIES IN CULTURAL PERSPECTIVE* (1988) (describing the application of object relations theory to several anthropological field studies).

73. See Adam Isaiah Green, *Erotic Habitus: Toward a Sociology of Desire*, 37 *THEORY & SOC'Y* 597 (2008) (applying object relations theory to sociology).

74. See generally Paul J. Albanese, *The Intimate Relations of the Consistent Consumer: Psychoanalytic Object Relations Theory Applied to Economics*, in *PSYCHOLOGICAL FOUNDATIONS OF ECONOMIC BEHAVIOR* 59, 59–80 (Paul J. Albanese ed., 1988) (applying object relations theory to consumption economics).

75. See Roberto Friedmann & Mary R. Zimmer, *The Role of Psychological Meaning in Advertising*, 17 *J. ADVERTISING* 31, 38 (1988) (referencing object relations theory in the context of marketing and advertising); Bruce Mills & Ramon J. Aldag, *Exploring the Relationships Between Object Relations/Reality Testing Functioning, Coping Styles, and Somatic Tension*, 14 *J. BUS. & PSYCHOL.* 5 (1999) (applying object relations theory to personnel management).

76. See NICOLE BOIVIN, *MATERIAL CULTURES, MATERIAL MINDS: THE IMPACT OF THINGS ON HUMAN THOUGHT, SOCIETY, AND EVOLUTION* 18 (2008).

77. *E.g.*, Daniel I. A. Cohen, *On Property as Self*, 26 *J. PSYCHIATRY & L.* 3, 4 (1998).

78. *E.g.*, Jeffery T. Powell, *The Psychological Cost of Eminent Domain Takings and Just Compensation*, 30 *L. & PSYCHOL. REV.* 215, 222 (2006).

79. *Cf.* Jeremy A. Blumenthal, "To Be Human": *A Psychological Perspective on Property Law*, 83 *TUL. L. REV.* 609, 614–15 (2009) (stating that an heirloom object can be imbued with immense psychological significance due to its history of ownership within the family).

80. *E.g.*, Cohen, *supra* note 77, at 36.

81. See DANIEL MILLER, *MATERIAL CULTURE AND MASS CONSUMPTION* 30 (Basil Blackwell Ltd. 1987).

82. See *id.* at 13.

both accounts.⁸³ But the theories of personhood differ in two fundamental respects. First, the theories differ in how they conceive the relationship between people and things. In particular, the theories diverge in how and why things become personal, also in their assumptions about the degree of separation between subjects and objects. Second, the theories differ in their source material. Although Miller finds in Hegel a workable philosophical account of personhood, the account itself is confirmed by years of anthropological fieldwork in material cultural studies.⁸⁴ Miller's theory of personhood is thus social scientific, not philosophical.

A. Hegel the Liberal: Philosophy and the Self as Representation

Professor Radin's account of the personhood perspective begins with what she describes as the "intuitive view" of property for personhood.⁸⁵ That view starts with the human experience of possessing objects that feel a part of us.⁸⁶ According to Professor Radin, "[t]hese objects are closely bound up with personhood because they are part of the way we constitute ourselves as continuing personal entities in the world."⁸⁷ To measure the strength of constitutive attachment to things, we look to "the kind of pain that would be occasioned by its loss."⁸⁸ Such personal property is to be contrasted with "fungible" property—instrumental items, the exemplar of which is money, held only to obtain or accomplish other things.⁸⁹

Professor Radin's intuitive view cannot explain why personal property is entitled to legal recognition because it is "wholly subjective."⁹⁰ Rather, "objective criteria differentiating good from bad modes of identification with objects" is needed "to identify a realm of personal property deserving [legal] recognition."⁹¹ To provide these criteria, Professor Radin turns to the account of personhood

83. I observe later in this Article that none of Radin's, Miller's, or my own ideas are truly Hegelian. Rather, all of us borrow only certain "insights" from Hegel, which are then used to our own ends. See *infra* note 136 and accompanying text.

84. MILLER, *supra* note 81, at vii–viii.

85. Radin, *supra* note 1, at 959.

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.* at 959–60.

90. *Id.* at 961.

91. *Id.*

found in Hegel's *Philosophy of Right*.⁹² Professor Radin's interpretation of Hegel starts with persons as abstract, autonomous entities capable of bearing rights.⁹³ At the outset, the Hegelian person lacks individual character, commitments, memories, future plans, and other attributes constitutive of personal identity.⁹⁴

Most important for Professor Radin, the Hegelian person sets out with no relationships whatsoever to other people *or to things*.⁹⁵ For Radin's Hegel, the journey from abstract autonomy to personhood begins with object relations.⁹⁶ A person has no concrete existence until the will that it is acts upon the external world: "Hegel concludes that the person becomes a real self only by engaging in a property relationship with something external. . . . Hence, 'property is the first embodiment of freedom and so is in itself a substantive end.'" ⁹⁷ Because the will is embodied in things, "the entity we know as a person cannot come to exist without both differentiating itself from the physical environment and yet maintaining relationships with portions of that environment."⁹⁸

The need for personal identity to be embodied in things is, for Professor Radin, one basis for legal ownership.⁹⁹ Further, the need cuts in favor of a property regime that distinguishes between personal and fungible property rights, with greater protection accorded to personal property.

A general justification of property entitlements in terms of their relationship to personhood could hold that the rights that come within the general justification form a continuum from fungible to personal. It then might hold that those rights near one end of the continuum—fungible property rights—can be overridden in some cases in which those near the other—personal property rights—cannot be. This is to argue not that fungible property rights are unrelated to per-

92. *Id.* at 971 (citing GEORG WILHELM FRIEDRICH HEGEL, *PHILOSOPHY OF RIGHT* (T. M. Knox trans., 1942)).

93. *Id.*

94. *Id.* at 971–72.

95. *Id.*

96. *Id.* at 972.

97. *Id.* at 972–73 (quoting GEORG WILHELM FRIEDRICH HEGEL, *PHILOSOPHY OF RIGHT* (T. M. Knox trans., 1942)).

98. *Id.* at 977.

99. *Id.* at 977–78.

sonhood, but simply that distinctions are sometimes warranted depending upon the character or strength of the connection. Thus, the personhood perspective generates a hierarchy of entitlements: The more closely connected with personhood, the stronger the entitlement.¹⁰⁰

As intuitive as Professor Radin's theory was then, and notwithstanding some "pragmatic" adjustments to the theory made by Professor Radin,¹⁰¹ it remains mainly a philosophical argument. In what remains of this section I draw attention to two positions peculiar to Professor Radin's Hegelian account of personhood. First is Professor Radin's view that the phenomenon of property personalization occurs between an individual and discrete things when the individual exercises its will upon them.¹⁰² Second is Professor Radin's view that self-constitution in objects is a function of representation or "embodiment" in those objects.¹⁰³ Both positions are defensible and quite forceful as they function with Professor Radin's philosophical account of personhood. Nonetheless, these positions must be modified in order to build a personhood perspective grounded in social science.

First, Professor Radin's description of personal property suggests it is a phenomenon that occurs between individuals and discrete objects. For example, Professor Radin writes:

A person cannot be fully a person without a sense of continuity of self over time. To maintain that sense of continuity over time and to exercise one's liberty or autonomy, one must have an ongoing relationship with the external environment, consisting of both "things" and other people. One perceives the ongoing relationship to the environment as a set of *individual* relationships, corresponding to the way our perception

100. *Id.* at 986.

101. See MARGARET JANE RADIN, REINTERPRETING PROPERTY 1-34 (1993) (casting *Property and Personhood* as a pragmatic theory focused "on the nonideal nature of property practices and institutions, on the situated, second-best, working out of liberal ideological commitments in practice" and addressing some of the concerns raised by the article since its publication).

102. *Id.* at 959.

103. *Id.* at 972-73.

separates the world into distinct “things.” Some things must remain stationary if anything is to move; some points of reference must be constant or thought and action is not possible. In order to lead a normal life, there must be some continuity in relating to “things.” One’s expectations crystallize around certain “things,” the loss of which causes more disruption and disorientation than does a simple decrease in aggregate wealth. . . . This argument assumes that all discrete units one owns and perceives as part of her continuing environment are to some degree personal.¹⁰⁴

And elsewhere she writes,

[T]he notion that the will is embodied in things suggests that the entity we know as a person cannot come to exist without both differentiating itself from the physical environment and yet maintaining relationships with portions of that environment. The idea of embodied will . . . reminds us that people and things have ongoing relationships which have their own ebb and flow, and that these relationships can be very close to a person’s center and sanity.¹⁰⁵

In the above passages, Professor Radin conjures the image of an individual situated in an environment where personal property enjoys some deliberate, perceptive foreground while fungible property languishes in a muted back. This picture fits with Radin’s idea that the transformation of an object from fungible to personal property occurs only upon the investment of a person’s will into a thing.¹⁰⁶ However, we can imagine the emergence of self following a chaotic, non-linear process, one in which cultural values, social contexts, and multitudes of objects themselves interact to construct personal identity. From this perspective, both individuals and discrete objects would play roles in larger processes of value definition, including processes of individual self-development. If building the self through objects were fluid and dynamic in this way, then even *unattended* objects—

104. *Id.* at 1004 (emphasis added).

105. *Id.* at 977.

106. *Id.* at 987–88.

objects devoid of personal attachment or conscious attention—could loom large in personal identity because of the functions those objects perform in context.¹⁰⁷ Using material culture studies, Part I.B outlines just such a view of personhood and self-development.

Second, in answer to the question of what event makes an object constitutive of personal identity, Professor Radin's response (via Hegel) is *will-embodiment*.¹⁰⁸ To support this position, Professor Radin first cites to key language from Hegel.

The person has for its substantive end the right of placing its will *in any and every thing*, which thing is thereby mine; [and] because that thing has no such end in itself, its destiny and soul take on my will. [This constitutes] mankind's absolute right of appropriation over all things.¹⁰⁹

Professor Radin goes on to describe Hegel's property theory as "an occupancy theory; the owner's will must be present in the object."¹¹⁰

I do not question Professor Radin's reading of Hegel.¹¹¹ Indeed, Professor Radin does not claim full faithfulness to Hegel, but admits rather to "build[ing] upon some of Hegel's insights"¹¹² in order "to develop a contemporary view useful in the context of the American legal system."¹¹³ Crucial for my purpose, however, is to observe *how mystifying Hegel's own notion of will-embodiment is*.¹¹⁴ Will-embodiment reveals nothing at all about the internal processes at work when property becomes personal. The term cannot be taken to describe a metaphysical event in which the substance of one's self literally occupies an object. Such a vague notion of object relations may be suitable for an outline of a theory for the legal protection of personal property. However, any claim to particular legal rules,

107. See generally Lorna Fox, *The Meaning of Home: A Chimerical Concept or a Legal Challenge?*, 29 J.L. & SOC'Y 580 (2002); see also Radin, *supra* note 1.

108. See Radin, *supra* note 1, at 972–73.

109. *Id.* at 973 (alteration in original) (emphasis added) (quoting GEORG WILHELM FRIEDRICH HEGEL, *PHILOSOPHY OF RIGHT* (T. M. Knox trans., 1942)).

110. *Id.*

111. But others have. See, e.g., Schroeder, *Unnatural Rights*, *supra* note 46, at 453–55 (arguing that Professor Radin and other "personhood" theorists misread Hegel in positing that a specific private property regime could be derived from that author's theory).

112. Radin, *supra* note 1, at 977.

113. *Id.* at 959.

114. See generally GEORG WILHELM FRIEDRICH HEGEL, *PHILOSOPHY OF RIGHT* (T. M. Knox trans. 1942).

property entitlements in the interests of personhood, or the special policing of personal property should require better evidence of the importance of property for personhood.¹¹⁵

Data on property for personhood also seem necessary to accurately apply the theory in law. For example, it is possible that certain property believed necessary for self-development in fact enjoys no special attachments for some groups or within a particular culture.¹¹⁶ This circumstance would require a policy choice between protecting relatively fungible property by virtue of its potential to serve personality and denying such protection because, as a matter of fact, it is not personal within a particular group or society. In the absence of data on actual person-thing relations, the contours of personal property within a society remain guesswork, save for a few non-controversial cases (e.g., home residences¹¹⁷).

The difficulty that arises for philosophy to offer such information highlights an important advantage of having material culture studies and other social sciences. Social science data on object relations may begin to fill the void that is left by will-embodiment. The hope is that data on the psychological states and social conditions that are at work in the personalization of property will yield a less mysterious, fleshier, and enriched account of property for personhood. This is the work of Part I.C.

B. *Hegel the Structuralist: Material Culture Studies and the Self as Objectification*

In Professor Radin's search for objective moral criteria to ground property for personhood, she looks to various normative conceptions of personhood, ultimately settling upon a Hegelian interpretation.¹¹⁸ In addition to theories of personhood, Professor Radin observes that "[t]he necessary objective criteria might be sought by appeal to extrinsic moral reality, *to scientific truths of psychology*, or to the concept of person itself."¹¹⁹ Whereas Professor Radin follows

115. See Radin, *supra* note 1, at 971–78.

116. See *id.* at 971–77; see also Nicolas Blomley, *Landscapes of Property*, 32 L. & SOC'Y REV. 567 (1998).

117. See, e.g., Radin, *supra* note 1, at 991–1002.

118. See *id.* at 958–59.

119. *Id.* at 961–62 (emphasis added).

the latter approach, material culture studies follows the social scientific approach.¹²⁰

The road into material culture studies starts with focusing upon events surrounding the transformation of fungible property—valued primarily for exchange—into personal property, which takes on the character of an “inalienable possession.”¹²¹ Looking beyond the precise moment of exchange, when equivalence in quantitative (typically economic) value is central, one can perceive the “embeddedness of such moments of exchange in larger projects of social life”¹²²—projects the successes for which depend not just on objects, but also on their materiality and the contextualized roles they play.¹²³

The capacity of things for different kinds of objectification, and to perform different social roles, is the pivotal step in building a personhood perspective using material culture studies.¹²⁴ It is also the path back to Hegel. Almost twenty-five years ago, Professor Daniel Miller wrote *Material Culture and Mass Consumption*.¹²⁵ In that work, Professor Miller finds in Hegel a model of object relations premised upon the utter inseparability of subject and object, even as the self develops identity through interaction with things:¹²⁶

120. See Thomas J. Schlereth, *Material Culture Studies and Social History Research*, 16 J. SOC. HIST. 111, 111–12 (1983).

121. See FRED R. MYERS, *THE EMPIRE OF THINGS* 3–15 (2001).

122. *Id.* at 13.

123. The insight into the connection between the materiality of objects and personal identity is attributable to Professor Annette Weiner. According to Myers, Weiner “recognized that the different kinds of materiality were important to the value and effectiveness of objects as media of social life. It was her insight, then, that the different qualities of the objects exchanged were significant—that different kinds of objects (‘hard’ or ‘durable’ versus ‘soft,’ ‘perishable,’ ‘scarce,’ ‘transportable,’ and so on) mattered or were differently appropriated to the circumstances of human social life . . . Moreover, she pointed out that different kinds of objectifications (words, objects, magic) were absorbed into different processes within a society. . . . Objects are an important medium of social activity precisely because they have properties—because they are vulnerable, fragile and losable, because they rot and endure.” *Id.* at 14.

124. MILLER, *supra* note 81.

125. *Id.*

126. In Hegel’s words, at the outset “[s]elf-consciousness knows the nothingness of the object, on the one hand, because it externalizes its own self—for, in this externalization it posits itself as an object, or the object as itself, in virtue of the indivisible unity of being-for-self. On the other hand, this positing at the same time contains the other moment, viz. the self-consciousness has equally superseded this externalization and objectivity, too, and taken it back into itself so that it is in communion with itself so in its otherness as such.” *Id.* at 21–22 (quoting GEORG WILHELM FRIEDRICH HEGEL, *PHENOMENOLOGY OF THE MIND* (A. V. Miller trans., 1977)).

The externalized object is always treated by Hegel as being one stage beyond the subject, and the subject is always dissatisfied with the stage it has reached. In a sense, the subject is defined in such a way that it is never complete . . . and it is this feeling of unfulfillment which provides the motive force for further development. This dynamism is important not only because it dispenses with any need to find an external causation for its own trajectory, but also because of what it implies about the relationship between subject, object and process. *In the Hegelian system these are inseparable; the subject, the object and their variable relationship are products of the process itself.* There is never a prior subject, because the subject is always constituted by the process of absorbing its own object. . . . Hegel has thereby resolved the central problem of subject-object relations not merely in the utopian state of absolute knowledge, but in the much more important refusal to allow for the existence of either subject or object except in a mutually constitutive relationship which itself exists only as part of the process of its own realization.¹²⁷

The inseparability of subject and object is important for Professor Miller because it undercuts a seemingly obvious idea: that the worth of objects could be a function of sole, subjective, autonomous valuation.¹²⁸ On the latter view, the special connection to a war medal or wedding ring is a function of how people act upon things to the exclusion of how things act upon people. That view undervalues how people and things *interact* through processes of signification that give rise to *culture*. Just such a view seemed at work in Professor Radin's account of how property is made personal through will-embodiment.¹²⁹ By contrast, Professor Miller's view of object relations is structural.

The central idea in structuralism was that we should not regard entities in isolation: a desk, a table, a din-

127. *Id.* at 27 (emphasis added).

128. *See* Radin, *supra* note 1, at 959–61.

129. *See id.* at 972–73.

ing table, a kitchen table. Rather we should start from the relationship between such things. What we are prepared to accept as a dining table depends in large part on the point at which, if it became any smaller, it would appear to be a kitchen table. Both the objects, and the words we use for them, achieve definition by contrast with what they are not, as much as from what they are. . . . This seems to correspond very well to . . . the humility of things. Objects don't shout at you like teachers, or throw chalk at you as mine did, but they help you gently to learn how to act appropriately. This theory also gives shape and form to the idea that objects make people. Before we can make things, we are ourselves grown up and matured in light of the things that come down to us from the previous generations.¹³⁰

One reason to move from Professor Radin's liberal account of the personhood perspective is to draw into the foreground what Professor Miller calls "the humility of things."¹³¹ It is not just things that we elect to invest in that are eligible for personal property status. Nor is it cherished property alone that contributes importantly to personhood, *it is things at large*. Similarly, the dialectical process by which subjects and objects interact gives short shrift to objects when the process is described in terms of self-embodiment or self-representation. From this perspective what is important about that process is not any particular external instantiation of self, but rather the role that externalization through objects plays generally in self-building. Externalization of the self through objects is an attempt at hard documentation of what we are becoming. Our varied relationships to objects are the sonars that resonate back to us our current, evolving selves and the guide for future development.¹³² According to Professor Annette Weiner,

In objectification, cultural objects externalize values and meanings embedded in social processes, making them available, visible, or negotiable for further ac-

130. DANIEL MILLER, STUFF 51, 53 (2010).

131. *Id.*

132. See MILLER, *supra* note 81, at 22–24.

tion by subjects. . . . The subject realizes that this apparently alien other is in fact a product of itself, created as a mirror by means of which the subject might further his or her own self-awareness.¹³³

If what matters about externalization through objects is that it enables contrast and differentiation, then what marks that activity is not so much self-representation as it is *self-objectification*. This may be a minor point in terms of the philosophical workings of Hegel's moral philosophy, but it has huge significance for a personhood perspective grounded in material culture studies. For it reveals that externalization of the self cannot be limited to what may be narrowly defined as personal property—the set of *owned* things personal and fungible—or even to the set of things toward which persons have formed conscious moral or emotional attachments. Rather, externalization of the self occurs at a higher level of removal, in contexts where things and people push against one another in a dynamic, complex variety of ways.

Professor Miller's interpretation of Hegel was intended "to replace a theory of stuff as representation with stuff as one part of a process of objectification, or self-alienation."¹³⁴ In this regard, Miller rejects interpretations of Hegel—such as Professor Radin's—that maintain a hard break between subjects and objects.¹³⁵ I highlight this disagreement between Miller and Radin only to clearly set it aside for consideration at a different time. The point of shift from Professor Radin's liberal Hegel to Professor Miller's structuralist Hegel is not to settle, once and for all, which interpretation of Hegel has the better claim to philosophical truth. Indeed, by admission, both Professors Radin and Miller—and now I—crib from Hegel for each of our own ends, rather than grappling with full-blown Hegelian personhood.¹³⁶ Rather, the point of the shift to Hegel the structuralist

133. MYERS, *supra* note 121, at 20–21.

134. MILLER, *supra* note 130, at 60.

135. In later writings, Professor Radin takes the view that "the blurring of the traditional distinction between subject and object" is part of the pragmatist project with which she identifies. Radin, *supra* note 101, at 6–11. The concession moves Professor Radin closer to, but does not approach, Professor Miller's view of the utter inseparability of subject and object. See *supra* text accompanying note 128.

136. See Radin, *supra* note 1, at 977–78 ("The intuitive personhood perspective on property is not equivalent to Hegelian personality theory, because that perspective incorporates the attributes of personhood that Hegel initially assumes away. Nevertheless a theory of personal property can build upon some of Hegel's insights."); MILLER, *supra* note 81, at 12 (acknowledging that his structuralist approach abstracts certain processes "from Hegel's

was to introduce a personhood perspective receptive to social science. Miller's structuralist view of personhood moves past will-embodiment toward the social science of object relations.

C. The Social Science of Object Relations—Three Observations

In the most important sense, Professor Miller has already substituted Professor Radin's liberal personhood perspective with an alternative, structuralist one that emphasizes the fluidity of object relations and personal identity. This section supplements that alternative approach by adding to it some layers of rather recent social scientific research on object relations.¹³⁷ The social science approach to object relations does not immediately extinguish the mystery that moral philosophy leaves shrouded but rather places that mystery in a context more susceptible to study. Note that no inconsistency would result from simply ending the argument here, leaving to readers the choice between a liberal or structuralist conception of personhood. However, available social science data on object relations weigh in favor of the structuralist approach outlined above and so provide additional support for this new personhood perspective.¹³⁸

To lay the foundation for self-constitution through objects, Professor Radin relies upon the intuitive view, drawn from the common experience of possessing objects that feel a part of our selves.¹³⁹ The idea that things structure or help to constitute the self is not new, nor are qualitative, social scientific attempts to understand such processes.¹⁴⁰ In 1890, in his monumental work *The Principles of Psychology*—a work of “natural science”—William James empha-

Phenomenology of Spirit, and are then used as the basis for a theory of culture. Since this abstraction proceeds by isolating certain elements of Hegel's work while ignoring the surrounding context within which these ideas were developed, the approach, although taken from a specific source, could not be termed Hegelian. . . . This procedure is justified by the contention that both Hegel and the later authorities have captured something in their use of these central ideas which is not dependent upon the particular manner in which they have developed them, but which may be used to construct another meaning through the accretative [sic] insights of diverse usages in various domains.”); see also Radin *supra* note 101 and accompanying text.

137. See *infra* notes 149–161 and accompanying text.

138. See *infra* notes 149–161.

139. Radin, *supra* note 1, at 959–61.

140. See generally WILLIAM JAMES, *THE PRINCIPLES OF PSYCHOLOGY* 291–401 (New York, Henry Holt & Co. 1890).

sized the fluidity of subject-object relations and personal identity in terms of “The Empirical Self.”

The Empirical Self or Me.

The Empirical Self of each of us is all that he is tempted to call by the name of *me*. But it is clear that between what a man calls *me* and what he simply calls *mine* the line is difficult to draw. We feel and act about certain things that are ours very much as we feel and act about ourselves. Our fame, our children, the work of our hands, may be as dear to us as our bodies are, and arouse the same feelings and the same acts of reprisal if attacked. And our bodies themselves, are they simply ours, or are they *us*? Certainly men have been ready to disown their very bodies and to regard them as mere vestures, or even as prisons of clay from which they should some day be glad to escape.

We see then that we are dealing with a fluctuating material. The same object being sometimes treated as a part of me, at other times as simply mine, and then again as if I had nothing to do with it at all. *In its widest possible sense, however, a man's Self is the sum total of all that he can call his, not only his body and his psychic powers, but his clothes and his house, his wife and children, his ancestors and friends, his reputation and works, his lands and horses, and yacht and bank-account. All these things give him the same emotions. If they wax and prosper, he feels triumphant; if they dwindle and die away, he feels cast down—not necessarily in the same degree for each thing, but in much the same way for all.*¹⁴¹

James makes a similar observation in his description of “the material self,” which contains

141. *Id.* at 291–92 (emphasis added). The preface to *Principles of Psychology*, and the work itself, evince that James's goal was a scientific, rather than a philosophic, product. *Id.* at v–vi. As a “natural science,” James defined psychology as “the science of finite individual minds,” which “assumes as its data (1) *thoughts and feelings*, and (2) *a physical world* in time and space with which they coexist and which (3) *they know*.” *Id.* at vi (emphasis added). As such, as much as possible, James sets philosophic considerations aside. *Id.*

[an] impulse . . . to collect property; and the collections thus made become, with different degrees of intimacy, parts of our empirical selves. The parts of our wealth most intimately ours are those which are saturated with our labor. There are few men who would not feel personally annihilated if a life-long construction of their hands or brains—say an entomological collection or an extensive work in manuscript—were suddenly swept away. The miser feels similarly towards his gold, and although it is true that a part of our depression at the loss of possessions is due to our feeling that we must now go without certain goods that we expected the possessions to bring in their train, yet in every case there remains, over and above this, a sense of the shrinkage of our own personality, a partial conversion of ourselves to nothingness, which is a psychological phenomenon by itself.¹⁴²

In keeping with Radin's notion of the self as coming to be represented in things personal, there is today a body of literature on consumer behavior that refers to "the extended self."¹⁴³ This literature confirms the hypothesis that possessions are viewed by individuals as self-constituting.¹⁴⁴ More interesting, data suggest the degree to which objects become self-constituting correlates strongly with the degree of control individuals wield over them.¹⁴⁵ Additionally, there is good evidence that non-voluntary loss of personal property, such as with burgled items or property lost in natural disasters, results in a diminished sense of self.¹⁴⁶ All of the foregoing firmly supports the existence of property viewed as self-constitutive or extensions of self. However, for reasons set forth below, the psychological truths that people identify through personal possessions are

142. *Id.* at 293 (emphasis added).

143. See, e.g., Aaron C. Ahuvia, *Beyond the Extended Self: Loved Objects and Consumers' Identity Narratives*, 32 J. CONSUMER RES. 171, 171–72 (2005); Russell W. Belk, *Possessions and the Extended Self*, 15 J. CONSUMER RES. 139, 139 (1988); Kelly Tian & Russell W. Belk, *Extended Self and Possessions in the Workplace*, J. CONSUMER RES. 297, 297 (2005).

144. See Belk, *supra* note 143, at 140–42.

145. *Id.* at 140–41.

146. *Id.* at 142–43; see also Karen Lollar, *The Liminal Experience: Loss of Extended Self After the Fire*, 16 QUALITATIVE INQUIRY 262, 262–70 (2010).

insufficient to ground Professor Radin's particular legal theory of property for personhood.

i. The Desire to Keep: Endowment Effects and Loss Aversion

A good place to begin is with Professor Radin's claim that "[o]ne may gauge the strength or significance of someone's relationship with an object by the kind of pain that would be occasioned by its loss. On this view, an object is closely related to one's personhood if its loss causes pain that cannot be relieved by the object's replacement."¹⁴⁷ According to Radin, then, one indicator of personal property is loss aversion.¹⁴⁸ This claim is disaffirmed, or at least confounded, by the available social science. Loss aversion "is perhaps the most successful and widely used explanatory construct in behavioral decision research."¹⁴⁹ Within this area, "endowment effects"—the tendency to place a larger value on an item when it is in one's possession—looms large.¹⁵⁰ In one well-known experiment conducted by Jack Knetsch, one set of participants was given a coffee mug and then given the option to trade it for chocolate.¹⁵¹ A second set of participants was given chocolate and then given the option to trade it for a coffee mug.¹⁵² Eighty-nine percent of participants initially given the mug chose to keep the mug over a trade for chocolate.¹⁵³ Ninety percent of participants initially given the chocolate chose to keep the chocolate over a trade for a coffee mug.¹⁵⁴ Whether given a coffee mug or chocolate as an initial entitlement, roughly only 10 percent of participants valued a change in possession enough to make the trade.¹⁵⁵ When given a choice between a coffee mug or

147. Radin, *supra* note 1, at 959.

148. See *id.* I am indebted to Professor Stephanie Stern for the observation that Radin's pain-loss measure of personal property is not strictly loss aversion as discussed in social science contexts. The latter involves data, not just on failures or refusals to part with objects, but also on willingness to trade. However, I do think that for purposes of advancing the discussion, treating Radin's pain-loss measure as *about* loss aversion is a good place to start.

149. Lyle Brenner et al., *On the Psychology of Loss Aversion: Possession, Valence and Reversals of the Endowment Effect*, 34 J. CONSUMER RES. 369, 369 (2007).

150. *Id.*; see also anon., *The Endowment Effect: It's Mine, I Tell You*, ECONOMIST, June 21, 2008, at 95.

151. Jack L. Knetsch, *The Endowment Effect and Evidence of Nonreversible Indifference Curves*, 79 AM. ECON. REV. 1277, 1278 (1989).

152. *Id.*

153. *Id.*

154. *Id.*

155. *Id.*

chocolate in the absence of a prior entitlement, fifty-six percent of participants chose the mug and forty-four percent chose the chocolate.¹⁵⁶

The Knetsch experiment, as well as many other studies, confirms that as a general matter “losses loom larger than gains”—including losses of property—in behavioral decision making.¹⁵⁷ That is, “losses from a particular reference position are systematically valued far more than commensurate gains.”¹⁵⁸ Similarly,

“[t]he minimum compensation people demand to give up a good has been found to be several times larger than the maximum amount they are willing to pay for a commensurate entitlement. For example, when questioned about the possible destruction of a duck habitat, hunters responded that they would be willing to pay an average of \$247 to prevent its loss but would demand \$1,044 to accept it.”¹⁵⁹

The result is a strong bias in favor of status quo possession.¹⁶⁰

The reality of endowment effects means that a certain amount of pain is associated with virtually any loss of property, even fungible property like free coffee mugs and chocolate. If loss aversion is naturally exaggerated with respect even to fungible property, we can imagine even greater exaggeration with respect to property that is “bound up with the holder” in the sense that Professor Radin thinks is important.¹⁶¹

More important, our interest in the psychology of loss aversion is not to understand how it affects voluntary disposition. Rather we are considering the psychology of loss aversion as a marker of property for personhood. The reality of endowment effects suggests that even where loss aversion is strong, such feelings could be hedonic, seeking only to avoid the displeasure of object loss rather than

156. *Id.*

157. Brenner et al., *supra* note 149, at 369.

158. Knetsch, *supra* note 151, at 1277.

159. *Id.*

160. Brenner et al., *supra* note 149, at 369.

161. *See* Radin, *supra* note 1, at 959.

the loss of personhood itself.¹⁶² This is James's miser, depressed only over shrinkage of her gold, not any shrinkage of her identity.¹⁶³

Professor Radin's theory does leave room for the prospect that the loss of an object could be occasioned by different "kind[s] of pain."¹⁶⁴ However, her remarks track only the distinction between personal and fungible property.¹⁶⁵ Professor Radin's personhood perspective, as applied to object relations, does not provide much useful guidance for separating out hedonic loss aversion from what may be called "identity loss aversion." "Pain"¹⁶⁶ accompanies both types of loss aversion when realized. And both types of loss aversion are probably present in dispossession of many, many objects. If this is correct, it is nearly impossible using Professor Radin's approach to separate out personal and fungible property in a legally practicable way, save for a few noncontroversial examples such as a home residence.¹⁶⁷

Professor Radin acknowledges this last point, in part. In questioning whether it makes sense to distinguish between personal and fungible property, she writes:

I think the answer is yes in many situations, no in many others. Since the personhood perspective depends partly on the subjective nature of the relationships between person and thing, it makes more sense to think of a continuum that ranges from a thing indispensable to someone's being to a thing wholly interchangeable with money. Many relationships between persons and things will fall somewhere in the middle of this continuum For example, in our social context a house that is owned by someone who resides there is generally understood to be toward the personal end of the continuum. There is both a posi-

162. See Brenner et al., *supra* note 149, at 370–72 (distinguishing between "possession" [object] loss and "valence" [desirability] loss as distinct types of loss aversion; "Possession loss aversion . . . implies an exaggerated hedonic reaction to losing one's possessions, both good and bad ones.").

163. JAMES, *supra* note 140, at 293.

164. Radin, *supra* note 1, at 959.

165. See *id.* at 959–60.

166. *Id.* at 959.

167. *Id.* at 987 n.104.

tive sense that people are bound up with their homes and a normative sense that this is not fetishistic.¹⁶⁸

The above passage represents a dramatic departure from Professor Radin's earlier "intuitive" suggestion that loss aversion—whether hedonistic loss or identity loss—is the marker of property for personhood.¹⁶⁹ Instead, in the above passage the markers of property for personhood are whether in "social context" a thing is "indispensable to someone's being."¹⁷⁰ Radin later concludes, according to liberal values such as liberty and equality, that in the United States a home residence qualifies as property for personhood.¹⁷¹

This shift in markers of property for personhood bears a striking resemblance to Miller's structuralist approach.¹⁷² Rather than asking how a person values a particular thing, Radin asks how a thing functions to advance personhood.¹⁷³ Miller would continue to deny that individuals form personal connections with specific contextualized things.¹⁷⁴ Interestingly, the above passage from Radin can be read to support that position. For regarding her discussion of home residence, it is only in the context of the norms of liberal society that Radin concludes a home residence is property for personhood.¹⁷⁵

In the end, I do not think that Professor Radin relies upon loss aversion as a primary marker of property for personhood. To the extent that Radin would acknowledge using a structuralist approach to identifying property for personhood, it is the better path. For then the recognition of a war medal—or wedding ring—as property for personhood grows out of what wars mean—and what weddings mean—to the individuals themselves and to others within a particular system of values, much of which individuals inherit and culturally perpetuate rather than determine for themselves.¹⁷⁶

168. *Id.* at 987.

169. *Id.* at 959.

170. *Id.* at 987.

171. *Id.* at 991–1002.

172. MILLER, *supra* note 81.

173. Radin, *supra* note 1, at 991–1002.

174. *See supra* Parts I.B–C.

175. Radin, *supra* note 1, at 991–1002.

176. Of the wedding ring example, Professor Radin later writes, "Perhaps this kind of example unduly risks reification, as if the description 'personal' is characterizing the thing itself, rather than the connection between person and thing. Then it appears mysterious how the 'thing' changes the character. In reality people's connections with their accustomed surroundings are complex and variable. . . ." RADIN, *supra* note 101, at 16.

ii. *Lessons from the Antiques Roadshow: The Abundance of Property for Personhood*

In Professor Radin's theory of property for personhood, the determination of whether a thing is property for personhood, and thus eligible for legal protection, is made with reference to liberal legal and moral values.¹⁷⁷ This normative overlay is necessary in her theory because it supplies the "objective criteria differentiating good from bad identification with objects in order to identify a realm of personal property deserving recognition."¹⁷⁸ Beyond the liberal legal gaze, however, is an abundance of property for personhood. This section draws attention to the broad diversity of property for personhood unlikely to receive recognition under Professor Radin's theory. I do so in order to highlight that much property for personhood is all about us—quite inevitably, in fact. There is so much property for personhood, in fact, that we should question any need for special legal protection.

In a fascinating article on the social valuation of objects, Abby Clouse discusses a Civil War segment from the television program *Antiques Roadshow*.¹⁷⁹ The participant brought what were believed to be Civil War bullets.¹⁸⁰ But standing alone, with no context, provenance, or historical significance, they were just bullets—bullets lacking utilitarian value at that.

Enter the appraiser:

What's really exciting about this collection is that . . . [the collector] labeled the boxes with the battlefields where the bullets were found. . . . The reason that's so important . . . is it, instead of just having a Civil War bullet, now we have a Civil War bullet with a history. . . . What this labeling does is . . . it dramatically affects the value of an artifact. If you took each individual fired bullet on its own, they might trade for a dollar or a dollar fifty. But because early on he took the time to write down where these bullets were found, it dramatically increases the value. What it

177. Radin, *supra* note 1, at 958–61, 978–79.

178. *Id.* at 961.

179. Abby Clouse, *Narratives of Value and the Antiques Roadshow: "A Game of Recognitions"*, 41 J. POPULAR CULTURE 3, 4 (2008).

180. *Id.*

does is—if we have around thirty-seven Civil War bullets here, it would take the [the price] from being thirty-seven to forty dollars worth of bullets to two thousand to two thousand five hundred dollars worth of bullets.¹⁸¹

Clouse observes that it is the documented connection to events of established cultural and social significance that gives the bullets their value.¹⁸² And there is not just one type of value at work. For collectors, appraisers, and visitors at *Antiques Roadshow* locations, and for viewers from home, objects showcased carry with them bundles of cultural, personal, economic, and other types of object valuation in combinations as varied as the persons tuned in. This belies Professor Radin's suggestion that personal property and fungible property are theoretical opposites along a linear continuum.¹⁸³ A better view is that the spectrum of mental states that interact to constitute an object's value is socially complex and dynamic.

The value of an object is never singular. Oftentimes, objects encompass multiple valuation systems simultaneously. Market value, historical value, sentimental value, artistic value and entertainment value are just a few of the ways in which the worth of objects is framed and understood. While at times these valuation systems are in conflict with each other, they always intersect and inform one another. . . . When an object is understood as meaningful for different reasons, for example personal sentiment and historical value, that object is revealed as socially dynamic in spite of its physical materiality.¹⁸⁴

That the range from personal property to fungible property is nonlinear is evinced by the common position of collectors on the *Antiques Roadshow*. Many, if not most collectors who shop their wares on the program begin with heartfelt stories of cherished objects and their connections to family.¹⁸⁵ Such people are at the show, however,

181. *Id.* (alterations in original).

182. *Id.* at 4–5.

183. Radin, *supra* note 1, at 987.

184. Clouse, *supra* note 179, at 3.

185. *Id.* at 5.

precisely to measure something different about themselves—*whether they can be bought off*. The personal and fungible valuations of objects on the *Antiques Roadshow* regularly compete within the same collector, while the job of the appraiser is to translate the personal significance of an object into its “official” cultural significance as well as its dollar worth at auction.¹⁸⁶

The *Antiques Roadshow* example is also useful in answering an important question left unaddressed in Professor Radin’s article: How much property for personhood is out there? That is, how many things by their nature are susceptible to objectifying value in ways that stimulate personhood? This is a separate inquiry from what subset of property for personhood should be eligible for special legal protection, such as homes in virtue of their importance to much else people do. If the *Antiques Roadshow* is any example, the answer is that nearly any possession—and even things not owned¹⁸⁷—is open for draft into service for personhood.¹⁸⁸ Social science is unnecessary to establish this point. We need only consider our own experience: what things go and what things stay, and for what reasons, in the clutter and accumulation of our homes, during spring cleaning and garage sales, and the spillover contents of our self-storage units?¹⁸⁹ There is also the nagging, anti-materialist guilt we experience at refusing to let go of seemingly useless things,¹⁹⁰ a rather deep-seated

186. *Id.* at 15–16.

187. See *infra* Part II.A (discussing types of property for personhood in the absence of legal ownership).

188. Gary Strauss observes that the *Antiques Roadshow* “features expert appraisals of everything from Craigslist collectibles to Aunt Martha’s antiques.” The article chronicles the recent explosion in “trash-centric” reality television programs, including *Pawn Stars* and *American Pickers*, both on the History Channel. Gary Strauss, *America’s Trash is TV’s Treasure*, USA TODAY, Feb. 19, 2010, at 6B.

189. See Jeffrey D. Jones, *Property Rights, Property Wrongs, and Dispossession Under Self-Storage Leases*, 78 TENN. L. REV. (forthcoming 2011) (examining law governing personal property placed in self-storage units).

190. Criticism of the American penchant for thing-accumulation (which is actually a characteristic common to all affluent societies) is extensive. See, e.g., Russell Belk et al., *Dirty Little Secret: Home Chaos and Professional Organizers*, 10 CONSUMPTION MARKETS & CULTURE 133, 133 (2007) (exploring “the deep meanings of clutter” and visualizing “the issues in disorganization and frustrations of home clutter and chaos as well as the methods and results of [professional] organizers”); Kieran Doherty, *Clean Your Closet, Clear Your Mind*, ORGANIC STYLE, Oct. 2005, at 35; Molly Ivins, *Too Much Stuff! Our Accumulating Crisis*, UTNE READER, July 1989, at 77; Nancy Keates, *The Struggle to Contain Ourselves*, WALL ST. J., Jan. 4, 2008, at W1; Lisa McLaughlin, *The 100 Thing Challenge*, TIME, June 16, 2008, at 57 (chronicling a movement in the United States for every American to get rid of all but 100 things they own); Nancy Stedman, *20 Minutes to a Clutter-Free House: Quick Easy Strategies that Really Work*, PREVENTION, Oct. 2004, at 133; Yarrow, *The Cost of Clutter: A Feng Shui Perspective*, LILIPOH, Spring 2003, at 29; Lauren Baier Kim, *Do We*

predilection toward some things that, when gone awry, creeps toward the illness (and now much reality television) known as “hoarding.”¹⁹¹

Although intuition and common experience seem sufficient to verify the broad diversity of objects that serve personhood, much available social science is also supportive.¹⁹² One of the many interesting discoveries in researching this project was that a broad variety of scholastic areas find useful and applicable the notion that “one person’s trash is another person’s treasure.”¹⁹³

The literature most relevant to demonstrating the abundance of property for personhood, however, is within social psychology and consumer behavior, and in particular the social science literature

Need Bigger Homes or Less Stuff?, WALL ST. J. REAL ESTATE BLOG (Jan. 4, 2008, 1:32 PM), <http://blogs.wsj.com/developments/2008/01/04/do-we-need-bigger-homes-or-less-stuff>. *But see, generally* MILLER, *supra* note 130, at 12, 12–41 (arguing that many apparently trivial, owned items perform valuable identity functions).

191. “Hoarding disorder” is currently under consideration for inclusion in the forthcoming fifth version of the *Diagnostic and Statistical Manual of Mental Disorders* (DSM), the authoritative text on psychological disorders maintained by the American Psychological Association, due for release in May 2013. *See* Tiffany O’Callaghan, *DSM-5: Hoarding, Binge-Eating and Hypersexuality*, TIME HEALTHLAND BLOG (Feb. 10, 2010), <http://wellness.blogs.time.com/2010/02/10/dsm-5-hoarding-binge-eating-and-hypersexuality>. However, the condition has already caught America’s attention through programs such as *Hoarders* on the Arts and Entertainment Channel and The Learning Channel’s *Hoarding: Buried Alive*. *See Hoarders* (Arts & Entertainment), available at <http://www.aetv.com/hoarders>; *Hoarding: Buried Alive* (The Learning Channel), available at <http://tlc.discovery.com/tv/hoarding-buried-alive>. For a fun piece blurring the line between typical American home clutter and hoarding behavior, see Heather Havrilesky’s post on hoarding TV shows. Heather Havrilesky, *How Hoarding Shows Cured My Hoarding*, SALON TV BLOG (Apr. 10, 2010, 7:01 PM), http://www.salon.com/entertainment/tv/heather_havrilesky/2010/04/10/am_i_a_hoarder.

192. *See generally* Jessica Berg, *Of Elephants and Embryos: A Proposed Framework for Legal Personhood*, 59 HASTINGS L.J. 369 (2007); Mary L. Clark, *Reconstructing the World Trade Center: An Argument for the Applicability of Personhood Theory to Commercial Property Ownership and Use*, 109 PENN ST. L. REV. 815 (2005); Zachary M. Garsek, *Napster Through the Scope of Property and Personhood: Leaving Artists Incomplete People*, 19 ENT. & SPORTS L., 1 (2001).

193. The use of the “from trash to treasure” concept is pervasive. Environmental scholarship uses the concept to discuss natural resources that command little or no market value in one place or time, but do in others. *See, e.g.*, F.K.E. Nunoo et al., *When Trash Fish is Treasure: The Case of Ghana in West Africa*, 96 FISHERIES RES. 167 (2009) (stating that “trash fish” are presumed to have no market value within a particular culture); Alex Spilger, *From Trash to Treasure*, ENVTL. DESIGN & CONSTRUCTION, Apr. 2010, at 26 (chronicling the process of turning waste materials into artwork and furniture). An important documentary also explores individuals and an entire ethnic group with personal connections to garbage which is likely property for personhood. *GARBAGE DREAMS* (Iskander Films 2009), available at <http://www.garbage dreams.com> (documenting the Zaballeen, an ethnic minority in Cairo, Egypt whose historical role has been to collect and recycle all of the city’s garbage, and who had done their job so well that the city had no landfills).

on voluntary disposition of property.¹⁹⁴ That literature suggests that “controlled transfer presents a means through which consumers extend the life of their favorite items by influencing specific individuals to acquire them.”¹⁹⁵ Older individuals, in particular, seek through disposition “to create a personal and durable sense of identity.”¹⁹⁶ Such items are used to mark indexicality—“an indelible contextual association with particular times, places, and people.”¹⁹⁷ As such, through disposition we are not simply seeking to pass along “sentimental” items but rather to bequeath quite specific “meaning bundles” to be preserved by subsequent possessors.¹⁹⁸ And the handing over of a gift, upon close examination, involves quite detailed tactics and heuristics—“divestment rituals”¹⁹⁹ involving cultural norms, family traditions, receiver congruity, time and place, and so on. The divestment rituals are designed to maximize the likelihood that the transferee of personal property accepts, along with the object, the specific meanings which the transferor has attached to them.²⁰⁰

How, exactly, does the literature on voluntary disposition of property confirm the broad diversity of property for personhood? The cherished objects underlying this research are as broad as there are chattels in the world: a quilt, a pearl necklace with matching earrings, a wedding dress, a turtle collection, ceramic figurines, an old mirror, a painting, a watch, a car or truck, crochet, a grandfather clock, china, linens, a musical instrument, a gold cross, a coin collection, an old bed, an owl collection, a rifle, a Queen Anne desk, dishes, a military dress sword, and, yes, a home.²⁰¹ From items disposed of or obtained at garage sales, through clothing exchanges, through eBay or other online sales, or discovered in self-storage facilities, to deeply scripted transitions over holidays or on deathbeds,

194. See, e.g., Pia A. Albinsson & B. Yasanthi Perera, *From Trash to Treasure and Beyond: The Meaning of Voluntary Disposition*, 8 J. CONSUMER BEHAV. 340 (2009) (citing RUSSELL W. BELK, *COLLECTING IN A CONSUMER SOCIETY* (1995)).

195. *Id.* at 350.

196. See Linda Price et al., *Older Consumers' Disposition of Special Possessions*, 27 J. CONSUMER RES. 179, 187 (2000).

197. *Id.* at 187.

198. *Id.* at 197.

199. See John L. Lastovicka & Karen V. Fernandez, *Three Paths to Disposition: The Movement of Meaningful Possessions to Strangers*, 31 J. CONSUMER RES. 813, 817–20 (2005).

200. See Price et al., *supra* note 196, at 189–96.

201. These examples are drawn from a single article. *Id.* at 187–97.

these studies confirm the inevitable richness of property eligible to serve personhood.²⁰²

iii. *“You Win Some, You Lose Some”: Object Loss and Object Security*

The structuralist model of property for personhood that I am defending implies that property for personhood is inevitable because social and cultural identity and objectification through objects is inevitable.²⁰³ The model also implies that in most circumstances, institutional organization or legal protection of particular objects is unnecessary because objects will simply *do* what they do—“objectify the self.”²⁰⁴ One implication of this model is that object security is less important than Professor Radin suggested. In Professor Radin’s theory, object security is important because it stabilizes aspects of personal identity. In my view, personal identity as constituted through things—things kept and things lost—is dynamic and in flux. Thus, whether an object should be secured through law in advancement of personal identity simply by virtue of its status as personal is an open question.

My approach also recognizes the importance to identity of object loss. Professor Radin does not appear to dispute the importance of object loss in her article. Presumably, the loss of objects around which individuals have developed “bad” or “fetishistic” forms of identification could be a good thing.²⁰⁵ But admitting the abundance of property for personhood strengthens the point. Take Professor Radin’s well-known examples of private residences and residential tenancies as extant cases of property for personhood.²⁰⁶ The presumed “sanctity of the home” is currently under some dispute.²⁰⁷ Apart from that concern, however, the structuralist model of

202. See, e.g., Albinsson & Perera, *supra* note 194 (studying clothing exchanges); Lastovicka & Fernandez, *supra* note 199 (studying garage sales and online sales of wedding dresses).

203. See Clouse, *supra* note 179, at 3.

204. *Id.* at 5.

205. Radin, *supra* note 1, at 961, 968–70; see also Jonathan Drimmer, *Hate Property: A Substantive Limitation for America’s Cultural Property Laws*, 65 TENN. L. REV. 691, 734–37, 751–53 (1998) (applying the proposition to support the argument that America’s decision not to return Nazi-era art to Germany is justifiable because the loss of such fetishistic objects is good for the German people).

206. Radin, *supra* note 1, at 991–96.

207. See Stephanie M. Stern, *Residential Protectionism and the Legal Mythology of Home*, 107 MICH. L. REV. 1093, 1097 (arguing that “the psychological and social benefits of

property for personhood permits us to do some parsing.²⁰⁸ Section I.C.ii, discussing the *Antiques Roadshow*, demonstrated the abundance of property for personhood.²⁰⁹ It is notable that few, if any, of the types of personal property discussed there have ever become the subject of legal debates about property for personhood. If it is uncontroversial that most property for personhood does not deserve special legal protection, what is it about homes that are different? The answer cannot now be that homes and residences are property for personhood because so much else is too. Rather, the answer is probably that stable homes encourage stable personhood in ways that much other property does not. If at all, the reason to accord special protection to home residences is not because of their status as property for personhood, but rather because it is hard to be any kind of person at all without one.

A good test case for this position contrasts the current home foreclosure crisis with the corresponding rise of defaults in self-storage facilities. Everyone understands that when an individual's home is foreclosed upon the individual is dispossessed of the home.²¹⁰ In most states, when an individual defaults on a self-storage unit, the facility owner is entitled to seize all personal property stored within the unit and auction off the property to satisfy outstanding debt.²¹¹ This is possible because every state, except Alaska, has passed self-storage lien laws that provide self-storage facility owners with lien security interests in any property placed in self-storage units.²¹² And, all over the country, people who leased self-storage units are losing their stuff—cars, tools, clothing, family photos and other heirlooms, tax and medical records, bikes, human skulls, TVs and computers, lawn mowers, the cremated remains of family members, furniture, and lots of worthless and dangerous junk.²¹³ But

remaining in a particular home do not warrant the vast apparatus of categorical protections that pervade American property law.”); see also Barros, *Legal Questions*, *supra* note 7, at 651–59 (calling for social science research on the psychology of home to inform property law relating to home ownership).

208. See MILLER, *supra* note 130, at 51–52 (emphasizing analysis-by-comparison by explaining that the central theme of structuralism is the relationship between entities, as opposed to entities viewed in isolation).

209. See *supra* Section I.C.ii.

210. KATIE JONES, CONG. RESEARCH SERV., R40210, PRESERVING HOMEOWNERSHIP: FORECLOSURE PREVENTION INITIATIVES 130 (2009).

211. See Jones, *supra* note 189.

212. *Id.*

213. See, e.g., Aaron Mesh, *Raiders of the Lost Crap*, WILLAMETTE WK., Dec. 17, 2008, <http://wwweek.com/editorial/3506/11985>; *All Things Considered: 'Blind Auctions'*

while home foreclosures continue to yield unceasing public outcry and federal action,²¹⁴ the hundreds and hundreds of news stories documenting rising self-storage defaults and dispossession have

Help Self-Storage Firms Recoup Losses (National Public Radio May 25, 2009) (downloaded using www.npr.org); see also Becky Bartkowski, *Storage-Unit Auction Yields Human Skull in Box*, ARIZ. REPUBLIC, Aug. 9, 2007, at 2, available at 2007 WLNR 27597994; Dan Bernstein, *Their Lives in Storage*, PRESS-ENTERPRISE, Mar. 28, 2009, at C1, available at LEXIS; Mark Boshnack, *Couple Search for Urn's Owner*, DAILY STAR, May 19, 2009, <http://thedailystar.com/local/x112915145/Couple-search-for-urns-owners>; Clayton Collins, *You Store It, You Lock It, You Stop Paying, You Forfeit It*, RECORD, Nov. 2, 2006, at F5, available at 2006 WLNR 19117407; Kevin DeMarrais, *Buying Blind; Bidding on Items Left in Self-Storage is Boom or Bust*, REC. N. N.J., Aug. 6, 2009, available at 2009 WLNR 16084572; Mediha Fejzagic DiMartino, *Unemployment Rate Leads to Storage Unit Auctions*, INLAND VALLEY DAILY BULL., June 26, 2009, available at LEXIS; Delores Flynn, *Bad Economy Fuels Storage Unit Auction Boom*, DETROIT NEWS, June 23, 2008, at 1A, available at 2008 WLNR 26399684; Denise Gamino, *Sold to the Highest Bidder: Someone Else's Storage*, AUSTIN-AM. STATESMAN, Feb. 8, 2009, at H1, available at LEXIS; *Grab Bag or Treasure Hunt?: Storage Unit Auctions Feed Resale Business*, GRAND RAPIDS PRESS, June 17, 2008, at A1, available at 2008 WLNR 11482810; Paul Grimaldi, *Looking for Hidden Treasures; Recession's Impact*, PROVIDENCE J. BULL., June 18, 2009, available at 2009 WLNR 11671784; Scott Duke Harris, *Self-Storage an Island for Misfit Stuff: When People Run Out of Room in Their Homes, They Rent Units to Stash Sentimental Items They Can't Bear to Throw Away*, CONTRA COSTA TIMES, Dec. 10, 2006, at F4, available at LEXIS; Lou Hirsh, *Stored Stuff Getting Left Behind: Owners Who Have Lost Their Homes or Can't Pay the Storage Bills are Walking Away from their Belongings*, PRESS-ENTERPRISE, Dec. 30, 2008, at E1, available at LEXIS; Jeff Kunerth, *Bidding on Leftovers for a Living*, ORLANDO SENTINEL, Sept. 26, 2008, at B1, available at 2008 WLNR 18290094; Kevin Leininger, *Gambling on the Unknown: Trash or Treasure?*, NEWS-SENTINEL, Oct. 13, 2008, available at LEXIS; Megan McCourt, *Surprises are Unlocked at Area Mini-Storage Unit Auctions*, CHICO ENTERPRISE-REC., June 30, 2009, available at 2009 WLNR 12457677; Bryn Mickle, *'Somebody is Losing Their Stuff Everyday': Foreclosure Crisis Boosts Storage Units—and Auctions*, FLINT J., May 17, 2008, at A1, available at 2008 WLNR 9313263; Waveney Ann Moore, *Abandoned Self-Storage Units Another Sign of Times*, ST. PETERSBURG TIMES, July 5, 2008, at 1B, available at 2008 WLNR 12642622; Eloise Parker & Gina Salamone, *Abandoned Storage Lockers Go Up for Sale*, N.Y. DAILY NEWS, June 22, 2009, available at 2009 WLNR 11928488; Beth Quimby, *Your Records for Sale to the Highest Bidder? Files Abandoned in Self-Storage Can be Sold Like Office Furniture*, PORTLAND PRESS HERALD, Dec. 26, 2008, at A1, available at 2008 WLNR 24761226; Arlene Satchell, *An Industry in Flux: Housing, Job Crises Forcing More to Abandon Property Left at Public Storage Units*, SUN-SENTINEL, Mar. 8, 2009, available at 2009 WLNR 4443261; Paul Sisson, *Finding Bargains in a Dusty Box*, N. COUNTY TIMES, Aug. 15, 2009, available at 2009 WLNR 16009991; Christian Vachon, *The Right Stuff, but Usually the Wrong Stuff*, N.Y. TIMES, May 13, 2007, at 14, available at <http://www.nytimes.com/2007/05/13/nyregion/thecity/13stor.html>; Danielle Williamson, *Urban Treasure Hunting: Bidders Strive to Separate Gold from the Dross at Storage Unit Auctions*, WORCESTER TELEGRAM & GAZETTE, Dec. 29, 2008, at B1, available at 2008 WLNR 24952660.

214. See *Programs*, MAKINGHOMEAFFORDABLE.GOV, <http://www.makinghomeaffordable.gov/programs/pages/default.aspx> (last visited Apr. 16, 2011) (describing President Obama administration's strategy to assist homeowners with avoiding foreclosure while stabilizing the housing market and the economy, which consists of four programs: the *Home Affordable Modification Program*, the *Second Lien Modification Program*, the *Home Affordable Refinance Program*, and the *Home Affordable Foreclosure Alternatives Program*).

yielded nothing.²¹⁵ An intuitive explanation—all that is offered here—is that whether or not homes and some of the contents of self-storage facilities are property for personhood, the home is also essential to general well-being and safety. That is, homes are the locus of much other individual autonomy and exercises of self²¹⁶ in a way that the contents of self-storage units simply are not. Indeed, one might think the very decision to place an item in self-storage is typically an indication that the item is not personal, or less personal than what is kept within the home.²¹⁷

The dramatic difference in public response to widespread home dispossession through foreclosure and increasing chattel dispossession through self-storage default suggests that the home is accorded special protection because of its importance to personal *welfare*, not personhood narrowly construed. This places laws protecting homes and residential tenancies in the unexceptional category of much legislation in welfare states designed to promote minimum security and well-being for all citizens, such as recent federal legislation intended to stave off home foreclosures.²¹⁸

II. THE NEW PERSONALITY THEORY OF PROPERTY

A. *What is Property for Personhood?*

Readers persuaded by the foregoing arguments may conclude that there is never a basis for special legal protection of property for personhood. This is not the case. As a start, it is useful to think abstractly about what is involved in the decision to protect property specifically in the interest of personhood. What is the legally relevant sense in which we might want to “protect personhood”?

In answering this question, a useful distinction is between *personal identity* and *socio-cultural meaning*. Among possessors of any resource, property protection will likely affect both. But the legal

215. See *supra* note 213 (citing myriad news stories of storage default and subsequent dispossession).

216. See Radin, *supra* note 1, at 992 (discussing “the feeling that it would be an insult for the state to invade one’s home because it is the scene of one’s history and future, one’s life and growth”).

217. The intuition is incorrect, however. See Jones, *supra* note 189 (arguing that there are many reasons why personal property might be stored away from one’s primary residence, for example, space constraints, including homelessness, the fact that certain personal property, such as family china, is used only occasionally, etc.).

218. See *supra* note 216 and accompanying text.

justification that is property for personhood is problematic when personhood is treated in terms of personal identity. To return to a now familiar example, I believe Professor Radin's example of the home as property for personhood equates personhood with personal identity.²¹⁹ On this understanding, in order for a home to constitute property for personhood, one's actual home—not home as a legal concept²²⁰—has to play an integral part in a person's specific identity or one's "self-constitution." Yet many people live in homes and apartments that they feel nothing for, or despise, simply because metaphysically they have to be somewhere.²²¹ Moreover, as Professor Stern has recently demonstrated, social science data strongly suggest that home often is not central to one's self-constitution.²²²

From a structuralist view of personhood, however, the self is constituted through socio-cultural meaning mediated, in part, through objects. To protect property in the interest of personhood, here, would not mean to protect personal identity. Rather, it would mean to protect certain socio-cultural meanings through legal regulation of the property to which those meanings attach. Similarly, property law would never be invoked in the name of personhood in order to assist particular individuals in identity security *per se*. Rather, property law in the name of personhood would be used to prop-up treasured socio-cultural meanings that might otherwise be lost or endangered to particular groups whenever the underlying resources were themselves endangered.

Why should law ever be used to preserve social or cultural meanings? The answer is because our property law is so capable and we are free to decide that this is what we want our property law to do. In fact, the use of property law to protect socio-cultural meanings already exists: in the property law of public museums and other monuments;²²³ in decisions to protect certain cultural property,²²⁴

219. *Id.* at 991–92.

220. Barros, *Home as a Legal Concept*, *supra* note 7, at 255–59.

221. *Cf.* Jeremy Waldron, *Homelessness and the Issue of Freedom*, 39 UCLA L. REV. 295, 296–98 (discussing the fact that one function of property law is to determine where we are allowed, simply, to be).

222. Stern, *supra* note 207, at 1110–15.

223. See Robert Justin Lipkin, *Down with Flags, Statues, and Monuments: Cultural Memory in a Deliberative Democracy*, 7 U. CHI. L. SCH. ROUNDTABLE 239, 257 (2000) (arguing that government commemoration through icons is problematic because it "fixes history, making it immune to the radical reinterpretation sometimes warranted by subsequent events").

224. See Naomi Mezey, *The Paradoxes of Cultural Property*, 107 COLUM. L. REV. 2004, 2012 (2007) (noting that the UNESCO Convention for the Safeguarding of Intangible

such as federal²²⁵ and state²²⁶ Indian burial laws; in protection of special land and buildings through historic preservation laws,²²⁷ and in the moral rights of artists.²²⁸ All of these laws are attempts at

Cultural Heritage of 2003 expands the notion of property to include “intangible cultural heritage,” defined as “the practices, representations, expressions, knowledge, skills—as well as the instruments, objects, artifacts [sic] and cultural spaces associated therewith—that communities, groups and, in some cases, individuals recognize as part of their cultural heritage”) (emphasis added).

225. The Native American Graves Protection and Repatriation Act, 25 U.S.C. §§ 3001–3013 (2006); see also *National NAGPRA*, NATIONAL PARK SERVICE, <http://www.nps.gov/history/nagpra> (last visited Apr. 15, 2011).

226. Most states have Indian burial laws or use combinations of historical preservation law, archeological exploration law, and laws of public decency to the same end. See *The Law and American Indian Burial Mound Protection: State Laws*, INDIAN BURIAL AND SACRED GROUNDS WATCH, <http://www.ibsgwatch.imagedjinn.com/learn/lawsstate.htm> (last visited Apr. 16, 2011). In Oregon, for example, it is unlawful to willfully “remove, mutilate, deface, injure, or destroy any cairn, burial, human remains, funerary object, sacred object, or object of cultural patrimony of any native Indian. Persons disturbing native Indian cairns or burials through inadvertence, including by construction, mining, logging, or agricultural activity, shall at their own expense reinter the human remains or funerary object under the supervision of the appropriate Indian tribe.” OR. REV. STAT. § 97.745(1) (2009). Possessing such objects or placing them on display is also illegal under the statute. § 97.745(2)(a)–(c).

227. See J. Peter Byrne, *Hallowed Ground: The Gettysburg Battlefield in Historic Preservation Law*, 22 TUL. ENVTL. L.J. 203, 205–06 (2009) (“Historic preservation law elevates the cultural value of land, ordinarily suppressed by property law. . . . Elevating the cultural meaning of land brings to the fore legal conflicts over cultural meaning and priority that are veiled when land is treated as a commodity. Historic preservation law engages these issues of contending meaning.”); Carol M. Rose, *Preservation and Community: New Directions in the Law of Historic Preservation*, 33 STAN. L. REV. 473, 479–80 (1981) (finding patriotism, aesthetics, and protecting “sense of place” as the three purposes that have dominated the development of historic preservation law in the United States). See generally JULIA H. MILLER, *A LAYPERSON’S GUIDE TO HISTORIC PRESERVATION LAW* (1997).

228. Among other protections, the Visual Artists Rights Act of 1990 (“VARA”), 17 U.S.C. § 106A (2006), gives artists a right to the “integrity” of their work. That right empowers artists “to prevent any intentional distortion, mutilation, or other modification of [the artist’s work] which would be prejudicial to his or her honor or reputation, and any intentional distortion, mutilation, or modification of that work is a violation of that right” § 106A(a)(3)(A). This provision of VARA seems directed at protecting artists’ identities as extended through their art. See Amy M. Adler, *Against Moral Rights*, 97 CALIF. L. REV. 263, 269–71 (2009) (noting that one proffered justification for the right of integrity is that artworks are “extensions of artists themselves,” an alternative justification for the right of integrity is the role art plays in maintaining public and cultural meaning); Henry Hansmann & Marina Santilli, *Authors’ and Artists’ Moral Rights: A Comparative Legal and Economic Analysis*, 26 J. LEGAL STUD. 95, 106 (1997) (arguing that great works of art become “important elements in a community’s culture” and “common reference points or icons that are widely shared in social communication”). The case of the moral rights of artists as a species of legal property for personhood could be unique if we suppose that the fixed meaning to be protected is sometimes the one the author herself assigns to it. See Barbara A. Spellman & Frederick Schauer, *Artists’ Moral Rights and the Psychology of Ownership*, 83 TUL. L. REV. 661, 674 (2009) (providing empirical evidence that “people actually are concerned about artistic integrity and believe that it is wrong to interfere with an artist’s intentions or an artist’s conception of the point of her creation.”).

property regulation in order to fix or to preserve certain socio-cultural meaning for target populations—Americans at large, Native American tribes, locals and tourists, and artisans,²²⁹ respectively.

The decision to regulate property in the interest of personhood also involves the governmental claim to assign “official” meaning.²³⁰ Just as appraisers at the *Antiques Roadshow* try to fix the official story of an object for purposes of public auction,²³¹ the government regulation of property for personhood may result in purported official meanings of things, including lands, made available to the public for use.²³² There is no guarantee that official meanings will take hold or predominate, of course; certainly there will be counter-narratives.²³³ But the regulation of property for personhood seeks to give certain meanings of things special security though the legal status of the things controlled.

B. *Some Final Considerations*

This Article has presented a new theory of what legal property for personhood *is*. The Article has tried to demonstrate that legal property for personhood, as conceived of here, *exists* within U.S. property law. The account tries to replace Professor Radin’s ac-

229. As one kind of legal property for personhood, the case of the moral rights of artists could be unique if we suppose that the fixed meaning to be protected is sometimes the one the author herself assigns, or attempts to assign, to her art. In this circumstance the artist stands in the shoes of appraisers at the *Antiques Roadshow*, and in the shoes of government in historically preserved sites. See Clouse, *supra* note 179 at 16; Lipkin, *supra* note 223, at 257.

230. See Byrne, *supra* note 227, at 219, and accompanying text.

231. See Clouse, *supra* note 179, at 16.

232. See Michael Diamond, *The Meaning and Nature of Property: Homeownership and Shared Equity in the Context of Poverty*, 29 ST. LOUIS U. PUB. L. REV. 85, 99–101 (2009) (discussing private property as an instrument of social good).

233. *Contra* Mario Vargas Llosa, *Fiction: The Power of Lies*, in MULTICULTURALISM AND AMERICAN DEMOCRACY 216, 223 (Arthur M. Melzer, Jerry Weinberger & M. Richard Zinman eds., 1998) (“[I]n such a society, history and fiction have ceased to be two separate entities; they have become muddled up, each taking the other’s place and swapping identities as at a masked ball. In a closed society the authorities not only assume the right to control people’s actions, what they do and what they say, but also aim to control their imaginations, their dreams and aspirations—and, of course, their memories. In a closed society, sooner or later the past becomes subject to a sort of manipulation specially designed to justify the present. The official version of history, the only one tolerated, is the setting for the extraordinary *voltefaces* made famous by the Soviet *Encyclopedia*. Protagonists appear and disappear without trace according to whether they have been redeemed or purged by the authorities; and the exploits of past heroes and villains alter, with every new edition, in sign, valency, and substance in accordance with the requirements of the dictatorial elite of the moment.”).

count of property for personhood and her examples of property for personhood along with it. In place of her theory and examples, this structuralist account of property for personhood brings to light a very different framework of current, legal property for personhood, wherein one function of property law is support for certain socio-cultural meanings grounded in specific object relationships.

The Article has deliberately left alone normative questions relating to the theory for another occasion from belief that, at this stage, other scholars will more readily be able to identify those issues. However, it seems worthwhile to mention two normative concerns here.

First, even if successful, my theory of property for personhood only makes a persuasive case for why property law may be used for personhood and the social-psychological mechanics involved. The theory does not set forth any normative criteria for the legal recognition or legal disqualification of purported property for personhood. Put differently, my theory does not answer the question: When *ought* particular socio-cultural meanings grounded in property relationships be entitled to legal support?

One promising answer to this question, and also an answer that affords my theory of legal property for personhood a healthy theoretical complement, treats this question as one kind of politics of recognition.²³⁴ The recognition in this case would not be of particular cultural group identities per se, however. Instead, recognition would be of particular group meanings built around resources which, according to liberal democratic principles and the specific socio-cultural circumstances, are deemed deserving of legal support through protection of the underlying property itself.²³⁵ Some such

234. The work of Professor Charles Taylor inaugurated this body of scholarship in political philosophy. See, e.g., CHARLES TAYLOR, MULTICULTURALISM AND "THE POLITICS OF RECOGNITION" (Amy Gutmann ed., 1992); see also CHARLES TAYLOR, MULTICULTURALISM: EXAMINING THE POLITICS OF RECOGNITION (Amy Gutmann ed., 1994). Professor Taylor is also a studied Hegelian far more capable than I am to mine Hegel's treatment of identity and property. See generally CHARLES TAYLOR, HEGEL (2008); CHARLES TAYLOR, SOURCES OF THE SELF: THE MAKING OF MODERN IDENTITY (1992); CHARLES TAYLOR, HEGEL AND MODERN SOCIETY (1979).

235. Two recent articles by Kristen Carpenter, Sonia Katyal, and Angela Riley seek to make just such a normative case for extensive protection of cultural property, land and other things that sustain indigenous cultural heritage. Kristen A. Carpenter, *Real Property and Peoplehood*, 27 STANFORD ENVTL. L.J. 313 (2008) [hereinafter Carpenter, *Real Property and Peoplehood*]; Kristen A. Carpenter et al., *In Defense of Property*, 18 YALE L.J. 1022 (2009) [hereinafter Carpenter et al., *In Defense of Property*]. Their case for cultural property connects with my own arguments in at least two ways. First, their case for cultural property is built, in part, upon Professor Radin's case for individual property for personhood.

political concern seems apparent in the types of property for personhood that I identified earlier in the Article. But the Article takes no position here on under what conditions the protection of property for personhood—versus other uses and schemes of allocation—is over-riding.

Second is an *is-ought* concern. The methods of moral and political philosophy on the one hand, and anthropology in the guise of material culture studies on the other, may seem irreconcilable. That is so because the former typically assumes the objectivity²³⁶ and the latter the subjectivity²³⁷ (or ethical relativity) of moral knowledge.

Thus, Professor Radin uses *Hegel the Liberal* to make possible the delineation of morally positive and negative forms of object relations which perhaps deserve reinforcement through law.²³⁸ In her discussion of the problem of fetishism, for example, she finds it necessary to “construct sufficiently objective [moral] criteria to identify close object relations that should be excluded from recognition as personal property because the particular nature of the relationship works to hinder rather than to support healthy self-constitution,” and finds “moral consensus” as the source.²³⁹

Conversely, Professor Miller notes that “there is probably no discipline as committed to [moral] particularism as anthropology. A principle of its work is relativism.”²⁴⁰ Miller uses *Hegel the Structuralist* to fashion a descriptive theory of object relations which demonstrates how human beings literally are constituted by all manner of contextualized objects.²⁴¹ Miller draws no distinction between “good” and “bad” object relations, for he is concerned only to document objects at work upon people.²⁴² Here, for example, Miller is discussing heroin and a house—objects Radin probably would place

Carpenter, *Real Property and Peoplehood*, at 341–57; Carpenter et al., *In Defense of Property*, at 1046–65. In this regard, their arguments for property for peoplehood may contain some of the same weakness as Professor Radin’s theory discussed at length earlier in this Article. Second, and in favor of their case for cultural property, these authors mainly push for special recognition of sacred sites—that is, *land*—which is better suited than chattel for protection as property for personhood (or peoplehood), as it is the literal substratum of socially contextualized meaning. See *infra* Part III.

236. See DAVID O. BRINK, MORAL REALISM AND THE FOUNDATIONS OF ETHICS 14 (1989).

237. See Paul F. Schmidt, *Some Criticisms of Cultural Relativism*, 52 J. PHIL. 780, 781 (1955).

238. Radin, *supra* note 1, at 974–75.

239. *Id.* at 967–68.

240. MILLER, *supra* note 130, at 8.

241. See *supra* Part I.B.

242. DANIEL MILLER, THE COMFORT OF THINGS 1–7 (2008).

in the “bad” and “good” categories of object relations, respectively—as they cooperate to create singular meaning, in this case the destruction and savior of an addict.

For a while, it seems that this dark shadow would enter the house every night and leave with something else. There was no stopping it; it could slide under locked doors, open casement windows and leave with Dave’s possessions. Things reached such a state that the room we were sitting in was quite empty. Empty to the extent that even the carpet and furniture had gone; only the shell of the fireplace and the walls remained. When it came to nicking stuff, even Dave was no match for heroin; he just didn’t possess the same relentless greed, the insatiable heartlessness of the drug, which, having removed all rival substances, sought his blood, his veins, and always found them. . . . I am convinced, however, that it was things that saved Dave, and one thing above all: the house itself—the one stroke of luck that cut through the stranglehold of drugs and drink. He was only supposed to be in the house on a temporary basis, but somehow the council screwed things up so he found himself there for quite a while and on this account he managed to get a tenancy. After that, however bad things were, the house was there as a refuge, the hull that kept him afloat; sometimes emptied down to its creaky caulked planks, but at least there. . . .²⁴³

Western philosophy’s commitment to moral universals²⁴⁴ and anthropology’s commitment to cultural particulars²⁴⁵ opens the door to the objection that substituting Professor Radin’s moral Hegelian approach for Professor Miller’s anthropological one cannot work. The objection is the *is-ought* concern, which observes that mere factual beginnings, such as with anthropology, cannot ever produce moral endings, as does philosophy.²⁴⁶ Were the objection sustaina-

243. *Id.* at 167–68

244. MILLER, *supra* note 130, at 6–7.

245. *Id.* at 8.

246. See DAVID HUME, A TREATISE OF HUMAN NATURE 469–70 (P. H. Nidditch et al. eds., 2d ed. 1978) (“In every system of morality, which I have hitherto met with, I have al-

ble, it would follow that using Hegel the anthropologist could never give us Hegel the moralist, resulting in the loss of any normative legal guidance on object relations.

For two reasons, these concerns should not be taken too seriously. First, whether we call it philosophical anthropology or anthropological philosophy, Professors Radin and Miller are both concerned over how people become the unique beings that they are and the object needs that shape them.²⁴⁷ Wherever investigation of the self begins, the inquiry must pass through modes of morally relevant human experience that are objects of academic study in areas as diverse as business, religion, art, engineering, and medicine. The moral content carries through, even as particular disciplines attend to non-moral aspects of what, by still other disciplines, may be usefully characterized as essentially moral phenomena.

Second, the *is-ought* concern seems to be a classic philosophical challenge with very little modern social purpose. Supposing the objection in its classic form does sever Hegel the moralist from Hegel the anthropologist, very little of social import would follow. One virtue of Professor Miller's approach is that it makes clear that culture, and we within it, are changing even when the moral dimensions of those changes remain mysterious or difficult to quantify.²⁴⁸ A material culture studies approach to personhood may prove the new stuff from which a novel philosophical account is ultimately born. Or it may prove a new acceptance with cultural diversity from which no unifying moral theory is demanded but which may freely and consistently be presumed. Either path permits new investigation of how people relate to things. The moral considerations that such investigation uncovers are equal game.

ways remark'd [sic], that the author proceeds for some time in the ordinary way of reasoning, and establishes the being of a God, or makes observations concerning human affairs; when of a sudden I am surpriz'd [sic] to find, that instead of the usual copulations of propositions, *is*, and *is not*, I meet with no proposition that is not connected with an *ought*, or an *ought not*. This change is imperceptible; but is, however, of the last consequence. For as this *ought*, or *ought not*, expresses some new relation or affirmation, 'tis necessary that it should be observ'd and explain'd [sic]; and at the same time that a reason should be given, for what seems altogether inconceivable, how this new relation can be a deduction from others, which are entirely different from it.'")

247. Compare MILLER, *supra* note 130, at 135–36 (stating his premise that things play a role in making people just as people play a role in making things), with Radin, *supra* note 1, at 959–61 (discussing the process and importance of people becoming bound with objects).

248. MILLER, *supra* note 130, at 155.

III. CONCLUSION

If the theory of property for personhood developed here is correct, then two things most importantly follow. First, contrary to Professor Radin, there is no case for the special legal protection of *individual* personal property that is constitutive of personhood. (This is true even in the case of the moral rights of artists who represent a *group* of individuals whose set of property—their creative works—holds special promise for public meaning. Policy supports special legal protection of such works for any artists because of the role art occupies within liberal democratic regimes.) Second, what property for personhood exists does so in virtue of the socio-cultural meanings attached to the underlying resources, not in virtue of the fact that such resources are constitutive of individual identity.

These two points help to explain why most recognized property for personhood involves real and not personal property. By definition, almost, personal property is mainly enjoyed by individuals and involves objects with little public stake. By contrast, real property is the locus of all manner of group activity as well as the literal substratum of social context. It is no coincidence that Professor Radin's examples of homes and residential tenancies fall right in the middle—a resource capable of personalization, but wholly dependent upon land, and rich with socio-cultural and political significance. On this issue, the Article concludes that homes and residential tenancies are not property for personhood, but rather are property for basic welfare.

Finally, although the Article makes a case against individual property for personhood, that is, personal property that is constitutive of individual identity, it does so for all the right reasons. We all have such property, even many homeless individuals. The security of these possessions is rarely in danger, and whatever connections we have with them are equally secure. These objects will continue to do what they do, largely unobstructed.

All of us interested in property for personhood are indebted to Professor Radin for drawing our gaze to this still under-examined issue of property law. My hope is that this Article advances our understanding of property for personhood and invites renewed interest and interdisciplinary work. Would that we can influence the course of

American property law, if only a little, through better recognition that people need their things; indeed, to an important degree, people *are* their things.