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Property: Human Right or Commodity?

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Abstract

There is currently in international law an overstatement of the tie between property and identity. International conventions have folded property into a set of immutable human rights. There needs to be greater flexibility and nuance in this perspective. In this paper we identify two approaches to property rights: the first, which argues that property and identity are necessarily bundled together and considers property to be a human right; and the second which understands them as explicitly separate and views property as a commodity. Empirically, we observe a transition between these two competing ideas. We posit that this transition happens voluntarily, with market development, or involuntarily through displacement due to conflict and disaster. The relationship between property and identity changes based on time, circumstance and individual choice. Rights-based norms regarding property, and more specifically the restitution of property after displacement, need to be sufficiently flexible to encompass changes in identity and context.

Author Bios

Sandra F. Joireman is a Professor of Politics and International Relations at Wheaton College in Wheaton, Illinois. She received her B.A. in Anthropology and Political Science from Washington University in St. Louis. Joireman received her M.A. and Ph.D. in political science from the University of California, Los Angeles. She specializes in comparative political economy with an emphasis on Africa. Joireman has been a Fulbright scholar, a visiting research scholar at the University of Addis Ababa, Institute for Development Research, Makerere University, Makerere Institute for Social Research and Queen Elizabeth House International Development Centre at Oxford University. She has also taught at Meserete Kristos College in Debre Zeit, Ethiopia.

Joireman is the author of *Institutional Change in the Horn of Africa: The Allocation of Property Rights and Implications for Development* (1997), *Property Rights & Political Development in Ethiopia & Eritrea* (2000), *Nationalism and Political Identity* (2003), *Church, State and Citizen* (2009) and *Where There is No Government: Enforcing Property Rights in Common Law Africa* (2011). She has written numerous articles on property rights and legal development most recently appearing in *Law & Society Review*, *World Development*, *Comparative Politics*, *Constitutional Political Economy* and *Commonwealth and Comparative Politics*.

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Property: Human Right or Commodity?

We are all defined by what we own. Our clothes, cars, homes and other possessions say something to others about the decisions and choices we have made in our lives and about who we are. Similarly, an absence of ownership of key items defines us as well. While property is a part of our identity, it is also a commodity. Our cars say something about who we are, yet they are also bought and sold. The homes we live in are critical to our identity in that they house our families and our memories. Yet, houses can be bought and sold and apartments rented or left. It is this dual nature of property as both commodity and source of identity that is the subject of this article. Our focus in this paper is on what happens when these understandings of property as identity and property as commodity clash because of a sudden and unanticipated displacement of people, such as that which occurs in a natural disaster, like Hurricane Katrina, or as the result of a violent conflict, for example the massive displacement that occurred in Colombia as the result of violence. Displacement provides a window for viewing the dual nature of property and observing the transition between property as identity and its role as a commodity.

This paper will proceed in four parts. First we will discuss the contested terrain of property and identity, specifying two schools of thought: the first, which argues that property and identity are necessarily bundled together; and the second which understands them as explicitly separate. In the second section of the paper, we examine the circumstances in which we can think of property rights and identity as transitioning between these two competing ideas, or moving from being bundled together to being separate from one another. We argue that this happens voluntarily as market development occurs in an area or involuntarily through conflict and disaster. The relationship between property and identity changes based on time,

circumstance and individual choice. In the third section of the paper, we discuss what the separation of property from identity means in post-conflict settings where there is an emphasis on restitution. We then conclude with recommendations for policy-makers and academics to recognize the points at which property and identity might transition from bundled to unbundled and to understand how these two understandings of property can coexist.

Property and Identity

There are two distinct approaches to understanding the relationship between property and identity. When property and identity are bundled together, property ownership or a relation to property of some sort is fundamental to group or self definition. It can be said that a person has an attachment to a particular piece of property - not *any* land or house, but a specific piece of land or a particular house. This is perhaps most easily conceived in terms of the identification that some indigenous people have with particular lands and territories. However, property also shapes the identity of the most sophisticated urbanite who might choose an expensive brand of car because of what the ownership of that car says about who they are. An unbundled theory of property, on the other hand, understands property as an economic asset that is both fungible and tradable without consideration of its impact on a person's identity. These two ideas about property and identity are complex and we discuss them in some detail below.

Property as Bundled with Identity

As far back as the Exodus narrative of the people of Israel, we have the idea of property as essential to the political community. A specific area of land is defined as belonging to a community and that land is tied to their group identification. Indeed, the idea of land as

fundamental to the identity of a group almost certainly precedes that narrative. Political theorists have noted the role that property plays in the political community, although they have not always agreed as to the appropriate nature of that role. John Locke articulates the idea of property rights and property ownership as critical to the political community, although his conception was of individual rights gained through labor which would be protected by the state (Locke 1764). From Locke's perspective, the social contract is undermined when property ownership is denied to some or when not all who work the land have the ability to claim ownership or use rights. His ideas emerge out of an agrarian society, and it is not surprising that the tie between property ownership and the political community has resonance in places around the world where livelihoods are primarily agricultural. However, Locke's view of property as an individual right is not shared by all.

G.W.F. Hegel had a different perspective on property, but still viewed it as embedded in a web of social relationships. He saw property not just as legal possession, but as a social product, perhaps owned individually but representing something akin to 'family capital' rather than a product of individual labor (Brod 1992: 65). Jean-Jacques Rousseau shared the conviction that property was responsible for the creation of the political community, but he believed that the establishment of property was an uncorrectable mistake that brought oppression and hardship to mankind (Rousseau 1992). From his perspective, once property was established, "equality disappeared, forests became smiling fields, [and] slavery and misery arose with the crops" (Copleston 1960: 68). Rousseau argued that property led to the creation of political society with government and law, which in turn created social classes and the entrenchment of inequality. At the more extreme end of political theory relating to property and identity, Pierre-Joseph Proudhon famously criticized property as 'theft'. He understood property as the control of the

means of production and as a means of exploitation. Proudhon preferred an understanding of property based exclusively on the product of one's labor. He observed that the upper class exploited the labor of the lower class, stealing the "property" of the workers through claims to the ownership of the means of production (e.g. a large piece of arable land). Proudhon believed that no one had a right to own the means of production and that upper class ownership of property resulted in exploitation. He therefore advocated the abolishment of property beyond the product of one's labor because it created injustice (Proudhon 1876).

What is interesting in all of these theoretical ideas about property is the relationship that it has to the political community. It is either fundamental or exploitative, but property is always present, formative of the political community and embedded in social relationships. More contemporary work on the link between property and identity focuses on the individual. The role of property in relation to individual identity is discussed in the work of Margaret Jane Radin and has also recently been captured in international law. Radin (1982) recognizes the practice and obligation of the state to distinguish certain types of "personal property" (e.g. houses, car) as having stronger property rights as they have a more significant role in defining the individual's personhood. Coming from a jurisprudential perspective, she proposes that a property-identity "continuum" exists to gauge how personal or fungible a piece of property is, "within a given social context...so that decisionmakers within that social context can use the dichotomy as a guide to determine which property is worthier of protection" (987). For example, Radin identifies that a person's relationship to his or her home is sacred and crucial for personal development, demanding special legal attention and protection because it is tied to understandings of personal identity. This is true whether home is an apartment in a city or a

rural home that has been in the family for generations. Legal protection of a person's home is legal protection of their personal identity or, as Radin calls it, personhood.

Legal recognition of the home has been noted for its absence elsewhere. In her study of slum communities in Brazil, Janice Perlman observed that people without legal property rights are not treated the same as others, nor do they view themselves as having the same status as those who have legally defined property rights and live in legal communities. The lack of legality in housing leads to an understanding of personhood that is diminished and a perception of the self as marginalized (Perlman 2010). Poverty, in other words, is more than just an economic construct; it has serious implications for identity. Mary Robinson, former UN High Commissioner for Human Rights, also claims that formalized property rights beget recognizable personhood.

“In many developing countries, the majority of people lack legally recognized rights to their homes, from rural subsistence farms to shacks in urban slums. Without legal addresses or title deeds to their shacks, families live under constant threat of eviction by public officials or invasion by violent gangs, who prey on their vulnerability. Many have no legal identity and no way to document their existence” (Robinson 2007).

The poor lack the tangible representation of their identity as bound to property, title or tenure. Property rights are therefore necessary for other human rights to be observed.²

Robinson's statements and Perlman's observations suggest that causation runs from property to personhood. However, it is clear in other contexts that an understanding of oneself as endowed with the full rights of personhood can lead to property claims. For example, after the civil war in Liberia, women were not content to return to customary land tenure systems which excluded them from land ownership. Their understanding of themselves as full members of

society endowed with rights led to claims of land ownership and broader community engagement (Montemurro 2011; Corriveau-Bourque 2010). Ironically, this new understanding of their rights in the community came about because of being displaced and coming into contact with UN organizations that recognized them as being fully endowed with human rights. In this case human rights led to property rights, or personhood led to property.

In the international realm, understandings of property have been bundled with identity since the Universal Declaration of Human Rights in 1948. Both the Universal Declaration and the European Convention on Human Rights of 1950 consider property along with race, sex, language, religion, etc as a fundamental tenet of identity, cataloging it as a defensible status that shall not be discriminated against. In 2007 the UN adopted The Declaration on the Rights of Indigenous Peoples, a document which makes even stronger claims with regard to the bundled nature of property and identity. The Declaration argues for a definition of land as attached to “cultural identity”. In Article 8.1, the Declaration says that,

“States shall provide effective mechanisms for prevention of, and redress for: (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities; (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources.”

In this document, property rights are human rights and necessitate state intervention to provide recognition, protection and redress or restitution in the event of loss of indigenous peoples’ land. Specifically, Article 25 provides indigenous people the “right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied lands...” Therefore, indigenous people groups in particular are respected in terms of property and identity.

Bundled rhetoric with regards to property and identity is found in these international legal documents and is manifested in the actions of human rights practitioners. The Pinheiro Principles were developed in 2005 as a response to the property issues that became apparent during the Bosnian war, yet they apply more broadly to violently displaced people everywhere. The Pinheiro Principles recognize the importance of property restitution to identity

“Ultimately, the concept of restitution provides a source of hope and a wellspring of potential justice. Restitution offers the displaced the promise that a history of injustice, the abuse of basic rights, or terror and harassment can actually, at least in this one important respect, be reversed. In what must be seen, then, as a major advance within the global human rights code, this aspiration to recover and repossess the dwelling, land or property the displaced called home when their displacement began, has emerged in recent years as a distinct and claimable right applicable to all displaced persons who wish to invoke it. The broader right to voluntary, safe and dignified return is now understood to encompass not merely returning to one’s country of origin, but to one’s original home as well. This is one reason, for instance, why UNHCR and other international and national agencies are now paying greater attention to the restitution elements of return than ever before” (Leckie 2005: 3).

The language of the Pinheiro Principles provides a basis for human rights practitioners to equate restitution with justice, and thus designs organizing structures that emphasize “restitution” over the development of a property rights system that facilitates economic growth and development. As will be discussed later, restitution, which legally refers to the return of a specific property or a monetary equivalent to the original owner, is a popular practical solution for cases of property dispossession or displacement from personal property. In practice, there has been more emphasis on the return of specific property than on compensation because of a belief that it is fundamentally tied to identity. The right of return in international law has been construed as the right to return to one's home (Hurwitz 2008: 198).

The Pinheiro Principles were developed for post-conflict settings in which there has been massive and violent displacement of people. Yet, it is these post-conflict settings which shine a light on some of the problems with an approach to property that views it as bundled with identity. The idea behind the Pinheiro Principles is to restore communities to the status quo ante – to a physical approximation of life before the conflict. However, in practice this is quite difficult to do and not always what people want (Toal and Dahlman 2011). Restoring property to people after a conflict cannot recreate the communities that previously existed with the same relationships between neighbors and authority structures. Indeed, this may not even be desirable if these structures and relationships contributed to the conflict.

Sale of land or home after it is restored undermines the idea of that property as critical to identity. Restoring property to people after a conflict because of a belief that the specific property of which they were dispossessed is tied to their identity may backfire as a method of community restoration if the owners promptly sell the property and move elsewhere. Jon Unruh observes that

“...when those who have received property as part of a human rights restitution programme then sell such property, the programme can often be seen as a failure and humanitarian actors can seek to prevent such sales. In reality what is happening is that the recipients are themselves making the translation from a human right to a property right due to the lack of alternative ways of doing this” (Unruh 2009: 65).

Post-conflict settings are a window into a fundamental tension with regard to understanding of property. Property is linked to human identity and it is a commodity. The Pinheiro Principles are embedded in a view of property that is bundled with the identity of the individual and of the community. In the short time that the Pinheiro Principles have been in existence some scholars are already questioning both their legal and theoretical justification (Ballard 2010).

An understanding of property restitution as a human right is at odds with developing a vibrant system of property rights that is sufficient to support economic development. Property rights are fundamentally commodities which can be bought and sold. Human rights are not. Restitution of property after conflict is a short-term solution, whereas developing an enforceable system of property rights is a long-term process. Strongly stated, a well-functioning property rights system demands property rights unbundled from identity, which can be freely transferred. In the section below we will detail the justification behind this unbundled view of property.

Property as Unbundled from Identity

To the extent that property is a commodity that can be traded in the marketplace, it must be viewed as separate from identity. Thus economic models and theories resist the notion that property is somehow tied to personal identity. In property rights models for economic development, the possession of tenure or title allows the owner to easily trade physical property, encouraging a transfer of rights for the gain of economic capital. Indeed, the fact that property can be dispossessed from its owner is what allows property to serve as collateral on loans and therefore underlies the title-based poverty alleviation model of Hernando de Soto. De Soto (1989, 2000) argues that property rights spur economic growth by creating ‘meta’ property – the paper trail of title and mortgage which can free the surplus value of assets and provide the necessary capital for economic growth and development. Without this legal framework of property rights people can only effectively do business with those they trust.³ Wider economic

opportunities remain restricted by the absence of proof of ownership and control that would enable individuals to mortgage their property and use the capital for investment.

De Soto posits that property rights for the poor will lead to poverty alleviation, drawing on previous work that suggests land title leads to greater investment and productivity (Demsetz 1967; Feder and Noronha 1987; Libecap 2003; Platteau 1996). However, de Soto diverges from previous theory by identifying the importance of titling all informally held land, small urban plots and farmland in an effort to boost the potential of capital accumulation for the poor.⁴ If title is going to lead to a freeing of capital through the process of mortgage then it must necessarily have the ability to be dispossessed from its original owner. Otherwise the whole idea of a mortgage with the land or house as collateral is moot. It is interesting to note that in some areas of the world, such as Kenya, banks have refused to mortgage even titled land and property because they do not think that dispossession could ever occur due to the strong ties between identity and property (Pinckney and Kimuyu 1994).

It is a given to most economists that land and houses, as property, can be bought and sold. This belief is not a result of callous hearts and a disregard for issues of personal identity, but is rather due to the empirical observation that in markets all around the world this is precisely what happens. People engage in the exchange of property without any observable damage to their sense of identity. Similarly, lawyers engaged in the conveyancing of land facilitate its exchange on the basis of a willing buyer/willing seller model without concern for violating human rights. The fact that land and houses are exchanged regularly and willingly suggests that the unbundled approach to property rights and identity has something to recommend it or that it is somehow necessitated by contemporary life.

Thus, there is a complexity. Human rights are non-commoditized, unchangeable standards that are the entitlement of every individual based on their status as human beings. On the contrary, property rights are alienable, and a successful property rights regime is based on the understanding of particular property as a transferable commodity. Understanding property rights as human rights then, entails a necessary tension. We will argue below that time, circumstance and individual choice all interact in creating a transition from one understanding of property to the other in the lives of individuals. Indeed, we can even imagine circumstances in which the same person has multiple pieces of property, some of which are tied up with her identity and others which she views simply as commodities. Property can both be bundled with an individual's identity as the human rights advocates argue and unbundled and commoditized as economists and development theorists envision.

Transitions in understandings of property

The relationship between property and identity changes based on time, circumstance and individual choice. How and when one person might adopt an unbundled view of property is the focus of the next section of this paper. The two paths that we observe regarding the transition between property as comprising a fundamental part of one's identity and property as a commodity are: voluntary choices to eschew the identity characteristics of property and involuntary occurrences which shift access to property and sever or diminish the tie between property and identity.

Voluntary disengagement

Farmers around the world have a strong attachment to the land from which they gain their sustenance. Whether they live in the US, France, Mexico, or Ghana, the practice of farming the

same land year after year and the aspiration of passing that land on to one's children forms a strong connection with place, which transcends the monetary value of the land. In some parts of the world, land may have spiritual and ritual significance as well, with certain areas having sacred meaning imbued by communities of people or derived from their purpose as ritual sites or burial grounds. These spiritual and sacred ties have a value far beyond the market value of an acre. Land in this case, is bundled with identity of the group and/or the individual. Yet, the very same farmers who own land that has been in their family for years, may also purchase shares in urban property funds with the explicit goal of making money from increasing market values of the rents from urban buildings. Property is a commodity in which one can invest.

The majority of people living in urban areas may have strong attachments to their homes because of the memories they have of living there, yet at the same time, they are willing to move if necessary to a better neighborhood or due to changing employment opportunities. Indeed, with the housing market as stagnant as it has been over the past few years, people who are able to sell their houses and move to others are likely to be happy at the prospect of moving, rather than despondent or resentful of the sacrifice of their identity.

So how is it that people move from one category of property owners to the other? What makes people's identities tied to property and what is it that breaks that tie? In examining this question we are trying to bridge the divide between human rights and developmental approaches to property. We argue that both understandings of property can be true, and that they can even be true for the same person at the same time regarding different pieces of property.

The first obvious path towards voluntary disengagement with property as identity is the development of a market in land which gives people the opportunity to voluntarily break any ties with historical land holdings. Before people have the ability to make a break with the land it is necessary for some sort of market in property to develop. Even if that market is vernacular (or local) as Chimhowu and Woodhouse note in customary tenure systems, the very presence of a market allows for the disengagement from the rural economy and for those who seek their fortunes elsewhere to sell their rural land and use the money to finance a move (2006). The fact that we see this sort of market developing even in situations where no legal land market exists suggests that there is a strong incentive for some people to sell what has been traditional land. This even applies to land which is held communally or with unclear property rights (Joireman 1996). Ties to the land, even for indigenous people, may be stronger for some than for others. Once a market for land develops, exit is facilitated for those who wish to sell their land.

In urban areas around the world, a vibrant lease and sale market in homes exists and people willingly sell their homes and property. How are we to understand this in terms of identity? If property is bundled with identity then what is it about the process of urbanization that breaks that tie and enables people to treat land and physical property like a commodity rather than a part of their identity? We posit that, just as some people choose to voluntarily disengage from customary land tenure systems when given the opportunity to do so, there is a psychological delinking of property from identity that comes with urbanization and an expectation that one will at some point sell the immovable property one currently has. This does not mean that house and home no longer have a pull on urban people. Indeed, even in advanced societies, special protection is given to the home because of its ties to identity (Radin

1982). However, these identity ties are weaker and coexist with an understanding that home may be temporary, or less than a lifetime. Few urban people anticipate passing their home onto their children because few can anticipate having their children live so close to them and therefore the expectation of ongoing inhabitation is limited.

The psychological tie to property is muted by the presence of a land market and by the expectation of mobility at some point in life. Even in 'traditional' contexts people can express a desire to break a tie with their land. Peter Gill anecdotally reports that in Ethiopia young men were willing to voluntarily leave their family land in the hope of better farming prospects elsewhere, even when that land was in another part of the country was not in their ethnic 'homeland' (Gill 2010: 105-110). For these young men, the poverty of home and lure of a better life was sufficient to move them from their traditional land to better expectations elsewhere. Voluntary disengagement from home or land is not limited to urban dwellers, developed countries or 'modern' market economies. It is an individual choice influenced by personal preference and expected future opportunities.

Involuntary disengagement

Apart from a voluntary choice to break the tie between specific property and identity, involuntary disengagement happens in instances of man-made, natural, and technological or environmental disasters. These events cause massive displacement of people and the destruction of homes. The most obvious of these disasters, and the most innately political, is displacement due to war or other violent conflict.

People fleeing violent conflict, particularly those who have been displaced for long periods of time, do not simply return to their prior areas of residence when a conflict is over. Instead, the experience of displacement and the trauma of violence alter the emotional ties they had to their previous communities. Research chronicling the return strategies of refugees and displaced people (RDPs) indicates that they do not necessarily return to their pre-conflict residence. Instead, many choose to relocate to ensure physical and economic security (Bascom 1996; Alden Wily 2009; Jansen 2010; Kibreab 2002; Stefansson 2006). In a 2010 survey of displaced families in Colombia, only 5.8% intended to return to their municipality of origin. The majority wanted to remain in their area of refuge or resettle in another municipality (Ferris et al. 2011: 139).

Two general trends describe the voluntary relocation strategies of displaced people. First, returnees tend to relocate near a border or political boundary in order to establish simultaneous access to the resources of land, homes, and assistance available in their original country as well as the country or location of their displacement. This has been noted in both refugee and internally displaced populations (Kibreab 2002; Stefansson 2006). Second, refugees and displaced people tend to gravitate toward urban centers as rural lifestyles become unfeasible or unappealing (Bascom 1996; Holt 1996). In these cases, man-made conflict breaks the identity tie between people and their property, and safety takes precedence over whatever ties might exist between property and identity in the communities people used to live in prior to the conflict.

One well-studied example of the effect of conflict on people's relationship with property is from Bosnia. During the Bosnian War, two million people were displaced from their original residences as a result of ethnic cleansing – a calculated effort to remove certain ethnic groups from territories which were claimed by other groups. When the war ended, an effort was made in the peace agreement to address property issues explicitly, since they had been such a fundamental part of the conflict. But the return of people to their original communities and property to its original owners was both politically and emotionally charged (Toal and Dahlman 2011). Indeed, Stefansson describes the return of displaced peoples and their complex relation to a politically changed land following the conflict in Bosnia as a “house war” in which the political issues of control over territory and restoration of property overlap with household identity and investment in a ‘family home’ (Stefansson 2006; Steffanson 2004). Since the experience of violence in Bosnia fundamentally destroyed the communities in which people lived, even restoration of their homes did not mean that their previous lives and identities could be recreated, since those past lives were lived in different communities. Stefansson urges that “the success of post-war reconstruction efforts ultimately depend on creating the conditions for RDPs (and those who stayed behind) that allow them to (re)create home and normalize their living conditions” (Stefansson 2006: 133).

Natural disasters are a second cause of the involuntary breaking of the tie between property and identity. They are similar to war in that they can forcibly displace large numbers of people from their homes and their communities. In natural disasters, those whose property is destroyed have a greater experience of trauma than those whose property remains intact (Dewaraja and Kawamura 2006). In addition to the trauma that people suffer because of a loss

of property, displacement due to natural disasters breaks the identity ties that they may have with their homes and communities. The tremendous amount of social science research that has been conducted in the wake of Hurricane Katrina gives us some idea as to the way that particular disaster affected people's identity. Of specific interest to us is the decision to return to the homes from which people were displaced and to re-establish life. Evidence regarding who returned after Katrina demonstrates that for younger people, those 39 and under, displacement from the hurricane led them to break ties with the area and re-establish their lives elsewhere (Fussell et al. 2010). It was also true that those of higher socioeconomic status were more likely to return to the city and to their neighborhoods than those of lower socioeconomic status (Stringfield 2010; Elliott and Pais 2006). Those in the displaced population that are young or professionals may count the material resources lost as overwhelmingly more important than the psychological gain that would come from returning to the affected area. Conversely, those that have strong business or "home" ties to the destroyed land will perceive the resource loss not too great to endeavor return - this population is often older and have a longer connection to homes and land (Aten 2011)

Natural disasters are unpredictable and nondiscriminatory in nature. Yet, they disproportionately affect the socioeconomically marginalized who have fewer resources to cope with their impact. Disasters exacerbate inequalities that already existed in the place of origin (Barnshaw and Trainor 2007; Blaikie 1994). Examining the effects of Hurricane Katrina, Francis Adeola argues that the loss of resources, such as homes, led to more psychological stress and that both home loss and stress were disproportionately incurred by racial minorities (Adeola

2009). Disasters highlight property disparities in the community and reveal unequal burdens of psychosocial stress in times of loss.

A third category of involuntary unbundling of property and identity stems from environmental disasters; what are also sometimes referred to as technological disasters. Technological disasters result from a collision of man and nature: oil spills, nuclear accidents and chemical contamination of land are all examples. Technological disasters can have a profound effect on people's ties to property, particularly when they damage property in such a way as to render it unusable. Moreover, technological disasters also displace people from their homes. The multiple disasters in Japan in 2011 were an overlapping of natural disasters (earthquake and tsunami) and technological disaster (nuclear accident). Both contributed to the displacement of people from their homes and sources of livelihood.

A further example of a technological disaster that had a lasting effect on people's identity ties is the Exxon Valdez oil spill in the Alaskan gulf. While this spill immediately affected the natural ecology of the Alaskan waters, it also had lasting effects on the native Alaskan fishing community. Gill and Picou argue that "the accident and its cleanup directly challenged a culture consisting of traditional subsistence bonds to the biophysical environment" (Gill and Picou 1997). In another work, Picou describes the "cultural and personal consequences" that resulted from the local community's severed relationship from "their biophysical environment through technological contamination" as psychologically and psychosocially challenging (Picou et al. 1992: 253). People's subsistence and identity was tied to the environment. When the water became contaminated, the lives and livelihoods of the community were endangered and their

identity ties were challenged by “a social context of uncertainty, anger and isolation” (Picou 2000: 79). In this case of technological disaster, a loss of subsistence jeopardized both life and identity for the people in the affected community.

Disasters of various sorts change access to property, displace populations and alter the livelihoods that people pursue. All of these factors, and the stress that accompanies them, transform the ties between property and identity in fundamental ways. Although psychological studies tell us about stress and trauma that result from disasters, there is very little research on how property losses, in particular, affect people. Some of the literature that exists has been detailed above, but there remains a need for further work on the ways that unexpected loss of property affects the manner in which people view themselves and their communities. Of particular interest would be studies that compare property loss in natural disasters to property loss in times of war or from technological disasters.

Disengagement and Restitution

Finding appropriate policy responses to cases of involuntary disengagement is difficult, particularly in post-conflict settings. Humanitarian organizations advocate for the restoration of communities and the recognition of human rights, while economists and other development specialists look to establishing a property rights regime that facilitates economic growth. In post-conflict settings these two perspectives can be at odds.⁵ Moreover, in post-conflict settings property can become a new arena of conflict where new power relationships and authority systems are articulated (Kretsi 2007; Toal and Dahlman 2011).

One of the many interests invested in this clash of rights are international organizations, particularly those institutions tasked with monitoring, sustaining, protecting and/or repatriating the displaced. Following the Pinheiro Principles, organizations, such as UNHCR and UN-Habitat, have developed practices that prioritize human rights and bundle identity with a specific legal response – restitution. Yet, given the way that conflict dissociates property from identity, this has the potential to be problematic from two perspectives. First, communities receiving property restitution may not necessarily find it desirable to return to their former places of residence. That said, restitution of property does open up choices for people in terms of their ability to lease or sell houses and land that they no longer intend to use; for this reason, Rhodri Williams has referred to property restitution as the first stage of return. (Williams 2006). The second perspective from which restitution can be problematic is that of the agency or organization facilitating the restitution process. These agencies might be frustrated with the lack of community buy in or voluntary return. Meg Ballard, speaks against the norm of property restitution after conflict, arguing that “property restitution [is used] as a means of *depoliticizing* the right of voluntary return” (Ballard 2010: 466) . While depoliticization might seem attractive, it is unlikely to be achieved in post-conflict settings, particularly those in which population displacement was the goal of one of the parties to the conflict.

Standardized procedures of restitution with a goal of restoring the conflict affected community to the status quo ante are unlikely to facilitate the return of populations if the link between identity and property in a community has been broken. Rights based approaches are often in conflict with the pragmatic choices that people make after a conflict. The UNHCR focuses on returning populations to their place of origin and restoring their property to them

(Barnett and Finnemore 2004). While it may be the right of displaced persons to return, that does not mean that they will all choose to do so. Restoration of people to home communities and of property to the original owners may be far less important than restitution of property alone if people have no intention of returning to a community. An economic or unbundled approach has no difficulty with this situation, although it may create tension in rights-based organizations operating on the principle that property is bundled with identity. Indeed, the very bundling of property with identity may make people less willing to return to a place if identity politics have been the focal social cleavage in a conflict. The Rohingya people are a good example. The Rohingyas, a Burmese Muslim group, were kept from reentry to Burma after being displaced to Bangladesh in the late 1970s because their citizenship was not recognized by the Burmese state. The UNHCR pushed for their return from Bangladesh in the mid 1990s, back to their 'rightful' home in Burma, following their established norm of repatriation. This solution returned the Rohingyas to their home, but did not end their citizenship conflicts or their ongoing repression by the Burmese state (Barnett and Finnemore 2004: 106-118). Their identity was the cause of their mistreatment and returning them to their 'home' did not end their persecution.

The post-conflict norms of return and restitution are ideals that are challenged in application by the experience of trauma, changes in livelihoods that result from displacement and individual decisions. As property is linked to identity, so must that identity be properly contextualized when policy is being formed and followed. Post-conflict land and housing policies need to 'go beyond narrowly framed restitution policies' (Hurwitz 2008: 213) and exhibit sensitivity to context and individual choice. A Bosnian Serb is not a Palestinian, and a Native American is not a South African; however similar their political narratives seem to be,

their relationship to property and home is different. Rights-based norms of restitution and return need to be sufficiently flexible to encompass changes in identity and context.

Conclusion

There is currently in international law an overstatement of the tie between property and identity. Property has been folded into a set of immutable human rights by international law, but there needs to be more flexibility and nuance in the way we understand property. There is a tie between property and identity, yet that tie can be broken, and frequently is, both by individual choice and by disasters which displace people from their homes and communities. In this article, we have challenged the bifurcated discussion of property as identity and property as commodity. We have introduced the issues of time, circumstance and choice and argued that these factors change the relationship that people have with property.

In adding these issues to the discussion of property and identity, we have sought to issue a challenge to strive for more nuanced thinking: property rights scholars and development specialists need to think more about identity issues; and human rights scholars and practitioners need to entertain the idea that identity and property might be delinked by circumstance and choice.

While it is trite to end an article with a call for further research, the gaps in knowledge regarding links between property and identity are profound. If we accept that property is tied to identity in a fundamental way, then we need more studies regarding the nature of this link and its durability across time and circumstance. The link between property and identity is critical to both personhood and politics. A few relevant questions illustrate this point: How long do people

consider themselves to be a displaced person or a refugee? When do people decide to view themselves as members of a new community? How is a tie to a home or homeland affected by the experience of trauma? These questions are important philosophically as well as politically. The strength of a tie to an ethnic homeland matters in conflicts. A strong tie can prolong conflict - the Palestinian claim to land has been sustained since 1948 and is unlikely to wane. Weaker ties to an ethnic homeland can lead to options regarding property restitution that do not hinge on return.

In addition to determining more precisely the contours of the relationship between property and identity for the purposes of reconstruction and rebuilding of communities, there are other reasons to explore this relationship in depth. Much effort has gone into creating international law and policy based on assumptions regarding the links between property and identity. We know there is a link, but we also know it is not immutable. International law and policy regarding property would benefit from a more robust understanding of precisely how property and identity are related and how that relationship can change.

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² One could also argue, following Proudhon, that the recognition of property rights can lead to exploitation; for example, tenant farmers cannot exist before owners to land are recognized.

³ This same idea is echoed in Demsetz (2002), although Greif (2006) gives evidence of privately ordered institutions, guilds, which arose during the Medieval period to expand potential networks of exchange.

⁴ Recent studies of titling suggest that De Soto is not correct in thinking that title will lead to mortgaging and the creation of capital, however, there are other positive benefits from titling that run the gamut from home improvement to increased wage labor and smaller households (Cousins et al. 2005; Field 2005, 2007; Galiani and Schargrodsky 2007).

⁵ Although, there has been quite an interesting unity of the rights based and development based perspectives over the issue of tenure security (Williams 2011).