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Reconstructing the World Trade Center: An Argument for the Applicability of Personhood Theory to Commercial Property Ownership and Use

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This essay highlights two critical understandings gained from examining the rise, fall, and subsequent reconstruction of the World Trade Center through the lens of personhood theory: (1) that proponents of personhood theory have failed to appreciate the significant potential for self-constitution and self-expression contained within commercial property ownership and use; and (2) that the post-9/11 decision to leave undeveloped the “footprinted” land underlying the original World Trade Center towers represents a decommodification (withdrawal from market) of some of the most valuable real estate in the world in explicit recognition of the personhood attachments of those who died there that day.

I. Introduction

This essay looks to Margaret Jane Radin’s “property for personhood” theory as a vehicle for understanding the rise, fall, and reconstruction of the World Trade Center. Nearly exclusively applied to non-commercial property, Radin’s personhood theory has tremendous, untapped relevance for commercial property ownership and use, as the following discussion of the World Trade Center development and redevelopment makes clear.¹ Among other insights generated by

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1. See, e.g., Margaret Jane Radin, *Property and Personhood*, 34 STAN. L. REV. 957 (1982) (articulating personhood theory); Margaret Jane Radin, *Market-Inalienability*, 100 HARV. L. REV. 1849 (1987) (articulating critique of universal commodification); see also Margaret Jane Radin, *The Colin Ruagh Thomas O’Fallon Memorial Lecture on Reconsidering Personhood*, 74 OR. L. REV. 423, 428-29 (1995) (“updating” her personhood theory).

applying personhood theory to the commercial property realm are: (1) recognition that commercial property ownership and use can significantly impact the self-constitution and self-expression of individuals in a way that richly promotes human flourishing, one of Radin's central concerns for property; and (2) that the post-9/11 decommmodification of the "footprinted" land underlying the original World Trade Center towers (*i.e.*, its complete withdrawal from the commercial real estate market for use as a memorial), was done in widespread recognition of the personhood attachments to the site of the nearly 3,000 people who died there on September 11, 2001.

This essay begins by highlighting the nearly complete failure of personhood theory—in the twenty-plus years since its first articulation by Radin—to address its applicability to commercial property ownership and use.² After exploring the potentially significant impact of commercial property ownership and use on self-constitution and expression, this essay concludes by examining how one aspect of property law, specifically eminent domain, could be modified to account for the personhood implications of commercial property.

II. Radin's Personhood Theory

In her trailblazing article, "Property and Personhood,"³ Radin speaks of property as distributed along a continuum, from that which is purely fungible (*i.e.*, held for its instrumental value and readily replaceable), such as stock certificates, to that which is principally sentimental and irreplaceable, such as photos of loved ones. Radin termed this latter category "personhood property" in recognition of the role these classes of things play in our self-constitution and expression. For Radin, "[p]ersonal property is important precisely because its holder could not be the particular person she is without it."⁴ Drawing heavily on Georg Wilhelm Friedrich Hegel's personality theory in arguing that personhood property is that which is centrally formative of the self, Radin asserts that individuals realize their true selves "only by engaging in a property relationship with something external. Such a relationship is the goal of the person."⁵ Thus, according to Radin (and Hegel), "property is the first embodiment of freedom."⁶

2. In addition to highlighting the failure of Radin's writings to address the personhood implications of commercial property ownership and use, I note the nearly complete failure of those responding to Radin's personhood theory—supporters as well as detractors—to fully address its applicability in the commercial property realm.

3. *See supra* note 1.

4. Radin, *supra* note 1, at 972 (attributing idea to Hegel).

5. *Id.* at 972-73.

6. *Id.* (quoting Hegel).

Radin grounds her personhood theory on an intuitive understanding that different items of property have different degrees of impact on an individual's self-identity.⁷ Radin's intuition, grounded in observation of fact, is that:

Most people possess certain objects they feel are almost part of themselves. These objects are closely bound up with personhood because they are part of the way we constitute ourselves as continuing personal entities in the world. They may be as different as people are different, but some common examples might be a wedding ring, a portrait, an heirloom, or a house.⁸

According to Radin, we can measure the degree of an individual's identification with an item of property by anticipating the extent of personal loss that would be suffered upon its removal. "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. If so, that particular object is bound up with the holder."⁹ Using a wedding ring as an example, Radin observes that if it is "stolen from a jeweler, insurance proceeds can reimburse the jeweler, but if a wedding ring is stolen from a loving wearer, the price of a replacement will not restore the status quo—perhaps no amount of money can do so."¹⁰

Radin contrasts the self-constitutive character of personhood property with that which is held merely instrumentally. For Radin, it is a distinction between that which is valued for having and holding and that which is valued for buying and selling: "The opposite of holding an object that has become a part of oneself is holding an object that is perfectly replaceable with other goods of equal market value. One holds such an object for purely instrumental reasons." According to Radin: "The archetype of such a good is, of course, money, which is almost always held only to buy other things. A dollar is worth no more than what one chooses to buy with it, and one dollar bill is as good as another."¹¹ Money in the hands of a currency collector would, of course, be an exception to this rule, but other examples of items held purely instrumentally would be "land in the hands of the developer, or the apartment in the hands of the commercial landlord."¹²

By contrast with these examples of instrumental property, the paradigm of personhood property for Radin is the family home, the site

7. Margaret Jane Radin, *Lacking a Transformative Social Theory: A Response*, 45 STAN. L. REV. 409 (1993) (reflecting on "Property and Personhood").

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

9. *Id.*

10. *Id.*

11. *Id.* at 959-60.

12. *Id.*

of primary human attachment and identity, and the foundation of personal stability, security, and growth. With specific attention to the home, Radin declares: "Once we admit that a person can be bound up with an external 'thing' in some constitutive sense, . . . we can argue that, by virtue of this connection, the person should be accorded broad liberty with respect to control over that 'thing.'"¹³ Two immediate implications of this recognition are, first, an understanding of the fundamentally destabilizing, individually violative nature of home burglary, and second, an argument that the home should be immune from the government's exercise of eminent domain authority, to which we will return in a moment.

While acknowledging that not all personal property (*i.e.*, books and clothes), is personhood property, Radin fails to acknowledge that some personal property may be held principally instrumentally,¹⁴ and that some commercial property involves important personhood concerns, *i.e.*, that not all commercial property is merely fungible.¹⁵ To her credit, Radin acknowledges that a factory owner may derive personhood value from his or her equipment holdings, noting, "[p]erhaps the entrepreneur factory owner has ownership of a particular factory and its machines bound up with her being to some degree."¹⁶ However, Radin acknowledges this only in passing. After discounting the personhood potential with use of "perhaps" and "to some degree," she says nothing more of the entrepreneurial factory owner.¹⁷ The commercial property

13. *Id.* at 960-61.

14. *See, e.g.*, Jeanne Lorraine Schroeder, *Virgin Territory: Margaret Radin's Imagery of Personal Property as Inviolable Feminine Body*, 79 MINN. L. REV. 55, 105 (1994) (asserting, "I would venture that many people actually identify their personhood partly in terms of economic behavior.").

15. Radin, *supra* note 1, at 960 n.6. On a related note, Schroeder criticizes Radin for failing to recognize that the loss of instrumentally held property might occasion a feeling of personal loss. *See* Schroeder, *supra* note 14, at 109 (noting, "Radin concentrates on the loss of self that people feel when they lose control over their bodies or other intimate objects that are tied to their personalities. It does not follow from this that people do not feel loss of self when they lose control over objects they hold solely for instrumental purposes."); *see also id.* at 110 (declaring, "if we seriously consider the role of property in human freedom, we should account for the subjective experience of empowerment and satisfaction owners have in controlling fungible property and the feelings of pain they experience at the loss of control.").

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

17. *Id.* Radin likewise discounts the personhood potential of commercial property ownership in her other writings. *See, e.g.*, Margaret Jane Radin, *The Liberal Conception of Property: Cross Currents in the Jurisprudence of Takings*, 88 COLUM. L. REV. 1667, 1689-90 (1988): "Use of property as one's residence is more closely connected to personhood than use of property as a garbage dump for one's factory. . . . Airplane overflight noise 'takes' much more from a (hearing) resident than from a (hearing) proprietor who already operates a noisy manufacturing business or from a (nonhearing) corporation. A cable on the roof of a building the owner rents out as a fungible

owner is simply not material to Radin's concerns.

Thereafter, Radin acknowledges that "[w]hile I have argued that personal property should be specially recognized, I do not argue that there is no personhood interest even in fungible property."¹⁸ Having acknowledged this, Radin nevertheless discounts the personhood value of commercial property by insisting that "[i]t is important to realize that in a larger scheme that accords special recognition to core personhood interests in general, some personhood interests not embodied in property will take precedence over claims to fungible property."¹⁹ Thus, Radin suggests that even non-proprietary personhood interests trump fungible property interests, defined largely in terms of commercial property interests. In so doing, Radin fails to give nuanced recognition to the potential personhood implications of commercial property ownership and use.²⁰

Radin's failure to adequately acknowledge the often-significant personhood potential of commercial property ownership and use is a critical shortcoming of her writing.²¹

investment no more invades her personhood than does a utility assessment. In this visionary interpretation, we would forthrightly declare *Loretto's* reasoning . . . to be wrong. . . . Thus, labor regulation (such as collective bargaining, minimum wage, maximum hours, health and safety and unemployment insurance) . . . can be seen as an effort to foster workers' and tenants' personhood by recognizing the nonmarket personal significance of their work and homes. Such regulations need not be seen as takings. . . . Such legislation should not be thought of as a taking, because the corporation's property is fungible. The corporation as a profit-maximizing entity should ethically be treated as indifferent between holding assets with fair market value of X dollars and possessing X dollars in currency or securities. Government action that required resident homeowners to sell to a corporation, on the other hand, might be considered a taking or a violation of substantive due process."

18. Radin, *supra* note 1, at 1008.

19. *Id.*

20. See Schroeder, *supra* note 14, at 81 (observing, "[Radin] does not . . . discuss which object relations to fungible property should appropriately be given legal recognition. Indeed, given that she defines 'fungible property' as 'commodification,' it is hard to see what affirmative relation Radin thinks one could have to one's fungible property, other than the non-relation of indifference.").

21. See, e.g., Radin, *supra* note 17, at 1695 n.122 (declaring, "I believe there is a strong case for treating corporate property as fungible."). See generally Robert G. Natelson, *Consent, Coercion, and 'Reasonableness' in Private Law: The Special Case of the Property Owners Association*, 51 OHIO ST. L.J. 41 n.162 (1990) (noting, "[t]he importance of some business property to personhood seems to have passed unnoticed by many scholars, as is suggested by the economic term 'consumer surplus' to describe value beyond market or instrumental value. Perhaps scholars overlook the personhood aspect of business enterprises because few of them have had entrepreneurial experience. Certainly anyone who has been a business owner for a significant length of time is deeply aware of the profound connection between business expression and personhood.").

III. Normative Implications of Radin's Personhood Theory

Having articulated a "sliding scale" of property from the merely fungible to the irreplaceable, Radin then calls for greater legal protection of the latter than the former. As Radin puts it, "[t]o the extent these theories are normative, the claim is that some property is worthier of protection than other property."²² More specifically, "the personhood perspective can . . . serve as an explicit source of values for making moral distinctions in property disputes, and hence for either justifying or criticizing current law."²³ For Radin, personhood theory has broad potential for reconfiguring property doctrine through attention to property's impacts on self-constitution and self-expression.

With these normative concerns in mind, Radin overlays her personhood to fungible property continuum with a hierarchy of legal entitlements and protection, such that that which is most closely identified with personhood is given the greatest legal solicitude, and that which is most closely identified with the purely fungible is given the least solicitude.²⁴ According to Radin, "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."²⁵

One area of direct applicability for Radin's personhood theory is eminent domain law, the governmental authority to condemn property. Because Radin advocates greatest legal solicitude for property that is centrally constitutive of self, she argues that the family home should be immune from eminent domain actions. By contrast, Radin understands the condemnation of commercial property as fully redressable with cash because no personhood attachments are at stake.²⁶

Noting that the law of eminent domain and regulatory takings was "the most difficult, yet most promising area for applying the personhood dichotomy,"²⁷ Radin asserts that the family home should be accorded special legal solicitude vis-à-vis eminent domain because of the centrality of individuals' attachments to the home. As a result, there should be no condemnation, or condemnation only under circumstances of strict necessity, where proof of compelling state interest and least

22. Radin, *supra* note 1, at 979.

23. *Id.* at 957.

24. Unsurprisingly, critics of Radin's personhood theory object that it is not self-evident that personhood property is deserving of greater legal solicitude than fungible property. See, e.g., Neil Duxbury, *Law, Markets, and Valuation*, 61 BROOK. L. REV. 657, 667-68 (1995) (stating, "[s]till more questionable is Radin's assumption that, generally speaking, rights in personal property have a greater value and therefore deserve greater legal protection than rights in fungible property.").

25. *Id.*

26. Radin, *supra* note 17, at 1685-87.

27. Radin, *supra* note 1, at 1002.

intrusive alternative is made.²⁸

Recognition of, or deference to, personhood attachments to property has not been forthcoming in either eminent domain or regulatory takings law. In attempting to explain this failing, Radin suggests that the law may be considered ill-equipped to measure the degree of an individual's identification with his or her home and other property centrally constitutive of the self: "[P]erhaps we are unwilling to presume that all single-family homes are personal because many houses are held only for investment, and a subjective inquiry into each case slows down government too much."²⁹ Alternatively, Radin suggests that the law may be thought to have already accounted for personhood attachments in determining which properties to condemn: "[P]erhaps the personhood perspective is so deeply embedded that, without focusing on the problem, we expect that the condemning authority will take fungible property where possible."³⁰ Ultimately, Radin confesses, "the fact that the personhood perspective has not surfaced to give some explicit protection to family homes from government taking, such as stricter scrutiny, [is] . . . anomalous."³¹ Likewise anomalous is the law's failure to recognize the potential for personhood attachments to commercial property ownership and use, a context both under-recognized and under-theorized, to which I now turn.

IV. Personhood Implications of Commercial Property Ownership and Use

Commercial property interests, whether large or small, can have significant implications for self-constitution and expression. Quite literally, for many their worksite becomes their "home away from home," where individuals decorate their worksites with much the same paraphernalia as their homes, including photos of loved ones, music players, artwork, etc.

Moreover, a business may well be the product of individual blood, sweat, and tears, *i.e.*, of personhood investment. It may also be a site of shared work with a spouse, parents, children, siblings, or other family members, as is so common with corner stores and other family-owned

28. *Id.* at 1005-06 (reasoning: "If the personhood perspective is expressed in law, one might expect to find an implied limitation on the eminent domain power. That is, one might expect to find that a special class of property like a family home is protected against the government by a 'property rule' and not just a 'liability rule.' Or one might expect to find that a special class of property is protected against taking unless the government shows a 'compelling state interest' and that taking it is the 'least intrusive alternative.'").

29. *Id.*

30. Radin, *supra* note 1, at 1005-06.

31. *Id.*

businesses. Business property may be inherited from family, or the entrepreneurial business owner may anticipate leaving his or her property as a legacy to children or grandchildren. Indeed, anticipation of leaving one's business as a legacy resonates with Radin's emphasis, derived from Hegel, on the importance of experiencing human connectivity through attachment to property—particularly to property that has belonged, and will belong, to others. In other words, to see oneself as a member of a larger humanity through identification with property that has a lifespan greater than one's own.

Anticipation of leaving commercial property as a legacy to one's heirs also resonates with Radin's and Hegel's emphasis on realizing individual aspirations through property ownership and use. Radin writes:

If an object you now control is bound up in your future plans or in your anticipation of your future self, and it is partly these plans for your own continuity that make you a person, then your personhood depends on the realization of these expectations.³²

This emphasis on the personhood implications of realizing personal goals through property is no less true of commercial property than personal property, and should be recognized by the law as playing a critical role in both realms.

V. Applying Personhood Theory to the World Trade Center Site

Radin's personhood theory applies with particular force to the World Trade Center in both its original development and current redevelopment.

A. *Clearing the Way for the Original Development*

The sixteen-acre World Trade Center parcel was earmarked for large-scale commercial development in the face of vocal opposition from a band of small electronics store owners whose properties the Port Authority sought to condemn for office towers devoted to "world trade."³³ In an effort to stave off the bulldozers, the "Radio Row" business owners marched through their neighborhood with a coffin labeled "Here Lies Mr. Small Businessman; Don't Let the Port Authority Bury Him."³⁴ One can hardly imagine a better demonstration of the personhood implications of commercial property ownership than

32. *Id.* at 968.

33. *Courtesy Sandwich Shop v. Port Auth. of N.Y.*, 190 N.E.2d 402 (N.Y. 1963), *appeal dismissed*, 375 U.S. 78 (1963).

34. JAMES GLANZ & ERIC LIPTON, *CITY IN THE SKY: THE RISE AND FALL OF THE WORLD TRADE CENTER* 210 (Times Books 2003).

depicting the property's condemnation as the death of the self.

The Radio Row business owners went on to confront then-New York Governor Nelson Rockefeller, a leading proponent of the World Trade Center project, with angry protests underscoring the dire impact of the condemnation on the well-being of their wives and children. By employing their families as "props," the business owners tapped into powerful personhood rhetoric to defend their commercial property interests. These examples of the Radio Row owners' responses challenge Radin's uncritical assertion that money is sufficient to redress condemnation of commercial property in all circumstances.

In contrast to the powerful personhood rhetoric drawn on by the Radio Row entrepreneurs, the Empire State Building owner's challenge to the World Trade Center project never engendered the same type of public sympathy because it did not tap into forces of personhood attachment. Lawrence A. Wien, the then-owner of the Empire State Building, saw the proposed World Trade Center project as a threat to his building's status as the world's tallest and feared the impact this threat would have on his ability to command premium rents from commercial tenants. Running a full-page ad in the *New York Times* under the moniker, "Committee for a Reasonable World Trade Center," Wien drew on fears for the public's safety by depicting a lost jetliner crashing into the top floors of the twin towers.³⁵

Ask New Yorkers who lived through the development of the original World Trade Center project whether they recall the Radio Row or Lawrence Wien protests, and they will cite the former, providing crucial information on the saliency of personhood theory in the commercial context.

B. Today's Redevelopment

Radin's personhood concerns likewise apply to today's redevelopment. After considering the personhood implications, if any, for Larry Silverstein, the long-term leaseholder to the World Trade Center, I show how the personhood attachments of those who died in the attacks have been embraced through the commitment not to rebuild on the land immediately underlying the original towers.

1. Potential Personhood Implications for World Trade Center Leaseholder Larry Silverstein

Whether legally recognized personhood implications arise from Silverstein's leasehold interest in the World Trade Center turns on what

35. *Id.* (as a military aircraft had earlier done with the Empire State Building).

types of personhood interests we believe the law should encourage; specifically, whether the law should recognize ego and ambition as types of motivation or attachments to property deserving of legal protection under a personhood rubric. That the law should encourage more benign personhood attachments—to family, friends, and colleagues—should be uncontroversial. But whether the law should recognize or encourage ego and ambition is another matter; again, not one well addressed by Radin, though anticipated, at least in part, by her reference to the “complete capitalist,” which I take up below.

Having followed his father into real estate as a young man, Silverstein subsequently brought his own son and daughter into business with him. Silverstein’s real estate business is thus a family business, connecting generations past and present. Silverstein may well plan to leave his business as his legacy to his children and/or grandchildren, consistent with Radin’s and Hegel’s emphasis on experiencing human connectivity through attachment to property.³⁶

Having spent his life in real estate, Silverstein’s property holdings are the primary locus of his identity, where the press regularly refers to him as “real estate developer Larry Silverstein.”³⁷ Under Radin’s personhood framework, Silverstein is centrally constituted by property—it has quite literally made him who he is.

What is not so unquestionably accepted as a personhood attachment to be recognized or encouraged under the law is Silverstein’s ego investment in the World Trade Center property, exemplified by his plans to erect the world’s tallest tower, the so-called “Freedom Tower,” on that site. It bears noting, of course, that Silverstein is not fully in control of the contours of the World Trade Center redevelopment. As a leaseholder, Silverstein must work with the Port Authority, as landowner, to develop the site. Silverstein and the Port Authority must in turn collaborate with a range of other parties to address the interests of all stakeholders, among them, the families of those who died in the attacks, those who live and work in the neighborhood, and the public. It goes almost without saying that the site has also become the focal point for intense nationalist yearnings, which cannot be discounted in shaping the site’s redevelopment, including the impulse toward construction of

36. In a related manner, Silverstein has also spoken of his commitment to rebuild the World Trade Center in terms of the legacy that he, now approaching his mid-seventies, wishes to leave New York. He also speaks of his loss of several employees in the September 11th attacks as undergirding his commitment to redevelop the site.

37. See, e.g., Jennifer Steinhauer, *A Mayoral Hand Helps Smaller Nonprofits Reach Into Deep Pockets*, N.Y. TIMES, June 28, 2004, at B1; *Rebuilding Lower Manhattan*, N.Y. TIMES, May 6, 2004, at A34.

Freedom Tower, with groundbreaking on the Fourth of July, 2004.³⁸

Ego is, of course, a central element—if not *the* central element—of personhood. One need look no further than to Freud’s writings for this proposition.³⁹ Radin would likely classify Silverstein’s ego-investment as “bad object relations”⁴⁰ to which minimal, if any, legal solicitude should be accorded. In this regard, Radin repeatedly invokes the caricature of the “compleat capitalist,” driven by material self-interest, as a complete failure of human flourishing.⁴¹ Radin posits a distinction between good and bad object relations in her personhood writings, ascribing bad object relations to the compleat capitalist, whose property attachments, she argues, should not be given legal solicitude:

[A]rguably there is bad as well as good in being bound up with external objects. If there is a traditional understanding that a well-developed person must invest herself to some extent in external objects, there is no less a traditional understanding that one should not invest oneself in the wrong way or to too great an extent in external objects.⁴²

Bad object relations represent the opposite of healthful property attachments for Radin. The former do not lead to secure, stable personal growth while the latter do. Radin accordingly asserts: “[T]he relationship between the shoe fetishist and his shoe will not be respected like that between the spouse and her wedding ring. At the extreme, anyone who lives only for material objects is considered not to be a well-developed person, but rather to be lacking some important attribute of humanity.”⁴³ Thus, Radin concludes, “[p]roperty is damnation as well as

38. See, e.g., PAUL GOLDBERGER, *UP FROM ZERO: POLITICS, ARCHITECTURE AND THE REBUILDING OF NEW YORK* (Random House 2004).

39. See, e.g., SIGMUND FREUD, *THE EGO AND THE ID* 8 (James Strachey, ed., 1990).

40. Radin, *supra* note 1, at 968.

41. See Radin, *supra* note 17, at 1694-95 (asserting that the “compleat capitalist” holds a relationship with property that we as a society should reject). Elsewhere, Radin explains the defect of the “compleat capitalist” as one of failed human flourishing: “The empire of the ‘compleat capitalist’ . . . might contribute to her continuity and to her own sense of fulfillment, but it would not contribute to her being a well-developed person, for the ‘compleat capitalist’ is not well-developed; she has embraced an inferior concept of human flourishing.” Margaret Jane Radin, *Residential Rent Control*, 15 PHIL. & PUB. AFF. 350, 365 (1986).

42. Radin, *supra* note 1, at 961.

43. *Id.* Not only might Radin question the bad object relations of Silverstein’s ego-aggrandizement in seeking to erect the world’s tallest building, but Radin would likely consider his leasehold interest quintessentially fungible. The July 2001 World Trade Center lease grants Silverstein an interest in “all that certain volume of space occupied by the Building and any replacements thereof.” (Lease on file with the author). Silverstein’s interest in the ten million square feet of office space contained within the original towers has been treated as inviolate in its volume but necessarily flexible in its allocation post-9/11, where the ten million square feet is intended to be distributed among

salvation, object-fetishism as well as moral groundwork.”⁴⁴

Radin is correct that rights in fetishized property—such as Imelda Marcos’s shoe collection, or Michael Jackson’s Neverland estate—should not be protected in the same way, or to the same degree, as property that is more healthfully constitutive of a genuine self. The question is whether the significantly ego-driven behavior of large-scale real estate developers like Donald Trump and Mortimer Zuckerman should be lumped together with fetishism as less deserving of legal solicitude.

I would argue that ego, within normal boundaries, is a healthy, natural, and powerful motivator of human activity, which the law should recognize and even encourage. After all, ego is a source of inspiration for the creativity and productivity of entrepreneurs, architects, artists, scientists, explorers, and others in the commercial realm, and of parents, children, community leaders, and others in the non-commercial realm.

Finally, it bears noting that Silverstein’s relationship to the World Trade Center may well be nothing more than that of an investor and real estate speculator. Considered in this light, Silverstein holds little or no personhood attachment to the property, but rather, holds it largely, if not purely, instrumentally.⁴⁵

2. Personhood Implications for Those Who Worked On, In, and Around the World Trade Center Site

There are a range of other stakeholders in the World Trade Center site who hold compelling personhood attachments to the property, including those who worked on, in, and around the towers.⁴⁶

Stories abound of artisans and engineers involved in the original construction who took pride in what they had built and speak of having

five office towers of not more than 70 stories each, located both on and off the original parcel.

44. Radin, *supra* note 1, at 961.

45. *But see* Schroeder, *supra* note 14, at 108-09. In critiquing Radin’s personhood analysis, Schroeder asserts the potential for an investor’s personhood attachment to property: “This ignores the possibility that an individual property holder, such as an investor, may subjectively value her fungible property differently from the ‘objective’ social valuation of the market. Property rights may exist, in part, to protect these subjective valuations. Indeed, the driving psychological motivation behind investment is probably the investor’s belief or hope that her Individually Subjective estimate of the ‘true’ value of the investment product will prove to be more accurate than the Community Objective estimate of the market—its price. . . . Thus, even purely fungible property, which is held for the realization of its eventual exchange value, is also held for the subjective value of the investor.”

46. Beyond the scope of this article are the personhood attachments, if any, of the emergency response workers who died as a result of their efforts at the site, and the solicitude, if any, that property law owes them.

lost a part of themselves when the towers were destroyed. To her credit, Radin recognizes that employees can develop personhood attachments to a business' property, writing:

Controversies over plant closings make clear that sometimes groups (employees, or whole communities) are "attached" in some sense to the old holdings. These groups may represent conflicting economic interests, desiring to maximize their profits instead of the corporation's. But they may also represent noneconomic interests—a noneconomic attachment to a certain job, a certain group of co-workers, a certain community character.⁴⁷

Nevertheless, Radin contrasts this potential for an employee's personhood attachment to a worksite with the business' own purely instrumental valuation of its property holdings. Because business owners are thought to consider property merely instrumentally, personhood implications are understood to be contrary to the rational economic impulse:

This goes for a corporation's land as well as for any other tangible and intangible assets. Under the market ideology, we cannot think that the corporation has become attached in some noneconomic sense to the land or the plant it has long been using, for example. Theoretically a corporation would sell its plant as soon as it became cheaper to operate it somewhere else, no matter how long it had been there.⁴⁸

3. Seemingly Unquestioned Commitment to Leave Undeveloped the Original Footprints in Recognition of the Personhood Attachments of Those Who Died There on September 11th

The commitment not to redevelop the original footprints in recognition of the personhood attachments of those who worked and died in the World Trade Center brings us to the question of what should and should not be commodified, and the impact of commodification on personhood. In "Market-Inalienability,"⁴⁹ Radin argues that certain goods should not be treated as market goods, and should instead be deemed unavailable for purchase and sale on the market. To fail to recognize this is to devalue those goods and humanity more broadly.

Applying this analysis to the World Trade Center, it is clear that the

47. MARGARET JANE RADIN, *REINTERPRETING PROPERTY* 12-13 (1993).

48. *Id.* at 12-13.

49. See Radin, *supra* note 1 at 1903-04. See also MARGARET JANE RADIN, *CONTESTED COMMODITIES* 59-60 (1996). Radin's commodification concerns are closely related to her personhood theory.

site was decommodified post-9/11 because of its rhetorical and actual implications for personhood. Decommodification of the footprinted land has removed from market some of the most valuable real estate in the world,⁵⁰ serving as a type of compensation for the 9/11 victims and their survivors. Indeed, where Radin writes of “contested commodities,”⁵¹ the original footprints have become a “contested *non*-commodity.” Not only has the Port Authority committed to desist from building on the footprints, but a proposal was considered by Congress to confer national historic landmark status on the footprinted land, prohibiting, in perpetuity, all development of the land on which the towers stood.⁵²

VI. Conclusion

The law must recognize the potential impact on self-constitution of commercial property ownership and use, especially as it relates to eminent domain. Applying personhood theory to the commercial property context underscores the need for a more thoughtful approach to eminent domain law. Property subject to condemnation should be evaluated as to the taking’s impact on those holding personhood attachments to it, whether owners or other users.

Returning to the World Trade Center example, the condemnation of the Radio Row properties should have been tempered with an understanding of the powerful personhood attachments of the small business owners to their shops. This recognition might have led the government to conclude that condemnation of these properties was not appropriate, and that the World Trade Center developers should have looked elsewhere to compile their parcel. Alternatively, recognition of the personhood attachments of the Radio Row owners to their shops might have led the government to implement a more modest condemnation scheme, somewhere between wholesale razing and complete immunity from eminent domain. For example, fewer businesses could have been taken for a more modest parcel, and substantial business relocation support could have been offered to those whose businesses were taken.⁵³

50. The Port Authority’s decision not to rebuild on the footprints may, in the end, deprive Silverstein of an opportunity to rebuild all of the original office space granted under the lease. If so, the decommodification of the land may necessitate an inverse condemnation of the leasehold, with monetary compensation to Silverstein for his lost property interest.

51. Radin, *supra* note 49, at 79-101 (discussing applications of this concept).

52. See William Neuman, *Flap over National Park at WTC Site*, N.Y. POST, at 6 (Nov. 17, 2003) (referring to November 2003 proposal of New York Representative Carolyn Maloney and Connecticut Representative Christopher Shays to establish a National Historic Site Study Commission for the World Trade Center footprints).

53. Such a result would be at variance with current eminent domain law, which does

To suggest that a business' employees must be compensated when the property is condemned is novel. Nevertheless, it represents a natural, progressive extension of Radin's personhood theory, recognizing the significant self-constitution that occurs through work, and the substantially destabilizing effect on workers when their businesses are relocated or closed.