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CONDITIONS OF PERSONHOOD AND PROPERTY

by

ZACHARY JAMES ACREE

A master's thesis submitted to the Graduate Faculty in Liberal Studies in partial fulfillment of
the requirements for the degree of Master of Arts, The City University of New York

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This manuscript has been read and accepted for the Graduate Faculty in Liberal Studies in satisfaction of the thesis requirement for the degree of Master of Arts.

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ABSTRACT

Conditions of Personhood and Property

by

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This paper seeks to demonstrate that a more robust understanding of personhood both reveals flaws in the underlying assumptions of modern property law, and orients that law to a more just application. To do this, the law needs not only a better definition of what persons are, but also a better understanding of how persons function in their society. First, in order to provide some context to the issues at stake, there is a brief historical introduction to some of the problems that personhood inquiries have faced. After the introduction, this paper is divided into four sections. Part I summarizes Daniel Dennett's six necessary conditions for personhood, and posits these conditions as preferable to the currently accepted, and rather vague, legal definition. Part II critically examines three historically significant views of personhood: the Psychological View, the Biological View and the Anthropological View. This examination is done in terms of Dennett's necessary conditions, in order to show that a person should be conceived of as a "who" rather than a "what". The difference between these two conceptions must be made explicit in order to show the necessity of a seventh condition, that a person have a life narrative. Part III explains how this life narrative functions in society, providing a framework to understand the interaction between persons and institutions such as the law. Lastly, Part IV examines Lockean conceptions that have shaped our legal treatment of property, and whether or not that treatment accommodates persons as they have been defined and understood in the previous sections of this paper. To conclude, this paper makes recommendations for future treatments of property issues that would better respect the structure and functions of personhoods.

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INTRODUCTION

Identity has posed challenges to philosophers since at least Aristotle's time.¹ These challenges have been diverse, and each with its own history of interlocutors. For the purposes of this paper, it is helpful to introduce three types of identity that have been recognized by philosophers over the course of the identity debate. They are Substantial, Specific, and Temporal identity. Substantial identity refers to the numerical uniqueness of an object. For example, there is only one planet Earth, and it doesn't matter that it has different names in different languages, for all those names pick out the same unique object. Specific identity refers to an object being classified as the same kind of object or entity as others. For instance, Earth is a planet among other planets, which are classified according to common properties. Temporal identity refers to an object maintaining permanence despite apparent changes over time. Therefore the Earth has existed for billions of years, despite having different features at one time or another.

While all three types of identity have their peculiarities and controversies, it is the third, temporal, which seems to have been the most preferred when discussing what it means to have personal identity. It is not difficult to see why this kind of identity has grabbed the attention of philosophers, dating at the very least back to John Locke.² Although cells in our bodies die and are replaced such that we are not physically the same from moment to moment, it seems an obvious fact that personal identity is yet maintained across time. Few would ever say that when they wake up tomorrow, it is someone else that will be waking. Therefore, personhood involves being conscious of one's permanence across time. That is to say, a person has a memory of past events that ground an understanding of the present self, and can project that present self into the future.

¹ See Barnes, who discusses Aristotle wrestling with the identity of indiscernibles

² See Chapter XXVII in *Essay Concerning Human Understanding*

Interestingly, it is also clear that personhood is transient. A personhood is never entirely formed. Its structures change with each new memory added, with each new experience had. Yet how do these two seemingly contradictory characteristics, permanence and transience, simultaneously construct a person's identity?

This conundrum led Hume to contend that there really is no such thing as personhood itself. In Book 1 of his *A Treatise On Human Nature*, he points out that what one would normally call the self is really just an endless series of perceptions that are replaced in rapid succession. He writes:

“I never catch myself at any time without a perception, and never can observe anything but the perception. When my perceptions are removed for any time, as by sound sleep; so long am I insensible of myself, and may truly be said not to exist”

(Hume 187)

When a person refers to themselves as a “person”, then, they are just referring to the impressions they are receiving at any given moment, and, as Hume believed, this means that it would be impossible to both be a person and perceive nothing.

Hume's point is well taken, but he may have been wrong in two ways. First, on Hume's stance, human beings appear as passive creatures, simply reacting to whatever flood of stimuli happens to be passing over them. Yet whether something is considered a person or not is not judged on the grounds of whether it feels heat, sees a tree, or smells a pot cooking on the stove. These are just indicative that the thing in question is alive, not that it has a personhood. Hume seems to have equated the two terms, thus nullifying the need to have a term like “personhood” altogether. Yet the two terms, being alive and being a person, are different, and necessarily so. Tomato plants and bacteria react to stimuli as well, but are never endowed with certain characteristics that are only reserved for persons. For example, no one would ever make the claim

that a jellyfish “owned” something, or that a tomato plant was “guilty” of doing something wrong. Ownership and guilt are characteristics that are only ascribed to persons, thus differentiating them from other living things that merely perceive and react to stimuli. Secondly, and more fundamentally, Hume failed to address a philosophical issue at stake with identity: Theseus's paradox.³ It is not just with the identity of persons that temporality creates problems, it is also with inanimate objects. This paradox asks the question of whether Theseus' ship was still the same object after each and every piece of it was replaced. There are other variations of the story, such as John Locke's favorite sock, Abraham Lincoln's axe, and Jeannot's knife, but the central issue remains the same: how can something have the same identity if all of its parts change over time?

In order to have a unique identity at all, any object, such as Theseus ship, it seems that it must have both qualitative and numerical identity.⁴ Qualitative identity refers to the ownership of shared properties. So two planets, Earth and Venus, can be qualitatively identical in that they both share the common properties of having atmospheres, orbiting the sun, and having rocky surfaces. In order to pin down individuality, there must also be numerical identity. This kind of identity requires total qualitative identity, and can only exist between an object and itself. There are certainly controversies over what it means to have these kinds of identity at one time, but for the purposes of this paper, it is really the controversy of diachronic identity that is directly related to identity as it applies to persons. The main issue for diachronic identity is how something can continue to exist over time, all the while experiencing changes in its qualitative properties. For example, what if, when remodeling Theseus' ship, all the sails were changed from white burlap to yellow canvas? Would that change in qualitative characteristics justify saying that it was not the

³ See Harry Deutsch's explanation of this paradox for greater detail

⁴ See Harold Noonan and Ben Curtis's summary of qualitative and numerical identity in the Stanford Encyclopedia of Philosophy

same ship? What if the sails were completely removed and a motor were installed?

To get around this issue entirely, another solution was proposed by Aristotle.⁵ That solution is that the real identity of the ship comes not from any material that it was made with, but rather the purpose, or final cause, of the ship itself. So, if the original ship was designed to carry Theseus, and so was the remodeled version, then the identity persists despite any and all qualitative changes in material parts.

Yet how this applies to persons is not entirely clear. For while it makes perfect sense to speak of the “final cause” of a ship, or any tool made and named by man, it does not seem to make obvious sense to speak of a person’s “final cause”. For this demands an answer to the question: What were persons designed to do? Because persons did not design themselves, the answer to this question is not available to us in the same way it is when asking what a ship or a credit card is designed to do. It is arguable whether the question even makes sense when applied to anything biological, for the answer always seems to be the same: adapt and survive under changing conditions, which lacks any real potency to the identity questions as it applies to the personhood of human beings.

The real test of personhood then, must be of another nature entirely. Rather than a sensory-reactive test, or an intended-design test, it must consist of different criteria. Both Hume’s qualification for personal identity and Aristotle’s seem to have assumed that persons are just like any other physical objects in the world. But much is lacking in their accounts of personal identity. In some sense, they are right. Persons do have physicality, and therefore we can ask questions stemming from general identity theory. But in many ways, persons are not like rocks or frogs or credit cards. The personal identity question, “who are you?”, could not properly be asked of rocks,

⁵ See Andrea Falcon’s article for further explanation on final causes

frogs, or credit cards, only the categorical question, “what are you?”. Therefore, it seems as if persons, as “whos” rather than “whats”, have characteristics that separate them from other physical objects, and that these characteristics demand special treatment regarding identity questions. So what are these characteristics? It is now that we turn to Daniel Dennett, and his six conditions of personhood.

Part I: Conditions of Personhood

In the law, a person can be categorized as either natural or juridical. A natural person “... is an individual being capable of assuming obligations and capable of holding rights”, while a juridical person is an entity “...endowed with juridical personality who are usually known as a collective person, social person, or legal entity” (Elvia p. 366). All other things are therefore non-persons, and do not have rights. One may accept this as a given, for it seems that the difference between a person and a non-person is painfully obvious. No one would doubt that the human being walking down the street, or the individual who wrote this essay were indeed persons, and therefore deserving of special rights. Likewise, one would be considered completely mad if she pointed to a rock and baptized it as a person, and due the same unique treatment as herself. It seems as if the law is designating persons as special, but does not explain how, perhaps because it is assuming that the difference between a person and a non-person is obvious and not worth pointing out. Yet this kind of differentiation between persons and non-persons is vague at best. It does not spell out any testable conditions by which something is judged a person or non-person, except perhaps that another person recognize it as such. This ambiguous condition, as the only one implied by the law, does nothing to inform us about the true characteristics of personhood, or the fair and just treatment of persons according to what those characteristics are.

Because “person” is found so commonly in law, “One might well hope that such an important concept, applied and denied so confidently, would have clearly formulatabic necessary and sufficient conditions for ascription, but if it does, we have not yet discovered them” (Dennett p. 175). Interestingly, despite the lack of a clear-cut definition, the law has divided personhood into two separate categories, those being a legal person (which does not necessarily have to be a human being) and a natural person (which does have to be a human being). Of course, this distinction is arbitrary, and only came about due to the financial conveniences of corporations, not due to the study of philosophers. In this description, there are only two conditions to meet the kind of personhood that is of concern here: one must be human and a non-corporation. Hardly any consolation for worries about personhood.

But what do philosophers have to say about personhood? Several philosophers have made attempts to outline necessary and sufficient conditions for personhood. One of the most widely known is Daniel Dennett, who outlined six necessary conditions by which personhood is established. Though the specifics of each condition are the subject of debate, having these spelled out explicitly is far better than the current legal definition. Understanding more precisely what a person is will allow a more just assessment of whether the law respects persons or does violence to them. These are Dennett’s six conditions, listed in the order of dependence⁶, according to Dennett:⁷

1. A person must be a rational being
2. A person must be a being to which psychological predicates can be ascribed
3. A person must have others treat her/him in a person-like way

⁶ As Dennett explains, the first three are mutually dependent on one another. Condition 4 is dependent on the combination of 1, 2, and 3. Condition 5 is dependent on condition 4, and condition 6 is dependent on 5.

⁷ These are a summarized version of Dennett’s wording. See Dennet’s article, pages 177 -179, for a more thorough explanation of each.

4. A person can reciprocate that same person-like treatment back onto others
5. A person is capable of verbal communication
6. A person is distinguishable from other entities by being conscious in a special way

Dennett's six attributes inspire more questions about the nature of personhood than they accurately define it. For example, the first one, upon which, by Dennett's own admission all the others depend, requires that we have fully fleshed out what it means to be rational. This alone is a tricky issue, around which has swirled much debate. That being said, what it really means to be rational is not the subject of this paper. It suffices to say that it would be far harder to dismiss rationality as a condition of personhood, than it would be to prove otherwise. The second condition really concerns the psychology of the object in question, specifically whether or not the object has intentions. Examples of this include a person X fearing that Y, or a person X hoping that Z. This condition is likewise not too difficult to swallow, as one would be hard pressed to come up with an example in which a person could exist without having any intentional states. The third condition, however, is where Dennett's system gets interesting. He describes it as such:

The third theme is that whether something counts as a person depends in some way on an attitude taken toward it, a stance adopted with respect to it. This theme suggests that it is not the case that once we have established the objective fact that something is a person we treat him or her or it a certain way, but that our treating him or her or it in this certain way is somehow and to some extent constitutive of its being a person. (Dennett p. 177)

Thus, according to Dennett, the existence of a personhood largely depends on the existence of other beings who believe that the thing in question is a person, and treat it as such. More will be said about what that treatment looks like later on.

Now, as Dennett states, the first three conditions are all interdependent upon one another,

and as such are necessary but not sufficient conditions for a personhood to emerge. This is because all three make up a class of things which Dennett calls “Intentional Systems”, of which persons are members. Thus, in order to really understand these conditions, an exploration of intentional systems is needed before we unpack Dennett’s final three conditions for personhood.

According to Dennett, “An Intentional system is a system whose behavior can be (at least sometimes) explained and predicted by relying on ascriptions to the system of beliefs and desires (and other Intentionally characterized features...meaning to include hopes, fears, intentions, perceptions, expectations, etc.)” of an individual (Dennett p. 179). One can see why the first three conditions of personhood are necessary here. In order to be intentional, one must have beliefs, which requires a rational mind. Once these two are established, the third requirement, that an outsider take an intentional stance toward the object in question, completes the intentional system. But why, one may ask, is the intentional stance necessary to complete the intentional system? The answer can best be shown by examining two different explanations for the same behavior. Take, for example, a plant growing on the forest floor. There is limited sunlight, but one particularly strong beam makes its way through the foliage above and onto a section of the plant. Now, a botanist may predict the behavior of the plant quite well without the need of an intentional system, such as through purely mechanical/physicalistic explanations. The sunlight causes photosynthesis to occur at a higher rate in the area of the plant where the light is concentrated, creating more sugars than other parts of the plant. The increase in sugar productions causes a growth spurt to occur in the direction of the light, thus shaping the plant towards the gap in the foliage in the tree canopy above. This activity would happen regardless of whether or not there were an observer to see it occur. However, such a prediction can easily be made from an intentional systems approach. Perhaps a man comes walking through the forest. He sees the plant on the forest floor, and see the light beam hitting only one part of the plant. His description is different. He thinks to himself:

“The plants wants more light, so it will grow towards the light beam. It hopes that the gap in the tree canopy will stay open, so that it can get enough food to grow. Therefore, it will grow towards the canopy gap.” Notice the three conditions at work. There is rationality, there are psychological states, and there is someone to baptise the plant with the intentions. Without the third condition, the plant would just be a machine. In this way, intentional systems are created by outside observers, rather than existing on their own.

As Dennett himself points out, the number of things that could fall into this category is quite large. Human beings regularly ascribe intentional states to things that are not human beings, such as animals and plants, as their behavior can, in many ways, be predicted in terms of what they “believe” or “intend” to do in certain situations. For example, squirrels may collect and hide nuts because they “believe” that winter is coming, and they “expect” for there not to be much food lying around in a month or two. Their “fear” is what drives them to store the nuts, in the “hope” that they will supply themselves with food in the coming cold. Though there are other explanations of such behavior, such as mechanistic, physicalistic ones, one cannot deny that intentionalistic explanations are often just as useful, and certainly more common among human beings. Dennett provides another example of intentional states being ascribed to plants, namely by loggers with whom he spoke in Maine.

These men invariably call a tree not "it" but "he," and will say of a young spruce "he wants to spread his limbs, but don't let him; then he'll have to stretch up to get his light" or "pines don't like to get their feet wet the way cedars do." Additionally, “You can "trick" an apple tree into ‘thinking it's spring’ by building a small fire under its branches in the late fall; it will blossom... (Dennett p. 180)

It may give one pause to consider that so many things could be described as “intentional” in the same way that human beings are. One could possibly explain this fear away by stating that

human beings are simply on a higher level, or rather a second-order intentional system, and thus above the plants and animals. One may say that it is only persons who act based on their perceptions of beliefs and other psychological predicates in other things, which is Dennett's fourth condition of reciprocity. For instance, one may feel the need to help a hapless tourist navigate the subway map, based on the perception that the tourist doesn't have correct beliefs about where she is. While this may filter out simpler forms of life such as plants, it does not do so well with many clever animal species, who have been known to "trick" predators, i.e induce a false belief in them. Dennett's example of this is that of a bird who feigns a broken wing whenever a predator nears her nest. The bird deceives the predator into thinking it is easy prey, luring it away from the nest, and thus saving its offspring. It acts based on its perception of a belief in the predator, which it harnesses for a useful end (saving its children). Therefore, it seems that there are some creatures that share a person's ability to possess second-order intentions.

Despite one's feelings about sharing personhood conditions with some clever animals, it is important to remember that there are two more conditions necessary to constitute a person, according to Dennett. The next criterion, verbal communication, is necessary to differentiate what we would normally consider persons from that which we consider non-persons, such as birds, dogs, and other clever animals. When Dennett speaks of verbal communication, he does so through the lens of Grice's theory of meaning, in which meaning is cashed out in terms of intentions of the speaker. Dennett's summary of Grice's explanation of meaning is as follows:

U meant something by uttering x" is true if, for some audience A, U

uttered x intending

(1) A to produce a particular response r,

and/or

(2) A to think (recognize) that U intends (1)

and/or

(3) A to fulfill (1) on the basis of his fulfillment of (2)

(Dennett p. 186)

As Dennett points out, what is important here is that for reciprocity to take place via communication, a third-order intention must be possible. When a speaker U says something to another intentional system, “U must intend that A recognize that U intends that A produce r” (Dennett p. 186). This is where the complexity of human beings exceeds that of other known animals. Therefore, when Dennett postulates his fifth condition, that there be verbal communication, he is speaking of this kind of Gricean third-order communication, and not nonverbal communication in general, such as a bird’s mating call.

Finally, we arrive at Dennett’s sixth condition for personhood, that the object in question have a “special” kind of consciousness. According to Dennett, this special awareness is really of a reflexive nature, ultimately meaning that a person must be able to take the same person-like stance toward herself that she takes towards others. In order to understand what kind of reflexivity Dennett is talking about here, two key issues must be explored. The first is John Rawls’ theory of justice, and the second is Harry G. Frankfurt’s concept of second-order volitions.

As Rawls’ theory of justice is far too broad a topic to fully explore in this paper, only an explanation of how it relates to Dennett’s notion of special consciousness is needed here. Dennett is primarily concerned with Rawls’ idea of an “original position”, that is, a stance taken by interlocutors that there is an idealized situation which ideal persons occupy. As Rawls’ explains, however, the original position “...is not, of course, thought of as an actual historical state of affairs, much less as a primitive condition of culture. It is understood as a purely hypothetical situation characterized so as to lead to a certain conception of justice” (Rawls 208). Thus, when persons are communicating, they are communicating as if one another understands and is trying to abide by an

unspoken system of justice. This system then guides their interactions, as they build meaning with respect to one another, in an attempt to approximate this original position. Thus, in order to have justice, there must be communication between persons.

Now the stances taken by actors are purely normative in nature, as each actor engages with one another under the assumption that they too ought to be acting as if in that ideal original position, in order to avoid the “nasty, brutish, and short” lives that Hobbes postulated. Although there certainly are many theories of justice, and myriad laws deriving from them, the conception of justice Rawls discusses here is not of an explicit, consciously deliberated nature. Though deliberate and careful thinking can result in the creation of more just practices, people do not actively refer to these in their day-to-day interactions with other persons. Thus, as Dennett says, “we can see that there is ‘an order which is there’ in a just society that is independent of any actual episodes of conscious thought” (Dennett p. 190).

Within these personal interactions, persons must make accommodations for one another through the process of negotiation. Negotiating requires active, rational minds that are capable of navigating reasons and the trains of thought that lead to them. This characteristic of persuasion within the original position allows access to what Dennett claims is an essential part of consciousness, and a necessary condition for personhood, second-order volitions. First-order volitions are desires to do one particular action, or to not do one particular action. Unlike any other animal, which are only capable of first-order volitions, persons “...may also want to have (or not to have) certain desires and motives. They are capable of wanting to be different, in their preferences and purposes, from what they are” (Frankfurt p. 7). For example, though a person may desire to be wealthy, she may simultaneously have the desire to *not* desire wealth. Thus, the volition here is not to do one particular thing, but rather to have a different motive, such that an entirely different set of actions may result. According to Frankfurt, freedom of the will is not a given, but rather only

comes about when one's second order volitions are satisfied by becoming actual.

So why does this notion of second-order volition become necessary for Dennett's special consciousness? "Because", Dennett explains, "...the 'reflexive self-evaluation' Frankfurt speaks of is, and must be, genuine self-consciousness, which is achieved only by adopting toward oneself the stance not simply of communicator but of...reason-asker and persuader" (Dennett p. 193). A person's special consciousness is derived from their ability to direct their consciousness inward, in that they are capable of both communicating with themselves and understanding themselves as a person. In this way, persons are not only constructed by others, but also by themselves. In order for someone to have the wherewithal needed to be aware of their first-order volitions, evaluate them, and then decide if they are worthwhile, their consciousness must have the peculiar ability to be turned inward, reflexively. As no other thing in existence seems to have this capability, it truly is what makes a person's consciousness "special".

Of special interest for the purposes of this paper is that of the six conditions discussed, half of them have a social element to them. While it is possible to imagine a rational being with psychological predicates, using second-order volitions in total isolation from all other beings (conditions one, two, and six), it is not possible for that isolated being to have another being, outside of itself, take a person-stance towards it (condition three) while in total isolation. Without condition three being met, there can be no reciprocity (condition four), and in total isolation, there would also be no verbal communication (condition five), as Grice explains it. Therefore, the Cartesian person, who thinks therefore he is, is only half formed on Dennett's explanation. In order to be whole, it seems that the existence of one person presupposes and demands that there be other persons.

Despite the robustness with which Dennett presents his conditions, he ultimately expresses doubt that they are comprehensive and final. This conclusion is largely based in his acceptance of

Rawls' original position, in which human beings are forever stuck in approximating ideal persons between one another. "...the concept of a person is, I have tried to show, inescapably normative. Human beings or other entities can only aspire to being approximations of the ideal, and there can be no way to set a 'passing grade' that is not arbitrary" (Dennett p. 193). Hence, while the conditions listed above may be taken as necessary, one can never say that they are sufficient, for other conditions of personhood likely exist.

Dennett's six conditions are hard to argue away, as they seem to accurately describe a person, but is it possible that he has missed anything essential? Categorically speaking, he has. This is the case because his conditions do not quite answer the question of who a person is, only rather the question of what a person is. In order to answer the personal identity question "who", an addition to his six conditions is needed.

Why is this relevant? As the purpose of this paper is to explore how a more robust understanding of persons can illuminate the justice of laws, we must consider whether Dennett's six conditions are useful to this end. When considering crimes against a person, most do not appear to violate any of Dennett's conditions, and therefore do not seem to be an attack against any one's personhood. The exceptions are of extreme violence, such as murder, or severe mental impairment. However, of the more common crimes against persons, Dennett's conditions do not seem to be violated. If someone steals your wallet, have they rendered you unable to be an intentional system? Have they taken away your ability to be reciprocal, have meaningful communication, or have second order volitions? What if they rendered you blind? Prohibited you from voting? The answer is no. You would still be a functioning intentional system capable of reciprocity and fully capable of having second order volitions. And yet, no one would be willing to deny that a crime against you had happened.

It is possible that there are crimes that do not violate personhoods. But there are also crimes that do seem to violate personhoods, and yet do not disrespect Dennett's conditions. In some of these cases, there is an inescapable element of property involved. Persons, and only persons, have ownerships over their wallets just as they do over their bodies, though there are nuances of difference. So in what way are personhoods tied to their property? Dennett's conditions do nothing in the way of explaining which way that is. In order to do that, there must be at least one other condition of personhood that has yet to be identified, one that can account for violations of the personal dimension of property.

Some of Dennett's conditions are individually oriented, such as that a person be rational, that a person have psychological predicates, and that a person have second-order volitions. Dennett also had elements of sociality built into his conditions. His third condition, that one be treated as a person, his fourth, that one reciprocate that treatment, and his fifth, that one participate in Gricean communication with other intentional beings, all have inescapable social dimensions to them. At the very least, these indicate that to be a person, in many ways, means to be both an individual and to be a person in tandem with other persons. What Dennett is missing, however, is what purpose these activities, both individual and social, have. While it makes sense that a person necessarily meets these six conditions, Dennett does not explain any overarching context that would bind the six together in meaningful purposefulness. Without that binding purposeful context, it wouldn't matter what second-order volition were chosen, or what was uttered to who, or what it really meant. These expressions would spill out into a void. Yet purpose is invariably tied to persons and their actions. The absence of purpose, in fact, is understood as meaninglessness. So, if we are to add purpose to Dennett's conditions, how are we to describe it? As we will see, that purpose is the act of world-building, and most crimes against persons are not against their Dennett's six conditions, but against their purpose as individual and social world-creators.

Part II: The Seventh Condition

I. The Psychological View

While having these six necessary conditions for personhood may allow one to better flesh out a definition of a person, it does not solve certain problems that have worried thinkers for quite some time. Although the study of personhood arguably started long before him, with Plato's notion of an immaterial soul, Locke is really the first to worry about the nature of personal identity as it concerned ethics and its applications. To Locke, a person is "a thinking intelligent being, that has reason and reflection, and can consider itself as itself, the same thinking thing, in different times and places" (Locke, p. 115). Thus, like Dennett, Locke believed that rationality played an integral part in determining the nature of personhood. In addition to this condition of rationality, Locke believed that a person must be able to recognize herself as such not only in the present moment, but also as the same person in the past and into the future. The connection between present and past or future selves has been called the personal identity relation,⁸ and concerns ownership of past memories and experiences. So, if a person W remembers an experience X had by person Y, then person W is the same person as Y. This understanding of personhood was built in order to unify slices of time in a person's life such that moral responsibility could confidently be assigned, as per our more practical needs for understanding personhood. For, without some kind of account of a person across time, if a person committed a crime ten years ago, she could not justifiably be punished should she be found guilty.

As time progressed, this study of how temporal self-recognition works would become the foundation for the Psychological View of personhood, perhaps culminating with Parfit's

⁸ See David Shoemaker for an explanation of the personal identity relation in more detail

Psychological Criterion, largely an extension of Locke's personal identity relation. Parfit defines it as five main points:

(1) There is psychological continuity if and only if there are overlapping chains of strong connectedness. X today is one and the same person as Y at some past time if and only if (2) X is psychologically continuous with Y, (3) this continuity has the right kind of cause, and (4) it has not taken a 'branching' form. (5) Personal identity over time just consists in the holding of facts like (2) to (4)

(Parfit p. 207)

The "connectedness" that Parfit speaks of in his definition is what he calls "the holding of particular direct psychological connections" between person A at time C and person B at time D. These connections could be memories, intentions, beliefs, or other psychological phenomena. What matters here is that the Psychological View, as exemplified by Parfit, deals with at least some of our practical concerns about personhood quite well. For example, on this view, one is only responsible for past actions if their current psychology is strongly connected to that of a past psychology.

Though this view seems to deal with practical worries about responsibility and blame, it does not incorporate Dennett's necessary conditions very well. On the Psychological View, only the first two conditions are truly required, that one be rational and have psychological predicates. The Psychological View, by its nature, is not concerned with the subjectivity of either the individual being observed or the observer. Rather, it tries to rule subjectivity out entirely. Thus, there is no requirement that the observer treat the object of interest in any special, person-like way. Rather, the opposite is preferred, as the person-candidate needs to be observed as objectively as possible. The observer's job is merely to determine the strength of memory connection between slices of time-selves, like a zoologist comparing the genes of two animals to see if they are the

same species. Therefore, without the requirement of a person-like stance being taken towards the person-candidate it's not even necessary for a person to be a fully formed intentional system. Condition four would also be unnecessary, for one cannot reciprocate a person-like stance if there were not stance taken in the first place. Likewise, conditions five and six are also not necessary conditions on the Psychological View. If all that matters is strength of connectedness across time, what would it matter if the person-candidate could verbally communicate those experiences, or be able to have second-order volitions?

Given that the Psychological View does handle our practical worries about credit, blame, responsibility, and other moral issues, one might be forgiven for overlooking its unresolved inconsistencies with abstract necessary conditions. Indeed, stemming from a Lockean tradition, many philosophers have done so. However, there is yet another issue which plagues advocates of this view. While the Psychological View does tie together different slices of time-selves in a satisfying way, it is not able to withstand worries about the essence of personhood. Worries about essence may stem from seemingly arbitrary characteristics that one holds as essential to who they are as a person. For example, perhaps at one time in the past I strongly identify myself according to a number of properties, such as an American, a Democrat, and a teacher. Though I viewed these properties as central to my identity, I could lose them later in life, or perhaps retain them, and yet diminish their importance in the construction of my self-concept. Therefore, it seems as if these properties, so easily interchangeable, are in fact orbiting around something else, the essence of personhood. But what is this essence? The Psychological View seems to say that this essence is psychological continuity, as it is what perpetuates my self across time. But many philosophers have pointed out several instances where this understanding seems to fail.

One of these instances is known as *the circularity objection*. The logic of this objection is based on how we distinguish between apparent memories and true ones. According to the

Psychological View, memories and other psychological phenomenon are the criteria of personal identity. We are what our strong, connected memories make us out to be, over time. Yet not all memories are genuine. A crazy person may believe, for example, that he is actually Abraham Lincoln, or that he was abducted by aliens when he was three years old. Now, the way that one would determine which memories are true and which are merely apparent is simple. As philosopher Marya Schechtman puts it, “real memories are apparent memories in which the person remembering is the person who actually had the experience” (Schechtman p. 74). And therein lies the problem. The distinction between a real memory and an apparent one presupposes the notion of a person, a notion which memory connectedness was supposed to define. Therefore, one would need an understanding of “person” in order to establish real memory connections for a particular person, yet would need those same real memory connections in order to understand what “person” meant. The same objection applies to other psychological phenomena central to the Psychological View as well, such as intention. How do people typically differentiate between a rational and an irrational intention? One way to understand a rational intention is in terms of the abilities of the intender. If I intend to run three miles today, that is rational because that falls within my ability. If I intend to sleep on Mars, that is not. Additionally, if I intend for another to act in a certain way, that is likewise irrational, because it is not in my power to do so. Therefore a true intention “...is necessarily an intention that *I* do something, and so it seems that an action will count as the action that carries out an intention only if the same person who forms the intention takes the action” (Schechtman p. 74). Again, we can see that the notion of a person is presupposed. In both cases, there is an essence, a personhood, owning these psychological phenomena. What that essence is, the Psychological View cannot answer.

II. The Biological View

Another instance in which the Psychological View was shown to fail the essence question has been demonstrated by followers of the Biological View of personhood, a view meant to be superior in handling the persistence of persons over time. Eric Olson is one such philosopher. According to Olson, the Psychological View falls apart when the same person does not have psychological continuity over time. One instance of the absence of psychological continuity is the various stages of development of a human being. Olson explains that

...embryologists tell us that a human fetus that is less than about six months old cannot remember or experience anything, and has no mental capacities worthy of the name...you and I cannot now be related to a five-month-old fetus in any *psychological way*....So if the Standard View (Psychological View) is right, nothing could be a fetus...at one time and a person later on. No person was ever a fetus, and no fetus ever becomes a person. (Olson p. 96)

In summary, no thing that was a non-person can suddenly become a person. Thus, as Olson illustrates, on the Psychological View identity cannot be preserved across the fetus barrier because psychological continuity is impossible. Yet this is counter to our practical understanding of ourselves, for wasn't it I who was in my mother's womb, and I who emerged from it in foetal form? Additionally, as I have no direct memories to recall from my infancy, on the Psychological View it is doubtful that I as a person ever existed in such a state. This blatant inconsistency is "no minor, technical problem but a major embarrassment" for proponents of that view (Olson p. 103).

Rather than rely on temporally connected psychological states, Olson proposes another way to unify identity across time, one that does a much better job of capturing an essence. This is the Biological Criterion of Personal Identity. As the name suggests, this view takes a purely physicalistic approach to the identity question, granting identity across time "if and only if my vital functions--those complex biochemical and mechanical activities of my atoms by virtue of which

they compose a living organism--are preserved” (Olson p. 106). Therefore, a person only continues to exist if he or she is the same biological organism, regardless of the connectedness of that organism’s various psychological states.

Though this view seems to present a better account of our identity as an essence, it does not accommodate Dennett’s conditions of personhood. For example, the Biological View is committed to ascribing personhood to most forms of development of a human being,⁹ as long as the basic life functions are operating. Thus, a fetus and a severely brain-damaged person in a persistent vegetative state (PVS) are all just as equally persons as a full grown, perfectly functioning adult, as their biological essence is maintained. Yet fetuses and PVS patients only have one out of the six necessary conditions for personhood as described by Dennett, which is that others adopt a person-like stance towards them. This of course happens all the time, as expecting mothers and fathers treat the developing fetus this way, or as loved ones of a PVS patient treat him as if he were fully functioning. However, fetuses and PVS patients are non-rational, can’t have psychological predicates confidently ascribed to them, cannot reciprocate a person-stance back upon those who love them, cannot verbally communicate, and cannot have the second-order volitions necessary to make up special consciousness. Therefore, on Dennett, it seems as though persons in this state are not fully formed, in that they have not realized all of the six necessary conditions. But on the Biological View, there would be no differentiating between a PVS patient and a fully functioning cognizant adult. Equating the two goes against our intuitive understandings of rights as they are given to persons. For example, would it make sense to say that a fetus has the right to choose its religion (the moment it is a fetus, not as an adult later in life), or that a PVS patient has the right to vote? Without alignment with Dennett’s conditions, these and similar questions plague the

⁹ Olson seems to believe that identity as human being starts around two weeks after conception, for cells “only adhere loosely” before that (Olson p. 106).

Biological View.

In the end, each theory is able to bear the weight of at least some of our worries about the nature of personhood. The Psychological View deals well with our practical worries about justice and responsibility by presenting a reasonable account of how personhood can persist over time, yet cannot provide a satisfactory answer to the essence question. The Biological View provides a more satisfactory answer to the essence question, and also presents an account of the persistence of personhood over time. Yet both ultimately cannot be reconciled with Dennett's conditions. As those conditions are being taken as necessary, either view cannot be robust enough to form a legal treatment of persons. For this task, another view is needed in order to make sense of personhood, one that allows us to both make sense of the essence question and allow for Dennett's six conditions to hold.

III. The Anthropological View

Though the Psychological View and the Biological View have their differences, both are primarily concerned with the problem of preserving personal identity over time, or rather, the question of re-identification. They ask questions such as: How do I know that I, existing now, am the same person that existed yesterday, or that will exist tomorrow? This worry has been the focus of conversations about personal identity since Locke, and, as shown in the previous sections, has not produced satisfying results. Perhaps this is indicative that the question of re-identification itself is problematic for inquiries of personhood, and that another way is needed to understand the existence of persons in time. One way to do this is to look at personal identity through the lens of self-knowledge, rather than re-identification. For it may be the case that I am not so much concerned with re-identification at different times, but rather true identification at any time. This is the question of self-knowledge. For any given person, it asks "which of the beliefs, values, and

desires that she seems to have are truly her own, expressive of who she is” (Schechtman p. 71). It asks not the “who am I” in terms of past history and memories, but instead the “who am I” in terms of which attributes correctly belong to a person. It posits questions of ownership, rather than questions of persistence, which both allows for abandoning problematic notions such as time-slices and biological continuum, and all the while incorporating Dennett’s six conditions.

The question of self-knowledge is primarily the concern of the Narrative View, or rather its more recent name, the Anthropological View of personal identity. As proponents of this view, such as philosopher Marya Schechtman, argue, criteria for what makes something the same thing at different times are not really relevant for our understanding of ourselves. Rarely, they point out, is someone concerned about whether they had the same beliefs or physical characteristics at age 10 as they do in their present age. These kinds of similarities do not seem relevant for inquiries related to personal identity, for the ability to draw a strong connection between a psychological state you had years ago and one you have now seems irrelevant when trying to construct an account of who you are. What is far more important is the *proper attribution* of psychological states, actions and experiences to individuals. In other words, what makes a particular attribute mine. Intuitively speaking, this perspective seems to be what the question “who am I?” is driving at. Though it does happen, it is a rare case indeed when someone questions whether their past self is the same as their current self, at least in the way the Psychological View prescribes. It seems far more common to question attributes at any time, than to question whether the attributes are strongly connected.

On the Anthropological View, it is not the case that psychology or biology do not have any place in the understanding of personhood. On the contrary, both are inescapably tied to our experiences as persons. However, they are only one half of the picture. As Schechtman points out, “...we have a dual perspective on persons. On the one hand, we view persons as one of the types of objects in the world, but, on the other, we view them as subjects and agents, creatures with a way

of experiencing the world and with affect and volition” (Schechtman p. 87). In this way, both the Psychological View and the Biological View are examining persons as object-types, much like machines or complex organisms. From this perspective, it is not unreasonable to be concerned with temporal continuity, as this issue arises whenever studying complex objects of any type. But this perspective is alien to the real question at hand. If I ask myself “who am I?”, I am not asking about past history, or whether or not I really am the person that I was at some point in the past. That kind of question is reserved for those suffering from amnesia, or other forms of memory loss. In these extreme cases, they are unable to locate past selves, and therefore are concerned with re-forming connections between their current selves and experiences in the past. Instead, I am asking about what constitutes my true self at the current moment in time. Because the Psychological View is by its nature an objective approach to understanding persons, and because it is “...forced to view psychological states as atomic, isolable, and in principle independent of the subject who experiences them”, it cannot answer this question (Schechtman p. 89).

On the other hand, viewing persons as subjective agents seems to shift the focus of the conversation away from questions about temporal continuity, and onto ones about responsibility and ownership. The Anthropological View doesn’t posit that psychological states are not relevant. On the contrary, they are important, just not as time-slices that need to somehow be connected. Instead, they are important as seen through the subjective lens of an agent, as an experiencer and owner of them. Intuitively, this matches identity-laden questions about psychological states that persons ask of themselves throughout their lives. For example, questions such as “What do I really believe?” or “Why do I hope for X?” are self-reflective questions that are meant to probe one’s own inner life. These identity questions about psychological states such as believing and hoping have nothing to do with connecting past and present states, and everything to do with identifying states that are true to self now.

Therefore, while a Psychological View holder may worry about “strong connectedness” between beliefs at different times, an Anthropological View holder will worry about whether the beliefs are really “his”. Whether or not someone takes a belief to be genuinely theirs is a matter of coherence, for if one belief contradicts other beliefs or experiences, it may find itself the subject of scrutiny by the believer. This is because tension-free beliefs rarely provide a believer with reasons to rethink them. For instance, if a person believes she is meant to be a doctor, and also experiences joy in studying medicine, then the belief is confirmed as hers. But if she experiences confusion and frustration when studying medicine, she may question whether her believed vocation is really hers. In this way, persons as subjects have the ability to self-conceive, to quite literally construct themselves, accepting some beliefs, desires, intentions, etc. as genuinely their own, while rejecting others. This ability to construct one’s own self is highly agreeable with Dennett’s sixth condition, that one have special consciousness through second order volitions. From this, we can derive the “*Narrative Criterion of Personal Identity*: What makes an action, experience, or psychological characteristic properly attributable to some person (and thus a proper part of his or her true self) is its correct incorporation into the self-told story of his or her life” (Shoemaker). Intuitively, this criterion makes more sense than the Psychological Criterion, for I’m much more likely to worry about having a coherent self at any one time, than I am to worry about the continuity of different time slices of myself. Furthermore, though I may have access to the past through memory and access to the future through anticipation/prediction, I can only have direct experience of the present. My existence as a self now will always be more important than who I was or who I will be.

Now, one may begin to question the nature of this self-constructed story, for, so far, there appears to be no restrictions as to what attributes a person can choose as identity-constitutive. If all that matters is that it fit into a story that I’m telling myself about the world, it seems as if that

attribute could be anything. As long as my self-told story is fleshed-out enough, with enough details and causally connected events, would it matter if I chose to believe I was a reincarnated Genghis Khan, or that I was Luke Skywalker's long-lost cousin? In addition, even if a self-told narrative corresponds to reality, is it really the narrative that connects experiences, beliefs, and other experiential phenomenon? Indeed, many of the experiences one has occur independently of a self-told narrative, and so it seems that an explanatory narrative of this kind presupposes that there is a self apart from what kind of story is being told about it.

In order to accommodate for these complaints, proponents of the Anthropological View have pointed out that self-narratives are not told in isolation, but instead are constantly being checked against the narratives of others. Therefore, it is not the case that I can add whatever I want into my self-told story, for blatant falsehoods would meet resistance among the narratives of others. So, if I decide that I am Luke Skywalker's long-lost cousin, that part of my self-told narrative will be rejected by those who know otherwise, such as my parents, siblings, and anyone else privy to my family history. Now I could reject their counter narratives, and insist that I was indeed Luke Skywalker's long-lost cousin. But that would create tension in the web of narratives that are being told about me, which includes my own, which decreases coherence in the overall understanding of my life. At some point or another, this tension will have a negative impact on my life, be it my mental health or my relationships with those who tell the counter narratives.

Interestingly, what this ultimately shows is that it is not just my narrative that constitutes my self identity, but also the narratives about me put forth by others. This intuitively makes sense, as people form their identities largely in response to the social relationships around them throughout their life. As children and adolescents, people are constantly accepting and rejecting aspects of the narratives of others. Even as fully developed adults, this process continues, because narratives are by their nature not stagnant. Therefore, being a person, an agent, is having "...a

relationship with others, and one cannot be fully an agent without being recognized as such” (Schechtman 2014 p. 71). This aspect of the Anthropological View strongly correlates with Dennett’s social conditions of personhood, which are conditions three, four, and five. For, as per Dennett’s third condition, in order to be a person, one must be, in some sense, “created” by others who baptize them with that title, and treat them in a personalizing way. As the Anthropological View contends, this personalization consists of narrative creation, in which a comprehensible story is told about them as an agent rather than as an object. Additionally, as per Dennett’s fourth condition, a person must also reciprocate this agent narrative back upon the teller, such that a dialectic is formed, held together by Dennett’s fifth condition, Gricean verbal communication. It is in this way, through the social conditions of personhood, that every person “...becomes that which he is addressed by others” (Berger p. 16).

Of the three major views presented, the Anthropological View is the only one that neatly incorporates all six of Dennett’s necessary conditions of personhood. This is because it is the only one that allows room for the subjectivity necessary for the conditions that require interaction between agents, namely conditions three, four, five, and six¹⁰. It is this feature of the Anthropological View that makes it the best, the only, candidate for understanding how a Dennettian person truly operates. Thus, through the Anthropological View, we can introduce a seventh condition of personhood, which unifies the previous six under an umbrella of meaningful context. That condition is that personhoods are shaped by identity-constitutive narratives.

¹⁰ As Condition six requires second-order volitions, it consists of a person interacting with herself rather than others, but this interaction is still a subjective one.

Part III: World Builders

As explained before, a self-concept is not stagnant, and is not created in isolation from others. Rather, both the agent in question and the agents with whom she interacts are co-creators of the personhood, as they posit, accept, and reject one another's narrative explanations. Because the narrative explanations are subject to change depending on the circumstance of each interaction, examining the specific content of the narratives may not be useful in trying to understand self-concepts. Instead, uncovering the structure of the interactions between agents that build self-concepts should shed more light on what self-concepts are and how they function.

Now, what is certain about these agent relationships is that they are dialectic in nature. The personhood of one is being built by interactions with the other, and the other's personhood is likewise being built in the same way. These dialectic interactions do not occur in a vacuum. They occur within the broader context of a society, which provides the meaningful content of each interaction. Take the student/teacher interaction as an example. Person A may define herself as the teacher, and person B may define herself as the student. These self-ascribed attributes will determine the nature of the interaction between the two, as these roles carry certain traditions and codes of behavior with them. But neither person A nor person B invented the roles of teacher and student, and neither person invented the particular traditions and codes of behavior that go with them. Those roles, and the particulars of their manifestations, are set and maintained by other persons who collectively make up a larger society. Therefore, it is the ongoing conversation between a person and others that not only sets up the parameters of interaction, but also supplies those interactions with form and content. This being the case, one cannot separate the study of persons from the study of their society, which not only existed before them, but continues to exist

after they die.

In fact, trying to understand personhood apart from society would be akin to studying a tree outside of the forest ecosystem that shaped it, for:

...it is within society, and as a result of social processes, that the individual becomes a person, that he attains and holds onto an identity, and that he carries out the various projects that constitute his life. Man cannot exist apart from society.

(Berger p. 3)

Interestingly, society itself is a creation of persons, past and present. In this way, societal interaction is also dialectic, as a person constructs his self-concept through the society of which he is a contributing member. So the final picture that emerges is one of a person that constructs a self-concept according to the societally structured narratives that others are telling him, but also that constructs society according to his own personal narrative.

This dialectic is made up of three simultaneous processes, described by Berger as externalization, objectivation, and internalization.¹¹ Because a self-concept is constructed in this dialectic, it is important to have an understanding of what these processes look like.

Externalization is the process by which man builds culture. According to Berger, this cultural construction occurs as a “direct consequence of man’s biological constitution” (Berger p. 5). Other animals are born with specialized ways of interacting with the world, and these interactions are usually finely tuned to allow the animal survival in its particular niche environment. Furthermore, in most cases, animals are born nearly fully formed and capable of interacting with it. But people are not. People are born without any particular characteristic that is finely tuned for survival in their niche world, and are not born fully formed. After birth, it is another fifteen to twenty-six

¹¹ For a more robust account of these three processes, see Berger chapter 1.

years (depending on culture) before a human being is said to be mature, both physically and psychologically. Because human beings are not suited for any one particular environment, they must act to create an environment that is suitable for them. This environment needs structure and order so that human beings may understand it, predict it, and thrive in it.¹² The structure and order imposed on the environment, thus become the culture, which “consists of the totality of man’s products”, such as language, tools, and institutions (Berger p. 6).

Another facet of the dialectic process is objectivation. This is a direct result of man’s externalized cultural products, for once they are produced out into the world, they stand apart from their creators. Every type of cultural product, be it art, music, language, or a tool, becomes a separate entity once it is projected out into the larger society. It can be seen, studied, and experienced by others, even if they exist in a different space and time from the creator. For example, the Greek word ἀγάπη (agape) refers to a type of love that is universal and unconditional. Though this word is of ancient origin, in lands very different from this one, and by persons who we will never know, we still have access to this word, as it exists apart from those who created it. Thus, we may say that “...society is a product of human activity that has attained the status of objective reality” (Berger p. 11). In this way, cultural concepts like “nationality”, “Existentialism”, or “debt” exist in the world in the same way that rocks and trees do; their existence stands apart from my own.

The final aspect of the dialectic process is internalization, and refers to the impact that objectivations have upon the persons who encounter them. For Berger, this is “... the reabsorption into consciousness of the objectivated world in such a way that the structures of this world come to determine the subjective structures of consciousness itself” (Berger p. 15). This means that

¹² By contrast, it is worth noting that animals are typically born either fully formed, or nearly so, and are readily adapted to the environment in which they find themselves.

objectivated cultural objects do not merely influence persons, they shape how persons experience reality itself. This is done through the process of socialization, wherein each new generation of persons is not only taught how to live in the particular society, but also how to experience it. For example, if motherhood is a dominant value of a tribal village society, then girls in that society will not only learn how to be mothers but will also develop their self-concepts in terms of motherhood. Their self-esteem and sense of purpose could be attached to how many children they are able to produce. The art and music that they make could be representations of aspects of motherhood. The most important relationships could be the ones between mothers and offspring. Therefore, when asked the question “who are you?” (in the essence sense, not the past history sense), a girl in such a society might respond with “I am the daughter of so-and-so”, or “I am the mother of so-and-so”, as this particular attribute defines much of her life. By defining herself in terms of motherhood, the girl effectively allows it then shape what her externalizations will look like, which are then objectivated, and the process continues ad infinitum.

In this way, we can see that the defining attributes of a self-concept, the ones that an individual may take as their own, are not randomly selected. They are grounded in the dialectic cycle of externalization, objectivation, and internalization, which one uses to participate in society. It would not make sense for the girl mentioned above, who lives in a tribal matriarchal society, to construct her self-concept around a notion that was foreign to her society, for instance, that of a professor. This is not to say that all girls in this village will come to have identical self-concepts, all centered around motherhood. Societies are never wholly centered around one and only one institution. All that can be said is that, because motherhood is emphasized and valued in this society, the people who live in it will be confronted with it through interactions with objectivated institutions and other persons who have internalized it, such that they cannot escape its imposing presence in their lives. Thus, when a person finds themselves questioning their self-concept, it will

always be in some way in relation to the institutions that make up their society.

Another reason why self-concepts in this village, or in any society, will always have variety is due to Dennett's sixth condition of personhood. The capacity to have second-order volitions means that a person has the ability to reflexively self-evaluate. So while the institution of motherhood might be the subject of her first-order volitions, she is always capable of evaluating those volitions, and changing them as she sees fit. For example, perhaps the girl in question desires to be a mother, because she wants to make her mother happy, wants her village to respect her, and other reasons. However, this desire may come under scrutiny if, say, she must marry a man she does not love in order to become a mother. She may then desire to have different desires. She may want to desire a different role, one that would not obligate her to marry this unsavory man. Perhaps this different role is that of a priestess, and she ends up choosing celibacy over motherhood in order to become one. Either way, whether she chooses to appropriate the role of mother or to reject it, the institution of motherhood has profoundly shaped her life.

Though persons have the ability to self-reflect on their volitions, and reject the objectivated social reality, this will not always occur without consequence. For, as Berger says, "The final test of its objective reality is its capacity to impose itself upon the reluctance of individuals" (Berger p. 11). While the girl may reject motherhood as her society has defined it, the objectivated institutions may seek to bring her back into line. This could happen in a variety of ways. Perhaps she is ostracized by her community. Perhaps she is fined, or forced to marry anyway. In our society, the main institution by which this happens is our legal one.

And so what is the final picture of personhood that has emerged, and does our legal system recognize it as such? If Dennett's six conditions are correct, and there are few reasons to doubt them, and the Anthropological View explains how they work in the context of narrative-making, then we have a much clearer picture of what a person is. This picture does not consist of a human

being's psychological consistency over time or biological constitution, but rather of agents in active construction of themselves and others, through a dialectic about what society ought to look like. From this perspective, it is possible to evaluate whether or not that society, created by persons, in fact treats them as such. For, as Berger says, it is entirely possible that "Paradoxically, man then produces a world that denies him" (Berger p. 86).

A proper legal system, therefore, will respect a person's' right to construct his own narrative as an agent, as well as to accept and reject the narratives of the society around him. The goal of any society should be to allow the proper context in which persons develop coherent symmetry between their own personal narrative, and those of others making up the society around them. Just societies will encourage symmetry, and unjust ones deny it.

By understanding the legal institution as one that is externalized, objectified, and internalized, we can see that it is not as fixed as it may appear, for "No set of legal institutions or prescriptions exists apart from the narratives that locate it and give it meaning" (Cover p. 4). Therefore, as individuals accept, reject, and create new narratives, the institutions that are maintained by them will also change. Yet given this, one would think that the legal institutions would reflect this dialectic nature of its creation. But as it stands, the law that we have now does not view persons as Dennettian agents and subjective narrative makers, who create and maintain it. It views them as Lockean time slices, which are objects to be studied in isolation.

This being the case, it is now that we turn to our objectified institution, the law. The objective in doing so is to see how this understanding of persons as "whats" rather than "whos" has been applied in certain contexts, and to judge whether or not the result did justice to our understanding of persons as subjects, co-creators of themselves, others, and the law itself. The law is itself an enormous category, and thus our discussion of personhood will focus on one particular aspect of it: property.

Part IV: Personhood and Property Law

Much of the American political system is based on John Locke's ideas. In fact, "It would be difficult to overstate Locke's influence on the American Revolution and the people who created the government that followed it" (Doernberg p. 57). This includes our understanding of property, and how property relates to our notions of justice.

Man being born, as has been proved, with a title to perfect freedom, and an uncontrolled enjoyment of all the rights and privileges of the law of nature, equally with any other man, or number of men in the world, hath by nature a power, not only to preserve his property, that is, his life, liberty and estate, against the injuries and attempts of other men; but to judge of, and punish the breaches of that law in others. (Locke Ch VII Section 87-89)

But what does it mean to own property? Debates around this issue tend to arise in the context of property disputes, that is, when two separate parties claim the same object as their own. Historically, the grounds for deciding who is baptized with the title of "owner" has largely revolved around the idea of merit, of who "deserves" the title. Locke himself was very concerned with merit, and his ideas have influenced the way in which we understand property today.

He that is nourished by the acorns he picked up under an oak, or the apples he gathered from the trees in the wood, has certainly appropriated them to himself. Nobody can deny but the nourishment is his. I ask, then, when did they begin to be his? (Locke II paragraph 27)

For Locke, the justification for something being one's property is based on the labor which is required to remove it from nature, or rather, what is commonly accessible to all. "The labour that was mine, removing them out of that common state they were in, hath fixed my property in them", he says (II paragraph 27). Thus, it may be said that *person Q* is justified in owning *property X* because *task Y* was done by *Q*.

However, Locke foresaw, to some extent, the problems that might arise given that mere labor was the justification for ownership, and thus mentions two constraints. He understood that it would seem wrong for an individual to accrue large masses of property while others had none. How much property becomes too much property? "As much as anyone can make use of to any advantage of life before it spoils, so much he may by his labour fix a property in. Whatever is beyond this is more than his share, and belongs to others", he writes (II paragraph 30). Therefore, according to Locke, man should not take so much property that he cannot use all of it before it rots and wastes away. This can be understood as the spoilage constraint. The second constraint regards the right to subsist, which he takes natural to all human beings, whether property owning or not. For Locke no piece of property caused "...any prejudice to any other man, since there was still enough and as good left, and more than the yet unprovided could use. So that, in effect, there was nevertheless left for others because of his enclosure for himself" (II paragraph 32.). Therefore, according to Locke, man is free to take any property so long as other men have enough resources left for them to subsist on, which will be called the subsistence restraint.

Given these constraints, one would think that Locke was quite worried about inequality, at least to some extent. Yet this was not the case. Despite these constraints, Locke believed that inequality was a justified result of capitalism, solely for the invention of one thing: money.

And thus came in the use of money; some lasting thing that men might keep without spoiling, and that, by mutual consent, men would take in exchange for the truly

useful but perishable supports of life...And as different degrees of industry were apt to give men possessions in different proportions, so this invention of money gave them the opportunity to continue and enlarge them (II paragraphs 47 and 48).

Money allowed a way for there to be inequality and yet not violate either of Locke's constraints, for money neither spoils nor does the ownership of it deprive anyone else of subsistence. Furthermore, money allowed every individual a way to justly accrue property according to their corresponding "degrees of industry". Therefore, the more one worked, the more money they accumulated. The rich man was rich because he worked hard, and the poor man was poor because he was lazy.

Problems with Locke's Account

While there have been other complaints against Locke, the following is concerned with two ways in which Locke's justification for inequality fail. First, Locke fails to recognize the two-dimensional nature of property, and thus is looking at the nature of equality with one eye shut. Second, Locke's justification for which task should be compensated by which property fails to take persons as agents into account, instead only viewing persons as objects within an impersonal economic system.

I. Two-dimensional Property

While certainly appealing to common sense, Locke's view is overly simplistic, and therefore problematic. Locke's initial treatise was concerned with physical resource ownership, such as land and agricultural products, which makes perfect sense given the agrarian worries of his day. For him, the worry was more about wasting perfectly good resources than about the harm

done to other people due to property inequalities, and this is because Locke's view of property is one-dimensional.

Fungible property seems relatively easy to trace back to some work, if the goal is to find a justification for the ownership of it, and as long as the property remains small. Yet as the scope of the property takes on larger and larger dimensions, Locke's system starts to crack. Take a monopoly, for example, specifically one that produces cars. This hypothetical monopoly owns most of the steps in the line of production, from raw resources to the end product, as well as patents on all the cars it makes, which are all that are available to be bought. Perhaps this company is well-run. Perhaps it distributes its resources and produces cars without wasting anything. Furthermore, everyone within the community in which these cars are sold has all the subsistence they need. Though one may be inclined to state that monopolies are unjust institutions, Locke could not, for there is both work and the proper use of resources involved, satisfying his two requirements for just ownership. So what has Locke missed?

Locke's assumption is that property only has a fungible dimension, but that is clearly not true. As Margaret Radin points out in her paper *Property and Personhood*, property lies along a spectrum. At one end are things considered purely fungible, such as raw currency. On the other end are things constitutive of one's personhood. This end is highly subjective, in that any particular thing could have great importance to one's personhood. A scribbled crayon drawing may be considered worthless to a passerby, yet may constitute a great part of oneself if, say, that drawing were given to a father by his daughter. The drawing may come to represent fatherhood, which constitutes a significant part of the man's life, such that the loss of it would cause harm to that individual's sense of himself. Both raw currency and a drawing could be claimed as property by an individual, though it seems that the two claims are made on different grounds.

As Radin herself states, separating property into two categories is not always useful, as it is

possible for the same object to be both fungible and personhood-constitutive. A diamond wedding ring, for example, has both qualities. But it seems to be the case that in situations where there is a conflict between the two, individuals will favor the personhood-constitutive value over the fungible value. One would be hard pressed to find an individual willing to sell her wedding ring back to the jewelry store for its asking price, if she still loved her husband and found meaning in her role as his wife. Radin takes note of this:

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 personhood, 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. (Radin p 986)

Yet one may then ask how fungible property could impinge upon the personhood of others. When discussing properties of a common variety, like a house, a hunting license, a bookstore, or a wedding ring, it would seem ridiculous to claim that ownership of such somehow impedes on the personhood of others. Yet as the ownership base of one individual is increased, so is the likelihood that the personhood of another is affected by it. This is because the person-building activity between woman and her world is not a private or a one-way street. Though an action, say creating a sculpture out of clay, certainly ties the identity of the agent to it, that of “sculptor”, the object then informs the agent *as well as everyone else* as to the identity, the personhood, of the person who made it, as well as themselves. Spectators can perceive not only that someone else is the “artist” of a given piece, but also that they are not. It is through such a process that people form their identities, their personhoods, in part from what is projected onto the world by others in

addition to what they themselves project.

Just such a process is well-described in sociologist Peter L. Berger's "The Sacred Canopy". The two-way street is composed of woman in her world-shaping activity, named *objectivation*, and the objectified objects then informing individuals how to structure their own subjective lives, named *internalization*.¹³ As one man goes about cordoning off certain pieces of property marked as "mine" with leases, contracts, and certifications, that property continues to engage in a dialogue with all who come into contact with it, informing them of their status as non-owners. Thus, this is where the issue of personhood comes into the arena.

Purely fungible property, money, does not sit idly. It is put to use in purchasing vehicles, apartments, businesses, clothing and toys. Especially in terms of real estate and businesses, money certainly allows one to buy more things than could ever be effectively utilized on one's own. Thus, it is possible for one individual to own dozens of businesses and have thousands of people working under him without either the waste of resources or the deprivation of subsistence of others. Yet this account fails entirely to take personhood into account, and breaks down under analysis of situations in which a conflict occurs between what is considered fungible and what is considered personhood-constitutive. Under the stress of this kind of conflict, both Locke's spoilage constraint and his subsistence constraint do not ensure a just system. Radin discusses residential tenancy as a prime example. On the one hand the landlord may see an apartment building as something only fungible, to be bought or sold, and only as such. Yet for the tenant, it is a home, within which one's identity is undeniably bound. According to Radin, this way of thinking "is one basis for the revolution in tenants' rights. Courts began to view the rights in question as more closely related to the personhood of the tenant than to that of the landlord, and accordingly moved to protect the

¹³ According to Berger, the cycle of objectivation and internalization is the key step in socializing a person into a society.

leasehold as the tenant's home” (Radin p 993). Therefore, tenants have a property claim over where they live, and this claim often trumps the fungible one made by the landlord, as in cases of sudden eviction without notice.

While the case may be clear that personhood-constitutive property claims are often higher up in the hierarchy of entitlements than fungible property claims, it is not clear whether property inequality in general does harm to personhoods. Though the idea of property as an expression of personhood is still relatively new, and therefore lacks precedent in law, evidence of its importance can be found wherever there is economic inequality.

This can only be demonstrated if property inequality of the fungible kind could be shown to be detrimental to one’s personhood. Take the introduction of Wal-Mart into small cities and towns throughout the United States. As has been well-documented, “The overwhelming weight of the independent research on the impact of Wal-Mart stores on local and national economies – including jobs, taxes, wages, benefits, manufacturing and existing retail businesses – shows that Wal-Mart depresses area wages and labor benefits contributing to the current decline of good middleclass jobs, pushes out more retail jobs than it creates, and results in more retail vacancies” (Angotti p. 4). Walmart negatively affects the communities it injects itself into in at least two profound ways. First, it forces nearby local businesses to go out of business.¹⁴ Second, it takes funds out of the communities, thereby damaging the local economy.¹⁵ While there is ample evidence suggesting that the fungible properties of local community members are negatively impacted by the introduction of large chain stores like Walmart, little has been said of the harm done in terms of personhood property damage. To a local business owner, their store could have

¹⁴ See Angotti page 5. In Chicago, one Walmart forced 82 local businesses to close with two years of opening.

¹⁵ See Angotti page 5. Of every \$100 spent at chain stores like Walmart, only \$43 remains in the local economy, compared to \$68 spent in locally owned stores.

been open for decades or passed down from parents, and thus takes a significant role in shaping their identity within the community. Even if the ex-storeowner is given a job of equal wage at the local Wal-Mart which ran him out of business in the first place, would that be considered an equal trade? Under a welfare rights theory of distribution, the answer is a definite NO.

If a welfare rights theory of distribution makes personhood interests take precedence over some claims to wealth, permitting taxation to provide largess for the poor, it may equally permit curtailing fungible property rights that impinge on the poor, unless doing so only for the holders of certain assets would under the circumstances violate accepted norms of equality. (*Radin* p. 991)

Thus, even if Wal-Mart cannot be shown to have wasted resources or kept local people from their right to subsist, the gross damage done to the personhood property of thousands of people would be more than enough to demonstrate the injustice of inequality created by the owners of Walmart. This is because the coherence of the narratives that local people have created, both for themselves and each other, would be shattered by the emergence of an amorphous, impersonal entity that gobbles up aspects of their naturally formed personal identities, and gives cookie cutter shaped ones as compensation. As non-fungible compensation, the community is offered only a position, a role, in the alien institution that has crushed all others. The residents are forced to either join the world of Wal-mart, which they did not have a hand in shaping, or to be expelled from the economic life of the community for good, through abject poverty.

What is obvious here is that the opportunity for a just society, one that encourages symmetry between a person's self-told narrative and the narratives about her told by her community, has been lost. Though many aspects of coherence will likely maintain their potency, such as familial relationships and religious convictions, others have been irrevocably damaged, namely those associated with vocation. This happens because of the intrusion of an outside, alien

institution, which the members of the society did not co-construct. So they had no hand in shaping its meanings, but are having their own meanings dictated to them by force. Such a relationship is not a dialectic, and therefore no symmetry between narratives could possibly be created. Rather, the meanings being projected by the alien institution must simply be accepted, without question, or negative consequences will be faced.

Take the coherence that would exist between, say, a local guild of furniture makers in which each member creates and confirms this part of their identity through one another. Each member of the guild has a role within society, whose value and legitimacy are reinforced throughout the larger community acceptance of them. But with the arrival of easy access to cheap, easily assembled furniture comes a lessening of their value. If everyone in a community is buying the same kind of furniture from the same faceless company, the value of a furniture maker as a person-role will diminish. Members of the community cannot put on the role of furniture maker if the other members of their society do not recognize them as such. A person could still declare herself a furniture maker, but to a society that does not value that role, it would be the same as if she declared herself a shaman in a modern, Westernized city. For, if their furniture is no longer wanted, no longer purchased, and no longer displayed in the various places around the community, this aspect of their self-told story will no longer be coherent among the other narratives. Instead, this person would lose his vocation, that of furniture-maker, and be forced to pick a new one from among the cookie-cutter options available: cashier, stocker, greeter, transporter, etc.

What should be noted among these new roles, as invented and valued by Wal-mart, is that they are roles that fit an object, not an agent. There is nothing creative about being a cashier, a stocker, a greeter, or a transporter. The thing taking these roles is a piece in a chain of manufacturing, not a subjective, unique, meaning-maker. Within the world of Wal-mart, all aspects of vocation are being dictated down upon the individual, and there is no room for the

individual to respond, to contribute to the overall culture of the institution which she is a part. In sum, a coherent life in which vocation carries significance would experience serious challenges in this context.

II. Which Y justifies which X?

As was stated before, Locke's theory of justification heavily relies on the idea of merit, that *person Q* is justified in owning *property X* because *task Y* was done by *Q*. However, no account is given by him as to how to determine which property is a suitable reward for which task. Getting paid \$20 an hour to help someone move seems like a fair deal. Yet getting \$1 an hour would cause an outrage. Why is this so? Many would simply chalk this up to market forces. The wage is determined by whoever is willing to do the job for the least amount of money. However, "market forces" are often cited as reasons why a CEO pays himself \$100,000 to sit in on a meeting for an hour, McDonalds employees make an unlivable wage despite working more than 40 hours a week, and other compensation scenarios that are problematic.

It could be argued that utilitarianism sought to remedy this problem. As John Stuart Mill pointed out, all men have a general sense of what is just and what is not.

It is universally considered just that each person should obtain that (whether good or evil) which he *deserves*; and unjust that he should obtain a good, or be made to undergo an evil, which he does not deserve. This is, perhaps, the clearest and most emphatic form in which the idea of justice is conceived by the general mind"

(*Utilitarianism*, Ch. 5, paragraph 7)

Thus, the concept of *desert* is introduced.

Despite this common sense approach to desert, there fails to be any substantial account by Mill or any other utilitarian philosopher for determining what is just compensation in any given situation. Sidgwick

sums up the utilitarian take on just desert by associating it with expediency. "...when a man is said to deserve reward for any services to society, the meaning is that it is expedient to reward him, in order that he and others may be induced to render similar services by the expectation of similar rewards", he writes (1907, 284). Thus, a person's salary can be seen as a just desert, in that it is expedient for society to encourage others to do the same type of work. This is why a computer programmer would earn \$80,000 a year, and a Wal-Mart greeter would make \$8 an hour. A programmer provides more value to society, and therefore it is advantageous to pay her more, in order to encourage others to provide the same service. Yet coming up with examples in which a desert is not expedient is relatively easy.

According to this take on desert, it may be expedient to encourage one kind of economic activity over another, regardless of whether or not the agent performing the action truly deserves it. For instance, perhaps a city is in need of street sweepers, and there is only one man doing this task. This man does this task lazily, and only works two days a week. In order to encourage others to do it, the city decides to pay this man a full salary with benefits. There is certainly expediency in doing so, but would anyone consider this just compensation for the work he performs?

Furthermore, a utilitarian approach does not provide a solid justification for the accruing of all types of property. Take inheritance for example. What is the overall social good when a man inherits ten million dollars from his parents? What does his inheritance encourage others to do? Be born into rich families? On utilitarianism, there is no expedient basis that can serve as a justification for inherited property, regardless of how large or small it is. Yet to many, an inheritance does not seem like an unjust way to gain property, be it large or small. In fact, it is often taken to be a matter of personal identity, rather than of merit. One feels entitled to the inheritance of some object or funds because of who one is in relation to others, not because one feels that they earned it through just desert.

While in many ways utilitarianism was a critique on Locke's natural rights, the fact that it was not able to improve on Locke's theory of desert base highlights the problematic nature of both of these theories. It suggests that there is indeed a great misconception underlying how both accounts think about property in general. And what these accounts are failing to address is the seventh condition of personhood.

III. Justice for Persons and their Property

On an Anthropological View of persons, perhaps except for money, property can never be purely fungible, because it will always be owned by persons, who are active agents. Thus, any theory of property that fails to account for persons as subjective meaning-makers will have problems in its application. The formula, *person Q* is justified in owning *property X* because *task Y* was done by *Q*, will therefore never fully explain our worries about property, in that it takes persons to be objects, rather than agents, and assumes a purely fungible nature of property. It is only through understanding property as an extension of someone's personhood story that the creation and execution of property laws can become more just. For, in many cases, it is the disruption of coherent narratives that is the real damage being done. Simplifying the complexity of the case into a dollar amount only ignores the real matter at hand, and supplies no real peace to those who feel their property, and by extension their personhood, has been violated.

Therefore, one way to make the creation and execution of property law more just would be to revise each in terms of property's two-dimensional nature rather than in terms of a purely fungible dimension. In order to see how this might work, let's examine the common practice of eminent domain, through which the government allows itself to seize the property of individuals, should it decide that the property is needed to serve the public good. Now this practice stems from the Fifth Amendment, which states that "[N]or shall private property be taken for public use,

without just compensation”. The key term here is, of course, “just compensation”, as those who wrote the amendment likely feared that the government would become abusive, and seize whatever it wanted, whenever it wanted. By forcing it to compensate whatever it takes, the authors of the constitution created a consequence as check against that power. But what is just compensation?

Historically speaking, in most cases just compensation is determined by fair market value, or rather, whatever an economic expert determines most people would pay for the property. So if the government wishes to take my house in order to build a highway, they must pay me whatever a real estate expert says my house is worth on the market, and I cannot refuse this offer. On this understanding, I would have to accept a monetary sum, say \$500,000, if that is what the market forces say it is worth.

On the face of it, this would seem fair, and certainly a step up from government property seizures without any compensation, as has happened in the past. Yet it must be noted that the only compensation given is purely fungible, and completely ignores the other aspect of ownership. For what if my house had been in my family for generations, such that my role as its safe-keeper were dominant in my construction of my personhood? Surely, even “just compensation” on the liberal side of market value cost would not suffice. Like a wedding ring, the house has person-constitutive value that could not be replaced by fungible means. So what then?

If it is the case that there is a personhood-constitutive element in the property, the first step would be to determine to what degree. The problem with doing so is that this is highly subjective. What means the world to one person may mean nothing to another. However, there is one criterion that may help the law determine an objective measure of a subjective experience. Whatever the property may be, its importance in a person’s identity will be greater the more it serves as a foundation for coherence in the person’s person-narrative, and the greater this importance, the greater the compensation will need to be. As stated before, coherence is the symmetry that a man

may build between his own self-told narrative and those of his fellow persons within his society. Naturally, not all properties will have the same strength in building this symmetry, and, more importantly, other people may be brought in to testify to the importance of this particular property in the man's person-building activity. For, if it is true that our personhoods are constructed by others as much as we ourselves, on the Anthropological View the narratives of others are just as important.

In this way, abuse of the system can be avoided. It would be easy for a man, with such a subjectively-oriented law, to abuse the system, saying that a house was a family heirloom when in fact it meant nothing to him, in the hopes of getting more fungible compensation than just the market value. For example, perhaps a man is making a claim that the house he is currently living in has been in his home for generations, and that he feels it his purpose to continue the tradition of maintaining his family line on the property. It is part of his being, he says, it is part of his identity that he is a sort of guardian of the family heritage. On the Anthropological View, this attitude can exist in isolation, but it serves little strength in maintaining narrative cohesion unless there is a network of persons who corroborate this view, and address him as such. The onus of proving that his personhood was attached to the property would then be on the man, such that he would have to provide a network of others to give testimony on his behalf. Without it, there is little proof of symmetry, and his claim might be viewed as dubious.

Additionally, even if there is proof of symmetry between his view of himself and others, it must be demonstrated that the symmetry is strongly identity-constitutive. Just because a man claims that his identity rests on the ownership and maintenance of a property, doesn't mean that it is always true. Even if others can corroborate, how could one know the strength of this attribute in shaping his personhood? How can one tell if a property is weakly identity-constitutive versus strongly constitutive? The answer should lie in other aspects of this person's life. If being the

protector of family history is indeed one of the key attributes that shape this person's life, there should be evidence of this attribute in many places. If this attribute is strongly identity-constitutive, his other possessions, for example, should reflect this. It should not be the case that the house or the land is the only thing he owns that represents his family's history. If he truly understood himself as the protector of his family history, his other possessions would likely be heirlooms, photo albums, historical records, and other memory preservations from his family's past. Likewise, his actions would also likely reflect this aspect of his personhood, as he would probably take great care of this property by never letting it fall into disrepair. All of these factors could be brought to bear as evidence in court, or likewise argued against, should there be suspicion of lying.

It would be ineffective for additional fungible property to be offered up as compensation in cases where there is damage to one's personhood. In many cases, there may be no clear monetary amount that will suite the person whose property is being taken. In these cases, the focus of just compensation should avoid negotiation in terms of purely fungible property, for money is not the issue here. Instead, just compensation should focus on which attribute the person is assigning identity importance to, and understand how the damage being done to this attribute can be remedied. For example, if the person in question takes himself to be a protector of family history, and that history is tied to the property being claimed under eminent domain, this would be the identity-constitutive attribute to focus on. Taking the property would damage this attribute, so just compensation would have to cater to repairing its constitution. Rather than prescribe a repair, which is an order, a negotiation between the government and the property holder would occur, to ensure a dialectic process that involves the person in question. As the person constitutes himself as a protector of family history, it must be asked what other ways he can serve in this respect, without the property, or with only some of it. It may be that the government should take other measures to

ensure his identity is repaired, such as allowing him access to the property, not bulldozing everything on the property, paying for the relocation of buildings on the property, or any other number of myriad remedies.

The main point here is that the focus should not be on how much money a person would need to accept violence done against their personhood, but rather on acknowledging his personhood, and working to ensure the preservation of its coherence. For it must be remembered that person-constitutive narratives are not formed in isolation. They are born among a web of others, and doing disservice to one often means harming many of those connected to it. Though the fungible dimension of property will inevitably be involved at some point, it should not be the primary way that justice is understood. Doing so ignores the special dimensions of persons as subjective meaning-making agents, and instead tries to understand them as objects. This method, essentially cramming square blocks into round holes, will always produce some degree of violence to the personhoods of those involved in legal disputes, as it seeks to replace narrative coherence with a dollar amount. Only by refining our legal definition of persons to reflect their true nature, and enforcing the law with respect to its structures will a more just society emerge.

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