

Property without Personhood

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This Article is dedicated to the memory of Marc Poirier, an inspiring author and a generous human being.

The property as personhood theory provides a dominant justification for legal theory and has shaped numerous legal doctrines. Although the theory has been criticized by many scholars, one important concern has escaped scholars thus far. Property as personhood limits identity and confines growth. The concept allows little room for experimenting with personality and testing one's lifestyle. Access, a rising form of property use in the sharing economy, provides an important alternative. It allows for property use without personhood, emphasizing choice, flexibility and mobility. This Article presents this alternative and explains its significance to property legal theory contra the property as personhood theory. It also details the benefits and costs associated with property without personhood, and sketches out possible legal implications.

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INTRODUCTION

Property and personhood are intimately linked in modern legal thinking.¹ Controlling property through possession manifests individuality.² Possession contributes to self-development and manifests identity.³ Ownership connotes stability.⁴ Property is often justified based on its role in connecting a person to her past and future and communicating her identity.⁵ Our home, car, books, furniture, and even toys reflect who we are to our friends and neighbors.⁶

Yet, alongside this description, property as shaping or reflecting identity comes at a price. We stand the risk of fetishizing property and reducing our identity to mere items.⁷ We risk being judged by what we have rather than who we are.⁸ To these familiar critiques, this Article adds a neglected risk: property as personhood limits our options and

¹ ALAN BRUDNER, *THE UNITY OF THE COMMON LAW: STUDIES IN HEGELIAN JURISPRUDENCE* 34–38 (1995); JEREMY WALDRON, *THE RIGHT TO PRIVATE PROPERTY* 352 (reprinted 2002); Margaret J. Radin, *Property and Personhood*, 34 *STAN. L. REV.* 957 (1982); Malla Pollack, *Your Image is My Image: When Advertising Dedicates Trademarks to the Public Domain – With an Example from the Trademark Counterfeiting Act of 1984*, 14 *CARDOZO L. REV.* 1392, 1397–1406 (1993); Jeffery Douglas Jones, *Property as Personhood Revisited*, 1 *WAKE FOREST J.L. & POL'Y* 93 (2011); Jeanne Lorraine Schroeder, *Virgin Territory: Margaret Radin's Imagery of Personal Property as the Inviolable Feminine Body*, 79 *MINN. L. REV.* 55 (1994); Joan Williams, *The Rhetoric of Property*, 83 *IOWA L. REV.* 277 (1998). *Cf.* the analysis of cultural property in Marc R. Poirier, *The Cultural Property Claim Within the Same Sex Marriage Controversy*, 17 *COLUM. J. GENDER & L.* 343 (2008).

² G. W. F. HEGEL, *THE PHILOSOPHY OF RIGHT* (T.M. Knox trans., 1967); WALDRON, *supra* note 1. *See also* Dudley Knowles, *Hegel on Property and Personality*, 33 *PHIL. Q.* 45, 56–57 (1983).

³ Radin, *supra* note 1.

⁴ *See generally* Abraham Bell & Gideon Parchomovsky, *A Theory of Property*, 90 *CORNELL L. REV.* 531 (2005); *see also* Eduardo M. Peñalver & Sonia K. Katyal, *Property Outlaws*, 155 *U. PA. L. REV.* 102 (2007).

⁵ *See supra* note 1.

⁶ *Cf.* Shelly Kreiczer-Levy, *Consumption Property in the Sharing Economy*, 43 *PEPP. L. REV.* 61 (2015) [hereinafter Kreiczer-Levy, *Consumption Property*].

⁷ Radin, *supra* note 1, at 961 (“Property is damnation as well as salvation, object-fetishism as well as moral groundwork.”).

⁸ Compare the role of property as conveying relative status in Nestor M. Davidson, *Property and Relative Status*, 107 *MICH. L. REV.* 757, 768 (2008) (internal quotations omitted) (citing WILLIAM JAMES, *THE PRINCIPLES OF PSYCHOLOGY* 291–92 (2007) (1890)) (“[I]t is clear that between what a man calls *me* and what he simply calls mine the line is difficult to draw. We feel and act about certain things that are ours very much as we feel and act about ourselves . . .”).

confines our growth.⁹ The concept allows little room for experimenting with our personality and testing our lifestyle. This Article further argues that the sharing economy,¹⁰ and the access revolution it has inspired, create an alternative property use: *property without personhood*.

Access allows consumers to use assets on a casual basis instead of purchasing unnecessary objects.¹¹ People choose to access cars casually on an as-needed basis rather than own or lease a vehicle.¹² Some users would rather borrow or rent a drill and not buy one, only to use it twice a year. Indeed, among the reported advantages of access are saving costs and promoting sustainability.¹³ Moreover, consumer researchers have suggested that access symbolizes flexibility, mobility, and openness to change.¹⁴ Much like property as personhood, we may conclude, access is a choice that communicates the identity of the user. People who choose access do not seek stability, but prefer a more casual lifestyle.¹⁵ However, we should proceed with caution. It is easy to attribute personality traits to consumer choices.¹⁶ This view tends to

⁹ See *infra* Part I.B.4.

¹⁰ On the sharing economy, see RACHEL BOTSMAN & ROO ROGERS, *WHAT'S MINE IS YOURS: THE RISE OF COLLABORATIVE CONSUMPTION* (2010). See Alice Witt et al., *Regulating Ride-Sharing in the Peer Economy*, 1 COMM. RES. & PRAC. 174 (2015); Rashmi Dyal-Chand, *Regulating Sharing*, 90 TUL. L. REV. 241 (2015) [hereinafter Dyal-Chand, *Regulating Sharing*]; Daniel E. Rauch & David Schleicher, *Like Uber, But for Local Governmental Policy: The Future of Local Regulation of the "Sharing Economy"* (Geo. Mason L. & Econ., Working Paper No. 15-01, 2015); Sofia Ranchordás, *Does Sharing Mean Caring? Regulating Innovation in the Sharing Economy*, 16 MINN. J.L. SCI. & TECH. 413 (2015); Sarah Schindler, *Regulating the Underground: Secret Supper Clubs, Pop-Up Restaurants, and the Role of Law*, 82 U. CHI. L. REV. DIALOGUE 16 (2015); Kellen Zale, *Sharing Property*, U. COLO. L. REV. (forthcoming 2016). See also BETH BUCZYNSKI, *SHARING IS GOOD: HOW TO SAVE MONEY, TIME AND RESOURCES THROUGH COLLABORATIVE CONSUMPTION* (2013).

¹¹ Examples of access-based projects are TURO, www.turo.com (last visited Feb. 22, 2017); NEIGHBORGOODS, www.neighborgoods.net (last visited Feb. 22, 2017); and PEERBY, www.peerby.com (last visited Feb. 22, 2017).

¹² ZipCar and Car2Go offer customers short-term rentals cars owned by a commercial company. Turo is a peer-to-peer market that allows private owners to rent out their cars. See Jörg Firnkorn & Martin Müller, *Selling Mobility instead of Cars: New Business Strategies of Automakers and the Impact on Private Vehicle Holding*, 21 BUS. STRATEGY & ENV'T 264 (2011).

¹³ Cait Poyner Lamberton & Randall L. Rose, *When Is Ours Better Than Mine? A Framework for Understanding and Altering Participation in Commercial Sharing Systems*, 76 J. MARKETING 109 (2012).

¹⁴ Fleura Bardhi & Giana M. Eckhardt, *Access-Based Consumption: The Case of Car Sharing*, 39 J. CONSUMER RES. 881, 890 (2012).

¹⁵ Cf. Fleura Bardhi et al., *Liquid Relationship to Possessions*, 39 J. CONSUMER RES. 510 (2012).

¹⁶ See, e.g., Russell Belk, *You are what you can access: Sharing and collaborative consumption online*, 67 J. BUS. RES. 1595 (2014) [hereinafter Belk, *You are what you can*

be reductionist. The argument in this Article is more nuanced, namely that access allows users to experiment and push the boundaries of their engagements with property. When someone chooses to buy or lease an asset, s/he might consider the reflection of this choice on his/her identity or its perception by the community.¹⁷ On the other hand, if one only accesses this asset, there is no financial commitment, and there is more room to experiment.¹⁸ Toy lending libraries make a good example. When children do not buy a toy, but instead exchange toys frequently, boys are willing to try toys normally associated with girls.¹⁹ There is more openness to experimenting with property.²⁰ Ownership's stability is limiting, while access has a liberating component.²¹

This aspect of ownership and possession has yet to be considered by property legal theory. The claim is not an attack on ownership or the vision of property as personhood *per se*.²² The goal is to highlight alternatives. The existence of alternatives, facilitated by the rise of the sharing economy, allows users to evaluate their choices and question the role of property as personhood in their lives.²³ Moreover, stability and attachment become more meaningful when there is also an opportunity to experiment. For this reason, this Article argues that the law should protect access as an option, and the ability to choose it. At certain points in one's life, access will be the most effective lifestyle choice. People may desire flexibility and mobility when they are younger and prefer stability as they get older. In addition, some individuals will combine attachment and stability with a certain level of flexibility. The law should support these choices.

The Article proceeds as follows: Part I presents the importance of personhood and stability in property legal theory and its influence on legal doctrines. It will then consider the various critiques of the property as personhood approach. Part II depicts the rise of access, and considers the economic and cultural factors leading to its newfound prominence. It will also consider the role of access in allowing people to experiment with their identity and push the

access]; Russell Belk, *Possessions and the Extended Self*, 15 J. CONSUMER RES. 139 (1988) [hereinafter Belk, *Extended Self*].

¹⁷ See Davidson, *supra* note 8.

¹⁸ See *infra* notes 194–197 and accompanying text.

¹⁹ See Lucie K. Ozanne & Paul W. Ballantine, *Sharing as a form of anti-consumption? An examination of toy library users*, 9 J. CONSUMER BEHAV. 485, 489 (2010).

²⁰ *Id.*

²¹ See *infra* Part II.B.1.

²² See *infra* Part I.

²³ See *infra* Part II.

boundaries of their personhood, as well as the normative difficulties of choosing access. Part III introduces general recommendations for legal reform and explicates, in very broad strokes, the importance of legal support of property without personhood. Finally, Part IV offers concluding remarks.

I. PROPERTY, PERSONHOOD AND STABILITY

A. *The Approach*

The role of property in supporting, shaping or recognizing personhood begins with Hegel's theory of person.²⁴ Hegel's person starts as an abstract unit of will, which becomes a concrete individual by controlling an external object.²⁵ It is not property in itself but the control of property by a person that makes one an individual.²⁶ This argument does not distinguish among types of property: it is the control of an asset, recognized by the community, that supports personhood.²⁷ It is through the recognition of others that one recognizes herself.²⁸ The right-holder is understood as a sovereign, exerting power, and is thus constituted as a concrete being.²⁹ Moreover, according to Jeremy Waldron, engaging with property has an important temporal aspect, as "the actions that an individual performs on or with the object now may constrain or determine the actions that he can perform on or with it later."³⁰ Property embodies will by forcing the individual to become consistent and stable over time.³¹

The general concept of property's role in the achievement of personhood is twofold. First, people define themselves at least partly by what they have.³² When a person changes an object, structures or uses it, according to the claim, she cements her identity in the object. She has to acknowledge her responsibility when she changes the property, since the process is irreversible.³³ Second, objects tell us something about their owner: they reveal her likes and dislikes, her

²⁴ See HEGEL, *supra* note 2.

²⁵ BRUDNER, *supra* note 1.

²⁶ WALDRON, *supra* note 1.

²⁷ *Id.*

²⁸ See Knowles, *supra* note 2.

²⁹ See WALDRON, *supra* note 1, at 377–78.

³⁰ *Id.* at 373.

³¹ *Id.*

³² Cf. Davidson, *supra* note 8.

³³ See WALDRON, *supra* note 1, at 364–65.

tastes and preferences,³⁴ her status in life³⁵ or the choices she has made. Our property says something about us to the world and, at the same time, helps us shape an image of ourselves. For example, consider personal possessions, such as clothes, books, and furniture. These objects allow owners to project personality outwards and structure their own experiences inwards.

Margaret Radin has stressed in her seminal work the attachment of subject to an object. Possession of certain objects contributes to achieving self-development.³⁶ She distinguishes between fungible assets that do not warrant special protection and personhood property, which suggests “a hierarchy of entitlements: The more closely connected with personhood, the stronger the entitlement.”³⁷ However, the subjective assessment is accompanied by a normative judgment. A fully developed theory of property as personhood embodies a normative evaluation that separates the fetish from attachments. Indeed, Radin is well aware of the duality that lies in property relations. She explains:

Property is damnation as well as salvation, object-fetishism as well as moral groundwork. In this view, the relationship between the shoe fetishist and his shoe will not be respected like that between the spouse and her wedding ring. At the extreme, anyone who lives only for material objects is considered not to be a well-developed person, but rather to be lacking some important attribute of humanity.³⁸

The Radinian approach is not abstract; it engages with particular types of property that contribute to self-development. A key example is the home. According to Radin, the home is closely connected to personhood because it is the “scene of one’s history and future, one’s life and growth.”³⁹ The car is also part of the same list, as cars are “the repository of personal effects, and cars form the backdrop for carrying on private thoughts or intimate relationships, just as homes do.”⁴⁰

Radin’s perception of property is non-formalist. Her argument highlights the value of continuing possession as the foundation for personhood. She does not focus on formal property rights, but on people’s engagement with property. Personhood is not attributable to

³⁴ See Knowles, *supra* note 2, at 56–57.

³⁵ See Pollack, *supra* note 1, at 1397–1406.

³⁶ Radin, *supra* note 1.

³⁷ *Id.* at 986.

³⁸ *Id.* at 961.

³⁹ *Id.* at 992.

⁴⁰ *Id.* at 1001.

ownership *per se*, but to people's attachment to objects. Accordingly, she argues that housing should not be treated as an ordinary market commodity.⁴¹ Occupational rights of tenants are to be characterized as personhood property, and the ownership rights of landlords are fungible property.⁴²

The property as personhood approach has proven remarkably influential in American property law. It is not only central to the study of modern property theory,⁴³ but has also played a leading role in shaping legal doctrines. Based on the personhood interest in the home, Radin and others argue for strong protection of privacy rights in residential property,⁴⁴ and in favor of rent control protection.⁴⁵ In addition, different scholars advocate for the protection of the home from involuntary dislocation, relying on the role of the home in building identity and well-being.⁴⁶ The personhood approach has been supported by empirical work. The home, according to these studies, creates a sense of belonging, permanence, and continuity.⁴⁷ It allows the individual to know where she is located.⁴⁸ Alongside its individual meanings, the home is also a locus of relationships. It

⁴¹ Margaret Jane Radin, *Residential Rent Control*, 15 PHIL. & PUB. AFF. 350, 351 (1986) [hereinafter Radin, *Residential Rent Control*].

⁴² *Id.* at 960, 993.

⁴³ GREGORY S. ALEXANDER & EDUARDO M. PEÑALVER, AN INTRODUCTION TO PROPERTY THEORY 57–69 (2012); GREGORY S. ALEXANDER & HANCOH DAGAN, PROPERTIES OF PROPERTY (2012); see STEPHEN R. MUNZER, A THEORY OF PROPERTY 82 (1990); Nestor M. Davidson, *Property's Morale*, 110 MICH. L. REV. 437, 447–48 (2011).

⁴⁴ Radin, *supra* note 1, at 996–1002; Arianna Kennedy Kelly, *The Costs of the Fourth Amendment: Home Searches and Takings Law*, 28 MISS. C. L. REV. 1, 3 (2009). See discussion and critique in Stephanie M. Stern, *The Inviolable Home: Housing Exceptionalism and the Fourth Amendment*, 95 CORNELL L. REV. 905 (2010) [hereinafter Stern, *The Inviolable Home*]. Cf. D. Benjamin Barros, *Home as a Legal Concept*, 46 SANTA CLARA L. REV. 256, 259 (2006).

⁴⁵ Radin, *Residential Rent Control*, *supra* note 41.

⁴⁶ For a general critique, see Stephanie M. Stern, *Residential Protectionism and the Legal Mythology of Home*, 107 MICH. L. REV. 1093, 1100 (2009) [hereinafter Stern, *Residential Protectionism*]. See also Megan J. Ballard, *Legal Protections for Home Dwellers: Caulking the Cracks to Preserve Occupancy*, 56 SYRACUSE L. REV. 277, 285 (2006) (defining the home as a space for developing identity); Lorna Fox, *Re-Possessing "Home": A Re-Analysis of Gender, Homeownership and Debtor Default for Feminist Legal Theory*, 14 WM. & MARY J. WOMEN & L. 423, 434 (2008) [hereinafter Fox, *Re-Possessing Home*] ("The impact of losing one's home on an individual occupier's quality of life, social and identity status, personal and family relationships, and for his or her emotional, psychological, and physical health and well-being have been well-established in housing and health literature."); Lorna Fox, *The Meaning of Home: A Chimerical Concept or a Legal Challenge?*, 29 J.L. SOC'Y 580 (2002) [hereinafter Fox, *The Meaning of Home*].

⁴⁷ Fox, *The Meaning of Home*, *supra* note 46; Judith Sixsmith, *The Meaning of Home: an Exploratory Study of Environmental Experience*, 6 J. ENVTL. PSYCH. 281 (1986).

⁴⁸ Fox, *The Meaning of Home*, *supra* note 46, at 593.

functions as a *social and cultural unit* of interaction. The home enables interactions with others, either as guests, neighbors, the people one lives with,⁴⁹ or even pets.⁵⁰

Furthermore, intellectual property scholars have also relied on personhood theories to justify the protection of intellectual property as a property institution,⁵¹ and to support the moral standing of copyright.⁵² For example, Roberta Kwall argues that artistic work reflects the author's meaning and "an embodiment of her message."⁵³

Other notable examples include the ongoing discussion regarding property interests in the human body,⁵⁴ and the conceptualization of inheritance and succession that stresses the importance of preserving intergenerational connections.⁵⁵

To sum up, personhood theory has played a key role in the analysis of various legal problems. Its influence on American legal thought is significant. Yet property's role in supporting long-term goals for individuals reaches beyond attachment to possessions. Property connotes stability. Abraham Bell and Gideon Parchomovsky argue that property is a mechanism for protecting stable ownership value.⁵⁶ Owner's control and the right to exclude preserve the owner's idiosyncratic values and bargaining position.⁵⁷ Property law achieves

⁴⁹ Sixsmith, *supra* note 47; Sandy G. Smith, *The Essential Qualities of a Home*, 14 J. ENVTL. PSYCHOL. 31, 39 (1994). See also Shelley Mallett, *Understanding Home: A Critical Review of the Literature*, 52 SOC. REV. 62, 68 (2004).

⁵⁰ Smith, *supra* note 49, at 37.

⁵¹ Justin Hughes, *The Philosophy of Intellectual Property*, 77 GEO. L.J. 287 (1988).

⁵² Ilhyung Lee, *Toward an American Moral Rights in Copyright*, 58 WASH. & LEE L. REV. 795, 845 (2001) ("Conceptually, the dignity-based right of integrity is a *personal* right, one that demands respect for the author's person (and the person's artist), her *personhood*, and *inviolate personality*, as reflected in her creation. All of these interests must be said to terminate with the death of the author."); Jeanne C. Fromer, *Expressive Incentives in Intellectual Property*, 98 VA. L. REV. 1745, 1746 (2012) ("Another group of scholars reasons instead that creators deserve moral rights in their works . . . because the works are important components of creators' personhoods (the aspects of creators' personalities infused into and bound up in their works).").

⁵³ ROBERTA ROSENTHAL K WALL, *THE SOUL OF CREATIVITY: FORGING A MORAL RIGHTS LAW FOR THE UNITED STATES* 25 (2010).

⁵⁴ Radhika Rao, *Property, Privacy and the Human Body*, 80 B.U. L. REV. 359 (2000); Michelle Bourianoff Bray, *Personalizing Personality: Toward a Property Right in Human Bodies*, 69 TEX. L. REV. 209 (1990); Margaret J. Radin, *Market-Inalienability*, 100 HARV. L. REV. 1849 (1987).

⁵⁵ Shelly Kreiczer-Levy, *Can One Inherit a Home as Opposed to a House? A Normative and Comparative Perspective*, 31 ARIZ. J. INT'L & COMP. L. 735 (2014); Karen J. Sneddon, *The Will as Personal Narrative*, 20 ELDER L.J. 355 (2013).

⁵⁶ Bell & Parchomovsky, *supra* note 4.

⁵⁷ *Id.*

stability for owners and for third parties.⁵⁸ To conclude, then, property connects people to their community by providing a means for self-identification, growth and stability. However, as we shall see, this important role limits the possibility of changing, experimenting and living a flexible lifestyle.

B. Personhood's Critiques

Although the property as personhood approach is undoubtedly central, it has also drawn significant criticism. These critiques are diverse and range from disputing its core rationale⁵⁹ to concerns over its social implications.⁶⁰ This section reviews the most notable objections and then adds a new concern regarding the growth and development of identity.⁶¹

1. Psychological Validity

Stephanie Stern questions the validity of the personhood claim and challenges the endorsement of its insights.⁶² She claims there is a panoply of laws designed to protect or increase the likelihood “that an owner can retain her residential real estate despite creditor claims, government eminent domain action, or market fluctuations.”⁶³ She critically refers to this array of protections as “residential protectionism.”⁶⁴ Stern disputes the moral status of these protections, forcefully arguing that there is little evidence from psychological research to support the argument that the home constructs identity.⁶⁵ According to her survey, evidence show that personality traits, values, social role and the body are more connected to the self than possessions.⁶⁶ Moreover, she reclassifies property and maintains that the home is less connected to the self than diaries, pictures, old letters and heirlooms.⁶⁷ This finding does not disprove the relevance of the approach, but deflects attention away from the home. In addition, Stern argues that people do not always prefer personhood property to

⁵⁸ *Id.* See also Peñalver & Katyal, *supra* note 4 (arguing that property law achieves stability but highlighting the role of lawbreakers in undermining stability and fostering the evolution of property).

⁵⁹ See *infra* Part II.B.1.

⁶⁰ See *infra* Parts I.B.2–I.B.4.

⁶¹ See *infra* Part I.B.4.

⁶² Stern, *Residential Protectionism*, *supra* note 46.

⁶³ *Id.* at 1100.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.* at 1110.

⁶⁷ *Id.* at 1111.

fungible property such as money.⁶⁸ Finally, Stern argues that property does not construct identity but rather expresses identity and even maintains it.⁶⁹ Indeed, “[h]omes and other possessions express attitudes, values, personal history, ethnic identity, and self-perceived status, or bolster an image of self we wish to convey to others.”⁷⁰ Yet this reflective function does not justify legal protection. Considering the social costs,⁷¹ Stern concludes that ongoing control over the home is not a prerequisite for psychological flourishing.⁷²

This argument does not negate the personhood approach altogether, but stresses the dynamic nature of attachment.⁷³ It seeks to overturn the claims against displacement. It maintains that people change and replace property frequently and the home cannot be seen as a rigid and sacred category. Jeffery Douglas Jones reinforces this conclusion from a different perspective. He argues that attachment to possession is so abundant that there is no need of legal possession.⁷⁴ Everything is personal property, and things kept and things lost are part of the circle of life.⁷⁵

2. Pragmatism and Values

Stephen Schnably criticizes Radin’s pragmatist focus on consensus as the foundation for property as personhood.⁷⁶ He makes two important claims. First, he argues that there is never any true consensus.⁷⁷ A search for consensus merely obscures relevant controversies. Radin’s assertion that the home allows for self-constitution ignores the historical context of the home as a middle-class suburban artifact.⁷⁸ According to Schnably, this perception rejects the importance of the public sphere in favor of private life, constitutes women’s role as homemakers, and excludes non-nuclear

⁶⁸ Stern, *Residential Protectionism*, *supra* note 46, at 1112.

⁶⁹ *Id.*

⁷⁰ *Id.* at 1113.

⁷¹ *Id.* at 1095.

⁷² *Id.* at 1096.

⁷³ *Id.* at 1114.

⁷⁴ See Jeffery Douglas Jones, *Property as Personhood Revisited*, 1 WAKE FOREST J.L. & POL’Y 93 (2011).

⁷⁵ *Id.*

⁷⁶ Stephen J. Schnably, *Property and Pragmatism: A Critique of Radin’s Theory of Property and Personhood*, 45 STAN. L. REV. 347, 373–74 (1993). Cf. Richard Thompson Ford, *Facts and Values in Pragmatism and Personhood: A Review of Margaret Jane Radin’s Reinterpreting Property*, 48 STAN. L. REV. 217 (1995).

⁷⁷ Schnably, *supra* note 76, at 363.

⁷⁸ *Id.* at 365.

families.⁷⁹

His second claim is that it is impossible to follow a consensus without constituting it at the same time.⁸⁰ Indeed, “what we as a society choose to recognize and protect as personal inevitably affects subsequent choices by individuals of how and where to embody themselves.”⁸¹ For this reason

[t]he ideal of the home is not one simply constructed by individuals, but is one that has been actively fostered by the state and other ‘private’ actors wielding significant social power . . . [s]ince the law itself often shapes consensus, purporting to rely on consensus to shape the law is a dangerous exercise in circularity.⁸²

While Stern’s critique focused on the validity of Radin’s argument, Schnably is more concerned with its normative strength. It is a meta-critique about legal theory’s struggle to grapple with social conventions and ideals. More importantly, it provides a skeptical take on pragmatism and universalism.⁸³ His argument directs our attention to the power embedded in social structures, and to the winners and losers of current property regimes.

3. Relative Status

The role of property as reflecting and shaping identity is intricate. If property communicates a vision of the self, then it becomes a vehicle for communicating messages of status, and in particular relative status.⁸⁴ Attachment to material possessions draws, at least partly, on comparison to others.⁸⁵ Property thus marks and reinforces economic, social and cultural hierarchies.⁸⁶ A comparison to other people “may over-incentivize the production of, or investment in, status-related resources.”⁸⁷ This potential interrelation between personhood and possessions may fuel competitive consumption.⁸⁸ Although it does not fall within the category of property fetish,⁸⁹ communicating status is

⁷⁹ *Id.* at 365–66.

⁸⁰ *Id.* at 363.

⁸¹ *Id.* at 371–72.

⁸² *Id.* at 374–75.

⁸³ *Cf.* Margaret Jane Radin, *Lacking a Transformative Social Theory: A Response*, 45 STAN. L. REV. 409 (1993).

⁸⁴ *See* Davidson, *supra* note 8.

⁸⁵ *See id.*

⁸⁶ *Id.* at 760–61.

⁸⁷ *Id.* at 762.

⁸⁸ *Id.* at 799–800.

⁸⁹ Radin, *supra* note 1, at 961.

reductionist. Instead of bolstering self-development, it has the potential to distort identity and personality.⁹⁰ The identity-signaling function of property has given rise to a countermovement, supporting ecological and anti-consumerist motivations that steer away from ownership as a source of personal meaning.⁹¹ Because relative status is tied up with consumption, it drives an anti-consumerist rebuttal, which manifests itself in, among other things, the rise of access.⁹²

4. Growth and Change

This Article identifies an additional risk that the conflation of property and identity creates. Attachment to possessions is inherently restrictive. It connects the individual to a particular setting, geographically and personally, making it harder for the individual to move and change environments. The more property people have, the more tied down they are to a particular time, place and community.⁹³ Because ownership is associated with stability and security,⁹⁴ it might result in limiting choices.

The ability to change one's life story, to develop goals and adapt new points of view is an essential component of the liberal understanding of autonomy.⁹⁵ Property as personhood and stability creates barriers to change. In order to move, one needs to sell property and buy new things. Of course, property can be sold and bought, as exchange is the foundation of our economic system.⁹⁶ Yet transactions are costly and cumbersome, and offer less flexibility than

⁹⁰ Davidson, *supra* note 8, at 762.

⁹¹ See KIM HUMPHERY, EXCESS: ANTI-CONSUMERISM IN THE WEST (2013).

⁹² See *id.*

⁹³ See Eduardo M. Peñalver, *Land Virtues*, 94 CORNELL L. REV. 821 (2009).

⁹⁴ Lynda Cheshire et al., *The Politics of Housing Consumption: Renters as Flawed Consumers on a Master Planned Estate*, 47 URB. STUD. 2597, 2599 (2010) (suggesting that ownership promotes ontological security). Cf. Shelley Mallett, *Understanding Home: A Critical Review of the Literature*, 52 SOC. REV. 62, 66 (2004) (arguing that governments promote homeownership as creating stability in order to shift the burden of welfare to the family). It has similarly been suggested that home ownership ideology promotes a property-based citizenship, privileging home ownership over public and rental housing. See RICHARD RONALD, THE IDEOLOGY OF HOME OWNERSHIP: HOMEWORKER SOCIETIES AND THE ROLE OF HOUSING (2008).

⁹⁵ WENDY DONNER, THE LIBERAL SELF: JOHN STUART MILL'S MORAL AND POLITICAL PHILOSOPHY 92–94, 118 (1991); JOHN STUART MILL, ON LIBERTY 10 (David Spitz ed., 1975) (1859); John L. Hill, *The Five Faces of Freedom in American Political and Constitutional Thought*, 45 B.C. L. REV. 499, 570–71 (2004); Anthony T. Kronman, *Paternalism and the Law of Contract*, 92 YALE L.J. 763, 780–83 (1983).

⁹⁶ Compare Harold Demsetz, *The Exchange and Enforcement of Property Rights*, 7 J.L. & ECON. 11 (1964); GARY D. LIBECAP, CONTRACTING FOR PROPERTY RIGHTS (1989), with BRUDNER, *supra* note 1, at 56 (explaining that according to Hegel, exchange involves the recognition of the other's personhood).

nonmaterial assets.⁹⁷ Financial means are different from material possession because they are culturally understood as representing liquidity and choice.⁹⁸

This critique will be at the focus of this Article, along with the rise of access in the sharing economy. However, the Article does not challenge the cultural, social and economic validity of property as personhood. On the contrary, it is because property is understood as an expression of the self that it becomes limiting. Recognizing access as a form of property use will allow individuals to experiment with their preferences and narrow the role of property in constructing or projecting their identity.

Moreover, stability and coherence are important traits of property, but they contribute to a certain lifestyle and relational choices. Mobility and flexibility are alternative choices that require a different mode of property engagement. These two forms of use can—and should—coexist to provide an array of choices for individuals.

II. THE RISE OF ACCESS

A. Access: Definition and Background

Access is a form of casual use that is detached from the asset itself.⁹⁹ Access breaks the connection between use and possession. The use value of property, its function, is produced without committing to continued use of one particular article.¹⁰⁰ This definition of access is different from two kindred uses of the term. First, Jeremy Rifkin uses *access* to refer to the structure of a new business model in his influential book, *The Age of Access*.¹⁰¹ Rifkin argues that ownership of market goods

⁹⁷ Cf. Robert Cooter, *The Cost of Coase*, 11 J. LEGAL STUD. 1, 17–24 (1982).

⁹⁸ Christine Desan, *Coin Reconsidered: The Political Alchemy of Commodity Money*, 11 THEORETICAL INQUIRIES L. 361 (2010) (discussing liquidity as the unique quality that sets money apart from a commodity); VIVIANA A. ZELIZER, *THE SOCIAL MEANING OF MONEY* 149 (1997) (discussing the liberating power of money to inspire choice).

⁹⁹ Shelly Kreiczer-Levy, *Share, Own, Access* (Feb. 2016) (unpublished manuscript) (on file with author) [hereinafter Kreiczer-Levy, *Share, Own, Access*]; see also *supra* note 11.

¹⁰⁰ See Karl Marx, *The Grundrisse*, in THE MARX ENGELS READER 221, 256–57 (Robert C. Tucker ed., 2d ed. 1978). See also Rashmi Dyal-Chand, *Useless Property*, 32 CARDOZO L. REV. 1369 (2011) [hereinafter Dyal-Chand, *Useless Property*]; Peñalver, *Land Virtues*, *supra* note 93; Lee Ann Fennell, *Homeownership 2.0*, 102 NW. U. L. REV. 1047 (2008) (discussing homeownership as consumption and investment). Cf. Avihay Dorfman, *The Normativity of the Private Ownership Form*, 75 MOD. L. REV. 981, 983 (2012) (“[W]hile the owner holds the (arguably) legitimate right to use her object, to the exclusion of others, she can also exclude simply for the sake of excluding others with no necessary reference to use, even potential use, at all.”).

¹⁰¹ JEREMY RIFKIN, *THE AGE OF ACCESS: THE NEW CULTURE OF HYPERCAPITALISM*,

has become outdated in the new network economy: “markets are making ways for networks and ownership is steadily being replaced by access.”¹⁰² Exchange of ownership cannot adapt to rapid technological advances, information flows and human creativity. Short-term access through lease, rent, subscriptions, or memberships is flexible but also creates attachments to commercial brands.¹⁰³ When a dealer sells a car to a buyer, their relationship is limited; it often ends with the sale. If the client gains access to the car in the form of a lease, the relationship is ongoing.¹⁰⁴ It becomes what Rifkin terms “a commodifying relationship.”¹⁰⁵ Consequently, “[w]hen everyone is embedded in commercial networks of one sort or another and in continuous association by way of paid leases, partnerships, subscriptions and retainer fees, all time is commercial time.”¹⁰⁶

Nonetheless, Rifkin discusses a possibly perpetual relationship between a commercial company and a consumer.¹⁰⁷ In many ways, access as identified by Rifkin almost fifteen years ago essentially takes the form of long-term engagement with assets and brands that lacks a formal ownership component.¹⁰⁸ This access also lacks the consumer’s control over the asset, making consumers more vulnerable and less powerful.¹⁰⁹ Access as depicted in this Article relates to more casual and detached relations to property. It mostly concerns individuals seeking either to lower the costs of consumption or to make use of excess capacity.¹¹⁰

Second, this definition of access is also distinguishable from the familiar understanding of open-access resources. Open-access concerns resources that can be claimed and used by everyone.¹¹¹ Open-access resources have important social and environmental value.¹¹²

WHERE ALL OF LIFE IS A PAID-FOR EXPERIENCE (2000).

¹⁰² *Id.* at 4.

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 10.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ RIFKIN, *supra* note 101, at 10.

¹⁰⁸ *Id.* at 98 (discussing the new economy’s goal, which is not to sell the product to many clients but to sell many products to one client).

¹⁰⁹ *Id.* at 6.

¹¹⁰ See, e.g., Gabriel H. Mugar, *A Practice Perspective on Websites for the Sharing Economy*, ICONF. PROC. 738 (2012); Yochai Benkler, *Sharing Nicely: On Shareable Goods and the Emergence of Sharing as a Modality of Economic Production*, 114 YALE L.J. 273 (2004).

¹¹¹ Peter Ekbäck, *Private, Common, and Open Access Property Rights in Land – An Investigation of Economic Principles and Legislation*, 6 NORDIC J. SURVEYING & REAL EST. RES. 57, 59 (2009).

¹¹² Daniel Mishori, *Reclaiming Commons Rights: Resources, Public Ownership and the*

Certain resources, such as beaches and open spaces, are “inherently public.”¹¹³ Open-access to public resources is very different from the option of access that this Article analyzes. Access allows individuals to constantly replace assets, use them casually, and move on to the next object. In contrast, open-access concerns the use of one common pool of resources¹¹⁴ which typically are not easily distributed to private individuals, such as beaches, open spaces, water, and so on.¹¹⁵ The literature references public access to public or quasi-public resources, not everyday goods.¹¹⁶ Access as a form of flexibility and choice, as portrayed in this Article, is not about regulating public resources. Rather, it is about the individual’s use and enjoyment of personal assets.

Access as a distinct form of casual use is rooted in two important developments: the sharing economy and global nomadism.¹¹⁷ The sharing economy is a modern form of consumption based on collaboration in the use, production, or creation of products and services.¹¹⁸ Rauch & Schleicher define it as a “stark reduction in transaction costs that allows for radically disaggregated consumption.”¹¹⁹ The sharing economy is actually an umbrella term that covers a wide range of transactions, some of them directly associated with access. Other sharing economy transactions are not about access, but serve as a background to changing consumption modes.

Rights of Future Generations, 8 L. & ETHICS HUM. RTS. 335, 353 (2014) (“[I]t is costly to exclude individuals from using the good [and] the benefits consumed by one individual subtract from the benefits available to others.”).

¹¹³ See Carol M. Rose, *The Comedy of the Commons: Custom, Commerce, and Inherently Public Property*, 53 U. CHI. L. REV. 711 (1986).

¹¹⁴ Cf. Thráinn Eggertsson, *Open Access Versus Common Property*, in PROPERTY RIGHTS: COOPERATION, CONFLICT, AND LAW 73 (Terry L. Anderson & Fred S. McChesney eds., 2003); S.V. Ciriacy-Wantrup & Richard C. Bishop, ‘Common Property’ as a Concept in *Natural Resources Policy*, 15 NAT. RESOURCES J. 713 (1975).

¹¹⁵ Rose, *supra* note 113.

¹¹⁶ See *id.*

¹¹⁷ For the sharing economy see *infra* notes 118–134 and accompanying text; for global nomadism see *infra* notes 138–140 and accompanying text.

¹¹⁸ This review is based in part on Kreiczler-Levy, Share, Own, Access, *supra* note 99. BOTSMAN & ROGERS, *supra* note 10; BUCZYNSKI, *supra* note 10; Danielle Sacks, *The Sharing Economy*, FAST CO. (Apr. 18, 2011, 1:05 AM), <http://www.fastcompany.com/1747551/sharing-economy>; Timm Teubner, *Thoughts on the Sharing Economy*, RESEARCHGATE, https://www.researchgate.net/publication/299812647_Trust_in_the_Sharing_Economy (last visited Feb. 22, 2017); Juliet Schor, *Debating the Sharing Economy*, GREAT TRANSITION INITIATIVE (Oct. 2014), <http://www.greattransition.org/publication/debating-the-sharing-economy>.

¹¹⁹ Rauch & Schleicher, *supra* note 10.

First, the sharing economy allows people to make better use of their own property. There are certain types of goods that are designed for private consumption but hold an unutilized excess capacity.¹²⁰ Cars, bikes, personal possessions,¹²¹ and even a spare room in the home,¹²² are good examples. The sharing economy allows owners, using new forms of peer-to-peer markets, to rent out assets such as a car, their home, a bicycle, or even pets to strangers.¹²³ *Second*, the sharing economy also includes cooperative projects such as bike-sharing and car-sharing.¹²⁴ Bike-sharing is becoming increasingly popular worldwide,¹²⁵ as a healthy way to travel that does not require owning a bike.¹²⁶ Providers of bikes for access include governments, quasi-governmental transport agencies, universities, non-profits, and for-

¹²⁰ Benkler, *supra* note 110.

¹²¹ Yuliya Chernova, *Peer-to-Peer Car Rental Startup RelayRides Hopes to Escape Silicon Valley Bubble*, VENTURE CAPITAL DISPATCH (June 14, 2014), <http://blogs.wsj.com/venturecapital/2014/06/24/peer-to-peer-car-rental-startup-relayrides-hopes-to-escape-silicon-valley-bubble/>; *How NeighborGoods Works*, VIMEO (2010), <https://vimeo.com/10659908> (last visited Feb. 22, 2017).

¹²² Airbnb is a site that allows people to rent out houses for short-term periods. Tomio Geron, *Airbnb And The Unstoppable Rise Of The Share Economy*, FORBES (Feb. 11, 2013), <http://www.forbes.com/sites/tomiogeron/2013/01/23/airbnb-and-the-unstoppable-rise-of-the-share-economy/>; Tapio Ikkala & Airi Lampinen, *Defining the Price of Hospitality: Networked Hospitality Exchange via Airbnb*, CSCW COMPANION 173 (2014). On the regulation of Airbnb, see *Airbnb in the City*, OFF. ATT'Y GEN. ST. N.Y., <http://www.ag.ny.gov/pdfs/AIRBNB%20REPORT.pdf> (last visited Feb. 22, 2017); Julie Bort, *Airbnb: 124 New York Airbnb Hosts "May Be Flagrantly Misusing Our Platform"*, BUS. INSIDER (Aug. 22, 2014), <http://www.businessinsider.com/airbnb-gives-ag-info-on-124-ny-hosts-2014-8>. See also Lauren Frayer, *Uber, Airbnb Under Attack In Spain As Old And New Economies Clash*, NPR ONLINE (July 29, 2014), <http://www.npr.org/blogs/parallels/2014/07/29/327796899/uber-airbnbunder-attack-in-spain-as-old-and-new-economy-clash>; Brad Tuttle, *7 Cities Where the Sharing Economy Is Freshly Under Attack*, TIME.COM (June 9, 2014), <http://time.com/money/2800742/uber-lyft-airbnb-sharingeconomy-city-regulation>; Brian Summers, *Airbnb's short-term rentals break law in Los Angeles, says city memo*, DAILY BREEZE (Mar. 21, 2014), <http://www.dailybreeze.com/business/20140321/airbnbs-short-term-rentals-break-law-in-los-angeles-says-city-memo>.

¹²³ Peer-to-peer (P2P) markets are markets where trade occurs between peers. See, e.g., Anindya Ghose, Panagiotis G. Ipeirotis & Arun Sundararajan, *Reputation Premiums in Peer-to-Peer Markets: Analyzing Textual Feedback and Network Structure*, in P2PECON '05: PROCEEDINGS OF THE 2005 ACM SIGCOMM WORKSHOP ON ECONOMICS OF PEER-TO-PEER SYSTEMS 150–54 (2005), <http://dl.acm.org/citation.cfm?id=1080207>.

¹²⁴ There have been several attempts at bike sharing since the 1960s, but most have proven unsuccessful in the long-run, until the new "third generation" bike sharing. See Paul DeMaio, *Bike-sharing: History, Impacts, Models of Provision, and Future*, 12 J. PUB. TRANSP. 41 (2009).

¹²⁵ Oliver O'Brien et al., *Mining Bicycle Sharing Data for Generating Insights into Sustainable Transport Systems*, 34 J. TRANSPORT GEOGRAPHY 262, 262 (2014).

¹²⁶ *Id.* at 262.

profits.¹²⁷ Users include commuters, leisure users who bicycle for fun and exercise, and tourists.¹²⁸ A *third* type of sharing economy transactions includes lending, bartering, and swapping.¹²⁹ These transactions do not include access but instead are about an exchange of ownership. *Fourth*, the sharing economy involves neighborhood-based cooperative endeavors designed to foster trust and cooperation.¹³⁰ These include, for example, tool, toy, and clothing libraries¹³¹ and community gardens.¹³² *Fifth*, many companies now offer services that are based on use and access rather than ownership and possession.¹³³ A *sixth* example of the sharing economy includes people who share their time, skills, and expertise.¹³⁴

All these transactions are becoming prevalent in everyday life. Notable consumer researchers argue that the rise of collaborative consumption has led to a decline in the symbolic significance of ownership,¹³⁵ and that access-based consumption allows flexibility and adaptability, creating a different relationship with possession that is

¹²⁷ DeMaio, *supra* note 124, at 45.

¹²⁸ O'Brien et al., *supra* note 125, at 262, 267, 269.

¹²⁹ See generally Juho Hamari et al., *The Sharing Economy: Why People Participate in Collaborative Consumption*, 67 J. ASS'N INFO. SCI. & TECH. 2047 (forthcoming 2016).

¹³⁰ Christopher D. Cook, *Seed Libraries Fight for the Right to Share*, SHAREABLE (Feb. 11, 2015), <http://www.shareable.net/blog/seed-libraries-fight-for-the-right-to-share>; Cat Johnson, *The Tool Library Movement Gains Steam*, SHAREABLE (Jan. 29, 2014), <http://www.shareable.net/blog/the-tool-library-movement-gains-steam>.

¹³¹ Johnson, *supra* note 130 (“[N]o longer just places to get a drill when you need one . . . [but rather] neighborhood hubs offering classes, community building spaces, workshops and a variety of tools ranging from belt sanders to lawnmowers and more.”).

¹³² Efrat Eizenberg, *The Changing Meaning of Community Space: Two Models of NGO Management of Community Gardens in New York City*, 36 INT'L J. URB. & REG. RES. 106 (2012); Jane E. Schukoske, *Community Development Through Gardening: State and Local Policies Transforming Urban Open Space*, 3 N.Y.U. J. LEGIS. & PUB. POL'Y 351 (2000); Joan Twiss et al., *Community Gardens: Lessons Learned From California Healthy Cities and Communities*, 93 AM. J. PUB. HEALTH 1435 (2003).

¹³³ Belk, *You are what you can access*, *supra* note 16. This is particularly common in the car-sharing business. Automobile manufacturers are buying or starting car-sharing enterprises such as Zipcar (Avis) and Car2Go (Benz). See also Jörg Firnkorn & Martin Müller, *Selling Mobility Instead of Cars: New Business Strategies of Automakers and the Impact on Private Vehicle Holding*, 21 BUS. STRATEGY & ENV'T 264 (2012) (indicating that the number of private vehicles is dropping due to consumer preferences).

¹³⁴ See, e.g., Catherine Lee Rassman, *Regulating Rideshare Without Stifling Innovation: Examining the Drivers, the Insurance “Gap,” and Why Pennsylvania Should Get on Board*, 15 PITTSBURGH J. TECH. L. & POL'Y 81 (2014); Janelle Orsi, *The Sharing Economy Just Got Real*, SHAREABLE (Sept. 16, 2013), http://www.mayorsinnovation.org/images/upload/s/pdf/3.The_Sharing_Economy_Just_Got_Real.pdf; Brad Stone, *My Life as a TaskRabbit*, BLOOMBERG (Sept. 13, 2012, 4:37 PM), <https://www.bloomberg.com/news/articles/2012-09-13/my-life-as-a-taskrabbit>.

¹³⁵ Bardhi & Eckhardt, *supra* note 14; Belk, *You are what you can access*, *supra* note 16.

termed “liquid.”¹³⁶

Global nomadism, the voluntary mobility of elite workers that is “characterized by serial relocations, frequent short-term international travel, and deterritorialization,”¹³⁷ has also contributed to the decline of ownership and attachment to possessions.¹³⁸ Global mobility has become a common phenomenon in a globalized world, which builds on the demand for skilled labor in the global economy.¹³⁹ Fleura Bardhi, Giana Eckhardt, and Eric Arnould found global nomads to have a liquid relationship to possessions that is detached, flexible, temporal, and situational.¹⁴⁰

Globalization and changing consumption modes serve as the background to the rise of access. This Article focuses on three performances of access in contemporary society: peer-to-peer access, community lending libraries, and a mobility-based flexible lifestyle.

Peer-to-peer markets allow owners to rent out personal property to casual users.¹⁴¹ Users choose to access instead of own. Many types of property are being rented out, from personal vehicles¹⁴² to bikes, ladders, and lawnmowers.¹⁴³ One can even casually spend time with a dog via *BorrowMyDoggy*; users can therefore choose to use John’s car today and Jane’s car next week.¹⁴⁴

A more communal form of access to property is found in community lending libraries. For example, toy lending libraries allow children and their parents to borrow toys, games, and puzzles.¹⁴⁵ Instead of buying toys, a child exchanges toys every few weeks.¹⁴⁶ Parents typically assist the librarian and enjoy joint activities.¹⁴⁷

Tool libraries allow people to borrow various tools, and occasionally serve as a common working space.¹⁴⁸ Clothing libraries

¹³⁶ Bardhi et al., *supra* note 15.

¹³⁷ Bardhi et al., *supra* note 15, at 2.

¹³⁸ *Id.*

¹³⁹ Aihwa Ong, *Please Stay: Pied-a-Terre Subjects in the Megacity*, 11 CITIZENSHIP STUD. 83 (2007); JOHN URRY, MOBILITIES (2007).

¹⁴⁰ Bardhi et al., *supra* note 15, at 2.

¹⁴¹ See Ghose, *supra* note 123.

¹⁴² See GET AROUND INC., <https://www.getaround.com> (last visited Jan. 4, 2017); JUSTSHAREIT, www.justshareit.com (last visited Jan. 4, 2017); TURO, <https://www.turo.com> (last visited Jan. 4, 2017).

¹⁴³ See NEIGHBORGOODS, www.neighborgoods.net (last visited Jan. 4, 2017).

¹⁴⁴ BORROW MY DOGGY, www.borrowmydoggy.com (last visited Jan. 8, 2017).

¹⁴⁵ Ozanne & Ballantine, *supra* note 19, at 488.

¹⁴⁶ *Id.*

¹⁴⁷ See, e.g., KARORI TOY LIBRARY, <http://www.karoritoylibrary.org.nz/belonging> (last visited Jan. 4, 2017).

¹⁴⁸ Johnson, *supra* note 130.

allow members to borrow clothes for free or for a membership fee, and satisfy the desire for diversity and novelty in fashion without overspending and overconsuming.¹⁴⁹

Finally, access as a lifestyle choice is manifested in a new urban-planning modality. WeWork, a company that provides a collaborative workplace, has recently launched a housing project that supports a flexible lifestyle.¹⁵⁰ These projects, simply termed “WeLive,” provide micro-housing units that are completely furnished, including kitchenware and dishes, linens and bedding, and offer month-to-month leases.¹⁵¹ The units are small but there are common areas and common activities.¹⁵²

Developers of micro-units generally assume that the people who use them will spend considerable time outside the home.¹⁵³ In particular, developers assume that dwellers will not own cars but instead depend on a sharing mechanism.¹⁵⁴ According to John Infranca, “[a] few recent micro-unit developments have successfully negotiated substantial reductions to the required on-site parking in exchange for providing car and bike sharing.”¹⁵⁵ Micro-units in general and the month-to-month lease offered by WeLive in particular accommodate a flexible lifestyle. Dwellers are not attached to their home, do not own a car, and can easily relocate. Access supports and accommodates this lifestyle.

Finally, although access is a rising phenomenon, even users who enthusiastically participate in the sharing economy have a strong

¹⁴⁹ On clothing libraries, see Vedra Korobar, *The Interconnection of Sustainability and Collaborative Consumption: A Case Study of Clothing Libraries* (Spring 2013) (unpublished M.S. thesis, Lund University) (on file with Lund University library system), <http://lup.lub.lu.se/luur/download?func=downloadFile&recordId=3800323&fileId=3800324>.

¹⁵⁰ See Katherine Clarke, “Dorm” Is the New Norm: Communal Living Spaces Offer Short-term Deals for Young Professionals, N.Y. DAILY NEWS (Mar. 19, 2015, 4:33 PM), <http://www.nydailynews.com/life-style/real-estate/nyc-commune-style-micro-apartment-communities-article-1.2148150>; WELIVE, <https://www.welive.com> (last visited Jan. 4, 2017).

¹⁵¹ See Clarke, *supra* note 150. See also David Friedlander, *WeLive Marries Micro-Apartments, Coworking, Magic*, LIFE EDITED (July 28, 2014), <http://lifeedited.com/welive-marries-micro-apartments-coworking-magic>; Daniel J. Sernovitz, *Work Where You Live? For WeWork Fans, There’s a Place for that in Crystal City*, WASHINGTON BUS. J. (Mar. 16, 2015, 5:24 PM), http://www.bizjournals.com/washington/breaking_ground/2015/03/work-where-you-live-for-wework-fans-theres-a-place.html.

¹⁵² Clarke, *supra* note 150. See John Infranca, *Spaces for Sharing: Micro Units Amid the Shift from Ownership to Access*, 43 FORDHAM URB. L.J. 1, 21 (forthcoming 2017).

¹⁵³ *Id.* at 7.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.* at 17.

preference for ownership in some cases.¹⁵⁶ The tendency towards ownership is strong in four categories: (1) intimate possessions, such as a toothbrush; (2) frequently used objects—for example, a television; (3) objects with emotional attachment, such as heirlooms; and (4) the home.¹⁵⁷ It is therefore important to note that no paradigm change has occurred overthrowing ownership, and with it personhood and stability; instead, we are witnessing the gradual and important emergence of a more nuanced set of consumer choices.

B. *Motivations for Access*

A number of empirical studies have examined the motivations for participation in the sharing economy.¹⁵⁸ These studies often refer to access as a primary example of collaborative consumption.¹⁵⁹

A prominent study explored four motivations of online participants in the sharing economy: sustainability, enjoyment, economic benefits, and reputation.¹⁶⁰ The study links motivations to perception of the sharing economy and to intentions of use. It found that although sustainability and enjoyment affect the attitude towards the sharing economy, the economic benefits of saving time and money are most likely to affect use intentions.¹⁶¹

Cait Lamberton and Randell Rose study access from a marketing perspective, presenting a case of companies offering access services such as commercial car sharing.¹⁶² They look into the costs and benefits of access. Costs include membership fees, learning to use new vehicles, and search costs.¹⁶³ In addition, there is risk of consumer rivalry over a limited supply of assets.¹⁶⁴ The benefits include the value of use, flexibility, saving on storage costs, and the psychological

¹⁵⁶ See Cornelia Grimshorn & Marlene Jordan, *Ownership: A Challenged Consumer Ideal* (May 27, 2015) (unpublished M.Sc. thesis, Lund University) (on file with Lund University library system), <http://lup.lub.lu.se/luur/download?func=downloadFile&recordOId=5468892&fileOId=5468905>.

¹⁵⁷ *Id.* at 29–30.

¹⁵⁸ See Bardhi & Eckhardt, *supra* note 14; Hamari et al., *supra* note 129; Lamberton & Rose, *supra* note 13; Ozanne & Ballantine, *supra* note 19; Grimshorn & Jordan, *supra* note 156.

¹⁵⁹ See *supra* note 158.

¹⁶⁰ Hamari et al., *supra* note 129.

¹⁶¹ *Id.* at 2047. Sustainability did not affect use intentions, but enjoyment did have some effect. *Id.* On the other hand, economic benefits had no effect on attitudes towards the sharing economy. *Id.*

¹⁶² Lamberton & Rose, *supra* note 13.

¹⁶³ *Id.* at 111.

¹⁶⁴ *Id.* at 109.

benefits of pursuing an anti-industry agenda.¹⁶⁵

Studies on lending libraries show a more diverse set of motivations.¹⁶⁶ They point to advantages that are specific to more communal forms of access. A qualitative study of clothing libraries in Sweden found that users identify with specific garments even if they do not own them.¹⁶⁷ In addition, they identify with the project itself.¹⁶⁸ They feel that borrowing clothes from a library specializing in quality clothes makes them unique, unlike more traditional shoppers.¹⁶⁹ Furthermore, users strive to be sophisticated consumers and ecologically conscious.¹⁷⁰

Lucie Ozanne and Paul Ballantine examined the social and communal function of community-based toy libraries.¹⁷¹ They identified four types of participants: the socialites who value the social and communal benefits of toy libraries, market avoiders, anti-consumers, and passive members.¹⁷² To conclude, motivations for access include not only saving costs but also flexibility and sociability.

C. Access: Property Without Personhood

1. Access as Flexibility and Detachment

Access is an alternative to ownership that allows for flexibility and fluidity. It breeds detachment to possession and focuses on functionality. This characteristic should prompt scholars to re-evaluate the role of property as personhood. The intricate relationship between access and property as personhood has yet to be explored.

Times have changed. Personality and self-expression are shaped and communicated in various mediums. Online social networks are a prominent example.¹⁷³ Rachel Botsman and Roo Rogers further explain: "As our online 'brands' define 'who we are' and 'what we like,' actual ownership becomes less important than demonstrating use or use by association. We can now show status, group affiliation, and belonging without necessarily having to buy physical objects."¹⁷⁴

Along with the rise of social networks, there is a change in lifestyle.

¹⁶⁵ *Id.* at 111.

¹⁶⁶ Ozanne & Ballantine, *supra* note 19; Grimshorn & Jordan, *supra* note 156.

¹⁶⁷ Grimshorn & Jordan, *supra* note 156, at 35.

¹⁶⁸ *Id.* at 36.

¹⁶⁹ *Id.* at 37.

¹⁷⁰ *Id.* at 33.

¹⁷¹ Ozanne & Ballantine, *supra* note 19.

¹⁷² *Id.* at 485.

¹⁷³ BOTSMAN & ROGERS, *supra* note 10, at 98.

¹⁷⁴ *Id.*

The Y-generation, or millennials, consists of people born after 1981.¹⁷⁵ Millennials are technologically savvy and frequent technology users from a young age.¹⁷⁶ As a generation, they experienced years of prosperity followed by an era of economic uncertainty and violence.¹⁷⁷ They own less property.¹⁷⁸ In addition, millennials prefer flexibility over security.¹⁷⁹ They prioritize choice and instant availability of customized products.¹⁸⁰ All these factors contribute to this generation's enthusiastic participation in the sharing economy and the inclination to favor access over ownership.¹⁸¹

Access fits well with the tendency towards flexibility and an asset-light lifestyle.¹⁸² As opposed to the vision of property as shaping and reflecting personhood,¹⁸³ access is a choice to use without attachment.¹⁸⁴ Its primary function as an alternative to ownership is to allow fluidity and the ability to experiment.¹⁸⁵ Toys may be the perfect example. Toys are usually associated with one's identity.¹⁸⁶ They foster

¹⁷⁵ Ruth N. Bolton et al., *Understanding Generation Y and their Use of Social Media: A Review and Research Agenda*, 24 J. SERV. MGMT. 245, 247 (2013).

¹⁷⁶ *Id.* at 257. See also Jeongdo Park & Dogan Gursoy, *Generation Effects on Work Engagement Among U.S. Hotel Employees*, 31 INT'L J. HOSPITALITY MGMT. 1195 (2012).

¹⁷⁷ Bolton et al., *supra* note 175, at 257. Susan Eisner, *Managing Generation Y*, S.A.M. ADVANCED MGMT. J. 4, 6 (2005) (internal citations omitted) ("Though it is the most affluent generation, some 16% of Gen Y grew up or is growing up in poverty. In its post-Columbine, post-9/11, 24-hour media world, this latest generation has seen more at an earlier age than prior generations have seen.")

¹⁷⁸ Ann Hayek, *How Millennials Are Driving the Sharing Economy*, MARKET REALIST (Mar. 1, 2016, 1:06 PM), <http://marketrealist.com/2016/03/millennials-driving-sharing-economy/>.

¹⁷⁹ Richey Piiparinen et al., *The Fifth Migration: A Study of Cleveland Millennials 9–10* (Cleveland State Univ. Urban Publ'ns, Working Paper No. 1338, 2016), http://engagedscholarship.csuohio.edu/urban_facpub/1338. See also Bolton et al., *supra* note 175.

¹⁸⁰ Piiparinen et al., *supra* note 179.

¹⁸¹ Hayek, *supra* note 178.

¹⁸² *Id.*

¹⁸³ See discussion *supra* Part I.

¹⁸⁴ Bardhi & Eckhardt, *supra* note 14, at 881 ("Instead of buying and owning things, consumers want access to goods and prefer to pay for the experience of temporarily accessing them.")

¹⁸⁵ *Id.* at 890 ("[O]ur informants talked of the lifestyle freedom experienced because car sharing allows them to experiment and try different or new car models that they would not have a chance to otherwise.")

¹⁸⁶ Compare Donald W. Ball, *Toward a Sociology of Toys: Inanimate Objects, Socialization, and the Demography of the Doll World*, 8 SOC. Q. 447 (1967) (emphasizing the importance of toys in the socialization process), with Joel Best, *Too Much Fun: Toys as Social Problems and the Interpretation of Culture*, 21 SYMBOLIC INTERACTION 197 (1998) (criticizing the attribution of toys to identity, and the focus on objects rather than actors).

gender¹⁸⁷ and racial identification,¹⁸⁸ and reflect personality traits such as a tendency towards activity, imagination, or puzzle solving.¹⁸⁹ Because toys and identity are perceived as linked, parents may be reluctant to spend money on unconventional toy choices.¹⁹⁰ Simply put, they are afraid to buy toys their child will ultimately choose not to play with.¹⁹¹ Moreover, children may be apprehensive that a certain toy may reflect a different personality that they do not necessarily endorse.¹⁹² For example, “[w]hen children are given a choice of a variety of gender-typed and non-gender-typed toys, children (especially boys) often choose toys based on gender associations.”¹⁹³

Access creates a different behavioral pattern. When children exchange toys in a toy lending library, there is no declaration of identification and no financial commitment.¹⁹⁴ Children are more open to experimentation. As previously mentioned, boys are willing to try toys associated with girls and less active children become more physical in their play.¹⁹⁵ This point is not purely empirical but rather theoretical. It stresses the potential benefit of decoupling property use from personhood. Once property is understood for its use function¹⁹⁶ instead of its association with the self,¹⁹⁷ there is more room for exploration and change.

Adults also need to experiment and push the boundaries of their

¹⁸⁷ Elizabeth Sweet, *Boy Builders and Pink Princesses: Gender, Toys, and Inequality over the Twentieth Century* (2013) (Ph.D. dissertation, University of California, Davis).

¹⁸⁸ Erika Engstrom, *Toys and Games: Racial Stereotypes and Identity*, in *ENCYCLOPEDIA OF GENDER IN THE MEDIA* 393 (Mary Kosut ed., 2012) (critically examining racial representation in dolls).

¹⁸⁹ Cf. Donna Fisher-Thompson et al., *Toy Selection for Children: Personality and Toy Request Influences*, 33 *SEX ROLES* 239 (1995) (studying gender roles and personalities in the selection of toys for a child).

¹⁹⁰ Lucie K. Ozanne & Julie L. Ozanne, *Parental Mediation of The Market's Influence on Their Children: Toy Libraries as Safe Havens*, <http://www.marketing.pamplin.vt.edu/facultyFolder/julieOzanne/01socialwebsite/professional/conference%20papers%20and%20sessions/2009%20Academy%20of%20Marketing%20Parental%20Mediation%20of%20Market's%20Influence%20on%20their%20children.htm> (last visited Feb. 22, 2017) (noting that “because there was no financial commitment to borrowing toys, the parents imposed few restrictions”).

¹⁹¹ Cf. Fisher-Thompson et al., *supra* note 189.

¹⁹² Cf. Ball, *supra* note 186.

¹⁹³ Erica S. Weisgram et al., *Pink Gives Girls Permission: Exploring the Roles of Explicit Gender Labels and Gender-Typed Colors on Preschool Children's Toy Preferences*, 35 *J. APPLIED DEVELOPMENTAL PSYCHOL.* 401 (2014).

¹⁹⁴ Cf. Bardhi & Eckhart, *supra* note 14.

¹⁹⁵ Ozanne & Ballantine, *supra* note 19.

¹⁹⁶ Cf. Dyal-Chand, *Useless Property*, *supra* note 100.

¹⁹⁷ *See supra* Part I.

identity. Tool libraries allow people who are not skilled to learn and experiment with fixing household appliances or personal vehicles.¹⁹⁸ The learning environment and the freedom from financial commitment support this type of experimentation.¹⁹⁹

Another example is pets. Although the concept of access to pets may seem confusing, BorrowMyDoggy is a game changer. It helps match dog owners and dog lovers who want to spend time with a dog without the long-term commitment.²⁰⁰ One can contemplate getting a dog, or just spend time with a dog casually for a day or an evening.²⁰¹ The activity could serve as a hobby or an opportunity to do more exercise.²⁰² All these benefits facilitate change with no strings attached.

These benefits potentially involve a variety of personal property, depending on a person's needs and preferences. Access can support detachment from car models and dis-identification with personal vehicles²⁰³ or household possessions. However, real property is a different matter. Housing connotes stability and security.²⁰⁴ People are less likely to experiment with permanent living arrangements. In the sphere of housing, whether as owners or as lessees, attachment and stability are prominent.²⁰⁵

Nonetheless, as the WeLive project shows, there is some room for

¹⁹⁸ See *About*, TORONTO TOOL LIBR., <http://torontotoollibrary.com/about-2/> (last visited Feb. 9, 2017).

¹⁹⁹ Cf. Noelia Romero, *Interview with Helen, Member #65*, EDINBURGH TOOL LIBR. (Mar. 8, 2016), <http://edinburghtoollibrary.org.uk/news/>.

²⁰⁰ *The BorrowMyDoggy Story*, BORROWMYDOGGY, <https://www.borrowmydoggy.com/about> (last visited Feb. 22, 2017).

²⁰¹ See *Waggy Tales Testimonials, Batman, Alex, and Lexie*, BORROWMYDOGGY, <https://www.borrowmydoggy.com/testimonials/batman-alex-lexie> (last visited Feb. 22, 2017) (dog borrowers also enjoy having a dog part time); *Waggy Tales Testimonials, Charlie, Marion, and June*, BORROWMYDOGGY, <https://www.borrowmydoggy.com/testimonials/charlie-marion-june> (last visited Feb. 22, 2017).

²⁰² See *Waggy Tales Testimonials, Max, Josie, Alice, Sophie, and Lucy*, BORROWMYDOGGY, <https://www.borrowmydoggy.com/testimonials/max-josie-alice-sophie-lucy> (last visited Feb. 22, 2017).

²⁰³ Bardhi & Eckhart, *supra* note 14.

²⁰⁴ KARL POLANYI, *THE GREAT TRANSFORMATION* 178, 187 (1944) (land "invests man's life with stability; it is the site of his habitation; it is a condition of his physical safety; it is the landscape and the seasons"). Fennell, *supra* note 100; Fox, *The Meaning of Home*, *supra* note 46; Fox, *Re-Possessing Home*, *supra* note 46; Peñalver, *Land Virtues*, *supra* note 93, at 830 ("[L]and is sufficiently stable that human transformations will remain in place almost indefinitely unless human beings actively restore the land to its prior form.").

²⁰⁵ Peñalver, *Land Virtues*, *supra* note 93, at 830. Sheila Klebanow, *How Much is Enough? A Psychological Overview of Money and the Middle Class*, in *MONEY AND MIND* 3, 6–7 (Sheila Klebanow & Eugene L. Lowenkopf eds., 1991) ("For many, homeownership connotes solidity, stability, self-esteem, putting down roots, and making a commitment to oneself, or to marriage and family.").

experimentation in housing.²⁰⁶ Young, unattached individuals might prefer a flexible living arrangement rather than commit to long-term leases or to homeownership.²⁰⁷ Long-term housing is expensive and requires financial stability.²⁰⁸ With the economic downturn and rising costs of living, there is a decrease in the ability to own a home.²⁰⁹ Moreover, month-to-month leases foster mobility because dwellers are not tied down to a community or to their homes. This alternative is part of a lifestyle choice that includes living in a dense urban environment,²¹⁰ using car-sharing,²¹¹ spending time outside the home,²¹² and the ability to quickly move from place to place.²¹³

All these examples point to a function of property that has yet to be fully theorized and analyzed,²¹⁴ namely the role of property as flexibility. This is a counterintuitive argument. Because property often means attachment and connections,²¹⁵ it seems implausible to associate it with flexibility and mobility. Against the background of property as stability,²¹⁶ access as a form of property use allows detachment and fluidity. It is important to note, however, that access is not a typical property form: traditional property rights are secured by title.²¹⁷ Even the non-formalist and progressive accounts that promote a more malleable understanding of property focus on

²⁰⁶ See Clarke, *supra* note 150.

²⁰⁷ Cf. *id.*; Eisner, *supra* note 177; Hayek, *supra* note 178.

²⁰⁸ Cf. Fennell, *supra* note 100, at 1051 (“[H]ouseholds that lack the financial wherewithal or risk tolerance to take on such a large investment simply cannot become homeowners.”).

²⁰⁹ Cf. Christopher L. Foote, *Just the Facts: An Initial Analysis of Subprime’s Role in the Housing Crisis*, 17 J. HOUSING ECON. 291 (2008).

²¹⁰ Emily Compton, *Could Micro-Apartments Help Ease Austin’s Housing Crunch?*, REPORTING TEX. (May 9, 2014), <http://reportingtexas.com/could-micro-apartments-help-ease-austins-housing-crunch/> (quoting a developer who declared that micro-unit residents have few belongings, “are part of the sharing economy,” and are “willing to have less space in order to live in a cool neighborhood and have access to the amenities of the city”). See also Nestor M. Davidson & John J. Infranca, *Sharing Economy as an Urban Phenomenon*, 34 YALE L. POL’Y REV. (forthcoming 2016).

²¹¹ Infranca, *supra* note 152.

²¹² Darcy Wintonyk & Lynda Steele, *A 226 Sq. Ft. Solution to Living Large in Vancouver*, CTV BRITISH COLUMBIA (Aug. 17, 2012), <http://bc.ctvnews.ca/a-226-sq-ft-solution-to-living-large-in-vancouver-1.917039> (“The city is your living room. The city is your dining room. You don’t need to use your own resources to recreate all that when you can just step out your door and enjoy a park, a beach, a restaurant, a café.”).

²¹³ Bardhi et al., *supra* note 15.

²¹⁴ See Kreiczer-Levy, Share, Own, Access, *supra* note 99.

²¹⁵ See *supra* Part I.

²¹⁶ See Bell & Parchomovsky, *supra* note 4; Peñalver, *Land Virtues*, *supra* note 93.

²¹⁷ See Bell & Parchomovsky, *supra* note 4. Thomas W. Merrill & Henry E. Smith, *The Morality of Property*, 48 WM. & MARY L. REV. 1849 (2007) (describing an information cost theory of property).

attachment.²¹⁸ Joseph William Singer, for example, supports recognizing informal property rights based on the reliance interest.²¹⁹ This vision of property as attachment to a place and a community is further explained in his work:

Property gives us freedom and stability, provides a source of wealth and well-being, the bases for creative work and useful investment. Property provides a place to create a family life, to nurture friendships, to rest, and to have fun. Property allows us to be good neighbors and good citizens, and it promotes various human values, including privacy, the freedom to associate with others, religious liberty, tranquility, and peace of mind.²²⁰

In order to decouple property from attachment, so ingrained in our legal thinking, one should direct attention to property use. Access is an alternative form of *use*, and not of property *rights*.²²¹ Once we accept use as the relevant prism for property as personhood, we can begin to unpack the important role of property without personhood.

The role of flexibility is intricate. It is not the same as freedom.²²² Flexibility derives from access as an alternative to ownership. As such, it allows choice as opposed to stability. Flexibility is not simply the ability to use a variety of assets. The argument is not an essentialist view of consumer choices.²²³ People are not necessarily defined by their choice to access;²²⁴ the claim is more nuanced. Flexibility concerns the detachment from property and the focus on use instead of continuing possession.

The choice of detachment is a relational choice as well. Property provides a place for social interaction with family and friends.²²⁵ A

²¹⁸ See Gregory S. Alexander, Eduardo M. Peñalver, Joseph William Singer & Laura S. Underkuffler, *A Statement of Progressive Property*, 94 CORNELL L. REV. 743 (2009).

²¹⁹ Joseph W. Singer, *The Reliance Interest in Property*, 40 STAN. L. REV. 611 (1988); JOSEPH W. SINGER ET AL., *PROPERTY LAW: RULES, POLICIES AND PRACTICES* (6th ed. 2014) (discussing informal sources of rights, reliance, social customs and norms). See also Shelly Kreiczer-Levy, *Informal Property Rights of Boomerang Children in the Home*, 74 MD. L. REV. 127 (2014) [hereinafter Kreiczer-Levy, *Boomerang Children*].

²²⁰ Joseph William Singer, *Democratic Estates: Property Law in a Free and Democratic Society*, 94 CORNELL L. REV. 1009, 1054 (2009) [hereinafter Singer, *Democratic Estates*].

²²¹ Dyal-Chand, *Useless Property*, *supra* note 100.

²²² On property as promoting freedom, see Charles A. Reich, *The New Property*, 73 YALE L.J. 733 (1964); ARTHUR RIPSTEIN, *FORCE AND FREEDOM: KANT'S LEGAL AND POLITICAL PHILOSOPHY* (2009). See also Larissa Katz, *Ownership and Social Solidarity: A Kantian Perspective*, 17 LEGAL THEORY 119 (2011).

²²³ On identity and consumption, see Alan Warde, *Consumption, Identity-Formation and Uncertainty*, 28 SOC. 877 (1994).

²²⁴ Cf. Belk, *You are what you can access*, *supra* note 16.

²²⁵ Singer, *Democratic Estates*, *supra* note 220.

stable location is important for sustaining relationships.²²⁶ If property is less about personhood and stability, then ties might be looser. Yet, access can support a broader spectrum of more casual networks.²²⁷

Of course, one could argue that access can be classified as fungible property—as per Radin’s taxonomy—and therefore does not present a true challenge to contemporary property theory.²²⁸ However, according to Radin, both categories—fungible and personhood property—refer to property owned or leased for long periods.²²⁹ Even fungible property can evoke stability and security.²³⁰ More importantly, access is a choice that rejects at least partially the limiting function of property as personhood. It represents resistance to traditional notions of property.

Nonetheless, flexibility is not for everyone. Young people, especially Gen-Yers, are more inclined toward property fluidity than previous generations.²³¹ Not everyone is looking for mobility. Access as a general lifestyle choice fits the unattached. People with strong ties to the community, who have caretaking responsibilities, are likely to prefer stability.²³² Nonetheless, more nuanced choices will fit a variety of people. Flexibility with personal, as opposed to real, property might be more easily integrated into people’s lives. At the end of the day, most people would prefer a mixture of personhood and flexibility, embracing both models of property use.²³³

2. Critiques of Property without Personhood

Access, or property without personhood, creates vulnerabilities. The Kantian notion of property focuses on independence both from other people and from the state.²³⁴ Access epitomizes the opposite: it

²²⁶ Kreiczer-Levy, *Boomerang Children*, *supra* note 219.

²²⁷ *Id.*

²²⁸ See Kreiczer-Levy, *Consumption Property*, *supra* note 6, at 88.

²²⁹ Radin, *supra* note 1, at 960.

²³⁰ Cf. Bell & Parchomovsky, *supra* note 4 (discussing stability without limiting it to a particular type of property).

²³¹ Piiparinen et al., *supra* note 179.

²³² Singer, *Democratic Estates*, *supra* note 220, at 1054 (explaining the pluralist values of property, including stability and community).

²³³ Kreiczer-Levy, Share, Own, Access, *supra* note 99, at 26–27.

²³⁴ See Katz, *supra* note 222, at 126 (“For Kant, all private rights are derived from our basic right to independence, which for Kant means the capacity to set and pursue our own purposes, and so the freedom not to be subject to the choices of others.”); RIPSTEIN, *supra* note 222, at 91 (“[I]f someone interferes with your property, they thereby interfere with your purposiveness.”). Others stress dependency or interdependency as a core feature of property. See HANOCH DAGAN, PROPERTY: VALUES AND INSTITUTIONS 37–57 (2011); Gregory Alexander & Eduardo Peñalver, *Properties of Communities*, 10 THEORETICAL INQ. L. 127 (2009). Relational accounts insist that

is profoundly dependent.²³⁵ It is dependent on a pool of resources provided by owners, the state or the community.²³⁶ Some access-based enterprises rely on an online platform to mediate transactions.²³⁷ These platforms gather information and might compromise privacy.²³⁸ In addition, access as a way of life is risky. Once the accessor becomes ill, old or in need of care, stability and long-term relations trump flexibility and mobility.²³⁹

For this reason, access is mostly chosen as one component in an overall choice of property use. It showcases the direction of new engagements with property, but it is unlikely to subsume the entire property project.

A different critique is that access is never fully detached. When people use an asset casually for a number of times, they become accustomed to it.²⁴⁰ They tend to prefer it, and ultimately get attached to this preferred possession.²⁴¹ If one borrows her neighbor's drill, she will be inclined to use it again provided she had a good experience.²⁴² If this is true, access will eventually morph into a more familiar form of property use that builds on ongoing attachment, yet lacks the security of formal ownership or a lease.

Although complete flexibility and fluidity are perhaps unattainable,²⁴³ access provides the greatest potential for unattached

property constructs relationships and does not just set boundaries. Jennifer Nedelsky, *Law, Boundaries and the Bounded Self*, 30 REPRESENTATIONS 162 (1991).

²³⁵ Kreiczler-Levy, Share, Own, Access, *supra* note 99, at 27.

²³⁶ *Id.*

²³⁷ Cf. Einat Albin, Required Intimacies: What Airbnb and Domestic Work Share in Common 7 (unpublished manuscript) (on file with author) (“[I]ndeed, technological development has enabled the progression of online platforms that promote sharing and collaboration.”); Dyal-Chand, *Regulating Sharing*, *supra* note 10.

²³⁸ See, e.g., Gabriel R. Schlabach, *Privacy in the Cloud: The Mosaic Theory and the Stored Communications Act*, 67 STAN. L. REV. 677 (2015).

²³⁹ Cf. Martha Alberston Fineman, *Elderly as Vulnerable: Rethinking The Nature of Individual and Social Responsibility*, 20 ELDER L.J. 71, 85 (2012) (“If someone is very young, profoundly ill or disabled, or very old, we may not be comfortable demanding they conform to the mandates of self-sufficiency and independence.”).

²⁴⁰ Chenchen Liao et al., *The Roles of Habit and Web Site Quality in E-Commerce*, 26 INT’L J. INFO. MGMT. 469 (2006) (noting that intentions of continued use depend on perceived usefulness, trust, and habit); Walter A. Woods, *Psychological Dimensions of Consumer Behavior*, 24 J. MARKETING 15 (1960) (discussing the force of habit in consumer choices).

²⁴¹ This is especially true considering the costs of learning to use new possessions. See Lamberton & Rose, *supra* note 13, at 111.

²⁴² *Id.* It is costly to scout for new products whenever accessors decide to use property again (“[S]earch costs’ are created through the money or effort needed to determine which product to purchase or which sharing program to enter.”). *Id.*

²⁴³ This is because of the human tendency to favor repetition. Henk Aart et al.,

property use. Transitions and change are less complicated and easier with access, as compared with ownership or long-term possession.²⁴⁴ It also creates more potential for experimentation, depending on the personality of the accessor and his or her motivations for using access.

Finally, the lack of attachment might mean disregard for the property, including lack of proper maintenance and neglect.²⁴⁵ In other words, if the property is not mine, I do not have sufficient incentives to care for it. A study of Zipcar users supports this claim.²⁴⁶ Yet unlike the access offered by business companies who own the property,²⁴⁷ communal access and peer-to-peer access create a reduced risk. In lending libraries, people feel a commitment to take care of the property for the good of the community.²⁴⁸ In peer-to-peer markets, the reciprocal reputation system creates an incentive for cautious and attentive behavior.²⁴⁹

To conclude, access provides an alternative property form that emphasizes flexibility and mobility. This attribute has benefits and costs, but it ultimately represents a choice of being detached from property. Alongside property as personhood, there is also reason to recognize property without personhood.

Predicting Behavior From Actions in the Past: Repeated Decision Making or a Matter of Habit?, 28 J. APPLIED SOC. PSYCHOL. 1355, 1355 (1998) (“When behavior is repeated and becomes habitual, it is guided by automated cognitive processes, rather than by elaborate decision processes.”).

²⁴⁴ See Cooter, *supra* note 97; Desan, *supra* note 98.

²⁴⁵ On physical damages to property, see Christian Witting, *Physical Damage in Negligence*, 61 CAMBRIDGE L.J. 189 (2002).

²⁴⁶ Bardhi & Eckhardt, *supra* note 14, at 889.

²⁴⁷ See *id.* at 891.

²⁴⁸ Lucie K. Ozanne & Julie L. Ozanne, *A Child’s Right to Play: The Social Construction of Civic Virtues in Toy Libraries*, 30 J. PUB. POL’Y & MARKETING 264, 271 (2011) (“Very young children learn that the library toys are collective goods that need to be enjoyed while respecting the next user.”). In addition, toy libraries sanction mistreatment of toys. See KARIORI TOY LIBR., <http://www.karoritoylibrary.org.nz/borrowing> (last visited Jan. 7, 2017) (collecting a \$5 fine for all missing, lost, or destroyed pieces); see also BOX HILL AREA TOY LIBR., <http://boxhillareatoylibrary.org.au/toys/borrowing/> (last visited Jan. 7, 2017) (charging a fine for broken or missing toys).

²⁴⁹ Adam Thierer et al., *How the Internet, the Sharing Economy, and Reputational Feedback Mechanisms Solve the “Lemons Problem”* (Mercatus Ctr., Working Paper, 2015), <http://mercatus.org/sites/default/files/Thierer-Lemons-Problem.pdf>. See, e.g., AIRBNB, https://www.airbnb.com/help/article/13/how-do-reviews-work_ (last visited June 30, 2016); TURO, <https://turo.com/trust-and-safety> (last visited June 30, 2016); NEIGHBORGOODS, <http://neighborgoods.net/faq> (last visited Feb. 22, 2017). See also Eyal Ert et al., *Trust and Reputation in the Sharing Economy: The Role of Personal Photos in Airbnb*, 43 NA ADVANCES CONSUMER RES. 518 (2015), <http://ssrn.com/abstract=2624181>.

III. LEGAL IMPLICATIONS

There are three possible legal approaches to the property without personhood phenomenon: to reject flexibility as working against the public policy of stability in property; to reevaluate the property as personhood legal protection; or, to distinguish between the two categories while supporting both when appropriate. This Part explains these possibilities and explores their merit.

The first direction is to insist that stability and property are inseparably linked. It is a governmental interest to foster stability, and property is one important means of achieving this goal.²⁵⁰ This is especially true regarding the homeownership debate.²⁵¹ Homeowners, arguably the epitome of stability, view renters as failing to demonstrate community commitment.²⁵² The connection of stability and commitment supports the view that flexibility is hazardous. If flexibility as a characteristic of property threatens the notion of stability, then the law must limit the option to engage with property without personhood.

Legally, such a position implies stringent regulation coupled with strong disincentives for access and access-like activities. Regulation today encourages users to choose ownership or other forms of long-term possession because there are strong disincentives working against

²⁵⁰ Shelley Mallett, *Understanding Home: a Critical Review of the Literature*, 52 SOC. REV. 62, 66 (2004) (arguing that governments promote homeownership as creating stability in order to shift the burden of welfare to the family). It has similarly been suggested that home ownership ideology promotes a property-based citizenship, privileging home ownership over public and rental housing. See RICHARD RONALD, *THE IDEOLOGY OF HOME OWNERSHIP: HOMEWORKER SOCIETIES AND THE ROLE OF HOUSING* (2008). See also Ann Dupuis & David C. Thorns, *Home, home ownership security and the search for ontological security*, 46 SOC. REV. 24 (1998) (arguing that the home is a site of constancy and ontological security).

²⁵¹ Lynda Cheshire et al., *The Politics of Housing Consumption: Renters as Flawed Consumers on a Master Planned Estate*, 47 URB. STUD. 2597, 2598 (2010) (arguing that renters are seen as failing in three aspects of social life: "aesthetical conduct, ethical values and community commitment").

²⁵² *Id.*

access.²⁵³ Examples include insurance policies,²⁵⁴ taxes,²⁵⁵ and business permits.²⁵⁶ This position supports such rules and would even advocate expanding this approach to more areas of regulation.

The advantages of this approach are clear. It preserves current understandings of the function of property, and supports stability, freedom and familial ties.²⁵⁷ However, it downplays the role of flexibility, mobility and change in property use, and their potential to promote autonomy for users. More importantly, property without personhood creates an alternative to the traditional view of property. This alternative provides a prism for criticizing and reevaluating the stagnation that afflicts contemporary property visions.

The second direction takes the opposite path. If property as flexibility is a rising phenomenon, it could be taken to mean the demise of property as personhood. Put differently, considering the popularity of access, one could argue that attachment is no longer

²⁵³ See Kreiczer-Levy, Share, Own, Access, *supra* note 99.

²⁵⁴ Ingrid Ballús-Armet et al., *Peer-to-Peer Carsharing: Exploring Public Perception and Market Characteristics in the San Francisco Bay Area, California*, 2416 J. TRANSP. RES. BOARD 27, 28 (2014) (discussing how personal vehicle insurance policies are generally invalid when the owners give access to users, as this activity would count as commercial activity). See also Ron Lieber, *Share a Car, Risk Your Insurance*, N.Y. TIMES (Mar. 16, 2012), http://www.nytimes.com/2012/03/17/your-money/auto-insurance/enthusiastic-about-car-sharing-your-insurer-isnt.html?_r=0. Jay MacDonald, *Auto Insurance Risks of Car Sharing*, BANKRATE (Nov. 23, 2011), <http://www.bankrate.com/finance/insurance/auto-insurance-risks-car-sharing-1.aspx#ixzz3kxcDf3Da>. But see CAL. INS. CODE § 11580.24 (West 2015) (“No private passenger motor vehicle insured by its owner pursuant to a policy of insurance subject to Section 11580.1 or 11580.2 shall be classified as a commercial vehicle, for-hire vehicle, permissive use vehicle, or livery solely because its owner allows it to be used for personal vehicle sharing . . .”); OR. REV. STAT. § 742.595 (2015) (“An owner’s insurance policy for a private passenger motor vehicle may not be canceled, voided, terminated, rescinded or nonrenewed solely on the basis that the vehicle has been made available for personal vehicle sharing pursuant to a personal vehicle sharing program that is in compliance with the provisions of ORS 742.585 to 742.600.”).

²⁵⁵ Shu-Yi Oei & Diane M. Ring, *Can Sharing be Taxed?*, 93 WASH. U. L. REV. 989 (2016) (arguing there is no need for special taxation rules for the sharing economy, but conceding that it would be complicated for nonprofessionals, especially regarding cost deduction and apportionment of expenses). See also Debbie Woskow, *Unlocking the sharing economy: An independent review*, UK DEP’T OF BUS., INNOVATION & SKILL 21 (2014), <https://www.gov.uk/government/publications/unlocking-the-sharing-economy-independent-review> (recommending “a guide to tax in the sharing economy, and an online tax calculator to help users of sharing economy services to easily work out how much tax they are liable to pay”).

²⁵⁶ Cf. Nicole Stelle Garnett, *On Castles and Commerce: Zoning Law and the Home-Business Dilemma*, 42 WM. & MARY L. REV. 1191, 1201–02 (2001) (noting the problem of home business).

²⁵⁷ See *supra* notes 213–219 and accompanying text.

important for human flourishing.²⁵⁸ The special treatment of personhood property should be scrutinized and reevaluated. This direction finds support in previous studies questioning the validity of property as personhood.²⁵⁹ Legal protection of personhood property includes takings law,²⁶⁰ eviction rules,²⁶¹ criminal law,²⁶² and privacy in the home.²⁶³ In addition, property tax and bankruptcy rules protect personal-use property.²⁶⁴ According to this approach, all these rules will be reconsidered as the elevation of personhood property is

²⁵⁸ Stern, *Residential Protectionism*, *supra* note 46, at 1106 (“Following Radin’s landmark article, a generation of legal scholars adopted the personhood perspective and focused in particular on the role of the home in human flourishing.”).

²⁵⁹ See *supra* Part I.B.1.

²⁶⁰ Following the case *Kelo v. The City of New London*, 545 U.S. 469 (2005)—that upheld a taking of a residential home for a private redevelopment project—several states enacted counter-legislation. See CAL. CONST. art. I, § 19(b) (requiring “acquiring by eminent domain an owner-occupied residence for the purpose of conveying it to a private person” unless it is necessary for public health or safety reasons). Indiana requires a 150% market value compensation for such a condemnation. IND. CODE § 32-24-4.5-8(2) (A) (2008).

²⁶¹ Just cause eviction rules serve to protect occupational rights of tenants in their home. See, e.g., Symposium, *The Revolution in Residential Landlord-Tenant Law: Causes and Consequences*, 69 CORNELL L. REV. 517, 534–35 (1984) (discussing common types of just-cause eviction statutes); Kenneth K. Baar, *Guidelines for Drafting Rent Control Laws: Lessons of a Decade*, 35 RUTGERS L. REV. 723, 833–35 (1983) (providing examples of “good cause” justifications for evictions and explaining their treatment).

²⁶² See Barros, *supra* note 44, at 262 (noting that the punishment for invasion of a home generally exceeds the penalties “imposed for invasions of other types of property”). In addition, the home as a castle doctrine provides that a person need not retreat if attacked at home. *People v. Tomlins*, 107 N.E. 496, 497 (1914) (“It is not now, and never has been the law that a man assailed in his own dwelling, is bound to retreat. If assailed there, he may stand his ground, and resist the attack. He is under no duty to take to the fields and the highways, a fugitive from his own home. . . . Flight is for sanctuary and shelter, and shelter, if not sanctuary, is in the home.”).

²⁶³ Stern, *The Inviolable Home*, *supra* note 44. See also Arianna Kennedy Kelly, *The Costs of the Fourth Amendment: Home Searches and Takings Law*, 28 MISS. C. L. REV. 1, 3 (2009).

²⁶⁴ 2009 US MASTER PROPERTY TAX GUIDE 9, 45–46 (Fred Conklin ed. 2009) [hereinafter MASTER PROPERTY TAX GUIDE], (describing how property tax law in most states distinguishes between personal property used for business purposes and property for personal use, and employs a personal property tax *ad valorem* but exempts personal use property, household goods or furniture). See, e.g. *id.* at 10–39 (describing the situation in Delaware as including family bible, school books, family library, family pictures, pianos and sewing machines). Yet, “[t]his provision shall not apply to persons who keep sewing machines for sale or hire.” See DEL. CODE. ANN. tit. 10, § 4902(c). See also MASTER PROPERTY TAX GUIDE at 10–19, 10–24 (Alabama and Alaska); HAW. REV. STAT. ANN. 651-121(1) (LexisNexis 1999) (discussing all necessary household furnishings, appliances, clothing and books that are used by the debtor and his family). Federal bankruptcy exemptions include a car, household furniture and goods, and books that are personally used. See 11 U.S.C.S. § 522(d) (LexisNexis 2016); JAMES J. BROWN, JUDGMENT ENFORCEMENT 10-1, 10-9 (Supp. 2010).

obsolete or unnecessary.

The problem with this approach is that the mere existence of an alternative does not negate the role of property as personhood. Property without personhood points to one drawback of the personhood argument: its tendency towards stagnation and the possible restriction of identity.²⁶⁵ It does not support or undercut the theory on its merits, but suggests an alternative that fits certain people at different points in their lives.

The third direction takes seriously both flexibility and stability as being part of a rich and nuanced property regime. Property as personhood and property without personhood play different roles in promoting autonomy and flourishing. Property law should recognize demographic differences and human diversity. Three implications follow: protection of personal property depending on its actual contribution to self-development and personhood; reconsideration of regulative barriers to access; and evaluation of the institutional design supporting access.

Without adopting property as personhood in full, this direction recognizes the centrality of attachment, personhood and stability in certain types of property. As mentioned above, even passionate adopters of access still prefer to own certain types of property, most notably the home.²⁶⁶ The vision of the home as a special locus for individual autonomy and dignity,²⁶⁷ freedom and privacy,²⁶⁸ is relevant even in an age of access. Moreover, the home is also important as a relational space hosting a variety of intimate interactions.²⁶⁹

Nonetheless, the protection of personhood cannot undercut access. A second important implication requires legal regulation to recognize access.²⁷⁰ The obstacles described earlier in tax, permit and insurance law need to be removed.²⁷¹ This is not a call for immediate regulation. In crafting rules, there are many relevant considerations, including positive and negative externalities.²⁷² However, addressing

²⁶⁵ See *supra* Part I.B.4.

²⁶⁶ Grimshorn & Jordan, *supra* note 156, at 29 and accompanying text.

²⁶⁷ See Eduardo M. Peñalver, *Property Metaphors and Kelo v. New London: Two Views of the Castle*, 74 *FORDHAM L. REV.* 2971, 2972 (2006).

²⁶⁸ Lisa M. Austin, *Person, Place or Thing? Property and The Structuring of Social Relations*, 60 *U. TORONTO L.J.* 445, 450 (2010).

²⁶⁹ Kreiczler-Levy, *Boomerang Children*, *supra* note 219, at 138.

²⁷⁰ Kreiczler-Levy, *Share, Own, Access*, *supra* note 99, at 32.

²⁷¹ See *supra* notes 251–254 and accompanying text.

²⁷² For example, effects on neighborhoods, the community, and the environment are key elements. See, e.g., *Ewing v. City of Carmel-By-The-Sea*, 234 Cal. App. 3d 1579, 1589 (Cal. Ct. App. 1991) (finding that preserving residential character and

these obstacles with the understanding of property as flexibility in mind is crucial.

Access is a general category based on the consumer's perspective that includes the experience of short-term and uncommitted use.²⁷³ However, the property could be accessed in various institutional settings, each with its own merits and faults. The owner of the property can be a commercial company, a private owner, the state or the community. This Article offers a preliminary account that compares these different institutions according to their contribution to flexibility and mobility.

There are four main institutional settings that provide assets or resources to be accessed by users: commercial companies, city or state-supported services, community resources, and peer-to-peer markets. In the commercial company model, a user chooses a vehicle from a fleet of cars owned by the company.²⁷⁴ The transaction concerns commercial property and property designed for personal use.²⁷⁵ Advantages include accessibility of vehicles,²⁷⁶ variety,²⁷⁷ a more regulated model, and the usual advantages of access such as saving storage costs and the costs of ownership.²⁷⁸ On the other hand, commercial access with regard to cars is characterized by a lack of reciprocity.²⁷⁹ There is no sense of community or commitment between users.²⁸⁰ Users typically neglect to fill gas tanks for the next user, and they sometimes smoke in the car.²⁸¹ Bardhi and Eckhardt conclude that Zipcar does not conform to the vision of collaborative,

community stability is a legitimate government interest in regulating the sharing economy); *Cope v. City of Cannon Beach*, 855 P.2d 1083, 1084 (1993) (upholding a local ordinance and stating there is a legitimate government interest "in securing affordable housing for permanent residents and in preserving the character and integrity of residential neighborhoods"). Cf. Jenny Kassan & Janelle Orsi, *The Legal Landscape of the Sharing Economy*, 27 J. ENVTL. L. & LITIG. 1, 2–3 (2012).

²⁷³ See generally *supra* Part II.

²⁷⁴ See Bardhi & Eckhardt, *supra* note 14, at 886.

²⁷⁵ See Kreiczler-Levy, *Consumption Property*, *supra* note 6, at 79 ("Because the owner in Zipcar is a commercial company, there is no consumption property involved in the transaction. Their cars are business inventory par excellence. In Turo, at least some of the vehicles available are personal cars rented out by individual owners when they are not using them.").

²⁷⁶ See Bardhi & Eckhardt, *supra* note 14, at 886 (explaining that Zipcars are located close to a person's residence or place of work).

²⁷⁷ *Id.* ("Zipcar has around 30 car models in its fleet, from basic functional models, such as Toyota trucks, to luxury brands such as BMW, to green cars such as the Toyota Prius.").

²⁷⁸ Lamberton & Rose, *supra* note 13, at 111.

²⁷⁹ See Bardhi & Eckhardt, *supra* note 14, at 891–92.

²⁸⁰ *Id.*

²⁸¹ *Id.*

altruistic and sustainable consumption.²⁸² There is a certain level of flexibility that comes from access to a fleet of cars spread out over many locations.²⁸³ However, companies usually tend to encourage a brand community and identification with specific cars.²⁸⁴ They attempt to foster attachment rather than flexibility.

A different model relies on governmental or nonprofit oversight. Bike sharing is a good example. Providers include governments, quasi-governmental transport agencies, and universities.²⁸⁵ Paul DeMaio explains the benefits and costs of each provider. In a governmental model, the local government operates the service and gains control over it, but it also maintains the liability and might be less experienced.²⁸⁶ In the transport agency model, there is a quasi-governmental organization that provides services to the jurisdiction.²⁸⁷ The jurisdiction benefits from the experience of the provider without bearing the costs.²⁸⁸ However, the provider is not subject to competition by other qualified operators.²⁸⁹ The university model expands intra-campus service without relying on outside sources.²⁹⁰ However, the general population does not benefit from the service and there might be compatibility issues with the locality.²⁹¹ The nonprofit model benefits the locality because it removes liability, yet this model often relies on the public sector for most of its funding.²⁹²

The governmental model today is mostly notable for transportation services.²⁹³ If considered more broadly, the model benefits from an equal distribution of goods and services and overall public planning,²⁹⁴ but it also creates dependency on the state for supplying the property, and less flexibility.²⁹⁵

²⁸² *Id.* at 894.

²⁸³ See ZIPCAR, <http://www.zipcar.com/> (last visited Jan. 9, 2017); CAR2GO; www.car2go.com (last visited Jan. 9, 2017).

²⁸⁴ See Bardhi & Eckhardt, *supra* note 14, at 886, 888.

²⁸⁵ DeMaio, *supra* note 124, at 45.

²⁸⁶ *Id.*

²⁸⁷ *Id.* at 45–47.

²⁸⁸ *Id.*

²⁸⁹ *Id.*

²⁹⁰ *Id.* at 47.

²⁹¹ DeMaio, *supra* note 124, at 47.

²⁹² *Id.*

²⁹³ *Id.* at 45–47.

²⁹⁴ *Cf.* Mishori, *supra* note 112.

²⁹⁵ *Cf.* Reich, *supra* note 222, at 273. As Charles Reich explains, “[t]he institution called property guards the troubled boundary between individual man and the state. . . . [I]n a society that chiefly values material well-being, the power to control a particular portion of that well-being is the very foundation of individuality.”

A community model operates as a common resource of members. Members pay membership fees²⁹⁶ and can use the resources as long as they follow specific borrowing rules, and in some cases perform responsibilities shared by members such as “assisting the librarian with issues and returns, helping new members and processing any new toys.”²⁹⁷ This model builds on detachment from the property and flexibility of use, but it also involves social involvement and participation.²⁹⁸ For this reason, access to property in the community model avoids the potential commodification of relationships that is sometimes associated with the peer-to-peer model.²⁹⁹

In the peer-to-peer model, a private owner rents out his personal property to a user. Both the owner and the user benefit from the excess capacity of the property.³⁰⁰ This model is often mediated by an online platform that significantly lowers transaction costs.³⁰¹ Peer-to-peer access combines a contract between the owner and the user, and the platform that facilitates the transaction and is responsible towards both owners and users.³⁰² This model avoids the problem of negative reciprocity associated with commercial companies³⁰³ because it directly connects owners and users.³⁰⁴ Most platforms include a reputation mechanism that offers reviews not only for the owner and the property, but also for the accessor.³⁰⁵ In addition, such a model provides more flexibility because it offers a plethora of available options without promoting brand association or consumer loyalty to a specific company.³⁰⁶ However, these markets may replace neighborly assistance with monetary transactions,³⁰⁷ sparking a concern with regard to

²⁹⁶ Ozanne & Ballantine, *supra* note 19, at 488.

²⁹⁷ See, e.g., KARORI TOY LIBR., <http://www.karoritoylibrary.org.nz/belonging> (last visited Feb. 20, 2017).

²⁹⁸ See Ozanne & Ballantine, *supra* note 19.

²⁹⁹ Kreiczler-Levy, Share, Own, Access, *supra* note 99, at 41.

³⁰⁰ See Benkler, *supra* note 110. See also Kreiczler-Levy, *Consumption Property*, *supra* note 6.

³⁰¹ *Id.*

³⁰² See, e.g., RENTYTHING, <https://www.rentything.com/> (last visited Jan. 9, 2017) (describing the role of owner, user and platform).

³⁰³ See Bardhi & Eckhardt, *supra* note 14, at 891–92 and accompanying text.

³⁰⁴ See Ghose, *supra* note 123.

³⁰⁵ See *supra* note 248. See also Rachel Botsman, *The currency of the new economy is trust*, TEDGLOBAL (Sept. 24, 2012), http://www.ted.com/talks/rachel_botsman_the_currency_of_the_new_economy_is_trust (discussing a case where the owner decided to get a cat to avoid a negative review concerning mice on the premises).

³⁰⁶ See Bardhi & Eckhardt, *supra* note 14, at 893, for Zipcar’s attempts at brand association.

³⁰⁷ Cf. Paul Webley & Stephen E. G. Lea, *The Partial Unacceptability of Money in*

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relationship commodification.³⁰⁸

To sum up, the third direction for legal policy seeks a balance between access and ownership to provide both security and flexibility. Yet a property regime requires lawmakers to consider the institutional framework of access, to ensure that flexibility and mobility are achieved.

IV. CONCLUSION

Property as personhood has been incredibly influential in modern legal theory. However, the changing demographics, globalization and the sharing economy have created an alternative form of property use. Possession of property provides attachment, security and stability, but it is also limiting. It constrains identity to a predetermined image. Access as a form of property use represents property without personhood, which allows individuals to experiment and push the boundaries of their identity. As this Article has argued, this alternative function of use has to be seriously considered by property theory. This Article has explained the benefits and detriments of property without personhood and presented its theoretical significance.

Repayment for Neighborly Help, 46 HUM. REL. 65 (1993).

³⁰⁸ Cf. Barry Wellman & Scot Wortley, *Different Strokes from Different Folks: Community Ties and Social Support*, 96 AM. J. SOC. 558 (1990) (addressing the services provided by physically accessible ties).