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Mindful Use: Gandhi's Non-Possessive Property Theory

Nehal A. Patel*

“A seeker after truth, a follower of the law of love, cannot hold anything against tomorrow.”¹

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Dedication: To my father and guru, Ambalal C. Patel: It is hard to know where you end and I begin. To my mother, Sumitra Patel, for being my lifelong role model and the most mindful user of the Earth's resources that I have ever known.

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¹ Mahatma Gandhi, *Letter to Narandas Gandhi (Aug. 24/26, 1930)*, in 50 COLLECTED WORKS OF MAHATMA GANDHI 5, 5 (Pub. Div. Gov't of India 1999), <http://www.gandhi-serve.org/cwmg/VOL050.PDF> [hereinafter CWMG]; see also RICHARD SORABJI, GANDHI AND THE STOICS: MODERN EXPERIMENTS ON ANCIENT VALUES 159 (2012).

I. INTRODUCTION

In the words of Law Professor Christopher Serkin, “[p]roperty is fundamental to how we order our lives and relate to one another. The study of property is no less than the study of society, the State, and the very underpinnings of law.”² John Sprankling and colleagues add that “its development is a product of—and a catalyst for—the economic, political, and social forces that shape a society.”³ Property’s significance is profound, but put simply, property is “an institution for allocating resources and distributing wealth and power.”⁴ As a body of doctrine, property law fulfills the imperative to distribute wealth and power “with rules and concepts drawn from age-old ways of looking at social relations in an ordered society.”⁵ Therefore, discussing property is partly a study of history and culture.⁶ However, the only form of history and culture that animates American legal education and property law is the dominant version constructed in the West.

The Western framing of history provides some continuity to modern legal thought and prevents legal discourse from floating anchor-less through an ocean of potential theories. However, this taken-for-granted quality also functions to exclude non-Western conceptions of what an ordered society entails, and therefore, the “age-old ways of viewing social relations in an ordered society”⁷ taught in law schools are narrow and unimaginative. Moving outside of the dominant discourse would allow us to explore the

² CHRISTOPHER SERKIN, *THE LAW OF PROPERTY* 6 (2013).

³ JOHN SPRANKLING ET AL., *GLOBAL ISSUES IN PROPERTY LAW* v (2006).

⁴ JESSE DUKEMINIER & JAMES E. KRIER, *PROPERTY* xxxv (4th ed. 1998).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

concept of property through fresh ontological and metaphysical assumptions.⁸

In the late nineteenth century, an unassuming young attorney in South Africa named Mohandas Gandhi began to express his own doubts about the modern Anglo system of law used by the British Empire. His campaigns of civil disobedience caught the attention of scholars in the West, but his view of property has received relatively little attention. Most scholars have focused more broadly on Gandhi's conception of the environment or economy, but only a handful of scholars have attempted to understand Gandhi's thought on property law.⁹ In fact, Joan Bondurant went as far as saying that Gandhi's detachment from material possessions and practice of non-possession are "the very negation of the institution of property."¹⁰ Therefore, the challenge to create a theory of property from Gandhi's non-possessive philosophy can seem a formidable one. However, Gandhi's core doctrines provide a broad canvas upon which a non-possessive theory of property can rest.

In this Article, I examine the conception of property in the doctrines that Gandhi either created or held dear to him. In Part II, I begin with the doctrine of *anasaktiyoga* (detachment from worldly things) and the principle of *aparigraha* (non-possession) in order to uncover Gandhi's basic orientation toward the human-environment relationship. In Part III, I discuss

⁸ See JACK D. FORBES, COLUMBUS AND OTHER CANNIBALS: THE WETIKO DISEASE OF EXPLOITATION, IMPERIALISM, AND TERRORISM xv–xxi, 20–25 (2008).

⁹ See, e.g., Shyamkrishna Balganes, *Gandhi and Copyright Pragmatism*, 101 CALIF. L. REV. 1705, 1718 n.64 (2013) (offering a thoughtful application of Gandhi's thought to copyright law, in which he quotes Gandhi:

You may say that trusteeship is a legal fiction. But if people meditate over it constantly and try to act up to it, then life on earth would be governed far more by love than it is at present. Absolute trusteeship is an abstraction like Euclid's definition of a point, and is equally unattainable.)

¹⁰ JOAN BONDURANT, CONQUEST OF VIOLENCE: THE GANDHIAN PHILOSOPHY OF CONFLICT 154 (1958).

Gandhi's doctrines of *sarvodaya* (the welfare of all) and *swadeshi* (self-sufficiency) to explain his view of the relationship between property and human labor.¹¹ In Part IV, I discuss Gandhi's theory of trusteeship as a theory that applies to all ownership and encapsulates his best attempt to rethink the institution of property.

II. *ANASAKTIYOGA* AND *APARIGRAHA* IN PRINCIPLE AND PRACTICE

To conceptualize a theory of property from Gandhi's thought, we can begin by discussing his view of the *Bhagavad Gita*, which served as his guidebook to living.¹² In the *Gita*, Gandhi found a balance between two central doctrines of Indian philosophy: *nivrtti* (contemplative renunciation) and *pravrtti* (active living).¹³ Many ascetics chose the way of *nivrtti* to find enlightenment, influenced by the view that social action produced entanglements that were unfit for a life devoted fully to contemplation.¹⁴ On the other hand, many sages preferred the way of *pravrtti* for its potential to benefit society.¹⁵ In the *Gita*, Gandhi saw a synthesis of inner contemplation (*nivrtti*) and social action (*pravrtti*), which formed the style of "contemplative action" that became his signature approach to life.¹⁶ Gandhi

¹¹ This section may be especially noteworthy for property law scholars given the potential comparisons and contrasts to John Locke's famed and influential view of the mixing of property and labor. See JOHN LOCKE, TWO TREATISES OF GOVERNMENT 285–302 (Peter Laslett ed., 1988); John Locke, *Of Property*, in PROPERTY: MAINSTREAM AND CRITICAL POSITIONS 15, 15–27 (C.B. Macpherson ed., 1978). See also SERKIN, *supra* note 2, at 9; THOMAS W. MERRILL & HENRY E. SMITH, THE OXFORD INTRODUCTIONS TO U.S. LAW: PROPERTY 11 (2010).

¹² See generally EKNATH EASWARAN, THE BHAGAVAD GITA, (1985); EKNATH EASWARAN, THE BHAGAVAD GITA FOR DAILY LIVING, (2001).

¹³ SURENDRA VERMA, METAPHYSICAL FOUNDATION OF MAHATMA GANDHI'S THOUGHT 90–94 (1970).

¹⁴ *Id.* at 90–91.

¹⁵ *Id.* at 91.

¹⁶ *Id.* See generally B.N. GHOSH, BEYOND GANDHIAN ECONOMICS: TOWARDS A CREATIVE RECONSTRUCTION (2012); B.N. GHOSH, GANDHIAN POLITICAL ECONOMY: PRINCIPLES, PRACTICE AND POLICY (2007).

summarized this ethical and social philosophy of the *Gita* as *anasaktiyoga*, or the path of non-attachment.¹⁷

To help him live the doctrine of *anasaktiyoga*, Gandhi practiced the principle of *aparigraha* (non-possession),¹⁸ which appears in an authoritative text written by Patanjali called the *Yoga Sutras*.¹⁹ In the *Yoga Sutras*, Patanjali discussed five methods of self-control (*yamas*) to help an individual nurture constructive thoughts and actions: *ahimsa* (non-violence, non-injury, or non-harm), *satya* (truthfulness), *brahmacharya* (continence), *astaya* (non-stealing), and *aparigraha* (non-possession, non-covetousness, or non-hoarding).²⁰ Gandhi practiced all five *yamas*, and although modern

¹⁷ See Mahatma Gandhi, “*Anasaktiyoga*” (1929), in 46 CWMG 164, 164 (Pub. Div. Gov’t of India 1999), <http://www.gandhiserve.org/cwmg/VOL046.PDF>; VERMA, *supra* note 13, at 90–94. See also GHOSH, BEYOND GANDHIAN ECONOMICS, *supra* note 16, at 26–27; see generally GHOSH, GANDHIAN POLITICAL ECONOMY, *supra* note 16.

¹⁸ As Gandhi explained:

Truthfulness, brahmacharya, non-violence, non-stealing and non-hoarding, these five rules of life are obligatory on all aspirants. Everyone should be an aspirant. A man’s character, therefore, is to be built on the foundation of these disciplines. Beyond doubt, they are to be observed by everyone in the world. Though a business man, one must never utter or practise untruth; though married, one must remain celibate; though keeping oneself alive, one can practise non-violence. It is difficult to be of the world and yet not to steal (to observe the rule of non-stealing) and not to hoard wealth or any other thing. One must, nevertheless, keep that as an ideal to be attained and have some limit in these respects; when the mind has begun to turn away from these things, one may even embrace the supreme renunciation. Everyone who observes these vows will be able to find a way out of all perplexities.

Mahatma Gandhi, *Fragment of Letter to Mathuradas Trikumji (Feb. 7, 1915)*, in 14 CWMG 355, 355 (Pub. Div. Gov’t of India 1999), <http://www.gandhiserve.org/cwmg/VOL014.PDF>.

¹⁹ See generally THE YOGA SUTRAS OF PATANJALI (Sri Swami Satchidananda Trans., 1999).

²⁰ The *yamas* also are the first and most fundamental *ashtanga* (limb) of yoga. The others limbs of yoga are *niyama* (individual conduct), *asana* (poses/postures), *pranayama* (mindful breathing), *pratyahara* (withdrawal of the senses), *dharana* (concentration), *dhyana* (meditation), and *samadhi* (unitive consciousness). See generally B.K.S. IYENGAR, LIGHT ON LIFE (2005); MIRA SILVA & SHAYM MEHTA, YOGA: THE IYENGAR WAY (1990).

commentators widely associate him with his use of *ahimsa*, his use of *aparigraha* deserves attention when addressing theories of property.²¹

Modern property law considers fairness and economic efficiency as core principles,²² and Gandhi considered both to be important.²³ However, Gandhi's practice of *aparigraha* shaped his conceptions of both fairness and economic efficiency. To create a fair world, Gandhi favored a view of property that met the need of all.²⁴ Gandhi's focus on need fulfilled two functions: first, non-hoarding allowed people to use excess property for the needs of others, thereby diminishing both the temptation to steal on the interpersonal level²⁵ and the likelihood of resource wars on the global scale;²⁶ second, material life remained simple, allowing individuals to concentrate their efforts on ethical and spiritual development rather than the perpetual desire to own more possessions. Gandhi explained the importance of simple living by linking the benefits of *aparigraha* to *asteya* (non-stealing):

²¹ See Gandhi, *Fragment of Letter to Mathuradas Trikunji*, *supra* note 18.

²² See DUKEMINIER & KRIER, *supra* note 4.

²³ Gandhi favored "any machinery which does not deprive masses of men of the opportunity to labor, but which *helps the individual and adds to his efficiency*, which a man can handle at will without being its slave." Mahatma Gandhi, *A Discussion*, in 67 CWMG 184, 184 (Pub. Div. Gov't of India 1999), <http://www.gandhiserve.org/cwmg/VOL067.PDF> (emphasis added). See also Thomas Weber, *Gandhi's Moral Economics: The Sins of Wealth Without Work and Commerce Without Morality*, in THE CAMBRIDGE COMPANION TO GANDHI 146, 135–53, (Judith M. Brown & Anthony Parel eds., 2011). See generally N. N. Chatterjee, *Mahatma Gandhi and the Industrial Worker*, 101 INT'L LABOUR REV. 215 (1970).

²⁴ See M.K. GANDHI, UNTO THIS LAST: A PARAPHRASE 144–46 (Valji G. Desai trans., 1951); see also Weber, *supra* note 23, at 144–46.

²⁵ "[W]e find that in the Ashram we possess many things the necessity for which cannot be proved, and we thus tempt our neighbours to steal." Mahatma Gandhi, *Letter to Narandas Gandhi*, *supra* note 1, at 6, cited in SORABJI, *supra* note 1, at 159.

²⁶ See generally M.K. GANDHI, HIND SWARAJ OR INDIAN HOME RULE (Jitendra D. Desai ed., 1938).

Nonpossession is allied to nonstealing. A thing not originally stolen must nevertheless be classified as stolen property, if we possess it without needing it²⁷

This principle [of *aparigraha*] is really a part of [non-stealing] [*asteya*]. Just as one must not deceive, so must one not possess anything which one does not really need. It would be a breach of this principle to possess unnecessary foodstuffs, clothing or furniture. For instance, one must not keep a chair, if one can do without it. In observing this principle, one is led to a progressive simplification of one's own life.²⁸

Because only minimal amounts of property are needed to meet basic human needs such as food and shelter, keeping more than one needed at the present moment was tantamount to stealing. Furthermore, preoccupation with material pursuits beyond what met the need of all distracted an individual from her ethical development. Therefore, to Gandhi, the principle of *aparigraha* encouraged non-material and non-acquisitive pursuits, and since accumulation of property was a material or acquisitive activity, it served little purpose for the individual beyond basic need.

Moreover, Gandhi's practice of *aparigraha* can aid efficiency by decreasing the likelihood of waste, especially if accumulated property could be used immediately to meet someone else's basic needs. To Gandhi, in order to avoid the inefficiencies of hoarding,²⁹ one could store property only to protect it from anticipated disasters:

In observing the vow of non-hoarding [*aparigraha*], the main thing to be borne in mind is not to store up anything which we do not require. For agriculture, we may keep bullocks, if we use them,

²⁷ PARMESHWARI DAYAL, GANDHIAN THEORY OF SOCIAL RECONSTRUCTION 179 (2006). See also S.K. BASU, FOUNDATIONS OF THE POLITICAL PHILOSOPHY OF SARVODAYA 102 (1984).

²⁸ Mahatma Gandhi, *Satyagraha Ashram*, in 42 CWMG 107, 109 (Pub. Div. Gov't of India 1999), <http://www.gandhiserve.org/cwmg/VOL042.PDF>.

²⁹ See AMARTYA SEN, POVERTY AND FAMINES: AN ESSAY ON ENTITLEMENT AND DEPRIVATION 76–83 (1981).

and the equipment required for them. Where there is a recurring danger of famine, we shall no doubt store food-grains. But we shall always ask ourselves whether bullocks and food-grains are in fact needed.³⁰

Thus, Gandhi encouraged minimal property accumulation to maximize fairness and economic efficiency, and he also sought to nurture the individual conscience by asking whether something was “in fact, needed.”³¹

By linking property minimization to personal development, Gandhi presented an alternative to conceptions of property rights in the West.³² In Western property law, possession is seen as a right, and an individual holds a right to ownership and use of possessions that can be reasonably exercised at the exclusion of others.³³ In fact, the right to acquisition and ownership—and the implied right to do with one’s property as one pleases—often is described as the central principle of modern Western property theory.³⁴ Therefore, with the possible exception of environmental theories of nature

³⁰ Mahatma Gandhi, *Letter to Maganlal Gandhi*, in 14 CWMG 383, 383–84 (Pub. Div. Gov’t of India 1999), <http://www.gandhiserve.org/cwmg/VOL014.PDF>.

³¹ *Id.*

³² Popular notions of non-possession in the West largely come from religious traditions, in which non-possession often has been justified as a moral good, and its practice largely has been secluded to monks and nuns who seek union with God in monasteries and convents. SIMPLER LIVING, COMPASSIONATE LIFE: A CHRISTIAN PERSPECTIVE 153 (Michael Schut ed., 2009). See generally VERNARD ELLER, THE SIMPLE LIFE: THE CHRISTIAN STANCE TOWARD POSSESSIONS (1973).

³³ EDUARDO M. PEÑALVER & GREGORY S. ALEXANDER, AN INTRODUCTION TO PROPERTY THEORY 130 (2012). See generally DUKEMINIER & KRIER, *supra* note 4, at 1–99.

³⁴ William Blackstone defined property as “that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe.” WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 2 (1766); Locke, *Of Property*, *supra* note 11, at 15; LOCKE, TWO TREATISES OF GOVERNMENT, *supra* note 11, at 97, 225, 285–302 (regarding the mixing of labor and property). See also DUKEMINIER & KRIER, *supra* note 4, at xxxv, 1–99; see generally Carole Pateman, *Sublimation and Reification: Locke, Wolin and the Liberal Democratic Conception of the Political*, 5 POL. & SOC’Y 441, 447–61 (1975).

preservation,³⁵ the concept of “non-possession” in Western property theory largely is nonexistent. Rather than being a primary policy principle, non-possession only obliquely appears in the common law to prevent interference from other people’s unauthorized use of an owner’s property.³⁶

A property theory that prioritizes Gandhi’s ethical development would temper the imperative to possess. In contrast to the dominant discourse on possession that implicitly begins with desire for dominion,³⁷ Gandhi’s practice of *aparigraha* challenges us to examine why we desire to possess. Rather than starting an analysis at the right to exclusive control, Gandhi questioned the purpose of acquisition and prioritized the goal of meeting minimum resource needs.

III. SARVODAYA AND SWADESHI

One of Gandhi’s most widely discussed doctrines is *Sarvodaya*, or “the welfare of all.”³⁸ Gandhi coined this term to express his vision of a society

³⁵ See *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 565 (1992) (discussing ecosystem nexus theory). In Western discourse, the discussion against outright possession appears in debates surrounding the equal distribution of resources, such as debates about the merits of socialism and communism. Merrill & Smith, *infra* note 57, at 1849–50 (quoting KARL MARX & FREDERICK ENGELS, *THE COMMUNIST MANIFESTO: A MODERN EDITION* 52 (1998)); Thomas W. Merrill, *The Landscape of Constitutional Property*, 86 VA. L. REV. 855, 948–49 (2000).

³⁶ See DUKEMINIER & KRIER, *supra* note 4, at 739–53. See generally Nehal A. Patel & Lauren Vella, *A Mindful Environmental Jurisprudence: Speculations on the Application of Gandhi’s Thought to MCWC v. Nestlé*, 30 PACE ENVTL. L. REV. 1116, 1131–32, 1152 (2013) (discussing riparian rights in *Michigan Citizens for Water Conservation v. Nestlé Waters N. Am., Inc.*, 737 N.W.2d 447 (Mich. 2007)).

³⁷ William Blackstone defined property as “that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe.” BLACKSTONE, *supra* note 34.

³⁸ BASU, *supra* note 27, at 1; NOSHIR BILPODIWALA, *THE SOCIAL ORDER AND SARVODAYA* 82–83 (1963); GEORGE D. BOND, *BUDDHISM AT WORK: COMMUNITY DEVELOPMENT, SOCIAL EMPOWERMENT AND THE SARVODAYA MOVEMENT* xi (2004); K.M. PRASAD, *SARVODAYA OF GANDHI* v (1984); Thomas Vettickal, *Sarvodaya of Mahatma Gandhi: Realistic Utopia* ii (1998) (unpublished Ph.D. thesis, University of Toronto).

that functions in the interests of all its members, especially the most impoverished.³⁹ Property theory plays an important role in *sarvodaya* because the well-being of all is affected by how owners use their property. When individual property use deviates from that which would promote the welfare of all, there is potential for distrust and discord rather than trust and harmony.⁴⁰ In the practice of *sarvodaya*, a property rights holder would act in harmony by using her property for the benefit of others, and conflicts would give way to trust and an ethic of common good. To Gandhi, the modern economy increased the desire to accumulate and used machinery to feed the desire to acquire, rather than promoting *sarvodaya*; in his own words:

I do not believe that multiplication of wants and machinery contrived to supply them is taking the world a single step nearer its goal. . . . I wholeheartedly detest this mad desire to destroy distance and time, to increase animal appetites and go the ends of the earth in search of their satisfaction. If modern civilization stands for all this, and I have understood it to do so, I call it Satanic.⁴¹

Thus, Gandhi believed that British large-scale industry was incompatible with efficient production and consumption for the welfare of all. He sought to illustrate a connection between small-scale domestic production and economic efficiency through his principle of *swadeshi*, or self-sufficiency.⁴²

³⁹ BASU, *supra* note 27, at 1; BILPODIWALA, *supra* note 38, at 82–83; PRASAD, *supra* note 38, at i–v; Weber, *supra* note 23, at 135–53, 144–56; AJIT K. DASGUPTA, GANDHI’S ECONOMIC THOUGHT 168 (1996).

⁴⁰ One Gandhi scholar explained the role of modern law: “Today, why do we have administration of law and order? [O]bviously because one man is afraid of another and so a third management becomes necessary.” BASU, *supra* note 27, at 186 (quoting BILPODIWALA, *supra* note 38, at 62).

⁴¹ RAMASHRAY ROY, SELF AND SOCIETY: A STUDY IN GANDHIAN THOUGHT 129 (1985) (quoting M.K. GANDHI, YOUNG INDIA 83 (1927)).

⁴² Weber, *supra* note 23, at 135–53. For another interpretation of *swadeshi*, see NARENDAR PANI, INCLUSIVE ECONOMICS 72–77 (2001).

One of Gandhi's most well-known applications of *swadeshi* was the *khaddar* (*khadi*) movement, in which he advocated for Indians to buy domestic homespun cloth rather than British clothing.⁴³ *Khaddar*, or hand-made clothing made in villages by local spinners, competed with clothing from British factories. Gandhi believed that Indians would support both domestic economic growth and independence by boycotting British cloth and purchasing *khaddar*.⁴⁴

Empirical research on the *khaddar* movement provides some support for Gandhi's form of economic efficiency. At the time, a machine spindle, like those used in the production of British clothing, would have cost Rs 100.⁴⁵ By comparison, a hand powered spindle would have cost Rs 4, or 1/25 the price.⁴⁶ Similarly, the cost of a hand loom was 18 times less than that of a mill powered loom (Rs 20 versus Rs 900), meaning that the rate of spindle efficiency relative to cost was 24 times greater with hand power versus mill power.⁴⁷ Therefore, the notion that mill power possessed a superior economic efficiency to hand-weaving was a myth based on limited considerations.

Consequently, in Gandhi's thought, *swadeshi* supports *sarvodaya* because of its ability to help the masses achieve political independence while preserving economic efficiency. Furthermore, in a self-sufficient economy for the benefit of all, property is a medium through which individual dignity and communal uplift can be realized. By protecting individual dignity through *sarvodaya*, Gandhi's conception of property

⁴³ DASGUPTA, *supra* note 39, at 25–30.

⁴⁴ *Id.* at 24–30.

⁴⁵ RICHARD B. GREGG, *ECONOMICS OF KHADDAR* 25 (1946); SHANTI SWARUP GUPTA, *ECONOMIC PHILOSOPHY OF MAHATMA GANDHI* 252 (1994).

⁴⁶ *Id.*

⁴⁷ Gregg refers to “[p]ercentage of spindle efficiency relative to costs” as 100 for mill power and 2,400 for hand power, concluding that “a hand-loom or charkha is much more efficient than a power-driven loom or spindle.” GREGG, *supra* note 45.

supports the core policy objectives of autonomy and personhood found in Western property law.⁴⁸

However, Gandhi's conception of property ownership contains a social ontology that is not atomistic as in dominant Western conceptions.⁴⁹ This is due in part to Gandhi's background in Indian philosophy, in which the fundamental substratum of the universe (*brahman*) is indistinguishable from the individual's essence (*atman*).⁵⁰ In this view of the universe, personhood is like "a drop in an ocean," whose characteristics are identical to the ocean itself. In Gandhi's own words, "[h]umanity is an ocean,"⁵¹ and the individual is the entirety of humanity "as a little drop of water is of the ocean."⁵² The temporary nature of a single human life only highlighted the impermanence of ownership to Gandhi:

Our existence as embodied beings is purely momentary. What are a hundred years in eternity? But if we shatter the chains of egotism and melt into the ocean of humanity, we share its dignity. . . . A drop in the ocean partakes of the greatness of its parent, although it is unconscious of it. But it is dried up as soon as it enters upon an existence independent of the ocean.⁵³

⁴⁸ See generally MERRILL & SMITH, *supra* note 11, at 51–55.

⁴⁹ See VERMA, *supra* note 13, at 93 (from Gandhi's note on the 23rd *shloka* of the Discourse XII of the *Gita*). See also MAHADEV DESAI, *THE GITA ACCORDING TO GANDHI* 323 (1956); M.K. GANDHI, *DISCOURSES ON THE GITA* 4–5 (1960).

⁵⁰ DAVID LOY, *NONDUALITY: A STUDY IN COMPARATIVE PHILOSOPHY* 6–7 (1998); BANSI PANDIT, *THE HINDU MIND: FUNDAMENTALS OF HINDU RELIGION AND PHILOSOPHY FOR ALL AGES* 7–10, 34 (2nd Ed., 1996). See generally HUSTON SMITH, *THE WORLD'S RELIGIONS* 12–81 (1991).

⁵¹ Mahatma Gandhi, *Letter to Amrit Kaur* (Aug. 29, 1947), in 96 CWMG 296, 296 (Pub. Div. Gov't of India 1999), <http://www.gandhiserve.org/cwmg/VOL096.PDF>.

⁵² Mahatma Gandhi, *Discussion with Agatha Harrison* (Mar. 29/30, 1939), in 75 CWMG 215, 216 (Pub. Div. Gov't of India 1999), <http://www.gandhiserve.org/cwmg/VOL075.PDF>.

⁵³ Mahatma Gandhi, *Letter to Narandas Gandhi* (Oct. 2/7, 1930), in 50 CWMG 115, 118 (Pub. Div. Gov't of India 1999), <http://www.gandhiserve.org/cwmg/VOL050.PDF>.

For Gandhi, the desire to possess without intending the benefit of all contradicted the basis of human existence, in which the individual already is the whole single essence:

My own experience has led me to the knowledge that the fullest life is impossible without an immovable belief in a living Law in obedience to which the whole universe moves. A man without that faith is like a drop thrown out of the ocean bound to perish. Every drop in the ocean shares its majesty and has the honour of giving us the ozone of life.⁵⁴

To Gandhi, the individual was to be celebrated as a part of a cosmic oneness; therefore, society was to organize itself around the recognition of the dignity of the individual essence. However, incumbent upon the individual was the need to recognize the transient quality of individual life, and how a preoccupation with one's own desire to possess reflected a short-sighted view of life and time. "I must reduce myself to zero," Gandhi explained, "[s]o long as man does not of his own free will put himself last among his fellow-creatures, there is no salvation for him. Ahimsa is the farthest limit of humility."⁵⁵ In Gandhi's worldview, the recognition of the oneness of all things led to love and compassion for others, since other users of the world's resources were of the same essence as oneself (*sarvam khalvidam brahman*). Similarly, within the intense identification with others is a non-possessive relationship with the other; there is no reason to possess when possession of a resource would be at the expense of another who is your own essence. Therefore, the absence of a desire to possess is a predictable outgrowth of the realization that one already is what one desires to possess (*ayam atma brahman*).

⁵⁴ Mahatma Gandhi, *A Youth's Difficulty*, in 68 CWMG 383, 383–84 (Pub. Div. Gov't of India 1999), <http://www.gandhiserve.org/cwmg/VOL068.PDF>.

⁵⁵ M.K. GANDHI, AUTOBIOGRAPHY OR THE STORY OF MY EXPERIMENTS WITH TRUTH 464 (1927).

It is no wonder, then, that property ownership was of little personal interest to Gandhi. At his death, the value of his possessions totaled no more than a few dollars and included his chappals, eyeglasses, timepiece, and spinning wheel (*charkha*).⁵⁶ His personal life illustrated his ideal vision of living, but in a social and legal sense, his choice to own virtually nothing is not the entire lesson of his life. In terms of property theory, Gandhi's insight is in his emphasis on *how one exercises control over her property*.⁵⁷

To Gandhi, *sarvodaya* was enhanced by property use that regarded the means of use as more important than the ends.⁵⁸ Gandhi explained, "[o]ne rupee can purchase for us poison or nectar, but knowledge of devotion cannot buy us either salvation or bondage. These are not media of exchange. They are themselves the thing we want. In other words, if the means and the end are not identical, they are almost so."⁵⁹ Under the doctrine of *anasaktiyoga*, property use via selfless means was the achievement of life's ultimate end, enlightenment (*moksha* or *nirvana*).⁶⁰ In

⁵⁶ See generally LOUIS FISCHER, *GANDHI: HIS LIFE AND MESSAGE FOR THE WORLD* (1982) (explaining the influence of Gandhi's simplicity, and containing a photograph of Gandhi's scarce possessions on the back cover).

⁵⁷ For discussions of the fundamental nature of property law, see JEREMY BENTHAM, *THEORY OF LEGISLATION* 111–13 (C.K. Ogden ed., Richard Hildreth trans., 1931); Thomas W. Merrill & Henry E. Smith, *The Morality of Property*, 48 WM & MARY L. REV. 1849 (2007).

⁵⁸ Gandhi, "*Anasaktiyoga*", *supra* note 17, at 170–71 ("The extreme of means is salvation. Salvation of the *Gita* is perfect peace."); VERMA, *supra* note 13, at 93.

⁵⁹ *Id.*

⁶⁰ Although the term "enlightenment" can carry several meanings in various traditions, I understand Gandhi's view of self-realization as being parallel to Hindu and Buddhist views of *moksha* and *nirvana*, respectively. Regardless of the conception of enlightenment, it is important to note that for Gandhi, the fulfillment of "individual" self-realization and a more enlightened social world went hand-in-hand; effectively, one necessarily followed from the other. Patel & Vella, *supra* note 36, at 1174 n.162.

other words, for Gandhi, the means of *ahimsa* and contemplative action merge into the ends of enlightenment and bliss.⁶¹

As Jeremy Bentham once stated, “[p]roperty and law are born together, and die together. Before laws were made there was no property; take away laws, and property ceases.”⁶² Similarly, perhaps Gandhi’s sentiment is ‘property and the isolated self are born together, and die together. Before isolated selves were made there was no property; take away the self, and desire for property ceases.’⁶³ In a non-possessive disposition toward property, *sarvodaya* becomes easy through the goals of distributive justice. However, although greater distributive justice can provide adequate property for all, peace is not attainable purely through equal distribution of property because of the focus on ends (who gets dominion) rather than means. Peace arrives when property is viewed as media (means) through which users can create nurturing relationships that advance their and others’ well-being.⁶⁴ With this disposition, Gandhi created his theory of trusteeship, perhaps the closest expression in his writings toward a theory of property.

IV. GANDHI’S THEORY OF TRUSTEESHIP AND THEORY OF RIGHTS

Gandhi’s theory of trusteeship perhaps best represents the application of his collective metaphysic to property. In this theory, Gandhi described all

⁶¹ K.S. BHARATHI, *THE SOCIAL PHILOSOPHY OF MAHATMA GANDHI*, CONCEPT PUBLISHING COMPANY, 145–50 (1991); VERMA, *supra* note 13, at 85–99. For a broader discussion of life’s aims in Hindu philosophy, see SMITH, *supra* note 50, at 12–81.

⁶² BENTHAM, *supra* note 57.

⁶³ The text is not a quotation from Gandhi; rather, it is the Author’s example of how Gandhi’s thought could be summarized in a way that parallels the structure of Bentham’s reasoning but presents the source of property as being in the ‘self’ rather than the ‘law.’

⁶⁴ For a recent discussion of means and ends in property law, see generally Gregory S. Alexander, *The Social-Obligation Norm in American Property Law*, 94 CORNELL L. REV. 745 (2009); Henry E. Smith, *Mind the Gap: The Indirect Relation Between Ends and Means in American Property Law*, 94 CORNELL L. REV. 745 (2009).

wealth as “held in trust” for all of society.⁶⁵ Property owners would not be expected to relinquish their property, but they would be expected to act as trustees of the world’s property rather than private owners able to easily justify pure self-interest.⁶⁶ Gandhi viewed property as meaningful when used in the service of humanity and described the proper use of private property as if it were a trust fund for the world:

Trusteeship provides a means of transforming the present capitalist order of society into an egalitarian one. It gives no quarter to capitalism, but gives the present owning class a chance of reforming itself. It is based on the faith that human nature is never beyond redemption. It does not recognize any right of private ownership of property, except inasmuch as it may be permitted by society for its own welfare.⁶⁷

As a result, he spent years trying to convince businesspeople to view their position of wealth as trustees rather than as exclusive owners.⁶⁸ His view of wealth-in-trust has clear implications for theorizing on property, especially in light of its departure from Western property theory.⁶⁹

Traditionally, Western property law has used an “in rem” view of property, in which property referred to things and a property right rested in

⁶⁵ NARENDAR PANI, INCLUSIVE ECONOMICS 70–72 (2001); Anil Dutta Mishra, *Trusteeship: A New Economic Concept*, in 4 GANDHIAN ALTERNATIVE 197, 200 (V.K. Natraj, Kamlesh Misra, & Neeru Kapoor eds., 2005). See also MAHENDRA S. KANTHI, GANDHIAN ECONOMIC THEORY 45 (1988).

⁶⁶ See Mahatma Gandhi, *The Greatest Good of All*, in 37 CWMG 380, 381 (Pub. Div. Gov’t of India 1999), <http://www.gandhiserve.org/cwmg/VOL037.PDF>. See also Weber, *supra* note 23, at 135–53.

⁶⁷ Thomas Pantham, *Thinking with Mahatma Gandhi: Beyond Liberal Democracy*, 11 POL. THEORY 165, 169 (1983).

⁶⁸ BIHIKHU PAREKH, GANDHI’S POLITICAL PHILOSOPHY 136–41 (1989).

⁶⁹ Pantham, *supra* note 67, at 169. This is the final version of a trusteeship formula that was originally drafted by Professor M. L. Dantwala and modified by Gandhi. See PYARELAL, MAHATMA GANDHI: THE LAST PHASE, VOL. I 633–34 (Ahmedabad ed., 1958).

the “thing.”⁷⁰ In recent history, Western property law has been influenced by a theory of property as a “bundle of sticks”⁷¹ or “bundle of rights” that owners or possessors can invoke to validate certain property relationships with each other.⁷² Because this popular notion of property directly engages property as a collection of rights, it is fitting to examine Gandhi’s theory of rights if we are to engage his thought with modern property law.

Because Gandhi’s Theory of Rights informed his view of law generally, it is a useful area of his thinking to engage property law. Gandhi’s theory of rights placed duty at the forefront of rights analysis. Gandhi was influenced by the Western presumption that every individual right included a corresponding duty upon others not to infringe on that right.⁷³ However, Gandhi also considered it necessary for individuals to fulfill duties in order to earn rights.⁷⁴ Gandhi’s emphasis on legal duty was shaped by the *purusarthas*, or the four goals of life in Indian philosophy.⁷⁵ These four goals are described in Sanskrit texts as *kama* (pleasure), *artha* (wealth), *dharma* (duty), and *moksha* (liberation or enlightenment).⁷⁶ In particular, *dharma* is relevant to Gandhi’s theory of rights, and the conception of duty implied in *dharma* has multiple meanings, including but not limited to

⁷⁰ Thomas W. Merrill & Henry E. Smith, *What Happened to Property in Law and Economics?*, 111 YALE L. J. 357, 357–99 (2001).

⁷¹ *Id.*

⁷² *Id.* at 357 n.1.

⁷³ DASGUPTA, *supra* note 39, at 44–63; Mahatma Gandhi, *Letter to James Godfrey*, in 2 CWMG 477, 477 (Pub. Div. Gov’t of India 1999), <http://www.gandhiserve.org/cwmg/VOL002.PDF> (“[A] consciousness that we are doing what we consider to be our duty to the best of our ability is the highest reward.”). See generally Ronald J. Tercheck, *Gandhian Autonomy in the Late Modern World*, in GANDHI FREEDOM AND SELF-RULE 47 (Anthony J. Parel ed., 2000).

⁷⁴ DASGUPTA, *supra* note 39, at 44–63; Tercheck, *supra* note 73, at 51–52.

⁷⁵ Most notably, the *purusarthas* are discussed in the *Dharmasastras*, *Ramayana*, and *Mahabharata*, all of which were familiar to Gandhi. PAREL, *infra* note 76, at 5–8, 98, 130; see generally DHARMASŪTRAS: THE LAW CODES OF ANCIENT INDIA (Patrick Olivelle Trans., 2009); WILLIAM BUCK, THE RAMAYANA (London ed., 1976); THE MAHABHARATA (J.A.B. Van Buitenen ed. & trans., 1973).

⁷⁶ ANTHONY J. PAREL, GANDHI’S PHILOSOPHY AND THE QUEST FOR HARMONY 5 (2006).

guidelines for personal behavior, ethical practice, and adherence to social virtues.

The conceptual framework of the *purusarthas* can be helpful in understanding Gandhi's conception of property rights and duties.⁷⁷ To Gandhi, the *purusarthas* were integrated, and each individual goal contributed to the proper pursuit of the other three.⁷⁸ Therefore, in isolation, a *purusartha* was liable to create negative outcomes for self and society.⁷⁹

For example, use of property purely through *kama* (pleasure) could preoccupy the possessor with excessive self-pleasure and would not lead to any meaningful social benefit. In Gandhi's own words, "the mind is a restless bird; the more it gets the more it wants, and still remains unsatisfied. The more we indulge in our passions, the more unbridled they become."⁸⁰ In Gandhi's thought, one cannot separate the mental state with which an owner or possessor approaches her property from her subsequent use of that property, and *kama* without the context of the other *purusarthas* is bound to leave the individual unsatisfied and wanting more.⁸¹ As a result, property use based purely on *kama* would fail to foster the regard for others that would be needed to focus energies on feeding and clothing the human family.⁸²

⁷⁷ For a discussion of the *purusarthas*, see SMITH, *supra* note 50, at 12–81. *See generally* PAREL, *supra* note 76.

⁷⁸ VENKATRAMAN SUBRAY HEDGE, *GANDHI'S PHILOSOPHY OF LAW* 8 (1983); PAREKH, *supra* note 68, at 210; PAREL, *supra* note 76, at 1–28.

⁷⁹ HEDGE, *supra* note 78, at 27–29.

⁸⁰ ANTHONY PAREL, *HIND SWARAJ AND OTHER WRITINGS* 68 (1997).

⁸¹ In terms of property law, one can surmise that in a purely pleasure-based property regime, there would be no end to the relentless desire for more property for one's own control and use.

⁸² Dasgupta uses the term "other-regarding" to describe Gandhi's mentality in contrast to "self-regarding" behavior. DASGUPTA, *supra* note 39, at 32. *See also* HEDGE, *supra* note 78, at 29–32.

Similarly, the second goal, *artha* (worldly acquisition), could degenerate into greed if it was pursued without the needs of others in mind.⁸³ For this reason, many Indian sages considered *artha* subservient to and incompatible with *moksha* (liberation), but Gandhi considered *artha* important and compatible with spiritual pursuit.⁸⁴ As a result, Gandhi's treatment of property was not purely "worldly" or "material"; property also carried spiritual significance.⁸⁵ Whereas Western property discourse treats property as "things" that confer wealth (or rights that confer control),⁸⁶ Gandhi viewed property through the mentality of the possessor. In Gandhi's thought, if property is used for selfish interests, there is little meaningful long-term social, ethical, or spiritual benefit for the individual and society. However, if *artha* remained connected with the other *purusarthas*, then acquisition would produce positive social outcomes.⁸⁷

In order to achieve such positive social outcomes, Gandhi focused his theory of rights on the third *purusartha*, *dharma* (duty). Broadly speaking, *dharma* refers to the fulfillment of obligations to others and is both a social and individual virtue in Gandhi's thought.⁸⁸ He argued that the fulfillment of duties is the highest honor in a worldly life. In his own words, "[c]onsciousness that we are doing what we consider to be our duty to the best of our ability is the highest reward."⁸⁹

Gandhi's firm insistence on fulfilling duties to earn rights originates in part from his ontology of society, in which people are of the same underlying essence, and therefore, intimately connected. His dedication to

⁸³ For interpretations of *artha*'s place in the *purusarthas*, see PANDIT, *supra* note 50, at 245; SMITH, *supra* note 50, at 16–17.

⁸⁴ PAREL, *supra* note 76, at 1–28, 85–184.

⁸⁵ *Id.*

⁸⁶ SERKIN, *supra* note 2, at 8. See also MERRILL & SMITH, *supra* note 11.

⁸⁷ PANDIT, *supra* note 50, at 245; PAREL, *supra* note 76, at 1–28, 85–134; SMITH, *supra* note 50, at 12–26.

⁸⁸ PAREKH, *supra* note 68, at 44–45, 105–08; Tercheck, *supra* note 73, at 51–52.

⁸⁹ Gandhi, *Letter to James Godfrey*, *supra* note 73.

the doctrine of *ahimsa* (nonviolence) only underscores this social ontology. In this ontology, the way people treat others reflects their progress along the path of enlightenment, which ends in the realization that the self is indistinguishable from the other.⁹⁰ Therefore, to Gandhi, clarity of duties was crucial to how people treated others and was necessary for attaining *moksha* (liberation), the fourth *purushartha*.

Consequently, when viewed through Gandhi's thought, the West's "rights-heavy" property discourse needs substantial reorientation. Imagining a "duty-based" view of property can be challenging in the current legal discourse where rights form the dominant frame.⁹¹ However, an "other-regarding" property theory is both possible and arguably desirable over the current "self-regarding" paradigm.⁹² Outside of Western property law's taken-for-granted ontological and metaphysical assumptions, Gandhi's insistence that individual benefit and collective benefit are synonymous can be self-evident. In his own words,

I do not believe . . . that an individual may gain spiritually and those around him suffer. I believe in Advaita [non-dualism]. I believe in the essential unity of man and for that matter all that lives. Therefore I believe that if one man gains spiritually the

⁹⁰ The Self (*atman*) also is indistinguishable from all objects of desire, as expressed in the Sanskrit maxim *tat tvam asi*. Although the terms "enlightenment, liberation, and salvation" can carry several meanings in various traditions, I use the terms interchangeably to describe Gandhi's view of self-realization as being parallel to Hindu and Buddhist views of *moksha* and *nirvana*, respectively. Regardless of the conception of enlightenment, it is important to note that, for Gandhi, the fulfillment of "individual" self-realization and a more enlightened social world went hand-in-hand; effectively, one necessarily followed from the other.

⁹¹ See DASGUPTA, *supra* note 39, at 44–46; RONALD DWORKIN, TAKING RIGHTS SERIOUSLY 184 (1977).

⁹² For a discussion of "self-regarding" versus "other-regarding" behavior, see DASGUPTA, *supra* note 39, at 32. For a discussion of *sarvodaya* as it pertains to the corporate veil and *parens patriae*, see also Patel & Vella, *supra* note 36, at 157, 171–75, 190.

whole world gains with him and, if one man fails, the whole world fails to that extent.⁹³

If property law operated via Gandhi's theory of rights, then any exercise of property rights would carry a duty to use property for the benefit of the world.⁹⁴ Gandhi's theories promote an unselfish form of property ownership because of their recognition of the connectedness of all beings and the impermanence of ownership and possession. To create this system of property, Gandhi preferred cultural transformation over state coercion. He, personally, attempted to persuade prominent businessmen to adopt his theory of trusteeship.⁹⁵ However, if efforts to affect cultural change failed, Gandhi still left open the possibility of "legislative regulation of the ownership of wealth."⁹⁶ His view of property as held in trust implies that property law has a crucial role in fostering social harmony and promoting inner peace. When viewed through Gandhi's thought, property law could enhance peace if it were designed with a sensitivity to the interconnectedness at the heart of the human-environment relationship.

V. PROPERTY LAW AS PEACE: INTEGRATING GANDHI'S CORE CONCEPTS

Gandhi found peace through abandoning the desire to possess, and his way to inner peace influenced his conceptions of policy and society. He had

⁹³ Weber, *supra* note 23, at 150.

⁹⁴ Gandhi connected individual duty and social good through cause and effect, explaining that if we all attend to our duties, then peace and a better world will follow. Exercising individual rights enables people "to develop their own potential to the full[est] and by doing so contribute as best they can to the common good which it is their duty to do." DASGUPTA, *supra* note 39, at 59.

⁹⁵ HEDGE, *supra* note 78, at 8, 40–47; PAREKH, *supra* note 68, at 140–41; Anthony Parel, *Gandhi and the State*, in *THE CAMBRIDGE COMPANION TO GANDHI* 154–72 (Judith M. Brown & Anthony Parel eds., 2011).

⁹⁶ Weber, *supra* note 23, at 144, 135–53 (quoting M.K. Gandhi, *Practical Trusteeship Formula*, 25 *HARIJAN* 48 (1952)). See also HEDGE, *supra* note 78, at 8–51; Kenneth Rivett, *The Economic Thought of Mahatma Gandhi*, 10 *BRITISH J. SOC.* 1, 7 (1959).

a lifelong disinterest in personal acquisition, and his simple material life became one of his trademarks. Gandhi's upbringing may give us some insight into the origins of his disposition to property and his subsequent insights on the human-property relationship.

Gandhi was raised in a family that held the minimization of possessions in high regard. His grandfather, Uttamchand Gandhi, was known to give half of his income to charity.⁹⁷ He was known to be so non-possessive that he once returned his son's wedding presents, claiming that they belonged to the people who made them.⁹⁸

Similarly, there are several stories about Gandhi's father, Karamchand (Kaba) Gandhi, and his non-acquisitiveness. For instance, when Kaba was moving from Vankaner to Rajkot, his friend, Navalram, placed bags of money under his carriage seat to take with him. Kaba took the bags out and returned them to Navalram.⁹⁹ In another instance, when the ruler of Rajkot allowed Kaba to choose a plot of land for a home, Kaba only asked for a 400 square yard plot. Even when the ruler insisted that he choose a larger plot for his large family, Kaba still insisted on possessing the smaller plot.¹⁰⁰ In his own words, Gandhi said of his father:

[H]e never hoarded money. He spent all that he earned in charity and the education and marriages of his children, so we were practically left without much cash. He left some property, and that was all. When asked why he did not collect money and set it aside

⁹⁷ BENUDHAR PRADHAN, *THE SOCIALIST THOUGHT OF MAHATMA GANDHI*, VOL. I 5–6 (1980). *See also* C.D.S. DEVANESEN, *THE MAKING OF THE MAHATMA*, 116 (1968); P.C. GHOSH, *MAHATMA GANDHI: AS I SAW HIM* 4 (1968); PYARELAL, *MAHATMA GANDHI: THE EARLY PHASE 176–92* (Vol. 1, 1965); ROMAIN ROLLAND, *MAHATMA GANDHI*, 3 (2000).

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

for his children, he used to say that his children represented his wealth.¹⁰¹

Like his father and grandfather, Gandhi became a man uninterested in acquiring possessions. Once, when a journalist asked Gandhi to tell him the secret of his life in three words, Gandhi replied, “[r]enounce and enjoy.”¹⁰² His decision to renounce his own material possessions (*aparigraha*)—and in the process achieve detachment from worldly things (*anasaktiyoga*)—illustrates a radical alternative from modern consumption-driven practices that presuppose the desire to possess. Rather than “possess and enjoy,” Gandhi’s proclamation to “renounce and enjoy” is a call to view property through the eyes of one’s ethical and spiritual essence rather than one’s interest to acquire. In this respect, Gandhi viewed the function of property as aiding the fulfillment of the basic needs of both the owner and humanity generally.¹⁰³

Gandhi seemed keenly aware of how our view of property would shape our use of it, and he even made references to comparative property law, saying “[i]n the legal languages of Mayne: ‘Individual property is the rule in the West. Corporate property is the rule in the East.’”¹⁰⁴ Although he recognized a need to reform the Western conception of property, Gandhi did not seek a return to any Indian historical conception of property. Together, Gandhi’s doctrines of *anasaktiyoga* (with *aparigraha*), *sarvodaya*, *swadeshi*, and his theories of trusteeship and rights give us a sense of how an original property theory could emerge from Gandhi’s thought. His thought reflects a contemporary understanding of the function and

¹⁰¹ Mahatma Gandhi, *Interview to “The Vegetarian”-I*, in 1 CWMG 41, 42–43 (Pub. Div. Gov’t of India 1999), <http://www.gandhiserve.org/cwmg/VOL001.PDF>.

¹⁰² EKNATH EASWARAN, *GANDHI THE MAN* 105 (1978). See also Bill McKibben, *The End of Growth*, MOTHER JONES (Nov./Dec. 1999), <http://www.motherjones.com/politics/1999/11/end-growth> (also published in *UTNE READER*, (Mar./April 2000), <http://www.utne.com/2000-03-01/JoysRUs.aspx>).

¹⁰³ See BONDURANT, *supra* note 10, at 154–55.

¹⁰⁴ Mahatma Gandhi, *Interview to “The Vegetarian”-I*, *supra* note 101, at 43.

application of property that is fit for a new age in which people are not “indifferent to questions of individual rights and distributive justice, which many consider the hallmarks of a moral perspective.”¹⁰⁵

Thomas W. Merrill and Henry E. Smith recently argued that “no system of property rights can survive unless property ownership is infused with moral significance.”¹⁰⁶ They explain that the utilitarian thinking that influences property law discourse is based on “price theory and cost-benefit analysis”¹⁰⁷ rather than an acknowledgment of utilitarianism as a moral theory.¹⁰⁸ Similar to Merrill and Smith, Gandhi explicitly treated utilitarianism as a moral theory. However, rather than accepting the theory as the moral basis for property, he critiqued it and offered his alternative doctrine of *sarvodaya*.¹⁰⁹ He said of the comparison, “a votary of ahimsa cannot subscribe to the utilitarian formula. He will strive for the greatest good of all and die in the attempt to realize the ideal.”¹¹⁰ For Gandhi, then, property use had explicit ethical considerations that went beyond utilitarian considerations or the satisfaction of wants.¹¹¹

¹⁰⁵ Merrill & Smith, *supra* note 57, at 1849.

¹⁰⁶ *Id.* at 1850.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ In prior articles, I discussed the connection between *ahimsa* and *sarvodaya* and focused on the comparison between utilitarianism and *sarvodaya* in economic thinking and the reasonable use doctrine, but here I will discuss the comparison as it pertains to property theory. Patel & Vella, *supra* note 36, at 1116; Nehal A. Patel & Ksenia Petlakh, *Gandhi’s Nightmare: Bhopal and the Need for Mindful Jurisprudence*, 30 HARV. J. ON RACIAL & ETHNIC JUST. 151, 157, 171–75, 190 (2014). See also Balganes, *supra* note 9, at 1013–15 (“Speaking about utilitarianism as commonly understood, he observed how ‘happiness is supposed to mean only physical happiness and economic prosperity,’ which implied that ‘[i]f the laws of morality are broken in the conquest of this happiness, it does not matter very much.’”).

¹¹⁰ Mahatma Gandhi, *The Greatest Good of All*, in 37 CWMG 380, 381 (Pub. Div. Gov’t of India 1999), <http://www.gandhiserve.org/cwmg/VOL037.PDF>. See also Weber, *supra* note 23, at 145, 135–53.

¹¹¹ As Gandhi explained:

In *sarvodaya*, one does not presume that the wants of the owner or possessor are the source for proper economic action, especially since desire for control can encourage selfish and short-sighted decision-making.¹¹² In the absence of exercising ethical preferences, the owner's (or possessor's) use of property can be destructive for both herself and others, especially for one's ethical and spiritual development. In this sense, the doctrine of *sarvodaya* is "ideal-regarding" as opposed to "want-regarding," and property use is "other-regarding" rather than "self-regarding."¹¹³ In other words, under the doctrine of *sarvodaya*, parties are expected to view their property as conduits for *ahimsa*, which in Gandhi's thought generates inner peace and social harmony. In Gandhi's thought, property is a medium for practicing nonviolence and love.

Because Gandhi's doctrines focus heavily on collective well-being, some commentators parallel his views to those of Socialists.¹¹⁴ However, in

People in the West generally hold that the whole duty of man is to promote the happiness of the majority of mankind, and happiness is supposed to mean only physical happiness and economic prosperity. If the laws of morality are broken in the conquest of this happiness, it does not matter very much. The consequences of this thinking are writ large on the face of Europe.

HEDGE, *supra* note 78, at 28; Balganes, *supra* note 9, at 1713 (quoting M.K. GANDHI, SARVODAYA: THE WELFARE OF ALL 7 (Bharatan Kumarappa ed., 1954)).

¹¹² BRIAN BARRY, POLITICAL ARGUMENT 38 (1965); DASGUPTA, *supra* note 39, at 168. See also Nirmal Kumar Bose, *The Theory and Practice of Sarvodaya*, in THE MEANINGS OF GANDHI 79, 80 (Paul F. Power ed., 1971).

¹¹³ For a more expansive explanation:

[I]f sarvodaya replaced utilitarian thinking, then a hierarchy of importance could be based on a single 'ideal regarding' principle: parties are expected to develop a method of action which will raise the welfare of all, not satisfy its own want. This expectation forces parties to include an 'other-regarding' view of conflict in which persuasive arguments must be implicitly and subtly collaborative. In other words, parties to a case automatically become intellectual agents of non-harm, rather than actors approaching a case in a pure 'want-regarding' fashion.

Patel & Vella, *supra* note 36, at 1144–45. See also DASGUPTA, *supra* note 39, at 32; HEDGE, *supra* note 78, at 29–32.

¹¹⁴ See generally PRADHAN, *supra* note 97.

contrast to dominant Socialist ideals, Gandhi did not necessarily favor state control of resources.¹¹⁵ Unlike the Indian Marxists of his era, Gandhi accepted private ownership and supported property rights, provided that owners viewed their property in trust for the welfare of all¹¹⁶ and social policy focused on the development of self-realized personhood and an enlightened nonviolent society.¹¹⁷ In Gandhi's thought, ethical development intimately was connected to the liberation of humankind. As a result, to Gandhi, the debate over state versus private ownership was irrelevant compared to the effort to realize a more ethically-grounded use of property.

Recently, Merrill and Smith noted that the attack on property through the thought of Pierre-Joseph Proudhon, Karl Marx, and Friedrich Engels "has put [private] property on the defensive in the minds of those drawn to thinking of public policy in moral terms."¹¹⁸ Merrill and Smith propose that "the right of the owner to act as the exclusive gatekeeper of the owned thing must be regarded as a moral right"¹¹⁹ and is "the differentiating feature of a system of property."¹²⁰ Western rights discourse commonly recognizes

¹¹⁵ It should be noted that in Gandhi's early years in South Africa, he recognized the importance of property ownership as a freedom sought by oppressed people. See Paul F. Power, *Gandhi in South Africa*, 7 J. OF MODERN AFR. STUD. 441, 451 (1969). His later writings explicate the conditions of property ownership in trust. Therefore, it is important to note the contextual significance of Gandhi's statements on ownership, where he emphasized distributive justice to promote protection of property ownership for oppressed people, but especially sought the adherence of the wealthy to promote trusteeship. See generally Balganes, *supra* note 9 (for a similar discussion pertaining to copyright).

¹¹⁶ SURINENI INDIRA, *GANDHIAN DOCTRINE OF TRUSTEESHIP* v (1991); Jai Narain Sharma, *Theory of Trusteeship*, in *GANDHISM AFTER GANDHI* 93, 93–100 (1999); Balganes, *supra* note 9, at 1708; Chatterjee, *supra* note 23, at 224–28.

¹¹⁷ For a discussion of ethics and social theory, see M.V. NADKARNI, *ETHICS FOR OUR TIMES: ESSAYS IN GANDHIAN PERSPECTIVE* 21 (2011).

¹¹⁸ Merrill & Smith, *supra* note 57, at 1850.

¹¹⁹ *Id.*

¹²⁰ *Id.*; see generally JAMES E. PENNER, *THE IDEA OF PROPERTY IN LAW* 29–37, 67–75 (1997); see also Thomas W. Merrill, *Property and the Right to Exclude*, 77 NEB. L. REV. 730, 736–41 (1998).

rights as universal moral declarations, but Gandhi's thought recognizes rights as neither fixed moral discoveries nor validated by rational deduction.¹²¹ Because Gandhi saw the realization of truth through *ahimsa* as life's highest goal,¹²² rights were opportunities to exercise love toward others, and through that practice, to attain self-realization (*tat tvam asi*).¹²³ Therefore, from one view, Gandhi's thought includes a "moral right" to exercise *ahimsa* through property and a moral duty to use property via the doctrine of *sarvodaya*. Unlike Proudhon's statement that "property is theft,"¹²⁴ Gandhi's sentiment may be that property *beyond need* is theft. In Gandhi's view, the world's resources are held in trust; to him, keeping any more than one needed was hoarding (not *aparigraha*), and failing to live via *aparigraha* was tantamount to stealing (*asteya*).

While the West argued internally over state versus private ownership,¹²⁵ Gandhi conceptualized property such that the central issue went beyond simply assuring proper rights to the owner. If an owner exercised her right to property in ways that harmed her global family, then such rights would not be meaningful for fulfilling *sarvodaya*. The important issue for Gandhi, therefore, was *how* property was to be used and how to imbibe both

¹²¹ DASGUPTA, *supra* note 39, at 59, 44–63; Patel & Vella, *supra* note 36, at 1145–49 (discussing the similarities and differences between dominant Western conceptions of rights and Gandhi's Theory of Rights).

¹²² "[T]his much I can say with assurance, as a result of all my experiments, that a perfect vision of Truth can only follow a complete realization of Ahimsa." GANDHI, *supra* note 55, at 463.

¹²³ Patel & Vella, *supra* note 36, at 1145–49 (discussing the similarities and differences between dominant Western conceptions of rights and Gandhi's Theory of Rights).

¹²⁴ PIERRE-JOSEPH PROUDHON, WHAT IS PROPERTY? 13 (Donald R. Kelley & Bonnie G. Smith eds. & trans., 1994). *See also* Merrill & Smith, *supra* note 57, at 1849.

¹²⁵ Note the contrast between support of private property ownership in American political discourse and Marx and Engel's proclamation that the "theory of the Communists may be summed up in the single sentence: Abolition of private property." Merrill & Smith, *supra* note 57, at 1849 (quoting MARX & ENGELS, *supra* note 35, at 52); Thomas W. Merrill, *The Landscape of Constitutional Property*, 86 VA. L. REV. 855, 948–49 (2000).

property theory and public consciousness with the needed tools to preserve resources, meet human need, and dignify all people.

Gandhi's thought provides a method of conceiving property beyond the conceptual limitations of Western debates. Western property theory narrowly focuses on the "right" of the owner to control the "owned thing" in relation to others' duties to respect that control. Western property discourse, therefore, recognizes a duty, but primarily on the other parties to avoid interference on the owner's interests. The discourse contains a great deal of emphasis on the world's duties to the owner, but relatively minimal elaboration of the owner's duties to the world.

Consequently, the wealthiest parties exercise their "rights" over the earth without consideration of their duties to the earth, and in a legal discourse that privileges utilitarian calculations, cost-benefit analysis is a convenient justification for pure self-interest.¹²⁶ Today, at a time of major ecological disruption, mainstream property law discourse pays minimal attention to both local and global consequences of property use, especially large-scale use by corporations and governments.¹²⁷ In contrast, Gandhi's theory of

¹²⁶ As Gandhi explained:

The rich have a superfluous store of things which they do not need and which are therefore neglected and wasted while millions are starved to death for want of sustenance. If each retained possession only of what he needed no one would be in want and all would live in contentment. . . . Civilization . . . in the real sense of the term, consists not in the multiplication but in the deliberate and voluntary reduction of wants.

BASU, *supra* note 27, at 103 (internal quotations omitted). Relative to its voluminous discussion on protecting property rights, Western legal discourse contains minimal discussion of why Western theories of property are "rights-heavy." This should be troubling given that much of the origin of modern property discourse developed during the historical period in which colonial control over the world's resources expanded. See Sudipta Sen, *Unfinished Conquest: Residual Sovereignty and the Legal Foundations of the British Empire in India*, 9 L., CULTURE & THE HUMAN. 227–42 (2013).

¹²⁷ In the field of law and economics, "[t]he emergence of exclusive, property rights is said to help solve the 'tragedy of the commons,' because the new private owners will bear more of the changes in resource values that their activities cause." Henry E. Smith, *Exclusion Versus Governance: Two Strategies for Delineating Property Rights*, 31 J. OF

rights emphasizes not only the corresponding duty of others to respect the right of the owner, but also emphasizes that the owner must fulfill her duties to earn the rights she seeks. In Gandhi's theory of rights, the duty to the environment is a preexisting obligation for the right to use its "things."¹²⁸

As a result, one possible lesson from Gandhi's thought is that the current private-state debate in the West actually distracts scholars from the question of how to *use* property in a way that furthers individual and social needs. In Gandhi's thought, it seems incumbent upon owners to consider how all stakeholders are affected by their gatekeeping behavior. In every deliberation, therefore, a mindful owner would recognize the potential harms to her global family and her home, the earth. Rather than being preoccupied with "discovering" universal moral rights, Gandhi took the pragmatic view of considering what approach would lead to peaceful and harmonious relationships.¹²⁹ This required the individual to approach the

LEGAL STUD. 453, 453 (2002). However, the rate of environmental degradation may be too high to wait for those changes in value caused by private corporate activity. See generally Patel & Vella, *supra* note 36. For a discussion of constitutional property, see Merrill & Smith, *supra* note 57.

¹²⁸ Explained more in depth:

There are several ways that commentators perceive duty. One of the most obvious is in the exercise of restraint to prevent encroachment on the rights of others. In *MCWC*, for example, one can think of a party as having a 'right' to use the stream water, which implies a duty among others not to interfere with the party's right of use. On the other hand, one can view 'duty' in the sense that the rights-holder also holds a duty to others to not over-use or abuse his or her right to use the water. Still others view a 'duty' to the ecosystem, in the form of a responsibility to protect the integrity of the ecosystem itself, regardless of whether other human parties are directly and adversely affected.

Patel & Vella, *supra* note 36, at 1146. Although I save an expanded discussion of the application of *dharma* to property theory for a later time, I do have the impression that Gandhi's view of *dharma* is expansive enough to entail duties to other people, living organisms, and the earth, provided that the application of *dharma* is consistent with *ahimsa*.

¹²⁹ Gandhi viewed rights "not so much as categorical moral claims by the right-holder but rather as opportunities open to individuals for self-realisation." DASGUPTA, *supra* note 39, at 43. See also Balganes, *supra* note 9 (discussing a "copyright pragmatism" in Gandhi's life and thought). Balganes observes that "Gandhi's nuanced engagement with

world in a peaceful manner, something which the restless acquisitive mind could not do. Therefore, peace required *non*-acquisitiveness (*aparigraha*), and this mentality could only arise with full commitment to the doctrine of nonattachment (*anasaktiyoga*). In this way, Gandhi's theory seamlessly fuses the inner individual life with the social interpersonal life, where property theory is about more than whether property is a "bundle of rights" housed in the owner or whether property is about "the thing" (in rem). In Gandhi's universe, property is about both, and its meaning is in its use to further the individual and social progression to a full realization of *ahimsa*.

copyright drew extensively from his belief in the importance of access to information and education for the masses . . . and perhaps most importantly, his steadfast commitment to ensuring that legal change come about through a bottom-up process." *Id.* at 1710. If applied to property broadly, Balganes' observation could be used to connect Gandhi's approach to property to his belief in access to resources for the masses and to a broad-based distribution of ownership. *See id.*