

Legal Questions for the Psychology of Home

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Intuitions play a significant role in our consideration of legal issues. In some instances, intuitions are the express basis of legal positions. Margaret Jane Radin’s classic personhood theory of property, for example, is founded on the intuitive idea that people become personally attached to some types of property, including homes.¹ This intuition in turn led Radin to argue that the interests of homeowners should be favored over competing interests because homeowners are personally attached to their homes.² In other instances, the reliance on intuitions may be more subtle. In search and seizure law, for example, the United States Supreme Court has measured reasonable expectations of privacy in terms of the “understandings that are recognized and permitted by society.”³ While this test has a surface level of objectivity, the Justices have not considered empirical evidence on this issue, leaving the impression that they are basing their decisions on their own intuitions about which expectations of privacy are reasonable.⁴

Positions on a host of other legal issues are influenced by intuitions about people’s relationships to their homes.⁵ Recent research

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1. Margaret Jane Radin, *Property and Personhood*, 34 STAN. L. REV. 957, 959 (1982).

2. *See id.* at 991-92.

3. *Rakas v. Illinois*, 439 U.S. 128, 144 n.12 (1978).

4. *See* Christopher Slobogin & Joseph E. Schumacher, *Reasonable Expectations of Privacy and Autonomy in Fourth Amendment Cases: An Empirical Look at “Understandings Recognized and Permitted by Society,”* 42 DUKE L.J. 727, 740-42 (1993) (highlighting differences between empirical data and Supreme Court doctrine).

5. *See infra* Parts I-II.

on analogous intuitions in philosophy, however, suggests that reliance on intuitions, whether conscious or unconscious, may be deeply problematic. An entire subdiscipline, experimental philosophy, has arisen within the last decade to test philosophically relevant intuitions.⁶ Experimental philosophical research has suggested two distinct types of problems regarding intuitions. First, philosophers' broad statements about shared intuitions may be inaccurate. In other words, people may not in fact have the intuitions that scholars think they do.⁷ Second, the intuitions that people have about philosophical issues may be contradictory or otherwise troubling. For example, people intuitively will make apparently contradictory decisions about mathematically equivalent scenarios depending on whether the scenarios are framed in terms of gains or avoided losses.⁸

While the experimental philosophy movement remains controversial in some respects, its findings are fascinating and merit close attention from legal scholars. Difficult issues surround the normative significance of this type of experimental research.⁹ I will presume for the purposes of this Essay, however, that there is at least some room for consideration of experimental psychological evidence in the normative evaluation of legal rules and that research into legally relevant intuitions would be important and informative to legal scholarship. Imagine, for example, that research demonstrated that, contrary to widely held intuitions, people do not have psychologically important connections with their homes. Although they may not be dispositive on any given legal issue, such findings would undercut the theoretical and practical support for many legal rules that give special protections to homes and homeowners.¹⁰

One positive effect of the experimental philosophy movement is that it has sparked psychological research directly related to philosophical issues. There is a strong need for a comparable experimental law movement to conduct psychological research

6. For a brief and balanced introduction to the experimental philosophy movement and some of the issues that it raises, see Christopher Shea, *Against Intuition*, CHRON. HIGHER EDUC., Oct. 3, 2008, available at http://chronicle.com/free/v55/i06/06b00901.htm?utm_source=cr&utm_medium=en.

7. See *id.*

8. See Tamara Horowitz, *Philosophical Intuitions and Psychological Theory*, 108 ETHICS 367, 369-71 (1998); F.M. Kamm, *Moral Intuitions, Cognitive Psychology, and the Harming-versus-Not-Aiding Distinction*, 108 ETHICS 463, 470-78 (1998) (raising a number of important points suggesting that these intuitions may not be as contradictory as they initially appear).

9. See Shea, *supra* note 6.

10. See *infra* Parts I-II.

targeted to legal issues. The number of open psychological issues surrounding people's relationships to their homes provides an example. Psychological researchers, of course, have investigated people's relationship with their homes.¹¹ The number of empirical studies that have been performed, however, is surprisingly small in light of the central role that the home plays in everyday life. Those studies that have been performed often address issues at a level of generality that inhibit their usefulness to informing debate about a particular legal issue.¹² The result is that the existing research on the psychology of the home is of limited use to legal scholars. It is possible to look to the existing psychological research to gain insight into legal issues involving the home and to try to make legal arguments based on that psychological research.¹³ The fact remains, however, that the existing research on the psychology of home is too sparse, and too little targeted to specific legal contexts, to support fully compelling legal arguments.

This Essay was initially presented as part of a panel at the 2008 American Psychology-Law Society conference. It is primarily aimed at psychological researchers in the hope that it will highlight the need for further research that can in turn inform legal scholarship. This Essay discusses a series of legal issues related to the home and asks psychological questions raised by these legal issues. It also discusses various contexts (some legal and some not) in which researchers could investigate these psychological questions.

Legal issues about the home can be divided into two broad categories. The first is embodied by the common law maxim that "a man's home is his castle." In a wide range of legal contexts, the home is given more protection than other types of property when issues of privacy, security, and freedom are at stake.¹⁴ The second concerns a person's ability to possess a particular home in a particular place. In certain areas, such as rent control and foreclosure law, possession of a

11. See, e.g., Sandy G. Smith, *The Essential Qualities of a Home*, 14 J. ENVTL. PSYCHOL. 31 (1994); Karin Zingmark, Astrid Norberg & Per-Olof Sandman, *The Experience of Being at Home Throughout the Life Span. Investigation of Persons Aged from 2 to 102*, 41 INT'L J. AGING & HUM. DEV. 47 (1995).

12. See, e.g., Smith, *supra* note 11, at 31 (attempting to quantify the "essential qualities for a house to be experienced as a home"); Zingmark, Norberg & Sandman, *supra* note 11, at 47 (surveying 150 people of various ages to explore the "phenomenon [of] 'being at home'").

13. I have done so myself. See D. Benjamin Barros, *Home as a Legal Concept*, 46 SANTA CLARA L. REV. 255, 277-300 (2006).

14. *Id.* at 259.

home is given an unusual degree of legal protection.¹⁵ In others, such as eminent domain law, possession of a home may be given too little legal protection.¹⁶

I will discuss each of these broad legal contexts, and the psychological issues that they raise, in turn. Part I takes a relatively brief look at the legal issues, and the attendant psychological issues, raised by the castle doctrine. Part II examines issues surrounding the possession of a home in more depth, placing these issues in the context of a theoretical debate about the strength and nature of people's personal connection with their homes.

I. PSYCHOLOGY AND THE CASTLE DOCTRINE

The common law maxim that "a man's home is his castle" encapsulates the idea that the home is vitally important when issues of safety, privacy, and autonomy are at stake. This general idea is not particularly controversial. Legal rules appear to reflect a remarkable degree of social consensus that homes should be given special treatment when these issues are raised.¹⁷ Psychological studies reinforce the importance of the home as a source of feelings of safety, privacy, and freedom.¹⁸

Despite this general consensus, legal issues reflected by the castle doctrine can be controversial at the margins and present line-drawing issues that can be informed by psychological research.¹⁹ The castle doctrine establishes the home as a generally private sphere resistant to public interference.²⁰ This private sphere, however, is permeable.²¹ There is little doubt that the police, for example, may enter the private sphere of the home provided that they have sufficient justification to do so.²² What constitutes sufficient justification in a particular context can be controversial.

In the search and seizure context, for example, the test for legitimacy of an invasion of the home by the government is often put in terms of reasonable expectation of privacy.²³ A government invasion

15. *Id.* at 282.

16. *Id.* at 291.

17. *Id.* at 259.

18. *See* Smith, *supra* note 11, at 33-34; Zingmark, Norberg & Sandman, *supra* note 11, at 50.

19. Barros, *supra* note 13, at 277.

20. *See id.* at 263-69.

21. *Id.* at 276.

22. *Id.*

23. *See* Slobogin & Schumacher, *supra* note 4, at 729.

is justified, in other words, if it is consistent with these reasonable expectations. This justification, in turn, can be framed as a balance between the government's interest in invading the private sphere and the individual's interest in maintaining the private sphere.²⁴ The personal interest in the sanctity of the home is widely considered to be particularly strong as compared to, say, the personal interest in the sanctity of a motor vehicle.²⁵ The government, therefore, typically requires a commensurately higher interest to justify an invasion of the home than to justify an invasion of other types of property.²⁶

The borderline between justified and unjustified invasions of the home is articulated in terms of social consensus—in the Supreme Court's words, the “understandings that are recognized and permitted by society.”²⁷ If the Court has substituted its own judgment for that of society as a whole, it is hard to see how it could have done otherwise because there is relatively little empirical evidence on society's actual understandings and expectations. A notable exception is a 1993 study performed by Christopher Slobogin and Joseph E. Schumacher.²⁸ This study tested people's perceptions of the intrusiveness of a range of government actions, from looking through foliage in a public park (low on the intrusiveness scale) to searching a bedroom or performing a body cavity search (high on the intrusiveness scale).²⁹ The study also tested the effect of three other factors on the perception of intrusiveness: (1) the framing of the target of the government action (i.e., whether the target was the test subject or a third person); (2) the government's motivation (i.e., whether the government action was motivated by a specific aim such as searching for evidence); and (3) the test subject's attitudes toward the criminal justice system.³⁰

Slobogin and Schumacher's study results are fascinating and notable in our context for the number of government infringements on the home that rank high on the intrusiveness scale.³¹ As the study authors note, however, these sorts of findings are unlikely to have an impact on the law until they are, at the least, supported by a wide body

24. *Id.* at 751.

25. *See* Radin, *supra* note 1, at 991-92.

26. *See* Barros, *supra* note 13, at 266-68.

27. *Rakas v. Illinois*, 439 U.S. 128, 144 n.12 (1978).

28. Slobogin & Schumacher, *supra* note 4.

29. *Id.* at 737.

30. *Id.* at 759-73.

31. *Id.* at 738.

of research.³² Unfortunately, very little interest has been shown in performing the further work needed to develop a robust body of research that is capable of having an impact on law and legal scholarship. Studies simply attempting to duplicate Slobogin and Schumacher's results would be a step in the right direction. Further research could also explore the impact of a number of other factors on perceptions of intrusiveness. For example, to what degree does the exact nature of the government's reason for invading the private sphere affect perceptions of invasiveness? Slobogin and Schumacher touch on this issue in their testing of government motivation, but a more fine-grained exploration of this issue could be conducted.

Similarly, to what degree does the nature of the conduct discovered by government action affect perceptions of invasiveness? Put another way, is the invasiveness of a government action justified, or not justified, after the fact by what is discovered? Would the same government action be perceived as justified if it discovered child pornography production where it would not be if it discovered a stash of medical marijuana? Further research may well discover that people's intuitive evaluation of these scenarios reflect post-hoc justifications or other problematic types of reasoning that undercut the utility of these intuitions, and of societal expectations, as a basis for legal rules.

Further studies could also sharpen the analysis of how societal expectations vary when different locations—e.g., homes, cars, offices, parks—are involved. Similarly, further study could explore people's expectations of privacy in the home when there are multiple people living in the dwelling. These expectations are raised in Fourth Amendment cases where one resident (or family member) gives permission to enter over the objection of another. Some important psychological work has been done in this context, but more is needed to develop a fully robust body of research.³³ A related issue is the conflicting privacy interests that are raised when some of the people in the home are in troubling or dangerous domestic situations. Historically, the idea of the home as a private sphere gave courts an excuse to ignore domestic abuse.³⁴ Although this view is discredited in

32. See *id.* at 743 (citing John Monahan & Laurens Walker, *Social Authority: Obtaining, Evaluating, and Establishing Social Science in Law*, 134 U. PA. L. REV. 477, 499 (1986)).

33. See, e.g., Dorothy K. Kagehiro, Ralph B. Taylor & Alan T. Harland, *Reasonable Expectations of Privacy and Third-Party Consent Searches*, 15 L. & HUM. BEHAV. 121 (1991) (examining privacy in the Fourth Amendment context).

34. See Barros, *supra* note 13, at 274.

modern law, complex psychological issues are still raised by difficult legal issues such as the duty to retreat in battered spouse cases.³⁵

Finally, another autonomy-related issue is raised by the conformity imposed by many common interest communities on individual conduct and the use of property. These issues are different in many respects from those raised in the government-invasion contexts discussed above.³⁶ Residents, for example, typically consent to the restrictions in a common interest community, either by some voting mechanism or through implied consent reflected by moving into a community where the restrictions are already in place.³⁷ It would be interesting to see the impact that the conformity imposed by these types of restrictions has on people's psychological relationships with both their homes and communities. I would speculate that the conformity is reassuring for some people but troubling for others. This issue provides an interesting context in which to study the psychological desirability of order versus freedom and how different people have different psychological preferences when these issues are at stake. It would also be interesting to learn the psychological effects of different types of common interest community regulations and to study how people's reactions to these restrictions are shaped by their incoming expectations or, for restrictions imposed after a vote, by their perceptions of the fairness of the voting process.

II. POSSESSION AND PSYCHOLOGICAL ATTACHMENT TO THE HOME

The second major grouping of legal issues relating to homes involves the right of a person to possess a particular home in a particular place. The law often gives more protection to the possession of a home than it gives to possession of other types of property. For example, it generally is harder to foreclose on a home than it is to foreclose on a commercial property, in part because of common law and statutory protections given to homeowners.³⁸ Similarly, rent control, tenure rights, and other aspects of landlord-tenant law give protections to residential tenants' personal interest in possession that are absent in the commercial leasing context.³⁹ In some circumstances,

35. *Id.* at 262 n.24.

36. *See generally* Paula A. Franzese, *Does It Take a Village? Privatization, Patterns of Restrictiveness and the Demise of Community*, 47 VILL. L. REV. 553 (2002) (highlighting unique issues raised by common interest communities).

37. *See id.* at 555.

38. *See* Barros, *supra* note 13, at 282-83.

39. *Id.* at 284-89.

this additional protection is not controversial, particularly where it is possible to protect possessory interests in the home without greatly impinging on competing interests.⁴⁰ In others, however, it seems troubling. A prominent example is Florida's famed homestead exemption, which gives absolute protection to the home against claims of creditors.⁴¹

In other contexts, the law seems to give too little protection to possession of homes. Consider two examples from eminent domain. First, in *Kelo v. City of New London*,⁴² the Supreme Court declined to give meaningful protection to homeowners attempting to resist government taking of their homes, in stark contrast to the protections given to homes in the Fourth Amendment and related contexts.⁴³ Second, the Supreme Court's case law has established that owners of taken property are only entitled to fair market compensation.⁴⁴ It is fairly widely acknowledged, however, that fair market value does not fully compensate people for the loss of their property.⁴⁵ Fair market value assumes a willing buyer and a willing seller, which is obviously not present in any condemnation case. Presumably, a home that was not voluntarily sold has a certain amount of personal value to the owners above the market value (or they would have sold voluntarily in the first place),⁴⁶ and it may seem troubling that the law does not require compensation for this additional personal value.⁴⁷

In existing law, we therefore have areas where homes, intuitively at least, are overprotected or underprotected. As noted at the outset, however, it is troubling to base legal positions on unexamined intuitions. Furthermore, an important theoretical question remains: other than base intuition, why should we give special protection to the possession of a home? The most influential theoretical model on this issue is Margaret Radin's personhood theory of property, which highlights both the potential importance of possession of a home and the dangers of relying on intuition alone.⁴⁸

40. *Id.* at 282-84.

41. FLA. CONST. art. X, § 4; *see* Barros, *supra* note 13, at 285.

42. 545 U.S. 469 (2005).

43. *Id.* at 488-89; *see also* Barros, *supra* note 13, at 295-98.

44. *See* *United States v. 564.54 Acres of Land*, 441 U.S. 506, 511 (1979).

45. *Id.*; *see also* *Coniston Corp. v. Vill. of Hoffman Estates*, 844 F.2d 461, 464 (7th Cir. 1988).

46. *See* *564.54 Acres of Land*, 441 U.S. at 511.

47. *See* Barros, *supra* note 13, at 298-99.

48. Radin, *supra* note 1.

Radin's personhood theory has been tremendously influential on property scholarship. The personhood theory is rooted in the pragmatic observation that people become more attached to certain types of property than others.⁴⁹ Radin used this observation to make a distinction between personal and fungible property.⁵⁰ An owner has no personal attachment to fungible property; its holder should be willing to freely exchange fungible property for money at fair market value. Personal property is the opposite. An owner has a personal attachment to personal property; the owner therefore should not be willing to exchange possession of personal property merely for its monetary equivalent.⁵¹

Radin provided several examples of personal property, including wedding rings, personal photographs, heirlooms, and, most relevant here, homes.⁵² The wedding ring example is a very helpful illustration of the difference between personal and fungible property. Imagine that a ring is held by a jeweler. The jeweler should not care whether she has a particular ring, another ring with the same value, or the monetary equivalent of the ring in her possession. In other words, to the jeweler, the ring is fungible. Now imagine that the same ring is later purchased and given by one spouse to another in a wedding ceremony. Once a wedding ring is exchanged with a spouse, it (intuitively, at least) takes on some personal value based on sentiment and commitment that cannot be replaced simply by the monetary value of the ring.⁵³

In setting forth her personhood theory, Radin suggested that personal interests should be favored over fungible ones.⁵⁴ So, under Radin's approach, a tenant will always be favored over a landlord when the tenant has a personal interest in the possession of an apartment and the landlord merely has a monetary or fungible interest in the apartment. Similarly, Radin suggested that the personal interest of a homeowner should always be favored over the fungible interest of a creditor.⁵⁵

Radin's thesis explicitly rests on an intuitive idea about people's connection with some types of property, but Radin did not look to the

49. *Id.* at 959.

50. *Id.* at 959-60.

51. *Id.* at 959.

52. *Id.*

53. *See id.*

54. *See* Margaret Jane Radin, *Residential Rent Control*, 15 PHIL. & PUB. AFF. 350, 359-62 (1986).

55. *See id.* at 365.

psychological literature to test this intuition.⁵⁶ Psychological studies, however, do appear to support Radin, at least to a degree.⁵⁷ These studies suggest that homes can be important sources of psychological feelings of rootedness, belonging, continuity, stability, and permanence, all of which would be undermined when a person is dispossessed from a home.⁵⁸

I have previously suggested that Radin was correct that people develop personal connections to their homes, but I have argued that her approach overvalued the personal interest in the home because it relied on unexamined intuitions.⁵⁹ My argument was based on the observation that certain important aspects of people's psychological connections to their homes are movable, and therefore would not be impinged when a person moves from one home to another. For example, the interests of security, privacy, and freedom that are so important in the home-as-castle context move from home to home. Similarly, the feeling of personal connectedness can return once personal effects, such as furniture, decorations, and photographs are moved into a new home. People frequently move voluntarily and do not seem to suffer from severe psychological impacts. Our simple intuitions about our psychological connections to our homes might therefore overstate the strength of a connection to a particular home in a particular place.⁶⁰

My arguments on this point, however, are not much better supported in empirical research than Radin's. My instinct is that Radin overstates the personal connection to the home, and I think that my position has some support in the existing literature about the psychology of home.⁶¹ But as noted in the introduction, the existing literature is not robust enough to give great support to legal positions. Very little empirical work has been done about the effect of dispossession of the home on the homeowner, and much of the work that exists is dated. For example, one of the most important studies of the impact of loss of home through eminent domain, Mark Fried's *Grieving for a Lost Home*, is nearly fifty years old.⁶²

56. *See id.* at 359-61.

57. Barros, *supra* note 13, at 278-80.

58. *Id.*

59. *Id.* at 280-82.

60. *Id.*

61. *Id.*

62. Marc Fried, *Grieving for a Lost Home*, in *THE URBAN CONDITION* 151 (Leonard J. Duhl ed., 1963). Another, more recent, study of this issue is found in Mindy Thompson

Simply put, there is a lot of research that needs to be done before legal discussion can be well-informed by the psychology of home. The fundamental question is this: are people really psychologically connected to their homes, and if so, in what ways and to what extent? On this particular issue, I suspect that people are far less connected to the physical structure of their homes than unexamined intuitions might suggest and that two other factors are far more important than structure for people's psychological connection with their homes.

First, my intuition is that personal effects play a critical role in people's psychological feelings of comfort, permanence, and stability related to their homes. As suggested above, personal effects are easily movable. I paid close attention to this when I last moved, and I felt much more at home in my new house once my photographs and other belongings were in place. Second, social networks seem to be related to important psychological connections associated with the home. These networks reflect physical proximity to family, friends, work, school, and other important people and locations. Although these networks are largely about relationships between people, the physical location of the home seems like it would have a strong influence on the nature of these relationships. My intuition, again based in part on my own experience the last time I moved, is that to the extent that moving has a negative psychological effect, much of this effect is caused by disruption in social networks. Unlike personal effects, social networks are not easily movable and therefore would be important to a person's interest in maintaining possession of a particular home in a particular place. The amount of disruption, of course, would depend on the type of move involved—a cross-country move would be more likely to be disruptive of social networks than a move across town.

My intuition is therefore substantially different from Radin's. Although my intuition is based on a reasonable amount of reflective consideration, it is still only an intuition. Further research needs to be done. As will be discussed further below, it would be helpful to legal scholarship for this research to be performed in contexts targeted to legal issues. I would note, however, that it seems that research into the basic nature of people's connection with their homes could easily be performed with student test subjects. University students are often moving away from home for the first time when they go to school. As students first move in to an empty dorm room, I would guess that they

feel not at all at home. Once the room is customized with their personal effects, and once they develop a new social network, I would guess that they start feeling much more at home.

The overarching issue of people's connections to their homes can be broken down into a series of more specific questions:

First, as suggested above, to what degree are the psychological connections to home based on physical structure, personal effects, and social networks? The relative importance might be illuminated in part by the following thought experiment. Imagine that a person offered to pay you to move from your current home to a very similar house down the street. All of your moving and other incidental costs would be covered, and the move would be done for you while you are away on vacation—imagine that the move was done so well that when you got back, everything would be just where it should be, and that there would be no real hassle involved. Would you demand a significant amount of money to agree to the move under these circumstances? Put another way, is the structure that you are actually living in really worth that much? To test the importance of social networks, which are difficult to move, the thought experiment can be modified so that the new house is now located across town, or across the country. My intuition is that people would react very differently, and would be far more resistant to the move, as the new home in the thought experiment is moved farther and farther from the old home. This in turn would suggest that social networks are far more important than physical structure in psychological relationships with the home.

Second, does dispossession of the home have a negative psychological effect on a person? If so, how much does this vary from person to person and context to context, and which factors are responsible for the variance? Within each of these contexts, how long does the negative effect last and what factors impact this duration? Some relevant factors might include:

- *Duration.* Does the amount of time that the person has lived in her home impact her psychological relationship with her home? Does duration affect the relative importance of physical structure and social relationships? On this issue, some people, myself included, have suggested that compensation for eminent domain be indexed in some way to the length of time that a person has lived in a home.⁶³

63. See Janice Nadler & Shari Seidman Diamond, *Eminent Domain and the Psychology of Property Rights: Proposed Use, Subjective Attachment, and Taker Identity*, 14

- *Owning v. Renting.* Does the temporary nature of a lease shape people's expectation about the permanence of their relationship with their particular home? A sub-issue in jurisdictions that have rent control or other rules protecting tenants' tenure would be whether these rules change people's expectations in a material way. Another potential issue, in this context and others, is the extent of disruption to social networks to someone whose lease has expired (or whose mortgage was foreclosed, etc.). This is an empirical issue and is likely to vary with particular circumstances. We should not assume, however, that people will automatically have to move a great distance, and suffer great interference with their social networks, every time they lose the right to possess a particular home in a particular place.
- *Financing.* Does the existence of a mortgage change a homeowner's expectations? Loss of a home through mortgage foreclosure seems very different from loss of a home through eminent domain in that mortgage foreclosure is contractual. Put another way, in executing the mortgage the homeowner gave advance consent to the loss of the home if the homeowner defaulted on mortgage payments. It could be, however, that people do not truly internalize this consent and that loss of a home through foreclosure is not materially different from loss of a home through eminent domain from a psychological perspective.
- *Voluntariness.* Building on the last two points, does the voluntariness of the dispossession have a significant effect? There is a spectrum of scenarios in which voluntariness could be measured. Moving in increasing order of voluntariness, this spectrum could include the following scenarios for the loss of a home: fire and other natural disasters (completely involuntary), eminent domain (generally involuntary, though the homeowner can resort to political and judicial processes for protection), divorce (involuntary from the perspective of a spouse who did not instigate the divorce), mortgage foreclosure (perhaps voluntary because of advance contractual consent), nonrenewal of a lease (perhaps voluntary because of the limited duration of the lease), corporate relocation (perhaps voluntary and potentially mitigated by the actions of the employer), and voluntary relocation.

- *Justification and Fairness.* The psychological impact of the loss of a home could be impacted by perceptions of the justification or fairness of events leading to the loss. In the eminent domain context, for example, losing a home in an economic development taking might be seen as less justified, and have a more negative psychological impact, than having a home taken for a new public school. Similarly, in a divorce case, the psychological effects of loss of the marital home seem likely to vary in part on the nature of the divorce and on the spouses' perception of the fairness of the loss. If one spouse instigates the divorce, for example, then that spouse would presumably be less affected by the loss of the home than the other spouse.

Because of the nuances involved in any specific legal issue, it would be most helpful to the legal academy if these issues were studied in specific legal contexts. One of the most prominent of these contexts is eminent domain, which has received a great deal of public attention since the Supreme Court's controversial decision in *Kelo*.⁶⁴ The psychological impact of the loss of a home through eminent domain was the subject of a recent study by Janice Nadler and Shari Seidman Diamond.⁶⁵ Like the Slobogin and Schumacher study discussed above, the Nadler and Diamond study is an example of the type of legally targeted psychological research that is needed to better inform legal discussions of property issues. Nadler and Diamond studied, among other issues, the impact of the purpose of the taking (for a hospital or for a mall), the impact of the length of time of residency on people's attitudes towards the loss of home through eminent domain, and the difference between people's attitudes about the loss of their homes in a voluntary sale to a developer and a taking by eminent domain.⁶⁶ As with the Slobogin and Schumacher study in the Fourth Amendment context, further work should be done to test and extend the findings and methodologies involved in the Nadler and Diamond study with the goal of eventually developing a robust literature on the psychological impact of eminent domain takings on homeowners.

The present mortgage crisis in the United States highlights another important context for the study of the impact of home loss on

64. Nadler & Diamond, *supra* note 63, at 1-2.

65. *See id.*

66. *Id.* at 3-4. In the development at issue in *Kelo*, many people voluntarily sold their homes. It is important to recognize in examples such as this, however, that it is hard to measure voluntariness when the threat of eventual use of eminent domain is hanging over people's heads.

individuals. The intuitive negative impact of a home loss on individuals could be used to support government programs to rescue homeowners from foreclosure. As suggested above, however, home loss through foreclosure is not purely involuntary—the mortgage relationship is contractual, and homeowners can be seen as having given advance consent to the loss of their homes under certain circumstances. Empirical evidence about people’s understandings of the nature of the mortgage relationship could help inform legislative debate about homeowner rescue plans. This type of evidence also could support and inform efforts to improve mortgage disclosures—if studies show that people do not understand or internalize the full nature of the mortgage relationship, programs and rules could be developed to better educate consumers.

Hurricane Katrina presented a series of issues relating to the dispossession of not just individuals but whole neighborhoods. Tragedies like Katrina present obvious opportunities to study the psychological effect of displacement caused by a natural disaster. The wide impact of large-scale disasters like Katrina also provides opportunities to test hypotheses about the relative importance of structure, personal effects, and social networks to the psychological relationship with the home. The results of such studies would inform policymakers not only on responses to natural disasters but also on other urban policy issues like gentrification. There is also a direct parallel between the ability of people to return to their neighborhoods after a natural disaster and the ability of people to return to their neighborhoods after an eminent domain taking.

The importance of the possessory interest in the home, of course, may also be studied in the context of issues that do not dominate the front page. Psychological study could inform longstanding debates about rent control and tenant tenure rights in the landlord-tenant context. The family law context also presents a number of important areas of study. Some of these issues, involving the relationship between fault in a divorce and the impact of loss of a home on each spouse, were suggested above. Another important area of study involves children and the treatment of a family home in a divorce. The law in some states does not make any effort to allocate the marital home to the custodial parent, and these rules would be undercut by empirical evidence showing a negative impact on minor children from loss of the family home.⁶⁷

67. Barros, *supra* note 13, at 294-95.

III. CONCLUSION

This Essay has described a number of important legal issues about the home that would be greatly informed by sustained psychological investigation. The studies by Slobogin and Schumacher and by Nadler and Diamond both stand out as rare examples of empirical psychological studies keyed to specific legal issues. More study is needed to develop a robust literature sufficient to inform legal positions involving people's relationships with their homes. I therefore encourage researchers interested in the psychology of home to seek collaborators within the legal academy to develop legally informed studies of the psychology of home.