

Louisiana Law Review

Volume 70 | Number 4

Recent Developments and Ruminations in Retrospect

Summer 2010

The Suspension Theory: Hurricane Katrina Looting, Property Rights, and Personhood

Casey E. Faucon

Repository Citation

Casey E. Faucon, *The Suspension Theory: Hurricane Katrina Looting, Property Rights, and Personhood*, 70 La. L. Rev. (2010)

Available at: <https://digitalcommons.law.lsu.edu/lalrev/vol70/iss4/9>

This Comment is brought to you for free and open access by the Law Reviews and Journals at LSU Law Digital Commons. It has been accepted for inclusion in Louisiana Law Review by an authorized editor of LSU Law Digital Commons. For more information, please contact kreed25@lsu.edu.

The Suspension Theory: Hurricane Katrina Looting, Property Rights, and Personhood

In anticipation of Hurricane Gustav, Mayor C. Ray Nagin announced, "Anyone caught looting in New Orleans will go directly to the Big House You will go directly to Angola Prison, and God bless you if you go there."¹ In making that announcement, Mayor Nagin undoubtedly had the events following Hurricane Katrina in mind. Three years earlier, Hurricane Katrina engulfed the city of New Orleans.² When the storm passed and the waters rose, New Orleans was in chaos.³ Media reports of people vandalizing and looting stores portrayed the image that the city had disintegrated into a state of anarchy.⁴ Looters ransacked the shops at Canal Place, burned parts of Saks Fifth Avenue, and took roughly \$250,000 worth of liquor, cigarettes, and candy from three convenience stores on the 5900 block of Veterans Memorial Boulevard.⁵

Such reports depicted the looters as heartless criminals who wrongfully took advantage of the disaster-stricken city.⁶ Much less

Copyright 2010, by CASEY E. FAUCON.

1. *New Orleans Mayor Vows to Throw Looters in Prison*, AFP, Aug. 31, 2008, http://afp.google.com/article/ALeqM5hrI_x_QOoT1haoCtsWhS3mKGVyaA. Hurricane Gustav, a category two hurricane, swerved to the west of New Orleans, hitting near Cocodrie, about seventy-two miles southwest of New Orleans on September 1, 2008. See JOHN L. BEVEN II & TODD B. KIMBERLAIN, NAT'L HURRICANE CTR., TROPICAL CYCLONE REPORT: HURRICANE GUSTAV, (2009), http://www.nhc.noaa.gov/pdf/TCR-AL072008_Gustav.pdf.

2. Matt Sloane & Susan Roesgen, *Hundreds of Thousands Flee Coastal Louisiana Ahead of Gustav*, CNN, Aug. 31, 2008, <http://www.cnn.com/2008/US/weather/08/31/gustav/index.html>. While still in the Gulf of Mexico, Hurricane Katrina was a category five hurricane. By the time Hurricane Katrina made landfall at the Southwest Pass of the Gulf of the Mississippi River, it was a category three hurricane. The Katrina Files, Timeline: Foreshadowing the "Big One," <http://www.nola.com/katrina/timeline/> (last visited Apr. 12, 2010).

3. See Ed Anderson, Michael Perlstein & Robert Travis Scott, *'We Will Do What It Takes to Restore Law and Order': Forces Called in to Curb Widespread Violence*, THE TIMES-PICAYUNE (New Orleans), Sept. 1, 2005, at 5.

4. *Id.* Contributing to the image of anarchy in New Orleans following Hurricane Katrina was the visible struggle for control between then-Governor Kathleen Blanco and the Bush administration. See Spencer S. Hsu, Joby Warrick & Rob Stein, *Documents Highlight Bush-Blanco Standoff*, WASH. POST, Dec. 5, 2005, at A10.

5. *Police Reports*, THE TIMES-PICAYUNE (New Orleans), Jan. 24, 2006, at METRO 1.

6. See Anderson, Perlstein & Scott, *supra* note 3; see also Russell R. Dynes & Enrico L. Quarantelli, *What Looting in Civil Disturbances Really Means*, in MODERN CRIMINALS 231, 232 (James F. Short, Jr. ed., 2d ed. 1973) [hereinafter Dynes & Quarantelli, *Looting in Civil Disturbances*] ("During disasters, according to common belief, 'invading armies' of opportunists take

attention was given, however, to those looters who took from others as a means to survive the devastating aftermath of the hurricane. Those looters took non-perishable goods, clothing, flashlights, and generators.⁷ Often, they left no wake of destruction in their paths and took only what was needed to survive.

Scholars and the general public alike perceive looting as immoral and debase or necessary and justified, depending on the circumstances.⁸ Although some people regard the looting of "luxury goods" as unconscionable, others sympathize with and excuse looters who take only "necessity goods."⁹ Perhaps the conscious distinction has less to do with society's moral perceptions of looting and more to do with society's perceptions of ownership. Professors Eduardo M. Penalver and Sonia Katyal argue that society negatively views "property outlaws" because such individuals undermine the stability that property laws strive to produce.¹⁰ Looters, as a particular type of property outlaw, contribute to the fracturing of that stable foundation.¹¹ Instead of

property left unguarded when the owner is forced out by the disaster. The looting that takes place in these situations is usually interpreted as evidence of human depravity. In periods of natural or civil chaos, goes the explanation, the human animal is stripped of his usual social controls. Without them, he is not a noble savage, but an ignoble one. For the general public, reports of looting are easy to incorporate into their images of the 'criminal elements' who clean out the corner grocery store during a racial disturbance, or the fiends and ghouls who roam disaster-stricken areas.").

7. See Brian Thevenot, *Proud Looter Took a Moment to Brag*, THE TIMES-PICAYUNE (New Orleans), Nov. 18, 2005, at METRO 7.

8. See generally Stuart P. Green, *Looting, Law, and Lawlessness*, 81 TUL. L. REV. 1129 (2007) (discussing the moral ambiguity of looting).

9. One New Orleans grocery store owner put all of the perishable goods in his store outside on the street curb and encouraged other residents to take them. See Anderson, Perlstein & Scott, *supra* note 3. For purposes of this Comment, "necessity goods" refers to those goods necessary for human survival within an urban environment, such as food, water, clothing, flashlights, and batteries. "Luxury goods" refers to any goods that are not necessary for human survival. Luxury goods is the residual category of goods. In this analysis, looted goods are either necessity goods by definition or luxury goods by default.

10. Eduardo M. Penalver & Sonia Katyal, *Property Outlaws*, 155 U. PA. L. REV. 1095, 1095 (2006).

11. Although Penalver and Katyal do not expressly analyze looters as a type of property outlaw, looters undoubtedly would fit within their analysis. Penalver and Katyal argue that three different types of property outlaws exist: expressive lawbreakers, acquisitive lawbreakers, and intersectional lawbreakers. *Id.* at 1102–03. Expressive lawbreakers fit loosely within the category of civil disobedience and seek to "send a strong message about the perceived injustice of existing property arrangements." *Id.* at 1102. Given examples of expressive lawbreaking include lunch counter sit-ins during the Civil Rights Era. *Id.* at 1114.

dismissing property outlaws as rebellious, subversive characters, Penalver and Katyal suggest that society should embrace the property outlaw as an enabler of the “reevaluation of, and, at times, productive shifts in the distribution or content of property entitlements.”¹²

This Comment demonstrates how, after natural disasters like Hurricane Katrina, society’s reaction to looters depends upon the extent to which the looter disrupts the pre-existing property rights under Louisiana property law. To facilitate this discussion, this Comment uses a theory first articulated by renowned sociologists and group behavioral theorists Enrico Quarantelli and Russell Dynes—what this Comment terms the “Suspension Theory.”¹³ This theory illuminates the causal relationship between property rights and societal reactions to looting in different situations.¹⁴

Part I of this Comment introduces the Suspension Theory and critiques its applicability to natural disaster situations like Hurricane Katrina. Part II argues that the looting which occurred after Hurricane Katrina demonstrates that the traditional line between “natural disaster looting” and “civil disturbance looting” has given way to a new form of looting and discusses the theoretical and practical applicability of the Suspension Theory to this new form of looting. Part III discusses Louisiana movable property laws and analyzes how the Suspension Theory interacts with these laws in three different hypothetical looting scenarios reminiscent of the types of looting situations following Hurricane Katrina. Part IV argues that the application of the Suspension Theory shows the causal connection between the effect of looting on property rights and society’s responses to looting. This Comment concludes with a brief discussion of why we—as a society and as individuals—make such a connection.

Acquisitive lawbreaking, in contrast, involves actions “that are oriented primarily toward direct appropriation. . . . [T]he dominant motivating factor might be to gain immediate access or procure a certain good.” *Id.* at 1102. As an example of acquisitive lawbreaking, Penalver and Katyal chronicle squatters and adverse possessors in the American West. *Id.* at 1105–13. Intersectional lawbreaking commingles both acquisitive and expressive activities. *Id.* at 1105. As an example of intersectional lawbreaking, Penalver and Katyal analyze contemporary urban squatters. *Id.* at 1122–28.

12. *Id.* at 1095.

13. Although Enrico L. Quarantelli and Russell R. Dynes first introduced this concept, this Comment uses the term “Suspension Theory” to refer to the idea. See Enrico L. Quarantelli & Russell R. Dynes, *Property Norms and Looting: Their Patterns in Community Crises*, 31 *PHYLON* 168, 176 (1970) [hereinafter Quarantelli & Dynes, *Property Norms and Looting*].

14. See *infra* Part III.

I. THE SUSPENSION AND REDISTRIBUTION OF PROPERTY RIGHTS

Undoubtedly, looting is criminal behavior.¹⁵ What is less apparent, however, is that the laws that make looting criminal are based on conceptions of property rights.¹⁶ Through a structured system of ownership, property law—as an institution—promotes stability within a society by creating a predictable relationship between owners and non-owners.¹⁷ Looters and other figures that “intentionally flout property laws” show a breakdown in that predictability.¹⁸ Looters rearrange property rights by taking possession of goods, moving them around, and consuming, selling, or destroying them, thus disrupting the balance between owners and non-owners.

Despite the societal need for stability, individuals need property to survive.¹⁹ This need for survival can cause those without property to challenge existing property rights.²⁰ Penalver and Katyal go so far as to argue that the “propertyless person” *should* take for himself the property of others that he needs to survive.²¹ This argument rings especially true after disasters like Hurricane Katrina that cause large-scale loss and create conditions of instability.²² The need for human survival often softens the reality that looters are essentially thieves; society is more sympathetic to the looting of necessity goods, especially in the most desperate of times.²³

15. See LA. REV. STAT. ANN. § 14:62.5(A) (2007 & Supp. 2010) (“Looting is the intentional entry by a person without authorization into any dwelling or other structure belonging to another and used in whole or in part as a home or place of abode by a person, or any structure belonging to another and used in whole or in part as a place of business, or any vehicle, watercraft, building, plant, establishment, or other structure, movable or immovable, in which normal security of property is not present by virtue of a hurricane, flood, fire, act of God, or force majeure of any kind, or by virtue of a riot, mob, or other human agency, and the obtaining or exerting control over or damaging or removing property of the owner.”).

16. Dynes & Quarantelli, *Looting in Civil Disturbances*, *supra* note 6, at 244.

17. See generally Abraham Bell & Gideon Parchomovsky, *A Theory of Property*, 90 CORNELL L. REV. 531 (2005) (arguing that property laws are organized around creating and defending the value inherent in stable ownership).

18. Quarantelli & Dynes, *Property Norms and Looting*, *supra* note 13, at 177.

19. See Penalver & Katyal, *supra* note 10, at 1145.

20. *Id.* at 1132.

21. *Id.* at 1158 (emphasis added).

22. See John A. Lovett, *Property and Radically Changed Circumstances*, 74 TENN. L. REV. 463, 476 (2007).

23. See Quarantelli & Dynes, *Property Norms and Looting*, *supra* note 13, at 176.

Because society's perceptions of looting often prove to be factually dependent on the type of property taken and the circumstances in which the looting occurs, looting should be addressed from the viewpoint of how it affects the structure and organization that property law promotes at any particular time. Although violent, large-scale group looting could be interpreted as a mass protest against society's conception of ownership and order,²⁴ a single looter acting without any violence or protest is perceived much differently. The scholarly discussions concerning looting must reflect this reactionary dichotomy. Professors Joseph Singer and Gregory Alexander argue that the stability of property law depends, ironically, on its malleability—on its “capacity to be modified or restrained to take into account the intersecting rights and needs of others.”²⁵ The scholarship that addresses looting should encourage such malleability in order to address the multiplicity of societal responses to looting.

A. The Suspension Theory

One example of scholarship that addresses this needed malleability in natural disaster situations is a theory first articulated by Enrico L. Quarantelli and Russell R. Dynes—the Suspension Theory.²⁶ Quarantelli and Dynes argue that after a natural disaster, a collective goal exists within the community to preserve lives.²⁷ In order to further this goal, the normal structure and organization of a community is, theoretically, temporarily suspended.²⁸ The underlying purpose of the Suspension Theory is to facilitate the transition from private ownership to “communal ownership” in order to provide for the community members who are most in need.²⁹ Furthermore, in reality, in these types of disaster situations, community officials often tolerate and facilitate this transition,

24. See Dynes & Quarantelli, *Looting in Civil Disturbances*, *supra* note 6, at 242–43 (arguing that looting is often a symbolic act of defiance and that the “carnival spirit” accompanying some occasions of looting represents widespread social support for the new definition of “property”).

25. GREGORY ALEXANDER, *COMMODITY AND PROPERTY: COMPETING VISIONS OF PROPERTY IN AMERICAN LEGAL THOUGHT, 1776–1970*, at 5–6 (1997); JOSEPH WILLIAM SINGER, *ENTITLEMENT: THE PARADOXES OF PROPERTY* 84–86 (2000).

26. See Quarantelli & Dynes, *Property Norms and Looting*, *supra* note 13, at 176–78. The Suspension Theory is a theoretical construct used to conceptualize what occurs within a community after a natural disaster. It is not recognized in the law, although some of its features apply *de facto*.

27. Dynes & Quarantelli, *Looting in Civil Disturbances*, *supra* note 6, at 239.

28. Quarantelli & Dynes, *Property Norms and Looting*, *supra* note 13, at 176.

29. Dynes & Quarantelli, *Looting in Civil Disturbances*, *supra* note 6, at 239.

even if private resources are limited.³⁰ The Suspension Theory is the theoretical justification for such action. Community members can break into stores to obtain food and other necessities in order to provide temporary shelter and meals for those left helpless without fear of public or criminal retribution.³¹ According to Quarantelli and Dynes, the suspension of property laws almost “defines looting out of existence . . . but not quite.”³² This is because post-disaster looting is strictly limited (1) to community members and (2) for community ends.³³ If outsiders take luxury goods for their own use, then the Suspension Theory does not work to remove criminal liability for those who break these two “rules.”³⁴

As described by Quarantelli and Dynes, the period during which property rights are suspended—or the suspension period—begins when the natural disaster first hits a community and ends when the community “restores to order.”³⁵ Depending on the extent of the devastation, the scope of the affected geographic area, and the particular community, the time needed to accomplish sufficient restoration will vary.³⁶ This is especially true in larger, urban cities when city officials restore power more quickly to

30. *Id.*

31. See Quarantelli & Dynes, *Property Norms and Looting*, *supra* note 13, at 176. Under normal circumstances, breaking and entering a store for the purpose of taking merchandise and to serve as temporary shelter would be burglary and trespassing. LA. REV. STAT. ANN. § 14:62.2 (2007 & Supp. 2010) (“Simple burglary of an inhabited home is the unauthorized entry of any inhabited dwelling, house, apartment or other structure used in whole or in part as a home or place of abode by a person or persons with the intent to commit a felony or any theft therein, other than as set forth in Article 60.”); LA. REV. STAT. ANN. § 14:63(A)–(C) (2007) (“No person shall enter any structure, watercraft, or movable owned by another without express, legal, or implied authorization. No person shall enter upon immovable property owned by another without express, legal, or implied authorization. No person shall remain in or upon property, movable or immovable, owned by another without express, legal, or implied authorization.”).

32. Quarantelli & Dynes, *Property Norms and Looting*, *supra* note 13, at 176.

33. Dynes & Quarantelli, *Looting in Civil Disturbances*, *supra* note 6, at 239–40.

34. *Id.* at 240. For a more extensive discussion of how the Suspension Theory does not favor those who take luxury goods, see *infra* Part I.B.3.

35. Quarantelli and Dynes state that this occurs “when emergency needs are met.” Dynes & Quarantelli, *Looting in Civil Disturbances*, *supra* note 6, at 241. This analysis does not contemplate the situation in which a community partially restores to order. For the purpose of this analysis, there is a theoretical moment when property rights reinstate, although in reality the line may not be definite.

36. *Id.*

certain operational areas while businesses and schools do not begin to function again until much later.³⁷

Absent from Quarantelli and Dynes' discussion on the issue of suspension and redistribution of property rights, however, is what the resulting ownership rights surrounding a looted good are when property rights "reinstate." Consider a community before a natural disaster strikes—complete with homes, businesses, and goods inside those homes and businesses. Then the disaster hits. Under the Suspension Theory, property rights are suspended at this moment in order to facilitate the most efficient and beneficial use of private resources.³⁸ Goods are taken, moved around, consumed, broken, and so forth. Whenever the community restores to order and property rights theoretically reinstate, however, the pre-existing property relationships do not merely fall back into place; they cannot do so because the objects to which the property rights were attached are now destroyed, missing, or in someone else's possession.

B. Applying the Suspension Theory

Quarantelli and Dynes argue that property rights become suspended within a community after a natural disaster.³⁹ Unfortunately, they never explain what the phrase "property rights" encompasses, so it is unclear exactly *what* becomes suspended. This Comment attempts to show how the actual application of the Suspension Theory changes property rights. In order to make the theory functional and didactic, some explanations, extensions, and limitations are required.

1. Ownership or Possession?

It is possible that by arguing that property rights become suspended, Quarantelli and Dynes mean that all rights relating to *ownership* become suspended. On the other hand, it is also possible that Quarantelli and Dynes intend to encompass all rights relating to *possession*.⁴⁰ This Comment chooses to focus on the broader

37. See GEORGE D. HADDOW & JANE A. BULLOCK, INTRODUCTION TO EMERGENCY MANAGEMENT (2004).

38. Dynes & Quarantelli, *Looting in Civil Disturbances*, *supra* note 6, at 239.

39. Quarantelli & Dynes, *Property Norms and Looting*, *supra* note 13, at 176.

40. In the Louisiana Civil Code, "possession" is a term of art and means more than just physical control over a thing. Corporeal possession is the "physical acts of use, detention, or enjoyment over a thing." LA. CIV. CODE. art. 3425 (2008). It also means that the person who has physical control over the thing must have the intention to possess the thing as its owner. See LA. CIV.

term of “property rights” and not just on “ownership.” By focusing on property rights instead of restricting the inquiry to ownership rights, a broader range of permissible property relationships become available. Quarantelli and Dynes’ use of the phrase “property rights are suspended” instead of “ownership rights are suspended” implies that their original thought was that the Suspension Theory could affect property relationships differently from just ownership alone.⁴¹

Possession, in particular—which is not ownership—certainly creates a property relationship. This Comment uses possession laws applicable to looted goods in order to show how the Suspension Theory would affect property rights. Further, the choice to focus on possession fits the scope of this inquiry because not all looting situations under the Suspension Theory can result in a *change* of ownership, although they may *disrupt* the current ownership, i.e. *possession* changes hands. Additionally, by not suspending ownership rights, the Suspension Theory is able to conform to the argument that society does not want to afford the looter running down the street with a flat-screen television in his arms all the rights and protections that ownership entails.⁴²

2. Possession Rights and Rights Accruing out of Possession

Once someone validly obtains possession over a movable thing,⁴³ certain rights accrue from that possession. The Suspension

CODE art. 3421 cmt. b (2008). Without this intent, the person with the physical control over the thing is merely a detainer for another. LA. CIV. CODE art. 3437 cmt. b (2008). The physical control element is called “corpus,” and the intent factor is called “animus.” A.N. YIANNPOULOS, PROPERTY § 310, in LOUISIANA CIVIL LAW TREATISE 612 (2d ed. 2001).

41. Dynes & Quarantelli, *Looting in Civil Disturbances*, *supra* note 6, at 239.

42. *See infra* Part I.B.3.

43. Under the Louisiana Civil Code, corporeal movables are things, whether animate or inanimate, that normally move or can be moved from one place to another. *See* LA. CIV. CODE art. 471 (2008). Corporeals are things that “have a body, whether animate or inanimate, and can be felt or touched.” LA. CIV. CODE art. 461 (2008). A movable thing is anything that the legislature has not deemed to be immovable. *See* LA. CIV. CODE art. 475 (2008). This discussion excludes immovable things for two reasons. First, Professor John A. Lovett recently discussed the effect of events like Hurricane Katrina, or, what he terms “radically changed circumstances,” on immovable property relationships. *See* Lovett, *supra* note 22, at 476. Second, although Professor Lovett did not address the applicability of the Suspension Theory to immovable property rights, such an application would be a beneficial exchange. However, the realm of property law concerning immovables is much more complex, and the rules interconnect with other legal institutions. Thus, it may not be feasible to consider them all

Theory affects two institutions that accrue from possession: occupancy and acquisitive prescription. Under the Louisiana Civil Code, a corporeal movable that does not belong to anyone is subject to occupancy.⁴⁴ This means that the first person to take possession of the corporeal movable becomes its owner at the moment that he takes possession of it.⁴⁵ Acquisitive prescription, comparatively, is a method of acquiring ownership over a thing by possession for a certain period of time.⁴⁶ Under Louisiana law, a person who has mere possession over a movable thing can become the owner of it after ten years.⁴⁷ The commencement of the prescriptive period begins when the person acquires *possession* over the movable thing.⁴⁸ Because this right is based on possession, the Suspension Theory affects the commencement of acquisitive prescription.⁴⁹ In order to make the Suspension Theory functional, this Comment limits the reach of the Suspension Theory to the laws regarding possession, occupancy, and acquisitive prescription.

3. *Potential Effect on Criminal Laws?*

Finally, the application of the Suspension Theory does not affect the operation of criminal laws. Criminal law scholar

together. Louisiana property law presents a much more manageable and smaller universe of applicable rules concerning the possessory rights surrounding a movable thing.

44. LA. CIV. CODE art. 3412 (2008).

45. *Id.*

46. See LA. CIV. CODE art. 3446 (2008).

47. LA. CIV. CODE art. 3491 (2008). This form of acquisitive prescription, called prescription of ten years, does not require that the possessor have good faith or just title in order to become the owner after ten years. For purposes of acquisitive prescription, good faith is the subjective and objective belief that you are the owner of the movable thing and that you validly got the thing from its former owner. See LA. CIV. CODE art. 3480 cmt. c (2008). Just title is an act sufficient to transfer ownership. See YIANNOPOULOS, *supra* note 40, § 264. Neither is needed for prescription of ten years. The possessor merely needs possession for ten years to become the owner.

48. See LA. CIV. CODE art. 3491 (2008).

49. The validity of his possession, since he is not required to be in good faith, may suffer from a vice of possession, namely the vice of clandestinity. Someone who hides his possession from those who have an interest to know has clandestine possession. See YIANNOPOULOS, *supra* note 40, § 316. However, a possession that was public at its inception does not become clandestine if the possessor subsequently hides his possession from the public. *Id.* This exception is applicable in this Comment because the looters take these goods in full view of the public. For the three looting scenarios, see *infra* Part III.B.

Professor Stuart P. Green recently discussed the inapplicability of the Suspension Theory to criminal looting.⁵⁰ Taken to its logical conclusion, he argues, the Suspension Theory would “exempt from criminal liability not only the more sympathetic cases of justified or excused acts, . . . but also the most heinous acts of looting.”⁵¹ Professor Green’s argument implies that he does not see how the Suspension Theory can operate in the requisite fact-sensitive way to take into consideration society’s need to hold some looters criminally culpable but not others.

Although Green makes a valid point, his argument fails to consider that the Suspension Theory does, in fact, allow for fact-sensitive judgments. The theory does not work in favor of those who take luxury goods,⁵² nor does it protect all types of looters.⁵³ It only operates to suspend *property* rights, not *criminal* laws.⁵⁴ This allows the Suspension Theory to interact with the objective content of property laws in order to aid in our understanding of why society reacts differently to looters depending on the situation, without regard to the possible imposition of criminal liability on the looter.⁵⁵

II. BLURRING THE LINES BETWEEN NATURAL DISASTER AND CIVIL DISTURBANCE LOOTING

The looting after Hurricane Katrina elicited a broad spectrum of emotional responses from people across the globe ranging from disgust and anger to sympathy and sadness.⁵⁶ Hurricane Katrina is a prime example of how the Suspension Theory can illuminate how these emotional responses are founded in society’s notions of property rights. When Quarantelli and Dynes first articulated the Suspension Theory, they applied it only to natural disaster looting, which, at the time, had a distinct set of characteristics in legal

50. Green, *supra* note 8, at 1150–51.

51. *Id.*

52. *See supra* Part I.B.3.

53. *See id.*

54. *See Quarantelli & Dynes, Property Norms and Looting, supra* note 13, at 176.

55. Penalver and Katyal took this same approach to justify the acts of property outlaws. They state that “the justification of an act of acquisitive lawbreaking can turn on the objective content of the law and the facts on which the law itself operates, and not just on the subjective attitude of the lawbreaker herself.” *See Penalver & Katyal, supra* note 10, at 1153.

56. *See Anup Shah, Hurricane Katrina, GLOBAL ISSUES: SOCIAL, POLITICAL, ECONOMIC AND ENVIRONMENTAL ISSUES THAT AFFECT US ALL*, Nov. 13, 2005, <http://www.globalissues.org/article/564/hurricane-katrina>.

scholarship.⁵⁷ However, their description of natural disaster looting carries with it certain traits that do not necessarily comport with the looting that occurred after Hurricane Katrina, making it questionable whether the Suspension Theory could even apply to the Katrina looting. If the Suspension Theory affects only those situations deemed to be natural disaster looting, then it excludes some of the Katrina looting.⁵⁸ Because Hurricane Katrina looting is a mixture of two formerly distinct forms of looting—natural disaster looting and civil disturbance looting—a discussion of the Katrina looting is required.⁵⁹

A. The Historical Contexts of Looting

Although looting historically occurred in the context of warfare,⁶⁰ today looting usually occurs outside of this context.⁶¹ Of

57. See Quarantelli & Dynes, *Property Norms and Looting*, *supra* note 13, at 176. For a discussion of the characteristics, see *infra* Part II.A.

58. See *infra* Part III.B.3.

59. These are not the only forms of looting. Some other forms of looting include “cultural object looting” and “white collar looting.” Cultural object looting occurs when looters remove culturally and artistically significant artifacts from their native sites. See Roger D. Scott, *Looting: A Proposal to Enhance the Sanction for Aggravated Property Crime*, 11 J.L. & POL. 129, 142 (1995); see also Matthew D. Thurlow, Note, *Protecting Cultural Property in Iraq: How American Military Policy Comports with International Law*, 8 YALE HUM. RTS. & DEV. L.J. 153, 153–54 (2005). White collar looting occurs when corporate executives or other corporate or government personnel with access to large accounts of private funds or public treasuries misappropriate the funds. See WILLIAM K. BLACK, THE BEST WAY TO ROB A BANK IS TO OWN ONE: HOW CORPORATE EXECUTIVES AND POLITICIANS LOOTED THE S & L INDUSTRY 1–4 (2005).

60. Historically, the term “looting” referred to the conduct of troops after a successful invasion of a city. See Green, *supra* note 8, at 1137. Some of the earliest accounts of warfare looting appear in the Old Testament. See 2 *Chronicles* 12:9 (telling of King Shishak of Egypt who attacked Jerusalem and looted the Lord’s temple and Solomon’s palace). Throughout Roman history, the right to take possession of the goods of the conquered peoples served as compensation for the otherwise underpaid troops. See generally DONALD A. PETRIE, THE PRIZE GAME: LAWFUL LOOTING ON THE HIGH SEAS IN THE DAYS OF FIGHTING SAIL 3 (1999) (discussing the role of looting during times of military invasion). See also M.T. BOATWRIGHT, D.J. GARGOLA & R.J.A. TALBERT, A BRIEF HISTORY OF THE ROMANS 77 (2006); Myles McDonnell, *Roman Aesthetics and the Spoils of Syracuse*, in REPRESENTATIONS OF WAR IN ANCIENT ROME 77 (S. Dillon & K.E. Welch eds., 2006). During the American Civil War, Henry Wager Halleck, a scholar, lawyer, and U.S. Army officer, argued that even the most inhumane invader is entitled “to take for his own use such works of genius and taste as belong to the hostile state, and are of a moveable character.” HENRY WAGNER HALLECK, INTERNATIONAL LAW, OR, RULES REGULATING THE INTERCOURSE OF STATES IN PEACE AND WAR, ch. XIX, §§ 10–11 (1861). However, the 1954 Hague Convention for the Protection of Cultural

all of the forms of looting that the scholarship addresses, the two types most relevant to this inquiry are civil disturbance looting and natural disaster looting. The term "civil disturbance looting" refers to situations in which large segments of the population within a community riot, looting and vandalizing businesses and homes in the immediate surrounding area.⁶² Events that trigger these riots range from sporting events⁶³ to assassinations of prominent public figures.⁶⁴ Civil disturbance looting differs from all other forms of looting in that it carries with it politically and socially charged "baggage." In May of 1991, a looting riot occurred throughout areas of Washington, D.C., after a policewoman fatally shot a young Hispanic man.⁶⁵ Some journalists reported that the shooting triggered the neglected Hispanic population of Washington, D.C., to rebel, releasing suppressed racial frustrations.⁶⁶ Quarantelli and

Property in the Event of Armed Conflict prohibited such "warfare looting." The Convention for the Protection of Cultural Property in the Event of Armed Conflict, art. 4(3), May 14, 1954, 249 U.N.T.S. 240.

61. This is because under contemporary international law, looting is uniformly prohibited under the Hague Convention and the Geneva Convention. Geneva Convention Relative to the Protection of Civilian Persons in Time of War, art. 16, Aug. 12, 1949, 6 U.S.T. 3516, 3528, 75 U.N.T.S. 287, 298; The Convention for the Protection of Cultural Property in the Event of Armed Conflict, art. 4(3), May 14, 1954, 249 U.N.T.S. 240; OSCAR M. ULHER ET AL., COMMENTARY: IV GENEVA CONVENTION RELATIVE TO THE PROTECTION OF CIVILIAN PERSONS IN TIME OF WAR 226-27 (Jean S. Pictet ed., 1958).

62. See Enrico L. Quarantelli & Dennis Wegner, *Riots: Behavioral Aspects*, in 13 INTERNATIONAL ENCYCLOPEDIA OF THE SOCIAL SCIENCES 1379, 1383 (1975).

63. See William Oscar Johnson & Lester Munson, *The Agony of Victory*, SPORTS ILLUSTRATED, July 5, 1993, at 31 (discussing the vandalism and looting that erupted in downtown Montreal after the Canadians' National Hockey League (NHL) Stanley Cup in 1986).

64. See Gordon Arnold, *A Cynical Legacy of JFK Assassination*, PROVIDENCE J., Nov. 21, 2008, http://www.projo.com/opinion/contributors/content/CT_arnold21_11-21-08_4SC5QP4_v8.3e2c60f.html (discussing the civil unrest that ensued after President John F. Kennedy's assassination in 1963); Leonard Downie, Jr., *Flames of Outrage*, WASH. POST, Apr. 9, 1978, at 7 (discussing the widespread arson, looting, and vandalism that ensued in Washington, D.C., after the assassination of civil rights leader Dr. Martin Luther King, Jr.); *Fights and Looting Mar Martin Luther King Parade in New Orleans*, WASH. POST, Jan. 16, 1979, at A10 (discussing the incidents of fighting, looting, and purse-snatching that occurred during a parade commemorating Dr. Martin Luther King, Jr.). Such incidents are often dubbed "grievance" riots. See also Scott, *supra* note 59, at 188.

65. Scott, *supra* note 59, at 130.

66. See Carlos Sanchez, *Civil Rights Panel Probes Mount Pleasant Disturbances: Hispanic Leaders Say Little Has Changed*, WASH. POST, Jan. 29, 1992, at D1.

Dynes state that looting has occurred during almost every major civil disturbance on record within the United States.⁶⁷

Such civil disturbance looting has certain traditional characteristics that distinguish it from all other forms of looting.⁶⁸ These characteristics address the looting participants, how these participants engage in the looting, and what goods the participants tend to take. Civil disturbance looters range in age, from the very young to the very elderly, and come from all socio-economic levels.⁶⁹ The looters are usually local community residents as opposed to outsiders.⁷⁰ Civil disturbance looters often work in pairs⁷¹ or family units to more quickly and efficiently loot,⁷² often looting stores where they cannot ordinarily afford to shop.⁷³ As a result, the goods taken are often high-quality goods or luxury goods.⁷⁴ Finally, Quarantelli and Dynes argue that such looting generally occurs very openly, and onlookers and other community members often encourage it.⁷⁵ This characteristic may be attributable to the fact that civil disturbance looting is often part of social or civil unrest that manifests in large-scale rioting and looting. Despite the chaos and destruction that a frenzied mob of looters can create, some historians view these larger demonstrations as producing and helping to bring about social or political change.⁷⁶

In contrast, Quarantelli and Dynes argue that traditional natural disaster looting has virtually the opposite characteristics of civil disturbance looting.⁷⁷ Natural disaster looting usually occurs after one of two types of events. The first type is a natural disaster in the

67. See Quarantelli & Dynes, *Property Norms and Looting*, *supra* note 13, at 174.

68. *Id.* at 173.

69. *Id.*

70. *Id.*

71. See Video: Looting and rioting in Serbia (Kosovo za patike) (YouTube, L.L.C. added Feb. 23, 2008), available at <http://www.youtube.com/watch?v=2BjWAY8KYf4> [hereinafter Serbia Looting].

72. Quarantelli & Dynes, *Property Norms and Looting*, *supra* note 13, at 174.

73. *Id.*

74. For a definition of “luxury goods,” see *supra* note 9. Commentators dubbed the riot that occurred after the Canadians’ NHL Stanley Cup victory in 1986 “The Gucci Riot” because the looters chose the most fashionable and expensive stores. See Johnson & Munson, *supra* note 63, at 31.

75. See Quarantelli & Dynes, *Property Norms and Looting*, *supra* note 13, at 175; see also Serbia Looting, *supra* note 71 (showing onlookers aiding the two looters by handing goods to them through a store window).

76. See Dynes & Quarantelli, *Looting in Civil Disturbances*, *supra* note 6, at 243.

77. *Id.* at 233–41.

pure sense of the term, such as a hurricane,⁷⁸ snowstorm,⁷⁹ or flashflood.⁸⁰ The second type of natural disaster results from events that are less based on the forces of nature, such as blackouts,⁸¹ plane crashes,⁸² and, arguably, terrorist attacks.⁸³ In instances of natural disaster looting, Quarantelli and Dynes argue that looting is actually quite rare,⁸⁴ and, if it does occur, individuals—as opposed to groups—participate.⁸⁵ The looter is usually an outsider that ventures into the area in order to take advantage of the victimization of the residents, as opposed to civil disturbance looters, who often are expressing anger or social frustrations.⁸⁶ Of particular interest is the characterization that the security forces sent in to secure the area or to aid in the relief efforts often participate in the looting as well.⁸⁷ Unlike civil

78. See Bill Peterson, *Carter Tours Storm-Whacked Gulf Coast, Pledges Help*, WASH. POST, Sept. 15, 1979, at A3 (discussing the looting that occurred in Mobile, Alabama, in the wake of Hurricane Frederick).

79. See Kim Kincaid, *Surviving the Blizzard of 1978*, THE LIMA NEWS, Jan. 23, 2008 (discussing the vandalism that occurred during the famous New England blizzard).

80. See Philip J. Hilts, *Flash Flooding in Texas Leaves 10 Dead, 4 Missing*, WASH. POST, May 26, 1981, at A3 (discussing the scattered looting of downtown stores after the flash flooding of Austin, Texas).

81. See ROBERT CURVIN & BRUCE PORTER, *BLACKOUT LOOTING! NEW YORK CITY*, JULY 13, 1977 (1979) (discussing the city-wide looting that occurred in New York City during a blackout caused by an electrical storm).

82. See *Psychologists Explain Looting at Crash Site*, UPI, Aug. 18, 1987 (discussing how looters took luggage and personal effects of passengers of a plane that crashed in Detroit, Michigan).

83. Although it may seem more likely that looting after a terrorist attack could be civil disturbance looting, according to traditional characterizations, looting after a terrorist attack shares characteristics common to natural disaster looting. Further, much civil disturbance looting occurs as a result of an internal struggle between certain communities, while terrorist attacks are brought on by conditions outside of the affected community, most often having that same element of surprise attributable to the more traditional forms of natural disaster looting. The looting that occurred after the terrorist attack of September 11, 2001, for example, fits under the traditional characteristics of natural disaster looting. See Bruce Ackerman, *The Emergency Constitution*, 113 YALE L.J. 1029, 1086 (2004) (arguing that terrorist attacks and the looting ancillary to it are distinct from general mob violence); Jeffrey W. Stempel, *Insurance Aftermath of September 11: Myriad Claims, The Multiple Lines, Arguments over Occurrence Counting, War Risk Exclusions, the Future of Terrorism Coverage, and New Issues of Government Role*, 37 TORT & INS. L.J. 817, 863 (2002) (discussing the similarities between terrorist attacks and natural disasters for purposes of providing insurance coverage).

84. Quarantelli & Dynes, *Property Norms and Looting*, *supra* note 13, at 173.

85. *Id.*

86. *Id.*

87. *Id.* at 174.

disturbance looting, natural disaster looting is particularly dependent upon circumstances and availability, and the choice of store is not necessarily the result of careful selection.⁸⁸ Natural disaster looters generally take necessity goods.⁸⁹ Finally, natural disaster looters usually work quickly and covertly,⁹⁰ which is likely attributable to the strong public and social condemnation of looting after natural disasters.⁹¹

B. The Emergent Looting Context: Hurricane Katrina Looting

Although Quarantelli and Dynes juxtapose natural disaster looting and civil disturbance looting, in reality they are not mutually exclusive, and the distinctions between them are especially questionable after the looting following Hurricane Katrina. Hurricane Katrina looting is comprised of a medley of natural disaster and civil disturbance looting characteristics. Hurricane Katrina looters took both necessity goods and luxury goods.⁹² Local New Orleans residents as well as outsiders participated in the looting.⁹³ Although some participants did act alone, small and large groups of looters worked together to loot more efficiently—a trait that Quarantelli and Dynes attribute to civil disturbance looting.⁹⁴ Finally, the argument that the strong societal disapproval of looting after natural disasters forces the

88. *Id.* at 174–75.

89. *Id.* For a definition of “necessity goods” and “luxury goods,” see *supra* note 9.

90. *Id.* at 175.

91. *Id.*

92. Jefferson Parish police officers recovered pick-up trucks full of goods taken from Walgreens drug stores, Wal-Marts, Radio Shacks, and businesses in Oakwood Center, including such goods as DVD players, DVDs, CD players, and Playstation 2 video games. See Michelle Hunter, *Jeff Arrests 275 in Katrina Looting; Deputy Wounds Man during Foot Chase*, THE TIMES-PICAYUNE (New Orleans), Oct. 1, 2005, at B1. However, some of the goods taken from Jefferson Parish convenience stores did include non-perishable food items and inexpensive clothing. See Michael Perlstein, *NOPD Clears Cops in Looting Probe; They Had OK to Take Clothing, Officials Say*, THE TIMES-PICAYUNE (New Orleans), Mar. 18, 2006, at NATIONAL 1.

93. See *Katrina Cost Us Faith in Others*, THE TIMES-PICAYUNE (New Orleans), Nov. 20, 2005, at METRO 6. Although Quarantelli and Dynes argue that such “ghouls” often come from outside of the community to prey on the local victims of the disaster, such “ghouls” also exist within the community. Dynes & Quarantelli, *Looting in Civil Disturbances*, *supra* note 6, at 233. For example, following Hurricane Katrina, Menekia Humphrey, a resident of Harvey, was arrested for looting Playstation 2 video games from her local Harvey Wal-Mart store with her thirteen-year-old daughter. Hunter, *supra* note 92.

94. See Quarantelli & Dynes, *Property Norms and Looting*, *supra* note 13, at 174.

most desperate of looters to proceed covertly and at night⁹⁵ fails in the face of the overt looting that followed Hurricane Katrina.⁹⁶

Although some of Quarantelli and Dynes' distinctions are beginning to blur, some remain strong. First, Quarantelli and Dynes argue that natural disaster looters generally take necessity goods.⁹⁷ Although some Hurricane Katrina looters took luxury goods, there were many reports of looters taking only necessity goods.⁹⁸ Second, outsiders (as well as local residents) participated in the looting following Hurricane Katrina,⁹⁹ a trait that Quarantelli and Dynes attribute to natural disaster looting.¹⁰⁰ Third, Quarantelli and Dynes argue that after a natural disaster, local law enforcement sent in to aid in the relief efforts often participate in the looting.¹⁰¹ Video footage of four police officers seen carousing the aisles of the Tchoupitoulas Street Wal-Mart loading their cart with clothes, shoes, and other items, as others nearby continued to loot without resistance from the officers, shows the continued validity of this trait.¹⁰²

The traditional characteristics that distinguish natural disaster looting from civil disturbance looting do not hold up after the looting that followed Hurricane Katrina. It would be inaccurate to label this looting as merely natural disaster looting, as the looting shared characteristics of both natural disaster and civil disturbance looting. As such, the implications of this new form of looting can reveal new insights into how society should perceive a looter after a natural disaster like Hurricane Katrina.

95. See generally Scott, *supra* note 59, at 143–47 (discussing looting from the viewpoint of victim vulnerability).

96. Terry Hayes, a local New Orleans resident, bragged to reporters that he was a “proud looter” who robbed local stores and hotels for food, water, and ice to give to the evacuees at the New Orleans Convention Center. Thevenot, *supra* note 7.

97. Quarantelli & Dynes, *Property Norms and Looting*, *supra* note 13, at 175.

98. See Anderson, Perlstein & Scott, *supra* note 3; Thevenot, *supra* note 7.

99. See Hunter, *supra* note 92; *Katrina Cost Us Faith in Others*, *supra* note 93.

100. Quarantelli & Dynes, *Property Norms and Looting*, *supra* note 13, at 174.

101. *Id.*

102. Video: Cops loot Wal*Mart after Katrina in New Orleans (YouTube, L.L.C. added June 29, 2006), available at <http://www.youtube.com/watch?v=NmQW6xLECUU&feature=related>. Police statements state that the four police officers had the authority to appropriate necessity goods in order to aid in the relief efforts. Perlstein, *supra* note 92. The New Orleans police force received strong criticism because some officers were accused of stealing SUVs from the Sewell Cadillac dealership in the Central Business District. See James Varney, *N.O. Cops Reported to Take Cadillacs from Dealership; Foti Investigating Looting Allegation*, THE TIMES-PICAYUNE (New Orleans), Sept. 29, 2005, at B1.

C. Applicability of the Suspension Theory to Hurricane Katrina Looting

Unfortunately, Quarantelli and Dynes only hypothesized the Suspension Theory in the context of traditional natural disaster looting and could not have considered applying the theory to this new form of looting. In order to apply the Suspension Theory to Hurricane Katrina looting, it is necessary to extend its scope. It is unclear, however, whether Quarantelli and Dynes would consider this an acceptable extension of the Suspension Theory,¹⁰³ as the theory originally only applied in the context of traditional natural disaster looting,¹⁰⁴ and the characteristics of Hurricane Katrina looting crossed over into the realm of civil disturbance looting.¹⁰⁵ Despite this theoretical difference, this Comment argues that the Suspension Theory should apply to this new form of looting. The event that triggered the looting was a natural disaster—a hurricane.¹⁰⁶ Although it is arguable that some of the looting that occurred may have been a result of some suppressed social frustrations,¹⁰⁷ the initial catalyst for the looting was a hurricane—a traditional type of natural disaster.¹⁰⁸ The same societal policy underlying the application of the Suspension Theory—to provide for the residents of a disaster-stricken community most in need—applies to Hurricane Katrina.¹⁰⁹ Even though it is questionable whether Quarantelli and Dynes ever contemplated stretching the Suspension Theory to apply to looting situations like Hurricane Katrina, their stated purpose for the theory overall compels the conclusion that Hurricane Katrina looting fits the bill. Further, the application of the Suspension Theory to Hurricane Katrina looting shows how the use of the theory provides the requisite fact-sensitive malleability needed to show the causal connection between society's responses to looting and property rights that property laws alone cannot.

103. In fact, Quarantelli and Dynes argue that civil disturbance looting operates in an entirely different manner. They imply that pure civil disturbance looting should not be affected by the operation of the suspension of property rights. This is because civil disturbance looting does not arise out of necessity, but out of a conflict of interests manifested through violence to property. See Quarantelli & Dynes, *Property Norms and Looting*, *supra* note 13, at 176–77.

104. *Id.* at 176.

105. See *supra* Part II.B.

106. See Katrina Files Timeline, *supra* note 2.

107. *Id.*

108. See *supra* Part II.A.

109. See Dynes & Quarantelli, *Looting in Civil Disturbances*, *supra* note 6, at 239.

III. CONSTELLATION OF RIGHTS:¹¹⁰ THREE HURRICANE KATRINA LOOTING SCENARIOS

The first step to showing the connection between society's responses to looting and property rights is a discussion of different types of movable things within the Louisiana Civil Code, in particular—stolen,¹¹¹ abandoned,¹¹² and lost things.¹¹³ The point of this initial classification is to determine the property rights that attach to a thing once it is classified as stolen, lost, or abandoned. If one of the elements of a stolen thing is missing, then the nature of the thing changes from stolen to something else, and all of the attached property rights change with that shift in classification. Also, the intent of the true owner of a looted thing is of pivotal concern in this classification analysis. If a true owner changes his intent, this could, in effect, change the classification of a thing from lost to abandoned. Further, although each type of thing is discussed individually, it is possible for a thing to share more than one classification.

A. The Constellation of Rights Surrounding a Movable Thing

1. Stolen Thing

The occupancy and possession articles in the Louisiana Civil Code do not define what qualifies as a stolen thing. However, article 521, entitled "Transfer of Ownership by Agreement," states that "a thing is stolen when one has taken possession of it without the consent of its owner."¹¹⁴ It is unclear, however, if this definition applies to all uses of the phrase "stolen" in the Civil Code.¹¹⁵ Professor Yiannopoulos states that stealing requires that a person take something of value from another with the intent to permanently deprive the owner of the thing.¹¹⁶

In Louisiana, courts often construe property laws in a manner that protects the rights of the true owner of a stolen thing.¹¹⁷ A person who steals a thing cannot become the immediate owner of it

110. The phrase "constellation of rights" is from Penalver and Katyal's article. See Penalver & Katyal, *supra* note 10, at 1095.

111. See LA. CIV. CODE art. 521 (2008).

112. See LA. CIV. CODE art. 3419 (2008).

113. See LA. CIV. CODE art. 3418 (2008).

114. LA. CIV. CODE art. 521 (2008).

115. *Id.*

116. The intent to permanently deprive the owner of the thing is based upon objective considerations. See YIANNOPOULOS, *supra* note 40, § 309.

117. *Id.* § 344.

through occupancy.¹¹⁸ This comports with the overarching social conception that people who do not obey property laws should not be rewarded with ownership rights.¹¹⁹ Instead, a thief may only become the owner of the stolen movable thing by acquisitive prescription of ten years.¹²⁰

2. Abandoned Thing

Under the Louisiana Civil Code, a thing is abandoned when its owner “relinquishes possession with the intent to give up ownership.”¹²¹ Abandonment requires two things: loss of corpus and relinquishment of animus.¹²² Whether or not an owner abandons his animus over a thing depends on objective considerations.¹²³ After a storm, a grocery store owner may put perishable goods outside on the curb in front of his store. Without electricity, the perishable goods would spoil. When he places the goods outside in the street, he gives up corpus. Two objective facts could show that he has relinquished animus as well. First, people put trash and other things that they do not want outside on the street for collection, and second, these goods will perish without electricity. In this situation, the perishable items are abandoned things.

Under Louisiana Civil Code article 3418, abandoned things are subject to the laws of occupancy,¹²⁴ and the occupant becomes the

118. For a discussion of “occupancy,” see *infra* Part III.A.2.

119. See Penalver & Katyal, *supra* note 10, at 1095.

120. See LA. CIV. CODE art. 3490 (2008); LA. CIV. CODE art. 3491 (2008); LA. CIV. CODE art. 3480 (2008); see also Symeonides, *One Hundred Footnotes to the New Law of Possession and Acquisitive Prescription*, 44 LA. L. REV. 69, 125 n.86 (1983) (stating that a thief may only become the owner of a movable thing after prescription of ten years because of his bad faith). Further, although someone who steals a thing cannot lawfully transfer it to a third person, the transferee of a lost or stolen movable, if in good faith, acquires ownership by prescription of three years. See LA. CIV. CODE art. 521 (2008). A person who possesses a movable in good faith under an act translatif of ownership becomes its owner after three years of possession. See LA. CIV. CODE art. 3490 (2008). However, an owner dispossessed of a thing can recover it in the hands of a good faith possessor of the thing within three years using a revendicatory action. See LA. CIV. CODE art. 526 (2008); Lee Hargrave, *Presumptions and Burdens of Proof in Louisiana Property Law*, 46 LA. L. REV. 225, 231–32 (1985).

121. LA. CIV. CODE art. 3418 (2008). Corporeal possession is the “physical acts of use, detention, or enjoyment” of a thing. LA. CIV. CODE art. 3425 (2008).

122. For a definition of “corpus” and “animus,” see *supra* note 40. Both are required for legal possession. LA. CIV. CODE art. 3421 (2008).

123. See LA. CIV. CODE art. 3418 cmt. c (2008).

124. LA. CIV. CODE art. 3418 (2008). For a discussion of occupancy, see *supra* Part I.B.2.

owner of the thing at the moment that he takes possession of it.¹²⁵ The perishable food items, as corporeal movables that no longer belong to anyone, are subject to occupancy.¹²⁶ The first person to walk by and pick up the goods off of the street becomes the owner of them the moment that they are in his hands. The finder, as the new owner, can use, consume, sell, give away, or abandon the goods himself if for any reason he does not want to keep them.¹²⁷

3. Lost Thing

The Louisiana Civil Code does not provide a definition of a "lost thing." However, in the general sense, a thing is lost when its owner does not know where it is and cannot find it.¹²⁸ In addition to this lay definition, a comment in the Civil Code provides an illustrative situation in which a movable is deemed to be lost.¹²⁹ Under the Louisiana Civil Code of 1870, things "jettisoned and lost in a shipwreck" were considered lost by default.¹³⁰ Although the article is no longer in the current version of the Civil Code, the rule still applies to things jettisoned or lost at sea.¹³¹ A thing can become lost by two possible ways: when the owner retains animus over but cannot find the thing and when the owner is dispossessed of the thing by a force majeure.¹³²

Consider a scenario in which a tsunami strikes a small island, and a local resident's dog becomes caught in the flow. Three days later, the water deposits the dog twenty miles away from the resident's home. The resident goes looking for his dog when the

125. See LA. CIV. CODE art. 3412 (2008).

126. Abandoned things are not the only things subject to occupancy. Things that have never been owned are also subject to the laws of occupancy. See LA. CIV. CODE art. 3412 cmt. c (2008).

127. See LA. CIV. CODE art. 477 (2008).

128. *Black's Law Dictionary* states that the word "lost" describes property that is beyond the possession and custody of its owner and not locatable by diligent search. BLACK'S LAW DICTIONARY 965 (8th ed. 2007).

129. See LA. CIV. CODE art. 3419 cmt. e (2008).

130. See LA. CIV. CODE art. 3424 (1870). Things lost at sea are not considered abandoned because the owner does not relinquish animus in such a situation. *Id.* In these situations, the continuation of animus is presumed. *Id.*

131. See LA. CIV. CODE art. 3419 cmt. e (2008).

132. "Force majeure" translates from French as an "irresistible force." See LA. CIV. CODE art. 1873 cmt. c (2008). Some illustrative examples of force majeure include war, civil unrest, plagues, calamities, and anything else that could impede communications and disorganize the justice system. Benjamin West Janke, *Revisiting Contra Non Valentem in Light of Hurricanes Katrina and Rita*, 68 LA. L. REV. 497, 508 (2008) (citing J. CARBONNIER, LA RÈGLE CONTRA NON VALENTEM AGERE NON CURRIT PRAESCRIPTIO, in 77 REVUE CRITIQUE DE LÉGISLATION ET DE JURISPRUDENCE 170-71 (1937)).

water begins to subside. The dog is a lost thing. By default, the resident was dispossessed of his dog by a force majeure—the tsunami.¹³³ Alternatively, the dog is lost because its owner retains animus over the dog but cannot find it.

Three days after the tsunami strikes, another resident finds the dog and immediately takes possession of it. Because the dog is lost—as opposed to abandoned—the finder does not become the owner of it immediately upon possession.¹³⁴ The finder of a lost thing must make a diligent effort to locate the true owner.¹³⁵ If the owner is not found within three years, then the finder becomes the owner.¹³⁶ Until that time, the resident who found the dog is merely a possessor¹³⁷ but can become the dog's owner after ten-year acquisitive prescription.¹³⁸

B. Three Looting Scenarios

The preceding section establishes the constellation of rights surrounding three different types of movable things within the Louisiana Civil Code. Although the looting of a thing may make it a stolen thing by default,¹³⁹ the Suspension Theory operates to legitimize the looting in some instances and condemn it in others.¹⁴⁰ In order to see the malleability of the Suspension Theory,

133. See LA. CIV. CODE art. 3424 (1870).

134. This is because lost things are not subject to occupancy, but to a different set of rules related to occupancy. Professor J. Randall Trahan refers to this derivative institution as “quasi-occupancy.” See Andrea Beauchamp Carroll, Professor, Class Lecture at Louisiana State University Paul M. Hebert Law Center (Mar. 12, 2008).

135. A diligent effort to locate the owner may involve publishing or advertising in newspapers, posting notices, or notifying the public authorities. See LA. CIV. CODE art. 3419 cmt. d (2008).

136. LA. CIV. CODE art. 3419 (2008). A person who possesses a movable for ten years becomes its owner. LA. CIV. CODE art. 3491 (2008).

137. The true owner of a lost thing can recover it from the finder using a revendicatory action. See LA. CIV. CODE art. 526 (2008).

138. LA. CIV. CODE art. 3491 (2008).

139. Looted goods are always considered stolen things by default. This is because the definition of a stolen thing, unlike that of an abandoned or lost thing, does not depend upon the intent of the true owner. See *supra* Part III.A.3. It is, instead, the intent of the looter to permanently deprive the owner of the thing that makes the looted good a stolen thing. *Id.*

140. Louisiana is one of seven states with a criminal looting statute. The other states with looting statutes are California, Hawaii, Illinois, Mississippi, North Carolina, and South Carolina. See Green, *supra* note 8, at 1140. Although the exact language of the statutes differs among the seven states, they share the essential elements of looting. *Id.* at 1140–41. Under Louisiana's looting statute, looting requires the intentional and unauthorized entry into a home or business, the damaging or removing of property once inside the business, and that the

this Comment posits three hypothetical factual scenarios reminiscent of Hurricane Katrina looting.

1. The Necessity Looters

In the first scenario, hurricane-force winds break the glass doors of a local pharmacy. The store subsequently floods, and canned goods, bottles of water, battery packs, and baby diapers are washed out onto the curb in front of the store. Three days later, a local resident sees the battery packs and baby diapers on the ground and takes them. Another local resident picks up the canned goods and the bottles of water and carries them away. The local police are not present when the two residents take the goods off of the street because they are helping others in need.¹⁴¹

In this scenario, the legal rights and relationships concerning the looted goods change over the course of events. The Suspension Theory interacts with these legal rights and relationships, modifying the resulting legal effect of this single act of looting into a more equitable set of consequences. Before the storm makes landfall, the store owner had possession of the goods.¹⁴² Once the storm makes landfall, this triggers the beginning of the suspension period.¹⁴³ Because the Suspension Theory only affects possession, just the store owner's possessory interest in the goods becomes suspended. While those possessory rights are suspended, however, the looters take corporeal possession of the goods.¹⁴⁴ Despite losing corporeal possession, the store owner still has a possessory

looter removes the property from a place in which normal security of the property is not present. *See* LA. REV. STAT. ANN. § 14:62.5(A) (2007 & Supp. 2010). These statutory elements serve as the basis for the three looting scenarios from which this analysis begins. In each scenario, the looter violates each statutory element in a different way to produce three different factual situations in which looting occurs.

141. This scenario, although it does not meet the exact statutory definition of "looting," would be considered looting under societal notions. This scenario does not meet the statutory definition of "looting" because the looters did not intentionally and without authorization enter the store. *See* LA. REV. STAT. ANN. § 14:62.5(A) (2007 & Supp. 2010). The simple fact is that after a storm makes landfall, a passerby that sees someone picking up goods off of the street and running off with them would classify this behavior as looting. *See* Dynes & Quarantelli, *Looting in Civil Disturbances*, *supra* note 6, at 236.

142. *See* LA. CIV. CODE art. 3425 (2008).

143. The Suspension Theory only applies after natural disasters. The storm, as a natural disaster, triggers the beginning of the suspension period. For a discussion and analysis of the Suspension Theory, *see supra* Part I.B.

144. *See* LA. CIV. CODE art. 3425 (2008).

interest in the goods because he has civil possession.¹⁴⁵ This means that his animus carries his possession, despite having lost corpus. In fact, the law presumes that he retains his animus.¹⁴⁶

Yet, the storm itself could change the intent of the store owner. After the storm, the store owner returns to find that his store windows are broken and that his wares are in the street. The store owner is not concerned about the lost value of his goods, and he takes it upon himself to help out the members of his community and gives away the rest of the necessity goods within his store.¹⁴⁷ If this is the case, then the moment that the store owner decides to give all of his goods away, he abandons them because he has lost his animus.¹⁴⁸

If the store owner abandons his goods, then this change of intent undermines the presumption that he intended to retain his animus over them.¹⁴⁹ When the suspension period ends and, thus, the operation of property rights reinstates,¹⁵⁰ the looters become owners of the goods *retroactively to the moment that they picked the goods up off of the street*. In this first scenario, the Suspension Theory should operate to retroactively change the classification of goods from stolen to abandoned. By reclassifying the goods as abandoned, the goods become subject to occupancy, and the looters become the owners of the goods at the moment that they take possession of them.¹⁵¹

The suspension period's retroactive effect on the operation of the store owner's intent legitimizes the conduct of the looters. The two residents, now owners, enjoy the full vestiges of ownership and could have sold the goods, consumed them, or given them away without consequence.¹⁵² This is one way that the Suspension Theory shows its ability to manipulate the operation of property laws to produce an equitable result, creating legal consequences

145. LA. CIV. CODE art. 3431 (2008).

146. The store owner retains animus over, but not corporeal possession of, the goods. This situation is termed "civil possession," which is a protected interest in the thing. See LA. CIV. CODE art. 3431 (2008).

147. According to Quarantelli and Dynes, this is the conduct that the Suspension Theory encourages. See Quarantelli & Dynes, *Property Norms and Looting*, *supra* note 13, at 176.

148. The store owner no longer has lost physical possession of the goods, and, by giving up his animus over them, he no longer has civil possession or possession over the goods. See LA. CIV. CODE art. 3433 (2008).

149. See LA. CIV. CODE art. 3432 (2008).

150. For a discussion of when the suspension period ends, see *supra* Part I.B.

151. See LA. CIV. CODE art. 3412 (2008).

152. See LA. CIV. CODE art. 477 (2008).

that more conform to society's perception of looting in such sympathetic circumstances.¹⁵³

This is not, however, the only possible effect of the Suspension Theory in this first scenario. A different store owner may not be as altruistic, and he may try to prevent looters from taking the rest of his goods. This store owner quickly gathers the goods, places them inside his store, and boards up the broken windows. In this case, the store owner has not abandoned his goods; his reaction demonstrates his intent to retain animus.¹⁵⁴ Like the first store owner, this store owner also has civil possession over the goods.¹⁵⁵ As a result, those few items that escaped the possession of the store owner are lost things, and the two looters cannot become immediate owners of the goods.¹⁵⁶ Their possession would ripen into ownership only after three years of possession and a diligent effort to locate the owner¹⁵⁷ or after ten-year acquisitive prescription.¹⁵⁸

Consider now the effect that the Suspension Theory has on this situation. If it takes the community two months to fully recover from the storm, then possessory rights are suspended for two months. Suppose that the looters are actually trying to make a diligent effort to find the second store owner. Ordinarily, this would mean that the looters have three years to find the store owner before they become the owners of the goods.¹⁵⁹ However, the Suspension Theory operates to suspend all rights *accruing* from possession,¹⁶⁰ which includes acquisitive prescription.¹⁶¹ In this second case, the Suspension Theory suspends the commencement of prescription for the two months after the storm hit the community, and the looters cannot become the owners of the lost things until two months and three years after the storm.

This result may seem inequitable toward the looters. But in this situation, the store owner's rights must be balanced as well. If the store owner wants to locate the looters for some sort of reimbursement, perhaps, then he now has a two-month grace period to do this. During this two-month grace period, prescription

153. See Quarantelli & Dynes, *Property Norms and Looting*, *supra* note 13, at 176; Anderson, Perlstein & Scott, *supra* note 3.

154. See LA. CIV. CODE art. 3418 (2008).

155. See LA. CIV. CODE art. 3431 (2008).

156. For a discussion of lost things, see *supra* Part III.A.3.

157. See LA. CIV. CODE art. 3419 (2008).

158. LA. CIV. CODE art. 3491 (2008).

159. *Id.*

160. See *supra* Part I.B.2.

161. For a discussion of acquisitive prescription, see *supra* Part I.B.

does not run against him.¹⁶² The Suspension Theory operates in this situation to take into consideration the continued intent of the store owner to retain possession of his goods, giving him some extra time to recover them.¹⁶³

2. *The Luxury Looters*

In the second scenario, imagine that a strong hurricane overcomes a large, urban city. In the days following the hurricane, a mob of local residents break into a shopping center that sells high-end luxury goods. In particular, two young men, brothers, break into a jewelry store in the shopping center.¹⁶⁴ Before the hurricane made landfall, though, the jeweler moved most of his jewelry to a safe place but forgot one display case holding a diamond engagement ring and silver necklace. The two brothers smash open the display case. One puts the ring on his finger, and the other puts the necklace in his pocket. When they arrive home, the latter takes the necklace from his pocket and sells it to his unsuspecting younger sister.

Here, the jeweler did not necessarily intend to abandon the ring and necklace. He secured as much of the jewelry in the store that he could but accidentally left some display items behind in his quick preservation efforts before the storm. The ring and necklace are presumptively stolen things: the jewelry has pecuniary value; the brothers took the goods from the possession of another without authorization; and, in all probability, they intended to permanently

162. During a period of suspension of prescription, the period of suspension is not counted toward accrual of prescription. LA. CIV. CODE art. 3472 (2008). Prescription commences to run again upon termination of the period of suspension. *Id.* The doctrine of *contra non valentem* operates to suspend prescription when the plaintiff does not know or does not have reason to know of the cause of action. For a discussion of the doctrine of *contra non valentem*, see ANDREA BEAUCHAMP CARROLL & RONALD J. SCALISE, JR., PRESCRIPTION: LIBERATIVE, ACQUISITIVE, AND NON-USE, in LOUISIANA CIVIL LAW TREATISE ch. II.F. (Feb. 2009) (unpublished manuscript, on file with The Louisiana State University Paul M. Hebert Law Center). See generally Janke, *supra* note 132.

163. In all probability, the looters would make no such diligent effort to find the store owner, and they would only become the owners of the goods by acquisitive prescription of ten years. Conversely, the store owner would have ten years plus two months to recover the goods from the looters. See LA. CIV. CODE art. 3491 (2008).

164. Throughout the rest of this Comment, these two actors are often referred to as “the brothers.” This is done in order to keep the looters in each scenario distinct. Their familial relationship as brothers is irrelevant for purposes of the analysis. The author includes the brothers as characters and the ring as the looted good in reference to the story of Gyges in PLATO, THE REPUBLIC 54 (Richard W. Sterling & William C. Scott trans., Norton & Company 1985).

deprive the jeweler of his jewelry.¹⁶⁵ But, the classification of the jewelry as stolen does not revolve around the intent of the store owner in the way that the classification of abandoned or lost things does.¹⁶⁶ Instead, it is the intervening criminality of the looting that pushes this scenario into the stolen things category.

Because the brothers took luxury goods, as opposed to necessity goods, the Suspension Theory does not operate to legitimize their conduct.¹⁶⁷ The looting of luxury goods is not protected under the umbrella of the Suspension Theory, as Quarantelli and Dynes' theory encourages only taking of necessity goods for the community's benefit.¹⁶⁸ Even though the brothers have possession over the jewelry and, arguably, should be entitled to the constellation of rights surrounding their possession, their possession remains tainted by the criminality of the acquisition of the jewelry. The Suspension Theory does not operate to wash away their wrongdoing in this instance.

What the brothers have is a conditional form of possession, dependent upon the subsequent change (or lack thereof) of the jeweler's intent concerning the two pieces of jewelry.¹⁶⁹ When the jeweler returns to his shop, he at once sees that the two pieces of jewelry are gone. He has some options: he can call the police, he can investigate the incident on his own, or he can do nothing.

If the jeweler calls the police, this act shows that he intends to retain possession over the jewelry. If the police find the brothers, then the jeweler should be able to recover the jewelry, and they will be criminally liable as well.¹⁷⁰ But suppose instead that the jeweler does not call the police but begins to look for the culprits himself and asks people if they have seen the silver necklace or ring. For weeks following the storm, the jeweler has no leads until he sees a young woman walking in the street wearing the silver necklace. The jeweler immediately recognizes the necklace as the one that was stolen from his store and confronts the young woman. She replies that she bought it from her older brother and that it belongs to her.

165. For a discussion of stolen things, see *supra* Part III.A.1.

166. See *supra* Part III.A.1.

167. See Quarantelli & Dynes, *Property Norms and Looting*, *supra* note 13, at 176.

168. See *supra* Part I.A.

169. This conditional possessory interest is not the same as revocable ownership or terminable ownership. Comments to the Louisiana Civil Code make clear that a revocable form of ownership does not exist in Louisiana. See LA. CIV. CODE art. 3419 cmt. c (2008).

170. See LA. REV. STAT. ANN. § 14:62.5 (2007 & Supp. 2010).

In this situation, the jeweler can always recover the necklace from her if he triggers the condition, as he did in the first instance, by invoking the criminal aspect and calling the police, possibly recovering possession through the criminal justice system. However, if the jeweler does not call the police, then both the jeweler and the sister have rights to the necklace, but in different capacities. Because the jeweler never intended to abandon the necklace, he still has civil possession over the necklace.¹⁷¹ But the sister also has some rights to the necklace. As a good faith transferee, if she retains possession over the necklace for three years, she could become its owner.¹⁷²

In this scenario, the Suspension Theory protects the jeweler by giving him additional time to find the necklace. If it takes two months for the community to restore to order, then the clock should not begin to tick against him until the suspension period ends. The operation of the suspension period in this situation suspends the running of acquisitive prescription. This protects the jeweler, the true owner—a result that comports with the sympathy that society has for the jeweler in this situation—while at the same time appropriately balancing the rights acquired by the sister.

Now suppose instead that the jeweler does not investigate the missing jewelry once he returns to his store; the jeweler is more worried about the state of his disheveled display room than the two missing pieces of jewelry. Unlike in the necessity looters scenario,¹⁷³ in this instance it would be inequitable to retroactively deem the jewelry to be abandoned. The Suspension Theory operates in this situation against the looters still, as the theory does not operate in favor of people who take luxury goods.¹⁷⁴ This is the more equitable solution because if retroactive abandonment was allowed in this instance, it would legitimize the conduct of the brothers. This would prejudice the rights of the jeweler, and the result would counter society's strong disfavor for looters who take

171. See LA. CIV. CODE art. 3431 (2008).

172. See LA. CIV. CODE art. 524 cmt. b (2008); Hargrave, *supra* note 120, at 231–32. Although in similar circumstances, it may be unlikely that under these objective considerations the sister is in good faith, in this situation, the younger sister is presumably in good faith because she bought the necklace from her brother unsuspecting of its criminal origin. For purposes of transfer of lost or stolen movables, “good faith” means that the acquirer of the corporeal movable is in good faith unless she knows, or should know, that the transferor is not the owner. See LA. CIV. CODE art. 523 (2008). Without good faith, the sister could not become the owner of the necklace for ten years. See LA. CIV. CODE art. 3491 (2008).

173. See *supra* Part III.B.1.

174. For a discussion of the limits of the Suspension Theory, see *supra* Part I.B.

luxury goods after natural disasters.¹⁷⁵ Even if the store owner did abandon his goods, the abandonment would only take effect at the moment when property rights reinstate and would have no retroactive operation. Further, the brothers would still be considered criminals for taking the jewelry.

3. *The Wal-Mart Looters*

The first two scenarios suggest that the Suspension Theory either wholly applies to the looting scenario or does not apply at all. However, in some looting occurrences, looters take both necessity goods and luxury goods.¹⁷⁶ In these instances, the Suspension Theory legitimizes some conduct, but not all of it, and sometimes the legal issues generated by the situation extend beyond the scope of property and criminal law, involving constitutional issues as well. This adds a new dimension to the outcome that the Suspension Theory has on those situations. This final scenario illustrates such a situation.

After a natural disaster strikes an urban city, a mob of people inundate a Wal-Mart store. Some of the looters take luxury goods, some take necessity goods, and some take both. A young woman takes a DVD player, some canned goods, and clothing.¹⁷⁷ By the time the police arrive at the store, the mob has calmed, but the store is in a state of disarray. Instead of arresting the looters, some police begin to participate, filling shopping carts with DVDs, canned goods, and clothing, implicitly condoning the action of the looters. The police officers, though, are acting under orders from their superiors to gather necessity goods to contribute to the relief efforts.¹⁷⁸

Although this analysis begins with the presumption that all of the goods taken are stolen things, this is rebuttable.¹⁷⁹ In order to be a stolen thing, someone must take it *without authorization*.¹⁸⁰ The police, at least with regard to the necessity goods that they

175. See Quarantelli & Dynes, *Property Names and Looting*, *supra* note 13, at 176.

176. See Perlstein, *supra* note 92.

177. The DVD player is a luxury good for purposes of this Comment, and the canned goods and clothing are considered necessity goods. See *supra* note 9.

178. This scenario also fits the statutory definition of "looting," even though it is markedly less violent than the second scenario. The looters enter intentionally and without authorization and damage and take property belonging to another once inside the store. Further, normal security of property is absent. For the elements of looting, see *supra* note 15.

179. For a discussion of "stolen things," see *supra* Part III.A.1.

180. *Id.*

took, had direct authorization from their superiors to do so. In this situation, executive orders trump any private ownership interest that the owner of a Wal-Mart chain has in his necessity goods.¹⁸¹ Further, this is the type of conduct that the Suspension Theory expressly condones.¹⁸² The purpose of the Suspension Theory is to suspend property rights in order to facilitate the transition from private to communal ownership of necessity goods to provide for the neediest community members.¹⁸³ Regarding its effect on the legal classification of the goods, this superseding authorization should remove the necessity goods taken from the police out of the realm of stolen goods.¹⁸⁴

Once the suspension period ends and property rights reinstate, the state is retroactively deemed to own the necessity goods taken by the police.¹⁸⁵ Such a result legitimizes the actions of the police as to the necessity goods. On the other hand, society may be sympathetic to the rights of the store owner,¹⁸⁶ but he is not left without redress. He can bring an action to recover damages from the state.¹⁸⁷

181. Under Article 1, Section 4 of the Louisiana Constitution, the state or its political subdivisions can take private property of its citizens for public purposes as long as the private owner is justly compensated. *See* LA. CONST. art. I, § 4.

182. For a discussion of the Suspension Theory, see *supra* Part I.B.

183. *Id.*

184. *See supra* Part III.A.1.

185. For a full explanation of the retroactive effects of the Suspension Theory, see *supra* Part III.B.1.

186. *See* Anderson, Perlstein & Scott, *supra* note 3; Quarantelli & Dynes, *Property Norms and Looting*, *supra* note 13, at 176.

187. The Fifth Amendment to the United States Constitution requires the payment of compensation whenever the government takes private property for a public purpose, including when the taking is in the form of physical appropriation. *See* Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency, 535 U.S. 302 (2002). The Fifth Amendment assures that the government cannot force certain individuals to bear public burdens. *See* Krupp v. Breckenridge Sanitation Dist., 19 P.3d 687 (Colo. 2001). The purpose is to make the property owner whole again. *See* State By & Through Dep't of Highways of State of Mont. v. McGuckin, 788 P.2d 926 (Mont. 1990). Just compensation applies to the states as well as to the federal government. *See* Brown v. Legal Found. of Wash., 538 U.S. 216 (2003); *see also* State Dep't of Transp. & Dev. v. Dietrich, 555 So. 2d 1355, 1358–59 (La. 1990); State Dep't of Highways v. Constant, 369 So. 2d 699, 702 (La. 1979) (stating that the purpose of the additional language in Article I, Section 4 of the Louisiana Constitution is to compensate an owner for any loss sustained by reason of the state taking without restriction, as under the former constitution, to the market value of the property taken and to the reduction in the market value of the remainder); Lee Hargrave, *The Declaration of Rights of the Louisiana Constitution of 1974*, 35 LA. L. REV. 1, 15 (1974).

This is not the result, however, as to the luxury goods that the police took. These goods remain presumptively stolen, as the police did not have authorization to take them. Furthermore, even if the store owner subsequently abandons the goods, the police officers would not retroactively become the owners of them,¹⁸⁸ and the Suspension Theory would not legitimize their conduct. As to the luxury goods, because the Suspension Theory does not favor looters who take such goods, it works instead in favor of the store owner. The store owner should be able to bring an action against the police officers or, perhaps, their superiors for redress.¹⁸⁹

In this latter scenario, the luxury goods taken by the police could also be considered lost things.¹⁹⁰ If so, then the police officers could only become the owners of the goods using ten-year acquisitive prescription.¹⁹¹ In the case of lost things, the Suspension Theory works to suspend the commencement of the looters' acquisitive prescription until the suspension period ends.¹⁹² If it takes six months for the community to sufficiently reorganize, then the running of prescription against the store owner would not commence for six months.¹⁹³

Regardless of the recovery method, the Suspension Theory works in favor of the store owner, and this result most likely comports with society's sympathies. Generally, an accepted opinion among civilized societies exists that it is inherently unfair and abhorrent when authority figures not only exploit their authoritative positions, but also do it at a time when the populace needs them the most.¹⁹⁴

However, the police were not the only looters in Wal-Mart. As to the other looters, the Suspension Theory affects their situations differently. Because the Suspension Theory only favors those who

188. For an explanation as to why the police do not get retroactive ownership rights over the luxury goods, see *supra* Part I.B.

189. A person may bring an action for redress against any person acting under color of law for deprivation of rights, including property rights. See 42 U.S.C. § 1983 (2006).

190. For an explanation as to why this is the critical moment, see *supra* Part III.B.2. For an explanation as to why the goods could be lost things, see *supra* Part III.A.2.

191. For a definition of "ten-year acquisitive prescription," see *supra* note 47.

192. For an explanation as to why the Suspension Theory suspends commencement of acquisitive prescription, see *supra* Part III.B.2.

193. See *supra* Part III.B.2.

194. See Diana L. Drummond, *Cops' Behavior Is Unacceptable*, THE TIMES-PICAYUNE (New Orleans), Mar. 21, 2006, at METRO 4 (stating that the cops' behavior in looting Wal-Mart and their subsequent pardoning are shocking and unacceptable); Perlstein, *supra* note 92, at 1 (stating that the public expressed strong outrage after learning of the officers' participation in the looting).

take necessity goods and not luxury goods, looters who take necessity goods and looters who take luxury goods must be addressed in turn. If the store owner abandons the necessity goods, then the Suspension Theory operates to retroactively deem the looters to be the owners of the goods at the moment that they took possession of them, retroactively legitimizing their conduct.¹⁹⁵ This is an acceptable application of the Suspension Theory because, as the theory promotes, community members need to be able to take some necessity goods to support themselves and their families after a natural disaster depletes their own resources.¹⁹⁶

However, if the store owner retains his animus over the necessity goods, then the goods could be considered lost things.¹⁹⁷ If so, then the Suspension Theory works in favor of the store owner by suspending the commencement of acquisitive prescription running against him.¹⁹⁸ This also is an acceptable result, as it demonstrates a balancing of the rights and needs of both the looters and the store owner. The store owner could possibly get the goods back, and that would be acceptable, but the looters could also become the owners of the goods through acquisitive prescription, and that is acceptable as well, considering the situation and the type of goods taken.

As to the luxury goods that the looters took, though, the Suspension Theory does not legitimize that conduct.¹⁹⁹ The luxury goods remain presumptively stolen, which also subjects the looters to possible criminal liability.²⁰⁰ As a society, this is the result that most reflects the attitudes toward these types of looters—those that exploit the vulnerable city and loot luxury goods. Even if the store owner subsequently abandons the goods, the looters do not retroactively become the owners of them.²⁰¹ What the looters have, then, is a form of conditional or tainted possession over the luxury

195. For an explanation as to why abandonment of the good during the suspension period retroactively deems it to be abandoned, see *supra* Part III.B.1.

196. See Quarantelli & Dynes, *Property Norms and Looting*, *supra* note 13, at 176. This is especially true after natural disasters like Hurricane Katrina in which New Orleans residents had little to no warning about the oncoming hurricane and had no necessity goods in preparation for the storm. See John Galvin, *10 Worst Disasters of the Last 101 Years: Hurricane Katrina: New Orleans, August 2005*, *POPULAR MECHANICS*, July 31, 2007, at 1.

197. For an explanation as to why retention of animus after the period ends makes the good a lost thing, see *supra* Part III.A.2.

198. See *supra* Part III.B.1.

199. See *supra* Part I.B.

200. For an explanation as to why this subjects the looters to criminal liability under the Suspension Theory, see *supra* Part III.A.1.

201. See *supra* Part III.B.1.

goods.²⁰² This means that the looters could become the owners of the goods, but there is always the possibility of criminal sanctions lurking in the background. Under this conditional or tainted possession, as to the rest of the world, the looter may acquire ownership through acquisitive prescription.²⁰³ But because of the criminal attachment, the true owner could press charges, thus triggering the criminal condition, and recover the value of the goods from the looters at any time through the criminal justice system.²⁰⁴

In this last scenario, the Suspension Theory results in a compromise of interests in all of the different possible situations. On the one hand, the Suspension Theory reflects and takes into consideration the anger that society feels toward the police officers for taking luxury goods. Situations such as these demonstrate why some scholars conclude that looting results from a failure of proper social controls.²⁰⁵ Further, it is possible that the conduct of the police officers implicitly authorized others to loot. By recognizing the possible influence that the conduct of the police officers has on the looters, the Suspension Theory gives the looters a possessory interest—albeit a conditional one—in the luxury goods that they took. On the other hand, society cannot and should not presume that a looter who witnesses a police officer looting will unconsciously follow his lead without any reflective thought of his own. To impose such a presumption presupposes the looter's right and ability to make his own decisions, and society upholds the right of every man to do so.²⁰⁶ The Suspension Theory weighs the possible influence that the police have over the choices of the looter against the ability of the looter to think for himself.

202. See *supra* Part III.B.2.

203. Such a result does not run afoul of the non-clandestinity requirement because clandestinity is based on objective openness. See YIANNPOULOS, *supra* note 40, § 316.

204. Other instances in Louisiana law allow defects to have relative effects. For example, the vices of possession are relative to the interested parties. See A.N. YIANNPOULOS, *CIVIL LAW PROPERTY COURSEBOOK* 184 (8th ed. 2007).

205. See David T. Mason, *Individual Participation in Collective Racial Violence: A Rational Choice Synthesis*, 78 AM. POL. SCI. REV. 1040, 1042 (1984) (arguing that the most rational way to deter looters is to increase criminal sanctions and police presence); Quarantelli & Dynes, *Property Norms and Looting*, *supra* note 13, at 171; Scott, *supra* note 59, at 146.

206. See DAVID HUME, *A TREATISE OF HUMAN NATURE*, bk. II, pt. III, § II (1967) (arguing that the doctrine of liberty and free will is considered fundamental for reasons of necessity, of indifference, and of religion and morality).

IV. THE DIDACTIC FUNCTION OF THE SUSPENSION THEORY

Some people initially react to looting as “wrong,” while others excuse the act as justified because they are sympathetic to looters in the neediest circumstances. However, these feelings have a basis in the law. The Suspension Theory allows society to see that its reactions have a direct causal relationship to how a looter disrupts existing property rights. Although the relationship does not always align perfectly under the parameters of property law, the Suspension Theory provides the requisite fact-sensitive malleability that is needed in order to at least recognize the connection between the two.

Regardless, the question is not whether our emotional responses to looting stem from our perceptions of *how* looting disrupts property rights, but *why*. Perhaps our emotional responses are based upon property rights—not because we revere property rights for their stabilizing function or because property rights tell us who can do what with a piece of property—but because the right to possess property strikes a fundamental chord in our beings. Even at an early age, children know the meaning of “mine” and, despite not knowing the applicable laws, seem to intrinsically understand the value of possession and ownership.²⁰⁷

The basis for the apparent fundamental nature of the right to possess property, however, is harder to define. John Locke argued in the seventeenth century that the intrinsic value of property is based on the fact that the owner acquires the property as a product of his labor.²⁰⁸ Locke used this labor theory of ownership in order

207. See Melody Warnick, *The 6 Most Annoying Things that Kids Say—and the Best Ways to Respond*, CNN, Jan. 18, 2007, <http://www.cnn.com/2007/HEALTH/parenting/01/15/par.most.annoying/index.html>.

208. See JOHN LOCKE, *THE SECOND TREATISE OF GOVERNMENT* § 27, at 17 (Liberal Arts Press 1952) (1690) (“Though the earth and all inferior creatures be common to all men, yet every man has a property in his own person; this nobody has any right to but himself. The labor of his body and the work of his hands, we may say, are properly his. Whatsoever then he removes out of the state that nature has provided and left it in, he has mixed his labor with, and joined to it something that is his own, and thereby makes it his property. It being by him removed from the common state nature has placed it in, it has by this labor something annexed to it that excludes the common right of other men. For this labor being the unquestionable property of the laborer, no man but he can have a right to what that is once joined to, at least where there is enough and as good left in common for others.”); see also Bell & Parchomovsky, *supra* note 17, at 566–67 (stating that Locke used the labor value of property theory in order to provide a natural rights basis for ownership and that Carl Marx used the same theory in order to argue for the virtues of egalitarianism and to empower the proletariat). Although the labor value of property theory has diminished over time as to Locke and Marx’s ends, it still provides a possible explanation for the

to assert that natural rights are the basis for property laws, that things are the natural consequences of labor, and that the laborer is thus entitled above all others to the value of the thing procured through his labor.²⁰⁹ This may serve as an explanation as to why society feels sympathetic to the jeweler and outraged at the brothers in the second looting scenario. The brothers, by stealing the jewelry, essentially acquire something for nothing, while the jeweler arguably made those pieces of jewelry through his own skill. The brothers thus unnaturally deprive the jeweler of the value of his labor. Unfortunately, Locke's theory does not seem to explain why, in the necessity looters scenario, society is sympathetic to the looters and not necessarily to the store owner because society does not balance the rights and needs of the looters.

Professor and scholar Margaret Jane Radin, alternatively, proposes the theory that the value of objects is directly related to the owner's "personhood."²¹⁰ She argues that in order to achieve proper self-development—to be a person at all—an individual needs some control over his external environment.²¹¹ Personhood is what drives property rights. Any property theory concerns how property rights affect different people, requiring a discussion of the nature of the person to which the property rights accrue.²¹² Within this conception of personhood, some argue that property rights are sacred to determining and establishing personal autonomy, while others believe that changing property rights shifts the nature of how people in communities interact.²¹³ And still others argue that

basis of the fundamental nature of property rights. *Id.*; see also YORAM BARZEL, *ECONOMIC ANALYSIS OF PROPERTY RIGHTS* 3 (2d ed. 1997) (arguing that the ability to derive value from an asset constitutes an economic property right). *But see* Thomas A. Merrill & Henry E. Smith, *The Property/Contract Interface*, 101 COLUM. L. REV. 773 (2001) (arguing that property rights come in a fixed number in order to promote easy and cheap distribution of information about the rights pertaining to assets).

209. See LOCKE, *supra* note 208, at 17.

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

211. *Id.*

212. *Id.*

213. *Id.* at 957–58 (“Conservatives rely on an absolute conception of property as sacred to personal autonomy. Communitarians believe that changing conceptions of property reflect and shape the changing nature of persons and communities. Welfare rights liberals find entitlement to a minimal level of resources necessary to the dignity of persons even when the entitlement must curtail the property rights of others [T]he Lockean labor-desert theory . . . focuses on individual autonomy [T]he utilitarian theory . . . focuses on welfare maximization.”) *Id.* (citing G. HEGEL, *PHILOSOPHY OF RIGHT* (T. Knox

even the most minimal of property rights is required to maintain the dignity of persons—even if that means diminishing the property rights of others.²¹⁴ Property defines and can represent individuals' value systems in any given society.

Professor Radin's theory seems to adequately encompass the arguments made in this Comment. Without property, human beings would lack a large and effective form of expression of tastes and values. But by clothing ourselves in a certain manner, by driving different cars, by having certain furniture, for example, we are able to visually express what and who we are as individuals. Thus, when the brothers take the jewelry, they are taking a part of the jeweler's personhood, a thing that defines his characterization as a jeweler. At the same time, this theory helps to explain why our reactions to looters who take necessity goods are more sympathetic to the looters. All men need at least minimal things to establish an existence, to maintain their personhood, and to survive. Further, by taking necessity goods, the looters are not, in effect, stealing another's personhood to the same degree as those who take luxury goods. Although the food that a person chooses to eat can be a sign of who they are as a person, looting someone's bottled water and canned beans does not affect the owner's personhood in the same manner as would stealing a diamond engagement ring labored over and fashioned to the buyer's personal tastes.²¹⁵

How property relates to personhood has an effect not only at the individual level, but at the societal level as well. As scientists and anthropologists delve into human history, they define a cultural human era by the artifacts and movable property that they recover. And even in contemporary world cultures, the use and styling of movable property such as clothing and home furnishings distinguish one culture from another. In different types of political systems—socialism, communism, and capitalism, for example—conceptions of ownership and property rights define the political and social system to the rest of the world.

The Suspension Theory demonstrates that society's differing reactions to looting are causally dependent upon how each different looting scenario affects existing property rights. The

trans., 1821); J. LOCKE, *SECOND TREATISE OF GOVERNMENT* (New York 1952) (London, 6th ed. 1764)).

214. *Id.* at 958 (citing J. BENTHAM, *THEORY OF LEGISLATION* (R. Hildreth trans., 1840) (1802); S. FREUD, *Civilization and Its Discontents*, in 21 STANDARD EDITION OF THE COMPLETE PSYCHOLOGICAL WORKS OF SIGMUND FREUD 111–14 (J. Strachey ed., 1964)).

215. See Bell & Parchomovsky, *supra* note 17, at 567.

responses vary depending on the type of goods that the looters take, raising the question as to why this is. Although different scholarly theories suggest a range of answers to this question, Professor Radin's personhood theory provides the most sufficient answer—individual personhood is connected to property. When a looter takes luxury goods from another, it detracts from the true owner's personhood. The application of the Suspension Theory to different looting scenarios allows us to reach this conclusion.

CONCLUSION

The purpose of this Comment is to demonstrate how society's responses to looting derive from conceptions of ownership and property rights. By laying the Suspension Theory atop the operation of property laws after natural disasters like Hurricane Katrina, the analysis demonstrates how the law comports with our fundamental conceptions of property rights. Property affects our personhood, and, considering the new form of looting that Hurricane Katrina exemplifies, different types of looting affect our personhood and our society in so many ways.²¹⁶ Looting causes a wide range of emotional responses. From anger, to complacency, to sympathy, the looting that followed Hurricane Katrina left us without explanation as to why we respond in this way. The Suspension Theory provides us with one possible explanation. It shows us that our societal responses to looting are connected to our conceptions of property laws, without which we may not have found such a causal connection.

Casey E. Faucon*

216. This may also be because looting has criminal, property, constitutional, international, and contract law aspects, as well as social, psychological, and economic implications. *See generally* U.S. CONST. amend. XIV, § 1 (showing the fundamental nature of property rights); Hague Convention, *supra* note 60 (showing the international implications of looting); Green, *supra* note 8 (discussing the criminality of looting); Quarantelli and Dynes, *Property Norms and Looting*, *supra* note 13 (discussing the relationship between looting and property rights); Bell and Parchemovsky, *supra* note 17 (discussing the relationship between property law and contract law); Quarantelli and Dynes, *Property Norms and Looting*, *supra* note 13 (discussing the social and psychological implications of looting); Mason, *supra* note 205 (discussing the relationship between looting, law, and economics).

* The author would like to thank Professor N. Gregory Smith for his guidance.