

The Proprietor Within: Irreplaceability and the Limits of Defensive Force

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Abstract

Modern criminal law evaluates the legitimacy of defensive force through the twin criteria of immediacy and proportionality, standards whose stated objectivity dissolves, in practice, into situational judgment. This study contends that doctrine has fixated on justifying the violent act while leaving unexamined the very thing the act claims to protect: property itself. To remedy this lacuna, it advances irreplaceability as the missing standard of legitimacy. The argument proceeds in three movements. It first conducts a comparative-doctrinal analysis of three contrasting legal traditions—Germany’s codified rigor, the Anglo-American tradition’s casuistic improvisation, and Korea’s post-colonial codification—to show that the prevailing framework’s limits are structural rather than merely jurisdictional. It then constructs a philosophical foundation linking John Locke’s labor theory of property, Margaret Jane Radin’s personal/fungible distinction, and Graham Harman’s Object-Oriented Ontology, in order to disclose why certain possessions are constitutively inseparable from the self. It finally establishes irreplaceability as a third legal standard, articulated along three axes—practical, identity-based, and external—and bounded by an internal ceiling: no possession, however constitutive of identity, can warrant the taking of another’s life. The study closes by arguing that what is irreplaceable is not the thing held in the proprietor’s possession, but the proprietor who dwells, however quietly, within the thing.

Keywords: Self-defense, Irreplaceability, Property and personhood, Comparative criminal law, Proportionality, Object-Oriented Ontology, Margaret Jane Radin

1. Introduction

What injury may one person rightfully inflict upon another to preserve what cannot be replaced? This question reaches beyond mere legal judgment; it discloses the ethical weight and the very limits of legal legitimacy folded into the concept of injury itself.

Self-defense is among the oldest justifications known to law. Roman jurists already recognized that force may lawfully be repelled by force (*vim vi repellere licet*; Dig. 43.16.1.27), and the English common law preserved a parallel intuition in the maxim that a person’s home is his castle, articulated as early as *Semayne’s Case* (1604) and later systematized by Blackstone (1769). Yet the tradition drew a sharp line between defending the person and defending property. Life and bodily safety could justify substantial force; mere possessions, as a rule, could not. The common-law writers generally held that one might not kill to protect property alone, a restraint later loosened in the United States by the Castle Doctrine and Stand-Your-Ground statutes (Brown, 1991; Light, 2017). The continental codifications followed a similar logic, permitting defensive force against unlawful attacks on property but binding it to requirements of necessity and proportionality. The modern framework of immediacy and proportionality is thus the heir of a centuries-long effort to license defensive force while containing it, an effort that has always measured the act of defense, but rarely the worth of the thing defended.

Even in modern criminal law, the legitimacy of violence is ordinarily judged by the requirements of immediacy

and proportionality. Yet the standards offered in the name of objectivity must take situational context into account, and in doing so reintroduce subjectivity into the evaluation. This study argues that doctrine has fixated on justifying the violent act while leaving unexamined the very thing that the act claims to protect: property itself.

Accordingly, this study pursues three objectives. It seeks, first, to demonstrate through comparative analysis that the immediacy-proportionality framework shares a common blind spot across distinct legal traditions; second, to ground philosophically the claim that some property is inseparable from the person; and third, to formulate irreplaceability as an operable third standard for evaluating defensive force.

Before determining what level of violence the law may legitimately sanction, we must first confront a more fundamental question: what is violence for? There is a clear gap between fungible property that is easily replaced and irreplaceable property bound to the dignity of life or livelihood. Through this shift in perspective, the study seeks to advance a new answer to the question of justifiable violence, a question whose relevance persists undiminished into the present day.

2. Reframing Property and Self-Defense: A Comparative Analysis

2.1 The Expanding Concept of Property

First it is necessary to determine the modern concept of property. In Korea and Germany alike, the legal concept of property, as defined in Article 98 of the Korean Civil Act and Article 14 of the German Basic Law (Grundgesetz), goes beyond physically defined objects to include intangible rights and interests that have economic value (Korea Ministry of Government Legislation [MOLEG], 2018; European Union Agency for Fundamental Rights [FRA], n.d.). Similarly, in the United States, leading cases such as *Pierson v. Post* (1805) and *Board of Regents v. Roth* (1972) illustrate that the modern conception of property reaches beyond physical objects to encompass land, entitlements, and intangible interests (Cornell Law School, n.d.-b). Property, on this account, is no longer confined to the tangible or the visible; its boundaries have steadily widened.

2.2 Analytical Framework

This study employs a comparative-doctrinal method organized by a most-different-systems logic. Germany, the United States, and Korea were chosen not for geographic convenience but because they embody three contrasting legal traditions that nonetheless converge on a single question: when may force be used to defend property? Germany represents the codified, dogmatically systematized civil-law tradition (*Strafrechtsdogmatik*; Dubber, 2005); the United States represents the case-law tradition, in which doctrine evolves through judicial decision and legislative experiment such as the Castle Doctrine and Stand-Your-Ground statutes (Suk, 2008); and Korea represents a post-colonial system that received and recodified continental doctrine within its own statutory frame. If the limitations of one framework recur across legal cultures this different, those limitations are unlikely to be accidents of a single jurisdiction; they are more plausibly structural features of modern self-defense law itself.

Within this design, the analysis compares three features held constant across the three systems: (i) the legal source from which the right of self-defense is drawn—statutory code in Germany and Korea, common law and state statute in the United States; (ii) the conditions each system imposes on justified defensive force, namely immediacy, proportionality, necessity, and, where applicable, a duty to retreat; and (iii) whether and how each system treats property, as distinct from the person, as an interest worthy of forcible defense. The comparison proceeds by reading primary legal materials—criminal codes, constitutional provisions, and leading cases—against established secondary scholarship, so as to isolate what the three systems share rather than to catalogue their differences.

2.3 Defensive Force Across Three Jurisdictions

When property faces an immediate threat, the extent to which physical means may be justified to defend it remains uncertain. In Germany, the Criminal Code (*Strafgesetzbuch*, StGB) permits defensive action in response to current unlawful attacks, subject to the requirement of necessity (*Erforderlichkeit*) (German Federal Ministry of Justice, n.d.;

Roxin & Greco, 2020, § 15). The principle of *Gebotenheit*, which concerns the social adequacy of the defensive act, is interpreted as a normative requirement of proportionality (Roxin & Greco, 2020, § 15 nos. 55–90; Funk, 2021, pp. 220–225). South Korea likewise requires immediacy, proportionality, and a genuinely defensive response for the recognition of self-defense (Korea Ministry of Government Legislation, n.d.). Even in the United States, where broader interpretations might be expected, the degree of injury that qualifies as legally justified remains limited. Under the general Self-Defense Doctrine, three core conditions are required—imminent threat, proportionality, and a duty to retreat (Robinson, 1984, § 131)—even as a growing number of states recognize the Castle Doctrine or Stand-Your-Ground statutes (Brown, 1991; Light, 2017; National Conference of State Legislatures, 2023).

2.4 Comparative Findings

Three findings emerge from this comparison. First, all three systems permit force in defense of property, not only of the person; the defense of things is a settled, not an exceptional, feature of each legal order. Second, all three gate that permission through the same two conditions, immediacy and proportionality, joined in the civil-law systems by necessity and in parts of the United States by a duty to retreat. Third, and most tellingly, all three calibrate legitimacy by the conduct of the defender—how immediate the threat, how proportionate the response—while remaining silent on the nature of the thing defended. Across three very different legal grammars, property enters the analysis as undifferentiated economic value: a stolen heirloom and a banknote of equal price are, in the eyes of the doctrine, the same loss.

This shared silence is the structural gap the present study addresses. If the limitation recurs regardless of legal tradition, it cannot be cured by importing one jurisdiction's rule into another; it can be cured only by adding a standard that none of them yet contains, one directed not at the force used but at the worth of what that force protects. Force is not the measure; value is. By “value” this study does not mean market price but constitutive worth: the degree to which a possession sustains the holder's survival, identity, or obligations to others, such that its loss is registered not as a debit to be repaid but as an injury to the person. It is on this common ground that the case for irreplaceability rests.

3. Property and Personhood: The Philosophical Foundation of Irreplaceability

The comparative analysis reveals a gap but cannot, by itself, fill it. To justify a new legal standard, one must show why certain possessions differ in kind, not merely in degree, from ordinary economic goods. This chapter builds that justification in three steps, moving from the origin of property in labor (Locke), through its entanglement with the self (Radin), to the metaphysical standing that makes such entanglement possible (Harman).

3.1 Locke: Labor, Property, and the Self

Certain possessions defy the logic of substitution. Tools that are essential to one's livelihood, or irreplaceable records, are more valuable than the price they cost. They are closely tied to the individual. This property is not just economic, but part of a person's identity. When it is destroyed, the destruction is not only financial, it is the damage to the basic conditions of one's identity and continuity of life. John Locke, who saw property gained by labor as part of natural right, which also involved life and liberty as a value of great importance, was the founder of classical liberalism. For Locke, property transcends the mere object of possession; it serves as a foundation reflecting an individual's survival, dignity, and autonomy. Extending this conception, irreplaceable forms of property—tools for livelihood, or uniquely recorded artifacts of memory—function as extensions of an individual's identity and rights, and thereby furnish an objective standard by which the boundaries of self-defense may be drawn.

3.2 Radin: The Personal and the Fungible

What Locke intuited as the indissoluble bond between labor and personhood was sharpened three centuries later by the American legal philosopher Margaret Jane Radin. In her essay “Property and Personhood” (*Stanford Law Review*, 1982), Radin distinguishes two modes of ownership. The distinction is simpler than its terms suggest. Personal

property is property a person cannot lose without losing a part of themselves—a wedding ring, a family home, an heirloom; its meaning is bound to one particular owner and cannot be transferred along with the object. Fungible property is property held only for its exchange value—a banknote, a mass-produced tool, a share of stock; one unit serves as well as any other, and replacement leaves the owner whole. As Radin contends, “to achieve proper self-development—to be a person—an individual needs some control over resources in the external environment” (Radin, 1982, p. 957). Her personal/fungible divide supplies the doctrinal bridge long missing between Locke’s labor theory and modern personhood jurisprudence: what binds a thing to a person is not the mixing of labor, but the inseparability of self from thing.

3.3 Harman: The Object’s Own Standing

This shift raises a deeper ontological question. Before proposing a new legal framework, we must ask what kind of relationship property bears to us. The inquiry traverses ownership and economic value alike, opening an interpretive horizon in which property appears as a constitutive element of individual existence.

Object-Oriented Ontology (OOO), one of the leading currents of contemporary philosophy, affords a precious insight here. Among its thinkers, Graham Harman stands closest to the questions this study pursues. He emphasizes that an object is no mere instrument for human use but an entity possessing its own independent standing (Harman, 2018). Read alongside Radin, Harman’s ontological re-elevation of objects ceases to be a metaphysical detour and becomes the philosophical completion of her legal-theoretical claim: where Radin shows that some things are inseparable from persons, Harman shows why such inseparability is metaphysically possible. Property thus becomes an ontological object mediating human dignity and autonomy, and it is here that its irreplaceability acquires a basis for legal protection.

4. Establishing Irreplaceability as a Legal Standard

If property possesses such ontological characteristics, its legal protection cannot be exhausted by procedural requirements alone. To immediacy and proportionality a third standard must be added: irreplaceability. Irreplaceability denotes the inherent value of what is defended—the degree to which damaged property cannot be restored to its prior worth, whether physically, emotionally, or socially.

4.1 The Three Categories of Irreplaceability

Irreplaceability resolves into three subcategories, each marking a dimension along which property constitutes personhood:

- Practical irreplaceability—Is the object essential to one’s survival or basic livelihood?
- Identity-based irreplaceability—Is the object deeply bound to the memories, emotions, or personal history that constitute one’s identity?
- External irreplaceability—Is the object connected, directly or indirectly, to the rights of third parties or to public trust?

How, in practice, would a court determine whether a given object falls under one of these categories? Each admits of a workable test directed not at price but at the consequences of irrecoverable loss. For *practical irreplaceability*, the decisive question is dependency: would losing the object deprive the owner of subsistence or of the capacity to earn a livelihood, such that no swift market substitute could restore that capacity? A fisherman’s only boat or a craftsman’s specialized tools would qualify; a second television would not. For *identity-based irreplaceability*, the test is biographical singularity: is the object so bound to the owner’s history, memory, or sense of self that an identical replacement would not be the same thing to its owner? A deceased parent’s handwritten letters or a family’s sole photographic record would qualify; a mass-produced item, however cherished, would not. For *external irreplaceability*, the test is third-party reliance: does destruction of the object impair the rights, safety, or legitimate trust of persons beyond the owner, as with medical records, title deeds, or data held on others’ behalf? In each case the court asks a single ordered question: would the loss strike at survival, at selfhood, or at others—and could money,

in any meaningful sense, undo it?

If a piece of property satisfies even one of these standards, it holds sufficient value to be recognized as eligible for defensive protection. Once irreplaceability is established, it combines with immediacy and proportionality to form a complete set of standards. The earlier critique exposed immediacy and proportionality as criteria that demand subjective interpretation across situations; yet this hardly renders them meaningless.

4.2 The Internal Ceiling: Proportionality as Corrective

Yet irreplaceability cannot license unlimited force. A doctrine that elevated personal property above all proportional restraint would subvert the very dignity it purports to safeguard. The principle must therefore impose a ceiling: no possession, however constitutive of identity, can warrant the taking of another's life. Proportionality re-enters here as an external corrective. The gravity of the defended interest may calibrate the permissible response, but never to the point at which property becomes a warrant for homicide. Properly understood, irreplaceability raises the floor of legal protection without dismantling the ceiling of human inviolability.

5. Conclusion

This study has proposed irreplaceability as a new standard for determining the legitimacy of self-defense, particularly in the defense of property. Most legal systems rely on immediacy and proportionality to evaluate justified violence; when the object of defense is property, the issue grows more complex still. Under current law, most property is treated alike, regardless of its nature or significance. In reality, however, property is not merely a possession; it is often bound up with a person's survival, dignity, and autonomy. On this view, irreplaceability is not a supplementary measure but an ontological core that justifies the use of force.

In practical terms, the standard proposed here offers courts a structured inquiry rather than an open-ended appeal to sentiment. Confronted with a claim that force was justified to defend property, a court may ask, in sequence, whether the object was practically irreplaceable (essential to survival or livelihood), identity-based irreplaceable (inseparable from the owner's memory and personal history), or externally irreplaceable (bound to the rights or trust of third parties). An affirmative answer to any one lifts the property above the threshold of fungible value and admits it to the protective calculus; immediacy and proportionality then fix the permissible degree of force, never breaching the ceiling that forbids the taking of life. So ordered, irreplaceability converts an ontological insight into an applicable rule of decision.

This study began with a familiar question—what harm one may rightfully visit upon another to preserve what is one's own—and was soon displaced by a deeper one: what is that violence for? It now returns to that displacement. Self-defense, in the end, concerns not the measure of force but the worth of what force protects. The standard such an answer requires lies not outside the law but at its origin, in the very purpose for which the law first granted the right to repel violence. In an age when the substrates of selfhood have grown ever more intangible, the law must learn to defend those possessions without which the person, in any meaningful sense, ceases to be.

It is here that Benjamin's aphorism returns with its full doctrinal weight (Benjamin, 1968, p. 67): what is irreplaceable is not the thing held in the proprietor's possession, but the proprietor who dwells, however quietly, within the thing. To defend such property is not to guard a mere chattel but to safeguard the very conditions under which a self continues to exist as itself; and legislators and courts can no longer defer this recognition. They are now called upon to articulate it in the explicit language of statute and doctrine.

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