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Wasting Land Amid Landlessness: The Expropriation (Without Compensation) Response in South Africa

Sue-Mari Viljoen*

In South Africa, the constitutional requirement to pay compensation for expropriations has come under scrutiny as an impediment to the state's redistributive efforts. The legislature has responded with a negative property sanction, allowing for expropriations without compensation. This sanction aims to address a particular type of land use, namely where use of property directly conflicts with the intensifying needs of the landless. Landowners' exercise of their entitlements that result in the abandonment or dilapidation of land, or the mere retention of land for speculative purposes, is potentially unacceptable at a time when landless masses struggle to find a space to legally reside. This Article scrutinizes the regulatory response of the property system with reference to the Constitution, the social-obligation norm, and the notion of sustainable development.

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I. Introduction

The South African property clause protects existing property rights against expropriations that are uncompensated, unauthorized, or that fail to serve the public interest.¹ The clause is unique in that it also seeks to guarantee land reform.² As a matter of state priority, land must be redistributed to the landless, specifically to those who

¹ Constitution of the Republic of South Africa, 1996, s 25(2) and (3):

2. Property may be expropriated only in terms of law of general application for a public purpose or in the public interest; and subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court.

3. The amount of the compensation and the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances ...

² Constitution, s 25(5)-(9); AJ van der Walt, *Constitutional Property Law* (3rd edn, Juta 2011). See JM Pienaar, *Land Reform* (Juta 2014) for an extensive analysis on land reform and Gustav Muller and Sue-Mari Viljoen, *Property in Housing* (Juta 2021) for detail on the right of access to adequate housing. The inherent tension between property protection and redistributive efforts have garnered considerable academic traction. See for instance AJ van der Walt and Sue-Mari Viljoen, 'The Constitutional Mandate for Social Welfare—Systemic Differences and Links Between Property, Land Rights and Housing Rights' (2015) 18 PER 1035; AJ van der Walt, 'Property Rights and Hierarchies of Power: A Critical Evaluation of Land-Reform Policy in South Africa' (1999) 64 Koers 12; AJ van der Walt 'Living with New Neighbours: Landownership, Land Reform and the Property Clause' (2002) 119 SALJ 816; and AJ van der Walt, *Property in the Margins* (Hart 2008).

were previously dispossessed.³ The state's redistribution program has been widely criticized for not only its failure to provide the landless with homes, but its failure to even provide a space where they may legally reside.⁴ Despite the reasons offered for the intensifying land and housing crisis, the state has recently shifted blame to the hurdles that it has experienced in acquiring adequate, affordable land. The expropriation clause, and the constitutional requirement for compensatory relief, has been reviewed by the government, specially constituted governmental bodies, academia, and the public. A constitutional amendment has been proposed, and subsequently withdrawn, to allow for expropriation without compensation.⁵

The most recent legislative development, and the only remaining measure in place to allow for uncompensated expropriations, is the Expropriation Bill 2020.⁶ Clause 12(3) of the bill identifies three types of land use—in subclauses (a) non-use, (c) abandonment, and (e) neglect—

³ Access to land and housing are fundamental human rights, without which the social transformation imperative cannot succeed: s 25(5) of the Constitution mandates the state to “take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis,” whereas the housing provision (s 26 of the Constitution) provides that “[e]veryone has the right to have access to adequate housing.” Similar to the redistribution imperative (s 25(5)), the state must introduce measures to progressively realize the right to housing.

⁴ See for instance Frederick J Zimmerman, ‘Barriers to Participation of the Poor in South Africa’s Land Redistribution’ (2000) 28 *World Dev* 1439, 1450-5; Pienaar (n 2) 373; Edward Lahiff, ‘Redistributive Land Reform and Poverty Reduction in South Africa’ [2007] *Programme for Land and Agrarian Studies* 1, 17; Sue-Mari Viljoen, ‘The South African Redistribution Imperative: Incongruities in Theory and Practice’ [2021] *J Afr L* 1.

⁵ See specifically clause 12(3) of the Department of Public Works, *Draft Expropriation Bill* (*Government Gazette* 42127 December 2018), followed by the Advisory Panel on Land Reform and Agriculture, *Final Report of the Presidential Advisory Panel on Land Reform and Agriculture* (May 2019) and the Parliament of the Republic of South Africa, *Draft Constitution Eighteenth Amendment* (*National Gazette* 42902 December 2019). See specifically also S Viljoen, ‘Expropriation Without Compensation: Principled Decision-Making Instead of Arbitrariness in the Land Reform Context (part 1)’ [2020] *TSAR* 35, 37-40.

⁶ Minister of Public Works and Infrastructure, (*Government Gazette* 43798 of 9 October 2020) <www.gov.za/sites/default/files/gcis_document/202010/expropriation-bill-b23-2020.pdf> accessed 23 March 2021.

that can justify uncompensated expropriations.⁷ Considered together, these three subclauses respond to the surging socioeconomic problem of valuable land/buildings that are inefficiently used in the midst of land and housing shortages.⁸ The first section of this Article scrutinizes clause 12(3) from a housing perspective and then briefly highlights terminological concerns. The remainder of the Article undertakes a theoretical analysis of the state's power to expropriate property without having to pay compensation with reference to the social-obligation norm – understood to define property as a measure to enable non-holders to acquire limited resources that are foundational for living a dignified life – and the notion of sustainable development.

I use the social-obligation norm to reflect on landowners' responsibilities in a specific social context, with a history of dispossession and discrimination, to suggest that certain types of land use may be flagged as socially irresponsible, which may justify constitutional property limitations.⁹ The landowner's use of space is central to clause 12(3): it calls for a new approach to landholding, one that is socially responsible and community-based. Irresponsible use may result in the uncompensated loss of property, which may be constitutionally justifiable. Yet, overextended regulatory measures – underscored by a stretched application of the social-

⁷ The main purpose of the bill is to replace the pre-constitutional Expropriation Act 63 of 1975. Central to this Article is the additional objective of allowing expropriations without compensation.

⁸ Clause 12(3) might be perceived as a mechanism that aims to shift attention to redistributive goals, away from property protection, yet the “protective” measures in section 25 are inherently regulatory and intended to allow for redistributive objectives, specifically land reform: S Viljoen, ‘Property and “Human Flourishing”: A Reassessment in the Housing Framework’ (2019) 22 PER 1. The principal objective of clause 12(3) of the bill is therefore to propose when section 25 may be limited, to allow for expropriations without compensation. In general, see AJ van der Walt, *Property and Constitution* (PULP 2012) 32. The underlying theme of clause 12(3) as it currently lists specific types of use is to suggest that such land use may be socially irresponsible because it possibly amounts to wasting valuable limited resources. The concept of waste as it is used throughout the Article is informed by the three categories of misuse as listed in clause 12(3).

⁹ Interferences with property fall outside the scope of what is allowed by section 25 and therefore require justification. See Van der Walt, *Property and Constitution* (n 8) 32.

obligation norm—may also lead to unintended systemic consequences, such as economic inefficiency. Even though the social-obligation norm can justify limiting the property clause (section 25 of the Constitution) in specific circumstances, which is what clause 12(3) authorizes (uncompensated expropriations), I argue for a nuanced governmental approach to the operation of this interference, which is further elaborated on with reference to the right of access to adequate housing.

Furthermore, I use the notion of sustainable development to bolster the idea of efficient land use, especially where land has either been cultivated or built on, to ensure optimal use of limited resources. In the urban sphere, the sustainable use of limited housing stock is central to fulfil constitutional housing and redistributive objectives. In conclusion, I propose a strategy that aligns governmental decision-making with both the social-obligation norm and sustainable development efforts to effectively allow for constitutionally compliant expropriations of privately held land, at minimal costs, for large-scale redistributive and housing objectives in urban areas. The notion of sustainable development serves as a direction-giving norm to flag certain types of property as potentially suitable for clause 12(3). At the same time, a strained application of the social-obligation norm should be avoided to stay clear of inadvertent constitutional attacks, economic repercussions, and social upheavals. Overall, I opt for a purposive interpretation of clause 12(3) to align uncompensated expropriations (directed at pressing housing demands in the urban sphere) with that of sustainable land use. Clause 12(3) can be optimized by way of a deliberate, yet carefully constructed governmental approach to promote sustainable use of urban resources for redistributive aims.

II. The Response to Wasted Property – A Housing Perspective

The 2020 Expropriation Bill,¹⁰ facilitates compensated and uncompensated expropriations.¹¹ The preamble specifically refers to section 25 of the Constitution, in its unamended form,¹² which suggests that the drafters of the bill consider section 25 to permit expropriation without compensation in certain circumstances.¹³ Clause 12 of the bill deals with the determination of compensation for expropriations and clause 12(3) stipulates circumstances when it may be just and equitable for the state not to compensate:¹⁴

(3) It may be just and equitable for nil compensation to be paid where land is expropriated in the public interest, having regard to all relevant circumstances, including but not limited to –

a) where the land is not being used and the owner's main purpose is not to develop the land or use it to generate

¹⁰ Minister of Public Works and Infrastructure (n 6).

¹¹ Expropriations at a cost of nil Rand are generally also phrased as expropriations without compensation: Viljoen, 'Expropriation Without Compensation (part 1)' (n 5); Björn Hoops, 'Expropriation Without Compensation: A Yawning Gap in the Justification of Expropriation?' (2019) 136 SALJ 261; Nkanyiso Sibanda, 'Amending Section 25 of the South African Constitution to Allow for Expropriation of Land Without Compensation: Some Theoretical Considerations of the Social-Obligation Norm of Ownership' (2019) 35 SAJHR 129.

¹² See the Draft Constitution Eighteenth Amendment Bill, (n 5), for the proposed amendment of section 25. The proposal was apparently withdrawn at the end of 2021 as the ruling party failed to secure sufficient backing from opposition parties: S Cele and P Vecchiato, 'South Africa's ANC Drops Constitution Change for Land Reform' (*Bloomberg*, 8 December 2021) <<https://www.bloomberg.com/news/articles/2021-12-08/south-africa-s-anc-pursues-land-grab-without-constitution-change>> accessed 28 February 2022.

¹³ The assumption is therefore that expropriations without compensation would be justifiable in terms of the limitation clause (section 36 of the Constitution), which allows for the restriction of rights in the Bill of Rights. It should be noted that the property clause does not permit expropriations at a value of nil Rand.

¹⁴ Clause 12(4) also allows for nil compensation to be paid where an arbitrator determines the amount of compensation in terms of section 23 of the Land Reform (Labour Tenants) Act 3 of 1996.

- income, but to benefit from appreciation of its market value;
- b) where an organ of state holds land that it is not using for its core functions and it is not reasonably likely to require the land for its future activities in that regard, and the organ of state acquired the land for no consideration;
 - c) notwithstanding registration of ownership in terms of the Deeds Registries Act, 1937 (Act No. 47 of 1937), where an owner has abandoned the land by failing to exercise control over it;
 - d) where the market value of the land is equivalent to, or less than, the present value of direct state investment or subsidy in the acquisition and beneficial capital improvement of the land; and
 - e) when the nature or condition of the property poses a health, safety or physical risk to persons or other property.

Three of these five categories address failures to optimize land use. Non-use (12(3)(a)), abandonment (12(3)(c)) and neglect (12(3)(e)) form part of this larger category of misuse, which clause 12(3) signals as potentially unacceptable.¹⁵

In the housing framework, scholarly attention should be directed at the potential operation and impact of clause 12(3) to address vacancy rates, dilapidation, and land mismanagement in light of the mounting housing demand in the urban sphere. The justification of clause 12(3) is seemingly founded on not only the constitutional obligation of the state to provide access to adequate housing but also the normative contention that valuable

¹⁵ Similarly, article 182, para 4 of the Constitution of the Federative Republic of Brazil, 1988, enables municipalities to force landowners to ensure “adequate use” of their empty or unused urban properties. Failure to ensure optimal use can result in penalties, including expropriation. The optimization of land is grounded in the constitutional obligation of giving land a “proper designation,” which effectively prohibits the retention of land for speculative purposes: Nir Mualam and Debora Sotto, ‘From Progressive Property to Progressive Cities: Can Socially Sustainable Interpretations of Property Contribute toward Just and Inclusive City-Planning? *Global Lessons*’ (2020) 12 *Sustainability* 1, 17–18.

property is going to waste in the midst of a housing crisis.¹⁶ The possibility of expropriating property without compensation is premised on the justification that the state can and should meet its redistribution and housing commitments, regardless of certain landowners' prospects and expectations. In South Africa, property regulation has not produced long-term housing solutions for the destitute that ensure "just and socially sustainable urban environments."¹⁷ The vast majority of the urban poor continue to occupy abandoned or poorly maintained buildings,¹⁸ or they are forced to live in informal settlements that are mostly located on the urban periphery.¹⁹ They reside in such dwellings with insecure tenure because they are unable to purchase or rent property on the open market.²⁰ Even though the state offers some housing assistance, the magnitude of the urban housing need swamps that which the state has managed to offer

¹⁶ See specifically David Wachsmuth, 'From Abandonment to Affordable Housing: Policy Options for Addressing Toronto's Abandonment Problem' [2008] *Research Paper* 215 1, 3 <www.urbancentre.utoronto.ca/pdfs/publications/RP215WachsmuthAbandonment11-2008.pdf> accessed 28 February 2022.

¹⁷ Mualam and Sott (n 15) 10. See also Muller and Viljoen (n 2) 174-75.

¹⁸ Socio-Economic Rights Institute of South Africa, 'Note on Expropriation' (2022) [4] <static.pmg.org.za/180629SERI_Note.pdf> accessed 28 February 2022. See, for example, *Occupiers of Olivia Road, Berea Township and 197 Main Street Johannesburg v City of Johannesburg and Others* [2008] 3 SA 208 (CC); *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another* [2012] 2 SA 104 (CC); *Schubart Park Residents' Association and Others v City of Tshwane Metropolitan Municipality and Another* [2013] 1 SA 323 (CC).

¹⁹ See, for example, *Residents of Joe Slovo Community, Western Cape v Thubelisha Homes and Others* [2010] 3 SA 454 (CC); *Government of the Republic of South Africa and Others v Grootboom and Others* [2001] 1 SA 46 (CC); *Modderklip East Squatters and Another v Modderklip Boerdery (Pty) Ltd, President of the Republic of South Africa and Others v Modderklip Boerdery (Pty) Ltd* [2004] 3 All SA 169 (SCA); *Fischer v Persons listed on Annexure X to the Notice of Motion and those persons whose identity are unknown to the Applicant and who are unlawfully occupying or attempting to occupy Erf 150 (remaining extent) Phillipi, Cape Division, Province of the Western Cape and Others; Stock and Others v Persons unlawfully occupying Erven 145, 152, 156, 418, 3107, Phillipi & Portion 0 Farm 597, Cape Rd and Others; Copper Moon Trading 203 (Pty) Ltd v Persons whose identities are to the Applicant unknown and who are unlawfully occupy remainder Erf 149, Phillipi, Cape Town and Others* [2018] 2 SA 228 (WCC).

²⁰ Socio-Economic Rights Institute of South Africa (n 18) [5]. See, for example, *Joe Slovo* (n 17) and *Blue Moonlight* (n 18).

through its programs, such as the Reconstruction and Development Programme (RDP) housing and housing subsidies.²¹

The state has blamed “land-scarcity”²² for its failure to adequately respond to the housing demand, whereas such scarcity has been explained as a construction of urban land markets that is often characterized by companies and individual investors that hold land for speculative reasons, often while failing to use the land for productive purposes.²³ Augmenting the general trend of landowners that decline state offers to purchase at market rates because they choose to retain their property for speculative purposes,²⁴ is the problem of owners either abandoning or letting their properties fall into disuse in the urban core, specifically in the Johannesburg inner city.²⁵

An urban land expropriation program would seemingly support the goal of attaining well-located urban land that has either been abandoned or left vacant for speculative purposes.²⁶ If abandoned buildings that house

²¹ See for instance Ntando Thukwana, ‘Government is ending free housing projects—here’s what it will offer instead’ (*Business Insider SA*, 3 December 2020) <www.businessinsider.co.za/government-is-calling-for-the-downscaling-of-housing-projects-heres-how-it-will-work-2020-12> accessed 28 February 2022; Parliament of the Republic of South Africa, *White Paper on Reconstruction and Development (Government Gazette 16085, November 1994)* <www.gov.za/sites/default/files/governmentgazetteid16085.pdf> accessed 28 February 2022.

²² Land scarcity is a debated obstacle when considering the acquisition and disposal of state land. See, for example, *Adonisi and Others v Minister of Transport and Public Works Western Cape and Others; Minister of Human Settlements and Others v Premier of the Western Cape Province and Others* [2020] ZAWCHC 87 [36]–[38] where one of the main issues was the sale of state land in the inner city of Cape Town when the property could have been used for middle and low income housing.

²³ Socio-Economic Rights Institute of South Africa (n 18) [6].

²⁴ Where owners are willing to sell, they often demand high prices due to the scarcity of well-located buildings.

²⁵ Socio-Economic Rights Institute of South Africa (n 18) [6]–[7].

²⁶ In comparison, in the U.S. framework, eminent domain can be used for the purpose of wholesale decommissioning, defined as the “geographically targeted comprehensive extinguishment of private ownership”: Ben Beckman, ‘The Wholesale Decommissioning of Vacant Neighborhoods: Smart Decline, Public-Purpose Takings, and the Legality of Shrinking Cities’ (2010) 58 *Clev St L Rev* 387, 392. Different from South Africa’s envisioned Expropriation Bill, smart-decline takings provide owners who are essentially functioning

unlawful occupiers are expropriated, the state would be able to offer basic services and secure the occupiers' tenure until it is able to offer long-term housing solutions. Expropriated vacant buildings could also be refurbished to serve as public housing.²⁷ Clause 12(3) of the bill read with section 9(3) of the Housing Act 107 of 1997, which permits the municipality to expropriate land for housing developments,²⁸ provides a route for the state to acquire land or buildings that (1) are unused and held for speculative purposes; (2) abandoned; or (3) dilapidated in the sense that it poses a health, safety of physical risk, without compensation. The uncompensated expropriation must however be just and equitable, having regard to all relevant circumstances.²⁹ Particularly relevant to the state's initiative in clause 12(3) is the possibility, as explained below, of enhancing environmental sustainability and housing affordability because sustainable development and economic efficiency are overlapping issues in housing law.³⁰

From a needs-based perspective, considering the potential of clause 12(3) in unlocking valuable land for housing and land reform purposes, the logic of the bill is sound, although a range of doctrinal and

in economic isolation with compensation in exchange for their property, which would allow them to retake opportunities elsewhere in the city: 447.

²⁷ Socio-Economic Rights Institute of South Africa (n 18) [8]; J Strydom and S Viljoen, 'Unlawful Occupation of Inner-City Buildings: A Constitutional Analysis of the Rights and Obligations Involved' (2015) 17 PER 1207. This is also in line with the idea that "property ownership must be considered in the context of neighborhoods—'location, location, location' or 'location cubed'—to truly facilitate human flourishing": Mualam and Sotto, (n 15) 9.

²⁸ It is unfortunate that this mechanism has hardly ever been used by municipalities to acquire land; it is therefore questionable whether clause 12(3) of the bill would make any difference, especially in light of the fact that section 25 of the Constitution authorizes below-market value expropriations: Viljoen, 'Expropriation Without Compensation (part 1)' (n 5) 36-7. Interestingly, in the U.S. context, Mayor Bart Peterson has commented on the critical use of eminent domain for housing purposes by stating that "the availability of eminent domain has probably led to more job creation and home ownership opportunities than any other tool that there is at the local level": Beckman (n 26) 396.

²⁹ In terms of the Constitution, uncompensated expropriations would have to be justified via the limitation clause (s 36).

³⁰ Andrea J Boyack, 'Sustainable Affordable Housing' (2018) 50 Ariz St LJ 455, 456.

theoretical impediments may emerge. First, clause 12(3) is terminologically vague: it lists land uses that are not defined in exact, legally recognized terms. I use clause 12(3)(c) as an example to explain why ambiguous terminology can lead to wide-scale uncertainty.³¹ Second, the underlying threat of uncompensated expropriations may lead to unintended systemic consequences, such as economic precariousness and the overuse of uncultivated land, which impacts sustainability. I use the social-obligation norm to critically reflect on the constitutionality of expropriations without compensation, after which I consider the effect of clause 12(3) from a sustainability perspective, to scrutinize whether landowners' behavior might not result in unintended environmental effects. Singling out of certain property owners based on loosely defined modes of usage can have inadvertent constitutional implications. Finally, the misuse provisions in clause 12(3) can be conducive to both the social-obligation norm and sustainable development, provided that a certain angle of approach be followed.

III. Terminologically Ambiguous

The three categories in clause 12(3) that deal with a particular kind of land misuse are problematic from a terminological perspective. Even though the overarching approach is to tackle landowners' failure to optimize land use, these categories should be described more precisely, because they pave the way for excessive interferences with property; expropriation without compensation is directly at odds with section 25 of the Constitution. An ad hoc approach to expropriation can lead to vague standards that disrupt predictability and consequently weaken efficiency. A rule-based approach is more likely to promote equality by reducing partiality when officials make decisions.³²

³¹ Clause 12(3)(c) is particularly problematic in the South African context due to the uncertain recognition of the "abandonment" of property.

³² Hanoch Dagan, 'The Social Responsibility of Ownership' (2007) 92 Cornell LR 1255, 1268-69. Dagan argues that "proponents of including a social-responsibility norm in the

The second category is particularly problematic in South Africa because it remains unclear whether the abandonment of landownership is possible.³³ Richard Cramer explains that this “lack of clarity is due to the failure of the Deeds Registries Act [47 of 1937] expressly to provide for (or prohibit) the abandonment of land.”³⁴ In the absence of such an express provision, it is doubtful that the abandonment of land is permissible.³⁵ Moreover, “housing abandonment,” which could be loosely categorized under the abandonment of land due to a failure to exercise control (as listed in clause 12(3)(c)) is particularly difficult to describe in precise terms; there are many definitions of abandonment.³⁶ A well-cited definition is that offered by Alan Mallach, “An abandoned property is a property whose owner has stopped carrying out at least one of the significant responsibilities of property ownership, as a result of which the property is vacant or likely to become vacant in the immediate future.”³⁷ This definition

meaning of ownership should support clear and simple rules rather than vague standards ... our conception of ownership should incorporate social responsibility through the means of ex ante refinements of the regime that governs compensation for takings, rather than through ex post adjustments of people’s entitlements”: 1269. See also Viljoen, ‘Expropriation Without Compensation: Principled Decision-Making instead of Arbitrariness in the Land Reform Context (part 2)’ [2020] TSAR 259, 264–5.

³³ See specifically Richard Cramer, ‘The Abandonment of Landownership in South African and Swiss Law’ (2017) 134 SALJ 870; JC Sonnekus, ‘Abandoning van Eiendomsreg op Grond en Aanspreeklikheid vir Grondbelasting’ [2004] TSAR 747; H Mostert, ‘No Right to Neglect? Exploratory Observations on how Policy Choices Challenge the Basic Principles of Property’ in S Scott and J van Wyn (eds), *Property Law under Scrutiny* (Juta 2015).

³⁴ Cramer (n 33) 874.

³⁵ Mostert (n 33) 26–8.

³⁶ Abandonment has been defined as where property has been legally unoccupied for at least six months and in need of rehabilitation (as an additional criteria); or where property has been “neglected functionally, financially, or physically and furthermore be deemed to be imminently dangerous”: Wachsmuth (n 16) 4. Wachsmuth points out that an appropriate definition should integrate functional and physical, and perhaps also financial, abandonment. Moreover, an abandoned residential property should meet at least one of the following conditions: (a) the property has been vacant for a minimum of six months, without a building permit issued; (b) substantial code violations should be outstanding; or (c) the property has outstanding tax, for more than three years: *ibid.* at 33.

³⁷ Alan Mallach, *Bringing Buildings Back: From Abandoned Properties to Community Assets: A Guidebook for Policymakers and Practitioners* (Rutgers University Press 2006) 1. In general, see

takes account of the property's operation (also referred to as its structural condition) and its occupancy status (or length of vacancy), which is often used by municipalities to classify the abandonment of buildings.³⁸ David Wachsmuth argues that abandonment should be understood as a multidimensional process and not simply a single state, such as being "vacant." Even though vacancy is a severe state of abandonment, a number of practices that constitute abandonment have been identified; for instance, ceasing to pay for municipal services, failing to collect rents, and allowing unlawful occupation. These are all practices of abandonment, even though lawful occupation and other legally valid property entitlements may remain intact.³⁹

If expropriation without compensation is allowed because the property in question is abandoned due to a failure to exercise control (as stated in clause 12(3)(c)), an array of additional questions emerge, none of which the bill provides answers for. It is unclear whether the landowner should personally exercise control over the land or whether clause 12(3) would kick in if the property in question is used, and even productively farmed, by another. If adequate use by another is satisfactory to constitute control, it is unclear whether the landowner should have consented to such use. Even more ambiguous is the concept of control; a failure to exercise control over land can have different meanings, as alluded to above.

The definition of abandonment is practically and theoretically important because the choice of definition will impact the appropriateness of expropriations without compensation.⁴⁰ In South Africa, the expropriation of abandoned land (as well as unused land held for speculative purposes and dilapidated property) is currently earmarked as a suitable form of state intervention. Even though the expropriation of suitable abandoned,

also Mathew J Samsa, 'Reclaiming Abandoned Properties: Using Public Nuisance Suits and Land Banks to Pursue Economic Redevelopment' (2008) 56 *Clev St L Rev* 189, 193-96.

³⁸ Wachsmuth (n 16) 6, referring to James R Cohen, 'Abandoned Housing: Exploring Lessons from Baltimore' (2001) 12 *Housing Policy Debate* 414.

³⁹ Wachsmuth (n 16) 7.

⁴⁰ *ibid* 4.

misused, or dilapidated urban land for housing purposes is advantageous to other forms of intervention⁴¹ on the basis that it offers a direct opportunity for the state to develop affordable housing,⁴² the exact meaning of these three categories of usage should be fleshed out to establish when it would be justifiable for the state to expropriate without having to pay compensation.⁴³

IV. The Response of Property as an Institution

A. *Introductory Remarks*

The justification for flagging misused, abandoned, and dilapidated property is founded on the triadic nature of the property relation:⁴⁴ property as an institution can only be understood with reference to an analysis of the pattern of rights, duties, and especially powers that control the behavior of individuals in relation to others and the custody, possession, use, and disposal of certain kinds of property.⁴⁵ Integral to understanding ownership and its constituent rights is the

⁴¹ See for instance Jonathan Barrett, 'Vacant Property Taxes and the Human Right to Adequate Housing' (2019) 20 J Australian Taxation 123 for a discussion on some of the measures that have been implemented, globally, to address vacancy rates. See specifically also Strydom and Viljoen, (n 27) 1240-9 for some of the measures that have been implemented in the Netherlands and England.

⁴² It should also be kept in mind that the expropriation process remains time-consuming and difficult, and the added justification to pay nil compensation will prolong the process.

⁴³ In the context of sustainability, it has been argued that "underused, misused or abandoned leftover spaces within the city, especially among residential neighborhoods possess potential opportunities to recycle (re-utilize), re-densify, reform and integrate green technologies into everyday urban life": Seog Jeong Lee, Soewon Hwang and Dongha Lee, 'Urban Voids: As a Chance for Sustainable Urban Design' (2015) Proceedings of the 8th Conf. Int. Forum Urban <pdfs.semanticscholar.org/c50b/5fd207b69441f348f8a8ff57887c688d0c0b.pdf?_ga=2.260903693.1090807643.1616490029-1199706248.1616144376> accessed 28 February 2022. Properties that are used in any one of these ways are broadly defined as urban voids, which points to the problem, similar to what is being identified in clause 12(3) of the bill, of waste.

⁴⁴ A Irving Hallowell, 'The Nature and Function of Property as a Social Institution' (1942) 1 J Leg Pol Soc 115, 120.

⁴⁵ *ibid* 121.

acknowledgement that property embraces specific social sanctions, generally defined as “culturally constituted means for motivating the individuals of a given society in such a way that they will play their roles in the total scheme of property relations in the most efficient manner.”⁴⁶ Positive sanctions aim to integrate the motivations of individuals with fundamental economic processes of production, consumption, and distribution whereas negative sanctions threaten individuals with penalties if they infringe upon the rights of others.⁴⁷

From a functional perspective, the institution of property prescribes who may control certain objects, including valuable limited resources, for various present and future purposes and the terms under which such entitlements may be exercised.⁴⁸ In South Africa, the institution of property has a very distinct, constitutionally ordained role to play, namely to enable all individuals to take their rightful place in society and live a life with dignity.⁴⁹ Property must be distributed as a matter of priority.⁵⁰ This means that sacrifices will have to be made, especially by landowners. A unique sanction is built into clause 12(3)—landowners are ordained to either use their property in ways that do not result in speculative misuse, abandonment, or dilapidation, or risk losing it in return for no value at all.

⁴⁶ *ibid* 131.

⁴⁷ *ibid* 130-31. The origin of sanctions is explained as stemming from “traditional beliefs about the nature of the world, the relations of man to spiritual beings or other forces, ethical values and the structuralization of society itself” 131.

⁴⁸ *ibid* 133.

⁴⁹ Viljoen, ‘Property and Human Flourishing’ (n 8) 14.

⁵⁰ S 25(5) of the Constitution.

B. *The Response in View of the Social-Obligation Norm*

1. *The Social-Obligation Norm*

Gregory Alexander's notion of the social-obligation norm⁵¹ is founded on a theory of justice that promotes wealth redistribution. The theory is community-based, but it opts for a nuanced "ontological" conception of the community, meaning that even though humans strive for autonomy, dependency and interdependency are integral to the human condition.⁵² The definition of property entitlements and the distribution of such rights should be assessed with reference to the degree to which they allow individuals to participate in objectively valuable patterns of existence and interaction.⁵³ These patterns are centered on the ability of individuals to live a well-lived life.⁵⁴ Central to Alexander's contribution is the individual's entitlement to flourish as a matter of human dignity. "[E]very person must be equally entitled to those things essential for human flourishing, i.e., the capabilities that are the foundation of flourishing and the material resources required to nurture those capabilities."⁵⁵ The acquisition of certain resources are therefore a prerequisite for human flourishing, which justifies distributive justice as a measure to provide households with what they need to foster the capabilities necessary for attaining the well-lived life.⁵⁶

⁵¹ For a complete history of this norm, also known as the social function of property, see MC Mirow, 'The Social-Obligation Norm of Property: Duguit, Hayem, and Others' (2010) 22 Fla J Int'l L 191.

⁵² Gregory S Alexander, 'The Social-Obligation Norm in American Property Law' (2009) 94 Cornell LR 745, 760.

⁵³ *ibid* 764.

⁵⁴ *ibid*, referring to Martha Nussbaum, *Women and Human Development: The Capabilities Approach* (CUP 2000); Amartya Sen, *Development as Freedom* (CUP 1999) 70–86.

⁵⁵ Alexander, 'The Social-Obligation Norm' (n 52) 768.

⁵⁶ *ibid*. This idea is in line with what Léon Duguit advocated, namely for the state to promote the place of humans in society, rather than to protect individual rights. Accordingly, subjective rights should be replaced by the social function: Mirow, (n 51) 204. Similarly, Singer and Beermann argue that "owners owe duties to non-owners; they must not use their property in ways that illegitimately harm others. They also have no right to monopolize property in ways that prevent others from participating equally in economic

Moreover, a general affirmation of the moral value of such capabilities means that we must develop them in others, just as much as we would like to develop them in ourselves.⁵⁷

According to Joseph Singer and Jack Beermann, a private property system should allow for large-scale dispersal of ownership as well as access to valuable resources. "A property system only works if lots of people have some."⁵⁸ Accordingly, two complementary strategies are required: (1) an initial distribution system should be implemented to provide a relatively substantive number of individuals with access to a minimum amount of valuable resources that are necessary to participate in the economic system; and (2) a series of rules should be developed to prevent the reconcentration of ownership, and to maintain the required level of dispersal of ownership.⁵⁹ Property rules should be aligned and adjusted to determine the instances when entitlements should be curtailed or even lost, provided that the system serves to shape the contours of social relationships by determining the distribution of power over resources.⁶⁰

Hanoch Dagan rightly points out that sound normative reasons exist to buttress a distinct constitutional social-obligation norm as part of our understanding of private ownership; this conception should not be preferred as simply part of tradition, but rather because it is just. Even the individualistic justification of private property, that being personal autonomy and personhood, infer an element of social responsibility. Such individualistic justifications rely on the institution of private ownership to provide control over external resources that are required to constitute personhood and give effect to personal autonomy.⁶¹

life": Joseph William Singer and Jack M Beermann, 'The Social Origins of Property' (1993) 6 CJLJ 217, 220.

⁵⁷ Alexander, 'The Social-Obligation Norm' (n 52) 769. See also Singer and Beermann (n 56) 241.

⁵⁸ Singer and Beermann (n 56) 242.

⁵⁹ *ibid.*

⁶⁰ *ibid.* 245.

⁶¹ Dagan, (n 32) 1259–60.

However, Dagan cautions against overextending the social-obligation norm of ownership. Such an overreach might eliminate or weaken market rules that govern production, circulation, and even the valuation of economic goods, which may threaten the integrity of the economy. Another risk associated with an expansive interpretation of the social-obligation norm is the unjustifiable diminution of constitutional property protection, which is particularly noteworthy in the South African context due to its history of dispossession and unequal protection of property. Interpretations of this kind allow for injuries to private property—even those that disproportionately burden specific individuals for the sake of the public interest—that are considered legitimate, provided that ethically permissible policies can justify them.⁶² Dagan argues that this is a troublesome approach,

Changes in the distribution of resources in a society implemented through law are, by definition, a result of government action. As such, they endanger property holders of all sorts, rich and poor. Moreover, both central and local governments may be corrupt despite attempts to structure them in the spirit of civic virtue ... corruption of public spiritedness can take various forms; some of the more troubling manifestations of this phenomenon are not necessarily crude infirmities of the administrative process but more systemic and subtle problems, such as interest groups capturing the public authority The danger of injury from government action in the absence of legal protection is greater the weaker the property owner in question. Those endangered include isolated individuals as well as individuals belonging to marginal groups with minor political clout.⁶³

With reference to Alexander, Dagan opts for a social-obligation norm that is sensitive to the protection of politically weak individuals from state

⁶² *ibid* 1261.

⁶³ Dagan (n 32) 1261–62.

interference.⁶⁴ The social responsibility of ownership should be founded on long-term mutuality, which implies that compensation is not required if the disproportionate burden of the state action is not excessive and is offset, or likely to be offset, by benefits of similar proportion to the affected owner's current injury that such owner would gain from past, present, or future state actions.⁶⁵

2. *South Africa's Pressing Social-Obligation Imperative*

The South African property clause, and specifically the outright commitment to land reform, incorporates a thick social-obligation norm.⁶⁶ In South Africa, social transformation is subject to a successful land reform program. The country's pursuit of an open and democratic society, based on human dignity, equality, and freedom is dependent on its success in transforming the land regime.⁶⁷ Without access to land and improved tenure, the black majority will find no consolation in the foundational values as expressed in the Constitution.⁶⁸ They will also be stripped of the opportunity to foster the capabilities of life and freedom—the state is therefore duty-bound to provide everyone with access to a space where they may legally reside.

One crucial way the state can do this is by providing the legal and social underpinnings for a robust and prosperous market economy. But when a

⁶⁴ See specifically Singer and Beermann (n 56) 241 for suggesting that a normative ideal that should structure the social vision of property is an ongoing commitment to decentralize decision-making power.

⁶⁵ Dagan (n 32) 1262–63.

⁶⁶ Alexander, 'The Social-Obligation Norm' (n 52) 782. This is also acknowledged by Mirow (n 51) 196. The social-obligation norm, otherwise known as the social function of property, is also explicitly recognized in German law. "The German State under the Basic Law ... is authorized to pursue a 'socially just property order' by balancing individual freedom against the interests of the general welfare, and German courts regularly refer to this affirmative duty of the property owner and of the state": Rebecca Lubens, 'The Social Obligation of Property Ownership: A Comparison of German and U.S. Law' (2007) 24 *Ariz J Int'l & Comp L* 389, 393.

⁶⁷ Alexander, 'The Social-Obligation Norm' (n 52) 784.

⁶⁸ *ibid.* at 785.

market economy is built on distributions of resources that are themselves skewed by past injustices, as in the case of South Africa, or when markets, as they are prone to do, operate to the exclusion of those at the bottom of the economic ladder, the state's intervention in the economy is justified, provided the intervention is undertaken non-arbitrarily and in a manner consistent with principles of subsidiarity.⁶⁹

With reference to the *Modderklip* judgment,⁷⁰ Alexander points out that some private owners might have to make sacrifices for the sake of social transformation—for example, by having to bestow some of their land to provide the landless with a space to reside. However, the obligation to contribute to the greater good should not burden only one (or even a distinct group of private owners), it should fall on all property owners within the national community. To properly discharge this obligation, a well-structured land reform program is required, which might justify placing more substantial burdens on some landowners than on others.⁷¹

From a comparative viewpoint, the social-obligation norm directs the regulation of property in Germany. Yet, property in German law is not necessarily subject to stringent regulatory controls since the extent of control depends on the type of property and the way in which it is used. In German law,⁷² property owners participate in the social order by using their property and recognizing their social obligation as an important restriction on the exercise of their property rights. The German State creates a property regime where private ownership continues to be an expression of freedom and a means to foster personhood, while favorable conditions enable the

⁶⁹ *ibid* 790.

⁷⁰ *Modderklip* (n 19).

⁷¹ Alexander, 'The Social-Obligation Norm' (n 52) 790.

⁷² German property law is particularly useful when working with the social-obligation norm to justify interferences with property rights. In terms of Article 14 of the German Basic Law, "[p]roperty entails obligations. Its use should also serve the public interest." Property in German law is therefore inherently subject to a social-obligation norm, similar to the South African property clause. Moreover, owners' use of land must serve the public interest. From the outright the assumption is therefore that irresponsible land use may be in conflict with the Basic Law and therefore unconstitutional.

majority to acquire property,⁷³ and owners must act in a socially responsible manner by way of land-use regulation.⁷⁴ Even though freedom and individual dignity are fundamentally guaranteed, the image of a person in the *Grundgesetz*⁷⁵ is of a person in the community, and the individual is indebted to such community in many ways. The individual is indivisibly linked to the social order and a person's "use of space" is considered from the relational perspective of the individual to society.⁷⁶

However, if the personal autonomy of the owner is tied to a particular type of property, the courts would be inclined to provide greater protection to such rights and less discretion would be given to the legislature to limit such rights.⁷⁷ German courts distinguish different types of property in accordance with their importance to the general public or affected third parties. In the context of land, a landowner's social obligation is more profound because land is scarce.⁷⁸ Courts may therefore be more inclined to consider the interests of the general public and non-owners in cases involving land than in cases where the affected type of property bears no social relevance.⁷⁹ Moreover, the contents and function of property in German law is dynamic; the legislature is tasked with the duty to adapt the purpose and operation thereof in line with social and economic conditions,⁸⁰ provided that overarching constitutional principles, including

⁷³ According to Lubens (n 66) 406, "private property is considered both an expression and a prerequisite of the individual freedom protected as a fundamental right." This commitment is similar to the South African redistribution imperative.

⁷⁴ *ibid.* at 393. This resonates the social-obligation norm that is built into clause 12(3) of the South African Expropriation Bill.

⁷⁵ The Basic Law for the Federal Republic of Germany.

⁷⁶ Lubens (n 66) 402.

⁷⁷ See also Viljoen, 'Expropriation Without Compensation (part 2)' (n 32) 265–69 for a similar type of proposition in the South African land reform framework.

⁷⁸ Similarly, in terms of clause 12(3) of the South African Expropriation Bill, the possibility to restrict owners' property rights is confined to land, presumably due to the scarcity of land and the social importance thereof to enable and allow others to take their rightful place in society: Viljoen, 'Property and human flourishing' (n 8).

⁷⁹ Lubens (n 66) 426.

⁸⁰ Owners' rights and obligations are also adapted in accordance with the *Situationsgebundenheit* principle, which entails "the legislature's determination of the

the property guarantees, are adhered to.⁸¹ The property guarantee comprises two separate, though related guarantees, the individual guarantee (*Bestandsgarantie*) and the institutional guarantee (*Institutionsgarantie*). The former protects individual property holders, and their distinct entitlements, against specific state impositions. The latter “recognizes private property objectively as a basic component of a specific economic and ideological model of state organization,”⁸² which must be preserved and protected by the state. The institutional guarantee therefore prevents the state from extinguishing entire categories of property, for instance land or minerals, in general.⁸³ Importantly, Rebecca Lubens notes,

In determining what a property owner may rely on as her protected “condition” of rights, courts look at how the owner has used the property until the point of regulation. Her rights are more likely to be positively guaranteed (and therefore off-limits for legislating away) if her property use meets the fundamental purposes for protecting property – if she has invested labor or capital in using her property and if her expectations for continued use are reasonable or socially responsible for the greater community.⁸⁴

The South African property system plays a central role in the achievement of social transformation. Property rules must be realigned and readjusted to determine when, and under what circumstances, entitlements

contents and limits of property rights based on physical context and situation”: *ibid* 431. This principle dictates that property is bound by its situation, described as its ‘geography, surroundings, and natural features’. In general, see also Singer and Beermann (n 56) 228 for the view that property rights are various, inherently restricted, dependent on instrumental and value judgments and socially and politically determined by private action and government policies.

⁸¹ Lubens (n 66) 427.

⁸² *ibid* 408.

⁸³ *ibid*. See also Gregory S Alexander, ‘Property as a Fundamental Constitutional Right? The German Example’ (2003) 88 *Cornell LR* 733, 741–52.

⁸⁴ Lubens (n 66) 438. Similarly, Singer and Beermann (n 56) 228 argue that the social meaning of property depends on its real-life effects, and particularly on human relationships. As the social meaning of property changes, property’s scope will be regulated accordingly to ensure that its social function is preserved.

should be limited or even lost to serve the constitutional redistribution imperative. The South African property clause, and specifically landowners' use of space, must be reconfigured in relational terms – of the individual to society. The needs of society, and specifically marginalized groups who have suffered under oppressive, discriminatory governments, should overrule landowners' personal interests when those interests are not conducive to the overall well-being of society. According to clause 12(3), when land is abandoned, neglected, or held for speculative purposes, the interests of the general public and especially the landless are, by law, more important than those of the owner because the owner's exercise of its entitlements are in conflict with societal priorities; land is scarce and land bears significant social relevance – social transformation is largely dependent on the redistribution thereof. The approach underlying clause 12(3) is therefore similar to the socioeconomic attitude adopted in German law; a landowner's rights are more likely to be legislated away if the use of the property fails to meet the fundamental purpose for protecting it in the first place – if the owner has failed to invest labor or capital in using the land and its expectations for ongoing use is unreasonable or socially irresponsible for the greater community.

Moreover, whenever property rights are regulated, the state runs the risk of interfering with the market to an extent that it may threaten the productivity of the economy. If the social-obligation norm is adopted in an overextended fashion, unintended economic repercussions might follow, including the elimination of market rules that govern the valuation of certain economic goods, and in this instance, land. It is vital for the state to preserve and affirm private property as an institution, including the institution of private landownership. If the negative sanctions in clause 12(3) were to be implemented, the entitlement to use land in a specific manner – to refrain from using and to retain for speculative purposes, to abandon by failing to exercise control or to allow large-scale dilapidation – would clearly be under threat, rather than the institution itself. Yet, inadvertent economic consequences will likely follow because clause 12(3) will affect investors' behavior. Property, and specifically vacant

land, is a lucrative investment for both South African and foreign investors.⁸⁵ Arguably, the enactment of the bill will adversely affect this perception, resulting in an overall decline in land value: “Land or property ownership is very valued in capitalist societies. From an economic perspective, if we take acquisition without compensation—which is in violation of property rights norms in the West—that could impact on our direct investment and impact on economies.”⁸⁶

An expansive interpretation of the social-obligation norm can also lead to an unjustifiable erosion of constitutional property protection, injuring individuals’ private property in a disproportionate manner for the sake of the greater community. Even though clause 12(3) may be constitutionally justifiable,⁸⁷ the implementation thereof, in practice, may single out and affect certain landowners in a discriminatory manner; the weaker the owner in question, the more burdensome the government action in the absence of constitutional protection.⁸⁸ Ideally, the redistribution imperative should be implemented in such a way that it affects all landowners, instead of one or a distinct group of private owners. However, the negative sanction in clause 12(3) of the bill is unique, and perhaps even justifiable, because it does not seem to single out a specific class or distinct group of landowners. Instead, it targets irresponsible, disengaged landowners.⁸⁹ Importantly, if isolated landowners that belong to marginal groups with minor political standing use their land in ways that fall under the realm of clause 12(3), they will face the same lot as the wealthy property magnate. With reference to clause 12(3)(a) of the bill, some singling out, and even unconstitutional

⁸⁵ See, for example, JP Tsheola and LMmotlana, ‘Politics of Land Investment, Informalities, Exclusionary Planning and Risk Exposure in South African Urbanism’ (2018) 10 *African J Public Affairs* 163; Mohammed Maoulidi, ‘African Land is a Profitable but Potentially Dangerous Investment’ (2015) 5 *Africa Conflict Monitor* 21.

⁸⁶ Jarryd Neves, ‘Property Seizures Will Send Shoch Waves Through the Economy’ (*Biznews*, 10 February 2021) <www.biznews.com/thought-leaders/2021/02/10/expropriation-property-seizures> 28 February 2022.

⁸⁷ Section 36 of the Constitution allows for the limitation of rights in the Bill of Rights.

⁸⁸ See specifically Dagan (n 32) 1261–62.

⁸⁹ This statement is qualified to clause 12(3)(a), 12(3)(c) and 12(3)(e).

targeting, might however be directed at property investors, whereas the application of clause 12(3)(c) and 12(3)(e) would be more neutral and directly targeted at addressing landowners' harmful behavior.

C. *The Response in View of Sustainability*

1. *Sustainable Use of Limited Resources*

Section 24(a)(iii) of the South African Constitution protects the right to the environment, for present and future generations, by way of laws that, amongst other objectives, "secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development." The right to the environment should be read with section 152, which captures the objectives of local government, especially its duty to promote social and economic development.

From an international perspective, the concept of sustainability is however quite fluid. Some have argued that sustainability operates as political rhetoric, without any substance, while others describe it in terms of energy efficiency, or the broader principles of efficient resource conservation. An interesting description is that sustainability involves attempts to address social and political issues that concern the unequal allocation of the world's natural resources.⁹⁰ This description resonates with the constitutional imperative as captured in section 24(a)(iii) as well as conventional environmentalism, which offers a fundamental theory for resource conservation. In this context, Carl Circo suggests that ecologically sustainable measures are essentially utilitarian and ethical:

As a purely utilitarian matter, the theory holds that society should maximize the value of natural resources for the common good by using those resources efficiently and without gratuitous waste or contamination. In an ethical

⁹⁰ Carl J Circo, 'Does Sustainability Require a New Theory of Property Rights' (2009) 58 UKanLRev 91, 92-3, quoting Nancy J King and Brian J King, 'Creating Incentives for Sustainable Buildings: A Comparative Law Approach Featuring the United States and the European Union' (2005) 23 VaEnvtlJ 397, 401.

sense, sustainability as conservation may reflect an intuitive respect for nature that stems from a fundamental preference for resource protection and preservation.⁹¹

Moreover, the sustainability imperative in section 24(a)(iii) is arguably similar to the social justice model of sustainability, which is intended to ensure the redistribution of resources to eventually achieve some acceptable level of allocation to all individuals.⁹² Part of this objective is also to preserve the Earth's resources for future generations, but the crux is the revision of social institutions to guarantee that all individuals and future societies will benefit from natural and other resources in an equitable fashion.⁹³ The connection between social justice, as a form of distributive equity, and sustainability—or even equity in resource allocation and sustainability—is the presumption that the societal failure to provide for the basic, economic needs of all will fail on the basis that some reform will be coerced from those that are displaced, excluded, and marginalized.⁹⁴ The redistribution imperative in section 25(5) of the South African property clause confirms the social justice theory of sustainability.⁹⁵

With reference to the idea that the right of property includes the right to choose how to use the property, which includes the option of imposing costs (or even harm) on others, Circo points out that an economically sound property system—broadly defined as one that maximizes social utility—must take account of the costs to others that result from an owner's decisions regarding the use of the property.⁹⁶ Even though economic theory holds that an actor, including a property holder, will usually not consider the external effects of its decisions, such externalities indicate market failures to which the government should respond to internalize

⁹¹ Circo (n 90) 94.

⁹² See Circo (n 90) 94–6 for the generational justice model of sustainability.

⁹³ *ibid* 96.

⁹⁴ *ibid* 97.

⁹⁵ See Alexander, 'The Social-Obligation Norm' (n 52) 782. This is also acknowledged by Mirow, (n 51) 196.

⁹⁶ Circo (n 90) 117.

externalities into decision-making processes.⁹⁷ An important function of a property system is to guide incentives to ensure that externalities are in fact internalized.⁹⁸ Such recognition and internalization of externalities accentuates a challenge for any private property system, and this challenge is amplified by a sustainability imperative. In some instances, the property system will have to allow for private property right adjustments to internalize externalities, while ensuring some protection of private property rights for efficiency purposes.⁹⁹ Even though efficiency theory values net social welfare, the exact definition of social welfare varies across societies. In addition, efficiency as measured by social welfare is not the only, or even the most important, value that a property system should aspire to.

This does not mean that the efficient use of limited resources should be ignored.¹⁰⁰ An important example is the high operating costs of dilapidated homes and buildings, which create economic inefficiencies.¹⁰¹ The concept of allocative efficiency is especially important in the South African redistribution context because it concerns the distribution of goods in an economy to maximize social welfare.¹⁰² From a sustainability perspective, property rights might have to be adjusted for the sake of others, or even future generations, not necessarily to promote efficiency, but rather morality in a completely different sense.¹⁰³ Moreover, the goals of sustainability and economic efficiency are not necessarily in conflict with one another. Even though economic theory is mainly concerned with the efficient exploitation of natural resources, economic analysis does not

⁹⁷ *ibid* 116.

⁹⁸ Harold Demsetz, 'Toward a Theory of Property Rights' (1967) 57 *AmerEcRev* 347, 348.

⁹⁹ Circo (n 90) 118.

¹⁰⁰ *ibid* 122.

¹⁰¹ Boyack, (n 30) 458.

¹⁰² See specifically Daniel H Cole & Peter Z Grossman, *Principles of Law and Economics* (Wolters Kluwer 2005) 10–13.

¹⁰³ Circo (n 90) 126.

prescribe “how to quantify the costs and benefits that flow from a particular use of resources.”¹⁰⁴

In contrast to economic approaches, relational property theories are particularly interesting when considering the justification of regulatory actions for the sake of sustainability. In the context of relational theories where relationships are interdependent, property systems should serve some core ethical values beyond merely rationalizing the status quo or maximizing net wealth. With reference to the Rawlsian principles of justice,¹⁰⁵ and specifically the idea that John Rawls’s principles of justice contemplate a society that is constructed to preserve just structures throughout all generations, Circo argues that such emphasis on justice for future generations creates a workable framework for placing sustainability within the broader context of social justice.¹⁰⁶ Moreover, Rawls’s concept of justice, and specifically its notions of social cooperation and distributive justice, creates a framework for the advancement of sustainability as a component of justice within relational property theories.¹⁰⁷

Property owners’ obligations, including to serve sustainability, are inherently part of the concept of ownership, provided that regulatory impositions are in fact just.¹⁰⁸ Singer argues that property rights should be understood with reference to the powers and rights that they confer upon owners and holders of such rights, in addition to the impact of the exercise of such powers and rights on others and the nature of the social relationships created by these rights and powers.¹⁰⁹

Another relational property theory that would likely support a sustainability agenda founded on social justice is that of Margaret Radin’s

¹⁰⁴ *ibid* 127.

¹⁰⁵ John Rawls, *A Theory of Justice* (Harvard University Press 1971).

¹⁰⁶ Circo (n 90) 131.

¹⁰⁷ *ibid* 132.

¹⁰⁸ Joseph William Singer, ‘The Ownership Society and Takings of Property: Castles, Investments, and Just Obligations’ (2006) 30 *HarvEnvtLLRev* 309, 330.

¹⁰⁹ *ibid*.

personhood theory,¹¹⁰ which asserts that individuals require some measure of private property as a matter of human dignity. Radin makes a distinction between relationships with property that are strong (and more personal) and weak (of a fungible kind), the former requiring greater legal protection than the latter.¹¹¹ In the context of sustainability, the implications of this theory that places property rights on a continuum, ranging from personal to fungible, is that it allows greater deference to governmental regulation of fungible, commercial types of property.¹¹²

Overall, these relational property theories suggest that relational angles are more receptive to property rights restrictions that are founded on sweeping sustainability objectives, in comparison to economic approaches.¹¹³ The relational approach to property is more in sync with the social justice framework of sustainability than any of the other property theories. In the context of distributive justice, a relational approach to property underscores the fact that property rights are acquired in a social context (and not in isolation), which means that the interrelationship amongst members of society—those who own, possess and control property and those who do not—justify the imposition of duties on owners for the collective benefit of the community.¹¹⁴ Particularly interesting for the South African context where the right of access to adequate housing is recognized as a constitutional right, Circo argues,

If every person, without regard to time or place, deserves that level of property essential for human dignity, significant restrictions on the property rights of the relatively wealthy may be necessary to secure and protect human rights for all persons throughout all geographic

¹¹⁰ See Margaret Jane Radin, 'Property and Personhood' (1982) 34 *StanLRev* 957 for a detailed discussion on this theory. Contrarily, see Stephanie M Stern, 'Residential Protectionism and the Legal Mythology of Home' (2009) 107 *MichLRev* 1093, 1109-20.

¹¹¹ Radin (n 110) 987-88, 1015.

¹¹² Circo (n 90) 136.

¹¹³ *ibid.*

¹¹⁴ *ibid* 158.

regions and socio-economic circumstances and for all generations.¹¹⁵

An inclusive sustainability objective requires that owners of natural resources exercise their rights in such a way that they also refrain from exhausting and injuring resources. This obligation is in line with owners' social duties; ownership entitlements have never been conceived as absolute.¹¹⁶ Sustainability promotes a "stewardship vision" that aims to impose duties on those who are in control of limited resources with reference to their relationship with current and future generations.¹¹⁷

Despite this, Joe Sax argues that the privacy-autonomy element of private landownership largely continues to embrace the notion of allowing owners to do with their land as they please, provided that such use or even non-use is not harmful to others. This assumption is premised on the self-determination version of private ownership—if owners operate within their boundaries and refrain from creating negative externalities, they should be free of state coercion or compulsion.¹¹⁸ Of course, this notion of private ownership is contentious due to the elusive meaning of harm. "Our definition of harm defines how and where we draw the line between what

¹¹⁵ *ibid* 159. Central to an analysis on sustainable development is the Rio Declaration on Environment and Development, which was endorsed by more than 175 nations in 1992: *Rio Declaration on Environment and Development*, (U.N. Doc. A/CONF. 151/5/ Rev.1 (1992)). The declaration effectively takes the form of an agenda for the achievement of sustainable development in the twenty-first century and is centered on three pillars of sustainability, namely a commitment to economic efficiency, environmental protection and equity: John R Nolon, 'Comparative land use: Patterns of sustainability' (2005) 37 *UrbLaw* 807, 815. In the context of sustainable housing, Agenda 21 sets out land use goals that encourage sustainable human settlements and integrate environmental considerations to be part of development decisions. Urban planning and regulation are central to land use laws, which should be optimized by governments to incentivize private actors to create sustainable human settlements; if human settlement patterns are not sustainable, law reform is required: 817, referring to the Rio Declaration on Environment and Development, which adopted in a 300-page plan, known as Agenda 21.

¹¹⁶ Circo (n 90) 149–50.

¹¹⁷ *ibid* 157.

¹¹⁸ Joseph L Sax, 'Ownership, Property, and Sustainability' (2011) 31 *UtahEnvtlLRev* 1, 2–3.

ought to be in the individual's private realm and what is the business of the public."¹¹⁹ Owners' understanding about what they are allowed to do, or refrain from doing, on the basis that they are not causing any harm, is another way of describing the broader community's impression of what is considered to be important and for what reasons control should be exercised over private autonomy.¹²⁰

With reference to natural resources, an historical overview shows that for the past two centuries, almost nothing of the economy of nature was purposefully saved.¹²¹ The law was intentionally structured and revised to allow for such a state of affairs, whereas the rules of landownership were aligned to incentivize transformation and deter retention of nature's economy.¹²² The renowned theory that ownership generally promotes sustainability because owners have self-interest in continued production on their land was undermined in various ways.¹²³

More recently, it turns out that sustainability in the form of maintaining biodiversity and natural resources is very much the business of the public, which means that the community, including the state, has an interest in land use, even where landowners use their land in ways that are traditionally considered to be acceptable and harmless. Current perspectives on sustenance and biodiversity requires careful reanalysis of both suppositions surrounding landownership and notions of harm.¹²⁴ Modern-day conceptions of land generally favor privacy and autonomy-enhancing values, instead of community principles. This includes the idea

¹¹⁹ *ibid* 3.

¹²⁰ *ibid* 4. In general, see also Sibanda (n 11) 135–42.

¹²¹ Joseph L Sax 'Property Rights and the Economy of Nature: Understanding *Lucas v South Carolina Coastal Council*' (1993) 45 *StanLRev* 1433, 1442 explains as follows: "An ecological view of property, the economy of nature ... views land as consisting of systems defined by their function, not by man-made boundaries. Land is already at work, performing important services in its unaltered state." See also 1445–6 for a more detailed explanation in the property regulation context.

¹²² Sax, 'Sustainability' (n 119) 6.

¹²³ *ibid*.

¹²⁴ *ibid* 10.

of having to cultivate and use land that is essentially unused or even underused; the undying eagerness to use human labor to make land productive perseveres.¹²⁵ The assumption that current patterns of landownership and land use would include sustainable use, to ensure preservation for future generations, due to incentives that promote the proper care of land and the capacity of technology to address problems associated with exhaustible resources, has proved to be inaccurate. The present system of land usage is inadequate to protect the economy of nature.¹²⁶

For example, the United Nations' Millennium Ecosystem Assessment Synthesis of March 2005¹²⁷ reports that more land has been converted from its natural state to cultivation in merely thirty years after 1950 than between 1700 and 1960; this negative impact is the result of growing populations and land development in urban areas that are required to serve such growth.¹²⁸ An important trend in response to the Millennium recommendations has been the participation of local governments in decision-making processes to ensure sustainable land use patterns. Local governments are well-positioned to observe and respond to unsustainable land use, especially because they work in close proximity to the citizenry.¹²⁹

2. *Sustainable Use in the South African Reform Context*

In terms of the South African Constitution, sustainability is concerned with addressing the inequitable allocation of resources by way of introducing more ecologically sustainable measures that are both utilitarian and ethical. This means that natural resources, and in this context, land, should be used in an efficient manner, without unwarranted waste, that

¹²⁵ *ibid* 14.

¹²⁶ *ibid* 15.

¹²⁷ Millennium Ecosystem Assessment, *Ecosystems and Human Well-being: Synthesis* (2005) <<http://www.millenniumassessment.org/en/Products.Synthesis.aspx>> accessed 23 March 2021.

¹²⁸ Nolon (n 116) 809.

¹²⁹ *ibid* 810.

maximizes its value for the common good. A vital component of this priority is founded on the social justice model of sustainability, which ensures that some land should eventually be distributed to all individuals, and specifically to the previously dispossessed. If landowners' usage is not conducive to the common good—if landowners' decisions regarding the use of their land fails to maximize social utility—and therefore places adverse costs on others, the property system should address such externalities. The negative sanctions in clause 12(3) of the bill could therefore be explained as the property system's response to harmful economic and moral externalities. However, clause 12(3) does not act as a delicate, instructive incentive that is aimed at guiding the private land market to allow for adjustments to the broader system to internalize externalities, while protecting private property for the sake of efficiency. The sustainable exploitation and development of expropriated land is therefore crucial to the economic viability of clause 12(3), if it survives a constitutional challenge. From a relational perspective, the ethical value associated with land might justify adjustments to the property system that fail to yield maximum net wealth. Such impositions and amendments might be sustainable from a moral, ethical perspective, especially if the land is of a fungible, commercial kind.¹³⁰

The land that is earmarked by clause 12(3) of the bill, specifically clause 12(3)(c) and 12(3)(e), are likely both of a fungible nature¹³¹ and used in a way that is harmful to society, which renders it the business of the public. From an environmental perspective, clause 12(3)(a) might justify the expropriation of unused, uncultivated land to allow for the sustainable

¹³⁰ The overall idea that is proposed in terms of which redistributive efforts, considered with environmental concerns will likely trump property is generally in line with the single-system-of-law principle as it was articulated in *Pharmaceutical Manufacturers Association of South Africa and Another: In re Ex Parte President of the Republic of South Africa and Others* [2000] 2 SA 674 (CC) and further developed by Van der Walt, *Property and Constitution* (n 8) and AJ van der Walt 'The Modest Systemic Status of Property' (2014) 1 JLPS 15.

¹³¹ An exception would for instance be where a home is still occupied, but the condition thereof is uninhabitable.

protection thereof. The core purpose of clause 12(3) is unlikely to maintain biodiversity,¹³² but the objective of sustainable land use and the protection of natural resources raises awareness for *the approach that the state will adopt when it embarks upon an expropriation strategy* for redistribution and housing imperatives. This Article points out a unique opportunity, via clause 12(3), for the state to align its approach to the acquisition and disposal of land and buildings for redistributive purposes with that of sustainable use and development; a detailed strategic approach towards this alignment is offered in Part 3. Furthermore, this alignment would predominantly depend on the identification of appropriate land/buildings with reference to a range of factors, including the landowner's plan with the property, the location of the property, the current use of the property, the general condition of the property, previous use of the property, and the potential use of the property.

A general legislative allowance for expropriation without compensation, regardless of the circumstances, remains highly problematic from a constitutional as well as economic perspective. Clause 12(3) constitutes a profound, politically driven limitation of a right in the Bill of Rights. This limitation does not mean that clause 12(3) is inherently unconstitutional, but it may prompt constitutional attacks. This predicament is avoidable if the state were to change its course of direction, away from a political manifesto, towards its constitutionally ordained options, to fulfil the needs of the people. Expropriations can be executed at minimal costs. The market value of the property is but one factor when calculating compensation. The current use of the property and the purpose of the expropriation can justify a compensation payment of almost nothing.¹³³ In practice, such a minimal payment would hardly affect the fiscus, whereas the enactment of the bill would most likely have detrimental economic repercussions. The proposed

¹³² See for instance the Advisory Panel on Land Reform (n 5) and the Draft Constitution Eighteenth Amendment Bill (n 5).

¹³³ S 25(3) of the Constitution; Viljoen, 'Expropriation Without Compensation (part 1)' (n 5) 36-7; Viljoen, 'Expropriation Without Compensation (part 2)' (n 32) 270.

strategy is made with these reservations in mind, to pave the way for constitutionally compliant expropriations without compensation, noting that minimal compensatory payments are still preferable.¹³⁴

3. *A Sustainable Strategy in the Urban Environment*

a. *Properties to be Taken, as a Matter of Urgency*

From a sustainability perspective, clause 12(3) can allow for economically efficient and fair expropriations. In the urban sphere, for mainly redistribution and housing purposes, I suggest the following strategy to stimulate a dialogue on the types of property that should fall subject to clause 12(3), as a matter of priority. Properties that should be taken as a matter of urgency are those identified in clause 12(3)(e) – where the condition of the property poses health, safety, or physical risks to individuals or to other property. Properties of this kind, and specifically inner-city buildings, offer suitable opportunities for the state to acquire well-positioned property at minimal costs, and likely even no cost, depending on the circumstances.¹³⁵ Such dilapidated buildings are often neglected by landowners, have outstanding municipal rates and taxes, and are managed by slumlords.¹³⁶

In light of the social-obligation theory, well-positioned, dilapidated buildings that have largely been abandoned by their owners should be expropriated to be refurbished and made available as public housing stock.¹³⁷ Expropriation without compensation might be justifiable on the

¹³⁴ See specifically Viljoen, 'Expropriation Without Compensation (part 2)' (n 32) 270 and the reasons mentioned there.

¹³⁵ It might for instance be unjustifiable if the property is occupied by the landowner who is socio-economically vulnerable.

¹³⁶ See, for example, *Blue Moonlight* (n 18) [1]–[9] and *Residents of Industry House, 5 Davies Street, New Doornfontein, Johannesburg and Others v Minister of Police and Others* [2021] 2 SA 220 (GJ) [4].

¹³⁷ One of the internationally recommended approaches to the provision of adequate shelter is the use public policy and efficient resources to enable private actors to respond to and in fact "solve the world's worsening shelter problems." Nolon (n 116) 826–7. Overall, the internationally recognized human settlement principles, as enunciated in

basis that the public interest, and specifically the interests of displaced individuals, are in direct conflict with the owner's exercise of its entitlements. It would be contrary to the common good if we were to allow an owner to hold on to its rights as owner when its entitlements are exercised in an unreasonable or socially irresponsible fashion; the protection of its right as owner can consequently fall away, and even be legislated away.

The expropriation of dilapidated inner-city buildings is also justifiable, and perhaps even necessary, from a sustainability perspective on the basis that the expropriation concerns a limited resource that is going to waste. The expropriation sanction, the response of the property system, should overturn the precarious, inefficient, and unethical use of the resource. Sustainable development is concerned with the optimization of existing, yet limited resources, in an ethically sound manner for society at large. Sustainable development principles render dilapidated structures particularly apt for expropriation – such structures or buildings are already part of an inherently restricted urban landscape. Properties of this kind offer the perfect opportunity for retention, refurbishment, and reuse for the sake of social transformation.

b. Abandoned Property, as a Matter of Priority

The second type of property that should be identified for purposes of clause 12(3) to allow for redistributive and housing purposes in the urban sphere is “abandoned,”¹³⁸ though not entirely neglected, buildings. The terminology used in clause 12(3)(c) is problematic, because abandonment can take various forms. It can also consist of different stages; mere lack of control should not be equated with abandonment as such.¹³⁹ Nevertheless,

Habitat I and II as well as the Rio Declaration, should influence land use laws, and specifically planning and zoning laws, to focus on the proper location of housing development; this includes the redevelopment of deteriorated areas: 827.

¹³⁸ See n 33 and the sources cited.

¹³⁹ See part 3 above for a detailed discussion.

well-structured and habitable buildings that are abandoned in the sense that the owner has stepped away from its duties as owner—it no longer exercises control over the building and has no intention of using the building in the near future—could arguably be expropriated without compensation, provided that the owner’s actions and intentions are unreasonable and socially inexcusable. A clause 12(3) inquiry in the context of the urban sphere where the purpose of the expropriation is redistribution or the provision of access to adequate housing must consider the location of the building, the extent to which refurbishments are required to offer habitable homes, and the overall costs that the state would have to incur to realize the constitutional objective. An all-things-considered approach is required to ensure that the total governmental project is logical in terms of execution, feasibility, costs, and its overall alignment with beneficiaries’ needs.

c. Vacant Land, Stepping Outside the Legislative Response

Finally, some vacant, unused land that is situated in either the urban sphere or on the urban periphery should also be expropriated and earmarked for housing or redistributive purposes. Properties of this kind will unlikely justify expropriation without compensation. A more in-depth analysis will be required to justify the operation of clause 12(3)(a), or misuse of a similar sort. If vacant, unused land has been abandoned in a similar fashion as an abandoned building, the same argument mentioned above should apply for the state to expropriate such land. An important additional consideration would be whether the consequential development of the land for constitutional purposes is sustainable from both an economic and moral point of view. Even if the owner’s actions are socially unreasonable and harmful to others, the state’s optimization of the land must still meet the sustainability criteria—the acquisition must be economically efficient, ethically sound and in tune with the notion to protect uncultivated land, to maintain biodiversity.

From a sustainability perspective, some unused land should also be identified for constitutional purposes, as a matter of priority, even though

the land is neither held for speculative purposes, nor abandoned.¹⁴⁰ Burgeoning case law casts light on an emerging housing crisis that has led to land grabs across South Africa, some resulting in the peculiar legal conundrum of continuous unlawful occupation, without the prospect of an eviction.¹⁴¹ The courts have grappled with this issue due to separation of powers concerns and the respect that should be shown to the decision-making powers of the executive, including the local authorities. The solution to the courts' predicament manifestly lies with the executive in taking innovative steps to acquire well-located, suitable land for redistributive purposes. Unlawful land grabs are associated with protracted legal disputes, high costs for both landowners and the state, and few decisions that provide satisfactory results to the parties concerned.¹⁴²

As an alternative, the state, and specifically the local authority, should be more actively involved in bargaining processes when land grabs are inevitable, imminent, or in full swing. Even though land grabs should by no means be encouraged or allowed to operate as an illegitimate queue-jumping mechanism, the local authority should be more proactive in identifying properties, often held by private owners, that should ideally serve redistributive aims. Such unused pieces of land that are neither held for speculative purposes, nor abandoned, should receive the required level of scrutiny—based on sustainability concerns—to optimize the use of a limited resource in an ethical manner, for the sake of social transformation. Importantly, it would be difficult to justify expropriation without compensation for land that falls outside the realm of clause 12(3). Expropriations outside of clause 12(3) would have to be accompanied by market-related compensation payments if the owners have exercised their entitlements in a reasonable fashion, in a manner that contributes to the

¹⁴⁰ The suggestion here does therefore not fit into the scenarios set out in clause 12(3) of the Bill.

¹⁴¹ See for instance *Port Elizabeth Municipality v Various Occupiers* [2005] 1 SA 217 (CC); *Modderklip* (n 19); *Fischer* (n 19).

¹⁴² See specifically *Port Elizabeth Municipality* (n 142) [61].

greater good. If a land grab emerges due to a landowner's unwillingness to optimize the use of its land, an expropriation in terms of clause 12(3) might be justifiable. Regardless of the need to pay compensation, properties that are subject to land grabs should, as a matter of public concern, be earmarked as potentially suitable for redistributive purposes based on sustainability concerns—to ensure economic efficiency and the ethical use of a limited resource.

V. Conclusion

At the turn of the twentieth century, the absolute conception of property led to several adverse consequences, including unmaintained houses and buildings, unproductive capital goods, and vacant city lots. Some advocated for a modernized conception of the nature of property—not the wholesale disappearance of individual property—by way of dedicated laws that bolster a social-function definition of property.¹⁴³ Such laws were envisioned to create obligations to farm uncultivated lands, maintain houses and buildings, and make capital productive.¹⁴⁴ Property's social function has been acknowledged in a number of jurisdictions, and most definitely South Africa. Clause 12(3) of the Expropriation Bill of 2020 serves as yet another example of a statutory provision that recognizes the social-obligation norm of property to allow for social transformation. Even though the logic of the provision seems sound, especially with reference to the purpose of addressing the continued waste of valuable land, unintended systemic consequences should be mitigated, for the sake of economic efficiency and sustainability.

Clause 12(3) authorizes uncompensated expropriations where “land is not being used and the owner's main purpose is not to develop the land or use it to generate income, but to benefit from appreciation of its market value” (12(3)(a)); “where an owner has abandoned the land by failing to

¹⁴³ Mirow (n 51).

¹⁴⁴ *ibid* 208.

exercise control over it” (12(3)(c)); or “when the nature or condition of the property poses a health, safety or physical risk to persons or other property” (12(3)(e)). The first concern pertains to the viability of the land market for both South African and foreign investors and the need to protect land as a lucrative investment option. Clause 12(3)(a) of the bill is therefore problematic from an economic as well as sustainability perspective. An important aspect of sustainable land use is the notion to preserve and maintain uncultivated land. The flipside of the coin is the need to actively and productively use land that has already been cultivated or developed to ensure that resources are optimized, reused, refurbished, and generally not wasted. The social-obligation norm underscores the operation of clause 12(3)(a), 12(3)(c), and 12(3)(e) of the bill, provided that it should not apply in an overextended fashion, nor to the detriment of a specific category of landowners—here clause 12(3)(a) is again problematic for constitutional reasons. An overextended application of clause 12(3)(a) will not only have an adverse effect on the value of land as an investment opportunity but may also threaten the constitutional guarantee that landowners will not be targeted in a discriminatory manner.

The overall potential of clause 12(3)(a), 12(3)(c), and 12(3)(e) of the bill remains important and workable to address the socio-economic problem of underused valuable land. Crucial to the success of these provisions is not only the state’s post-expropriation plan, but also its strategy when targeting land/buildings for constitutional purposes. From a sustainability perspective, clause 12(3)(e) should allow for wide-scale expropriations of dilapidated, derelict buildings in the urban landscape, as a matter of urgency. Properties of this kind are particularly apt for redistributive and housing purposes. Similarly, clause 12(3)(c) should reintroduce abandoned land as part of the urban fabric, provided that the concepts of abandonment and control are carefully approached in a context-sensitive, all-things-considered fashion. Of course, vacant, unused land must also contribute to the constitutional objectives of redistributing land to the masses and providing adequate housing to the homeless, but the location and nature of the property should be scrutinized in detail to confirm the aptness thereof,

more so than to simply expropriate land that is held for speculative purposes without having to pay compensation.

The social-function definition of property, as it was initially articulated by Léon Duguit, and subsequently refined by Alexander, Singer, Beermann, and many other contemporary scholars, calls for a reimagination of what we once considered unthinkable. The large-scale waste of valuable land/buildings, to a point where some of these properties are not only neglected, but also harmful to society, has forced us to a point of reckoning, to take account of selfless deeds and inaction, when we should act to the betterment of all. At a time when landowners forget about their entitlements, duties, and position as holders of control over valuable, limited resources, the state is not only allowed, but perhaps even ordained to overthrow and overtake ownership, with a stewardship vision, in line with the Constitution.