

RESEARCH ARTICLE

The Social Function of Property and Real Estate Abandonment: Between Property Law and Environmental Protection

Tommaso De Mari Casareto dal Verme¹ and Alberto Quintavalla²

¹Faculty of Law, University of Trento, Trento, Italy and ²Erasmus School of Law, Erasmus University Rotterdam, Rotterdam, Netherlands

Corresponding author: Alberto Quintavalla; Email: quintavalla@law.eur.nl

Abstract

This article explores the relationship between the social function of property and the abandonment of real estate, arguing that factual abandonment may amount to a form of ‘negligent non-use’ of property. Although the social function of property is both an external limitation on ownership and an affirmative social-obligation norm inherent in property itself, legal systems struggle to operationalise this or to address the negative externalities, particularly environmental harms, generated by factual abandonment. As existing regimes do not always sufficiently disincentivise harmful non-use, legal abandonment could be reconceptualised as a regulatory tool capable of promoting optimal use of unwanted resources.

Keywords: property; social function; abandonment; environmental protection; negligent non-use

1. Introduction

Over the last decades, abandoned immovable property (both housing and land) has become commonplace in many parts of the world. In Europe, the territories that are located between large mountain ranges are among the most severely affected. A European Parliament study highlights that the abandonment of land is particularly widespread in remote mountain and coastal areas.¹ These regions often face limited economic opportunities and depopulation, which exacerbate land abandonment. In the US, abandoned housing has been a widespread phenomenon in many major cities at least since the 1960s² and approximately 12.3 million hectares of arable land were abandoned between 1986 and 2018.³ Furthermore, 16.7% of the land area of the average large American city is classified

¹ B Schuh et al, *Research for AGRI Committee—The Challenge of Land Abandonment after 2020 and Options for Mitigating Measures* (European Parliament, Policy Department for Structural and Cohesion Policies, Brussels, 2020), [www.europarl.europa.eu/thinktank/en/document/IPOL_STU\(2020\)652238](http://www.europarl.europa.eu/thinktank/en/document/IPOL_STU(2020)652238). See also C Perpiña Castillo et al, ‘Modelling Agricultural Land Abandonment in a Fine Spatial Resolution Multi-level Land-Use Model: An Application for the EU’ (2021) 136 *Environmental Modelling and Software* 104946.

² The abandonment of real estate has long been documented as a significant socio-economic issue in the United States. For instance, in New York City approximately 38,000 housing units were abandoned between 1965 and 1967; in Philadelphia, some 35,000 units were abandoned each year between 1965 and 1970; and in Baltimore, the figure reached 4,400 units (BP Scafidi, MH Schill, SM Wachter, and DP Culhane, ‘An Economic Analysis of Housing Abandonment’ (1998) 7 (4) *Journal of Housing Economics* 287). Similar concerns were raised by CL Edson, who already in the early 1970s highlighted the scale of the phenomenon and the need for structural legal and policy responses (CL Edson, ‘Housing Abandonment—The Problem and a Proposed Solution’ (1972) 7 (2) *Real Property, Probate and Trust Journal* 382).

³ Y Xie et al, ‘Cropland Abandonment between 1986 and 2018 across the United States: Spatiotemporal Patterns and Current Land Uses’ (2024) 19 (4) *Environmental Research Letters* 044009.

© The Author(s), 2026. Published by Cambridge University Press on behalf of Centre for European Legal Studies, Faculty of Law, University of Cambridge. This is an Open Access article, distributed under the terms of the Creative Commons Attribution-NonCommercial-NoDerivatives licence (<http://creativecommons.org/licenses/by-nc-nd/4.0>), which permits non-commercial re-use, distribution, and reproduction in any medium, provided that no alterations are made and the original article is properly cited. The written permission of Cambridge University Press or the rights holder(s) must be obtained prior to any commercial use and/or adaptation of the article.

as unused and approximately 4% of urban addresses are vacant.⁴ Climate change will likely intensify these trends by increasing the vulnerability of certain regions to disasters and accelerating exodus from these territories. For example, prolonged droughts could make farming unsustainable in areas that are already economically marginal, while coastal regions may face heightened risks from rising sea levels and erosion.

The literature explains abandonment in economic terms: abandoning property becomes rational when the costs of ownership, such as taxes and maintenance costs, exceed its benefits. Furthermore, abandonment may be inevitable when demand dries up, say because the market value of a property has become negative owing to structural decay or shifting economic priorities. Abandoned real estate generates significant negative externalities for surrounding communities. Beyond urban blight, abandoned buildings and land may discourage tourism, as well as both public and private investment, and foster criminal activity and conditions of social insecurity owing to possible collapses. Ultimately, abandoned real estate also affects the environment adversely. Although the attendant reduction in human activity may favour the development or preservation of ecosystems, abandonment more frequently causes direct or indirect polluting effects on land, water, and air.⁵

Abandonment has become a central issue in the contemporary legal debate on private property. The principal questions concern whether the power to abandon real estate forms part of the owner's entitlement and whether the transfer of the negative externalities from abandoned property to society is compatible with the social function of property. Neither legal theory nor regulation explains the social and legal implications of abandonment comprehensively. In point of fact, the term 'abandonment' has one meaning as a matter of law and another in practice. In the realm of fact, 'abandonment' is the material act of ceasing to use and maintain property so that it deteriorates, loses economic value, and becomes socially undesirable or even harmful to the surrounding community and the environment ('factual abandonment'). In law, 'abandonment' denotes the formal and unilateral act of relinquishing fee-simple ownership over an asset ('legal abandonment'). Private-law scholarship and regulation have traditionally focused on legal abandonment. We argue for a shift in perspective: it is factual abandonment that generates the most serious negative externalities, particularly environmental ones. Those externalities result from, among others, illicit waste disposal and the degradation of hazardous construction materials. If our argument is correct, then regulation should address factual abandonment directly, which would require lawmakers to pay close attention to the social function of property.

Section II is a concise overview of the evolution of the social function of property in the common and the civil law. Section III clarifies the definition and dimensions of abandonment in several legal systems, highlighting how disparate regulatory responses converge on the social function of property to varying degrees and with different outcomes. Section IV proposes a different regulatory perspective: non-use, no less than use, can be negligent and socially undesirable, and there is a strong case for constraining it through limitations and duties of care that further environmental interests. Section V discusses the effectiveness of a preventive approach to factual abandonment—we suggest that the legal concept of abandonment can be remoulded so as to facilitate the transformation of unwanted assets into common-pool resources, thereby enabling their optimal use in line with collective interests and self-determination, and thus to express the social function of property.

II. The social function of property

The idea of the social function of property—or social-obligation norm—reflects a long-standing tension between the conception of property as an exclusive and largely unrestricted right and the notion

⁴GD Newman et al, 'A Current Inventory of Vacant Urban Land in America' (2016) 21 (3) *Journal of Urban Design* 302. See further J Laitos and R Martin, 'Abandoned and Unfinished Residential Properties in America and Europe: Comparative Strategies for Removal and Prevention' (2014) 91 (10) *Denver Law Review Forum* 65.

⁵For further details on positive and negative externalities of real estate abandonment, see the following sections of the article.

that a certain form of social responsibility is embedded into ownership itself. The full realisation of the social conception of property would require owners to exercise their rights also in the interest of the community. The introduction of this idea to Western legal thought and its diffusion within it are traditionally associated with the work of Léon Duguit. However, Duguit systematised and further developed arguments that had already emerged from the writings of other authors, particularly Durkheim and Comte.⁶ Both Durkheim and Comte opposed the classical liberal conception of ownership which is epitomised by Blackstone's definition of property as 'sole and despotic dominion'⁷ (the exclusivity axiom).⁸

Other important antecedents of the social function of property appear much earlier in Western thought. These earlier writings inspired the modern elaborations of the social-obligation norm. Some have even located the foundations of the modern social function of property in the Aristotelian tradition.⁹ Aquinas, drawing on Aristotelian ethics, described property not merely as an instrument of productive individualism but also as a means of cultivating other virtues, such as justice, and thought that the pursuit of those goods was sufficiently important to warrant the circumscription of the owner's prerogatives.¹⁰

When Duguit delivered his Buenos Aires Lectures in 1911,¹¹ he presented the social function as an alternative to the abovementioned exclusivity axiom.¹² Duguit rejected the notion of property as an individual, subjective right. According to him: (i) individual property can cease to be a right of the individual and become a social function;¹³ (ii) the owner of property can bear a social obligation to make it productive to serve the community; and (iii) property rights are inherently relational, meaning that they matter only in relation to others. In this framework, the owner's powers are legitimate only insofar as they serve social interests, and a right is abused if it is exercised contrary to its social purpose.

This proposal for a structural transition challenged the exclusivity axiom. Blackstone thought that the absoluteness of property could only be curtailed by exceptional state intervention. Bentham likewise cast restrictions on the rights of the owner as exogenous to property law.¹⁴ The modern adherents to this tradition, such as Richard Epstein, continue to resist the idea that there are internal limits to property. To Epstein, discretionary state interventions corrode liberty, whereas the classical liberal synthesis in which the rule of law and private property work together in 'harmonious fashion' promotes both freedom and prosperity.¹⁵ In this strand of liberal thought, property remains a presumptively absolute entitlement, and social claims are treated as exceptional derogations from it.

Duguit, conversely, saw the social limits to property rights as inherent to ownership itself. In his account, ownership carries a positive obligation to make property socially productive. His theory has had some influence on the manner in which civilian and common-law legal systems allocate control

⁶MC Mirow, 'The Social-Obligation Norm of Property: Duguit, Hayem, and Others' (2010) 22 (2) *Florida Journal of International Law* 191, 201ff.

⁷W Blackstone, *Commentaries on the Laws of England* (Callaghan and Co, 1871), 2.

⁸As defined and described by CM Rose, 'Canons of Property Talk, or, Blackstone's Anxiety' (1998) 108 (3) *Yale Law Journal* 601, 603ff; CM Rose, *Property and Persuasion: Essays on the History, Theory and Rhetoric of Ownership* (Westview Press, 1994), 28.

⁹See EM Peñalver, 'Land Virtue' (2009) 94 (4) *Cornell Law Review* 821, 822ff. In a similar sense, GS Alexander, 'The Social-Obligation Norm in American Property Law' (2008) 94 *Cornell Law Review* 747, 760ff.

¹⁰EM Peñalver (n 9), 879, referring to T Aquinas, *Summa Theologica* (1265–73), Ila, Ilae, Q 66, Art 2.

¹¹The lectures were later published as L Duguit, *Les transformations générales du droit privé depuis le Code Napoléon* (1912), then circulated in France, the United States, and Latin America.

¹²SR Foster and D Bonilla, 'The Social Function of Property: A Comparative Law Perspective' (2011) 80 (3) *Fordham Law Review* 101, 102.

¹³Duguit (n 11), 148–49. For an English translation, see J Viven-Wilksch, 'Translation' in P Babie and J Viven-Wilksch (eds), *Léon Duguit and the Social Obligation Norm of Property* (Springer, 2019).

¹⁴J Bentham, *The Theory of Legislation*, vol I, ed CK Ogden, trans R Hildreth (Harcourt, Brace & Co, 1802), 113.

¹⁵R Epstein, 'Property Rights and the Rule of Law: Classical Liberalism Confronts the Modern Administrative State' (2010) 45 (197) *Biblioteca della libertà* 1, 2.

over scarce resources through property law.¹⁶ In US legal theory, it evolved into what came to be known as the ‘social-obligation norm’,¹⁷ and contemporary progressive and pluralist theories adopt the internal-limit model explicitly. For instance, Gregory Alexander, who recognised that ownership engenders both negative and positive duties to other members of the community, advances a form of social-obligation theory that conceives of property not as an enclave of individual autonomy but as a locus of responsibilities that are grounded in plural values,¹⁸ including life and human flourishing.¹⁹ Colin Crawford similarly links the social function to the normative goal of human flourishing and environmental protection, and traces its expression in US jurisprudence²⁰ from *State v Shack*,²¹ where the Court held that ‘property rights serve human values’, to the dismantling of racially restrictive covenants in the Fair Housing Act.

Hanoch Dagan has a distinct position on the contemporary liberal conception of property. He proceeds from the premise that ‘a theory of property that excludes social responsibility is unjust’²² and therefore insists that duties are internal to property. Dagan draws on corrective justice to develop a ‘structural’ pluralist account of ownership which rejects the classical liberal monist conception and the idea that exclusion is the core of the property concept.²³ Instead, property is cast as an umbrella concept for a limited and standardised set of property institutions that function as defaults in interpersonal interactions.²⁴ This treatment of property as a set of institutions is far removed from Hohfeld’s bundle of rights and calls for rules that ‘promote the property values underlying the property institutions to which they belong’.²⁵

Dagan’s latest liberal theory of property²⁶ revolves around three key propositions: ‘(1) liberal property carefully circumscribes owners’ private authority so that it is adjusted to its contribution to self-determination; (2) it includes a structurally pluralist inventory of property types so as to offer people real choice; and (3) it complies with the prescriptions of relational justice so as to ensure that ownership does not offend the maxim of reciprocal respect for self-determination on which property’s legitimacy is grounded’.²⁷ Departing from Blackstone’s ‘sole and despotic dominion’,²⁸ Dagan offers an alternative to exclusion and the bundle of rights:²⁹ ownership is said to be justified only insofar as it enables individuals to pursue their autonomy within diverse, interdependent social spheres. He reframes liberal property as a normative architecture which internalises social responsibility while safeguarding freedom, equality, and human flourishing.

¹⁶P Babie and J Viven-Wilksch, ‘Léon Duguit and the Propriété Function Sociale’ in Babie and Viven-Wilksch (n 13), 16.

¹⁷Alexander (n 9); Mirow (n 6).

¹⁸GS Alexander, ‘Pluralism and Property’ (2011) 80 (3) *Fordham Law Review* 1017, 1018.

¹⁹GS Alexander, EM Peñalver, JW Singer, and LS Underkuffler, ‘A Statement of Progressive Property’ (2009) 94 (4) *Cornell Law Review* 743.

²⁰C Crawford, ‘The Social Function of Property and the Human Capacity to Flourish’ (2011) 80 (3) *Fordham Law Review* 1089, 1090–91. For Crawford, even American law—often perceived as a stronghold of classical liberalism—has absorbed Duguit’s insight that private rights are conditioned by social needs.

²¹New Jersey Supreme Court, *State v Shack*, 277 A.2d 369 (1971).

²²H Dagan, ‘The Social Responsibility of Ownership’ (2007) 92 (6) *Cornell Law Review* 1255, 1259.

²³TW Merrill and HE Smith, ‘The Morality of Property’ (2007) 48 (5) *William and Mary Law Review* 1849, 1857 and 1891.

²⁴H Dagan, *Property: Values and Institutions* (Oxford University Press, 2011), 58; H Dagan, ‘Inside Property’ (2013) 63 (1) *University of Toronto Law Journal* 1, at 14.

²⁵Dagan, ‘Inside Property’ (n 24), 18. In this respect, Dagan rejects the criticism that his theory of property as institutions merely reproduces Hohfeld’s ‘bundle of rights’ conception (WN Hohfeld, ‘Fundamental Legal Conceptions as Applied in Judicial Reasoning’ (1917) 26 (8) *Yale Law Journal* 710, 747)—as suggested by HE Smith, ‘Property Is Not Just a Bundle of Rights’ (2011) 8 (3) *Econ Journal Watch* 279, 287, Available at https://econjwatch.org/file_download/507/smithsept2011.pdf. For Dagan, property is not simply ‘a plethora of general principles to be balanced as specific situations present themselves’ but rather a set of ‘unifying normative ideals for core categories of interpersonal relationships’ (Dagan, ‘Inside Property’, 16).

²⁶H Dagan, *A Liberal Theory of Property* (Cambridge University Press, 2021).

²⁷H Dagan, ‘Liberal Property and the Power of Law’ (2023) 36 (1) *Canadian Journal of Law and Jurisprudence* 281.

²⁸H Dagan, ‘The Ambitions of Liberal Property’ (2022) 18 (2) *International Journal of Law in Context* 259.

²⁹H Dagan, ‘Pluralism and Perfectionism in Private Law’ (2012) 112 (6) *Columbia Law Review* 1409, 1438.

The social-obligation norm as conceived by Alexander and Dagan has struggled to gain traction in US case law, where courts invoke it only sporadically and often implicitly.³⁰ American judges initially employed a form of the social-obligation norm through the concept of malice in torts.³¹ Later, the stronger version of the social-obligation norm helped to explain why owners could be compelled to sacrifice uses of entitlements or even whole entitlements. Although American property law may seem absolutist,³² the American case law includes instances in which an owner's individual interests are subordinated to those of the public interest—cases that may be classified as either entitlement sacrifices or use sacrifices.³³ Obviously, recognising the existence of an implicit social obligation is one thing, and explicitly acknowledging it as a formal, internal element of property law is another,³⁴ and it is important to note that American property law has never acknowledged the existence of obligations to act or refrain from acting in the name of the collective good.³⁵

In this respect, we should note that English law³⁶ was long marked by a tension between the absolutist conception of property rights and their social dimension. Although Sir William Holdsworth observed that the state cannot be wholly indifferent to the use that owners make of their property,³⁷ the 1895 House of Lords decision in *Bradford v Pickles*³⁸ entrenched the principle that even malicious exercises of ownership are lawful, rejecting any doctrine of abuse of rights. This case has often been seen as the apogee of absolutism.³⁹ Still, as Honoré's classic account of the incidents of ownership shows, English law always incorporated obligations such as the prohibition of harmful use and liability to execution,⁴⁰ which indicates that a form of the social-obligation norm endured in it.

This brief sketch of common-law doctrine indicates that the social function of property often operates implicitly. It never appears in the strong forms on the social-obligation norm that Alexander and Dagan propose. In practice, when individual interests are subordinated to public or collective claims, the social function typically results in the curtailment of private sovereignty over resources, rather than the imposition of positive social obligations on owners.

Duguit's vision of the social function of property may have had a more palpable influence on civil-law systems, particularly European ones. In France, for instance, despite the highly absolutist formula of Article 544 of the *Code civil*, legislative interventions in the 20th century have resulted in the partial socialisation of ownership:⁴¹ rural and commercial property have been redefined in a way that serves economic productivity and environmental protection, and urban property has been made subject to tenancy controls and the demands of housing policy. While some scholars have defended property

³⁰ Alexander et al (n 19), 748.

³¹ See M Taggart, *Private Property and Abuse of Rights in Victorian England: The Story of Edward Pickles and the Bradford Water Supply* (Oxford University Press, 2002), 144, summarising OW Holmes, Jr, 'Privilege, Malice, Intent' (1894) 8 (1) *Harvard Law Review* 1.

³² Babie and Viven-Wilksch (n 13), 21; MR Poirier, 'Federalism and Localism in Kelo and San Remo' in RP Malloy (ed), *Private Property, Community Development, and Eminent Domain* (Routledge, 2016), 101.

³³ Alexander et al (n 19), 775ff. Alexander et al distinguish between two categories of sacrifice imposed on owners. Entitlement sacrifices arise where the owner is compelled to relinquish the property itself, as in eminent domain—justified, in their view, by considerations of economic efficiency—or in nuisance remedies, where the state may deprive an owner of her entitlement in return for compensation that does not necessarily reflect her subjective valuation. Use sacrifices, by contrast, occur when the owner retains title but is prevented from employing the property in ways deemed contrary to the community's collective interests. Examples include land-use controls such as historic preservation (illustrated by *Penn Central Transportation Co v New York*), nuisance regulation, the public trust doctrine, and duties tied to ownership of art and cultural heritage.

³⁴ Ibid, 752.

³⁵ Ibid, 757.

³⁶ Babie and Viven-Wilksch (n 16), 19–20.

³⁷ W Holdsworth, *History of the English Law* (Little, Brown & Co, 1926), vol 8, c 4; Taggart (n 31), 143.

³⁸ AC 587 (HL).

³⁹ Taggart (n 31), 193.

⁴⁰ AM Honoré, 'Ownership' in AG Guest (ed), *Oxford Essays in Jurisprudence* (Oxford University Press, 1961), 107, 123.

⁴¹ A Deroche, 'The Importance of the Social Function of Property—France' in Babie and Viven-Wilksch (n 13), 67ff.

as a sovereign individual right,⁴² others have welcomed its evolution and the acceptance of Duguit's insights.⁴³ After the Second World War, several attempts were made to enshrine the social function of property into the French Constitution. For example, Article 36 of the Draft Constitution of 1946 would have prohibited the exercise of property rights to the detriment of social utility. However, these efforts failed. The social-obligation norm has developed mostly in the case law, which has produced a substantial and often highly complex body of restrictions that prioritise the public good over individual entitlements. The doctrine of abuse of rights is the most innovative of these limitations.⁴⁴

In Germany, the idea of the social dimension of property entered constitutional law with the Weimar Constitution of 1919 and then resurfaced in Article 14(2) of the German Constitution (*Grundgesetz*),⁴⁵ which recognises that 'property entails obligations', guarantees property and inheritance rights, subjects them to legal limitations, and states that their use 'shall also serve the public good'. Today, scholarly debate centres on the question of whether this clause is effective directly or merely as a directive to the legislator.⁴⁶ The prevailing approach, which is supported by the Federal Constitutional Court,⁴⁷ is to treat Article 14(2) GG primarily as a legislative mandate to integrate social responsibility into property law. In Italy, the social function of property is enshrined in Article 42 of the Constitution. As in Germany, scholarly debate has focused on the direct effect of this provision.⁴⁸ The Italian Constitutional Court⁴⁹ treats it as a systemic criterion that is addressed at the legislator, both because Article 42 explicitly reserves the task of defining the content and limits of property in light of its social function for the legislature and because treating it as directly effective would risk granting an excessive discretion to the courts.⁵⁰

This cursory overview of the evolution of the social-obligation norm in property law is not intended as a stand-alone work of comparative law. It merely serves to frame our analysis of abandonment, in which the long-standing tension between absolutist and social conceptions of ownership assumes a peculiar and distinct significance.

III. The law of abandonment

This section examines the law of abandonment in selected jurisdictions. This examination has not the ambition of providing an exhaustive comparative survey. What we have set out to do, instead, is to highlight common structural features of abandonment of immovable property and the variety of treatments to which they are subjected. The jurisdictions considered represent emblematic

⁴²G Ripert, *Les forces créatrices du droit* (LGDJ, 1955), 236.

⁴³M Laborde-Lacoste, *Vue d'ensemble du droit et de l'économie de la construction et du logement en 1965–1967: Aperçu de sociologie juridique: La propriété est-elle une 'fonction sociale'? Mélanges offerts à Jean Brêthe de La Gressaye* (Dalloz Brière, 1967), 398; Deroche (n 41), 76ff.

⁴⁴E Steiner, *French Law: A Comparative Approach* (Oxford University Press, 2018).

⁴⁵M Raff, 'Duguit and the German Property Law Tradition' in Babie and Viven-Wilksch (n 13), 96.

⁴⁶M Löhnig, 'The "Social Function of Property" in German Law' in Babie and Viven-Wilksch (n 13), 119.

⁴⁷BVerfGE 56, 249, 260 (1981).

⁴⁸In the Italian debate, see S Rodotà, *Il terribile diritto: Studi sulla proprietà privata e i beni comuni* (Il Mulino, 2013), 223 and 267, arguing that the social function shapes the very content of property and thus imposes on the owner a duty to pursue the collective good. On the point see also C Salvi, *Il contenuto del diritto di proprietà*, Artt. 832–833 (Giuffrè Francis Lefebvre, 2019), 45. *Contra*, P Barcellona, 'Proprietà (tutela costituzionale)' in *Digesto delle discipline privatistiche, Sezione civile*, vol 15 (UTET, 1997), 466. According to CM Bianca, *La proprietà* (Milan, 1999), 173, the Constitution requires coordination between individual and collective interests but entrusts the ordinary legislature with the task of achieving that balance. The debate also traces back to MS Giannini, 'Basi costituzionali della proprietà privata' (1971) 2 *Politica del diritto* 443, 456ff, who reconstructed Article 42 of the Constitution as a statutory reservation that establishes a 'preceptive' or 'normative' content limiting legislative discretion in the regulation of property rights and thereby potentially shaping the very essence of the right itself.

⁴⁹See *Corte cost.*, 22 October 2007, no. 348. Although the Court has affirmed that ownership entails obligations of efficiency and productivity—deriving from a coordinated reading of Article 42 with the principle of solidarity in Article 2 of the Constitution—such duties have been linked to the legislature's discretion in balancing individual ownership interests with the social function of property.

⁵⁰Salvi (n 48), 44.

expressions of the possible legal responses to abandonment in important Western legal traditions, particularly suited to highlighting how different conceptions of the social function of property may influence the legal treatment of real estate abandonment. Our only affirmative claim is that we aim to illuminate key contrasts and commonalities between very different legal systems. In fact, this comparative analysis is intended to show that, despite important historical and doctrinal differences, the legal responses to abandonment of immovable property are frequently shaped—either explicitly or implicitly—by underlying assumptions concerning the relationship between ownership, social responsibility, and collective interests.

A. The general definition of property abandonment: ‘factual’ and ‘legal’ abandonment

Turning now to law, we begin by noting that the general term ‘abandonment’ has two distinct meanings. First, it may denote the material act of deserting an asset, that is, cessation of use and failure to maintain, without any change in title. We call this desertion ‘factual abandonment’. Second, ‘abandonment’ may refer to a unilateral act by which the owner extinguishes their fee-simple interest in the property. We call this ‘legal abandonment’. Factual abandonment concerns the use of property; legal abandonment concerns entitlements.

Generally, the mere factual abandonment of an asset is never sufficient to alter its legal status, irrespective of the type of property involved. For an act to constitute legal abandonment, it must, at the very least, reflect the owner’s unilateral intention to renounce the right and to leave the property available for acquisition by others. According to the California Court of Appeals,

to constitute an abandonment in the strict legal sense there must be a parting with title that is unilateral, the owner must leave the property free to the acquisition of whoever wishes to claim it, and indifferent as to what may become of it ... A transfer of property from one person to another cannot be effected by abandonment, and abandonment cannot be made to a particular individual. A relinquishment by one person to another is not an abandonment.⁵¹

The French Court of Cassation has likewise held that ‘the surrender of a right cannot be inferred from the mere inaction of its holder and can only result from acts that unequivocally express the will to surrender.’⁵² In Italy, this distinction is reflected in the concepts of *de facto* abandonment and formal relinquishment.⁵³ The Court of Cassation has consistently held that any act of relinquishment is unilateral, complete, and legally effective by virtue of the express or tacit externalisation of the will to abandon, without any requirement that said intention be directed at or communicated to another person.⁵⁴ More recently, the Court has clarified that the intention to relinquish property must, like all acts of renunciation of rights, be unequivocal.⁵⁵

From the foregoing, we can identify at least three core features of legal abandonment: (i) it is unilateral in that it is not addressed to any particular person and requires neither knowledge nor acceptance by third parties; (ii) it has a subjective element, namely an unequivocal intention to relinquish all proprietary interests in the asset; and (iii) it has an objective element, consisting of an act, which can be tacit provided that it is unambiguous, through which the owner externalises that intent and thereby

⁵¹ *Bright v Gineste*, 284 P.2d 839 (Cal. Ct App. 1955).

⁵² Our own translation of Cour de Cassation, Chambre civile 3, du 1 avril 1992, 90-14.066: ‘la renonciation à un droit ne se déduit pas de la seule inaction de son titulaire et ne peut résulter que d’actes manifestant sans équivoque la volonté de renoncer’.

⁵³ C Bona, *L’abbandono mero degli immobili* (Editoriale Scientifica, 2017), 12ff.

⁵⁴ *Cassazione Civile*, 23 July 1997, nr 6872.

⁵⁵ *Cassazione Civile*, sez. V, 22 January 2024, nr 2132.

effects abandonment. The first two elements explain the theoretical distinction between abandonment and legal acts such as conveyances and forfeitures, in which unilaterality and the subjective element, respectively, are absent.⁵⁶

B. The legal responses to abandonment: the case of real estate property

Legal responses to abandonment vary with the type of property that is involved. As a general matter, both common-law and civil-law systems recognise the possibility of abandoning chattels when factual abandonment is accompanied by a clear and unequivocal intent to forgo any future claim. In practice, the owner must divest themselves of their title and all of their rights and interests intentionally and voluntarily as well as externalise that intention through conduct.⁵⁷ The owner must express no intention that the chattel be acquired by any particular person.⁵⁸ Once abandoned, it belongs to the first person to take possession of it.⁵⁹

The permissibility of abandoning immovable property is far more contentious because the deterioration and eventual reversion of buildings and land engage important public interests. Allowing an owner to shift the costs of abandonment onto the state amounts to an unwarranted collectivisation of private burdens. In practice, owners typically abandon real estate when the benefits of holding it fall below the costs of retention, say when the property yields minimal income, attracts no market demand even at nominal price, or is encumbered by substantial tax liabilities. Empirical studies from the United States in the 1970s and 1980s show that abandonment tends to be gradual: after a speculative acquisition, maintenance is deferred for tax purposes and, once assessments fall due, the property is abandoned outright because revenues cannot cover ongoing expenses.⁶⁰ As we noted in [Section I](#), abandonment may, in principle, yield limited positive benefits—such as the regeneration of natural habitats or reduced urban sprawl—but the problems that it creates will often outweigh these advantages. Local actors are likely to face significant burdens, from lost tax revenue⁶¹ to physical hazards such as building collapses and landslides.⁶²

1. Common law

Since the abandonment of immovable property can cause serious harm to communities, it matters a great deal whether the right to abandon forms part of the owner's entitlements. The common law generally prohibits the legal abandonment of fee-simple interests in land.⁶³ While an owner can abandon some of their interests, such as the benefit of a servitude,⁶⁴ they can never relinquish the title to

⁵⁶The distinction is explained clearly in EM Peñalver, 'The Illusory Right to Abandon' (2010) 109 (2) *Michigan Law Review* 191, 197ff. Conveyances, such as gifts and sales, are directed at a particular person, and the consent of the recipient is necessary, despite the owner's intent to sever the legal bonds with the asset; thus, there is no unilaterality. Forfeiture might resemble abandonment because it is a unilateral operation that is not directed at a particular person, but there is no psychological element because the person merely needs to perform some other act which has the loss of ownership rights as one of its consequences (and likely an unwelcome one). Thus, in forfeiture, dispossession can take on an involuntary and punitive dimension that is wholly alien to abandonment.

⁵⁷JG Sprankling, *Understanding Property Law*, 4th ed (Carolina Academic Press, 2017), § 4.03. See also Peñalver (n 56), 191 and 196. See also the earlier decision in *Haslem v Lockwood*, Supreme Court of Errors of Connecticut, Fairfield County 37 Conn. 500; 1871 Conn.

⁵⁸LJ Strahilevitz, 'The Right to Abandon' (2010) 158 (2) *University of Pennsylvania Law Review* 360, 376.

⁵⁹On the point, see *Hawkins v Mahoney*, Supreme Court of Montana, 990 P.2d 776 (1999).

⁶⁰See R Corenzwit Lieb et al, 'Abandonment of Residential Property in an Urban Context' (1974) 23 (3) *DePaul Law Review* 1188, who describes a study conducted by a private research company which concentrated on the abandonment problem in large metropolitan cities and cast the problem as being the final product of a number of extraneous contributing factors.

⁶¹For deeper insights on the study of the importance of taxes in abandonment decisions, see MJ White, 'Property Taxes and Urban Housing Abandonment' (1986) 20 (3) *Journal of Urban Economics* 312.

⁶²Scafidi et al (n 2), 288.

⁶³Peñalver (n 56), 200.

⁶⁴*Ibid*, when referring to the Restatement (Third) of Prop.: Servitudes? 7.4 (2000).

a fee-simple interest in immovable property.⁶⁵ This prohibition is generally justified by considerations of legal certainty. In *Cristofani v Board of Education*,⁶⁶ the Court of Special Appeals of Maryland inquired as follows:

if the title to fee simple real property could be abandoned, what would happen to it? It could not revert to the fee owner, as the fee owner was the person who abandoned the property. Thus, no one would own it, nor could anyone thereafter adversely possess it because there would be no fee owner against whom the adverse possession would be adverse, open and hostile. Would it escheat to the State? Would the law of land patents then apply?

The prohibition on abandonment can be traced back to the feudal period, when breaks in the chain of title threatened to undermine key political relationships. As Robertson explains, the rule against abandonment, or ‘abeyance of seisin’, protected the lord’s position by ensuring the continuous presence of tenants from whom feudal incidents could be demanded.⁶⁷ The most salient illustration of Robertson’s point that we could find is from contemporary Scots law which, though undeniably separate and distinct from English common law, is strongly influenced by it. In 2013 the Court of Session held that land may become ownerless, but only as a result of intestacy and insolvency and not through abandonment. When property becomes ownerless, title reverts to the Crown—which owns all land—by virtue of a power which is grounded in public rather than private law. The judgment typifies the general common-law aversion to allowing private parties to relinquish fee-simple interest over real estate:⁶⁸

the abandonment of land had been conceptually impossible under feudalism ... the question is whether there can be ownerless land. The answer to that is that land can indeed be ownerless, if by that is encompassed the situation in which the owner of the land ceases to exist. That can occur with the death of a person without heirs or upon the dissolution of a corporate body. In that situation, as is well known, the maxim *quod nullius est fit domini Regis* (that which is the property of no one belongs to the Crown) applies to land as it does to movables. ... however, it may be wrong to describe the exercise of what is a prerogative right of the Crown, to administer land which has become *bona vacantia*, as creating a real right of ownership in the Crown in the private law sense. The right of the Crown is more properly described as one derived from public law. It enables the Crown to take possession of ‘lost’ property, including land with no owner. The Crown can then administer the land for the benefit of the community and dispose of it to another person.

The legal response to real estate abandonment in common-law jurisdictions invites reflection on the role of the social-obligation norm of property. The English rules on abandonment are feudal—they are meant to ensure that lords are not left without tenants—but they also cohere with the post-liberal bundle-of-rights conception, in that ownership is treated not as a unitary, comprehensive right⁶⁹ but

⁶⁵ See *Pocono Springs Civic Association, Inc v MacKenzie*, 446 Pa. Superior Ct 445 (1995) 667 A.2d 233. It is open to question whether the abandonment of non-possessory interests is abandonment in the strict sense: real property rights that come short of a simple fee are often based on leases, and the lessee’s abandonment may be conceptualised as the termination of a contract rather than as the direct relinquishment of a proprietary interest. In this respect, JW Simonton, ‘Abandonment of Interests in Land’ (1930) 25 (3) *University of Illinois Law Review* 260, 263ff.

⁶⁶ *Cristofani v Board of Education of Prince George’s County*, Court of Special Appeals of Maryland, 2 November 1993, 98 Md App. 90, 632 A.2d 447. The Court concluded that ‘simply stated, while title to fee simple property may be lost or divested through adverse possession (excepting state property and/or governmental property), failure to pay taxes, judicial sales, and the like, it cannot be lost by abandonment. You can devise, bequeath, grant, deed, and give fee simple property away but you cannot abandon it’.

⁶⁷ JC Robertson, ‘Abandonment of Mineral Rights’ (1968) 21 (5) *Stanford Law Review* 1228.

⁶⁸ *Joint Liquidators of Scottish Coal Co Ltd v Scottish Environment Protection Agency (SEPA)*, Court of Session-Inner House, 12 December 2013, n. 108.

⁶⁹ See S Van Erp and B Akkermans (eds), *Cases, Materials and Text on Property Law* (Bloomsbury, 2012), 213ff and 306.

rather as a *numerus clausus* of property rights from which the right to abandon is excluded. In this sense, the English position implicitly reflects the notion of proprietary responsibility: owners owe duties to the community and resort to the state as a cost-bearing entity is regarded as a measure of last resort.⁷⁰ Consequently, abandonment of property is effective in English law only when it is connected to the acquisition of rights by another private party, as in adverse possession or the creation of real rights short of a full fee simple. Even though the social-obligation norm is only implicit, the legal response to real-estate abandonment underscores the primacy of the public interest: land is preserved as a rule and abandoned only as an exception, and only when a third party that can assume responsibility for maintaining it in productive condition is available.

2. Civil law

In the civil law, mere factual abandonment, even when coupled with intent to relinquish ownership, does not typically result in the legal abandonment of immovable property, which includes both housing and land. The civil-law jurisdictions which permit legal abandonment generally require a formal, written, and unilateral declaration of relinquishment. For example, the German *Bürgerliches Gesetzbuch* (BGB) provides that a right in land may be abandoned by means of a declaration to that effect and by deleting the right from the Land Register.⁷¹ French case law appears to adopt a permissive stance towards real-estate abandonment, although scholars contend that the right is largely theoretical.⁷²

Italy constitutes an especially significant case: a recent decision of the United Sections of the Court of Cassation in August 2025 warrants closer examination, offering an illustrative example of a civil-law approach that stands in marked contrast to the common-law response. In recent years, there have been many cases in which owners have sought to renounce title to immovable property. The case law culminated in two referrals for a preliminary ruling to the United Sections of the Court of Cassation,⁷³ which delivered its response in Judgment No. 23,093 of August 2025, the first uniform interpretative ruling on the matter.⁷⁴ The two referrals raised two issues: (i) the general admissibility of the power to relinquish ownership over immovable property unilaterally and (ii) the extent to which courts may review the formal validity of such acts. The questions arose from actions that were brought by the Ministry of Economy and Finance and the State Property Agency. The defendants had renounced ownership of land parcels that were classified as high-risk under the Hydrogeological Asset Plan and listed in the Italian Inventory of Landslide Phenomena. The authorities sought a declaration to the effect that said unilateral relinquishments were null, invalid, and ineffective. The legal issue was that Italian law contains no provision that authorises or prohibits relinquishment of immovable property. Scholarly opinion had long been divided: some Italian authors viewed abandonment as generally admissible,⁷⁵ while others considered it unlawful for being contrary to the social function of property

⁷⁰For deeper insights, see K von Schütz, 'Keeping It Private: The Impossibility of Abandoning Ownership and the Horror Vacui of the Common Law of Property' (2021) 66 (4) *McGill Law Journal* 721, 744.

⁷¹§875 BGB.

⁷²H Perinet-Marquet, 'Droit des biens' (2016) 15 *La semaine juridique—Édition Générale* 753.

⁷³See Tribunal of L'Aquila, 15 January 2024, nr 233 and Tribunal of Venice, 22 April 2024, nr 4569.

⁷⁴*Cassazione civile*, sez. un., 11 August 2025, nr 23,093.

⁷⁵Some Italian scholars who described unilateral acts of relinquishment as permissible justified this position by reference to several provisions of the Italian Civil Code that explicitly provide that a person who wishes to be discharged from obligations which they have assumed previously is entitled to renounce their property rights or shares in common property. See C Salvi, *Proprietà e possesso* (Giappichelli, 2021) at 135; E Damiani, 'La rinuncia alla proprietà immobiliare è abuso del diritto?' (2022) 1 *Jus Civile* 5; M Bellinva, 'La rinuncia alla proprietà ed ai diritti reali di godimento' Studi No. 216-2014/C for the National Council of Notaries (2014), § 3, available at www.notariato.it/sites/default/files/216-14-c.pdf; T Pasquino, 'La rinuncia alla proprietà immobiliare, con particolare riferimento alla quota in multiproprietà' (2019) 2 *Nuovo diritto civile* 25; V. Brizzolari, 'La rinuncia alla proprietà immobiliare' (2017) 1 *Rivista di diritto civile* 187, 207.

because ownerless immovables accrue to the state automatically under Article 827 of the Civil Code. In this perspective, abandonment allows the costs of degraded property to be shifted onto the public.⁷⁶

The United Sections confirmed that relinquishment is lawful. It held that renunciation of ownership of immovable property constitutes a unilateral, non-receptive act whose sole function is to extinguish a right. Legal abandonment cannot result from the mere fact of physical abandonment—there must be a unilateral written declaration of the owner's unequivocal intention to relinquish. This holding follows from the general rule that contracts which create, transfer, or modify real rights in immovable property must be executed in writing and entered in the Land Register in order to be enforceable against third parties. Consequently, factual abandonment is never sufficient to sever the legal bond between owner and real estate. It is not even a necessary condition for legal abandonment. Legal abandonment therefore falls within the powers of disposition which are described in Article 832 of the Civil Code. Ownership is extinguished, while its subsequent acquisition by the state occurs *ex lege* under Article 827 of the Civil Code as a consequence of the asset becoming vacant. Although Article 2 of the Constitution permits the imposition of obligations on owners in the name of solidarity, particularly to safeguard fundamental collective interests in health and the environment, the Court held that said Article does not create a regime of compulsory ownership because making relinquishment conditional on the owner's satisfaction of public claims would be an anomalous form of horizontal subsidiarity—private owners would be required to fulfil social functions instead of public authorities.

As for the question of validity, the Attorney General, in Opinion No. 37,243/2017, had acknowledged that relinquishment is one of the prerogatives that are recognised by Article 832 but argued that its validity should be assessed on a case-by-case basis under the general rules of contract law, in light of its concrete purpose (*causa in concreto*). On this view, an act of relinquishment might be invalid if undertaken solely to evade statutory obligations. The United Sections rejected this restrictive approach. They held that the act of relinquishment cannot be invalidated on grounds of incompatibility with Article 42 of the Constitution and the social function of property because Article 42 is a directive to the legislator and not a directly enforceable rule. Abandonment cannot constitute abuse of rights, either, because it is incompatible with any fraudulent purpose by its very nature.

This recent development in Italian law was initially thought to reflect a stance that is diametrically opposed to that of the common law. Despite the constitutional recognition of the social function of property and the explicit reference to social duties in Article 2 of the Constitution, the Court of Cassation endorsed an unrestricted power to abandon property in immovables. The ruling comes close to embracing a classical liberal, absolutist conception of ownership: the owner may dispose of the property entirely at will and even renounce it and transfer its burdens to the community unless and until a specific legislative measure is introduced that prohibits or restricts said right.

However, this absolutist development was curtailed by Budget Law No. 199 of 2025, which made any act of legal abandonment of immovable property invalid unless accompanied by documentation which certifies that the property is compliant with all applicable regulations, including environmental urban-planning and seismic-protection legislation. Although Budget Law No. 199 appears only to prevent owners from shifting negative externalities onto the community, in truth it is so far-reaching that it often forecloses the possibility of legal abandonment altogether, even when transferring ownership to the state might be socially desirable, a possibility to which we will turn shortly.

⁷⁶For a general reconstruction of the Italian approach to property abandonment, see T De Mari Casareto dal Verme, 'Ammissibilità della rinuncia abdicativa al diritto di proprietà immobiliare e suo perimetro di sindacabilità giudiziale: la parola ai giudici di legittimità' (2024) 4 *Jus Civile* 727.

IV. Abandonment and the environment

Many historical, sociological, and technical legal factors explain the wide variability of the legal responses to abandonment that we described in the preceding section. What matters most to the present ends is that each of these responses is linked, in some shape or another, to the social function of property, and that all of them concern entitlements rather than uses. Whether the owner may relinquish fee-simple title to real estate unilaterally depends on the strength and form of the social-obligation norm. At the same time, many sociological and economic studies warn that the most severe negative effects—irrespective of the positive ones—linked to abandonment in the real world arise not necessarily from transfers of title but from the degradation caused by unproductive and harmful non-use of property. In the legal systems in which title can be transferred by a written declaration, the transfer occurs—regardless of whether the value of property is positive or negative.⁷⁷

Accordingly, in this section, we will argue for a change of perspective by trying to transcend the technical differences between legal traditions and by placing *factual* abandonment at the heart of inquiry. Thereafter, we will re-examine the relationship between non-use and the social function of property. We will explain how non-use can contravene the social-obligation norm when it fails to promote the optimal use of resources (Section IV.A), we will situate environmental concerns within the modern conception of property and its social function (Section IV.B), and we will explain why we believe that factual abandonment may result in *negligent non-use*, which is discouraged by environmental law and liability regimes (Section IV.C).

A. The social function of property and negligent non-use

It is commonly recognised that the owner's powers include the right not to use property, despite the fact that a stronger form of the social function of property would require each owner to make proactive and productive use of their assets.⁷⁸ A middle path would be to say that owners' prerogatives—including the prerogative of non-use—should be exercised in the pursuit of the 'optimal use' of resources, encompassing productive, socially beneficial, and environmentally sustainable management of real estate. If approached from this angle, factual abandonment may amount not merely to non-use but to *negligent non-use*, when the owner's omission conflicts with the social-obligation norm of property by failing to undertake the affirmative conduct necessary to ensure optimal use of the asset.

This proposition accords with Locke's anti-waste imperative.⁷⁹ From a Lockean standpoint, minimising waste is a core commitment of property law, and many rules can be read as specific applications of a broader mandate to prevent the negligent or intentional dissipation of resources in the absence of use or enjoyment. For Locke, the act of claiming ownership excludes an asset from alternative uses by others; consequently, spoilage, destruction, and abandonment that leads to degradation are akin to theft of value from others.⁸⁰ This idea complements Duguit's theory of the social function of property: the anti-waste principle is not purely distributive; it also accommodates efficiency, which is intended no longer exclusively as utility maximisation⁸¹ but as 'optimal use of

⁷⁷ On this point, Strahilevitz (n 58), 362, 405ff, sets out a taxonomy of the circumstances in which property may be abandoned. A first category comprises assets with negative market value, which may in turn be divided into those with positive subjective value (eg sentimental worth) and those with negative subjective value. The former are rarely abandoned, whereas the latter account for most abandonment cases. Yet even property with positive market value may be abandoned, and this occurs more frequently than is generally assumed. Although such cases typically involve movables—the author cites, for example, memorabilia associated with tyrannies or dictatorships inherited from family members, which may carry market value but would find no willing buyers—the possibility of similar phenomena cannot be excluded a priori for immovable property.

⁷⁸ Duguit (n 11), 153.

⁷⁹ The idea of property law's anti-waste commitment is traced back to John Locke, *Two Treatises of Government* (1823), 117. On the point, see MM Render, 'Waste, Property, and Useless Things' (2025) 138 (5) *Harvard Law Review* 1260, 1267ff.

⁸⁰ Render (n 79), 1276.

⁸¹ Ibid, 1281.

resources,⁸² which includes a balancing exercise of productive needs with social and environmental interests.

The pursuit of socially efficient property rights requires two well-known symmetrical risks to be avoided.⁸³ The first one is the tragedy of the commons, whereby the overuse of accessible resources leads to their depletion when all individuals are acting in their own self-interest and against their collective interest.⁸⁴ The second one is the tragedy of the anticommons,⁸⁵ whereby excessively fragmented entitlements and veto powers obstruct productive use, resulting in underdevelopment and wasted potential.⁸⁶

Negligent or suboptimal non-use of property is seldom regulated, but there are exceptions. Duguit referred to the French Acts of 6 October 1916 and 4 May 1918, which required the cultivation of uncultivated land. Under these measures, owners or regular tenants were first invited by the local authorities to fulfil what was regarded as their duty; if they were unable or unwilling to do so, the administration could requisition the land and grant it to another farmer temporarily. Similarly, in Italy, Article 838 of the Civil Code provides that, when an owner abandons the conservation, cultivation, or use of assets that are relevant to national production in a way that causes serious harm to production, their property may be expropriated with fair compensation. The same rule applies when the deterioration of the assets seriously undermines the appearance of cities or the interests of art, history, or public health. The case law confirms that maintaining property in good condition is not only an expression of the rights that are inherent in ownership but also a duty that the legislature enforces in various ways.⁸⁷ In Germany, the Federal State of Hesse has drafted a law which would prevent landlords from leaving rental properties empty for longer than six months without valid justification. This mechanism is similar in purport to the vacancy taxes that have been adopted in the United States and in some European countries, such as France and Ireland.

All of these measures embody a contemporary commitment to optimality. They also resonate with Dagan's account of liberal property, which grounds ownership in the value of individual self-determination and explicitly casts housing as essential to personal autonomy.⁸⁸ What is being pursued is not efficiency in the neoclassical economic sense but human flourishing—of both owners and non-owners—within what Dagan describes as an individualism of living with others in the context of diverse and interdependent social spheres.

All in all, the social-obligation norm of Western legal systems does not include an affirmative duty to put one's property to optimal use. However, doctrines such as abuse of rights and liability rules set limits on use in order to ensure that it does not harm others. Negligent non-use, just like acts that injure others, should be constrained in the name of the social function of property. This approach also resonates with modern liberal theories of property which prioritise individual autonomy while limiting exercises of sovereignty that undermine collective self-determination.⁸⁹

⁸² G Hull, 'Clearing the Rubbish: Locke, the Waste Proviso, and the Moral Justification of Intellectual Property' (2009) 23 (1) *Public Affairs Quarterly* 67, 68.

⁸³ *Ibid.*, 68–69.

⁸⁴ G Hardin, 'The Tragedy of the Commons' (1968) 162 (3859) *Science* 1243.

⁸⁵ M Heller, 'The Tragedy of the Anticommons: Property in the Transition from Marx to Markets' (1998) 111 (3) *Harvard Law Review* 621; M Heller, 'Anticommons Theory' in B Hudson, J Rosenbloom, and D Cole (eds), *Handbook of the Study of the Commons* (Routledge, 2019), 63. A modern reading of the theory of anticommons—understood as 'ownership' and, on the other hand, 'regulatory' anticommons—in order to guide any attempt to develop green infrastructures—is provided by G Bellantuono, 'The Regulatory Anticommons of Green Infrastructures' (2014) 37 (2) *European Journal of Law and Economics* 325.

⁸⁶ Hull (n 82), 68–69.

⁸⁷ Tribunal of Genoa, 5 February 2019.

⁸⁸ H Dagan, 'The Human Right to Private Property' (2017) 18 (2) *Theoretical Inquiries in Law* 391, 409. See also Crawford (n 20), 1097, who notes that 'housing is needed for security (and arguably good health); thus 'where one lives usually constitutes an integral part of one's identity'.

⁸⁹ Morris Cohen, in his contribution MR Cohen, 'Property and Sovereignty' (1927) 13 (1) *Cornell Law Quarterly* 8, described property as a form of empowerment, noting that property right is a relation not between an owner and a thing but between

B. Environmental protection and property law

Now we will argue that environmental protection is an expression of collective self-determination⁹⁰ which should activate the social-obligation norm of property. We live in an age of heightened environmental concern and we have accumulated a sizeable corpus of environmental laws. However, the relationship between environmental law and property law has, in the words of Howarth, 'long been controversial and unhappy'.⁹¹ The two appear to have developed in isolation,⁹² and they advance different objectives: environmental law furthers collective societal goals, whereas property law advances individualistic interests. The tension is readily apparent from the concern, common among environmental lawyers, that the protection of property rights undermines that of the environment (and vice versa).⁹³ Yet property and the environment are enmeshed in actuality⁹⁴ and property rights can indeed positively address certain environmental challenges.⁹⁵

Many have inquired how property law can serve the interests that environmental law protects.⁹⁶ The question is whether changes to the current structure of property rights are necessary to protect environmental interests,⁹⁷ the latter being the preservation and sustainable management of natural resources and ecosystems to ensure a healthy and resilient environment for present and future generations. Some may view this framing of the problem as controversial—it is not obvious why property rights should further collectivist goals.⁹⁸ To the present ends, we assume with Cole that there are no principled reasons to keep the two distinct and that all obstacles to their integration are attributable to political or practical causes.⁹⁹

The connection between the social function of property and environmental protection has become increasingly salient to contemporary legal theory. Alexander argues that the social-obligation norm explains restrictions on owners' freedom to use their land when the community regards that use as contrary to collective interests, notably in the fields of historic preservation, environmental regulation, and public-trust doctrines such as beach-access rights.¹⁰⁰ This approach is closely tied to the

the owner and other individuals in reference to things, meaning that 'the dominion over things' that 'the legal order confers on those called owners' empowers them in their interpersonal relations and thus also implies a private '*imperium* over [their] fellow human beings' (Cohen, 12–13). On this point, see also Dagan (n 88), 398. Dagan later developed this concept into a form of property empowerment that 'enhances people's self-determination. But as such property also disables (other) people and renders them vulnerable to owners' authority. Therefore, to be (and remain) legitimate, property requires constant vigilance. A genuinely liberal property must expand people's opportunities for individual and collective self-determination while carefully restricting their options of interpersonal domination'. See Dagan (n 28), 281.

⁹⁰L Droz, 'Redefining Sustainability: From Self-Determination to Environmental Autonomy' (2019) 4 (3) *Philosophies* 42.

⁹¹D Howarth, 'Environmental Law and Private Law' in E Lees and JE Viñuales (eds), *The Oxford Handbook of Comparative Environmental Law* (Oxford University Press, 2019), 1092. Please note that in his original work Howarth referred to private law in its entirety, thereby including property law.

⁹²S Bell, D McGillivray, and O Pedersen, *Environmental Law* (Oxford University Press, 2013), 280–3; P Cane, 'Using Tort Law to Enforce Environmental Regulations?' (2002) 41 (3) *Washburn Law Journal* 427–68.

⁹³H Doremus, 'Climate Change and the Evolution of Property Rights' (2011) 1 (4) *UC Irvine Law Review* 1091.

⁹⁴See, eg, R Kundis Craig, "'Stationarity Is Dead"—Long Live Transformation: Five Principles for Climate Change Adaptation Law' (2010) 34 (1) *Harvard Environmental Law Review* 9, 16 and 61.

⁹⁵D Grinlinton, 'The Intersection of Property Rights and Environmental Law' (2023) 25 (3) *Environmental Law Review* 202; B France-Hudson, 'Surprisingly Social: Private Property and Environmental Management' (2017) 29 (1) *Journal of Environmental Law*, 101.

⁹⁶Howarth (n 91), 1095ff.

⁹⁷*Ibid.* See also C Rodgers, 'Nature's Place? Property Rights, Property Rules and Environmental Stewardship' (2009) 68 (3) *Cambridge Law Journal* 550.

⁹⁸Paul Babie argues that climate change 'is a problem made possible by the concept of private property, and made real by its idea'. See P Babie, 'Idea, Sovereignty, Eco-colonialism and the Future' (2010) 19 (3) *Griffith Law Review* 527, 542. Cf J Holder and M Lee, *Environmental Protection, Law and Policy* (Cambridge University Press, 2007), 330; N Stern, *The Economics of Climate Change: The Stern Review* (Cambridge University Press, 2007), 1, 25, and 36.

⁹⁹See generally D Cole, *Pollution and Property: Comparing Ownership Institutions for Environmental Protection* (Cambridge University Press, 2002) for a discussion of the practical and political problems.

¹⁰⁰Alexander (n 9), 797.

noxious-use doctrine, under which a regulation that is designed to prevent harmful uses does not amount to a compensable taking because the prohibited use was never part of the owner's entitlement. The doctrine can be traced back to the 19th-century jurisprudence of the US Supreme Court, notably *Mugler v Kansas*, but it was weakened considerably by *Lucas v South Carolina Coastal Council*.¹⁰¹ Alexander suggests that the debate about whether environmental regulation prevents harm or confers benefits risks obscuring the real issue, which is whether the owner is obliged to contribute to the vitality of community institutions. If this key question is answered in the affirmative, restrictions on land use that serve environmental purposes ought to be part and parcel of landowners' duties.¹⁰²

A similar finding emerges from the progressive property theory. Alexander, Peñalver, Singer, and Underkuffler argue that the values which are embedded in property extend far beyond wealth maximisation and include life, physical security, autonomy, knowledge, happiness, and, crucially, responsibilities for others, future generations, and the natural environment.¹⁰³ Property, thus conceived, is not merely an institution of entitlement but a moral and political construct that requires attentiveness to the ecological and social effects of ownership. Crawford also develops this reasoning by insisting that any account of the social function of property must incorporate sustainability. In his view, the ecological aspect of property is not a separate concern but a constitutive dimension of the social function itself. This implies that socio-environmentalism—drawing from US environmental law, human rights discourse, and global environmental justice movements—should be seen as a central element of the property regime. The social function of property also provides a normative bridge between land use and environmental stewardship in cities, where these two issues are inseparable.¹⁰⁴

National, international, and supranational legal instruments cover environmental law extensively, often in ways that affect property. In France, Deroche traces national environmental policies—particularly since the 1970s—to the broader socialisation of private law that was inspired by Duguit's notion of the social function, which ultimately gave rise to the idea that rural property has an environmental function.¹⁰⁵ The Charter for the Environment has had constitutional force since 2005. It recognises that 'everyone is under a duty to participate in preserving and enhancing the environment' (Article 2).¹⁰⁶ In Italy, Article 9 of the Constitution now expressly provides for the protection of the environment, biodiversity, and ecosystems in the interest of future generations. Environmental issues have permeated private¹⁰⁷ and property law.¹⁰⁸ The case law increasingly acknowledges that environmental protection is a constitutional interest which the legislator must pursue when regulating and limiting private ownership under the legislative mandate of Article 42 of the Constitution.¹⁰⁹ Italian scholars have long written of the functionalisation of property for the protection of environmental

¹⁰¹ *Ibid.*, at 799–800.

¹⁰² *Ibid.*, 799.

¹⁰³ Alexander et al (n 19), 743–44.

¹⁰⁴ Crawford (n 20), 1092.

¹⁰⁵ Deroche (n 41), 69–70.

¹⁰⁶ The French Constitutional Council has clarified that the general provisions of the 2005 Environmental Charter are not merely programmatic or philosophical but possess binding constitutional force. In its 2009 decision on the carbon tax (DC 2009-599), the Council held that the duties set out in Articles 2–4 of the Charter—preservation, prevention, and limitation of environmental harm, and reparation of damage—constitute objectives with constitutional value. See D Marrani, 'Reinforcing Environmental Rights: The French Charter for the Environment' (2015) 25 *Revista Europea de Derechos Fundamentales* 383, 396–97.

¹⁰⁷ U Salanitro, 'Tutela dell'ambiente e strumenti di diritto privato' (2009) 2 *Rassegna di diritto civile* 1.

¹⁰⁸ M Pennasilico, 'La "sostenibilità ambientale" nella dimensione civil-costituzionale: verso un diritto dello "sviluppo umano ed ecologico"' (2020) 3 *Rivista quadrimestrale di diritto dell'ambiente* 6.

¹⁰⁹ Italian Constitutional Court, 11 July 1989, No 391, had already held that in the constitutional framework, Article 9(2) of the Constitution, which enshrines the interest in preserving the natural environment for its use as an ecological good and 'accords primacy to the aesthetic-cultural value' (see Constitutional Court Nos 359 of 1985 and 151 of 1986), must be read in conjunction with the social function of property that is guaranteed by Article 42(2). More recently, in the context of the protection of common lands (*usi civici*), the Court reaffirmed that 'there exists, therefore, an inextricable connection between the economic, social, and environmental dimensions, which constitutes one of the cases in which the combined principles

values,¹¹⁰ which is conceived of as a corollary to the broader functionalisation of patrimonial interests for the existential values of individuals.

Environmental protection is enshrined as a legislative objective in EU primary law. Although the EU lacks general competence on property, the Court of Justice of the European Union (CJEU) has recognised environmental protection as a legitimate public interest that is capable of justifying limitations on property rights.¹¹¹ This principle actualises the regulatory provisions of primary EU law and, specifically, Article 191 of the Treaty on the Functioning of the European Union (TFEU), which establishes environmental protection as an EU objective, grounding Member States' action in the preventive and precautionary principles directed to the 'prudent and rational utilisation of natural resources'; as well as Article 37 of the EU Charter of Fundamental Rights (EUCFR) and Article 11 TFEU that provide the integration of a high level of environmental protection and the principle of sustainable development into the policies of the Union.

C. *Factual abandonment and the environment: the deficits of environmental and liability rules*

Given the emerging idea that property has an environmental function, the right to non-use should be considered socially undesirable when it produces—or contributes to producing—collective harms by damaging common resources and thereby undermining collective self-determination,¹¹² regardless of whether perfect title is transferred. The elevation of environmental protection in national and transnational legal frameworks has yielded a number of regulatory constraints and liability rules. We will presently attempt to demonstrate that, as far as EU law is concerned, the limitations of these rules are substantial enough to warrant consideration of the treatment of factual abandonment in property law.

In brief, there are at least three mechanisms through which real-estate abandonment produces environmental externalities: (i) abandonment facilitates the illicit disposal of hazardous waste or polluting substances by third parties; (ii) the chattels that remain on abandoned premises can release contaminants; and (iii) the decay of the abandoned site can produce emissions. Abandoned residential buildings may deteriorate to the point of releasing pollutants into the air, soil, and water, often through asbestos components, deteriorating pipes, or illegal dumping. Abandoned industrial sites pose even greater risks: derelict factories typically contain heavy metals, toxic sludges, and methane emissions which degrade the surrounding environment. Agricultural land, when left unused, does

of personal development, landscape protection, and the social function of property find specific implementation' (Italian Constitutional Court, 31 May 2018, No 113).

¹¹⁰On the environmental function of property in the Italian legal system, see E Marseglia, 'La funzione ambientale della proprietà' (2024) 3 *Giustizia Civile* 608ff; Pennasilico (n 108), 22ff; S Pagliantini, 'Sul c.d. Contratto Ecologico' (2016) 2 *Nuova giurisprudenza civile commentata* 339; T Dibenedetto, 'La "conversione ecologica" della proprietà privata' (2020) 2 *Rivista quadrimestrale di diritto ambientale* 122, 132ff; S Praduroux, 'Il privato, la proprietà e l'ambiente: spunti di riflessione da un confronto tra il diritto italiano e quello francese' (2021) 2 *Rivista quadrimestrale di diritto ambientale* 526; S Persia, 'Proprietà e contratto nel paradigma del diritto civile "sostenibile"' (2018) 1 *Rivista quadrimestrale di diritto ambientale* 9; S Sitta, 'Funzionalizzazione ambientale del diritto di proprietà e bilanciamento di valori: gli assetti fondiari collettivi e, in particolare, il diritto di uso civico' (2024) 3 *Dirittifondamentali.it* 338.

¹¹¹J Krommendijk and D Sanderink, 'The Role of Fundamental Rights in the Environmental Case Law of the CJEU' (2023) 2 (3) *European Law Open* 616, 619 noted that environmental provisions in the EUCFR function both as 'swords' when invoked by private individuals to advance environmental protection or combat pollution (notably Arts 2, 7, 35, and 37) and as 'shields' when raised to defend against claims of property infringement. The latter version has played a more prominent role in the case law. See further *Križan* (C-416/10), concerning the annulment of a landfill permit for breach of the Integrated Pollution Prevention and Control Directive (2008/1/EC), the CJEU Grand Chamber held that the annulment did not amount to an unjustified interference with the operator's property rights, emphasising environmental protection as a legitimate public interest. Similarly, in *Standley* (C-293/97), UK farmers challenged the Nitrates Directive (91/676/EEC) as violating their property rights, but the Court confirmed that private property interests cannot override the general interest in environmental protection. See also A Quintavalla and O Yalnazov, 'The Death of Law: Mandatory Requirements and Environmental Protection' (2021) 13 (2) *European Journal of Legal Studies* 9.

¹¹²Dagan (n 27), 281.

not revert seamlessly to natural equilibrium but first comes to host invasive species and then often goes ablaze.

Nevertheless, we should note that the environmental consequences of abandonment are not uniformly negative: in certain instances, such as the decline of farmland bird populations owing to intensive agriculture, abandonment may provide temporary ecological relief.¹¹³ In these circumstances, encouraging abandonment strategically may even advance conservation goals. However, these cases are exceptional. More often, the desertion of rural or mountainous areas undermines semi-natural habitats,¹¹⁴ while the abandonment of urban or industrial properties attracts criminality, fire, and waste. These phenomena are further exacerbated by the parallel abandonment of chattels, including hazardous materials such as discarded electronics,¹¹⁵ which release substances like lead, mercury, and cadmium into the soil and air, contaminating water sources, harming wildlife, and creating severe risks to human health.¹¹⁶

Specific legislation on abandonment and environmental protection tends to focus primarily on chattels, by prohibiting the abandonment of waste. In the United States, a range of state and local laws proscribe the non-consensual dumping of waste on both public and private land.¹¹⁷ At the federal level, the Resource Conservation and Recovery Act of 1976 grants the Environmental Protection Agency broad authority to regulate hazardous waste. In the European Union, the Waste Framework Directive (WFD) pursues the similar objective of preventing or reducing the adverse impacts of waste and its management.¹¹⁸ Article 13 WFD requires Member States to adopt the necessary measures to prohibit the abandonment, dumping, or uncontrolled management of waste, including littering.¹¹⁹ Member States are expected to ensure that waste is managed safely and to minimise its impact on the environment and public health.¹²⁰ The case law has confirmed that the mere operation of an unauthorised landfill is in itself deemed harmful to the environment, irrespective of evidence of actual damage.¹²¹ Nonetheless, the WFD does not extend to land *in situ*, including unexcavated contaminated soil or buildings that are permanently attached to the land, even though the abandonment of real estate often makes unlawful dumping easier by eliminating opportunities for effective surveillance.

It is not clear whether pollution from chattels on abandoned property (see point (ii) earlier) falls within the scope of the WFD. This issue might arise when initially innocuous objects or substances acquire the legal status of ‘waste’. For example, electronic devices that are programmed to become obsolescent may, when they do become obsolescent, be deemed subject to *cumulative* abandonment, and the owner may be held responsible for them. Some support for this interpretation can be found in the case law of the CJEU, which has held that, in Article 3(1) of Directive 2008/98, both the verb

¹¹³For these considerations, see the AGRI study (n 1) at 57–58.

¹¹⁴See D MacDonald et al, ‘Agricultural Abandonment in Mountain Areas of Europe: Environmental Consequences and Policy Response’ (2000) 59 (1) *Journal of Environmental Management* 47.

¹¹⁵Electronic devices comprise precious and toxic metals which have severe human health and environmental effects if they are not disposed of carefully. The increased generation of so-called e-waste is therefore a rising concern, particularly in developing countries with emerging economies, weak public health infrastructures, and rapidly growing populations. See M Zaffar Hashmi, ‘Preface’ in M Zaffar Hashmi and A Varma (eds), *Electronic Waste Pollution: Environmental Occurrence and Treatment Technologies* (Springer, 2019).

¹¹⁶Render (n 79), 1263. On the negative environmental externalities of planned obsolescence, see also J Guiltinan, ‘Creative Destruction and Destructive Creations: Environmental Ethics and Planned Obsolescence’ (2000) 89 (1) *Journal of Business Ethics* 19.

¹¹⁷Strahilevitz (n 58), 363 reporting Alaska Stat. Ann. § 46.06.080; Cal. Penal Code § 374.3 (West 2008); Tex. Health & Safety § 365.012.

¹¹⁸Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives.

¹¹⁹Article 36 of Directive 2008/98/EC; see also Case C-387/97 *Commission v Greece* [2000] ECR I-5047 paras 55 and 58.

¹²⁰See, eg, Article 13 of Directive 2008/98/EC.

¹²¹Case C-449/03, *Commission v France; San Rocco*, paras 67–68; Case C-494/01, *Commission of the European Communities v Ireland*, para 169.

‘to discard’ and the noun ‘waste’ must be construed broadly. The owner’s intention to dispose of an object that is no longer deemed useful and the fact that disposal occurs in circumstances which are liable to cause environmental harm are decisive.¹²²

When considering the environmental externalities from the abandonment of real estate—be they from dumping, deteriorating chattels (i–ii), or emissions from abandoned sites (iii)—the key questions are always about the environmental liability of property owners and the collective interest in remediation, as well as the capacity of existing liability regimes to disincentivise factual abandonment sufficiently. To answer this question, it is necessary to determine whether an omission, such as failure to supervise or maintain property, can ground environmental liability. In the United States, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, 42 USC § 9607) 1980 established requirements for abandoned hazardous waste sites, as well as providing for the liability of persons who are responsible for releases of hazardous waste at those sites and establishing a trust fund to provide for clean-up when the responsible party is not identified. It imposes strict, joint, and several liability on a wide range of ‘potentially responsible parties’, including current owners of contaminated sites. The courts have consistently held that the federal government does not need to prove that the current owner contributed to the contamination in order to establish liability.¹²³ Although CERCLA includes an innocent-landowners defence,¹²⁴ it is construed narrowly and requires purchasers to demonstrate that they ‘did not know and had no reason to know’ of the contamination despite having made ‘all appropriate inquiries’ prior to acquisition.¹²⁵

In contrast, the Environmental Liability Directive implements the polluter-pays principle (Recital 2; Art 1), according to which negligence or intent must be shown.¹²⁶ The CJEU judgment in *Fipa*¹²⁷ confirmed that liability under the Directive is based on fault.¹²⁸ The CJEU held that innocent landowners cannot be compelled to engage in preventive or remedial action when they have not contributed to the pollution, even if the actual polluters cannot be identified. The Court emphasised the importance of causality. Some national courts, such as those of Italy, have found that a landowner may be liable jointly with the actual polluter not because liability is strict but because sometimes it is possible to establish fault—at least in the form of negligence. Negligence may take the form of an omission, such as failure to adopt adequate safeguards to properly secure a property. However, liability still requires proof of intent or fault, in the sense that the owner must have been aware of the unlawful conduct and tolerated it.¹²⁹

In sum, unlike in the United States, EU law on environmental liability does not give rise to any intrinsic duty of care that would restrict an owner’s power of non-use of real estate to prevent third-party pollution or deterioration into contamination. Such an obligation arises only once the owner becomes aware of ongoing pollution and tolerates it, in which case they are liable for the future harm

¹²² C-624/17, *Tronex BV*, 4 July 2019, ECLI: ECLI:EU:C:2019:564.

¹²³ B Pozzo, B Vanheusden, L Bergkamp, and E Brans, ‘The Remediation of Contaminated Sites and the Problem of Assessing the Liability of the Innocent Landowner: A Comparative Law Perspective’ (2015) 23 (6) *European Review of Private Law* 1071, 1071–72.

¹²⁴ § 9607(b)(3), § 9601(35) (A), (B)l.

¹²⁵ Scholars note that the defence has been largely ineffective, leaving owners objectively liable even where they did not pollute. This strict regime operates as a powerful deterrent against neglect of contaminated properties. See Pozzo et al (n 123), 1072.

¹²⁶ Directive 2004/35/CE of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage.

¹²⁷ Case C-534/13, *Fipa*, ECLI:EU:C:2015:140.

¹²⁸ According to Article 3, a form of strict liability is established only for those activities that are listed in Annex III of the Directive. Therefore, the Court observes that ‘none of the respondents in the cases before the referring court currently engages in any of the activities listed in Annex III to Directive 2004/35. In those circumstances, it must be determined to what extent those respondents may be covered by the directive pursuant to Article 3(1)(b) thereof, which concerns damage caused by activities other than those listed in that annex, where the operator has been at fault or negligent’.

¹²⁹ Italian Council of State, s. IV, 26 August 2024, nr 7236; TAR (Administrative Regional Court) Campania—Salerno, s. III, 16 September 2024, nr 1665.

that could have been prevented or remedied. The cost of everything else that happened before that moment falls on the community, especially when, as is common, the actual polluters remain unidentified, that is, when abandoned sites are used as dumping grounds. Therefore, EU environmental liability frequently fails to disincentivise factual abandonment, even though it can cause or contribute to pollution in practice.

The focus may therefore shift to national liability regimes to assess whether they can fill the gaps left by EU environmental law. Domestic liability rules may provide remedies for externalities arising from abandonment that harm individual interests, such as health or property, but they often fall short in protecting the environment as a collective good. This is so because environmental harm frequently affects ecosystems in ways that are diffuse, long-term, and difficult to attribute to specific actors, making traditional liability frameworks less effective.

Moreover, even when successful in holding private actors accountable for environmental harm, national liability frameworks usually prioritise compensatory damages over preventive and remediation measures, typical of environmental liability rules. Against this background, while individual claims within national liability regimes may encourage more responsible behaviour, they remain insufficient from a preventive and precautionary perspective aimed at environmental protection. What could therefore constitute a genuine step forward in promoting a positive social-obligation norm of property would be an interpretative evolution of environmental law aimed at fostering not only responsible use but also responsible non-use of resources, through an adequate framework of incentives and deterrence mechanisms targeting unsustainable conduct, including omissions.

V. The social function of (legal) abandonment

The preceding sections showed that property and environmental law do little to prevent the negative externalities that follow factual abandonment. Prohibitions and restrictions on legal abandonment do not prevent owners from materially abandoning real estate, nor do they avert the environmental and social harms resulting from degradation and neglect. Environmental liability, be it national or supranational in origin, does not incentivise socially responsibility in decisions about use and non-use.

Against this background, our proposal is not simply to reform either property law or environmental law in isolation but rather to rethink the interaction between property and environmental law by placing the social function of property as a guiding principle to achieve environmental protection. In this view, from a property law perspective, in certain circumstances legal abandonment should be not merely tolerated but positively enabled—and even encouraged—provided that it is accompanied by preventive regulatory mechanisms allowing property to be legally abandoned before it becomes harmful or totally unproductive. Such mechanisms can allow owners who cannot or will not maintain property to transfer it into forms of collective governance capable of restoring its social and environmental utility.

Our final substantive argument, in brief, is that regulators should prevent factual abandonment.¹³⁰ Paradoxically, legal abandonment may be critical to the success of this enterprise because it could allow owners who can no longer sustain the costs of maintenance to transfer their fee-simple interest to the state. This reasoning is in evidence, for example, in section 554(a) of the US Bankruptcy Code, which authorises trustees to abandon assets that are burdensome or of inconsequential value. Contaminated land, whose clean-up costs routinely exceed market value, is a salient example: the bankrupt cannot meet the expenses, so the burden shifts to the government.¹³¹ Similarly, the Italian Supreme Court has underscored that Article 827 of the Civil Code, according to which ownerless

¹³⁰ LA Duvic-Paoli, *The Prevention Principle in International Environmental Law* (Cambridge University Press, 2018).

¹³¹ See MP Arwood, 'Trust(ee) and Abandonment Issues: A Proposal for New Action Regarding Abandonment of Environmentally Contaminated Property' (2016) 32 (2) *Emory Bankruptcy Developments Journal*, 365, 365–66.

immovables vest in the state, embodies a functional solution whereby public authorities assume responsibility for assets that private parties are unable or unwilling to maintain.

One way in which unwanted real estate may be put to use in the collective interest is through new institutional mechanisms that facilitate and promote its transformation into common-pool resources. Common-pool resources are to be interpreted as managed under collective governance arrangements. Under these regimes, an attempt is made to find optimal uses of real estate that would fall otherwise into despair.¹³² Conventional property rights are premised on the idea that property ought to be owned by an individual or a self-governing association of individuals so as to limit over-consumption and destruction through collective use. Factual abandonment, conversely, signals that the property has become unproductive and that the priority should be optimal use in the collective interest (including environmental interests). Vacant land can enable cities to meet their social and environmental goals, and community groups can identify appropriate spaces and potential uses and users.¹³³

Several studies have highlighted the potential of public–private partnerships (PPPs) in the urban regeneration of vacant land.¹³⁴ Some of these partnerships operate under consolidated frameworks. In the US, the environmental benefits of some PPPs are evident from projects that are run by large organisations as well as from smaller projects that include homeowners and neighbourhood organisations.¹³⁵ Thus, PPPs can highlight the role of active citizens who pool their resources with those of the government to fulfil the social function of property.

These results can be achieved most effectively when ownership is transferred formally from the private to the public sphere. If the owners who do not wish to retain their assets relinquish them to the state, the state can promote cooperation with other private actors so that the assets in question can be managed as common-pool resources where the involvement of local communities can better help identify socially beneficial uses of those assets with the economic and organisational support of public authorities.

The model proposed here—that is, allowing legal abandonment as a means of preventing the negative externalities associated with factual abandonment through forms of public–private governance—does not preclude the adoption of additional regulatory mechanisms, including liability rules specifically targeting negligent non-use. Rather, these instruments should operate in a complementary manner. Expanded environmental liability for negligent non-use could strengthen deterrence against degradation, while property regimes favouring collective governance and public policies supporting regeneration could facilitate the socially and environmentally sustainable management of unwanted assets.

¹³² See, eg, E Ostrom, *Governing the Commons: The Evolution of Institution for Collective Action* (Cambridge University Press, 1990) and E Ostrom, 'Reformulating the Commons' (2000) 6 (1) *Swiss Political Science Review* 29.

¹³³ P Kremer and Z Hamstead, 'Transformation of Urban Vacant Lots for the Common Good: An Introduction to the Special Issue' (2015) 8 (2) *Cities and the Environment* 1, 3; G Kim, 'The Public Value of Urban Vacant Land: Social Responses and Ecological Value' (2016) 8 (5) *Sustainability* 486.

¹³⁴ J Teuk Chin, 'The Shifting Role of Public–Private Partnerships in Vacant Property Redevelopment' (2021) 105 *Land Use Policy* 105430, 2.

¹³⁵ The Metropolitan Sewer District of St Louis (MSD) faced legal action over stormwater and wastewater overflows, leading to a \$4.7 billion investment in improving its sewer system under Project Clear. This initiative focuses on green infrastructure, including the Rainscaping Program, which transforms vacant properties into rain gardens, pervious surfaces, and other eco-friendly solutions to reduce stormwater run-off. Key partnerships, such as with the Land Reutilization Authority (LRA), have been crucial. The LRA provided vacant properties for green projects, while MSD funded building demolitions and developed neighbourhood-scale infrastructure. These collaborations maximise environmental benefits, reduce stormwater issues, and creatively repurpose abandoned land, showcasing the potential of PPPs to address ecological challenges. However, future PPPs could improve through better civic engagement and maintenance planning, ensuring long-term project sustainability and stronger community involvement. See Chin (n 134), 7.

Our common-pool model is not an imaginary. A notable example of its use is the Italian practice of ‘shared administration’.¹³⁶ Under shared administration, citizens—individuals, associations, or economic actors—may enter into cooperation agreements with local administrations to become co-administrators of ‘commons’ (*beni comuni*)¹³⁷ in order to pursue objectives of general interest, in line with the subsidiarity principle.¹³⁸ In this way, they contribute actively to the resolution of matters of general interest by combining their resources with those of the public administration.

The shared-administration model does not necessarily alter ownership status. Private owners may retain title to the asset when they enter into such agreements. The rationale is that, as citizens commit their resources to the regeneration of public spaces in exchange for a collective right of use, what is shared between public and private actors is not ownership but responsibility.¹³⁹ When it is applied to privately owned assets, the shared-administration model becomes complex because the owner must consent to collective use under the cooperation agreement.¹⁴⁰ In such situations, a preventive approach could encourage owners to relinquish property to the government, since the status of public property may facilitate the transition from unwanted assets to PPPs for their redevelopment. Public administrations, in turn, should actively promote cooperation agreements with private actors to secure the efficient use of resources while fostering a genuine sharing of responsibilities.

Public–private partnerships require strong regulation. The agreements to which we referred are based on regulations that have been adopted by local governments according to a standard model that was developed by Labsus,¹⁴¹ an association that promotes shared administration across Italy.¹⁴² Approximately 280 regulations have served as the bases of between 6,000 and 7,000 cooperation agreements.¹⁴³ Many of these cooperations have significant environmental impacts. For instance, in August 2022, public and private entities signed a cooperation agreement to redevelop a forest in Milan that had grown spontaneously on abandoned land which had previously been contaminated by factories. Part of the content of the agreements is determined by regulation, while the remainder is left to the parties.¹⁴⁴ The regulations explicitly recognise environmental concerns as being among the

¹³⁶The first who introduced the concepts in Italy was G Arena, ‘Introduzione all’amministrazione condivisa’ (1997) 117–118 *Studi parlamentari e di politica costituzionale* 29. See also G Arena, *I custodi della bellezza: Prendersi cura dei beni comuni — Un patto per l’Italia fra cittadini e le istituzioni* (Touring Club Italiano, 2020).

¹³⁷The notion of *beni comuni* employed here differs from that advanced by the Rodotà Commission in 2007, which proposed a reform of the Civil Code provisions on goods and the creation of a new category—*beni comuni*—to designate resources of collective value (such as air, water, and forests), which may be subject to public, private, or shared ownership.

¹³⁸See F Giglioni, ‘I patti di collaborazione’ in F Giglioni and A Nervi (eds), *Gli accordi delle pubbliche amministrazioni* (ESI, 2019), 272, 273. Cooperation agreements define the objectives of the initiatives, their subject matter, duration, guarantees, and responsibilities, as well as the means by which publicity is ensured, the mutual commitments of the parties, and any other elements deemed necessary by them. The legal basis for these agreements lies in municipal regulations adopted in the exercise of the regulatory autonomy granted by Article 117, paragraph 6, of the Italian Constitution, and the principle of horizontal subsidiarity, which promotes cooperation between citizens and public administrations. The regulations are applied directly under the Constitution, rather than through implementing legislative acts. As a result, these agreements are necessary, insofar as the procedures governed by the regulations do not allow for their conclusion through unilateral administrative measures. What makes this particularly significant is that this outcome results not from legislation but from secondary law.

¹³⁹See S Franca, ‘The Urban Management of Secondary Raw Materials in the Light of Commons Theory: Circular Economy in Action’ (2023) 23 (1) *Halduskultuur: The Estonian Journal of Administrative Culture and Digital Governance* 49, 50.

¹⁴⁰G Arena, ‘Da beni pubblici a beni comuni’ (2022) 3 *Rivista trimestrale di diritto pubblico* 647, 653ff.

¹⁴¹The main objective of Labsus regulation is to promote a new public administrative model that is based on the collaboration between public institutions and citizens, which is called ‘shared administration’. This new model is considered to be fully in line with the horizontal subsidiarity principle that is set forth in Article 118(4) of the Italian Constitution. See M Bombardelli, ‘Taking Care of Commons to Tackle the Financial Crisis’ in F Merloni and A Pioggia (eds), *European Democratic Institutions and Administrations: Cohesion and Innovation in Times of Economic Crisis* (Springer, 2018), 297, 305.

¹⁴²See, eg, www.labsus.org/category/beni-comuni-e-amministrazione-condivisa/patti-collaborazione/page/2/.

¹⁴³G Marletta, ‘La legge sul procedimento amministrativo e i patti di collaborazione’ (2023) 1 *Diritto amministrativo* 441, 443.

¹⁴⁴The public or private nature of the cooperation agreements has been long debated. In any case, the determination of the use to be made of the asset or space is determined by the contracting parties. On this point, see F Giglioni (n 138), 274.

general interests that are safeguarded by the PPPs,¹⁴⁵ and individual agreements may protect those interests further, as in the case of conservation covenants.¹⁴⁶

The case of the commons illustrates the advantages of a preventive approach in which legal abandonment occurs *before* the property becomes entirely unproductive. As Ostrom observed, for self-governance to be successful, the resources which are subject to it must not be 'at a point of deterioration such that it is useless to organise or so underutilised that little advantage results from organizing'.¹⁴⁷ It is imperative that we note once more that the technical legal solution which we propose—using legal abandonment to prevent factual abandonment—always operates within a dense juridical and institutional structure. We noted that liability and property rules would be congruent in an ideal world, and it is equally true that state economic policy in general should be conducive to the success of the common-pool regime. There must be clear rules, defined responsibilities, and an effective dispute-resolution system¹⁴⁸ that creates meaningful and benign incentives for owners and active citizens. Tax incentives, including models of 'circular taxation' or 'extrafiscality',¹⁴⁹ may prove feasible.¹⁵⁰ Partial or full tax waivers could be offset by alternative forms of public revenue, such as the redevelopment of sites that stimulate tourism and local economies or the earmarking of tax revenues for regeneration projects.¹⁵¹

These ideas obviously extend into the realm of economics and public administration. The need to embed the legal-abandonment concept into the general structure of the law also gives rise to another problem of fit, with which lawyers are likely to be more familiar. Specifically, if legal abandonment is to be reformed along the lines that we suggested, the reform would have to cohere with the more general rules of the legal system in which it is implemented. In common-law jurisdictions, the legal abandonment of real estate is generally prohibited. Civil-law systems have more nuanced responses,

¹⁴⁵The standard model of regulation for cooperation agreements explicitly lists sustainability among the general principles: 'the administration, in exercising discretion in the decisions it takes, verifies that collaboration with citizens does not generate burdens greater than the benefits nor costs greater than the available resources and does not determine negative consequences on environmental balances and on the use of common goods by future generations'. See the English version at www.labsus.org/2024/06/dieci-anni-dopo-un-nuovo-prototipo-del-regolamento/.

¹⁴⁶In this regard, see B Holligan, 'Property and Contract in a Climate of Disruption: Just Processes for Change in Private Agreements made for Public Purposes that Burden Land' (2025) 14 (1) *European Property Law Journal* 3, 6ff, who—in the light of the relationship between a private agreement burdening land for public environmental purpose and the response of legal rules governing that agreement—describes a conservation covenant as 'an agreement between a landowner and a "responsible body" that contains a provision requiring a landowner to do or not to do something on land, or that allows or requires the responsible body to do something in relation to that land'. The responsible body can be a private or a public entity and, accordingly, the agreement protecting environmental values shows a public-private dimension. 'In the English context, at the most public end of the spectrum, conservation covenants may be used to secure compliance with public regulation, for example as a guarantee of long-term adherence to biodiversity net gain requirements'.

¹⁴⁷Ostrom (n 132), 34.

¹⁴⁸Bombardelli (n 141), 300 and 305.

¹⁴⁹X Vence and S de Jesys López Pérez, 'Taxation for a Circular Economy: New Instruments, Reforms, and Architectural Changes in the Fiscal System' (2021) 13 (8) *Sustainability* 1, 6: 'the rationale for a tax shift towards circular taxation is based on the concept of extrafiscality or extrafiscal taxation (taxation with extrafiscal purposes, e.g., "sin taxes")'. Taxation is not limited to raising revenue for the public budget but also pursues other objectives of an industrial, commercial, social, public health, or environmental nature.

¹⁵⁰Many studies have described how fiscal measures can improve the circular economy and environmentally friendly measures. See, among others, WE Oates, 'Green Taxes: Can We Protect the Environment and Improve the Tax System at the Same Time?' (1995) 61 (4) *Southern Economic Journal* 915; AL Bovenberg and LH Goulder, 'Environmental Taxation and Regulation' in AJ Auerbach and M Feldstein (eds), *Handbook of Public Economics* (Elsevier Science, 2002), 1471.

¹⁵¹See A Perrone, 'A Different Role of Taxation: From a One-Sided Taxation to a Circular Taxation' in AF Uricchio and G Selicato (eds), *Circular Economy and Environmental Taxation* (Cacucci Editore, 2020), 307, who suggests the shift from the traditional 'one-side taxation' process to a 'circular taxation' process moving from the description of the regeneration of common spaces and goods. Just like circular economy, circular taxation is inspired by the same principle of making resources usable in a circular context, exploiting already existing goods and reconvert them in different usable ways. By pursuing collective interests, regeneration covers interests that fall in the field of taxation.

with some permitting renunciation under strict formal conditions. The Italian case law is most radical in affirming the legitimacy of formal relinquishment. To take the easiest example of a problem of fit, the classical common-law rules cannot accommodate our solution. We speculate that, under such circumstances, reform can occur in one of two ways. First, it may be that common-law legislatures will eventually acknowledge that the main socio-economic concern is not formal but factual abandonment and legislate accordingly. Second, the need for reform may become palpable owing to experiences with the environmental liability regimes that we described in [Section IV](#). Those regimes are clearly premised on a social-obligation norm that requires owners to exercise a duty of care, but their reliance on liability and the resultant difficult issues of fault and negligence mean that they do not discourage negligent non-use consistently. As results fall short of expectations and as the demands of the climate crisis grow more pressing, it may come to be acknowledged that what is needed is not reform from outside of property law but a thorough reconceptualisation of the idea of property, which would pave the way for the interpretation of legal abandonment for which we have argued.

Finally, we must note that these developments—if and when they do occur—will take different shapes in different places. Our cursory sketch of the relevant laws of England and the United States revealed large differences in the treatment of the social-obligation norm, and those differences would inevitably have had to be multiplied by several orders of magnitude had we also considered the laws of other jurisdictions globally. The same, of course, holds true of our treatment of the civilian world. In describing successful forms of PPP, we focused on the shared-administration regime. That regime derives its vitality in part from the constitutional architecture of the Italian state, in part from specific municipal regulations, and in part from the development of concrete contractual practices. Those parameters are likely very different in Madagascar and Japan. Any local solution would not be a direct transplant of the *beni comuni* concept from Italian law but some version that accounts for the legal histories, cultures, and practices of the people whom it is meant to nudge in the direction of a more prosocial system of ownership and abandonment. All that we did is to point out that the idea of legal abandonment, which is accessible to all legal traditions which recognise some concept of title, could be the fulcrum of these reforms.

VI. Conclusion

In Western legal traditions, property law concentrates on legal abandonment. However, the most pressing problem is not legal but factual abandonment, which results in environmental degradation (among many other harms). Derelict buildings, contaminated industrial sites, and deserted agricultural land create risks to health, safety, and ecological integrity while burdening communities with costs and undermining their collective self-determination. The law's focus on entitlement rather than use appears misplaced in this light.

Modern theories of property, particularly those that are inspired by Duguit's functionalist approach, have developed into a contemporary social-obligation norm. According to those theories, property is not simply a locus of individual autonomy but a relational institution that engenders positive, inherent duties. Ownership cannot be conceived solely as a right to exclude or to dispose—it is also an obligation to ensure that the use and the non-use of property contribute to human flourishing and respect collective interests and self-determination. Environmental protection epitomises this affirmative dimension and tends now to be widely recognised as part of the social function of property across international, European, and national legal frameworks.

Despite the ascent of the social-obligation norm, the regulatory responses to abandonment remain inadequate. National property law often discourages or forbids legal abandonment, while the EU environmental liability regime fails to create robust disincentives to negligent non-use. The narrow interpretation of the polluter-pays principle shifts the costs of factual abandonment onto the community.

A preventive approach is therefore necessary. The concept of legal abandonment can be remade into a tool for advancing the social function of property because it enables the transfer of unwanted assets to collective management. Redeveloped in this way, legal abandonment would allow the assets in question to be re-functionalised as common-pool resources through institutional frameworks such as PPPs and shared administration. Shared *responsibility* rather than ownership would come to occupy the core of governance. This, of course, is not the end of the matter. Where legal abandonment is permitted, safeguards must prevent its misuse as a device for externalising private burdens. When it is prohibited, consideration should be given to reform. Whatever happens, the law of abandonment is now about the balance between individualism and social responsibility. The challenge is to reframe property not only as a safeguard for autonomy but as an institution that is oriented towards collective interests. Negligent non-use undermines that purpose and must be targeted proactively. Only in this way can modern property law respond effectively to the socio-environmental realities of abandonment and ensure that ownership continues to serve the ends of both humans and their environment.