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An Ethic of Enough: Ownership as an Ethical Choice

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The tragic conflict between justice and ecological degradation present in the Anthropocene requires that existing assumptions about and justifications for private property be reconsidered within an ethical framework based on the idea of sufficiency. When viewed with this ethical lens, an obligation to prevent the excessive accumulation of property interests is easily recognized as a necessary incident of ownership. An underlying assumption that property holders have an obligation to not accumulate private property beyond what is sufficient is present in popular justifications for the existence of private property and likewise is consistent with leading property law doctrines at common law. Moreover, the use of an ethical framework to reconsider the rights and obligations of ownership directs the analysis to the reality of the effects of private property rather than the ideal operation of the system. Recognizing an inherent constraint on the accumulation of private property is supported by Alexander's assertion that human flourishing is the moral foundation of private property. Such a concept of property recognizes that state intervention should not be assumed as the only response to this tragic conflict. Both public and private action is required. In the end, private action will likely prove to be the more effective and pragmatic approach because owners not only have the ethical duty, but the capacity to make private property systems more just.

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For long as there has been private ownership, it seems, there have been people who have sought to challenge the prerogatives of ownership in search of a more just social order.¹

I. Introduction

In a world with finite resources, property ownership² can become an ethical choice. Human alteration of the earth’s natural processes has led to the emergence of new epoch called

¹ Eduardo Moisés Peñalver & Sonia K. Katyal, *Property Outlaws: How Squatters, Pirates, and Protesters Improve the Law of Ownership* 7 (2010).

² This paper is concerned with private property and that is what I am generally referring to when I write of property. For simplicity, I use the language ownership and accumulation interchangeably although I acknowledge that interests in private property that do not qualify as ownership can be accumulated. In addition, I am especially concerned with real property although the acquisition of excessive capital can be equally problematic.

the Anthropocene.³ The Industrial Revolution shepherded in a perpetual growth imperative wherein economic and political discourse is dominated by the belief in the inherent good of economic growth without limit.⁴ Consequently, planetary boundaries are on the verge of being exceeded such that the earth may no longer be a safe place for humanity.⁵ If we ever hope to reconcile the often competing rights of the extreme poor with environmental⁶ conservation goals, the growth imperative—and the ethic of more that emerged from it—must be rejected. In response to the challenges presented by the Anthropocene, we must reject or reform the institutions that have developed with this imperative. Private property is such an institution.

This Article reconsiders justifications for private property in light of an ethical framework based on the ideas of sufficiency and justice. It concludes that owners have an obligation not to accumulate private property beyond what is sufficient. The obligation to say “I have enough” is present in existing justifications of private property. The growth imperative, however, has resulted in this obligation being ignored and replaced with a celebration of excess and unapologetic self-interest. But even if the argument that private property has always rejected unconstrained accumulation is unconvincing, property systems are not static. They ought to change in response to the

³ The Anthropocene is used to “suggests that the Earth is moving out of its current geological epoch, called the Holocene, and that human activity is largely responsible for this exit, i.e., that humankind has become a global geological force in its own right.” Manuel Arias-Maldonado, *Spelling the end of nature? Making sense of the Anthropocene* 172 *TELOS* 83, 84 (2015).

⁴ MILENA BUCHS & MAX KOCH, *Capitalist Development and the Growth Paradigm*, in *POSTGROWTH AND WELLBEING* 9, 21 (2017).

⁵ Karl Bruckmeier, *Global Environmental Governance: Social-ecological Perspectives* 217 (2019).

⁶ I use the term environment to primarily refer to the nonhuman, natural world including its systems and processes although I recognize that humans do not occupy a position separate and apart.

demands of justice and the ecological imperatives of the Anthropocene. The obligation not to accumulate excessive property is not only a necessary incident of ownership, but an ethical obligation of all.

II. The Tragic Conflict

Efforts to achieve the laudable goals of justice and environmental protection often conflict because the impacts of environmental degradation and the burden to remediate those impacts are neither color blind nor impervious to class distinctions. They are disproportionately borne by the extreme poor.⁷ The World Bank defines the extreme poor, who are often indigenous people and people of color, as those living below the international poverty line of less than \$1.90 per day.⁸ No serious theory of justice can view the persistence of extreme poverty as just. All persons possess inherent dignity and, therefore, are equally entitled to a guarantee that they will be able to exercise and enjoy their human rights.⁹ It is practically impossible for the extreme poor to fully realize those rights where they are unsuccessful in securing sustenance.¹⁰ Institutions that perpetuate inequality cannot be ignored if a just society is to be anything other than

⁷ Max Roser & Esteban Ortiz-Ospina, *Global Extreme Poverty*, OUR WORLD IN DATA (2017), <https://ourworldindata.org/extreme-poverty#the-demographics-of-extreme-poverty>.

⁸ Approximately 9.6% of the world's population lives in extreme poverty. MARCIO CRUZ ET AL., WORLD BANK GROUP, POLICY RESEARCH NOTE 15/03, ENDING EXTREME POVERTY AND SHARING PROSPERITY: PROGRESS AND POLICIES 2 (2015).

⁹ Darrel Moellendorf, *Absolute Poverty and Global Inequality*, in ABSOLUTE POVERTY AND GLOBAL JUSTICE 124 (Elke Mack et al. eds., 2009).

¹⁰ Elizabeth Ashford, *The Alleged Dichotomy between Positive and Negative Rights and Duties* in ABSOLUTE POVERTY AND GLOBAL JUSTICE: EMPIRICAL DATA—MORAL THEORIES INITIATIVES 124 (Elke Mack et al. eds., 2009).

an ideal. Justice demands a response to extreme poverty, and inaction is unethical.¹¹ The privileged not only have the obligation to address the consequences of extreme poverty, but also as its beneficiaries, must interrogate their privilege and dismantle the structures that perpetuate extreme poverty.¹²

When determining the most ethical course of action, justice is a consideration. An ethical individual ought to be concerned with the influence her behavior has on the lives of others. Thus, to the extent that it can be shown that limiting the accumulation of private property is just or that the reverse is unjust, acting ethically requires reflection upon how choices support or undermine justice. As Martha Nussbaum writes, “respect for human dignity requires that citizens be placed above an ample (specified) threshold of capability,” in ten

¹¹ One does not need to decide whether a universal set of ethical beliefs exists to make this assertion. I make no such claim here, but instead state that such an obligation is firmly rooted in Judeo-Christian, and especially Roman Catholic, moral teachings. For example, Thomas Aquinas asserted that entwined in the duty to love thy neighbor is a principle of equality that gives rise to the individual ethical obligation not only to provide for those in need, but also not to accumulate surplus. THOMAS AQUINAS, *SUMMA THEOLOGICA*, IIa-IIae, q. 2 (Fathers of the English Dominican Province trans., 1911-1925). While I suspect that a similar obligation exists in secular and non-secular traditions, if only the Judeo-Christian world works to dismantle unjust institutions, this analysis will be worthwhile given their role in the creation of these institutions. In addition, human rights discourse requires the same of the privileged for the simple reason that the extreme poor and the privileged have the same rights to life and security. Finally, too often, arguments that morality is relative and personal are used to shield the privileged from their obligations. Even if understandings of morality vary by culture, religion, etc., to be moral requires that your actions align with your personal understanding of ethical behaviors. It is wrong-thinking to suggest that eliminating your contribution to extreme poverty is an inappropriate imposition of one’s morality on the poor when living immorally produces life and death consequences for those very same people.

¹² See generally Thomas Pogge, *World Poverty & Human Rights* (2d ed. 2000).

areas.¹³ She also measures justice by the degree to which an individual has the necessary capabilities to make the choice to exercise substantial freedoms.¹⁴ One area of capability involves having control over one's environment and includes "[b]eing able to hold property (both land and movable goods), and having property rights on an equal basis with others."¹⁵ Relying on Nussbaum's capability approach, the link between property and justice is well established. It is unjust that some people do not possess the minimal amounts of property required for survival.

Failing to act is not only unjust, it is unethical. Once one accepts that each of us has the right to life, there is ethically no difference in actively taking the life of another and allowing someone to die, especially where no good comes from the death.¹⁶ In a world where absolute poverty, defined as "the lack of sufficient income in cash or kind to meet the most basic biological needs for food, clothing and shelter,"¹⁷ exists, the affluent who do not actively transfer their wealth to the poor are unethical. That it is easier to avoid killing than to save does not change the intrinsic morality of the behavior.¹⁸ Likewise, that the duty to avoid killing is experienced directly while the duty to save is more likely indirect is also irrelevant to the question of morality. If "we ought to prevent what is bad when we can do so without sacrificing anything of comparable moral significance," charity is not sufficient.¹⁹ One does not relieve themselves of their

¹³ MARTHA C. NUSSBAUM, *CREATING CAPABILITIES: THE HUMAN DEVELOPMENT APPROACH* 36 (2011).

¹⁴ Nussbaum defines substantial freedoms as "a set of (usually interrelated) opportunities to choose and act." *Id.* at 20.

¹⁵ *Id.* at 34.

¹⁶ PETER SINGER, *PRACTICAL ETHICS* 224 (2d. 1993).

¹⁷ *Id.* at 220.

¹⁸ *Id.* at 223.

¹⁹ *Id.* at 230.

ethical obligations by mitigating the suffering their actions cause. There is a positive obligation to interrogate those elements of our affluence and privilege that sustain excess and to use one's excess to do "the most good you can do."²⁰

But what about the ethical obligations owed to species, such as the Cross River gorilla,²¹ who are suffering as a consequence of environmental degradation. Should justice trump environmental protection? Like the extreme poor, Cross River gorillas have looked across at the affluent and implicated me and my privilege in their plight. Conflict arises between protecting biodiversity and addressing hunger as a result of the colocation of global biodiversity hotspots and regions with high incidences of food insecurity.²² The risk of species extinction as a consequence of bushmeat consumption and poaching by the poor in developing countries are a well-known example of this conflict.²³ Does justice demand that species be permitted to go extinct to ensure human survival? I cannot accept that this is so.²⁴

²⁰ PETER SINGER, *THE MOST GOOD YOU CAN DO: HOW EFFECTIVE ALTRUISM IS CHANGING IDEAS ABOUT LIVING ETHICALLY* (2015).

²¹ Found along the border of Nigeria and Cameroon, this subspecies of western gorilla is critically endangered as result of habitat loss, fragmentation, and hunting for food and medicine. R.A. Bergl et al., *Gorilla gorilla ssp. Diehli*, The IUCN Red List of Threatened Species (2016) (last accessed Apr. 9, 2019).

²² *Id.* at 4.

²³ See, e.g., IUCN SPECIES SURVIVAL COMMISSION, *LINKS BETWEEN BIODIVERSITY CONSERVATION, LIVELIHOODS AND FOOD SECURITY: THE SUSTAINABLE USE OF WILD SPECIES FOR MEAT* (Sue Mainka & Mandar Trivedi eds., 2002); Rosaleen Duffy et al., *Toward a New Understanding of the Links between Poverty and Illegal Wildlife Hunting*, 30 *Conservation Biology* 14 (2016).

²⁴ The genesis of this paper arose from a personal ethical crisis in which I found myself. As I learned from indigenous elders, colleagues, and students that their homes, ways of living, and laws have been and continued to be challenged, prohibited, and denigrated in the name of conservation, I began to question how I could continue to advocate for conservation goals. But then, I came face-to-face with a Cross river gorilla and was overwhelmed by the same sense of obligation

Historical justifications for treating nonhuman animals as of lesser moral significance than humans are unsound.²⁵ These justifications are based on either erroneous assumptions about human distinctiveness or arbitrarily attaching moral significance to human capabilities over nonhuman capabilities. As such, the treatment of nonhuman animals in law should reflect the principle of equal consideration, whereby like cases are treated similarly.²⁶

Moreover, contributing to loss and degradation of habitat and undermining its resiliency to recover itself is unethical. Aldo Leopold offered guidance as to ethical duties owed to the natural world beyond nonhuman animals when he wrote, "A land ethic of course cannot prevent the alteration, management, and use of these 'resources,' but it does affirm their right to continued existence, and, at least in spots, their continued existence in a natural state."²⁷ Because of our reliance on land, the land ethic can be understood as deriving from obligations we owe one another. Therefore, accepting that nonhuman animals are entitled to equal consideration or that there are independent ethical duties owed to the natural world are not a precondition of recognizing ethical duties to environmental protection. Each of us also have an ethical duty to interrogate how our access accumulation perpetuates environmental degradation.

that arises from kinship associations. While not a perfect resolution to the ethical dilemma presented by this tragic conflict, it has offered me a pragmatic path towards living more ethically.

²⁵ See generally PETER SINGER, *Equality for Animals*, in PRACTICAL ETHICS, *supra* note 16.

²⁶ GARY L. FRANCIONE, ANIMALS AS PERSONS: ESSAYS ON THE ABOLITION OF ANIMAL EXPLOITATION 135 (2008).

²⁷ ALDO LEOPOLD, A SAND COUNTY ALMANAC: AND SKETCHES FROM HERE AND THERE 204 (1949).

Herein lies what Nussbaum has defined as a tragic conflict.²⁸ What makes the conflict between addressing extreme poverty and environmental protection tragic is that a person acting ethically may nonetheless make a choice that is unjust and vice versa. Consider the trolley problem.²⁹ Imagine a trolley is hurtling down the track out of control. On the track and unaware of the pending threat are five people who will certainly be killed if struck by the trolley. The only way to prevent the collision is to redirect the trolley off course by pushing an innocent man in front of the trolley to his certain death. The question posed by moral philosophers is whether it is ethical to end one life to save five. Two prominent schools of normative ethics reach opposite conclusions. Utilitarians say that the ethical course of action is to end one life because the result would be less overall suffering.³⁰ Kantians, in contrast, argue that the ethical course of action is to follow the overarching rule that the majority of people have identified as right.³¹ In this case, thou shall not kill. Therefore, inaction is the ethical decision.

While each action can be defended as ethical, both ignore issues of justice. How can it ever be just to choose either result if (1) you will never be among those on the track or sacrificed and (2) you are

²⁸ Nussbaum asserts that human dignity requires that individuals achieve a minimum threshold of capabilities in ten areas. The ten areas are: (1) life; (2) bodily health; (3) bodily integrity; (4) senses, imagination and thought; (5) emotions; (6) practical reason; (7) affiliation; (8) other species; (9) play; and (10) control over one's environment. The right to property is an aspect of threshold (10). A tragic conflict arises when meeting the minimum threshold in one area is done so at the expense of another. Nussbaum, *supra* note 13, at 33-34.

²⁹ Initially proposed by Philippa Foot and extensively developed by Judith Jarvis Thomson, the trolley problem demonstrates how moral philosophies can influence outcomes in ethical decisions. Philippa Foot, *The Problem of Abortion and the Doctrine of the Double Effect*, 5 OXFORD REV. 5 (1967); Judith Thomson, *The Trolley Problem*, 94 YALE L. J. 1395 (1985).

³⁰ See e.g., Peter Singer, *Ethics and Institutions*, 3-4 J. OF ETHICS 331 (2005).

³¹ See e.g., John Rawls, *Kantian Constructivism in Moral Theory*, 77/9 J. OF PHIL. 515 (1980).

either partly responsible for the trolley being out of control or have benefitted from this fact? These justice concerns become most apparent when the trolley problem moves from the hypothetical and is applied to the tragic conflict under consideration. The privileged have not only benefitted, but have contributed to the perpetuation of extreme poverty and environmental degradation, yet they have the sole agency and power to determine the response to the tragic conflict. If the people or animals on the track have the same right to life as I do, how can any choice I make ever be just?

Proposed solutions to the tragic conflict often call for increased protections for wildlife while the extreme poor seek ways to adopt new, more “sustainable” ways to find food.³² These types of solutions emphasize the concern for conservation over justice in the short-term.³³ This emphasis pushes aside the fact that in some circumstances the choice not to conserve is one of survival. In this context, arguments that justify the preference for conservation over justice in the short-term, on grounds that the extreme poor will benefit in the long-term from species protection, must be rejected if justice matters.³⁴ The extreme poor have the same rights to life and security that I do. From my privileged position, not only will I never be asked to choose between feeding my family or protecting an en-

³² See, e.g., William J. Ripple, *Bushmeat Hunting and Extinction Risk to the World's Mammals*, 3 ROYAL SOC'Y OPEN SCI. 10 (2016).

³³ Duffy et al., *supra* note 23, at 15.

³⁴ An example of such an argument can be found in the World Wildlife Fund (WWF) policy on poverty and conservation: “WWF therefore believes that our conservation work and skills, ranging from local natural resource management to global climate change and trade policy, can make crucial contributions to alleviating poverty and promoting the long-term wellbeing of people.” LIZA HIGGINS-ZOGIB, WWF POLICY ON POVERTY AND CONSERVATION (2009), http://assets.wwf.org.uk/downloads/poverty_and_conservation_policy.pdf.

dangered species, I will likely never know anyone who will. Likewise, I will be the last to suffer from the dislocations, hunger, and disease threats associated with failing to address rising global temperatures.³⁵ As a result, it is unjust that the least culpable with the fewest choices are being forced to alter and abandon the way they live in response to global environmental crises when the privileged have been largely unwilling to do the same.

For the same reasons that abdicating personal responsibility to reduce extreme poverty is unethical, paralysis in the face of this tragic conflict is not an acceptable response either. Singer directs those concerned with how to make a choice when faced with this tragic conflict to rely on their values. If your values support conservation, then provide your surplus to charities that support conservation. If alleviating the suffering of the extreme poor speaks more to your values, support charities that reduce poverty and save lives. But what if you value justice? The ethical response must also include identifying the reasons for the trolley having lost control and taking steps within your control to bring the trolley to a stop. The failure of property systems to effectively limit accumulation of private property, I argue, is one of the reasons the trolley is out of control. Private property systems are “fundamental institutions shaping socio-economic structures in any given society and there is a broad agreement that they have a profound effect on opportunities for economic

³⁵ Admittedly, this generalization can be challenged by reference to examples such as the extensive droughts, wildfires, and hurricanes experienced in the United States in recent years. That said, even with the devastating impact of these events, they have occurred where there is a capacity to respond and rebuild. This resiliency is a key feature of privilege and mediates suffering comparatively.

growth and socio-economic development, including poverty reduction."³⁶

Private property allows an individual to take resources from the commons, with state sanction, and in most circumstances exclude others from access and use. Existing private property regimes have done little to address the fact that property interests, especially in land, have become concentrated in an increasingly limited number of individuals with the practical result that many people have no ability to acquire even the basic amount of property required for survival, whether that be land or capital.³⁷ Taking from the finite commons beyond what one needs to survive, therefore, is an ethical choice if one accepts that life is ethically significant.

Likewise, private property is implicated in ecological degradation. The perpetual growth imperative that has dominated the post-Industrial Revolution society was shaped by a misunderstanding of the bounty of the natural world. This misunderstanding was perhaps most apparent during the colonial expansion era wherein not only was land seen as limitless, but transforming the natural ecology of a parcel was often a precondition of the initial grant of ownership.³⁸ As a result, the commons has largely been enclosed and transformed by human uses that are proving both incompatible for use

³⁶ Ellen Hillbom et al., *Assessing the role of property rights and legal empowerment in poverty reduction*, 209/210 INT'L SOC. SCI. J. 207, 208 (2014), <https://onlinelibrary.wiley.com/doi/pdf/10.1111/issj.12022>.

³⁷ In its guiding principles on extreme poverty, the United Nations Commission on Human Rights identifies ensuring access to land and security of tenure as key measures public officials can take to address extreme poverty. UNITED NATIONS HUMAN RIGHTS, GUIDING PRINCIPLES ON EXTREME POVERTY AND HUMAN RIGHTS (2012), https://www.ohchr.org/Documents/Publications/OHCHR_ExtremePovertyandHumanRights_EN.pdf.

³⁸ Jedidiah S Purdy, *The American Transformation of Waste Doctrine: A Pluralist Interpretation*, 91 CORNELL L. REV. 653, 690 (2006).

by nonhuman species and undermining the resiliency of ecological processes.³⁹ In light of this systematic failure of property systems to address their role in perpetuating extreme poverty and environmental degradation, ethical duties and justice imperatives arising from this tragic conflict create an obligation on owners to stop accumulating property when they have enough. Before further explaining how I reach this conclusion, it is necessary to identify the definition of property upon which I rely. An understanding of property as relational is fundamental to my argument.

III. Definition of Property

Property is best understood as a category of social relations and thus is intertwined with issues of power, privilege, and wealth.⁴⁰ Property is less about our ability to control things through fixed entitlements, including land, and more about our interaction with others in relation to those things.⁴¹ Property is properly conceived as both rights and obligations or duties. This understanding of property purports to be concerned with “the human interests it serves.”⁴² As such, if responses to extreme poverty and environmental degradation are to be reconciled, the ability to access property rights must be more than theoretical. The relational understanding of property supports the adoption of evolving conceptions of property and, consequently, is capable of recognizing an inherent limit to accumulation.

³⁹ Helmut Haberl et al., *Finite Land Resources and Competition*, in RETHINKING GLOBAL LAND USE IN AN URBAN ERA 36 (K.S. Seto, & A. Reenberg eds., 2014).

⁴⁰ Gregory S. Alexander et al., *A Statement of Progressive Property*, 94 CORNELL L. REV. 743 (2008-2009).

⁴¹ Haberl et al., *supra* note 39, at 40.

⁴² GREGORY S. ALEXANDER & EDUARDO MOISÉS PEÑALVER, AN INTRODUCTION TO PROPERTY THEORY 6 (2012).

Moreover, the definition of property is not fixed, but reflects the time, place, and culture where it is located. "Like music, property gets its sense of stability from the ongoing creation and resolution of various forms of tension . . ." ⁴³ Climate change will likely prove a defining influence on property systems. Relationships to property are contingent and will change in response to climate change as cultural values collide when people are displaced due to rising sea levels and resource conflicts. It is not unreasonable to expect that these changes will affect both the character and the distribution of property rights. Moreover, humanity created private property, as an institution, to meet human needs. When an institution no longer serves humankind, but instead undermines our interests, reform and even rejection of the institution is justified. If limits on accumulation are not inherent to private property, property systems must include this limitation to prevent further exacerbating environmental degradation and extreme poverty. A relational understanding of property, where property gives rise to contingent relationships rather than absolute rights, permits such change.

IV. The Obligation to Say 'I Have Enough'

Everyone requires access to property to perform the necessities of life (notwithstanding existing debates on whether this creates an entitlement to expropriate privately owned spaces.) ⁴⁴ Private property rights have never been viewed as absolute. That one cannot use their property to unreasonably interfere with the property rights of another has long been understood. ⁴⁵ Yet, when faced with the failure

⁴³ JOSEPH WILLIAM SINGER, ENTITLEMENT: THE PARADOXES OF PROPERTY 13 (2000).

⁴⁴ See, e.g., CAROL ROSE, *The Comedy of the Commons: Custom, Commerce, and Inherently Public Property* in PROPERTY AND PERSUASION: ESSAYS ON THE HISTORY, THEORY AND RHETORIC OF OWNERSHIP (1994).

⁴⁵ SINGER, *supra* note 43, at 3.

of existing property systems to facilitate universal property ownership, critiques often only emphasize the lack of state action to provide space for those essential needs rather than on exploring the duties of owners. Nussbaum, for example, places the responsibility to enforce the duty to support each individual's ability to acquire the minimal thresholds of capabilities, including the right to hold property, squarely on the state as a duty owed to citizens except in extraordinary circumstances.⁴⁶

Over confidence in state action may be predicated on that fact that even though stability and predictability are widely recognized as key features of private property systems, systems remain dynamic and will respond to changing economic and social realities.⁴⁷ Eduardo Peñalver and Sonia Katyal have demonstrated that the propertyless have often facilitated change to property systems through acts of defiance, especially trespass.⁴⁸ For example, where owners used private property rights to justify race-based exclusions from quasi-public places, such as hotels and restaurants, activists trespassed on these properties in protest.⁴⁹ Likewise, many people acquire rights to property after squatting on land left idle by absentee landowners.⁵⁰ A Canadian court recognized the rights of the homeless to use

⁴⁶ Because there are real risks to political institutions and the stability of governments if there are ongoing threats of external interference in domestic governance, negotiations and influence rather than direct interference are the best means to address the extra-territorial impacts of state decisions. That said, the accident of birth, that is that one was born in one state rather than another, should not matter in terms of realizing the fundamental right to live a dignified life. If you accept that essential capabilities exist, a political boundary is irrelevant to ensuring access to their minimum thresholds.

⁴⁷ Peñalver & Katyal, *supra* note 1, at 16.

⁴⁸ See generally *id.*

⁴⁹ See generally *id.*, chapter 4.

⁵⁰ See generally *id.*, chapter 3.

public parks despite objections of municipal landowners.⁵¹ Legal reforms followed each of these acts of defiance and have resulted in property systems that are more just.

Collective expression of dissatisfaction with the concentration of private property, such as the Occupy Movement, are no longer resulting in widespread domestic reforms let alone global change to property systems. This fact should not be used to argue against the use of grassroots action. Rather, this supports a focus on individual responsibility to respond to this tragic conflict. Although domestic circumstances certainly contribute to the existence of extreme poverty and environmental degradation and states should act in response, many of the drivers of this conflict are extranational.⁵² The global nature of extreme poverty and environmental degradation in the Anthropocene means that no one state can act alone. In the absence of a global political regime to mandate change of property systems, individual action is also the pragmatic response.

Because the extreme poor lack the agency to resist global drivers of extreme poverty and environmental degradation, to be ethical the privileged ought to personally constrain their accumulation of private property. Calling on governments to act is insufficient to relieve us of our ethical obligations. Such an approach ignores the fact that individuals, as primary decision makers, hold the power to transfer property and tacitly assert that it is the state's role to dictate the boundaries of ethical conduct based on whether a state desires to intervene to change the rules of property systems. Few would accept that states have the primary responsibility to define ethical conduct of individuals.

⁵¹ *Victoria (City) v Adams*, 2009 BCCA 563 (Can.).

⁵² JOACHIM VON BRAUN & FRANZ W. GATZWEILER, *MARGINALITY: ADDRESSING THE NEXUS OF POVERTY, EXCLUSION AND ECOLOGY* 5 (2014).

Furthermore, governments pay disproportionately less attention to preventing environmental harm in poor, indigenous communities, exacerbating the tragic conflict as these communities become biodiversity hotspots.⁵³ The belief in endless growth provides false assurances that distributional inequalities of environmental degradation are temporary.⁵⁴ These failings are likely the result of environmental law emerging in the 1970s when the world was experiencing sustained economic growth and improved well-being of the primarily white, middle class.⁵⁵ The growth imperative has become entrenched in state responses to ecological degradation through the sustainable development discourse. The regulatory goal of equally balancing economic, social, and environmental well-being is inconsistent with a growing consensus that the earth is rapidly approaching the point where it will exceed its carrying capacity.

Thus, existing environmental regulations rarely consider the obligations of property owners to address the distributional inequalities of environmental degradation. A discourse of sufficiency challenges this growth imperative. The question of what is sufficient for any one person will be highly variable and dependent on individual capabilities. It is doubtful that states are capable of engaging in nuanced analysis to determine questions of sufficiency on an individual basis. Moreover, given how intertwined environmental law is with the growth imperative, it is unlikely that states have the capacity or motivation to lead change. Despite the historical role states

⁵³ Adrian Martin et al., *Global Environmental Justice and Biodiversity Conservation*, 179 *GEOGRAPHICAL J.* 122, 125 (2013).

⁵⁴ Jedediah S Purdy, *The Long Environmental Justice Movement*, 44 *ECOLOGY L Q* 809, 815 (2018).

⁵⁵ Zygmunt J.B. Platter, *From the Beginning, a Fundamental Shift of Paradigms: A Theory and Short History of Environmental Law*, 27 *LOY. L.A. L. REV.* 981, 995 (1994).

have played in defining the boundaries and content of private property systems, owners are the gatekeepers of access to ecological resources. Integrating how theories of justice and of property define the rights and obligations of owners is an acknowledgment that direct action by individuals is the most effective and pragmatic way to reform property systems so that they are more just and responsive to local conditions.⁵⁶

An ethical approach to private property that rejects an ethic of more and adopts an ethic of enough is essential to constrain excessive accumulation. Ethics guide evaluation of actions and “[i]f private property rights are something that each person needs for the satisfactory development of his autonomy, then it should be a matter of deep concern if the distribution of these rights is such that some people end up with none.”⁵⁷ That unconstrained accumulation of private property undermines the resiliency of ecosystems matters deeply because our self-preservation is predicated on a functioning and regenerating environment. Ethical change begins with critical self-reflection; the adoption of an ethic of enough will necessarily require personal scrutiny of one’s needs and the choices made to fulfill those needs. With this ethical lens, the obligation not to accumulate, therefore, is a corollary to the right to transfer because individuals must consider how their control and acquisition of property mediates their relations with others and the natural world.

Landowners have direct decision-making authority over how land is acquired, used, and transferred. Waldron argues that individuals can and ought to change their behavior with respect to land acquisition, use, and transfer

⁵⁶ Accepting this point, does not mean that state action is unnecessary. Rather, it is an acknowledges that looking only to states has not been sufficient.

⁵⁷ JEREMY WALDRON, *THE RIGHT TO PRIVATE PROPERTY* 131 (1988).

[i]f there is any possibility at all that transfers arranged by individuals between individuals could solve the problem of reallocation, then that will appear the more attractive solution. This then is an independent reason (arising out of the allocation problem) for including a power of transfer in any practical conception of ownership.⁵⁸

The right to transfer property is universally recognized as a general incident of ownership (notwithstanding infrequent examples where property transfer is prohibited). The right to transfer implies that the individual landowner and not the state is in the best position to make ethical choices about how to direct the movement of property between individuals. That individuals fail to do so can be attributed to the dominant ethic of accumulation.

I offer a pragmatic approach for those with the privilege of having more property than they need who desire to meet their ethical obligations to do more than acts of charity in the absence of effective state action to address private property's role in extreme poverty and environmental degradation. It is unethical to leave the least empowered to challenge these institutions while the most empowered take no responsibility. The privileged have an ethical duty to interrogate how their choices contribute to injustice. Property owners should address private property's role in perpetuating extreme poverty and environmental degradation in the absence of legal obligations to do so. That perfect justice cannot be achieved immediately does not relieve us of our ethical duties.⁵⁹

⁵⁸ *Id.* at 434.

⁵⁹ Our duty is to "consider how to move people closer to the capability threshold right away, even if we can't immediately get them above it." Nussbaum, *supra* note 13, at 39.

V. Theoretical Support for Accumulation Limits

The obligation to limit accumulation already underlies common justifications for private property. Consequently, the remainder of the paper analyzes theories that offer justifications for the existence of private property to determine how these theories support an inherent limit to unfettered accumulation.

A. Labor Theory

That private property rights are accompanied by obligations is not a novel assertion.⁶⁰ Landowners are obliged to *use* their property in ways that respect and accommodate the property rights of others. Likewise, they cannot use their property to harm individuals or society as a whole. These use limits often come in the form of regulations such as zoning bylaws that aim, among other things, to protect property values by separating incompatible uses. They may also come in the form of environmental regulations that restrict some activities to minimize environmental impacts of land uses. Use limits also arise from common law remedies where courts attempt to balance the rights of one owner to be free to use and enjoy her property as she sees fit without interference resulting from another owner's exercise of the same rights on her property.⁶¹ John Locke's writings, however, support the proposition that private property also imposes a duty to limit unnecessary *acquisition* of rights. Use limits alone are not capable of overcoming private property's role in perpetuating extreme poverty and environmental degradation—accumulation limits are required.

⁶⁰ SINGER, *supra* note 43, at 3.

⁶¹ The common law action of nuisance is the obvious example of the court's role in balancing competing property rights.

The historical focus on use rather than accumulation limits is not surprising given that theorists such as Locke had little experience with laborless property, such as bitcoins and share purchase options that have no natural limit to their creation, and thus, accumulation. While capital existed, it remained coupled to labor through such devices as the gold standard. Money was not printed without state-held reserves. Property was naturally limited by what one could physically create through invention or artistic inspiration or the extraction from tangible resources. Someone's labor provided a natural limit to accumulation. Despite the proliferation of laborless property, and unsecured currencies, Locke's usufructuary description of property continues to serve as a foundation of modern understandings of private property.

Locke asserts, as a principal of Natural Law, that humans have an obligation of self-preservation because they are God's creation and belong to God. Humans cannot chose to destroy that which belongs to God.⁶² Because the duty of self-preservation extends to all, each person has the right "to the use of those things, which were serviceable for his subsistence, and given him as means of his preservation."⁶³ This right provides the foundation for Locke's justification of private property whereby in the pursuit of survival, humans have the right to the products of one's labor.⁶⁴ Therefore, private property is built upon a foundation that recognizes a general right of all to survival that has been used to justify state action to constrain individual private property rights.⁶⁵ Another's survival, therefore,

⁶² JOHN LOCKE, *TWO TREATIES ON GOVERNMENT* (1887) c.II §6,16.

⁶³ *Id.* at c.I, §86; c.II, §25.

⁶⁴ *Id.* at c.II, §27.

⁶⁵ *Id.* at §139.

comes before one's "desire for luxury, enjoyment, and the accumulation of power."⁶⁶

Many authors widely reference Locke for his labor theory of property.⁶⁷ But that is not all he writes about the nature of private property. He also recognizes that private property is only justified if all have the potential to acquire it. Locke asserts that limits on accumulation arise because each person has a corresponding duty to assist others with self-preservation.⁶⁸ As a consequence, he articulates three constraints on the rights of owners that are consisted with an obligation to limit accumulation.

First, an obligation to limit accumulation is implicit in what has been described as Locke's "principle of charity."⁶⁹ In this principle, Locke equates a person's right to their labor with the right to take from others what is needed for subsistence.

As justice gives every man a title to product of his honest industry, and the fair acquisitions of his ancestors descended to him; so charity gives every man a title to so much out of another's plenty, as will keep him from extreme want, where he has no means to subsist otherwise.⁷⁰

Locke is articulating that property will be acquired through labor or bequest beyond what is required for subsistence. Nevertheless, Locke establishes as a condition of holding private property, the obligation to ensure that others are not denied the right to self-preservation by one's excess.

⁶⁶ *Id.* at §146.

⁶⁷ See e.g., JEREMY WALDRON, *THE RULE OF LAW AND THE MEASURE OF PROPERTY* 26 (2012).

⁶⁸ LOCKE, *supra* note 62, at c.I, §86; c.II, §6.

⁶⁹ JEREMY WALDRON, *GOD, LOCKE, AND EQUALITY* 177 (2002).

⁷⁰ LOCKE, *supra* note 62, at c.I, §42.

Second, Locke addresses the practical reality of this duty when he says that appropriation of common resources is only justified when “there is enough, and as good left in common for others.”⁷¹ Where the first principle speaks of devolving oneself of property as an obligation to others in need, the second principle is more proactive. Here, Locke is saying that “you can’t take it all.” In other words, that you have the means and potential to acquire property does not mean that you should. By requiring that some property be “left,” Locke expects, as an incident of acquiring property, consideration of the impact of one’s acquisition on the availability of property for others. The second principle, is entirely consistent with the critical self-reflection contemplated by a private property system grounded in an ethic of enough.

Finally, Locke addresses the issue of waste. Accumulation is limited by what one can use and “whatever is beyond this, is more than his share, and belongs to others. Nothing was made by God for man to spoil or destroy.”⁷² When read at face value, this principle merely confirms that acquisition is limited by what can be used before it becomes unusable. But the principle contains two parts. The first part of the principle re-affirms that all people have the right to access private property. The second part can be read as a confirmation of the obligation of owners to consider how further acquisition of private property will have an impact on others. To this end, Locke’s use of the word “destroy” is illustrative. Locke justifies the right to private property as arising from man’s obligation not to destroy what God has created. Locke’s statement, therefore, can be equally read as referring back to his assertion that everyone has the right to obtain the property they require for self-preservation.

⁷¹ *Id.* at c.II, §27.

⁷² *Id.* at c. II, §31.

At the same time as articulating these constraints, Locke also speaks of the security of rights to property once property has been acquired. He asserts that states cannot deprive someone of their property without their consent.⁷³ Typically, those who argue against the state's ability to regulate private property rely upon Locke's consent requirement.⁷⁴ These arguments are made while ignoring Locke's demonstrated commitment to redistribution where it is needed to achieve equality of self-preservation. In fact, some authors have asserted that Locke's writings not only fail to support limits on accumulation, but in fact champion limitless accumulation.⁷⁵ In a world where resources have become scarce, however, the only way that that three constraints can be reconciled with the consent requirement is if, internal to the very concept of private property, there is an obligation to say that I have enough. Consequently, a right to unfettered accumulation is incompatible with private property.

While the labor theory remains an influential justification for private property, the essential roles access to property play in welfare, self-actualization, and flourishing, offer competing justifications. Humans are entitled to expropriate from the commons that which they need to achieve not merely survival, as argued by Locke, but also either happiness or personhood or to promote flourishing. As such, no one can prevent others from achieving these ends by taking what is required from the commons. Utilitarian, personhood, and human flourishing theories, therefore, are commonly asserted to argue that ends beyond efficiency should shape the rules that govern private property systems.

⁷³ *Id.* at c.II, §138., "[t]he Supream Power cannot take from any Man any part of his Property without his consent."

⁷⁴ RICHARD A. EPSTEIN, *TAKINGS: PRIVATE PROPERTY AND THE POWER OF EMINENT DOMAIN* 333-34 (1985).

⁷⁵ *See, e.g.*, CRAWFORD B. MACPHERSON, *THE POLITICAL THEORY OF POSSESSIVE INDIVIDUALISM* (1962).

B. Utilitarian Theory

Pursuant to utilitarian theory, we should judge the rightness of institutions by the degree the institutions promote the maximization of welfare. From this welfarist lens, private property is justified because the cost of managing common resources to prevent overexploitation is more than the cost of creating and enforcing a system of privatization.⁷⁶ It is argued that private property internalizes the externalities associated with unrestricted exploitation as owners have an incentive to consider their long-term interests and make decisions today so as not to undermine the sustainability and usefulness of the resource in the future.⁷⁷ Over time, private property maximizes welfare by protecting the resources and minimizing the burden of externalities borne by society as a whole.

At first glance, utilitarianism presents a challenge to the incorporation of an obligation to limit accumulation of private property because of the individualistic nature of this theory. The measure of welfare, sometimes defined as utility, pleasure, or happiness, is subjective. The endowment effect can distort the process of balancing property rights as one tends to value what they already have more than that which they do not.⁷⁸ As a consequence, utilitarian theory can overlook distribution effects, the very driver of this inquiry, in favor of the individual who most values property.

Recognizing an obligation to limit accumulation as an incident of ownership is compatible with utilitarianism. When Bentham proposed his social choice theory, on which utilitarian property theories

⁷⁶ Alexander & Peñalver, *supra* note 42, at 21.

⁷⁷ This perspective is mostly famously argued in Garrett Hardin, *Tragedy of the Commons*, 162 *SCI.* 1243 (1968).

⁷⁸ S. Huck et al., *Learning to Like What You Have – Explaining the Endowment Effect*, 115 *ECON. J.* 689, 690 (2005).

are derived, the scale and reach of externalities that could be caused by use of a common resource was significantly less than what it is today.⁷⁹ Moreover, the cost to society of the concentration of wealth and property that has resulted from unfettered accumulation of private property was not contemplated in Bentham's theory. Consequently, the assertion that private property costs less than state regulation of the commons becomes increasingly difficult to defend without adopting an extremely narrow view of externalities.⁸⁰ Thus, a full accounting of externalities likely justifies increased state regulation, if not ownership, of resources on utilitarian grounds, at least in theory. Recognizing an obligation to limit accumulation as an incident of ownership offers utilitarians a pragmatic response to the challenge of accurately accounting for externalities of private property so long as there is a relationship among extreme poverty, environmental degradation, and private property.⁸¹

⁷⁹ One only needs to consider persistent organic pollutants (POPs) to prove this point. POPs are a class of highly toxic chemicals that, once released, readily disperse and accumulate in the environment. The Stockholm Convention regulates POPs. Parties to the convention deemed global, coordinated action essential because POPs continue to be a risk long after they are no longer in use. U.S. ENVIRONMENTAL PROTECTION AGENCY, *Persistent Organic Pollutants: A Global Issue, A Global Response*, <https://www.epa.gov/international-cooperation/persistent-organic-pollutants-global-issue-global-response> (last visited Jan. 29, 2019).

⁸⁰ This broad view of externalities is reflected in Singer's utilitarian justification for the ethical obligation to transfer one's wealth to the poor when he writes "Nevertheless the uncontroversial appearance of the principle that we ought to prevent what is bad when we can do so without sacrificing anything of comparable moral significance is deceptive. If it were taken seriously upon, our lives and our world would be fundamentally changed." SINGER, *supra* note 16, at 230.

⁸¹ It is worth mentioning that there is also some research that demonstrates that increased wealth produces diminishing returns as measured by happiness and well-being at the individual level. This research may support limits on accumulation on the grounds that excess accumulation does not maximize welfare. See, e.g., A.T. Jebb et al., *Happiness, Income Satiation and Turning Points Around the World*, 2 NATURE HUMAN BEHAVIOR 33 (2018).

*C. Personhood, Flourishing, and the Social
Obligation Norm in Property*

It is perhaps not surprising that an obligation to limit accumulation readily aligns with justifications of private property that rely on the relationship between personhood and property. Rather than justifying private property using the measure of happiness employed by utilitarians, personhood theory uses the relationship between private property and personality as justification. Moreover, explicit in the development of personhood theory is the recognition that individuals live in a community and as such, private property regimes can be altered to benefit the common good.⁸² Individuals also have minimum rights to private property and therefore a corresponding obligation arises that requires property be available for individuals to acquire. Because some property is essential in the expression of personhood, the rights to that property can trump market alienability.⁸³ The personhood theory contemplates a higher threshold for the minimum amounts of property an individual is entitled to than what is proposed pursuant to Locke's labor theory. Locke speaks only of a right to property needed for self-preservation, whereas G.W.F. Hegel, and subsequently Margaret Jane Radin, define personhood as something more than self-preservation. Personhood is the embodiment of freedom, which is necessary to develop the ethical conscience required to live in community.⁸⁴ Therefore, it follows that more property is required to realize personhood than to realize survival.

⁸² Alexander & Peñalver, *supra* note 42, at 65.

⁸³ *Id.* at 67.

⁸⁴ Margaret Jane Radin, *Property and Personhood*, 34 STAN. L. REV. 957, 973 (1982).

Radin argues that personhood, a concept she later links to human flourishing,⁸⁵ offers a moral framework by which to adjudicate property disputes, which supports my call for a shift to an ethic of enough.⁸⁶ Personhood theory provides a mechanism to assist in determining what is enough by creating a “hierarchy of entitlements” that is justified on the basis that “property for personhood gives rise to a stronger moral claim than other property.”⁸⁷ Using this framework, she identifies that at some point, excessive accumulation and control of property is morally objectionable because it destroys personhood rather than enhances it.⁸⁸ Unfortunately, Radin does not provide much detail as to how personhood can be destroyed. She does state that governments should intervene when one is “imping[ing] on the personhood of another by means of her control over tangible resources.”⁸⁹

The way excessive accumulation can destroy personhood can be more broadly understood by exploring the formation of personhood. Radin writes, “the notion that the will is embodied in things suggests that the entity we know as a person cannot come to exist without both differentiating itself from the physical environment and yet maintaining relationships with portions of that environment.” As such, personhood also requires a relationship with the environment that is not a mere incident of one’s relationship with others. To the extent that excess accumulation contributes to environmental degradation and undermines the resiliency of natural systems, this relationship is strained and puts personhood at risk.

⁸⁵ Margaret Jane Radin, *Lacking a Transformative Social Theory: A Response*, 45 STAN. L. REV 409, 422 n.2 & 423 (1993).

⁸⁶ Radin, *supra* note 84, at 957.

⁸⁷ *Id.* at 986, 978.

⁸⁸ *Id.* at 970.

⁸⁹ *Id.* at 990.

It follows that if the justification for at least some private property arises from an ethical claim, the reverse, failing to reallocate property interests to those in need when one possesses more property than they require, is likewise unethical. That the state should force reallocation does not change the individual ethics of excess accumulation. But when ethics is understood not as either right or wrong, but a continuum of culpable behaviours, the claim that one is acting unethically is strengthened when they are aware of the state's failure to address this tragic problem. Nonetheless, Radin predictably looks to the state to intervene to respond when private property threatens personhood.

Gregory Alexander, however, provides an understanding of flourishing that does not necessarily assume state intervention as the response to private property's deficiencies. He argues that to realize many of private property's own values, a recognition of public values such as dignity, inclusiveness, self-constitution, and community is required.⁹⁰ So long as there are those without sufficient property to live not only a dignified life, but also to ensure self-preservation, those with property are at risk of expropriation and theft. Therefore, there is scope within private law to address the role private property plays in perpetuating this tragic problem. If it can be shown that a constraint on accumulation will further both public and private property values, then recognizing this limitation as a necessary incident of private property is justifiable.

By defining human flourishing as private property's end, Alexander asserts that a social-obligation norm exists in property law. This norm is grounded in an honest understanding of the common

⁹⁰ See generally Gregory S. Alexander, *Property's Ends: The Publicness of Private Law Values*, 99 IOWA L. REV. 1257 (2014).

good that reflects the reality that mediating property disputes will most often involve a balancing approach rather than picking winners and losers based on thin concepts of welfare.⁹¹ This norm is a corollary to the fact that “dependency and interdependency are inherent aspects of the human condition.”⁹² As a general guide, “an owner is morally obligated to provide to the society of which the owner is a member those benefits that the society reasonably regards as necessary for human flourishing.”⁹³

In context, this has meant that theorists have called upon property owners to sacrifice their property rights through expropriation procedures to build the necessary, tangible infrastructure to develop the communities essential for the individuals to become free, autonomous moral agents.⁹⁴ Likewise, remedies for nuisance, when understood as encompassing a social-obligation norm, support the development of the intangible, social infrastructure of community

⁹¹ Gregory S. Alexander, *The Social-Obligation Norm in American Property Law*, 94 CORNELL L. REV. 745, 749 (2009). While this obligation can be justified on utilitarian and natural law theories, reconsidering property as derived from a social-obligation norm supports a concept of property that requires sacrifice by owners in some instances — namely, when failing to sacrifice undermines flourishing. Where I differ from Alexander, perhaps, is in limiting the ontological conception of flourishing to humans. I conceptualize the normative framework underlying property’s ends as related to both human and ecological flourishing. Alexander defines flourishing as morally pluralistic and meaning “that a person has the opportunity to live a life as fulfilling as possible for him or her.” Consistent with Leopold’s Land Ethic, ecological flourishing, on the other hand, can be measured as resiliency. Resiliency means “the amount of disturbance that an ecosystem [can] withstand without changing self-organized processes and structures.” Lance H. Gunderson, *Ecological Resilience – In Theory and Application*, 31 ANN. REV. ECOL. SYST. 425, 425 (2000).

⁹² Alexander, *supra* note 91, at 760.

⁹³ *Id.* at 774.

⁹⁴ *Id.* at 776.

life. Owners can justifiably be asked to abandon property entitlements to use their property as they wish when uses are incompatible with a neighbor's ability to flourish.⁹⁵

A property theory that encompasses a social-obligation norm "recognizes that because individuals can develop as free and fully rational moral agents only within a particular type of culture, all individuals owe their communities an obligation to support in appropriate ways the institutions and infrastructure that are part of the foundation of that culture."⁹⁶ This norm, Alexander argues, justifies obligations to maintain the health, safety, and public aesthetic values, such as heritage features, of property.⁹⁷ Similarly, this norm may require owners to alter their use and care of property to be consistent with community well-being. In particular, this norm obliges owners to contribute to a community's social infrastructure (e.g., beach access, parks, community squares), which Alexander asserts creates just social relations through the sense of affiliation.⁹⁸ Finally, compliance with environmental regulations can be seen as the duties of owners not to erode the ecological infrastructure to support human life and well-being.⁹⁹

Alexander is not blind to potential problems that may arise when adjudicating property disputes that reflect a social-obligation norm. He notes that there is debate regarding the appropriate scope of enforcement of moral norms.¹⁰⁰ While the social-obligation theory provides that owners have an obligation to provide essential tangible

⁹⁵ *Id.* at 780.

⁹⁶ *Id.* at 795.

⁹⁷ *Id.* at 795.

⁹⁸ *Id.* at 806–07.

⁹⁹ *Id.* at 799.

¹⁰⁰ *Id.* at 815.

and intangible infrastructure to facilitate human flourishing, identifying what structures and institutions can legitimately be demanded by the state of an owner is context specific. Alexander writes, “[a] tighter nexus between the institution whose activity is under challenge and the goods necessary to a well-lived life is required before the political community can legitimately demand that an owner sacrifice her property entitlement.”¹⁰¹ Ongoing debate on the legitimacy of regulating private property¹⁰² is evidence that determining this nexus is highly contested and is partially responsible for state inaction in addressing the tragic conflict. A personal obligation to constrain the acquisition of property, therefore, should be championed because it reduces the need for contested public debate to determine this nexus.

In sum, recognizing an obligation of owners to stop accumulating property is justified through an understanding that a normative commitment to human flourishing is implicit in property’s ends. The social-obligation norm requires property owners to take seriously the impact of their use, condition, and care of their property and, at times, modify their behavior, including sacrificing property rights, to develop in others the capabilities that allow for human flourishing. In contrast to other theories that are indifferent to justice considerations and ignore the practical reality that access to the resources necessary to facilitate human flourishing is often out of reach for the poorest and most vulnerable segments of a community, the social-obligation norm provides a mechanism for redistributing wealth.¹⁰³

¹⁰¹ *Id.* at 781.

¹⁰² See, e.g., Keith N. Hylton, *When Should We Prefer Tort Law to Environmental Regulation?*, 41 WASHBURN L.J. 515 (2002).

¹⁰³ Alexander, *supra* note 91, at 758.

Consequently, owners cannot rely on state inaction to escape the ethical duty to consider how their property perpetuates extreme poverty or environmental degradation.

VI. Discussion

If it is the case, as I believe it is, that property is essential to human flourishing, justice cannot exist if there are people who do not have access to property. It is not sufficient that the potential to acquire property exists; justice requires that each individual have a realistic opportunity to obtain property if they choose to do so. This duty is not only owed to other people; duties also extend to ecosystems because property systems that prevent or undermine the resiliency of ecosystems are also unjust. One does not have to accept that ecosystems (or components thereof, such as higher-functioning animals) can have independent rights to accept that property systems that undermine ecosystem resiliency are unjust. Such an obligation may equally be conceived as a derivative right of what is owed to other humans as the ecological goods and services provided by ecosystems are essential to human survival.

Owners, therefore, cannot escape the ethical duty to not use their property in a way that perpetuates extreme poverty or environmental degradation. In one way, this is not a significant intellectual leap from the commonly recognized principal that property rights are not absolute but instead require that one not use their property to harm another. The duty to do no harm can be viewed as both a positive and negative obligation. That is, you cannot use your property to harm another and similarly you cannot neglect to use your property in a way that leads to harm. But active use should not be all that matters when addressing questions of justice; accumulation of property should be scrutinized. Where a property holder is challenged by

people who do not have property rights on grounds that their exclusion from private property is denying them the capabilities to flourish, the response should balance the rights of the two parties just as they would if the challenge arose from a dispute between two owners. At the forefront of that analysis should be the question of need—how much property does the existing owner need and how much is required by the person demanding access to property?

One of the criticisms of this approach will likely be that the recognition of a constraint on accumulation is only viable if it is accompanied with a clear consensus on how to measure when someone has surpassed a sufficient amount of property. To that criticism, I reply that distributional differences are not prohibited by justifications of private property. This approach does not require that everyone have the same property-holding. Treating property as a general right still permits some differences in individual accumulation. The concern is instead for “tendencies toward the accumulation of enormous holdings, particularly of capital resources, on the one hand, and the accompanying development of long-term propertylessness, on the other.”¹⁰⁴ What is required is an accounting for those differences when faced with the reality that the capabilities of others and the natural world are being disrupted by the inability to access the resources they need to flourish.

Another likely criticism of this approach is the fact that individuals are self-interested and will define sufficiency with little regard for the interests of others. This may very well be true in the short term, but public and private reasoning on questions about private property accumulation can be norm-creating. The very act of asking owners to detail and then justify their excess could promote ethical

¹⁰⁴ WALDRON, *supra* note 57, at 439.

behavior because of the recognized value in “the comparative judgments that can be reached through personal and public reasoning,”¹⁰⁵ even in the absence of agreement.¹⁰⁶

Moreover, state interventions would be less resisted once there is a better appreciation of private property’s potential to perpetuate extreme poverty and environmental degradation. As the ethic of more is replaced with an ethic of enough, it will no longer “seem oppressive in a society committed to those ideals [rights, liberty, and justice] to set out to defeat intentions which are calculated to undermine them.”¹⁰⁷ State interventions, such as progressive taxation, would be appropriate, therefore, when an individual fails to do what is just and accumulates private property far beyond what is enough. At a minimum, the state could demand that an individual publicly justify their need for their property-holdings. The prospect of facing a public accounting will likely also motivate behavior change.¹⁰⁸

Finally, all advances in well-being and dignity have occurred because of the goodwill of humankind. We have a capacity for empathy and kindness that often overtakes self-interest. This may be as a

¹⁰⁵ AMARTYA SEN, *THE IDEA OF JUSTICE* 243 (2009).

¹⁰⁶ For example, consider the debate in Canada over spanking children as a form of discipline. Public and private discussion about the appropriateness of corporal punishment has resulted in many parents who were spanked as a child choosing not to spank their children despite unsuccessful legal challenges to prohibit the practice. Thus, attitudes changed without state mandates to change behavior. Sabrina Fréchette & Elisa Romano, *Change in Corporal Punishment Over Time in a Representative Sample of Canadian Parents*, 29 *J. FAMILY PSYCH* 507, 508 (2015). The global movement calling for divestment from fossil fuels offers a comparable property example. In most cases, the state has not mandated divestment, yet public discourse and public pressure has led to large institutions and countless more individuals divesting from fossil fuels.

¹⁰⁷ WALDRON, *supra* note 57, at 436.

¹⁰⁸ Consider the fossil fuel divestment example in note 106.

result of our own sense of morality or self-identity becoming intertwined with our response to the needs of others. As Aristotle argued, “for no one would choose the whole world on condition of being alone, since man is a political creature and one whose nature is to live with others”¹⁰⁹ so that taking action to relieve the suffering of others is in our self-interest. Currently, fear or the misbelief that individual action will not have a meaningful impact on these tragic problems underlines much of our paralysis. Introducing limits on accumulation into public discourse can help create an ethic of enough that, overtime, will demonstrate that individual action can have an impact.

VII. Conclusion

The tragic conflict between justice and ecological degradation present in the Anthropocene requires that existing assumptions about and justifications for private property be reconsidered within an ethical framework based on the idea of sufficiency or, what I have called, the ethic of enough. When viewed with this ethical lens, an obligation to prevent the excessive accumulation of property interests is easily recognized as a necessary incident of ownership. An underlying assumption that property holders have an obligation to not accumulate private property beyond what is sufficient is present in popular justifications for the existence of private property. Moreover, the use of an ethical framework to reconsider the rights and obligations of ownership directs the analysis to the reality of the effects of private property rather than to the ideal operation of the system. Recognizing an inherent constraint on the accumulation of private property is supported by Alexander’s assertion that human

¹⁰⁹ ARISTOTLE, W.D. ROSS, *NICOMACHEAN ETHICS*, 157 (1999).

flourishing is the moral foundation of private property.¹¹⁰ Such a concept of property recognizes that state intervention should not be assumed as the only response to this tragic conflict.

Because individuals find themselves on a spectrum from ethical to unethical, that perfect justice cannot be achieved does not relieve us of our ethical duties to act in response to this tragic conflict. Therefore, if there is any hope for resolution of this tragic conflict, individual action must be at the forefront. Despite the challenges that arise from the tragic conflict between environmental degradation and extreme poverty, I share Peter Singer's hope when he writes that:¹¹¹

It may be naïve to hope that a relatively small number of people who are living in a reflective, ethical manner could prove to be a critical mass that changes the climate of opinion about the nature of self-interest and its connection with ethics; but when we look around the world and see what a mess it is in, it seems worth giving that optimistic hope the best possible chance of success.

¹¹⁰ Alexander, *supra* note 90, at 1260.

¹¹¹ PETER SINGER, *HOW ARE WE TO LIVE? ETHICS IN AN AGE OF SELF-INTEREST*, ix (1995).