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Sustainable Property Law: towards a revaluation of our system of property law

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1. Introduction

At the beginning of the previous century, one of the oldest colleges at the University of Oxford, New College Oxford, was confronted with a problem with the oak beams in the dining hall. Which needed to be replaced. The fellows of the college were posed with a problem on how to solve this when one of the junior fellow raised the idea to see if there were any oak trees on the many pieces of land held in ownership by the college since its foundation. The college Forrester was summoned to the college and stated upon his arrival the he had been waiting for a request of this sort. As it turns out, at the founding of the college in 1379 young oak trees had been planted to supply the college with new wood if this would ever be necessary in the future. So it happened and the new oak beams in the dining hall at New College Oxford can be viewed for over 100 years already.[2]

The foresight of the founders of the college show a design of an institution that is meant to stay for a very long time. The design does not only foresee in the needs of the generation that would use the building, but also incorporates the many generations that would follow. In our modern day terminology, we could conclude that the design of New College Oxford is a sustainable design.

Sustainability, and sustainable development as a method to come to that, are receiving more and more attention in the last years.[3] Sustainability concerns the ideas of preservation and protection. Many proponents of sustainability refer to a photo of the planet earth, taken by an astronaut on board of the Apollo 8 spaceship, and a photo of the earth as a globe from 1972.[4] These photo's show, according to those proponents of sustainability, that the earth is not limitless and that humanity must treat her with care to enable future generations to enjoy her as well.

This does not only concern ecological sustainability, but also the way in which we live together, choose our government and governance structures, and share or do not share our wealth with each other. In 2015 the United Nations established, after a very long negotiation process, 17 Sustainable Development Goals (SDGs). These goals deal with, apart from ecological sustainability, with democratic governance and economic progress for everyone. They deal, in other words, with wellbeing for everyone. Although these UN SDGs do not have formal legally binding power, all member countries to the UN are expected to give effect to the SDGs by reforming current policy and the making of new policy and legislation.[5]

As can be seen from the example of New College Oxford, sustainability has been considered for hundreds of years already. These are therefore not new initiatives, but the attention they receive is new. At the same time a situation has arisen that requires immediate attention for the sustainability problem. Think, in this context, about natural phenomena such as increasing sea levels and global warming, large forrest fires and mud-streams in the United States of America and Australia, but also the Dutch problems arising from the extraction of natural gas.

How, in other words, have we come to this? In the past decades there has been a lot of attention from natural scientists and economists for this question. Most research points to the ideas of Neo-liberal economics,

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[2] https://www.atlasobscura.com/places/oak-beams-new-college-oxford

[3] See John Blewitt, Understanding Sustainable Development, 2e editie (Londen, New York: Routledge, 2015), p. 6 et seq.

[4] See John Blewitt, Understanding Sustainable Development, 2e editie (Londen, New York: Routledge, 2015), p. 7. The photo's bear the titles Earthrise (1968) and Blue Marble (1972).

[5] These are principles of 'soft law' and - according to some are also principles of international customary law. See John Blewitt, Understanding Sustainable Development, 2e editie (Londen, New York: Routledge, 2015), 14, 68.

introduced as a political model by Margareth Thatcher and Ronald Reagan in the 1980s. In Neo-liberal thinking, which builds on 19th century *laisser faire* thinking in economics, the economy is seen as a balance of offer and acceptance, in which we all participate as rational actors with the aim to enrich ourselves and each other. The market is leading in this and government interference or other supportive measures are not to be taken. Profitability and economic growth are the central driving forces.[6]

Private law plays an instrumental role here as primary supplier of the building blocks of economic development. The freedom of ownership, free circulation of goods and the freedom of contract enable us to give value to a thing, that you may consider to be your own and that you may freely transfer for a value in conformity with the market value of that thing.[7] In this perspective, rules of property law are transactional rules that - together - form a coherent and especially efficient system. To put it simply: a natural person accrues as many things in ownership as possible to enrich himself and to freely and exclusively dispose over these.

It is this - capitalist - system that natural scientists and economists point to as the cause of problems. Extraction and profit have reigned too strongly in past decades. Natural phenomena such as global warming due to the burning of fossil fuels, but also the financial crisis of 2008 are, so these critics state, a direct consequence of the way in which we deal with our things.
A short example to illustrate this. In the period prior to the financial crisis banks became publicly traded companies. The consequence of this was that the main objective of the bank was no longer only to provide good services to its client, but also to grow and make more profit for shareholders and investors. In the 1990s banks succeeded in these new targets and manages to attain up to a factor 20 growth levels.[8] At a certain moment, however, the the market for the granting of loans became saturated, and growth levels stabilized and, with that, also turnover and profits. Banks, led by large stock-exchange listed banks on Wall Street, began to cut loans into pieces and repackage these to be able to sell these to investors as derivatives. With that, journalist Marjorie Kelly shows in her most recent book 'Owning our Future' an investment market in products was created that disconnected itself from the real world. A market that became so disconnected that at the beginning of this century a package of loans or mortgages traded on Wall Street no longer automatically represented an actual piece of land. The result of the bursting of the bubble that resulted from this are known and many banks, not only in the US, became insolvent or almost became insolvent as a result of these practices. Private law was, once more, instrumental in this. The loan, a contract, and the mortgage, a limited property right, are the basis of these types of transactions. The result, however, is very disproportional: stareholders were protected, but land- and homeowners lost their land and house.[9]

In the past years a lot of new initiatives have been created that partly provide an answer to the problem of excessive profits and growth targets and that all - in some way - proceed on the basis of sustainability. Examples of this are offered by the sharing economy, with sharing-car company Cambio in Germany and Belgium, housing sharing platform AirBnB and transport platform Uber, circular building and cooperative initiatives of governments, companies and citizens. Also here, private law continues to supply the building blocks on the basis of which these innovative platforms can do their work. For the most part his is the law of contract and not the law of property. In fact, the law of property is pushed to the background by these sharing initiatives in favor of contract law, more than was already the case in the last 30 years.
Sharing, after all, implies the 'leasing' of things and not the ownership thereof. In most cases the business model in the sharing economy is the offering of a service on the basis of a right of ownership. Sustainability lies specifically in the idea that the thing is used more often, for example a car that is used more than two cars that stand still all day when their owners are at work. The idea behind this is that producers would produce more sustainable products if their profit does not come from a one-off transfer of ownership, but through a

[6] Kate Raworth, Doughnut Economics (Londen: Random House, 2017), p. 62-63, 68 et seq.
[7] Met zaak bedoel ik hier een stoffelijk voorwerp dat onderwerp van een goederenrechtelijke rechtsverhouding kan zijn
[8] Zie Marjorie Kelly, Owning our Future. The Emerging Ownership Revolution (Oakland: Berrett-Koehler Publishers Inc, 2012), p. 53 et seq.
[9] Marjorie Kelly, Owning our Future. The Emerging Ownership Revolution (Oakland: Berrett-Koehler Publishers Inc, 2012), p. 67-70, 78-82, 85 et seq.

business model where one thing keeps delivering periodic income. The concept of ownership for a consumer becomes superfluous in such an approach.[10]

This seems an undesirable development to me a development that does not automatically serve sustainability. After all, the producer can also claim a higher monthly payment if he replaces the current thing with a nicer, better, more extensive model. Before we, in other words, throw out a part of our law of property, it makes sense to explore the possibilities of a sustainable property law. In order to do that we must (1) look at the role and purpose of private law, (2) at sustainability and property law and (3) see if this can lead to concrete solutions. In order to do this I bring existing literature together, before I come to a proposal for the revaluation of our law of property - mostly based on existing insights - into a sustainable law of property.

2. The purpose of property law

In our current system property law is at the service of personal development. After the abolishment of the feudal system, with enlightened idea on a new society, the right of ownership became finally available for everyone. Our system of private ownership and free circulation of goods made it possible to accrue wealth. In this way land, in those days the most valuable object one could have, was no longer in the hands of a small elite. With the Industrial Revolution after that movable objects, besides land, also became of importance. Through mass production of things everyone could accrue wealth on their own.
When there was ownership of a thing, the owner was free to dispose over that thing in any way he wished. The lawyer that drafted the French civil code based themselves in this respect on the work of Bartolus, who in his turn gave definition to the Roman law concept of ownership. Bartolus described the right of ownership as the right to dispose over an object in the most complete manner.[11] The French 19th century author Demolombe writes affirmatively, for example, on the question whether the owner of a painting also has the power to set fire to that painting. This liberalist philosophy, that should be placed in a time of great thinkers such as Robert Pothier and John Locke, uses an instrumentalist approach: the law of property is a means to achieve a purpose, the accrual of wealth. An, in other words, utilitarian philosophy. Some thinkers even went further on the basis of Locke's theory and developed a libertarian theory of ownership in which the right of ownership is a pre-political right, a right that everyone has before legislation is created.[12] The link between political philosophy and ownership is clear.

With the rise of economic theories in the 19th and 20th centuries a second link between law and society was made. Not only on the basis of political philosophy, but also on the basis of economic thinking - which in its turn also finds its basis in philosophy of, for example, Adam Smith - the law of property became instrumental once more to the realisation of a purpose: welfare and economic growth.
In 1947 in Mont Pèlerin in Switzerland three economists met to lay the foundations of what would become Neo-liberal thinking. These economists, among which were Friedrich Hayek and Milton Friedman, argued - inspired by market economist Adam Smith - for a free market market economy with as little government interference as possible. Economic growth, expressed in the Gross Domestic Product (GDP), became the leading objective. Private law, especially the right of ownership, became the means to achieve this. Ownership became, more than ever, a status symbol for welfare, freedom and especially the incentive to trade. Law and economic scholars such as Ronald Coase and Richard Posner brought the attention to the law of property as a system of transactions. The transferability and actual transfer of property rights became the leading method of analysis. In 2018, te most famous proponent of such an analysis is Henry Smith from Harvard, with an analysis of the transactional aspects of property law, which he names the operating system. In Smith's analysis the operating system revolves around the costs that are concerned with a transaction. Essentially the rule applies that if the proceeds are higher than the costs, the transaction can take place and should actually be encouraged.

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[10] See, for example, Judith Merkies, The End of Ownership, European Voice 6 maart 2012, https://www.politico.eu/article/the-end-of-ownership/.
[11] Feenstra, Romeinsrechtelijke grondslagen van het privaatrecht (Leiden: Brill Uitgevers, 1990), p. 40, see also Bram Akkermans and William Swadling in Sjef van Erp and Bram Akkermans (Eds.), Text, Cases and Materials on Property Law, Ius Commune Casebooks for the Common Law Of Europe (Oxford: Hart Publishing, 2012), p. 217-218
[12] Gregory Alexander en Eduardo Peñalver, An Introduction to Property Theory (Cambridge: Cambridge University Press, 2012), p. 35 et seq.

This applies to the rules of transfer of property rights, but also for the number and content of the catalogue of property rights.
Opposed to Smith's law and economics analysis is a group of progressive property lawyers who base themselves not on economic, but once more on philosophical foundations. They are concerned with the purpose of the law of property in our society. They do this not only with a descriptive aim, as many law and economics scholars do, but often with a normative aim by providing content to the purpose of property law in our society. Joseph Singer, for example, brings out attention to equality and democracy as constitutional aims and show how the rules of property law, such as the rules on the distribution and redistribution of ownership of land, can play a role. If equality is the purpose, Singer argues, then the rules of property law must be placed in a constitutional perspective.
Singer uses the famous Kelo case to illustrate this. In this case a group of citizens objected to the expropriation of their neighborhood.[13] The city of New London in the state of Connecticut wanted to take this neighborhood to persuade pharmacist Pfizer to establish itself there. Expropriation (or taking in US terminology) in the private and not public interest. The American Supreme Court ruled that it was permissible to take this land with a private purpose if the taking was for the benefit of the development, read growth, of the local economy. Singer argues that his decision was wrong because it does only concern the transaction, i.e. the transfer of ownership of the land from private citizens, through the government, to a private party that will ensure economic growth, but also about the question how we consider the ownership of land. Having ownership of land is not only about the right to exclude others and extract value from the land for yourself, but also about exercising your right of ownership in the context of other land owners.[14] Community, in other words, also provides content to the way in which the right of ownership is exercised or, in case of Kelo, respected.
It is especially Gregory Alexander, also an American scholar, who emphasizes the positive duties that go with the right of ownership. Alexander takes his inspiration from German constitutional property law and mostly South American theories on the social function of ownership.[15] For his own theory Alexander looks back to Aristotle and Thomas of Aquinas and states that the purpose of property law is not only to give exclusivity and welfare, but also to create wellbeing for everyone, individuals and the community. Alexander distinguishes himself with this from other, more economically inspired approaches, because he widens the purpose of property law to also include within the right of ownership the rights of others and the interest of the community.[16]

Differences of opinion therefore exist on what is the purpose of property law. The mainstream, more private-law-inspired thought is to see the right of ownership as an individualist right, for which accrual of value, increase in wealth and individual welfare are the starting points.[17] A diverging and more progressive thought that wins in power is more public-law-inspired and brings besides the private law point of view an additional context of wellbeing and equality that influences that.

In relation to sustainability this is a very interesting discussion as the sustainable development goals deal with wellbeing of ourselves and those around us. We are, I submit, therefore before a fundamental choice: do we keep clinging to a pure private law inspired understanding of ownership and property law or are we prepared to incorporate these or a part of these SDGs in our property law? With climate change, the finiteness of fossiel fuels and the increasing inequality in the world, but also considering the obligations we put on ourselves to achieve the UN SDGs, a choice for the second option seems inevitable.

3. Private law and sustainability

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[13] See also Gregory Alexander's discussion of the Kelo decision in relation to his human flourishing theory. Gregory Alexander, Property and Human Flourishing (Oxford: Oxford University Press, 2018), p. 225 *et seq.*
[14] Joseph Singer, Property as the Law of Democracy, 63 Duke Law Journal 1287 (2014), p. 1323.
[15] These South American theories are based on the work of the French lawyer Léon Duguit. See Léon Duguit, Les transformations générales du droit privé depuis le code Napoléon 21, 2e editie (Parijs: Félix Alcan, 1912). See on this, Matthew Mirrow, The Social Obligation Norm of Property: Duguit, Hayem, and Others, 22 Florida Journal of International Law (2010), 191.
[16] Gregory Alexander, Property's Ends: The Publicness of Private Law Values, Cornell Law School Research paper No 14-13 (2014), Gregory Alexander, Property and Human Flourishing (Oxford: Oxford University Press, 2018).
[17] See, in this sense, Teun Struycken, De *numerus clausus* in het goederenrecht (Deventer: Kluwer, 2007), p. 236.

Sustainability generally refers to ecosystems that are able to continuously remain divers and productive. Think in this respect about forests that maintain themselves for centuries already without any human interference. But sustainability does only concern ecological sustainability, but on the way in which we treat the earth. The 17 UN SDG do therefore not only relate to these (1) ecological objectives, such as healthy drinking water, clean energy and stopping climate change, but also on (2) governance aspects, in which equality and democracy are leading, and (3) economic aspects, in which sustainable economic growth from which everyone should benefit is central.
The UN agreements bring with it that we all contribute to these objectives: governments, the private sector, societal organizations and even citizens. The starting point is that we cannot do this all through our governments and that we can only achieve this together. The law of property will have to deliver most of the building blocks for this. After all, our understanding of ownership, of land but also ownership of companies by the shareholders, is crucial in the way in which we have designed our society.

In the context of sustainable development of private law, scholars have pointed to three important aspects in the last years: (1) the importance of the commons, (2) the circular economy and circular construction and (3) the sharing economy in which services are more important than ownership.

In relation to the commons this work does only concern the way in which these are governed, but especially the idea that in former times, before the French Revolution and the large European codifications, a lot of land was held in common ownership. Natural scientist Fritjof Capra and legal scholar Ugo Mattei put the emphasis in their book 'The Ecology of Law' on how the Neo-liberal thinking already mentioned has lead to privatization of what was common before. Ugo Mattei uses the example of the provision of water in Napels, Italy. There, in the 1980, the water company was privatised, with disastrous results in the quality of the drinking water and the prices for users. When the Italian parliament declared water into a commons, Mattei led a movement to make the Napolitan water company public once more. Not by expropriation, but by changing the mission statement of the company as an activist shareholder from profit into general and public service.[18]
Commons, in which the right of ownership is shared by a large group, or even by everyone, is gaining in popularity in the last years. In the 21st century this does not mean joined ownership of the means of production as in a communist system, but means cooperation between citizens and governments to achieve, mostly sustainable, objectives.
A short example of such an initiative. In my neighborhood a group of citizens is constructing a baking-house, a communal wood fired oven, that together with a windmill on the same premises will provide space and opportunity for everyone to bake their own bread.[19] A communal oven was very normal in the Middle Ages in many communities. There was a great danger for destruction by fire for the often wooden houses and a stone building with an oven provided safety and economies of scale.[20] In 2018 this initiative is about something different: this is about the community and the feeling of belonging to a community and of course on the sustainable use of energy. On a baking day easily 25 people will bake bread in an oven that only needs to be heated once.
This citizens initiative fits very well in a global trend. Journalist Marjorie Kelly provides other examples such as common windmills, cooperative living solutions and large companies that are co-owned by their employees.[21] The development of the commons actually goes much further than that. Think in this respect about open source software, the digital commons, and YouTube and Wikipedia, to which everyone can provide his or her own creative contribution.[22]

A second aspect of sustainability in private law relates to the circular economy. The Ellen MacArthur Foundation describes the circular economy as a closed system in which products and services are exchanged.

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[18] Fritjof Capra and Ugo Mattei, The Ecology of Law. Toward a Legal System in Tune with Nature and Community (Oakland: Berrett-Koehler Publishers Inc, 2015), p. 164-167.
[19] See http://molenmeterik.nl/wp/uitbreiding-molen/
[20] Also known as *four banal*, see François de Boutaric, Traité des droits seigneuriaux et des matières feodales (Toulouse: Jean-François Forest, 1767). p. 379 (available at https://archive.org/embed/traitdesdroitsse00bout).
[21] Marjorie Kelly, Owning our Future. The Emerging Ownership Revolution (Oakland: Berrett-Koehler Publishers Inc, 2012), p. 147 *et seq.*
[22] See Felix Stadler, Digital Commons: A dictionary entry. http://felix.openflows.com/node/137

This system is designed to reduce waste and prevent pollution, use products and materials and keep using them and to let natural systems recover and thrive.[23] In The Netherlands Monica Chao-Duivis recently paid attention to the private law aspects of the circular economy.[24] This especially concerns the rules of accession, dealing with the question what is one unity of objects and who owns these. Creating more flexibility in the traditionally very strict rules provides the possibility to replace whole facades of houses by new versions with higher isolation values or to place solar panels on a building with several property relations resting on it.[25] A facade or solar panel can then be owned by another, making room for joined initiatives such as collective solar panels in a neighborhood, or leasing of a facade to a house that fits the highest isolation standards.
A lot of attention for this is generated by architect Thomas Rau. Rau is known for his initiatives in the area of circular construction, especially the 'Alliander' building that is accompanied by a materials passport: an overview of all materials that are used in the construction and that can - that is how the building is designed - can be reused when the building is demolished.[26] A more recent initiative is the 'madaster' an attempt to come to a cadastral registration of materials.[27] In his book Material Matters Rau, together with Sabine Oberhuber, proposes to move towards a special lease rights (*beklemrecht* in Dutch) instead of ownership. The idea behind this is the materials are in use and not in ownership and that in that way can return to the owner who may reuse them or reshape them into other sustainable materials.[28]
Arie Mes and Hendrik Ploeger in their advice to the Dutch Notarial Professional organization (KNB) put the emphasis on rules of accession and argue in favor of more flexibility by allowing party autonomy in this area.[29] Also Pernille van der Planck comes to similar conclusions in her book on accession.[30] More party autonomy is the thought, makes it possible to come to new and creative solutions.

Rau's lease construction comes close to the third aspect already mentioned: the sharing economy. In the private law debate on the sharing economy mostly the contractual aspects are central. This concerns the commercial providing of services to citizens, such as car-sharing project Cambio, or from citizens to citizens through sharing platforms such as AirBNB and Uber. Instead of leaving a thing, such as a car, unused for 80% of the time, much more efficient use can be made of it by sharing it with others or to use it to provide services to others. The law of property is pushes to the background here as the central issue is the service and not the entitlement to the thing. In fact, a lot of times the end of ownership is argued for in this context.[31] Or, when the end of ownership and property law is not called for, the right of ownership is reduced to the right of the producer or facilitator of the service. The theory is that if the business model of the producer not only concerns the one-off sale of the thing, but is a model in which the producer receives periodic payments to the use of the thing, the producer will make more sustainable products. For example a private-lease of a car rather than the ownership of a car. The longer the product lasts, the more income the thing will deliver to the producer. The same applies to a situation in which a lessee shares his right with others in a sharing project, possibly through AirBNB or Uber.[32]

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[23] See https://www.ellenmacarthurfoundation.org/circular-economy/overview/concept
[24] Monica Chao-Duivis, Privaatrechtelijke aspecten van de circulaire economie in het bijzonder circulair bouwen. Deel 1 (Tijdschrift voor Bouwrecht 9 (2017/139) Deel 2 (Tijdschrift voor Bouwrecht 10 (2017/154), Deel 3 (Tijdschrift voor Bouwrecht 1 (2018/1).
[25] See Monica Chao-Duivis, Privaatrechtelijke aspecten van de circulaire economie in het bijzonder circulair bouwen. Deel 2, Tijdschrift voor Bouwrecht 10 (2017), p. 1036, Pernille van der Plank, Natrekking door Onroerende Zaken (Deventer: Kluwer, 2016), p. 126 *et seq.*
[26] See www.rau.eu/portfolio/liander/
[27] www.madaster.com.
[28] Thomas Rau and Sabine Oberhuber, Material Matters. Het alternatief voor onze roofbouwmaatschappij (Haarlem: Bertram en De Leeuw Uitgevers, 2016), p. 155 *et seq.*
[29] Arie Mes, Hendrik Ploeger en Barbra Jansen, Eigendom van Onroerende zaken, met name natrekking (titels 1 en 3). Flexibele eigendomsverhoudingen in het vastgoedrecht, in Leon Verstappen (Red), Boek 5 BW van de toekomst. Over vernieuwingen in het zakenrecht (Den Haag: KNB, 2016), p. 164.
[30] Pernille van der Plank, Natrekking door Onroerende Zaken (Deventer: Kluwer, 2016), p. 126 *et seq*.
[31] See Judith Merkies, The End of Owenrship, European Voice 6 maart 2012, https://www.politico.eu/article/the-end-of-ownership/.
[32] It could be in violation of the general terms and conditions of a sharing platform, depending on what right is created on the object. It is clear that AirBnB does not allow lessors to rent their objects in violation of their

Private law, especially property law, therefore plays an essential role in the achieving of sustainability. However, it seems that private law practice is ahead of private law theory in this respect.[33] Property law and the right of ownership are easily set aside in favor of the law of obligations. A development that is already going on for a century.[34]

However, property law can play a crucial role in the achievement of sustainability and the SDGs, if we see her as a flexible rather than a closed toolbox, as a dynamic rather than static system. To do that we need to provide new values to our system of property law, revalue it in a way, to internalize the concept of sustainability. That is possible, I intend to show, without pleading for the end of property law and without going to a pure communal system.

own rental conditions. See Article 7.3.4 of the AirBnB General Terms and Conditions through www.airbnb.com.

[33] See, in the same sense, Monica Chao-Duivis, Privaatrechtelijke aspecten van de circulaire economie in het bijzonder circulair bouwen. Deel 1 (Tijdschrift voor Bouwrecht 9 (2017/139), p. 915.

[34] See on this Remi Libchaber, 'La recodification du droit des biens', in: *Le Code civil 1804-2004* (Livre du Bicentenaire), Paris: Dalloz/Lexis Nexis Litec 2004, p. 297 et seq., Bram Akkermans, The Principle of Numerus Clausus in European Property Law (Antwerpen: Intersentia, 2008), p. 385 ff. Jens-thomas Füller, Eigenständiges Sachenrecht? Jus Privatum. Beitrage zum Privatrecht. 104 (Tübingen: Mohr Siebeck: 2006), p. 2 *et seq*.

4. Towards a sustainable property law

4.1 New philosophical and economic foundations

The law of property and especially the right of ownership traditionally are essential for personal development in our society. It provides freedom, a status symbol and is an incentive to accrue more wealth.[35] Founded in a liberal economic system that aims for growth and welfare. The individual in our system is the holder of subjective rights, with the right of ownership as the most extensive right from the catalogue.[36] The right of ownership grants its holder exclusivity and especially the power to exclude others.[37]

The right of ownership provides, in other words, the right to take from the object on which it is created.[38] In the most simple meaning to harvest from your land, but also to fertilize your land and plant crops on it in such a manner that eventually the land will be exhausted. The behavior of large American banks prior to the financial crisis in 2008 can also be described like this. After all, banks received rights of mortgage in their portfolio and split these into parts to trade them for as much money as possible, after which they created derivatives of these right and even traded in derivatives that were no longer directly linked to a specific right of mortgage or a specific object.[39] The result is well known: the bubble imploded and millions of people lost their home as a result of these very complex financial transactions.[40]

The economic model that is at the foundation of our property law is a Neo-liberal model: economic growth, expressed in the gross domestic product, is the leading principle. The state withholds itself from interference with the market as much as possible to provide free reign for the principles governing the market economy. Since the financial crisis it is clear for many that this cannot continue. Economist Kate Raworth is one of the first to offer an alternative by planing sustainability, and not economic growth as the starting point. Her model, known as doughnut economics, proceeds on the basis of a bandwidth, the doughnut, within which we executed our economy and our transactions in a sustainable manner. The minimum threshold, the hole of the doughnut, is a basis of fundamental social rights, the upper threshold the ecological ceiling.[41] Raworth's main argument is that economic growth and profit are fine, but that excessive growth and excessive profit bring more problems than they can solve.[42]

The link between our economic foundational principles and private law, the law of property in particular, is obvious. A different economic foundation can therefore provide a different method with which we use our rules of property law. Besides economics, it is also possible to use political philosophical foundations for this same purpose. If the purpose of property law is not utilitarianism, i.e. welfare and profit maximisation, but wellbeing and human flourishing for ourselves and also our community, our context and perspective dramatically change. There is no real contradiction between utilitarianism and human flourishing, but rather a

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[35] Monica Chao-Duivis, Privaatrechtelijke aspecten van de circulaire economie in het bijzonder circulair bouwen. Deel 2 (Tijdschrift voor Bouwrecht 9 (2017/154), p. 1041 'having a right of ownership has, for a long time, be considered essential for our society as we know it. It provides freedom, status and is considered an incentive to trade…'

[36] Teun Struycken, De numerus clausus in het goederenrecht (Deventer: Wolters Kluwer, 2007), p. 236

[37] Article 5:1 Duch Civil Code, Article 544 Belgian Civil Code.

[38] Marjorie Kelly calls this 'extractive ownership', Marjorie Kelly, Owning our Future. The Emerging Ownership Revolution (Oakland: Berrett-Koehler Publishers Inc, 2012), p. 11-12, see also Fritjof Capra and Ugo Mattei, The Ecology of Law. Toward a Legal System in Tune with Nature and Community (Oakland: Berrett-Koehler Publishers Inc, 2015), p. 6-7 who mention the difficulty of the closing of a parcel to the outside world by the owner.

[39] Marjorie Kelly, Owning our Future. The Emerging Ownership Revolution (Oakland: Berrett-Koehler Publishers Inc, 2012), p. 78-79

[40] See www.nbcnews.com/id/42881365/ns/business-personal_finance/t/no-end-sight-foreclosure-quagmire

[41] Kate Raworth, Doughnut Economics (Londen: Random House, 2017), 51, see also her performance at Pakhuis de Zwijger via https://dezwijger.nl/programma/kate-raworths-doughnut-economics?lipi=urn%3Ali%3Apage%3Ad_flagship3_feed%3BjBVP5eojTm6wc%2FVCs4vbRQ%3D%3D.

[42] Kate Raworth, Doughnut Economics (Londen: Random House, 2017), p. 53-60.

difference in perspective: Gregory Alexander's theory on human flourishing does not only deal with the individual, but also with the community.[43]
Human flourishing means staying within the bandwidth in order to - at the minimum level - provide everyone with fundamental basic needs and - at the maximum level - deal with our materials in a regenerative and not extractive manner. In the terminology of journalist Marjorie Kelly already mentioned, this means a regenerative property law instead of an extractive property law: a system of doctrinal and technical rules that supplies the building blocks to create a sustainable environment.[44]

These are not ideas that are completely new to our system of property law. It is true that the right of ownership is the most extensive individualistic right - which especially enables the extraction from the object on which it is created - but there are several other instances in which the law of property functions in a different manner.
The most logical example of this is the duty to maintain the object of the person holding a right of usufruct. He who is usufructuary for another is expected not only to use the object, but also to preserve and maintain the object so that the value of the object remains stable.[45] Another example of the same duty can be found in the concept of *negotiorum gestio*, the fiduciary duty to take care of an object that belongs to another without any prior agreement to that.[46] The owner of the dominant land in case of a right of servitude must maintain the buildings and constructions he placed on the servant land to be able to use his right.[47] Another example is the legal relation between apartment owners, who have a duty against each other to maintain the land and the building.[48]
The thought, in other words, that when someone is using an object of another, he does so in a sustainable manner in order to be able to return the object in the best possible condition, is already part of property law's DNA. It is a central concept in some instances, such as usufruct, or is read into property relations, such as in case of the relations between apartment owners.[49]

Not in private-law property law, but in the area of constitutional property law there has been attention for the effect of fundamental rights on property law for a while already. In our context, this mostly relates to Article 1 of the First Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). In relation to this article, the European Court of Human Rights in 2002 introduced a positive obligation for the State to protect the ownership of its citizens.[50] This case dealt with the safety of a person illegally occupying a small piece of land at the bottom of a garbage belt. Due to a methane-gas explosion and the garbage and landslide that resulted because of this the man lost his house, which was nothing more than a shed. The security of the enjoyment of the right of ownership is therefore not only the responsibility of the owner, but also of the State. The right of ownership is therefore, besides a private law power, also a fundamental right that needs to be facilitated and protected by the State. The same applies of course for land owners whose land or house is endangered by rising sea levels as a result of global warming.

4.2 Revaluation: a positive proprietary obligation
It is the combination of these already existing connections that open the way for a revaluation of our property law. The new values on which a sustainable property law can be based are sustainability and sustainable development. A doughnut of values, for which the law of property provides the building blocks.
The most important value is wellbeing or human flourishing for ourselves and for our community. The idea that we use materials in a responsible manner by not consuming them, but by using them with the aim of being able to re-use them afterwards. This cannot only be an obligation that arises from the state, but must be internalized into our law of property. The private law method for this *par excellence* is the proprietary obligation, the *obligatio propter rem*. The content of this does not only flow from agreements between private

[43] Gregory Alexander and Eduardo Peñalver, An Introduction to Property Theory (Cambridge: Cambridge University Press, 2012), p. 80 et seq. Community plays a crucial role in thinking about sustainability as the sustainable development goals are to be achieved together.
[44] Kelly calls this regenerative ownership, but this approach applies to the full law of property.
[45] See for example Article 3:214 Dutch Civil Code, Article 578 Belgian Civil Code.
[46] See Article 6:196 Dutch Civil Code.
[47] Article 5:74 Dutch Civil Code.
[48] Article 5:108 Dutch Civil Code.
[49] See for example RB Limburg, 29 maart 2017, zaaknummer 5445461 \ CV EXPL 16-8550.
[50] Öneryildiz v Turkey (2012) 18 June 2002

parties, but from an integral way of thinking in which public law and private law work together to realize sustainability.[51]

Gregory Alexander's work on human flourishing in property law provides a strong foundation on the basis of which this new obligation can be built.[52] In his most recent work Alexander contrasts community with the neoliberal concept of ownership.[53] Human flourishing theory is, in Alexander's view, that the 'vital purpose of property is to enable individuals to live a flourishing life'.[54] To that effect, the Alexander identifies the communities we live in and holds that our membership of these communities, be it our family, religious group and even our country, bring with it a dependence on others.[55] A social thesis to promote human flourishing lies at the basis that assumes that to be a person with capabilities for human flourishing, you must be actively part of a society that enables the type of political, social and moral culture, as well as infrastructure, that allows you to flourish.[56]
From that social thesis, Alexander derives general and specific obligations that are not just for anyone, but for holders of property rights, especially owners.[57] The assumption is that when you have assets (or resources) that enable you to contribute to human flourishing there may be a duty to do so. To fulfill a general obligation may be to vote for the right political party to enact policy or to pay taxes, to fulfill a more specific obligation may entail doing something for a particular group and may be in kind rather than money.[58]
For this to materialise, Alexander holds, we need to identify the community that we are part of, and the interdependence that this community brings, before we can conceptualize the general or specific obligation that ownership in this community brings with it. What our obligation is, will depend on the context that these elements provide. In Alexander's theory we are not, therefore, dealing with a one-size-fits all obligation for all owners.

In his most recent work Alexander deals with the issue of a clean environment as an infrastructural requirement for human flourishing.[59] The community that we are part of determines what type of obligation property right holders may have against each other as well as against others. Alexander identifies two types of communities: (1) those with a territorial foundation, such as our neighborhoods, cities and even countries and (2) those with a non-territorial foundation, such as our (extended) families and even intergenerational links between family members.[60] Not everyone belongs to their community in the same way and the commitment to the community may also change over time. A child is dependent on her parents in different ways then when she grows into an adult with her own life with a family of her own. The obligations we owe to our community members are therefore, in Alexander's view, different in content and different depending on our involvement (or dependency) in our community.
Alexander does not directly address sustainability. In his analysis a clean environment is part of the infrastructure we need to enable human flourishing. A general obligation exists in his view that can be fulfilled by paying taxes to ensure the State takes care of this.[61] When Alexander deals with intergenerational

[51] See Gregory Alexander, Property and Human Flourishing (Oxford, Oxford University Press, 2018), p. xv-xvi.
[52] Gregory Alexander, Property and Human Flourishing (Oxford: Oxford University Press, 2018).
[53] Gregory Alexander, Property and Human Flourishing (Oxford: Oxford University Press, 2018), p. 3 *et seq*.
[54] Gregory Alexander, Property and Human Flourishing (Oxford: Oxford University Press, 2018), p. xiv (in general), p. 39 (on ownership in particular).
[55] Gregory Alexander, Property and Human Flourishing (Oxford: Oxford University Press, 2018), p. xv (in general), p. 75 et seq (on communities in particular).
[56] Alexander formulates this as: 'In order for me to be a certain kind of person—a free person with the basic capabilities necessary for human flourishing—I must be in, belong to, and support a certain kind of society—a society that supports a certain kind of political, social, and moral culture and that maintains a decent background material structure', Gregory Alexander, Property and Human Flourishing (Oxford: Oxford University Press, 2018), p. 55.
[57] Gregory Alexander, Property and Human Flourishing (Oxford: Oxford University Press, 2018), p. 59.
[58] Gregory Alexander, Property and Human Flourishing (Oxford: Oxford University Press, 2018), p. 55-58.
[59] Gregory Alexander, Property and Human Flourishing (Oxford: Oxford University Press, 2018), p.56.
[60] Gregory Alexander, Property and Human Flourishing (Oxford: Oxford University Press, 2018), p. 75 *et seq* (on communities), p. 103 *et seq* (on intergenerational-communities).
[61] Gregory Alexander, Property and Human Flourishing (Oxford: Oxford University Press, 2018), p. 56-57.

communities and the question whether there are obligations we owe to future generations, he writes about an obligation not to 'milk' our resources.[62] Such obligation must, finally, be carried out 'by the state, through taxation and regulatory programs'.[63]

In the context of sustainability, I argue for action by all of us and the incorporation of an obligation of sustainability *propter rem*. Alexander's Human Flourishing theory does not go as far as this, but does offer inspiration to attempt to construct such an obligation.[64] For that to happen we need to establish (1) whether such obligation falls under the social thesis, (2) what is the community in which this obligations becomes relevant, (3) whether this gives rise to a general and/or specific obligation, and (4) to whom the obligation is owed and (5) what may be its content.

First, the inclusion of sustainability in the Human Flourishing social thesis seems uncontroversial. It is part of the political and social culture, as well as the infrastructure we need to enable human flourishing of ourselves and our communities. Although Alexander only includes a clean environment as an aspect of this, other issues of sustainability, such as equality, social justice and democracy also easily fit within the scope of this thesis.

Second, the community we belong to will greatly determine the existence and scope of the obligation that results. One community could be our fellow humans. As inhabitants of planet earth, we are all connected to each other. Especially when issues of environmental sustainability are concerned the realization that what happens in one part of the planet, for example in terms of CO2 emissions, has an effect on other parts of the planet or even the whole planet. For example with rising sea levels as a result of global warming. At the same time, Alexander argues, most inhabitants on the planet are strangers to each other and not usually in the position that they can contribute to the development or nurturing of each other's capabilities.[65] Global citizenship, in Alexander's reasoning, does not provide enough connection to base obligations on.

The context of sustainability, especially environmental sustainability, may contribute to this reasoning in such as way that we can begin so speak of a global community. Our well-being, after all, depends us developing a sustainable society. The global realization of our inter-dependence relating to these natural phenomena makes us responsible for each other's well-being. Alternatively, we can use smaller communities, such as Europe (EU citizenship is actually a valid legal concept and EU citizens are closely related to each other by rules of EU Law) or our own country.[66]

Another community that we can identify in this context are Alexander's intergenerational communities. In these, which are more individually based, we are linked to our ancestors as well as responsible for those that will come after us. Surely this also includes the way in which we deal with our planet to ensure that future generations will also be able to make use of its resources.[67]

Third, the membership of this global, European, or national, as well as intragenerational community of sustainability brings both general and specific obligations. Property owners hold resources that are essential to enable human flourishing by treating their objects in a sustainable manner. Such general obligation towards themselves as well as to others should come with their membership of their community or communities. Specific obligations can also exist for two reasons: depending on the property right, the specific obligation of sustainability may be not to exhaust the land, or not to foreclose on a sub-prime mortgage right.[68]

Fourth, these obligations are - first and foremost - owed towards the other members of the community. When it comes to the general obligation this seems obvious, but a complication arises when we ask the question who is able to enforce such obligation. Can another member of the community ask for fulfillment of such general

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[62] Alexander refers to 'milking' in the same way as I use the concept of exhaustion and extraction in this contribution. See Gregory Alexander, Property and Human Flourishing (Oxford: Oxford University Press, 2018), p. 117, 119-120.

[63] Gregory Alexander, Property and Human Flourishing (Oxford: Oxford University Press, 2018), p. 122-123.

[64] Alexander explicitly states that the theory serves as an inspiration and not a roadmap, Gregory Alexander, Property and Human Flourishing (Oxford: Oxford University Press, 2018), p. xvii.

[65] Gregory Alexander, Property and Human Flourishing (Oxford: Oxford University Press, 2018), p. 93-94.

[66] In Alexander's analysis nation states are certainly a community in his theory, applying the same reasoning to the European Union in relation to EU Citizens words very well. Gregory Alexander, Property and Human Flourishing (Oxford: Oxford University Press, 2018), p. 90-92.

[67] See also Gregory Alexander, Property and Human Flourishing (Oxford: Oxford University Press, 2018), p. 122.

[68] See my arguments and explanation on this below in section 5.

obligation in a certain context, or is that a state matter and can we ask from the state to have a policy in place sufficient to protect this general obligation?[69] However, one may also reason a duty of care exists for every owner, natural person or corporation, to fulfill the global general obligation that they are under.[70] One or several members of the community may then certainly hold a property holder to his general obligation to treat his object in a sustainable manner. Specific obligations can exist between right-holders of property rights, for example the holder of a mother right and the holder of a daughter right. Because they are more specific they are more specifically enforceable between the parties that concern them.
Fifth and final, the content of these obligations are filled from our understanding of sustainability. As our understanding grows how our current way of dealing with our planet needs to change to achieve a truly sustainable society, the content of the obligations that arise for holders of property rights - who have the resources to contribute to the development and therewith human flourishing of themselves and their community - will evolve and become more and more concrete.

4.3 An algorithm for the development of sustainable property law

In 2012 André van der Walt created a brilliant algorithm for the development of a property law in post-apartheid South Africa.[71] In South Africa the law of property is placed in front of an enormous challenge to create more social justice and welfare for everyone. To honor his work and his life as a world-renowned legal scholar, I reform his algorithm in an algorithm for the creation of a sustainable property law:

a. There is one system of law in which there is no distinction between public law and private law;
b. Sustainability is the starting point and organizational principle at the foundations for the development of our law and legal system. The UN SDG are the most recent expression of this and, as highest source of law give direction to the development of our law and legal system;
c. The theoretical foundation of our property law is that of human flourishing; the doughnut economy is the foundation for economic growth and development;
d. Property law, whether it concerns legislation, common or customary law, or case law gives effect to sustainability and sustainable development;
e. Property rights, especially the right of ownership, is seen not only as an individualistic right, but also as a right with the obligation to protect and preserve for the future the object on which the right is created. This is a general as well as a specific obligation to connote to human flourishing in our communities. It is generative- instead of extractive ownership;
f. Limited property rights are derived from a more encompassing right and therefore contain the same generative obligation as the right of ownership from which they derive themselves;
g. Existing property right are respected and protected, in so far as they are not in violation with the idea of sustainability and sustainable development
h. The legislature must make legislation that gives effect to sustainability and the UN SDG
i. The executive creates policy to guarantee and promote sustainability and the UN SDGs
j. The judiciary has as its tasks to interpret existing legislation and existing legal relations in which a way that they are aligned with sustainability and the UN SDGs;
k. Legislation and legal relations that do not comply with these concrete SDGs and the policy made by the executive, cannot continue to exist;
l. It is the task for us legal academics to find out how legislation can be made, changed and interpreted in the context of sustainability and the SDGs.

[69] Alexander, under reference to the South African example created in Government of the Republic of South Africa v Grootboom, 2001 (1) SA 46 (CC), chooses for the latter as he holds that general obligations are to be fulfilled by paying taxes. Gregory Alexander, Property and Human Flourishing (Oxford: Oxford University Press, 2018), p. 126 at note 37.
[70] This is an argument currently raised by the Dutch NGO *Mileudefensie* (environmental defence) that will attempt to hold Shell to a duty of care (in tort law) to stop producing fossil fuels. See https://milieudefensie.nl/klimaatzaakshell.
[71] André van der Walt, Property and Constitution (Pretoria: Pretoria University Press, 2012), p. 23-24

Regardless of the international agreements on sustainability, there are still nationally oriented and nationally designed systems of property law.[72] A certain incompatibility between the international and national level therefore exits. The necessity to give effect to these developments seems obvious, but has so far not proven difficult. This also makes sense as our rules of private law are designed to incorporate societal change and to adapt to innovative situations. At the same time, I have tried to demonstrate, private law is also in the service of the ruling economic and philosophical thought. By tackling both of these foundations it becomes possible to bring the law of property in the service of new ideas and principle and to recalibrate our rules.
That all is perhaps a bit abstract, which is unavoidable when new theory is created, but in two short examples I would like to show what my sustainability-algorithm can mean.

5. Two short case studies

5.1 The right of ownership: land ownership of the NAM

Since 1959, in the north of the Netherlands, the Nederlandse Aardolie Maatschappij (NAM) drills for gas in the province of Groningen and the North Sea. Before the concession to excavate gas was granted to NAM there was a lot of debate whether this was a government task - gas was for the general use of everyone - or a corporate activity - in which private parties make a lot of profit from selling gas.[73] The privatized model was favored, the consequences of which are know: so much gas was extracted that earthquakes and social unrest that these brought were the consequence.[74] The ownership of the gas-fields, as well as the gas, be it in the hands of the government or not, is an extractive ownership until now. The NAM and the Dutch state earn a lot of money extracting gas.
This does not fit in the algorithm for a sustainable property law. Human flourishing does not only mean profitability for the NAM and income for the Dutch State, but also care for the land and the minerals in there as well as for the occupants of the land. The question remains whether the 18 billion euro reserved to pay for damage caused by the drilling for gas is enough. After all, those 18 billion euro could also have been spend on preventing of the damage.
A proprietary obligation of the owner makes it a lot easier to demand from the NAM or the Dutch state to deal with their right of ownership in a different manner. If we consider such a duty as contained in the right of ownership, the doctrine of abuse of right can also be of assistance here. The use of a power that causes damage to another in a disproportional manner can be an abuse of right.[75]

5.2 Limited property rights: mortgages

Another example concerns the right of hypothec (or mortgage) as a limited property right derived from a right of ownership with a positive obligation of sustainability. Human flourishing plays a direct role here too. The owner uses his right of ownership to provide security in order to be able to acquire that right of ownership: a loan is taken and at the moment of acquisition of the right of ownership a right of hypothec is created for the creditor. The owner knows that he will have to fulfill his obligations to be able to enjoy his ownership, as foreclosure and forced public sale will result and make him lose his ownership if he does not. This system has been around and has been working for centuries. What has changes in the last decades is that banks, under enormous pressure of profit maximization by shareholders and investors, have started granting loans to people of which they knew, or at least should have known, would not be able to fulfill their payment obligations.[76]
To make matters worse, these banks have also proceeded to make derivatives from these rights of hypothec to make these as attractive as possible for re-financing of debt. Advanced securitization techniques have led to an investment bubble that imploded in 2008 because many were unable to fulfill their payment obligations. Banks, pushed by their shareholders and investors, foreclosed and realized their rights of hypothec in most of these cases. After all, the profit of the bank was priority and in a transactions in derivatives the person that

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[72] With the Paris Climate Agreement, the successor of Johannesburg (2002) and Rio (1993), market-liberalism still rules in private law. See John Blewitt Understanding Sustainable Development, 2e edition (Londen, New York: Routledge, 2015), p. 21-23, 29-30.
[73] www.co2ntramine.nl/hoe-nam-macht-kreeg-nederlandse-aardgas/
[74] See Rechtbank Noord-Nederland 1 maart 2018, C/19/109028 / HA ZA 15/33.
[75] Asser/Bartels/Van Velten 5, n. 44, 46.
[76] See Marjorie Kelly, Owning our Future. The Emerging Ownership Revolution (Oakland: Berrett-Koehler Publishers Inc, 2012), p. 87-98.

originally was granted the loan is not involved (the real economy), but the trade on the financial market is leading (the financial economy).
A right of ownership that contains an obligation of wellbeing also includes such an obligation when a limited property right is derived. When realizing the limited property right, here of the right of hypothec, this includes the obligation to consider the wellbeing of the person granting the right of hypothec. Joseph Singer even argues that, on the basis of theoretical insights on wellbeing in property law, that a bank should not be allowed to foreclose on a property if they have deliberately granted a loan to someone of which they knew would not be able to repay.[77] That is not a very stranger consideration in the context of sustainability: especially cooperative banks have proven to do very well in the financial crisis. These banks have mostly not been able to take part in very risky securitization transactions, because the shareholders of such banks are also the clients. Some cooperative banks have helped their clients by allowing them to pay interest only for a period of time and so prevent execution of the right of hypothec in many cases, while other banks did nothing but foreclose on their portfolios.[78]

Human flourishing and wellbeing in other words, implies that the relation between the holder of the primary right and the holder of the limited property right remains. We should also reconsider our rules on accessorily in this light and provide new life to these. The positive obligation of the owner can also bring a positive obligation for the holder of a limited property rights, such as a right of hypothec. The holder of the right of hypothec must therefore have another purpose than just profitability.

6. Conclusion

Sustainability and human flourishing go hand in hand. The UN sustainable development goals have as their objective to promote our wellbeing, for us as individuals as well as four our community. That will not happen at once and also not by tomorrow. However, it is clear that this deals with more than international obligations only. If we want to achieve our sustainable development goals or at least make a serious effort to do so, then private law must provide its contribution.
Legal certainty and durable legal relations are traditionally the starting points in the law of property. Sustainability is not in the way of these. The objective is, so I have tried to argue, that we must become more aware of the context of our property law. Why do we have the rules that we use and why do we provide content to these in the way that we do? Liberal and Neo-liberal foundations have gained the upper hand in the last decades, in such a way that we perhaps have exceeded the aims that we wished to pursue and in the way we have been treating our planet in the process. Of course this has not all been bad, but from a sustainability perspective we have not yet been able to do much good.

More and more concrete initiatives are appearing. Neighborhood initiatives, supported by energy companies, for clean energy such as solar, wind or heat, cooperative living communities in which only the buildings are owned by the residents, and sharing projects, facilitated by platforms such as AirBnB and Uber. What is lacking is the general overarching theoretical foundation on the basis of which we do this. Personal ideals, mostly ecological in nature, often play a role, but all try to navigate in an existing system that is mostly centered around an individualistic concept of ownership. The rules of the operation system, i.e. the rules of the acquisition and loss of ownership, are aimed to create certainty for the owner. We use the concept of unity of the object, that is under pressure so much in the circular economy, the exclusionary power of the owner, the is under pressure so much in the sharing economy, and the relatively easy rules for the execution of rights of hypothec, to create and maintain the most economically efficient system.
The idea to make the law of property superfluous, by giving everything the shape of service contract is not the right way to go. Revaluation, i.e. the providing of our system with new values, by conceptualising the proprietary obligation, brings the law of property to the centre. It gives us all the duty to consider how we deal with our things, for example our homes. With that, we provide the building blocks to - together - design a sustainable economy in which human flourishing, including economic growth and further development of new initiatives are central. A theoretical foundation, such as I have tried to create, is only the beginning.

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[77] Also known as a sub-prime loan, see Joseph Singer, Property as the Law of Democracy, 63 Duke Law Journal 1287 (2014), p. 1301-1302.
[78] Marjorie Kelly, Owning our Future. The Emerging Ownership Revolution (Oakland: Berrett-Koehler Publishers Inc, 2012), p 38, 40-45.