



HOUSING AND LAND RIGHTS NETWORK

Habitat International Coalition

The Social Function of Property: A Concept Paper

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Normative content

Social function: in theory, a social function is "the contribution made by any phenomenon to a larger system of which the phenomenon is a part."¹ In practice, the social function of a thing is its use or application to the benefit of the greater society, in particular, prioritizing those with the greatest need. Thus, the social function of a property, good, resource or service is realized when it is applied to satisfy a general social need or the unmet need of a segment of society. The social function of property imposes "the obligation of the owner to use the property for the satisfaction of his needs, but also the collective needs of society; as such, it refers to the rules regulating the relationship between the needs of the individual and the needs of society."²

Islamic philosophy, prophetic authority and law recognize ownership, but reserve water, pasture and fire as common entitlement of the people with a social function, restricting their privatization.³

Sources in Constitutional Law

Many state constitutions recognize the social function of property. The 1988 Brazilian Constitution explicitly recognizes the right to decent housing, and provides that property, whether urban or rural, "shall fulfill its social function."⁴ The Constitution provides for the state's duties in ensuring the social function of property.⁵ Unoccupied buildings or unproductive land, thus, become susceptible to expropriation in the social interest. The Egyptian Constitution also explicitly recognized the social function of property, until its most-recent iteration of January 2014.⁶

The South African Constitution (1996), stands as an example of the right to property functioning as a means to realize other human rights, as well as of the state's obligations in that process. The Constitution provides that "no law may permit arbitrary deprivation."⁷ Expropriation is permitted, if prescribed by law, in the public interest or for a public purpose and it is subject to compensation.⁸ The same article defines the public interest as including "the nation's commitment to land reform, and to reforms to bring about equitable access to all South Africa's natural resources."⁹ It establishes that compensation should reflect "an equitable balance between the public interest and the interests of those affected."¹⁰ and specifies the duty of the State to fulfill the right to property in respect to land: "The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis." Thus, a person or community whose land tenure is insecure as a consequence of *apartheid* is entitled "either to tenure which is legally secure or to comparable redress."¹¹

The Constitution of Ireland (*Bunreacht Na hÉireann*) of 1937, recognizes the right to property as fundamental, but that its "exercise...ought, in civil society, to be regulated by the principles of social justice" and that "The State, accordingly, may as occasion requires delimit by law the

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exercise of the said rights with a view to reconciling their exercise with the exigencies of the common good.”¹² The *Grundgesetz* (Basic Law) of the Federal Republic of Germany (1949, amended upon reunification in 1990) recognizes that: “Property entails obligations. Its use also shall serve the public good.”¹³

Sources in International Law

The social function of property as a concept of international law exists in the (European) Convention for the Protection of Human Rights and Fundamental Freedoms (1950). The first Article of its first Protocol, entitled the “Protection of Property” (1952), provides:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.”

The Protocol recognizes every state party’s right “to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

The American Convention on Human Rights (ACHR) guarantees everyone’s “right to the use and enjoyment of his property,” but provides also that “The law may subordinate such use and enjoyment to the interest of society.”¹⁴ The UN Committee on Economic, Social and Cultural Rights has supported the concept of the social function of property both in its jurisprudence and general guidance to all states parties to the Covenant on Economic, Social and Cultural Rights.¹⁵

In international customary law, Article 17 of the UDHR provides that “everyone has the right to own property alone as well as in association with others.” The universal acceptance of “general interest” as a lawful limitation to the right to property (with the fulfillment of other conditions), as also illustrated by the concept of “eminent domain,” places the social function of property in the realm of customary norms such that guarantee the realization of the core content of other economic, social and cultural rights.

Endnotes:

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- ¹ Thomas Ford Houtt, *Dictionary of Modern Sociology* (Totowa NJ: Littlefield Adams 1969), p. 139.
 - ² Theo van Banning, *The Human Right to Property* (Antwerp, Intersentia/Hart, 2002), pp. 147–48.
 - ³ The Prophet Muhammad (PBUH) famously enjoined: “Muslims are to share in these three things: water, pasture, and fire.”
¹⁵ Hadith related by Abu-Dawud, Ibn Majah, and al-Khallal. See *Islamset*, at: <http://www.islamset.com/env/contentv.html>.
 - ⁴ Article 5, §XXIII.
 - ⁵ Articles 183, 184, 186.
 - ⁶ Articles 30 and 32.
 - ⁷ Article 25.1.
 - ⁸ Article 25.2.
 - ⁹ Article 25.1, para. 4
 - ¹⁰ Article 25.1, para. 3.
 - ¹¹ 25.6.
 - ¹² Article 43.2(1) and 43.2(2).
 - ¹³ Art. 14(2).
 - ¹⁴ Article 21.1.
 - ¹⁵ See CESCR General Comment No. 17: “The right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author (art. 15),” thirty-fifth session (2005), para. 35 and “CESCR statement “Human Rights and Intellectual Property”, Statement by the Committee on Economic, Social and Cultural Rights, twenty-seventh session, 29 November 2001, E/C.12/2001/15, at paragraph 9.