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Gregory S. Alexander  
*Cornell Law School*, gsa9@cornell.edu

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## OWNERSHIP AND OBLIGATIONS: THE HUMAN FLOURISHING THEORY OF PROPERTY

Gregory S. Alexander<sup>1</sup>

The thesis of this brief paper is straightforward, although not uncontroversial: The moral foundation of property, both as a concept and as an institution, is human flourishing. In the remainder of my remarks I will explain what I mean by human flourishing, as I use the term, and I will distinguish human flourishing from welfare as that term is commonly used today by economists and legal analysts. I will then briefly illustrate the approach through an example.

Private property ordinarily triggers notions of individual rights, not social obligations. After all, the core function of private property, at least according to conventional lore, is to insulate individuals from the demands of society both in its organised political form and its non-political collective form. Of course, the common law has long recognised limits on the exercise of property rights, limits that grow out of the needs of others in cases of conflicting land uses. The obvious example is the common law of nuisance, which courts developed using the ancient maxim *sic utere tuo ut alienum non laedas* (“use your land in such a way as not to injure the land of others”) as their guiding principle. But such limits on property rights are considered the exception, not the rule, the periphery rather than the core.<sup>2</sup> The core image of property rights, in the minds of many people, is that the owner has a right to exclude others and owes no further obligation to them.<sup>3</sup> On this view trespass is the paradigmatic cause of action in the law of property. Hence if another intentionally commits trespass upon my land after I have refused permission to pass across it, the trespasser is properly liable for punitive damages even though only trivial damage was done to my property.<sup>4</sup>

That image is highly misleading. The right to exclude itself, thought by many to be the most important twig in the so-called bundle of rights,<sup>5</sup> is subject to many exceptions, both at common law and by virtue of statutory or constitutional provisions. For example, the common

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<sup>1</sup> A. Robert Noll Professor of Law, Cornell University. This paper was originally delivered as a lecture at the University of Hong Kong Faculty of Law. I am grateful to the Faculty for the invitation and especially to Professor Guanghua Yu for making the arrangements and for his hospitality.

<sup>2</sup> This is essentially the thesis of Henry E. Smith, “Mind the Gap: The Indirect Relation Between Ends and Means in American Property Law” (2009) 94 *Cornell Law Review* 959. Indeed Smith uses the very imagery of core and periphery.

<sup>3</sup> See Thomas W. Merrill, “Property and the Right to Exclude” (1998) 77 *Nebraska Law Review* 730.

<sup>4</sup> This is precisely what happened in the well-known American case of *Jacque v. Steenberg Homes, Inc.* (1997) 563 NW2d 154 (Wis).

<sup>5</sup> See, e.g., J.W. Harris, *Property and Justice* (Oxford: Oxford University Press, 1996), p. 154–64; J.E. Penner, *The Idea of Property in Law* (Oxford: Clarendon Press, 1997), p. 68–104; Felix S. Cohen, “Dialogue on Private Property” (1954) 9 *Rutgers Law Review* 357, 370–71; Morris R. Cohen, “Property and Sovereignty” (1927) 13 *Cornell Law Quarterly* 8, 12.

law requires landowners to permit police to enter privately owned land to prevent a crime from being committed or to make an arrest.<sup>6</sup>

More generally, property owners owe far more responsibilities to others, both owners and non-owners, than the conventional imagery of property rights suggests. Property rights are inherently relational, and because of this characteristic, owners necessarily owe obligations to others. But the responsibility, or obligation, dimension of private ownership has been sorely under-theorised.

In this brief paper I shall outline a theory of property that emphasises the obligations that owners owe to others, specifically, to certain members of the various communities to which they belong. These obligations vary in different contexts and at different times. As society has grown more complex and more interdependent, the obligations have thickened. Capturing all of these obligations under one theoretical umbrella, one may speak of a social-obligation norm that the law does and should impose on owners. This norm, I want to stress, is inherent in the concept of ownership itself. This is an important point because it means that when the law, whether by way of statutes, administrative action, or judicial decisions, announces some restriction on an owner's use of her land or building, insofar as that announcement restates what is already part of the social-obligation norm, it is simply a legal recognition of a restriction that is inherent in the concept of ownership rather than being externally imposed and engrafted upon the owner's bundle of right.

The basis of this norm is human flourishing. The social-obligation theory builds on the claim that the basic purpose of property is to enable individual to achieve human flourishing. The theory further builds on Amartya Sen's famous insight that flourishing is a matter of what a person is able to do rather than what he has. That is, the well-lived life should be measured by a person's capabilities rather than by a person's possession or by the satisfaction of his subjective preferences. Before developing the social obligation of ownership, I must first explain the foundational norm of human flourishing a bit further.

## 1. Human Flourishing

Human flourishing, a term that I intentionally borrow from Aristotle, means that a person has the opportunity to live a life as fulfilling as possible for him or her. Aristotle's term, of course, was *eudaimonia*, which is commonly translated as "happiness." Human flourishing is a better translation of *eudaimonia*, however, for reasons I will explain later.

There are two important characteristics of my conception of human flourishing. First, it is morally pluralistic; that is, it rejects the notion that there exists a single irreducible fundamental moral value to which all other moral values may be reduced. Rather, it conceives of human flourishing as including (but not limited to) — individual autonomy, personal security/privacy,

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<sup>6</sup> See Restatement (Second) of Torts § 204 (1965).

personhood, self-determination, community, and equality. These values cannot be reduced to a single basic value because they are incommensurable; that is, there is no available metric by which one can commensurate goods such as equality and personhood. (It is one states that Einstein’s genius was “better than” Mother Theresa’s compassion — the comparison makes no sense.) They are all aspect of human flourishing, and cannot be balanced one against the other, although rational choices can be made between them in cases where they come into conflict with each other.

The second defining characteristic of flourishing is that it is objective. This is why flourishing is a better translation of *eudaimonia* than happiness is. The problem with “happiness” is that it connotes something which is subjectively determined. It is for me, not for you, to pronounce on whether I am happy, or on whether my life, as a whole, has been a happy one. Contrast my being healthy or flourishing. Here we have no difficulty in recognizing that I might think I was healthy, either physically or psychologically, or think that I was flourishing and just be plain wrong. It is all too easy for me to be mistaken about whether my life is *eudaimon* (the adjective from *eudaimonia*) not simply because it is easy to deceive oneself, but because it is easy to have a mistaken conception of *eudaimonia*, or of what it is to live well as a human being, believing it to consist largely in physical pleasure or luxury for example.

## 2. Human Flourishing v Welfare

Now, it is important to understand, especially in the context of property and property theory, how this conception of human flourishing differs from the concept of *welfare* and how the human flourishing theory differs from those theories that go under the label “welfarist.” Modern legal welfarists sometimes suppose that the concepts of welfare and human flourishing are synonymous,<sup>7</sup> but they are not, at least not in the sense in which welfare is used by law-and-economics analysts.<sup>8</sup> Welfare is an imprecise term, and it certainly could be understood to have the same meaning as flourishing. After all, welfare seems to mean “faring well,” which is more or less what flourishing is all about. But the question is, faring well is what sense or what respect? Law-and-economics analysts define “faring well” in a particular way — whether one’s personal preferences, taken as givens, are satisfied. One fares more or less well according to the degree to which one is able to maximise the satisfaction of one’s personal preferences. Welfarism, in this sense, supposes that there is one and only one good—maximization of preference satisfaction.<sup>9</sup> All other values can be reduced to that single, irreducible value. In this

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<sup>7</sup> See John O’Neill, *Ecology, Policy and Politics* (London: Routledge, 1993), p. 71.

<sup>8</sup> See Louis Kaplow and Steven Shavell, *Fairness versus Welfare* (Cambridge, MA: Harvard University Press, 2002).

<sup>9</sup> See Daniel M. Hausman and Michael S. McPherson, “Preference Satisfaction and Welfare Economics” (2009) 25 *Economics and Philosophy* 1.

respect, welfarism, as a moral theory, is a value monist theory, unlike a theory based on human flourishing, which is value pluralist.<sup>10</sup>

Human flourishing, unlike welfarism, is not a desire-fulfillment theory of how a person's life can go maximally well. It is an objective theory. That is, it contends that "certain things are good or bad for us, whether or not we want to have the good things, or to avoid the bad things."<sup>11</sup> Now, it is important to emphasise that in characterizing the human flourishing theory as an objective theory, this does mean that the theory claims that there is one and only way to live a life that goes maximally well. Far from it. There are many diverse paths to lead a fulfilling life, many ways of flourishing. At the same time, not every way of living that a person may choose to pursue, no matter how excellent an individual may become at his chosen path, is one that maximises his well-being. For a Nazi SS officer, a life devoted to murdering Jews, no matter how excellently performed, is not a well-lived life.

### 3. Human Flourishing and Capabilities

How can one measure human flourishing? Economists and others committed to welfare measure that value, of course, in terms of resources.<sup>12</sup> For welfarists, human welfare is a matter of satisfying subjective individual preferences, revealed through exchange transactions.<sup>13</sup> In recent years, Amartya Sen has developed an alternative approach to measuring well-being, one that does not focus on resources.<sup>14</sup> Sen's insight is that flourishing is a matter of what a person is able to do rather than what he has. That is, the well-lived life should be measured by a person's

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<sup>10</sup> Gregory S. Alexander, "Pluralism and Property" (2011) 80 *Fordham Law Review* 1017; Gregory S. Alexander, "The Social-Obligation Norm in American Property Law" (2009) 94 *Cornell Law Review* 745.

<sup>11</sup> Derek Parfit, *Reasons and Persons* (Oxford: Clarendon Press, 1984), p. 493.

<sup>12</sup> See, for example, Kaplow and Shavell, *Fairness versus Welfare* (n 6 above).

<sup>13</sup> See, for example, Harold Demsetz, "Toward a Theory of Property Rights" (1967) 57 *Am. Econ. Rev. (Papers & Proc.)* 347. This is not to say that welfarists are indifferent to the social good. Far from it; their objective is precisely to maximise aggregate social welfare. Hence, the human flourishing theory and welfarism, which derives from classical utilitarianism, share common ground insofar as they both hold a basic concern with the well-being of society. The two theories part company on two important points. The first point concerns the standard by which one measures well-being. Welfarism measures it on the basis of what is commonly called revealed preferences, ie, the actual choices a person makes between resources. According to this theory, a society is better off to the extent that it maximises the aggregate revealed preferences of its members. See Robert Sugden, "Welfare, Resources, and Capabilities" (1993) 31 *J. of Econ. Literature* 1947. The human flourishing theory, drawing upon Sen's work (see n 14 below), rejects revealed preferences in favor of looking at the capabilities that are necessary for a person to flourish, ie., to live a well-lived life.

The second, and related, point of difference is that welfarism holds a conception of the common good that is subjective whereas the human flourishing theory's conception is objective. As Sugden states, "Revealed preference welfarism purports to evaluate each person's circumstances in terms of that person's own system of values, without even asking what those values are. An aggregation of such independent valuations cannot be any kind of valuation at all." Sugden, "Welfare, Resources, and Capabilities" *ibid.* By contrast, the human flourishing theory contends that although there are many ways of living a well-lived life, not every way a person may happen to choose to spend his life is good. The common good must have an objective dimension in the sense of filtering certain values, certain choices, or certain ways of living that are intrinsically bad.

<sup>14</sup> See Amartya Sen, *Commodities and Capabilities* (New Delhi: Oxford University Press, 1999); Amartya Sen, *Development as Freedom* (New York: Anchor Books, 1999).

capabilities rather than by a person's possessions or by the satisfaction of his subjective preferences. What a person actually does with their capabilities is up to him, but his life simply cannot go well unless he at least possesses certain essential capabilities.

We could debate endlessly what capabilities are essential to be in a position to be able to live a fulfilling life. Various philosophers, including Sen, have their own preferred lists of capabilities.<sup>15</sup> But four such essential capabilities seem uncontroversial. These are *life*, understood to include certain subsidiary values such health; *freedom*, understood as including the freedom to make deliberate choices among alternative life horizons; *practical reasoning*; and *sociability*.

No one can develop these capabilities by himself. The physical process of human development makes us dependent on others to cultivate the necessary capacities. Indeed, we are dependent on others for our ability to function as free and rational agents.<sup>16</sup> Our dependence on others is deeper. This form of dependence is perhaps most clear with respect to life and its subsidiary goods. We enter the world utterly dependent on others for our physical survival.<sup>17</sup> Even upon reaching adulthood, we continue to place at least partial physical dependence (and even emotional or psychological dependence) on others as we move through a dangerous world. Often, little more than dumb luck separates the independent adult from the dependent one. And, as we reach the final years of our lives, the possibility of physical dependence once again looms ever larger.

Life, freedom, practical rationality, and sociality can meaningfully exist only within a matrix of social structures and practices. Even the most seemingly solitary and socially threatened of these capabilities, freedom, depends upon a richly social, cultural, and institutional context; the free individual must rely upon others to provide this context. From the earliest age and well into adulthood, if not for our entire lives, we receive from and we rely on parents, teachers and mentors, and friends for lessons about planning and evaluation, causes and consequences, self-restraint and discipline: these are the raw materials from which the capability of practical reasoning emerges. We are, in short, inevitably dependent upon communities, both chosen and unchosen, not only for our physical survival, but also for our ability to function as free and rational agents.

Communities, including but not limited to the state, are the mediating vehicles through which we come to acquire the resources we need to flourish and to become fully socialised into the exercise of our capabilities.<sup>18</sup> Even as free, rational persons, we never cease to operate within

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<sup>15</sup> Compare, for example, Martha Nussbaum, *Women and Human Development: The Capabilities Approach* (New York: Cambridge University Press, 2000), p. 78-80, with Sen, *Development as Freedom* (n 12 above), p. 286-287.

<sup>16</sup> Charles Taylor, "Atomism", in Charles Taylor, *Philosophical Papers: Philosophy and the Human Sciences*, Vol 2 (Cambridge: Cambridge University Press, 1985), at p. 205.

<sup>17</sup> See Alasdair MacIntyre, *Dependent Rational Animals: Why Human Beings Need the Virtues* 71-74 (1999).

<sup>18</sup> The conception of community that I hold is more fully explicated in Rosalind Hursthouse, *On Virtue Ethics* (Oxford: Oxford University Press, 1999); MacIntyre, *Dependent Rational Animals*, n 16 above.

and depend upon the matrices of the many communities in which we find ourselves in association. Each of our identities is inextricably connected in some sense to others with whom we are connected as members of multiple communities.

Our dependence on others and on the various communities of which we are members creates an obligation not only to participate in but also to support the social networks and structures that enable us to develop those human capabilities that make human flourishing possible.<sup>19</sup>

The development and maintenance of these matrices require resources. Our inherent condition of dependence gives rise to an obligation that we help, at times and in ways that are appropriate to us, provide the resources necessary to support the various social matrices that enable development of the essential human capabilities. Human flourishing requires a version of distributive justice that has as its objective giving people what they need in order to develop the capabilities necessary for living the well-lived life. Insofar as I regard my own flourishing as valuable and something that I ought to foster, insofar as I am a rational human being, then I am committed to fostering the flourishing of others insofar as they are rational human beings as well.

Just because human flourishing depends upon social matrices, it does not follow that *the state* may properly make demands upon us to foster the development of the capabilities in others. In early societies human beings' needs for their proper development were met by local, or face-to-face communities. In the modern capitalist state, however, the uncoerced actions of private entities are not sufficient to supply all members of society with access to all of the resources necessary for them to have the opportunity to develop the capabilities necessary for human flourishing.<sup>20</sup>

If that is the case, what consequences does it have regarding the demands which the state is entitled to make on the property of its citizens? If we accept the existence of an obligation to foster the capabilities necessary for human flourishing, and if we understand that obligation as extending to an obligation to share property, at least in surplus resources, in order to enhance the abilities of others to flourish, then it follows that, in the predictable absence of adequate voluntary transfers, the state should be empowered and may even be obligated to step in to compel the wealthy to share their surplus with the poor so that the latter can develop the necessary capabilities. None of this is meant to suggest that the state's power, even as it touches on the facilitation of the capabilities we are discussing, is unbounded. But the limits to the state's proper domain are supplied by the same principles that justify its action: the demands

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<sup>19</sup> I develop this argument at greater length in Alexander, "The Social-Obligation Norm" n 10 above at 123-125.

<sup>20</sup> See Milton Friedman, *Capitalism and Freedom* (Chicago: The University of Chicago Press, 1962), p. 191 ("In small communities, public pressure can suffice [to meet the needs of the poor] even with private charity. In the large impersonal communities that are increasingly coming to dominate our society, it is much more difficult for it to do so.").

generated by the capabilities that facilitate human flourishing – security, practical rationality, and sociality, among others.

Moreover, from the standpoint of the capabilities necessary for human flourishing, our contribution of the resources necessary to sustain the matrices without which human flourishing is impossible is not just a volitional act. Our dependence on others creates, for us an obligation to support the social networks and structures that enable us to develop those human capabilities that make human flourishing possible.

An important way in which we fulfill this obligation is through property ownership. This is what it means to take the inherently social character of ownership seriously. Property owners are obligated to provide from their surplus, and in ways that are appropriate to them as property owners, to the communities to which they belong — upon which they are dependent — those benefits that the community reasonably regards as necessary for development of the capabilities essential to human flourishing. This obligation is not unlimited, of course. It is limited in the first instance by the same demands generated by the capabilities that facilitate human flourishing – personal security, practical rationality, and sociality, etc. It is also limited by the principle of subsidiarity — the notion that the state ought not arrogate to itself functions that can be performed just as well, if not better, by smaller, more intimate communities.

#### **4. An Illustration: Public Access to Private Beaches**

To illustrate the theory consider a topic of recent controversy in the United States. This is a topic in which some courts have issued decisions that have been neither entirely popular nor altogether intellectually satisfying. Although the decisions were, in my judgment correct, I believe they could have been better supported in terms of the theory that I have just outlined. The topic is public access to privately-owned beaches.

Historically, public access to beaches was quite limited. Basically, the public was permitted to access only the land between the mean high and low tide lines, i.e., wet-sand areas. The purposes for which the public was permitted to access this land were also limited—only fishing.<sup>21</sup> In recent years some courts have added recreation as one of the purposes for which the public is entitled to use the wet-sand portion of a beach.<sup>22</sup> The more striking expansion of beach access via the public trust doctrine, custom, and other doctrinal headings, however, has been the extension to privately-owned dry-sand portions of the beach. The New Jersey Supreme Court has taken the lead in this expansion of public beach access via the public trust doctrine. In

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<sup>21</sup> Navigable waters themselves were also subject to public access for navigation and commerce, as well as for fishing. See Carol Rose, “The Comedy of the Commons: Custom, Commerce, and Inherently Public Property” (1986) 53 *University of Chicago Law Review* 711.

<sup>22</sup> See, for example, *Neptune City v. Borough of Avon-by-the-Sea* (1972) 294 A2d 47 (NJ); *Thornton v. Hay* (1969) 462 P2d 671 (Ore); *Hixon v. Pub. Serv. Comm’n* (1966) 146 NW2d 577 (Wis). But see, for example, *Bell v. Town of Wells* (1989) 557 A2d 168 (Me) (refusing to extend the public trust doctrine to recreational uses); *Opinion of the Justices* (1974) 313 NE2d 561 (Mass (same)).

*Matthews v. Bay Head Improvement Association*,<sup>23</sup> the court held a private nonprofit entity which owned or leased most of the beachfront lots in Bay Head did not have an unlimited right to exclude members of the public from the dry-sand portion of its beach. “The public must be afforded reasonable access to the foreshore [i.e., wet-sand area] as well as a suitable area for recreation on the dry sand.”<sup>24</sup> In defining the contours of this right of reasonable access to privately owned dry-sand areas, the court identified four factors as relevant: “Location of the dry sand area in relation to the foreshore, extent and availability of publicly-owned upland sand area, nature and extent of the public demand, and usage of the upland sand land by the owner . . . .”<sup>25</sup>

The holding in *Matthews* was bolstered by the fact that the Bay Head Improvement Association was, in its view, a “quasi-public” entity.<sup>26</sup> Subsequently, in *Raleigh Avenue Beach Association v. Atlantis Beach Club*,<sup>27</sup> the court expanded the scope of public access under the public trust doctrine, holding that a private beach club that was not a quasi-public entity was required under the *Matthews* reasonable access norm to provide members of the public with access to the beach across its dry-sand area. Applying the four factors that it had set out in *Matthews*, the court concluded that the club was required to make its upland sand area, though privately owned, available for use by the general public, although it could charge appropriate fees for certain services the club provided.<sup>28</sup>

In both cases the decisions were right but not well-reasoned by the court. Let us see how the same decisions might have been reached under an analysis that focuses on human flourishing. Why is public access to beaches important? The reason is that it provides a valuable form of recreation. Recreation is not a luxury but a necessity. It is an important aspect of the capabilities of both life and sociability. With respect to life as a good, there is ample and growing medical evidence indicating that recreation and relaxation contribute importantly to good health,<sup>29</sup> reducing the risk of diseases ranging from depression<sup>30</sup> to heart disease.<sup>31</sup> Yet some of the very groups who need recreation the most often do not, as a practical matter, have access to it. Recreation is an important aspect of health, which is itself a vital dimension of the capability

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<sup>23</sup> 471 A.2d 355 (N.J. 1984).

<sup>24</sup> *Id.*, p. 366.

<sup>25</sup> *Id.*, p. 365.

<sup>26</sup> *Id.* The court concluded that the improvement association satisfied its obligation by opening up its membership to everyone rather than limiting it to Bay Head residents and by making daily and seasonal passes available for sale to nonresidents. *Id.* at 369.

<sup>27</sup> 879 A.2d 112 (N.J. 2005).

<sup>28</sup> *Id.* at 125.

<sup>29</sup> See, for example, Marie-Élise Parent, et al, “Occupational and Recreational Physical Activity During Adult Life and the Risk of Cancer among Men” (2011) 36 *Cancer Epidemiology* 151; RA Breslow, “Long-Term Recreational Physical Activity and Breast Cancer in the National Health and Nutrition Examination Survey” (2001) 10(7) *Cancer Epidemiology, Biomarkers & Prevention* 805.

<sup>30</sup> See, for example, CD Johnson, “Therapeutic Recreation Treats Depression in the Elderly” (1999) 18(2) *Home Health Care Services Quarterly* 79.

<sup>31</sup> See, for example, American Heart Institute, Exercise and Cardiovascular Health, available at <http://www.irc.ahajournals.org/content/107/1/e2.full> (visited 12 Aug 2013).

of life, and that providing all persons, including poor people, with reasonable access to basic modes of recreation and relaxation would materially contribute to the goal of being capable of living lives worth living.

Recreation also supports sociability as a good.<sup>32</sup> As a good, sociability encompasses subsidiary goods such as friendship and social participation. Indeed, sociability may explain, or partly explain, many of the circumstances in which courts have recognised some version of a reasonable access rule that limits the common law right to exclude. Sociability includes the ability “to recognize and show concern for other human beings, to engage in various forms of social interaction; [and] to be able to imagine the situation of another.”<sup>33</sup> Sociability is the indispensable means through which communities create just social relations. By teaching us how to be concerned for others, how to show that concern, and how to place ourselves in their shoes, communities inculcate in us values of equal dignity, equality, respect, and justice, as well as individual autonomy.

We live in a society characterised by conditions of increasing congestion and social interdependency. The social-obligation theory recognises that those very conditions, especially our interdependency, create for all property owners an obligation to contribute, in ways that are appropriate to them, to the vitality of the community’s material infrastructure that facilitate the cultivation of affiliation, among other essential human capabilities. For private beach owners, this obligation may include providing members of the general public with reasonable access to portions of their beach, depending upon various circumstances of the sort specified by the court in *Raleigh Avenue Beach Association*. This obligation is not open-ended. Under the social-obligation theory, the issue in beach-access cases is whether the landowner’s obligation to contribute to the vitality of capabilities-nurturing aspects of her community includes sharing with members of the general public access to her land, at least at certain times and under certain circumstances. If members of the public wish to use private beach property for recreational purposes and have reasonable means of gaining access to a public beach, as will frequently (perhaps usually) be the case, the owner’s right to exclude is preserved.

The question we should ask in these cases is whether the owner’s general obligation to contribute to the human flourishing of others includes a specific obligation to promote affiliation by providing some sort of reasonable public access to her land. The answers to that question will not come easily nor uniformly. Whether public access to some form of land will promote affiliation in a significant way will not always be clear, warranting even some limited form of public access under legal theories such as the public trust doctrine. Small wonder, then, that courts in cases like *Raleigh Avenue Beach Association* have struggled to develop some sort of metric by which they may cabin the reasonable access rule and identify its scope of operation.

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<sup>32</sup> See Rose, “The Comedy of the Commons” n 21 above at 777-781.

<sup>33</sup> Martha Nussbaum, “Human Rights and Human Capabilities” (2007) 20 *Harvard Human Rights Journal* 21, 23.

The need to nurture affiliation will not always justify public access. But surely, as social conditions change and make affiliation more difficult, the good of affiliation will justify some version of a reasonable access rule in some circumstances where public access to privately-owned land is sought for recreational purposes.

### **Conclusion**

Ownership is not about rights only; it is equally about obligations. We can argue about exactly what those obligations should be, but the existence and importance of the obligations of ownership should not be in doubt. I have further argued that the soundest normative foundation of those obligations is human flourishing.