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The Social-Obligation Norm in American Property Law

Gregory S. Alexander; Trans. by Haoyang Wu*

Abstract: This Article seeks to provide in property legal theory an alternative to law-and-economics theory, the dominant mode of theorizing about property in contemporary legal scholarship. I call this alternative the social-obligation theory. I argue that American property law, both on the private and public sides, includes a social-obligation norm, but that this norm has never been explicitly recognized as such nor systemically developed. I argue that a proper understanding of the social obligation explains a remarkably wide array of existing legal doctrine in American property law, ranging from the power of eminent domain to the modern public trust doctrine. In some cases, social obligation reaches the same result as law and economics, but in other cases it does not. Even if it reaches the same result as law and economics, social-obligation theory provides a superior explanation. At a normative level, I argue that the version of the social-obligation norm that I develop here is morally superior to other candidates for the social obligation norm. It is superior because it best promotes human flourishing, i.e., enabling individuals to live lives worthy of human dignity. Drawing on Amartya Sen and Martha Nussbaum's capabilities approach (which itself is based on the Aristotelian notion that the human being is a social and political animal, not alone self-sufficient), the social-obligation theory holds that all individuals have an obligation to others in their respective communities to promote the capabilities that are essential to human flourishing (e.g., freedom, practical reasoning). For property owners, this has important consequences. 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, then it follows that to enhance the abilities of others to flourish, in the predictable absence of adequate voluntary transfers, the state should be empowered and may even be obligated 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 generated by the capabilities that facilitate human flourishing-freedom, practical rationality, and sociality, among others.

Keywords: Property Law, Amartya Sen, Martha Nussbaum, Social Obligation Theory, Human Flourishing, Law and Economics

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On Property: An Essay

Laura S. Underkufflert; trans. by Yiran Chou*

Abstract: This essay examines the concept of property as a central category in constitutional theory, political philosophy, and legal doctrine. It traces the historical development of property rights from the eighteenth century to modern jurisprudence, with particular attention to the tension between property as an individual right and its collective functions within society. By engaging with classical theorists such as Locke, Madison, and Blackstone, as well as contemporary scholarship, the essay explores how property has been understood not merely as a material possession but also as a bundle of rights, a symbol of liberty, and an extension of personhood. It further considers the challenges posed by modern welfare policies and regulatory takings, arguing that the evolution of property reflects broader transformations in law, politics, and social order.

Keywords: property, constitutional theory, liberty, personhood, regulatory takings, welfare state

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Content of Premarket Submissions for Device Software Functions (Guidance for Industry and Food and Drug Administration Staff)

USFDA; Trans. by Yijun Li, Xiaoli Zou, Tianai Zhang*

Abstract: The U.S. Food and Drug Administration (FDA) issued the Content of Premarket Submissions for Device Software Functions on June 14, 2023, replacing the Guidance for the Content of Premarket Submissions for Software Contained in Medical Devices from May 2005. This newly released guidance applies to "device software functions" as defined in the Federal Food, Drug, and Cosmetic Act (FD&C Act) and provides a detailed explanation of the content required for premarket submissions. It organizes and clarifies the documents recommended by the FDA for sponsors' reference, reflecting and updating the FDA's perspective on "incorporating recommended documentation into the review of premarket submissions for device software functions." The guidance holds significant value for both the industry and FDA staff.

Keywords: Medical Devices; Premarket Submission; Device Software Functions.

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Informed Consent in Personal Information Utilization: From "Static" to "Dynamic"

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Abstract: Informed consent, as a foundational principle in personal information protection law, has increasingly revealed issues of formalism, rigidity, and misuse in practice, undermining users' rights to informed decision-making and control. The case of Wu v. Shanghai Information Service Company exemplifies the limitations of current informed consent rules in safeguarding user rights. Drawing on comparative legal frameworks, this study advocates for a paradigm shift from "static" to "dynamic" informed consent. Proposed institutional reforms include prominent notification mechanisms to enhance transparency, dynamic control mechanisms enabling user participation throughout the information lifecycle, and exit mechanisms to strengthen post-authorization protections. These measures aim to empower users with heightened awareness, real-time engagement, and enforceable withdrawal options, thereby optimizing the efficacy of personal information protection laws and transcending the constraints of traditional consent models.

Keywords: personal information protection; informed consent; prominent notification; dynamic control; exit mechanism

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Consumption Governance: The Role of Production and Consumption in International Economic Law

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Abstract: Over the last decade, international economic conflict has increased dramatically. To name only a few examples, the European Union banned the import of products from deforested land and is poised to impose duties on carbon-intensive imports; the United States banned Chinese imports made withforced labor; and countries the world over threatened to impose digital services taxes on U.S. corporations, leading to a new multilateral agreement on apportioning income tax revenue among countries. This Article argues that these conflicts represent a shift in norms governing the authority to tax and regulate international commerce. Different fields within international economic law describe the limits of state authority to tax and regulate international commerce in diverse ways. But I argue that a transsubstantive set of principles underlies the varied doctrines in international trade, international tax, and international antitrust. Throughout the twentieth century, international law's jurisdictional limitations rested on the notion that production could be taxed and regulated primarily, and often only, by the producing country (what this Article terms "Production Jurisdiction"). As a result, international law often prohibited consuming nations from imposing taxes or regulations on imported goods and services if the taxes or regulations depended on the circumstances of foreign production. By contrast, nations today increasingly claim jurisdiction to tax and regulate foreign production based on their interest in controlling the kinds of activity that consumption within their borders supports (what this Article terms "Consumption Jurisdiction"). This Article makes three contributions. First, I describe the ongoing shift from Production Jurisdiction to Consumption Jurisdiction in international antitrust law, international tax, and international trade. Second, I argue that the shift from Production to Consumption Jurisdiction does not mean the end of globalization or the rise of protectionism. Rather, it reflects a change in states' views on the role that national policy should play in creating a nation's comparative advantage in the global economy. Third, I discuss the implications of the shift from Production to Consumption Jurisdiction.

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