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Accepted for publication in Chris Bevan (Ed.). 2024. *Research Handbook on Property, Law and Theory.* Edward Elgar.

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Abstract

Speculation and sustainability are central themes for anchoring analyses of the current and future challenges facing our land law systems. While we can trace the influences of speculation and sustainability to the emergence of land law in each jurisdiction, they have taken on new prominence and urgency as domestic land law systems have been opened up to the demands of (globalized) capital investment markets, on the one hand, and the pressures on sustainable land use in a context of climate and ecological emergencies. Just as traditional, rural 'homesteading' squatting mediated the demands of speculation and sustainability, so today's urban squatting movements draw on similar narratives to challenge modern speculation, absentee ownership and unsustainable land (non-)use practices. Urban squatting movements draw attention to acute housing shortages in post-industrial cities, where land and buildings have been left vacant, either because the absent owner's purpose is fully met through speculative housing market investment or pending future development plans. By demonstrating utility on the land and asserting claims based on occupation and use, these movements advocate for sustainable land use, sustainable housing systems and sustainable cities.

In this chapter we explore how narratives of speculation, squatting and sustainability emerged and evolved to produce the 'land law values' that are embedded in constitutional, legislative and doctrinal frameworks. As jurisdictions grapple with foundational questions about ownership, investment, and use of land, speculators and squatters are sometimes encouraged, sometimes tolerated, and sometimes sanctioned, depending on the economic, political, fiscal and environmental goals being pursued in each jurisdiction, in each historical moment. We analyze the role of speculation, squatting and sustainability, from the shaping of early American property law to London's 'Alpha City'. Focusing on the policy of 'de-materialization' embedded in the Land Registration Act 2002, we develop 'sustainable property' as a necessary corrective to 'speculative property' policies. Finally, we provide a new analytical framework for developing sustainable property policies based on the UN Sustainable Development Goals. As the materiality of the climate emergency, housing, economic and inequality crises demand our attention, we urge land law researchers to look beyond the narrow frames of speculative ownership and face up to the urgent demands of sustainability.

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Speculation, squatting and sustainability

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(1) 'The Law' is an anagram of 'Wealth': speculation and squatting in London's 'Alpha City'

In *Alpha City: How London was Captured by the Super-Rich*, Rowland Atkinson provides a compelling account of how London achieved the 'more or less unrivalled position' of global 'Alpha City'. As super-rich ultra-high-net-worth individuals were drawn to London, much of their wealth was channeled into high-end real estate. Atkinson described London's investor-property market as a: "…single-minded pursuit of the rich, creating seamless, open borders for capital while ignoring its working population and its poor."[1] In one sense this is not a new phenomenon: London has long been a magnet for wealth, with enduring impacts on the fabric and life of the city. Iconic residential developments built—speculatively—in the 17th and 18th centuries included Covent Garden (funded by the Earl of Bedford), Leicester Square (Earl of Leicester), Bloomsbury (Earl of Southampton), Hanover Square (Earl of Scarborough), Cavendish Square (Earl of Oxford), Berkeley Square (Lord Berkeley) and Grosvenor Square (Grosvenor family). These grand houses were constructed on the back of capital generated from aristocratic land holdings and estates, at home and across the British Empire. They were built to service the London property-aspirations of the upper-classes: landed aristocrats; colonisers and merchants who had made their fortune in the Empire; and the captains of industry who flourished in the Industrial Revolution.[2] Many of these residences were part-time occupied from the outset: built to house wealth and communicate social standing, and to provide a base during the May-September London 'season', when the wealthy left their rural residences to come up to town for social events.[3]

These habits are echoed—and amplified—in today's 'alpha' neighbourhoods, where many of the most expensive and exclusive properties are rarely, if ever, occupied.[4] Rather than functioning as homes for people to occupy, they function as places to park internationally-mobile capital.[5] Atkinson described how the 'capture' of the city 'by money and those whose interests are served by it'[6] has re-shaped not only the high-end real estate market, but the complex networks of institutions and elites who protect and advance London's position as a key node in a global economy based on

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[1] R. Atkinson, *Alpha City: How London was Captured by the Super-Rich* (Verso, 2020), p2.
[2] *Ibid*, p35. See also, Tom Burgis, Kleptopia: How Dirty Money is Conquering the World 26 (London: William Collins Publishing 2020) ("The city of London had for centuries run the business side of a colonial project that extended from the slave ships of the Atlantic to the gold fields of the Cape and the East India Company's cargoes of teas, dyes, and opiates. As British power waned, many of its smaller possessions remained bound to the City, only now in the service of other people's empires.").
[3] Atkinson, p37.
[4] We drew on this theme in the opening vignettes of our new book, L Fox O'Mahony & M Roark, *Squatting and the State: Resilient Property in an Age of Crisis* (Cambridge University Press, 2022), and as a theme throughout the book.
[5] Atkinson argued that in some cases, they provide places to launder international capital; pp 87-96.
[6] Atkinson, p28.

endless cycles of extraction and growth. Atkinson described the 'capture' of the city by global capital as: "…a process that involves not so much conflict and strategic gain as an apparently voluntary acceptance and submission to the ruling logics of capital and its expansion...those with money can profit from and subsequently dictate how the city and its various resources are to be used."[7]

London's 'Alpha City' status was enabled by, and is reflected in, the re-shaping of the English land law system. In this chapter, we argue that new narratives of 'speculation' and 'squatting' have superseded the historic English common law concept of possession and the twentieth century liberal norms of 'ownership'.[8] A key component in this process has been the 'de-materialisation of land' under the Land Registration Act 2002. While squatting and sustainability are always materialized in local contexts, speculation is a dematerialized manifestation of local land use, often driven by national or international forces and capital flows. The evolution of modern land law systems can be understood through the shifting balances struck between these modes, in the context of dominant policy demands in each jurisdiction, in particular historical moments.

In the early U.S. experience, land policy vacillated between the material concerns of local land-use needs and the dematerialized interests of speculators who rarely set foot on lands they acquired in the west.[9] Land was both a primary investment asset for speculation, and a vital site for productive use as the new nation transitioned from nodes of individual production to an economy of collective and converging interests.[10] As the U.S. expanded into the West and additional land was opened up for settlement, cheap and easy access to capital fueled a land grab in the western states, where speculators purchased more land than they could manage or maintain. The resulting absentee ownership impacted on local infrastructure, with speculators resistant to paying local taxes.[11] This, in turn, placed a higher burden on local communities, who relied on local taxes to pay for railroads, schools, and roads. Farmers who had to pay a higher share of taxes cut corners and adopted unsustainable farming practices that depleted the soil, caused erosion, and diminished land value.[12]

Local conflicts between speculators, squatters and settlers became a national issue through the prism of land productivity and sustainability. U.S. President Andrew Jackson described absentee ownership as "one of the greatest obstacles to the

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[7] *Ibid*, 28. Atkinson adds: This can be seen in the way planning authorities in the city have come to identify private developers as critical to the remaking of many districts, while presiding over the demolition and loss of desperately needed public housing."; *ibid*.

[8] While the English common law recognises 'estates in land', the rhetoric of 'ownership' came to the fore in late twentieth century.

[9] P.W. Gates, *The Role of the Land Speculator in Western Development* 66(3) The Pennsylvania Magazine of History and Biography (1942); reprinted in The Jeffersonian Dream: Studies in the History of American Land Policy and Development, by A.G. Bogue and M.B. Bogue (eds) (University of New Mexico Press, 1996) at 15.

[10] P. A. Gilje, *The Rise of Capitalism in the Early Republic*, 16 JOURNAL OF THE EARLY REPUBLIC 159 (1996).

[11] P.W. Gates (1942) at 17.

[12] *Ibid*, at 17.

advancement of a new country and the prosperity of an old one".[13] In 1836 he issued a Specie Circular aimed at "sav[ing] the new states from a non-resident proprietorship." While speculators enjoyed financial and political advantages, the wasteful practices of absenteeism, and a growing democratic spirit of land opportunity amplified the virtues of utility and productive land use. Conflicts between settlors and speculators were also placing unsustainable burdens on the legal system.[14] The emergence of 19th century 'claims clubs' provided squatters with extra-legal means to survey lands and organize themselves to protect their claims against both Native Americans and speculators.[15] As the prominence of absentee ownership on the western lands reinforced the view of land speculation as a wasteful and unproductive endeavor for a young, growing country, the system by which expansion lands were distributed and acquired shifted from purchase-only to include possession-based claims.[16]

In the legal reform period (from the 1830s), the expansion of the vested rights doctrine and the enactment of pre-emption statutes reflected the Jeffersonian view that productive use squatters were virtuous citizens while land speculators were not.[17] Although the legal framework continued to protect the strong property rights of the speculative purchaser over the weaker rights of the productive user-possessor, the productive use squatter gained protections through federal pre-emption laws (1830-1841) which allowed settlers who occupied land for minimum periods of time, and who improved land by fencing, cultivation, or improvement, to purchase the land before it was sold at auction at a federally-set price.[18] From 1862, 'homesteading' provided a mechanism for promoting the federal-policy of preferring settlers who would build and cultivate land, deeding them title in return for their labor in settling previously vacant lands, while 'mere speculators' were badged as 'bad fellows'.[19] Local action to discourage speculation and federal policies that encouraged owner-occupation vied with the power of capital to leverage financial resources in ways that were remote from local problems.

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[13] *Ibid*, at 14. The Specie Circular limited land sales to physical currency (gold or silver), with the exception that settlers in actual occupation of land could arrange for credit to purchase the lands they occupied for the remainder of the year

[14] M. BUTLER, HISTORY OF THE COMMONWEALTH OF KENTUCKY 138 (Cincinnati 1836), *cited in* P. Gates (1862), at 5.

[15] A.G. Bogue, *The Iowa Claim Clubs: Symbol and Substance*, 45 THE MISSISSIPPI VALLEY HISTORICAL REVIEW 231, 231-32 (1958).

[16] D.W. Allen (1991) at 8; *see also* K. LEWIS (2002) at 110 (noting that the prevailing sentiment by 1820 was the speculators stood as "commercial middlemen who conducted business for personal gain," and whose interests "interfered with the settlement process."). While Federal policies seemed to favour settlement over speculation, the secondary market still thrived for land sales after allocation. Kenneth Lewis tracks the growth in land prices in Michigan between 1820 and 1860 noting that the increase in prices coincided with the availability of cheap credit following the collapse of the Second Bank of the United States. *See* K. LEWIS (2002) at 111-113.

[17] D.J. Pisani, *The Squatter and the Natural Law in Nineteenth-Century America* 81 AGRICULTURAL HISTORY 443, 444 (2007); E.M. PEÑALVER (2010), at 56. The Jeffersonian view was captured by his famed exalting of the "yeoman farmer" as exemplifying American values. *See* R.W.B. Lewis, The American Adam (University of Chicago Press 1955).

[18] D.J. Pisani, *Squatter Law in California, 1850-1858*, 25 WESTERN HISTORICAL Q. 277, 284 (1994).

[19] M.E. Young, *Congress Looks West: Liberal Ideology and Public Land Policy in the Nineteenth Century* in D.M. ELLIS (ED) THE FRONTIER [in] AMERICAN DEVELOPMENT: ESSAYS IN HONOR OF PAUL WALLACE GATES (Ithaca: Cornell University Press, 1968) pp106-7. These same rhetorical claims re-emerged in the 1980s to justify claims to vacant unowned land in the urban context of the lower east side of New York City. The familiar tropes of absentee landlords, adverse effects of land speculation, and the virtue of productive use and occupation were deployed to justify squatters' claims to vacant buildings in the absence of legal title.

Tensions between the material manifestations of land laws and policies at the local level, and the de-materialized interests of capital finance are also evident when local-level social movements squat in empty land and buildings to protest against practices of housing speculation and land banking. While the early American land law system adopted elements of the transplanted English colonial common law approach, the concepts of ownership that developed in the U.S. context—including the idea that 'strong rights' are protected under the U.S. Constitution's 5th Amendment—washed back across the Atlantic through the dominance of American property thoughts in neoliberal globalization. From the 1980s, new political and ideological conceptions of 'ownership' emerged in English legal thought; and the growing power of the investment norm was reflected in the de-materialization of English land law, particularly through the Land Registration Act 2002.

These new dynamics of speculation, squatting and sustainability were epitomized in the squatter-occupation of 102 Eaton Place, a five-story mansion in London's affluent Belgravia, purchased by Russian oligarch Andrey Goncharenko in 2014 for £15 million. The Eaton Place residence was one of four houses purchased by the billionaire over a three-year period, including one of the U.K.'s most expensive homes, £120 million 'Hanover Lodge' in London's exclusive Regent's Park.[20] 102 Eaton Place remained empty until 23 January 2017, when a group of squatters who identified themselves as the 'Autonomous Nation of Anarchist Libertarians' went into occupation. The squatter group brought more than 20 homeless people in to take shelter in the house. They also used the house as a base to provide food and clothing to homeless people, and to host film nights and talks highlighting the large numbers of empty buildings in London and the growing toll of homelessness in the city.

The eviction secured national headlines, highlighting the large stock of empty buildings 'going to waste' in London, while homeless people spent the winter sleeping on the streets. A compounding factor in the case of Eaton Place was that the building had been purchased through an offshore company (registered in tax-haven Gibraltar) controlled by Goncharenko. Law student and activist Jed Miller told *The Guardian* that:

> "These offshore companies which own so many empty buildings in London are using them to minimize their tax liability. That is diverting money away from crucial public services like the NHS. So instead of that money being used to help people who are having problems it stays in the pockets of those who caused the problems in the first place."[21]

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[20] C. Stroud, *'In the Masters House' Inside the £15 Million Belgravia Mansion owned by a Russian billionaire that squatters have taken over – and they seem pretty settled already!*, THE SUN (January 27, 2017) [available at] https://www.thesun.co.uk/news/2719311/anti-fascist-squatters-take-over-russian-billionaires-15million-mansion-in-one-of-britains-most-exclusive-streets/.

[21] D. Taylor, *Judge Orders Eviction of Squatters from Oligarch's £15 Million House*, THE GUARDIAN (Jan. 31, 2021) [available at] https://www.theguardian.com/society/2017/jan/31/judge-orders-eviction-of-squatters-at-oligarch-andrey-goncharenko-15m-london-house.

Practices of 'buy-to-leave'—privileging speculation over sustainability—also put pressure on local governments within London's affluent alpha neighbourhoods. Rachael Robathan, Westminster Council's Conservative Cabinet Member for Housing explained that:

> "A key priority for the Council is to deliver more types of housing in Westminster. We are looking at all the powers we have to deliver more affordable homes, more quickly, in order to meet the urgent need for housing and to support those who deliver vital services within the City and also people who are made homeless. Empty properties and buy-to-leave are just two challenges that the city faces and which the Council currently has very limited powers to address. We will be talking to national Government and the Mayor as we go forward on the issues of homelessness and affordable housing across London...our priority is seeing more actual homes which people can afford, ready for them to move into as quickly as the development process allows."[22]

The squatting occupation and attendance at court had successfully drawn attention to the negative localized and material impacts of the speculation-norm for the sustainability of the city. In September 2022, Westminster Council announced that it was exploring the use of compulsory purchase orders to 'combat the capital's reputation as the European centre for money laundering';[23] and to bring empty properties back into use as affordable housing. As part of its campaign, the Council is lobbying for greater transparency of land ownership, especially in relation to overseas companies.

Contemporary narratives of speculation, squatting and sustainability reflect the pre-occupations of 'the city'—as a global 'entrepreneurial city',[24] a capital hub, and a[n] [un]sustainable city. The amplification of speculation and squatting within core ideas about 'ownership' and 'possession' reflects the 'up-scaling'[25] of these urban concerns within the norms and narratives of English land law, and in other major cities around the world. As city-level and national governments enabled land speculation as a mechanism for accessing global investment capital, social movements like the *Autonomous Nation of Anarchist Libertarians*, the *Take Back the City* movement in Ireland; the *15M* movement in Spain and across Europe; and the global *Occupy* movement; criticized government practices of land speculation. Governments were criticized for cultivating foreign investment which, they argued, was not invested in producing sustainable and affordable housing for its own citizens. Critiques drew on the material impacts of speculative investment on the ground: for people, and for

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[22] *Id.*

[23] R. Booth, 'London Council could seize oligarchs' homes for affordable housing', *The Guardian* (21 September 2022).

[24] This new model 'entrepreneurial city' has emerged across the U.S., Europe, Asia, and in the developing world, fueling two key changes in relationships between the city and private property—particularly land. Firstly, financialization has emerged as an important tool for development at the city or local level; and secondly, public-private partnerships have taken on a key role to fill service gaps, enabling cities to tap into additional resources, positioning themselves to be competitive in a globalized capital world. Entrepreneurial cities have leveraged the opportunities of globalized capital and finance to tackle localized problems that the national-level state either didn't see or couldn't solve. *See* Squatting and the State, Chapter Four, section 4.

[25] For analysis of the role of 'scale' in Resilient Property methodology, see M Roark & L Fox O'Mahony, 'Scale' in B. Akkermans (ed), *Research Agenda in Property Law* (Edward Elgar, 2023).

the fabric of the city; as a result of housing policies that encouraged and prioritized de-materialized claims to land.

These policy choices were validated by ideologies and narratives that promoted entrepreneurial or speculative cities.[26] Atkinson illustrated the cause-and-effect of speculation and unsustainability in his description of the spill-over effects of London's ultra-high net worth, speculative, residential real estate market[27] for the city's housing market, and the sustainability of the city, Atkinson argued that the:

> "…perceived magic of markets…[is] also deeply implicated in political processes that cast these alchemical operations as dis-embedded from social and civic life, even when it is clear that the markets are closely monitored and managed by governments working in concert with leading economic actors and institutions…For several decades the allure of the market has inveigled its way into forms of political thinking that have become aligned with the needs of business and finance."[28]

The consequence, he argued, was that: "…when the background assumptions of pro-market systems become deeply embedded in political and economic life to the detriment of social needs and functions…markets come first and social essentials, like housing, education and health, become secondary issues, instead of being understood as part of a system in which the needs of citizens are paramount."[29] Put another way, while official discourses may express property claims in de-materialized terms, the consequences of these polities continue to have material implications for housing, land use, and sustainable development.

The gearing of speculative cities around productive *asset* use impacts on states' capacities to deliver sustainable housing and sustainable cities. Structural economic and political changes since the 1970s have left 'entrepreneurial cities' dependent on developing and implementing local strategies for economic accumulation.[30] City-authorities pursue economic growth by leveraging private capital investment to fund erstwhile public functions, from housing to infrastructure to policing.[31] Financialization has emerged as an important tool for speculative development at the city or local level; and cities have looked to public-private partnerships to fill service gaps, re-calibrating their policies and practices to be competitive for investment in a globalized capital world.

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[26] J. Hackworth, *The Neoliberal city: Governance, Ideology and Development in American Urbanism* (2007).
[27] O. Visser and D. Kalb, Financialised Capitalism Soviet Style? Varieties of State Capture and Crisis, European Journal of Sociology 51:2 (2010); Oxfam, Working for the few: political capture and economic inequality, Oxfam Briefing Paper 178 (2014).
[28] Atkinson, *op cit*, pp25-26.
[29] Atkinson, *op cit*, p26.
[30] J. Hackworth, *The Normalization of Market Fundamentalism in Detroit: The Case of Land Abandonment*, *in* M. P. Smith and L. O Kirkpatrick (Eds.) (2015).
[31] J. HACKWORTH (2006) at 43, 44 ("Though the boundaries for acceptable policy action have narrowed, localities have been thrust into the position of determining exactly how to address, contest, or embrace larger shifts in the global economy). Hackworth notes the impact of this shift: "One consequence in the United States, the United Kingdom, and other countries that have pursued neoliberal paths is an acceleration of uneven development within and across localities. Local variation in the quality, quantity, and maintenance of public housing, for example, has increased significantly in recent years, less because of differences in federal funding or landscape features conducive to investment than because of the kaleidoscope unleashed by the rescaling of regulation." *Id.*

While entrepreneurial cities have leveraged the opportunities of globalized capital and finance, the elevation of the speculation norm has had recursive effect for squatting and sustainability.[32] These changes are not merely questions of competing budget priorities or economic decline (although these are symptoms of the problem) but reflect a more fundamental ideological re-orientation that has important implications for how we think and talk about land in English law. Atkinson described the displacement of material sustainability in favour of financial sustainability: policies geared to attract ultra-wealthy speculators were coupled with: "…disinvestment in local neighbourhoods, demolished estates, evictions, rising homelessness and, alongside these changes, the apparent loss of an ethos of care as support for those in need was systematically withdrawn."[33] Acute affordable housing and environmental sustainability crises coincided with an upsurge in empty land and vacant properties.[34]

(2) Speculation and squatting in the English land law *nomos*

In *Squatting and the State: Resilient Property in an age of Crisis*, we demonstrated the vital constitutive role of narratives in assertions and understandings of entitlement to land, and in the persuasiveness and authority of legal norms and rules to regulate land. In England and other jurisdictions, competing norms and narratives relating to speculation, squatting and sustainability are, over time, variously centered and de-centered, elided or countered in official accounts of 'property values', legislative policies or doctrine.[35] The Land Registration Act 2002 rhetorically re-calibrated the norms of 'speculation' and 'squatting' within the English land law *nomos*, enabling the development of the 'Alpha City' and muting the sustainability norm. In this section we focus on two aspects of the LRA 2002 to illustrate this process: the policy commitment to 'de-materialize' land; and the rhetorical re-construction of the concepts of 'ownership' and 'possession' to facilitate, legitimate and privilege land speculation and to retrench the protection and validity of possessory interests.

The Land Registration Act 2002 was geared around the promotion and protection of owner-speculators.[36] It promised to: 'dematerialize' the basis of entitlement to interests in land: from *possession* of land as a good root of title, to *registration* as the

[32] Atkinson rehearses a long list of beneficiaries, including governments (through taxes on house sales), private developers, estate agents, interior decorators, builders, exclusive retail stores, and service staff (delivery drivers, window cleaners, cleaners, private security staff, butlers, servants, nannies, personal trainers, manicurists, gardeners, dog walkers; "all making up the vast supporting cast of extras needed by the wealthy to make life a little more comfortable."; Atkinson, p67.
[33] Atkinson, p3. "…the social mission statement of the city becomes subtly realigned with, for example, the idea of realising the value of any and all 'underused' assets as the city intensifies investment activity (housing associations selling homes, local authorities selling playing fields, care homes, housing estates and so on)."; *ibid*., p27.
[34] *See* Fox O'Mahony & Roark, *Squatting and the State*, *op cit*., which offers on a case study of homeless squatting on empty land in five jurisdictions.
[35] *See* M Roark & L Fox O'Mahony, 'Scale' in B. Akkermans (ed), *Research Agenda in Property Law* (Edward Elgar, 2023).
[36] See Fox O'Mahony, O'Mahony and Hickey, *op cit*.

source of title:[37] the 'basis of title ... is not possession, but the register itself'.[38] The Joint Report of the Law Commission and Land Registry clearly signaled that the Act was intended to: "…alter the way in which title to land is perceived."[39] It claimed that:

> "There is now wide support, both within the property industry and from many legal practitioners, for the introduction of a system dealing with land in de-materialized form. Indeed, such a system has come to be regarded as inevitable…"[40]

The report claimed that achieving the fundamental objective of the Bill: "that the register should be a complete an accurate reflection of the state of the title of the land at any given time…";[41] would "also require a change in attitude…[t]hese changes will necessarily alter the perception of title to land. It will be the fact of registration and registration alone that confers title."[42]

Keenan has explained how the three core principles underpinning the English land registration system: the mirror principle, the curtain principle and the insurance principle; work together to 'cure' titles of their materialized pasts.[43] The three principles of land registration render some relations with land 'temporary' (and defeasible) while others are rendered 'indefeasible'. This has consequences for human subjects who have material connections to the land;[44] and also—crucially—for the possibility of accommodating and advancing sustainability norms within this frame. Pottage described the process of land registration as: "…extricat[ing] land from the network of relations and understandings which formed the 'local knowledge' of different communities, relocat[ing] it on an abstract geometric map, and decipher[ing] it according to a highly conventionalized topographic code…[it] marked a transformation in the idea of land in law: property ceased to be a contractual construct and became a bureaucratic artefact."[45]

While this effect was already underway to some degree in English land law under the Land Registration Act 1925, the policy commitment to de-materialization was foregrounded and substantially upscaled as a corner-stone of LRA 2002. Nicole Graham has demonstrated how this process of abstraction—of 'placeless property'—creates unsustainable 'people-place relationships'.[46] By supporting and legitimating practices of de-materialization, de-physicalization and placenessness, the LRA 2002 promoted legal and cultural discourses about property and land that

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[37] The Law Commission has acknowledged that: '[a]t its most fundamental level, the basis of title to unregistered land is possession, whereas the basis of registered title is the fact of registration': Law Commission & HM Land Registry, *Land Registration for the Twenty-First Century: A Consultative Document*, Law Com No 254 (HMSO, 1998) [1.6].
[38] Ibid, [2.6].
[39] Para 1.1.
[40] Para 1.2.
[41] Para 1.5.
[42] Para 1.9, 1.10.
[43] S. Keenan, 'Smoke, Curtains and Mirrors: The Production of Race through Time and Title Registration' (2017) 28 *Law and Critique* 87-108.
[44] *Id.*
[45] *Id.*, 363.
[46] N. Graham, *Lawscape: Property, Environment, Law* (Routledge, 2011).

centered speculation and marginalized sustainable land use values and norms. By removing most of the remaining vestiges of the possession-based system, the LRA 2002 further elevated the rational, measurable, objective, financial exchange interest in land ownership as recorded on the register, and embedded the idea that 'perfecting the register' in preparation for e-conveyancing was a legitimate—indeed a necessary—goal for land law reform.

The impact of the LRA 2002 in re-scaling speculation and sustainability are also illustrated in the dilution of 'possession' and the elevation of 'ownership' in the official rhetoric of English land law. Fiona Burns explained that:

> "[I]n a title-by-registration system, possession is no longer the bedrock of land law. It is not necessary for a person to demonstrate some kind of physical nexus with the land in order to acquire seisin or other interests in the land. As possession declines as the normative principle, so the legitimacy of registration is amplified because the only way of dealing with the land is through alteration of the register."[47]

As the materiality of possession gave way to the high-scale, bureaucratic abstraction of absolute ownership,[48] the legal status of 'possession' was eroded through the effective abolition of adverse possession,[49] and the dilution of protections for interests-in-possession. At the same time, the concept of 'ownership' that was foregrounded in its place was not the liberal concept associated with the twentieth-century 'ownership society' but the norms and narratives of speculative or 'extractive ownership'.[50] As the LRA 2002 re-constituted the concept of 'ownership', it lent the sheep's clothing of respectability to the wolf of speculation.

Changing official discourses of ownership and possession reflect changing policy positions on speculation, squatting and sustainability. States sometimes collaborate with squatters who occupy unused private property, endorsing their protests at the absent owner's unproductive use in a context of pressing need. Collaborative acts include the creation of short-term "licensed squatting" deals on public sector housing, in exchange for the cessation of unlicensed squatting in public sector property.[51] In 1945, when squatters occupied seasonal properties in Brighton, the Government created a new power to enable local authorities to requisition under- or un-used properties.[52] The historical context for this approach was explained in Watson's *Squatting in Britain 1945-55: Housing, politics and direct action*,[53] when he

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[47] F. Burns, 'The Future of Prescriptive Easements in Australia and England' [2007] *Melbourne Univ LR* 3, 22.
[48] S. Panesar, *The Importance of Possession in Land*, 33 HONG KONG L. J. 569 (2003); E. Waring, *Adverse Possession Relativity to Absolutism*, in MORAL RHETORIC AND THE CRIMINALISATION OF SQUATTING: VULNERABLE DEMONS? 178-203 (L. Fox O'Mahony, D. O'Mahony & R. Hickey, eds), (2015).
[49] *See* L FOX O'MAHONY, D O'MAHONY & R HICKEY, MORAL RHETORIC AND THE CRIMINALISATION OF SQUATTING: VULNERABLE DEMONS? (2016, Routledge).
[50] *See* M. KELLY, OWNING OUR FUTURE: THE EMERGING OWNERSHIP REVOLUTION (Berrett-Koehler, 2012).
[51] R. BAILEY, THE SQUATTERS (Harmondsworth: Penguin Books 1973); S. LOWE, URBAN SOCIAL MOVEMENTS: THE CITY AFTER CASTELLS (New York: St. Martin's Press 1986); H. Pruijt, 'The Logic of Urban Squatting' 37(1) INTERNATIONAL JOURNAL OF URBAN AND REGIONAL RESEARCH (2013) 19 at 24.
[52] A. Friend, *The Post War Squatters* [in] N. WATES & C. WOLMAR (EDS), SQUATTING: THE REAL STORY (London: Bay Leaf Books 1980).
[53] D. WATSON, SQUATTING IN BRITAIN 1945-55: HOUSING, POLITICS AND DIRECT ACTION (London: Merlin Press 2016).

described the impact of events during and after World War II in generating political and public support for state intervention to meet housing needs against the backdrop of market failures. In this period, the material demands of housing need—framed by 'the national need'—outweighed the claims of wartime (and post-war) speculator-profiteers.

The roots of the current English approach can be traced to the 1970s, when—following the collapse of the post-war consensus—the idea of housing evolved to foreground first the 'owned home'; and then the capital asset or de-materialized investment-value of homeownership over the inherent use value of the material artefact of housing itself. Of course, the foundations for this shift were embedded in the Law of Property Act 1925; but the political, economic and social implications of this were manifest in new ways from the 1980s and 1990s, through the disbursement of the housing asset into global capital flows through secondary mortgage markets.[54] The up-scaling of home-finance to global financial markets expanded the capacity for real property to underpin financial risk, while at the same time further distancing the land itself, and owner- and tenant-occupiers, from the processes through which investor-owners interact with other stakeholders in the realm of globalized capital finance. Odinet highlighted the impact of this trend in the U.S., where the development of secondary mortgage markets disaggregated and further de-materialized ownership interests in land.[55]

The de-materialization of land and the emergence of 'speculative ownership' in land law discourse was reflected in morphing of 'owner-occupiers' into 'owner-speculators', as official narratives promoted 'homeownership as *investment'* and normalized the idea of speculation. The deregulation of mortgage markets, newly available flexible home finance products and the emergence of property/asset based welfare policies re-positioned owner-occupied housing not only as an investment asset for the future, but as an asset to *spend*.[56] The new generation of financial services (epitomized in the 'flexible mortgage') followed a wave of deregulation—led by the U.K. in the 1990s—that: "blur[red] the boundary between (fixed) capital and (fluid) money;[57] enabling people to treat their housing wealth as 'interchangeable with the cash economy',[58] and changing how owner-occupiers thought about, and performed, ownership of residential real estate. In 2005, the U.K. Government described owned

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[54] C. ODINET, FORECLOSED: MORTGAGE SERVICING AND THE HIDDEN ARCHITECTURE OF HOMEOWNERSHIP IN AMERICA 6 (New York: Cambridge University Press 2018). Of course, the 'de-materialization' of ownership interests in real property has a long heritage. For example, in England, the 1925 legislation was expressly intended to: "…assimilate the law of real and personal estate and to free the purchaser from the obligation to enquire into the title…any more than he would have to do if he were buying a parcel of stock." Lord Birkenhead, lead drafter of the legislation in a letter to *The Times*, 15 December 1920. *See Chapter Three* [in] D. COWAN, L. FOX O'MAHONY & N. COBB, LAND LAW 2nd edn. (Basingstoke, Palgrave Macmillan 2016).

[55] ODINET (2018) at 6-9, 17-22.

[56] S. J. Smith, N. Cook, & B. A. Searle, *From Canny Consumer to Care-Full Citizen: Towards a Nation of Home Stewardship?*, AN ESRC/AHRC CULTURES OF CONSUMPTION PROGRAMME WORKING PAPER NUMBER 35, FROM THE PROJECT BANKING ON HOUSING; SPENDING THE HOME RES-154-24-0012 (2007); N. Cook, S. J. Smith & B. A. Searle, *Mortgage Markets and Cultures of Consumption*, 12 CONSUMPTION MARKETS & CULTURE 133 (2009).

[57] S. J. Smith, *Banking on Housing: Speculating on The Role and Relevance of Housing Wealth in Britain*, PROJECT REPORT: DURHAM UNIVERSITY (2005).

[58] Smith (2008) at 520.

homes as: "…not just places to live, they are also assets."[59] As changes to the political narrative of owned housing were successfully embedded in public attitudes and norms, the character of housing assets, owned homes and owner-occupiers themselves also changed.[60]

The transformation of owner-occupation was a profoundly spatial phenomenon.[61] From the globalization of housing and credit markets, mortgage products and construction capital[62] and the re-configuration of housing provision at the national level, to local housing markets and hyper-local, personal experiences—the 'financialization of everyday life'[63]—access to globally traded finance, secured against owned homes, became an essential housing strategy for ordinary people in 'ownership societies'. Mortgagors became: '"investor figure[s]' in the new financial order of housing."[64] The paradigm of 'owner-investor' embedded norms of liquidity into popular conceptions of owner-occupation,[65] blurring the distinction between categories of owners: between owner-occupiers and investor-speculators. Once limited to the super-rich or professional capital traders, the identity of 'owner-investor' was normalized for 'ordinary' owner-occupiers and for small-scale investors enabled by 'buy-to-let' mortgages. As owner-occupiers were re-constructed as 'housing-asset-managers'[66] and a new register of 'investor-owner-citizen' emerged, *absentee* owner-speculators were normalized, and 'buy to leave' was legitimated as a land-holding strategy.

In 2002, these new norms reached from the 'public' realm of housing finance into the heart of English land law. Enhanced legal protections for absentee owners were coupled with the withdrawal of legal cover for informal-possessory interests and settlor-squatters. The new imperatives of speculation demanded the reform of the law of adverse possession and the criminalisation of squatting, through the Land Registration Act 2002, and section 144 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012.[67] Another signal of this shift was the strengthening of owner-purchaser protections, relative to informal interests, in the LRA 2002. While the LRA 1925 created the category of 'overriding interests' to strike a balance between

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[59] Office of the Deputy Prime Minister, *Homebuy: Expanding the Opportunity to Own*, CONSULTATION PAPER (2005).
[60] S. J. Smith, *Owner Occupation: At Home with a Hybrid of Money and Materials,* 40 ENVIRONMENT AND PLANNING A 520 (2008).
[61] S. French, A. Leyshon, & T. Wainwright, *Financializing Space, Spacing Financialization*, 35 PROGRESS IN HUMAN GEOGRAPHY 798 (2011); A. Pike & J. Pollard, *Economic Geographies of Financialization*, 86 ECONOMIC GEOGRAPHY 29 (2010).
[62] M. B. Aalbers, *The Financialization of Home and The Mortgage Market Crisis*, 12 COMPETITION & CHANGE 148 (2008).
[63] P. LANGLEY, THE EVERYDAY LIFE OF GLOBAL FINANCE: SAVING AND BORROWING IN ANGLO-AMERICA (Oxford: Oxford University Press 2009); R. AITKEN, PERFORMING CAPITAL: TOWARD A CULTURAL ECONOMY OF POPULAR AND GLOBAL FINANCE (Basingstoke: Palgrave Macmillan 2007); D. Knights, *Governmentality and Financial Services: Welfare Crises and The Financially Self-Disciplined Subject* [in] G. MORGAN & D. KNIGHTS, REGULATION AND DEREGULATION IN EUROPEAN FINANCIAL SERVICES (Basingstoke: Macmillan 1997).
[64] Smith (2008) at 521. *See* also P. Langley, *Uncertain Investor Subjects of Anglo-American Financialization*, 65 CULTURAL CRITIQUE 67 (2007).
[65] J. Froud, S. Johal, & K. Williams, *Financialization and The Coupon Pool*, 78 CAPITAL AND CLASS 119 (2002); Langley (2007); P. Langley, *The Making of Investor Subjects in Anglo-American Pensions*, 24 ENVIRONMENT AND PLANNING D: SOCIETY AND SPACE 919 (2006).
[66] See P. BERNSTEIN, AGAINST THE GODS: THE REMARKABLE STORY OF RISK (New York: J Wiley & Sons 1996), for an historical account of the role of risk in financial transactions.
[67] L. FOX O'MAHONY & M. L. ROARK, SQUATTING AND THE STATE: RESILIENT PROPERTY IN AN AGE OF CRISIS (Cambridge University Press, 2022).

the transactional certainty and efficiency and the protection of 'on the ground' claims;[68] the 'fundamental objective' of the LRA 2002 was:

> "that, under the system of electronic dealing with land that it seeks to create, the register should be a complete and accurate reflection of the state of the title of the land at any given time, so that it is possible to investigate title to land online, with the absolute minimum of additional enquiries and inspections."[69]

The 2002 Act reduced the range of interests capable of overriding and re-drafted others to limit their applicability. It adopted a general principle that expressly created interests should, in principle, be subject to registration, and incorporated a 'discoverability' requirement for informally created interests to qualify as overriding.[70] Enhanced protections for purchasers and the retrenchment of legal protection for on-the-ground interests in possession, read together with the reform of adverse possession and the 'de-materialization of land', embedded an explicit moral agenda of support for owner-speculators. As the same time, legal protections for possessors, both lawful and unlawful, were diluted or withdrawn.

(3) Speculation, squatting and sustainability

Urban squatting movements variously draw on narratives of traditional (rural) 'homesteading' and housing need; radical agendas to challenge absentee owner-speculation and late capitalist economic systems; and alternative ways of living more sustainably. By demonstrating utility on the land and asserting claims based on occupation and use, they articulate demands that 'reclaim the city' for affordable housing and productive, sustainable land use. Urban and rural squatting movements promote sustainable alternatives to extractive capitalism using a range of strategies:[71] from the direct action of land/food system commons[72] and ecological protest sites like 'Grow Heathrow';[73] to *oikonomic*-ecological practices of urban and rural squatters who demonstrate ways of living more sustainably.[74] Global movements like *Occupy*

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[68] Dixon reminded us that the creation of the category of overriding interests was not a design-flaw in the land registration system, but a deliberate strategy to strike a balance between transactional certainty and efficiency for purchasers, on the one hand, and the protection of informal interests, on the other; M. Dixon, 'eConveyancing and Title Registration: Lessons from England and Wales' in S. Murphy & P. Kenna (eds) *eConveyancing and Title Registration in Ireland* (Clarus Press, 2019), p80.

[69] 2001 Report, para 1.05.

[70] Under the LRA 2002, informally created legal easements and profits are potentially overriding, but only bind the purchaser in fact if (a) the purchaser had actual knowledge or constructive knowledge (i.e. that the interest was obvious on a reasonably careful inspection) of the existence of the easement, or (b) the easement has been exercised within the last year. Leases granted for a term not exceeding seven years from the date of grant of lease are overriding (LRA 2002, sch. 3, para. 1) unless the tenant does not take possession until three months after the grant of the lease (these reversionary leases or future leases are more difficult for a purchaser to discover); or if the lease is discontinuous (for example, a lease of a property for a month a year, over three years – again, difficult to discover); and excluding the grant of certain rights under the Housing Act 1985.

[71] *See*, C. Cattaneo & M.A. Martinez, 'Squatting as an Alternative to Capitalism: an Introduction'; and S. Engel-Di Mauro & C. Cattaneo, 'Squats in Urban Ecosystems: Overcoming the Social and Ecological Catastrophes of the Capitalist City' in THE SQUATTERS' MOVEMENT IN EUROPE: COMMONS AND AUTONOMY AS ALTERNATIVES TO CAPITALISM (C. Cattaneo & M.A. Martinez, eds.) (Pluto Press, 2014).

[72] C. Maughan & T. Ferrando, 'Land as Commons: Examples from the UK and Italy' in ROUTLEDGE HANDBOOK OF FOOD AS A COMMONS (J. L. Vivero-Pol & T. Ferrando, eds.), (Routledge, 2018).

[73] E. Harding, 'Grow Heathrow: A Lockean Analysis' 23(7) CRITICAL REVIEW OF INTERNATIONAL SOCIAL AND POLITICAL PHILOSOPHY 894-909.

[74] C. Cattaneo, 'Urban Squatting, rural squatting and the ecological-economic perspective' in SQUATTING IN EUROPE: RADICAL SPACE, URBAN STRUGGLES (Squatting Europe Kollective, eds.), (Minor Compositions, 2013).

have raised public awareness and understanding of the connections between unsustainable economic and financial systems, unsustainable social inequalities, and environmental and ecological unsustainability.[75]

In this section we propose a new framework for analyzing statutory provisions and doctrinal decisions based on the UN's 2030 Agenda for Sustainable Development.[76] Building on the UN's Sustainable Development Goals, we have identified four sustainability sub-themes to guide land law research. These can be applied to evaluate core features of land law and policy through a sustainability lens.

(i) *sustainable land use* (SDG 2: Zero Hunger; SDG 6: Clean Water and Sanitation; SDG 7: Affordable and Clean Energy; SDG 9: Industry Innovation and Infrastructure; SDG 12: Responsible Consumption and Production; SDG 13: Climate Action; SDG 14: Life Below Water; SDG 15: Life on Land),

(ii) *sustainable social relations* (SDG 1: No Poverty; SDG 3: Good Health and Wellbeing; SDG 4: Quality Education; SDG 5: Gender Equality; SDG 8: Decent Work and Economic Growth; SDG 10: Reduced Inequalities),

(iii) *sustainable institutions* (SDG 16: Peace, Justice and Strong Institutions; SDG 17: Partnerships), and

(iv) *sustainable communities and cities* (SDG 11: Sustainable Communities and Cities).

Applying this framework to analyze the nuts and bolts of land law reveals the relationships between competing norms, narratives and commitments: for example, between 'speculative ownership' and 'sustainable ownership'. It enables us to reach beyond the boundaries of official narratives as these have been embedded in specific legislation or doctrines.

For example, by framing the de-materialization of land as both necessary and inevitable, the LRA 2002 embedded an official discourse of land registration in which questions about *sustainable land use* were not visible, not relevant and not cognizable. Sustainable land use strategies seek out synergies between the social, environmental and economic dimensions of land use, balancing natural and social capital needs with the imperatives of financial capital. The de-materialization of land excludes social and environmental aspects of land use to value land solely in relation to its economic or investment value. Similarly, the marginalization of 'informal interests'[77] and the erosion of adverse possession[78] undermine *sustainable social*

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[75] L. Leonard & S.B. Kedzior (eds), OCCUPY THE EARTH: GLOBAL ENVIRONMENTAL MOVEMENTS (Emerald Books, 2014); T.L EVANS, OCCUPY EDUCATION: LIVING AND LEANING SUSTAINABILITY. GLOBAL STUDIES IN SUSTAINABILITY VOL 22 (Peter Lang New York, 2012).

[76] https://sdgs.un.org/goals; B Akkermans, 'Sustainable property law?' (2018) 7(1) *European Property Law Journal* 1-3; B Akkermans, 'Sustainable Ownership – new obligations towards achieving a sustainable society' (2021) 10(2-3) *European Property Law Journal* 277-303.

[77] LRA 2002, Schedule 3 (reducing the categories of 'overriding interests' and requiring that informally created interests are either registered or 'discoverable').

[78] LRA 2002, Schedule 6.

relations, by privileging insider/formal title/purchaser-investors over outsider/often women/informal title/occupiers.[79] Atkinson's account of the capture of London by the super-rich highlighted the deleterious impact of privileging speculative ownership over sustainable communities and cities. By defining the goals of land registration in terms of de-materialization, the assumptions embedded to the official frame deemed speculators good, squatters bad, and sustainability irrelevant.

The choice between speculative and sustainable modes of thinking can also be traced through land use governance debates. For example, the 2006 *Barker Review of Land Use Planning* was commissioned in broad terms, which defined the role of English planning law in:

> "…contributing to the quality of life of people and the communities in which they live…mediating between conflicting interests and objectives…to support economic success together with other sustainable development goals."[80]

The Final Report re-framed these objectives to privilege: "…the importance of the planning system as a vital support to productivity and economic growth".[81] In contrast, the Government Office for Science's 2010 report on *Land Use Futures: Making the most of land in the 21st century*[82] framed the goals of land governance in terms of economic, environmental, social and cultural sustainability. Produced by the 'Foresight' group, a cross-disciplinary, cross-agency group of stakeholders across public and private sectors, central and local government, led by the Government's Chief Scientific Officer, it described land as:

> "[t]ogether with human capital…possibly the UK's greatest asset. It provides basic services that we need to prosper and flourish, the environment in which we all work and live our lives and it forms the historical and cultural bedrock of the country. It is difficult to imagine a national asset that affects us all so profoundly."

Having established the collective national interest in the nation's land, the report adopted a sustainability frame to define the challenges that land use policy would be required to respond to:

> "…our land is a finite resource and it is set to come under increasing pressure as the century unfolds. Factors such as climate change, demographic shifts and changing patterns of work and habitation will all create major challenges. Also, as these pressures intensify, so will the demands we make on our land. This is already happening as we seek to maximize economic returns and we recognize its potential to yield benefits in diverse areas such as ecosystems, services, mitigating climate change and wellbeing. Deciding how to balance

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[79] L Fox O'Mahony, 'Property Outsiders and the Hidden Politics of Doctrinalism' (2014) 67 *Current Legal Problems* 409.
[80] K Barker, *Barker Review of Land Use Planning: Interim Report – Analysis* (July 2006), p1.
[81] K Barker, *Barker Review of Land Use Planning: Final Report* (December 2006), Foreword. Key proposals included updating planning policy to clarify the need to take full account of economic benefits from development applications; a policy framework which encourages a more positive attitude to development and better financial incentives and flexibility to promote economic development more effectively.
[82] Government Office for Science, *Land Use Futures: Making the most of land in the 21st century; Foresight Land Use Futures Project* (2010) Executive Summary (Government Office for Science, London).

> these competing pressures and demands is a major challenge for the coming century and one that is more pressing due to the time that may be needed to roll out new land use policies."

The report argued for a balanced approach to land values: "…to use and manage land more sustainably and to unlock greater value for people and for the economy—now and in the future."[83]

The Land Use Futures project argued for the '*re*-materialization' of land values, paying attention to different levels of governance, spatial and geographic differences, and trends in land use sectors: built environment, housing and commercial use, infrastructure, natural resources, agriculture, conservation and leisure: "Crucially [the report stated], the analysis takes an even-handed view—it does not judge one type of land use to be more or less important than another."[84] While land registration systems are geared around the primacy of purchasers' private property rights, land use governance is located in the realm of public policy. Anchoring its approach in the materiality of land, the report recognized that:

> "[h]ow [land] is used and managed affects everyone's prosperity and quality of life…the productive capacity of land underpins the whole economy…Land also plays a critical role in providing services that are vital for the physical wellbeing of the population."[85]

While the fiction of de-materialization eschews questions about the relationship between land ownership (private) and land use (public), the fact remains that land is a material resource; and that (private) owners enjoy expansive freedoms to 'set the agenda'[86] for the use (or not) of their land. In the sustainability frame, questions about use of land cannot be separated from questions about who owns land.

While precise information about land ownership remains notoriously hard to access, in *Who Owns England?* Shrubsole used a combination of digital maps and data to construct an aggregate picture of land ownership across England.[87] This revealed that (notwithstanding the 1925 policy of 'free trade in land') land ownership in England remains heavily concentrated in the hands of a very small aristocratic elite.[88] While the growth of owner-occupation as a percentage of housing tenure is sometimes viewed as evidence of democratization, the owner-occupied sector accounts for only about 5% of land ownership *by territory*; about a third of the U.K. is owned by the aristocracy and landed gentry;[89] with another third owned by corporate/commercial and overseas entities.[90] Patterns of land ownership matter for sustainability because of the relative freedom land owners enjoy to 'set the agenda'

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[83] *Id.*
[84] *Id.*, p10.
[85] *Id.*, p11.
[86] L. Katz, 'Exclusion and Exclusivity in Property Law' (2008) 58 UNIVERSITY OF TORONTO LAW JOURNAL 275.
[87] G. SHRUBSOLE, WHO OWNS ENGLAND? HOW WE LOST OUR LAND AND HOW TO TAKE IT BACK (William Collins, 2019).
[88] "Most people remain unaware of quite how much land is owned by so few. A few thousand dukes, baronets and country squires own far more land than all of middle England put together."; *id.*,
[89] *Ibid.*, pp85-88.
[90] Department for Communities and Local Government, *Fixing Our Broken Housing System* (Cm 9352), (2017), paras 1.18, 1.21. See G Shrubsole, Who Owns England? (William Collins, 2019), p42.

for land use—owner-freedoms that were protected by the U.K.'s exit from the European Union at the same time as the 'European Green Deal'[91] advanced collective approaches to state-led sustainability and environmental protection that may see the extension of EU jurisdiction to regulate the use of privately-owned land.

(4) Conclusion

As affordable housing crises, inequality and economic crises and the climate emergency become increasingly urgent, the development of the 'sustainable property' theme—as a counterpoint to 'speculative property'—will be critically important for land law and scholarship. From policy debates to popular discourse, the choice of 'frame' is critical in defining the problems that policy makers are seeking to solve, and the range of legal and/or policy tool(s) through which responses are developed and implemented. Frames critically determine which problems are *seen*, and how they are understood: by states, by lawyers and by citizens. Policy frames also shape legal frameworks: the selection and interpretation of relevant facts, the development of legal doctrine and the enactment and application of legislation.[92] The Land Registration Act 2002 set out a policy framework to govern 'land registration for the twenty-first century'; yet, in advancing the de-materialization of land values (as a putative means to the end of e-conveyancing) it embedded a legal and conceptual framework that runs counter to the urgent demands of sustainable land use for the twenty-first century.

Practices of urban squatting, and legal and political responses to these, provide a useful lens through which to understand changing norms and narratives of speculative and sustainable ownership. In England, the erosion of adverse possession (LRA 2002) and the criminalization of squatting in empty residential buildings (LAPSOA 2012) revealed an official discourse of speculative ownership, which has influenced legal, political and public discourses about land use. Social movements like Ireland's *Take Back the City*; Europe's *15M* and the global *Occupy* movement challenge this speculator norm by deploying practices of urban squatting to draw attention to housing insecurity, the affordable housing crisis and the unsustainability of unrestrained speculation by absentee owners.

Atkinson described the acceleration of London's transformation to become the world's 'Alpha City' in the last twenty years:

> "Change in cities is rarely as dramatic as it has been in London over the past twenty years. A veritable crescendo of activity, reaching a climax of capital investment…to a city associated more than anything else with the rich—each shift echoing and integrating the dividends of the global economy…A city

[91] Alicja Sikora, 'European Green Deal – legal and financial challenges of the climate change' (2021) 21 ERA Forum, 681–697.
[92] O. A. Hathaway, *Path Dependence in the Law: The Course and Pattern of Legal Change in a Common Law System*, 86 IOWA L. REV. 601, 641–42 (2001).

> economy that was once the site of a gentlemanly capitalism now embraces the mantra of cash at all costs, without heed to the social consequences."[93]

The explicit agenda of the LRA 2002 to de-materialize land should be read as a key enabler of this phenomenon, and of the 'speculative ownership' norm. Legal scholars evaluating the impact of the Act, advancing arguments for further developments in this direction, and researchers from other jurisdictions who look to the LRA 2002 as a model, typically focus on the opportunities and costs of de-materialization of land in relation to purchasers.

We would urge land law researchers to look beyond the narrow frames of official land law discourses and binary speculator/squatter tropes to understand the significance of land registration reforms for sustainability. For example, this corrective could re-frame debates about 'gold-standard' e-conveyancing and the putative imperative of 'perfecting the register'. Once we understand that de-materialisation is not an inevitable and desirable goal for land registration, but a process that privileges speculation over sustainability, the implications of pro-speculation policies for land use and sustainability can be weighed in the balance of competing property values. Rather than framing land registration reforms in terms of extractive-efficiency norms, decisions, doctrines, policies and proposals could be evaluated against the four pillars of land law sustainability: their likely impact on sustainable land use, sustainable social relations, sustainable institutions (including the sustainability of the property system) and sustainable communities and cities. By incorporating these lenses to debates and discussions about land law values and the desirability of specific policy prescriptions, the stranglehold of speculation would be tempered by considerations of sustainability.

[93] Atkinson, p2.