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The socio-environmental function of the Land Registry: registration publicity as a technique for realizing the social and environmental function of property.

The socio-environmental function of the Land Registry: registration publicity as a technique for realizing the social and environmental function of property

The socio-environmental function of the Real Estate Registry: the publicity of the registry as a technique to achieve the social and environmental function of the property

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Abstract: This article investigates the role of the Land Registry in realizing the social and environmental functions of property. It starts from the traditional conception of the registration system, ordered by publicity, presumption, public faith, and qualification in service of the security of real estate transactions, and identifies within it an open constitutional question: property whose ownership is publicly registered is subject to a social function (articles 5, XXIII, 170, III, 182 and 186) and an environmental function (articles 186, II, and 225) that are integral to the content of ownership. It argues that these functions are constitutional vectors that demand an instance capable of making them enforceable and quantifiable, and that the Land Registry provides such an instance by registering purpose-bound links and endowing them with erga omnes enforceability. The demonstration mobilizes examples of positive law, including the registration of environmental restrictions and limitations on land regularization of social interest, including land regularization as a registration modality of acquisition. The work addresses the objection of declaratory neutrality, distinguishing the constitution of the bond, external to the registration, from the concretization of its enforceability, inherent to it, and the objection of economic displacement operated by Law 13.465/2017, by showing that the registration technique is neutral regarding the use of the property. I conclude that the socio-environmental function of registration is continuous with the traffic safety function: the registration of the purpose is a technique for implementing socio-environmental policy, articulated by publicity, enforceability, and calculability.

Keywords: Property Registry; socio-environmental function of property; registration publicity; enforceability; land regularization.

Abstract: This article examines the role of the Brazilian Land Registry in realizing the social and environmental functions of property. It departs from the traditional conception of the registry system, organized around publicity, presumption, public faith and qualification in the service of the security of real estate transactions, and identifies an open constitutional question: the property whose title the registry publicizes is subject to a social function (Articles 5, XXIII; 170, III; 182; and 186 of the Constitution) and to an environmental function (Articles 186, II; and 225) that forms part of the content of ownership. It argues that these functions are constitutional vectors requiring an instance capable of rendering them enforceable against third parties and calculable, and that the Land Registry provides such an instance by inscribing purpose-bound encumbrances and endowing them with erga omnes effect. The demonstration draws on examples from positive law, including the recording of environmental restrictions and the limitations of land regularization of social interest, with land legitimation as a registry

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mode of acquisition. The article addresses the objection of declaratory neutrality, distinguishing the constitution of the encumbrance, external to the registry, from the concretization of its enforceability, proper to it, and the objection of economic displacement brought about by Law 13.465/2017, showing that the registry technique is neutral as to the use of the asset. It concludes that the socio-environmental function of the registry is continuous with the function of transactional security: the inscription of purpose is a technique for implementing socio-environmental policy, articulated through publicity, enforceability, and calculability.

Keywords: Land Registry; socio-environmental function of property; registration advertising; enforceability against third parties; land regularization.

1. Introduction

Brazilian legal doctrine has organized the Land Registry around a
Legal advertising function focused on the security of real estate transactions. Afrânio de Carvalho
This places the registry in an auxiliary position to civil law, intended to receive the legal relationships that
have as their subject matter real estate, in order to document and publish the property's status.
(CARVALHO, 1977, p. 35). Walter Ceneviva, when commenting on Law no. 6,015/1973 sets out the purposes
of the registration system such as the publicity, authenticity, security and effectiveness of the acts.
legal entities subject to it (CENEVIVA, 2010, pp. 33-35). Under this conception, property
mobilized by the registration, it circulates with the confidence that the seat confers on purchasers and
creditors, and the registry functions as the legal infrastructure of the real estate market.

This interpretation, by focusing the record on the security of asset circulation, leaves in
This raises a fundamental constitutional question. The property whose ownership is publicly registered.
is subject to a social function (BRAZIL, 1988, art. 5, XXIII; art. 170, III; art. 182, §
2nd; art. 186) and to an environmental dimension that links it to the proper use of resources.
natural resources and the defense of the environment (art. 186, II; art. 225). If the protection of property depends
regarding the fulfillment of social and environmental functions, and whether registration is the instance that confers
publicity and enforceability against real legal situations raises the question of what role...
of the Land Registry in carrying out these functions.

This article argues that the Land Registry acts as the venue for the realization of
The socio-environmental function of property. The public registration process, by registering and making enforceable...
purpose-related ties (environmental restriction registrations, limitations arising from
Land regularization for social interest (social purpose clauses) adds to security.
Traffic management serves as a function for implementing socio-environmental policies. This is inscribed within the purpose...
that the constitutional order imposes on property, property confers upon it enforceability and

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It makes the bond to which it is subject calculable, integrating the tools for carrying out the functions. social and environmental.

The argument unfolds in three movements, within a dogmatic-legal framework. supported by registration doctrine, the constitutional discipline of property, and theoretical contributions. on the social function of land. Section 2 reconstructs the traditional conception of registration, ordered by publicity, public faith, and traffic safety. Section 3 reconstructs the The social and environmental functions of property as constitutional vectors that affect regarding the domain and conditioning its protection. Section 4 demonstrates how registration concretizes These functions, by inscribing purposeful links and endowing them with enforceability, address tension. between this socio-environmental function and the logic of circulation that has historically organized the institution.

2. The Land Registry in the traditional conception: legal security, publicity and circulation

The main function of the Land Registry is to document and publish the legal status of... real estate property. According to Ceneviva, the system serves advertising purposes, Authenticity, security and effectiveness: advertising transmits the content of the seat to third parties; Authenticity results from the intervention of the delegate of public power, who receives, verifies and It transcribes the statements of those concerned into books; security operates as liberation from risk, by establishing a solid network of information about the situation of properties; and effectiveness translates the ability of the registration to produce legal effects, based on the security of the records and on authenticity of the acts transposed to them (CENEVIVA, 2010, pp. 34-35).

Advertising occupies the center of this architecture. In the Brazilian system, the inscription It replaces the tradition in the transmission of real rights over real estate, and the registered act acquires Dual effectiveness: it establishes the real right and makes it enforceable against third parties. Before registration, the A transaction creates obligations between the parties; once registered, it completes the legal-real change and invests the acquirer in a situation enforceable against all, as Carvalho explains (CARVALHO, 1977, pp. 34-35). Ceneviva directly links advertising to enforceability: the law confers publicity for the act to preserve its unenforceability against third parties, and attributes to publicity The registry has a threefold mission, which includes transmitting information to interested parties and not

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interested parties, partially sacrificing privacy for the benefit of registration guarantees and to serve purposes of national interest and public oversight (CENEVIVA, 2010, pp. 108-111).

In addition to publicity, there is the presumption that supports trust in the registration. Carvalho, Commenting on the article: Article 859 of the 1916 Civil Code establishes the presumption of ownership of the right. The right belongs to the person in whose name it was registered, a presumption that extends to all registered rights and It prevails, in favor of and against whomever is affected by it, until evidence to the contrary is produced (CARVALHO, 1977, pp. 173-174). It is a rebuttable presumption that operates as a rule of Distribution of the burden of proof and upholds the public faith in the ruling. The resulting security It protects the good faith of those who contract based on trust in the registration.

Publicity, presumption, and public faith serve a central purpose of the system: to reconcile the security of the rightful owner of the property with that of its eventual buyer. Carvalho describes this combination of interests as the problem that registration aims to address. to resolve and observe that the weakening of the holder's security in favor of the security of Trade rests on a land registry that tends to maintain a constant correspondence between the real situation and the registered situation (CARVALHO, 1977, pp. 172-173). It is this correspondence that mobilizes real estate ownership: by reducing uncertainty regarding ownership. Regarding encumbrances, registration enables secure transfer and territorial credit.

The correspondence between reality and the record rests on structuring principles. Legally, or in terms of qualification, the validity of the registration depends on the validity of the business transaction. It gives rise to and the power of disposal of the transferor, so that only valid titles and Legitimate entries are made into the books; the prior examination of the legality of the titles establishes the The correspondence between the legal situation and the registration situation allows the public to trust it. in the registry, as Carvalho underlines (CARVALHO, 1977, pp. 254-255). Due to the specialty, Every inscription pertains to a precisely identified object, which demands the determination of... real estate and, when there is a real guarantee, the quantification of the debt (CARVALHO, 1977, p. 223). A Registration qualification thus appears as the filter through which the registrar controls The entry of the titles preserves the integrity of the royal folio.

Reconstructed in these terms, the traditional conception organizes the Land Registry into Regarding traffic safety: advertising, presumption, public faith, and qualification converge. to make property transferable with confidence and to support credit. This function It remains valid and structures everyday registration practice. However, it leaves in suspense the The impact of social and environmental functions on property as recorded in the registry.

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Property that circulates under the guarantee of the seat is the same that the Constitution subjects to duties of social purpose and environmental protection, and the way in which the registry incorporates these. Duties organizes the following section.

3. The social and environmental functions of property as constitutional vectors.

Property whose ownership is publicly registered is subject, by the Constitution, to social function, which is incorporated into the content of the domain. Eros Grau distinguishes property endowed with an individual function of property endowed with a social function and reserving the incidence for the latter. From the principle of Article 5, XXIII: the social function shapes the law from within and conditions its application. exercise for purposes that exceed the interest of the holder (GRAU, 2010, p. 240-244).

This incidence is rooted in the constitutional economic order. Article 170, III, states that... The social function of property as a principle of the economic order, alongside property. deprived of item II; Grau qualifies it as an imperative constitutional principle, an objective norm. which links the shaping of property ownership to the implementation of public policies (GRAU, 2010, (pp. 237-238). In this arrangement, the constitutional guarantee extends to property that fulfills a function. social, a requirement that Gustavo Cardoso situates as inherent to all domains (CARDOSO, 2018, p. 278).

The constitutional interpretation of the social function originates from a critique of the proprietary model. Classic. Carlos Frederico Marés argues that land is valued for its social function. inherent, so that the title is not enough to legitimize the domain dissociated from the fulfillment of that function (MARÉS, 2003, pp. 90-91). Eroulths Cortiano Junior describes this Functionalization as a rupture of the legal discourse of property, built upon abstraction. of the good converted into a commodity and about the figure of the absolute owner, and situates, in the function social, the shift in the focus of law, from the interests of the holder to their social inclusion. (CORTIANO JUNIOR, 2002, p. 84-88, 93-96).

In addition to its social function, the Constitution adds an environmental function by requiring the use of... adequate use of available natural resources (art. 186, II) and in defining the environment ecologically balanced as a common good of the people (art. 225). The property of The land thus incorporates an ecological component: Marés observes that land inherently possesses a ecological function and that land that does not fulfill a socio-environmental function loses the protection of ownership (MARÉS, 2003, p. 100-102).

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The two dimensions are given a unified formulation in the notion of the socio-environmental function of property. Maurício Mota argues that it makes the exercise of property rights functional. to non-property interests, including the preservation of the environment (MOTA, 2015, p. 791). This functionalization corresponds to the category of socio-environmental asset: the holder of Essential to the maintenance of life, it is subject to duties of preservation that prevail over... the individual interest in property (MOTA, 2015, p. 780). The author situates the basis of this incidence in articles 170 and 225 of the Constitution (MOTA, 2015, p. 802).

Édis Milaré formulates the point as a principle of the socio-environmental function of property. Under the 1988 Constitution, the right to property is only recognized when its function is fulfilled. socio-environmental, which operates as a prerequisite and integral element of the domain; the legislation civil law, by requiring the exercise of property rights in accordance with its economic purposes and social and environmental preservation considers the environmental function as an element of the law itself (MILARÉ, 2015, pp. 273-276).

Together, the social function and the environmental function form a constitutional vector. A unitary approach that focuses on the content of the domain. The environmental dimension is integrated into the social function. of the property and adds to the social factor an environmental component that shapes the use of the asset. (RODRIGUES, 2011, p. 131). Carolino, Ormelesi and Vieira record that, after the recognition of the environmental function by sub-constitutional legislation, legal production The national government has consolidated the expression "socio-environmental function of property" to designate this. joint incidence (CAROLINO; ORMELESI; VIEIRA, 2023, p. 264).

The socio-environmental factor affects property without, in itself, making it effective. before third parties. The constitutional requirement binds the holder, but its fulfillment depends on Instances and instruments that make the purpose enforceable and calculable. The trajectory of the function. Urban social policy illustrates this dependence: its fulfillment was contingent upon the publication of Instruments for implementing the City Statute and municipal master plans. (CAROLINO; ORMELESI; VIEIRA, 2023, p. 279). It remains open by which instance the The socio-environmental purpose imposed on the domain acquires publicity and enforceability, a matter that leads to the Land Registry.

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4. The Land Registry as a place for realizing the socio-environmental function.

The technique that the registration employs for traffic safety also serves to registration of liens that limit ownership in favor of purposes unrelated to the interests of the owner. The immediate owner. The registration system records easements which, once registered, bind the property. servient and dominant rights become knowable to third parties as real rights (CARVALHO, 1977, pp. 92-93). It also includes conventional restrictions and encumbrances that curtail the availability of the asset, recorded in the folio to be opposed to the purchaser; the registration records the facts that alter the main registration, including the encumbrances and limitations that apply. regarding the property (CARVALHO, 1977, pp. 110, 127-128). The socio-environmental purpose imposed on Property is registered through the same method.

This admission process is based on the principle of concentration. The enrollment must bring together, therefore... as thoroughly as possible, the legal situations affecting the property, so as to to dispense with inquiries to other sources of information (SOUZA, 2012, p. 337). Lucas Koch It develops the idea by treating the royal folio as an integrative and informative matrix for the protection of Environment: From the union between advertising and registration concentration, with information. Environmentally, it results in an instrument for understanding the restrictions that weigh on the asset. (KOCH, 2020, p. 38).

The first example is the legal reserve. Carneiro and Siqueira show that the registration of The legal reserve on the margin of the registration conferred on the environmental restriction publicity enforceable against all, integrating registration into the protection of the socio-environmental function of property (CARNEIRO; SIQUEIRA JÚNIOR, 2016, p. 9). The exemption from this registration, after the transfer of Information regarding the Rural Environmental Registry, as per Law 12.651/2012, was removed from the real estate folio. The publication of the restriction in the registry, which the authors describe as a setback in environmental protection (CARNEIRO; SIQUEIRA JÚNIOR, 2016, pp. 10, 15). Milaré, even though he acknowledges the Based on the registration function, it is recommended that the legal reserve remain registered in the Land Registry. This indicates that public registration fulfills a function that administrative registration does not replace (MILARÉ, 2015, pp. 1333-1337).

The second example is in land regularization for social interest. Edésio Fernandes argues that regularization integrates the legal-ownership, urban planning and dimensions. socio-environmental and is not limited to the delivery of the property title (FERNANDES, 2007, p. 24-25, 29). The resulting liens are added to the land registry through specific registration acts,

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such as the registration of the subdivision resulting from the regularization project and the annotations of the acts.
which compose it, as described by Lamana Paiva (LAMANA PAIVA, 2012, pp. 19-20, 22). A
Reurb-S appears here as positive law that registers purpose-based ties in the land registry.
social.

Land regularization clearly illustrates the point. Marcelo Melo describes it as
original form of property acquisition, conferred by an act of public authority within the scope of
Reurb, under the terms of article 23 of Law 13.465/2017 (MELO, 2022, p. 575). The right to
In this modality, ownership is established with registration: the beneficiary only begins to exercise the rights...
Domain attributes once the legitimacy is registered in the land registry (MELO, 2022, p. 580).
Arícia Correia situates regularization as an instance of urban policy and points to compensation.
urban-environmental aspects are among the links that the process can establish, which reinforces the record.
as a venue for purposes that go beyond the circulation of assets (CORREIA, 2020, p. 2, 21).

Taken together, these examples support the argument that registration fulfills the function.
socio-environmental. Anelise Stifelman argues that the seat provides evidentiary means of the situation.
of the property, relevant for the protection of collective rights, and that the concentration of information in
Folio expands environmental protection (STIFELMAN, 2010, pp. 338, 340). Koch adds
that the situations described, because they have real transcendence, are valid erga omnes, so that the
The environmental restriction published in the registration is enforceable against any third party (KOCH, 2020, p. 57-
58, 61-62). The contribution proposed here organizes this implementation into three operations: a
Advertising makes the purpose knowable, enforceability imposes it on third parties, and
Calculability allows for anticipating the link in decisions regarding the asset.

This thesis is countered by the objection of declarative neutrality. The registration would be merely...
an instance of publicity, which receives and disseminates acts constituted elsewhere without issuing a judgment on them.
its merit; attributing to it the fulfillment of constitutional functions would confuse publicity.
Registration combined with environmental oversight is a function reserved for other agencies. The objection is serious because
The establishment of the socio-environmental bond actually occurs outside of the official record.

The answer begins by distinguishing between two levels: the establishment of the socio-environmental bond.
It is an act of the administration, of the urban planning process, or of a judicial decision, according to the source.
The restriction is not created by registration, nor does it evaluate its merit. The registration process establishes the legal bond.
already constituted by erga omnes enforceability and stability. Souza illustrates the sequence: a
The conclusion of public agencies regarding the environmental situation of the property is recorded in the property registry by

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means of registration (SOUZA, 2012, pp. 343-344). The registration process focuses on the
The effectiveness of the bond, without encroaching on the competence that constitutes it.

The second step in the response involves qualification. The registrar examines the
The legality of the title's purpose must be verified before it is admitted to the registry, in a legality control process that...
Section 2 identified it as a filter of the system (CARVALHO, 1977, pp. 254-255). This examination falls...
about the formal regularity and legitimacy of the title, and not about the merit of the policy.
environmental, so that it does not convert the registration into an instance of inspection. Stifelman attributes
The official has a duty, based on the official information they receive, to publish the data.
environmental aspects of the property, a role that is added to legal security (STIFELMAN, 2010, p. 348).

A second objection arises from criticism of the land regularization promoted by the Law.
13.465/2017. Betânia Alfonsin and co-authors argue that this legislation operates a
The shift from the social function of land to the economic function, by converting the asset...
regularized in liquid goods and to favor their circulation, to the detriment of
social purpose (ALFONSIN et al., 2019, p. 181, 187). If regulation fuels the market,
The registration that accompanies it could reinforce commercialization instead of serving the purpose.
socio-environmental purpose.

The objection targets the political use of the institution, but leaves the registration technique intact.
The registration of a purpose in the land registry is a neutral operation with respect to the fate of the property, and the
The effect it produces depends on the content of the registered bond. A bond with a social purpose.
A registered title binds the intended purpose to future buyers; a registration free of encumbrances facilitates...
circulation. The same technique that can accompany the commodification described by Alfonsin is
which allows the socio-environmental purpose to be made enforceable and resistant to transfer. The
The result stems from the choice of the link that the policy decides to register; the registration technique.
It remains available for both circulation and enforceability for the intended purpose.

Hence the consequence that concludes this section. The socio-environmental function of registration is continuous.
with the function of traffic security. Advertising that reduces uncertainty about ownership.
and enables circulation is the same one that endows the socio-environmental purpose with enforceability and
Calculability. The Land Registry fulfills social and environmental functions through
an operation that is unique to it: the inscription of the binding purpose, which makes it knowable,
enforceable and calculable, without the registrar establishing the lien or judging its merits.

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Final considerations

This article argued that the Land Registry acts as the venue for the realization of
The socio-environmental function of property. The public registration of legal rights, by recording ties of...
The purpose of providing them with enforceability against all parties adds a function to traffic safety.
implementing the social and environmental functions that the Constitution imposes on the domain.

The argument went through three stages. The first reconstructed the concept.
traditional registration, ordered by publicity, presumption, public faith and...
qualification in service of traffic safety. The second restored social functions and
Environmental issues, as constitutional vectors, are integral to the content of the domain and demand a...
an instance that makes them enforceable and quantifiable. The third demonstrated that the registry provides this.
instance when registering purpose-related ties, exemplified in the registration of restrictions.
environmental and limitations regarding land regularization for social interest, and responded to the objection.
of declarative neutrality through the distinction between the establishment of the bond, external to the registry,
and the realization of its enforceability, inherent to registration.

The dogmatic consequence situates the socio-environmental function of registration within the continuity of
traffic safety function. The inscription of the purpose is technical implementation of
Socio-environmental policy: the same operation that reduces uncertainty about ownership and provides support.
circulation confers upon the purpose imposed on the domain publicity, enforceability and
Calculability. The registrar does not establish the link nor judge its merit, and the qualification
The control that filters the entry of securities is the legality check that preserves the integrity of this.
implementation.

A specific agenda remains open for this specific segment: the limits and requirements of
registration of socio-environmental purpose links, including the type of act that constitutes them, the
The form of its registration and the effects of its eventual termination on third parties. The examination of these
The requirements define the scope of the function discussed here and are reserved for further investigation.

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