

**Learning from Youngstown: Applying Land Use  
Scholarship to Promote Corporate Accountability**

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## I. INTRODUCTION

The Mahoning Valley, a Northeastern Ohio community comprised of Youngstown and the surrounding area, is an example of how a corporation's decision to cease operations on its property can "lay waste a community."<sup>1</sup> Nearly 40 years ago, in a case ("*Local 1330*") brought by U.S. Steel employees and Mahoning Valley community members, the Northern District of Ohio and the Sixth Circuit permitted United States Steel Corporation ("U.S. Steel") to close its Mahoning Valley operations.<sup>2</sup> Although the deciding judges acknowledged that this business decision would likely harm the community,<sup>3</sup> the plaintiffs were unsuccessful and the mills closed.<sup>4</sup> To this day, the community has not recovered.<sup>5</sup> In March 2019, the community suffered further economic harm when General Motors ceased production at its Lordstown plant, which, after the steel mills closed, had accounted for about one third of the Mahoning Valley's industrial employment.<sup>6</sup> While the full effect of the Lordstown

1 Staughton Lynd, *The Genesis of the Idea of a Community Right to Industrial Property in Youngstown and Pittsburgh, 1977-1987*, 74 J. AM. HIS. 926, 955 (1987) [hereinafter Lynd, *Genesis of the Idea of a Community*]; see also STAUGHTON LYND, *THE FIGHT AGAINST SHUTDOWNS: YOUNGSTOWN'S STEEL MILL CLOSINGS 3-5* (1982) [hereinafter LYND, *THE FIGHT AGAINST SHUTDOWNS*].

2 See *Local 1330, United Steel Workers of Am. v. U.S. Steel Corp.*, 631 F.2d 1264, 1279-80, 1283 (6th Cir. 1980) [hereinafter *Local 1330 II*]; *United Steel Workers of Am., Local No. 1330 v. U.S. Steel Corp.*, 492 F. Supp. 1, 2-4, 11 (N.D. Ohio 1980) [hereinafter *Local 1330 I*].

3 See *Local 1330 II*, *supra* note 2, at 1279-80, 1283.

4 LYND, *THE FIGHT AGAINST SHUTDOWNS*, *supra* note 1, at 3-5.

5 Salena Zito, *The Day that Destroyed the Working Class and Sowed the Seeds of Trump*, N.Y. POST (Sept. 16, 2017), <https://nypost.com/2017/09/16/the-day-that-destroyed-the-working-class-and-sowed-the-seeds-for-trump/>; see also Lynd, *Genesis of the Idea of a Community*, *supra* note 1, at 955 ("Youngstown has become a symbol of how unilateral corporate decision making can lay waste a community.").

6 LYND, *THE FIGHT AGAINST SHUTDOWNS*, *supra* note 1, at 5; see also Julia Horowitz, *Production Will End at GM's Lordstown, Ohio Plant on Wednesday*, CNN BUS. (Mar. 5, 2019), <https://www.cnn.com/2019/03/04/business/general-motors-lordstown/index.html>. General Motors expects this business decision to result in "\$6 billion in cash savings by 2020 —\$4.5 billion in cost reductions and \$1.5 billion in lower capital expenditures." Michael Wayland, *GM Targets 5 N.A. Plants for Closure, Will Slash 15% of Salaried Jobs*, AUTOMOTIVE NEWS (Nov. 26, 2018, 12:00 am), <https://www.autonews.com/article/20181126/OEM01/181129806/gm-targets-5-n-a-plants-for-closure-will-slash-15-of-salaried-jobs>. Yet, counterintuitively, the Cruze, which was manufactured at the Lordstown plant, was "GM's third-biggest seller" in 2018. Julia Horowitz, *Production Will End at GM's Lordstown, Ohio Plant on Wednesday*, CNN BUS. (Mar.

closing remains to be seen,<sup>7</sup> the U.S. Steel closures resulted in job loss for both U.S. Steel employees and for the greater community,<sup>8</sup> increased mental and physical health ailments,<sup>9</sup> increased poverty

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5, 2019), <https://www.cnn.com/2019/03/04/business/general-motors-lordstown/index.html>; Michael Wayland, *Unlike 2008, GM Cutting Jobs, Plants Proactively*, AUTOMOTIVE NEWS (Dec. 3, 2018), <https://www.autonews.com/article/20181203/OEM/181209962/unlike-2008-gm-cutting-jobs-plants-proactively>. While this business decision is arguably profitable for General Motors, it will likely result in further economic devastation for the Mahoning Valley. David Welch, *GM Squeezed \$118 Million from its Workers, Then Shut Their Factory*, L.A. TIMES (Mar. 29, 2019), <https://www.latimes.com/business/la-fi-hy-general-motors-lordstown-ohio-union-20190329-story.html>.

7 Editorial, *Devastation Ripples from Lordstown Closure*, TOLEDO BLADE (May 2, 2019), <https://www.toledoblade.com/opinion/editorials/2019/05/02/devastation-ripples-outward-lordstown-general-motors-ohio-mary-barra/stories/20190430156>.

8 LYND, *THE FIGHT AGAINST SHUTDOWNS*, *supra* note 1, at 3–5. The steel mill closures resulted in rising unemployment and poverty rates, with the poverty rate remaining at over 20% for close to 20 years. SHERRY LEE LINKON & JOHN RUSSO, *STEELTOWN U.S.A.: WORK AND MEMORY IN YOUNGSTOWN 200–01* (2002). The authors explain that:

[A]s the poverty rate increased, a continuous cycle developed of economic dislocation, unemployment, outmigrations of middle- and working-class families, and the decline of the work ethic, values, neighborhoods, and community. The economic and community destabilization was reflected in the rise of broken families, anti-social behavior, and loss of control over the social behavior of children and adults.

*Id.*

9 See Philip Harvey, *Combating Joblessness: An Analysis of the Principal Strategies that have Influenced the Development of American Employment and Social Welfare Law During the 20<sup>th</sup> Century*, 21 BERKELEY J. EMP. & LAB. L. 677, 679–80 (2000) (“Unemployment is associated with severe mental and physical health problems, increased rates of suicide and attempted suicide, serious family and relationship problems, and increased criminal activity.”). In Youngstown, this has manifested in extreme racial disparities in health outcomes with blacks dying from preventable diseases at a higher rate than whites. LINKON & RUSSO, *supra* note 8, at 194.

rates,<sup>10</sup> decreased property values,<sup>11</sup> economic decline,<sup>12</sup> population loss,<sup>13</sup> a plethora of property vacancies,<sup>14</sup> and increased unemployment rates.<sup>15</sup> Notably, these harms have been disproportionately felt

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10 LINKON & RUSSO, *supra* note 8, at 200 (“As unemployment in Youngstown increased in the late 1970s and 1980s, so did the poverty rate, which remained over 20 percent for twenty years.”).

11 Les Christie, *10 Dirt-Cheap Housing Markets*, CNN MONEY, [https://money.cnn.com/galleries/2011/real\\_estate/1105/gallery.cheapest\\_housing\\_markets/index.html](https://money.cnn.com/galleries/2011/real_estate/1105/gallery.cheapest_housing_markets/index.html) (last updated June 21, 2011) (stating Youngstown is the cheapest major housing market with median home values around \$55,000); Ian Beniston, *How to Fight Vacancy? Do It All*, SHELTER FORCE (Nov. 13, 2018), <https://shelterforce.org/2018/11/13/how-to-fight-vacancy-do-it-all/> (“Market building is critical in a place like Youngstown, where property values have declined dramatically to a point where the market no longer functions in many parts of the city, and in other parts increasingly inhibits investment. For instance, in 1978 my parents purchased the house I grew up in for \$24,000. It was a home on the north side of Youngstown that was in need of repair. They sold the same house 35 years later in good condition for \$20,000. This same story is repeated throughout Youngstown and the Midwest.”).

12 See Stan Boney, *‘A Whole Generation, We Lost’: Declining Population Fueled by Job Loss Around Youngstown*, WKBN (Apr. 19, 2019) <https://www.wkbn.com/news/a-whole-generation-we-lost-declining-population-fueled-by-job-loss-around-youngstown/> (stating Youngstown’s population decline is connected to the region’s economic decline).

13 *Id.*; Compare DAN KILDEE ET AL., NATIONAL VACANT PROPERTIES CAMPAIGN POLICY ASSESSMENT REPORT, REGENERATING YOUNGSTOWN AND MAHONING COUNTY THROUGH VACANT PROPERTY RECLAMATION 10–11 (2009) <https://smartgrowthamerica.org/app/legacy/documents/youngstown-assessment.pdf> (reporting that Youngstown’s population peaked in 1930 at 170,002); *Quick Facts: Youngstown city, Ohio*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/youngstowncityohio/INC110218> (last visited Mar. 14, 2020) (stating Youngstown’s population was 66,982 in 2010).

14 KILDEE ET AL., *supra* note 13, at 10–11 (reporting that Youngstown’s population peaked in 1930 at 170,002; as of 2006, 22.8% of the housing stock was vacant; and, as of 2000, median value of a home was \$40,900); see Ian Beniston, *How to Fight Vacancy? Do It All*, SHELTER FORCE (Nov. 13, 2018), <https://shelterforce.org/2018/11/13/how-to-fight-vacancy-do-it-all/> (stating that a 2009 survey revealed that Youngstown had 4,566 vacant buildings and 23,000 vacant lots but also recognizing that “[w]hile Youngstown continues to face tremendous challenges, the vacant property and physical conditions have improved significantly in the past five years”).

15 See TOLEDO BLADE, *supra*, note 7. Singer paints the following picture of unemployment that resulted from the plant shutdowns:

When a factory closes, many workers never find new jobs at all. Others are unemployed for long periods of time. Forty percent of the 88,000 steelworkers who lost their jobs between January 1979 and January 1984 because of plant closings were still looking

by black workers.<sup>16</sup> These consequences all stem from a corporation's unilateral decision to stop using its property for its originally intended purpose.

This Note will articulate why U.S. Steel and corporations in general should be prevented from creating waste by closing their manufacturing plants and other properties. Part II will examine the events leading up to the *Local 1330* case, explain how the case was decided, and assess the impacts of the decision on the Mahoning Valley. Part III will frame property law as an exercise in balancing the parties' positive and negative liberties to prevent negative externalities, framing property law "as an institution designed to allocate rights over things in order to foster human flourishing."<sup>17</sup> Part IV will use this framework of property law to provide an overview of potential property law claims the *Local 1330* could have brought. Specifically, it will articulate claims the plaintiffs could have brought to allege that U.S. Steel should not have been permitted to abandon,

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for work at the end of that period. Twenty-five percent of this group left the work force entirely. Those that find jobs after plant closings often face large reductions in their wages. Steelworkers who found new jobs had a median income 40 per cent below their old wages. These difficulties, moreover, are disproportionately visited on older workers, less educated workers, women and racial minorities.

Joseph William Singer, *The Reliance Interest in Property*, 40 STAN. L. REV. 611, 713 (1988).

- 16 See GERALD D. TAYLOR, *UNMADE IN AMERICA: INDUSTRIAL FLIGHT AND THE DECLINE OF INDUSTRIAL COMMUNITIES* 3 (Oct. 5, 2016), <http://s3-us-west-2.amazonaws.com/aamweb/uploads/research-pdf/UnmadeInAmerica.pdf> ("Unemployment rates for black workers have outstripped those for white workers at least since 1954, the earliest date for which robust unemployment data is available, and often by at least a factor of two. Further, black workers are disproportionately represented among the long-term (27+ weeks) unemployed. Making matters ever worse is the longstanding and well-documented wealth gap between black and white workers. Black Americans have historically lagged behind their white counterparts in several major wealth-building measures, such as household wealth, retirement savings, and homeownership. These facts suggest that black workers find it inordinately difficult to weather the storm brought on by prolonged economic distress—faced with the sudden loss of income, they not only have to lean more heavily on their personal financial reserves, but also deplete those reserves more fully than white workers. As such, black workers in those circumstances are more likely to fall into poverty, to be plunged into it more deeply, and to find it more difficult to recover in its aftermath.").
- 17 Oskar Liivak & Eduardo M. Peñalver, *The Right Not to Use in Property and Patent Law*, 98 CORNELL L. REV. 1437, 1465 (2013).

destroy, or not use its property. Finally, Part V will examine claims future individuals who may be affected by a manufacturing plant closure can raise to argue that the corporation should be prevented from abandoning, destroying, or not using its property.

## II. THE MAHONING VALLEY: CORPORATE IRRESPONSIBILITY AND ECONOMIC DECLINE

### A. *Youngstown: Then and Now*

Youngstown, Ohio, which once represented a vibrant, industrialized community, now faces a host of challenges stemming from lack of economic opportunities.<sup>18</sup> For most of the 1990s, Youngstown consistently placed in the top ten cities with the highest murder rate per capita with a rate eight times that of the national average.<sup>19</sup> Youngstown's current challenges were created because "[d]eindustrialization and disinvestment exerted an enormous cost in terms of employment, earnings and fringe benefits, and destruction of the social fabric of the local community."<sup>20</sup> This present landscape is in stark contrast to the Youngstown of 40 years ago. In the 1970s, Youngstown

was a place in which the American Dream seemed to have come true for many working-class families. Houses to rent were hard to find: most people owned their homes, and were to be seen mowing their neat

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18 LINKON & RUSSO, *supra* note 8, at 190. Black women were especially affected by the murder rate, and between 1988 and 1997 black women under the age of 65 were murdered at a rate higher than anywhere else in the entire country and were eleven times more likely to be murdered than their white counterparts. *See id.* at 194. The crime rate increased approximately 15 years after the steel mills closed because of the lack of opportunity for the children who grew up in the neighborhoods that were adversely affected by deindustrialization. *Id.* at 197. The authors point out that:

Lacking economic opportunities and access to real wealth, these young adults turned to selling drugs, especially crack cocaine, to largely suburban residents who do 'drive-bys' into poor neighborhoods. Most young adults in Youngstown do not have the money to purchase drugs; rather, they have opportunities to sell drugs, purchase guns, and join gangs to protect territory and profits.

*Id.*

19 *Id.* at 193.

20 LINKON & RUSSO, *supra* note 8, at 196.

lawns, painting, or adding a patio. A few miles [away] was [the] Eastwood Mall, one of several huge shopping malls on the outskirts of Youngstown . . . Often three generations of a family worked in the same [steel] mill and lived close to each other in the same neighborhood . . . There was a sense that this way of life—with its materialism and false security, as well as with its dignity—was created by the union.<sup>21</sup>

This union was the United Steel Workers, which represented workers at several Mahoning Valley steel mills.<sup>22</sup> These mills were the foundation of the region's economy and they provided a path for economic mobility.<sup>23</sup> Jobs at these mills also encouraged many southern blacks to migrate to Youngstown, although racism prevented them from obtaining permanent positions in the mills for many years.<sup>24</sup> This racial hierarchy persisted even after blacks were permitted to hold permanent positions in the mills because they were often only granted these jobs after the white workers sought jobs outside of the mill. Resultantly, blacks “often held the worst jobs and endured racism from both companies and unions.”<sup>25</sup> In spite of the racism within the mills, such jobs still gave black workers a ticket into the middle class likely not present in other regions of the country.<sup>26</sup>

### B. *The Local 1330 Case*

The Sixth Circuit's decision in the *Local 1330* case wrong-

21 LYND, *THE FIGHT AGAINST SHUTDOWNS*, *supra* note 1, at 6.

22 *Id.* at 3–5, 15.

23 See KILDEE ET AL., *supra* note 13, at 8–11; LINKON & RUSSO, *supra* note 8, at 198, 200–01.

24 LINKON & RUSSO, *supra* note 8, at 198. Specifically, these black workers were often recruited to work at the mills while the white workers were on strike. See also Daniel Denvir, *Defending Youngstown: One City's Struggle to Shrink and Flourish*, CITY LAB (Jan. 31, 2013), <https://www.citylab.com/equity/2013/01/defending-youngstown-one-citys-struggle-shrink-and-flourish/4485/> (noting that black workers “first arrived at a mill owner's invitation to labor as scabs during strikes.” This means that they worked under the very conditions that caused the white workers to go on strike.).

25 LINKON & RUSSO, *supra* note 8, at 198; see also John W. Goodwin Jr., *Youngstown in Early 1900s, Blacks Flocked*, THE VINDICATOR (Feb. 9, 2004), <https://vindyardives.com/news/2004/feb/09/youngstown-in-early-1900s-blacks-flocked/> (noting that blacks often had the “dirtiest, hottest, and most dangerous [jobs]”).

26 See LINKON & RUSSO, *supra* note 8, at 198.

ly permitted U.S. Steel to make a business decision that devastated an entire community. Youngstown today is different from the Youngstown of the 1970s because of the economic decline created by the closures of multiple Mahoning Valley steel mills in the late 1970s and early 1980s. U.S. Steel initially promised to keep these mills open if they became profitable, but reneged on this promise, later basing their decision to close on their claim that the mills were not profitable.<sup>27</sup> On January 3, 1978, U.S. Steel announced that it would be closing the McDonald Works and the Ohio Works, two Mahoning Valley steel mills.<sup>28</sup> Contrary to U.S. Steel's assertions, at least one of the mills was about breaking even at the time of closure and likely could have increased its profitability if it had been properly upgraded.<sup>29</sup> Sensing the potential impact of these closures on their community, the steel mill workers attempted to prevent economic decline by filing the *Local 1330* lawsuit.

On Friday, December 21, 1978, employees who worked at the McDonald Works and the Ohio Works filed suit against U.S. Steel in the Northern District of Ohio.<sup>30</sup> The workers filed suit as members of Locals 1330 and 1337 of the United Steel Workers and were joined by two other United Steel Workers locals, the district's Congressman, and Ohio's Attorney General.<sup>31</sup> The plaintiffs set forth four causes of action: (1) breach of contract, (2) promissory estoppel, (3) violation of anti-trust statutes, and (4) a property right.<sup>32</sup> They intended to use the federal courts to mandate that U.S. Steel continue to operate the two mills or, alternatively, require U.S. Steel to sell the two plants to the plaintiffs.<sup>33</sup>

The plaintiffs' fourth claim asserted that they had a property

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27 U.S. Steel alleged that the mills were not profitable in its answer to the complaint. See *Local 1330 II*, *supra* note 2, at 1266 ("Defendant . . . claim[s] that the plants were unprofitable and could not be made otherwise due to obsolescence and change in technology, markets, and transportation.")

28 Agis Salpukas, *U.S. Steel to Close Youngstown Mills; Timing is Uncertain*, NY TIMES, Jan. 4, 1978, at D1.

29 See *Local 1330 II*, *supra* note 2, at 1274, 1278; LYND, THE FIGHT AGAINST SHUTDOWNS, *supra* note 1, at 17, 172-73, 209.

30 LYND, THE FIGHT AGAINST SHUTDOWNS, *supra* note 1, at 143.

31 *Local 1330 II*, *supra* note 2, at 1264 n.1.

32 *Local 1330 I*, *supra* note 1, at 3-4.

33 *Local 1330 II*, *supra* note 2, at 1265; *Local 1330 I*, *supra* note 2, at 3-4 (stating claims as "breach of contract, promissory estoppel, violation of anti-trust statutes and property right."). Mahoning Valley residents had also raised over four million dollars to purchase the plants themselves. LYND, THE FIGHT AGAINST SHUTDOWNS, *supra* note 1, at 38-40.

interest in the plants by way of an easement.<sup>34</sup> The complaint read:

52. A property right has arisen from the long-established relation between the community of the 19<sup>th</sup> Congressional District and Plaintiffs, on the one hand, and Defendant on the other hand, which this Court can enforce.

53. This right, in the nature of an easement, requires that Defendant:

- a. Assist in the preservation of the institution of steel in that community;
- b. Figure into its cost of withdrawing and closing the Ohio and McDonald Works the cost of rehabilitating the community and the workers;
- c. Be restrained from leaving the Mahoning Valley in a state of waste and from abandoning its obligation to that community.<sup>35</sup>

Both the District Court and the Sixth Circuit rejected this claim, stating that there was no source of law or precedent that would permit a finding of an easement between the plaintiffs and U.S. Steel.<sup>36</sup> The Sixth Circuit affirmed the District Court's denial of relief on all claims except for the plaintiffs' anti-trust claims. The District Court's initial decision on this matter was instead vacated and remanded for further proceedings.<sup>37</sup>

However, scholars agree that the case was wrongly decided and argue that the court should have recognized that the workers had a property right by way of an easement because, contrary to the conclusions of the judges in this case, precedent for the creation of property rights of the kind asserted by the union did exist.<sup>38</sup> While

34 *Local 1330 II*, *supra* note 2, at 1280.

35 *Id.*

36 *Local 1330 II*, *supra* note 2, at 1279–80; *Local 1330 I*, *supra* note 2, at 11. Judge Lambros, the District Court Judge, rejected this claim even though he had originally suggested that the plaintiffs amend their complaint to include it. *See Local 1330 II*, *supra* note 2, at 1279–80; *see also* LYND, *THE FIGHT AGAINST SHUTDOWNS*, *supra* note 1, at 169, 209.

37 *Local 1330 II*, *supra* note 2, at 1283. The court record does not indicate that there was any further litigation concerning the antitrust claim.

38 *See* Karl Klare, *Teaching Local 1330—Reflections on Critical Legal Pedagogy*, 7 *HARV. UNBOUND J. LEGAL L.* 81, 83 (2011) (acknowledging he believes “that the plaintiffs’ common law theories were sound and should have prevailed”).

it certainly would have been possible for the court to reach that decision, there are also alternative property law claims that could have proven successful. Specifically, the plaintiffs may have succeeded if they had brought claims alleging that U.S. Steel should not have been prevented from abandoning, destroying, or not using its property. Examining the principles enshrined in property law provide a framework on how the *Local 1330* plaintiffs may have succeeded on these other causes of action.

### III. OWNERSHIP, NEGATIVE AND POSITIVE LIBERTIES, AND DUTIES OWED TO OTHERS

The obligations enshrined in property rights reveal that U.S. Steel should have been prevented from abandoning, destroying, or not using its property. Property rights are determined by examining relationships between the parties.<sup>39</sup> Within the relationship, the parties will have both negative and positive liberties.<sup>40</sup> Negative liberty is the “absence of obstacles that are external to a person, which would include the absence of government restraints.”<sup>41</sup> Positive liberty, on the other hand, is defined as “the availability of meaningful choice and capacity to exercise it.”<sup>42</sup> An entity exercising its negative liberty can infringe upon others’ abilities to exercise their positive liberties by preventing those with positive liberties from exercising their own choices and implementing their own vision of their communities.<sup>43</sup> Prominent legal scholar Sidney A. Shapiro explains that many po-

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Property scholar Joseph Singer has also asserted that the plaintiffs should have succeeded on their property claim. He has said:

I do not want to be so disingenuous as to claim that recognition of such entitlements would not constitute a substantial change in the law, but I do want to assert that the legal system contains a variety of doctrines—in torts, property, contracts, family law and in legislative modifications of those common law doctrines—that recognize the sharing or shifting of various property interests in situations that should be viewed as analogous to plant closings. If I am right, the courts had access to enforceable legal rules based on principles that could have been seen as applicable precedent for extension of existing law by creation of this new set of entitlements.

Singer, *supra* note 15, at 621.

39 See Singer, *supra* note 15, at 643.

40 See Sidney A. Shapiro, *Inequality, Social Resilience and the Green Economy*, 86 UMKC L. REV. 963, 967 (2018).

41 *Id.*

42 *Id.*

43 *Id.*

litical philosophers have recognized the importance of positive liberties. For instance, Shapiro notes that John Rawls argued “that for citizens to be free and equal, reasonable and rational, they required a set of ‘primary goods’ that include both various negative liberties” along with “‘positions of authority,’ ‘income and wealth,’ and the kind of social recognition that ‘gives citizens a sense of self-worth and the confidence to carry out their plans,’ which are positive liberties.”<sup>44</sup> The exercise of positive and negative liberties are constantly in tension: “Freedom for the pike is death for the minnows.”<sup>45</sup> The imbalance in the exercise of these liberties is intentional, as “they are the direct result of the allocation of power determined by the assignment of legal entitlements.”<sup>46</sup> Therefore, balancing the relationship between parties means that the entity with the negative liberty owes affirmative obligations to the entity with the positive liberty.<sup>47</sup>

When determining property rights, it is necessary to “ad-

44 *See id.* at 967–68.

45 *Id.* at 968.

46 Singer, *supra* note 15, at 662–63 (“[S]ome members of the common enterprise are more vulnerable than others. These inequalities are not natural; they are the direct result of the allocation of power determined by the assignment of legal entitlements.”).

47 *See id.* at 657. Shapiro offers the following explanation of the intentionality of negative and positive liberties:

Berlin started with the concept of “negative liberty” which he defined as the absence of obstacles that are external to a person, which would include the absence of government restraints. There is also “positive liberty” which Berlin defines as the availability of meaningful choice and the capacity to exercise it. Positive liberty refers first to “the range of issues or problems over which one can exercise control” and second to the “resources, both material and non-material, that enable one to envision alternatives and carry them out.”

An exclusive focus on protecting negative liberty misses the ways that unregulated markets deny less advantaged individuals control over their own lives, limiting their positive liberty. When individuals lack meaningful choice through no fault of their own, they lack positive liberty in the sense that they do not have meaningful choice or the capacity to exercise it. When government removes such obstacles, as for example by reducing the cost of education or training for those who cannot afford it, despite their best efforts, government increases their positive liberty.

Shapiro, *supra* note 40, at 967 (quoting ISAIAH BERLIN, *Two Concepts of Liberty*, in *FOUR ESSAYS ON LIBERTY*, 118, 121–22, 131–34 (1969)).

just[] the relationships among the parties.”<sup>48</sup> Property owners possess land “in trust for the community and for others with whom they establish continuing relationships” in addition to possessing the property for their own interests.<sup>49</sup> In other words, property law is infused with obligations to share, which are embedded within the structure of property law.<sup>50</sup> These obligations focus on both individual and collective goods, thereby accounting for both the owner’s autonomy (negative liberties) and the community’s “health and stability” (positive liberties).<sup>51</sup> Under this conception of ownership, all property operates under servitudes that benefit the community in which the property exists.<sup>52</sup> However, “[w]hen ownership is conceived of as a social practice permeated by obligation. . . . owners’ (negative) property liberties and the (affirmative) obligations associated with ownership stand on conceptually equal footings.”<sup>53</sup>

This balancing of parties’ abilities to exercise their negative and positive liberties is infused within property law jurisprudence. The law recognizes two circumstances where a property owner should not be permitted to exercise their negative liberty without restriction: “(1) where certain uses will engender negative externalities and (2) where the owner lacks the capacity to make a rational judgment about how the property should be used.”<sup>54</sup> Negative ex-

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48 See Singer, *supra* note 15, at 659.

49 See *id.* at 657; see also Eduardo M. Peñalver, *The Illusory Right to Abandon*, 109 MICH. L. REV. 191, 216 (2010) (arguing that because land is a finite resource, repercussions of its use are more severe for humans and other beings).

50 Peñalver, *supra* note 49, at 213. Singer offers the following explanation of these obligations to share:

The doctrines of adverse possession, prescriptive easements, easement by estoppel and easement by necessity all stand for the same proposition: Where a non-owner of property comes to rely upon access to property, the law sometimes recognizes the non-owner’s vulnerability and shifts some or all of the property rights from the title owner to the non-owner. The rules in force therefore protect the non-owner’s reliance on her relationship with the owner that made access to the land possible.

Singer, *supra* note 15, at 672.

51 Peñalver, *supra* note 49, at 213.

52 *Id.*

53 *Id.*

54 Lior Jacob Strahilevitz, *The Right to Destroy*, 114 YALE L.J. 781, 797 (2005) [hereinafter Strahilevitz, *The Right to Destroy*]. This Note will only analyze the negative externalities that U.S. Steel’s decision created, it will not analyze whether U.S. Steel’s decision was rational. Singer offers the following explanation of how property law prevents owners from using their property in

ternalities, the first circumstance courts look to prevent, are the primary focus of this Note. They are defined as “costs an actor imposes on third parties” that “the actor is unlikely to take . . . into account adequately in his decision-making.”<sup>55</sup> In *Local 1330*, the court failed to limit U.S. Steel’s exercise of negative liberties to alleviate both the negative externalities of the company’s decision, and the resultant restraints on Mahoning Valley residents’ positive liberties.

### A. *Negative and Positive Liberties in Local 1330*

Here, U.S. Steel had established relationships with both the workers and the Mahoning Valley community—relationships that attached affirmative obligations to U.S. Steel’s exercise of its negative liberties. The workers and U.S. Steel had a relationship through their involvement “as part of a common enterprise,”<sup>56</sup> the operation of the steel mills. In order to produce steel, the corporation relied upon its workers to provide the necessary labor in the same way it relied upon its shareholders for funding.<sup>57</sup> In fact, the workers’ length of service and inability to easily withdraw from the relationship may have made their investment greater than that of the shareholders.<sup>58</sup>

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ways that produce negative externalities for the community:

The rules in force also recognize the interdependence of persons in the community by sometimes prohibiting owners of valuable resources from wasting them or otherwise making them unavailable to the public (the public trust doctrine). They also recognize the mutual dependence of persons in the community by forcing owners to contribute to alleviating the external consequences of their land use decisions (nuisance; linkage requirements).

Singer, *supra* note 15, at 678.

55 Lisa Grow Sun & Bringham Daniels, *Mirrored Externalities*, 90 NOTRE DAME L. REV. 135, 137 (2014).

56 Singer, *supra* note 15, at 657 (describing this relationship: “Rather than seeing the corporation and the workers in isolation, and assuming that the corporation has absolute freedom of ‘its’ property as it sees fit, in the absence of a clear contractual obligation to the contrary, we can see the corporation and the workers as together having established and relied on long-standing relations with each other in creating a common enterprise.”).

57 *See id.* (quoting Clyde W. Summers, *Codetermination in the United States: A Projection of Problems and Potentials*, 4 J. COMP. CORP. L. & SEC. REG. 155, 170 (1982)).

58 *See id.* Clyde Summers explains that:

[T]he corporation is more than the shareholders and includes the employees. If the corporation is conceived in relatively narrow terms as an operating institution combining all factors of production to conduct an on-going business, then the employees

Additionally, U.S. Steel had a relationship with the entire Mahoning Valley community that even Judge Lambros, the District Court Judge who decided the case, recognized.<sup>59</sup> The former union president of the Ohio Works plant poignantly described this relationship in a speech delivered at a mass meeting of the union's members:

They've taken money out and milked us dry. Money that came out of your sweat, backs and muscles. Out of your sweat, out of your muscle, they took millions and millions, hundreds of millions and put it in hotels, Disneyland, everywhere except in Youngstown. We put our lives into the valley. We built the homes and the churches and the hospitals. Now they're cutting us off. You invested here. You built houses and paid taxes that built the schools and highways. And

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who provide the labor are as much members of that enterprise as the shareholders who provide the capital. Indeed, the employees may have made a much greater investment in the enterprise by their years of service, may have much less ability to withdraw, and may have a greater stake in the future of the enterprise than many of the stockholders.

*Id.* Although this Note will not explore this alternative way of recognizing the workers' contribution to the shared enterprise, it is pertinent to note that European Union members require employee representatives to serve on corporations' boards of directors. Wanjiru Njoya, *Job Security in a Flexible Labor Market: Challenges and Possibilities for Worker Voice*, 33 COMP. LAB. L. & POL'Y J. 459, 471 (2012) ("This broader formulation of corporate strategy, conceptualized in English law as 'enlightened shareholder value,' recognizes that the integrity of corporate policy requires the input of all affected participants in corporate enterprise.").

59 Judge Lambros poignantly described this relationship during a pretrial conference:

Everything that has happened in the Mahoning Valley has been happening for many years because of steel. Schools have been built, roads have been built. Expansion that has taken place is because of steel. And to accommodate that industry, lives and destinies of the inhabitants of that community were based and planned on the basis of that institution: Steel.

We are talking about an institution, a large corporate institution that is virtually the reason for the existence of that segment of this nation (Youngstown). Without it, that segment of this nation perhaps suffers, instantly and severely. Whether it becomes a ghost town or not, I don't know. I am not aware of its capability for adapting.

*Local 1330 II, supra* note 2, at 1279–80.

we want U.S. Steel to invest here, right here. That's the issue.<sup>60</sup>

When U.S. Steel decided to exercise its negative liberty by closing the McDonald and Ohio Works, it infringed upon the workers and community members abilities to exercise their positive liberties. U.S. Steel restrained the choices that were available to the workers and the community, and limited the resources the workers and the community had to continue to operate the mill.<sup>61</sup> The workers wanted to continue to operate the mills themselves.<sup>62</sup> When the court upheld U.S. Steel's ability to exercise its negative liberty through use of its property as it desired without governmental constraint, it prevented the workers and the community from being able to operate the mills on their own, and preserve the community's livelihood, thus restraining their ability to exercise their positive liberties.<sup>63</sup> The Mahoning Valley's subsequent economic devastation continues to severely limit its residents' positive liberty.<sup>64</sup>

Because U.S. Steel wanted to cease operations at the Ohio Works and McDonald Works but did not want to sell these plants to the workers, the only persons who wanted to operate them at full capacity, it had three options: abandon the property, destroy the property, or let the property fall into disuse. Each option would have been an exercise of U.S. Steel's negative liberty. As discussed, such exercises are bound with affirmative obligations to offset any interference in the community's exercise of its positive liberties—affirmative obligations that the judges deciding the *Local 1330* case should have considered.<sup>65</sup>

#### IV. ALTERNATIVE PROPERTY CLAIMS

##### A. *Defendants Cannot Abandon Their Property*

U.S. Steel should not have been permitted to abandon its steel mills because this exercise of its negative liberty created negative externalities for the Mahoning Valley residents, thereby re-

60 LYND, *THE FIGHT AGAINST SHUTDOWNS*, *supra* note 1, at 139.

61 Shapiro, *supra* note 40, at 967; *see also supra* notes 8–15.

62 *See Local 1330 II*, *supra* note 2, at 1265–66; *see generally* LYND, *THE FIGHT AGAINST SHUTDOWNS*, *supra* note 1, at 43–44.

63 *See Local 1330 II*, *supra* note 2; *supra* Introduction and Section II.

64 *See supra* Introduction and Section II.

65 Strahilevitz, *The Right to Destroy*, *supra* note 54, at 797.

stricting the exercise of the residents' positive liberties.<sup>66</sup> Property is abandoned when the owner voluntarily "relinquish[es] all interests in the property, with no intention that it be acquired by any particular person."<sup>67</sup> Abandoning property opens it up to new ownership and the new owner is the first person to take control of the property after abandonment.<sup>68</sup> Recently, there have been two competing schools of thought as to whether abandonment should be permitted.<sup>69</sup> On one end of the spectrum, Eduardo M. Peñalver argues that the common law principle forbidding land from being abandoned "reflects discomfort with abandonment through and through" and forbids chattels, including buildings and manufacturing equipment, from being abandoned as well.<sup>70</sup> Conversely, Lior Jacob Strahilevitz argues that owners should be permitted to abandon land "upon cleaning up or improving the property sufficiently to give it positive market value."<sup>71</sup> Peñalver's categorical prohibition on abandoning both chattels and land would have prevented U.S. Steel from abandoning its mills.<sup>72</sup> Yet, even Strahilevitz's more permissive approach may have prohibited U.S. Steel from abandoning its property. Even if the property did not have positive market value when U.S. Steel abandoned it, as the company alleged, the workers were the only people who expressed interest in continuing to operate the mill at full capacity, and they did not have the capital to make necessary

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66 U.S. Steel argued in its appellant brief that it had the right to abandon Youngstown. See *Local 1330 II*, *supra* note 2, at 1266 ("The company also asserts an absolute right to make a business decision to discharge its former employees and abandon Youngstown.").

67 Lior Jacob Strahilevitz, *The Right to Abandon*, 158 U. PA. L. REV. 355, 375–76 (2010) [hereinafter Strahilevitz, *The Right to Abandon*]. Here, U.S. Steel would have had difficulty abandoning its property because although it did not want the property to be acquired by a specific entity, there were other entities that it affirmatively did not want to acquire the property. See LYND, *THE FIGHT AGAINST SHUTDOWNS*, *supra* note 1, at 159 (quoting a U.S. Steel executive who said that he did not want the workers to acquire the plant because "[U.S. Steel] obviously would not be interested in selling the plants to a group of people that can only be successful if they were subsidized by the federal government. We are not, in other words, interested in creating subsidized competition for ourselves at other locations.").

68 Strahilevitz, *The Right to Abandon*, *supra* note 67, at 376.

69 See generally Peñalver, *supra* note 49; Strahilevitz, *The Right to Abandon*, *supra* note 67.

70 Peñalver, *supra* note 49, at 215.

71 Strahilevitz, *The Right to Abandon*, *supra* note 67, at 419.

72 See Peñalver, *supra* note 49, at 215.

updates to the plants' furnaces.<sup>73</sup>

However, it is likely that the mills could have become profitable. Both of the mills used less efficient open hearths that took between nine and ten hours to make steel, as opposed to basic oxygen furnaces that produced steel in just 45 minutes and required less manpower.<sup>74</sup> U.S. Steel could have updated the mills with basic oxygen furnaces for approximately \$150 million at each site.<sup>75</sup> While this may seem like a large sum of money, U.S. Steel had the funds, but chose to purchase the Marathon Oil Company for \$6.3 billion in 1981 instead of using that capital to offset the negative externalities of its decision to close its Ohio steel mills.<sup>76</sup> In addition, the Youngstown Works was "about breaking even" when U.S. Steel decided to close the mill and was actually producing enough revenue to cover all of its fixed expenses.<sup>77</sup> Since updating the furnaces would have increased the mill's efficiency, it is likely that such an improvement could have helped the mills turn even more of a profit in the future. If U.S. Steel had updated its mills, then, according to Strahilevitz, the property would have been sufficiently "cleaned up" and suitable for abandonment.

Both Peñalver and Strahilevitz state that property law requires balancing the interests of those with the negative liberties and those with the positive liberties with the goal of mitigating negative externalities.<sup>78</sup> While Strahilevitz argues that owners should

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73 See LYND, *THE FIGHT AGAINST SHUTDOWNS*, *supra* note 1, at 40 (stating residents raised over four million dollars to purchase the plants themselves); *id.* at 209 (stating that open hearths could have been updated for approximately \$150 million).

74 LYND, *THE FIGHT AGAINST SHUTDOWNS*, *supra* note 1, at 16.

75 *Id.* at 209.

76 *Id.*

77 *Id.* at 172–73; see *Local 1330 II*, *supra* note 2, at 1266 ("Defendant . . . claim[s] that the plants were unprofitable and could not be made otherwise due to obsolescence and change in technology, markets, and transportation.").

78 See Peñalver, *supra* note 49, at 213; Strahilevitz, *The Right to Abandon*, *supra* note 67, at 405. Instead of using the phrase "negative externalities," Peñalver does acknowledge that:

[A]n important aim of property law is to promote human flourishing by enforcing and encouraging certain forms of virtue, including obligations to share. . . . [T]he sorts of interests that underlie the assessment of a particular duty . . . include such collective goods as the health and stability of the community in which a particular parcel of property is situated as well as the shared values and commitments on which that health and

be able to dispose of possessions that they do not want anymore, he asserts that these owners have obligations to others to ensure that the way they act with respect to their property does not infringe upon others' positive liberties.<sup>79</sup> Peñalver, who also recognizes that liberties are enshrined in property law, asserts that property law promotes the collective good, community health, and stability through "obligations to share."<sup>80</sup> Moreover, both scholars agree that property owners have a duty to mitigate the negative externalities they may create through their interactions with and use of their own property.<sup>81</sup>

Some of the negative externalities the common law against abandonment seeks to prevent include decreases in tax revenue that the community relies upon for funding, blight, a subsequent burden placed on neighbors who might maintain part of the property to mitigate the effects of this blight,<sup>82</sup> a depreciation in the property's value as it awaits a new owner to claim it, vandalism, crime,<sup>83</sup> and loss of value to adjoining property.<sup>84</sup> Many of these negative externalities occurred when U.S. Steel closed the Ohio Works and McDonald Works. Here, the effects of abandonment were even more severe because industrial, not personal, property was abandoned.<sup>85</sup> As has been emphasized in this Note, the property's industrial nature not only resulted in a large mass of land not being used, but also led to job loss and financial hardship. After the mills closed, personal problems increased within the community as the rates of "alcoholism, divorce, child and spouse abuse, [and] suicide" increased.<sup>86</sup> For nearly 20 years after the mills closed, Youngstown had the highest unemployment rate and per capita welfare costs in the state of Ohio.<sup>87</sup>

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stability depends.

Peñalver, *supra* note 49, at 213. Since a community's health and stability is threatened by negative externalities, it is likely Peñalver would not object to this term. Thus, "negative externalities" will be the term that this Note uses moving forward.

79 Strahilevitz, *The Right to Abandon*, *supra* note 67, at 371, 405.

80 See Peñalver, *supra* note 49, at 213.

81 Strahilevitz, *The Right to Abandon*, *supra* note 67, at 405; Peñalver, *supra* note 49, at 213.

82 Peñalver, *supra* note 49, at 217.

83 Strahilevitz, *The Right to Abandon*, *supra* note 67, at 375.

84 See David A. Super, *A New New Property*, 113 COLUM. L. REV. 1773, 1854 (2013) (discussing the impact of long-term vacancies caused by foreclosures).

85 See LYND, *THE FIGHT AGAINST SHUTDOWNS*, *supra* note 1, at 4.

86 *Id.*

87 LINKON & RUSSO, *supra* note 8, at 196.

This dire picture of economic devastation and business failure coincided with an increase in arson that further depleted property value in the Mahoning Valley.<sup>88</sup> Furthermore, the community was forced to invest millions of dollars to clean up the natural environment that the mills had polluted.<sup>89</sup>

Thus, because the court chose to protect U.S. Steel's ability to exercise its negative liberty, Mahoning Valley members lost "control over their own lives, limiting their positive liberty."<sup>90</sup> The negative externalities created by U.S. Steel's abandonment continue to severely limit the economic choices of Mahoning Valley residents.<sup>91</sup> By choosing not to restrict a corporation's exercise of its negative liberty, the court restricted the positive liberties of less advantaged individuals.<sup>92</sup> U.S. Steel's ability to exercise its negative liberty could have been balanced with the need to protect the positive liberties of Mahoning Valley residents if U.S. Steel had been required to offset the negative externalities that its exercise of its right to abandon its property produced.<sup>93</sup> These negative externalities could have been offset by requiring U.S. Steel to update the furnaces at the Ohio Works and the McDonald Works.

The negative externalities of U.S. Steel's decision to abandon Youngstown, which it admitted was its intention, would have rendered U.S. Steel's exercise of its negative liberty impermissible under both Peñalver and Strahilevitz's views on abandonment. Peñalver's "duty to share" would have prevented U.S. Steel from abandoning

88 *Id.* at 222–23 (“In the 1980s, as the city’s population dropped, its economic base crumbled, unemployment and business failures increased, and the real estate market crashed, Youngstown averaged 2.3 fires daily with an estimated dollar loss between \$1.75 million and \$9 million annually. In the 1990s, Youngstown averaged 310 arson fires with an estimated loss of \$2 million annually. There is little doubt that residential, commercial property, and automobile arson fires became commonplace in Youngstown in the last two decades of the twentieth century.”). *Id.* This increase in arson could be linked to the increase in vacant property that occurred as the population declined. See *Reducing Arson at Vacant and Abandoned Buildings*, U.S. FIRE ADMIN. [https://www.usfa.fema.gov/prevention/outreach/arson\\_prevention\\_abandoned\\_bldgs/](https://www.usfa.fema.gov/prevention/outreach/arson_prevention_abandoned_bldgs/) (last visited Mar. 16, 2020).

89 See LINKON & RUSSO, *supra* note 8, at 232 (noting that the Mahoning River is one of the most polluted streams in the country and that seven million dollars in tax abatements had been invested in cleaning up former mills with very marginal results).

90 Shapiro, *supra* note 40, at 967.

91 See Introduction (describing current plight of Youngstown).

92 Shapiro, *supra* note 40, at 967.

93 See *id.*

its property, as doing so would destabilize the Mahoning Valley and upset the community's health and safety. Meanwhile, Strahilevitz's acknowledgement that an entity must mitigate potential negative externalities before abandoning its property would also prohibit U.S. Steel from closing the steel mills without making necessary updates.

### **B. Defendants Cannot Destroy Their Property**

Because U.S. Steel should not have been permitted to abandon its property, the only other unilateral method of disposing of its property would have been to destroy its steel mills.<sup>94</sup> As land is the only form of property that cannot be destroyed, U.S. Steel's decision to destroy its chattel property was a decision to "deprive a resource of its immortality."<sup>95</sup> Determining whether an entity has the right to destroy requires determining the nature of ownership and the rights that property owners owe to others.<sup>96</sup> The essence of ownership necessitates identifying established relationships between parties.<sup>97</sup> Here, as discussed above, the steel mill and the process of making steel was a common enterprise between U.S. Steel and the workers and the community.<sup>98</sup> By the nature of this relationship, U.S. Steel should not have been permitted to exercise its negative liberty of destroying the mills because doing so severely restricted the workers and the community from being able to exercise their positive liberties.<sup>99</sup>

Courts tend to restrict an owner's ability to exercise their negative liberty through property destruction precisely because such

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94 Strahilevitz, *The Right to Abandon*, *supra* note 67, at 360 (categorizing abandonment and destruction as the only unilateral methods of disposing of property and distinguishing destruction of property from a transfer of property).

95 See Strahilevitz, *The Right to Destroy*, *supra* note 54, at 796; see also Peñalver, *supra* note 49, at 216 (acknowledging that although land cannot be completely destroyed "its usefulness to human beings and to ecosystems can be irreparably damaged.").

96 Strahilevitz, *The Right to Destroy*, *supra* note 54, at 795.

97 See Singer, *supra* note 15, at 657.

98 *Id.* ("Rather than seeing the corporation and the workers in isolation, and assuming that the corporation has absolute freedom to dispose of 'its' property as it sees fit, in the absence of a clear contractual obligation to the contrary, we can see the corporation and the workers as together having established and relied on long-standing relations with each other in creating a common enterprise.").

99 See generally Shapiro, *supra* note 40, at 967.

an act creates negative externalities.<sup>100</sup> An owner destroys their property when their “acts or omissions eliminate the value of all otherwise valuable future interests in a durable thing.”<sup>101</sup> A court’s main concern when restricting this right is to prevent the negative externality of waste.<sup>102</sup> Thus, when a living person tries to destroy their property, “the courts express concern about the diminution of resources available to society as a whole.”<sup>103</sup> When a deceased person’s will certifies that their property should be destroyed, “the court’s focus is generally on preventing a loss to the estate and the beneficiaries.”<sup>104</sup>

Courts restrict individuals’ rights to destroy their property in an array of situations, but their reasons are typically the same: to prevent negative externalities.<sup>105</sup> For instance, a Pennsylvania court prohibited a woman from being buried with her jewelry in order to prevent the negative externality of grave digging.<sup>106</sup> The *Meksras*’ court reasoned that allowing people to be buried with their valuables would encourage tomb raiding, which was “contrary to public policy” because it desecrated the dead.<sup>107</sup> Missouri has also held that allowing a deceased person to destroy their property is against public policy.<sup>108</sup> A Missouri court found that the negative externalities of such destruction outweighed a testator’s negative liberty because “[d]estruction of the house harms the neighbors, detrimentally affects the community, causes monetary loss in excess of \$39,000.00 to the estate and is without benefit to the dead woman.”<sup>109</sup> The court ruled in favor of the community’s ability to exercise its positive liberties, which included living in a stable community.<sup>110</sup> The need to

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100 Strahilevitz, *The Right to Destroy*, *supra* note 54, at 796. Strahilevitz’s article notes that “to destroy” was removed from the definition of “owner” in the 1999 edition of Black’s Law Dictionary. *Id.* at 783. The most recent version of Black’s Law Dictionary, which was published in 2019, also excludes “to destroy” from both its definition of “ownership” and its definition of “owner.” *Owner*, BLACK’S LAW DICTIONARY (11th ed. 2019); *Ownership*, BLACK’S LAW DICTIONARY (11th ed. 2019).

101 Strahilevitz, *The Right to Destroy*, *supra* note 54, at 793.

102 *See id.* at 783–84, 796.

103 *Id.* at 796.

104 *Id.*

105 *See id.* at 784.

106 *In re Meksras’ Estate*, 63 Pa. D. & C.2d 371, 372–73 (Ct. Com. Pl. 1974).

107 *Id.* at 373.

108 *Eyerman v. Mercantile Tr. Co.*, 524 S.W.2d 210, 217 (Mo. Ct. App. 1975).

109 *Id.* at 214.

110 *Id.* at 217.

protect these positive liberties outweighed the testator's ability to exercise her negative liberty.<sup>111</sup> The court further justified its decision by noting that the testator had not articulated any justification for wanting to destroy her property.<sup>112</sup>

While the *Meksras* and *Eyerman* cases involved deceased property owners who did not have any recognizable interest in destroying their property, owners who do have legitimate interests in destroying their property also have been prohibited from doing so.<sup>113</sup> For instance, a Washington, D.C. landlord once sought permission to demolish a building he owned because it had been damaged by a fire.<sup>114</sup> He was barred from exercising this negative liberty because the building was covered under the Historic Preservation Act, and the board responsible for administering this act declined to permit its demolition in the absence of "imminent danger."<sup>115</sup> The court held that the mayor's decision not to exercise this discretionary power was not subject to judicial oversight, upholding the administrative body's decision.<sup>116</sup> Thus, the court upheld the administrative decision to prevent the landlord from exercising his negative liberty.<sup>117</sup> In each of these cases, courts were wary of permitting entities from exercising their negative liberty to destroy their property precisely because such destruction would produce negative externalities for the community.<sup>118</sup> In fact, *Meksras* demonstrates that even if an owner's exercise of their negative liberty is not illegal, a court can still bar the action if the court deems that such an exercise creates negative externalities that violate public policy.<sup>119</sup> Interestingly, the court cited no authority to support its prediction that allowing individuals to be buried with their valuables would lead to an uptick in

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111 *Id.*

112 *Id.*

113 Strahilevitz, *The Right to Destroy*, *supra* note 54, at 784.

114 *J.C. & Assocs. v. District of Columbia Bd. of Appeals and Review*, 778 A.2d 296, 298 (D.C. 2001).

115 *Id.* at 307–09.

116 *Id.* at 309.

117 *Id.* at 308.

118 See *J.C. & Assocs.*, 778 A.2d at 298 (restricting the negative liberty to destroy in the interest of historic preservation); *Eyerman v. Mercantile Tr. Co.*, 525 S.W.2d 210, 215, 217 (Mo. Ct. App. 1975) (restricting the negative liberty to destroy because doing so would destabilize the community); *In re Meksras' Estate*, 63 Pa. D. & C.2d 371, 372–73 (Ct. Com. Pl. 1974) (restricting the negative liberty to destroy because it would produce the negative externality of tomb raiding).

119 *In re Meksras'*, 63 Pa. D. & C.2d at 372–73.

this type of crime.<sup>120</sup>

The district court and the Sixth Circuit, on the other hand, knew that U.S. Steel's decision to destroy its property would have negative externalities for the Mahoning Valley, but chose not to create an equitable solution.<sup>121</sup> Although Judge Lambros and the Sixth Circuit might have been unable to predict the full scope of the harm that would ensue, both courts specifically stated that the community could potentially suffer substantial harm. The Sixth Circuit could have followed the *Meksras* court's reasoning and fashioned an equitable solution to guard against the negative externalities.<sup>122</sup>

Courts may permit entities to exercise their negative liberty and destroy their property if the cost of preservation would be more than the cost of destruction, or if destroying their property is a form of self-expression. Neither of these exceptions eliminates the court's responsibility to consider whether destroying property will create negative externalities.<sup>123</sup> For instance, an Illinois court held that a private entity that owned a theater could not be forced to preserve the building because the building was not economically profitable and was vacant, "functionally obsolete," posed a fire hazard, and could not have been made profitable even if improvements had been made.<sup>124</sup> The court essentially reasoned that destroying the building would increase the value of the land overall, so such destruction was therefore actually an improvement to the parcel rather than a loss.<sup>125</sup>

But the facts of *Marbro Corp.* and the resultant reasoning are in stark contrast to the facts in *Local 1330*. Rather than destroying a theater, U.S. Steel destroyed the Mahoning Valley's economic livelihood.<sup>126</sup> Unlike the defunct and unprofitable theater, the Youngstown Works was about breaking even when U.S. Steel decided to close it, and a feasibility study conducted on another area steel mill, the Campbell Works, concluded that the mill could have actually earned a profit in as little as five years with an initial \$500 million invest-

120 See generally *id.*

121 *Local 1330 II*, *supra* note 2, at 1279–80. The Sixth Circuit quoted from the speech that the district court judge, Judge Lambros, gave at one of the pretrial hearings. *Id.*

122 *In re Meksras'*, 63 Pa. D. & C. 2d at 372–73.

123 Strahilevitz, *The Right to Destroy*, *supra* note 54, at 830.

124 *People ex rel Marbro Corp. v. Ramsey*, 171 N.E.2d 246, 256 (Ill. App. Ct. 1960).

125 Strahilevitz, *The Right to Destroy*, *supra* note 54, at 816–17.

126 Compare *People ex rel Marbro Corp.*, 171 N.E.2d at 256 with *Local 1330 II*, *supra* note 2, at 1279–80, 1283.

ment.<sup>127</sup> While \$500 million may sound like a steep investment, U.S. Steel had the funds.<sup>128</sup> Given that the steel mills were not only occupied, but also employed a significant portion of the Mahoning Valley population, produced tax revenue in the form of both corporate taxes and employee income taxes, were not fire hazards, and could be made profitable with available funds,<sup>129</sup> destroying the property would not have been an improvement to the parcel under the logic of *Marbro Corp.* Thus, U.S. Steel should not have been permitted to exercise its negative liberty and destroy its properties.

### C. *Defendants Must Use Their Property*

U.S. Steel should not have been permitted to exercise its negative liberty of not using its property because the nonuse similarly prevented Mahoning Valley residents from exercising their positive liberties and contributed to negative externalities for the community.<sup>130</sup> Oskar Liivak and Eduardo M. Peñalver argue that an owner should not be permitted to exercise their negative liberty through nonuse if doing so is not part of a “purposeful plan or where nonuse interferes with third parties’ own autonomy-based interests [positive liberties] in the use and enjoyment of their own property.”<sup>131</sup> Although the law does not bar an owner from not using their property per se, it does limit an owner’s ability not to use their property if the “nonuse harms third parties and, in particular, where it harms the interest that those parties have in use and possession of their own property.”<sup>132</sup> The law of tangible property is not typically concerned with an entity’s reason for not using its property, so it likely would not have scrutinized U.S. Steel’s reasons for refusing to sell its mills to its workers. But this law, like those discussed above, is concerned with negative externalities; thus, the law of tangible property may have prevented U.S. Steel’s nonuse of its mills on these grounds.<sup>133</sup>

The doctrines of abandonment, undue hardship as applied to innocent improvers, nuisance, estoppel, permissive waste, adverse possession, necessity, and eminent domain all restrict an owner’s

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127 LYND, *THE FIGHT AGAINST SHUTDOWNS*, *supra* note 1, at 43, 172–73.

128 *Id.* at 209.

129 *See supra* Introduction and Section II.

130 *See Liivak & Peñalver, supra* note 17, at 1466–68.

131 *Id.* at 1466–67.

132 *Id.* at 1455.

133 *See LYND, THE FIGHT AGAINST SHUTDOWNS, supra* note 1, at 159; Liivak & Peñalver, *supra* note 17, at 1455.

ability not to use their property.<sup>134</sup> The workers in *Local 1330* claimed that they had either an easement or a shared property interest in the mills because of their long-established relationship with U.S. Steel. The court rejected this claim, finding that the plaintiffs failed to support their argument with either constitutional or statutory arguments.<sup>135</sup> While it is possible that none of the property doctrines that limit an entity's ability to exercise its negative liberty through nonuse were directly applicable to *Local 1330*,<sup>136</sup> the harms that these property doctrines are meant to prevent did occur in the Mahoning Valley.<sup>137</sup> These doctrines are meant to prevent three types of negative externalities: (1) necessity and eminent domain restrict the harm that would otherwise result from allowing the owner's nonuse at the expense of not allowing someone else to put the property to productive use; (2) nuisance and permissive waste prevent the owner's nonuse from "interfer[ing] with other owners' use and enjoyment of their own property (either contemporaneously or in the future)"; and (3) abandonment and adverse possession prevent harm by limiting wasted time and effort.<sup>138</sup> All three of these types of negative externalities occurred when U.S. Steel decided to exercise its negative liberty by not using its steel mills, thus creating negative externalities for the Mahoning Valley.

Although they had not attempted to claim the mill through necessity or eminent domain, Mahoning Valley residents experienced the first type of negative externality referenced above, as they were unable to put the mill to productive use. Economic decline, rising crime rates, mental and physical ailments, and abuse plagued the

134 Liivak & Peñalver, *supra* note 17, at 1455–56.

135 *Local 1330 II*, *supra* note 2, at 1280.

136 The court rejected this claim because:

Neither in brief nor oral argument have plaintiffs pointed to any constitutional provision contained in either the Constitution of the United States or the Constitution of the State of Ohio, nor any law enacted by the United States Congress or the Legislature of Ohio, nor any case decided by the courts of either of these jurisdictions which would convey authority of this court to require the United States Steel Corporation to continue operations in Youngstown which its officers and Board of Directors had decided to discontinue on the basis of unprofitability.

*Id.* However, scholars agree that the court wrongly decided this issue. See Klare, *supra* note 38, at 83; Singer, *supra* note 15, at 621.

137 See Liivak & Peñalver, *supra* note 17, at 1468.

138 *Id.* at 1465.

region in the wake of U.S. Steel's departure.<sup>139</sup> If U.S. Steel had been required to transfer ownership of the mill to the workers so they could continue to operate it themselves, the mill would have had the opportunity to continue to be productive.<sup>140</sup> Thus, the type of harm that the doctrines of necessity and eminent domain are meant to prevent would have been curtailed.

The Mahoning Valley residents also experienced the inability to use and enjoy their property, which is the second type of negative externality property doctrines that prevent owners from not using their property are meant to curtail.<sup>141</sup> Mahoning Valley residents were not able to use and enjoy their own property for many reasons. First, the lost tax revenue in the form of both corporate taxes and income taxes led to diminished community resources.<sup>142</sup> Second, the population drastically declined, which resulted in an onslaught of vacant property that caused remaining occupied property to lose value and further depleted the tax base due to the diminished property taxes.<sup>143</sup> Third, rates of mental and physical illnesses increased, and it can logically be inferred that mentally and physically ill individuals do not enjoy their property to the same extent as healthy individuals.<sup>144</sup> Fourth, an increase in crime prevented residents from being able to live peaceably in their community.<sup>145</sup>

The community also experienced waste, the third type of negative externality that the doctrines of abandonment and adverse possession are intended to prevent.<sup>146</sup> Liivak and Peñalver discuss the waste involved in abandonment and adverse possession as a waste of time and effort that ensues during the re-appropriation of the abandoned and unwanted property.<sup>147</sup> Another prominent property scholar, David A. Super, argues that abandonment in the form of foreclosures is also a form of permissive waste because "allowing

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139 See *supra* Introduction and Section II.

140 See generally LYND, *THE FIGHT AGAINST SHUTDOWNS*, *supra* note 1.

141 See Liivak & Peñalver, *supra* note 17, at 1465.

142 See LINKON & RUSSO, *supra* note 8, at 196–97; LYND, *THE FIGHT AGAINST SHUTDOWNS*, *supra* note 1, at 4; see also Singer, *supra* note 15, at 718.

143 See *supra* notes 11–13 (noting the increased property vacancy and unemployment rates that necessarily lead to a decrease in taxes).

144 Singer, *supra* note 15, at 718; see also LINKON & RUSSO, *supra* note 8, at 194 (“[H]omocides, heart disease, and lung disease—all considered preventable by public health officials—killed blacks at a much higher rate than whites.”).

145 See *supra* note 16.

146 Liivak & Peñalver, *supra* note 17, at 1465.

147 *Id.*

a property that is still valuable, and that is still capable of producing a stream of payments . . . to fall into foreclosure with little prospect of remunerative resale” results in financial decay.<sup>148</sup> Super’s reasoning is directly applicable to *Local 1330* because the steel mills, as discussed, were still valuable and capable of generating a profit.<sup>149</sup> Abandoning the mills also created waste because the resultant population decline created vacant residential property that drove down the values of properties that remained occupied.<sup>150</sup>

The negative externalities actually produced by U.S. Steel’s nonuse of its property demonstrate that the nonuse was, in fact, harmful. Since common law property doctrines regulate harmful nonuse,<sup>151</sup> the plaintiffs may have had a viable claim if they had alleged that U.S. Steel should have been prevented from not using its property.

## V. LEARNING FROM LOCAL 1330

If the plaintiffs in *Local 1330* had access to the more recent scholarship pertaining to the right to abandon, destroy, or not use property and had included these relevant arguments in their complaint, they may have succeeded in preventing U.S. Steel from closing its Mahoning Valley mills, or requiring it to transfer ownership of the mills to the workers. Because the plaintiffs may have prevailed had they brought these claims, this section will examine how future plaintiffs may successfully prevent other corporations from shutting their plants down. This section will first examine which individuals would be proper plaintiffs. It will then examine case law and potential facts these plaintiffs could rely upon in crafting their complaints alleging that corporations should not be permitted to abandon, destroy, or not use their property.<sup>152</sup>

148 Super, *supra* note 84, at 1854–55.

149 *Local 1330 II*, *supra* note 2, at 1266; LYND, *THE FIGHT AGAINST SHUTDOWNS*, *supra* note 1, at 172–73, 209.

150 KILDEE ET AL., *supra* note 13, at 10–11 (reporting that Youngstown’s population peaked in 1930 at 170,002, as of 2006, 22.8% of the housing stock was vacant, as of 2008, and in 2000, median value of a home was \$40,900); Super, *supra* note 84, at 1854 (stating adjoining property values fall when homes are abandoned); Beniston, *supra* note 11 (stating that a 2009 survey revealed that Youngstown had 4,566 vacant buildings and 23,000 vacant lots); *Quick Facts: Youngstown city, Ohio*, *supra* note 13 (stating Youngstown’s population was 66,982 in 2010).

151 Liivak & Peñalver, *supra* note 17, at 1468, 1480.

152 This note does not discuss issues of standing as they relate to whether the

### A. *Potential Plaintiffs in Future Claims*

Because entire communities are affected by plant closures of this nature and the resulting mass layoffs, there are several potential plaintiffs. The most obvious group of people who could sue are workers who would lose their jobs as a result of similar shut-downs. In *Local 1330* the workers were union members, so the union filed the complaint on behalf of the workers.<sup>153</sup> Similarly situated union workers could raise a similar complaint, or workers who are not members of a union could file a complaint, potentially as a class action suit.<sup>154</sup>

Community members could also bring suit. In *Eyerman*, property owners who expected their own property values to fall as a result of the demolition of the nearby theater acted as parties to a similar lawsuit and the court ultimately found in their favor.<sup>155</sup> In the instance of a plant closing, property owners who live near the plant could state a claim that they expect their property values to fall in the wake of any closing. Because plant closings can result in the laid-off employees moving to seek employment elsewhere,<sup>156</sup> property owners who live in communities likely to suffer as a result of this migration could also be a part of a lawsuit against a closing plant.

Lastly, government entities could be appropriate plaintiffs in future plant-closing actions. Future plaintiffs could follow *Local 1330's* example and add elected officials as plaintiffs.<sup>157</sup> The elected officials would be filing on behalf of their constituents to prevent the local economy from being harmed. Depending on the circumstances of the individual case, state and local administrative bodies could also be appropriate plaintiffs. For instance, sometimes abandoning a building will raise zoning concerns.<sup>158</sup> Thus, the administrative

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plaintiffs can sue, or the circumstances under which the plaintiffs' claims would be ripe for adjudication.

153 *Local 1330 II*, *supra* note 2, at 1265.

154 *See generally* Drew R. Heard, *The Prerequisites for Class Actions*, in 19 E. MIN. L. FOUND. § 5.02 (1998).

155 *Eyerman v. Mercantile Tr. Co.*, 524 S.W.2d 210, 213, 218 (Mo. Ct. App. 1975).

156 *See* Nanette Senters, *GM Is Closing My Plant. What are Politicians Going to Do About It?*, INEQUALITY.ORG (Mar. 1, 2019), <https://inequality.org/research/gm-is-closing-my-plant-what-are-politicians-going-to-do-about-it/> ("GM is forcing my fellow workers to choose between mandatory relocation to other plants, hundreds of miles away from their families, and the unemployment line.").

157 *See Local 1330 II*, *supra* note 2, at 1266.

158 *See* J.C. & Assocs. v. D.C. Bd. of Appeals & Review, 778 A.2d 296, 298 (D.C. 2001); *Francisco v. City of Columbus*, 31 N.E.2d 236, 238 (Ohio Ct. App.

agency that is responsible for enforcing the zoning regulations along with the city or state that the administrative agency operates under could be a part of the claim.<sup>159</sup>

**B. Potential Claim: Defendants Do Not Have the Right to Abandon**

While it is well-established that entities cannot abandon real property, a holding that an entity cannot abandon a chattel would be an extension of the law.<sup>160</sup> Even so, Eduardo M. Peñalver has argued persuasively that extension is natural:

Looking at the operation of the law of abandonment as a whole, rather than piece by piece, it is simply a misunderstanding to see it as permissive with respect to chattels while restraining the abandonment of land. It would be more accurate to say that, through its treatment of land, the common law reflects discomfort with abandonment through and through.<sup>161</sup>

Thus, the best way to argue against a corporation's right to abandon its property may be to articulate how forbidding the right to abandon chattels is a natural extension of the law,<sup>162</sup> and to list the negative externalities that would be produced if the corporation was permitted to abandon its property.<sup>163</sup>

When articulating the potential negative externalities, it likely would be most persuasive to quantify the losses expected to arise from a plant closure. The plaintiffs should clearly quantify the

1937).

159 See *J.C. & Assocs.*, 778 A.2d at 298; *Francisco*, 31 N.E.2d at 237.

160 Peñalver, *supra* note 49, at 215.

161 *Id.* But see Strahilevitz, *The Right to Abandon*, *supra* note 67, at 414 (“[I]t is unclear why the law should take the position advocated by Peñalver with respect to positive-value chattel property.”).

162 Peñalver, *supra* note 49, at 215. If the court is reluctant to accept Peñalver reasoning, this claim could still succeed by pointing out that abandoning the property will produce negative externalities, which even Strahilevitz, who is more cautious, agrees should be prevented. Strahilevitz, *The Right to Destroy*, *supra* note 54, at 797.

163 See Strahilevitz, *The Right to Destroy*, *supra* note 54, at 797. Future plaintiffs could also consider zoning codes as a means of bolstering their claims. Sometimes a zoning code will not permit a building's use to change and will deem that a change of use constitutes abandonment. See *Francisco*, 31 N.E.2d at 243.

number of people who are expected to be laid off and explain that even people who do not work at the closing plant are likely to lose their jobs and face other economic harm.<sup>164</sup> These lost wages could be added to any complaint as damages.<sup>165</sup> Future plaintiffs can also mention the toll that layoffs are known to have on the laid-off workers' mental and physical health.<sup>166</sup> Lastly, the loss of the tax base and subsequent loss of social services can also be mentioned.<sup>167</sup>

### **C. Potential Claim: Defendants Do Not Have the Right to Destroy**

It is well-established law that property owners do not have the right to destroy their property;<sup>168</sup> therefore, this is likely the strongest claim that future plaintiffs could bring. Claims of this sort may be most compelling if they are able to quantify the amount of damage that is expected to result from the property's destruction.

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164 1,500 workers were laid off when General Motors closed its Lordstown plant. Emily Stewart, *Trump's General Motors Tweets, Explained*, VOX (Mar. 18, 2019), <https://www.vox.com/policy-and-politics/2019/3/18/18271028/trump-general-motors-david-green-mary-barra>; see also LYND, THE FIGHT AGAINST SHUTDOWNS, *supra* note 1, at 3–5 (arguing that layoffs often spread to other businesses that provided the raw materials for the industrial operation that originally closed); *supra* notes 6–7. In addition, “Cleveland State University’s Center for Economic Development estimates that the plant shutting down will have a negative impact of \$8bn in the region.” Adam Gabbot, “It’s Devastating.” *End of GM in Ohio Town as Trump Fails to Bring Back Midwest Jobs*, GUARDIAN (Aug. 23, 2019), <https://www.theguardian.com/business/2019/aug/23/general-motors-factory-ohio-lordstown>.

165 Singer offers the following example what could be included in these calculations:

The long-term loss of jobs and substantial reductions in income and wealth of discharged workers also affect the community at large. The loss of work is felt by the public sector in increased unemployment benefits, increased welfare benefits, and increased need for other sorts of public services. It is felt by society generally in the lost contribution of workers who are not working at all or working at jobs that require less than their full talents.

Singer, *supra* note 15, at 713–14.

166 Harvey, *supra* note 9, at 680–81.

167 Peñalver, *supra* note 49, at 217 (listing decreased tax revenue as one of the negative externalities that the law against abandonment seeks to prevent). In Youngstown, the city’s income from the industrial taxes decreased, resulting in less funding for schools and public services—the public schools even fell into bankruptcy. LINKON & RUSSO, *supra* note 8, at 197; LYND, THE FIGHT AGAINST SHUTDOWNS, *supra* note 1, at 4.

168 See *supra* note 116.

For instance, in *Eyerman*, the plaintiffs asserted that the destruction of the testator's property would lead to a loss of \$39,000 to the direct value of the lot, destabilize the community, "increas[e] the likelihood the lot will be subject to uses detrimental to the health, safety and beauty of the neighborhood," and would "depreciate adjoining property values by an estimated \$10,000.00," all of which the court relied upon in holding that the property destruction was not permissible.<sup>169</sup> As explained above with respect to the previous claim, plaintiffs can draw expected loss numbers from a variety of sources. Particular to this claim is the exact amount of taxes expected to be lost and the exact monetary figure of expected lost wages, both from employees of the plant and those who are expected to lose their jobs in unrelated businesses as collateral to the closure.

It should be noted that while it has been consistently held that owners cannot destroy their property,<sup>170</sup> a court may decline to extend this rule to corporations. Courts have previously ruled that a corporation's decision to cease operations is a business decision with which a court should not interfere.<sup>171</sup> Yet, courts are typically not concerned with a property owner's reason for not using their property.<sup>172</sup> Thus, if the right to destroy is framed as a form of non-use, then the court may be required to apply a negative and positive liberty analysis, rather than merely excusing the corporation's actions under the guise of a business decision.<sup>173</sup> Moreover, a court's refusal to hold a corporation to the same standard as a single individual as it pertains to the right to destroy would be nonsensical because a corporation would necessarily create more negative externalities through the destruction of its property than would a single individual. This is because its property is likely larger, its taxes are

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169 *Eyerman v. Mercantile Tr. Co.*, 524 S.W.2d 210, 213-14 (Mo. Ct. App. 1975).

170 See *supra* note 116.

171 See *Textile Workers Union of Am. v. Darlington Mfg. Co.*, 380 U.S. 263, 270 (1965) ("A proposition that a single businessman cannot choose to go out of business if he wants to would represent such a startling innovation that it should not be entertained without the clearest manifestation of legislative intent or unequivocal judicial precedent so construing the Labor Relations Act. We find neither."). Thus, "[a]s long as a company is making *some* profit it should not have the right to make the *highest possible* profit if to do so is destructive to workers and the community. Ordinarily this will mean that it is better to rebuild in one place, rather than scrapping and moving on." LYND, *THE FIGHT AGAINST SHUTDOWNS*, *supra* note 1, at 208.

172 Liivak & Peñalver, *supra* note 17, at 1455.

173 *Id.*

likely greater, and, most importantly, the destruction of corporate property usually corresponds with the individuals who worked at that property losing their jobs. If property law is about ensuring that the exercise of one's negative liberties do not create negative externalities, corporations who wish to destroy their property should be held to the same standard as individuals who wish to destroy their property.

Holding corporations to the same standard would require a court to create new precedent, but courts have previously expanded the law to prevent certain property uses from creating negative externalities. In *Meksras*, the court had recognized that there was no established precedent stating that a deceased individual could not be buried with her property.<sup>174</sup> However, the court also recognized that if the individual was permitted to use her property as she intended, the use could create negative externalities for the community by encouraging tomb raiding.<sup>175</sup> In recognizing that this particular use of the property could create negative externalities, the court took the initiative to establish a new rule that forbade an individual from being buried with their valuables.<sup>176</sup> Courts should take the same initiative to prevent negative externalities when adjudicating plant closing issues. Since a corporation's decision to close its operations has the potential to devastate entire communities—a negative externality that is more severe than tomb raiding—courts should recognize and capitalize on their abilities to impose affirmative duties upon corporations to mitigate the negative externalities that their exercise of their negative liberties creates.

#### ***D. Potential Claim: Defendant's Must Use Their Property***

Future plaintiffs likely will have the most difficulty succeeding on a claim alleging that the corporation does not have a right not to use its property because the right not to use is the most theoretical. Although Peñalver persuasively argues that this right is implied in all of property law, it has never, to this author's knowledge, been recognized as a cause of action.<sup>177</sup> Thus, the most persuasive way

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174 *In re Meksras' Estate*, 63 Pa. D. & C.2d 371, 372–73 (Ct. Com. Pl. 1974) (“There being no established judicial precedent, I think that the question should be decided in the light of consideration appropriate to the present day.”).

175 *Id.*

176 *Id.*

177 Liivak & Peñalver, *supra* note 17, at 1455–65.

to argue this point may be to discuss the three types of harm that the implied right not to use are meant to prevent: (1) not allowing the claimant to put the property to productive use, (2) preventing the owner's nonuse from "interfer[ing] with other owners' use and enjoyment of their own property (either contemporaneously or in the future)," and (3) limiting waste.<sup>178</sup> After identifying the types of harm that the nonuse is causing, plaintiffs could explicitly discuss which of these negative externalities would arise from a corporation's nonuse of its property.<sup>179</sup> Plaintiffs could compellingly analogize the right not to use to the concepts of nuisance and permissive waste, as courts have previously held that nonuse is a form of nuisance and permissive waste.<sup>180</sup> Here, plaintiffs could argue that a corporation's failure to use its property is a nuisance and a form of permissive waste that should not be permitted because it interferes with others' rights to use and enjoy their own property. Thus, the nonuse itself could be used as a cause of action in which the concepts of nuisance and permissive waste would be implied.

## VI. CONCLUSION

Claims alleging that corporations do not have the right to abandon, destroy, or not use their property could potentially prevent plant shutdowns from devastating communities in the future. While plaintiffs should continue to pursue the claim that the workers also have a property right in the enterprise by means of an easement, they may also find that the additional property claims discussed in this Note provide additional relief. But, as the court recognized in *Local 1330* that finding that the plaintiffs had a property right in the mill by way of an easement would have constituted an extension of the law,<sup>181</sup> the additional claims addressed this Note also would be an extension of the law. Such an abandonment claim requires extending the prohibition on abandoning real property to prohibiting the abandonment of chattels. And while the right to destroy is restricted in a host of circumstances, to this author's knowledge it has never been used to restrict a corporation from making a "business decision." The right not to use is perhaps the most challenging: while the right not to use is a principle that is imbedded throughout

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178 *Id.* at 1465.

179 See *supra* Sections V.B and V.C for a discussion of the harms that might occur and how to quantify them.

180 Liivak & Peñalver, *supra* note 17, at 1459–62.

181 Singer, *supra* note 15, at 746.

property law, it has never been expressly acknowledged. Yet, substantial precedent proves that the common law must evolve to meet new situations.<sup>182</sup> If anything, *Local 1330* and the resultant negative externalities that continue to affect the Mahoning Valley are proof that corporations should no longer be given deference to do as they please under the guise of a “business decision.” Rather, they should be required to ameliorate the negative externalities that their decisions create for their former employees and the communities in which they used to operate.<sup>183</sup>

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182 *See, e.g., id.*

183 *See id.* at 651–52 (arguing that the inequalities and wealth and power “are the result of the legal allocation of entitlements,” and that it is up to the courts to determine whether they want to uphold regulations that uphold this current imbalance or if they want to ensure an allocation of this wealth and power).