There are important and fundamental differences between the concept of land— as shorthand for natural resources—that is, as raw mineral, chemical, water, and biotic inputs used for the production of material goods (e.g., food, fiber, minerals, energy), and “land” as shorthand for nature—that is, as the life support system upon which we all depend (e.g., clean air, clean water, functioning ecosystems). I come back to the implications of this distinction, and especially the latter conceptualization, in my conclusion to this review.

For now, it is important to recognize that there exists in any market-oriented society an inescapable tension between the material benefits that individuals obtain from private property ownership, on the one hand, and the social consequences of an individual’s use of his or her land, on the other. The relationships between markets, the statehouse, individuals, private property, the public, and public resources are, of course, inextricable. Land markets require an array of governmental actions in order to function. These include the establishment of rules of behavior that frame private and public expectations, state action to secure property rights, and the state provision of forums for resolving disputes. The state, in turn, relies on revenues taxed from land resources and market transactions to pay for the officials, places, and other institutional arrangements it provides and, more controversially, to engage in some redistribution of wealth (for whatever philosophical reason).

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Moreover, from the perspective of land as natural resource, the state has an interest in establishing arrangements that allow private entrepreneurs to use their lands in economically efficient and productive ways, particularly in modern-day capitalist economies. Facilitating economic production facilitates the flourishing of ambitious and talented individuals, encourages the rising tide that will (theoretically) lift all boats, and generates the revenues that the state itself needs to function. But the state, particularly in the form of individual state officials, also faces the persistent temptation to take land from its owner—or to capture the wealth that the land produces—and to incorporate both or either into state coffers. State officials may seek to capture this wealth to enrich themselves personally or, more benignly, to enhance the state in some way, or to advance more ideological goals such as the promotion of social equity or even egalitarianism.

Legal systems around the globe have institutional protections in place against the abusive taxation of wealth generated by privately owned land and the abusive direct expropriation or compulsory purchase of that land by the state. For example, in the United States of America (hereafter the U.S.), private land may be expropriated only for some valid “public use,” and the state must provide just compensation to the property owner from whom the land was taken.¹ This protection speaks to the conventional meaning of a “taking,” and while the mechanics of defining and institutionalizing this principle may vary somewhat across states, the need for the principle itself is widely acknowledged and, to that extent, unremarkable.

But what about public regulations that, short of completely depriving a landowner of his or her property, have the effect of severely diminishing a landowner’s ability to use that property in ways that allow for the production of wealth, or that effectively compel the owner to somehow transfer use of the property into the public domain? Countries everywhere, when they adopt land use regulations for a variety of purposes such as environmental and related sustainability purposes, affect private property values. When those regulations result in a reduction in property value, property owners often expect to be compensated for that lost value—more or less, depending on the legal system. Courts (and legislatures) are sometimes sympathetic to these property owners. At the same time, they recognize the social imperatives that necessitate regulation, not to mention the practical difficulties of discerning the extent to which any observed change in property values was actually attributable to the regulation and, to the extent it was, how much compensation should be granted.

All of these issues relate to the intersections of law, land development patterns, the environment, the economy, and society more broadly. To the extent that states and local governments increasingly face complex and difficult decisions because of sustainability imperatives like hazards mitigation, habitat protection, and water quality protection, this tension between regulation and compensation also has significant implications for efforts to promote sustainable development.

2. REVIEW

It turns out that countries around the globe struggle with the issue of how to address so-called regulatory takings. It also turns out that they do so in both similar and sometimes surprisingly different ways. Taking International: A Comparative Perspective on Land Use Regulations and Compensation Rights, authored by Rachelle Alterman along with 16 other contributors, presents a comprehensive evaluation of the issue from a cross-national perspective. Professor Alterman is a prolific and collaborative urban planning and planning law scholar at the Technion-Israel Institute of Technology, while the 16 other contributors are all planning or legal scholars with expertise in the institutional arrangements and legal traditions of their home countries. They hail from 13 different countries in all. These authors are all well qualified and well positioned to tackle the issue of regulatory takings in a comprehensive and thoughtful way.

The prospect of a cross-national comparison of regulatory takings immediately brings to mind several related questions: which issues and concerns related to the “takings” attributes of regulation are universal and which are unique to particular settings; what have the various countries learned from their own and from other countries’ experiences; and what insights do those experiences provide as we proceed with efforts to promote more sustainable land use? Finally, what might this comparative analysis suggest in terms of issues that the authors did not address, either because of the limitations they confronted while conducting their work or the way they approached their analysis? I approached my reading of this book with these questions in mind.

The book consists of 17 chapters organized into four parts, followed by a short afterword by Daniel R. Mandelker, an eminent American land use law scholar. The first part includes a set of chapters that provide the background behind (Chapter 1), a conceptual framing for (Chapter 2), and a summary overview of (Chapter 3), the study’s key comparative findings. The remaining parts then present detailed descriptions of the specific countries that comprise the study, grouped according to whether those countries provide “minimal compensation rights” (Part II, consisting of Canada, Australia, the United Kingdom, France, and Greece), “moderate or ambiguous compensation rights” (Part III, consisting of Finland, Austria, and the U.S., with a special chapter on the experiences of the U.S. State of Oregon), or “broad compensation rights” (Part IV, consisting of Poland, the Federal Republic of Germany, Sweden, Israel, and the Netherlands). Each of these chapters provides detailed analysis of the particular country, with cross-national comparisons covered primarily in Chapters 2 and 3. In effect, the detailed country-specific chapters provide rich case studies prepared by the contributing authors that

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2 According to the authors, the term “regulatory takings” originated in and is used primarily in the US, where the issue has been both most contentious and most studied, but that term is not used universally. The authors choose to use that term here for the sake of consistency and given the primarily American audience of this book. They also note that the term that comes closest to capturing the same meaning in English speaking countries outside of the US is probably “planning compensation rights.” See Takings, below, note 3 at 8. Other terms are sometimes used, particularly for regulatory takings claims founded on the total deprivation of economic value or the effective conversion of private land into public use. These terms include, for example, “constructive expropriation” or “de facto taking” in Canada, “de facto expropriation” in Greece, and “planning expropriation” in Poland. Ibid at 23.

3 Rachelle Alterman, Takings International: A Comparative Perspective on Land Use Regulations and Compensation Rights (Chicago: Section of State and Local Government Law, American Bar Association, 2010) [Takings].
support the cross-national comparative analysis presented in Part I by Professor Alterman, as well as in the conclusions offered by Professor Mandelker through his short afterword.\(^4\)

The specific purpose of this book is to redress the dearth of systematic, empirical, and comparative research on the legal and public policy approaches different countries have taken to reconcile the inherent tensions between land use regulation and property values, particularly when regulation diminishes private property values. Professor Alterman states that her goals are to “provide a platform of basic comparative knowledge on regulatory takings to enable cross-national learning,”\(^5\) to engage in vicarious learning through an analysis of diverse experiences, and to “tap the universality of the regulatory takings issue and reduce some of the insularity and compartmentalization that has characterized the issue so far.”\(^6\) By focusing on nine of the 13 European Union countries, the authors also hope to “stimulate a broader cross-national debate within the EU,”\(^7\) although the intent is not to create a “manual of laws from which to pick and choose and transplant from one country to another.”\(^8\) Finally, it should be noted that while this book targets a broader international audience, it was published by the American Bar Association, and it includes discussions of historical background, terminology, conceptual framing, and so on\(^9\) that are particularly useful to and intended for an American audience.

The contributing authors were asked to address a number of principal questions in preparing their country-specific analyses of the regulatory takings issue. These questions then became the basis both for the individual chapters and the cross-national comparison. These questions included:

Under your country’s laws, do landowners have the right to claim compensation when a government decision related to planning, zoning, or development control causes a reduction in property values? If so, what are the legal and factual conditions that a landowner must meet to claim compensation? And how extensive are such claims in practice?\(^10\)

This charge sets up a fruitful analysis of the regulatory takings question both as a formal theoretical or legal matter and as a practical matter. However, the analysis is limited to land use regulations. For conceptual clarity, and given the conceptual disparities in treatment across countries, the author and contributors specifically exclude other types of regulation that may have some effect on land use and property values but that do so only tangentially (e.g., environmental regulations), as well as state actions that compel exactions or dedications through regulation (e.g., roads, public passage, environmental mitigation),\(^11\) and the direct or “true” taking (or expropriation or compulsory purchase) of private land by the state through the exercise of eminent domain.

\(^{4}\) *Takings*, *supra* note 3 at 365-66.

\(^{5}\) *Ibid* at 3.

\(^{6}\) *Ibid* at 9.

\(^{7}\) *Ibid*.

\(^{8}\) *Ibid*.

\(^{9}\) See e.g. *Ibid* at 7-9.

\(^{10}\) *Ibid* at 9.

\(^{11}\) This type of regulation is typically included as a species of regulatory taking in the US, but it is not treated uniformly as such by the other countries treated by this book.
Professor Alterman makes clear that this type of cross-national analysis is truly unique and that as a result there is no *a priori* theory upon which to build. Her overall approach, therefore, is necessarily exploratory and descriptive. Given that starting point, she selected a spectrum of countries to study based primarily on ensuring representation across several broad and “common-knowledge variables,”12 including countries from the two major Western legal traditions or “families” of law—common law (the United Kingdom, Canada, Australia, the U.S., and Israel) and civil law (France, the Netherlands, Sweden, Finland, Germany, Austria, Poland, and Greece); countries with federal jurisdictions (the U.S., Canada, Germany, Austria, and Australia) and unitary jurisdictions (all the rest); and countries representing a broad geographic spread (ranging from the U.S. in the west to Australia in the east and south).13 The “common denominator” for all of these countries is that they share a “democratic system of government and have an advanced (or fast-emerging) economy.”14

The analytical approach employed for this study was also necessarily tailored to the task at hand. Given the broad array of countries, cultures, and languages covered, Professor Alterman convened a team of legal experts from all 13 countries, with one or two representing each of their home countries, again using each country effectively as a case study. She then crafted the analytical approach and key questions to be addressed for each study, including the questions noted above, and worked iteratively with the authors to fine-tune and craft their chapters to ensure that they each covered roughly the same ground in a comparable way. The primary method of analysis is juxtaposition and analytical description.15 No formal causal hypotheses are stated or tested, although in effect the study tests the implied hypothesis that countries with similar legal traditions, jurisdictional structure, and/or geographic proximity might be expected to have developed similar doctrines. Professor Alterman also asserts—and I believe her—that the study was conducted as a strictly objective, non-normative assessment of what the regulatory takings doctrines appear to be in law and in practice across the various countries, not starting from a normative position on what they should be.16

The results of the study are many and detailed. I cannot give a synopsis of the doctrines of the various countries, but I will highlight what I think are some of the more intriguing and consequential findings and conclusions from the comparative assessment. The first thing to note is that, because of the exploratory nature of the analysis, the framework used to conduct the analysis was, in fact, developed through the analysis itself in an iterative fashion. The very act of working through the analysis and crafting a logical and useful framework for description and comparison strikes me as a real contribution, yielding some helpful concepts and distinctions. The first of these is that, rather than presenting countries in groups according to factors such as legal tradition, jurisdictional type, or geographical location, it makes more sense to group them according to the key outcome variable—the extent to which countries recognize a claim for a regulatory taking. This method hints at a key finding as well: there is no apparent correspondence between the key outcome variable and those factors.

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12 *Takings*, supra note 3 at 84.
13 *Ibid* at 10-11.
14 *Ibid* at 10.
15 *Ibid* at 12.
16 *Ibid* at 12.
A second key distinction folded into (or emanating from) the analytical framework is whether the protection is afforded through constitutional provision or by statute, or both. It turns out that all of the countries studied provide constitutional protection of some sort, and all but the U.S.\textsuperscript{17} provide additional protections of some sort through statutory law. Another interesting and related distinction the analysis highlights is that while some countries assert a constitutional protection of property,\textsuperscript{18} not all explicitly include provisions for compensation rights should property values be diminished through regulation. That is, the existence of private property rights does not necessarily equate to compensation rights as against regulatory takings. Unfortunately, the constitutional doctrines and case law of most of the study countries do not necessarily provide a clear conceptual underpinning for their doctrines or coherent guidance on the nature of the relationship between private property rights and compensation rights.\textsuperscript{19}

A third key conceptual advance relates to a categorization scheme for describing different kinds of regulatory takings claims. Specifically, the author and contributors describe three distinct kinds of regulatory takings useful for cross-national comparison, including: major takings (i.e., total economic deprivation or conversion to public use); partial takings due to direct injuries (e.g., partial loss in economic value because of a regulation’s direct effect on the property in question); and partial takings due to indirect injuries (e.g., partial loss in economic value due to a regulation’s effect on other properties in the vicinity of the property in question).

The laws of all of the countries in the study address major takings in some way, but not all of the countries recognize partial takings or, if they do, address them in similar ways.

The approaches that the different study countries take in addressing regulatory takings are seemingly as varied as the ways creative legislatures can find to regulate land use. Nonetheless, a number of the key distinctions that all or most of the various countries appear to make when addressing whether a property deserves protection, or more to the point whether any compensation is due, include: whether the land owner had valid development expectations prior to the regulation;\textsuperscript{20} whether the regulation effects a “downzoning” by decreasing the development potential of the land;\textsuperscript{21} whether the regulation in effect zones the land for public use (e.g., compelling public access through the designation of a public road right-of-way); what the actual

\textsuperscript{17} This assertion refers specifically to federal law in the US, recognizing—as the authors do—that a number of US states have adopted limited statutory protections for regulatory takings within the past decade or so. See e.g. \textit{Private Property Rights Protection Act} Ariz Rev Stat tit 12 §1134 (2006).

\textsuperscript{18} In the case of the European countries considered, this protection is asserted through the regional European Convention on Human Rights and Fundamental Freedoms. Council of Europe, \textit{Convention for the Protection of Human Rights and Fundamental Freedoms}, 4 November 1950, ETS 5 at art 1; 213 UNTS 221, (entered into force 3 September 1953) [ECHR].

\textsuperscript{19} See e.g. \textit{Takings}, supra note 3 at 24-35.

\textsuperscript{20} Valid development expectations are minimal, for example, in the United Kingdom, unless a plan policy or permit has been issued specifically for the property in question that anticipates or allows effectively an upzoning, and even then, the expectation is valid for only a limited time. Development expectations are, as a general rule, more expansive in other countries, which have not reformed and abolished development rights as the United Kingdom did in 1947. \textit{Ibid} at 29.

\textsuperscript{21} All of the countries apparently consider whether the regulation has the effect of downzoning the property, while only the US also potentially recognizes a regulatory taking when the government refuses to upzone. \textit{Ibid} at 44.
development potential of the land was prior to the development (i.e., real potential versus pure speculation); and whether the real purpose of the regulation was clearly to deflate property values prior to an expropriation. As varied as the approaches are for major takings, they are even more striking in terms of variety and scope in the context of partial takings.

All of these findings are summarized in Chapter 2, in conjunction with the presentation of the framework used to inform the more general comparative assessment. Chapter 3 then presents a set of conclusions drawn from that comparative analysis, focusing initially on key differences and similarities under U.S. law compared to the other study countries (again, reflecting the publisher and target audience of the book). There are some intriguing observations here. Nowhere else, for example, has the regulatory takings debate been as prominent and contentious as in the U.S., and nowhere else is it based on a purely constitutional foundation, albeit, a very ambiguous foundation, given the U.S. Supreme Court’s reticence to establish bright-line doctrinal rules for adjudicating regulatory takings claims.

The cross-comparative study also demonstrates that there is no such thing as a single “European approach” to regulatory takings, as is the common perception outside of Europe, nor is there even a “British approach” that has informed the doctrines of countries with historical or current ties to Britain. Moreover, the “American approach” to regulatory takings does not, in fact, provide the jealous protection of private property rights as against public regulation that Europeans perceive it to provide, particularly relative to a number of the other countries in the study (most notably Israel and the Netherlands), despite all of the rhetorical bluster in the U.S.

Even more interestingly, beyond finding that all of the countries provide—at least on paper—some protection against regulatory takings (specifically, at the very least major takings in the guise of regulations that effectively convert private land to public use), there is nothing else consistent about the ways in which or the extent to which the study countries have developed their doctrines. More to the point, there is no consistency even across the overarching criteria used to select countries in the first place. Countries at both ends of the compensation rights continuum can be found in both the common law and the civil law groups, in both the federal and the unitary jurisdiction types, and across the geographic range covered. Even countries that have similar cultures, languages and traditions have developed notably different regulatory takings doctrines (most notably Germany, which provides more expansive compensation rights, and Austria, which provides comparatively fewer rights). Moreover, while Professor Alterman detects some convergence in the doctrines of the EU countries—attributable primarily to the effects of the ECHR rather than the countries’ individual constitutional or statutory doctrines—that convergence is “discernable [only] with a magnifying glass,” and it has operated only, if at all, to provide slightly greater protections of property rights in the few

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22 In addition, a consideration also apparently unique to the US is the question of whether the regulation merely codified “background principles” that already existed in the law, rather than creating new constraints, thus defeating a takings claim. Ibid at 43.

23 Ibid at 35-47.

24 Ibid at 47-67.

25 Supra note 18.

26 Ibid at 84.
countries at the very extreme of the continuum (i.e., those few providing virtually no protection under their current doctrines).

Taken altogether, the analysis highlights how important it is to consider not just a given country’s regulatory takings doctrine as it exists on paper, but also how it is implemented in practice. The latter includes accounting not just for how the government postures regulatory takings claims (e.g., are there any administrative fees assessed against plaintiffs, or must the government pay all of the litigation costs?), but also in terms of the more intangible yet almost certainly more important expectations of property owners and public officials. These include consideration of the general propensity for litigiousness on the part of citizens; the corresponding rate of claims that occur as a background condition; and the expectations of government officials when they make planning changes that might prompt a regulatory takings claim. This more nuanced and subtle consideration can help to explain why some countries that have seemingly strict doctrines on the books have ambiguous, if not quiescent, doctrines in fact, including especially those in which few regulatory takings claims are made in the first place.

In sum, I come back to the questions I raised above: What is universal about the regulatory takings doctrine, at least for the selection of studies covered? Only the idea that some type of a valid regulatory takings claim may exist, even if just under the narrowest of circumstances or merely as an exception to the general rule. What is unique to the several countries studied? Everything else. It does indeed turn out to be the case that there is “no universally consensual approach, nor even a dominant approach”27 to the idea of what should constitute a valid regulatory takings claim, how it should be administered, or by what governmental entity.

In terms of learning, what have countries learned from their own experiences? It appears that what they have learned is also highly variable, depending largely on how much of an issue the notion of a regulatory taking has been, how much it has been litigated, and how much it has been studied. There is a definite tendency toward path dependency here as the countries’ doctrines have evolved over time, as well as a seemingly high degree of susceptibility to the vicissitudes of time, context, and even judicial whim.28 There is irony here too, most notably in the U.S., where the doctrine has been so contentious, so litigated, and so often studied, and yet remains so stubbornly ambiguous.

Beyond what countries have learned from their own experiences, what have they learned from each other? It appears very little, if anything at all. There is no clear evidence that courts or legislatures have looked to the statutory laws or judicial decrees of other countries for guidance, or that parallel approaches to addressing the issue have been adopted for countries with closely related legal, cultural, and language systems (compare, again, Germany and Austria). Indeed, as Professor Alterman concludes, “as counterintuitive as this may seem … there are no apparent explanations based on the usual assumptions about legal families, institutional structure, or transfer of knowledge among proximate or culturally similar countries”29 for the wide array of doctrinal approaches observed.

27 Ibid at 13.
28 Ibid at 86.
29 Ibid at 85.
Finally, what does this study not address, and how does all of this relate to sustainability? The study specifically does not address a priori hypotheses about causality, although as noted, in effect it did test implied hypotheses relating to legal traditions, jurisdictional structures, and geographic location. More to the point here, the study also does not address explicitly how all of this analysis relates to the issue of sustainability. That perspective brings me back to the distinction I drew at the very start of the review—the distinction to be made between “land” as natural resource or input for economic production and “land” as nature or life support system.

3. A SUSTAINABILITY CRITIQUE

I really have but one critique of this study, and it relates more to the ways in which the concept of a regulatory taking is conventionally framed today than to a conscious decision by the author and contributors. Specifically, from the very start of the book, Professor Alterman notes the “universal dilemma” of “[h]ow to deal with the shifts in land values inevitably caused by land use regulation?”

Or more precisely, “[h]ow should the negative economic consequences of regulation on property values be shared?” This framing inherently incorporates the presumption of an unqualified right to use land as private property regardless of the harm that the owner’s desired use of that property might cause. The corresponding supposition is that any restriction of that right is an economic “harm” to the property owner that should, at the very least, be considered as potentially—if not actually—warranting compensation by the state.

One alternative to this perspective might be to articulate “public rights” as a counterpoint to private rights. This, however, transforms the debate into a battle of rights, with one right pitted against the other. More subtly, and perhaps most critically, such a rights framework avoids a discussion of responsibilities. Akin to the concept that the fullest expression of liberty requires, in a fundamental way, the constraint of liberty, having the right to use land implicates the responsibility, at the very least, to do so in a way that does not degrade others’ abilities to exercise their rights to the use of their own lands. This formulation in fact speaks to both ends of the conventional property rights debate; indeed, even the most ardent private property rights advocates acknowledge this inherent limitation on the notion of rights. The trick is to discern how far those responsibilities extend in tension with the rights of use: does it extend merely to private-nuisance-like harms (i.e., hindering the ability of adjacent landowners to “quietly enjoy” their properties), or to more public-nuisance-like harms (i.e., hindering the larger public’s ability to “quietly enjoy” a neighborhood or community)? Or does it, perhaps, apply more expansively to proscribe activities that tangibly degrade the life support function of “land” writ large?

30 Ibid at 3.
31 Ibid at 21.
The conceptualization of land as a life support system strikes me as a more appropriate framework for contemplating the concept of the regulatory takings doctrine from a sustainability perspective, whether for a given country or in cross-national comparison. The problem today is not that we are producing insufficient material goods from our resources, but that we are already living unsustainably, given our increasing rates of resource use, pollution, and disparities in wealth. An analysis of the inherent tension between “private” rights to land versus “public” rights, with no explicit recognition of responsibilities that come from “owning” a resource inextricably and unavoidably linked to the ongoing sustenance and well-being of society, strikes me as imprudently narrow and unnecessarily predisposed toward a particular conclusion (i.e., an expectation of compensation rather than forbearance). Surely we should be concerned when governments clearly act to expropriate private land for actual public use, but why should we compensate a private property owner for frustrating his or her desire to use property in a way that will clearly (or even very likely) yield tangible harms, however incremental or indirect? Rather than representing a merely “aburdens and benefits” formulation, a compensatory approach acknowledges a kind of demand on the part of property owners that sounds like the following: “let me do this harmful activity or pay me to stop.” This approach approximates extortion more than fairness.

Despite my rhetorical flourishes, I recognize the complexity of the issues I raise here, and I recognize that many of the harms generated by private land use are not intentional harms but artifacts of good-producing behaviors. Nonetheless, there is surely some benefit to expanding our reasoning on these topics, and I have to believe that this line of reasoning and debate is not unique to U.S. scholarship alone (the body of scholarship with which I am, admittedly, most familiar). Indeed, my sense in reading this book is that the philosophical tensions I raise here are, in fact, well-developed in many of the other countries studied, if not culled out specifically for contemplation in the analysis presented.

4. CONCLUSION

Takings International presents an exceptional first-cut, comprehensive, and comparative assessment of this important topic of planning and land use law. There is substantial and rich detail here, and scholars interested in this topic are well advised to read this book, read it again, and then read it yet one more time. In doing so, they should study not just the country-specific chapters prepared by the contributors, but Professor Alterman’s comparative analysis of that material as well. Readers should also look for ways to expand upon her analysis. I suggest this not because her analysis is somehow flawed, but rather because that there is so much detail and content to work with here that it is quite likely others will be able to draw additional insights from the materials presented. As Professor Alterman herself concludes, there are no clear cultural characteristics that explain differences between the regulatory takings doctrines of the various countries studied, and whatever explanatory factors are to be found in the future—or, I would offer, possibly even within the findings presented here—they will more likely be anchored in the realms of political science or history (or possibly urban and regional planning) than in the realm of law.

36 See e.g. James Gustave Speth, The Bridge at the Edge of the World: Capitalism, the Environment, and Crossing from Crisis to Sustainability (New Haven, CT: Yale University Press, 2008).

37 Takings, supra note 3 at 22, 86.
Finally, in building upon this substantial work, I would suggest that the questions raised regarding private property rights, public regulation, regulatory takings, and compensation rights be framed anew specifically from a sustainability perspective. To be fair, the author and contributors never expressed an intent to adopt such an approach in framing their work, but writing this review gives me the opportunity to suggest that they and others might consider doing so for future iterations. The key to doing so, I believe, will come with expanding the issues considered so that they encompass not just the question of how to share the economic burdens of public regulation but, more fundamentally, to address head-on the prior question of how private property owners’ rights and responsibilities do and should relate to the state’s regulatory responsibilities and prerogatives, particularly in the context of contemporary concerns about our prospects for long-term environmental and social sustainability.