

TRACK EIGHT

## DOWN WITH CONSTANTINE!

### PROPERTY IS (NEARLY) THEFT

#### A GREEK TRAGEDY

In the mid 1990s the former King of Greece, his sister Irene and his aunt Princess Ekaterini hit upon a neat ruse.

The family had been on the Greek throne on and off since 1864 and by the time Constantinos ascended to the throne in 1964 its estates were vast. But soon after this, disaster struck in the form of the military dictatorship which seized power in 1967 and which a few years later ordered the seizure of all Royal property. (Though compensation was offered on that occasion it was never accepted by the family.) With the return of democracy to Greece in 1974, there was some discussion and a few proposals before the state finally legislated to confirm that all the property now definitively belonged to the state.

In the old days a Royal Household would have taken this kind of thing on the chin. Can we fight back with a loyal army or use some foreign mercenaries to force the issue in our favour? If not, then I guess it's a future of expatriate grouching and global play-making: not quite the luxury our parents enjoyed, but not exactly a firing squad either.

But Constantinos, Irene and Ekaterini had another string to their bow: they were victims of a human rights abuse! And the European Convention of Human Rights said so.

With top lawyers from Greece and the UK recruited, they launched their case. The old European Commission on Human Rights declared the application admissible on 21 April 1998 and on 23 November 2000 the Court itself agreed there had been a breach of their right to property, a right guaranteed by a [Protocol](#) to the European Convention on Human Rights (on which more later). What particularly influenced the court was the lack of any compensation for the one-time first family. You can see the whole thing at [the Bailii web site](#) – and the [later ruling](#) concerned with the details of the compensation now ordered by the Court in 'just satisfaction' for the wrong done to these 'victims' of 'human rights abuse' – over 13 million Euros directly and 500,000 Euro in costs and expenses (all those terrific lawyers).

Now this was much less than the family had wanted – but still why pay anything at all?

#### IS THE RIGHT TO PROPERTY A 'HUMAN' RIGHT?

The [French Declaration of the Rights of Man](#) certainly thought so, with article 2 declaring it one of the 'natural and imprescriptible' rights that we all enjoy in view of our humanity and to the preservation of which all 'political association' must be dedicated. The [American Declaration of Independence](#) was more coy but when the founders of the American Republic got round to their written constitution the [protection of private property](#) had made it to the forefront of their minds.

In the shape that human rights took in the Enlightenment period, we can be in no doubt that the right to property was part and parcel of what the term was thought to include, the individual was not only an individual but a 'possessive individual' (as [C B Macpherson](#) once so famously put it) to boot.

But we should be careful about taking this tradition and deducing from it anything general about our subject. Earlier and later versions of human rights have been very hostile to it.

## CHRISTIAN PERSPECTIVES

It is remarkable how conflicted the Catholic Church was about property even at the height of its power. Roger Ruston's book on [Human Rights and the Image of God](#) is fascinating on this. The great intellectual guru of the Church [Thomas Aquinas](#) was very hostile to accumulation, viewing us as having nothing more than a right of self-preservation. Indeed Aquinas was not even sure that there was anything so very wrong about taking from the rich – their duty was to dispense not to hoard.

Taking their cue from Aquinas – but also drawing from the ancient traditions of the Church of Christ – the Christian tradition has developed a strong line against unnecessary acquisition, reflected in many church encyclicals:

... the acquisition of worldly goods can lead men to greed, to the unrelenting desire for more, to the pursuit of greater personal power.... Neither individuals nor nations should regard the possession of more and more goods as the ultimate objective: [Populorum Progressio](#).

I am sure that other religious traditions share a similar perspective on the person, one that puts the personal growth of all over the disproportionate material aggrandisement of the few. Perhaps readers can point me in the right direction on this?

## THE SOCIALIST CRITIQUE

And then, with Christianity losing its grip on Europe and Enlightenment confidence a couple of generations old, came Marx. It was as though the world of ideas suddenly noticed power. Rights of property began to seem out-of-date, sociologically illiterate even. Marx led the charge,

the right of a man to property is 'the right to enjoy his possessions and dispose of the same arbitrarily, without regard for other men, independently from society, the right of selfishness'

The [communist alternative to capitalism](#) was inherently hostile to the right to property, a right that Marx and his many followers since have viewed as a mere creature of capital.

It was in the 19<sup>th</sup> century that human rights made its great migration from radical idea to tool of conservatism, not the destroyer but rather the protector of privilege: see my [first common track](#) on some of this history. The apparently unbreakable connection between rights and property underpinned this perception.

## JUDGES MAKE THINGS WORSE

Judges were quick to see the conservative potential of property rights as a means of resisting the democratic and emancipatory advances by which they seemed at this time increasingly to be surrounded.

- The disastrous [Dred Scott case](#) of 1857 in which the US Supreme Court held that slaves could never be citizens was a property case, the property in question being the human beings who had been enslaved by their white owners.
- In seeking to resist the emergence of the Labour Party in Britain in the first decade of the 20<sup>th</sup> century, a leading law lord, Lord Shaw of Dunfermline, used a case in Britain's highest court, [Amalgamated Society of Railway Servants v Osborne](#), to develop a theory about democracy being subsidiary to more natural rights, with Parliament being the mere instrument of the rich, a body whose rationale for existence was that it operated 'as a fence to their properties'.
- When President Roosevelt developed his New Deal in the US he was nearly destroyed by the reaction of a deeply conservative Supreme Court which cloaked its political antagonism to progressive state action in the guise of property rights: a sequence of cases that nowadays go under the heading of [Lochnerism](#), after an early version of what was to follow, decided by the US Supreme Court some thirty years before.
- To the extent that Constitutions have sought to place property ownership above politics, in the form of a human or constitutional right, then they have invariably handed the rich a device with which to resist movement towards an equal society: see the [Irish cases on rent control](#) for example.

## RESISTING TEMPTATION

Since the right to property is a foreign growth on the subject, playing no part in its emergence and being even less relevant today – a time when, as we have seen, our subject is increasingly taking on a progressive shape as a platform for the creation of a fair and equal society – should we now simply deny its place as a human right?

Has the time come to strike the right to property completely from the arsenal of rights?

The answer is an *unequivocal* no.

Of course it is wrong in human rights terms to be relentlessly accumulative in the acquisition of material things, particularly when the consequence is less for others and so an increased disparity between the rich and the poor.

But the days are over when we can blithely assume that the tendency towards ownership is a creature of capitalist indoctrination, that left to our own devices we would be happily immune to this temptation to material aggrandisement.

Either this is not true, and there is within us a natural inclination to exclusive possession, one that it is part of what makes us human and that allows us to flourish as persons.

Or even if this property instinct is not natural to us, then it remains (sadly) the case that we have demonstrated no capacity to devise a system of common ownership which does not leave itself vulnerable to abuse, to the grabbing of disproportionate shares by those who have fought their way to the top of the system, however 'communist' or 'egalitarian' it might in theory happen to be.

The facts of history, once we look them in the face with an open mind, mock the simplicities of Aquinas, just as they do the idealistic assumptions of Marx.

All property is not theft – the much maligned [Proudhon](#) (originator of this great revolutionary phrase) knew that well enough. The point is control, regulation and – if necessary – state ownership. The key is power, the control of greed, not of ownership as such.

## AND THE EUROPEAN CONVENTION?

The actual Convention itself does pretty well on property. First it does not include it at all. Then, when it does eventually sneak in as the [Protocol](#) mentioned earlier, it does so in a very apologetic fashion, speaking of 'the peaceful enjoyment of [a person's] possessions' being however subject to deprivation where this is 'in the public interest and subject to the conditions provided for by law and by the general principles of international law'.

And none of this is in any way to impair 'the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.'

Overall not so bad: the right to property not as a necessary evil on the way to a human rights Nirvana (there can be no such place for the human without the chance to call things their own) – rather the right to property as a highly circumscribed chance (where the common good allows it) to enjoy stuff that you possess.

So how did we get from this to Constantinos?

The European Court has reasoned itself into a corner by insisting that compensation should invariably be given where property is taken. But this is nowhere explicitly set out in the Convention itself and should not have been deduced from its words.

No country can afford to buy off the unfairly rich – such an obligation is inherently self-defeating of any determined effort to reduce inequality. There must be times when it is right to proceed with brutal power to seize the vast accumulations of the rich – not to subvert their rights of ownership but rather to destroy their privilege of iniquitous accumulation.

The European Court judges knew this in their hearts and gave Constantinos much less than he and his family (and their lawyers!) wanted. In an ideal human rights world they would have received nothing at all, save enough to live as ordinary citizens in the state they used not only to call home but also practically to own.