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THE EROSION OF PROPERTY RIGHTS; POLITICIANS AND POLITICS

According to Roman Law the dominus had the real right enforceable against the whole world of using his land, (from beneath the soil up to the heavens) enjoying it and indeed destroying it, in an absolute manner.

This is chronologically and conceptually very far from today's position obtaining locally. I am prompted to write on this subject as certain letters have recently appeared in the press (as happens periodically) complaining about the unfair situation effecting property owners in Malta. Other countries passing through the same original requirements have enacted corrective legislation.

The basic point is the unfairness and injustice suffered by property owners.

A list of such discrimination must necessarily start with the notorious Rent Laws.

These **Rent Laws** impose an enormous injustice on the landlord. They practically deprive the owner of all his property rights - and on succession impose a transfer tax. The tenant is entitled to total maintenance of the premises (upon payment of only a peppercorn rent) with security of tenure for his family, descendants etc. This in itself gives rise to an injustice. When related third parties then avail themselves of this law in order to inherit the tenancy upon the demise of the original tenant (even if they do not indeed need financial assistance - rather the opposite may well apply) this injustice becomes enormous. The Decontrol Laws at one time were a relief to this injustice; then under Mr Mintoff the clock was put back again. The legislation effecting future rents as from June 1995 is only of partial solace. It does not remedy the unfair situation for those landlords who have now suffered this injustice for over sixty years.

Requisition Orders were at one time the scourge of the innocent landowners. In their heyday in the 1970s and 1980s the sudden “expropriation” - contrary to the motives that introduced Decontrol - was the feared axe. The vestiges of this Law - now happily on its way out - are still felt to this day.

Mr Mintoff’s Labour Government further burdened the property owner when amending the **Housing Decontrol Act** in 1979. The Government basically granted the temporary ex-empyteuta and the tenant, the right of acquiring the property at a low cost, instead of honouring their contractual obligation upon the termination of the temporary emphyteusis of returning the premises with vacant possession to the property owner. Mr Mintoff may have intended to deal a serious blow to the Church because of its property: however in the law there is no such limitation - it applies to all. The end result is that a fundamental property right was removed at the stroke of a pen. Admittedly this legislation is being contested and a final judicial decision is still awaited.

The coup de grace came in 1992 when the Nationalist government created as has been said, an “uncontrollable monster”, “a state within a state”. Well meaning though it may have been, the **Planning Authority** has an intrinsic set up which faults one of its “raison d’être”. Meant to act as a control over whimsical ministerial decisions, it can now act uncontrolled by whimsical technocrats who are in practice similarly unaccountable. Although I am sure that judicially this unaccountability will one day end in personal responsibility, the fact remains that at present property rights have been reduced drastically through this legislation.

The desired dealing with similar applications in the same area in a uniform manner - is still desired. This effects property owners/developers drastically.

“Scheduling” for aesthetic, social, historical, archaeological or other reasons - practically decided by individual technocrats, is tantamount to expropriation, without compensation. It is well known that in some cases of scheduling two nearby houses enjoy different fates: one may be converted into flats and property worth thousands, the other becomes scheduled - and its landlord impoverished. If scheduling is to be had then any financial suffering is to be made good for by the state. It is very easy for a technocrat to schedule other people’s property; with other’s goods, individuals may well feel lavish. I still have to learn of the case where a technocrat has scheduled his own property.

Furthermore certain districts are disadvantaged when compared with others. I refer to property owners who cannot convert their property to a use previously permitted, because they live in a particular district. I refer to Valletta and the conversion of vacant property to office premises. Of course the application of this rule depends on street to street, or rather from applicant to applicant.

Another diminution of property right emanating from the same legislation is the prohibition of a minute nature (e.g. that one cannot plant trees of a non-indigenous nature in one's own property). The irony of it all is that after that one plants an indigenous tree, the property may eventually be scheduled because of the historical importance of such a tree.

Finally (at least for this article - I will resist the impulse to write further on the Planning Authority) under its Chairman, Fabri, the Planning Authority had the cheek and arrogance to suggest a further hardship on the long suffering property owner, by proposing a levy on vacant property. Luckily (or is it because it effects many voters?) this suggestion has not been taken up by the political parties.

The Planning Authority - and the Housing Authority needs to take note - must realise that it is the carrot that provides true and long lasting solutions.

Expropriation for public use with compensation (which is often meagre) is also a diminution of property rights. This type of expropriation is protected by the Constitution and is more understandable; but it often creates unfairness especially when compensation takes many years to be paid or in comparing cases is found to be grossly disproportionate.

Politicians have been included in the title as obviously the situation is a legislated one and politicians are responsible in toto for the same. Politicians have supported this legislation throughout various administrations mainly on the ground that such legislation was necessary because of social economic and political reasons. I am in favour of owner occupied housing as well as distribution of wealth. It avoids hiccups in the country and great steps have been achieved in this regard. However robbing Peter to give to Paul (and thereby win Paul's vote) is still theft. In some legislation and vis-a-vis some politicians such motivation may have been genuine. I doubt the motives of certain politicians in some cases. The fact remains that this legislation effects adversely the minority and enriches enormously a majority - a majority who

were not entitled to or indeed justified in receiving such enrichment. The barter is the people's votes for such acts, at the expense of the property owner. Clearly such legislation is a vote winner for the politician. At least this was the case in the past. Doubts may be expressed as to whether this situation still actually prevails in Malta.

What can be done administratively/legislatively? In the past Commissions have been set up with the task of making suggestions to Government. They have also gathered suggestions from individuals. I am sure there are many worthwhile suggestions which have been offered (e.g. Notably the comments by The Chamber of Commerce: STOM 31.5.1998). My suggestions singularly, alternatively and/or cumulatively are the following.

Regarding: Rent Laws

The rent laws can be declared to become gradually ineffective in say five years' time. When a landlord desires to sell his property a fair price should be established, however taking into consideration the fact that the property is leased. If the tenant does not accept to buy this property at a subsidised price and if necessary financed, then the protection given to the tenant by the rent laws should not apply. Where the *raison d'être* of the protective legislation does not in reality exist, as can be established by a means test effected on the tenant and/or his family, then the protection of the rent laws should not be had.

The protection of the decontrol laws given to the Maltese tenants are to be repealed.

Regarding: The created rights of the ex-empyteuta/tenant upon the expiry of the temporary emphyteusis

The imperative rule of giving effect to a contract freely entered into and the principle that no retroactive legislation should be enacted such as to adversely effect an innocent contracting party, should be foremost and be applied. As such the legislation enacted under the Housing Decontrol Act (in 1979) giving the ex-empyteuta and the tenant basically the right to rent the property in perpetuity or outright buy the property should be immediately repealed.

Regarding: The Planning Authority

Vis-a-vis the better functioning of the Planning Authority, clearly the proposed national conference announced by the Minister, Tonio Borg could be a step in the right direction, although one may ask what was the outcome of the post 1987 election public dialogue meetings. However the good intentioned 1997 amendments and the encouraging correct words of Architect George Pullicino (The Times 15.12.1998) become easily thwarted and stultified if the persons applying same are not accountable and/or do not have the genuine intention of being customer orientated. No amount of legislation rectifies such a situation. Set minds do not change. The solution is clearly written on the wall. Having said that on "personalities" I would like to express my full confidence in the present Chairman Mr Chris Falzon. I also think that the appointment of an ombudsman and/or executive regulator would be a step/s in the right direction. The 1997 amendments could also be amplified - restricting the PA's powers (particularly in inserting the small print to thwart the whole pro customer process) and protecting further the customers' interest. Accountability and personal responsibility is a must.

What can be done politically? It is an abundantly clear fact that the above laws are unfair. Everyone, even those who unfairly enjoy their benefits are fully aware of this basic fact. Yet the politicians do not do that which is necessary to remedy the unfairness of the situation - and this because they fear that the majority of voters will not support such just legislation. The morale of the story is that some politicians do not enact just laws, but only those that favour them. This of course is in itself immoral. Theoretically this argument may well be applied a contrario. Politicians are recently correctly intoning against the immorality of tax evasion. I support such speeches. However the above said example of the politicians, who whilst fully aware of what morally correct legislation should be enacted, yet do not so enact, constitutes in itself a bad example. Cannot the suffering citizen say that he will abide by enacted legislation including "no" to tax evasion - only if the legislator on his part abides by his side of the bargain and remedies the unfair rent laws etc? In other words: if these laws are not amended, other laws may be disobeyed. Clearly two wrongs do not make a right - but the principle of self defence equally applies.

The correspondent Mr L F Grech, stated that he will not vote unless in favour of a party which remedies this unfair situation. This is a plausible suggestion,

politically correct, but unless followed widely, probably practically ineffective. My suggestion is that a pressure group of property owners and their supporters should be formed who should then exert their pressure on political parties. The hunters seem to have been successful in their lobbying. Why not the property owners?

It would seem that this is the only language some politicians understand.