

ITATIONS TO THE RIGHT TO PROPERTY UNDER INTERNATIONAL HUMAN RIGHTS LAW

Brice Dickson, 26 June 2019



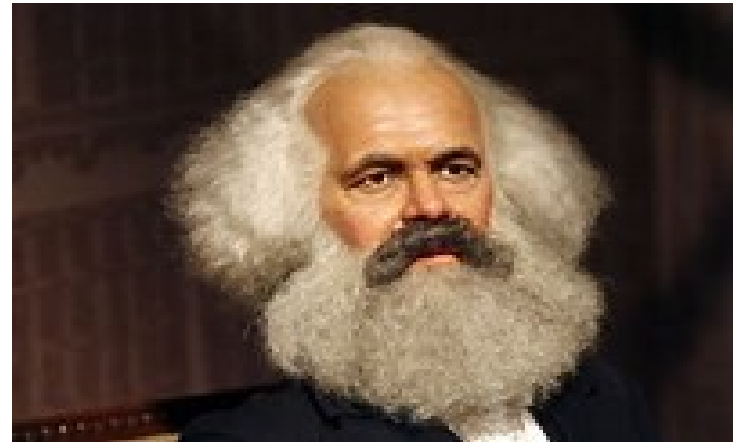
WESTERN PHILOSOPHIES OF PROPERTY

- ▶ Property as a natural right, resulting from work: John Locke, 1632-1704
- ▶ Accumulation of wealth should be banned: Maximilien Robespierre, 1758-1794



WESTERN PHILOSOPHIES (cont'd)

- ▶ Property as 'theft': Pierre-Joseph Proudhon, 1809-1865
- ▶ No private property in the means of production: Karl Marx, 1818-1865



HUMANS AS PROPERTY

Feudalism

Slavery

Serfdom

Bonded labour



OTHER PHILOSOPHIES

- ▶ Buddha (624-544 BC): saw private ownership as dishonesty; promoted



- ▶ Indigenous peoples have a relationship to land which transcends private property: *Awas Tingni v Nicaragua* (Inter-AmCtHR, 2001)

THE GENEALOGY OF THE HUMAN RIGHT TO PROPERTY

- ▶ French Declaration of the Rights of Man and the Citizen – Article 17 (1789)
- ▶ US Constitution – 5th Amendment (1791)
- ▶ American Declaration – Article 23 (1948)
- ▶ Universal Declaration – Article 17 (1948)
- ▶ **ECHR – Protocol 1, Article 1 (1950)**
- ▶ ICCPR / ICESCR – not mentioned (1966)
- ▶ American Convention – Article 21 (1969)
- ▶ African Charter – Article 13 (1981)

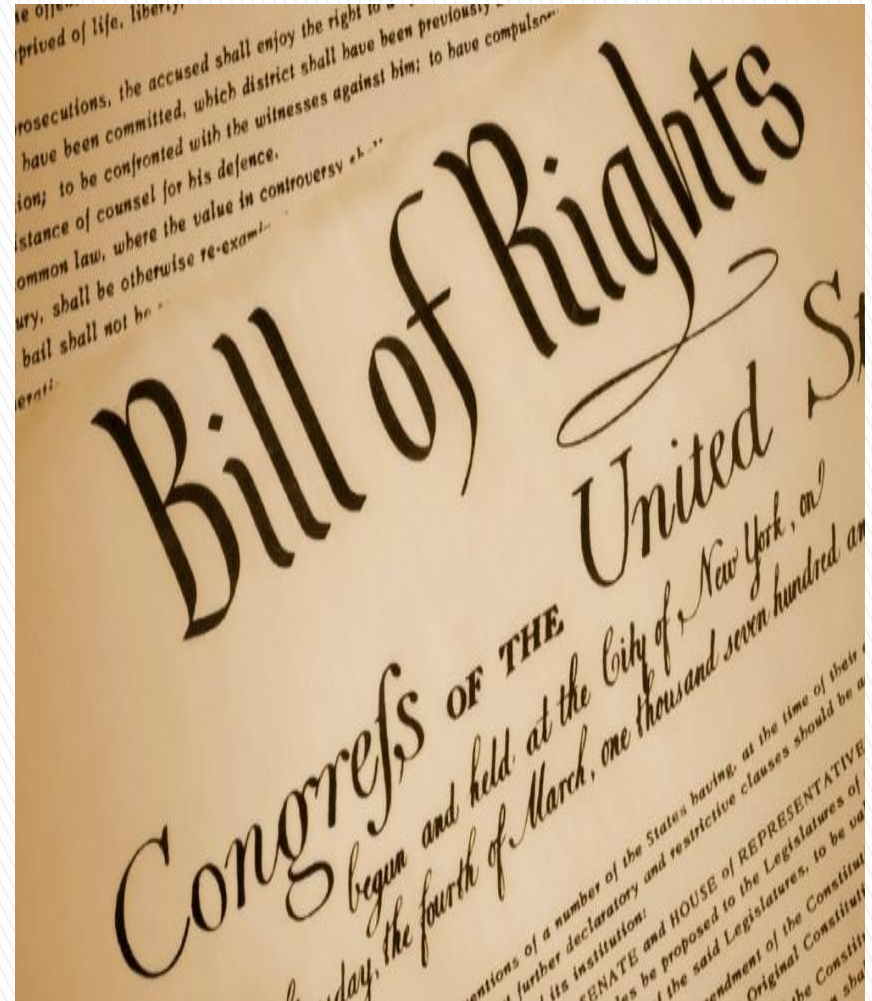
FRENCH DECLARATION, ART 17

Since the right to property is inviolable and sacred, no one may be deprived thereof, unless public necessity, legally ascertained, obviously requires it, and just and prior indemnity has been paid.



US CONSTITUTION, AMENDMENT 5

No person...shall be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use without just compensation.



AMERICAN DECLARATION, ART 23

Every person has a right to own such private property as meets the essential needs of decent living and helps to maintain the dignity of the individual and of the home.



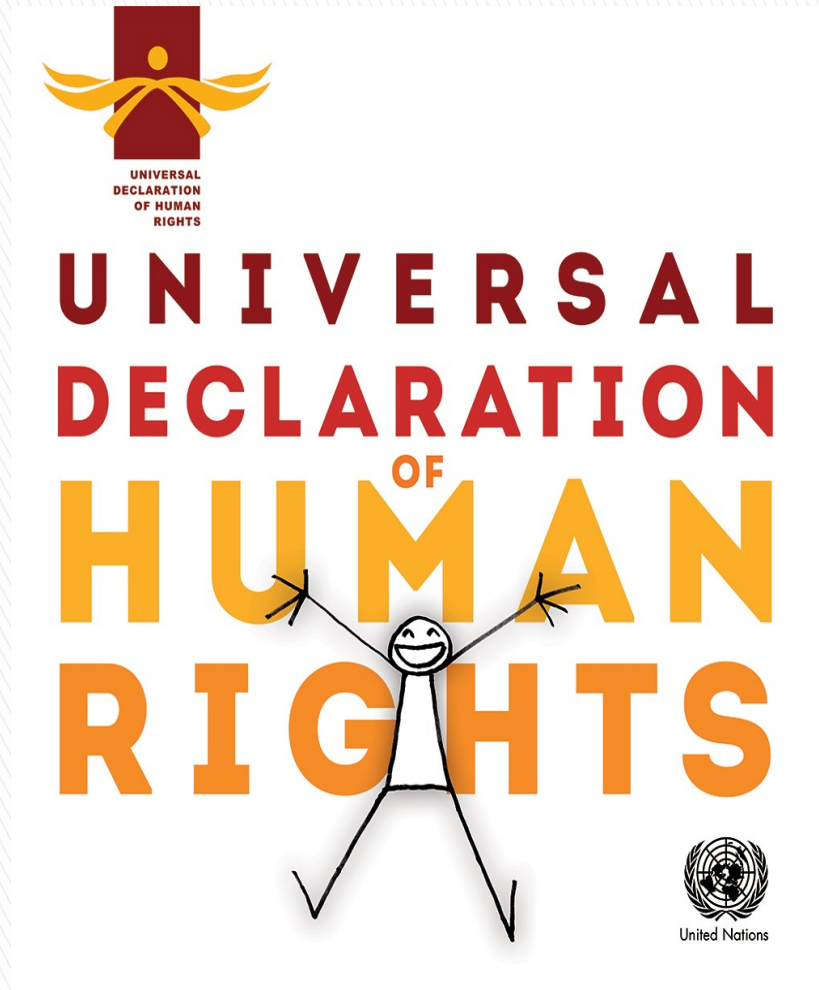
OAS

More rights for more people

UNIVERSAL DECLARATION, ART 17

(1) Everyone has the right to own property alone as well as in association with others.

(2) No one shall be arbitrarily deprived of his property.



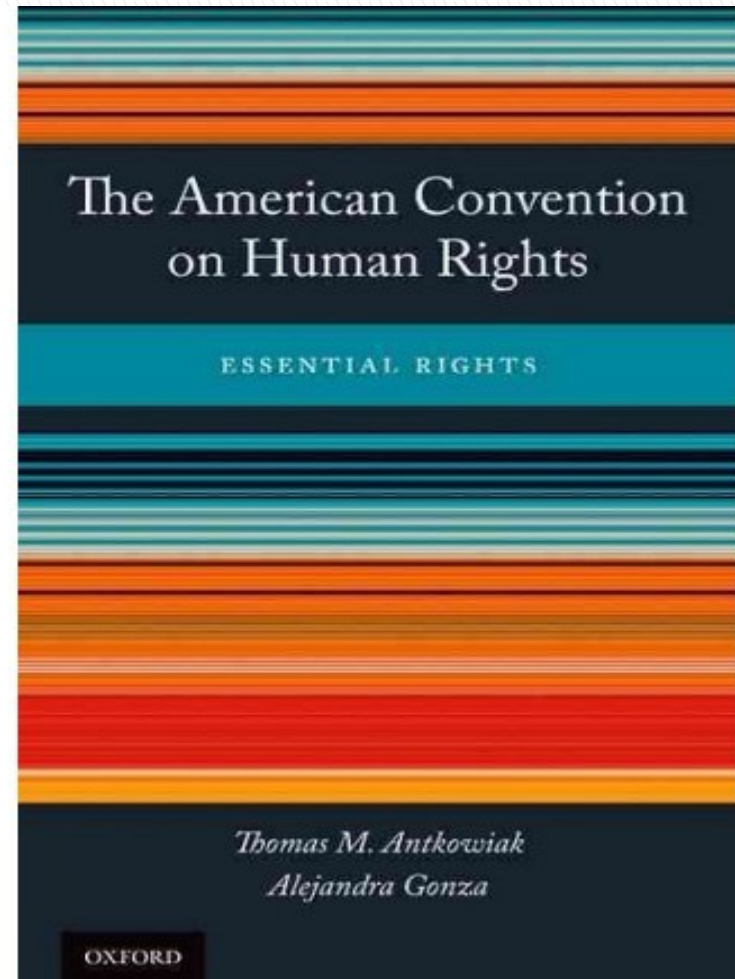
ECHR, PROTOCOL 1, ART 1(1)

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law



AMERICAN CONVENTION, ART 21(3)

Usury and any other form of exploitation of man by man shall be prohibited by law.



CONTEXTS ALREADY AFFECTED BY THE ECHR RIGHT TO PROPERTY



Protection of the
environment

Taxation

Savings

Austerity measures

Social welfare

Property restitution

CONTEXTS NOT YET AFFECTED BY THE ECHR RIGHT TO PROPERTY



Content of trade
agreements

Access to natural
resources

Regulation of climate
change

Reduction of poverty

Promotion of equality

GENERAL POINTS ABOUT PROTOCOL 1, ARTICLE 1 (P1A1)

- ▶ Not included in the original ECHR
- ▶ It talks of 'possessions' and the ECtHR has defined that term broadly
- ▶ It deals sequentially with (a) protection, (b) deprivation and (c) control of possessions
- ▶ All interferences have to be based on law, in pursuit of a legitimate aim and strike a proportionate balance between competing interests
- ▶ ECHR, Art 4 protects against human exploitation
- ▶ *Öneryıldız v. Turkey*, 30 November 2004 (GC): States also have positive duties under P1A1

THE CONCEPT OF 'POSSESSIONS'

- ▶ It includes some 'legitimate expectations', client lists ('goodwill'), business licences and intellectual property
- ▶ *James v UK*, 21 February 1986 (Plenary): rights under Leasehold Reform Act 1967
- ▶ *Broniowski v Poland*, 22 June 2004 (GC): 'rights to credit' for Bug River claimants
- ▶ *JA Pye (Oxford) Land Ltd v UK*, 30 August 2007 (GC): rights acquired by occupation
- ▶ *Doğan v Turkey*, 29 June 2004: villagers had P1A1 rights even without proof of ownership

'STATE' COMPANIES



- ▶ Whether a company is a 'State' company, and so unable to lodge an application, depends on many factors: *Radio France v France*, 23 September 2003: Radio France able to apply
- ▶ The same factors determine whether a State is directly responsible for a company's actions: *Liseytseva and Maslov v Russia*, 9 October 2014: Russia responsible for the debts owed to employees by town and district transport and maintenance companies

TAXATION



- ▶ States have a wide margin of appreciation when framing and enforcing tax policies
- ▶ *National and Provincial Building Society v UK*, 23 October 1997: applicant attempted to exploit a loophole in the tax laws
- ▶ *Jokela v Finland*, 21 May 2002: different valuations of same property violated P1A1
- ▶ *'Bulves' AD v Bulgaria*, 22 January 2009: implementation of VAT law violated P1A1

SAVINGS



- ▶ *ON v Bulgaria*, 6 April 2000 (inadmissible): no right to any particular economic policy to deal with inflation or other economic events
- ▶ *Grishchenko v Russia*, 8 July 2004 (inadmissible): there is no right to acquire property, here a car
- ▶ *Kotov v Russia*, 3 April 2012 (GC): insolvent bank
- ▶ *Ališić and Others v Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the Former Yugoslav Republic of Macedonia*, 16 July 2014 (GC): Serbia and Slovenia violated P1A1, but not the other States

AUSTERITY MEASURES



- ▶ States have a wide margin of appreciation when seeking to preserve economic stability or reduce the national debt in a crisis
- ▶ *Mamatas v Greece*, 21 July 2016: bond-holders forced to exchange bonds for less valuable ones
- ▶ *Koufaki and Adedy v Greece*, 7 May 2013: public sector salaries and pensions cut by up to 38%
- ▶ *P Plaisier BV v The Netherlands*, 14 November 2017: 16% tax on employers paying over €150k
- ▶ *Stec v UK*, 6 July 2005 (GC): P1A1 protects both contributory and non-contributory welfare benefits

CONCLUSIONS



- ▶ P1A1 is based on a capitalist concept of property
- ▶ The ECtHR has bolstered this concept but done little to limit wealth accumulation, narrow the wealth gap, reduce poverty, or promote income equality
- ▶ Various measures could be taken by States to achieve those goals without violating P1A1, including:
 - bans on excessive salaries
 - higher taxes on excessive profits
 - higher inheritance taxes
 - more generous welfare benefits
 - a right to a basic income



**THANKS
FOR
LISTENING**

Any Questions

