

# Freedom Matters

A News & Opinion Paper

Dane County, Wisconsin

Preserving Property Rights

Vol. 5, No. 18

Friday, July 29, 2005

Our republic limits government to securing individual unalienable rights to life, liberty, and property. These rights are eroded by legislatures, and by courts complicit with them. To encourage wise jurists and journalists to help, *Freedom Matters* dedicates itself to the fight to restore that republic.

## The Securing of the Constitutional Protection of Property Rights

by Bob Bowman

The Judiciary has proven to be as corruptible as other branches of government, and in as much need of checks and balances to assure that it does not raid the unalienable rights declared for citizens as part of our political birthright. Especially pernicious in this regard is the deference which the courts accord to government. Such deference is needed in narrow areas, to allow government the power to protect the rights of individuals. However, such deference is misplaced, when it acts gratuitously to restrict our individual civil rights.

The civil right (i.e., the unalienable right) that the courts have done the least to protect, and even from the get-go, is property rights. Yet, to key founders of our republic, property rights were the cornerstone of all other unalienable rights. They were concerned to prevent the state from usurping the unalienable rights of the free citizen. However, the consequences of property rights goes further. Modern economic theory, and the overwhelming judgment of history and of data, bears out that the free market, which cannot exist without strong and strict protection of property rights, is the only system that has proven able to produce a prosperity broad enough to lift all citizenry out of poverty.

Yet, in an anti-rational, or counter-rational fashion, the courts have let property rights be trampled by legislatures. Only as citizens have taken control and imposed their will, have courts done right by property rights. That is powerfully documented in a chapter summarizing the **history** of property rights in the USA, in the book *The Mystery of Capital*, by Hernando DeSoto. That fact was also most recently demonstrated by the citizens of the State of Oregon, who used their provision of direct citizen legislation to enact property rights protection into state law, and emphatically, by 61% of the vote. Hopefully, the size of that vote margin will restrain even rabid judges from tampering with that legislation.

In Wisconsin, the current political balance is not favorable for enacting new property rights protection into state statute. It seems more favorable for enacting it into the state constitution. Ideas are still formative for the wording that such constitutional protection might take, and for the nature of the rights to be so protected. Here are our current constitutional property rights.

Individual rights are embodied in the Wisconsin State Constitution as its first concern, being placed right at the beginning, in Article 1, "Declaration of Rights," which comprises the civil rights, or unalienable rights, of those who reside or do business in the state. Property rights appear right off, in the prohibition of slavery and involuntary servitude (section 2).

Property rights appear next in section 6, which prohibits excessive bail or fines.

Property rights appear in section 11, which states "the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures ..."

Property rights appear again in section 12, which prohibits attainder (the extinction of property rights) as a punishment for crimes.

Property rights appear most famously in section 13, which says "The property of no person shall be taken for public use without just compensation therefor."

Property rights appear, respecting land, in section 14, which declares "all lands within the state to be allodial, and feudal tenures are prohibited." This was inspired by a provision of the New York State Constitution, in which state it was instituted to prohibit the practice of maintaining feudal tenures by "leasing" land perpetually rather than selling clear title.

An argument can be made that the selling of "conservation easements" is a violation of section 14 unless the easement holder pays a proportionate share of the property taxes, and if the easement may encumber unpaid services by the land owner to "maintain" the conditions of the easement. Thus, the proliferation and encumbering of lands by conservation easements looks very much like the imposition of feudal tenure.

Property rights are declared the same for resident aliens as for citizens (section 15).

Finally, property rights are protected by forbidding imprisonment for debt arising out of contracts (section 16) and by exempting a residuum of property from seizure for the payment of debts (section 17).

Despite all of the above protection, the inroads of socialism requires still more. *(To be continued)*

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