



Human Rights Consultation Committee
Department of Justice
55 St Andrews Place
Melbourne 3000

1 August 2005

Thank you for the opportunity to make a submission to this process. This submission is made in my capacity as an academic researcher and not on behalf of the Centre for Comparative Constitutional Studies or the University of Melbourne. (Andrew Brookes, CCCS Law Reform and Public Policy Intern, helped with research for this submission.)

This submission focuses on whether and how a Victorian Charter of Rights should protect property rights. It is based on my extensive research and publication in relation to constitutional property rights, under the Australian Constitution and other constitutions.

Should a Victorian Charter of Rights protect property rights?

In my view, it should. But it should do so in a way that respects the limited extent to which property rights are properly regarded as human rights.

- It should not guarantee compensation for expropriation or deprivation of property rights.
- It should protect property rights in a way that recognises the significant protections already afforded to property rights by the common law and by Parliament.
- And it should do so in a way that recognises the inappropriateness of the courts second-guessing the Parliament's decision that legislation strikes an appropriate balance between private rights and the public interest.

Some constitutions and bills of rights contain a ‘property rights guarantee’ that requires the State to pay compensation whenever it expropriates (acquires) property from a person or deprives a person of property. The most famous of these is the Takings Clause of the 5th Amendment to the United States Constitution: “nor shall private property be taken for public use, without just compensation”. The Commonwealth Constitution has been interpreted to contain a property rights guarantee – when the Commonwealth acquires property from any person or state it must provide just terms compensation (s 51(xxxi)). The self-government Acts of the ACT, the Northern Territory and Norfolk Island contain guarantees in similar terms.¹ Many national constitutions and bills of rights also contain guarantees but the language used and the operation of the guarantees differ markedly.² (A selection of other property rights guarantees is set out in the appendix to this submission.)

A Victorian Charter of Rights *should not* contain such a guarantee for the following reasons.

- A Charter of Rights *need not* contain such a property rights guarantee
- *As a matter of general international law*, such a property rights guarantee is not a human right
- *As a matter of principle*, such a property rights guarantee is not a human right
- Where constitutions and bills of rights have contained such a property rights guarantee, the results have been undesirable
 - The courts have been asked to second-guess the Parliament’s judgment that legislation strikes an appropriate balance between private rights and the public interest
 - The courts have not been able to reach satisfactory and stable interpretations of the property rights guarantee
- A strong property rights guarantee would not reflect Australia’s political traditions
- A property rights guarantee in the absence of protection of social and economic rights would be unbalanced
- The existing parliamentary scrutiny of legislation that affects property and the common law presumption that the legislature does not intend to take or limit property rights without compensation already provide appropriate protection for property

I will elaborate on these points before identifying the kind of protection that, in my view, should be given to property rights in a Victorian Charter of Rights.

¹ *Australian Capital Territory (Self-Government) Act 1988* (Cth), s 23(1)(a); *Northern Territory (Self-Government) Act 1978* (Cth), s 50; *Norfolk Island Act 1979* (Cth), s 19(2)(a).

² See A J van der Walt, *Constitutional Property Clauses: A Comparative Analysis* (1999); Tom Allen, *The Right to Property in Commonwealth Constitutions* (2000).

A Charter of Rights need not contain a property rights guarantee

As noted above, many national constitutions and human rights statutes contain property rights guarantees. However, neither the New Zealand *Bill of Rights Act 1990* nor the Canadian *Charter of Rights and Freedoms* contains a property rights guarantee. Nor does the ACT *Human Rights Act 2004*. (It is not clear whether it was thought that such a provision would be redundant in the ACT in light of the provision in the self-government Act or whether the issue simply did not arise because of the focus on the ICCPR and the ICESCR in identifying the rights to be protected. As will be seen below, neither of those Conventions contains a property rights guarantee.)

These examples reflect the fact that whether or not to include a property rights guarantee in a Charter of Rights is a distinct issue from whether to have a Charter of Rights. It is not something that is resolved automatically once it is decided to have a Charter of Rights. Property rights are not a necessary inclusion in a Charter of Rights.

The decision to include a property rights guarantee has structural implications about the relationship between the courts and the Parliament and substantive implications about the types of legislation that can be enacted.

The property rights guarantee in s 25 of the South African Constitution of 1996 illustrates the structural and substantive implications. The property rights guarantee was one of the most highly contested elements in the negotiations leading to the post-apartheid Constitution. Whether there was a property rights guarantee and what form it took would affect directly the legislative programme of the post-apartheid government. A strong property guarantee would require that the government compensate any one affected by reform legislation that departed from the apartheid status quo. It would have imperilled the land reform and other measures that were essential for creating a South Africa that respected human rights. And it would have handed control over these issues to the courts charged with enforcing the Constitution. A weak property guarantee would have allowed majoritarian control over property but would have presented the risk of capital leaving the South African economy in response to expropriation of minority property holders. The property rights guarantee that emerged from the constitutional negotiations attempts (perhaps unsuccessfully) to straddle these competing demands.

I do not pretend that the implications for Victoria of including or omitting a property rights guarantee are as stark as they were in South Africa.

But the South African example does illustrate that what is at stake in deciding to include a property rights guarantee is a question of high politics. A property rights guarantee limits the range of policy options open to government and makes courts the arbiters of whether legislation affecting property requires compensation. That is a political line-drawing exercise that arises in innumerable contexts and not just where legislation on its face appears to expropriate property right. The experience under property rights guarantees around the world shows that people whose economic interests are affected by ostensibly regulatory legislation will attempt to argue that the regulations actually amount to an acquisition or deprivation of property requiring compensation. Thus courts will be asked to consider whether a property rights guarantee affects the interpretation or operation of legislation across the public policy

landscape: Can the State regulate property use in order to conserve the natural environment? Can it limit water use? Can it enact heritage protection legislation? Can it limit land use in order to preserve public amenity? Can it reallocate or limit commercial fishing licences to preserve fishing stocks? Can it require employers to provide access to their property for union representatives? If it does any of these things, is it required to compensate the affected property owners? All these questions potentially involve legislation that affects property rights and property values. A property rights guarantee – even if the Charter of Rights functions purely as an interpretive tool and provides no direct right of action – bears on the resolution of these policy questions.

In short, there is a decision to be made – Should Victoria follow New Zealand and Canada in leaving these questions to the political process? As already indicated, my view is that it should do so and should not include a property rights guarantee in a Victorian Charter of Rights for the following reasons.

A property rights guarantee is not a human right under general international law

Neither the International Convention on Civil and Political Rights (ICCPR),³ nor the International Covenant on Economic Social and Cultural Rights (ICESCR),⁴ contain such a right.⁵ Article 17 of the Universal Declaration of Human Rights provides that “[e]veryone has the right to own property alone as well as in association with others” and that “[n]o one shall be arbitrarily deprived of his property”,⁶ but the prohibition on arbitrary deprivation is rather more limited than a guarantee of compensation for all deprivations of property. As one commentator has put it, “The Universal Declaration ... does not define what constitutes ‘arbitrary deprivation.’ Consequently, the extent of protection afforded by the Universal Declaration in relation to private property ownership is vague at best.”⁷

As a matter of principle, a property rights guarantee is not a human right

Political philosophers have generally rejected the proposition that a property rights guarantee constitutes a human right.⁸ James Harris argues:

³ *International Covenant on Civil and Political Rights* (1966) 999 UNTS 171, entered into force 23 March, 1976.

⁴ *International Covenant on Economic, Social and Cultural Rights* (1966) 993 UNTS 3, entered into force 3 January 1976.

⁵ Some regional treaties provide strong protection. Eg. Article 1 of Protocol 1 to the *European Convention on Human Rights*. Some bilateral treaties also do so: eg. the investment provisions of the *North American Free Trade Agreement*, art 1110 and the *Australia-United States Free Trade Agreement*, art 11.7.

⁶ *Universal Declaration of Human Rights*, GA Res 217A(III), 10 December 1948.

⁷ Jonathan Shirley, “The Role of International Human Rights and the Law of Diplomatic Protection in Resolving Zimbabwe’s Land Crisis” (2004) 27 *Boston College International & Comparative Law Review* 161, 166.

⁸ Contrast s 43.1 of the Irish Constitution – but note how s 43.1 is balanced by s 43.2. See also van der Walt, above n 2, 229ff (discussing the complex relationship between s 43 and s 40.3.2, which provides a limited individual guarantee).. Some writers however do (controversially) take the view that property rights are close to natural rights: see eg Richard A Epstein, *Takings: Private Property and the Power of Eminent Domain* (1989 reprint).

Other rights have a transparent universality which the property right lacks. We all have bodies which may be killed, tortured, enslaved or imprisoned. Anyone may choose to join in political controversy, to take part in family life, to adopt a religion or to change her place of residence, and so on. All these things may plausibly be said to advance facets of well-being which are more or less the same for all. But a person's 'possessions' vary enormously in the extent to which they contribute to well-being, and some people may have none at all.⁹

Liam Murphy and Thomas Nagel argue that property rights are not natural rights:

[T]here are no property rights antecedent to the tax structure. Property rights are the product of a set of laws and conventions, of which the tax system forms part. Pretax income, in particular, has no independent moral significance. It does not define something to which the taxpayer has a prepolitical or natural right, and which the government expropriates from the individual in levying taxes on it.¹⁰

A property rights guarantee, then, is not a human right.

But this is not to say that property rights do not have any moral weight. It would be wrong to treat property rights as purely positive legal rights, that is, as rights that have no existence or relevance apart from what the law says.¹¹ Expropriation of established property interests can cause demoralisation;¹² it may discourage investment;¹³ it may cause government to underestimate the true costs of what it sets out to do.¹⁴ Property rights have moral weight – sometimes significant moral weight – that legislatures should respect. (The moral claim to compensation is highest when the Parliament expropriates property – that is, when it directly receives the benefit of what it takes from the property owner.)

But that moral weight does not necessarily mean that property rights should be protected against expropriation in a Charter of Rights. The range of moral concerns that is appropriately protected in a constitutional (or quasi constitutional) enactment is narrower than the range of moral concerns that should be taken into account in the political process.¹⁵ Not every matter of political morality is a human right that should enable the courts to reinterpret or invalidate legislation that, in the court's view, is inconsistent with the best view of political morality.

⁹ Jim Harris, 'Is Property a Human Right?' in Janet McLean (ed), *Property and the Constitution* (1999) 64, 78; J W Harris, *Property and Justice* (1996).

¹⁰ *The Myth of Ownership* (2002) 74.

¹¹ Cf Jeremy Bentham, *Theory of Legislation* (1911) 113 quoted in *Wily v St George Partnership Banking Ltd* (1999) 84 FCR 423, 426.

¹² Jeremy Waldron, 'The Normative Resilience of Property' in Janet McLean (ed), *Property and the Constitution* (1999) 170, 185-186.

¹³ William A Fischel, *Regulatory Takings: Law, Economic, Politics* (1995) 188.

¹⁴ For a survey of the economic literature on property rights guarantees, see Thomas J Miceli and Kathleen Segerson, "Takings" in Boudewijn Bouckaert and Gerrit De Geest (eds), *Encyclopedia of Law and Economics*, Volume IV. The Economics of Public and Tax Law (2000) 328 available at <http://encyclo.findlaw.com/tablebib.html>. The economic literature is divided on the merits of property rights guarantees.

¹⁵ Cf Linda C McClain and James E Fleming, 'Constitutionalism, Judicial Review, and Progressive Change', (2005) *Texas Law Review* (forthcoming), <http://ssrn.com/abstract=672382>, 14-15 discussing the different domains of justice.

A property rights guarantee in the absence of protection of social and economic rights would be unbalanced

Some property-related rights, however, can legitimately be described as human rights. These include the right to own property alone or in conjunction with others; the right to acquire and dispose of property, the right to have access to sufficient material resources (food, shelter, medicine) in order to lead a life of dignity; and protection from discrimination in the right to own, acquire and dispose of property. These rights *should* be protected in a Victorian Charter of Rights. They are recognised as human rights in international instruments.¹⁶ These rights *do* have the “transparent universality” that a right to compensation for interference with property holdings does not.

It would be inappropriate for a Charter of Rights to include a property rights guarantee that requires compensation for expropriation of property rights if these more basic rights were not also protected. At the very least, such an outcome would suggest an inappropriate hierarchy between the two sets of rights and lend support to an interpretation of the property rights guarantee that left little room for redistributive legislation that aimed to advance the plight of the least fortunate members of the community.

Where constitutions and bills of rights have contained such a property rights guarantee, the results have been undesirable in two respects:

1. The courts have been asked to second-guess the Parliament’s judgment that legislation strikes an appropriate balance between private rights and the public interest

A property rights guarantee asks the courts to decide whether compensation ought to be paid when legislation affects property rights. The questions are not straightforward legal ones. The courts will be asked to engage in a line-drawing exercise: to decide when regulatory legislation “goes too far” and warrants compensation.¹⁷ The courts have no particular expertise in the economic, social and political issues involved in that determination. As Jennifer Nedelsky argues:

[D]ebates over the meaning of property, of the kinds of power that should be allocated to individuals and the limits on that power (such as landlord-tenant law, environmental regulation, minimum wage law) should be part of the ongoing vigorous debate of the most popularly accessible bodies, the legislative assemblies. That debate should not be obscured or curtailed by constitutionalizing property.¹⁸

¹⁶ For example, in the International Convention on Civil and Political Rights, the International Convention on Economic, Social and Cultural Rights, the Convention on the Elimination of Racial Discrimination, the Convention on the Elimination of Discrimination Against Women and the Universal Declaration of Human Rights.

¹⁷ Cf *Pennsylvania Coal Company v Mahon* 260 US 393, 415 (1922) (Holmes J).

¹⁸ Jennifer Nedelsky, ‘Should Property be Constitutionalized? A Relational and Comparative Approach’ in G E van Maanen and A J van der Walt (eds), *Property Law on the Threshold of the 21st Century* (1996), 424.

Moreover, property rights are not the kinds of rights that Parliament is at all likely to limit without appropriate deliberation and debate. Property rights have high visibility and high salience. They provide a focus for organised interest groups to make Parliament aware of the impact of proposed legislation.¹⁹

The Victorian Parliamentary Hansard reveals that parliamentarians are acutely aware of the impact of their legislation on property rights. An example is provided by the 1996 national firearms buyback agreement. In Victoria, the agreement was implemented in two Acts, the *Firearms (Prohibited Firearms) Act 1996* (Vic) passed in May 1996 before the agreement was finalised and the *Firearms Act 1996* (Vic) passed in October 1996 once it was in place. The first Act cancelled the authorisations of certain types of firearm, making them prohibited firearms, and substituted a new s 32(4B) in the *Firearms Act 1958* that enabled the Minister to approve a compensation scheme for firearms that were newly prohibited. As the Minister said in introducing the Bill. The Labor Opposition supported the compensation provision:

[P]eople who have legally owned firearms that are now prohibited should be compensated. Those people were granted permits to own those weapons, they purchased them legally, they registered them and they were within the law at all times. They are disadvantaged by surrendering very valuable items of equipment, and certainly that should not be demanded of them without compensation.

I do not have the same sympathy for people who hold firearms without permits [for whom compensation was not initially available] as I do for the legal owners of firearms. I believe they should be given an opportunity under an amnesty to surrender those weapons, and if they fail to do so they should be identified and prosecuted to the full extent of the law.²⁰

In the Legislative Council, one Councillor sought compensation for ammunition manufacturers and retailers: ‘A number of workers will lose their jobs as a result of the reduction in the need for ammunition. ... At the Winchester factory, which I think is in Port Melbourne, more than 50 per cent of the staff are facing redundancy.’²¹ Another Councillor expressed concern that the compensation arrangements were not then known and that some firearms owners might receive less than full compensation, yet supported the legislation ‘for the sake of the majority of the population and for future generations’.²² The debate on the specific compensation question was limited. But it, and the wider debate on the appropriateness of the legislation effectively confiscating private property, demonstrates that parliamentary processes are well able to address the complex issues that arise – the balance between private rights and the public interest and the fact that property rights are not simply economic rights, a fact that is difficult – if not impossible – to capture when courts enforce property rights guarantees. In relation to this last point, it is worth observing how members of the Victorian Parliament recounted their childhood and adolescent experiences with firearms and the importance of firearms to the identity of rural people and some ethnic communities; some referred to firearms that they had owned for a long period and with which they had strong associations or which were held as decorative objects;

¹⁹ See Fischel, above n 13, who argues that the risks are much greater in relation to local government.

²⁰ 18 June 1996, 782-783.

²¹ Gould, Council 25 June 1996, 704.

²² Hall, Council 25 June 1996, 717.

others bridled at the intrusion on the person and property of people who had not committed offences, especially as law abiding gun owners were likely to lose their registered weapons whereas unregistered weapons were unlikely to be surrendered or subsequently located and forfeited.²³ Such important considerations would be extraordinarily unlikely to figure in *judicial* consideration of the appropriateness of compensation under a property rights guarantee.

2. The courts have not been able to reach satisfactory and stable interpretations of the property rights guarantee

Jurisprudence on guarantees of property rights is almost universally incoherent. The lack of clarity in judicial decisions regarding the interpretation of the acquisition of property provision in the Commonwealth Constitution (s 51(xxxi)) is a good example.²⁴ This problem comes about largely because the courts are attempting to compress the most highly contested political questions into propositions of law. These political questions invariably revolve around the relative value to be assigned to individual rights and the general welfare of the community. These questions do not tend to be amenable to legal solutions.

Further, the concept of property is unstable and resists precise definition. Much of the complexity in interpreting property guarantees stems from this reality. The potential to argue that any economic advantage is a form of property creates the possibility of arguing that any regulation at all amounts to an acquisition of property that requires compensation. As Nedelsky argues:

Courts should not hold the legislature accountable on the basis of what property “really is”, as is likely to happen if property is constitutionalized. It is not appropriate to take the centrally contested questions of distributive justice, of the allocation of power, of the inevitable trade-offs entailed in policy areas such as environmental protection and insulate them from democratic debate. On the contrary, the institutions should be designed to maximise popular comprehension and deliberation on these issues.²⁵

The definition and limits of property and the responsibilities entailed by ownership are, and should remain, the subject of political deliberation.

A strong property rights guarantee would not reflect Australia’s political traditions

Australia’s legal/political history is made up of a combination of liberal and social/democratic elements. Its liberal tradition is of social liberalism (rather than libertarianism), in pioneering redistributive and regulatory legislation – including state pensions and a minimum wage.²⁶ A stringent guarantee of personal property rights does not fit within this tradition.

²³ See generally Victoria, *Parliamentary Debates*, Legislative Council, 25 June 1996, 702–21; Victoria, *Parliamentary Debates*, Legislative Assembly, 18 June 1996, 781–811.

²⁴ See Simon Evans, ‘When is an Acquisition of Property Not an Acquisition of Property?’ (2000) 11 *Public Law Review* 183, 184.

²⁵ Nedelsky, above n 18, 431.

²⁶ See generally, Marian Sawer, *The Ethical State* (2003).

The existing common law presumption that the legislature does not intend to take or limit property rights without compensation provides appropriate protection

In *Durham Holdings v New South Wales* (2001) 205 CLR 399 at 414, Kirby J remarked:

[W]ithin the Australian legal system, courts will presume that legislation (federal, State or Territory), or subordinate laws made under such legislation, do not amend the common law to derogate from important rights enjoyed under that law, except by provisions expressed in clear language... The presumption, rule of construction or imputed intention certainly applies to the taking of property without compensation.

That statement reflects a longstanding principle of the common law. As *Durham Holdings* illustrates, this presumption does not provide an overriding protection of property rights. It can be displaced by clear statutory language. Parliament has legislated in the context of this presumption for many years.

It might then be argued that there is no harm in restating this presumption in a Charter of Rights. However, it seems to me that there is a risk in so doing. Inevitably, because of the context, such a provision if included in a Charter of Rights would be regarded as giving the courts a stronger interpretive mandate to read in a right to compensation that the legislature had omitted.

Experience in other jurisdictions, notably New Zealand and the United Kingdom, has shown that the courts are capable of taking a very wide view of a purely interpretive role conferred by a human rights Act, notwithstanding how narrow that role might have been intended to be. In *Ghaidan v Godin-Mendoza* [2004] UKHL 30; [2004] 2 AC 557 at [32], the House of Lords held that s 3 of the *Human Rights Act 1998* (UK) might require the courts to interpret legislation in a way that departed from the *unambiguous* meaning that the legislation would otherwise bear and thus that the court can “modify the meaning, and hence the effect, of primary and secondary legislation”. This would clearly allow the courts to read in a right to compensation that the Parliament had omitted.

For these reasons, a property rights guarantee should not be included in a Victorian Charter of Rights.

However, the absence of a property rights guarantee could provide a focus for opposition to a Charter of Rights

Failing to provide recognition within a charter of rights of property-related rights would be conspicuous and could potentially galvanise opposition to such a Charter.

In its 1987 report on the legislative protection of human rights, the Victorian Legal and Constitutional Committee stressed the importance of public support for any proposal to protect rights through legislation:²⁷

²⁷ Victorian Legal and Constitutional Committee, *Report on the Desirability or Otherwise of Legislation Defining and Protecting Human Rights*, April 1997.

Any proposal for the better protection of human rights which did not command general support would inevitably become the subject of intense mistrust by a large section of the community, and rather than comprising a unifying assertion of common values, would become the subject of intense political division and controversy. In short, what would be achieved would be the increased politicization of questions of human rights, a position which the Committee would view as being little short of disastrous.

The dissenting report pointed strongly to the omission of property rights from the Committee's proposal and painted it as a partisan proposal at odds with Australia's free-enterprise system.²⁸ Property rights are an important element in the Australian system. While a right to compensation for legislation affecting property is not a human right and would be institutionally inappropriate, it is appropriate to recognise property rights in a charter.

An appropriate model for recognising property rights in a charter

An appropriate model for the recognition of property rights within a charter of rights would have five elements:

- It would provide that property is defined and regulated by law.
- It would provide that the Parliament may make laws defining and regulating the rights *and responsibilities* of ownership.
- It would provide that everyone²⁹ has a right to own property alone as well as in association with others, without discrimination on grounds including race, colour, sex, language, religion, political or other opinion, national or social origin, birth or other status (see ICCPR art 2.1). (Equally, it would provide that the enjoyment of other rights is not to be denied on grounds of property (see ICCPR Arts 2.1, 24.1, 26.1).)
- It would provide that no one is to be deprived of their property other than in accordance with law (see UDHR Art 17 and compare s 1 of the Canadian Charter) (where law includes the common law and the prerogative).

Defining a right to property in these terms ensures that the institution of property is recognised, protects against arbitrary deprivation, and acknowledges the reality that Victoria is a market economy.

The drafting of any property rights clause should be undertaken with scrupulous attention to overseas approaches

Constitutions and charters of rights in different jurisdictions take varying approaches to the protection of property rights. In determining how such rights should be

²⁸ Ibid 223-225.

²⁹ This would need to be subject to reasonable regulation, for example to allow laws about property rights of minors and the mentally ill.

protected (if at all), drafters should be aware of these different experiences and how each brings with it a different range of consequences. It is necessary to maintain an awareness that particular terms and concepts – property, deprivation, expropriation, acquisition, public interest – have all acquired particular meanings (and sets of meanings), and that this will influence the way in which a property rights provision will be interpreted.

I would be very happy to discuss any of these issues or other related issues with the Committee if that would be of assistance. Thank you again for the opportunity of making this submission.

Yours sincerely

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APPENDIX: Provisions Protecting Property Rights

s 51(xxxi), Australian Constitution

The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to:

...

(xxxi) The acquisition of property on just terms from any State or person for any purpose in respect of which the Parliament has power to make laws:

s 25, Constitution of the Republic of South Africa 1996

25. (1) No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.

(2) Property may be expropriated only in terms of law of general application

a. for a public purpose or in the public interest; and

b. subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court.

(3) The amount of the compensation and the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances, including

a. the current use of the property;

b. the history of the acquisition and use of the property;

c. the market value of the property;

d. the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and

e. the purpose of the expropriation.

(4) For the purposes of this section

a. the public interest includes the nation's commitment to land reform, and to reforms to bring about equitable access to all South Africa's natural resources; and

b. property is not limited to land.

(5) The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.

(6) A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.

(7) A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress.

(8) No provision of this section may impede the state from taking legislative and other measures to achieve land, water and related reform, in order to redress the results of past racial discrimination, provided that any departure from the provisions of this section is in accordance with the provisions of section 36(1).

(9) Parliament must enact the legislation referred to in subsection (6).

s 1, Canadian Bill of Rights Act 1960

It is hereby recognized and declared that in Canada there have existed and shall continue to exist without discrimination by reason of race, national origin, colour, religion or sex, the following human rights and fundamental freedoms, namely,

(a) the right of the individual to life, liberty, security of the person and enjoyment of property and the right not to be deprived thereof except by due process of law;

(b) the right of the individual to equality before the law and the protection of the law; ...

s7, Canadian Charter of Rights

Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Article 17, Universal Declaration of Human Rights

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.

s 14, German Basic Law (*Grundgesetz*)

(1) Property and inheritance are guaranteed. Their content and limits are determined by statute.

(2) Property imposes duties. Its use should also serve the public weal.

(3) Expropriation is only permissible for the public good. It may be imposed only by or pursuant to a statute regulating the nature and extent of compensation. Such compensation has to be determined by establishing an equitable balance between the public interest and the interest of those affected. Regarding disputes about the amount of compensation, recourse to the courts of ordinary jurisdiction is available.

s 43, *Irish Constitution*

1. 1° The State acknowledges that man, in virtue of his rational being, has the natural right, antecedent to positive law, to the private ownership of external goods.

 2° The State accordingly guarantees to pass no law attempting to abolish the right of private ownership or the general right to transfer, bequeath, and inherit property.

2. 1° The State recognises, however, that the exercise of the rights mentioned in the foregoing provisions of this Article ought, in civil society, to be regulated by the principles of social justice.

 2° The State, accordingly, may as occasion requires delimit by law the exercise of the said rights with a view to reconciling their exercise with the exigencies of the common good.