

DISCUSSING CONTEXT AND PERCEPTION OF PUBLIC AND PRIVATE LAWS AND THEIR IMPACT ON SOCIETY

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ABSTRACT

Dating back to ancient times there seems to have been a need to bend or even remove the rules of private law concerning the category of goods which are intended for usage by the entire population. These goods are considered of utmost importance for society, they have gradually undergone certain restrictions in order to not be diverted from the purpose they serve, that is forming the public domain. The interest in this matter among specialists which are outlined in the administrative guidelines, is the fact that the public institution itself does not show merely a theoretical character, but a practical one. Its associations exceed the concern of what is considered legal and enters into the socio-economic and political realms. Given that the goods included in the public domain are separate from the rest of the goods in a society, in that their legal status requires certain features, which is supported in the administrative guidelines, but consequently preserved in the normative acts adopted over time. Due to this fact, it is absolutely imperative that the new administrative guidelines set in place for the public domain to be concise, leaving little to no room for interpretation and most importantly the have to be in line with the constitutional rights for individuals. By achieving this aspect, public and private laws can no longer be misinterpreted or taken out of context in order to benefit the state or the property owner. Since the introduction of the public domain, laws have been conceptualized on the foundation of the Romano-Germanic civil law system, later revised and adapted by the Napoleonic regime and finally re-interpreted and implemented by each country separately based on their socio-economic infrastructure. Overtime these laws seem to have lost their essence, laws that were initially meant to protect individual rights and benefit the public, have been taken out of context and made into laws that mainly benefit the state. This paper aims to examine the impact of these administrative laws on society as a whole and propose some ideas to rectify and improve the current situation of the public domain.

Keywords: context, public domain, administrative laws, constitutional rights.

Introduction

What is context? How does it effect the meaning of a proposition or a situation? Context is defined as: the parts of a written or spoken statement that precede or follow a specific word or passage, usually influencing its meaning or effect; or the set of circumstances or facts that surround a particular event, situation. (dictionary.com) Taking this into account, it is abundantly clear that saying or doing something in a certain situation can be misconscued if it is not utilized in the proper context. Throughout the years, the concept of the administrative domain and its laws relating to the division of the public and the private sectors have been under continuous scrutiny and constantly debated, especially when it comes to context. From the inception of the idea of the public and private domains, there have been numerous changes in the constitutional guidelines when refering to property or goods, either movable or immovable and their delimitation, i.e. which goods belong to the private sector and which belong to the public.

As a general rule, a public good is regarded as an object or an estate which serves a purpose for the community and can be used on a daily basis by the entire population, such as public parks, traffic lights, national roads, cable TV, radio, etc. These are just some examples of public goods which are non-excludable, meaning that more than one person at a time can benefit from the use of these goods, without creating a rivalry. There are still some public goods which are controlled by private companies, mainly websites and TV stations, because they can be regluated. Other public goods, like public parks, the education system, fresh air, clean water, etc. cannot be regluated as well and are thus administrated by the government. These government regulated public goods run the risk of being over used and in time becoming damaged goods due to the lack of funds invested, funds which should come from citizens, yet unfortunately some chose to ride for free, a phenomenon which has a significant effect on the public sector and its plans for modernization.

Due to the fact that even after years of debate on this subject, even to this day there really isn't a clear and concise defintion or delimitation of what goods are considered public and which are considered private, with the state being the only entity who can decide which goods are considered which. In accordance with this statement, you can see how easy it would be to take one of these definitions out of context and use it to your advantage. Ever since the first constitutional guidelines, the notion and application of the public sector has been the subject of many theories, there seems to be one constant though, the fact that the government has the final say in what is considered to be abusive or fair. From eminent domain laws and taking away private property for public use, to high ranking government officials having different rights than ordinary citizens. A few instances on how context is important in the understanding and application of constitutional rights.

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This paper aims to further examine the public laws imposed by governments, which may be interpreted differently by individuals depending on the context in which they are used in, what purpose they are meant to serve and who benefits the most from them.

1. The public domain – Ambiguous regulations

The Romans can take most of the credit for conceptualizing the idea of the public domain. Although the first applications for the public sector were introduced around the the 18th century, they were based on the guidelines of Roman Law. The Romans managed to clearly establish the rights of the population by categorizing patrimonial goods into two public and private property. These goods were clearly delimited and respected by the the population and the state alike. It wasn't until years later where many theories would arise about the true notions of the public domain and how it can be used to regulate the population and essentially the economy. (Johnston, 1997)

It is widely considered that the basis of the modern day public sector is based on the laws and guidelines conceptualized in 1804, after the French Revolution by the Napoleonic Code, or the French Civil Code as it is known today. The Civil Code contained the rights belonging to individuals, the rights of individuals when it comes to owning objects or property and the right of the state in determining and regulating all these laws. These laws were later implemented all across Europe, while some countries were concerned with the establishing a fair administration based on civil rights, others took these laws out of context in order to benefit the government officials directly or the state (in thier personal point of view) rather than soiety as a whole. (Encyclopaedia Britannica, 2017)

As mentioned above, the state has and will always have, atleast from what we've seen so far, the power to decide which goods belong to which sector and therefore the ability to pass laws which can be used to their advantage. These rights have been revised and republished many times over the years, each time trying to create a less vague explanation of the public domain and its components. Due to their ambiguous nature, public laws can be taken out of context and applied to the situation in which individuals or the state find themselves in. Although private property laws have been administered correctly guaranteeing fair rights for private ownership, the government can basically strip these properties away from society and claim them as public property, promoting their use in the context of social welfare and economic growth, while society can preceive these alterations as being insignificant and abusive. (Toula and Lisby, 2014).

2. Public laws and regulations – abusive or fair?

One of the most common examples of government abuse of power is the ability to collect taxes. Dating back to ancient times, the state has always had the power to solicit taxes for privately owned goods and property as well as taxes in order to benefit from public goods, such as public transportation, road taxes, etc. These taxes came into play further down the line in history, but were still somewhat based on the same principles, the principle of economic development by extracting funds from the private sector and dumping them into the public sector.

Nowadays, apart from the purpose of increasing public revenue, taxes are imposed in order to affect the manufacturing and supply of goods, as well as their consumption, all the while striving to ensure the well-being of the society by way of promoting economic development.

The basis of public income are taxes. Tax obligations allows for the deviation of funds from the formal or taxed sector to the non-taxed or informal sector, taxes imposed on various sectors of production and manufacturing are implemented in order to increase the overall economy of the country. A notion which is abundantly prevalent in under developing countries, due to the lack of foreign investments. (TheBlaze, 2016)

Another example of ambiguity or abuse of power has to do with the issuing of copyright laws. Dating back to 1710, when the first Copyright Act was introduced, known also as the Statute of Anne, a statute which granted the government rights over published materials after the expiration of the copyright term. This basically meant that the author and the publisher had the sole rights to their works which was valid for a period of 14 years, (Berne Convention for the Protection...n.d.) with the option of renewal after this period has expired, after which it became public property. Initially this law was well received, some even applauding a new constant in the previously ill-defined book trading laws and almost everyone believed that it would increase the accessibility of the public to knowledge. As we have noticed so far, with new laws come new interpretations, here we can refer to how the Copyright law was perceived by the publishers, especially in regard to book deposits, where many publishers decided to ignore this clause and not deposit the printed books, simply because it would have been much cheaper for them to do so. Not complying with this clause came with a penalty of up to 5 pounds per book, yet publishers chose to take this law out of context and claim that the clause referred only to registered books, another instance of benefiting from the ambiguity of these laws and leaving room for interpretation.

The issue of misinterpreting laws was significantly reduced with the application of the Berne Convention in 1886. Regarded as an international convention established to protect copyright laws for any member of the convention, including all artistic works from books to photographs to films. The convention stated that all works were

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protected by copyright laws even after the artists' death, for a period no shorter than 25 years (photographs) and no longer than 50 years (books and films), with the option of renewal. Copyright laws have suffered alterations throughout the years, but the right of renewal or refusal to sell privately owned goods of public interest is still controlled by the state. A modern example of this issue is the ongoing debate in regard to Constantin Brancusi's sculpture „The Wisdom of the Earth”, a sculpture considered to be a Romanian national treasure. The sculpture was first sold in 1911, then abusively confiscated by Ceausescu and the Communist regime in 1957 who claimed the rights to the sculpture now belong to the state, even though by law it should have been returned to the family of its original owner, which it finally did in 2008 after a lengthy legal battle. In 2014 the sculpture was put up for sale by the Romascu family, seeing as how the artwork is considered a national treasure, Romania had the right of first refusal to sell the sculpture, which was initially instated by the state, but this pre-emptive right, according to the constitutional guidelines is only valid for a period of 30 days, if the state doesn't engage in negotiations or attempt to buy the artwork back, the rights are automatically transferred back to the owner. (Badea, 2016) After numerous negotiations extended over a two year period, the state managed to bring down the selling price of the sculpture to 11 million euros and in 2016 the it organized a national campaign to buy back the sculpture. Citizens had the right to donate 2 euros via sms which went towards the national fund, so basically the state benefited on two levels, once from collecting funds from tax payers, a portion of which was allocated towards this issue, and twice from private donations.(Badea, 2016) Personally, seeing as how the sculpture cannot legally leave the country, it would be a waste of funds to try and buy it back, when the funds could have been used towards the public budget in order to build a hospital or a school for example or even modernize roads or highways, events that would benefit the entire population or atleast a larger portion than spending that money on a sculpture that will eventually end up in some Romanian museum anyways.

Last, but certainly not least on the list of abusive government laws, is a law that has been enforced pretty much all around the world, however not to the abusive extent in which the Romanian socialist regime implemented it and that is the confiscation of private property by the state, commonly referred to throughout Europe as expropriation. As municipalities begin to undergo expansion and assume developments to roads, communications, power and sewer lines, etc. the state is required to obtain or procure the right of entry to private property. The government uses this law as a pretext for confiscating, not just immovable property (buildings, land, etc.) but also movable goods that can be used for public interest (condemnation), stating that if the laws of the eminent domain weren't in effect than the proficiencies of the public substructure would ultimately grow to be insufficient in keeping up with public needs. The power of expropriation laws permits the state to procure private property for public purposes, to build schools, hospitals, parks, etc., if and only if they

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can provide a fair reimbursement to the owner of the property. In theory this law seems to be somewhat fair, you give up a piece of land which will be used for public benefit and as a compensation you will receive land, of the same value, somewhere else. Here is where the abusive aspect comes into play, although the state was required to fairly recompense the owners of the confiscated properties by providing assets of equal value in return, it was also up to the state to evaluate the property, which was controlled by public officials, so basically the government had the final say in all matters which had to do with an individual's private property and if you didn't concur with their evaluation or the location of your newly acquired property, there was pretty much nothing you could do about it. (Simiz, 1999)

Even though the use of the eminent domain laws are beneficial to society, because as the population of a country expands so does the standards of that population and it is obvious that the public infrastructure should cater to those needs. However, letting the government, who is the same entity that benefits from the acquisition of that property, be the only authority in the evaluation and relocation of the property is frankly unconstitutional. Nobody is saying that private property shouldn't be able to be used for public purposes, as long as the infrastructure of the community requires it and as long as fair compensation is provided. Nowadays, private property owners have more rights than in the past meaning that they have the right to disagree and refuse the evaluation of the property in condemnations proceedings, with the help of an attorney and an appraiser the landowner can solicit what they consider as being fair compensation. In general, the state is only permitted to invade an individual's rights of property to the degree that that specific property is essential in accomplishing a public purpose. (Fulglsang and Pedersen, 2011) In what context? And who gets to decide if that property is indeed essential to serve a public purpose? Obviously the state! So, in actuality private property rights are essentially useless, because if the state claims to "need" your property for public purposes, for all intents and purposes you're out of luck, because as history has shown so far, what the government wants it more than often manages to get.

Conclusions – suggestions and applications

It has been made abundantly clear that throughout history, public as well as private regulations have been contorted, taken out of its original context and re-adapted to apply to the current situation in a beneficial manner. The public domain was first conceptualized with the notion of economic growth and sustainability, for a prosperous nation, or atleast that's what the initial creators had in mind. It would be completely hypocritical to assume that even in ancient times, individual greed and the lust for power weren't factors which influenced the passing of public laws, but as time passed the standard of wealth and power changed, thus changing the needs of the public and along with it increasing the standards of state officials.

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Given the purpose of implementation for which the public domain was created, we can say that it is made up of movable or immovable assets, public property, designed for use by all members of society, either directly or through means created for their administration, in order to meet social needs.

According to the opinions expressed within the guidelines, the private sector is viewed as the second component of the administrative domain, including movable and immovable assets, whose administration is subject to the rules of common law, unless the law instructs otherwise. Administering the principles of the communal or private law, does not however exclude certain features that differentiate the assets belonging to private individuals from those that belong to the public.

It is obvious that exploiting the profits which can be generated from the private domain is extremely important for the national economy and this particular area can benefit from budgetary resources.

Using the excuse that goods will be used for public purposes in order to intrude on the rights of individuals and their private property does have a certain appeal, but it is a temptation which should not be acted upon instead resisted. Looking back on past laws which were taken out of context by the government and used abusively for personal gain, it is that same government who holds the responsibility of compensating the victims. Where as in the case of existing or imminent misapplications of laws, the government should also take responsibility in attempting to alter them.

So, how can we get a jump on government officials who take laws out of context and stop them from passing intentionally ambiguous laws? Maybe by making sure that laws are clearly defined leaving no room for interpretation would be a start, or having public officials who have no affiliation to a political party run for election, that way less power would be granted to local leaders. Allowing the public to finance campaigns for officials they consider has their best interest at heart, can also be used as a way to escape corruption, that way candidates can focus on important issues and not raising funds for his campaign or accepting donations from investors who want to push their personal agenda. All these options will essentially necessitate the structuralizing and reorganization of the public institution, it will require the upmost support and cooperation from political parties along with the allocation of funds from already scarce public resources, but most importantly the people need to observe the fact that elected officials put the collective interests of society above their own interests.

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