

## **The Asset Forfeiture Unit – a warning from history**

Headlines trumpet the activities of the Asset Forfeiture Unit in confiscating property. In the year 2001 we are asked to believe that after centuries of crime-fighting a new, more effective and efficient method of fighting crime has been found. Seize the assets of the ‘criminal’!

The confiscation of property by governments has led to atrocities in the past, yet there was hardly a protest when the South African government started down the same perilous route.

Confiscation by government of property of what *it* defines to be criminals is not at all new. The Asset Forfeiture Unit is simply the reintroduction of a practice societies abolished after witnessing and enduring centuries of institutionalised theft, murder and genocide. In reintroducing the practice, we appear to have forgotten the lessons of history: Whenever government takes property, it is taken by people – government employees and agents. These people soon acquire a vested interest in the confiscation of property. In confiscating property there is a dual aspect: Government and individuals who benefit through the exercise of government power. They corrupt each other.

History contains many examples of governments taking the property of others because of supposed ‘crimes’. Corruption and murder often followed. Consider some examples:

### **Persia**

In about 460 BC Haman, akin to a prime minister, went to King Xerxes and told him of a people (the Jews) acting *unlawfully* in his kingdom. He recommended that they all be put to death. To help the king to make the ‘right’ decision Haman said he would put an amount of ten thousand talents into the royal treasury for the benefit of the agents who murdered the Jews – so in fact for the benefit of Haman himself. This was about two thirds of the Persian national budget. The king was not fooled about the money – he had doubts if he would ever get a cent of it – so he told Haman to keep the money, but to go ahead and kill the Jews anyway. Now where did Haman plan to get the money? In his instructions to his agents, he said of the victims: “Plunder their goods”. The driving force of the genocide was the theft of private property – and the nominal reason was state-defined, ‘unlawful acts’.

### **Spanish Inquisition**

The Jews were a minority in Spain and minorities are always soft targets for institutionalised theft. In 1492 the Jews were expelled by statute. They could leave but could take neither gold nor silver with them. This was an early, crude but effective form of foreign exchange control used again by the Nazis during World War II. The purpose was of course to expel the Jews but to retain the bulk of their assets. Some estimate that as many as 800 000 fled, and most suffered enormous hardship and death. There was, however, a loophole in the statute: It applied only to Jews. Jews could avoid the statute by converting. To many this was the only practical route to save their lives, so many converted and remained in Spain. This did not suit the crown, which wanted property much more than religious conversion, so it set up the Inquisition. If it could ‘prove’ that a conversion was not genuine, then the property of the heretic was confiscated to suit the state’s hidden agenda. Ostensibly the Inquisition was a tribunal to combat ‘heresy’, itself an ill-defined crime. It became Spain’s most well-known institution for murder and theft. The people of the time were under little illusion about its true purpose. So, for example, Pope Sixtus IV said:

...the Inquisition has for some time been moved not by zeal for the faith and the salvation of souls but by lust for wealth...

Of course Sixtus did nothing about it. The common people of the day had little doubt either. In 1501 a woman of Aranda de Duero trembled at the news of the coming of the Inquisition. A more worldly-wise man reassured her, "Do not be afraid of being burnt, they are only after the money". Indeed, after the Inquisition had come, murdered, and confiscated the property of many of the wealthy of the town, a resident pointed out that: "Very many of those arrested and burnt by the reverend fathers were arrested and burnt only because of their property".

The Spanish Inquisition was motivated by the confiscation of private property. It resulted in wholesale and brutal murder of large numbers of innocent people. It was led by government officials who stood to gain by the use of state power and they themselves were corrupted by such power.

### **Nazi extermination camps**

A third example involves the millions of people put to death in Nazi extermination camps. These camps were commanded by only four men. One of these was Franz Stangl who commanded Treblinka. He was eventually caught, charged and convicted of the murder of 900 000 people. In 1971 he was interviewed by Gitta Sereny, shortly before his death. She published the interview in a book entitled *Into that darkness – from mercy killing to mass murder*. There are two inevitable questions that must be asked of anyone who presided over the murder of nearly a million persons: Why and how? Why murder these people and how can any person reach a point where he can murder a million persons?

She put the question to him: Why?

Sereny: What did you think at the time was the reason for the extermination of the Jews?

Stangl: They wanted their money

Sereny: You cannot be serious!

(Stangl was bewildered by my reaction of unbelief.)

Stangl: Have you any idea of the fantastic sums of money involved?

Sereny: But they were not all rich. At least 900 000 Jews were killed in Treblinka – and more than 3 million altogether on Polish soil during the existence of the extermination and concentration camps. There were hundreds of thousands of them from the ghettos in the east, who had nothing ...

Stangl: Nobody had nothing; everybody had something. Even those from the extreme east of Poland, the poorest, brought something.

The answer to the question "how can a person commit these murders?" was "conditioning". Stangl started his career with Hitler's euthanasia programme, the so-called programme for the destruction of 'worthless' lives. In the end he could no longer see what he was doing for the evil it was. We all give up freedom in much the same way, little bits at a time. In the end we do not even realise that we have lost it until it is too late. Eternal vigilance is indeed the price of liberty.

### **The South African Asset Forfeiture Unit – learning from history**

The Asset Forfeiture Unit was established during the early part of last year. Despite the fact that it was ostensibly formed to fight organised crime, and the unit's spokesmen continue to announce that it is after crime bosses, this is not so. The cases involved are run-of-the-mill fraud causes. Fraud for example by bookkeepers against companies such as Investec and Continental Tyres and the usual insurance scams. In less than a year it has seized R200m of assets. It is estimated that "R135m (65%) is likely to be returned to the victims (sic), depending on the orders given by the courts granting the forfeitures". Those are the estimates – the figures to date are not as good. Forty-three orders had been granted by February 2001 and forfeiture proceedings commenced in 30 instances, involving R23m.

Of this only R7,5m (33%) will be returned to the 'victims' of crime. The balance 67% will be retained by the state for 'crime prevention'. Who or what is meant by 'crime prevention' is not said, but it seems safe to assume that crime prevention means retained by the Asset Forfeiture Unit and the structures supporting the unit.

A case that surprised everyone was the seizure of the assets of The Ranch – an upmarket brothel. Prostitution has in recent years become rife and the seizing of the assets of a brothel by a unit formed to fight organised crime was somewhat unexpected, particularly when no action has been taken against other well known sex clubs. There are no reports of a concomitant clamp-down on prostitution and sex crimes. Even after the media pointed out that a well known hotel was being used to trade sex, there was no report of it being seized. It is clear that the Ranch was singled out for special treatment. Examining the economics of the Asset Forfeiture Unit, this is not surprising. Prostitution is a so-called victimless crime. There are no assets to return to the owners and the state can therefore keep all of the assets 'for the prevention of crime'.

### **Conclusion**

The clear lesson of history, as we have seen, is that officials who are responsible for the confiscation of property must not benefit from such confiscations. If South Africa wishes to confiscate property of criminals, it should learn from history to ensure that not a single cent finds its way into the pockets of anyone involved in the confiscation of the property. Only unlawfully acquired property should be subject to confiscation. Property seized should either be returned to its rightful owner (because they are owners not because they are victims of crime), destroyed (as in the case of guns and drugs) and the balance sold by public auction and an equivalent sum withdrawn from circulation. The state has no more claim over the assets used in a crime than the original thief. For it to acquire these assets is for it to become the great crime boss. For the state to retain the assets is to institutionalise corruption.

### **Further reading**

- Boudreaux, Donald J and Pritchard, Adam C (1998) 'Civil forfeiture as a tax' in Shugart *Taxing choice – the predatory politics of fiscal discrimination*, Transaction Publishers, San Francisco.
- Kamen, H (1997) *The Spanish Inquisition – an historical revision*, Phoenix Press (revised edition of the 1965 work by Kamen), London.
- Sereny, Gitta (1994) *Into that darkness – from mercy killing to mass murder*, Pimlico, London.
- Wollstein, Jarret B (1993) 'The government's war on property' 43 *Feeman* pp.244-52, Irvington-on-Hudson.

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