

UNDERGRADUATE LAWS BLOG

Regulating destruction

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Hi, this is Rick Canavan the Module Convenor for Commercial Law and you're listening to the second blog piece for this academic year; regulating destruction.

First of all, I want to talk about what I mean by regulating destruction. We live in a world where people are ever more aware of the waste that we produce and how it's disposed of. As we cast more and more light on this, what we see are some very disturbing trends. What we see, for example, in relation to food waste, is that a third of all food that is produced is never actually even consumed.

This is not just the case with food, this is also the case with a lot of other consumer products as well; whether it's fashion and textiles, consumer electronics or luxury goods, huge amounts of unwanted or unused consumer goods are destroyed before they ever even reach our homes, they simply go unsold. When I say destroyed, let me be clear what I mean by this, this is an active process on the part of wholesalers, manufacturers and retailers to physically remove goods from the market and actively destroy them so they cannot be resold. Quite a dramatic act.

Well, why do they do it? Well, quite simply, on a level, for many of them, if there is no demand for the goods then there may be no other opportunity. Simply to keep them means pain to sort them, and to store them which may be uneconomic, but very often there are other reasons as well. Particularly for more expensive goods. Manufacturers and retailers absolutely must protect the integrity of the brands that they've sought so hard to build. It's very difficult to sell very expensive goods in one part of your store when in another part you're having to discount them very, very heavily indeed to sell them at all.

There's another problem, many businesses, particularly in the luxury sector, have built very sophisticated and closed supply chains. There are almost no third parties either supplying them or manufacturing on their behalf. The reason for this is the need obviously to protect the quality and integrity of the goods themselves, but also to protect the significant intellectual property that's built up in the brand and in the goods.

There's a real risk that if you allow those goods to simply enter into a grey market where they're being sold at a discount, not only does that contribute to the denigration of the brand, but it also puts a lot of that intellectual property in the hands of other people. We can see that from a purely commercial perspective, destroying goods, even though that may seem extreme, may be justifiable.

Let's have a look at one manufacturer of luxury goods who came to the headlines in the UK last year as a result of its ever increasing reliance on destruction and that's Burberry. Burberry is a very well-known manufacturer of fashion and luxury goods, and they sell them throughout the world; a well-known British brand. In fact, so successful have their goods become, but over 10 years they've almost tripled their sales reaching £3 billion, so around \$4 billion last year.

However, even a successful company like Burberry has an amount of unsold goods every year. Of course, every year it's launching new collections of fragrances and clothing accessories and so on. Rather than heavily discounting them or risk them entering the grey market, or risk their intellectual property being used by others potentially making it easier to copy making that

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garments and things easier to copy, they have turned to burning, actually burning, an increasing amount of their unsold stock.

Between 2012 and 2017, Burberry burned almost £90 million, so \$120 million or more, of merchandise. They've been ever more reliant on burning nearly £30 million worth of clothing perfume and accessories in 2017 alone. Of course, it's not just Burberry, it would be unfair to suggest that this is an isolated incident. Of course, it isn't. Every year billions of dollars of unsold televisions, smartphones and consumer electricals are simply thrown into landfill or also burnt.

A couple of years ago, the French luxury goods conglomerate, Richemont, repurchased \$350 million worth of unsold luxury watches. Now, of course, the precious metals in those might be capable of being salvaged and reused, and there may be an economic case to do so, but in many cases many of the components will simply be destroyed and the materials lost forever.

Let's move on to the next slide and look at the effect of all of this. Because, of course, while we might not see it happening, there is always an effect to destruction on this scale. In disposing of unwanted consumer goods of all types, we're creating pollution and waste in two places. First of all, of course, in the manufacture of those goods where we're investing energy, probably producing climate-changing greenhouse gases, and, of course, taking resources out of the natural environment at the same time.

Then, of course, if those goods are never used or sold, we're then adding to the waste stream, we're adding to landfill, we're adding to air pollution, potentially where those goods are then incinerated. With goods like consumer electronics going to landfill, not only are we creating a waste problem that's going to last for centuries, but we may also endanger, for example, groundwater supplies and air quality for many, many, many years. The destruction then of unwanted and unsold consumer goods before they ever reach the hands of consumers is clearly a rather dark and unpalatable consequence of a consumer society, but what exactly is to be done with it?

It seems as if the world, in general, is waking up to some of the problems with waste, single-use plastics, for example. The solution there is, by and large, to regulate, to prevent the manufacture of those items, or to educate people better, to reduce their use, and to recycle them more. What do we do when people are destroying goods which they have a legal right to destroy? Looking at a case study from France. Earlier this year, the French press covered a story which showed that every year France disposes off €900 million worth of unwanted, unused consumer electricals.

French Prime Minister, Edouard Philippe, called this a waste that defies reason. Indeed, he's right. Just think about the rare earth metals, the plastics, everything that has gone into those goods, including the energy, and all of that is never to be used. In response to the public outcry around this enormous waste, it is, indeed, of course, a waste that defies reason, Prime Minister Philippe has agreed to put before Parliament a law that will require that all unwanted consumer electronics are either recycled, repurposed, or simply given away by 2023. That may seem like exactly the kind of decisive action that we need in response to the environmental challenge, that such a large amount of potentially hazardous waste represents.

Let's just take a moment to think about what that means from a legal perspective. As we discussed in chapter one of the study guide, there are two main interests that a person can have in goods. One of them is mere possession, and the other is ownership. There are 11 features that Honore identifies as being the main indicators of ownership. I won't go into those in detail, but what is absolutely clear is that for the most part, the ability to use goods as the owner sees fit, which includes the rights to exhaust or destroy the good, if not paramount, is certainly one of the most prominent of those features. Anything that we do to try to limit the right of the owner to exercise that right to destroy the goods is in effect, a regulation of their ownership.

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Now, let's just think about the impact of that for a moment. Any government or any society that is arranged around the idea of private personal property is going to surely be pretty reluctant to start regulating property rights. One thing that Honore does identify as also being a feature of private property-- sorry, ownership in goods is the prohibition on harm.

In his essay, Honore identifies the example of his car. While, of course, he owns his car, drives his car, do all the things that an owner can do with the car, there is still the prohibition on harm. He can't use it to willfully hurt other people. Always saying that that could also be the case in relation to regulating the destruction of goods. That I can limit the right to use and therefore to exhaust or destroy the goods by reference to a wider concept of harm. That certainly seems to be what the French government are proposing here.

Therefore, it could be something that will begin to see more widely. Undoubtedly, the large scale destruction and disposal of unwanted consumer goods is in no way beneficial to the environment, but that is a much wider and more generalized concept of harm than perhaps the law has admitted to previously. There's also an interesting interaction here, as I've already suggested, between ownership and the wider regulation of the disposal of unwanted consumer goods, or of waste more widely.

Are we perhaps entering a time where we're going to see increasing regulation, or perhaps increasing impingement on individual rights of ownership in order to achieve goals that are in the common good? What does then this tell us about individual legal systems views and real beliefs at their core, about the nature of ownership as a concept? Will this ultimately lead us perhaps down to a different or varied concept of ownership where individual rights in goods, and particularly rights to destroy them, are perhaps subjugated under a much wider concept of harm, particularly where that harm is environmental and may damage the world at large? I think it's an interesting point, and I hope it's something that you found interesting as well.