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The Full Context: Eminent Domain

Too often, political debates fail to consider all of the alternatives. But if we are going to make rational and informed decisions, then we must consider all of the alternatives, as well as the pros and cons of each. We must consider the full context. Eminent domain serves as an example.

We are often told that, without eminent domain, certain types of projects could not be built. Without eminent domain, projects requiring a lot of land, such as pipelines or high-speed rail, could be stymied by individual land owners. Similarly, redevelopment of “blighted” areas might not occur without the use of eminent domain to seize homes and businesses. According to the conventional wisdom, the alternatives are: use eminent domain to seize private property or forgo projects that might have widespread benefit. Other alternatives are seldom, if ever, discussed. But other alternatives do exist. And if we want to consider the full context, then they must be discussed.

In the 1960s, Walt Disney bought nearly thirty thousand acres of land in central Florida without using eminent domain. That is an area twice the size of Manhattan and equal in size to San Francisco. He proved that large tracts of land can be assembled without seizing property. Of course, Disney was an unparalleled visionary, but he demonstrated, in more ways than one, what is possible with a little imagination. If he could assemble thirty thousand acres without eminent domain, why can’t others assemble much smaller parcels without forcing the rightful owners to sell? Why can’t others be creative, rather than resorting to force?

Or consider land readjustment, a concept that has been used extensively in Asia and Europe to redevelop “blighted” areas. In land readjustment, property owners are given a stake in the redevelopment. While the details vary, land owners essentially give up a small portion of their property, which is then used to improve infrastructure and amenities, such as widening roads and creating new parks. Though the size of their property is smaller, its value is increased. They don’t lose their property, and they benefit from the redevelopment.

Or consider the example of Anaheim, California. When the city wanted to see a particular area redeveloped, it explicitly forbid the use of eminent domain. Instead, it loosened zoning regulations (often a primary impediment to redevelopment). When developers didn’t have to beg zoning officials for permission to build, they invested hundreds of millions of dollars into the area. But nobody was forced to sell his property or change its use.

In each of these examples, the rights of property owners were respected and protected. Their participation was voluntary. (I don’t know if every use of land readjustment is voluntary, but land readjustment could certainly be based on voluntary participation.) In each of these examples, creative, rights-respecting solutions were found, and eminent domain was not required. Why aren’t these alternatives discussed?

Certainly, these alternatives come with a cost. The first acre of land that Walt Disney bought in Florida cost \$80. The last acre cost \$80,000. But Disney was a willing buyer, and he bought from willing sellers. Disney was willing to spend the money because he thought it was worth the

investment. If a pipeline company, developer, or other business believes that its plans are truly worthwhile, they should be able to achieve those plans—including the purchase of the necessary land—through voluntary means. We should question any plan or proposal that requires government coercion in order to achieve success.

If a recalcitrant land owner refuses the offer made by a pipeline company, morally the company has two choices: reroute the pipeline or increase its offer. And it is free to judge which makes the most sense (and cents).

If an individual does not want to participate in a redevelopment project, other property owners can still proceed if they think it is worth it. In Anaheim, light industry was allowed to continue in operation in close proximity to new high rise apartments and trendy restaurants. While some people object to such “incompatible” land, Anaheim respected the property rights of owners, and everyone flourished. Those who object to living or dining near light industry are free to live or dine elsewhere.

Eminent domain would eliminate some of these costs. Eminent domain allows projects to proceed by forcing property owners to “sell.” But eminent domain also has a cost—the violation of property rights. And while it is impossible to put a dollar figure on that cost, it is a cost that is ultimately borne by every individual.

Eminent domain means rejecting the principle of property rights. It means that, when government officials decide that your property has a better use, they are justified in seizing it. Which means, your property is never entirely safe from seizure. Never. If government officials believe that your neighborhood could serve a better purpose, eminent domain justifies leveling your home. It happened to Suzette Kelo and countless other Americans.

The right to property means the freedom to create, use, keep, trade, and dispose of material values. It means the freedom to make our lives better. Eminent domain results in much more than the loss of land or a building. It means losing the freedom to attain and use the things that sustain and enhance our lives. If eminent domain can be used to seize someone’s property, then it can be used to seize anyone’s property.

Many people talk about the “benefits” of eminent domain, but they ignore the costs. Many people believe that eminent domain is a “necessary evil,” so long as it is applied to the other guy. But when they are the other guy, they don’t see eminent domain as necessary. They only see it as evil. And it is.

If we are going to have a meaningful discussion of eminent domain, then we must consider the full context. And that means identifying the alternatives to eminent domain, as well as the real costs of seizing private property. We may decide that we can do without a pipeline or a new sports stadium when we realize what it will really cost us.



The Texas Institute for Property Rights provides analysis, training, and resources for legislators, businesses, organizations, and property owners.

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