



February 22, 2018

Principles and Eminent Domain

Calls for new laws regarding the use of eminent domain echo across the state. Rural land owners are finding their property seized to build pipelines and a railroad. In south Texas, property owners are facing seizure to build the border wall.

While stating their support for property rights, many prominent Texas politicians have defended the use of eminent domain—sometimes. Attorney General Ken Paxton, for example, sued the federal government over the use of eminent domain during the Obama Administration, declaring, “Washington, D.C., needs to hear loud and clear that Texas will not stand for the federal government’s infringement upon Texas land and the property rights of the people who live here.”¹ Less than a year later, he defended the use of eminent domain to build the border wall, saying, “It’s a public purpose providing safety to people not only along the border, but to the entire nation.”²

Paxton is hardly alone in his oscillating defense of property rights. Many Texans share his views. Political expediency, not principles, guides their position on eminent domain. It was politically popular to fight the Obama Administration; it is equally politically popular to support the border wall. To Paxton and his ilk, playing to public opinion is more important than principles.

A principle is a general truth that subsumes many specific concrete issues. It is by applying principles that we can determine the long-term consequences of our decisions and actions.

A principle is a general truth that applies to an almost unlimited number of concrete situations. A principle provides us with a rule that we can apply to particular issues.

For example, the principle that stealing is wrong applies to taking any value that one is not rightfully entitled to. This includes a package of gum, a pair of designer shoes, a car, money, or anything else. If, in principle it is wrong to steal something, then it is wrong to steal anything. It doesn’t matter what that thing is, its value, or who the rightful owner is. Stealing is wrong on principle.

Principles provide us with a standard or reference. If it is wrong to steal anything, then we do not need to evaluate each particular situation or temptation. If it is wrong to steal, then we do not need to consider whether we can get away with it, the value of the item, who we are stealing it from, or anything else. It is wrong to steal, as a matter of principle, and all other considerations are irrelevant. If we accept the principle that stealing is wrong, then we don’t steal. We don’t make exceptions and declare that stealing is wrong sometimes.

But if one declares that a principle has exceptions, as Paxton has implicitly done, then he has rejected that principle. He has declared that he will follow the principle when it is convenient, but not as a matter of principle. Such an individual will have to decide each issue on a case-by-case basis.

1. Tom Benning, “Trump’s border wall is fine, says Texas Attorney General Ken Paxton,” Dallas Morning News, March 27, 2017, <https://www.dallasnews.com/news/texas-politics/2017/03/27/texas-attorney-general-backs-trumps-plan-use-eminent-domain-border-wall>

2. Ibid.

He will adopt a different principle—expediency. If he is a criminal, the deciding factor will likely be whether he thinks that he can get away with it. If he is an Attorney General, the deciding factor will likely be what he thinks will be political popular.

Unfortunately, many Texans support eminent domain when it is used against the “other guy,” but they object when it is used against them. They support its use when a recalcitrant property owner poses an obstacle to a project that is in the “public interest.” But they oppose eminent domain when they are the recalcitrant owner holding up a project. They can’t have it both ways. They must oppose eminent domain on principle, or they must accept the fact that they could be its next victim. They must defend the property rights of every individual. To do otherwise is to reject the principle of property rights.

The right to property means the freedom to create, use, keep, trade, and dispose of material values. It means the freedom to acquire and utilize the things that sustain and enhance our lives. Property rights, like all rights, protect our freedom to act on our own judgment, so long as we respect the rights of others to do the same.

Property rights are not determined by what is politically popular. The right to property is as fundamental as the rights to life, liberty, and the pursuit of happiness. Indeed, without property rights, no other rights are possible. Rights protect our freedom to act as we think is best, no matter who or how many may disagree. Indeed, rights protect us from the passions of the mob.

Eminent domain is an assault on property rights. It forces an owner to “sell” his property regardless of his own desires, values, or judgment. He is compelled to trade his property even if he does not want to. Of course, he is paid “just compensation.”

Just compensation is applicable only when all parties to a transaction are willing. In such a transaction, all parties are free to accept the terms and conditions offered by others. If they don’t think that those terms are fair and just, they can refuse to partake in the transaction. But when one party is unwilling, as is the case in eminent domain, the concept of “just” does not apply.

If someone broke into your home, took some of your possessions, and left some money on the counter, you would not consider that “just compensation.” Your property was taken without your consent. You had no voice in the matter. That is how eminent domain operates.

If we wish to defend property rights, then we must do so on principle. It is never proper or moral to violate property rights. Never. Not under any circumstances. Never. Not for any purpose or cause. Never. To claim otherwise is to reject the principle of property rights.

Public declarations of support for the right to property are meaningless if one also believes that property rights can sometimes be violated. The proof is not in the pudding, but in the principles.



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

Voice: 979-429-4447

Website: www.texasipr.com

Email: contact@texasipr.com

Facebook: www.facebook.com/texasipr/