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Eminent Domain: Just Compensation is an Injustice

The Fifth Amendment to the United States Constitution states that private property shall not be taken for public use without just compensation. In the years since, this has been a source of great controversy. What is a public use? And what is just compensation? In this brief, we will examine the latter issue.

To fully understand this issue, we must first understand what is meant by just. Just is the root of justice. For something to be just, it must be fair or deserved. For compensation to be fair, it must be an expression of justice.

We must also understand what occurs when eminent domain is applied. Under eminent domain, a government entity can seize private property and then pay the owner what it—the government—deems is just. While this **might** sound good in theory, it is impossible in practice. And it is impossible in practice because it is actually bad in theory.

Consider the following scenario: A burglar breaks into your home and steals some jewelry. He leaves some money on your kitchen counter as compensation. And let us say that the money he leaves is far more than the jewelry's financial value. Is this just compensation? Many people would think that this is fair.

But what if that jewelry had belonged to your grandmother? It would have sentimental value far beyond the financial value, and no amount of money would be just compensation. You want the jewelry, not the money. It is your property, and you were deprived of it without your consent.

In truth, just compensation is possible only when all of the parties are willing participants. If an individual is unwilling to sell, no amount of money is just, even if the compensation is more than what others think is fair.

Government often uses the fair market value to determine just compensation. But what does this mean? The Business Dictionary defines fair market value as the “price at which a willing buyer will buy from a willing seller when... neither is under any compulsion to buy or sell...” Clearly, this is not the case when eminent domain is applied—the seller is compelled to sell. Fair market value, like just compensation, is simply invalid when applied to eminent domain.

To understand this, consider the contrast between eminent domain and the sale of a property when no compulsion is involved. If the seller does not like the price offered, he is free to walk away from the deal, and he will retain his property. The owner is free to decide what price he regards as fair, and he can use any standard he chooses. If he uses irrational standards, he won't find a buyer unless he changes his standards. But it is up to him to decide what he regards as fair and just.

Eminent domain prevents individuals from acting on their own judgment. They have no choice in whether to sell or not. They have no choice as to just compensation. Their only choice is to fight the government, which few can afford to do, or accept the government's “offer.” But a choice

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made under compulsion isn't really a choice. And it certainly isn't justice.

Justice is the virtue of judging by rational standards and acting accordingly. In the context of buying and selling, individuals judge whether the value received is equal to or greater than the value they are giving up. If an individual believes that the latest iPhone offers more value than the money he will give up, then he will buy it. If he doesn't, he will buy a different phone or do without. If an individual believes that the value he has is worth more than the price offered, he won't sell it. When individuals are free to act on their own judgment, they determine whether the price offered is fair. They determine what is just.

In the context of the marketplace, justice is possible only when individuals are free to judge the value offered and act accordingly. This is what eminent domain makes impossible

Despite the pretense of paying just compensation, eminent domain is a gross injustice. It forces individuals to sell their property, regardless of their own judgment. Eminent domain is a violation of property rights.

Property rights protect our freedom to create, use, keep, trade, and dispose of values. The right to property means that we get to choose what to do with our "stuff." Eminent domain forces individuals to dispose of their property even when they don't want to. That compensation is paid does not change this fact.

The fact that eminent domain is a part of the Constitution does not make it fair or just. Slavery was also a part of the Constitution, and few would argue that slavery is fair or just. Fortunately, America abolished slavery. Unfortunately, America clings to the notion that eminent domain is necessary.

Many Americans believe that eminent domain is a "necessary evil." But evil isn't necessary; it is a choice. Eminent domain isn't necessary, but it is certainly evil. And choosing to engage in evil is choosing to engage in an injustice.

Property rights are good. They are a primary enabler of individual flourishing. Without property rights, individuals lack the means to create and attain the values that life requires. Without property rights, the values one attains today can be taken tomorrow.

We have a choice. We can support that which is evil and unjust, or we can support that which is good and moral. We can't support both.



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

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