



Texas Institute for Property Rights

January 21, 2019

Eminent Domain versus Innovation

Once again, eminent domain has erupted into a political controversy in Texas. In its latest manifestation, Kinder Morgan proposes to build a 430-mile pipeline from West Texas to a suburb of Houston. As a “common carrier,” Kinder Morgan can use eminent domain to acquire access to the land needed to build the pipeline.

The Texas Railroad Commission (TRC) regulates pipelines within the state. According to the *San Antonio Express-News*,

Oil and gas companies’ ability to use eminent domain keeps the industry functioning in West Texas, said Ryan Sitton, the agency’s [TRC] commissioner. Without it, one landowner could shut down an entire project, Sitton and Fore [a spokesman for Kinder Morgan] said.¹

Consider what this means. According to these defenders of eminent domain, one landowner can stop a pipeline project, and therefore, it is proper and just to force that landowner to relinquish his property, regardless of his own desires or interests.

Certainly, pipelines are crucial to the oil and gas industry, and that industry is crucial to the economy of Texas and the well-being of all individuals. Oil and gas companies provide us with the inexpensive and abundant energy that we need to sustain and enhance our lives. But that does not justify seizing the property of a single individual. Oil and gas companies provide pro-life values— inexpensive and abundant energy; eminent domain destroys pro-life values—the right to property. So, what is the solution to this seemingly insolvable conflict between pipelines and private property rights? The simple answer is: imagination and innovation.

Throughout history, innovators have been told that their visions and dreams were mere fantasies. But, when the innovators are free, they can prove their detractors and critics wrong (assuming that the innovators are right). Freedom allows individuals to act on their own judgment, and it allows others to voluntarily purchase the products or services created by the innovators. Freedom allows the innovators to dream the impossible, and then make the “impossible” a reality.

Making dreams come true requires creativity and imagination. It requires new ideas and then taking action on those ideas. It requires developing and embracing ideas that others might think foolish. It requires commitment to what one judges to be true, no matter who or how many may disagree. Most importantly, it requires the freedom to act on one’s judgment. Property rights protect the innovator’s freedom to attain materials, attract investors, and create new values.

Pipelines were an innovative development when they were first conceived. They provided, and continue to provide, an efficient means for transporting liquids and gasses over long distances.

1. “Texas landowners fight Kinder Morgan’s \$2B pipeline proposal,” *San Antonio Express-News*, January 7, 2019, <https://www.mysanantonio.com/news/texas/article/Texas-landowners-fight-Kinder-Morgan-s-2B-13514523.php> accessed January 9, 2019.

Pipelines themselves are no longer innovative. The ability to use eminent domain to build pipelines has removed the need for further innovation and imagination in acquiring the needed land. (This is not to say that there is no innovation in the construction or use of pipelines. The lack of innovation to which I refer is in the acquisition of land.)

For most of human history, land has been acquired by conquest. The superior army conquered a land and occupied it, imposing its ideas and culture upon the conquered. And this is what eminent domain does. It allows some entity—whether private or governmental—to “conquer” a parcel of land, not with a military army, but with an army of lawyers.

If a society purports to support and defend property rights, as most Texans and Americans do, then this presents a serious problem. How do we build the pipelines that are so necessary to our well-being while still respecting one of the fundamental principles upon which our state and our nation were founded?

Those who wish to build pipelines have a moral right to do so, as long as they acquire the necessary land through moral means—by respecting the property rights of land owners. This means that land is acquired through voluntary trade. This means rejecting the use of eminent domain because property owners have a moral right to determine the use and disposal of their land. This may require imagination and creative ways to build a pipeline.

Walt Disney, the icon of imagination and creativity, demonstrated what is possible. In the 1960s, he assembled nearly thirty thousand acres in central Florida without using eminent domain. This is an area twice the size of Manhattan! Using his imagination, Disney purchased the land using dozens of “dummy” corporations. He realized that if land owners knew that he was the buyer, they would demand a higher price. He purchased the land from willing sellers on terms that both parties agreed to, rather than through the legal conquest of eminent domain.

Innovators find creative ways to overcome challenges. Oil and gas companies have found innovative ways to discover and recover the raw materials that make our lives immensely better. It is time that pipeline companies find innovative ways to acquire the land that they need.

Eminent domain removes the motivation to find innovative methods for acquiring land. All that is required is an army of lawyers and any entity granted eminent domain powers can conquer the territory they desire. And this is true of energy companies, railroads, the government, or any other entity granted eminent domain powers. It is true whether one wants to build a pipeline, a bullet train, or a border wall.

Texans value innovation. And we also value property rights. We can have both innovation and property rights, but only if we protect the rights of property owners to sell only when they choose, and only on terms that they agree to. But if we sacrifice property rights for any reason, we will have abandoned the principle that makes innovation possible.



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

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