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## How to End the Bullet Train Controversy: Principles and Property Rights

In 2015, Texas Central Partners announced that it had secured funding to move forward with a proposed high-speed railroad between Houston and Dallas. The project, which according to the company's website will be funded by private investors, has attracted many opponents and generated great controversy, particularly among rural land owners along the proposed route.

Opponents have presented numerous arguments against the bullet train. The rail line will bisect some tracts of land, making it more difficult for farmers and ranchers to operate. The train will disrupt families and communities. Some have complained that they will no longer be able to shoot feral hogs on their property for fear of hitting a passing train. And if/when Texas Central resorts to using eminent domain to acquire the needed land, property rights will be violated. While all of these objections are true, only the last one is relevant. If rural Texans wish to retain their land, they must defend property rights. And they must do so on principle.

In response to pressure from constituents, during the 2017 session Texas legislators introduced twenty bills that were aimed at stopping the rail project. Ostensibly, these bills were intended to protect the property rights of current land owners. Unfortunately, many of these bills would violate the property rights of Texas Central. This is hypocritical and self-defeating. We can't defend property rights of some by violating the property rights of others. If we want to defend property rights, then we must defend everyone's property rights, even when we don't like what they intend to do with their property. If we do so, the bullet train ceases to be a political controversy. To understand this, let us begin by understanding what the right to property means.

### **The Principles 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 use "stuff," whether land, buildings, money, gadgets, or anything else. It means the freedom to get and use the things that we believe will make our lives better and more enjoyable. This is true of rural land owners, and it is also true of Texas Central.

Like all rights, the right to property protects our freedom of action. Property rights protect our freedom to take the actions that we believe will help us acquire the values that will enable us to flourish. This includes the freedom to trade and dispose of one's property as one chooses. Property rights protect our freedom to sell what is ours. If you want to sell your stuff, you have a moral right to do so. At the same time, if someone else wants to buy your stuff, they have a moral right to do so. If land owners want to sell to a willing buyer, whether Texas Central or anyone else, they have a right to trade their property as they choose.

The exchange of property through trade is based on the voluntary choices of each party involved. If the seller proposes a price that the buyer thinks is too high, the buyer can negotiate for a

lower price or refrain from the deal. If the buyer proposes a price that the seller thinks is too low, the seller can negotiate for a higher price or refrain from the deal. Each is free to act on his own judgment in disposing of his property. If land owners don't want to sell to Texas Central, or anyone else, they have a right to refrain from doing so.

But what if land owners are prohibited from creating, using, or trading property as they choose? They can't act on their own judgment. They can't take the actions they believe are best for their lives. When they are prevented from creating, using, or trading property as they deem best, their right to property is violated. This is true of rural Texans, and it is true of Texas Central.

Like all rights, property rights can only be violated through physical force. If we are threatened with fines or imprisonment if we create, use, keep, or trade certain material values, then we can't act on our own judgment. If government erects arbitrary barriers to our freedom to use or trade our property, our rights have been violated. We are prevented—through force or the threat thereof—from taking the actions that we believe will further our lives and enable us to flourish. This is what is proposed for Texas Central.

Similarly, if we are forced to take certain actions under the threat of fines or imprisonment, we are unable to act on our own judgment. And this is what eminent domain does. It forces us to “sell” our property, regardless of our own desires or judgment. We are forced to trade our property on terms that we object to. This is what is proposed for rural land owners.

Many believe that property rights must sometimes be sacrificed to the “greater good.” They believe that there are some situations in which it is proper to violate property rights because the alleged benefits are substantial. This is the “justification” for eminent domain. But if the principles of property rights can be violated sometimes, then they can be violated anytime. The only issue up for debate is when and for what purpose. The only question is who will be the victims and who will be the alleged beneficiaries.

A principle with exceptions is no longer a principle. It is a loose guideline that will be followed when it is convenient and expedient. And it will be violated just as easily. The views of many Texans on eminent domain illustrate this point.

### **Principles and Eminent Domain**

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.”<sup>1</sup>

One 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.”<sup>2</sup> 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

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1. Bobby Blanchard, “Texas allowed in on Red River land grab lawsuit,” *Dallas Morning News*, March 2016, <https://www.dallasnews.com/news/politics/2016/03/14/texas-allowed-in-on-red-river-land-grab-lawsuit>, accessed April 8, 2018.

2. Tom Benning, “Eminent domain for Trump's border wall is fine, say Texas Attorney General Ken Paxton,” *Dallas Morning News*, March 2017, <https://www.dallasnews.com/news/texas-politics/2017/03/27/texas-attorney-general-backs-trumps-plan-use-eminent-domain-border-wall>, accessed April 8, 2018.

wall. To Paxton and his ilk, playing to public opinion is more important than principles. And real people are the victims of this political expediency.

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 provides us with a rule that we can apply to an unlimited number of 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 (and it is), 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. And that is what Paxton has done. In 2016, he declared that eminent domain violated property rights and was wrong. In 2017, he declared that eminent domain was necessary.

A person who rejects principles will adopt a different guide—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 politically 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 the use of eminent domain for projects that they like. 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 and business—always and without exception. To do otherwise is to reject the principle of property rights, no matter the platitudes that one occasionally utters.

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 to sustain and enhance our lives, no matter who or how many may disagree. 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. He is forced to accept compensation that he does not think is fair or just.

### **Eminent Domain and Texas Central**

The principle of eminent domain holds that government may seize private property for “public use” if “just compensation” is paid. That authority has been extended to certain private businesses, including railroads. But eminent domain is rife with controversy. What is a “public use”? And what constitutes “just compensation”?

The courts have offered little clarity on these issues. They have essentially said that a “public use” is anything that legislators declare will benefit the public. If leveling a neighborhood means that a private business can build a new facility, create jobs, or increase the tax base, according to some, that will benefit the public, and the use of eminent domain is regarded as justified. Similarly, if it is believed that a pipeline company or a railroad will benefit “the public,” the use of eminent domain to seize private property is deemed justifiable.

In the *Kelo* case, which brought the use of eminent domain for private gain to the nation’s attention, the Supreme Court declared, “The Court declines to second-guess the wisdom of the means the city has selected to effectuate its plan.” In other words, if a government body wants to seize private property, the Court won’t stand in the way, so long as that body has a plan that it believes will somehow benefit “the public.” But who is “the public”?

In truth, every individual is a member of “the public”. The commuters who will ride the bullet train are member of “the public.” So are the property owners whose land may be taken for the rail line or a pipeline. So are the employees and investors in Texas Central. While all individuals are members of “the public,” they have different interests, desires, and values. In regard to the bullet train, what is beneficial to some members of “the public” may be harmful to other members of “the public.” In truth, “the public” is not monolithic.

When anyone talks about the benefit to “the public,” or “the public interest,” what they really mean is that some individuals should benefit and some individuals should be forced to sacrifice. The debate then centers on who will be the beneficiaries and who will be the victims. That is the issue that underlies every debate over eminent domain (and indeed, every debate over restrictions and controls on the creation, use, and trade of property). Such debates are nothing more than an attempt to justify the violation of property rights by appealing to the nebulous pseudo-concept of the “public interest.”

Defenders of eminent domain like to point out that the property owner will be paid “just compensation” when his property is seized. But what does this mean?

“Just compensation” is applicable only when all of the parties to a deal are acting voluntarily and on their own judgment. When individuals are free to act voluntarily, they can accept or reject the price and terms offered. The property owner can choose whether to sell or not. He can decide if the compensation is just. But eminent domain removes choice from the owner. He will “sell,” no matter his own desires or choices, and he has only a marginal voice in the price that he receives. He has no choice in the matter.

When “just compensation is determined, market value is usually used. However, each of us owns many things that have more value to us than their economic worth. The full value of something isn’t just what it would cost to purchase or replace. The full value is often deeply personal. For example, much of the land sought by Texas Central has been in the same families for generations. For these individuals, the land means much more than money. In a sense, it is a family heirloom and no amount of money would convince them to sell. To them, whatever price they receive from Texas Central will not be just. A just price is one that is agreeable to both the seller and the buyer. Eminent domain removes the seller’s agreement from the equation.

Texas gives railroads the power of eminent domain. And Texas Central has used this power to threaten land owners. On its website, Texas Central offers a “Landowner’s Bill of Rights,”<sup>3</sup> which is

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3. “Texas Central Partners Guiding Principles for Land Acquisition and Landowner Rights,” Texas Central Partners, <http://www.texascentral.com/wp-content/uploads/2015/12/TCPBillofRights.pdf>, accessed April 9, 2018.

ostensibly an attempt to assuage the concerns of property owners. Two items in this “Bill of Rights” are worth noting:

1. TCP [Texas Central Partners] will provide the landowner with a written statement or certificate of the its right to exercise eminent domain as well as a copy of the resolution authorizing the taking of the landowner’s property and its letter to the Texas Comptroller registering the right of eminent domain;
4. TCP will negotiate in good faith and make a good faith offer in an amount equal to or greater than an appraised fair market value of the property and damage to the remainder;

Notice that the very first item in this alleged “Bill of Rights” is the threat of eminent domain. In other words, Texas Central begins its “Bill of Rights” for landowners with a declaration that it can and will violate the property rights of landowners by taking their land without their consent. Rights pertain to freedom of action. Compelling individuals to act contrary to their own judgment is not a recognition of their rights.

In item four, Texas Central claims that they will negotiate in good faith. Negotiating in good faith means respecting the freedom of the other party to accept or decline one’s offer. But this is not what Texas Central is doing. They are stating, clearly and without equivocation, that they will get the land that they desire, and they will obtain that land by hook or by crook. That is not negotiating in good faith.

In truth, Texas Central is negotiating while waving a gun in the face of property owners. And that is not hyperbole—eventually someone with a gun will show up to enforce eminent domain. In a free market, individuals negotiate the exchange of values on terms that are mutually acceptable. Eminent domain replaces true good faith negotiations with the threat of a gun.

Some have questioned whether Texas Central is actually a railroad, since it has no trains or rail lines. According to this position, if it is not a railroad, it should not have the power of eminent domain. But this is a non-essential issue. The real issue is: should railroads or any entity, private or public, have the authority to seize private property? Should any entity have the authority to force an owner to “sell” his property? If we debate over who may and may not use eminent domain, then we have abandoned the principle of property rights. And then we are merely bickering over details.

The opponents of Texas Central have flexed their political muscles, and they have garnered significant support in the Texas legislature. But unfortunately, much of proposed legislation, while proclaiming to defend property rights, will actually violate property rights.

### **Legislation to Stop Texas Central**

In the 2017 legislative session, twenty different bills were introduced in an effort to stop Texas Central. Many of these bills were intended to protect the property rights of rural land owners. Unfortunately, many of these bills would violate the property rights of Texas Central. Morally, protecting the property rights of some by violating the property rights of others is a gross contradiction. In principle and in practice, if the property rights of some Texans (whether rural land owners or Texas Central) can be violated, then the property rights of all Texans can be violated.

As an example of the proposed legislation, HB2163 would have required rail lines for high-speed trains to be elevated forty feet in certain counties. This requirement would have dictated how Texas Central could use its property. It would not have been allowed to build the line at an elevation that it deemed best. Instead, it would have to meet the demands of state legislators.

As another example, SB978 would have required Texas Central to return all land to its “natural state” if the line failed. This bill would have imposed terms and conditions on Texas Central that it may or may not agree to.

As a third example, SB981 would have required Texas Central to demonstrate the compatibility of its rail line with other technologies. A property owner has a moral right to use his property as he chooses, including to introduce new technologies. Many (if not most) significant innovations in history, such as Edison’s light bulb and Ford’s Model T, were incompatible with existing technologies. So? If Texas Central wishes to use “incompatible” technology, it has a moral right to do so. Where would we be today if “incompatible” technologies were banned?

As a final example, SB092 would have required Texas Central to demonstrate the financial viability of its project. Businesses are launched every day in Texas, and virtually none have to demonstrate financial viability. Again, this would have imposed a condition on Texas Central that it may or may not agree to.

In principle, as well as in practice, the proposed bills are no different than eminent domain. These bills would have forced Texas Central to use and trade its property differently than it would voluntarily choose. That is precisely what eminent domain does.

Admittedly, Texas Central is a unique business in multiple ways. It proposes to do something that has never been done—build a privately financed high-speed rail line. It will impact thousands of property owners. It proposes to use eminent domain to acquire land. But none of this means that its rights should be violated. If Texas Central legally acquires property—whether land or monetary investments—it has a moral right to use that property as it chooses.

Legislation aimed specifically at stopping Texas Central is dangerous and immoral. And, despite the wording of these bills, they were aimed specifically at Texas Central. Legislation aimed at a particular business means that the Legislature will pick and choose “winners” and “losers.” The Legislature will decide which businesses are allowed to operate in Texas and under what conditions. It means that the government will dictate how property is used. And this impacts every Texan, whether he wants to operate a taco truck, open a retail store, build houses, or build a railroad.

There are no heroes in this story. Texas Central is willing to violate property rights. Opponents to the bullet train are willing to violate property rights. The solution to this controversy is to respect property rights—everyone’s property rights, including Texas Central’s. If we do that, then the bullet train is no longer a political controversy.

### **The Solution**

In some ways, the solution to the controversy over the bullet train is quite simple. In other ways, it is quite complex.

The simple solution is to deny Texas Central the ability to use eminent domain. If Texas Central can acquire land and funding through voluntary means, then it has a moral right to build its line, no matter who or how many may object. If it must resort to the violation of property rights—eminent domain—to acquire land, then it should be stopped. But it should not be stopped by resorting to legislation that violates the property rights of Texas Central. It should be stopped by eliminating its ability to violate the property rights of others. If we want to protect the property rights of rural Texans, then we must also protect the property rights of Texas Central. To do otherwise is to endorse a grotesque contradiction.

Eliminating the ability of Texas Central to use eminent domain is a more complex issue. To do so, we must challenge the concept of eminent domain. We must challenge the authority of any entity—public or private—to seize private property for any purpose.

If we don't challenge the principle underlying eminent domain, we can only bicker over the details. If we don't challenge the principle underlying eminent domain, we imply that eminent domain is acceptable as long as it happens to the other guy. And when eminent domain happens to us, the other guy will say the same thing.

The bullet train will bisect land and make it more difficult for farmers and ranchers to operate. It will cause changes and disruptions to families and communities. It will make it harder to shoot feral hogs. These are real issues, and they will impact real people. But one principle unites all of these issues—property rights.

If land owners want to sell their property to Texas Central, they have a right to do so. And those who don't want to sell also have a right to refrain. Each property owner—including Texas Central—should be free to use and trade his property as he chooses.

If we respect and protect property rights, this controversy goes away. It's no longer a political issue. It becomes an economic issue. If Texas Central can build a profitable high-speed rail line through voluntary means, we at the Texas Institute for Property Rights will be among their biggest fans. If they can't, then they deserve to fail. But they shouldn't fail because of legislation aimed specifically at stopping the bullet train. They should fail because they couldn't convince others—land owners, investors, and commuters—that they have a good idea. That is what happens in a free market. And it should be what happens in Texas.