

The Politics of Land Grabbing

By [David Morris](#), [AlterNet](#). Posted [July 7, 2005](#).

The central question at the heart of the eminent domain debate is, how much do we value community?

The Supreme Court's June 23 decision to allow the city of New London, Conn. to condemn its citizens' homes simply to generate more municipal tax revenue offended the vast majority of Americans, myself included. In a blistering dissent, Justice Sandra Day O'Connor declared, "Nothing is to prevent the state from replacing any Motel 6 with a Ritz-Carlton, any home with a shopping mall or any farm with a factory."

That's the bad news.

The good news is that the Court's decision does not prevent states and localities from adopting a different approach. "We emphasize that nothing in our opinion precludes any state from placing further restrictions on its exercise of the takings power."

The eminent domain debate now returns to the local and state level, where it ultimately belongs. All states have statutes or constitutional provisions governing the conditions under which governments can take private property. Michigan, New Hampshire, New Jersey, South Carolina, Arkansas, Missouri, Kentucky and California significantly limit that authority. A 1976 California court opinion describes their approach. Eminent domain "never can be used just because the (city) considers that it can make better use or planning of an area than its present use or plan. ... (I)t is not sufficient to merely show that the area is not being put to its optimum use, or that the land is more valuable for other uses" to justify condemnation of property.

The laws of Kansas, Maryland, Minnesota, New York, North Dakota and Connecticut, conversely, grant local and state governments much broader leeway.

The debate about eminent domain centers on two questions. When can government take private property? What should it pay for that property?

The Supreme Court decision focused on the first issue, the definition of "public use" under the 5th Amendment. At the state and local level, we might more profitably initiate the conversation by focusing on the second, the definition of "just compensation."

Under current laws, "just compensation" means current market value. If government condemns two identical houses in the same neighborhood it pays the owners an identical amount. This is true, even if, as was the case in New London, one family had lived in its home for several generations while another was renting on a short-term lease.

Common sense, however, tells us that the value of a place to the occupant is related to the amount of time he or she lives in it. And the value of the tenant, whether a person or

a business, to the neighborhood also increases with the length of occupancy. Intangibles are involved here, costs and benefits difficult to quantify but indisputably real.

The central question before us, then, is how do we value community? Here is my suggestion:

- All owners receive the current market value of the real estate.
- Government adds a premium based on the length of time the family or business has occupied the land, or perhaps, lived within the immediate neighborhood. Businesses are included because locally owned, long-lived businesses constitute an essential node in a strong community network.
- The premium paid increases by 1 percent of the market value for every year of continued occupancy, kicking in after a minimum of 10 years.
- The premium is paid not to the owner, but to the occupant. This is fairer, because it is the longevity of the occupancy, not the longevity of ownership, that strengthens the sense of community. It is also more equitable, because renters tend to be poorer than owners.

In sum, the appreciated market value of the property goes to the owner. The appreciated community and social value of the property goes to the occupant. Such a policy begins to internalize the social value of property into the cost-benefit equation. That is as it should be. A municipal corporation, unlike a private corporation, should take into account the costs of dislocation to the individual and the neighborhood.

The "just compensation" debate forces us to decide whether, and how, we value community, rootedness, continuity, cohesion, connectedness. Having answered that question we can move on to the \$64,000 question. Under what circumstances should the eminent domain power be exercised?

Virtually everyone agrees that when the government takes private property to build something that clearly and directly benefits the entire community--schools, roads, parks--it is acting for a public purpose.

The thorny question, and the one with which the Supreme Court struggled, is what to do when the government seizes private property to create jobs or increase tax revenue or some other economic development objective.

Three options are available. We can accept the Court's philosophy. Allow a person's home or business to be taken for virtually any development. But as the outcry over the Supreme Court's decision indicates, most of us would find that option unacceptable.

We can allow the taking of property for economic development only under rigorous standards. We can require an economic impact statement that not only evaluates in comprehensive fashion costs and benefits, but includes an analysis of the probability that the benefits would actually materialize. That last rarely if ever occurs today. The analysis would take into account the true dislocation costs to individuals and the community. This is never done today.

It may be possible to create rigorous standards to evaluate the net benefit of a proposed development project; but it will be difficult to enforce those standards. As Adam Hellegers has wisely noted,

Corporate influence...may prevent local officials from performing the rational calculus needed to decide whether a taking's displacement costs--including the loss of valuable affordable housing stock, small business matrices and viable communities--are outweighed by unenforceable promises, or no promises at all, of job creation, income, sales, and property tax revenue, and speculative spin-off spending.

The third option is to absolutely prohibit the taking of private property for economic development. Washington's Constitution does so. In early 2005, Utah stripped its redevelopment agencies of the power of eminent domain.

The arguments in favor of an absolute prohibition, or an extremely circumscribed eminent domain authority are persuasive. The eminent domain process itself is unfair. As Jane Jacobs, renowned urban historian and a keen observer of urban redevelopment efforts noted in an amicus brief to the Supreme Court, "Condemnations generally benefit the politically powerful while the costs fall on the poor and politically disadvantaged."

Eminent domain is exercised almost always to acquire large tracts to enable massive building projects: stadiums, high-rise office buildings, large factories. Many of these projects do not generate net benefits at all. All of them undermine close-knit, rooted communities and a diverse, locally owned business sector.

A final reason to strip local governments of their right to seize private property for economic development purposes is that it may actually strengthen the governments' independence. As Michael Kinsley observes,

When the local government showers a big development with money and favors, it's usually not about sovereignty but about lack of sovereignty. Private developers play jurisdictions off against one another, extracting concessions from all that none would actually make a sovereign decision to give.

The Supreme Court decision disappointed many. But the debate is far from over; it has shifted to the local and state level -- which is where, ultimately, it should be decided.

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