

# Eminent Domain and Private Gain



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[Eminent domain is a government trump card for social projects. Are Local Economics a valid social Project?] American History - 1700s

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## Eminent Domain and Private Gain

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PORT CHESTER, NEW YORK

Bill Brody thought he was set for life.

He'd bought and renovated four buildings on South Main Street in this struggling New York suburb and was successfully renting them out.

Then he was informed the village was taking his property - all of it. And because he missed a small, legal notice in the paper, he even lost the right to fight the decision.

[Does it seem we've been here before? The local government is taking someone's property by using **eminent domain**?

Does responding to a legal notice in the paper seem like a valid method for a local government to contact property owners?

Isn't there a title and deed and permits on file so the local government may know who owns the land and how to contact them?]

The village had simply declared **eminent domain**, so that another private developer could build part of a Stop & Shop and parking lot where Mr. Brody's commercial buildings sat.

[Wait a minute. The argument we've heard before was the property was going down hill and so they needed to develop the land so the poorer people who lived there would move out and those with more money would either move in or do more business there. This sounds like replacing one business with another?

How long had Mr. Brody had these commercial buildings, not that it is really relevant. The article seems to suggest it has been recent, as in the last year or so.]

"It's ludicrous," says Brody. "If it was for a road or a school or a highway I wouldn't bother."

[Why would Mr. Brody not bother?

Because he believes in using **eminent domain** for schools and highways?

Because he believes using **eminent domain** for private developer reasons is an abuse of power?]

But since the village was taking his property only to give it to another private developer, Brody decided to take it to court.

The Constitution does give local governments the right to **condemn property through eminent domain** for "public use" if the owner is compensated. But in the **past five years, both state and local governments have taken or threatened to take more than 10,000 homes and**

small businesses such as Brody's to turn them over to private developers, according to a report compiled by the Institute for Justice, a nonprofit advocacy law firm in Washington.

[What's with 10,000? Is the number of occurrences relevant or irrelevant?]

The local governments contend they're creating bigger tax bases and more jobs to help the local economy. That's the "public use." But to critics it's an unconstitutional abuse.

[Are increased tax bases a reason for using **eminent domain**?

If yes, how many \$ or what % increase is the threshold where **eminent domain** is to be considered?

Are increased job opportunities a reason for using **eminent domain**?

If yes, how many jobs or what % of increase is the threshold where **eminent domain** is to be considered?

Is **eminent domain** constitutional if the property is not used for "public use"?]

"Practically every house in the entire country would produce more jobs and taxes as an office building, and everybody's small business would produce more jobs and taxes if it were removed and turned into a Costco," says Dana Berliner, a senior attorney at the Institute for Justice. "If that's all it takes, then your house or business can be up for grabs as soon as a some private business interest takes a fancy to it."

[Would you buy property without an iron clad guarantee from the local government they would take your land using eminent domain within a certain number of years?

How does a government body come to understand a developer wishes to develop your property with the alleged benefits?

Why did I say "alleged"?

Does not a developer need to come before the council to make their proposal?

Does not the developer provide all the cost / risk / and income analysis?

Does not the developer do a little lobbying before and during the presentation?

Does there seem to be at least the slightest chance of some ethics problems here?

What sort of problems could arise?]

The increase in the use of **eminent domain** for private entities has created a ground swell of opposition from New York and Detroit to California.

The Institute for Justice's report documents dozens of instances of apparent abuse where states and local cities and towns put the interests of individual developers over longtime residents.

For instance:

- In Atlantic City, an entire black middle-class neighborhood was condemned and destroyed to make way for a tunnel to a new casino that was never built.
- Bremerton, Washington removed a woman in her 80s from her home of 55 years for the claimed purpose of expanding a sewer plant, but gave her former home to an auto dealership.

[A change in plans or an ethical problem?

If a change in plans, wasn't there some point when things could have been reversed?]

- West Palm Beach County in Florida condemned a family's home so that the manager of a planned new golf course could live in it.

[In it? An in, they did not tear the building down and build a larger, higher tax home?

This touches another issue. When a local government wants an enterprise in there community very badly, as in a gambling casino, golf course, or manufacturing plant,

they are going to cut deals. In competition with them are other communities who are also offering deals. Is using eminent domain a valid bargaining chip to use in order to bring in the business?]

Many individuals are fighting the practice and the courts, which used to routinely rubber stamp local condemnations, are responding.

In 40 percent of the challenges to **eminent domain** brought between 1998 and 2002, courts sided with the original landowners. **Six state legislatures have passed bills increasing protections for people threatened with eminent domain.** Eleven others are considering such bills, including New York.

The practice of **eminent domain** has been abused throughout US history. When the railroads and many of the nation's highways were built, landowners were often told their properties were condemned, given a dollar and told to go to court if they wanted their "just compensation." But even using such high-handed tactics, most eminent-domain condemnations were used for clearly delineated public purposes.

In the early 1950s, a landmark case changed that. Washington, D.C., wanted to redevelop a rundown part of town. So it declared **eminent domain** and condemned the property by arguing that it constituted a public use by getting rid of the "blighted" area. The Supreme Court upheld the notion that it's a public good to get rid of blight, but made no determination one way or the other on the appropriateness of handing the property to private developers.

[Blight?

This article began with Bill Brody and his successful, on going business. This was no blight. Does this remind you of what happens after a camel gets their nose under the tent? In all our philosophy discussions, do not forget to always consider the "Logical Outworkings" over every proposal.]

"The Supreme Court gave 'public use' definition by saying it had to be of public purpose," says Veronique Pluviose-Fenton, an attorney with National League of Cities. "**Redeveloping brown fields can be seen as having a public use because it gets rid of an environmental hazard.**"

[Logically, this seems to make sense. Do you believe the attorney is probably quite right. This points out the thorny road or "Pandora's box" which had been opened up by defining "public use" so loosely.

However, it is not likely this particular example will actually happen in today's Political climate. Can you imagine someone trying to make that argument in the courts? Why do you suppose that is?]

It wasn't until the booming 1990s - when real estate prices soared - that the practice of condemning property for private development really took off.

According to the Institute for Justice report, **local governments went from condemning blighted areas** to applying the practice to **rundown neighborhoods**. Then it began to be condemn properties in **areas that looked just fine**.

[So there is a progression.

Had I reminded you before about considering the "Logical Outworkings"? What do you believe may be the step, logically? (*I can think of a couple, can you?*)]

In Lakewood, Ohio, for instance, a whole neighborhood of colonial homes was recently deemed "blighted" because the backyards were too small and the homes didn't have two-car garages. The city is turning the property over to private developers to build upscale condominiums and retail space.

[Wait a minute. If a small backyard and small garages are a reason for blight, then why isn't the property converted to homes with larger yards and bigger garages? Ever see a yard which goes with a condominium?]

"Things have gotten worse as the word spread among **businesses that they can acquire land without having to go through a bidding process**," says Gideon Kanner, a professor emeritus at Loyola Law School in Los Angeles and expert on the issue of eminent domain. "They can overcome opposition and force their way into communities that don't want them."

[Is this one of the logical outworkings you thought of?  
Why would this appeal to businesses?]

The National League of Cities' Ms. Pluviose-Fenton wouldn't comment on any individual case. But she admits there have been abuses. But in general, she insists the power of **eminent domain** is used responsibly and that the courts are there to act as a check and balance.

"I think **local governments** are keenly **aware** that kind of **abuse gets the attention of people in Washington** who are, at a moments notice, **ready to pass legislation** that would restrict local authority."

[What is wrong with this picture?  
Think -- Ethics.

What is suggested to be guiding local government activities?  
What should guide a local government's actions?]

Lawmakers in New York State are considering a bill that would at **least require cities and towns to notify people** like Mr. Brody that they're taking their land so that they can at least mount a legal fight.

[Does that sound like a reasonable restriction?

We know Mr. Brody was KNOWN to city hall because city hall had to contact him eventually to tell him how much he was going to get and to have him sign the papers. So, why could they not have contacted him earlier in the process?]

Brody had wanted to challenge the city's designation of the street as "**blighted**." Just a few years earlier, it had **spent a million dollars putting in new roads, underground wires, and quaint 19th street lamps**. It had **assessed him almost \$60,000 for the upgrade**. The street had a thriving, eclectic mix of antique shops, Latin restaurants and commercial space when it was condemned.

[Why is a "**blight**" so expensive?

Does this seem logical to you?

What they are saying is millions were spent by the city on capital improvements and the businesses along the way had to pay for parts of these improvements.

If these improvements are NOT improvements, then don't those businesses have a refund coming?]

Several property owners, in addition to Brody, are challenging the city. But so far have had little luck with the local courts. "I've never, never seen anything like this," says Mike Rikon, an eminent domain attorney with 33 years experience who is representing several Port Chester landowners. "Since the beginning you could open the book and **go down chapter by chapter and point out the violations of the law**."

[Beyond the Ethical problems, what else do we see?

That line of philosophy is at work here. There is one, you know, and this is just one of the logical outworkings of that philosophy.]

Anthony Cerreto, village attorney, wouldn't comment because the matter is in litigation.  
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Bill Brody has taken the case to federal court. A hearing is scheduled on June 2nd.

"We have to get the legislative and judicial branches to revisit this takings issue so it's a little more friendly to the people," he says. "Because that's what the laws are supposed to be there for - the people not the government."



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