

The impact of eminent domain is causing more damage

by Randy Bright <http://www.tulsabeacon.com/?p=6197>

If you have ever read Ken Follett's Pillars of the Earth or its sequel World Without End, you have a sense of what it was like to live in a time when your hard work did not necessarily count for anything. Set during medieval times in England, it was not that it was lawless, but that laws were arbitrarily established by nobility, and many times solely for the expedience and wealth of those who held noble rank.

So, for example, if the nobility did not want someone to compete with them in the growth of crops, they could simply declare their competition to be illegal and destroy the crops of their competition.

Why were they able to do so? For two reasons. The first was simple. They could. It was simply assumed and accepted that the nobility were within their power to do so. The second reason was because the average citizen had no laws to fall back upon to defend themselves or their livelihood. There was no such thing as rights back then, especially property rights defined as a person's ability to keep and defend the fruits of their labor.

When the U.S. Constitution established our rights and protections to our properties, civilization began to rapidly advance, benefiting all of mankind.

But skip forward to 2005 to the ill-fated Kelo vs. New London decision by the Supreme Court. The City of New London was being sued to stop the taking of residential properties for the purpose of giving those properties to Pfizer for the development of a facility that would create jobs. The city argued that eminent domain could appropriately be taken from one private party by a governmental entity, and that property could then be given to another private party if it were for the economic good of the community.

It is undoubtedly one of the worst, if not the worst, decisions that has ever been made by the U.S. Supreme Court because it created opportunities for those who would casually look for ways to take property from others with impunity.

It didn't take long. In a recent issue of Atlantic Cities online, an article was posted by Amanda Erickson entitled Can Eminent Domain Solve Our Mortgage Woes? In it she describes how an advisory firm is promoting a novel idea for solving the problem of underwater mortgages. What they are suggesting is that municipalities exercise their new-found power of eminent domain to bail out homeowners by condemning properties that are worth less than the principal amount of their loans, taking ownership of them, then make loans to the current homeowners with better terms.

The losers, of course, are the companies who hold the mortgages. Under the proposal, they would be paid the current market value for the homes by the municipality, undoubtedly leaving them with huge losses.

Anyone who holds to the original constitutional meaning of eminent domain will immediately realize that this is not an appropriate use of the takings clause, yet the author of the article apparently had little trouble finding a law professor who wasn't troubled by the abuse, quoting him to say, "It's very unusual, (but) this doesn't mean its unconstitutional."

That's funny, because it looks like stealing to me.

The presumption seems to be that if it is for the economic well-being of the community, it is somehow permissible and acceptable to steal property from corporations. After all, that will help our citizens get back on their feet so they can begin contributing to the community again, right? This is rationalization at its worst, and if this scheme and others like it succeed, it could deliver another devastating blow to our economy. With the overregulation of the banking industry, it's hard enough to get a home loan as it is. Who is going to make home loans if the loans are going to be at this kind of risk?

In addition, the casual use of eminent domain for "economic development" can be a real two-edged sword for those who initially benefit from the takings, in this case the underwater homeowners. What happens when they fail to make their mortgage payments to their local government? Do they really believe that their homes won't be taken from them and given to someone who will make the payments?

Furthermore, what business would invest themselves in a community that practiced this kind of abuse? Only the ones that have the ability to stay, let's just say, because they can. Is that what we want America to become?

This isn't just one of the dumbest ideas I've heard in a long time; it's very disturbing.

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