

Eminent Domain

In almost all developed countries, governments claim the power of eminent domain, which allows them to seize private property for public use. This is often used to make way for large-scale public works. For example, the government may want to build a highway that will ease traffic between two major cities, but if there are homes along the way and even one homeowner refuses to relocate, that refusal would prevent the construction of a public resource that would benefit hundreds of thousands of people. Additionally, if homeowners know that the government needs their land for major infrastructural projects, they may be tempted to hold out for longer than they otherwise would, in order to pressure the government into paying an exorbitantly high price for their land at public expense. That said, at least in the United States, if a mutually satisfactory transaction cannot be agreed upon and eminent domain is exercised, the Constitution requires that homeowners receive “just compensation” for the seized property.¹ Of course, determining just compensation can at times be difficult. Courts have determined that property owners need only to receive “fair market value” for their property—the price that a similar property would command if sold on the market at the time. Importantly, the fair market value is *not* necessarily the same thing as how much the property is actually worth to the owner, particularly if the property has some intangible, sentimental value to the homeowner. Furthermore, if eminent domain has to be invoked, then it seems to follow that homeowners value their homes at a price higher than the market would offer: otherwise, the homeowner and government would have reached an agreement of sale freely, and no invocation of eminent domain would be needed.

Even more controversially, however, is the use of eminent domain for the construction of *private* projects. Recently, the Supreme Court declared in *Kelo v. City of New London* that eminent domain can legitimately be invoked for private developments so long as they benefit the community at large. In this case, the City of New London, Connecticut, delegated its power of eminent domain to a private developer, arguing that the redevelopment project in question would create new jobs, increase tax revenue, and revitalize an urban area—therefore serving an important public purpose. The Court’s majority decision in favor of New London, however, drew powerful criticism. In particular, many critics argued that it is wrong to take property away from some people in order to help companies increase their profits. Moreover, critics argue, delegating eminent domain to private parties will inevitably favor the rich, powerful, and influential over less privileged citizens.²

STUDY QUESTIONS

1. Under what conditions is it appropriate to seize property from someone against their will?
2. Is there a moral difference between using eminent domain for a public project and a private project, if both have the same benefit to the community at large?
3. If there were no power of eminent domain, would it be ethical for a homeowner to stall a public development project in order to obtain an extraordinarily high price for their property?

¹ U.S. Const. amend. V. https://www.law.cornell.edu/wex/fifth_amendment

² <http://www.ncsl.org/research/environment-and-natural-resources/summary-of-kelo-v-new-london635308174.aspx>