

Eminent Domain Abuse by the Supreme Court

Most Americans regard themselves as capitalists who reject the Marxist desire for "abolition of property in land and application of all rents of land to public purposes"; so they reacted with shock and anger when the Supreme Court ruled in the New London, Connecticut case that city governments can condemn homes and businesses of private citizens for use by businesses that governments believe will use the land most efficiently and pay the most taxes.

Americans would have been angrier still had the story remained in the headlines, since after the properties were destroyed, the recipient of the confiscated land, the drug maker Pfizer, chose not to build the promised development project. According to the Associated Press:

There are a few signs of life: Feral cats glare at visitors from a miniature jungle of Queen Anne's lace, thistle and goldenrod. Gulls swoop between the lot's towering trees and the adjacent sewage treatment plant.

The outrage is unjustified because Congress and the Supreme Court have blessed central land planning by state and local governments for at least 90 years. The court was merely following established policies that disparage capitalists and private property owners, especially minorities such as blacks and urban small businessmen; and owners of small real estate parcels, often people accumulating equity for old age. Recognizing these common victims, the court was opposed by the American Association of Retired People (AARP) and the National Association for the Advancement of Colored People (NAACP).

Land theft in Boston, New York, Detroit, and Washington, DC

The government of Washington, DC confiscated blocks of brick houses in the 1950's, forcing thousands of residents, mostly poor blacks, and businesses in the southwest portion of the city to search for new homes. The owner of a department store sued in 1954 because unlike some of the other victims, his property was not in disrepair, so stealing it served no public purpose. The Supreme Court unanimously responded:

If owner after owner were permitted to resist these redevelopment programs on the ground that his particular property was not being used against the public interest, integrated plans for redevelopment would suffer greatly.

The Kelo v. New London case can be considered an advance, since four of the nine justices dissented, nearly reversing the ruling in the Washington case.

Boston destroyed the Scollay Square entertainment district to create space for Government Center; and destroyed the West End of the city to build high rise apartments, displacing 7000 poor Italians. The government claimed that the neighborhood was a fire hazard because the streets were narrow, but the residents opposed the project.

The federal government paid 2/3 of the cost of the Boston and Washington projects with funds allocated to the Housing Act of 1947. The projects could not have been completed without federal intervention.

Detroit may have been the lustiest abuser of eminent domain when it destroyed the entire Poletown neighborhood, taking 100 businesses, 16 churches, and 1500 homes where 4000 people lived. The government compensated the victims with \$200 million and sold the factory to General Motors (GM) for \$6.5 million. To ensure that GM would

earn a big profit, they added millions in tax breaks; but, GM still went bankrupt, and despite their thievery and incompetence, Presidents Bush and Obama rewarded GM with \$49 billion in bailout funds, raised by borrowing from China and Japan. The Michigan Supreme Court blessed the Detroit government actions in 1981. In a rare victory for capitalism, it reversed itself in 2004.

New York created a controversy that reached the Supreme Court in 1978, but, rather than confiscate old buildings to build new ones, as in the other cities, New York sterilized the air space above the five story Grand Central Station, preventing the Penn Central Railroad from constructing a new building above the old one. The old building is attractive and would be welcome in most places. Surrounded by enormous skyscrapers, it seems like a lost puppy in lower Manhattan.

The Supreme Court ruled that Penn Central could not use the air space, even though neighboring property owners were not similarly restricted. However, the company will be permitted to use the air space if a terrorist from al-Qaida or other foreign enemy destroys the building, since it would no longer be a landmark. Emboldened by the decision, hundreds of cities have created landmark preservation bureaucracies.

Land Privatization in the 19th Century and Redistribution in the 20th

The federal government privatized 10% of the land in the United States in the 1862-1934 period using the Homestead Act (1862), Enlarged Homestead Act (1909), and Stock Raising Homestead Act (1916). Since 1934, the federal government has reversed the process and owns 30% of the land in the country. Land in the east and Texas was settled early and remains mostly private; about half of western lands are owned by the federal government.

One of the first big government targets was Rancho Malibu, owned by May Rindge, along 30 miles of the California coast near Los Angeles. It sports scenic views like the 17 Mile Drive 200 miles north near Monterey owned by the Pebble Beach Corporation. The 17 Mile Drive toll road open in 1881, but Rindge preferred to use her property as a ranch to raise cattle and grow grain. This was a fatal miscalculation of the power and determination of her enemy, for the Los Angeles County government coveted the scenic views and condemned the property. Rindge appealed fruitlessly to the Supreme Court in 1923:

Public uses are not limited, in the modern view, to matters of mere business necessity and ordinary convenience, but may extend to matters of public health, recreation and enjoyment. Thus, the condemnation of lands for public parks is now universally recognized as a taking for public use.

A land redistribution scheme similar to the Rancho Malibu controversy was brought to the Supreme Court in 1984 involving the Hawaii Land Reform Act (HLRA) of 1967. The Hawaii government claimed that a housing shortage caused high prices and allowed a small number of wealthy landlords to gouge poor renters. Their solution was to confiscate the property and transfer ownership to the tenants at a price set by the government. The new owners were required to remain living in the residence.

As the government claimed, there was a shortage of residential land; but the government refused to privatize 34% of the island that it owned, and enacted zoning restrictions prohibiting residential construction on 97% of the island.

Most landlords sold their investments because they were hindered by rent control rates set 55 years earlier. However, the Bishop Estate charitable trust, which operated the

Kamehameha Schools for poor native children, retained large land tracts on the main island of Oahu, consisting of the majority of the land targeted by the government. When the HLRA was enacted, the majority of the tenants were native Hawaiians, but wealthy mainlanders and Asians replaced them by the 1980's.

The requirement that the former tenant remain living on the property was removed in 1978 so that the wealthy mainlanders could lease the properties; the new owners could charge market rate, dramatically increasing the property values. One estimate concluded that the average rent in 1974 was \$350-\$400 per year, which increased to \$5,000 after rent control was removed. Many of the new owners sold their houses to Japanese land speculators during their stock market bubble in the late 1980's.

The Supreme Court unanimously approved the HLRA in 1984 because relieving the housing shortage is a public purpose no different from condemning land to build a road. Today, there is still a housing shortage and high prices in Hawaii.