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Sullivan Washburn

Trinity College, halbert.washburn@trincoll.edu

Trey Zenker

Trinity College

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Eminent Domain: A Process Contrary to Classical Liberal Thought

Sullivan Washburn and Trey Zenker

Most classical liberal thinkers would argue that the practice of eminent domain involves an illegitimate abrogation of an individual's rights. Eminent domain directly contradicts the classical liberal emphasis on the protection of private property. Moreover, such a practice creates uncertainty in society, thus hindering economic progress because people do not know if what they are doing is legal or not. Paramount to the understanding of this belief is the comprehension of the definition and historical precedence of eminent domain in the United States.

Eminent domain is defined as a constitutional provision that grants the government the power to seize private property without the consent of the owner. In return for the seizure of property, the original owner is guaranteed compensation from the government which is determined not only by the current value of the land but also by the value of the land when it is being utilized to its full economic potential (Benson, 2008, p. 429). In writing the Fifth Amendment, James Madison made property rights in the United States more secure than they had been under British rule. Madison thought the idea of compensation in return for takings to be critical in cases concerning the use of eminent domain. He also deliberately specified that lands taken by the process should be done so for *public use*, not *public interest*, *purpose*, or *benefit* (Benson, 2008, p. 430). In *Kelo v. City of New London* (2005), the United States Supreme Court interpreted eminent domain in a new light.

In 1998 the city of New London, Connecticut reestablished the New London Development Commission (NLDC), a private non-profit organization founded in an effort to assist the city of New London with economic development and planning. The NLDC was revived with hopes of revitalizing the troubled New London economy. In January of 1998, the city of New London granted 5.35 million dollars to support the NLDC's planning efforts as well as an additional 10 million dollars for the establishment of Fort Trumbull State Park.

In 2000 the New London City Council approved the NLDC's plan for development in the Fort Trumbull neighborhood and designated the organization to implement their plan, allowing the NLDC to use eminent domain in the city's name. The NLDC was able to acquire most of the land without conflict, but failed to reach an agreement with a number of families. In December of 2000, the petitioners took action and brought the case to court, arguing that the use of eminent domain by the NLDC would violate the "public use" restriction of the Fifth Amendment. The case ultimately proceeded to United States Supreme Court where the court sided with the NLDC and imposed eminent domain upon the petitioners (Cornell, 2005).

Deciding "public use" to be effectively synonymous with "public purpose," the Supreme Court determined that private property could be seized for private use by the state government so long as the taking would benefit the public's interest (Benedict, 2009, p. ix).

Classical liberals believe the chief concern of the government is the protection of the private property of any individual or institution. The reason that the individual chooses to enter into a society is because of his desire to obtain protection for his private property. This idea is neither new, nor radical. The origins of this mentality derive from the 16th century philosopher John Locke, who succinctly stated: "The great chief end therefore, of man's uniting into commonwealths, and putting themselves under government, is the preservation of their property" (Boaz, 1998, p. 125). Therefore, the government cannot take property from an individual without

his consent (Boaz, 1998, p. 125). When the use of eminent domain, as seen in the Kelo case, occurs, one could be compelled to question to what extent the government's power could potentially reach. If the government is free to take the property of the individual without consent, the individual has no property at all. Furthermore, classical liberal economists such as F. A. Hayek and Milton Friedman argue that one without true property rights lacks economic freedom, which "is the prerequisite of any other freedom" (Hayek, 1944, p. 133).

The classical liberal would argue that this case is yet another example of what one might call coordination through involuntary cooperation. Cooperation, as both Friedman and Hayek would argue, should not occur through coercion by government but rather by the self-serving motives of individuals or institutions. Competitive capitalism fosters a marketplace where both parties involved in a transaction can achieve their maximum economic benefit (Boaz, 1998, p. 296). This is a favorable alternative to the system propagated by eminent domain where, as seen in the Kelo Case, one party wins and another loses. Moreover, the Kelo Case serves as a prime example of the U.S. government diverging from the classical liberal understanding of the role of government as a protector of private property, enforcer of law, and settler of disputes between parties (Friedman, 1962, Chapter Two).

By allowing the process of eminent domain to take effect in the Kelo Case, the Supreme Court further blurred the line between what is private and what is public. America's founding fathers drafted a constitution in order to make it known to all people the laws of the land and the limitations of government. By considering the "public interest" to be the same as the "public use," the judicial system declared a change of interpretation of a preexisting law. After the Kelo case, who is to say that the governments of other cities will not implement the same approach in reviving their economies? As a result, a chain reaction might take place and before the country knew it, the government would have the power to obtain any property under the guise of the "public interest." This, as any classical liberal would agree, is a deplorable state of existence, and not what our founding fathers worked so hard to create.

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