



CPR Principles: Eminent Domain

Eminent domain involves government acquisition of privately owned real, or physical, property for public use. This power involves the taking of and affording due process and just compensation for one's private property. The following principles outline the property rights principles CPR applies in assessing the merits of policy matters relating to eminent domain.

- Eminent domain doctrine should safeguard the property interests of the private property owner. Physical property carries certain ownership rights. These property rights are inherent in private individuals and “as sacred as the laws of God,” Founding Father John Adams said. To secure these rights of property ownership to American citizens, the Constitution places the Takings Clause, among other protections of lawful due process and limitations on the government’s police power, in the Fifth Amendment. Any policy or legal judgment relating to taking private property for public use should faithfully secure individual rights and constrain the government through the rule of law.
- Eminent domain must be confined solely to serving a “public use.” Takings should only benefit the public as a whole. “Public use” must be narrowly construed. The *Kelo* ruling has inspired a widespread, vigorous reaction primarily because it is a case of *reductio ad absurdum* — its premise is flawed in that it deems almost everything to be a “public use.” “Public purpose” as conjured by judicial activists has no place in eminent domain policy or jurisprudence. An individual should not suffer for the benefit of the majority, absent crystal clear, traditionally recognized public use coupled with due process and just compensation. Neither should an individual nor the public suffer for the benefit of a private interest.
- Takings of private property by eminent domain must provide property owners substantive and procedural due process, as the Constitution requires. Due process protections must be afforded to every affected private property owner, and should accord with principles of the rule of law. By limiting the power of government through due process, the property rights of all citizens are secured and individual liberty protected.
- Takings of private property through eminent domain must justly compensate the private property owner who is losing his or her land and the rights to its use. Just compensation should make a property owner whole, fully and fairly making up the lost economic and other benefits that would have been derived from the property being taken. Further, compensation should fairly offset the inconvenience the government imposes upon the property owner as a result of taking the property. Government takings of private land must appropriately compensate affected land owners, regardless of whether the property belongs to an individual or a corporate entity, the land is in use or not, or the land is presently used for private recreational, commercial, agricultural, or other purposes.
- Eminent domain must be exercised impartially. The government must never show favoritism toward one private individual or interest over a property owner. Eminent domain should never target or harass any individual property owner. Singling out someone by vindictive or impure motives must be precluded by providing both vigorous due process protections and punishments of unjust public officials satisfactory to deter abuse of power under color of law.