Eminent Domain  
Opposition Brief by Drew Magness



Monument Publishing has released to its membership several case ideas for consideration so far this year. You have either adopted the case ideas that Monument Publishing has suggested, come up with your own case ideas, or managed to do something in between. Whatever the case may be, you have likely come across applications as persuasive elements to a number of different cases.

As you know, contentions beg for “real-world” examples, and these examples we call “applications.” These are references to history, items in the news, stories or analogies, or philosophical truths. Applications are considered the most persuasive elements of a contention, often pulling the judge into granting the debater a winning ballot.[[1]](#footnote-1)

Moving into the “midseason” of the competitive year in Stoa, Monument Publishing is turning attention to applications, and this is one of our first “opposition briefs” to a particular application. In this brief, we’ll be turning our attention to the most widely cited example in this year’s Stoa resolution: Eminent Domain.

As you surely know, Eminent Domain is when the government forcibly takes a citizen’s property for a public use and pays “just compensation” to the property owner. Many affirmatives cite eminent domain as necessary for the government to build essential infrastructure like roads, pipelines, and military bases.

Luckily, as a negative there is ample material that you can use to argue against this concept. Dig a little deeper, and there are arguably few examples of when eminent domain was proved to be necessary for the project at hand. Most evidence is mere insinuation of need rather than real warrants. However, there are many examples of eminent domain being abused. Point toward those and show how eminent domain is vague, fickle and gives governments a blank check.

Here’s the Affirmative argument, taken from the “Social Progress” Affirmative case (see [Stoa LD Release #11: “Social Progress”](https://www.monumentpublishing.com/stoa-ld-release-11-social-progress/)) written by Joshua Johnson:

“According to the U.S. Department of Justice, “Eminent domain has been utilized traditionally to facilitate transportation, supply water, construct public buildings, and aid in defense readiness.”[[2]](#footnote-2) This has greatly provided for society’s needs and social progress. Take the example of *United States v. Great Falls Manufacturing Company*. In 1862, the United States used eminent domain to appropriate land belonging to Maryland’s Great Falls Manufacturing Company in order to build aqueducts for the cities of Washington and Georgetown.[[3]](#footnote-3) This provided much needed water for the cities’ inhabitants. Take another example of *Kohl v. United States*. In 1875, the U.S. government used eminent domain to appropriate a piece of land belonging to several building owners in order to provide a post office, a customs building, and some other essential government buildings for Cincinnati, Ohio.[[4]](#footnote-4) These buildings provided Cincinnati’s basic need for a postal service. Take another example of *Sharp v. United States*. In 1903, the U.S. government used eminent domain to appropriate a piece of farm land belonging to the Gibbons along the Delaware River near Fort Mott in order to provide greater “fortifications and other works of defense.”[[5]](#footnote-5) This strengthened the nation’s social progress by providing for its national security.”

Turn this kind of rhetoric on its head by showing that there is another way in the case of eminent domain. And at its core, eminent domain is still an inherently unjust concept.

Opposition Brief: Eminent Domain

Pipelines built w/o Eminent Domain for years

John R. Lott Jr., author of Freedomnomics and president of the Crime Prevention Research Center February of 2016 <http://www.nationalreview.com/article/431005/trump-eminent-domain>

Fortunately, there is a solution — one that businesses used for years before they gained access to eminent domain. Whether they seek to build a pipeline, a road, or a building, companies almost always consider multiple possible locations. For decades, Koch Industries, the largest privately owned company in the United States, built natural-gas and oil pipelines, just like the Keystone Pipeline, across many thousands of miles without using eminent domain. Their approach was to offer a contract to property owners along different possible routes; the deal would go to whichever complete set of property owners signed the contract first. The owners might be offered, for example, 25 percent above the fair market value. If they value their property more than that, they don’t have to sell. But the Kochs’ approach discourages people from indefinitely holding out for better offers. If the homeowners wait, they risk losing this 25 percent profit. This is clearly a better alternative to forced sales at prices that, in reality, are anything but “fair.”

Always another option

John R. Lott Jr., author of Freedomnomics and president of the Crime Prevention Research Center February 2016 <http://www.nationalreview.com/article/431005/trump-eminent-domain>

Once again, the Atlantic City case raises the important point that there are almost always different places that a parking lot or a building or a pipeline can be built. Trump should follow the Kochs’ example. For that matter, the government itself would be well advised to use this market-based approach.

Unjust Compensation

Steven Greenhut is senior fellow and western region director for the R Street Institute. In this role, he is responsible for running R Street’s West Coast office in Sacramento, California and leading R Street’s work on legislation and issues affecting the western states. March 1st 2005 <https://fee.org/articles/unjust-compensation/>

“The Constitution requires the payment of just compensation, and the states and federal government have laws designed to flesh out exactly what that means. But the process rarely works out fairly for sellers, given some flaws in the process. First, *there is no just compensation when an owner is forced to sell, no matter the price offered*. A truly “just” price is the price freely accepted by willing buyers and willing sellers. Anytime government negotiates for a property and threatens to take it by force if the seller doesn’t agree to the terms, the price is neither a true market transaction nor fair to the seller. “You have to pay dearly to be treated fairly,” is how Steven Strooh, vice president of Des Moines Blue Print Co. in Des Moines, Iowa, puts it after having had the facility of the business he works for taken by the city in 2000 to make way for a new downtown office building.”

Eminent Domain is Financially Destructive

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“The frustrations and stress were incredible,” Strooh said. “We had to buy a building without knowing what we were going to get. Plus, we had to deal with all the meetings. There were meetings with the city, meetings with appraisers, meetings with attorneys on a regular basis, meetings with realtors. . . . We were in negotiations all the time, plus we were trying to keep the old business going. This is a small company. Len and I are the only executives. Eminent domain says you must be made whole. But you don’t have a leg to stand on. We did as well as we could, but it was the most difficult time in our lives.

Eminent Domain Creates Tyranny

Steven Greenhut is senior fellow and western region director for the R Street Institute. In this role, he is responsible for running R Street’s West Coast office in Sacramento, California and leading R Street’s work on legislation and issues affecting the western states. [https://fee.org/articles/the-blight-of-eminent domain/?utm\_medium=popular\_widget](https://fee.org/articles/the-blight-of-eminent%20domain/?utm_medium=popular_widget)

“In the city of Cypress, a well-kept middle-class community in the north Orange County suburbs of Los Angeles, a large non-denominational church made the tragic mistake of operating with the assumption that this is still a free country. The Cottonwood Christian Center negotiated the purchase of an 18-acre property in a commercial center with zoning that specifically allows the construction of a church. The church bought the land and developed plans for an attractive architect-designed community center–a first-rate project that would be a considerable improvement over an empty parking lot next to a sprawling racetrack. Trouble started when the church submitted plans to the city to gain the necessary approvals City officials had an epiphany. This was the last large tract of vacant land in the city, they realized. If a church builds a facility there it won’t pay much in the way of property or sales taxes. So city officials have found every reason to deny the church a permit to proceed with the project, and began shopping the land around to tax-generating companies. The latest in this long and deceitful process: The City Council, at the urging of the city manager, voted to take the property under eminent domain (while still claiming it is willing to “negotiate” a settlement) and plans to hand it over to developers, most likely at deep discount prices, to build a Costco retail center. The national discount chain is notorious for strong-arming cities into using eminent domain on its behalf. “It is hubris for the city of Cypress to decide a church isn’t the best use of land owned by the church,” Assemblyman Ken Maddox said. “In the Soviet Union, Stalin seized churches and turned them into museums. Cypress seizes a church and wants to turn it into a Costco. At least Stalin looked for something with artistic merit.”

The Plight of Vera Coking

David Boaz, Research Fellow for the Cato Institute August 19th 2015 [https://www.theguardian.com/commentisfree/2015/aug/19/donald-trumps-eminent-domain-nearly-cost-widow-house](https://www.theguardian.com/commentisfree/2015/aug/19/donald-trumps-eminent-domain-nearly-cost-widow-houseDavid)

“For more than 30 years Vera Coking lived in a three-story house just off the Boardwalk in Atlantic City. Donald Trump built his 22-story Trump Plaza next door. In the mid-1990s Trump wanted to build a limousine parking lot for the hotel, so he bought several nearby properties. But three owners, including the by then elderly and widowed Ms Coking, refused to sell. As his daughter Ivanka said in introducing him at his campaign announcement, Donald Trump doesn’t take no for an answer. Trump turned to a government agency – the Casino Reinvestment Development Authority (CRDA) – to take Coking’s property. CRDA offered her $250,000 for the property – one-fourth of what another hotel builder had offered her a decade earlier. When she turned that down, the agency went into court to claim her property under eminent domain so that Trump could pave it and put up a parking lot. Peter Banin and his brother owned another building on the block. A few months after they paid $500,000 to purchase the building for a pawn shop, CRDA offered them $174,000 and told them to leave the property. A Russian immigrant, Banin said: “I knew they could do this in Russia, but not here.”

Eminent Domain Fails Economies

Rep. Tom Reed, Republican representative from New York July 2nd 2015 <http://thehill.com/blogs/congress-blog/246691-eminent-domain-abuse-violates-private-property-rights>

The *Kelo*decision is based on the premise that “Big Government” is more capable of determining what serves the best interest of local landowners than the landowners themselves. To understand the flaws of this perspective, look no further than New London, Conn.: the city confiscated Ms. Kelo’s home so that a pharmaceutical corporation could build a new facility. The city claimed that seizing this property under eminent domain was necessary to complete a “redevelopment project.” Today, 10 years after the *Kelo* decision, the property where Ms. Kelo’s home once stood is a vacant and desolate lot. After spending millions of dollars of taxpayer money and forcing several hard-working families from their homes, this economic development plan was a complete failure. The abandoned 90-acre lot in the heart of New London is a chilling example of the danger posed by government overreach and intrusion into the lives of American citizens.

Eminent Domain is playing God

Rev. R.J. Rushdoony was the founder of Chalcedon and a leading theologian, church/state expert, and author of numerous works on the application of Biblical Law to society. 1995 <http://chalcedon.edu/research/articles/eminent-domain/#author-rev-r-j-rushdoony>

The right of eminent domain ostensibly limits the state to the confiscation of properties necessary to the common good or to the public welfare. But the state is the judge of the common good and public welfare, and so the power of eminent domain expands steadily toward the total possession by the state of all properties within the state. The state, being viewed as the higher or supreme power, and the possessor of eminent domain, is seen as the natural guardian and agency of public welfare. In terms of this presupposition, *private* ownership is seen as hostile to the common good, whereas *state* ownership advances the public welfare. With this philosophy, total confiscation is simply a question of time. The right of eminent domain, therefore, by associating a “necessary common use” or good with the state, makes the state into a benevolent god whose control and ownership are necessary to the welfare of man.

No Justice in Eminent Domain

Anthony Gregory a Research Fellow at the Independent Institute 12/5/06 <https://mises.org/library/trouble-just-compensation>

So long as the state can steal from one to give to another, the capacity for it to do so in a "fair market" manner, or with "just compensation," is a logical impossibility. Instead of trying to fight Eminent Domain abuse, we must recognize that Eminent Domain is itself an abuse of property rights, one that is totally irreconcilable with the foundational mechanisms of the market and quintessentially compatible with the nature of the state. As in all other areas, the answer is not to change the way in which the state violently attacks property rights — to shuffle around victims and beneficiaries — but to reduce the extent of those attacks with a commitment toward the unmistakable, ultimate goal of ending them altogether.

10,000 Abuses

Dana Berliner Senior Vice President and Litigation Director for The Institute for Justice June 2003 <http://ij.org/ll/june-2003-volume-12-number-3/ij-report-documents-10000-plus-eminent-domain-abuses-across-us/>

Over the past five years, governments have condemned or threatened more than 10,000 homes, businesses, churches and private land for private business development. More than 4,000 of these properties are currently under threat of condemnation for private parties. Among many examples, the report found that in the past five years, governments have: Condemned a family’s home so that the manager of a planned new golf course could live in it; Evicted four elderly siblings from their home of 60 years for a private industrial park; Removed a woman in her 80s from her home of 55 years supposedly to expand a sewer plant, but actually gave her home to an auto dealership. Private developers love eminent domain. By cozying up to local bureaucrats, they can secure land on the cheap without the hassles of negotiating with individual owners. And local officials get to trumpet exciting projects promising new jobs and taxes. But because everyone’s home or small business would generate more jobs or taxes as a big business, no one’s land is safe. Cities thus use eminent domain to favor large businesses over mom-and-pop establishments, national chains over local businesses, upscale condos over middle-class single-family homes, and government-chosen projects over ones developed privately.

1. Explanation adapted from *Red Book for Lincoln-Douglas Debate* by Chris Jeub. See <https://monumentpublishing.com/redbook>. [↑](#footnote-ref-1)
2. “History of the Federal Use of Eminent Domain.” The United States Department of Justice. <https://www.justice.gov/enrd/history-federal-use-eminent-domain> [↑](#footnote-ref-2)
3. “UNITED STATES v. GREAT FALLS MANUF’G CO.” Legal Information Institute. <https://www.law.cornell.edu/supremecourt/text/112/645> [↑](#footnote-ref-3)
4. “KOHL v. US.” FindLaw. <http://caselaw.findlaw.com/us-supreme-court/91/367.html> [↑](#footnote-ref-4)
5. “SHARP v. US.” FindLaw. <http://caselaw.findlaw.com/us-supreme-court/191/341.html> [↑](#footnote-ref-5)