

# The Blight of Eminent Domain

by Steven Greenhut

**M**y sister-in-law came back from a recent trip to Poland outraged at how that former communist country treats its citizens. An acquaintance of hers owns a beautiful home in the Polish countryside and is now involved in an ugly court battle because a government official was so impressed with the property that he began the legal process of taking it for himself.

That sort of outrage would never happen in America, for heaven's sake. This is the land of the free and home of the brave. A place where every man's home is his castle and where the government can't just take property for the heck of it, thanks to a sophisticated system of property rights. At least that's what my sister-in-law and the vast majority of Americans think.

Unfortunately, the truth is far different. The experience of that Polish homeowner isn't much different from what happens every day in southern California. And don't think it's only on the left coast property rights are treated shabbily. Eminent-domain abuses are rampant in every state in America.

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

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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.”

Maddox is one of only a handful of elected officials willing to speak out against a process that has become so commonplace that many officials can’t understand why the Cottonwood issue is even controversial. It’s not just a possible “taking” that’s at issue, but an entire taxpayer-funded smear campaign by a city against a property owner. Cypress has launched a public-relations crusade against the church for defending a concept of property rights that city officials view as arcane.

Taxpayer money is spent to pay for a push poll designed to show the true benefits of kicking the church off its land. A pricey city-sponsored public effort is bashing the church and implying that religious fanatics are selfishly trying to build something that will deprive the city of needed revenue to pay for parks, schools, senior centers, after-school programs, and more.

It always creeps me out when life resembles an Ayn Rand novel, but that’s exactly what’s happening here. Craven officials are allied with looting companies to defame and then rob a group of people who are trying to live their own lives their own way on their own property.

## Fiscal Crisis Invoked

Sophisticated supporters of the city make an argument that’s used repeatedly on behalf of the many cities that operate this way. Tax-limiting Proposition 13, the California ballot initiative that capped property tax increases unless approved by a two-thirds vote, limited city revenues, they say. Furthermore, the state of California has repeatedly dipped into funds belonging to cities to pay for state priorities. Given this fiscal “crisis,” cities have no other choice but to turn to sales taxes as a way to pay for needed services. So cities must use eminent domain to assure that every piece of developable land has its tax potential maximized.

Actually, the local budget “crisis” isn’t that different from the national one—it’s a question of too much spending rather than too little revenue. In California cities, cops routinely make six-figure salaries, bureaucracies are huge and expanding, city halls are gilded palaces, union featherbedding is rampant, and officials spend money on open-space acquisition and other costly amenities with frightening abandon.

Municipal-finance experts in California correctly refer to the “fiscalization of land use.” Governments have immense power over what gets built where, and they use it to approve only those projects that bring in the most tax revenue. This has exacerbated the housing problem in southern California, because cities view housing as a drain on their resources and therefore force homebuilders to make all sorts of concessions before getting approvals. But coveted retail complexes—1 percent of the sales tax goes into city discretionary budgets—are lured with ridiculous subsidies and promises of using eminent domain on their behalf.

This is accomplished through California’s 1950s-era redevelopment law. Other states have similar laws called different things. In California, the good-government “liberals” wanted to come up with a way to help cities clean up blighted neighborhoods. Every city can start a redevelopment agency, which is technically separate, but operates as a city department. In almost every case, the city council is the agency’s governing body.

Simply put, agencies can declare areas blighted, based on the broadest possible standards. Once an area is blighted, and the city goes through an official hearing process, every increase in property value—called tax increment—goes directly into the agency’s budget. Debt can be floated without a public vote. Tax dollars are used to subsidize developers, pay for consultants, and acquire land. Agencies gain eminent-domain powers to take property from one private owner and give it to another.

The details are complicated but the concept is simple. Government officials are granted central-planning and confiscatory powers that would make a Soviet commissar

jealous. It's such a handy development tool that few cities can resist using it. So the bulk of major development projects, especially in the more densely populated areas where land isn't sitting fallow, are driven by city officials who serve as land-clearing agencies for big developers. The process is rarely about blight removal and mainly about finding ways to turn areas that produce little tax revenue (that is, your church or older neighborhood) into sales-tax bonanzas (that is, strip malls). No wonder southern California is an endless sea of Wal-Marts, Costcos, and Home Depots.

It's just too difficult to assemble 15-acre tracts without using eminent domain, according to a development specialist who handles land acquisition for Costco. In other words, companies are unwilling to play by the rules of the free market, where buyers must cajole willing sellers to part with their properties. It's so much easier to have government thugs just take the land and hand it to you on a platter, with taxpayers picking up much of the tab.

## **Just Compensation?**

Wait a minute, critics often say. It may not be nice to use eminent domain for private purposes, but in America the courts still insist that property owners get paid just compensation. (Of course, under the U.S. Constitution takings can be only for "public use.")

Yes, property owners are reimbursed. Those who play ball with the city often get amounts that approach gifts of public funds. Those who try to defend their businesses, however, often get subjected to vicious hard-ball tactics. It's not unusual for victims of eminent domain to spend years in court trying to get just compensation. And what about people who plain old don't want to sell their property? They like their neighborhood or have built up a good reputation with their business. Why should they have to move? Besides, cities refuse to pay for the value of businesses' goodwill, paying instead only the assessed value of the accumulated property and business equipment.

Not far from Cypress is Garden Grove, a working-class, immigrant-heavy city filled with small businesses and older, decently maintained tract neighborhoods. Yet city officials don't like its down-market reputation and are trying to capitalize on its location close to Disneyland. So officials are using redevelopment to remake much of the entire city. Until public outrage forced the city to back down, officials were looking to drive 1,000 families out of their homes, possibly to make room for a theme park. By their own admission, city officials are marching along the major commercial boulevards and driving small companies out of business, with the hopes of luring new hotels that draw overflow tourists from the Anaheim resort area.

This is horrible on any number of levels. The city is amassing a large public debt to pay for projects of questionable long-term value. Many of the proposed projects have become embarrassing busts, such as a major hotel that nearly went bankrupt until the city poured in additional millions to prop it up.

The process also has exacerbated blight, given that property owners are less apt to fix up their homes and businesses when they know that they are being targeted for extinction. Most disturbing, though, is the way the city puts the screws to victims of eminent domain when it comes time to pay fair market value.

One couple, Joseph and Yae Hong, operated a successful car-rental business along Garden Grove Boulevard. The company had a ten-year lease on the property and brought in about \$2 million a year, but the city offered them \$16,000 for the entire operation after condemning it. The Hong's were forced out of business and ran up tens of thousands of dollars in debt to fight for a better deal. A court eventually awarded the Hong's nearly \$1 million but only after a long period of pure misery. And they were forced to move to a less desirable location.

In 1997 Garden Grove took a Romanian couple's small business and offered \$640,000 for a property the couple had purchased in 1990 for \$778,000 and zero for the business itself, which the couple had pur-

chased for \$100,000. These are two typical examples of what goes on. In one attempted use of eminent domain in Anaheim, the company doing the appraisal had a financial interest in the final project. Wouldn't that be great if you could appraise a property that you wanted to buy?

I could go on and on with examples. I've seen blight designations for modern shopping centers, newer housing developments, and even for vacant land. Blight is whatever a city says is blight, even though California and federal courts have finally added a few needed limits after cities went way over the line in justifying blight designations. (For example, the rural enclave of Mammoth Lakes declared land blighted because of excessive urbanization).

Essentially, cities can take any property

anywhere within their city limits and give it to other private owners for virtually any reason. It's terrible in many other places. One Illinois agency offers one-stop shopping for businesses that want to take someone else's property. Just fill out a form designating the property you want and the agency will see what it can do.

It's all in the name of the common good, of course. Cities need tax revenue and churches don't pay any. Small car-rental businesses aren't nearly as attractive as fancy new discount centers. Neighborhoods with 1960s tract houses don't impress the tourists as much as a new theme park.

Now what was that again about America being a beacon of freedom and property rights? Surely things can't be this bad in Poland. □

## OOPS! We Can't Find the Government!

Princess Navina has spent her young life studying the governments of other lands, but in Voluntaria she draws a blank. Reacting against their history of past violence, the people of Voluntaria have sworn off using force to manage society. As a result, they have none of the political fixtures of the modern world: no taxation, no regulation, no laws... and no lawyers!

How do they solve the problems of daily life without depending on politicians? The solution is so simple one wonders why no one has thought of it before.

Political scientist Jim Payne, the creator of the Princess Navina series, has written fourteen books on topics ranging from the Peruvian labor movement to the U. S. Congress. "After 41 years of research," he says, "I think I've figured out what's wrong with government and what we can do about it. I've put the answer in fictional form to engage youthful minds without distressing elderly ones."

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# Underdeveloping Indiana

by Manuel F. Ayau Córdón

**T**he people of the 50 states of the United States (5 percent of the world's population) produce 31 percent of the world's gross product of goods and services. Think of the United States as a world in itself, composed of 50 countries with open borders and no restrictions on trade between them. In this world, no limits exist on immigration, enabling people to vote with their feet. There is also considerable diversity in the laws among the states because most legislation is not "harmonized."

Now let us imagine what it would mean to Indiana if it adopted the trade policies common to most underdeveloped countries.

Imagine that Indiana established tariffs and other trade restrictions to provide a new source of revenue, protect local industry (principally steel and autos)—as well as its agriculture—from competition by other states, attract more industries to create jobs, and make sure that Indiana does not have a negative balance of trade.

The first step would be for the government to purchase the required real estate on its periphery to build customhouses where all highways and rail lines enter Indiana from Michigan, Ohio, Kentucky, and Illinois, as well as at ports on Lake Michigan. And don't forget the airports where flights from other states come in.

Look at a map in order to appreciate the extent of the task. Indiana would have to build warehouses at train sidings, roads, airports, and ports to unload, inspect, and reload imported goods from the other states. Then it would have to staff these facilities with customs inspectors to apply the proper tariffs established in its newly created Customs Code. A Bureau of Customs would have to be staffed with personnel adequately trained and prepared for the required tasks; they would have to be specially screened and supervised to avoid bribery and smuggling from other states. The new bureaucrats would naturally have to come from previously productive occupations—and their products be forgone.

Given the present demand for goods, the new additional handling and production costs could not simply be passed on to the consumer, so marginal production would be abandoned. Thus, thanks to the diminished supply of goods and the diminished competition from out of state in the market for raw materials and industrial supplies, prices would rise. Real wages would thus be correspondingly lowered.

New investment opportunities would immediately arise to exploit the competitive advantage of local production over imported goods subject to duties and extra expenses. The duties would be set high enough so that protected firms could attract workers from their current occupations. The old activities would have to be abandoned because they

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