



# Imminent Domination

**Progressives cannot allow libertarians to lead the fight against the misuse of eminent domain.**

**BY DAVID MOBERG**

**I**N JUNE THE SUPREME COURT STARTED the clock ticking on a potential political time bomb. In *Kelo v. New London*, the Court ruled five to four that local governments could use their power of eminent domain to take private property, including homes, to promote economic development. The decision broke no new legal ground, but it did stir up opposition across the political spectrum, yielding a potential windfall for the right-wing libertarian movement for “property rights.”

Under the Constitution, government can take property for “public use”—for projects

like roads, schools and hospitals—if it pays “just compensation.” For more than a century, courts have interpreted “public use” to include public purpose or benefit, like clearing a slum or helping a utility or railroad obtain right-of-way.

Over the past half-century or more, local governments have used eminent domain to promote local economic development, creating more jobs and generating needed revenue. While everyone agrees that government can’t arbitrarily transfer one owner’s property to another owner, the controversy arises over what

kind of public benefits, if any, can justify such a transfer. From both left and right, critics have accused government of abusing its power of eminent domain by taking homes and small businesses from the less affluent or less powerful and transferring them to big corporations—much as Detroit did in 1980 when it razed the working-class Poletown neighborhood and displaced more than 3,400 people to clear land for a new General Motors factory. On the other hand, it’s rare when eminent domain is even proposed to take over, say, a factory being shut down by a

corporation and turn it over to community-worker ownership.

In *Kelo*, the court ruled that the economically depressed city of New London, Conn., had the power to take and pay for the property of a group of homeowners for a planned development that included a waterfront conference hotel, a marina, housing, and commercial and office space. But the majority also emphasized that the government's power was legitimate because there was a deep public need and a well worked-out plan.

## The right backlash

The lawyers for the homeowners came from the Institute for Justice, a libertarian legal group that is part of the property rights movement. Property rights advocates argue that much government regulation, from environmental laws to New Deal legislation, constitutes illegal "takings" of private property without compensation. "The [*Kelo*] opinion is written so that government can take property for anything it feels like," argued Institute for Justice attorney Dana Berliner. "With that decision we knew immediately there would be some sort of backlash."

There was, and it went far beyond the libertarian right. Some polls showed close to 90 percent of respondents hostile to using eminent domain for economic development, with a strong majority even critical of using eminent domain to build roads. Legislators in more than two dozen states are now planning legislation that would curb the power of state or local governments to take private property for any private economic development project (often with the sole exception in cases of "blight"). Members of Congress have introduced at least nine measures, including one denying federal funds to any local government that uses eminent domain for economic development.

The issue is pushed mainly by conservative Republicans and libertarian right groups like The Castle Coalition (an offshoot of the Institute for Justice). Grover Norquist, the influential right-wing strategist who heads Americans for Tax Reform, told *The Economist* that "twenty years from now, people will look back at *Kelo* the way people look back at *Roe v. Wade*," spawning a property rights movement as potent as the anti-abortion movement.

## The left backlash

Critics of eminent domain abuse also exist on the left. Progressive politicians like Rep.

Maxine Waters (D-Calif.) have proposed restrictions on the use of eminent domain, and the *Kelo* homeowners case drew support from the NAACP, AARP and the respected urbanologist Jane Jacobs. Dating back to the Poletown case, the subject of a Michigan Supreme Court decision that the current state Supreme Court reversed last year, consumer advocate Ralph Nader has also criticized local governments for abusing their power to transfer property of homeowners and small businesses to big corporations.

It's easy to find egregious cases, like the effort by Atlantic City to take one woman's house to provide limousine parking for Donald Trump (a move blocked by the courts), or, only slight less outrageous, the current attempt of Long Branch, New Jersey, to use eminent domain to clear existing waterfront homes in order to build higher-priced homes. In decades past, cities typically used their eminent domain powers for dubious urban renewal projects—often labeled "Negro removal"—such as the destruction of Boston's West End working class Italian community for luxury housing or Robert Moses' massive transformation of many neighborhoods in New York City, especially in the Bronx.

Often the use of eminent domain is combined with tax breaks and other public subsidies for factories, warehouses, Wal-Mart and other big box retailers, and stadiums for private sports teams—like the subsidies and eminent domain powers used to build a stadium for George W. Bush's Texas Rangers. As Greg LeRoy makes clear in his new book, *The Great American Jobs Scam*, the public benefits of these private developments are frequently exaggerated, and corporations often take the tax breaks and fail to live up to expectations—or even leave.

Defenders of the use of eminent domain for economic development point to successful big projects, like Baltimore's Inner Harbor, or unusual smaller-scale projects, like Boston's Dudley Street Neighborhood Initiative, a neighborhood nonprofit group that used the city's powers of eminent domain to redevelop a blighted, poor neighborhood. And even though eminent domain should be the last resort, it is often necessary to avoid a single hold-out from blocking a worthy public purpose.

But the property rights movement sees all uses of eminent domain for economic development as abuse. It has an absolutist view of property and a desire for minimalist government, but government creates property rights, which are always conditional

and limited. The movement also makes no distinction between rights of homeowners and those of big corporations.

## Distinctions with differences

It's possible to reform the use of eminent domain without adopting the property rights movement strategy. First, there's a need to recognize that local governments are driven towards the abuse of eminent domain because of current urban policy. Sprawl often drains resources from central cities, and the lack of both metropolitan revenue sharing and federal urban financial aid (typical in most of Europe) leads local governments to seek revenues by raising the value of their real estate—thus displacing modest homes and businesses. Also, cities often mistakenly pursue large-scale land clearance projects, pushed by developers and corporations, rather than encourage economic growth with infrastructure development that respects the existing built environment, trains its workforce and builds on existing assets.

The process of using eminent domain for economic development is in need of reform, such as more extensive and democratic planning (especially from the affected neighborhood), more rigorous demonstration of the public benefits that should be the plan's primary objective (not simply increased tax revenue or the private benefit of a new owner), and both public regulation of the project and binding contracts for private performance.

Finally, as Nader has argued, there's a need to recognize that not all property, nor all uses of eminent domain, are equal. Special safeguards are needed against abuses in transfers from the economically and politically weak to the wealthy and powerful, and it must be recognized that people's homes are a different type of property from a Wal-Mart store. Homes are often not just expressions of property interests but of personal liberty and autonomy, as well as freedom of association, that deserve more protection (and above-market compensation).

The libertarian right, which is at odds on this issue with the big-business conservatives who benefit from eminent domain and tax breaks, clearly hopes that it can ride this issue into battle against all regulatory restrictions on property rights. The left must do more than simply join the opposition to the misuse of government power on behalf of corporate interests against homeowners and small businesses. It needs to pursue comprehensive reforms that preserve essential powers of local governments but make them better serve the needs of their citizens. ■

# Reckoning with the God Squad

Fundamentalist bullies cannot be appeased. They must be confronted.

BY BILL MOYERS

**A**T THE CENTRAL BAPTIST CHURCH in Marshall, Texas, where I was baptized in the faith, we believed in a free church in a free state. I still do.

My spiritual forbears did not take kindly to living under theocrats who embraced religious liberty for themselves but denied it to others. “Forced worship stinks in God’s nostrils,” thundered the dissenter Roger Williams as he was banished from Massachusetts for denying Puritan authority over his conscience. Baptists there were a “pitiful negligible minority” but they were agitators for freedom and therefore denounced as “incendiaries of the commonwealth” for holding to their belief in that great democracy of faith—the priesthood of all believers.

Such revolutionary ideas made the new nation with its Constitution and Bill of Rights “a haven for the cause of conscience.” No longer would “the loathsome combination of church and state”—as Thomas Jefferson described it—be the settled order. The First Amendment neither inculcates religion nor inoculates against it. Americans could be loyal to the Constitution without being hostile to God, or they could pay no heed to God without fear of being mugged by an official God Squad. It has been a remarkable arrangement that guaranteed “soul freedom.”

It is at risk now, and the fourth observance of the terrorist attacks of 9/11 is an appropriate time to think about it.

Four years ago, the poet’s prophetic metaphor became real again and “the great dark birds of history” plunged into our lives.

They came in the name of God. They came bent on murder and martyrdom.

Yes, the Koran speaks of mercy and compassion and calls for ethical living. But such passages are no match for the ferocity of instruction found there for waging war for God’s sake: “Those who believe fight in the cause of Allah, and those who reject faith fight in the cause of Evil.”

So the holy warriors came—an airborne death cult, their sights on God’s enemies: regular folks, starting the day’s routine one minute and in the next, engulfed by a hor-

rendous cataclysm.

But it is never only the number of dead by which terrorists measure their work. It is also the number of the living—the survivors—taken hostage to fear. The writer Terry Tempest Williams has said “the human heart is the first home of democracy.” Fill that heart with fear and people will give up the risks of democracy for the assurances of security. Fill that heart with fear and you can shake the house to its foundations.

Having lost faith in all else, zealots have nothing left but a holy cause to please a warrior God. They win if we become holy warriors, too; if we kill the innocent as they do; strike first at those who had not struck us; allow our leaders to use the fear of terrorism to make us afraid of the truth; cease to think and reason together, allowing others to tell what’s in God’s mind. Yes, we are vulnerable to terrorists, but only a shaken faith in ourselves can do us in.

**M**USLIMS HAVE NO MONOPOLY ON HOLY violence. As Jack Nelson-Pallmeyer, an assistant professor of Justice and Peace Studies at University of St. Thomas, points out, God’s violence in the sacred texts of both faiths reflects a deep and troubling pathology “so pervasive, vindictive and destructive” that it contradicts and subverts the collective weight of other passages that exhort ethical behavior or testify to a loving God.

We know we can go through the Bible and construct a God more pleasing to the better angels of our nature. We also know that the “violence-of-God” tradition remains embedded deep in the DNA of monotheistic faith. Inside that logic you cannot read part of the Bible allegorically and the rest of it literally. If you believe in the virgin birth of Jesus, his crucifixion and resurrection, and the depiction of the Great Judgment at the end times you must also believe that God is sadistic, brutal, vengeful, callow, cruel and savage—that God slaughters.

Let’s go back to 9/11 four years ago. The ruins were still smoldering when the reverends Pat Robertson and Jerry Falwell went on television to proclaim that the terrorist

attacks were God’s punishment of a corrupted America. They said the government had adopted the agenda “of the pagans, and the abortionists, and the feminists, and the gays and the lesbians,” not to mention the ACLU and People For the American Way. (The God of the Bible apparently holds liberals in the same low esteem as Hittites and Gergushites and Jebusites and all the other pagans of holy writ.) Critics said such comments were degraded. But millions of Christian fundamentalists and conservatives didn’t think so. They thought Robertson and Falwell were being perfectly consistent with the logic of the Bible as they read it: God withdraws favor from sinful nations—the terrorists were meant to be God’s wake-up call: better get right with God. Not many people at the time seemed to notice that Osama bin Laden had also been reading his sacred book closely and literally, and had called on Muslims to resist what he described as a “fierce Judeo-Christian campaign” against Islam, praying to Allah for guidance “to exalt the people who obey Him and humiliate those who disobey Him.”

Suddenly we were immersed in the pathology of a “holy war” as defined by fundamentalists on both sides. You could see this pathology play out in General William Boykin. As a member of the U.S. military, Boykin had taken up with a small group called the Faith Force Multiplier whose members apply military principles to evangelism with a manifesto summoning warriors “to the spiritual warfare for souls.” In uniform, Boykin attended evangelical revivals preaching that America was in a holy war as “a Christian nation” battling Satan and that America’s Muslim adversaries will be defeated “only if we come against them in the name of Jesus.” For such an hour, America surely needed a godly leader. So General Boykin explained how it was that the candidate who had lost the election in 2000 nonetheless wound up in the White House. President Bush, he said, “was not elected by a majority of the voters—he was appointed by God.” Not surprising, instead of being reprimanded for evangelizing while in uniform, General Boykin is now