

POLITICAL & SOCIAL THOUGHT

The Issue of Eminent Domain

Instructions

When doing the reading for this class, there are the two basic kinds of information you need to understand:

1. What are the main points or conclusions that an author accepts with respect to a particular issue?
2. What premises, assumptions, reasons, evidence, and other important considerations lead the author to accept that conclusion?

For our purposes, it is *information of the second sort that will be our primary concern* since our most basic task is to *evaluate the reasons and evidence* that are offered to support and justify accepting the author's conclusions as opposed to other ones.

Reading

Lithwick, D. (2005, February 22). Condemn-Nation: This Land was Your Land, but Now It's My Land. *Slate*. Retrieved December 25, 2018, from <https://slate.com/news-and-politics/2005/02/condemn-nation.html>.

Optional: Kelo v. New London, 545 U.S. 469 (2005).

(Excerpts are from Justice Stevens, delivering the opinion of the Court, and Justice O'Connor, dissenting.)

Comment

When reading and discussing legal cases for this class, try to distinguish the *political and moral* reasoning from the *purely legal* reasoning. Legal reasoning says things like "this is right/wrong because of the following laws, sections from the constitution, or previous court decisions." For the purposes of this class, we are less concerned with this type of reasoning—after all, the laws, constitution, or previous decisions may themselves be unjust.

Instead, focus on the political and moral reasons for why something is right/wrong or why the laws, constitution, previous decisions being applied are themselves just and should be upheld.

Questions

1. Consider the facts of the case, as presented by Dahlia Lithwick.
How do you think John Stuart Mill's Greatest Happiness Principle would decide this case? That is, does the social utility of eminent domain here outweigh the social utility of private property rights?
Would Jeremy Bentham's Utilitarian Calculus agree with this analysis, or would it be different?
2. The city of New London (represented by lawyer Wesley W. Horton) wants use its powers of eminent domain to condemn private land and sell it to private developers.
What seems to be the city's (and Horton's) argument that the city can justly use eminent domain in this situation? Is this an argument grounded on utilitarian principles? (In thinking about this, you might look at the optional reading with the ruling by Justice Stevens, which agrees with the city of New London.)
3. The homeowners (represented by lawyer Scott G. Bullock) believe it is unjust for the city to condemn their land and sell it.
What seems to be the homeowners' (and Bullock's) argument that it is wrong for the city to use eminent domain in this situation? Is this an argument grounded on utilitarian principles? (In thinking about this, you might look at the optional reading with the dissent by Justice O'Connor, which agrees with the homeowners.)
4. Both sides to this case do share some premises—for instance, neither side wants to abolish eminent domain completely. Even so, these sides reach different conclusions about the application of eminent domain in this case.
Since these two sides cannot both be right, where exactly in their premises do they disagree?

To answer these questions you will have to reflect critically on what you have read and possibly re-read important passages.

Although I strongly suggest that you write out brief answers to these questions, you do not have to turn in written responses (unless you miss or are late to class, and must then submit a written reading question review).

You do need to be prepared to speak intelligently about these issues at our next class meeting. You may, during the following class, be randomly selected to present answers to these if selected to do so for a verbal reading question review.