

Legalizing Theft in America

Does the United States government abuse property rights of American citizens?

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Since its inception in 1776, the United States has fought an ongoing battle to ensure peace and justice for its citizens. Through the addition of the Bill of Rights to the Constitution, the United States government guaranteed certain freedoms for its citizens while also establishing a preventative measure to defend against a tyrannous rule of government. The Fifth Amendment of this bill partially encompasses the various property rights that American citizens are ensured. Recently, however, controversy has arisen concerning these rights due to government systems known as eminent domain and civil asset forfeiture (CAF). Eminent domain allows for the seizure of a citizen's land in return for 'just compensation', but this ultimately displaces minorities and breaks up cultures and communities. Similarly, CAF allows police to legally seize someone's property without convicting or charging the owner of a crime, because it is their property that is being charged. Although this law is meant to deter criminal activity, it does so at the expense of innocent property owners, and it is too often misused in order for financial gain. The misuse of both of these systems has stirred much controversy in America, thus catalyzing a widespread call for change. These laws have come at the expense of innocent property owners, and reform must be implemented in order to guarantee the freedoms and rights of American citizens continue to be upheld.

Eminent Domain

Although the basis of eminent domain was founded in protecting the rights of the individual whose land is being seized, undercompensation of property has left many in an economic downfall. Eminent domain explicitly states that owners of property seizures must be justly compensated for their land, determined by market price for their property. However, this

does not account for the sentimental value the property may hold to the owner, nor the value the property may hold to a private company that would buy it (Lee, 2013). ‘Just compensation’ also does not help families replicate the sense of community and networking they once held with neighbors, local stores, and church communities (Carpenter & Ross, 2007). It is essential that the government takes into account the cultural communities and sentimental values they are affecting before they decide to seize them. Also, if one was to sell their home on the market, they may make more money through negotiations or through a private company than they would through the government. This makes it harder for people who have had their property seized to move on, especially if they were not adequately compensated (Bell and Parchomovsky, 2007). Overall, what is considered ‘just compensation’ to the government often hurts the original owners proving that this justification for eminent domain is not enough.

Eminent domain has also had a history of discriminating against minorities and the lower class. This abuse of power was especially evident around the civil rights movement, with the Federal Housing Act of 1949 which allowed the government to clear neighborhoods that were ‘blighted’, or damaged to improve the area. Author and professor at Columbia University, Mindy Thompson Fullilove, suggests that low-income neighborhoods where African Americans reside are targeted by the government and seized for eminent domain (Fullilove, n.d). This can be observed in court cases such as *Berman v. Parker*. In 1952, 20,000 impoverished African Americans had their homes replaced with office buildings and stores. Although one of the stores in the area was not ‘blighted,’ the Supreme Court ordered the continuation of displacement of the community (Jackson, 2010). Today, many Americans claim that since times have changed, this would not be the case anymore (Ely, 2013). However, this is not supported by recent statistics,

which show that two thirds of the people displaced by eminent domain are African Americans (Fullilove, n.d). Furthermore, this discrimination is not limited to minorities, but also the low-income class. In fact, properties impacted by eminent domain had a median income nearly one-fifth lower than surrounding areas as reported by Claire Page of the Chicago Tribune editorial board (Page, 2007). By broadening eminent domain's power, ethnic groups and social classes are subject to discrimination. Therefore, the term 'blighted' should be specified to prevent any loose interpretations of eminent domain.

Another flaw in the eminent domain process is that the property seizures have not always been utilized to benefit the public. The Constitution gives the government the power of eminent domain as long as the land seized is effectively utilized for the public (Eminent domain, 2010). However, this has not been practiced in recent court cases such as *Kelo v. City of New London* in 2005. In New London, Connecticut, Pfizer Inc. planned to build a research center in a habituated area, but when homeowners refused to move, the city used the power of eminent domain to take the property. Attorney Joseph Whealdon, reports that the courts justified their actions by stating that the land for the private company would eventually benefit the economic development of the community (Whealdon, n.d). Even more shockingly, four years later, the land was left vacant because the Pfizer company decided to move its project elsewhere, and has been abandoned into a city dump (Jackson, 2010). These actions show how the use of eminent domain has not always benefitted the public. The Supreme Court has the power to take people's homes and justifies it by simply stating that the property would indirectly better the community. Court cases like *Kelo v. City of New London* prove that the definition of 'public use' is not concise enough even to this date.

However, if used properly, eminent domain could help create new buildings and stabilize the economy in a city or town. Public redevelopment creates beneficial institutions including schools, recreational facilities, and parks (Salkin & Lucero, 2005). These places promote a better sense of community and can increase the quality of life for residents. There was an instance of beneficial use of eminent domain in the St. Louis area, where a private developer wanted to build a new retail center in place of a car dealership. The new shops would generate nearly \$170 million in revenue over the course of five years and would also provide jobs for the community (Erman, 2006). The benefits that this retail center could provide reveal the government's interest in improving the community as a whole. Furthermore, eminent domain was established with the intention of expanding infrastructure for the United States. The United States Constitution was amended to require 'just compensation' and 'public use', however, more regulation is needed to prevent abuse (Ely, 2013). Overall, eminent domain's original intentions can have a multitude of benefits to it, economically through new revenue and socially through a more beneficial use of land for individuals of the city.

Civil Asset Forfeiture

Much like eminent domain, CAF is very poorly regulated which ultimately has resulted in the victimization of innocent property owners. Recent outrage has been sparked by the overwhelming amount of cases in which people have had their property unjustly taken from them. For example, in 2012 a small business owner from Virginia had \$17,550, for business supplies taken from him by the police after a minor traffic violation. His money was returned to him, but not after he lost his business because he did not have enough money to pay his overhead (Leef, 2014). In other instances, people have had their valuable necklaces, cars, and even homes

seized under this law. The majority of the time, property owners do not have enough money to contest their case in court, and they ultimately lose their property despite the fact that in 80 percent of CAF cases, the owner is not accused of a crime (“What Civil Asset Forfeiture Means”, 2014). This is due to the poor regulatory standards when enforcing this law. CAF makes it very difficult to retrieve property from the government, even if it is possible to prove that the property was not going to be used for illegal actions (Dunn n.d.). This violates the property rights of American citizens, as there is no warrant needed to collect property. These poor regulations extend to the economic aspects of this law as well. According to a New York Times study, in 2012, CAF brought in \$4.2 billion (2013). There are laws in some states that are meant to regulate the funds that are brought in by CAF, but these are evaded through a process called *equitable sharing*. Under this program, state and local law enforcement agencies are able to circumvent state forfeiture laws by partnering with the federal government. This allows law enforcement agencies to share funds from seized assets with the federal government, rather than having to give the funds to the state (Chi, 2002). This creates a cash incentive for law enforcement officials to increase their pursuit of property owners for their own financial gain. The lack of regulations on how this seized money is spent has also come under much speculation. A portion of the money from seized assets should be funneled into law enforcement budgets in order to help further deter crime, but that is not the case. According to an auditors report, a Massachusetts police department spent \$56,196 from CAF funds with inadequate documentation of the purpose of the expenditures or what law enforcement purpose it served (2013). This department also used funds to buy their own zamboni, which lacked sufficient documentation as well. Similarly, in Texas, one police department used forfeiture funds to

purchase alcohol and a margarita machine (Lee, 2008). This financial incentive is an area that should not influence a police officer's decision on what is or isn't against the law, yet it does. Indiana is an example of where financial gain is a clear motive. The Indiana State Constitution dictates that funds collected through CAF go to a school fund. Police in Indiana have discovered loopholes that allow the money collected through CAF to end up as revenue for their police department. One of their loopholes is to make the CAF cases in Indiana a federal case that is no longer controlled by Indiana law. Loopholes such as this breed corruption that is masked with good intent.

The implementation of private police training firms that emphasize the direct targeting of money on highways is corrupt and directly violates the rights of Americans. According to a large scale investigation done by the Washington Post, one of these firms, known as Desert Snow, is responsible for a private network where police officers are able to share personal information about drivers such as their social security number, address, and any distinguishing physical trait that can be used to identify which drivers to pull over (2014). This is directly infringing on the privacy and constitutional rights of american citizens. The network also holds an annual contest to honor the policeman who seizes the most property (O'harrow & Sallah, 2014). This is a direct violation of the rights of Americans and this system cries for reform. This only emphasizes how corrupt and unjust CAF has become.

Despite the controversy that surrounds CAF, it has had a positive effect in deterring crime. It is meant to reduce criminal activity by taking away profits from offenders, but it also has more specific implications. It has been used to combat street racing in cities such as San Diego by seizing the cars used in these illegal contests. An evaluation showed that using

forfeiture, as a means to deter street racing, ultimately was more effective than other law enforcement means (Worrall & Tibbets, 2006). It has also been used in combating drunk drivers. Through the Transportation Equity Act for the 21st Century, state laws must contain a provision that allows for the forfeiture of vehicles by repeat DWI offenders (Worrall, 2008). Studies show that this system of forfeiting vehicles has shown a significant decrease in drunk driving in states such as Oregon, California, and Ohio (Voas, Tibbetts, Taylor, 1998). CAF has also helped to target houses that have been plagued with drug activity. By seizing property, that has drug related activity, the house can be turned over to the government and renovated then be handed over to low-income families. This is an effective way of deterring criminal activity in neighborhoods while also giving back to those in need (Wolf & Worrall, 2006). In situations such as these search warrants and various amounts of research must be done before forfeiture is allowed, in order to ensure due process and the right decision is made. In regards to these situations, CAF has been an effective tool in increasing safety on streets and in neighborhoods. The overarching purpose of CAF is to deter criminal activity by targeting funds, but unfortunately no data has been released on its effectiveness. In addition to deterring criminal activity, CAF is also an important source of revenue for law enforcement that otherwise would have strained taxpayers. It is important that law enforcement receives these funds in order to help further their fight against crime. However, this has fostered an array of corrupt practices that come at the expense of property owners. Despite the fact that there are positives that result from this law, it has also done a great deal of harm to the public.

Solutions

In order to better control the abuse of property rights, eminent domain should have more structure and detailed requirements. First, the term 'blighted' should be defined to prevent any discrimination against any lower classes or minority ethnic groups. This could stop any bias of what areas should be altered (Jackson, 2010). Also, the land taken for 'public use' should be investigated to ensure the future use of the property is not to aid a private company because there is no guarantee that the private company will give the community positive effects as seen in previous court cases (Murakami, 2013). Public usages should include property for recreation areas, municipality or educational centers. Lastly, the courts should also make sure that all owners do not have to suffer economically or emotionally because of this policy (Nelson, 2010). Thus, one could negotiate the monetary value of their property. However, by making these policies more specific, it becomes difficult to cover all possible situations, without preventing the government from building beneficial infrastructure. Although these solutions would require a lot of supervision of eminent domain, the first step towards change are essential. Therefore, the people affected by eminent domain should be able to negotiate for the compensation of their property.

The current state of CAF needs to be assessed and improvements must be made in order to prevent abuse of property rights. There are several alternatives to this system, but the most probable and effective would be to enforce harsher regulations in order to ensure due process for property owners and regulate the funds brought in from CAF. This would establish easier and more cost effective ways of contesting forfeited property while also allowing police to their continue their pursuit and deterrence of criminal activity. This will allow the positive effects of CAF to continue to benefit the public, but will also minimize the property rights issues that

surround it. Issues will still exist for property owners however because authorities must have the capabilities to confiscate property in order to prevent crime. These changes will not guarantee that innocent property owners will not be affected but it will prevent the excessive misuse of CAF and more effectively control the funds brought in by CAF.

Trust in law enforcement and the federal government is essential to a functioning society. Eminent domain and civil asset forfeiture have undermined this trust and ultimately led to the exploitation of property owners. Although there have been benefits to both of these laws, the infringement of Americans' rights cannot be overlooked. Eminent Domain has compensated people unjustly, seized property that was not used for the public and has furthered discrimination of minorities in the United States. CAF statistics show that in every state, law enforcement uses equitable sharing to evade forfeiture laws in order to receive a large amount of forfeiture funds. In some instances, law enforcement misuses these funds. There have been some instances where both of these laws have had a positive effects, but in the majority of cases it has come at the expense of innocent property owners. The war on drugs, fight against crime, and importance of infrastructure are serious issues that need to be addressed, but basic rights of Americans must not be placed in harms way in order to achieve these goals.

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