

1. John Rossler

Presentation Title: Eminent Domain in the United States

Abstract:

Eminent domain is the name of the power given to the U.S. Government to take private property away from citizens and convert it into property for public use. The Fifth Amendment protects citizens on two levels, first it states that citizens cannot be deprived of their property without “due process of law”, and then follows by stating citizens cannot be deprived of their property for public use without “just compensation”. The scope of these two protections, however, is rather subjective to the Government’s whims; what qualifies as “just compensation”? To what degree of fairness does “due process” entail? In this research, the actual definitions of “due process” and “just compensation” will be leveled against the reality of past occurrences of eminent domain. For instance, the case of *Kelo v. City of New London* found that the government can seize private land for sale to private developers, seemingly outside of the general definition of “public use” since it stimulated economic development. *Kohl v. United States* determined that infrastructure is, as well, an acceptable use of confiscated land.

Historically, the Government has often used condemnation to secure property-in some instances the Government fails to pay the “just compensation” to the private party. This method was especially prevalent during the New Deal era, since FDR’s programs for newer infrastructure and national parks required land to be taken from citizens. Citizens have a built-in retaliation option if they feel their rights have been violated; they can countersue for their land back in a method called inverse condemnation. Furthermore, when eminent domain takes place, there are major effects on citizens who don’t receive any compensation at all. Imagine a strip of houses being taken for a highway, but those properties on either side of the strip that aren’t bought suffer property value loss since they are now directly beside a noisy highway.

The process of Eminent Domain and its’ Constitutionality is determined, like most legal concepts, through the meeting of required elements. However, these elements are often so ambiguous that the courts are able to rule on each matter however they please. The elements are as follows; private property¹ must be taken² for public use³ with just compensation⁴. Private property is relatively self-determining, with a narrow definition and small scope of what property actually is “private”. As for the other elements, there is heavy debate as to their respective scopes. What determines a taking? Is a general public benefit still a public use? Or, must it be used literally for something that the public owns together-like a park or a post office? Especially, how is “just compensation” determined in the sale or acquiring of property? Through research of judicial decisions, past instances of eminent domain, and similar wording in other

legal narratives one may be able to solidify a method that is sensible to both citizen and government.

With proposals such as this Mexican border wall, the completion of the Keystone pipeline, and other large national projects, the need for a rigid and concrete procedure must be drafted and accepted to avoid the many lawsuits that would otherwise surely follow.