

JCI CURRICULUM: UNIT 1: CHAPTER 5 – SELF & COMMUNITY
LESSON 4: EXAMINING EMINENT DOMAIN

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Goals:

- To explore the debate over eminent domain as a modern example of the tension between the individual and the community
- To analyze the arguments for and against the New London, CT and Norwood, OH cases.
- To think about these issues through the prism of two Jewish concepts - the sanctity of the individual and the needs of the public.

Materials:

- NY Times Article on eminent domain
- Pro & Con Quote Sheet

(Optional materials)

- Parade Article on eminent domain
- Computer with projector & web access to screen news segments on eminent domain cases.
 - Home Sweet Home (7:31) – PBS
http://www.pbs.org/now/thisweek/index_021006.html#
 - SEIZING PROPERTY (10:06)-- PBS
http://www.pbs.org/newshour/bb/law/jan-june05/property_6-24.html#

Procedure

1) Introduction (10 minutes):

Introduce the class in the following way:

“We have been focusing on the tension between the individual and the community. We have learned that in Judaism there is a concept that each individual is sacred. On the other hand, each individual also has the obligation to see that the needs of the community are being met. Today, we are going to explore how this tension plays out in an important debate that is happening in the United States right now...”

- Have the students write in their journal or binder their response to the following question: (you could read it or write it on a blackboard or poster sheet):

“Imagine you have just been informed that the local government is planning to seize your home and demolish it to make way for a new shopping mall. What do you think and feel? What would you do? How would your response change, if at all, if your family were to be given fair market value for the price of the home, as well as relocation expenses?”

JCI CURRICULUM: UNIT 1: CHAPTER 5 – SELF & COMMUNITY
LESSON 4: EXAMINING EMINENT DOMAIN

After a few minutes, allow students to share their answers.

Then, explain to students that what they are discussing is known as "eminent domain," which is not mentioned explicitly in the U.S. Constitution, but the Supreme Court ruled in June 2005 that the government can take land for certain types of development use. Review and discuss the following definition and constitutional amendment, focusing on how they relate to the seizure of private property:

2) What is eminent domain? (5 mins)

Introduce the following definition to the class:

"The power of a government body to take private property for public use. Numerous public and quasi-public agencies (such as airport authorities, highway commissions, and community development agencies) are authorized to use eminent domain. Private property owners are entitled to compensation for any property taken under eminent domain" (U.S. Department of Housing and Urban Development)

"No person shall be ... deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." (U.S. Constitution, 5th Amendment)

3) Examination of NY Times article (15 mins)

Break the students into groups of 6 to read the NY Times article "Ruling Sets Off Tug of War Over Private Property." Distribute the article and point students to the questions immediately following the article.

4) Students work in *chevruta* (15 minutes)

Have students work in *chevruta*. Have them work with someone who wasn't in their reading group. Tell them to imagine that they are legal advisors for one of the land use projects described in the article. Assign each pair a scenario, (more than one pair may receive the same scenario, or additional imaginary ones may be created, depending on class size) such as:

- The taking of land owned by a family for 36 years to build condominiums. A successful restaurant exists on part of the land; the rest was ruined by an earthquake.
- The condemnation¹ of old homes to make way for a private development of new homes.
- The condemnation of old homes to make way for a new football stadium.

¹ You may want to explain that condemnation is the process by which a government declares a residence unfit for living and removes the residents.

JCI CURRICULUM: *UNIT 1: CHAPTER 5 – SELF & COMMUNITY*
LESSON 4: EXAMINING EMINENT DOMAIN

- The condemnation of old homes to make way for a new shopping center, despite pleas from elderly homeowners who said they have nowhere else to go and no desire to move.
- The eviction of a tire shop and auto repair shop to make room for a housing development designed to bring 10,000 residents to the central part of a city.
- The eviction of a prosperous cigar and coffee shop to make way for a hotel project.

Instruct students to examine the issue as it is presented in the article, and brainstorm a list of benefits and drawbacks for the government to exercise the power of eminent domain in this particular situation.

After about 10 minutes, allow pairs time to share their ideas with the class.

5) Wrap-up discussion (5 minutes)

Bring the discussion back to the original question: weighing the needs of the individual vs. the needs of the community. Remind them that Judaism tends to defer to community needs to a greater extent than does American law. How would you evaluate these cases from a Jewish perspective? Should the community's need for economic improvement force someone to sell their home? Or does Judaism's emphasis on the dignity of the individual make the opposite case?

JCI CURRICULUM: UNIT 1: CHAPTER 5 – SELF & COMMUNITY
LESSON 4: EXAMINING EMINENT DOMAIN

Appendix

Eminent Domain History

The State Courts of Utah define eminent domain as: "**The power to take private property for public use by the state and municipalities.**" Collier County in Florida posts this definition for its citizens: "**The right or power of public and semi-public agencies to take private property for public purposes without the owner's consent on payment of just compensation.**" The online knowledge compendium Wikipedia defines it as follows:

In law, eminent domain is the power of the state to appropriate private property for its own use without the owner's consent. Governments most commonly use the power of eminent domain when the acquisition of real property is necessary for the completion of a public project such as a road, and the owner of the required property is unwilling to negotiate a price for its sale.

Property rights purists contend that the words eminent domain appear nowhere in the U.S. Constitution. However, eminent domain law is based on the Fifth Amendment: **[no person shall] be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.**

Early uses of eminent domain were primarily for public works — large-scale projects such as the utilities of the Tennessee Valley Authority or the grand highway schemes of the years after World War II. In 1954, the Supreme Court ruled in *Berman v Parker* that private projects meet the definition if they have a "public purpose". Under this rationale, the court approved a slum-clearance plan of the government of Washington, DC. In the latter half of the 20th century the process was used to clear "blighted" areas of American cities for redevelopment — with projects such as the Baltimore waterfront standing as successful eminent domain stories.

Eminent domain cases, like *Kelo v. New London*, recently decided by the Supreme Court, has centered about the definition of "public use." In recent years "public good" has been expanded to include private economic developments which use eminent domain seizures to enable commercial development for the purpose of generating more tax revenue for the local government.

Source: (<http://www.pbs.org/now/politics/domain.html>)

JCI CURRICULUM: *UNIT 1: CHAPTER 5 – SELF & COMMUNITY*

The New York Times

nytimes.com

EXAMINING EMINENT DOMAIN

August 1, 2005

Ruling Sets Off Tug of War Over Private Property

By TIMOTHY EGAN

SANTA CRUZ, Calif. - More than a month after the Supreme Court ruled that governments could take one person's property and give it to another in the name of public interest, the decision has set off a storm of legislative action and protest, as states have moved to protect homes and businesses from the expanded reach of eminent domain.

In California and Texas, legislators have proposed constitutional amendments, while at least a dozen other states and some cities are floating similar changes designed to rein in the power to take property.

But at the same time, the ruling has emboldened some cities to take property for development plans on private land. Here in Santa Cruz, for example, city officials started legal action this month to seize a parcel of family-owned land that holds a restaurant with a high Zagat rating, two other businesses and a conspicuous hole in the ground and force a sale to a developer who plans to build 54 condominiums.

Far from clarifying government's ability to take private property, the 5-to-4 Supreme Court decision has set up a summer of scrutiny over a power that has been regularly used but little-discussed for decades.

"The intense reaction - this backlash - has caught a lot of people off guard," said Larry Morandi, who tracks land use developments for the National Conference of State Legislatures.

In Connecticut, where the court case originated, Gov. M. Jodi Rell, a Republican, has likened the reaction to the Boston Tea Party and called for a moratorium on land takings until the legislature can revisit the law.

California's proposal would prohibit the use of eminent domain, a process in which governments force a sale of someone's property, in cases like Santa Cruz's.

"This decision opens a new era when the rich and powerful can use government to seize the property of ordinary citizens for private gain," said State Senator Tom McClintock, a Republican who proposed the amendment.

In Congress, liberals like Representative Maxine Waters, Democrat of California, have joined conservatives like Representative Tom DeLay of Texas, the House majority leader, in criticizing the ruling. The House voted 365 to 33 to pass a resolution condemning the decision, and proposals in both the House and the Senate would prevent the federal government from using eminent domain for private development, as well as local governments using federal money on such projects.

JCI CURRICULUM: *UNIT 1: CHAPTER 5 – SELF & COMMUNITY*
LESSON 4: EXAMINING EMINENT DOMAIN

The Fifth Amendment allows the taking of land for "public use" with "just compensation," and governments have long used the practice to build roads and schools and to allow utilities to run service lines. In its June 23 ruling regarding efforts by the City of New London, Conn., to condemn homes in an old part of town to make way for a private development, the Supreme Court said public use could mean something that brings a public benefit - like jobs or increased tax revenue.

But at the same time, the court invited states to tailor their own laws. While only one state, Delaware, has changed its law, most states are likely to have a proposed change by next year, Mr. Morandi said.

"The initial outcry after the court case was: Nobody's house is safe, we've got to do something now," he said. "But as more states take a look at this they will respond in some form, but they won't want to take away a valuable tool."

In Texas, Gov. Rick Perry added the issue to a special legislative session initially called for education. Both houses passed bills limiting eminent domain with some exceptions, including one allowing the City of Arlington to condemn homes for a new Dallas Cowboys football stadium, a project already under way. The two versions of the bills were not reconciled before the session ended.

But some cities view the ruling as blessing their redevelopment plans; Arlington filed condemnation lawsuits against some holdout property owners this month. Officials in Sunset Hills, Mo., outside St. Louis, voted to condemn a cluster of homes to make way for a shopping center, despite the pleas of some elderly homeowners who said they had nowhere else to go and no desire to move. Officials in Oakland, Calif., evicted a tire shop and an auto repair shop to make room for a development that is part of Mayor Jerry Brown's plan to bring 10,000 residents to the central part of the city.

In Santa Cruz, the plans pit one family against the city's long effort to redevelop a downtown hit by the 1989 earthquake. With the Supreme Court's ruling, city officials here said they felt free to seize a 20,000-square-foot lot they considered a blight.

To the city, the lot owned by the Lau family is a drag on other businesses, because the hole, left by the earthquake, has never been redeveloped. To the family, the seizure is legalized theft and shows how the court decision can be used to take anyone's property under the broad rubric of public use.

"My family has owned this land for 36 years," said Eric Lau, who laid bricks to shore up the building that would become his thriving restaurant, which is adjacent to the hole. "And now they're trying to erase us from this place, to take it and say we don't have any choice."

The ruling has struck a chord; in a Wall Street Journal/NBC News poll this month, the legal issue that Americans said most concerned them was "private property rights," ahead of parental notification for minors' abortions or the right-to-die debate.

Property rights groups have united with more liberal organizations in arguing that taking property for economic use usually favors the rich over the poor.

JCI CURRICULUM: UNIT 1: CHAPTER 5 – SELF & COMMUNITY
LESSON 4: EXAMINING EMINENT DOMAIN

"Typically, you have these corporate lobbyists who go down to a city council and say, 'Take this person's property and we'll build you a shopping center,'" said Timothy Sandefur, a lawyer with the Pacific Legal Foundation, a libertarian-leaning legal group that helped draft the proposed California amendment.

Opponents of the Supreme Court decision also point to San Diego, where Ahmed Mesdaq lost his prosperous cigar and coffee shop in the trendy Gaslamp Quarter to a hotel project, which the city said would bring more tax revenue.

Many city officials say eminent domain is crucial for creating jobs, expanding tax bases and keeping their communities economically viable.

"Redevelopment is sometimes the only tool a community has to jump-start revitalization of downtrodden, blighted communities," officials at the California League of Cities wrote in a response to the proposed amendment.

Mayor Brown of Oakland said it was inevitable that some small businesses would have to be relocated, and he urged caution in any efforts to pass laws. "I understand the horror of urban renewal," he said. "But you don't want to take away a tool that a city has to reform itself. If you did, Oakland would suffer greatly."

During the 1970's, the Lau property, with its bookstore and cafe in the pre-Starbucks age, was a central hangout in funky Santa Cruz, neighbors say. Eric Lau watched his father's bookstore come to life and then die in the Loma Prieta earthquake, which destroyed the building.

The family's restaurant, Oswald, would not be considered blight by many standards. There is ivy on the outside walls, art on the inside, and the tables are covered with fresh-pressed linen. The restaurant is packed on most nights, neighbors say. And it has consistently been voted one of the best places to dine in Santa Cruz, a beach town of 54,000 people south of San Jose, known for its university and the carpet of redwoods on its fog-shrouded hills.

Ron Lau, who is 69, has long tried to build something on the undeveloped part of the property - the hole in the ground. The problem, city officials say, is that Mr. Lau has proposed hard-to-build, idealistic plans, involving alternative energy sources and unusual designs, that have never gotten off the ground, angering some nearby property owners.

"We do not use eminent domain frivolously," said Ceil Cirillo, executive director of the Santa Cruz Redevelopment Agency. "I feel we have been very fair and very patient."

Taking the Lau property would serve the public good, Ms. Cirillo said, "because there is a hole in the center of our retail district."

Eric Lau and his sister Lani say the city is taking their property simply because their father took so much time to try to build something unusual.

JCI CURRICULUM: UNIT 1: CHAPTER 5 – SELF & COMMUNITY
LESSON 4: EXAMINING EMINENT DOMAIN

"My dad was hellbent on getting his dream project built, nothing less, and that has been his biggest weakness," Eric Lau said.

The city agency has offered the family \$1.6 million for the property, and the Laus plan to fight it. It is unclear whether the amendment would protect the Laus, but they hope to hang on to the property long enough to find out. A vote on the amendment would come no sooner than next June, legislative leaders say.

Meanwhile, the Laus say they are willing to modify their plans and build something close to what the city has agreed to with a developer.

But city officials say that they have run out of patience and that it is too late for the Laus to come up with new designs. They have an exclusive agreement, Ms. Cirillo said, with a developer, Bolton Hill, to take over the property and build on it.

"The project is moving forward," Ms. Cirillo said. "The Supreme Court gave us reassurance of our ability to proceed."

As for Laus and their restaurant, Ms. Cirillo said there might still be a place for them in the new development - after they sell out.

"Ideally, we would like to see them relocated in some way to the project," she said.

Discussion Questions:

- What is happening as a result of the Supreme Court ruling?
- How have various states responded to the ruling?
- How has Congress responded to the ruling?
- According to the Supreme Court ruling, what is considered "public use" when it comes to eminent domain?
- What seems to be at stake at the heart of the argument surrounding eminent domain?
- According to a Wall Street Journal/NBC News poll, what legal issue are Americans most concerned about?
- According to officials at the California League of Cities, what purpose does redevelopment serve?
- How does the struggle of the Lau family illustrate the challenges presented by eminent domain? Why do you think the author featured this particular situation in the article?

JCI CURRICULUM: *UNIT 1: CHAPTER 5 – SELF & COMMUNITY*
LESSON 4: EXAMINING EMINENT DOMAIN

parade.com

Across the country, Americans fight to protect their property.

Will the Government Take Your Home?

By Sean Flynn

Published: August 6, 2006

Joy and Carl Gamble bought an English stucco house in Norwood, Ohio, in 1969. They raised two children there and worked seven days a week in their small grocery store to pay off the mortgage. “We had the house fixed up just the way we liked it,” Carl says. “When we retired, we planned to sit down and enjoy it.”

But now the Gambles live in their daughter’s basement. Their house stands vacant in the weedy field that was their neighborhood—seized by the city and transferred to a developer who wants to build shops, offices and condominiums.

In Long Branch, N.J., Denise Hoagland, 39, has an endless view of the Atlantic Ocean from the cottage she and her husband, Lee, bought 13 years ago. Their garden blooms with so many flowers that their three daughters call home “the place where the butterflies fly.” But Long Branch wants to take their home and about 35 other properties so a developer can build luxury condos. “It’s theft,” Denise says. “It’s legalized theft.”

Technically, it is a forced sale, because the government has to pay for the property. And it is legal: In June 2005, the U.S. Supreme Court ruled that state and local governments can seize homes to make way for private development. The decision in *Kelo v. City of New London* triggered a sort of government land-grab.

In the one year since *Kelo*, more than 5,700 homes, businesses and even churches were threatened with seizure for private development, according to the nonprofit Institute for Justice (IJ), and at least 350 were condemned or authorized for condemnation. By comparison, about 10,000 were similarly threatened or taken over from 1998 through 2002.

Government always has had the power to force the sale of private property for public use—a process known as eminent domain. But what is “public use”?

Historically, it meant highways, railroads, schools and sweeping urban-renewal projects, such as the redevelopment of the Baltimore waterfront. But *Kelo* made clear that middle-class homes could be replaced with malls, offices, luxury homes—anything that might increase tax revenue.

“It’s a blatant example of reverse Robin Hood—taking homes from the poor and the middle-income and giving them to the rich,” says Scott Bullock, the IJ attorney who argued (and lost) *Kelo*.

“The fact is, a shopping mall does usually produce more taxes than a house,” says IJ attorney Dana Berliner. “An office building does produce more taxes than a church. But if that’s the rule—that anyone’s home can be taken away from them because something else will produce more taxes—then no one’s home is safe.”

But *Kelo* also has sparked a backlash. In the past year, more than two dozen states introduced or passed legislation and constitutional amendments to stop what critics call “eminent domain abuse.” Even the U.S. House of Representatives approved a bill aimed to restrict eminent domain. Residents also are fighting back through courts of law and public opinion.

JCI CURRICULUM: UNIT 1: CHAPTER 5 – SELF & COMMUNITY
LESSON 4: EXAMINING EMINENT DOMAIN

In Norwood, the Gambles and two other property owners represented by IJ brought their case to the Ohio Supreme Court. (At press time, the court had yet to rule.) [See editor's note below.] In Long Branch, two dozen residents, also working with IJ, are suing to stop their neighborhood from being replaced with 185 condominiums. And in Lakewood, Ohio, my hometown, the people of Scenic Park waged such a successful public campaign three years ago that voters spared their homes from being taken.

In each city, the process unfolded almost identically: A private developer, with the government's backing, wanted a big piece of property—cliff-side homes with valley views in Lakewood, ocean-front cottages in Long Branch—and tried to negotiate deals with each owner. When some refused to sell, the cities threatened to invoke eminent domain to clear the holdouts.

In order to do that, however, city officials first needed to declare the neighborhoods “blighted.” But the legal designation of “blight” bears little resemblance to a commonsense definition. In Lakewood, for example, Scenic Park is a charming neighborhood of older, well-kept homes. But because they lack such modern touches as attached two-car garages and central air-conditioning, the city deemed them blighted—a standard by which more than 80 percent of Lakewood, even the former mayor's home, would likewise be blighted.

“We always bit on the word ‘blight,’” says Julie Wiltse, 63, who helped neighbors distribute 20,000 fliers and sponsor a series of blight events: a Blighted Block Party, a Blighted Chili Cook-off, even a Blighted Groundhog Day (which predicted four more months of blight). TV cameras and newspaper reporters loved that stuff.

“We were very successful in explaining to the community, ‘If we're blighted, you're blighted,’” Wiltse says.

Likewise, the Hoaglands' neighborhood in Long Branch isn't “blighted” in any meaningful way. With one or two exceptions, it's a few blocks of low-key bungalows where families have lived side-by-side for decades, even generations. The shabbiest touches, ironically, are the posters in nearly every home's windows with the words “eminent domain abuse” inside a red-slashed circle and the several homes that have been bought by the developer and boarded up. What the area doesn't have, however, are the \$500,000 condos or the restaurants with \$12 hamburgers that were built immediately south of the neighborhood.

“When they want to revitalize,” says William Giordano, 41, whose great-grandfather built his house, “suddenly we're not good enough to live here.”

The city has put prices on the houses it wants to take: \$400,000 for the Hoaglands' house, \$374,000 for Lori Ann Vendetti's, \$410,000 for the home her parents built across the street and \$325,000 for Anna DeFaria's tiny gray cottage. Those might sound like hefty sums, but not on the Jersey shore. “I can't get anything in Long Branch for three and a quarter,” DeFaria says, “let alone an ocean view.”

But what's money? “The memories are here,” says Lori Ann Vendetti. “They can come in with a million dollars, two million—we won't take it. A lot of people think we're bluffing, that everyone has a price. The Vendettis don't have a price.”

Neither do the Gambles. Most of the properties that the Gambles and their Norwood neighbors owned—69 out of 75—were sold to the developer, who was required by the city to pay at least 25 percent above market value. Three others later settled with the developer. Then the city used eminent domain to claim the last three, concluding that the neighborhood was deteriorating, based on a study that was paid for by the developer.

Tim Burke, a lawyer for the city, argues that the government had to clear the holdouts, especially because there were so many other property owners who had agreed to sell. “Would Norwood have used eminent domain if it

JCI CURRICULUM: *UNIT 1: CHAPTER 5 – SELF & COMMUNITY*
LESSON 4: EXAMINING EMINENT DOMAIN

had to acquire 69 of the properties? Clearly not,” he says.

As Burke explains it, Norwood is an old industrial town that lost its industry and a third of its population. The city needs to redevelop to generate new revenues, and clearly most of the Gambles’ neighbors weren’t opposed. “When you’re a community like Norwood, you’ve got to be concerned with the entire citizenry,” Burke says. “And, yeah, there are going to be instances where, in order to better the lives of the many, the property of the few will have to be taken.”

But what if you’re one of those few? “That this is happening here,” says Joy Gamble, “in the land ‘ of the people, for the people, by the people...” The thought trails off, and she just shakes her head.

Editor’s Note

On July 26, the Ohio Supreme Court ruled unanimously that the city of Norwood can’t use eminent domain to take Carl and Joy Gamble’s home solely for economic development. The United States Supreme Court had ruled previously that there is nothing unconstitutional about a government taking private property, with just compensation, solely for economic development but left it to state courts to decide whether such takings violated their own state constitutions. The Ohio Supreme Court further rejected Norwood’s claim that it also could use eminent domain to eliminate the Gambles’ neighborhood because it was a “deteriorating area.” The court ruled that the phrase “deteriorating area” was too vague—that it was, in effect, a standardless standard. The court ruling means the development group has to return the house to the Gambles. “Our state supreme court did what the U.S. Supreme Court did not do: It protected our home,” Joy Gamble told reporters.