

Reviewing the american constitution



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Eminent Domain

The development and freedom of a society and its individuals depend to a large extent on the content and protection of property rights. In practically all the legal systems the indemnification to the individuals is consecrated in the event that the State deprives them of their property through an act of expropriation. Being one of the first to recognize such a guarantee, the Fifth Amendment of the United States Constitution prohibits the State from expropriating property for public use, without payment of fair compensation to its owner. The application of such requirement is relatively easy to enforce when the government formally exercises deprivation of property to a private individual, especially when dealing with real estate. The question in this matter is: when should a particular sector of the population bear the cost of a regulation whose benefits are taken advantage by society as a whole? In outlining the concept of eminent domain regulation, a convenient point of departure turns out to be the examination of the next argument: the right of the State to exercise eminent domain. When the government needs a certain private property for public use, it should clearly state its intention assessing the specific property, and then paying the former owner a fair compensation. Usually, the main issue in the government's use of eminent domain is what constitutes fair compensation.

Eminent domain is defined as: " the power that the government has to expropriate a private land for public use" (U. S Fifth Amendment). This power is limited by the Federal Constitution as well as State Constitutions " when

the government takes a private property for common use, it must properly indemnify the owner for the alienation" (U. S. Fifth Amendment). Sometimes the exercise of eminent domain consists of a simple process, in which the government grants the owner a fair price and this will result in the appropriation of the property for common use. On other occasions, the government and the owner may disagree as to whether an expropriation needs to occur and what the amount of compensation should be. In these types of cases a legal procedure will be necessary to certify the legitimacy of the expropriation and establish a fair price for the property.

The Fifth Amendment expropriation clause protects the owner and assures that he or she will receive appropriate compensation. This clause has three significant components: the first component states that eminent domain should only be applied to private property. Due to this fact, if the government decides to modify the purpose of some public land, for example, to build an office building or a homeless shelter in what used to be a public park, this action will not require government to compensate citizens who used the park. The second requirement is that the land should only be expropriated for common use. This limitation prevents government officials from taking private property for personal use. In this case, this requirement will protect citizens from government officials that might try to get any personal gains from taking private property. Lastly, The Fifth Amendment requires fair compensation. Usually, fair compensation is determined by the market value of the property, in other words. the price at which the owner could have expected to sell the property. It is important to know that the value of the property should be set considering many factors. These factors

include: the size of the land and the buildings, the location of the property, the access to utilities and public services, resources present on the property, etc. When a permanent expropriation is about to take place, the courts will use different methods to determine market value. However, if the government needs the property for a limited time, the calculation of value will be more complicated.

In cases of eminent domain, the government states that it needs certain private property to create a public benefit, such as the construction of a new stadium or public park. The government can offer the owner a price that is acceptable to the individual or the individual can initiate an expropriation procedure. This procedure is similar to a lawsuit and it is started by the owner of the property when they do not reach agreement. The owner of the property has the right to be notified of the decision of the government and can submit a reply. As one can see, the Fifth Amendment offers protection to the owner and guarantees that he or she will receive a fair compensation for the expropriation.

In some non-usual cases the government will deny the claim that they have taken property from the owner. Therefore, the owner would have to initiate an action, denominated " procedure of compensation by expropriation", to demand compensation from the government. This situation might occur in various ways. For example, the government may adopt behavior that destroys the owner's ability to use and enjoy his or her land, such as building a rail road along the owner's property. As one can see, this action does not involve an expropriation, but will certainly reduce the value of the property, forcing the owner to file a lawsuit to obtain compensation.

The necessity to determine the time at which the expropriation occurred is important in the matter of eminent domain. An argument may arise when the government presents a plan that affects the property of a citizen. In other words, when the government makes a public announcement about the possibility of starting a new infrastructure project this could potentially impact the value of private property. Furthermore, the owner might think that this plan will already constitute an indirect expropriation, which will could cause stress and uncertainty about the future. Even though the government can claim that they have not taken away any property at this point, its actions have already affected the value for future transactions, causing undesired consequences. The concept of eminent domain gives the government power to act on behalf of public interest. Unfortunately, in many cases, the government violates property rights without offering a fair compensation. The legal issues involved in these matters are complex and the courts have not been entirely coherent in their approach.

In conclusion, more than two centuries have passed since the proclamation of the American Constitution. However, the constitutional normative body continues to expand its application and renew its validity. The decisions dictated by the courts, offer a variety of interpretations, not always uniform but with an undeniably value. This academic paper offers a summary on how jurisprudence has constructed the concept of eminent domain regulation. According to the government these regulations have no other purpose than to protect citizens from its own government, while trying to draw clear boundaries to delineate its application. The concept of eminent domain goes beyond a simple theoretical construction, it is a true legal institution that

articulates basic concepts of private law such as property and economic freedom, in addition to foundational principles of public law like the common good.