

<https://www.usnews.com/opinion/economic-intelligence/articles/2017-06-13/ eminent-domain-and-civil-asset-forfeiture-are-too-easy>

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John Locke explained the primary role of government in 1689, writing, "The great and chief end, therefore, of men uniting into commonwealths, and putting themselves under government, is the preservation of their property." But as axiomatic as this might have become over the next 250 years, many people who work in government at every level seem to have forgotten this aspect of their jobs. And sadly, that's the most charitable possibility.

This was brought into full public view recently when Dallas [Councilwoman Sandy Greyson](#) lamented, [on camera no less](#), that a citizen would have the temerity to fight back in court as the city attempted to take his land through a condemnation proceeding. She said, with no apparent sense of understanding that the citizen in question was fighting *to keep his own property*, "...it's just infuriating that, if you are rich enough, you can hold the city hostage for years and then get what you want. There's something really wrong with that." According to this government employee, there is something wrong with people maintaining ownership of their property if the government wants it. The Councilwoman knew she, and by extension the Dallas city government was in the wrong, too, as she admits that, "in the end, we're settling because he will probably win."

It turns out the government cannot simply wave a magic wand and condemn a property, in this case because of the desire to run a water pipeline through it. There are rules that at least some portions of government still see fit to follow.

But as the Councilwoman noted, the citizen in question here, hotel magnate Monty Bennett, had more than enough money to fight for the right to keep his own land. Most other people are not so well-situated. And with them, government at all levels is much more ham fisted in its approach. People often lose their property simply because government wants it for some other reason; eminent domain and civil asset forfeiture proceedings prove as much beyond any doubt.

Eminent domain is one of those uncomfortable legal principles that nearly everyone agrees is necessary but no one wants applied to them. The principle is that the government has the right to confiscate property provided that it uses the property for the common good, and that it compensates the owner for the fair market value of the property. Even those who find the principle distasteful would agree that it is reasonable. After all, without eminent domain, a single recalcitrant property owner could stand in the way of a project that promised to benefit tens or even hundreds of thousands of people.

In practice, however, neither "common good" nor "fair market value" mean what reasonable people would assume. Most people naturally assume that "the common good" is something that benefits the entire community. The definition courts have accepted, though, has been more expansive. In the landmark 2005 case, [Kelo v. City of New London](#), state and local officials wanted to [spur economic development](#) in New London, Connecticut. Officials convinced [Pfizer](#) to build a \$300 million research facility on land that was largely, though not entirely, owned by the city. The problem was that [Susette Kelo's home was on some of the property Pfizer wanted](#). The City of New London claimed that the Pfizer facility would create 1,000 new jobs, bring new commerce to the city, and would generate more tax revenue which the city would then be

able to spend for “the common good.” While the government is not permitted to use eminent domain simply to take property from one person and give it to another - even if the first person is compensated - it may take property from one person and give it to another if “use by the public” is the purpose of the transfer. In other words, as long as the government could reasonably claim that the transfer was “for the common good,” it could take Susette Kelo’s property and hand it to one of the [largest pharmaceutical corporations](#) in the world. And that’s exactly what happened.

In his [dissent](#), Justice Thomas said that if, as the court claimed, economic development is an acceptable example of “the common good,” then there is no instance in which a government could not take private property. Since Kelo, there is effectively no such thing as private property. All property is now simply held by people in trust until such time as the government decides that it wants it or, more disturbingly, would rather that someone else have it. Justice Thomas was right of course. He was also in the minority.

The Supreme Court did hold that states are free to legislate eminent domain protection if they so desired, and in the wake of *Kelo* many did. But they do not have to. And many choose not to. In the end, what happened in New London could still happen. Making matters worse, there has been a lot more hand wringing over what constitutes, “the common good” in eminent domain cases than over what constitutes “fair market value.” The Supreme Court has defined “fair market value” to mean, roughly, the going market price for the property. But in eminent domain cases, the very government confiscating the property is allowed to determine its value. Not surprisingly, confiscated properties are most often undervalued.

The most egregious property rights violations, though, undoubtedly come in the form of civil asset forfeiture laws. It might seem astounding to some, but the police in the United States actually [confiscate more property than is stolen in robberies](#). In 2015, \$4.5 billion worth of property was confiscated, while \$3.9 billion was stolen. One might argue that \$8.4 billion was stolen.

Simply put, civil asset forfeiture laws shift the burden of proof from the accuser to the accused by allowing law enforcement to bring charges against property instead of people. Functionally, the police can arrest your car, your house and even your money — and there is precious little you can do about it. This makes life easier for law enforcement, as inanimate objects are not protected by the same legal principles that protect human beings.

Everywhere one looks, it is easy, far too easy, for government simply to take its citizens’ property. And when it is easy, it will happen. A government that can, at will, take anything it wants from its citizens is not a government that “derives its just powers from the consent of the governed,” to quote the Declaration of Independence. It is, for lack of a better word, simply an overlord. And that sort of government will neither enjoy nor deserve the respect of its people for long.