



TEXAS *Legends*

Private Property and Takings

One of the most pervasive legends in Texas is that of private property. Most Texans view their property as being exclusively under their own control. However, this is increasingly false.

The idea of “takings” emerges from the Fifth Amendment to the U.S. Constitution, which prohibits the taking of private property “for public use, without just compensation.” Traditionally, this clause has been examined in the light of eminent domain, the power of government to take property for public use. Generally, eminent domain has been used to take private property for government use for public services, such as roads. Recently, the limits of eminent domain have been tested as the government has taken private property for public uses such as the Dallas Cowboys’ new stadium in Arlington, toll roads operated by private firms, and the Keystone pipeline. In this more expansive use of power, the taking of private property is justified for general economic development that will create jobs and other advantages for the entire community. Thus, “public use” doesn’t exclude private profit.

Another use of the takings label deals with the impact of regulation on the value of private property. One example of regulatory takings would be environmental regulations that place restrictions on the uses of private property designated as wetlands. These rules restricting how individuals use their property may diminish the value of the property. In this case, the government is restricting use of property to promote the general welfare, which is certainly a public concern. However, for many years the courts did not support compensating citizens for regulatory takings. Restrictions on land use are not unique to environmental regulation. Property owners in cities also face restrictions on how they use their land. For example, zoning rules prohibit building businesses in residential areas. However, environmental regulations reach outside cities to the rural areas where many people have retreated in their attempt to avoid rules imposed by government and their neighbors.

The problem of takings reflects a cost of government that frequently does not show up on the balance sheet of costs and

benefits. Sometimes government regulation requires costly action, such as altering coal plants to produce less pollution, with the cost being passed along as higher utility bills. At other times, government policies restrict citizens’ uses and enjoyment of their own property.

However, without some ability to extend its authority onto private property, the government would lack the ability to create and enforce meaningful rules related to the environment or public safety, since pollution and other problems don’t honor property lines. Without such rules, individuals could block the flow of creeks and cut off water supplies to, or cause flooding for, other citizens. Neighborhoods could find adult businesses placed next to family homes or schools. Thus, the matter of who wins and who loses involves a balancing act in which the government must weigh the public safety against the rights of individual property owners.