

Constitutional Restraint on the Exercise of Eminent Domain for Private Use

Chung-Lin Chen *

Abstract

In Taiwan, laws grant governments extensive powers of eminent domain, including, in many circumstances, the power to take property for the purpose of conveying it to a private person. Those laws were rarely questioned, and governments often abuse the power while claiming that their actions are based on law. The purpose of this article is to investigate the constitutional constraint on the exercise of eminent domain. Particularly, the article will focus on the issue what standard of judicial review should apply to taking property for private use.

Based on the analysis from the perspectives of efficiency, fairness, and political process failure, this article argues that state actions that allow governments to take property for private use should trigger strict scrutiny. It follows that the current statutes that authorize governments to take property for the purpose of establishing various “industrial parks” are likely unconstitutional and many recent administrative decisions of eminent domain are highly problematic in terms of legality.

Keywords: taking, eminent domain, condemnation, property rights, judicial review, standard of review, public use clause, *Kelo v. City of New London*

* Assistant Professor, Institute of Law for Science and Technology, National Tsing Hua University. E-mail: clchen@mx.nthu.edu.tw