

# How to Eliminate Eminent Domain

If the land owner is willing to pay to others their due,  
then he should be supreme on his land

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Eminent domain is the power of government to forcibly take private real estate from the title holders. Under the Constitution of the United States, the Fifth Amendment limits the power of eminent domain, stating: "nor shall private property be taken for public use, without just compensation." The term "public use" had been interpreted to mean a governmental use, but more recently, private property has been taken by government to transfer it to another private owner who allegedly would use it for a better use, a "public benefit," a practice which received the approval of the U.S. Supreme Court in the case of *Kelo v. City of New London*, 545 U.S. 469 (2005).

The argument for eminent domain is that when the government builds something long and skinny, such as a road, those who refuse to sell their land make it impossible or very costly to place the road elsewhere or go around the holdout. But eminent domain has also been used to redevelop a neighborhood to build shopping centers and better dwellings that pay a higher property tax. Laws that empower governments to declare that an area has "blight" are abused under the concept "blight makes right," to allow government to declare any location to have "blight," even places that are undeveloped.

Some Georgists, followers of Henry George, justify eminent domain as a way to maximize the economic rent of a site even if the government collects only a small part of it and most of it goes into the pockets of a developer who kicks out poor folks so that developers can indulge in rent seeking. In my judgement, under pure geoism, the philosophy inspired by the thought of Henry George, the title holder should have complete rights of possession so long as the economic rent of the land is distributed to the community, as the land rent properly belongs to the residents in equal shares, the land value being a creation of the community and of nature, not the exertions of the title holder.

The complete right of possession, conditional only on the payment of the economic rent, would preclude eminent domain. If the government seeks to build a highway and the route has to go through somebody's land, this should not justify violating the right of possession. In today's world, government is not just a co-owner of all land but the superior partner, being able to expel the other partner, the private title holder. In my judgment, individual title holders should be the sole holders of the rights of possession. Society may only claim the rent, not the holding of land. But then how can the problem of holdouts be solved?

When either the government or a private developer seeks to build a project that is long and skinny, such as a canal, railroad, highway, pipe, or communications line, this makes the route space more valuable. The value is created not by any action by the title holder but by the need to complete the acquisition of the route. Since the holdout's land becomes much more valuable, under a geoist system the holdout would pay that much more economic rent to the community. The holdout would compensate society for the social cost of not allowing the project to be built or to make it go around his land. If the holdout refused to make the payment, then the community could properly take the land, but only because their rent is not being paid.

As with any increase in site value and rent, under a proper geoist system, the title holder has a choice, pay the rent or transfer the site to someone who is willing to pay the rent. If the rent is paid, then one's

rights of possession are absolutely secure. But even under this approach, there is the potential for abuse. Suppose the government seeks to build city hall in some desired location, and the title holder refuses to sell. A structure that is short and thick, like a building, can be built elsewhere. The fact that a government prefers a particular location for city hall does not make the land more valuable. If nasty city chiefs get corrupt assessors to place a high value on the site, this would be public knowledge, as it would be on the books for public inspection. The title holder would appeal, ultimately to a jury of peers. Only if the people agree that this is a proper increase in site rent would the assessment stick.







Eminent domain has been justified because communities do not collect the full economic rent and they therefore don't know how to obtain property for the completion of routs other than the crude and rude method of taking the site by force, to send armed police into a site and forcibly yank the owner out, and dump his possessions in some far-away lot. Such force is only justified to deal with theft. Under geoism, the economic land rent properly belongs to the community, and if not paid to them, the title holder has stolen property.

Thieves should be punished. But if the title holder is willing to pay to others their due, then he should be supreme on his land. If we are morally equal, a man or woman should have no master, and no obligations to others other than what he or she contracts for, and what others own by natural law and collective creation.

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### Economist

**FRED E. FOLDVARY, Ph.D.**, (May 11, 1946 — June 5, 2021) was an economist who wrote weekly editorials for [Progress.org](https://progress.org) since 1997. Foldvary's commentaries are well respected for their currency, sound logic, wit, and consistent devotion to human freedom. He received his B.A. in economics from the University of California at Berkeley, and his M.A. and Ph.D. in economics from George Mason University. He taught economics at Virginia Tech, John F. Kennedy University, Santa Clara University, and San Jose State University.

Foldvary is the author of *The Soul of Liberty*, *Public Goods and Private Communities*, and *Dictionary of Free Market Economics*. He edited and contributed to *Beyond Neoclassical Economics* and, with Dan Klein, *The Half-Life of Policy Rationales*. Foldvary's areas of research included public finance, governance, ethical philosophy, and land economics.

Foldvary is notably known for going on record in the *American Journal of Economics and Sociology* in 1997 to predict the exact timing of the 2008 economic depression—eleven years before the event occurred. He was able to do so due to his extensive knowledge of the real-estate cycle.

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