

Freedom Matters

We are a free people in a republic, under a constitution which limits the powers of government to those necessary to secure the unalienable rights of each person to their life, liberty and property. We dedicate this publication to preserving those freedoms.

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The Supreme Court on Property Rights: “A Car on Every Plot”

Their version of “A chicken in every pot”

by Bob Bowman

The modern judicial concept of property rights, we are told, is that the ownership of land really comprises a bundle of rights, each right consisting of a different use to which you can put the land. As with many clever ideas, especially if used to pit the law against you, it is instructive to cast them in everyday terms.

Thus, let us cast property rights as comprising a parcel of land which holds several vehicles (each one representing one of the uses to which you can choose to put the land). Now we can see what laws constitute legitimate police regulation for public safety, and what laws constitute a taking of property for public use.

Protecting people from palpable harm is, in every lexicon, a legitimate function of government. It is the only valid moral purpose for the existence of the state. Thus, we accept safety regulations on vehicles as not depriving us of property rights to which we are entitled, because our individual rights do not entitle us to put others in the way of harm. So far, so good.

However, suppose the state for public use takes all of your vehicles except one, say a small vehicle that it allows you as a minimal use. The state has taken your property. Does it not have to pay you for it? According to the U.S. constitution it does. I quote:

“No person shall be ... deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use without just compensation.”

To the contrary, the Supreme Court has ruled that the state can take all of your “vehicles” without compensation, as long as it leaves you one. If those were actual cars in your garage, could the state confiscate all

but one without paying you for them? Would it not be committing theft if it did? Thus, such confiscation of your land rights violates the restraint on the power of the government against taking your private property without paying you for it. Right up front, such judicial legalization of theft is a failure of the constitution, which provides no practical or civil means of redress when the state violates your inalienable rights. It is a gross failure of the state, particularly of the judiciary, to fail to protect you against theft of your property.

Zoning is an evil form of state theft. It was invented in Germany, I understand, which is the same nation that was an early developer of socialism, another form of state theft of private rights and property. State theft was big in Germany, a nation that evolved in the 1940s to the grossest violations of people's rights.

Whatever virtues an immoral zoning might have can instead be achieved by moral laws. Even urban areas do well without zoning, as Houston, Texas, demonstrates. Moreover, regulation of land division, street layouts, setback requirements, etc., as useful as they are, nonetheless must be done with restraint and forethought, if not to be immoral or counterproductive.

Zoning in rural areas is especially of dubious merit, except perhaps in the broadest of terms (e.g., protection of water resources). The surest way to limit residential living in rural areas is not to protect homes from the gamut of productive uses of adjacent land. Thus, instead of rural zoning, regulations designed to promote “sound economic practices” for various uses of land can be used to ensure health, safety and environmental protection, thus to prevent palpable harm of adjacent land. In the countryside, to protect everyone's property rights, protection against palpable harms should constitute the only land laws in effect.

A version of such ideas is put forth by Richard Epstein, a law professor at the University of Chicago Law School, in a book titled *Simple Rules for a Complex World*, Harvard University Press, Cambridge MA.

More on this next issue.

Property rights web sites: < <http://www.fairnessinlaw.org/> >
< <http://www.takebackwisconsin.com/> >
<<http://www.PropertyRightsResearch.org>>

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