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Water Wars: Interstate Compacts And The Supreme Court's Equitable Apportionment Jurisprudence

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THOMPSON SCHOLARSHIP WINNER

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Indiana and Discretion in the Realm of Property Rights: A Primer for Mayors

INTRODUCTION

Our nation takes pride in its freedoms, rights, and liberties. However, real property rights are sometimes being "bulldozed" over in the United States.[1] Specifically, eminent domain, annexation, and zoning laws can give governments an unfair advantage to take land, expand city limits, and introduce zoning laws that all restrict property rights. This is not to say that such "government-taking" tactics are never necessary, but political leadership should seize the opportunity to learn from the sometimes-overzealous overreaches of their peers in the past. This essay will outline some issues with these policies and analyze possible solutions.

Eminent Domain

Eminent domain is a legal process that gives authorization to federal, state, and local governments to take private property and convert it into something that will benefit the public. Examples of eminent domain include highway construction, redevelopment of certain areas, new infrastructure, and even protecting the environment. The eminent domain process is not unrestricted; in order for it to take place, a handful of requirements have to be met. The requisites include setting a fair market price to compensate private property owners and use of the private property for a specific public purpose. Moreover, the government must follow myriad strict procedures to ensure they are fair to property owners. Utilizing eminent domain is not always the easiest road for a government entity because private property owners have the right to due process and can put up roadblocks in an attempt to deny the governmental taking of their property. Ultimately the private property owner should be compensated with a fair market value for their property.

While the main goal of eminent domain is to promote some sort of public benefit, it can also have devastating effects on those caught up in the path of those "benefits." In 2013, it became clear that the Jackson Farm in Bloomington, Indiana, would be in the direct path of construction of interstate highway I-69.[2] According to an employee of the demolition company contracted by the state, the path of I-69 was set to cut straight down the middle of Jackson's eighty-acre farm, which had been in their family for over three generations.[3] The employee, who has been involved in many takings under eminent domain, stated, "At the end of the day, the state gets what they want. . . . Because the state deems the land to be for 'public benefit,' they will find a way to take it no matter what," His prognostication held true in this case. The state offered a "fair market price" for the land, but the landowners refused. When the initial offer was rejected, the state lowered its offer. In the end, the Jacksons were forced to accept an offer that was only a third of what was initially offered by the state. The employee recalled that while working for the demolition company contracted by the state, they tore down the family farmhouse right in front of the sobbing elderly owner.

This situation stands as an example of a successful taking under eminent domain, but with harsh consequences. State and local governments have a great deal of power and must exercise better discretion when determining how to handle a situation like this one. Decisionmakers must weigh if their ends justify their means. Property is personal to its owners, and local officials should be well advised about weighing all options in their attempt to come to an equitable agreement that can result in the public benefit while the landowner retains a feeling of respect.

Annexation

People may confuse the practice of eminent domain with annexation, but there are significant differences. Annexation is not the physical taking of one's property but instead changes the legal "status" of land one owns. Annexations occur when a city or town expands its borders and brings those properties into its boundaries. Those newly added properties will be subject to the taxes and regulations imposed by the annexing body and in return will become a member of the electorate and will receive services from the annexing body. This process is important as it can expand a city's tax base to ensure the city's initiatives can be completed. Of course, there are added costs to bringing in more residents due to increased service costs and more strain on those services. Former Bloomington, Indiana Mayor Mark Kruzan believes that annexation should be utilized only when it is "absolutely needed." Kruzan argued that there can be immense immediate rewards for bringing in many new residents in the short-term, but he expressed concern about the long-term ramifications of such a strategy, especially when a city reaches

the county boundary and cannot expand further.

Annexations typically begin with a city or town council voting in favor of an annexation ordinance, outlining the areas intended for annexation and providing a fiscal analysis of the costs and benefits of the annexation. Indiana statute allows for property-owning residents to sign remonstration petitions, stating their opposition to their land being brought into the city.[4] There are two ways to halt the annexation under Indiana Code 36-4-3-11: (1) Sixty-five percent of the property owners signing the petition or (2) signatures from landowners making up seventy-five percent of the assessed value for the area intended for annexation.[5] The annexation process is similar to eminent domain in the sense that the deck is stacked in the favor of the municipality and against individual property owners. And similar ideals underlie eminent domain and annexation--in both cases, supporters of the policies claim that the city's supposed collective benefit should be more highly valued than any individual property owner's interests in their property. While annexation attempts do not always come to fruition, the statutory bias in the city's favor means that most annexation efforts are successful.

There are alternatives to annexation. Former Mayor Kruzan did not pursue annexation during his tenure, and instead focused on developing areas within the city and strengthening services for current residents. Kruzan argued that over-expansion could prove detrimental to residents if services weree diluted, and while development within existing city boundaries may take more time to yield positive results than expansion through annexation, in the long-term, the city will see a greater return. While there is little doubt that political elements incentivize short-term victories, public servants should be mindful of, and give credence to, long-term strategies that will have lasting impacts on a community. Kruzan argued that developing within city boundaries is an evergreen strategy, while annexation can only be pursued to the county boundaries.

One example of annexation is instructive on this point. Just fifty miles north of Bloomington sits Indiana's capital city: Indianapolis. In 1970, at the behest of Indianapolis Mayor Dick Lugar, (who would later become a five-term United States Senator serving Indiana), the Indiana General Assembly agreed to merge city and county government, making every resident of Marion County a resident of the city of Indianapolis. This massive annexation revitalized the city and lightened the effects of stagflation from the 1970's. Today, however, Indianapolis faces major financial difficulties because it cannot expand past its county boundaries for a larger tax base. Indeed, some of the most affluent areas in the state are the cities just on the other side of the Marion County border – no doubt because they are just beyond the reach of the Indianapolis taxing apparatus.

The struggles of Indianapolis give credence to Kruzan's view of municipal growth: developing within city boundaries and small intentional annexations over longer periods may be the best formula for successful growth.

Zoning

Any analysis of local property rights must include a discussion of zoning. Zoning is a broad topic, but two of the most hot-button issues in city planning now are the debates over building multi-family versus single-family homes and the proliferation of first-floor retail requirements in city centers.

The history of single-family zoning is laden with inequality, given that it first emerged in 1916 as a way to separate communities on racial and class lines.[6] In recent years, the spread of people able to purchase homes has slightly evened out among races, but undoubtedly, imbalances remain. It is well established that attainable, affordable single-family homes provide a route to the middle class.

Most would agree with Former Mayor Kruzan who believes that, while single-family housing should not be banned, there needs to be increased importance placed on affordable housing for all.

Former Fort Wayne Mayor Paul Helmke echoed this point, stating that he believes single-family zoning is part of the ideal American Dream of having a "house with a backyard for your kids and dogs." He acknowledged that homeownership has become less and less realistic over time with growing populations and rising prices for land and houses.[7] Thus, the shortage of housing and its rising costs creates a double-edged sword: inability to afford larger, nicer homes unless you already have a great income, while apartments or multi-family housing is becoming the only realistic option for most people.

There is also a large divide between those who can afford an expensive downtown apartment and those who make up the working class in the city that keep the economy running. A server working in an expensive local steakhouse is less likely to be able to afford to live in the community she works in than the patrons she serves.

While this is a prevalent issue for big cities, the problem is even more prevalent in college towns. In areas like Bloomington, which houses Indiana University, one critical mass of residents is not the people who have lived in the city for their whole lives, but rather are often-transient college students. These students are catered to by developers

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SCHOLARSHIP *cont'd from page 19*

who build nice new apartment complexes that are appealing to those who come from affluent families (who may be footing the students' bills) and are willing to pay exorbitant prices. Many long-term residents in these college towns feel priced-out of living in their own city.[8]

One possible solution is for cities to put limits on who landlords may rent their units to. For example, cities may restrict the number of undergraduates living in their buildings or block them entirely in some instances. But problems of politics emerge here as well. In some college towns, half of the electorate are voting-age students, so restrictions such as these could have serious ramifications on election chances for local leaders. Likewise, developers and landlords will not be keen on lowering their rental and property values. Leaders must utilize wisdom and will to face the challenges of making hard but necessary decisions in their communities.

In terms of first-floor retail, which is a part of the mixed-use development approach where cities aim to combine revenue-producing sources like retail, with density and walkability, there could be changes too.[9] Mayors Kruzan and Helmke agreed that limiting first-floor space to retail was positive for quite a while as it allowed areas to become more walkable and encouraged a flourishing economy. However, in recent years, as shops have closed down and space is left vacant, cities may need to reconsider the changing housing market and begin to allow developers to utilize all available space in order to increase the housing supply.

Tying this back into other elements of property rights, allowing more housing development increases the density of an area and can decrease the immediate need for annexation, by having a stronger property tax base. One recommendation for zoning would be that single-family zoning should be allowed but primarily oriented to actual single families and not transient high-turnover clientele, and retailers should continue to be encouraged to buy first-floor real estate when they can keep a strong local base of customers -- but landlords should not be barred from creating livable space with these areas if no residential market interest is shown.

CONCLUSION

Former Fort Wayne Mayor Paul Helmke stated that property rights have been a point of contention for centuries. In the old world, it was understood that "the king owned all the land," and while the country has broken from that philosophy generally, there are principles that remain.[10] Both Mayor Helmke and Kruzan acknowledged that when a city initiates an update to zoning ordinances, presents an annexation ordinance, or serves eminent domain paperwork to a property owner, the vast majority of the time, the city will win. Both contend that this is probably a good thing because the needs of all people in a local community ought to be weighted more heavily than the rights of one person. However, with that discretion necessarily left in the hands of local government officials, citizens must demand that they exercise fair judgment in these cases. When local officials overstep their bounds, they will lose the trust of the community. And most importantly, local leaders must remember that their decisions will impact – and sometimes even upend – the lives of their residents.

Mayors must carefully consider when to exercise their relatively unchecked authority to change residents' relationships with their property. This analysis should not dissuade mayors from making their communities better places to live; indeed, more walkable cities are only made possible through zoning changes. Public safety could be threatened without an avenue to take someone's property to build a police station, and cities may struggle to thrive if they do not expand their boundaries and tax base. While all these are realities faced by cities, mayors ought to be encouraged to treat these actions as actions of last resort.

Creativity can bring better solutions than the easiest, most apparent path. Respecting the best interests of the city and individual property owners may at times seem irreconcilable, but with care and community conversations, better solutions may emerge. Every community is unique and has different needs, so there is no single formula regarding how to implement eminent domain, annexation, or rezoning programs--aside from saying the city government ought to show empathy and respect for property owners whose lives could be changed due to decisions made by the municipality. If there is a shared understanding of the stakes, then city leaders will be well-equipped to make good judgments regarding how to help their city flourish. **ML**

NOTES

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