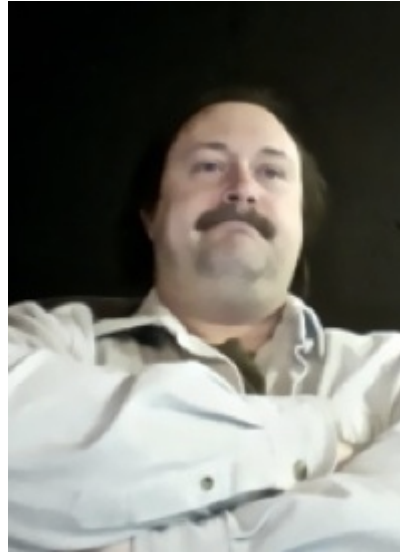




Written by [Dennis Behreandt](#) on June 11, 2010

Eminent Domain and the Rights of Property

In China, one man has had enough. Yang Youde, who lives near the city of Wuhan, has had to begin defending his property rights with homemade artillery. He's not fighting off who you might think. There are no roving gangs of thugs, no sneaky, shifty criminals eager to invade his home. No, privatized criminals like these present no threat to Yang. Instead, the threat comes from his own government.



According to London's *Telegraph* newspaper, Yang is fighting off developers who want his land. The paper reports: "Mr. Yang said the local government had offered him 130,000 yuan (£13,000) for his fields, on which they want to erect 'department buildings.' He said the land is worth five times that amount."

He is likely right. [Wuhan](#) is a rapidly growing city in Hubei province with a population of approximately 9 million. Many French firms have investments in the area, and the city is at the center of much economic and industrial development. To the government, Yang's modest holdings stand in the way of further "progress."

Sad as Yang's story is, it isn't unexpected. It is taking place in China, where the [communist](#) government routinely tramples on the rights of citizens.

Shockingly, stories like Yang's are repeated every day — in the USA.

Consider the [story of farmer Earl Giefer](#), a resident of Oak Creek, Wisconsin. The city hoped to acquire Giefer's 24-acre property and began the first steps of declaring the small farm to be "blighted." That's the first step also in preparing to seize the land through [eminent domain](#).

The effort was undertaken by city officials because it was thought that the modest farm would hinder development nearby. "The perception was that, given the location of the Giefer's property in relation to the business park, that it would be an impediment to development," City Attorney Lawrence Haskin told reporter Sean Ryan of the *DailyReporter.com*.

Said Geifer of Oak Creek's attempt — now halted due to bad press — to take his land: "You change it over into worthless money. What good is money? It's a worthless piece of paper with numbers on it."

In Oak Creek, as in China, property rights are nothing if you stand in the way of government and its cronies from acquiring a few more numbered scraps of paper.

In the U.S., no discussion of property rights and eminent domain can be undertaken without reference to the now notorious decision in the *Kelo v. City of New London*. In that case, the Supreme Court held in a 5-4 decision written by Justice John Paul Stevens, that the contested plan involving the seizure of the land and transfer to another private entity "unquestionably serves a public purpose" and satisfies



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“the public use requirement of the Fifth Amendment.”

To this standing of the Fifth Amendment on it's head, Justice Clarence Thomas dissented, noting that famed jurist William Blackstone wrote that “the law of the land ... postpone[s] even public necessity to the sacred and inviolable rights of private property.” Wrote Thomas: “The Framers embodied that principle in the Constitution, allowing the government to take property not for ‘public necessity,’ but instead for ‘public use.’”

That principle is enumerated in the final clause of the Fifth Amendment which reads: “nor shall private property be taken for public use, without just compensation.” Justice Thomas argued in his dissenting opinion that “public use” necessarily means public “employment” of a property, and that it is unthinkable to conclude, therefore, that this clause allows the government to take private property and transfer it to another private owner.

“The most natural reading of the Clause,” he writes, “is that it allows the government to take property only if the government owns, or the public has a legal right to use, the property, as opposed to taking it for any public purpose or necessity whatsoever.” From this he concludes: “When the government takes property and gives it to a private individual, and the public has no right to use the property, it strains language to say that the public is ‘employing’ the property, regardless of the incidental benefits that might accrue to the public from the private use.”

But why should it be argued, in any case, that the government shouldn't take property for any public purpose? In the Giefer case, there can be little doubt that had he lost his farm to the city, the developers and city officials would have built something new on or nearby the farm that would have been glittery and attractive to the region's “elite.” The public would have “benefitted” from looking at something more aesthetically pleasing and that, presumably, would have brought jobs to the area. How dare farmer Giefer stand in the way?

The problem is, once you destroy the property rights of anyone, you undermine the rights of everyone. And this is a mighty injustice.

Property arises from the natural rights of individuals. As Jefferson so eloquently put it in his paraphrase of [John Locke](#), every person has a right to life that preexists the establishment of government. In other words, no one person or group of people, even if they call themselves “the government,” can take away the life of another.

Having a right to live presupposes having a right to maintain one's life by acquiring food, shelter, clothing and the other incidentals necessary to live. This is the essence of the second inalienable right, that to liberty. Individuals must be at liberty, free to employ their faculties in the effort to procure the elements necessary to continued life.

This leads inexorably to property. Locke argued that “every Man has a Property in his own Person. This no Body had any Right to but himself. The Labour of his Body, and the Work of his Hands, we may say, are properly his.”

Thus the inalienable right to own property. But Jefferson wisely rephrased Locke's work in the Declaration of Independence, referring instead to the more expansive right to pursue happiness. The connection between property and happiness may not be apparent at first blush, but upon consideration it becomes obvious. Property can be as elemental to life as food for sustenance and ownership of the roof over one's head. Take these away, and misery, rather than happiness, is almost certainly to be the direct result.



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But happiness also derives from the freedom to use one's property as one sees fit. For freedom itself is a vast and inestimable good and the exercise of one's freedom can be and often is a path to joy.

But, since any discussion of property and eminent domain necessarily involves perceptions of the "public good," it is worth considering how private ownership of property relates to that notion.

The Constitution, the product largely of Jefferson's close friend James Madison, opens with the Preamble describing the purposes of the instrument to follow. Among those purposes, the Preamble famously notes that the Constitution was meant to "establish justice ... and promote the general Welfare."

These two terms are inextricably intertwined. Where there is no justice, there is no general welfare. In such a case there is only welfare for the powerful, and the weak have no recourse.

To prevent this situation from arising in the new United States, the Constitution sought to prevent the federal government from accruing powers that would infringe the natural rights of citizens. Thus the law establishing government gave that body very few and very well defined powers, reserving the remainder, as delineated by the Tenth Amendment, "to the states respectively, or to the people."

This creates a level playing field for the great and the small. Under Constitutionally limited government, the wealthy and the powerful do not have legal recourse to oppress the poor and the weak. Moreover, on the other side of the coin, left free to pursue their own self interest, the poor and the weak may better their condition and raise themselves to ever higher stations in life by pursuing their own vision of happiness and employing their faculties and resulting property as they may choose. The Constitution, therefore, by its protection of the inalienable rights including that of property ownership, created the perfect conditions for the functioning of what Adam Smith called the "invisible hand."

According to Smith, the individual engaging in economic activity, "intends only his own security; and by directing that industry in such a manner as its produce may be of the greatest value, he intends only his own gain, and he is in this, as in many other cases, led by an invisible hand to promote an end which was no part of his intention."

In other words, individual economic activity driven by nothing more than self interest is essential to the promotion of the general welfare. Says Smith again: "It is not from the benevolence of the butcher, the brewer or the baker, that we expect our dinner, but from their regard to their own self interest."

Truer words were never written. Now, if government takes away the baker's property, and gives it to someone else, then government puts at risk the property held by all property owners. The baker who originally suffered loss at the hands of government will no longer produce bread, but then other property owners, witnessing this deprivation, may be more cautious in their economic activities in order to avoid falling prey to the maw of government. The resulting chilling effect cascades through the economy, and the general welfare is harmed.

To return to Yang and his defiance of officials in Wuhan, he is an unfortunate citizen of a nation ruled by a government that does not have a legal and philosophical attachment to the rights of property. Instead, the communist government there holds that only the people collectively understood and represented by the government can hold property. Yang may employ cleverly constructed rockets in an effort to defend his tiny holdings, but 50 years of communist rule and practice seems likely to doom his efforts.

Meanwhile, here in the U.S. eminent domain takings continue to represent a threat to freedom and



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prosperity. This won't change until the majority of citizens once again begin to understand that the inalienable rights to life, liberty and property are essential not only to the good of the one, but to the good of the many and to the general welfare.

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