

Eminent Domain Benefits Developers, Not the Public

by Susan Fainstein

Monday, December 12, 2005 12:00 AM

In general, I do not believe that eminent domain should be used for private economic development.

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We do not ever hear that it is a public purpose to take the land of the wealthy to benefit low-income people. We never hear that eminent domain is used to take a Hyatt and build mixed income housing. The general stance is always take away land from poor people and give it to someone who is much better off.

There are alternatives to eminent domain. Private developers who want to build large projects can buy the existing tenants out. And if there are holdouts – as was the case with the one building, that refused to sell out for the Rockefeller Center development - it is possible to build around an existing location.

I also believe that when you take a huge swath of property and try to build it all at once we generally end up with a less interesting, less textured, and less vital environment that may not produce as much in terms of economic development as a more mixed plan.

In the case of Atlantic Yards plan with the Frank Gehry buildings and the arena, developers plan on taking over not just residences, but a lot of small businesses as well. There is a tendency of people who run economic development corporations to see anything that is not big business

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that is not a multi-national corporation, as unworthy. Small businesses are often the birthplaces of larger businesses that drive the economy. We must always look at who benefits and who loses in cases of eminent domain.

I would be less concerned about the use of eminent domain if I thought that it was really for a public purpose, rather than for the benefit of developers. We are in an era of public/private partnerships and what typically happens is a developer comes to the government and says, "We like that property. We think we could make good use of it. Why don't you condemn it for us." Then the government goes through with a charade of a public process and does it.

Also the argument that these decisions should be left up to elected officials or legislative bodies is problematic. When we voted for Michael Bloomberg in the last election, we didn't get to vote on whether we should develop Willets Point or the West Side of Manhattan, we just had to choose between two candidates.

Unless you have input into the actual programs as opposed to saying we can kick these officials out " and think of how long it took before Robert Moses finally met his demise " there isn't much that can be done.

Eminent domain can always be used for a high school or an actual public facility, but it should not be used for economic development that benefits a developer, corporation, or shopping mall operator. We use the public sector, and then rationalize it by saying the development will produce jobs and taxes.

Many of these projects also get tax abatements. So it is not even clear that they create much in taxes. And it is difficult to say whether new jobs are created as a direct result of physical development or whether it is just a movement of jobs from one place to another.

Susan Fainstein is a professor and acting director of the urban planning department at Columbia University. Her remarks were adapted from an address at a recent event at the [New York University Wagner Graduate School of Public Service](#) and the [New York Metro Chapter of the American Planning Association](#)

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