

AMERICAN CONSTITUTIONALISM
VOLUME II: RIGHTS AND LIBERTIES
Howard Gillman • Mark A. Graber • Keith E. Whittington

Supplementary Material

Chapter 8: The New Deal/Great Society Era—Individual Rights/Property/Takings

Berman v. Parker, 348 U.S. 26 (1954)

Max Morris owned a department store in the District of Columbia. In 1945, Congress made a legislative determination that “conditions existing” where the Morris store was located “with respect to substandard housing and blighted areas, including the use of buildings in alleys as dwellings for human habitation, are injurious to the public health, safety, morals, and welfare.” The District of Columbia Redevelopment Act established the District of Columbia Redevelopment Agency, empowered that agency to buy property in “blighted areas” and turn that property over to a private developer who promised to build more adequate housing. Andrew Parker, a member of the Redevelopment Agency, exercised the power of eminent domain over an area that included the Morris department store. Samuel Berman, the executor for the Morris estate, claimed that the federal government could not condemn the property because the takings clause of the Fifth Amendment did not permit government to give condemned property to a private developer. The federal district court rejected this claim and Berman appealed to the Supreme Court of the United States.

The Supreme Court unanimously ruled that a constitutional taking had taken place. Justice Douglas’s opinion held that government give condemned land to a private developer as long as the transaction had a public purpose. Berman raised questions about the conditions under which a taking had the constitutionally mandated public purpose. The District of Columbia Redevelopment Agency acknowledged that a taking had occurred. No constitutional dispute existed over whether the government offered the Morris estate fair compensation for the store. Nevertheless, the Morris family, probably for sentimental reasons, wished to continue operating the family business. How should this influence your analysis of the case? Should a court presume that the obligation to pay fair compensation will ensure that government will only take private property if there is a public purpose? Is greater scrutiny needed for fear that government officials will privilege more affluent parties who claim that they can make a greater profit on the land in question?

Justice Douglas, when affirming the decision of the lower federal district court, cited several Supreme Court decisions rejecting liberty of contract claims. Was he right to regard claims that a taking had no legitimate public purpose as analogous to discredited claims that laws limiting the freedom of contract had no legitimate public purpose? Are there reasons, perhaps textual, for treating takings clause claims differently than freedom of contract claims? Justice Douglas also noted in passing that more than 95% of the persons in the affected areas were African-Americans. Do you believe that influenced his decision? Should the high percentage of African-Americans have influenced the result in Berman? How?

JUSTICE DOUGLAS delivered the opinion of the Court.

...
We deal . . . with what traditionally has been known as the police power. . . . The definition is essentially the product of legislative determinations addressed to the purposes of government, purposes neither abstractly nor historically capable of complete definition. Subject to specific constitutional limitations, when the legislature has spoken, the public interest has been declared in terms well-nigh conclusive. In such cases the legislature, not the judiciary, is the main guardian of the public needs to be served by social legislation. This principle admits of no exception merely because the power of eminent domain is involved. The role of the judiciary in determining whether that power is being exercised for a public purpose is an extremely narrow one. . . .

...

We do not sit to determine whether a particular housing project is or is not desirable. The concept of the public welfare is broad and inclusive. . . . The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled. In the present case, the Congress and its authorized agencies have made determinations that take into account a wide variety of values. It is not for us to reappraise them. If those who govern the District of Columbia decide that the Nation's Capital should be beautiful as well as sanitary, there is nothing in the Fifth Amendment that stands in the way.

Once the object is within the authority of Congress, the right to realize it through the exercise of eminent domain is clear. For the power of eminent domain is merely the means to the end. . . . Once the object is within the authority of Congress, the means by which it will be attained is also for Congress to determine. Here one of the means chosen is the use of private enterprise for redevelopment of the area. Appellants argue that this makes the project a taking from one businessman for the benefit of another businessman. But the means of executing the project are for Congress and Congress alone to determine, once the public purpose has been established. . . . The public end may be as well or better served through an agency of private enterprise than through a department of government—or so the Congress might conclude. . . .

. . .

The rights of these property owners are satisfied when they receive that just compensation which the Fifth Amendment exacts as the price of the taking.



OXFORD
UNIVERSITY PRESS