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Property Rights Are Basic to Liberty and They're Under Attack

By Bob McClure

For most Americans, their home is their biggest investment. Not only is it a place for them to live, but the equity that accumulates in their home is also their largest nest egg, far exceeding most other forms of savings for the average family.

Lately, with low interest rates fueling a home-buying boom, residential property has been appreciating at a near-record pace. Some analysts are warning of a real estate "bubble" akin to the stock market bubble of the late 1990s. Others expect the gains in property values to continue indefinitely.

Regardless of what the future holds, your home still ought to be your castle – a place of refuge. That's how Sir Edward Coke famously described it back in 1644, and even then the principle was nothing new.

In fact, the sanctity of the home was rooted in English common law as early as 1349. In 1488, the principle was further strengthened by a ruling in which an English judge enunciated what has come to be known as "the castle doctrine."

"The law," he wrote, "wills that every man shall be as safe and sound in his own house as he shall be in the King's presence."

If the term "castle doctrine" sounds familiar, it may be because the 2005 session of the Florida Legislature passed a law embracing it. The new law made it

clear that a person has a right to use deadly force when threatened by an intruder in his home and in certain other situations.

But what if the person who arrives at your door to take away your property isn't a thief waving a gun but a bureaucrat brandishing a court order? What if a judge has ordered you to surrender your home so that the government can take possession of it and convey it to another private owner?

Sound farfetched? Tell that to Carl Gamble's family in Norwood, Ohio. The city declared their pleasant, middle-class neighborhood "blighted," then tried to use its power of eminent domain to acquire the Gamble family's home of 35 years and convey it to a shopping-center developer. The rationale? It will expand the city's tax base. Even more ominous? Last month, the United States Supreme Court reached a 5-4 decision giving the local government in New London, Connecticut broader power to seize private property simply to generate more tax revenue. In a scathing dissent, moderate Justice Sandra Day O'Connor wrote, "The specter of condemnation hangs over all property. Nothing is to prevent the state from replacing.....any home with a shopping mall or any farm with a factory.

That has been happening with disturbing frequency across the country as some local governments find reasons to abuse their powers of eminent domain in

ways our nation's founders never could have anticipated. Nationwide, more than 10,000 properties have been threatened or condemned in recent years according to the Institute for Justice.

After all, the idea of property rights was a fundamental tenet when America's founders drafted the Declaration of Independence and the Constitution. Indeed, the phrase "life, liberty, and the pursuit of happiness" initially read "life, liberty, and property."

Many of the Founders were profoundly influenced by the thoughts of the great philosopher John Locke, who wrote in his *Second Treatise on Civil Government* that "Government has no other end but the preservation of property." The Founders were also concerned about the various abuses imposed by the British monarchy, despite the rights granted by the Magna Carta and English common law.

So it's no accident that the Constitution forbids the government to take our property without due process or to quarter troops in our homes. It also bars government agents from pawing through our possessions and personal papers without a warrant.

These provisions are evidence of the Founders' desire to protect property rights. Yet under the guise of "expanding the tax base," some elected officials in our own country are bent on garnering more revenue to redistribute as they see fit. Whatever it's called, it displaces folks from their "castles."

Granted, sometimes government takings are necessary. The greater good may be served by widening a major public highway, for instance. If a recalcitrant property owner is standing in the way of achieving some demonstrable public purpose, it may well be appropriate for government to use its power of eminent

domain – provided, of course, that the owner receives fair compensation.

However, if there is no *public* use for the property to be seized through eminent domain but instead merely wishes to transfer the ownership to another private party, then nobody's property is safe.

The danger of government abuse of its eminent domain authority was articulated by Justice Janice Rogers Brown, the African-American daughter of an Alabama sharecropper who understands better than most the importance of property rights, and whom the U.S. Senate belatedly confirmed last month as President Bush's appointee to the U.S. Court of Appeals for the District of Columbia.

In a strongly worded dissent in a property seizure case she heard while a member of the California Supreme Court, Justice Brown wrote: "Theft is theft even when the government approves of the thievery. Turning a democracy into a kleptocracy does not enhance the stature of the thieves; it only diminishes the legitimacy of the government."

If property rights are in distress, it disrupts the abilities of businesses and individuals to contract with one another or to buy and sell goods, all the while creating an unstable market for all things related to commerce. Succinctly, property rights are the underpinning of any nation's liberty not to mention its economy.

If nothing is done to protect the rights of property owners from the whims of those in power, then there will be much more to worry about than the housing "bubble," rising property taxes, and intruders with a gun. Their property rights, a precious legacy of our nation's founders, will have been lost.

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