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Constitutional Law: The Validity of Urban Renewal in Colorado

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CONSTITUTIONAL LAW: THE VALIDITY OF URBAN RENEWAL IN COLORADO

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This article is written to review the constitutional law and administrative law decisions of the Supreme Court of Colorado during 1961.

A reading of the 1961 decisions disclosed none that are classifiable as administrative law decisions. Most of the constitutional law decisions were routine and not of much importance. Rather than digest many cases with only routine significance, an election has been made to confine comment to the one case which involved a very difficult and important question and stirred vehement disagreement among the members of the court.

I. URBAN RENEWAL — TAKING PRIVATE PROPERTY FOR PRIVATE USE?

The case involved the highly controversial questions in the urban renewal litigation[1] which dispossessed property owners, and resulted in clearing of properties of the then existing buildings, and resale of most of the property by the Urban Renewal Authority to private concerns for industrial and multiple unit housing uses.

The case arose as a result of the condemnation by the Urban Renewal Authority of property of the plaintiffs, part of 150 acres of property in west Denver. The project which gave rise to the case is otherwise known as the Avondale Project, at the west end of the Colfax Avenue viaduct, approximately one and one-half miles west of the downtown business district of Denver.

The condemnation proceedings were commenced pursuant to the Urban Renewal Act,[2] authorizing cities, through Urban Renewal Authorities, to condemn slum and blighted areas and to "redevelop" such areas by sale to private individuals or corporations.

The plaintiff property owners resisted the condemnation actions initiated by the Authority. The principal contention of the plaintiffs was that the Urban Renewal Law and the action taken thereunder by Denver and the Authority violated the state constitution which provides limitations on state legislative authority as follows:

> Private property shall not be taken for private use unless by consent of the owner, *except for private ways of necessity, and except for reservoirs, drains, flumes or ditches on or across the lands of others, for agricultural, mining, milling, domestic or sanitary purposes.*[3]
>
> Private property shall not be taken or damaged, for public or private use without just compensation. . . . and *whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public shall be a judicial question,* and determined as such without regard to any legislative assertion that the use is public.[4]

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1 Rabinoff v. District Court, 360 P.2d 114 (Colo. 1961).
2 Colo. Rev. Stat. §§ 139-62-1 to 139-62-14 (Supp. 1960).
3 Colo. Const. art. II, § 14. (Emphasis supplied.)
4 Colo. Const. art. II, § 15. (Emphasis supplied.)

A. Is Urban Renewal a Public or a Private Use?

In considering the principal question posed, the court said:

> The narrow inquiry, therefore, is whether the power of eminent domain can be exercised in circumstances such as the present, wherein the public authority does not intend to permanently retain the property which it proposes to condemn. *We do not consider the actual use by the public after the taking to be the appropriate test* as to whether or not the use is a public one. The main object of this legislation is to eliminate slum and blighted areas as defined in the act. . . .[5]

If the *use* to which property is to be put is not the "appropriate test," then what is? And if "actual use by the public after the taking" is not the appropriate test, why does the Colorado Constitution[6] provide specifically that "whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public shall be a judicial question. . . ."?

Analysis of the constitutional provisions[7] makes it perfectly clear that the people intended to and did establish the following principles for the protection of property ownership:

1. Private property shall not be taken for either a public or a private use without just compensation.

2. Private property shall not be taken for a private use except for carefully specified purposes.

3. Whenever an attempt is made to take property for a use alleged to be public, the courts are to decide whether the use be really public.

The only purpose which the last principle can serve is to determine if the contemplated use be public (in which case the constitution imposes no limit upon the purpose of the taking) or private (in which case the constitution permits the taking only for certain named purposes). Slum clearance and urban renewal are not permissible objects or purposes which will support taking private property for private use.

The foregoing consideration returns us to the question whether the taking of private property, clearing it of improvements, and selling the property to private developers, is a public use or a private use. There can be no doubt concerning the answer to this question because it is manifest, on the face of the Urban Renewal Act that the legislature, the city council and the Renewal Authority intended to take the property for the sole purpose of distributing it to other private owners.

> An authority may sell, lease or otherwise transfer real property or any interest therein acquired by it as a part of an urban renewal project, for residential, recreational, commercial, industrial or other uses, *or for public use*. . . .[8]
>
> An authority may dispose of real property in an urban renewal area to private persons. . . .[9]

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5 Rabinoff v. District Court, 360 P.2d 114, 118 (Colo. 1961). (Emphasis supplied.)
6 Colo. Const. art. II, § 15.
7 Colo. Const. art. II, §§ 14, 15.
8 Colo. Rev. Stat. § 139-62-6(1) (Supp. 1960).
9 Colo. Rev. Stat. § 139-62-6(2) (Supp. 1960).

An authority cannot undertake an urban renewal project unless the city council approves the project, which approval may be given if the council finds that "the urban renewal plan will afford maximum opportunity, consistent with the sound needs of the municipality as a whole, for the rehabilitation or redevelopment of the urban renewal area *by private enterprise.*"[10]

Language could not make it clearer that the legislative purpose was *not* to take the lands for *public use,* but to take private property from the owners and redistribute it to other private owners. Any other meaning given to the language of the act does violence to the plain and ordinary meaning of the words used.

After determining that it does not consider the public use of the property after its taking to be the appropriate test, the court says, "The main object of this legislation is to eliminate slum and blighted areas as defined in the act,"[11] and "The acquisition and transfer to private parties is a mere incident of the chief purpose of the act which is rehabilitation of the area."[12] The court then cited numerous cases sustaining urban renewal acts in other states, and in the United States Supreme Court, and of them said:

> All of these cases emphasize that the acquisition of properties and the elimination of their slum or blighted character constitutes a *public purpose;* that what is involved is an urban reclamation project; and the fact that when the redevelopment is achieved the properties are sold to private individuals for the purpose of development *does not rob the taking of its public purpose.*[13]

What the court has failed to perceive is that *all* legislation by the General Assembly must be calculated to achieve a public purpose if it is to be valid. The question here is not whether a public purpose is being achieved, but rather whether it is being achieved *by a taking for a public or a private use.* The latter question won't just go away and hide behind the blind and easy references to public purpose. We can only conclude that the court failed to carry out its constitutional duty to decide the most important question in the case.

The dissents[14] not only contain the more persuasive logic, but

10 Colo. Rev. Stat. § 139-62-7(4) (Supp. 1960). (Emphasis supplied.)
11 Rabinoff v. District Court, 360 P.2d 114, 118 (Colo. 1961).
12 *Id.* at 119.
13 *Ibid.* (Emphasis supplied.)
14 Dissenting opinions were by Mr. Justice Moore, in which Mr. Justice Frantz and Chief Justice Hall concurred, and by Mr. Justice Frantz.

also point out the dangers to the public inherent in the kind of judicial abdication indulged in by the bare majority in the *Rabinoff* case.

The final blow to the dispossessed property owners was the advertisement in the Sunday Denver Post[15] for June 17, 1962, for sale by the Renewal Authority, of the lands which they had previously owned to private purchasers "for development."

B. The Eminent Domain Limitation in Colorado

In order to afford a better understanding of the nature and purpose of the Colorado eminent domain limitations, and of the confusion apparent in the cases which seems to have led the majority of the Colorado court astray, it is appropriate to explore the historical understanding of eminent domain prior to and at the time of the adoption of the Colorado Constitution.

1. The Nature of the Power.—It is not necessary for our purpose to establish the origin of the power of eminent domain. But, for a landmark in our consideration of the problem it seems that the power had only begun to be discussed in England, and not at all in the colonies, at about the time of the Jamestown and Plymouth landings.[16] We are here more particularly concerned with the early views as to what the power permitted governments to do by way of taking private property.

> The raw, unlimited power of eminent domain . . . embraces all cases where, by authority of the State and for the public good, the property of the individual is taken, without his consent, for the purpose of being devoted to some particular use, either by the state itself or by a corporation, public or private, or by a private citizen. This definition relates to the power of eminent domain as it exists unrestricted in the sovereign state.[17]

The power of eminent domain, thus defined, is nothing more nor less than a facet of the police power — the power to legislate with regard to persons and their property to promote the public health, welfare, safety and morals. Indeed, Judge Cooley defined the power as "the rightful authority, which exists in every sovereignty, to control and regulate those rights of a public nature which pertain to its citizens in common, and to appropriate and control individual property for the public benefit, as the public safety, necessity, convenience, or welfare may demand."[18]

In the modern edition of Nichols, *The Law of Eminent Domain*, as revised by Sackman and van Brunt, we find the power defined as follows:

> Eminent domain is the power of the sovereign to take property for public use without the owner's consent. This definition expresses the meaning of the power in its irreducible terms:
>
> (a) Power to take,
> (b) Without the owner's consent,
> (c) For the public use.

15 Denver Post, June 17, 1962, p. 6D, col. 6-8.
16 1 Nichols, Eminent Domain 40 (3rd ed. 1950).
17 Lewis, Eminent Domain in the United States 1-2 (3rd ed. 1909).
18 2 Cooley, Constitutional Limitations 1110 (8th ed. 1927).

> All else that may be found in the numerous definitions which have received judicial recognition is merely by way of limitation or qualification of the power. As a matter of pure logic it might be argued that inclusion of the term "for the public use" is also by way of limitation. In this connection, however, it should be pointed out that from the very beginning of the exercise of the power the concept of the "public use" has been so inextricably related to a proper exercise of the power that such element must be considered as essential in any statement of its meaning. The "public use" element is set forth in some definitions as the "general welfare," the "welfare of the public," the "public good," the "public benefit," or "public utility or necessity."[19]

It appears quite clearly, from the historical works alluded to above, and others, that the power to take private property for public use is most properly considered a power inherent in sovereignty and unlimited, except, as every power in our system, to the achievement of a public purpose as broadly defined. And, as one work puts it:

> It does not require recognition by constitutional provision, but exists in absolute and unlimited form. Under this doctrine, therefore, positive assertion of limitations upon the power is required. This requirement is met by the provisions found in most of the state constitutions relating to the taking of property by eminent domain. Such constitutional provisions neither directly nor impliedly grant the power of eminent domain, but are simply limitations upon a power already in existence which would otherwise be unlimited.[20]

2. The Nature of Limitations of the Power.—On Independence Day very few of the original thirteen states had constitutional limitations upon the power of eminent domain, and very few adopted limitations within the immediate years thereafter. North Carolina has no constitutional limitation even today. Georgia had no limitation until 1865, and South Carolina until 1868.[21]

Madison, Hamilton and Jay felt it necessary to submit a Bill of Rights to the states to help carry the ratification of the Constitution of the United States.[22] It is singular that although many of the states had no constitutional limitations on this power of eminent domain, the Fifth Amendment in the Bill of Rights provided: That private property shall not be taken for public use without just compensation.

Today, all states except North Carolina have constitutional limitations upon the power of eminent domain. All such states[23] prohibit the taking of property except upon payment of "just," "reasonable," or "full" compensation, or the "equivalent in money."[24]

19 1 Nichols, Eminent Domain 2-3 (3rd ed. 1950). As to whether the words "public use" constitute a limitation, see Lewis, Eminent Domain p. vi (3rd ed. 1909).

20 1 Nichols, Eminent Domain 14-16 (3rd ed. 1950). See also Lewis, Eminent Domain 21 (3rd ed. 1909).

21 For dates on which the various states adopted constitutional limitations, see 1 Nichols, Eminent Domain 52-55 (3rd ed. 1950); Lewis, Eminent Domain 28-50 (3rd ed. 1909).

22 Swisher, American Constitutional Development 43-44 (1943).

23 New Hampshire, however, only requires that the taking be with the owner's consent or with the consent of the "representative body of the people." Lewis, Eminent Domain 41 (3rd ed. 1909).

24 Lewis, *op. cit. supra* note 21, at 27-50.

The limitation that just compensation must be paid for property taken for a public use, interpreted as indicated above, is the usual one found in state constitutions. And, as we have seen above, the term "public use" was construed by the courts to mean everything from actual use by the public to "public purpose" or "public benefit."

The definition of the power of eminent domain in many states permitted the taking of private property for "public use" in such liberal terms that property could be taken for the "general welfare," the "public good," the "public benefit," or the "public utility or necessity."[25]

The earliest example of the taking of private property for a "public use," which was not really for use by the public in the sense that the public used the property, was the condemnation and overflowing of the property of others for the purpose of creating a mill pond and a fall of water at a mill dam to turn the grinding mechanism of a flour mill. Such a taking was common in early New England.[26] Mills established as a result of the exercise of the power of eminent domain were undoubtedly highly necessary and beneficial to the whole public in early colonial days, but actual use was by the mill owner.

Any doctrine, such as that accepted by some states to the effect that a public use means any use which in any way contributes to the public welfare, is likely to be pushed to the point of being difficult to defend. It was natural that persons having any desire at all to invade the property rights of others would argue that the proposed use was beneficial to the public and that they should be permitted to condemn land of another for such things, for instance, as logging roads, spur tracks from a saw mill to a railroad, for drainage of factory wastes, for recreation areas, or for a way of ingress and egress to and from land not served by a road.

The early mill dam cases indicated that there was not only great public benefit supplied by mills, but that no miller could, morally at least, refuse to grind the grain of another.[27]

It was natural for the courts to extend the doctrine of the mill dam cases to permit the taking of property for other purposes, because even though property for railroads, ferries, telephone companies and others was to be taken by private individuals or cor-

25 See note 17 *supra*.
26 For descriptive text and cases see Lewis, *op. cit. supra* note 21, at 544.
27 Lewis, *op. cit. supra* note 21, at 547.

porations, and used for private profit, the public was to be permitted the use of the facilities.

More serious questions arose when the mill dam doctrine was urged as precedent for permitting the taking of property for *private uses* which indirectly and incidentally *benefitted* the *public*, but which property the public had neither any right to use nor any interest in using. Certain ways of necessity, such as logging roads, mining roads, cable trams for carrying ore from mine to mill, ditches and flumes to carry water from its source to a farmer's land, and many others, were frequently sought to be condemned as taking for public use.

Because the courts were finding difficulty in establishing the boundary between takings of private property for public uses and takings of private property for private uses, it was inevitable that modifications in constitutions would be sought which would establish such a boundary.

3. Later Constitutional Developments.—In the latter part of the nineteenth century another kind of limitation began to appear in state constitutions. Before 1876 (the year in which the Colorado Constitution was adopted) a number of states had adopted constitutional limitations seemingly calculated to restrict the scope given to the prevailing constitutional limitations.

A really broad-sweeping, new kind of limitation was adopted as a constitutional provision in Missouri in 1875, prohibiting the taking of private property *"for private use . . .* except for ways of necessity, and except for drains and ditches across the lands of others for agricultural and sanitary purposes . . . and whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public shall be a judicial question, and as such judicially determined, without regard to any legislative assertion that the use is public."

The Missouri limitation was adopted in virtually the same form (but with sufficient difference in each case to indicate that careful consideration was given to the suitability of the limitation to each state) in the Colorado Constitution of 1876, the constitutions of Wyoming and Washington in 1889, and of Oklahoma in 1907. Illinois in 1878, and New York in 1894 adopted or extended existing constitutional limitations along the same line. In 1889 Montana and Idaho adopted constitutional provisions declaring private use of ways to conduct water to reservoirs, and through ditches, flumes and other ways to be public uses.[28]

In passing, it should be noted that not all of the constitutional developments indicated above were in the constitutions of new states. Quite apparently there were problems in connection with the taking of property for private uses that were recognized as in need of correction in the states of Missouri, New York, Illinois and Oklahoma. And just as apparently, the constitutional conventions of new states coming into the Union recognized the necessity for placing more specific limits on the power of eminent domain.

4. Comparative Interpretation of the New v. the Old Kind of Constitutional Limitation.—Almost beyond question, the states which revised their constitutions, and the new states coming into

[28] For all the limitations indicated in the paragraph, see Lewis, *op. cit. supra* note 21, at 28-50.

the Union, recognized that the doctrine allowing "for a public use" to mean "for a public purpose" had been carried too far. The adoption of the new kind of limitation appearing in the Missouri Constitution of 1875 could mean nothing else.

It is interesting and instructive to sample a few opinions handed down in the early period of the new limitation.

Illustrative, in the West, of contemporary judicial interpretation of the old, traditional prohibition that property shall not be taken for a public use without compensation is the Nevada case of *Dayton Gold & Silver Mining Co. v. Seawell.*[29] A mine operator wanted a right of way over lands of others to take in timbers and other supplies and to bring out ores. The court posed the principal question for decision: "What is the meaning of the words 'public use' as contained in the provision of our state constitution?"

Some indication of the reason for the new kind of limitation being adopted by both new and older states at that time may be ascertained from the language of the learned Nevada court:

> No question has ever been submitted to the courts upon which there is a greater variety and conflict of reasoning and results than that presented as to the meaning of the words "public use" as found in the different state constitutions regulating the right of eminent domain. The reasoning is in many of the cases as unsatisfactory as the results have been uncertain. The beaten path of precedent to which courts, when in doubt, seek refuge, here furnishes no safe guide to lead us through the long lane of uncertainty to the open highway of public justice and of right. The authorities are so diverse and conflicting, that no matter which road the court may take it will be sustained, and opposed, by about an equal number of the decided cases. In this dilemma, the meaning must, in every case, be determined by the common sense of each individual judge who has the power of deciding it. Upon examing the authorities, we find that private property has been taken under a similar provision in the different state constitutions, for the purpose of making public highways, turnpike roads, and canals; of building railroads; of constructing wharves and basins; of establishing ferries; of draining swamps and marshes; of bringing water into cities and towns; of the establishment of water-power for manufacturing purposes; of laying out a public park; of constructing sewers; of erecting levees, to prevent inundation; of building lateral railroads to coal mines; of laying pipe for the transportation of oil from oil-wells to a railroad; of laying gas-pipes; of disposing of stagnant and offensive water, etc., etc.[30]

The Nevada court sustained the taking, on the authority of the mill pond cases mentioned above, but not without some misgivings as to the validity of the analogy. The way of precedent is hard; but the way of independent thinking, by appellate courts, is harder still. Better that the people would amend the constitution!

29 11 Nev. 394 (1876).
30 *Id.* at 400-401.

Proceeding from the old to the new kind of constitutional provision, we examine a case from the state of Washington.[31]

The plaintiff, who had no way to get his saw logs to a mill, sought a right of way across the land of another.

We will recall that Washington had, in 1889, adopted a constitution which provided that: Private property shall not be taken for private use, except for private ways of necessity, and for drains,

31 Healy Lumber Co. v. Morris, 33 Wash. 490, 74 Pac. 681 (1903).

flumes or ditches on or across the lands of another for agricultural, domestic or sanitary purposes.

The plaintiff relied heavily on the doctrine of the mill dam cases and urged the large element of public benefit to be created by his logging operation as the element which would sustain his appropriation of defendant's property as a public use.

While conceding that there were many authorities following the mill dam doctrine, the Washington court pointed out that those authorities were about equally balanced by decisions rejecting attempts to appropriate private property for private use on the theory that the private use would produce public benefit.

Characterizing the mill dam doctrine as "dangerous," the Washington court said:

> It seems scarcely necessary to particularize to show to what extent this doctrine might practically be carried. Under such liberal construction, the brewer could successfully demand condemnation of his neighbor's land for the purpose of the erection of a brewery, because, forsooth, many citizens of the state are profitably engaged in the cultivation of hops. Condemnation would be in order for gristmills and for factories for manufacturing the cereals of the state, because there is a large agricultural interest to be sustained. Tanneries, woolen factories, oil refineries, distilleries, packing houses, and machine shops of almost every conceivable kind would be entitled to some consideration for the same reasons; thereby actually destroying any distinctions between public and private use, for the principle in one instance is the same as in the other. The difference is only in degree.[32]

The Washington court rejected the mill dam doctrine, pointing out that only Colorado and Missouri had constitutional provisions regarding condemnation for a private use, and said:

> That fact eliminates from the discussion in this case all that line of cases which hold that the fact that the Legislature has either pronounced a certain thing a public use, or has so indicated by its enactment, by conferring the right of eminent domain, ought to have great weight with the court in construing the constitutionality of the act, because our Constitution has expressly negatived any such idea; . . .[33]

Having thus expressed itself upon the question of the difference between the Washington eminent domain limitations and those of most other states, the court held that the kind of way desired by the plaintiff was not a "way of necessity"[34] and the contemplated use did not qualify as one of the other private uses for which the power of eminent domain was available under the Washington Constitution.

5. *Development and Application of the Colorado Limitation.*— It is unfortunate that the Proceedings of the Colorado Constitutional Convention, held in 1875, do not contain any record of the comments or debates on proposed provisions. However, it would be

32 *Id.* at 684.
33 *Id.* at 682.
34 Because at common law a way of necessity could be raised only out of land granted or reserved by the grantor, and the defendant was a stranger to plaintiff's title.

assuming too much to believe that the Committee on the Bill of Rights, in proposing the new limitations on the power of eminent domain, were not cognizant of the confusion that existed at that time regarding the diversity in the cases which held that "for a public use" meant everything from "use by the public" to "any use by anybody that produces some public benefit." Indeed, it is reasonable to assume that there were large land holders in the convention desirous of insuring their ability to put water on their lands, and that there were in the convention mining men intent on safeguarding their right to get men and materials to their mines and their ores out. It is equally reasonable to assume that there were land owners in the delegations who recognized the threat to their holdings arising from miners, loggers and others who wanted constitutional sanction for private ways that would facilitate their exploitation of natural resources.

It is not, therefore, to be supposed that the strangely new provision limiting the power of eminent domain written into the Colorado Constitution was a mere paraphrase or the result of a desire to use refreshing new language to communicate old concepts. Lawyers just don't do things that way. They prefer to adhere to words and phrases that have become technical in their meaning by virtue of repeated use and judicial construction. Knowing the legal profession and its traditional way of operating, and knowing that constitutional conventions are the occasions most surely to invite presentation of all conflicting interests, we can be reasonably certain that the language used in the Constitution of 1876 was meant to change and make more specific the fundamental law as to what was and what was not a permissible taking of private property in Colorado.

The Supreme Court of Colorado had occasion to apply the new and different constitutional limitation in a decision only eleven years after adoption of the constitution.[35] The plaintiff sought to condemn land for a private railroad over land of others, to take out ore, claiming a right to do so under section 2407 of the General Statutes of Colorado. The question of public benefit to be derived from facilitating the mining industry, admittedly a matter of great public benefit in those days, was not much labored in the case. The court, with economy of words, held that "The right to condemn and appropriate private property, in the present case, being for a private use, no argument is necessary to show that the taking of private property for the construction of a tramway does not fall within the exceptions specified, to which the legislative power is limited by the constitution."

It is somewhat singular that this case, although cited in the petitioners' brief, was not mentioned by either the majority or minority opinions in *Rabinoff*.

II. SUMMARY AND CONCLUSION

In the *Rabinoff* case, urban renewal was sustained in Colorado.

The purported authority for urban renewal, the Urban Renewal Law enacted by the Colorado General Assembly, provides for the creation of urban renewal authorities by cities. Clearly and un-

35 People v. District Court, 11 Colo. 147, 17 Pac. 298 (1887).

equivocally, the intent of the legislature, manifest in the words of the act, is to take possession and title of private property in areas which are determined to be slums or blighted, to destroy the buildings and terminate the uses which are the source of slums and blight, and to return the lands to other private owners for profitable exploitation.

In *Rabinoff* it was stipulated by both parties that the avowed purpose of the undertaking by the authority is to acquire the properties by purchase or condemnation and as soon as possible thereafter sell a substantial portion of the properties to other persons or corporations for redevelopment. In the process another objective is to be achieved, namely, the elimination of slums and blight.

It was conceded by all that slum clearance is a proper objective for exercise of police power. But the petitioners urged that the avowed objective of taking their property for the purpose of reselling it to other private developers is prohibited by the Colorado Constitution which specifically prohibits taking private property for private use except for certain kinds of *uses.*

The court rejected the contention, holding that the taking was not for a *private use,* but for a *public purpose,* and for support for its holding alluded to the fact that urban renewal had been sustained in nearly every state in which questioned, and by the Supreme Court of the United States for the District of Columbia. In so holding, it is obvious that the bare majority of the Colorado court completely disregarded the unequivocal language of the constitution. The court also overlooked the fact that Colorado and a few other states have constitutional prohibitions much more restrictive than the constitutions of most states and of the federal government which only prohibit taking property for public use without just compensation. It was inevitable that the majority of the state decisions, with which the majority of the court were so impressed, would be different from decisions based upon the kind of limitation found in the Colorado Constitution.

The extreme confusion in the various interpretations of the eminent domain limitations usually found in state constitutions, at the time of the Colorado constitutional convention, clearly suggests that the convention wrote a new and different kind of limitation into the Colorado Constitution deliberately and for the very purpose of preventing the kind of decision represented by *Rabinoff.*

The only objective that could possibly be served by the new and different kind of prohibition was to make it clear that in Colorado private property was not to be taken for private use on the theory that the new *use* served a *public purpose* and for that reason constituted a *public use;* and to make it crystal clear that private property cannot be taken and devoted to a private use as a means of achieving some legitimate end.

The error in the Colorado decision lies in the failure by the court to recognize that, in sustaining the public purpose to be achieved by the Urban Renewal Law (slum and blight removal), it approved the achievement of that quite legitimate end by a means (taking private property for private use) specifically prohibited by the constitution.