

The fallacy of basic economic rights



One of the main questions dividing the left and the right is about how economic rights rank compared to other rights and public goals. That is, the question is about what can or cannot outweigh economic rights.

Basic vs *prima facie* rights

The left regularly argues that economic rights can be outweighed by legitimate state interests, like social justice, such that they are “*prima facie* rights”. Some scholars representing the right, conversely, have recently sought to elevate economic rights to the status of “basic rights”. This terminology follows the work of John Rawls for whom a right is “basic” when it can only be outweighed by other basic rights and when other aspects of justice can be pursued only by those means that fully respect the basic rights.

The objective of many neoclassical liberals, libertarians, and conservatives, who defend economic rights as basic, is to counter extensive programs of taxes and transfers. This divide, I believe, is fictitious. Economic rights cannot be basic. The divide also obscures the real dilemma we face regarding economic rights – it is not true that by making such rights increasingly strong compared to other rights we also increase economic freedom. Quite the contrary, doing so may weaken economic freedom.

Let me explain the fallacy of basic economic rights. There is no genuine disagreement, I should mention, about the nature of economic rights between the left and the right – or at least there was none until very recently. Economic rights may be divided between the liberties of labour, transacting, holding, and using property. Such rights are indeed *prima facie* rights, I think, and arguments that would elevate economic rights to a higher status are potentially dangerous.

Eminent domain – the expropriation of land for public use

We may recall that classical liberals like Friedrich Hayek or Milton Friedman who have most enthusiastically defended the importance of economic rights nonetheless accepted that a public agency may expropriate someone’s private property if it deems it to be in the public interest – say, to build a military base. If economic rights were basic, conversely, your local government could not build a major highway crucial for the development of your region if one irritable landlord were to refuse to sell his land. Eminent domain is an established practice today, and though many cases are problematic, the overall practice is nevertheless essential for our economic freedom. We may review two cases to pinpoint one problem that is often obscured today.

The case of *Kelo v. City of New London*



Photo by [christina rutz](#), under a [CC-BY-2.0](#) licence

First, consider *Kelo v. City of New London* (545 U.S. 469 (2005)). A redevelopment plan was supposed to revitalize the ailing economy of the city of New London, Connecticut, and therefore the city purchased property in the Fort Trumbull neighbourhood, through its development agent, and sought to enforce eminent domain to acquire land from owners unwilling to sell. Pfizer Corporation was supposed to build research facilities on the land, and thus the city initiated condemnation proceedings when the owners of the rest of the property, the petitioners, refused to sell.

The Supreme Court, in a controversial 5-4 decision, justified the enforcement of eminent domain under the Takings Clause of the Fifth Amendment, saying “nor shall private property be taken for public use, without just compensation.” Economic development, the Court ruled, qualifies as “public use” under the said clause. This case, however, is moved by a reverse-Robin Hood understanding of the clause – taking from the poor and giving to the rich. The decision also eliminates the distinction between private and public use of property, since the taking was for the benefit of Pfizer.

The case of *Hawaii Housing Authority v. Midkiff*

Second, consider *Hawaii Housing Authority v. Midkiff* (467 U.S. 229 (1984)), which is a case of oligopoly in land ownership. Twenty-two landowners owned about 72 per cent of fee simple titles on the island of Oahu, where about two-thirds of the population of Hawaii live. The land being concentrated to such an extent in the hands of a few private owners was a remnant of the feudal system and the caste organization in Hawaii. That is, traditionally, the ali'i nui and kaukau ali'i lines ruled and controlled the main Hawaiian Islands. The Hawaii State Legislature, therefore, used eminent domain to take land and redistribute it to private residents.

In an 8-0 decision, the Supreme Court held that such redistribution was constitutional, as a legitimate exercise of the police powers to correct a market failure. Though one may disagree with the rationale of the decision, as well as with the rational basis test used to arrive at that decision, there was manifestly a problem that needed to be addressed – people could practically not become homeowners on Oahu.

These two cases are indicative of an under-appreciated ambiguity concerning economic rights. We all agree that individuals have property rights, and that these rights may be outweighed by some considerations, say, of utility. But not any consideration will do. We should not take from the least well off to then give to the best off as in the *Kelo* case – this cannot be understood as a compelling state interest. Yet that people could live their entire lives without ever having the opportunity to own their homes is a problem. For families who have lived on Oahu for generations, we may think, not being able to buy a house is a compelling reason to use eminent domain. The access to homeownership is most probably a vital component of economic freedom.

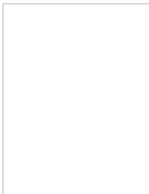
The fallacy, then, is to think that making economic rights stronger will automatically lead to increased economic freedom, and vice versa. The Heritage Foundation Index of Economic Freedom, for example, takes into account the risk of expropriation to measure the degree of economic freedom in the world's countries. The greater the risk, the less freedom people have. But the *Midkiff* and the *Kelo* cases show that expropriation can lead either to more or less economic freedom. If homeownership is a component of economic freedom, the possibility of expropriation may be desirable.

The real question, therefore, as Hayek noted, is about “the conditions under which the particular rights of individuals or groups may occasionally be infringed in the public interest” ([page 217](#)). If the total amount of economic freedom can be increased by having some economic right outweighed in some circumstances, then such rights should not be basic.



Notes:

- This blog post is based on the author's paper [The Fictitious Liberal Divide: Economic Rights Are Not Basic](#), *Erasmus Journal of Philosophy and Economics*, Vol. 10, No. 2, 2017, pp. 1-23.
- The post gives the views of its authors, not the position of LSE Business Review or the London School of Economics.
- Featured image credit: [Cliffs of Moher](#), by [Joseph Mischyshyn](#), under a [CC-BY-SA-2.0](#) licence
- When you leave a comment, you're agreeing to our [Comment Policy](#)



Åsbjørn Melkevik is an Edmond J. Safra Post-Doctoral Fellow-in-Residence at Harvard University. He has published his research in journals such as *Business Ethics Quarterly*, the *Journal of Business Ethics*, *Constitutional Political Economy*, the *European Journal of Political Theory*, *Ethics and Economics*, the *Erasmus Journal of Philosophy and Economics*, and *Critical Review of International Social and Political Philosophy*. Åsbjørn specializes in political theory, business ethics, and law-and-economics.