

Chapter 16

Eminent Domain in Argentina, Brazil, and Mexico

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ABSTRACT

All states cherish eminent domain, which is the power to assert dominion over the resources in their territory. How eminent domain is exercised in a region may be used as a test to gauge the attitude of a state to business. Eminent domain also has deeper influence on the economy of a state beyond direct percepts. Invoking eminent domain scintillates social crisis. How a state manages its social crisis marks the difference between continued growth and economic collapse. This chapter anatomizes a few relevant and recent eminent domain developments in the Latin American states of Argentina, Brazil, and Mexico, contrasting it with the scenario in the USA wherever appropriate.

INTRODUCTION

Constitutions are often perceived as political documents; however, they also act as economic instruments. Constitutional economics has often illustrated the dichotomy between the academic economic recommendations and the ensuing political decisions as the field provides a powerful armor to policy scientists (Buchanan, 1990). Constitutional economic issues arise when States assert their dominion over its resources. In many cases, how those issues affect the business climate can

be considered hazily at best. This chapter analyzes such assertions in three prominent Latin American countries: Argentina, Brazil, and Mexico.

BACKGROUND

Latin America, a Collective Sovereign

Latin America represents economies responding to surrounding flux and evolving in the process. Latin

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America has the potential to emerge as a collective of sovereign republics with common interests and identities (McPherson, 2013). The stature of Latin America was probably first recognized when the USA in 1914 invoked the aid of Argentina, Brazil, and Chile, dubbed the so-called “ABC Powers”, to diplomatically mediate the crisis the USA had with Mexico at the time. This invocation, due to its unprecedented nature, had raised enough sensation by then (Ellis, 2004). Much study has since emerged analyzing these nations to demonstrate the homogeneity and diversity of Latin America.

The average Latin American motif can be sketched as having no long-term pattern of convergence to the living standards of rich countries; slow modernization process, with high levels of inequality; relatively undiversified economy based on natural resources; oligarchic frontier expansion in the 19th century; populism in the 1950s and 1970s; and restricted democracy, military coups, and civil wars (Robinson, 2013). While the aspiration to achieve modernization in Latin America is widespread, the process of development often disrupts the established order and introduces new conflicts and problems (Sloan, 1984). Liberalization processes in Argentina, Brazil, and Mexico have contributed to more stable stock markets, which are similar to markets in developed nations (Edwards, Biscarri, & Gracia, 2003). The repressive regimes prevailing in these countries perhaps helped to erase some of the preceding country-to-country differences that the ensuing process of transition to democracy reinforced similarities (Schneider 2010: 386).

Resources, Whether a Boon or a Bane

Resources are important for the growth of any economy and the Latin American region is rich in resources, particularly in natural resources. How the resources stand distributed and how they remain utilized are the relevant factors in exuding its economic growth. Resources captivate sover-

eigns and investors while the subjects of the State represent the third relevant group. The interests of these three groups often come into conflict with one another. An economy’s dependence on natural resources has also given rise to conflicting views, whether it constitutes a boon or a bane.

An argument is that natural resources trigger resource curse – the paradox of how countries with rich resources often develop more slowly, more corruptly, more violently, and with more authoritarian governments than others (Sachs & Warner, 1995). However, later studies based on Latin America counter this argument and establish that natural resources are neither a curse nor a blessing. These later studies establish that “resource curse, including its Latin American ‘crude democracy’ variant, is another example of a clever—yet flawed—theory that must now be confronted by a set of inconvenient facts” (Haber & Menaldo, 2012).

Eminent Domain and Its Varied Avatars

Eminent domain is the highest and most exact idea of property remaining in the government or in the aggregate body of the people in their sovereign capacity. It gives a right to resume the possession of the property in the manner directed by the constitution and the laws of the State whenever the public interest requires it (Black, 1979). Urban legend that Davy Crockett fought and died at the Alamo in Texas because of Mexico’s eminent domain policy shows the extent to which eminent domain can go. How to protect investments from the State’s assertion of eminent domain powers has been a major apprehension in public international law since the last century. Expropriation often also occurs in indirect forms. Indirect expropriation has finer branches manifesting as de facto, creepy, regulatory, and disguised expropriations (Reinisch, 2008).

There are conflicting views existing regarding the similarity and difference between various

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