# Eminent Domain–Benefits Conferred Upon Property by Public Use

Equipped with the elastic yardstick of "just compensation"[1] the judiciary has sought to measure the reward due the individual when he bows to the exercise of the sovereign's power of eminent domain. Cases involving only minor problems of the condemnation field have exhibited a wide range of theories and decisions. One such problem is presented when the taking and subsequent use of part of a tract of land results in a benefit to the remainder. The various definitions of just compensation in this situation will be briefly discussed in this comment. Throughout the article, it will be assumed that the benefit to the landowner is reasonably ascertainable and not merely speculative.

The diversity of standards applied when benefits are conferred by an action of eminent domain is the result of the conflicting views of the factors involved. The first of these factors, the benefit or advantage, has often been divided into two classes. Based on a geographical distinction, the benefits are termed either general or special.[2] Typical definitions follow the line that general benefits are such as are enjoyed by all people in the community; special benefits are such as are peculiar to one or more persons by reason of the more favorable location of their land with relation to the public project.[3] The definitions are vague at best and the results of their applications to similar facts are far from uniform. Where the benefit is the so-called "neighborhood" type, shared by lands in the same area, vicinity, or project, the cases are in conflict. Some courts view the benefit as general,[4] others as special.[5] One line of cases has refused to attempt any precise definition, preferring to build up examples by case decisions.[6] The principal argument used to support the division of benefits into general and special has been that it is unfair to charge the condemnee for benefits which the owners

[1] UNITED STATES CONST. AMEND. V

[2] Prudential Ins. Co. v. Central Nebraska Public Power & Irrig. Dist., 139 Neb. 114, 296 N.W. 752 (1941); McRea v. Marion County, 222 Ala. 511, 133 So. 278 (1931); Mississippi County v. Byrd, 319 Mo. 697, 4 S.W. 2d 810 (1928).

[3] Wilson v. Greenville County, 110 S.C. 321, 96 S.E. 301 (1918).

[4] Louisiana Highway Comm. v. Grey, 197 La. 942, 2 So. 2d 654 (1941).

[5] Washington County v. Day, 196 Ark. 147, 116 S.W. 2d 1051 (1938); San Luis Valley Irrig. Dist. v. Noffsinger, 85 Colo. 202, 274 Pac. 827 (1929).

[6] Harvey v. City of Huntington, 103 W Va. 186, 136 S.E. 840 (1927). West Virginia has since adopted the rule of deducting both general and special benefits. State v. Sanders, 128 W Va. 321, 36 S.E. 2d 397 (1945).

of land not taken enjoy without charge.[7]

Some jurisdictions have made an increase in market value the sole test and have said that any factor that increases the market value may be considered in determining the compensation.[8] This rule would necessarily include benefits that in other states would be both general and special, where they affect the market value. As a result, the rule has been attacked as a violation of the due process and just compensation requirements of the Fifth and Fourteenth Amendments.[9]

In *Bauman v. Ross*,[10] a District of Columbia statute providing for deduction of increased value was held to be valid under the Fifth Amendment. The court said that there was no express or implied prohibition against considering benefits in estimating just compensation and that Congress could direct subtraction of "... any special and direct benefits, capable of present estimation and reasonable computation ..."[11] In a case involving damage by an elevated railway to an abutting owner, the court found the rule valid under the Fourteenth Amendment:[12]

> The fundamental right guaranteed by the Fourteenth Amendment is that the owner shall not be deprived of the market value of his property under a rule of law which makes it impossible for him to obtain just compensation. There is no guarantee that he shall derive a positive pecuniary advantage from a public work whenever a neighbor does. It is almost universally held that in arriving at the amount of damage to property not taken allowance should be made for peculiar and individual benefits conferred upon it—compensation to the owner in that form is permissible. And we are unable to say that he suffers deprivation of any fundamental right when a state goes one step further and permits consideration of actual benefits — enhancement in market value—flowing from a public work, although all in the neighborhood receive like advantages. In such case the owner really loses nothing which he had before; and it may be said with reason, there has been no real injury.[13]

There are other cases in accord.[14]

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[7] *Petition* of Reeder, 110 Ore. 484, 222 Pac. 724 (1924); Mantorville Ry. Co. v. Slingerland, 101 Minn. 488, 112 N.W 1033 (1907)

[8] Long v. Shirley, 177 Va. 401, 14 S.E. 2d 375 (1941); State Highway Comm. v. Hillman, 189 Miss. 850, 198 So. 565 (1940); State Highway Comm. v. Hartley, 218 N.C. 438, 11 S.E. 2d 314 (1940).

[9] Long v. Shirley, *supra* note 8, McCoy v. Union Elevated Co., 247 U.S. 354 (1918).

[10] 167 U.S. 548 (1897).

[11] Bauman v. Ross, 167 U.S. 548 at 584.

[12] McCoy v. Union Elevated Ry., *supra* note 9.

[13] McCoy v. Union Elevated Ry., *supra* note 12, at 365, 366.

[14] Long v. Shirley, *supra* note 8; Rudder v. Limestone County, 220 Ala. 485, 125 So. 670 (1930); Stroud's Creek & M.R. Co. v. Herald, —— W.Va. ——, 45 S.E. 2d 513 (1947) (state constitution)

Determination of the landowner's benefit does not present the only complexity, however. The owner's injury must also be considered and for the purpose of deducting benefits this injury may be separated into its component parts. These are the actual taking of part of the land, damages to the remainder from the act of severance itself and damages from public use of the condemned portion. It is generally agreed that the owner should be compensated for damage from all these sources[15] but there is no general rule for the deduction of benefits from them.[16] It has been held that there can be no deduction of benefits.[17] Some states have refused to allow the set off of benefits against the value of the land actually taken.[18] These two views generally assume that just compensation implies compensation in money rather than benefits.[19] Strangely enough, this assumption is not always followed with regard to the injury to the remaining land. It is sometimes said that just compensation for the damage from severance or from public use of the portion taken is measured by the excess of harms over benefits and that to determine whether there has been *any* compensable damage requires a deduction of benefits.[20] A United States Supreme Court case held that the requirement of just compensation for both the land taken and damage to the remainder was satisfied by benefits to the remaining land.[21] The court said, ". . . when part only of a parcel of land is taken . ., the value of that part is not the sole measure of the compensation or damages to be paid to the owner; but the incidental injury or benefit to the part not taken is also to be considered."[22]

The distinctions drawn within the two factors, benefit and injury, have been variously combined. One noted writer has grouped the combinations used into five main classifications:[23]

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[15] Dep't of Public Works v. Barton, 371 Ill. 11, 19 N.E. 2d 935 (1939); Lewis and Clark County v. Nett, 81 Mont. 261, 263 Pac. 418 (1928), Oklahoma Natural Gas Co. v. Coppedge, 110 Okla. 261, 237 Pac. 592 (1925).

[16] MCCORMICK, DAMAGES 548 (1935).

[17] Kukkuk v. Des Moines, 193 Iowa 444, 187 N.W. 209 (1922).

[18] Prudential Insurance Co. v. Central Nebraska Power & Irrig. Dist., 139 Neb. 114, 296 N.W 752 (1941); Dep't of Public Works v. Barton, 371 Ill. 11, 19 N.E. 2d 935 (1939); State v. Carpenter, 126 Tex. 204, 89 S.W. 2d 194, *motion for rehearing overruled*, 126 Tex. 618, 89 S.W 2d 979 (1936).

[19] B.B., B. & C. Ry. v. Ferris, 26 Tex. 588 (1863); Isom v. Miss. C. R. Co., 36 Miss. 300 (1853). One writer suggests that this prohibition of the deduction of benefits was aimed primarily at the early railroad land acquisitions. MCCORMICK, DAMAGES 552 (1935)

[20] Aaronsen v. United States, 79 F. 2d 139 (App. D.C. 1935), Kane v. Chicago, 397 Ill. 172, 64 N.E. 2d 506 (1945); State v. Baumhoff, 230 Mo. App. 1030, 93 S.W 2d 104 (1936).

[21] Bauman v. Ross, *supra* note 10.

[22] Bauman v. Ross, *supra* note 10, at 574.

[23] 2 LEWIS, EMINENT DOMAIN 1177 (3d ed. 1918).

1. Benefits cannot be considered at all.
2. Special benefits may be set off against damages to the remainder but not against the value of the part taken.
3. Benefits, whether general or special, may be set off only against the damages to the remainder.
4. Special benefits may be set off against both damages to the remainder and the value of the part taken.
5. Both special and general benefits may be set off against damages to the remainder and the value of the part taken.

The various states have given all these rules constitutional, statutory or judicial support.[24]

Approached from the view of the landowner, all five of the above-mentioned rules are valid under the Constitution of the United States. The elements of the one most harsh to the landowner —deduction of general and special benefits from both the value of the land taken and the damage to the remainder—have been upheld.[25] If just compensation is viewed as a minimum requirement and not as a rule of damages,[26] the methods restricting deduction of benefits and thus allowing the owner greater recovery are within the constitutional requirement. The opposing interest of the condemning party is seldom considered. However, one court has said in dictum that to award a landowner less than just compensation would be unjust to him; ". . to award him more would be unjust to the public."[27] And a recent case hinted that state legislation seeking to impose an obligation on the Federal Government for greater compensation than that required by the Fifth Amendment would be unconstitutional.[28] Usually the question is raised by the landowner and apparently the issue of a constitutional right of the condemnor to a deduction of benefit has never been directly adjudicated.

The rules for the deduction of benefits complicate the conduct of eminent domain cases and, as an original proposition, their use might be questioned. Precise as such formulae may seem in the vacuum of legal scholarship, the ultimate answer in jury cases is influenced by all the variables of the jury's experience. A mention

[24] See Note, 145 A.L.R. 7 (1943). The Ohio position is not clear. Article I, Section 19 of the state constitution prohibits "deduction for benefits to any property of the owner." This has been interpreted as precluding set off of benefits from the value of the land taken but there has been doubt as to its application to the damage to the remainder. Young v. Toledo, 39 Ohio App. 553, 178 N.E. 33 (1931); Loram St. Ry. v. Sinning, 17 Ohio C.C. 649, 6 Ohio C.D. 753 (1895); Chicago & Atlantic Ry. v. Williams, Ohio Dec. Rep. 753 (1883); Little Miami Ry. v. Collett, 6 Ohio St. 182 (1856).

[25] Bauman v. Ross, *supra* note 10; McCoy v. Elevated Ry., *supra* note 9.

[26] State v. Reid, 204 Ind. 631, 185 N.W. 449 (1933).

[27] Bauman v. Ross, *supra* note 22.

[28] United States *ex rel.* TVA v. Indian Creek Marble Co., 40 F. Supp. 811, 818 (E.D. Tenn. 1941).

of benefits to the jury suggests the possibility for over-emphasis and mental juggling. Conceivably the monetary awards to the owner would not be greatly changed by defining just compensation to the jury in these cases as the difference between the market value of the entire tract before the taking and the remainder after the taking. This would recognize the conditioning of the human mind to think of property "value" in terms of market price and effect a simplification in procedure.

It is highly improbable that the individual states will discard their present law on the deduction of benefits, whether it be constitutional, statutory or judicial. However, much of the condemnation of the future will probably be brought in the district courts by the United States or its agents. These cases do not require the courts to follow the substantive rules of the state for the measure of compensation[29] and the difference in market value could be established as the definition of just compensation. The fairness to the landowner and the public plus the existing precedent[30] would be arguments for its adoption.

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[29] United States v. Miller, 317 U.S. 369 (1943).

[30] McCoy v. Union Elevated Ry., *supra* note 9 (abutting property); Aaronsen v. United States, *supra* note 20; United States *ex rel.* TVA v. Indian Creek Marble Co., *supra* note 28.