

THE FREEMAN

IDEAS ON LIBERTY

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Perspective

One Size Fits Some

The nonhuman part of the world makes sense. I expect no less of the human part. So let's explore the following true-life experience:

You're sitting in an airliner that has just landed and is taxiing to the gate. The flight attendant comes on the public-address system to say, "Welcome to New York's LaGuardia Airport. Please remain seated until the captain has turned off the seat-belt sign. You may now use your cell phones. All other portable electronic devices [as though you would be carrying nonportable devices] must remain turned off."

What is perplexing about this announcement is that the one and only electronic device you are now permitted to use is the one you were not allowed to use throughout the flight, and the devices you *were* allowed to use in flight may not be used now. That makes no sense.

If cell phones, as we're told, pose a threat to airliner communications, why isn't that the case while the plane is on the ground? And if Gameboys, iPods, and portable DVD players don't interfere with communications at 30,000 feet, why do they do so at zero feet? Are we being told the whole truth?

Another thing that makes no sense is why a rule—the one banning cell-phone use in flight—that is described as an aviation safety precaution was promulgated by the Federal Communications Commission (FCC), not the Federal Aviation Administration (FAA). The FAA oversees safety in the air. The FCC governs the broadcast spectrum. To be sure, the FAA supports the ban, but it is nonetheless an FCC rule. And it is the FCC that has invited public comment on the proposal to eliminate that rule.

A theory that makes sense of at least some of these puzzling facts is that the ban is not about safety at all. Perusing the newspapers and magazines, I find that no evidence supports the charge that cell phones pose any threat to communications. According to a 1999 *Wall Street Journal* story: "In 1995, [Boeing] engineers at the aircraft maker conducted a four-hour test on a 737, setting up about 20 cell phones throughout the jet and monitoring the plane's radios, navigational equipment and other controls. A variety of flight conditions were simulated. The results: 'Absolutely nothing,' says [Boeing senior electromagnetics engineer Bruce] Donham." One writer wonders why risky phones would be permitted in airport terminals and

parking lots. *USA Today* reported last year that American Airlines and the phone maker Qualcomm performed a successful FCC/FAA-approved test over west Texas.

If the ban is not about safety, what then? Money, perhaps. Various articles report that using cell phones in airliners can, with current technology, disrupt cellular service on the ground. I also read that it would be hard, again with current technology, to bill cell-phone customers who are moving between towers at 300 miles per hour. Then there are those pricey AirFones installed in the seats that the airlines want us to use. Why pay a minimum \$2 a minute if you can use your own phone? (Apparently most people prefer no phone at all to one at that price.) Is the FCC ban a safety cover for financial interest?

Which brings us to the question: should passengers be allowed to use cell phones on airliners? At least that's the question people are asking as they divide themselves into productivity and can't-we-have-peace-anywhere? blocs.

But it's the wrong question. The appropriate question is: who should decide? That's the right one to ask all the way down the line. If the airlines and plane manufacturers can't determine if cell phones pose a danger to their equipment and customers, then the FAA is nothing but a fig leaf. It would be powerless to protect us from such incompetence. But in fact those private companies *can* decide the safety issue. As noted, they already have.

As for letting passengers use their phones, why assume there is only one answer? Here in living color is the presumptuousness of the regulatory state. It arrogates the authority to determine the Right Answer and then to impose it on everyone.

The controversy over cell phones on airliners arises from a clash of preferences. Some people want to talk on the phone while flying. Others don't want to hear telephone chatter. (One wonders if chatter between two seatmates is so different—but I digress.) No one knows the full business implications of permitting passengers to use cell phones. So why not let the airlines, individually, find out? Some will stick with prohibition. Others will permit open use. Still others will set up cell-phone sections. All will cater to anticipated passenger tastes, and the consequences will play themselves out in the competitive marketplace, which is a great teacher.

Imagine that! Freedom leads to the best combination of outcomes.

★ ★ ★

The lion's share of this issue of *The Freeman* focuses on the notorious case *Kelo v. City of New London*, in which the U.S. Supreme Court explicitly gave local governments the green light to revitalize their economies by transferring property, under the power of eminent domain, from one private party to another. Eminent domain, a vestige of absolute monarchy, under which the king owned his realm, violates individual rights. The problem is not that it has been abused. *It is an abuse in itself.*

Our contributors examine the ruling, and other forms of property deprivation, from several angles.

Richard Epstein points out that the outrageous decision grew out of an equally outrageous local redevelopment plan that didn't even require the taking of private homes.

George Leef challenges the Supreme Court's assumption that economic revitalization is a proper function of government.

Steven Greenhut surveys the public reaction around the country to the decision and the heartening determination to prevent such takings from occurring in other states.

Eminent domain isn't the only way that government can interfere with a landowner's property rights.

As Gardner Goldsmith points out, local governments are fond of using their borrowing power to acquire open land in order to prevent development.

And Paul Messino tells the story of a man whose property rights fell victim to North Carolina's municipal-incorporation laws.

This special issue culminates with an article by Andrew Morriss on why the rule of law is important—and so badly misunderstood.

From our columnists we have the following: Richard Ebeling urges private reconstruction of New Orleans. Donald Boudreaux adds his own take on *Kelo*. Stephen Davies contrasts the reputations of warriors and merchants. Russell Roberts revisits supply and demand. And Arthur Foulkes, seeing charges of market failure leveled at capitalism, responds, "It Just Ain't So!"

Our book reviewers pass judgment on tomes about the Austrian and Chicago schools of economics, capitalism's record, the ominous expansion of the criminal law, and intergenerational rivalry.

—Sheldon Richman
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