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## Antonio Azuela

**LAND LINES:** *How did you get involved with the Lincoln Institute of Land Policy?*

**ANTONIO AZUELA:** In 1991, I met several of the Institute's officers while they were on an exploratory trip to Mexico. I stayed in touch, because I was interested in the Institute's approach to urban policy. My relationship grew stronger in 1998 through a meeting in Cairo organized by the International Research Group on Law and Urban Space (IRGLUS), where the Institute expressed interest in a sociolegal approach to urban land problems. In 2000, I was honored with an invitation to join the Institute's Board of Directors. Since then, I have been in permanent contact with the Lincoln Institute staff and programs.

**LAND LINES:** *Why has the public acquisition of land become such a critical issue, particularly in Latin America?*

**ANTONIO AZUELA:** Expropriation, also known as eminent domain (i.e., the compulsory acquisition of land by the state) is an important subject all over the world, because it is a way of procuring land for public urban projects. But in Latin America it is even more critical, due to the weak nature of the state regarding urban matters. Before the democratic transition in the region, it was easier for governments to procure land using mechanisms that would be questionable in a democracy. But the transition has strengthened the judicial branch, which is generally unsympathetic to government interventions in the marketplace. Now, it's increasingly possible for private owners to interfere with the public acquisition of land in the region (with the notable exception of Colombia, where a wide-ranging coalition of professionals, judges, and social organizations supports the doctrine of the social function of property). This trend can be seen, for example, in the exorbitant compensation that some courts have granted for land expropriations in Mexico City and São Paulo.

**LAND LINES:** *What are the main watershed issues?*

**ANTONIO AZUELA:** The first is the adoption of economic policies that advocate a lesser role for the state. The second pertains to the legal status of property rights. When constitutional reforms empower judges to limit the power of eminent domain, this restriction is not necessarily bad, because it can lead to higher quality public administration, but in the short term it has interfered with government power to purchase urban land for public projects. There are two notable exceptions: In Brazil and Colombia, constitutional reforms have established urban policies inspired by ideas of social justice—though only in Colombia do we find a new generation of judges who act in accordance with these principles. In Brazil, the courts are dominated by the classic liberal view of private property, which interferes with the ability to implement the social function of property—an idea that has been circulating in Latin America for almost a century.

**LAND LINES:** *Many jurisdictions prefer to acquire land in the open market instead of using instruments such as eminent domain.*

**ANTONIO AZUELA:** Eminent domain should not be the first option for acquiring land. The challenge is for governments to regulate a variety of instruments in order to achieve a general goal, which is to reduce the land component of the total cost of urban development. The use of eminent domain must be guaranteed by a strong legal framework that can establish an adequate balance between the power of the state and the power of the landowners, and it should be the last option when acquiring land for public urban projects.

The big problem is the cost of land, but the mechanisms of government intervention can inflate prices. For example, if the use of eminent domain is not expected to increase land value, and the judges determine it's the right approach, it can have a positive impact on land markets. At the very least, we can expect from governments that their acquisition of land does not raise prices.

**LAND LINES:** *What are the main outcomes of your research on the use of eminent domain for urban development in the region?*

**ANTONIO AZUELA:** While there is a general trend to strengthen property rights, which interferes with the power of eminent domain, this trend shows several variations, depending on the relationship between the judicial and executive branches in the post-authoritarian governments of the region. The process of institutional change depends less on global trends than on domestic and even local forces, as certain cities follow different paths from others in the same country. Even if all local governments were to adopt the same strategy, the courts in one region will protect landowners more than the courts in other regions. The metropolitan area of Buenos Aires, for example, illustrates how the institutional system of eminent domain is not homogeneous, even within the same metropolitan area. In the Autonomous City of Buenos Aires, for example, people who live in informal settlements (*villas miseria*) have gone to court and prevented evictions. In the Province of Buenos Aires, however, the political climate is such that there is no threat of eviction; eminent domain is used to ensure that settlers can remain where they are.

Another important lesson is that there is no authentic dialog in Latin America on the significance of eminent domain or on the various ways the courts have tackled the dilemmas it presents. While the constitutional thinking in the region is very rich in ideas about certain legal issues, such as the rights of indigenous people and the elderly, urban policies—in particular, eminent domain—have not triggered deep discussions among legal scholars. Unfortunately, these issues seem to be viewed as exceptions, despite the enormous number of people who live (suffering or enjoying) in large urban centers.

**LAND LINES:** *Are eminent domain compensations arbitrary or unfair? If so, for whom?*

**ANTONIO AZUELA:** Inadequate compensation is, no doubt, one of the great challenges for the future development of eminent domain as a land policy instrument. In some cases, governments may take

advantage of the powerlessness of certain social groups and offer them ridiculously low compensation for their land or homes. In other cases, however, the landowner's economic power and influence can result in exorbitant compensations. Beyond these two extremes, in which the affected landowner is either very vulnerable or very powerful, it is difficult to discern a dominant trend.

A precise answer to your question would require a market study of a large number of eminent domain cases in order to determine if the compensation is high or low when compared to pre-established criteria. The existing research has shown, however, that in general the courts do not possess clear and widely shared criteria for determining whether compensations are fair. Moreover, courts lack the capacity to understand what is at stake during the process of urban transformation in which eminent domain is used. Consider, for instance, the case of a prominent family from Ecuador that received a very high compensation for the expropriation of agricultural land on the periphery of Quito. What is remarkable is that this case was decided by the Inter-American Court of Human Rights, and it was obvious that the court did not establish clear criteria to determine the amount of compensation; it simply averaged the assessments submitted by the different parties. The compensation was the highest ever awarded by this high court, which was created to address violations of human rights committed by dictatorships yet ended up benefiting private property owners at the expense of the public interest. The fact that this case did not create a scandal among constitutionalists in the region indicates how marginalized urban legal issues are in Latin America.

**LAND LINES:** *What are some changing trends you have observed?*

**ANTONIO AZUELA:** I observe, with some optimism, that many courts and local governments in the region are undergoing a learning process, trying not to repeat prior judicial mistakes. Unfortunately, these lessons rarely transcend the affected local area and become incorporated into the common regional juridical knowledge.

**LAND LINES:** *What sort of education or training would you recommend?*

**ANTONIO AZUELA:** Logically, we need to intensify exchanges among different disciplines and countries, placing the courts at the center of the discussion, as they will make the final decisions. These decisions should express the best possible synthesis of a body of knowledge that we need to build around the urban dynamics of the region. In the contact we have had with the courts, with the support of the Lincoln Institute, we have found that once a dialog is established, judges understand the need to learn more in order to grasp the effects of their decisions. In other words, while the courts do not seem to show a great interest in urban problems, as evidenced by the routine attitude shown in their day-to-day decisions, they can see new perspectives for their own professional development in the context of a critical analysis of urban issues.

**LAND LINES:** *What are the critical issues that need to be investigated more deeply?*

*What is it that we do not yet know?*

**ANTONIO AZUELA:** We should try to understand the logic of court decisions in the region. We frequently make a simplistic interpretation of the actions taken by the courts, because the media tend to amplify the worst cases. However, many judges make an effort to find the best possible solution to each case. Under what conditions do they operate? One of the challenges of investigating these issues in Latin America is to understand the real world in which these decisions are made, apart from the common but always relevant themes of corruption and incompetence. We need to analyze statistical information to observe general trends, combined with an ethnographic approach to the functioning of the courts. Only then will we be able to understand what needs to be reformed in order to improve the court performance in urban conflicts. While it is important to ascertain who is being favored by the court decisions—which can be done by analyzing the contents of judicial decisions—we need better understanding of the conditions under which these decisions are made. In order to do that, we need to get closer to the courts themselves. 