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Life, Liberty, and the pursuit of Property

The death of liberty in the aftermath of

Kelo v. New London

". . . Life, Liberty, and the pursuit of Happiness." Most Americans recognize this phrase from the Declaration of Independence. Indeed, it is one of the founding principles of this country to protect these things. But, do people today still understand the importance of protecting these rights? Life and liberty are somewhat easy to understand, but the "pursuit of Happiness" has a bit more history to it. Two years prior to the Declaration of Independence, the First Continental Congress, in response to the *Intolerable Acts*, issued a Declaration of Colonial Rights. The document asserted that each of the British colonies in America "are entitled to *life, liberty, and property*, and they have never ceded to any sovereign power whatever, a right to dispose of either without their consent" (Roland; emphasis mine). The founders of this country understood that the right to property is claimed individually, that it is not a gift from government, and that property is the foundation of both life and liberty. John Adams has said "property must be sacred or liberty cannot exist" (qtd. in Wayne) A home is the quintessential property. With homes we raise our families – fostering life. With homes we grow, learn and create – fostering liberty. Our homes and our right to own and make them the way we want, is the most essential thing we have as human beings, and yet, we as Americans are slowly giving away our right to property despite its great importance.

Last summer, the Supreme Court of the United States ruled on one of the most important

cases concerning property rights in history: *Kelo v. New London*. In 1998, the pharmaceutical company Pfizer announced its plan to build a $300 million complex in the New London, Connecticut, Fort Trumble area (Stevens 2). The New London Development Corporation (NLDC) saw this as an opportunity to revitalize the city's economy and quickly drew up plans for new development right along side the new Pfizer plant. The NLDC plans called for a new waterfront hotel, conference center, eighty new residences, research and development office space intended for Pfizer, as well as general office and retail spaces (Stevens 3). The only problem was that the intended area was already developed land, mostly residential area. The majority of the existing land owners saw an economic opportunity and quickly sold their land to the NLDC. However, Suzette Kelo, along with eight other home owners coerced into giving away their land, petitioned the state of Connecticut (and later the US Supreme Court) claiming "that the taking of their properties would violate the 'public use' restriction in the Fifth Amendment" (Stevens 5).

The Fifth Amendment of the Constitution was written specifically to prevent this character of abuse demonstrated by the city of New London. According to the preamble to the Bill of Rights, some states "expressed a desire, in order to prevent misconstruction or abuse of [the Constitution's] powers, that further declaratory and restrictive clauses should be added." These states were afraid that the government would abuse its power and take away private property just as British forces had prior to this country's independence. The Fifth Amendment protects, among other things, individuals from the seizure of property unless the property is to be seized for "public use." Public use has been defined in prior Supreme Court cases. One such example is *Pennsylvania Coal Co. v. Mahon*. In this decision, examples of public places of use were hospitals, schools, highways, and railroads (Holmes). These are all very traditional public places. Nowhere in this list does one see office or retail space. How can one argue that office

space built directly adjacent to the new Pfizer complex, which would obviously benefit Pfizer, should be considered a public place of use? The signers of the Bill of Rights were concerned with individual property rights. Clearly, they would never have approved of New London's definition of *public* use: taking away homes and giving the land to a *private* company. In *Forbes* magazine, Steven Forbes responded to the situation in New London: "on this issue the Constitution is clear – except to the Supreme Court – governments are supposed to exercise eminent domain only for 'public use,' such as constructing highways or building schools" (Forbes).

With *Kelo v. New London, t*he Supreme Court ultimately developed a new definition for public use that strips the protections of private property from the Constitution. In June of 2005, Justice John Paul Stevens issued the majority opinion in favor of the city of New London. He justified New London's taking of land for "economic development" declaring that "[the court] embraced the broader and more natural interpretation of public use as 'public purpose'" (Stevens 9). If what happened in New London is to be the rubric for what "public purpose" is to entail, the power of the state just grew a hundredfold. Essentially, any local, state, or federal government can now take away any land they want if someone, *anyone*, could make better use of the land and provide "economic development" for the community. Certainly, no one can justify a powerful company stealing land directly from a low income family. How then, can one justify a government doing the same, vicariously, for the company? Justice Sandra Day O'Connor raised the point in her dissent to the court's decision:

> "Under the banner of economic development, all private property is now vulnerable to being taken and transferred to another private owner, so long as it might be *upgraded* . . . Nothing is to prevent the State from replacing any Motel 6 with a Ritz-Carlton, any home with a shopping mall, or any farm with a factory" (O'Conner 10; emphasis mine).

If houses were computer software, this would be like *your house* being "upgraded" to *their house version 2.0*, only they didn't write the software. . . they stole your source code.

It should be obvious that the consequences of this new interpretation of the law will disproportionately benefit wealthy companies. Justice O'Connor, in the conclusion of her dissent notes that "the fallout from this decision will not be random. The beneficiaries are likely to be those citizens with disproportionate influence and power in the political process, including large corporations and development firms" (O'Connor 12-13). Exactly one year after the ruling on *Kelo v. New London*, the Institute for Justice issued a report chronicling the amount of eminent domain cases brought forward since the case. They found over 5,783 cases where eminent domain was used to take away homes, churches, and businesses to benefit new private commercial development. This statistic shows a 155% increase over the previous five year average of 2,056 cases per year (Opening the Floodgates 2). O'Connor's warning foretold of what is now the common practice of city and state governments. Even governments that publicly consider redeveloping allegedly blighted urban areas, areas that are so run down they cause a danger to society, those same governments create "self-fulfilling prophecies because individuals refuse to invest money in properties that could be taken from them by bureaucratic whim" (Opening the Floodgates 10). Such government involvement greatly discourages private redevelopment of blighted property if private owners know the government is simply going to bulldoze the entire area.

Regardless of the denial of property rights in the decision of *Kelo v. New London*, many refuse to give up the fight. In one example of dissent, a lobby group, called the Natural Rights Organization, took it upon themselves to demonstrate the new power of the Supreme Court decision. In the small town of Weare, NH, there exists the summer home of David Souter, one of the justices who voted in the majority in *Kelo v. New London*. The Natural Rights Organization,

because of the new authority granted by the decision in *Kelo v. New London*, petitioned the Weare city council to seize Justice Souter's home to build a new hotel, the "Lost Liberty Inn." The hotel is to be a museum chronicling the history of lost liberties in America. The organization drew up blueprints for the hotel and argued how the hotel would bring new tourism and "economic development" to the small developing town (Lost). Even though no action has yet been taken by the city, the news of this maneuver spread quickly in the blogosphere. As of June 22, 2006, blog aggregator Technorati.com shows 1,501 posts containing the phrase "Lost Liberty Hotel."

Another organization, the Castle Coalition, has become a direct opposing force to abusive local governments. Shortly after the Supreme Court decision, the Castle Coalition published the *Eminent Domain Abuse Survival Guide.* This guide gives effective strategies that enable individuals to defend their own homes and to help spread information on property rights activism. Within the guide, there are resources for finding the relevant laws concerning eminent domain, advice for how to approach city counsels, how to find a good lawyer, and how to raise public awareness through the use of media. The Castle Coalition lists on their website over thirty different cases where the guide has helped property owners win against various city and state governments wanting to take away their property for private redevelopment ("Success Stories").

Kelo v. New London has created more public discussion than most Supreme Court cases. Due to the public's outrage, Congress has even introduced a bill to eliminate federal funding for economic development purposes for any state that also takes property from its citizens for economic gain. The bill, HR 4128, passed with a 91% majority in the House in November of 2005, but has since been delayed in the Senate (Boulard 30). Several states have enacted new laws to prevent eminent domain abuse, although the wording is different in each state and some protect private property better than others. Alabama, for instance, has completely outlawed the

taking of private property for “purposes of private retail, office, commercial, industrial, or residential development; or primarily for enhancement of tax revenue” but Utah has only required that if such taking is being considered that the individuals who own the property must be informed of all meetings where the taking is being discussed (“Passed Legislation”). State legislators have been greatly influenced by the efforts of individual citizens writing letters to their representatives and setting up rallies and other events. It is not too late to contact our city and state governments expressing our desire for the protection of private property. The Supreme Court noted in its final decision: “[we] emphasize that nothing in our opinion precludes any State from placing further restrictions on its exercise of the takings power” (Stevens 19). The States, representing the People, are still the ultimate policy makers. Luckily, many state legislatures realize they have retained this power and are seeking to limit their taking power. Our voice will help assure that end.

The power demonstrated by the Supreme Court in this decision clearly goes beyond its authority. The Supreme Court has, as Justice O'Connor put it, “effectively [deleted] the words 'for public use' from the Takings Clause of the Fifth Amendment.” The role of the Supreme Court is not to rewrite the Constitution; it is to interpret the Constitution. The framers embedded a method of amending the Constitution directly in its text. This process in no way involves the Supreme Court. However, the Supreme Court has already ruled, and their decision will have lasting effects regardless of if they have legitimate authority or not. The Supreme Court has proven it is unwilling to protect property rights. Now, more than ever, is the time for the states and the individual to defend property rights. Thomas Jefferson wrote: “[The] rights [of the people] to the exercise and fruits of their own industry can never be protected against the selfishness of rulers not subject to their control at short periods" (Coates). Throughout the history of our country, we have fought to defend against the forces of property confiscation. We cannot

allow America's guard to drop now. To do so trivializes the efforts of every American who has ever fought for the cause of liberty. The right to own property is essential for fostering and protecting liberty in this country and throughout the world.

The problems America is facing concerning property rights are not new; they have plagued society throughout history. For example, in 1733, England's House of Commons was considering the *Walpole's Excise Bill,* which some historians believed "raised up a small army of officials with powers of inspection over shops and warehouses, and even private dwellings" (Gabb). This prompted Sir William Pitt to pronounce one of history's most eloquent dissents on government interference concerning individual property:

> The poorest man may in his cottage bid defiance to all the force of the Crown. It may be frail; its roof may shake; the wind may blow through it; the storms may enter, the rain may enter,—but the King of England cannot enter; all his forces dare not cross the threshold of the ruined tenement! (Bartlett)

This caliber of resistance forced the House of Commons to throw out the bill. The United States faced a very similar situation with *Kelo v. New London*. However, the William Pitt of our time has yet to emerge.

Public outcry has driven US legislatures to consider new laws, but there is still more to be done. The kind of passion shown by William Pitt, although prevalent in the early years of this country, has somehow been lost. Every American needs to find the desire for individual sovereignty that has been defended throughout this country's history, otherwise, the deaths of our countrymen will have been for nothing. The destiny of property rights in America is ultimately not up to any court or legislative body. Protecting property is dependent upon the action of the proper ruler of this country: the People.

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