

# KELO V. NEW LONDON (2005)

## DIRECTIONS

*Read the Case Background and Key Question. Then analyze the Documents provided. Finally, answer the Key Question in a well-organized essay that incorporates your interpretations of the Documents as well as your own knowledge of history.*

## CONSTITUTIONAL PRINCIPLES

*Limited government  
Inalienable rights*

### Case Background

In *Calder v. Bull* (1798), Justice Samuel Chase wrote that it “is against all reason and justice, for a people to entrust a Legislature with” the power to enact “a law that takes property from A. and gives it to B.” For a long time, the “public use” limitation was understood to require that the government actually use the property it was taking, for example to build a road, a school, a hospital, a prison or other government facilities.

But what if government takes private property because that property is run down, impoverished, deteriorating, or blighted, and the government plans to redevelop the property to more valuable, “private” uses? Ultimately, this question has proven difficult and controversial for the Supreme Court.

The Court first addressed these issues in *Berman v. Parker* (1954), a case in which the Court upheld a redevelopment plan targeting a blighted area of Washington, D.C. The Court unanimously held that the plan involved a “public use” because the plan, as a whole, served public purposes, even though much of the property would be leased or sold to private parties.

In 1998, the pharmaceutical company Pfizer built a new facility in New London, Connecticut. Seeking to improve the economic outlook of the area, the city’s New London Development Corporation offered to sell Pfizer additional land where the drug company would build a large resort/marina/condominium complex. Most of the residents of the affected neighborhoods accepted the city’s offer to purchase their property. However, Susette Kelo was one of 15 property owners who refused to sell. They maintained that the government does not have the constitutional power to take private property in order to turn it over to a private developer. The city then invoked its power of eminent domain in order to take the land. In *Kelo v. New London*, the Supreme Court was asked to determine whether the “public purpose” as intended by city government was the same thing as the Fifth Amendment’s “public use.”

# TEACHING TIPS: KELO V. NEW LONDON

## LEARNING OBJECTIVES

- Students trace the historical background of government power to take private property for public use.
- Students analyze modern examples of government taking of private property for public use.

## ACTIVITIES

1. To set the stage for this lesson, provide half the class with a **copy of the Bill of Rights**, and the other half with **Document C, James Madison’s essay “On Property”**. Have students complete the following with their respective documents: Underline physical property and circle other types of property.

Have students form pairs or small groups that include both documents and discuss the ways they have marked them. Next, have students with the Bill of Rights go back through it, marking additional items that Madison considered to be included in the term, “property”.

Discuss the differences between the way Madison understood “property” and the way that term is commonly used today. What aspects of life in the neighborhood of one’s own choosing are part of one’s property rights?

2. See **Background Information on *Kelo v. New London***, p. 98. Discuss with students the context provided for **Document D, *Berman v. Parker (1954)***.
3. Have students analyze **Document D, *Berman v. Parker (1954)***, and answer the scaffolding questions.
4. Assign appropriate documents for student analysis.
5. Have students complete handout **Graphing Property Rights—*Kelo* DBQ**.
6. Use key question, “Evaluate the Court’s ruling in *Kelo v. New London*” for class discussion or writing assignment, focusing on the constitutional principles involved in the case.

**See Appendix for additional Graphic Organizers.**

# BACKGROUND INFORMATION ON KELO V. NEW LONDON

## **Document A: Blackstone’s *Commentaries on the Laws of England* (1765)**

Sir William Blackstone (1723–1780) was an English lawyer and judge whose *Commentaries on the Laws of England* provided an explanation of English common law. Blackstone’s work was very influential in the thinking of America’s Founders, and continues to be frequently used in modern legal reasoning.

## **Document D: *Berman v. Parker* (1954), Unanimous Opinion**

“Urban blight” refers to decay of buildings and deterioration of neighborhoods that result from a number of causes, including overcrowding, an increase in criminal activity and lack of proper maintenance of the structures. In 1945, in order to correct blighted areas in Washington, D.C., Congress passed the District of Columbia Redevelopment Act, which created the 5-member District of Columbia Redevelopment Land Agency. The law gave this new agency the power of eminent domain, or the authority to seize private property after paying its owners a just price. After conducting surveys to identify neighborhoods in need of beautification, rebuilding, and “revitalization,” the Redevelopment Agency in 1950 published its plan to take over property in the District’s southwest quadrant, including Berman’s well-maintained and successful department store. About 5000 people lived in the area, 98% of them African American. According to the Agency’s surveys, 58% of the residential units had only outdoor toilets, 29% had no electricity, and 64% of the dwellings were beyond repair. The planning commission proposed to demolish the houses and businesses, create parks, streets, and schools for public use, and then lease or sell the remaining land to private developers who would build various kinds of structures specified in the Agency’s plan, including low-rent apartments. Berman and other owners of the department store brought suit against the planning commission, on the grounds that their property was not slum housing or otherwise blighted and it was unconstitutional for government to take property from one private owner to turn it over to another, even if the original property owner was paid. Justice William O. Douglas wrote the opinion for a unanimous Court.

## **Document E: *Poletown Neighborhood Council v City of Detroit* (1981)**

Detroit, suffering a long-term economic downturn and high unemployment, planned to sell a large tract of land to General Motors. In return, General Motors agreed to develop a factory that promised to provide 6,000 permanent jobs. The area seized by Detroit was home to thousands of people, who were mostly Polish immigrants. About 1400 homes, more than 100 businesses, a major hospital, and several churches were on this land. The city claimed that the use of eminent domain served a public purpose because of the expanded tax revenue that would be generated by the factory. The Majority of the Michigan Supreme Court agreed with the city. The predicted greatly expanded tax base did not materialize and the factory fell far short of its promise of 6,000 jobs.

## **Document F: *County of Wayne v. Edward Hathcock* (2004), Michigan Supreme Court**

In this case, Wayne County wanted to use the power of eminent domain to take citizens’ properties for the construction of a 1,300-acre business and technology park. This proposed commercial center was intended to re-invigorate the struggling economy of southeastern Michigan by attracting businesses, particularly those involved in developing new technologies, to the area. In this case, the Michigan Supreme Court unanimously overturned its ruling in *Poletown*.

## **Document K: “A Wreck of a Plan,” Charlotte Allen, July 17, 2005**

After the *Kelo* decision, Charlotte Allen, a resident of Washington, D.C.’s southwest area, wrote a critique of the urban revitalization that resulted from the *Berman* decision.

# KELO V. NEW LONDON

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## CONSTITUTIONAL PRINCIPLES

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Inalienable rights

### KEY QUESTION

Evaluate the Court's ruling in *Kelo v. New London*.

- A Blackstone's *Commentaries on the Laws of England* (1765)
- B The Fifth Amendment (1791)
- C James Madison's *On Property* (1792)
- D *Berman v. Parker* (1954), Unanimous Opinion
- E *Poletown Neighborhood Council v. City of Detroit* (1981), Michigan Supreme Court
- F *County of Wayne v. Edward Hathcock* (2004), Michigan Supreme Court
- G New London (2004)
- H *Kelo v. New London* (2005) Majority Opinion
- I *Kelo v. New London* (2005), Dissenting Opinion
- J *Kelo v. New London* (2005), Dissenting Opinion
- K "A Wreck of a Plan," Charlotte Allen, *Washington Post* (2005)
- L Newspaper Accounts (2009)
- M Satellite View of Fort Trumbull (2010)

## DOCUMENT A

### **Blackstone's *Commentaries on the Laws of England* (1765)**

So great ... is the regard of the law for private property, that it will not authorize the least violation of it; no, not even for the general good of the whole community. If a new road ... were to be made through the grounds of a private person, it might perhaps be extensively beneficial to the public; but the law permits no man, or set of men, to do this without the consent of the owner of the land.

- 1. According to Blackstone, under what conditions may government take private property for the general good of the community?**

## DOCUMENT B

### **The Fifth Amendment (1791)**

No person shall ... be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

- 1. What protections for private property are listed in the Fifth Amendment of the U.S. Constitution?**
- 2. Are these protections meant to secure the rights of individuals (in the same way that other amendments protect freedom of religion, freedom of speech, etc.) or are they meant to secure the collective rights of communities (i.e. those who would benefit from the government taking the property)?**

## DOCUMENT C

### **James Madison's *On Property* (1792)**

A man's land, or merchandize, or money is called his property ... a man [also] has a property in his opinions and the free communication of them. He has a property of peculiar value in his religious opinions, and in the profession and practice dictated by them. He has a property very dear to him in the safety and liberty of his person. He has an equal property in the free use of his faculties and free choice of the objects on which to employ them.

In a word, as a man is said to have a right to his property, he may be equally said to have a property in his rights.

Where an excess of power prevails, property of no sort is duly respected. No man is safe in his opinions, his person, his faculties, or his possessions.

That is not a just government, nor is property secure under it, where the property which a man has in his personal safety and personal liberty, is violated by arbitrary seizures of one class of citizens for the service of the rest....

If the United States mean to obtain or deserve the full praise due to wise and just governments, they will equally respect the rights of property, and the property in rights....

- 1. How does James Madison define property?**
- 2. Put this statement in your own words: "In a word, as a man is said to have a right to his property, he may be equally said to have a property in his rights."**
- 3. What does Madison say the U.S. government must do in order to be "wise and just"?**

## DOCUMENT D

### ***Berman v. Parker (1954), Unanimous Opinion***

Miserable and disreputable housing conditions may do more than spread disease and crime and immorality. They may also suffocate the spirit by reducing the people who live there to the status of cattle.

It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well balanced as well as carefully patrolled. In the present case, the Congress and its authorized agencies have made determinations that take into account a wide variety of values. It is not for us to reappraise them. If those who govern the District of Columbia decide that the Nation's Capital should be beautiful as well as sanitary, there is nothing in the Fifth Amendment that stands in the way.

Once the object [goal] is within the authority of Congress, the right to realize it through the exercise of eminent domain is clear. For the power of eminent domain is merely the means to the end. ....Once the object is within the authority of Congress, the means by which it will be attained is also for Congress to determine. Here, one of the means chosen is the use of private enterprise for redevelopment of the area. Appellants argue that this makes the project a taking from one businessman for the benefit of another businessman. But the means of executing the project are for Congress, and Congress alone, to determine once the public purpose has been established....

The entire area needed redesigning so that a balanced, integrated plan could be developed for the region, including not only new homes, but also schools, churches, parks, streets, and shopping centers....

The rights of these property owners are satisfied when they receive that just compensation which the Fifth Amendment exacts as the price of the taking.

- 1. Traditional approaches to the power of the state to condemn (or seize) private property were based on needs related to “(p)ublic safety, public health, morality, peace and quiet, law and order.” How did the *Berman* decision expand on that concept?**
- 2. The *Berman* Court reasoned, “In the present case, the Congress and its authorized agencies have made determinations that take into account a wide variety of values. It is not for us to reappraise them.” Do you agree? How deferential should Courts be to democratically-elected legislatures?**
- 3. The Court held that “the entire area needed redesigning so that a balanced, integrated plan could be developed for the region, including not only new homes, but also schools, churches, parks, streets, and shopping centers...” What means other than government seizure of property could have brought about the resources needed and/or desired by the people in a community?**

## DOCUMENT E

### ***Poletown Neighborhood Council v City of Detroit (1981), Michigan Supreme Court***

This case raises a question of paramount importance to the future welfare of this state and its residents: Can a municipality use the power of eminent domain ... to condemn property for transfer to a private corporation to build a plant to promote industry and commerce, thereby adding jobs and taxes to the economic base of the municipality and state?

[Poletown Neighborhood Council] challenge[s] the constitutionality of using the power of eminent domain to condemn one person's property to convey it to another private person in order to bolster the economy. They argue that whatever incidental benefit may accrue to the public, assembling land to General Motors' specifications for conveyance to General Motors for its uncontrolled use in profit-making is really a taking for private use and not a public use because General Motors is the primary beneficiary of the condemnation.

The [city of Detroit] contend[s], on the other hand, that creat[ing] an industrial site will ... alleviate and prevent conditions of unemployment and fiscal distress. The fact that it will be conveyed to and ultimately used by a private manufacturer does not defeat this predominant public purpose.

The power of eminent domain is to be used in this instance primarily to accomplish the essential public purposes of alleviating unemployment and revitalizing the economic base of the community. The benefit to a private interest is merely incidental. If the public benefit was not so clear and significant, we would hesitate to sanction approval of such a project.

- 1. What arguments did the 4200 displaced Poletown residents make against Detroit's plan to take their property by eminent domain?**
- 2. What arguments did the city of Detroit make in favor of the plan?**
- 3. How did the Michigan Court answer the question?**



## DOCUMENT F

### ***County of Wayne v. Edward Hathcock* (2004), Michigan Supreme Court**

We have concluded that this Court's *Poletown* opinion is inconsistent with our eminent domain jurisprudence and advances an invalid reading of our constitution. Because that decision was in error and effectively rendered nugatory [invalid] the constitutional public use requirement, it must be overruled. It is true, of course, that this Court must not "lightly overrule precedent." But because *Poletown* itself was such a radical departure from fundamental constitutional principles and over a century of this Court's eminent domain jurisprudence leading up to the 1963 Constitution, we must overrule *Poletown* in order to vindicate our Constitution, protect the people's property rights, and preserve the legitimacy of the judicial branch as the expositor—not creator—of fundamental law.

- 1. The Michigan Supreme Court held that its ruling in *Poletown* 23 years before had been "a radical departure from fundamental constitutional principles." What principles do you think the Court meant?**

## DOCUMENT G

### New London (2004)



*Susette Kelo's street before redevelopment. Image courtesy of New London Landmarks, Inc., via Professor Tom Metzloff, Voices of American Law, Duke Law*



*Fort Trumbull street scene. Image courtesy Eric McAfee, American Dirt (<http://dirtamericana.blogspot.com>, November 25, 2009)*

- 1. Do these images depict “Miserable and disreputable housing conditions”? Do they depict “distressed” conditions?**
- 2. Do these images depict businesses likely to bring significant new tax revenue to the city of New London?**

***Kelo v. New London (2005)***

[T]his is not a case in which the City is planning to open the condemned land—at least not in its entirety—to use by the general public. Nor will the private lessees of the land in any sense be required to operate like common carriers, making their services available to all comers. But although such a projected use would be sufficient to satisfy the public use requirement, this “Court long ago rejected any literal requirement that condemned property be put into use for the general public.” Indeed, while many state courts in the mid-19th century endorsed “use by the public” as the proper definition of public use, that narrow view steadily eroded over time.

Not only was the “use by the public” test difficult to administer (e.g., what proportion of the public need have access to the property? at what price?), but it proved to be impractical given the diverse and always evolving needs of society. Accordingly, when this Court began applying the Fifth Amendment to the States at the close of the 19th century, it embraced the broader and more natural interpretation of public use as “public purpose.”...

The disposition of this case therefore turns on the question whether the City’s development plan serves a “public purpose.” Without exception, our cases have defined that concept broadly, reflecting our longstanding policy of deference to legislative judgments in this field.

Those who govern the City were not confronted with the need to remove blight in the Fort Trumbull area, but their determination that the area was sufficiently distressed to justify a program of economic rejuvenation is entitled to our deference. The City has carefully formulated an economic development plan that it believes will provide appreciable benefits to the community, including—but by no means limited to—new jobs and increased tax revenue. As with other exercises in urban planning and development, the City is endeavoring to coordinate a variety of commercial, residential, and recreational uses of land, with the hope that they will form a whole greater than the sum of its parts. To effectuate this plan, the City has invoked a state statute that specifically authorizes the use of eminent domain to promote economic development. Given the comprehensive character of the plan, the thorough deliberation that preceded its adoption, and the limited scope of our review, it is appropriate for us, as it was in *Berman*, to resolve the challenges of the individual owners, not on a piecemeal basis, but rather in light of the entire plan. Because that plan unquestionably serves a public purpose, the takings challenged here satisfy the public use requirement of the Fifth Amendment....

In affirming the City’s authority to take petitioners’ properties, we do not minimize the hardship that condemnations may entail, notwithstanding the payment of just compensation. We emphasize that nothing in our opinion precludes any State from placing further restrictions on its exercise of the takings power. Indeed, many States already impose “public use” requirements that are stricter than the federal baseline. Some of these requirements have been established as a matter of state constitutional law, while others are expressed in state eminent domain statutes that carefully limit the grounds upon which takings may be exercised. This Court’s authority, however, extends only to determining whether the City’s proposed condemnations are for a “public use” within the meaning of the Fifth Amendment to the Federal Constitution. Because over a century of our case law interpreting that provision dictates an affirmative answer to that question, we may not grant petitioners the relief that they seek.

- 1. How did the Court explain its interpretation of “public use” as “public purpose”?**
- 2. In what ways was this case similar to *Berman*?**
- 3. In what ways was this case similar to *Poletown*?**
- 4. The 5-4 ruling observes that the city had “carefully formulated an economic development plan that it believes will provide appreciable benefits to the community.” What means other than government planning are available for ensuring that a community thrives economically?**
- 5. What does the Court say about how its ruling may apply to states?**

## DOCUMENT I

### ***Kelo v. New London (2005), Dissenting Opinion***

The specter of condemnation hangs over all property. 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.

Finally, in a coda, the Court suggests that property owners should turn to the states, who may or may not choose to impose appropriate limits on economic development takings. This is an abdication of our responsibility. States play many important functions in our system of dual sovereignty, but compensating for our refusal to enforce properly the Federal Constitution (and a provision meant to curtail state action, no less) is not among them.

- 1. According to this dissenting Justice, how was the Court neglecting its responsibility?**

## DOCUMENT J

### ***Kelo v. New London (2005), Dissenting Opinion***

The consequences of today's decision are not difficult to predict, and promise to be harmful. So-called "urban renewal" programs provide some compensation for the properties they take, but no compensation is possible for the subjective value of these lands to the individuals displaced and the indignity inflicted by uprooting them from their homes. Allowing the government to take property solely for public purposes is bad enough, but extending the concept of public purpose to encompass any economically beneficial goal guarantees that these losses will fall disproportionately on poor communities....

The Court relies almost exclusively on this Court's prior cases to derive today's far-reaching, and dangerous, result. But the principles this Court should employ to dispose of this case are found in the Public Use Clause itself...

#### **According to this dissenting Justice:**

- 1. on what did the Court base its decision?**
- 2. on what should the Court have based its decision?**
- 3. which communities will be most harmed by the ruling?**

## DOCUMENT K

### **“A Wreck of a Plan,” Charlotte Allen, July 17, 2005**

The sorry truth is that governments aren't very good at rejuvenating neighborhoods. Revitalization is strictly a job for the private sector, as our own experience here in Southwest Washington is proving....

Think of Detroit demolishing the entire ethnic neighborhood of Poletown in the 1980s to build a General Motors plant that never delivered on its promised 6,000 new jobs....

Government entities, for all their subsidies, bond issues and eminent domain powers, almost always fail badly at effective urban revitalization, and those failed attempts almost always exact an appalling human cost in the form of lost homes, neighborhoods, businesses and jobs. In the District, the most spectacular recoveries of moribund urban zones – Capitol Hill over the decades, downtown and Columbia Heights almost overnight – have occurred almost entirely by way of individual consensual transactions, building by building.

- 1. What is Allen's general assessment of urban revitalization projects over time?**
- 2. What does Allen believe is the best solution to urban blight?**

## DOCUMENT L

### **Newspaper Accounts (2009)**

*“Pfizer to leave city that won land-use case.”*

*New York Times, November 12, 2009*

“Look what they did,” [Michael] Cristofaro said on Thursday. “They stole our home for economic development. It was all for Pfizer, and now they get up and walk away.”

Pfizer, the giant drug company, [has] announced it would leave the city just eight years after its arrival ... It would leave behind the city’s biggest office complex and an adjacent swath of barren land that was cleared of dozens of homes to make room for a hotel, stores and condominiums that were never built.

*“After the Homes are Gone.”*

*San Francisco Chronicle, November 28, 2009.*

The land where Susette Kelo’s little pink house once stood remains undeveloped. The proposed hotel-retail-condo “urban village” has not been built. And earlier this month, Pfizer Inc. announced that it is closing the \$350 million research center in New London that was the anchor for the New London redevelopment plan, and will be relocating some 1,500 jobs.

- 1. Describe Pfizer’s presence in New London eight years after the ruling in *Kelo v. New London*.**
- 2. How much economic development did New London gain from its deal with Pfizer?**
- 3. How does the fact that the promised economic benefit never materialized affect your assessment of the case? If an economic boom had followed, would that have justified the takings?**

## DOCUMENT M

### Satellite View of Fort Trumbull (2010)



Bing.com

1. What signs of economic development can be seen in this satellite photo of property seized for economic development?

### DIRECTIONS

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### KEY QUESTION

Evaluate the Court's ruling in *Kelo v. New London*.