

# B

## What Is Property? Why Protect It?

### BACKGROUND ESSAY

The students returned to class on Monday after enjoying a relaxing weekend. As they streamed in from the parking lot and buses, many were shocked to see the brown row of lockers that had been in the main hallway was gone. Many students used their lockers to store not only their books, but also other personal belongings like clothing, music, and food. Confused, they walked into the principal's office.

"What happened to our lockers?" they demanded.

The principal informed them that the school planned to fix up the front hallway and turn it into an alumni welcome center. Their lockers had been torn down.

"What happened to all our stuff?" the students asked, becoming angry.

The principal shrugged. "Oh, we just threw all those things out."

### What Is Property?

One might say the Founders were not only concerned with property rights, they were passionate about them. Half of the Bill of Rights deals with property. Most people think of property as land, however, property includes much more than just land. It involves houses, cars, and other material things. It also includes things of the future, such as future profits from the sale of an object or idea.

Individuals also have property in their conscience, thoughts, and reputation. More than just securing these things for individuals, property rights secure freedom.

### What Are the Origins of American Property Rights?

Early Americans had many things in mind when they used the word "property." Rather than saying, "That horse is my property," most Americans would have said, "I have property in that horse." That phrase meant that they had a legal right to use the horse. They also had a right of exclusion, meaning they could stop others from using the horse.

Another example of property is one's own body. People usually do not refer to themselves as "property," but they clearly have a general right to do what they want with their bodies and to keep others from doing things to them. Thus, individuals have a property in their body. This concept is associated with English natural rights philosopher John Locke. It is called self-ownership, and helps explain why the Founders took many steps to protect property.

The Founders were deeply influenced by Locke as well as by English legal history. The *Magna Carta* (1215) and the Declaration of Rights (1689) restricted

the power of the king or queen to take belongings or put people in jail at random. Eventually, British abuse of property rights beginning with taxation without representation pushed many colonists to argue for revolution. They had had enough of forced housing of troops, searches with no warrants, and excessive fines.

## How Did the Founders View Property?

Thomas Jefferson used one of Locke's famous phrases dealing with property in the Declaration of Independence (1776). Locke wrote that people have natural rights to "life, liberty, and property." Jefferson changed it to "life, liberty, and the pursuit of happiness." He did not change Locke's meaning so much as expand it. Colonists would



*Most people think of property only as land, but it also includes material items, ideas, thoughts, and reputations.*

have thought of ideas as well as material things as "property." Jefferson believed the enjoyment of material things and the satisfaction of creativity were essential to happiness.

James Madison, who was important in developing the Bill of Rights (1791), believed property rights to be the key to protecting all rights. Securing rights is the purpose of "a just government," as he put it in his essay entitled, "Property," published in 1792. In it, Madison argued that man has a property in not just his body and possessions. He also has property (an interest) in the maintaining and exercising of opinions and religious beliefs. Madison noted that security of property plays a big role in personal growth. It allows each person "the free use of his faculties and free choice of the objects on which to employ them."

Madison strongly believed in a commercial republic. He urged Americans to protect the acquiring and owning of property through hard work. He criticized excessive taxes. Madison concluded with a warning to his fellow citizens: "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." It is no accident that half the Bill of Rights contains property protections. The Third and Fourth Amendments assure freedom and security of one's home and possessions, while the Fifth Amendment guarantees due process and just compensation when the

government takes one's property. The Seventh Amendment addresses the right to jury trial in common law suits involving more than twenty dollars, and the Eighth protects the freedom from excessive fines. The Founders understood that the protection of all kinds of property was key in protecting all rights.

### **How Do Property Laws Affect Modern Life?**

Questions of property law are at the center of many social concerns today. Some examples are environmental issues, conservation of endangered

species, and even the legality of media downloading websites. Individual property rights must be balanced with legitimate state concerns about natural resources, and media sharers must consider whether they are "sharing" or "stealing."

The property protections in the Bill of Rights are essential to liberty. If the government can take anything from anybody at any time, no one can be free. As students and as citizens, your right to control your own property is one way you have the power to live as you wish.



### **Comprehension Questions**

1. What is self-ownership? How did the Founders use this philosophy in the Constitution and Bill of Rights?
2. How did James Madison define property?
3. Why did the Founders believe that protecting property was key in protecting all rights?



# Understanding the Third, Fourth, Fifth, Seventh, and Eighth Amendments

**Directions:** *Below each Amendment, explain how each provision safeguards individual property rights.*

**1. Third Amendment:** No Soldier shall, in time of peace, be quartered in any house, without the consent of the Owner; nor in time of war, but in a manner to be prescribed by law.

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**2. Fourth Amendment:** The right of the people to secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

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**3. Fifth Amendment:** No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

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**4. Seventh Amendment:** In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

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**5. Eighth Amendment:** Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted.

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# D

## English Origins of Property Protections

**Directions:** Read the following excerpts from legal and philosophical sources, and answer the questions that follow each excerpt.

### **Magna Carta (1215)**

12. No scutage (tax) or aid shall be imposed on our kingdom, unless by common counsel of our kingdom.

27. If any freeman shall die intestate (without a will), his chattels shall be distributed by the hands of his nearest kinsfolk or friends, under the supervision of the Church, saving to every one the debts which the deceased owed to him.

30. No sheriff or bailiff of ours (the King), or other person, shall take the horses or carts of any freeman for transport duty, against the will of the said foreman.

31. Neither [the King nor his] bailiffs shall take, for our castles or for any other work of ours, wood which is not ours, against the will of the owner of that wood.

55. All fines made with us unjustly and against the law of the land ... shall be entirely remitted (set aside)...

1. What kinds of property protections do you see in the Magna Carta excerpts?

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**William Blackstone, Commentaries 1:137-38 (1765)**

*...Neither his majesty, nor his privy council, have any jurisdiction, power, or authority by English bill, petition, articles ... or by any other arbitrary way whatsoever, to examine, or draw into question, determine or dispose of the lands or goods of any subjects of this kingdom; but that the same ought to be tried and determined in the ordinary courts of justice, and by course of law.*

1. In his explanation of English common law, what power does Blackstone say the King does NOT have over his subjects' property?

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2. Who or what does Blackstone say may have the power over the "lands or goods" of subjects?

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**John Locke, Second Treatise of Civil Government (1689)**

*[People are] willing to join in society with others ... for the mutual preservation of their lives, liberties, and estates, which I call by the general name, property. The great and chief end, therefore, of men's uniting into commonwealths, and putting themselves under government, is the preservation of their property,.*

1. Why does philosopher John Locke say that people choose to unite into societies?

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2. What does Locke say is the most important reason people need government?

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# E

## Samuel Adams, James Madison, and Property

**Directions:** Read the following excerpts and answer the questions that follow.

### Excerpts from *The Rights of the Colonists* (1772), by Samuel Adams

*Among the natural rights of the Colonists are these: First, a right to life; Secondly, to liberty; Thirdly, to property; together with the right to support and defend them in the best manner they can...*

*The Legislative has no right to absolute, arbitrary power over the lives and fortunes of the people; nor can mortals assume a prerogative not only too high for men, but for angels, and therefore reserved for the exercise of the Deity alone.*

*There should be one rule of justice for rich and poor, for the favorite at court, and the countryman at the plough...*

*The supreme power cannot justly take from any man any part of his property, without his consent in person or by his representative.*

*These are some of the first principles of natural law and justice... Now what liberty can there be where property is taken away without consent?*

1. What role does Adams argue the government should have with respect to "property"?

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## Excerpts from *Property* (1792), by James Madison

*This term [property] ... means "that dominion which one man claims and exercises over the external things of the world, in exclusion of every other individual."*

*In its larger and juster meaning, it embraces every thing to which a man may attach a value and have a right; and which leaves to every one else the like advantage.*

*In the former sense, a man's land, or merchandise, or money is called property.*

*In the latter sense, a man has property in his opinions and the free communication of them.*

*He has a property of a 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...*

*Conscience is the most sacred of all property...*

1. What do you believe James Madison means by "property"?

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2. Circle each kind of property to which Madison refers. Are these what you normally think of as "property"? Explain.

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# F

## The Bill of Rights and Property

**Directions:** Read over the Bill of Rights and underline the words and phrases that secure protections for physical (or “real”) property. Then circle the words and phrases that secure protections of other kinds of property Madison mentions.

### First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

### Second Amendment

A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.

### Third Amendment

No Soldier shall, in time of peace, be quartered in any house, without the consent of the Owner; nor in time of war, but in a manner to be prescribed by law

### Fourth Amendment

The right of the people to secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

### Fifth Amendment

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

## **Sixth Amendment**

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

## **Seventh Amendment**

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

## **Eighth Amendment**

Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted.

## **Ninth Amendment**

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

## **Tenth Amendment**

The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.



# How Does the Fifth Amendment Protect Property?

## LESSON OVERVIEW

The Founders believed that property is among the natural rights governments exist to protect. One of the ways the Founders protected property rights was in the Fifth Amendment. The Fifth Amendment restricts the government's ability to take property and ensures that when it does take property, it must pay for it. When do governments' actions become a taking, and when should the government pay for an intrusion?

## LESSON OBJECTIVES

Students will:

- Explain how the Fifth Amendment protects property rights.
- Understand the concepts of just compensation and eminent domain.
- Analyze government actions to determine whether or not the actions would be considered a "taking."

## MATERIALS

- Handout A: The Takings Clause
- Handout B: Background Essay - How Does the Fifth Amendment Protect Property?
- Handout C: Property and the Supreme Court
- Handout D: Updates

## RECOMMENDED TIME

One 60-minute class period.

## STANDARDS

- NCHS (9-12): Era III, Standards 3b and 3c
- CCE (9-12): IA1 and IID1
- NCSS: Strands 6, 7, 8, and 10
- Common Core (9-12): RI.8, RI.9, SL.1, RH.1, RH.2, RH.3, RH.4, RH.5, RH.6, RH.8, RH.9

# LESSON PLAN

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## **Background/Homework**

15 minutes

- A. Have the students work in pairs or groups to complete **Handout A: The Takings Clause**.
- B. As a large group, discuss the definitions they arrived at by consensus and clear up any misconceptions.

## **Warm-Up**

10 minutes

- A. Have students read **Handout B: Background Essay - How Does the Fifth Amendment Protect Property?**
- B. Discuss each definition on **Handout B** as a class.

## **Activity**

25 minutes

- A. Cut out the scenario cards on **Handout C: Property and the Supreme Court**. Ask two students to come to the front of the room, assume the roles of the people on the first scenario card, and present the information to the class in role-play form.
- B. After students have finished presenting, conduct a large-group discussion about the situation. Ask the class:
  - Is the situation described a “taking” of property?
  - Is the situation described a constitutional exercise of government power?
  - If so, what would be the best way to determine just compensation?
- C. Repeat this process for all three scenarios.
- D. After the scenarios have all been discussed, distribute or read aloud **Handout D: Updates** to share with the students how the Supreme Court ruled on each case. Ask students to share their reactions to the ruling.

## **Wrap-Up**

10 minutes

As a large group, discuss the following questions:

1. In which case did the government attempt to take physical property? (*Nollan v. California Coastal Commission*, 1987)
2. In which case did the Court rule that a “taking” had occurred, even though no land was actually taken? (*United States v. Causby*, 1946)
3. In which case did the Supreme Court interpret “public use” as “public benefit? Is there a difference? (*Kelo v. New London*, 2005)

4. How does the Kelo ruling differ from the other property rulings? Why do you think it has been a very controversial decision?
5. Is redevelopment through eminent domain the only way to revitalize a neighborhood? Is it the best way? What other methods can you think of?

### **Homework/Extensions**

- A. Have students research Supreme Court cases beyond the readings provided related to property rights and prepare journal entry on their findings. Guidelines should include a summary of the case, the majority and minority opinions, and the outcome of the case.

Some examples of Supreme Court cases related to property include:

1. *United States v. Cors* (1949)
  2. *Loretto v. Teleprompter Manhattan* (1982)
  3. *Lucas v. South Carolina Coastal Commission* (1992)
  4. *Dolan v. City of Tigard* (1994)
  5. *Tahoe-Sierra Preservation Council v. Tahoe Regional Planning Agency* (2002)
  6. *MGM Studios v. Grokster* (2005)
  7. *Palazzolo v. Rhode Island* (2008)
  8. *Stop the Beach Renourishment Inc. v. Florida Department of Environmental Protection* (2010)
- B. The Supreme Court decision in *Kelo v. New London* (2005) has prompted some states to enact laws preventing the use of eminent domain to take non-blighted property for economic development. Eleven state supreme courts have forbidden Kelo-style takings under their state constitutions. Additionally, at least one bank has said it will not loan money to be used for development of land that was obtained through this kind of taking. Have students investigate the public and private reactions to the Kelo case and present their findings in a PowerPoint or oral presentation.
- C. Ask students to simulate a situation where an environmental law prohibiting logging on land where an endangered species of eagle lives must be balanced with the rights of property owners who wish to sell timber from their land. Divide the class into groups of nine including: three property owners, three environmental activists, and three policymakers. Have the owners and activists lobby the policymakers with their best arguments for how the law should be written and how takings, if any, will be compensated. Policymakers should write legislation and each group can present their law to the class. Have the class vote on the best one.
- D. Have students learn more about the case of *Berman v. Parker* (1954), an important precedent for *Kelo v. New London* (2005). Students should make a Venn diagram comparing and contrasting the two cases with information on: the reasons the government gave for taking land; arguments against the takings; the court's rulings; and who was affected by the decisions. Are "blight" takings or "redevelopment" takings more common? Which type is most important to the issue of property rights?

# A

## The Takings Clause

**Directions:** Read the following excerpt from the Fifth Amendment. With your group members, come to a consensus about how best to define the terms below. Then brainstorm ideas of things that could be considered “public use.”

**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. Definition of “due process of law”: \_\_\_\_\_

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2. Definition of “taken”: \_\_\_\_\_

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3. Definition of “public use”: \_\_\_\_\_

\_\_\_\_\_

4. Definition of “just compensation”: \_\_\_\_\_

\_\_\_\_\_

5. Examples of things that could be considered “public use”: \_\_\_\_\_

\_\_\_\_\_

# B

# How Does the Fifth Amendment Protect Property?

## BACKGROUND ESSAY

If a person owns some beautiful land and wants to build her home there, who is to say she cannot? But what if there were three-thousand-year old redwood trees on that land and building would mean cutting them down? Or what if the land is on the beach where construction would cause erosion and destruction of the shoreline? Are these valid reasons for the government to take the land?

### What Does the Fifth Amendment Guarantee?

Among other things, the Fifth Amendment guarantees that people have the right to their life, liberty, and property. The government cannot randomly decide to meddle with those things without a reason, or without following due process. Due process means the government must act fairly and obey legal procedures when it tries to take property. The just compensation clause of the Fifth Amendment means the federal government must pay for any private property it does take for public use.

### What Is a Taking?

Although the Constitution protects private property, the government can sometimes seize or restrict the use of

that property. It can take property in the name of the public good. This is called a taking.

### What Is Eminent Domain?

The Founders realized they needed to balance taking property for government use and protecting individuals' rights to property. Sometimes the government needs land to build a road, school, post office, or military base. Historically, most takings happened through eminent domain. Eminent domain refers to the government's right to acquire private property for public use. In the 1800s, eminent domain was used to claim land for railroads. In the twentieth century, it was used to remove residents from land along planned interstate highway routes. Even in cases of eminent domain, the government must provide just compensation.

### What Is Just Compensation?

Individuals can sue the government to be reimbursed (paid back) for the lost value of their property. They are asking for just compensation. It is often difficult to determine the amount of just compensation. Today, the Supreme Court generally uses the fair market value standard, defining just

compensation as “what a willing buyer would pay in cash to a willing seller at the time of the taking.”

Recently, the government has been required to pay citizens, even if it did not actually take land. Some people have lost some or all of their property’s value through regulation or other government actions. They have claimed a right to be paid for a partial taking.

In *Lucas v. South Carolina Coastal Commission* (1992), the Court ruled that the owner of beachfront land must be paid back after a state law stopped all new construction on the property. Lucas had intended to build single-family homes on the land. Since he could no longer do this, the land’s economic value was reduced to zero. The Court ruled that this was a taking even though the land had not literally been taken away, because the state took away all of the economic value of the land.

More recently, in general, the Court has not taken the side of private property rights. It has generally sided with state and federal power to regulate. In *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency* (2002), the Tahoe Regional Planning Agency called a halt on new building at Lake Tahoe for nearly three years, but this delay went on to last for nearly twenty years. Property owners claimed that this ban was a taking and they should be paid back. The Court did not agree. In its decision, the Court ruled that, “a temporary restriction causing a diminution in value is not [a taking].”



*Suzette Kelo was forced from her property in New London, Connecticut when the local government used the Takings Clause of the Fifth Amendment*

*Kelo v. New London* (2005) became the landmark case surrounding the government’s ability to exercise eminent domain and changed the concept of public use versus private use forever. Suzette Kelo was forced from her property in New London, Connecticut when the local government used the Takings Clause of the Fifth Amendment. The Takings clause of the Fifth Amendment allows the government to take private land for the purpose of “public use.” While the term “public use” formally relates to the building of highways, railroads, or other uses that constituted the public welfare or public interest, Kelo’s land was to be used for a private business venture.

The Court ruled that the taking of Kelo’s property was constitutional because the public would benefit from increase in jobs, tax revenue, and economic development. In the majority opinion, Justice Stevens stated,

“The city has carefully formulated a development plan that it believes will provide appreciable benefits to the community.” However, in the dissenting opinion, Justice Sandra Day O’Connor asserted that, “Any property may now be taken for the benefit of another private party, but the fallout of 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.”

The ruling in *Kelo* has spurred legislation at both the state and federal level in an attempt to clearly define “public use” and “just compensation.” As for the land in the *Kelo* case, it remains vacant. The economic development which forced Suzette Kelo out of her home never materialized.

### **Are Ideas Property?**

Property is not always touchable or concrete. Authors, researchers, inventors, and artists also have a strong interest in protecting their rights to the

products of their minds. These things are called intellectual property. Songs, books, or poems are property, just like cars, houses, or land.

The Internet has been an unmatched way of issuing information, but it has also made it much easier to steal intellectual property. Books and music can be downloaded for free, taking payment away from the authors and musicians. Some argue that if these owners do not think they will be justly paid for their work, they may produce less. The consequences to our culture may be huge: fewer novels, fewer medicines, fewer inventions, and less art. Others argue that few ideas are truly and wholly original but build on the efforts of prior artists and creators. Therefore, they say, giving too much protection to intellectual property can have the effect of reducing creative output.

The Founders believed that protecting private property was key to economic prosperity. As James Madison wrote, “Government is instituted to protect property of every sort ... [It] will equally represent the rights of property, and the property in rights.”



### **Comprehension Questions**

1. What does the Fifth Amendment guarantee?
2. What is just compensation?
3. Why was the case *Lucas v. South Carolina Coastal Commission* considered a taking?
4. Why was the *Kelo v. New London* case considered a landmark Supreme Court case?

# Property and the Supreme Court

## Scenario One:

1. My name is Bob Dale, and I work on the Ventura, California Coastal Commission. We're very proud of our gorgeous beaches. As our population has grown, more and more people want to experience them. Congestion on public beaches is worsening. We've made it a rule now that whenever people apply for building permits to do new construction on the beach, they will have to provide public walkways on their land. We believe this will cut down on congestion.
2. My name is Mr. Nollan. My wife and I have a small bungalow on our Ventura beachfront property. It has gotten kind of run down, and we would like to tear it down and build a new, three-bedroom house similar to others in the area. We applied to the city for a building permit, but we were told we would not be able to get one unless we let the government build a public walkway through the middle of our land so people can walk across it. We don't want to do this, and, furthermore, we believe it's an unconstitutional demand.
3. Dale: We believe that a walkway would serve a legitimate public purpose, especially since the Nollan's land is surrounded by public beach on all sides. We told everyone we were going to make these walkways as a condition of new building permits, so I don't know what they're complaining about. The government is not taking their land away; we're just asking that they people walk through a small part of it. If they don't like it, then they don't have to build a new house.
4. Nollan: They can't restrict the use of our land this way without paying us for it.

## Scenario Two:

1. My name is Thomas Lee Causby. Years ago, my wife Tinnie and I bought 2.8 acres of land in North Carolina. We decided it would be the perfect place for raising chickens. It was the perfect place until Army planes started taking off from the nearby airport. Now it's unusable because of all the airplane noise. Therefore, I believe we're entitled to just compensation from the government, since the government is causing the noise.
2. I am Rachel Ash, an attorney for North Carolina. I don't believe the Causbys are entitled to compensation from the government. Their land was not taken from them. The government has never set foot on their land and has not physically intruded in any way. Furthermore, the Causbys knew that the land was close to the airport when they bought the land.
3. Causby: We knew it was just over 2,000 feet from an airport, but only a few commercial flights and crop dusters took off from there. It was many years after we bought the land that the Army started using the airport. Their planes are constantly flying right over us – just 67 feet over us to be exact. The noise keeps us awake and we lost 150 chickens because they would get so scared from the noise they would fly into the walls of the barn and die. I think that even though the government didn't physically "take" our land, that we are entitled to just compensation.
4. Ash: I don't know why Mr. Causby is complaining; he and his wife still own every acre of land that they did before. The government hasn't "taken" anything.

## Scenario Three:

1. My name is Suzette Kelo. About seven years ago I bought a Victorian home on the Thames River in Connecticut. I spent seven years restoring my house, and I really love it here. The city has been somewhat depressed economically, although the area surrounding my home is in good shape. Now I just found out that the city wants to take my land so that the area can be re-energized.
2. My name is Jason Helm, and I am on the New London City Council. We plan to take Ms. Kelo's land using our power of eminent domain and turn it over to a private developer. The developer will build a new facility for a pharmaceutical company that will create hundreds of jobs and \$680,000 in new tax revenue for the city. They will also build upscale

condominiums. All these things will benefit the community and therefore amount to "public use."

3. Kelo: I think this is an unconstitutional taking because the Fifth Amendment only says that property can be taken "for public use." This means something like a library or a highway – something the public will actually use. I am fighting this because I believe it is an unconstitutional infringement on my right to private property. Fourteen of my neighbors are joining me.
4. Helm: The residents of New London can certainly "use" the additional money that will be brought in to this depressed area by the new development. I believe this taking is constitutional because it will benefit the city.

## Scenario One:

1. In *Nollan v. California Coastal Commission* (1987) the Court held that “where individuals are given a permanent and continuous right to pass to and fro, so that the real property may continuously be traversed,” there was a taking of property. Therefore, the government could not make the public walkway a condition of a building permit. If the government wished to take the property, it would have to exercise its power of eminent domain and provide the owners with just compensation: “If it wants an easement across the Nollan’s property, it must pay for it.”

## Scenario Two:

1. The Court found a taking in *United States v. Causby* (1946) when low-flying jets at an airbase made farming impossible on nearby land even though the government never actually claimed the land itself. The Court held, “As a result of the noise, respondents had to give up their chicken business. As many as six to ten of their chickens

were killed in one day by flying into the walls from fright ... Production also fell off. The result was the destruction of the use of property as a commercial chicken farm.” The Causbys were entitled to just compensation from the government. “It is the owner’s loss, not the taker’s gain, which is the measure of the value of the property taken.”

## Scenario Three:

1. The Supreme Court ruled on *Kelo v. New London* in 2005. The Court agreed with the city of New London and held that the government could take land from citizens in order to turn it over to a private developer. The Court explained that it had “rejected a literal requirement” of the phrase “public use” in the Takings Clause of the Fifth Amendment. The phrase “public use” could be interpreted as “public benefit.” Therefore, the government can take private property from an individual in order to turn it over to a private developer because the taking will result in “economic development” for the region.