

THE FREEMAN

IDEAS ON LIBERTY

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Property Protects

Opponents of authentic liberalism have long held that the state must be powerful enough to protect the powerless from the ravages of private property. The Supreme Court's decision in the *Kelo* eminent-domain case last summer shows what that principle is worth.

To recap, the city of New London, Connecticut, condemned 15 working-class homes for an upscale private development scheme that is to include a luxury hotel. Some of the targets, including an elderly woman who has lived in her house her entire life, refused to sell and went to court. After losing in the state courts, they moved to the U.S. Supreme Court, where the justices ruled 5–4 for the city.

The crux of the case was the phrase “public use,” since the takings clause in the Fifth Amendment to the U.S. Constitution permits government to acquire private property through eminent domain only so long as it is for public use and “just compensation” is paid. (Of course, no takings can be reconciled with individual liberty.) The key question was: does the city's plan constitute a public use? The city argued that although the public will not use the land as it uses roads, the increased tax revenues and jobs yielded by the project will benefit the public. The property owners countered that the Bill of Rights says “public use” not “public benefit.”

The Court's majority sided with the city, delighting government officials everywhere. Quoting a 1984 case, Justice John Paul Stevens said that the “Court long ago rejected any *literal requirement* that condemned property be put into use for the general public” (emphasis added).

The dissenters were stunned. In separate opinions Justices Clarence Thomas and Sandra Day O'Connor criticized the majority for purging the words “public use” from the Fifth Amendment. (For more detail see my FEE web article “The Supreme Court and the End of Limited Government” at www.fee.org/vnews.php?nid=6991.)

The threat to individual rights is obvious. But the ruling also sheds light on whether the state or the institution of property better protects society's powerless. A political-science professor of my acquaintance said that while the facts of the case bother him, he applauds the principle. He meant that while he believes government

should have the power to take property and put it to “better” uses, he was uncomfortable that working-class people were losing their homes to big corporations. I suppose he’d prefer that property be taken from big corporations and given to working-class people. His only objection is that *he* is not choosing the victims.

He is not naïve. As a well-informed political scientist, he knows that eminent domain victimizes those with the least money and fewest connections. But if he has to choose between government power and protecting the powerless, he’ll take the power.

O’Connor and Thomas chose otherwise. O’Connor writes, “[T]he 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. As for the victims, the government now has license to transfer property from those with fewer resources to those with more. The Founders cannot have intended this perverse result.”

And Thomas: “Allowing the government to take property solely for public purposes is bad enough [Yes!], but extending the concept of public purpose to encompass any economically beneficial goal guarantees that these losses will fall disproportionately on poor communities. Those communities are not only systematically less likely to put their lands to the highest and best social use, but are also the least politically powerful.” He adds, “Urban renewal projects have long been associated with the displacement of blacks. . . . Regrettably the predictable consequence of the Court’s decision will be to exacerbate these effects.”

If liberty is to be won, its defenders must emphasize that property *especially* protects the most vulnerable against government impositions. Perhaps some good will come from *Kelo* after all.

★ ★ ★

In this issue we acknowledge—but do not celebrate—the 70th anniversary of Social Security. In 1935 President Franklin Delano Roosevelt signed the historic legislation that insinuated the central government into our retirement. This month’s contributors explore the history and ramifications of this most lamentable gov-

ernmental imposition. Can nothing positive be said of it? Only that it is perhaps the longest-running chain letter in history.

All technical criticisms aside, the most fundamental thing to be said about Social Security is that it violates the liberty and autonomy of the individual. Aeon Skoble shows why.

To hear its champions tell it, everyone loved Social Security from the start. Oh really? Check out what Jude Blanchette has dug up.

You might think Social Security is insurance—that is, if you have no idea what insurance really is. Will Wilkinson explains.

But what about the Trust Fund? In this FEE Timely Classic William Conerly explores how well the Social Security principle would work within the family.

And speaking of the notorious Trust Fund, John McGinnis dispels the popular impression that it has no assets.

The negativism about Social Security can be wearisome. So in the interest of uplift, here’s Dwight Lee’s FEE Timely Classic in which he looks for the bright side of the program.

Anyone who proposes to privatize the financing of retirement will be told that this would cause people to starve in their old age. Former *Freeman* editor Paul Poirot anticipated this objection long ago. His reply is a FEE Timely Classic.

In other articles, Andrew Morriss tours the Cayman Islands and Chris Matthew Sciabarra delves into the dialectics of liberty.

Our columnists will entertain and astound: Richard Ebeling further dissects Social Security. Donald Boudreaux suggests some economic research. Burton Folsom shows why he prefers entrepreneurs to bureaucrats. Walter Williams continues his economics course. And Alan Reynolds, bombarded with the cant that there are no jobs for young people, ripostes, “It Just Ain’t So!”

Books on Mao Zedong, economic misconceptions, the threat from local governments, and guns engage our reviewers.

—Sheldon Richman
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