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06/26/05 01:26 PM **"Liberal" Justices Turn Back Clock ... To the Year 1215** [ Post [293733909](#) ]**Category:** News & Opinion (General) **Topic:** Government Takings**Synopsis:** If you got the right connections you can steal your way to greater wealth.**Source:** [Sierra Times com](#)**Published:** June 24, 2005 **Author:** Thomas M. Sipos**For Education and Discussion Only. Not for Commercial Use.**

You no longer own your own home or have the right to buy one. This is due to an amendment to the U.S. Constitution, approved June 23. No, this amendment didn't pass both houses of Congress and three fourths of the state legislatures, in what is whimsically termed "the amendment process." Rather, our Constitution was amended in the usual way, by judicial fiat. In essence, five Supreme Court justices -- John Stevens, David Souter, Ruth Ginsburg, Stephen Breyer, Anthony Kennedy -- voted that you no longer own your own home.

That's the result of *Kelo v. City of New London*, in which, according to dissenting Justice Clarence Thomas: "The court has erased the Public Use Clause from our Constitution."

That's right. A whole Constitutional clause, a clause that protected your property from arbitrary government expropriation, erased by five justices. At least with flag burning, the issue is undergoing the official amendment process.

But to understand *Kelo*, let me first give you some historical background. Back in olden days, all land was owned by a "sovereign," that is, a king, tsar, pope, or emperor. This sovereign leased his land to vassals, i.e., lords, barons, knights, and other titled nobility. Vassals could use the land so long as they served the sovereign. (See the bargain struck in the movie, *Excalibur*.) Because the sovereign owned the land, he could always repossess it.

In 1215, the English nobles decided this was a bad deal. They asked King John to sign Magna Carta, restricting his ability to reclaim the land. King John agreed, mostly because the nobles had brought plenty of swords. Peasants still owned no land, but the times, they were a changin'.

A big change occurred in 1776, when Americans decided that "the people" were sovereign, owning the land and the powers to govern it and themselves. In 1789, they delegated some of those powers to the government via the Constitution, while also restricting those powers through the ten Bill of Rights. For instance, the Fifth Amendment says: "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."

Thus, "the people," being sovereign and owning all the land, can, through their elected representatives, take your property, but only if (1) the taking is for a "public use" (traditionally, a road, school, or other public project), and (2) you're paid "just

compensation" (theoretically, fair market value).

With Kelo, according to Justice Thomas, the Supreme Court "erased" the Public Use Clause. Now government can take your property for any reason at all.

In Kelo, the city of New London, CT, had condemned 15 homes so that private developers may build offices, a hotel, pricier homes, and a pedestrian path along the Thames River. The homeowners sued the city, trying to save their homes by arguing that private development was not a public use. The city said it was, because offices and pricier homes would generate more tax revenue.

The Supreme Court agreed with the city.

Justice Stevens wrote: "Promoting economic development is a traditional and long-accepted function of government. ... [T]here is no basis for exempting economic development from our traditionally broad understanding of public purpose."

But if private use is a public use, and public use is a public use, then everything is a public use -- and the Public Use Clause has no meaning. As Justice O'Connor said in her dissent: "Who among us can say she already makes the most productive or attractive use of her property? ... 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."

Is she right? With the Public Use Clause erased, what will prevent the state from replacing any home or business with a "nicer" business? Nothing but the good intentions of back room politicians. Seriously. According to Justice Stevens, the very cities and states condemning the land can best determine "local public needs," and their judgements are "entitled to our deference."

That's like letting the accused decide whether he's guilty.

The result is that politically-connected developers can now use state muscle to force those of modest income to sell their homes at below market rates, while wealthy homeowners are protected by their own political clout. (I say "at below market rates," because if developers paid homeowners their asking price -- the true definition of "market rate" -- there'd be no need to condemn land, as every owner has his price). As Justice O'Connor put it: "The government now has license to transfer property from those with fewer resources to those with more."

So it seems the times are a changin' again. Only now we're going backwards, to about 1215, when only nobles could protect their land from the king, the peasants at the mercy of both. And ironically, it's the more "liberal" justices who are turning back the clock.

Thomas M. Sipos is Vice Chair of the L.A.-Westside Region of the California Libertarian Party.

His books & bio at: [Link to communist vampire.com](http://link.to/communist/vampire.com).

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**grapple writes:** *"There have been other posts on this subject but I thought that this one was particularly well written.*

*Just another step down the road. They use to have to declare your land blighted in order to take it and give it to developers. Blighted often meaning that the owners were not rich enough to fight them. Now they can just say they are taking it because it will make them money.*

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*Edited by grapple on 06/26/05 01:27 PM.*

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