Legal and Ethical Analysis - U.S. Supreme Court case: Kelo v. City of New London

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This paper provides an ethical and legal analysis of the 2005 Supreme Court case regarding eminent domain - Kelo v. City of New London.

**Background**

In 1998, a drug company, Pfizer, build a plant in New London, Connecticut. In an attempt to capture more of the business from Pfizer employees as well as to increase the tourism revenues for the city, the local government founded the New London Development Corporation – a non-profit organization designed to assist the government with economic development. (Head & Kelo v. City of New London) The New London Development Corporation created a $75 million project called the Fort Trumbull Municipal Development Plan. (New London Development Corporation) In order to enact the plan, the city needed to acquire and redevelop existing housing properties. All but 115 of the owners agreed to sell their properties. The city decided to claim the remaining properties, including the property of Suzette Kelo, using the 5th Amendment clause for eminent domain. (Kelo v. City of New London)

**Legal Analysis**

***Relevant Facts***

The following facts are relevant to this case:

* The seizure of private property by the government for public use (referred to as eminent domain) is permitted by the 5th Amendment of the U.S. Constitution - “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.” (U.S. Const., amend. V)
* The Fort Trumbull properties to be claimed using eminent domain had not been determined to be blighted.
* The basis for the eminent domain claim was that the property could be redeveloped in order to generate
* The redevelopment return on investment projections made assumptions about Pfizer’s long-term plans and the number of Pfizer employees in the area, but did not include any formal agreements between the company and the city or any projections from the company itself.

***Key Issues***

The key legal issue is the definition of “public use”. For example, does a shopping mall provide a public use? One perspective says it does – the public may use the shopping mall, and the income taxes paid by the mall are put to public use by local governments. Another perspective says it does not – the mall is present in order to allow private companies to earn profits, and the definition of “public use” should be limited to those items which the government provides to the public – transportation systems, schools, libraries, etc.

***Applicable Legal Rules***

This case was not the first case in which the U.S. Supreme Court addressed the interpretation of the 5th Amendment text. Thus, there are several applicable precedents.

In Missouri Pacific R. Co. v. Nebraska, it was determined that property cannot be taken from a private party via eminent domain if the purpose of that action is to transfer the property to a different private party.

In Fallbrook Irrigation Dist. v. Bradley, the Supreme Court decided that the phrase “public use” does not necessarily mean opening the use of the property to the public at large, but may mean “public purpose”.

In Berman v. Parker, the Supreme Court found that eminent domain did apply to the redevelopment of blighted structures. In this particular case, an area with structures housing 5,000 citizens was determined to be beyond repair. The redevelopment project planned was to not only build public structures, such as schools, but offer incentives for the construction of modernized low-income housing to replace the housing that was condemned.

***Observations***

The request to use eminent domain for the New London properties differs from previous Supreme Court cases because the properties are not blighted and because the final use of the property is private in nature.

Blighted properties were claimed under eminent domain using the Difference Principal (Mallor) – the worst-off are better off it the properties are seized and redeveloped to be up to code. Otherwise, the worst-off are forced to live in substandard housing that cannot be easily repaired and brought up to current standards.

The final use of the claimed properties is not public in nature. The city does not intend to own the land for the purpose of building schools, libraries or parking structures – instead, they intend to use the land for private business enterprise – including apartments, office buildings, and stores. Such uses are inherently private in nature and are intended to benefit privately owned businesses, as demonstrated by the city’s anticipated tax revenues from those businesses. The city claimed that these revenues will be used for the public good, but no clear plan for what the money will pay for was set forth.

The good of increased tax revenues cannot be weighed against the rights of property owners because the increased revenues cannot be guaranteed. The projections made by the city are based upon the anticipated actions of Pfizer Corporation; however, there is no agreement between Pfizer and New London that demonstrates these projections are substantive.

***Conclusions***

The request by the City of New London to seize non-blighted properties via eminent domain should be denied on the basis that it violates the 5th Amendment of the U.S. Constitution. The redevelopment project does not meet the terms of “public use” because (1) the properties in question are not blighted, (2) the land ownership is being transferred from one private party to another private party, and (3) the existence of increases in tax revenues and increases in employment are based on conjecture and cannot be proven – therefore, their public benefit cannot be proven.

**Ethical Analysis**

***Relevant Facts***

The following is relevant in addition to the information in the “Relevant Facts” Section for the preceding legal analysis:

* No evidence was provided showing that the New London Development Corporation considered alternative designs that avoided the need to invoke eminent domain on the 115 privately-owned properties.

***Key Issues***

The key ethical issue is whether the rights of less affluent land owners can be protected if the government may seize private property solely for the purpose of increasing the amount of property taxes it earns from that property. Overall, the issue raises a concern of a snowball effect of property upgrades that is difficult to stop if it is allowed by law.

In her response to the case, Justice O’Connor asked if the Supreme Court’s Decision would mean that all privately held property would be subject to eminent domain if a government felt they had a plan to gain greater tax revenues from the land. (Kelo v. City of New London) In more detail from Realty Times:

“Justice O'Connor's comment about the "specter of condemnation" arose from a dialogue the court had with New London's attorney during oral argument. Asked whether a city could seize a Motel 6 and hand the property over to developers of a Ritz-Carlton hotel solely because the new hotel would yield higher tax revenues to the city, New London's attorney replied that yes, the city could.”. (Harney)

The question of what limits exist for the process was also considered with an eminent domain claim on Justice Souter’s farmhouse in New Hampshire. Logan Clements proposed building a hotel on the site of Justice Souter’s property, since the hotel would generate more revenue than the $2,895 in property taxes that Justice Souter had paid in 2004. (MSNBC)

***Applicable Ethical Rules***

The City of New London is applying the theory of Utilitarianism. In applying this theory, the government is seeking to maximize the utility of the region’s land for the greater benefit of the city, even though the actions may be harmful to a few of the city’s citizens. (Mallor) In this case, the city postulates that the greater benefit comes from increased tax revenues.

The citizens who are fighting the application of eminent domain to their properties are seeking to invoke the Justice Theory – specifically, the Greatest Equal Liberty Principal and the Difference Principle. Under the Greatest Equal Liberty Principal, these property owners’ 5th amendment right to property ownership is of equal, not lesser, weight to the ownership of that property by other parties. Under the Difference Principal, eminent domain should not create a social inequality that causes the worst-off to become worse off. (Mallor) This principal is reflected in the “just compensation” portion of the 5th Amendment.

***Ethical Alternatives***

Although a court may find in favor of the city or the citizens on this particular case, the best course of action likely lies between the proposed solutions. One solution destroys privately held property with a promise to turn it into something more profitable. The other solution blocks efforts to implement an economic program for the city. Alternatives to claiming eminent domain on the affected New London properties focus on attempts to find a compromise that suits both parties. All the documentation on the case did not show that much, if any, effort was made to find a solution representing a compromise.

For the city, an important question to answer is who the new development actually benefits. The premise of the eminent domain claim is that the new development will provide public utility. Does that public include the current citizens of the city, or is it predominantly comprised of people who are brought to the community to work in the newly created jobs? If the design is based predominantly on benefit to the city government and new residents, how might it be modified to also provide economic development for the current residents? For example, starting in 2008, the city of New London established a rent subsidy program to encourage business development. It also offers mixed used improvement programs and business loans. (New London City) These kinds of incentives can promote economic development among the existing city population without significant reliance upon external corporations or employees.

For the owners of the affected properties, is there a compromise that can be formed to increase the profitability or utility of those properties? Some of the properties are rental units – would the owner be willing to work with the city on a financial incentive to change the density of the units or to modernize them? For properties with river access, could the owners find an equitable solution that allows the construction of the river walk?

***Conclusions***

The ethical course of action is for the City to not subject well-maintained privately-owned historical properties to eminent domain, but to find a way to work them into the overall design. Such properties can often add interest and context to urban development. For example, the City of Golden, Colorado, has posted plaques near historical buildings, explaining their significance to the area, in order to enrich the experience of the city’s tourists. If some of the property is blocking the proposed river walk, the city should work to negotiate an easement with the property owners.

This course of action will retain the citizen’s trust in and goodwill with the city government while working to encourage development. The citizens may be part of the city far longer than any business the city is attempting to encourage. In the case of New London, their relationship with Pfizer was short-lived. The company decided to move their plant to another city in 2009 and lay off 1400 employees. (McGeehan) Unemployment in the city of New London was 3% higher at the end of 2011 than it was in 2005 and the number of citizens in the labor force was the same as it was in 2005. (Bureau of Labor Statistics)

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