

on an adjacent site. Following a planning process, the NDLC finalized a development plan for 90 acres of the Fort Trumbell area. Seven parcels were identified for various new developments, including a waterfront conference hotel at the center of a “small urban village” to include: restaurants, shopping, and marinas; 80 new residences; a U.S. Coast Guard Museum’s 90,000 square feet of R&D office space; and a pedestrian “riverwalk.” The NDLC intended the Fort Trumbell development to benefit from the Pfizer facility, and associated positive externalities. By 2004, it trumpeted its role in “creating hope and confidence that has transformed New London’s investment climate. Today, new London is the place to be” (New London Development Corporation, 2004, p. 4). City council approved the plan in January 2000, authorizing NDLC to purchase or acquire property through the exercise of eminent domain.

The development site comprised 115 privately owned properties, as well as the 32 acres formerly occupied by the Navy. The NDLC successfully negotiated the purchase of most of the properties, but nine property owners, who collectively owned 15 parcels in Fort Trumbell, declined to sell. Susette Kelo had lived in Fort Trumbell since 1997, making extensive improvements to her heritage house (which she described as her “little pink cottage”) that she reportedly valued for its water view. Another petitioner, Wilhelmina Dery, was born in her Fort Trumbell house in 1918 and had lived there ever since. Their son, who joined in the suit, lived next door with his family in a house he was given as a wedding present. Their properties were to be demolished, and used for office space or parking lots.

Condemnation proceedings were initiated: the nine owners petitioned the New London Superior Court to invalidate these proceedings, arguing that the taking of the properties would violate the Fifth Amendment (of which more below). Partial success at this level led to an appeal to the Supreme Court of Connecticut, which held, over a dissent, that all the City’s takings were valid. The U.S. Supreme Court granted certiorari to determine whether a city’s decision to take property for the purpose of economic development fell within the bounds of the Fifth Amendment. A majority of the court ruled that it did.³

The so-called Takings Clause of the Fifth Amendment provides that “private property [shall not] be taken for public use, without just compensation.” This, of course, has proved something of a lightning rod in a number of high profile U.S. cases (notably *Lucas v. South Carolina Coastal Council*, 1992). What then is a “public use”? The U.S. Supreme Court has previously identified three existing categories of takings that conform to “public use.” The state may transfer private property to public ownership (e.g., for the building of a road). The state may also transfer private property to private parties when they make the property available for the public’s use, such as with a railroad. However, in the present case, the City was not planning to open the condemned land to public use, nor was it requiring the new owners to operate like common carriers. In certain circumstances, however, the Court has allowed takings even when a property has been subsequently designated for private use. However, in these cases, the Court identified some clear public good that was served. In *Berman v. Parker* (1954), the Court upheld the

³Stevens delivered the opinion of the Court, in which Kennedy, Souter, Ginsburg, and Breyer joined. Kennedy filed a concurring opinion. O’Connor filed a dissenting opinion, in which Rehnquist, Scalia, and Thomas joined. Thomas filed a dissenting opinion.

taking of Mr. Berman's department store in a poor neighborhood in Washington, DC,

self-interest and optimal social good. In this, it could be said to be conservative and regressive. Yet neoliberal urban development is also expansionary and revolutionary. When wedded to capitalist urbanization, it requires the constant creative destruction of the urban landscape. Devalued assets, such as Fort Trumbull's "depressed" landscape of single-family homes and abandoned military installations, are to be sacrificed on the alter of "highest and best use." The economic impetus provided by Pfizer must be capitalized upon in order, it seems, to attract a new clientele of middle-class owners, attracted by the same river view that Ms. Kelo enjoys, to the promised riverwalks, restaurants, and marinas.

Neoliberalism entails a complicated redrawing of the public-private divide. On the one hand, the distinction, long central to liberal legalism, must be sharpened. The state must withdraw from "interventions" into the private domain. Yet, in other ways, neoliberalism requires the mobilization of the state for private ends. For the power of private property and rugged individual entrepreneurialism to be unleashed, however, requires—as always—the state. The NDLC, in a report, outlines several justifications for state intervention via eminent domain. This includes "boosting value,"⁴ creating civic pride, and

sighted and selfish to not do this). For law and economics guru, Richard Posner, they are “holdout owners,” who serve to undermine economic efficiency (Ref. C).

It has ever been thus. Rural enclosure, urban renewal, colonial dispossession, and contemporary gentrification all entail the massive reworking of property relations, frequently justified according to imperatives of improvement, productivity and higher and better uses (Harvey, 2003). This may entail the enclosure of assets held in common (Blomley, in press), or, as here, the revalorization of private assets. Yet while *Kelo* must be seen in historical context, the contemporary sanctity accorded to private property, and the intense policing (and frequent transgression) of the

