The Takings Clause

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Private property, protected by the Takings Clause of the Fifth Amendment of the Constitution, is one of our most basic rights as citizens of the United States. The power of eminent domain grants local governments and state authorities the ability to condemn property for public works projects, but only if citizens receive compensation. However, a recent Supreme Court ruling in the case of Kelo v. City of New London arguably is tantamount to deleting the constraint of "public use" from the Constitution.

In the case of Kelo v. City of New London the court's ruling essentially bestowed upon local governments the power to condemn private property and build shopping malls, essentially establishing that no citizen's property is safe. In defining and interpreting "public use" in such a broad manner the Court has in effect dissolved any form of private property protection the Founders initially understood.

In view of such alterations, my research focuses on the Kelo v. City of New London case in an attempt to produce a convincing argument for a more concrete understanding of "public use". My research does this by applying a pluralist theory of property, which is advocated by Stephen M. Fieser in his book A Theory of Property, to the Kelo v. City of New London case. In acknowledging that property takings and regulations serve a just purpose, I do not argue that takings and regulations should not occur, but rather that they should occur under a more constrained definition of "public use."