

THE EDITORIAL NOTEBOOK

Supreme Court ruling betrayed citizens' constitutional right to their property

So you don't pay enough taxes? Then the government may just have to seize your property and hand it over to a private entity that does.

The U.S. Supreme Court, in a recent 5-4 decision, ruled that private property can constitutionally be seized and ceded to another private interest for the purposes of economic development.

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Residents and property owners of a working-class neighborhood in New London, Conn., were fighting an attempted takeover by the New London Development Corp., a private, nonprofit organization endowed by the city with its power of eminent domain.

The plan included a hotel, restaurants, retail space, new residences, marinas, research and office space, a river walk, and the possibility of other com-

mercial development.

Ostensibly, the development was meant to "complement" the \$300 million Pfizer research facility located just to the south, but not to directly "serve the interests of Pfizer" in any way.

Nine plaintiffs, who owned 15 properties in the area, had resisted being coerced into selling their land to make way for the development, which would supposedly "create in excess of 1,000 jobs," "increase tax and other revenues" and "revitalize an economically distressed city."

These ends, however desirable, cannot be attained if they violate the Constitution's "takings clause," which states "nor shall private property be taken for public use, without just compensation."

But Justice John Paul Stevens, writing for the majority, found a way to pervert that Fifth Amendment provision to fit his ideological worldview.

In a splendid dissent, Justice Sandra Day O'Connor got it right: Under the "public use" clause, eminent domain must only be invoked to obtain prop-

erty to be owned by the public — such as bridges, parks or roads — or to provide a direct public benefit, such as a privately owned railroad, public utility or reclamation of blighted property. In contrast, she wrote, economic development takings provide only secondary or "incidental" benefits to the public.

Under the ruling, private property previously protected from seizure can now be taken, even if there is no direct "public use," in order to benefit private interests — namely powerful corporations colluding with policy-makers masquerading as benign economic planners.

Using sleight-of-hand semantics, Stevens equated the "public use" clause with his own "public purpose" test.

Distinguishing economic development from other public uses, he wrote, was "difficult" and "impractical given the diverse and always evolving needs of society."

What also has evolved, apparently, is the Court's willingness to encroach on individual rights guaranteed by the Constitution.

The Court said that economic development plans need not be reviewed on a piecemeal basis, effectively replacing individual property rights with a single commune of property owners.

Additionally, the Court abdicated judicial responsibility for reviewing localities' proposed economic development plans. Any plan with a stated "public purpose," no matter how dubious, can now pass judicial muster because of the Court's expression of total deference to the recommendations of the appropriate legislative body.

Although O'Connor recognized the validity of general deference to legislators, she was skittish about total deference.

"Were the political branches the sole arbiters of the public-private distinction," she wrote, "the public use clause would amount to little more than hortatory fluff" — or, as Justice Clarence Thomas wrote in his dissent, "a virtual nullity."

Stevens did note that states may curb the use of eminent domain. In fact, at least 10 states,

Kentucky included, forbid the use of eminent domain for economic development, according to a survey by *The Wall Street Journal*, while six expressly allow it.

On this point, O'Connor retorted sublimely: "States play many important functions in our system of dual sovereignty, but compensating for our refusal to enforce properly the federal Constitution (and not a provision meant to curtail state action, no less) is not among them."

Philosophical liberals have attempted to calm the storm, arguing that this won't lead to wanton confiscation of private property.

But studies show that eminent domain is widely abused, with the effects disproportionately falling on the poor and/or minorities.

It's no wonder that libertarians and conservatives opposed to this ruling have found strange bedfellows in the liberal-leaning AARP, NAACP and Southern Christian Leadership Conference

Admittedly, it's an odd juxtaposition. Normally, it's conservatives who advocate for economically powerful private interests and urge judicial restraint, and liberals who defend "the little guy" and civil liberties.

Nevertheless, the ruling is compatible with the liberal notion that enlightened individuals know better, and must be allowed to pursue the greater good, regardless of the means used.

The danger here is real. Private property, in light of this ruling, is now vulnerable to almost unfettered seizure under the guise of economic development.

Thomas Jefferson warned about such danger when he said, "The natural progress of things is for liberty to yield and government to gain ground."

Now there's some philosophy worth seriously considering.

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