Resolutional Analysis with the Supreme Court



*The Supreme Court, Washington D.C.*

By Mark Csoros

A long time ago, gravity had no name. No one had thought to study this force, or think about how it applied to the movements of planets. Finally, in the early 17th century, a genius by the name of Isaac Newton had a breakthrough. He realized that the same force or gravity that brought an apple to the ground kept the moon in its orbit. Eventually, this breakthrough led to Newton’s major thesis (*Principia Mathematica*)*,* and his Three Laws of Motion, which still govern most of our modern physics and astronomical research.

When Newton wrote about how he was able to achieve so much, he stated: “*If I see further, it is because I stand on the shoulders of Giants.*”[[1]](#footnote-2) He meant that the progress he made was only possible because of the accumulated knowledge of the centuries. His breakthrough was, in part, because he had a base from which to build.

Not many of us have the IQs of scientific prodigies like Isaac Newton. I wonder if I even have the IQ of a *Fig* Newton. But, intelligence notwithstanding, we can all benefit from the great minds of the past. So, let’s take a look at the conflict of this resolution in the context of the Supreme Court.

For over two centuries, our best and brightest legal minds have sat and considered some of the same issues that we get to debate in Stoa. **This article will analyze five landmark SCOTUS cases, from 1961 all the way to last May, that specifically address the conflict in this year’s resolution between private property rights and the needs of the public.** These cases contain some great snapshots of the resolution and would make for excellent applications. Therefore, it would behoove us to be prepared to debate them.

What are Public Needs? *Kelo v. New London*

Our first case, *Kelo v. City of New London*,was decided in June of 2005, and it dealt mainly with the definition of the “needs of the public.” Since 2000, the city of New London, Connecticut, had been planning an economic revitalization. To accomplish this, they wanted to use eminent domain to build a chic little downtown area, complete with shops, restaurants, a hotel, and a museum. In addition, the pharmaceutical giant Pfizer was also using eminent domain, building a $300 million plant close by.

The city hoped to take advantage of the revenue from the Pfizer plant by creating an area in which to spend that new revenue. Unfortunately, a group of petitioners led by Suzette Kelo got in the way. Kelo argued that even though she and the other landowners were “justly compensated” as the 5th amendment requires, they shouldn’t have been forced to give up the land at all. Kelo claimed that the land wasn’t taken for the public good, but instead for the private good of Pfizer and the companies who would occupy the downtown shopping area. Essentially, the petitioners wanted takings for the public good to be publicly owned, and claimed that private ownership of eminent domain takings was inherently unjust.

Justice John Paul Stevens disabused them of that notion, writing:

“Petitioners’ proposal that the Court adopt a new bright-line rule that economic development does not qualify as a public use is supported by neither precedent nor logic. Promoting economic development is a traditional and long accepted governmental function, and there is no principled way of distinguishing it from the other public purposes the Court has recognized.” [[2]](#footnote-3)

Stevens went on to say:

“The Court declines to second-guess the wisdom of the means the city has selected to effectuate its plan.”*[[3]](#footnote-4)*

This set the definition of public needs pretty clearly. Anything that helps out the general public is fair game for eminent domain, regardless of the means of benefit. Economic revitalization? Sure. Military base? You bet. Casino? If you’re Donald Trump and you can convince lawmakers it’s economically viable, go for it. Anything that is for the benefit of the general populace, not just one person or section of people, is something that fulfills a public need.

The Right to Use: *USACE v. Hawkes*

The next case on our list happens to be the most recent. Decided in May, *U.S. Army Corps of Engineers v. Hawkes Co.* dealt with the government’s jurisdiction over private land under the Clean Water Act. The Act forbids dumping of waste products into “waters of the United States” unless a permit is given. Water on private land is no exception.

This was problematic for Hawkes Co. because the company mines peat, a product that happens to create a good deal of waste water during the mining process. “Peat” is rotting plant life used in gardening that can also be burned as fuel. The USACE said that Hawkes’ property had a nexus to the Red River of the North (which was 120 miles away) and therefore contained “waters of the United States,” over which the USACE has jurisdiction. Under the USACE’s interpretation, that decision was law. In order to get a permit and be able to use their own property to dump waste, Hawkes would have to perform assessments that cost over $100,000.

The company declined to comply. When they were taken to court, the Supreme Court ruled in Hawkes’s favor in a rare 9-0 decision, finding that the system unfairly imposed costs to the landowners. To change that system, the court decided USACE’s word wasn’t enough to impose those costs, and that the landowner has the right to judicial review on what are “waters of the United States,” and whether an individual can use his own property. Even more applicable to the resolution, Justices Kennedy, Thomas, and Alito wrote in a concurrent decision:

“The [Clean Water] Act…continues to raise troubling questions regarding Government’s power to cast doubt on the full use and enjoyment of private property throughout the nation.”[[4]](#footnote-5)

In other words, the government cannot simply “fiat” that you can’t use your land in the way you want to. In order to have jurisdiction over your land, two criteria must be satisfied. 1) there has to be a legitimate public need (in this case, pollution-free rivers), and 2) If challenged, the court gets to decide, not the government entity that wants to control the land.

The impact? The use of private property can be limited, but only sometimes. Public needs are not an automatic trump card.

The Sanctity of Property: *Mapp v. Ohio*

Our third case is one that’s been reheated, if you will, from a previous year of competition. The 1961 ruling *Mapp v. Ohio* was heavily discussed during the Stoa’s 2014-15 season of team-policy debate. That doesn’t mean it’s obsolete or worn-out, however, it just means it’s multi-faceted.

*Mapp* is best known for birthing the exclusionary rule, the idea that evidence gathered illegally cannot be used in (is excluded from) court proceedings. The decision states:

“All evidence obtained by searches and seizures in violation of the Federal Constitution is inadmissible in a criminal trial in a state court.”[[5]](#footnote-6)

But why was this even an issue? Well, Miss Mapp was doing something illegal inside her home, but the police officers who found out about it found it out illegally. They invaded her home without a warrant, physically restrained Miss Mapp (although she was acting “belligerent”), and then seized the evidence. So, Miss Mapp argued that because the evidence was illicitly gathered, it shouldn’t be used against her. And the Supreme Court approved. Justice Clark wrote in the opinion of the Court

“If letters and private documents can thus be seized and held and used in evidence against a citizen accused of an offense, the protection of the Fourth Amendment declaring his right to be secure against such searches and seizures is of no value... The efforts of the courts and their officials to bring the guilty to punishment, praiseworthy as they are, are not to be aided by the sacrifice of those great principles established by years of endeavor and suffering which have resulted in their embodiment in the fundamental law of the land.”*[[6]](#footnote-7)*

At the risk of sounding too Texan, *that’s legal and ethical gold, right thar*. The government cannot sacrifice “great principles” (i.e. property rights in the 4th Amendment) in order to “bring the guilty to punishment” (obviously, law enforcement is a public need). So, the middle ground is a warrant: a system where public needs can be met when private property is most likely a danger to society. Just like in *USACE v. Hawke*, there is a compromise. Private property rights are not absolute, but neither are public needs.

Right to Compensation Part 1: *Loretto v. Teleprompter*

No, not *Obama v. Teleprompter*.That’s an entirely different matchup, although one that’s entertaining to Google up.

In the 1982 decision *Loretto v. Teleprompter Manhattan CATV Corp.,* Mrs. Loretto sued over the roof. Literally, she protested a New York State law that required apartment building owners to provide TV companies with space to put the TV cables on the roof. Mrs. Loretto argued that she ought to be justly compensated for the permanent seizure of her property that was required by law. The cable company had several arguments, all of which the Supreme Court rejected. Justice Marshall said in his opinion:

“In short, when the ‘character of the governmental action,’ is a permanent physical occupation of property, our cases uniformly have found a taking to the extent of the occupation, without regard to whether the action achieves an important public benefit or has only minimal economic impact on the owner. The historical rule that a permanent physical occupation of another's property is a taking has more than tradition to commend it. Such an appropriation is perhaps the most serious form of invasion of an owner’s property interests. To borrow a metaphor, the government does not simply take a single ‘strand’ from the ‘bundle’ of property rights: it chops through the bundle, taking a slice of every strand.”*[[7]](#footnote-8)*

Here, SCOTUS tells us that there are no “minor” infractions of private property rights. Even a little-bitty wire in the farthest, most unused corner of a place you never visit is protected private property. This case set a hard and fast standard by which all property rights cases have been judged since: if it intrudes on physical property, it’s under eminent domain, and the government has to pay for it. That standard stayed basically the same until 2015, when our final case shook it up a bit.

Right to Compensation Part 2: *Horne v. Dept of Agriculture*

*Horne v. U.S Department of Agriculture* was fought over raisins. I’m not making this up! In 1937, the Raisin Administrative Commission came into being. That Commission sets the “reserve requirement” for raisins: the percentage of the crop that growers fork over (no pun intended) to the government to sell in non-competitive markets, donate, or dispose of. If there are any profits, they were doled (again, no pun intended) back out to the farmers. The reserve requirements aren’t low, either. In 2001 it was 47% of the crop, before shriveling (okay, that one was intentional) to a hefty 30% in 2004. The U.S.D.A. claimed that they were helping farmers by having a voluntary exchange for the farmer’s benefit, and therefore didn’t have to pay eminent domain compensation.

The Supreme Court didn’t buy it. In the case syllabus SCOTUS found:

“In one of the years at issue, the Government insisted that the Hornes part with 47 percent of their crop for the privilege of selling the rest. But the ability to sell produce in interstate commerce, although certainly subject to reasonable government regulation, is not a benefit that the Government may withhold unless growers waive constitutional protections.*[[8]](#footnote-9)*”

In other words, regulation of commerce is fine, seizure of goods without compensation is not fine. The main point, though, is that SCOTUS doesn’t just see property as physical land and buildings. Crops that turn into revenue are property as well. Chief Justice Roberts said in his decision:

“When it comes to physical appropriations, people do not expect their property, real or personal, to be actually occupied or takes away. The reserve requirement imposed by the Raisin Committee is a clear physical taking.*[[9]](#footnote-10)*”

People don’t expect their property to be taken because they expect to have basic human rights. In this case, SCOTUS tells us that those basic human rights extend to less tangible property, like profits, as well.

In Conclusion: *Red Book Readers v. Boring Auth*or

Okay, I get it. Supreme Court cases are not the flashiest thing to read about. Neither are they always easy to grasp. However, Lincoln-Douglas debate, and especially this resolution, deserves more than a shallow back and forth with a few resolutional phrases tossed in. *“Rights!” “Needs!” “No, we need Rights!” “We need Needs even more!”* is how TPers debate.

So please, for the love of Stephen Douglas, use this as an opportunity to dive deeply into the history and philosophy of the resolution. This conflict, like most LD conflicts, is one that doesn’t have an easy answer. Take the time to find the right ones. Not just the obvious answers, the true answers. If you do, I can guarantee this: your win rate will improve, your debating prowess will expand, and, perhaps most importantly, Abraham Lincoln will smile upon your diligence. Good luck!

1. "Sir Isaac Newton." *Learning English - Moving Words*. BBC, n.d. Web. <http://www.bbc.co.uk/worldservice/learningenglish/movingwords/shortlist/newton.shtml> [↑](#footnote-ref-2)
2. "KELO V. NEW LONDON." *Legal Information Institute*. Cornell University, 22 Feb. 2005. Web. 26 June 2016. <https://www.law.cornell.edu/supct/html/04-108.ZS.html>. [↑](#footnote-ref-3)
3. Ibid. [↑](#footnote-ref-4)
4. "U.S. ARMY CORPS OF ENGINEERS v. HAWKES CO., INC., ET AL." Supreme Court of the United States, 31 May 2016. Web. <http://www.supremecourt.gov/opinions/15pdf/15-290\_6k37.pdf> [↑](#footnote-ref-5)
5. "Mapp v. Ohio." *LII / Legal Information Institute*. Cornell University, n.d. Web. 26 June 2016. <https://www.law.cornell.edu/supremecourt/text/367/643> [↑](#footnote-ref-6)
6. Ibid. [↑](#footnote-ref-7)
7. "Loretto v. Teleprompter Manhattan CATV Corp." *LII / Legal Information Institute*. Cornell University, Web. 26 June 2016. <https://www.law.cornell.edu/supremecourt/text/458/419#> [↑](#footnote-ref-8)
8. "HORNE ET AL v. DEPARTMENT OF AGRICULTURE." Supreme Court of the United States, April 22, 2015 Web June 26, 2016<<http://www.supremecourt.gov/opinions/14pdf/14-275_c0n2.pdf>> [↑](#footnote-ref-9)
9. Ibid. [↑](#footnote-ref-10)