

The Rights behind Eminent Domain Fights: A Little Property and a Lot of Home

By Debbie Becher. *Forthcoming 2010 in Property Rights and Neo-liberalism: Cultural Demands and Legal Actions*. Editors Wayne McIntosh and Laura Hatcher. Ashgate Press.¹

Abstract

The Court opinion in *Kelo v. City of New London* (2005) drew national attention to property rights with what was once a local dispute over government's use of eminent domain. How do we understand the widespread support for the libertarian agenda that emerged in this case's aftermath? To answer this question, I present a Philadelphia version of the project behind *Kelo* and the backlash afterwards. As in *Kelo*, the condemnations along American Street in Philadelphia galvanized activism that built widespread resistance to government taking of property. The city targeted sixty-eight privately owned properties, of which forty-two were vacant lots and buildings, fourteen were occupied homes, and two were occupied businesses. I offer a history of how these plans to use eminent domain developed, how those plans proceeded, and how stakeholders and the public reacted to them. I find that anti-eminent domain activists converted narrow sympathy with their narrative about a particular event to mobilization around property rights more generally. Yet by conflating home with property while making demands on government, activists also subtly moved the meaning of property rights away from a libertarian agenda of downsized government. I interpret citizen mobilization against eminent domain on American Street as making three different kinds of demands for property and home rights, each moving further away from a neoliberal ideology. In the fight over American Street, eminent domain opponents demanded respect for property as a possession, for houses as deserving of enhanced protection, and for community self determination. American Street illustrates how and why the use of "home" instead of "house" in *Kelo's* dissent opinions both reinforced and subverted a libertarian property rights agenda.

Introduction

A strong popular belief in property rights helped mobilize national sympathy for a movement to reform eminent domain laws in 2005. To what extent was that popular commitment to property rights aligned with neoliberal goals? The mobilization was sparked by the U.S. Supreme Court decision in *Kelo v. City of New London, Connecticut* (545 U.S. [2005] 469), which denied a request to save several properties taken for economic development. The public backlash was almost visceral. How could the Court sanction the dislocation of Susette Kelo, the lead plaintiff, from her well-cared-for, pretty pink house? Especially when local government had planned to replace it with

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a commercial complex to bring economic development? According to national opinion polls, the disapproval rating for the *Kelo* decision was extremely high, between 80 and 90 percent (See Nadler, Seidman, Diamond, and Patton, p.298.). Reflecting public sentiment (or creating it), four of five newspaper editorials voiced opposition to the Court opinion (Sagalyn 2008). Public anger at the decision, fear of growing government abuses nationwide, and adept political organizing catalyzed legislative-reform efforts. Just two years after the *Kelo* decision was announced, the Castle Coalition (2007) (a project of the Institute for Justice, itself an arm of the libertarian Cato Institute, dedicated to “Citizens Fighting Eminent Domain Abuse”) claimed the movement it led had ushered new statutes through forty-two state legislatures. How do we understand the widespread support for the libertarian agenda that emerged and helped secure these reforms?

Media coverage made the public reaction to *Kelo* seem quite straight forward. The majority of news headlines related to *Kelo* suggested that the American public objected to government power expanding too far, endangering property rights and homes (Sagalyn 2008). Many of the pictures and articles published about the case suggest at first glance that the public reaction was right in line with what has been critically labeled a neoliberal ideology, defending the private real estate market from government intervention. A *Parade* magazine article began, “Across the country, Americans fight to protect their property,” and pictured a young woman marching with a sign “YOUR HOME MAY BE NEXT!” (Flynn 2006) The cover photo pictured a mother, father and their three children in front of their house with a title “Will the Government Take Your Home?” (Moser 2006) The Institute for Justice posed plaintiff Susette Kelo in front of her pretty pink house with a “Not for Sale” sign posted on it (Castle Coalition 2007b). Were these images in the media and by the Castle Coalition reflecting or reinventing popular sentiment? (See Wilkerson’s contribution to this volume for a detailed analysis of the Castle Coalition’s use of *Kelo* to mobilize support for property rights.) Beyond simply stopping this case of eminent domain, what did the widespread public rejection of *Kelo* signal public support for?

To answer these questions, I studied Philadelphia’s version of *Kelo*. The American Street Takings is my phrase for three large-scale property acquisitions pursued by Philadelphia’s eminent-domain authority. All three land assembly efforts were officially initiated between 2001 and 2002 and rested along a one-mile strip of a road called North American Street (its real name). Like in *Kelo*, American Street’s anti-eminent-domain activists publicized stories of government stripping rightful owners of their houses for economic development (Webb 2003). They demanded that the takings be stopped, but they used very little litigation to defend their cause. How closely did this local, grassroots mobilization against eminent domain reflect a broader neoliberal agenda?

Scholars have used the term neoliberalism to mean many things, but there are some fairly central tenets: demands to increase private powers to pursue gain through markets, in exchange for more limits on government power. The various contributions in this volume attest that the last few decades have witnessed several environments where governments have increased, or at least attempted to increase, private property rights, which may seem to mean an expansion of a neoliberal agenda. Whether or not property rights support market activity and limit government power at the policy level, how well does an increased public faith in property rights represent neoliberal sentiments? Does the American popular mobilization for property rights, against eminent domain, indicate widespread appeal for a neoliberal ideology? Through the analysis of mobilization against the American Street Takings, I argue in this chapter that popular demands for protection of property and home represented claims for respect for three distinct ideas: property possession, emotional investments in houses, and community self determination. Though there is some overlap with the kinds of property rights defended in other legal mobilizations termed neoliberal, the particular demands here seem either unrelated or at odds with a neoliberal agenda.

In what follows, I first elaborate on why we should be curious about ideas represented by the term home, house, and property. I then explain why the American Street Takings are an ideal case study for the questions I have posed and give an abbreviated history of them, ending with the protests against the Takings. Finally, I interpret citizen mobilization against eminent domain on American Street as making three different kinds of demands for property and home rights, each moving further away from a neoliberal ideology.

The Difference a Word Makes: Property, House, and Home

The *Kelo* dissenting opinions used the words to property and home much more than the majority opinions. What might this choice of words reflect about the popular appeal of post-*Kelo* anti-eminent-domain mobilizations? How might “property” and “home” represent what Americans found so distasteful about the story of eminent domain they read about *Kelo*? What is commonly referred to as the Takings Clause of the Fifth Amendment has one of two direct references to property in the U.S. Constitution, stating “nor shall private property be taken for public use, without just compensation.” It is not surprising that the *Kelo* dissenters, arguing that this Amendment was violated, used the word property more than twice as often as the majority opinion upholding the government actions (See Table 1.). Opinions on both sides also used the word “house,” though much less often and in fairly equal numbers. Justice Stevens used the word house to refer to improvements Susette Kelo had made, where petitioner Wilhelmina Dery was born, and where her husband Charles has lived. Justice O’Connor used the word similarly: to refer to where Dery lives

and was born, where Dery’s husband lives with her, and where their son lives (next door). Houses (and the land on them) were the real property at stake in the *Kelo* case.

The reaction to *Kelo* may have clarified a public sentiment that not all property deserves the same kind of security and that property rights may not fully represent what inspired popular reactions. Legal scholars were generally unsurprised by the *Kelo* decision; they did not think it had created any new property law. If we treat property as the only issue that ignited the *Kelo* backlash, we miss this important fact. An owner-occupied house -- not a car, a garage, a lot, a gadget, or even a rental home or a business -- was at stake. Home ownership is a special kind of property ownership, in the American psyche and American public policy, whether or not the law should and does recognize it as such (Perin 1977). Recognizing that home ownership in particular was at issue in *Kelo*, some recent law review articles argue for legal recognition of the special status of home ownership or housing (Fee 2005-2006, Godsil and Simunovich 2008). (For a study acknowledging this as existing practice, and arguing normatively against it, see Stern 2009). Recognition that a house, not just any kind of property, was the issue suggests part of what was at stake in the *Kelo* backlash. But the more startling differences are in the use of “home” in the *Kelo* opinions.

Table 1. Word Choice in *Kelo* Opinions

<i>Author</i>	<i>Type of Opinion</i>	Counts of Words Used ¹			
		<i>Total Words</i>	<i>"Property"</i>	<i>"House"</i>	<i>"Home"</i>
Stevens	Of the Court	4150	17	3	1
Kennedy	Concurring	1132	1	0	0
O'Connor	Dissenting	3808	44	4	9
Thomas	Dissenting	5498	44	0 ₂	8

¹ Words in footnotes not included in the count.

² Thomas’ opinion uses the word “house” three times, but as “light-houses,” “custom-houses,” and “court-houses” when he quotes another opinion.

Justice O’Connor’s now famous *Kelo* dissenting opinion opened the description of the facts with an emphasis on home, “Petitioners are nine resident or investment owners of fifteen homes in the Fort Trumbull neighborhood of New London, Connecticut...To save their homes, petitioners sued New London and the NLDC [New London Development Corporation], to whom New London has delegated eminent domain power.” Justice O’Connor’s and Justice Thomas’ dissents mentioned “home” nine and eight times respectively. They used the word mostly to refer to what the petitioners were asking be protected, but they also used it to quote directly or to paraphrase other court opinions dealing with homes. Justice Stevens majority opinion used the word just once, to defend the use of eminent domain in the case brought in *Hawaii Housing Authority v. Midkiff* (467 U.S. [1984] 242) for creating home-ownership opportunities.

The similar, and somewhat spare, use of the word “home” in the dissenting and majority opinions suggests that there was something in the difference between the connotations of “house” and “home” that captured the imagination of those protesting the decision. One difference between “house” and “home” is that talking about a property as a “home” implies an emotional investment and/or a sense of identity more than “house.” In protests to eminent domain, descriptions of the time someone has lived in a home and the memories one has there refer, at least in part, to one’s emotional investments that deserves respect and protection. A second difference between “house” and “home” is that the latter term can refer to a community, rather than to an individual or single family. Residents of the Philadelphia’s American Street neighborhood, and perhaps residents of New London’s Fort Trumbull neighborhood, asked government for some help with change, not protection of the status quo. Under the banner of “property” and “home,” they claimed rights that are not well reflected by an ideology that reveres markets and limits government power. The demands I uncovered in Philadelphia were of three kinds: to have individual rights to possess property, to have the emotional investments in their houses respected, and to enjoy collective rights to control neighborhood change.

Studying American Street

Thirteen of the several thousand properties Philadelphia government has condemned in the last fifteen years for urban redevelopment have become locally infamous (Becher 2009). These 13 properties were the privately owned, occupied homes, out of 109 privately owned properties targeted by eminent domain for large-scale assembly projects on three blocks of North American Street in 2001 and 2002 (See Table 2.) Public testimony at City Council hearings about what I call the American Street Takings looks similar to what we know about how nine New London property owners became plaintiffs in *Kelo*, but only a few of the American Street owners turned to the courts, and they did so individually. Most of American Street’s homeowner-occupants were asking government to stop the use of eminent domain. Government officials argued they had been working on a long-term plan of urban revitalization, and these takings were necessary for that plan. According to protesting residents, condemnees (owners and occupants of property taken by eminent domain) were left in the dark while government and business had been planning their demise in the name of economic development. As in *Kelo*, despite resistance, the condemnations along American Street in Philadelphia moved forward, although delayed and with more attention to relocating homeowners. The condemnations eventually galvanized activism that built widespread resistance in Philadelphia to government taking of property, between 2002 and 2004, just as *Kelo* was making its way to the U.S. Supreme Court. Philadelphia’s anti-eminent domain activists have continued to tell

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the American Street story in videos and news stories to mobilize support against city redevelopment plans.

What can the fight against eminent domain on American Street tell us about property rights? The American Street Takings involved a particular kind of mobilization around rights related to property, outside of court. Scholarship on legal mobilization includes a vast amount of attention to how people use the law in ways other than litigation (McCann 2008). Mobilization of three kinds can be distinguished: mobilization of courts, of public support, and of legal concepts. This case allows me to look at what happens when only public support and legal concepts are in play, and courts have very little immediate impact. It is extremely important to look at the subgroup of cases of legal mobilization that fail to involve the courts but successfully use legal ideas to garner public support. On the one hand, these are likely to involve the most radical or creative of ideas. They are likely to occur in the exact moments when courts will not settle disputes in the claimants favor. And, claimants can frame their arguments without envisioning a judge adhering to the written law as an audience. On the other hand, to be successful, they must appeal to a different audience; some segment of public opinion will both provide an opportunity and limit how they frame their appeals (Snow and Anderson 1987, Snow and Benford 1988).

I investigate the Philadelphia case of American Street, rather than the New London history of *Kelo*, precisely because the takings on American Street raised similar issues but did not make their way through the courts. Resident advocates crafted messages about American Street to gain public support, but they focused very little attention on litigation. Nevertheless, conflict was evident as both sides argued their cases as they testified at City Council hearings, wrote reports, talked to reporters, created videos, spoke at meetings, and shared with their friends and neighbors. I study the American Street Takings by reading the testimony to a legislative rather than a judicial body. Nationally, legislatures are much more likely to be the sites of debate; discussions here happen during, rather than after, the decision-making process. (The courts have repeatedly given legislatures authority to decide which economic development projects fit the “public use” requirement of the U.S. Constitution’s Fifth Amendment.) I also investigate what happened that led to the testimony at those hearings. To understand what caused the public conflict, I draw largely on private communications: in-person interviews and personal communications (with me and others) rather than only news articles, policy papers, or public meetings.²

² I reviewed government records on the development project and on individual properties, and I conducted over thirty in-person interviews with residents, business owners, community leaders, and government representatives who were heavily involved in

A Concise Recounting of Events

American Street circa 1970 to 2000: unofficial daily land management and invitations for official help

Any description of a neighborhood in eminent-domain debates is highly charged. The decision to attach the label of “blight” focuses on failure and often confers power on a government authority to condemn property, therefore raising suspicions in the impacted neighborhoods. Government supporters of an eminent domain project often describe the place as if nothing there were of value. In the late twentieth century, that kind of depiction of American Street was possible. By the 1970s, what had been the main thoroughfare of Philadelphia’s former textile industry was full of contaminated lots and empty buildings. Through the 1980s and 1990s, much of the vacant land became dumping sites and urban weed farms. Its reputation for lawlessness and vacant property had earned it the nickname with outsiders of the “Badlands.”

Whatever an area’s problems are, some neighborhood stakeholders argue that a space that is cared for and inhabited cannot and should not be called blighted. One former American-Street-area resident explained, “Many years ago, there used to be a lot of drugs on every corner, but as years has gone by, now it is good.” She had preceded the comment about drugs in the neighborhood by saying, “It was nice. It was a small block, like six houses, and the neighbors, they were all almost family. There was like four of them that were all related, and it was nice growing up there.” Residents of the American Street area against eminent domain talk about their neighborhood as paradise rather than disaster. Community leader Rosemary Cubas tells one videographer she tours around the neighborhood, “We have beauty. We have comfort. We have safety” (McCollough 2005) and another that it “used to be a beautiful neighborhood”(Community Leadership Institute, Philadelphia Folklore Project and Dornfeld 2004). A resident in a third video explains, “It was well maintained and pretty and everything.” “All these houses were perfectly conditioned” before “everybody is just like asked to move”(Community Leadership Institute 2008: Tata speaking).

To some extent, pride in the area’s local beauty has been all the sweeter because it was often the result of hard work. Many residents of the area in the 1990s share a history of the neighborhood as a place of struggle, strength, and refuge from a city that denied them resources. The land situation was not completely dire because an active informal management system emerged. The lack of security and care in the neighborhood forced residents to be vigilant around their homes. Residents who were there largely watched out for each other, and the vacant space actually made some of them feel safe, for it served as a barrier that anyone attempting to harm them would have to cross.

the project. Files accessed were at the Redevelopment Authority of the City of Philadelphia, the Department of Commerce of the City of Philadelphia, and the Philadelphia Mayor’s Office of the Neighborhood Transformation Initiative and Empowerment Zone.

Individual residents cleaned up, fenced off, and used abandoned land; business owners cleaned trash as well. “At the end of the block, people come and dump and dump...They come at night and just dump it. So this is a never-ending fight” (Romero 2008). “When I first moved in this area, that park was full of needles and glass and everything was dirty around this area. And neighbors start chipping in and cleaning up, you know cleaning up the neighborhood”(Segarra 2007).

They even breached private property boundaries to care for land abandoned by its legal owners. It was very common for residents to begin caring for lots they did not own. It was obvious no one else was going to do it. It also became clear that caring for property, and fencing it, was a crucial way to prevent dumping and the other nuisances that followed. A group of lots commandeered by a large family living to the south of them, catty corner to one of the blocks discussed in this chapter. When I was walking there in 2008, the area looked like it had been well used for some time. The width of about five row homes side by side, the dirt lot was fenced in, had a large vegetable garden, a chicken coup, and several yard chairs. You would have to either look up the titles or ask the people using the lot (and living in the house adjacent to it) to find out that they did not own it. The yard they had cultivated was even featured in a local paper, and they were proud of it.

Eventually, community leaders encouraged a strong government presence to help bring the neighborhood additional security and development. One group of women organized to fight the influx of drugs in the 1980s and solicited help from law enforcement and their City Councilperson; several other groups formally organized in the 1970s and 1980s either to pursue lawsuits against government and banks for neighborhood neglect or with other goals related to empowering local community members and improving the area. These organizations have grown immensely since then, and by the 1990s several of them had created or become community development corporations, contributing significantly to housing and business construction with government financing. A core group of small business owners founded the American Street Business Association in 1979, and in the 1990s, lobbied for and won \$25 million in state money for a land assembly program along the strip to be overseen by the city’s Commerce Department (Dougherty 2007). In the early 1990s, residential and business leaders together convinced Mayor Ed Rendell to include them as one of three communities on a national application for federal Empowerment Zone funds, which was successful in 1994 and dedicated another \$29 million in federal dollars to the American Street area. The Empowerment Zone would be one of the organizations that helped push forward on the use of eminent domain to pursue large parcels for commercial development.

Moving forward on takings and meeting resistance

In the late 1990s, staff in several government departments and leaders of different community organizations considered using eminent domain to consolidate large (three-acre) parcels along American Street. In the mid 1990s, the American Street Site Assembly Project (a multi-agency committee led by the City of Philadelphia Department of Commerce) had purchased what properties they could privately and forced tax delinquent-parcels to go to sheriff's sale to buy them there. As early as 1993, they suggested the west side of the 2100 block of North American Street as a potential parcel for acquisition, but they held back because this and other sites, though mostly vacant, were dotted with occupied private properties. In general through the 1990s, government workers worried about the negative political fallout that could result from taking occupied properties and avoided doing it. A few things changed that reluctance. A business interested in signing a contract for the land, and the Mayor's office willingness to use its power to push interagency cooperation gave people on the inside reason to think government could indeed pull this off. In late 2000, three major government programs (the American Street Site Assembly Project, the American Street Empowerment Zone, and the Mayor's anti-blight initiative³) coalesced around the plan to acquire the full 2100 block of North American Street for Reline Brakes, and plans to acquire properties on two nearby blocks (1700 and 2501 blocks) shortly thereafter. There would be 109 privately owned properties subject to eminent domain in total, to help the city piece together two three-acre and one half-acre site for industrial development. Of those properties, 92 were lots, 1 a vacant building, 13 occupied residences, and 3 occupied businesses (See Table 2.).

Government provided several assurances that this was a sound plan. A live business was planning to take over one of the blocks they were acquiring, and several others had shown interest in the other blocks (Burgos 2001). A legally regulated relocation process which guaranteed communication and fair compensation (American Street Empowerment Zone Community Trust Board Minutes). These assurances helped forge a general agreement among community leaders and government representatives that the use of eminent domain might be justified (Becher 2010, *Forthcoming*).

³ At that time it was called the Blight Elimination and Neighborhood Transformation program, but it would later become the Neighborhood Transformation Initiative or NTI.

Table 2. Use of Properties in Large-Scale Land Assemblages of American Street Takings

Block of N American Street Error! Reference source not found.	Area (acres)	Use 2001-2002				Total
		Lots	Vacant Buildings	Occupied Residences	Occupied Businesses	
2100 block	3.2	48	1	7	1	57
1700 block	3.0	25	0	4	2	31
2501 block	0.7	19	0	2	0	21
Total	6.9	92	1	13	3	109

Government started serious movement on using eminent domain in late 2000. A team of administrators from various city departments worked out a plan they thought could get the property on the 2100 block in time for Reline Brakes. They began the official process in late 2001. There were delays, however, because of a process tied up with unrelated properties, and the takings were stalled for six more months by a lack of agreement between two government agencies over the contract guaranteeing payment for the acquisition. Before the land was in government hands, Reline Brakes pulled out and relocated outside of the city.

A first set of very cryptic letters informing owners of the 2100 block of the plans went out at the very end of 2001. In the spring and summer of 2002, government hosted a community meeting about the eminent domain process and sent out more letters to property owners. In late 2002, as owners started to acknowledge and fear the impending use of eminent domain, public conflict erupted. A community leader and nearby resident named Rosemary Cubas, led the anti-eminent-domain activity under the banner of the Community Leadership Institute (CLI), a recently formed local organization dedicated to politically empowering residents organized residents. Rumors spread about plans to acquire a much larger part of the neighborhood, and competing community meetings in the fall of 2002 led by the CLI and by the Empowerment Zone drew hundreds of people. Despite the activism, the takings moved forward, though they took much longer than originally expected. Cubas' leadership around the American Street Takings birthed a citywide, grassroots effort to fight

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eminent domain that has continued, and has continued to use the American Street story as evidence of what should be stopped.

It was 2007 when the neighborhood saw a new building operating on the 2100 block, the first of the three blocks to see new development. In 2009, the 1700 block has been cleared and is vacant, though there is a private owner of half of the block with plans to develop it. The other half of the block is still in government hands, as is the vacant 2501 block parcel. Negative evaluations of these takings often reference disappointment with the development results.

Mobilizing Support

The Community, not the courts

Few of the condemnees along American Street litigated. Most did not consult attorneys because of the cost or because they were convinced it would make no difference. The attorneys a few of them consulted said the law should not give the property owners much room for optimism. Property owners would have little chance of having a judge reverse the city's use of eminent domain on any individual property (Ackelsberg 2007, Pantoja 2008, Velez 2008). Filing a collective action, the possibility broached with a few attorneys, would not happen. One resident's lawyer suggested that the neighbors cooperate and do this, but they say that the most vocal of their neighbors/relatives refused, so none of them considered it (Ocasio 2008, Pantoja 2008, Rivera 2008). When neighbor and activist Rosemary Cubas took the residents' cause to one local attorney with a sympathetic ear for struggles of the disenfranchised, he did not perceive a clear enough injustice to take on the case (Ackelsberg 2007). In general, no one envisioned a good match between the messy, real story of what happened and any possible litigation.

The outside parties from the libertarian movement building around *Kelo*, who might have assisted this local group, did not take on American Street as their own. Institute for Justice Senior Attorney Scott Bullock became involved with the Philadelphia anti-eminent domain group that organized in response to American Street but did not file any litigation. In a phone interview, he told me his perception of what was happening in Philadelphia at the time: some people who had real investments in their property were swept up with the taking of mostly abandoned properties, and there is not much opposition to the latter (Bullock 2006).⁴ The Institute for Justice did slowly help

⁴ I would add that this case did not have as clear a moral story of government capture by private interests; there was never a big corporation asking government to take this property. The property owners in this case involved might have also been less picture-perfect than Susette Kelo. The outsides of their houses were not in good condition (though many were well kept on the inside). Many of the owners had taken to using abandoned lots beside their properties as yards, whether they owned them or not. Some of the

Rosemary Cubas and others design their approach by sharing materials, coming to Philadelphia occasionally, and hosting a few Philadelphians at their national activist training conferences. They did not, however, become any more directly involved in framing the Philadelphia struggles or acting on their behalf.

Some condemnees did turn to lawyers, but most believed they could not afford them, and even if they could, the lawyers would do little for them. Only one condemnee filed the kind of motion necessary to ask the court to stop the condemnation. He lost at both the Court of Common Pleas and on an appeal of their decision; he stopped there. His daughter explained, “We had a lawyer and everything, a really good lawyer that helped Chinatown when they were trying to build that stadium down Chinatown, and he won that case. But he said he can’t change the law...I think he tried, I mean he knew what the law was, but the RDA [Redevelopment Authority of the City of Philadelphia] was really unfair.” Another condemnee also used a lawyer but did not litigate. When her neighbors did not follow his suggestion to have him represent the group, he did little more than read over the settlement papers. Looking back years later, she said, “I understand it, the city does whatever it wants to do, and who is going to fight the city? We got a lawyer and we couldn’t do anything.”

I asked the other people I interviewed if they thought of talking with a lawyer. Aida Cartegena responded, “We are poor people what can we do? We cannot hire our lawyers...We did not have the money. Like I said, we all were poor people, always good people. Nobody could have helped us even if we tried and if we did hire a lawyer maybe what we are almost going to do is waste our money because who else is going to get our money back, regardless?” Sonia Ortiz told me, “No, I tried to call, but they say I have to pay for it that they don’t have any free lawyers for that matter. Then I was introduced [to an employee of the RDA]; he came out to my property. And he started to work with me and explain to me that I have to move because it is eminent domain and you can't really fight them off when it is the government that is taking away your property.” Ana Rivera said simply, “I thought of that but also I thought that they would charge me a lot of money. After I thought, leave it like it is, and I left it like that.” The one homeowner-occupant who was happy that eminent domain came through, because she could get more money for her house, still had to persist to get what she thought she deserved. She did not consult a lawyer either. She told me, “I said to myself, ‘No, it is not necessary.’ I even said to my daughter and son, because they mentioned, ‘Mom, if they tried to gag you and offer less than what you deserve, you can call a lawyer.’ And I

owners had failed to pay taxes. All of the owners were Puerto Rican, and many did not speak English. Together, these facts do not seem to have formed material for the most convincing test case, either in court or a more public setting.

said, ‘Yes I know my rights, but I do not think I need it.’ So that is what I said, ‘I do not think I need it because I know how these people work.’”

In a sort of haphazard fashion, one condemnee and then others did turn to a community leader, Rosemary Cubas for help. Cubas says was conducting a community meeting on predatory lending when an older woman came up to her, waiving a letter in front of her, saying the city was going to take her house. When Cubas organized community meetings around the issue, several of the residents faced with condemnation came. But they stopped attending, they reported, when they realized this group wasn’t going to be able to stop what the city was doing. The two residents who were the last to relocate, Ramon Hernandez and Manuel Velez, stayed involved with the Community Leadership Institute as it developed an anti- eminent domain campaign. This campaign was in its early stages when the Philadelphia City Council held a hearing about the taking of one of the blocks of North American Street (where Velez lived), and several residents registered their complaints. Those people opposed to the takings voiced their complaints at these legislative hearings, in media coverage and organizing materials, and in interviews with me. I use the rest of this chapter to understand the claims they made in these venues.

Fighting for stability through possession of property

Some aspects of the American Street conflict looked somewhat like the national public debate over *Kelo* so focused on property rights -- as possession. To most Americans, the meaning of property provoked by the *Kelo* backlash was relatively simple: Property is ownership. What’s mine is mine, unless I want to give it to you. Eminent-domain opponents both in New London and Philadelphia spoke of what they were fighting for in this way. Condemnees and their supporters demanded that property rights allow owners to retain that to which they had legal title. In defense of their position, condemnees opposed to the acquisitions demonstrated that the homes were rightfully *theirs*. They talked about how they had paid for the properties; most of them did not even have a mortgage; they had paid for their houses in full. They had paid their property taxes, and they were the legal owners. In an interview, American Street condemnee Aida Cartegena proudly but sadly told me that she still hangs on to her deed, several years after the taking. Making all the motions with her arms to demonstrate, she explained to me that during the upheaval, she mused about returning to her lot, knocking on the door of whatever new building had replaced her home, and waiving the deed in the new occupant’s face to prove she was the true owner of the property (Cartegena 2008).

Already, fighting to keep possession of property does not seem to fit perfectly in what is considered a neoliberal agenda that thrives on vibrant market activity. There is no obvious conflict, but strengthening owners’ right to keep something, in and of itself, is somewhat neutral towards

government. Nor does this demand give much support to a market as the organizing institution. First, keeping property, rather than selling it, is unlikely to promote market exchanges. Second, property owners talked about how their property had utility value to them much beyond what a market would recognize. Property owners talked about how their economic losses would not be compensated with a principle of “full market value” used for accounting because their properties had value particularly for them. No one argued that fair market value was more than the \$20,000 American Street owners were first offered, but people involved knew that this amount would not even replace the utility value of these properties in the hands of their current owners. Residents spoke about how they had improved their kitchens, repaired their roofs, and even created handicapped accommodations for older family members; none of this would be reflected in the market price in a neighborhood with such a depressed market.

Fighting for the possession of a home

As in *Kelo*, only select properties became the focus of public attention: the privately owned, occupied houses. Activism and press coverage surrounding both New London and American Street focused primarily on the taking of houses rather than other kinds of property that were also condemned. Protests about American Street explicitly focused on thirteen homeowner-occupied properties, but the same bills that sanctioned these takings approved condemnation for more privately owned properties of different kinds: ninety-two lots, a vacant building, and three occupied businesses. The intense focus on the fate of owner-occupants (and sometimes renters) suggests that the taking of an occupied house evokes considerable rancor. In Philadelphia, protestors remain practically silent about the much more common condemnations of vacant lots and buildings, and even sometimes of rental homes and occupied businesses (Becher 2009). I would argue that the condemnation of small businesses is often successfully protested if and when they seem like part of home themselves, as in a family-owned business.

Even though protestors of the American Street Takings were only talking about occupied houses, they might have easily used the word “property” to make their points. But they were much more likely to use the word “home,” even as they spoke about “rights.” Resident leader Rosemary Cubas’ initial call for mobilization started, “Your home may be in danger of expropriation.” Velez-Ardon, daughter of 1700 block condemnee Manuel Velez, said on an anti- eminent-domain video, “It is like as if we do not have any rights, even though we get to vote.” She recalls her father’s astonishment at learning about the eminent domain plans: “This cannot happen, because this is not a communist place, we are free here, nobody can come and take my home” (Community Leadership Institute, Philadelphia Folklore Project and Dornfeld 2004).

Protestors of the takings on American Street often used the word home in a way similar to how the dissenting opinions in *Kelo* did, to reference the emotional value that is sometimes, but not always, a part of property ownership. When they talked about home, eminent domain opponents associated with American Street often referred to the emotional or identity value in it, a value they argued could not be exchanged or recreated (For a description of property as identity value, see Goffman 1961., Radin 1982). Owners and their advocates associated with the Community Leadership Institute said that the decades residents had been there represented significant personal investments, which also would not be represented in a market price. Ten years was the shortest time any of the families had lived in the houses on the 2100 block of Bodine Street (The median was greater than 20 years.). This psychological attachment to a house is one reason people may argue for it having a privileged legal status, compared to other kinds of real property. In the midst of an effort to win public support, stories about particular dislocated residents can be a strong emotional appeal, to help people who may know nothing of this particular neighborhood identify with the experience of having an emotional attachment to home broken (Goodwin, Jasper, and Polletta 2001). The following section explains one more, and more surprising, meaning attached to the claims for home that even a stronger individual right that respects emotional attachment would do little to address.

Fighting for security through community

The final thread I noticed in anti-eminent domain claims used the word home and stories about it to make demands about the public-good side of the conflict between individual and community. Residents of the neighborhood made demands that look more like communal than individual property rights. This demand, for community control over land, involved wanting to balance community change with security about the future and wanting to preserve the connection of a certain group of people to each other and to the physical space that helped make them a community. All of these meanings of home seem almost irrelevant to a neoliberal ideology focused on shrinking governments and growing markets.

In the neighborhoods surrounding American Street, even before the conflict erupted, a sense of home pervaded a common effort to bring neighborhood improvement. In the 1980s and 1990s, there was a period of cooperation among residents, business owners, and government representatives to engage government in creating community change. A fuller history of the American Street Takings, summarized earlier in the chapter, reveals resident interest in neighborhood improvement rather than simply preservation. In my study of American Street, I witnessed that residents also repeatedly said that they wanted to see neighborhood change and, as explained earlier, some sought government assistance for that purpose.

Residents knew the neighborhood had problems, and leaders thought government action might spur development that would help solve those problems. The testimony at the legislative hearings – even by residents facing condemnation at the height of the conflict – reveals a surprising degree of shared interest in community improvement, to be achieved with help from the government. One resident member of the Empowerment-Zone governing board explained to me, “I supported that [the 2100 block acquisition] only because I saw the importance of bringing jobs because the neighborhood is dying. And it needs to be revived, and if we don’t bring jobs we are going to die” (Burgos 2008). People who live near but not in the areas that were acquired had similar attitudes. One woman, who lives directly across the street from a block that was cleared for a new warehouse, had knocked on some neighbors’ doors at the time this plan was in the works; she found them to be generally happy about the prospect of new housing, and they were eager to hear plans for a local factory providing jobs.

As plans for eminent domain ensued, residents demanded attention to home, in the sense of wanting the security of knowing what the future would bring. The problem was that, despite the efforts of many different people and organizations trying to spawn the area’s development, no one involved seemed to know what would work. The elephant in the room was uncertainty. Residents, businesses, and government were not content to keep things as they were, nor were they committed to a certain path to progress. They were all engaged in a struggle over what you do when you do not know what is best to do. (This is similar to a definition of uncertainty offered by Jens Beckert [1996: 804]). No one could assure that any plan would come to fruition, or at least which parts of it would be realized and which parts would not. The history of urban planning, full of failed experiments, supports this kind of skepticism.

It is important here to understand how this skepticism of the effects of future government policy affects negotiations and decisions in the present. No one explicitly discussed planning in the face of uncertainty even though that is exactly what everyone was doing. Instead, each side engaged in the conflict (once it erupted) painted a picture of either full certainty or complete uncertainty. In attempting to garner support for the plan, government bureaucrats painted as pretty and certain a picture as possible in public. They talked about the real business-owner who wanted to develop the land, how many jobs would be provided, and the government policy that would ensure fair treatment of property owners. Residents wanted more assurances. What would residents and owners get? When would they get it? What would be developed on the taken land? What kinds of new jobs would there be? Who would get them? How could they be sure all or any of this would actually

happen? Those against the takings argued that they had no idea what would happen. Milagros Velez testified to the problem of uncertainty for the residents,

Now, I don't know how this works...In order for residents to be willing to move, we do want to know what we're going to get...We're not going to want to move if they're not going to tell us what we're going to get...We want to be involved. We want someone, anyone, to set up meetings with us... because we don't know anything, and we're like lost out in space. (Council of the City of Philadelphia 2002: 208-9)

In making the case that condemnees be allowed to stay, activists demanded a collective right to keep a community of people – often understood as an extension of home – intact. Even if their individual houses were nothing special, people said they had a right to maintain their physical and social connection to the networks of people there. Especially at 2100 North Bodine they had created a safe, quiet block within a more dangerous area by depending on each other. The residents were mostly related to one another and say that the group of seven households felt like family, whether related or not (Cartegena 2008). When I asked one relocatee if she had looked for a replacement house in the same area, she responded negatively, and her daughter explained, “It was a good block, not a good neighborhood.” Many residents also had several different relatives and long-time friends scattered through the neighborhood. Anti-*eminent-domain* leader Cubas complained about the city “wiping out a neighborhood” by moving away some of its long-timers. (This idea of home as a network of people, or kin, is what urban ethnographers have found to be a primary economic resource of the urban poor. Stack 1974, Duneier and Carter 1999, Venkatesh 2006.)

Some of the value that condemnees knew would not be compensated derived from the informal forms of organization their community had developed. They had built informal arrangements that government workers had a hard time recognizing when they calculated compensation. One of the most dissatisfied condemnees was unable to get government to recognize the informal arrangement he had with his brother about ownership. Even though his brother did not live there, his name was on the title, and the brother told the authorities that he was the owner in name only. Still, government workers refused to the brother who lived there as an owner, and treating him as a tenant brought him fewer relocation benefits. This infuriated him because he and his brother knew he was the *real* owner. In addition, government would not compensate him for the lots he had been using, which government saw as illegal squatting, and he saw as caring for and using land others had abandoned and used as a dumping area. His next door neighbor was in a different position from the start because she wanted to move; she had not sold because she expected that eminent domain was coming her way and was convinced she would get more if she waited it out. Indeed, she feels she had few problems getting exactly what she deserved in terms of compensation, because she could show receipts for the work she had done on the house and had clear title. Her only complaint was in regards to a plot to which she did not have title,

though she had possession; she thinks government should have paid her a couple of thousand dollars for an abandoned lot adjacent to her home and for which she had cared as if it belonged to her. She knew that she could have gotten title for that property from the City for one dollar but just had not gotten around to it. As far as she was concerned, it was hers. She could have argued adverse possession, but she had no lawyer, and the amount the property was worth would not have covered representation.

Conclusion

The American Street Takings involved legal mobilization against eminent domain, without the litigation. To protest takings along American Street, condemnees and their neighbors mobilized legal concepts. Philadelphia organizers, with little hope that they would make any progress in the courts, took their case to the streets – and asked the public and the politicians to support demands that their “rights” be respected. Taking legal terminology out of the courthouse, they could imagine a public audience, not a judge. In framing their arguments, they might imagine their neighbors deciding what the rules were instead of the written law. This chapter was dedicated to understanding what their demands entailed in these conditions. Philadelphia community leaders organized around the American Street Takings and hit the local news just before national organizers pushed eminent domain in New London, Connecticut through the courts and into the national news. American Street organizers eventually connected with the Institute for Justice, but there is little evidence that the national organization had any significant impact on local work when the American Street issue was at its hottest. What rights -- what rules -- did American Street condemnees and activists in support of them appeal to their neighbors to uphold? What particular notions of property rights did these claims include? To what extent would these appeals support a neoliberal ideology, dedicated to shrinking government and growing markets?

The rights pushed for in the fight over American Street most directly a demand for respect for a right to property as a possession, an idea which seems to have little in common with a neoliberal ideology. Owners claiming that they should be able to keep what is already theirs is possibly a demand for smaller government in this particular policy arena (property expropriation), but it is not a demand for increasing market exchanges. In fact, it seems to be the opposite. As long as people hold on to their property, there is no market.

The condemnees and local activists opposed to the American Street takings quite clearly claimed that houses should get enhanced protection. They did not really fight for rights to possession of any kind of property. In defense of this special protection they cited the emotional value of a house to an owner. Again, eminent domain opponents were not supporting a neoliberal

agenda dedicated to market exchanges of property. They fought for government respect of idiosyncratic values that an idealized market involving arms-length exchanges cannot account for.

Finally, the opponents of the American Street takings made clear and direct demands that the community had rights to control its own destiny. For decades before this conflict erupted, residents of American Street organized to increase care for the neighborhood. Many community leaders invited government in to help, and even sanctioned the very limited use of eminent domain, under conditions for development and relocations that they prescribed. When government continued with the eminent domain but failed to meet those conditions, some of these same leaders turned to oppose it. Thus, they pushed for community change, but they wanted a very strong say in its direction. In addition, descriptions of eminent domain as unjust because it would destroy a community suggested that the community had some right to exist, a right they expected government to observe. Because it seems so antithetical to a philosophy that privileges individual rights, this demand for a right to community sovereignty is the most orthogonal to both neoliberal and libertarian agendas.

The condemnees on American Street seem to have articulated parts of a moral philosophy of how individual and communal rights in conflicts over land development such as the ones they faced. By grappling with the complex issues of governing a struggling neighborhood through the 1980s and 1990s, and facing a highly contentious government intervention, they developed three basic tenets. First, one's possession of property has more value than property that is for sale on a market. Second, a house deserves special protection as a possession to the extent that the owner has invested emotionally in it. Third, a group of people who have built a home, a residential community, ought to have a strong voice in how the community changes. These three tenets may all be helpful additions to the American legal code as it relates to eminent domain and other land development issues. None of them seems to lend significant support to a neoliberal ideology; in fact, they probably do the opposite.

What about *Kelo*? Did the eruption of the local conflict and the national reaction to the Court decision reflect similar sentiments? I would predict that if we studied the struggles in *Kelo* that happened before, during, and after the conflict, we would also observe that people in New London wanted more from government. Their demands would likely have included such phrases as home security, demands that would be difficult to express and harder for government to demonstrate it had fulfilled. They likely wanted to ensure the success of their neighborhood's future, and to be a part of it. And, they likely wanted assurances about uncertainties along the way and respect for the informal community agreements they, themselves had developed, and that gave the area a sense of

cohesiveness when business and government had little interest. (Plaintiffs' attorneys have repeatedly mentioned owners' ties to their homes and to their communities. See Wilkerson in this volume.).

Whether or not New London looked anything like Philadelphia, the American Street case is informative about what public demands might really lie beneath what appears to be wholehearted support for a property-rights agenda. It seems that when faced with the real problems of struggling neighborhood economies, Philadelphians may have stretched the idea of property-as-practiced away from property-as-litigated. Through a fight over property, they demanded special protection for possessions, for emotional investments, and for community self-determination. Liberal political theorists were aware of the latter issue, as democratic rule, but understood property rights as in conflict with group rule rather than as encompassing them. When another community faced what American Street did, the flight of industry and the abandonment of land, they litigated that property involved communal rights (Lynd 1988). Though that argument failed in judicial court of law, what happened on American street makes it seem alive and well in the American public psyche.

This case reveals Americans struggling with principles that are in tension, rather than adhering to any ideology about property, government, or markets. The tenets that emerged from an analysis of the American Street conflict do not answer the question of when and where government should use eminent domain or act in many other situations because they can, and do, come into conflict. Together, these basic statements often represent a clear tension between individual and communal rights. Questions in that conflict fundamentally return to understanding what the community voice is, and whether government represents it. Americans seem to expect their governments to protect their home security through times of dramatic change in land use. This means that government is expected to attempt a combination of activities: Government ought to support grassroots attempts for community change and protect individual interests in maintaining their attachments to home and community.

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