

A new book that revisits the controversy behind *Kelo v. City of New London*

The Grasping Hand

In 2005 the Supreme Court ruled that the city of New London, Connecticut, could condemn 15 residential properties in order to transfer them to a new private owner. Although the Fifth Amendment only permits the taking of private property for “public use,” the court ruled that the transfer of condemned land to private parties for “economic development” is permitted by the Constitution—even if the government cannot prove that the expected development will ever actually happen. The decision in *Kelo v. City of New London* perpetuated the Court’s long-standing failure to enforce constitutional property rights.

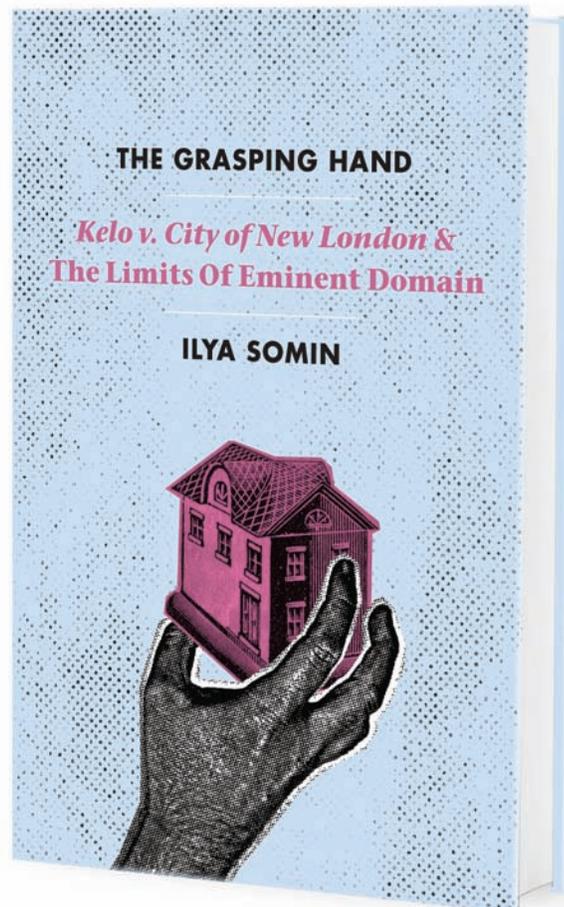
In *The Grasping Hand: Kelo v. City of New London and the Limits of Eminent Domain*, author Ilya Somin offers the first book-length analysis by a legal scholar of one of the most controversial Supreme Court cases in modern times. A law professor at George Mason University and an adjunct scholar at the Cato Institute, Somin presents a detailed study of the infamous decision alongside a broader history of the dispute over public use. He also evaluates the options for reform. Ultimately, Somin concludes, *Kelo* was a tragedy at the end of a long line of grave errors.

“The right to private property is a central part of the American constitutional tradition and of our political culture,” Somin writes. “But for many decades, federal courts—and especially the Supreme Court—have given constitutional property rights far less protection than that routinely granted to other constitutional rights.” Somin argues that the courts have abdicated their responsibility in this regard. “To a large extent, they have left those rights at the mercy of the very government officials that they are supposed to protect us against.”

Economic development and “blight” condemnations are unconstitutional under both originalist and most “living constitu-

tion” theories of legal interpretation. They also victimize the poor and the politically weak for the benefit of powerful interest groups and often destroy more economic value than they create. *Kelo* itself exemplifies these patterns, according to Somin. The residents targeted for condemnation lacked the influence needed to combat the formidable government and corporate interests arrayed against them. Moreover, the city’s poorly conceived development plan ultimately failed: the condemned land lies empty to this day, occupied only by feral cats. The Supreme Court’s unpopular ruling triggered an unprecedented political reaction, with 45 states passing new laws intended to limit the use of eminent domain. But many of the new laws impose few or no genuine constraints on takings. The *Kelo* backlash led to significant progress, but not nearly as much as it may have seemed.

Despite its outcome, the closely divided 5-4 ruling shattered what many believed to be a consensus that virtually any condemnation qualifies as a public use under the Fifth Amendment. It also showed that there is widespread public opposition to eminent domain abuse. Polls showed that over 80 percent of the public disapproved of the Court’s ruling. And in the years following the decision, both the federal government and 45 states passed new laws limiting the use of eminent domain. No other Supreme Court decision has ever led to such a broad legislative reaction. At the same time, however, many of these new state laws turn out to impose few or no genuine constraints on the government’s power to condemn property.



With controversy over takings sure to continue, Somin’s book is an indispensable resource on an alarming trend. “In *The Wealth of Nations*, Adam Smith famously argued that private property and decentralized market transactions generate prosperity as if “by an invisible hand,” he wrote. “The use of eminent domain to promote ‘economic development’ is based on the exact opposite assumption: that resources will often fail to generate as much wealth as they should unless their allocation is controlled by government. Instead of the invisible hand of the market, eminent domain relies on the grasping hand of the state.” ■

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