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BOOKSHELF

Evicted, But Not Without a Fight

The government took her home. The Supreme Court approved.

By MELANIE KIRKPATRICK

Roughly 70% of Americans own their own homes, a statistic that goes a long way toward explaining why the Supreme Court's ruling in 2005 in *Kelo v. City of New London* was so widely reviled. Before *Kelo*, most Americans probably took it for granted that their home was their castle, protected by the Constitution from arbitrary seizure by government. The Fifth Amendment's takings clause says: ". . . nor shall private property be taken for public use, without just compensation."

In *Kelo*, a majority of five justices came up with an extremely broad interpretation of "public use." The high court's four liberal members, joined by the ever-changeable Anthony Kennedy, ruled that government has the right to seize a private home for virtually any purpose -- including handing it over to private developers.

Specifically, the court ruled that the city of New London, Conn., had acted constitutionally when it sought to exercise its power of eminent domain. The city wanted to tear down a clutch of modest houses in a working-class neighborhood for the purpose of clearing the way for private developers to build a corporate park, five-star hotel and fancy condos. This wasn't about razing a blighted neighborhood; it was about bringing in more tax revenue for the city. The proposed development was a far cry from a highway or a bridge or some other infrastructure project that falls under most people's definition of public use.

Enter Susette Kelo. Ms. Kelo is a classic American heroine -- the feisty little guy who takes on city hall and corporate fat cats in pursuit of a just cause. "Little Pink House," by Jeff Benedict, is her story. It opens on the day in 1997 when she fell in love with a Victorian fixer-upper overlooking Long Island Sound and plunked down her life savings to buy it. She was 40 and fleeing a troubled marriage. She had spotted the "for sale" sign on the cottage when she answered an emergency call in the neighborhood while on the job as an EMT worker.

A few months after Ms. Kelo moved into her dream house, Pfizer Inc., the pharmaceutical company, announced plans to build a large research facility nearby. The state put up \$100 million to upgrade the neighborhood. The city's development arm, run by a bulldozer of a woman who was also president of Connecticut College, moved quickly to buy out the local property owners. Ms. Kelo and a few others said no. The day before Thanksgiving in 2000 she came home from work to find an eviction notice on her front door; she had 90 days to vacate the premises.

Thus began the campaign of Ms. Kelo and several of her neighbors to save their homes. It was a kitchen-table operation. The property owners and a few sympathetic New Londoners would gather in someone's house to write letters to the editor, draft petitions and plot strategy. Along the way, they saw local politics up close and nasty. At one dramatic moment, Ms. Kelo marches into a local men's club that had been spared the wrecking ball for political reasons -- its influential members could have stalled the project -- and demands to know why it is still standing and her house is doomed.

While Mr. Benedict doesn't hide that he is rooting for Ms. Kelo, neither does he paint his tale in black and white. He is careful not to shortchange the players on the other side and their (mostly) honorable intentions. New London's fortunes have declined since its heyday as a shipbuilding center and whaling port in the 19th century. The Pfizer research facility and associated businesses would bring much needed jobs. Many of the people working to oust Ms. Kelo and her neighbors believed that the proposed high-end development was the best outcome for their distressed city even if it meant taking private property. The needs of the community, they thought, outweighed the preferences of the individual homeowners.

That's where the Constitution comes in -- along with the Institute for Justice, a public-interest law firm in Washington, D.C., dedicated to protecting the Constitution's guarantees of economic freedom. The institute represented Ms. Kelo and her co-plaintiffs in the case, which made its way through a series of lower-court rulings before ending up at the Supreme Court. Its PR team helped make *Kelo* a national story.

"Little Pink House" is an absorbing read, almost novelistic. Mr. Benedict interviewed just about every player, and he reconstructs events and dialogue in readable detail. The result is more "Dombey and Son" than legal brief.

I wish I could report a happy ending. But there isn't one -- at least not for Ms. Kelo, who lost her home. She received a financial settlement that allowed her to buy a new house on a hill overlooking the water in a town near New London. Unlike the rest of the homes in her old neighborhood, her little pink house was not demolished. Instead, it was disassembled and moved to a different part of New London, where a plaque in the front yard explains its significance.

For the rest of us, there is perhaps a better ending. *Kelo* was a wake-up call in many states about the dangers of letting government pick winners and losers at the expense of individual property owners. According to the Institute for Justice, since *Kelo* 43 states have amended their laws to protect private property more vigilantly. Federal legislation curtailing eminent domain was introduced but did not pass.

"Little Pink House" is a modern morality tale. It shows how the politically powerful can use eminent domain as an instrument against the weak. Justice Sandra Day O'Connor said it best in her dissent in *Kelo*: "The fallout from this decision will not be random." She predicted that "the government now has license to transfer property from those with fewer resources to those with more." The beneficiaries, she wrote, are likely to be those citizens "with disproportionate influence and power in the political process."

Owning property is one of Americans' most basic constitutional rights. It's too bad Susette Kelo didn't get to exercise hers.

Ms. Kirkpatrick is a deputy editor of the Journal's editorial page.

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