

USING RHETORIC TO SUSTAIN DEMOCRACY: THE RHETORICAL DEVICES UTILIZED BY JUSTICE O'CONNOR IN *KELO V. CITY OF NEW LONDON*

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A recent Supreme Court case, *Kelo et al. v. City of New London et al.*, which emerged from the history of a contest between the interests of the people in preserving their rights under the Takings Clause of the Constitution and the interests of municipalities in utilizing their eminent domain power to have aesthetically pleasing, tax-revenue-raising towns, exemplifies the power of constitutive rhetoric in our adversary system of law. In the rhetoric of judicial opinions, we find the means to form conversation and build relationships. According to Hart Wright Professor of Law James Boyd White, legal discourse, as a function of rhetoric, is the “central art by which community and culture are established, maintained, and transformed” (“Law as Rhetoric” 684). Thus, our judicial opinions are intended to yield interpretations of both the current case and prior cases in light of our rights as individuals under the Constitution and in light of our goals, wants, and needs as a society.

When judicial opinions are crafted, justices create a language that not only rules on rights and wrongs, but gives citizens a voice or leaves them in silence, and drives our society toward more progressive ideals or reinforces prejudices. As White explains:

[T]he judicial opinion, often thought to be the paradigmatic form of legal expression, might be far more accurately and richly understood if it were seen not as a bureaucratic expression of ends-means rationality but as a statement by an individual mind or a group of individual minds exercising their responsibility to decide a case as well as they can and to determine what it shall mean in the language of the culture. (“Law as Rhetoric” 697)

Finding the means to relate to others through the language of judicial opinions is the quintessence of constitutive rhetoric, defined as the “establishment of comprehensible relations and shared meanings, the making of the kind of community that enables people to say ‘we’ about what they do and claim consistent meanings for it” (693). Through a critical analysis and understanding of the court’s language and rhetoric, which shape and define the relationships formed in our society, a dialogue is ensured, one that is essential for democracy not to be dampened or undermined. Through the language of effective judicial opinions, a continued conversation is provided for those who have a stake both in the case and in our society, even when the ruling is not in their favor.

In *Kelo*, the ruling was not particularly promising with respect to the preservation of our constitutional rights. Yet the dissenting opinion, written by Justice Sandra Day O’Connor, is accessible and encourages the public to further debate its cause; as a result, the language of her dissent serves the people, the Constitution, and, most importantly, democracy. In analyzing O’Connor’s opinion, I would like to make two related points. First, by choosing not to argue for overturning past cases, O’Connor chooses implicitly to elicit public concern and to provoke public dialogue. In this choice, O’Connor realizes the need to write an opinion in the language of everyday people, thereby engaging in an act of translation between the legal and public realm by creating an opinion that exempli-

fies White's criteria of constitutive rhetoric. Second, in providing the public with an accessible opinion that issues caveats about the potential dangers associated with the ruling of the majority, O'Connor authored a court opinion that acted as a catalyst to positively shape public policy by reaching far beyond the legal realms.

To understand how exactly O'Connor's rhetoric served the people and continued a dialogue in our democracy, I will first look at how the Takings Clause has evolved over the years with respect to property rights. By looking at the history of the Takings Clause, we will be able to see the events and interpretations that precipitated the eminent domain abuse that brought *Kelo* to court. After, we will examine the facts of the case. Only after looking at both the history of the Takings Clause and the unique circumstance that brought *Kelo* to the highest court are we able to appreciate fully O'Connor's work as an effective decipherer and translator. In her opinion, O'Connor gives us a framework and a voice to continue the dialogue. Finally, I analyze the cogency of constitutive rhetoric as utilized by O'Connor in her dissent along with the effects of this type of rhetoric on public discourse through its ability to shape public policy.

Eminent Domain Before *Kelo*

The founders of our country, in consideration of the property rights of people and the sometimes omnipotent actions of government, included the Takings Clause in the Fifth Amendment, which states, "No person shall be . . . deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." In other words, the government may take private land by the power of eminent domain if, after paying the owner a fair market price for the property, the land would be used by the general public.

In the interest of productivity and efficiency, the government has often overridden the property rights of individuals and businesses in the interest of public use. Ideally, the Takings Clause served to make the most efficient use of land. Although sometimes creating burdens, the Takings Clause always reallocated land so the public could achieve a greater good. As a function of upturns and downturns in our economy, our views on property rights and property transfers shifted with time. The most notable fluctuation followed the Great Depression. During the New Deal, the government assumed the role of revitalizing the economy, and alongside the federal government, municipalities adopted ways of adjusting their own economies. City municipalities began to view businesses taking the place of otherwise nonproductive, non-tax-revenue-raising homes as the means of saving financially depressed areas of their towns. Municipalities, therefore, began to incorporate *public purpose* under the public use constraint of the Takings Clause, and the onslaught of eminent domain takings began. The majority of these takings were of single-family homes, leaving the homeowners virtually voiceless as the newfound interpretation gave municipalities the freedom to take without much oversight.

Eminent domain takings in the pursuit of economic redevelopment continued from the 1950s for approximately another fifty years, forcing homeowners and local business owners from their land without fair legal representation. Not until 2005, when Susette Kelo of New London, Connecticut, challenged the city's eminent domain taking of her entire neighborhood in the interest of economic redevelopment, did the judiciaries finally agree to reevaluate the constitutionality of *public purpose* being interpreted as public use. Numerous other landowners joined the lawsuit and went through a quagmire of legal battles in the lower courts in hopes of keeping their homes and Fifth Amendment rights. Their case, *Kelo et al. v. City of New London et al.*, details the circumstance of a city courting

a corporation in an attempt to revive a municipality struggling to survive, but only at the expense of homeowners.

The city began its struggle for sustainability in 1990, when Connecticut deemed the city of New London a “distressed municipality” (qtd. in Stevens 3). Six years later, New London, specifically the Fort Trumbull area in southeastern Connecticut, became an economically depressed area after the closing of the federal government’s Naval Undersea Warfare Center resulted in the loss of over 1,500 jobs. The leaders of New London began to fear that the area would soon become blighted, as a significant amount of the population began to relocate, resulting in a diminishing tax base: “In 1998, the City’s unemployment rate was nearly double that of the State, and its population of just under 24,000 residents was at its lowest since 1920.”

In February 1998, New London saw a sign of hope, when the pharmaceutical giant Pfizer announced plans to open a new research facility. The New London Development Corporation (NLDC), assuming Pfizer would bring new business to the city, drew plans to welcome other businesses to the area in an attempt to increase the tax base of the city and save it from blight. The development plan, which drew upon land from the Naval Undersea Warfare Center and privately owned, nonblighted businesses and houses in the area, aimed to give the city a more positive future by capitalizing on the potential business accompanying Pfizer’s arrival. In order to obtain the privately owned and nonblighted parcels of the land, the NLDC, interpreting public use as *public purpose*, exercised the city’s power of eminent domain. Not all of New London’s citizens were willing to sell their homes, so the NLDC was not able to obtain all properties through the power of eminent domain. In November 2000, the NLDC began to condemn the remaining properties. Following the lead of Susette Kelo, however, the owners of the remaining properties, claiming that the takings violated the “public use” constraint in the Fifth Amendment, filed suit in the New London Superior Court in December 2000. The owners of the properties, having many various emotional ties to their property—Susette Kelo had lived in her house for three years and made extensive improvements, Wilhelmina Dery had lived in hers since birth, the Derys’ son received his house as a wedding gift—sought relief in New London’s trial court.

The New London Superior Court prohibited takings from only one of the parcels of land, causing both sides to appeal to the Supreme Court of Connecticut, where all of the takings were deemed constitutional. Connecticut’s Supreme Court determined that the takings followed the state’s municipal development statute, which states that “the taking of land, even developed land, as part of an economic development project is a public use and is in the public interest,” making the takings undoubtedly constitutional (Stevens 4). The ruling allowed the NLDC to take land from all parcels, thereby deeming *public use* and *public interest* as synonymous and interchangeable.

Constitutionality of “Public Purpose” Takings

Thereafter, the Supreme Court granted certiorari. In February 2005, upon hearing arguments from both parties in the case, 545 U.S. 469 (2005), the Supreme Court faced a very difficult question: can *public purpose* be interpreted as *public use*, with respect to the Takings Clause? The Supreme Court heard the case and issued a 5-4 verdict, resulting in adjudication in favor of the city, deeming the takings constitutional and permissible, thereby allowing economic development to be considered *public use* under the Takings Clause of the Fifth Amendment. The ruling changed how the courts interpret the Constitution by allowing government taking of nonblighted homes in the interest of eco-

conomic development, essentially giving municipalities the constitutional power to transfer private land and homes to other private entities in the name of economic redevelopment.

The decision and the opinion of the majority largely addressed the needs and desires of municipalities, for “[i]n every opinion a court not only resolves a particular dispute one way or another, it validates or authorizes one form of life—one kind of reasoning, one kind of response to an argument, one way of looking at the world and at its own authority—or another” (White, *Justice* 101). The majority opinion in effect returned the burden of interpretation back to the states by stating that economic redevelopment could be interpreted as public use under the Constitution, but each state held the power to allow or prohibit eminent domain takings in the interest of economic redevelopment. By a small majority in a swing vote, the sheer power by numbers of the majority seemingly rendered home and property owners like Susette Kelo without a language for further dissent. The Court’s majority unfortunately resorted to the kind of reasoning White describes as “resolv[ing] cases by ‘balancing’ one ‘interest’ against another, thus engaging in a crude form of the kind of cost-benefit analysis that is the grammar of modern economics” (47). In *Kelo*, the sheer appeal of money superseded the property rights of citizens.

O’Connor’s Decisions in Writing a Dissent for *Kelo*

As we will see, with the help of a dissenting opinion, Susette Kelo ultimately did not lose her battle despite the discouraging ruling of the majority. As one of the four dissenters in the case, O’Connor needed to write a dissent that bridged past and present in a way that could bring hope for the future, because, as Eric Rutkow noted in Harvard’s *Environmental Law Review*, the majority’s ruling “is particularly difficult to insulate from abuse by the politically and economically powerful at the expense of the disenfranchised, whose property rights are often all they have to repel developers seeking quick profits” (269).

In addressing the past, O’Connor faced a significant hurdle. O’Connor authored majority opinion in *Hawaii Housing Authority v. Midkiff* (1984), which was not only the last case on eminent domain that came before the Supreme Court, but also one of the main cases cited as precedent in the majority’s opinion for *Kelo*. In *Midkiff*, a case involving the breaking up of a land oligopoly, the Court questioned the constitutionality of the Hawaii legislature’s transferring land from one private owner to another in the interest of serving a *public purpose*, which is parallel to the question before the Court in *Kelo*. In *Midkiff*, O’Connor, however, severely limited the role of the courts in overseeing eminent domain cases and did not leave a voice or framework for dissent: “[O]ur cases make clear that empirical debates over the wisdom of takings—no less than debates over the wisdom of other kinds of socioeconomic legislation—are not to be carried out in federal courts” (O’Connor, *Midkiff* 6). Not only did O’Connor narrow the door through which eminent domain cases could enter the courts, but she also reaffirmed the Supreme Court’s stance that “rejected any literal requirement that condemned property be put into use for the general public” (7). In concluding her opinion, she removed the Supreme Court from the system of checks and balances by stating, “Judicial deference is *required* because, in our system of government, legislatures are better able to assess what public purpose should be advanced by an exercise of the taking power” (emphasis added). With such strong, definitive statements about the wide bounds of public use and the limited role of the courts in *Midkiff*, O’Connor needed to replace her previous firm, dismissive rhetoric with a more unifying, affable rhetoric that did not stifle the voices of property owners through her dissent from the majority in *Kelo*.

Although judging by O’Connor’s opinion in *Midkiff* it seems almost ironic that she would

not rule with the majority in *Kelo*, O'Connor clearly had a bad premonition about the future of eminent domain, because *Kelo* explicitly gave municipalities the go-ahead to assume numerous powers to revamp their towns in areas where the constitutionality of takings was previously somewhat gray. Interestingly and similarly, a number of O'Connor's opinions on affirmative action cases were written on the basis of a gut instinct, as University of California law professor Vikram David Amar noted, "Justice O'Connor's intuitions have significant constitutional traditions behind them . . . her gut instinct is often an important one to understand and examine" ("Of Hobgoblins"). Relying on her *gut instinct*, O'Connor believed the majority's ruling left too much room for eminent domain abuse, which led her to become mindful of her need to craft a dissent that would translate from the legal to the public realm, ultimately with hopes of continuing the debate in another public arena, as we will later see in the rhetorical analysis of her opinion.

Of equal importance as following one's instinct, however, is maintaining credibility. It would be hard to lend O'Connor any credence if she simply contradicted her opinion in *Midkiff*. O'Connor, therefore, faced the important decision of whether to argue for overruling a number of cases on which the decision in *Kelo* was based or construct an argument that could work within court precedent. O'Connor's style corresponds more with the latter option, as her rulings "invoke notions of reliance (suggesting that judges should not change course because society has already structured itself around past rulings) to support applying the doctrine of *stare decisis* (Latin for 'let the decision stand')" (Amar, "The Courts").

Ultimately, O'Connor chose to work within precedent, setting *Kelo* apart from the other cases decided, which was indeed a risky move. In working within precedent, O'Connor had to translate legal jargon while employing numerous rhetorical devices in order for the public to be reached. Since she was not arguing for overturning, O'Connor needed to capture both the public (for support) and legislators (for action) in bringing justice to *Kelo*. O'Connor, however, was the only sitting justice with any legislative experience, giving her an edge knowing where to direct her arguments and rhetoric (Amar, "The Courts"). Knowing the strains the public places on elected officials, O'Connor realized that by using constitutive rhetoric to unify the public with a common language, her dissent could enter the realm of public discourse.

Rhetorical Features of Justice O'Connor's Dissent

Through the power of constitutive rhetoric in Justice O'Connor's dissenting opinion, Susette Kelo and others like her are given a fresh impetus to continue a dialogue. O'Connor realizes that in order to effectively foment discontent with the Court's ruling, her dissent must be written in the vernacular of the people. This type of judicial translation is strongly advocated by White, who explains that it is essential for justices "[t]o begin to think in more than one language, more than one voice, and thus to locate the particular practices of a discourse in the larger context of the rest of what we know and are" (*Justice* 79). O'Connor adds an element of familiarity to her dissent through her word choice, which makes the opinion pervious to the general public. Through the language of court opinions—specifically, word choice—justices can invite citizens into their understanding or banish them from ever entering their realm of thought. Appealing too much to the emotions may cause a judicial opinion to be dismissed as maudlin, whereas a discourse characterized by legal parlance may be rejected as indiscernible. A court opinion that is too complex and proves to ensnare the public in confusion serves as an injustice. Yet, O'Connor acts as an effective decipherer and translator. O'Connor takes the concerns of a group of citizens, translates them into her legal realm, decides an appropriate

course of action, and justifies her decision not with the legal language on which she based it, but with a language common to the citizens to which her judgment applies. Her translation bridges the legal and public realms, enabling her to effectively reach an audience and propel our ever-evolving democracy forward.

From the very beginning of her dissent, O'Connor's use of colloquialisms allows her to adopt an affable tone in her otherwise pedagogical, persuasive purpose. O'Connor writes, "Under the banner of economic development, all private property is now vulnerable to being taken and transferred to another private owner, so long as it might be upgraded—i.e. given to an owner who will use it in a way that the legislature deems more beneficial to the public—in the process" (*Kelo* 11). Straying away from legal jargon, O'Connor uses words like "banner" and "upgraded," which exist in the vocabularies of all Americans, regardless of education or class. With this approach, she maintains the ability to reach all sectors of the public and deliver a message: your rights as a property owner are no longer definite or secure. O'Connor then alludes to the constitutional implications, only gently, with another colloquialism, as she states, "[to] render economic development takings 'for public use' is to wash out any distinction between private and public use" (12). Again, O'Connor uses a familiar phrase, "to wash out," to explain a topic unfamiliar to most Americans, as she essentially describes the deterioration of the public use safeguard in the Takings Clause.

O'Connor then substantiates her claims of deterioration with an argument for interpreting the Constitution in a way that gives every word a meaning: "When interpreting the Constitution, we begin with the unremarkable presumption that every word in the document has independent meaning, that no word was unnecessarily used or needlessly added" (*Kelo* 13). In other words, when reading and interpreting the Constitution, we assume something "unremarkable," something naturally expected; we assume that in drafting the Constitution, our Framers avoided redundancy, leaving us with a document in which all words serve a purpose—none linger within the text "unnecessarily" or "needlessly." Since no redundancy exists, the two separate elements—the public use and fair compensation constraints—of the Takings Clause are imperative because "[t]ogether they ensure stable property ownership by providing safeguards against excessive, unpredictable, or unfair use of the government's eminent domain power." This line of common adjectives—"excessive," "unpredictable," and "unfair"—lists the three abuses of government that the public is supposedly protected from by a system of checks and balances.

In the system of checks and balances, O'Connor establishes what White would describe as "a character—an ethical identity, or what the Greeks called an *ethos*—for oneself, for one's audience, and for those one talks about, in addition one proposes a relation among the characters one defines" ("Law as Rhetoric" 691). In building her foundation for authority, O'Connor states, "But were the political branches the sole arbiters of the public-private distinction, the Public Use Clause would amount to little more than hortatory fluff" (*Kelo* 13). Without the judicial check on the actions of legislatures, the clauses of our Constitution would become "hortatory fluff," which is exhorting and encouraging, but nothing more than an inconsequential add-on. O'Connor finds her position as constitutional arbitrator between municipalities and property owners, because it would be dangerous for the legislative branch exclusively to decide and label which takings are public or private.

Upon establishing her identity and responsibility to all stakeholders—the Constitution, property owners, and municipalities—O'Connor, then, is able to adopt an amicable, animated approach to reaching a solution that does not reduce the matter by simply sending the problem of interpretation back to the states, as the majority recommended in following precedent. O'Connor is interested in

encouraging a further discussion until property rights under the Takings Clause are honored. In her most widely quoted paragraph, O'Connor writes,

The logic of today's decision is that eminent domain may only be used to upgrade—not downgrade—property. At best this makes the Public Use Clause redundant with the Due Process Clause, which already prohibits irrational government action. . . . The Court rightfully admits, however, that the judiciary cannot get bogged down in predictive judgments about whether the public will actually be better off after a property transfer. In any event, this constraint has no realistic import. For who among us can say she already makes the most productive or attractive possible use of her property? The specter of condemnation hangs over all property. Nothing is to prevent the State from replacing any Motel 6 with a Ritz-Carlton, any home with a shopping mall, or any farm with a factory. Cf. *Bugryn v. Bristol*, 63 Conn. App. 98, 774 A. 2d 1042 (2001) (taking the homes and farm of four owners in their 70's and 80's and giving it to an "industrial park"); *99 Cents Only Stores v. Lancaster Redevelopment Authority*, 237 F. Supp. 2d 1123 (CD Cal. 2001) (attempted taking of 99 Cents store to replace with a Costco); *Poletown Neighborhood Council v. Detroit*, 410 Mich. 616, 304 N. W. 2d 455 (1981) (taking a working-class, immigrant community in Detroit and giving it to a General Motors assembly plant), overruled by *County of Wayne v. Hathcock*, 471 Mich. 415, 684 N. W. 2d 765 (2004); Brief for the Becket Fund for Religious Liberty as *Amicus Curiae* 4-11 (describing takings of religious institutions' properties); Institute for Justice, D. Berliner, Public Power, Private Gain: A Five-Year, State-by-State Report Examining the Abuse of Eminent Domain (2003) (collecting accounts of economic development takings). (16)

In her construction, O'Connor is careful to create neither a hyper-legalistic argument nor a reductionist argument; O'Connor instead insists that the interpretation of the majority is unconstitutional, in an argument that inspires by her choice of common words creating familiar metaphors and honest imagery. Repeating the strategy we saw her use in her opening, O'Connor begins her argument by explaining the court's position on "upgrad[ing]—not downgrad[ing]—property." By using the metaphors "upgrade" and "downgrade," O'Connor is able to associate unnaturalness with the Court's ruling by terms that are understandable to the general public. Later in the paragraph, she creates a chilling tone, as she claims, "The specter of condemnation hangs over all property." Horridly, the possibility of takings now looms like a ghost over all houses and private properties, resulting in imagery that is frightening enough to evoke response. O'Connor's use of imagery allows her to create a judicial opinion that mimics everyday conversation, which is important because the "affirmation of ordinary language . . . provides a ground for challenge and change, a place to stand from which to reformulate any more specialized language" (White, "Law as Rhetoric" 701). Furthermore, through her employment of "ordinary language," O'Connor encourages citizens to imagine the consequences of the judgment of *Kelo*. In O'Connor's last sentence of the paragraph, she offers a picture of the possible injustices faced due to unchecked measures of eminent domain: a place of practical lodging replaced with extravagance, a domicile replaced by a business, a farm replaced by a factory more remuneratively productive. With her imagery, we see what forms the basis of our communities and landscapes altered for what is more profitable.

What is additionally noteworthy about this often-cited paragraph is O'Connor's treatment of "homes," as opposed to the generic "properties" of the majority's opinion. By specifying homes not

only in this paragraph but throughout her opinion, O'Connor reminds the public what is at stake. Quite literally, *Kelo* is about property rights, but more specifically and importantly to O'Connor, it is about homes. University of Tulsa School of Law professor Marc Roark explains the significance of this word choice: "Justice O'Connor's dissent from the majority is filled with compelling imagery designed to animate the properties and houses towards specific properties: instead of property, she talks about 'homes'" (373). Indeed, "home" conjures more intimate emotions compared to "house," which need not necessarily refer to one's own home. The most common idiomatic expression associated with home is an expression of relief and comfort, "home sweet home," whereas with house, it is an expression to signify something for free, "on the house."

The use of "home" instead of "house" is recurrently found throughout O'Connor's dissent. This word choice proves not only to be a useful rhetorical strategy in appealing to the public's emotions, but also to contribute to the establishment of constitutive rhetoric. The specific word choice of justices like O'Connor is what binds us and our material world to the law: "[I]mages created by constitutional language tend to define what the parameters of the Constitution are supposed to inhere to" (Roark 387).

O'Connor is careful to leave no part of her opinion inaccessible. Realizing that the cases she is using as precedent to support her arguments may not be written in a way the public can understand, O'Connor adamantly continues her role as translator when citing case precedent. Precedent is not given in a laundry-list fashion, which is how precedent is normally referred to in Supreme Court opinions, including the last eminent domain opinion that she authored in *Midkiff*. O'Connor adopts a different approach to making the precedent relevant to public discourse; instead of simply listing cases, O'Connor also gives a short explanation of each case in parentheses, which serves to make previous court rulings and opinions not only more accessible to the general public, but also more relevant to the public's sphere of dialogue that can be created through the framework given in her dissent. For example, as O'Connor makes apparent, in *Poletown*, houses were taken to build a GM plant; in other words, a community was lost so a factory could be built. In *99 Cents Only Stores v. Lancaster Redevelopment Authority*, we see an attempted taking by a bigger, more powerful retailer, Costco, which serves as an alarming example of the big bullying the small. O'Connor produces ample evidence for us to see how eminent domain has been abused and provides ample reason for us to be livid. Through the constitutive rhetoric of her opinion, O'Connor binds members of the public around an issue they can understand. Additionally, since she so successfully attained White's ideal of translation, she did not have to rely on overturning precedent cases. Overall, O'Connor gives the public an opinion that is personal, one it cannot help but relate to.

Consequences of O'Connor's Dissent

O'Connor did not create a dissent that would exist solely in a volume of the *United States Report*; she created an opinion that was rhetorically persuasive enough to live outside the judicial realm. In her simplistic style and word choice, O'Connor translates her legal reasoning into everyday language, creating a judicial opinion that is effectively conversational. Also, recognizing that her argument can be won only through the public's urging of lawmakers, O'Connor stays away from legal verbiage and complex sentence structure. Through her use of constitutive rhetoric, O'Connor is able to unite citizens together with a common language to spark a continued conversation. A telltale sign of her effect is the 109th Congress Senate hearing on the *Kelo* decision, where her dissent is quoted throughout. For example, at the Senate hearing, Steven Eagle, professor of law, spoke of the effect of

O'Connor's dissent on the American public: "Justice O'Connor's statement which is now so famous about the Motel 6 being replaced with the Ritz Carlton struck such a resonant chord in the American people" (17). O'Connor's assertiveness and tone of grave warning gave the public a reason for protest. To her advantage, O'Connor establishes herself as a judge representing the public—not small but powerful sectors.

From the outcry of the public, members of the House and Senate responded and continued the conversation introduced by O'Connor, and through legislative acts, her dissent became more powerful than the ruling of the Court in *Kelo*. Subsequent to the Senate hearing, numerous states enacted bills prohibiting or severely inhibiting the use of eminent domain. For example, Florida passed one of the most notable post-*Kelo* bills, which "forces localities to wait 10 years before transferring land taken by eminent domain from one owner to another—effectively eliminating condemnations for private commercial development—and forbids the use of eminent domain to eliminate so-called blight" ("Citizens Fighting Eminent Domain Abuse").

O'Connor successfully raises a question: Are tax-revenue-raising, property-transferring projects that destroy local homes and businesses really serving the people better? What is good for Taco Bell, Target, or any other business is not necessarily good for our communities or America as a whole—although they can raise money for the municipalities, "we are cannibalizing each other's land in our zeal to keep on building America" (Main). O'Connor's dissent helped us to find a democratic solution to a despotic abuse of municipalities. Citizens were able to get protection from economic redevelopment eminent domain takings written into their state statutes through grassroots actions and voicing the concern enough to make it a talking point in local elections. Public officials, wishing to become elected or wishing to stay in office, quickly realized that they had to listen to public concern and safeguard the property of the citizens. Ultimately, O'Connor's use of constitutive rhetoric successfully preserved the Constitution and the Fifth Amendment rights of the people under the Constitution.

Although O'Connor left the interpretation of *public purpose* out of the Court's reach by not arguing to overturn past cases, she authored an exemplary dissent by actively doing the sort of translating that White advocates in judicial opinions. By meeting his criteria of translation, her dissent is able to move beyond courts. Through O'Connor's mastery of constitutive rhetoric and utilization of the vernacular of the people, each side of the case receives the means to reach a compromise, because a judicial opinion "at its best . . . can work as a way of respecting the human beings on both sides of a controversy by giving each something to say that is appropriate to their legitimate needs and to the character of the relation that exists between them" (White, *Justice* 202). Through constitutive rhetoric, O'Connor shows that we can sometimes create discourse and conversation that is more powerful than even a ruling of the highest court. Eventually, with the help of O'Connor, Susette Kelo kept her home after the governor issued a moratorium on eminent domain takings in Connecticut. O'Connor, in creating a discourse that can be critically analyzed, understood, and utilized by the general population, is able to bind our communities together, uphold our Constitution, and, consequently, sustain our evolving democracy.

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