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When Property Rights and the Public Good Clash

CIVITAS
Delaware/Georgia

Lesson Plan
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“Not for Sale!”

When Property Rights and the Public Good Clash

In this lesson, students will analyze a case involving a government’s use of eminent domain powers to construct an understanding of property rights and how they might be viewed as essential protections for citizens in a constitutional democracy. Using the U.S. Constitution and the Constitution of the Republic of Georgia, students will compare how two constitutional democracies view property rights. Students will also engage in a mock public hearing to decide whether eminent domain should be used for purposes of economic development.

Rationale:

Effective citizens must understand that, while governments can do enormous good, they also possess a massive amount of power and resources that pose serious threats to individual liberties. Our economic freedom depends on our ability to exercise property rights. Developing citizens can acquire the dispositions (e.g., vigilance, willingness to participate) needed to secure individual rights by examining cases involving possible encroachments by government. Students must also realize that individual rights must be balanced by a consideration of the public or common good and that, sometimes, advancing the common good requires citizens to sacrifice “alienable” rights.

Grades: 6-8

Content Narrative (for the teacher):

Delaware Civics Standard 3 [Citizenship] for grades 6-8 states that students will understand that property rights secure economic freedom and that they are essential protections for United States citizens.

Economic freedom refers to the ability to own, control, and make decisions about the use of one’s resources. It is sometimes defined and measured in light of certain rights and the degree to which those rights are protected. Such rights include but are not limited to choosing one’s work, changing employment, joining labor unions and professional associations, establishing and operating businesses, and entering into lawful contracts.

Economic freedom may also be analyzed through the lens of property rights. Examinations of property and property rights can be complex undertakings as they are classified under several headings that include personal (i.e., tangible or intangible), intellectual (i.e., copyright and patent), or real (e.g., homes or land). This lesson focuses on real property.

Stated simply, property rights include rights to acquire, own, use, transfer, and dispose of property as well as to exclude others from using that property. The connection between property rights and economic freedom can be made clear by pointing out that one cannot claim to be free in an economic sense unless he or she can acquire, own, use, transfer,

and dispose of property in a manner of his or her choosing and also be able exclude others from using that property.

“Anglo-American constitutional thought has long assigned a high place to the rights of property owners.” The Magna Carta protected owners of property except by “the law of the land.” At our nation’s founding, Thomas Jefferson incorporated natural law ideas borrowed from John Locke that stressed the rights to “life, liberty and property” and the connection between those rights and political freedom. Locke argued that private property existed before government was formed and that a principal purpose of government was the protection of that property. Respect for private property came to be viewed in colonial America as a “bulwark” against arbitrary rule (Hall, 2002).

Despite the revolutionary generation’s demands to respect property rights, the period during and immediately after the War for Independence was characterized by contradictory behavior as states seized the property of those who remained loyal to Great Britain and repudiated debts owed to British creditors. The decision to replace the Articles of Confederation with the Constitution was motivated partly by an attempt to prevent what some viewed as arbitrary assaults on property rights by building stronger safeguards in the new plan of government.

A deep understanding of property rights and economic freedom requires citizens to understand that property rights, like other rights, are not absolute. There are circumstances in which individual property rights might justifiably be subordinated to the public good. Recognizing this, most nations like the United States and Georgia have provisions in their constitutions or laws that allow governments to take private property for “public use” or “pressing social need” (see Handout 4 “Comparing Constitutions”). The power of a government to compel owners of a real or personal property to transfer it, or some interest in it, to the government is called “eminent domain.”

In the United States, the “takings clause” and eminent domain are anchored in the Fifth Amendment to the Constitution. It 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.”

There are two aspects of this provision that are worth noting. First, the “takings clause” appears alongside the due process clause that suggests that the procedures a government uses to “take” property must be fair. Government is also required to give “just compensation” to those from whom property is taken. Indeed, there are even cases in which governments have been required to grant compensation despite the fact that individuals never had to surrender property (e.g., when the construction of an airport lowers the value of neighboring homes).

Perhaps the most contentious aspect of the “takings clause” is the broadly worded requirement that takings must be for “public use.” Just what “public use” involves has been debated throughout the nation’s history. Traditionally, public uses for which the power of eminent domain have been authorized include the building of schools, parks,

roads, highways, subways, fire and police stations, and public buildings as well as the elimination of blight through redevelopment. In recent years, however, efforts to expand the meaning of “public use” to include economic development have been launched. In other words, state and local governments have exercised the power of eminent domain to take property from one private party (e.g., a homeowner) in order to give it to another private party (e.g., a corporate developer) for reasons such as increased tax revenue. In the Kelo case, the City of New London, Connecticut, transferred its power of eminent domain to a private corporation.

What protection does the Fifth Amendment’s public use requirement provide for individuals whose property is being condemned—not to eliminate slums or blight—but for the sole purpose of “economic development” that will perhaps increase tax revenues and improve the local economy. (FindLaw)

Supreme Court Decides

On June 23, 2005, the United States Supreme Court handed down its decision in *KELO et al. v. CITY OF NEW LONDON et al.* A divided Court held that “Those who govern the City [New London] were not confronted with the need to remove blight in the Fort Trumbull area, but their determination that the area was sufficiently distressed to justify a program of economic rejuvenation is entitled to our deference...the City has invoked a state statute that specifically authorizes the use of eminent domain to promote economic development. Given the comprehensive character of the plan, the thorough deliberation that preceded its adoption, and the limited scope of our review, it is appropriate for us, as it was in *Berman [v. Parker]*, to resolve the challenges of the individual owners, not on a piecemeal basis, but rather in light of the entire plan. Because that plan unquestionably serves a public purpose, the takings challenged here satisfy the public use requirement of the Fifth Amendment.”

The Court then sent a signal to state legislatures. “We emphasize that nothing in our opinion,” Justice Kennedy wrote, “precludes any State from placing further restrictions on its exercise of the takings power.”

Within a month of the Court’s decision, newspapers reported that states were rushing to pass legislation aimed at preventing local governments from seizing homes and turning the property over to developers. On July 17, Delaware’s Governor Ruth Ann Minner signed into law Senate Bill 217 [143rd General Assembly], which allows the power of eminent domain to be used “for the purposes of a recognized public use.” While *The News Journal* interpreted the legislation to restrict the use of eminent domain for “public buildings, utilities, and roads,” the broad wording of the legislation may suggest otherwise.

Concepts Addressed: property rights, economic freedom, and eminent domain.

Delaware Benchmark[s] Addressed:

- **Civics 2** [Politics]: Students will understand the principles and content of major American state papers such as the United States Constitution (including the Bill of Rights).
- **Civics 3** [Citizenship]: Students will understand that civil rights secure political freedom while property rights secure economic freedom and that both are essential protections for United States citizens.
- **Civics 4** [Participation]: Students will follow the actions of elected officials and understand and employ the mechanisms for communicating with them while in office.

National Standards Addressed:

Students will be able to evaluate, take, and defend positions on issues involving economic rights.

To achieve this standard, students should be able to:

- Identify important economic rights (e.g., the right to own property).
- Explain the importance of such economic rights (e.g., right to acquire, use, transfer, and dispose of property) to the individual and to society (National Standards for Civics and Government, p. 76).

Essential Questions Addressed:

- What are some property rights that individuals possess? [Civics 3]
- To what extent do property rights define an individual's freedom? [Civics 3]
- How might property rights secure economic freedom? [Civics 3]
- Why might property rights be viewed as essential protections for American citizens? [Civics 3]
- Why might governments around the world have the power of eminent domain? [Civics 2]
- Should individual property rights be limited? [Civics 2]
- How might the power of eminent domain be both an asset and a threat to citizens? [Civics 2]

Objective[s]:

At the conclusion of this lesson, students will be able to:

- Identify the property rights guaranteed to citizens in a democratic society.
- Explain why property rights are viewed as essential protections for citizens of a free society.
- Explain why governments typically possess the power of eminent domain.
- Explain how the power of eminent domain might be abused.
- Explain why citizens in a democratic society have a responsibility to remain informed and monitor the actions of government.

Student Vocabulary:

- abrogate
- alienate

- compensation
- due process
- eminent domain
- fair market value
- impermissible
- revenue
- takings clause
- violation

Time Required: 2-3 class periods.

Materials:

- Handout #1: *Analyzing Economic Freedom*
- Handout #2: *Graphic Organizer – Elements of Economic Freedom*
- Handout #3: *Formative Assessment – Property Rights*
- Handout #4: *Comparing Constitutions*
- Handout #5 – *Kelo Case Story*
- Handout #6 – *Story Map*
- *Handout #7 - Assessments*

Tasks to Complete Before the Lesson:

- Assign students to the Mock Public Hearing roles that are described in Step VI of the Procedures section.

Procedures:

- I. **Warm-ups:** Introduce the lesson by asking students the following questions:
 - a. Would you consider yourself free if you...
 1. Went into a store but were not allowed to buy anything? **right to acquire property**
 2. Bought a pen but were only allowed do homework with it? **right to use property**
 3. Lived in a home but were never allowed to own it? **right to own property**
 4. Owned a book but could never give it away? **right to transfer property**
 5. Owned a bike but could not stop others from using it? **right to exclude others from using property**
 - b. Hold up piece of property (e.g., pencil or mug). Ask the students “*If you were truly free in an economic sense, what would you be allowed to do with this?*” Write their responses on the board. You will return to this list in a few minutes.
 - c. Project a copy of Handout 1 – *Analyzing Economic Freedom* onto a screen (or distribute copies of the handout to the students). Ask students to look at the illustration found on Situation 1 – “Woman Shopping for Clothes.” Ask the

questions at the bottom of the page. Do the same for Situation 2 – “House Sold.” Accept reasonable responses from the students.

- d. Present the “economic freedom” graphic organizer located on Handout 2 to students. Explain that economic freedom may be analyzed through the lens of property rights. Tell them that economic freedom exists when individuals are able to *acquire, use, own, and transfer* or *dispose* of property in a manner of their own choosing. A person should also be able to *exclude* others from using their property if economic freedom exists.
- e. Return to the list of responses that students gave to the prompt in Procedure Ib. and that you recorded on the board. Ask the students to work with a partner to categorize appropriately each of the responses on the board under one of the following headings: *acquire property, use property, own property, transfer property, dispose of property, or exclude others from using property*. After a few minutes, ask students to share with the class their groupings. Correct any errors or misconceptions.
- f. Present the list of property rights to students and ask them to work in groups and come up with at least 1-2 examples of an exercise of each property right. Have them share their examples after a few minutes.
- g. Distribute copies of Handout 3 – the blank “economic freedom” graphic organizer (Formative Assessment). Have students fill in the categories of property rights on the blank graphic organizer. Ask, “What are the rights considered essential to economic freedom?”

II. Violations of Property Rights: Present the students with the following cases one at a time. Ask the students to read each case and decide first, was any property right violated and, if so, which property right might have been violated?

- a. Ryan buys a bike. Sean asks if he can ride it. Ryan says no. Sean jumps on the bike and takes it for a ride.
- b. Jordan goes into a grocery store and sees a pair of shoes that she wants to buy. The store owner tells her that she cannot buy that pair of shoes.
- c. Alysia just finished reading her new book and decides to give it to her best friend Antonio. Alysia is told that she can only give it to someone in her family.
- d. After Kylie buys a new radio, the store manager tells her that she has to wait three weeks before she turns it on.
- e. Mr. and Mrs. Roberts have been living in their house for almost 15 years. Mrs. Roberts receives a letter from the government which states that the government is going to take her house so that a new road can be built across her property.

III. Document Analysis: Distribute copies of Handout #4 – *Comparing Constitutions*.

The two readings are from the U.S. and Georgia Constitutions. The excerpts that appear on this handout describe a power that the governments of the United States and Georgia share. Ask the students to read the excerpts and be able to identify the power that is granted to both governments. Ask students to volunteer their answers. [Optional – As an extension activity you may want to have students construct a Venn

diagram that illustrates the similarities and differences between the U.S. and Georgia Constitutions as they relate to the power of eminent domain.]

IV. Content Presentation – Eminent Domain: Present the following ideas to the students:

- a. Economic freedom is the ability to own, control, and make decisions about the use of one’s resources.
- b. Those who live in free societies possess property rights that include the rights to acquire, own, use, transfer, and dispose of property in a manner of one’s own choosing. A person who owns a piece a property also has the right to exclude others from using that property.
- c. If a person did not have the ability [rights] to acquire, own, use, transfer, and dispose of property in a manner of one’s own choosing, he or she could not claim to be free in an economic sense. In essence these property rights are essential protections of economic freedom.
- d. Most, if not all, governments have the power to compel property owners to transfer their property, or some interest in it, to the government for public use.
- e. Governments hold enormous power which can, and often is, abused. One of the main responsibilities of citizens in a democratic society is vigilance i.e. monitoring those who hold power to insure that individual liberties are protected.
- f. People and governments are often required to make difficult choices between the common good and individual rights.

V. Case Studies: Present the following cases to students one at a time. Ask students, “In which of the following cases should government be permitted to use its “takings” power?”

- a. **Case 1** to expand a road?
- b. **Case 2** to build a school?
- c. **Case 3** to build a hospital?
- d. **Case 4** to drill for oil?
- e. **Case 5** to build a fire station?
- f. **Case 6** to build a police station?
- g. **Case 7** to replace a blighted area?
- h. **Case 8** to build a sports stadium?
- i. **Case 9** to build a casino?

VI. Debrief: Explain to students that the “takings clause” (eminent domain) traditionally is used in two situations to:

- a. Provide public services (e.g., roads, hospitals, fire houses).
- b. Clear and replace economically “blighted” areas.

VII. Extended Case Study (Kelo v. New London): Tell students that they are now going to read about a case involving a conflict between individual property rights and the application of eminent domain (i.e., the “takings clause”). They will be asked to

play the roles of various parties in the case to try to persuade a group of officials that the principle of eminent domain should or should not be used.

- a. Before Reading Activity: Pre-Reading Prediction. Tell students that you are going to present them with a list of ten words from the case story that they are about to read. Ask them to use some or all of the words on the list to construct a brief paragraph in which they predict what the reading will be about. Invite students to share their predictions.

1. Pre-Reading Prediction Words

- Government Dream
- Refuse Taking
- Home Purchase
- Problem Sell
- Company Redevelop

- b. Case Reading: Have students read Handout #5 – *Kelo Case Story*.
- c. Post-Reading (Comprehension) Exercise: Story Map. Distribute copies of Handout #6. Ask students to visualize the scenes from key points in the story and to draw them onto the four storyboard boxes found on Handout 4. Then, ask them to write brief sentences under each boxed drawing describing what happened at each phase of the story.
- d. Comprehension Check: Invite students to share their story maps. What were the key developments in the story?
- e. Problem Clarification: Tell the students that the story they read is based on true events and the case was recently argued before the Supreme Court of the United States. Suggest that the story raises important questions about individual property rights and government power. Ask students to identify the central problem and question in the case. The problem is that homeowners (or property owners) are challenging the government’s attempt to exercise its power of eminent domain. The central question is “Should the New London Development Corporation be permitted to exercise eminent domain powers for the purpose of furthering the economic development of the city?”

VIII. Mock Public Hearing: Conduct the following exercise.

- a. Prior to the lesson you should have assigned students to each of the following groups and play one of the following roles:

Arguing for the Use of Eminent Domain

- Group A: Member of the New London Development Corporation
- Group B: Representative from the Pfizer Pharmaceutical Corporation
- Group C: New London Chamber of Commerce – Supporter of Use of Eminent Domain for Economic Development

Challenging the Use of Eminent Domain

- Group D: Suzette Kelo’s Family
- Group E: Charles and Wilhelmina Dery
- Group F: Matthew Dery’s Family

- Group G: Institute for Justice – Oppose Use of Eminent Domain for Economic Development

Public Hearing Officials

- Group H: New London City Council

- b. Tell them that they are going to engage in a simulated public hearing involving the central question in the Kelo Case. They are to assume that the officials at the public hearing (i.e., New London City Council) have to decide whether they are going to permit the New London Development Corporation to use the “takings clause” to force the residents of Fort Trumbull to surrender their homes. Their task is to construct arguments for or against the claim that New London has a legitimate power to “take” the homes of the residents of Fort Trumbull for the purpose of enhancing the economic development of the city. The students in Group H must construct questions that they will pose to each group.
- c. Allow 5-10 minutes for each group to construct their arguments and questions.
- d. Conduct the simulation. Have the students in Group H take seats at the front of the room. Invite each group to present their case to the City Council. Alternate presentations in the following manner: Group D, A, E, F, B, G, C. Allow members of Group H to ask questions at the conclusion of each presentation.
- e. Give Group H time to reach a decision after each presentation group has had an opportunity to present their case. Allow them time to explain their decision to the rest of the class.

Closure – Debrief: (see “Content Narrative” on pp. 3-5)

Conclude the lesson by drawing student attention back to the objectives and essential questions for the lesson. Ask students the following questions:

- What are some of the property rights that people in a free society possess? Give examples.
- To what extent do property rights define an individual’s freedom? [Civics 3]
- How might property rights secure economic freedom? [Civics 3]
- Why might property rights be viewed as essential protections for American citizens? [Civics 3]
- Why might governments around the world have the power of eminent domain? [Civics 2]
- Should individual property rights be limited? [Civics 2]
- How might the power of eminent domain be both an asset and a threat to citizens? [Civics 2]

Be sure to clarify any misconceptions or misunderstandings before concluding the lesson.

Sources Used

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States act to limit government's power to seize private property. The News Journal Wednesday July 20, 2005.

THE CALIFORNIA EMINENT DOMAIN HANDBOOK California Eminent Domain Law Group <http://www.eminentdomainlaw.net/power.html#whatisit>

KELO *et al.* v. CITY OF NEW LONDON *et al.* Findlaw <http://caselaw.lp.findlaw.com/cgibin/getcase.pl?court=US&navby=case&vol=000&invol=04-108>

Handout 1

Situation 1



The woman in this picture is looking around in a clothes store. Consider the clothes on the rack to suggest how she might demonstrate her economic freedom.

What might she do with the clothes that she is looking at?

Situation 2



The man in this picture just bought the house behind him.

*What might he do with the house to demonstrate his economic freedom?
Are there any circumstances in which the man might have his house legally taken away? If so, describe them.*

Handout 2

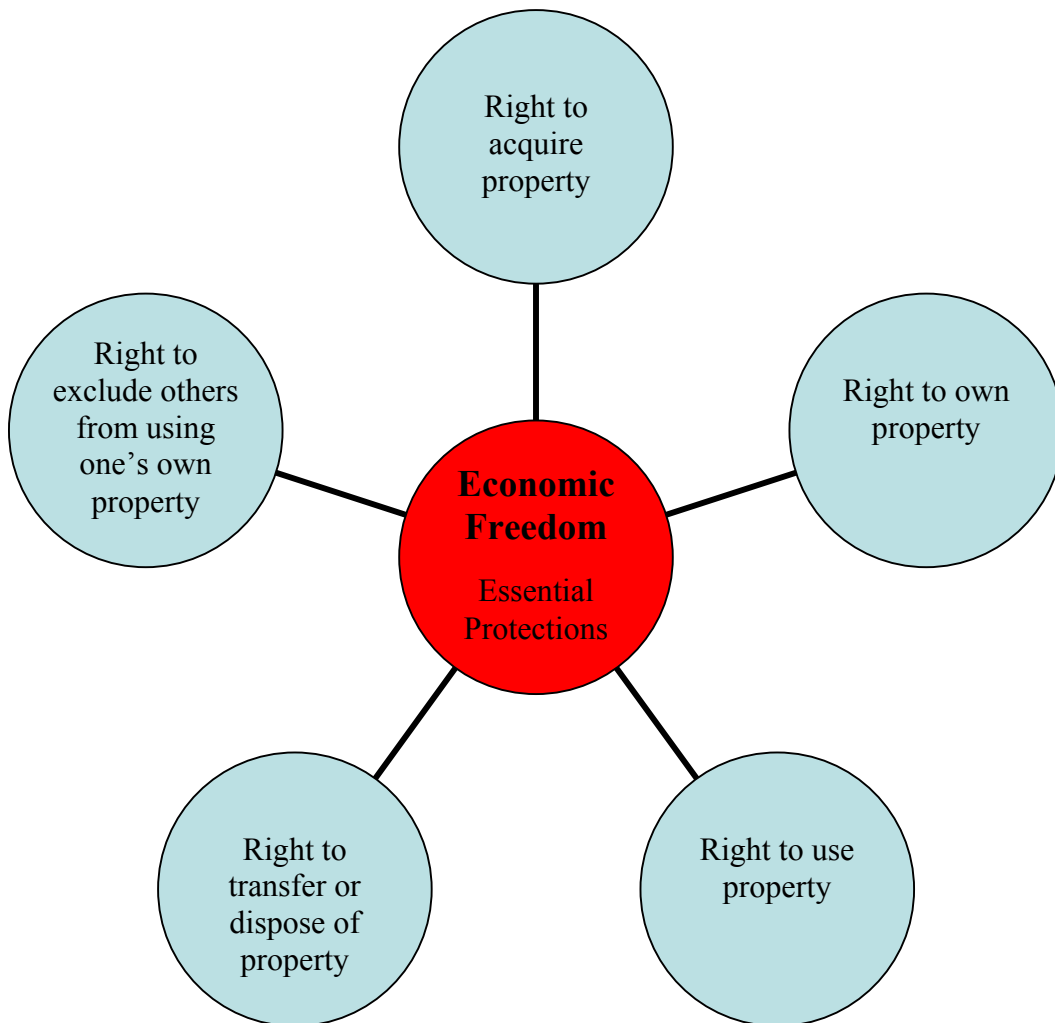
Graphic Organizer: Elements of Economic Freedom

Civics 3 [Citizenship]

Grades 6-8

Students will understand that civil rights secure political freedom while property rights secure economic freedom and that both are essential protections for United States citizens.

Property Rights that Are Essential Protections of Economic Freedom

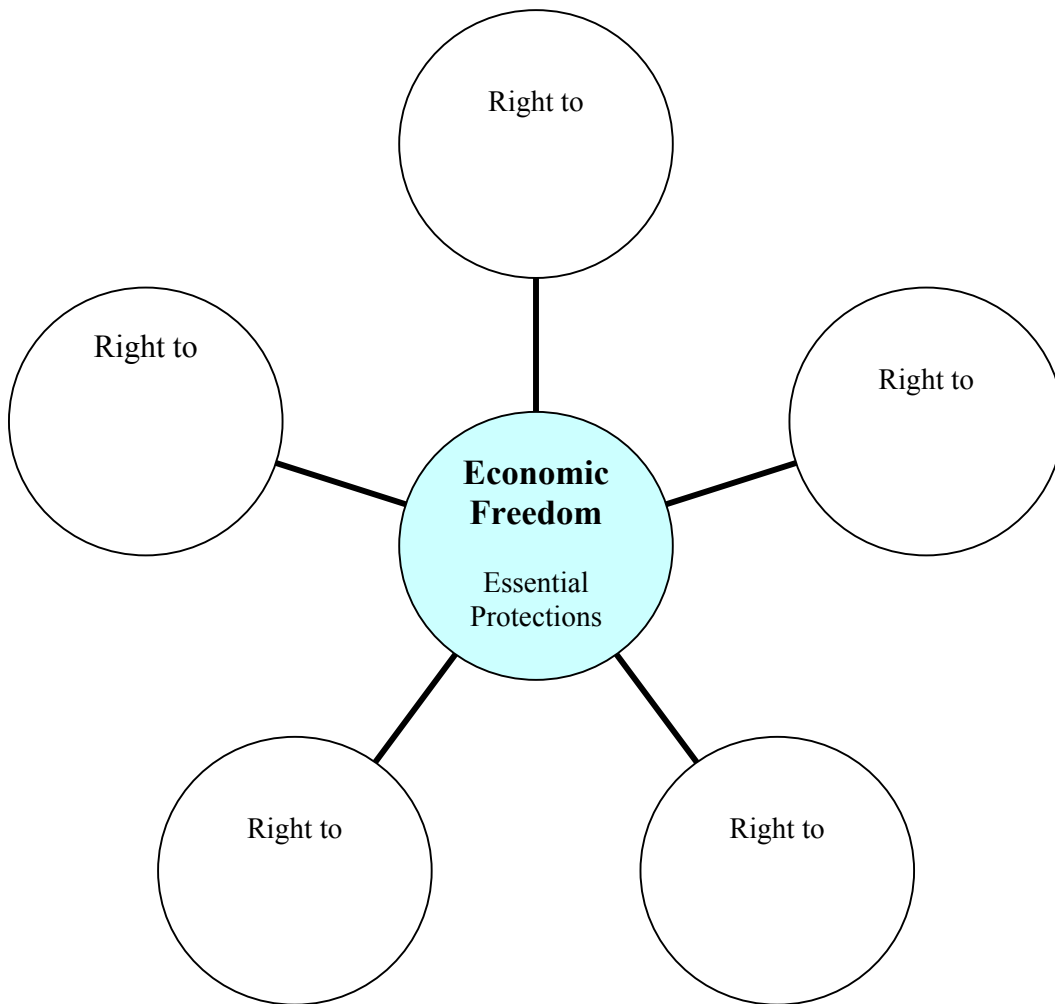


Handout 3

Formative Assessment: Property Rights

Name _____

Directions: Complete the graphic organizer that appears below by filling in property rights that are considered essential protections of economic freedom. Each circle should be used to identify one property right.



Handout 4

Comparing Constitutions

Directions: Read the excerpts from the Constitutions of the United States and the country of Georgia. Then, formulate responses to the prompts that appear below.

Constitution of the United States	Constitution of Georgia
<p>Amendment V</p> <p>“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.”</p>	<p>Article 21</p> <p>“1. The property and the right to inherit shall be recognized and guaranteed. The abrogation of the universal right to property, of the right to acquire, alienate and inherit property shall be impermissible.</p> <p>2. The restriction of the rights referred to in the first paragraph shall be permissible for the purpose of pressing social need in the cases determined by law and in accordance with a procedure established by law.</p> <p>3. Deprivation of property for the purpose of pressing social need shall be permissible in the circumstances as expressly determined by law, under a court decision or in the case of the urgent necessity determined by the Organic Law and only with appropriate compensation.”</p>

Questions:

1. What power is shared by the governments of the United States and Georgia?
2. In what ways are the two constitutions similar? In what ways are they different?

Activity:

Work with a partner to construct a Venn diagram illustrating the similarities and differences between the U.S. and Georgia Constitutions.

Handout 5 - The Kelo Case Story

Wilhelmina Dery is 85 years old. She was born in her house in the Fort Trumbull section of New London, Connecticut, in 1918. Her husband Charles is 87. The couple made the house their home at the time they married 60 years ago. Their son Matthew lives with his wife and son next door in a house that was given to him by his grandparents as a wedding present. Matthew's home has been in his family since 1903.

The Fort Trumbull section of New London sits along the Thames River. Over the years, the City of New London has suffered economically. A major cause of their economic problems was the closing of a naval base. The base closing cost the town 18,000 jobs. Job losses drove a number of people out of the city in search of new employment. As the demand for homes dropped, so too did the values of those homes.

New London's misfortune did not hurt everyone, however. Several years ago (1997) Susette Kelo landed an opportunity that fulfilled her dream of owning property (i.e., a home). Susette did not have a lot of money but got lucky when she was able to purchase a house with a view of the river for \$50,000 in Fort Trumbull. Susette's "fixer-upper" was located just down the street from the Dery family. Since moving in, Susette has made a lot of improvements to her home. She loves the view from her home, the people in the area, and the fact that she can get in a boat and be out on the ocean in less than ten minutes.

Ever since the New London naval base closed, the City Council has worked tirelessly to attract new businesses to the community in the hope of turning their city's economy around. With that goal in mind, the council approved the creation of a privately run New London Development Corporation (NLDC) to lead the redevelopment efforts for the city. Recently, City Council announced with great pride that NLDC had struck a major deal with an international drug company called Pfizer. Pfizer has agreed to build a \$270 million research facility in Fort Trumbull. Pfizer selected New London after NLDC agreed to develop the area around Fort Trumbull to make it an attractive place for the company and its employees. The development plan requires New London to build a luxury hotel for Pfizer's clients, upscale housing for its workers, and office space for its contractors. The plan also requires the city to renovate the state park, upgrade the sewage treatment plant, and begin an overall "redevelopment" of the Fort Trumbull neighborhood (next to Pfizer). The development plan involves 115 parcels on approximately 90 acres of land.

In addition to bringing new jobs into the city, New London expects to raise between \$680,544 and \$1,249,843 per year in property tax revenue if the NLDC economic development plan goes into effect.

"Not For Sale"

New London's City Council granted NLDC its power of eminent domain so that it could carry out the redevelopment plan. NLDC moved forward in its efforts to acquire the properties within the Pfizer economic development area. Whereas most of Fort Trumbull's property owners have accepted NLDC's offer of a "fair market value" for their homes as "just compensation" for the taking of their properties, seven property owners including the Dery's and Susette Kelo are challenging the use of eminent domain in this case. They argue that New London is taking private property and transferring it to *private* developers for the purpose of economic development (i.e., increasing tax revenue and creating jobs).

NLDC filed condemnation actions against those who refused to sell their property. In other words, the properties will be condemned and the owners will be required to leave.

Most of the people of Fort Trumbull area have moved on, leaving large parts of the neighborhood bulldozed amid rubble. About 80 homes and businesses are gone. As you read earlier, only seven property owners remain. Are their property rights protected?

Handout 6

Story Map

The Kelo Case Story

Directions: Draw four key developments in the story and then write a paragraph describing what is happening in each phase of the story.

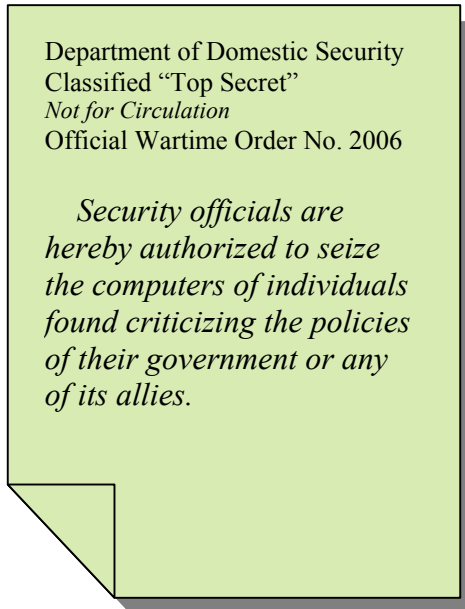
First

Next

Handout 7

Assessments

Item 1: Brief Constructed Response



How might the Constitution protect property rights and secure economic freedom?

Response

Item 2: Selected Response

Which of the following involves a violation of property rights?

- a. Brent wins a gift certificate then gives it away.
- b. Marcus buys a new iPod but does not let anyone else use it.
- c. Maria videotapes her favorite movie and gives it to her best friend as a present.
- d. Danielle receives a new dress as a present for her birthday then throws it in the trash.