

## Master of Your Domain

With the U.S. Supreme Court's June decision in *Kelo v. New London*, the truth of this column's conceit—that Rockford, Illinois, is a microcosm of America—has never been more clear. One of the running themes of this column since shortly after it began in 2001 as a “Letter From Rockford” has been the abuse of the power of eminent domain by local government. Now, the Supreme Court has essentially declared that Winnebago County and the city of Rockford were not guilty of abuse; they were simply ahead of the times.

*Kelo* has substantially removed state and local eminent-domain proceedings from review by the federal courts. For this reason, some libertarians have cheered the ruling, seeing in it the beginnings of a reversal of the Incorporation Doctrine by which the restrictions of the Bill of Rights (applied originally only to the federal government) have been extended to the states.

If only it were so simple. While it is true that the Fifth Amendment prohibition on taking private property “for public use, without just compensation” was never meant to apply to the states, it is also true that the amendment was never meant to serve as a summary of the common-law understanding of eminent domain—which did apply to all levels of government—but merely to ensure that, if eminent domain were exercised on the *federal* level (something that did not occur until 1876), “just compensation” would be provided. While it may seem otherwise to latter-day Americans who memorized the Bill of Rights in junior high, it is not self-evident that, if property is to be taken for “public use,” “just compensation” must be provided. The Framers, however, agreed that this was the right thing to do, and they codified their understanding in the Fifth Amendment.

The Fifth Amendment does point to one important aspect of the common-law understanding of eminent domain that bound all governments in America—local, state, and federal. Property could be taken only for “public use,” and this is where the foes of the Incorporation Doctrine who have greeted *Kelo* with enthusiasm are sorely mistaken. In the process

of removing federal-court oversight of state and local eminent-domain proceedings, the Supreme Court has expanded the concept of eminent domain to include circumstances that the common law would have flatly rejected—and, in so doing, has expanded the power of local and state governments to tyrannical levels. Post-*Kelo*, every governmental body can redistribute any property within its boundaries as it sees fit—as long as it can argue that the new owner will put it to better economic use than the previous one had. And who will judge whether the governmental body has proved its argument? According to *Kelo*, that judgment is left up to the governmental body itself, not the courts.

While, to many of the readers of *Chronicles*, taking a 40-acre parking lot from Wal-Mart and breaking it up into eight 5-acre homesteads is self-evidently a better economic use of the property, no local government will ever see it that way. The quality of the economic use of a property will be based almost entirely upon the aggregate of the monetary transactions that take place on that property—which is simply another way of saying that anyone who can promise that he will generate a greater combination of property taxes and sales taxes than you do automatically has a stronger claim to your property than you have. To cities such as Rockford, where many residents believe that developers have too much control over local government, the Supreme Court has said, “You ain’t seen nothing yet.”

In small towns and medium-sized cities across the United States, the most expensive block of homes does not come close to generating property taxes comparable to the combination of property taxes and sales taxes that would be generated by a Wal-Mart or a megamall on the same spot. (And, of course, most houses do not generate any sales taxes.) On the day that *Kelo* was handed down, the corporate attorneys in Bentonville, Arkansas, no doubt had to put on waders to protect their fancy cowboy boots from being stained by their drool.

Retiring Justice Sandra Day O’Connor, in a rare moment of clearheadedness, accurately summed up the import of this de-



cision in her dissent: “The beneficiaries are likely to be those citizens with disproportionate influence and power in the political process, large corporations and development firms.”

What is most surprising about the *Kelo* decision is not that the Supreme Court has redefined eminent domain; it is that the Court took so long to do so. In 2000, the city of Rockford initiated eminent-domain proceedings against the owners of the Torres Market, a Mexican grocery in the southwest quadrant of the city. At the time, there were no full-service groceries in the area, and, for several years, the Torreses had met the needs of this economically depressed, largely black and Hispanic neighborhood as best they could. When a local developer approached the city with a plan to place an IGA on the Torres property, it should have been obvious that he was trying to increase the chance that his proposed store would succeed by eliminating his only significant competition. (There were plenty of vacant properties on which the IGA could have been built.)

Shortly after then-mayor Charles Box announced that the city intended to take the Torres Market by eminent domain and to hand the property over to the developer of the IGA, I appeared on a local television talk show with the city’s director of community development, Barbara Richardson. When I pressed her to explain how the city could justify this redistribution of property under the traditional understanding of eminent domain, she replied that, “If you believe that government has any role in economic development, then you must believe that government can do whatever is necessary in order to facilitate economic development.” At the time, that seemed like a socialist argument; today, it is the law of the land.



## Letter From Queensland

by R.J. Stove

### Bland Rube Triumphant

Let us now praise famous Queenslanders, in particular the most famous Queenslander of the lot: Sir Johannes Bjelke-Petersen, who died, aged 94, on April 26. One of Australia's most sure-footed and most intuitively brilliant political leaders, Sir Joh, as everyone called him (though he received his knighthood only in 1983, it is now impossible to imagine him as plain Mr. Bjelke-Petersen), ruled his home state as premier from 1968 to 1987. By his tenure's length and ethos, he appalled the liberal commentariat, while being regarded by most of his subjects—"subjects" is *le mot juste*—with amused tolerance that often enough, when fueled by non-Queenslanders' snickering, flared into passionate approval. Queensland, in his time (and long before), had a seemingly ineradicable reputation as "the Deep North," awash with Faulknerian craziness. In more genteel Australian regions, it inspired an endless catalogue of jokes—mostly witless—about bananas, pineapples, and incestuous cross-burning rednecks. Not that its sovereign cared. The more vociferously *Ausländer* elements demonized him, the happier Sir Joh grew, the bigger the majorities he piled up in the state's unicameral legislature, and the more attractive Queensland's low-tax economy became to business investors of sometimes dubious morals but always impressive wealth creation. (Uniquely among state leaders of his time, Sir Joh achieved budget surpluses year after year.)

Readers nostalgic about America's gubernatorial populists of old—the Huey and Earl Longs, the George C. Wallaces, the Eugene and Herman Talmadges—can surely consider shedding a manly tear for Sir Joh, who exercised a similar electoral appeal. Yet, to the pantheon of such bosses, Sir Joh, head of Queensland's Country (renamed, in 1982, National) Party, contributed a distinctive new type:

the *drab* populist. He could not match Wallace's outbursts of fighting-cock temper, or Huey's impish taunts, or brother Earl's more languid rebukes ("Guv'nor, Ah'm with yo' when yo' right, not when yo' wrong." "Yo' stoopid S.O.B., Ah don't need yo' when Ah'm right!"). The elder Talmadge, displaying truly Whitmanesque egalitarianism, once interrupted an interview with Alistair Cooke so as to visit the lavatory. Sir Joh—a Lutheran pastor's son who boasted that he owed his political success to his daily Bible readings—would not have permitted himself such coarseness for all the mining profits in the Southern Hemisphere.

If he ever uttered a swearword, or even touched alcohol, friend and foe alike remained ignorant of the occasion. His visage, somewhat psittacine, revealed nothing; Providence had inscrutably lavished the ideal poker face upon one who abhorred card games. When you saw him on television (he had the mysterious gift of making even a color TV set look black-and-white), he gave no clue by his comportment as to whether he had won an election or lost it. Except that, until just before the very end, he always won. Like Eisenhower, he assumed with genius the role of bland rube, tangled in his own labyrinthine syntax. His reelections became as ceremonial as the changing of Buckingham Palace's guard, and much less dynamic. In 1969, 1972, 1974, 1977, 1980, 1983, and 1986, voters put him back in office. None save the most besotted psephologists remembers most of the luckless Labor Party candidates whom his electoral juggernaut turned, one after another, into roadkill. The only such candidate to achieve wider notice, 1983's Keith Wright, did so not on political grounds but because his taste for schoolgirls later sent him to a less-than-idyllic penitentiary.

New Class spokespersons railed against Sir Joh's electoral methods, notably the gerrymander by which the inhabitants of ghost towns possessed thrice or four times as much voting power as the citizens of Queensland's state capital, Brisbane. (With some accuracy, Sir Joh regarded Brisbane as part of the Soviet Empire and avoided the city whenever possible.) This gerrymander had antedated his rule by decades. He did not invent it; he merely perfected it. But though a

master of electoral malapportionment, he shunned electoral corruption. Apparently, he never wanted—certainly he never attempted—to imitate, let alone emulate, LBJ and Richard Daley, Sr., by granting suffrage to entire graveyards. He would have considered this not merely immoral but a waste of effort.

To his administrative endurance, he matched formidable psychic discipline. For 15 years, as even Britain's *Daily Telegraph* admitted in an otherwise petulant obituary, Sir Joh lived in a cowshed. Possessing the farmer's capacity for months of solitude (he grew peanuts near Kingaroy, in the state's rural southeast), he felt more grief about needing to shoot clapped-out horses than about finishing off parliamentary rivals. A bachelor until his early 40's, he attained unclouded happiness through his marriage to a civil servant, Florence Gilmour, who, as Lady Flo Bjelke-Petersen, represented Queensland during the 1980's in the Senate. As premier, Sir Joh prohibited street protests, forbade sex-education programs in schools, enforced every last statute against sodomites, and ensured that girlie magazines, if sold at all, had their more explicit portraiture removed (thus making them worthless to the black market). Upon the development of Queensland's nude theater, Sir Joh exercised a wholly obstructive influence. Playgoers longing for *Hair* and *Oh! Calcutta!* had to flee to Sydney's fleshpots. "Banned in Queensland!" became as proverbial an artistic boast as "Banned in Boston!" had been in Mencken's day.

By these acts, Sir Joh earned permanent leftist and neocon execration, outside as well as within Australia. The death notice in London's *Independent* condemned his rule as "despotic." Yet those of us who are neither leftists nor neocons managed to survive in one piece his putative tyranny (while noting that even his biggest infrastructure projects never included a reeducation camp). By so strong an instinct did he embody social conservatism that he never even viewed himself as a social conservative. He thought that sort of talk was just a needlessly pretentious synonym for "common decency." It is difficult, in 2005, to say that he erred. Besides, his supposed despotism stopped well short of real elective dictatorships: He scrupulously avoided persecuting gun owners, massacring Branch