WARM-UP, DAY ONE

[5 minutes]

Write the word “property” on the board and ask students how they would define the term. Write key terms and ideas on the board. Then ask students to brainstorm examples of property, continuing to record responses on the board.

ACTIVITY I

[25 minutes]

A. Distribute Handout A: English Origins of Property Protections. Using an overhead, read the excerpts from the Magna Carta and discuss the questions that follow. Do the same for the Blackstone and Locke documents. See the Answer Key for suggested responses.

B. Explain in a mini-lecture that when the British colonists came to America, they brought with them a strong tradition of respect for property rights. Colonial governments enshrined protections for property and against arbitrary taxation in the Massachusetts Body of Liberties, the Fundamental Orders of Connecticut, and other documents. Property rights were one foundation of the colonists’ rallying-cry “No taxation without representation.” James Otis objected to the British officers’ use of general search warrants, declaring, “A man’s home is his castle, and whilst he is quiet, he is as well guarded as a prince in his castle.” When the colonies declared independence from England, they charged the King with taxing them without their consent, seizing their ships, and denying them due process in Admiralty Courts.

Students will now explore the writings of two important Founders, Samuel Adams and James Madison, on property rights. Their views were complex and varied, but Adams, Madison, and indeed all the Founders agreed that property rights were fundamental to liberty.

C. Distribute Handout B: Samuel Adams, James Madison, and Property, and divide the class into groups of four. Have two students in each group read the excerpts from Adams’s The Rights of the Colonists and two read the excerpts from Madison’s Property.

D. After they read, students should brief their group members on how each author used the word “property.”

E. Reconvene the class and go over the questions on Handout B. See the Answer Key for suggested responses. Which definition(s) of property do students find most useful?

WRAP-UP

[20 minutes]

A. Distribute Handout C: The Bill of Rights and Property, reminding students that Madison was the chief author of the Bill of Rights. Have students return to working in their groups to complete the Handout.

B. After students have finished, assign each group to represent either “physical property” (e.g. material goods) or “the most sacred property” (e.g. conscience). Using an overhead of Handout C, read aloud the Bill of Rights. Have students stand up whenever they believe their “type” of property is being protected. See the Answer Key for suggested responses.
C. As you proceed, pause when needed to debrief the class. Are there any instances where everyone is standing up? Are there times when no one is standing? What does this tell you about the property protections in the Bill of Rights?

WARM-UP, DAY TWO [15 minutes]

A. Distribute Handout D: The Takings Clause Up Close. Have students work in pairs or trios to examine the Fifth Amendment and answer the questions.

B. Go over responses as a large group, keeping a list of “public uses” on the board or overhead. See the Answer Key for suggested responses.

ACTIVITY II [20 minutes]

A. Cut out the scenario cards on Handout E: Property and the Supreme Court. Ask two students to come to the front of the room, assume the roles of the people on the first scenario card, and present the information to the class in role-play form.

B. After students have finished presenting, conduct a large group discussion about the situation. Ask the class:
   - Is the situation described a “taking” of property?
   - Is the situation described a constitutional exercise of government power?
   - If so, what would be the best way to determine just compensation?

C. Put up an overhead of Transparency Master F: Updates, and share with the class how the Supreme Court ruled on the case. Ask students to share their reactions to the ruling before moving on to the next scenario with two new student volunteers.

D. Repeat this process until all three scenarios have been presented.

WRAP-UP [15 minutes]

As a large group, discuss the following questions:
   - In which case did the government attempt to take physical property? (Nollan v. California Coastal Commission, 1987)
   - In which case did the Court rule that a “taking” had occurred, even though no land was actually taken? (United States v. Causby, 1946)
   - In which case did the Supreme Court interpret “public use” as “public benefit”? (Kelo v. New London, 2005) Is there a difference?
   - How does the Kelo ruling differ from the other property rulings? Why do you think it has been a very controversial decision?
   - Is redevelopment through eminent domain the only way to revitalize a neighborhood? Is it the best way? What other methods can you think of?
Lesson Plan: Property, the Bill of Rights, and the Supreme Court

Notes

Homework

A. Have students respond in a one-paragraph journal entry to an excerpt from Sandra Day O’Connor’s dissent in *Kelo v. New London* (2005): “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.”

B. Have students locate a newspaper article describing a government’s planned use of eminent domain and write a two-paragraph summary of the government’s plans as well as citizens’ responses. News stories are updated daily at: www.BillofRightsInstitute.org/headlines.

Extensions

A. The Supreme Court decision in *Kelo v. New London* (2005) has prompted some states to enact laws preventing the use of eminent domain to take non-blighted property for economic development. Eleven state supreme courts have forbidden *Kelo*-style under their state constitutions. Additionally, at least one bank has said it will not loan money to be used for development of land that was obtained through this kind of taking. Have students investigate the public and private reactions to the *Kelo* case and present their findings in a PowerPoint or oral presentation.

B. Ask students to simulate a situation where an environmental law prohibiting logging on land where an endangered species of eagle lives must be balanced with the rights of property owners who wish to sell timber from their land. Divide the class into groups of nine including: three property owners, three environmental activists, and three policymakers. Have the owners and activists lobby the policymakers with their best arguments for how the law should be written and how takings, if any, will be compensated. Policymakers should write legislation and each group can present their law to the class. Have the class vote on the best one.

C. Have students learn more about the case of *Berman v. Parker* (1954), an important precedent for *Kelo v. New London* (2005). Students should make a Venn diagram comparing and contrasting the two cases with information on: the reasons the government gave for taking land; arguments against the takings; the court’s rulings; and who was affected by the decisions. Are “blight” takings or “redevelopment” takings more common? Which type is most important to the issue of property rights?
ENGLISH ORIGINS OF PROPERTY PROTECTIONS

Directions: Read the following excerpts from legal and philosophical sources, and answer the questions that follow each excerpt.

Magna Carta (1215)
12. No scutage [tax] or aid shall be imposed on our kingdom, unless by common counsel of our kingdom.
27. If any freeman shall die intestate (without a will), his chattels shall be distributed by the hands of his nearest kinsfolk and friends, under supervision of the Church, saving to every one the debts which the deceased owed to him.
30. No sheriff or bailiff of ours (the King), or other person, shall take the horses or carts of any freeman for transport duty, against the will of the said freeman.
31. Neither [the King nor his] bailiffs shall take, for our castles or for any other work of ours, wood which is not ours, against the will of the owner of that wood.
55. All fines made with us unjustly and against the law of the land … shall be entirely remitted (set aside) …

What kinds of property protections do you see in the Magna Carta excerpts?

William Blackstone, Commentaries 1:137-38 (1765)
…Neither his majesty, nor his privy council, have any jurisdiction, power, or authority by English bill, petition, articles … or by any other arbitrary way whatsoever, to examine, or draw into question, determine or dispose of the lands or goods of any subjects of this kingdom; but that the same ought to be tried and determined in the ordinary courts of justice, and by course of law.

In his explanation of English common law, what power does Blackstone say the King does NOT have over his subjects’ property?
Who or what does Blackstone say may have power over the “lands or goods” of subjects?

John Locke, Second Treatise of Civil Government (1689)
[People are] willing to join in society with others … for the mutual preservation of their lives, liberties and estates, which I call by the general name, property. The great and chief end, therefore, of men’s uniting into commonwealths, and putting themselves under government, is the preservation of their property.

Why does philosopher John Locke say that people choose to unite into societies?
What does Locke say is the most important reason people need government?
SAMUEL ADAMS, JAMES MADISON, AND PROPERTY

Directions: Read the following excerpts and answer the questions that follow.

Excerpts from The Rights of the Colonists (1772), by Samuel Adams

Among the natural rights of the Colonists are these: First, a right to life; Secondly, to liberty; Thirdly, to property; together with the right to support and defend them in the best manner they can….

The Legislative has no right to absolute, arbitrary power over the lives and fortunes of the people; nor can mortals assume a prerogative not only too high for men, but for angels, and therefore reserved for the exercise of the Deity alone.

There should be one rule of justice for rich and poor, for the favorite at court, and the countryman at the plough….

The supreme power cannot justly take from any man any part of his property, without his consent in person or by his representative.

These are some of the first principles of natural law and justice…. Now what liberty can there be where property is taken away without consent?

- What do you believe Samuel Adams means by “property”?
- What role does Adams argue the government should have with respect to “property”?

Excerpts from Property (1792), by James Madison

This term [property] … means “that dominion which one man claims and exercises over the external things of the world, in exclusion of every other individual.”

In its larger and juster meaning, it embraces every thing to which a man may attach a value and have a right; and which leaves to every one else the like advantage.

In the former sense, a man’s land, or merchandise, or money is called his property.

In the latter sense, a man has a property in his opinions and the free communication of them.

He has a property of peculiar value in his religious opinions, and in the profession and practice dictated by them.

He has a property very dear to him in the safety and liberty of his person.

He has an equal property in the free use of his faculties and free choice of the objects on which to employ them.

In a word, as a man is said to have a right to his property, he may be equally said to have a property in his rights….

Conscience is the most sacred of all property….

- What do you believe James Madison means by “property”?
- Circle each kind of property Madison refers to. Are these what you normally think of as “property”? Explain.
The Bill of Rights and Property

Directions: Read over the Bill of Rights and underline words and phrases that secure protections for physical property. Then circle words and phrases that secure protections for the other kinds of property Madison mentions.

Amendment I
Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Amendment II
A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.

Amendment III
No soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

Amendment IV
The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V
No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI
In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Amendment VII
In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

Amendment VIII
Excessive bail shall not be required, nor excessive fines imposed, nor cruel and usual punishments inflicted.

Amendment IX
The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment X
The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.
The takings clause up close

Directions: Read the following excerpt from the Fifth Amendment. With your group members, come to a consensus about how best to define the terms below. Then, in the space below, brainstorm facilities or purposes that could be considered “public use.”

“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.”

1. Definition of “due process of law”:

2. Definition of “taken”:

3. Definition of “public use”:

4. Definition of “just compensation”:

5. Examples of things that could be considered “public use”:
1. **My name is Bob Dale**, and I work on the Ventura, California Coastal Commission. We’re very proud of our gorgeous beaches. As our population has grown, more and more people want to experience them. Congestion on public beaches is worsening. We’ve made it a rule now that whenever people apply for building permits to do new construction on the beach, they will have to provide public walkways on their land. We believe this will cut down on congestion.

2. **My name is Mr. Nollan.** My wife and I have a small bungalow on our Ventura beachfront property. It has gotten kind of run down, and we’d like to tear it down and build a new, three-bedroom house similar to the other ones in the area. We applied to the city for a building permit, but we were told we would not be able to get one unless we let the government build a public walkway through the middle of our land so people can walk across it. We don’t want to do this, and furthermore, we believe it’s an unconstitutional demand.

3. **Dale:** We believe that a walkway would serve a legitimate public purpose, especially since the Nollan’s land is surrounded by public beach on all sides. We told everyone we were going to make these walkways a condition of new building permits, so I don’t know what they’re complaining about. The government is not taking their land away; we’re just asking that they let people walk through a small part of it. If they don’t like it, then they don’t have to build a new house.

4. **Nollan:** They can’t restrict the use of our land this way without paying us for it.
1. My name is Thomas Lee Causby. My wife Tinnie and I bought 2.8 acres of land in North Carolina several years ago. We decided it would be the perfect place for raising chickens. It was the perfect place until Army planes started taking off from the nearby airport. Now it’s unusable because of all the airplane noise. Therefore, I believe we’re entitled to just compensation from the government, since the government is causing the noise.

2. I am Rachel Ash, an attorney for North Carolina. I don’t believe the Causbys are entitled to compensation from the government. Their land was not taken from them. The government has never set foot on their land and has not physically intruded on it in any way. Furthermore, the Causbys knew the land was close to the airport when they bought the land.

3. Causby: We knew it was just over 2,000 feet from an airport, but only a few commercial flights and crop dusters took off from there. It was many years after we bought that the Army started using the airport. Their planes are constantly flying right over us—just 67 feet over us to be exact. The noise keeps us awake and we lost 150 chickens because they would get so scared from the noise that they’d fly into the walls of the barn and die. I think that even though the government didn’t physically “take” our land, that we are entitled to just compensation.

4. Ash: I don’t know why Mr. Causby is complaining; he and his wife still own every acre of land that they did before. The government has not “taken” anything.
1. My name is Suzette Kelo. About seven years ago I bought a Victorian home on the Thames River in Connecticut. I spent seven years restoring my house and I really love it here. The city has been somewhat depressed economically, although the area surrounding my home is in good shape. Now I just found out that the city wants to take my land so that the area can be re-energized.

2. My name is Jason Helm, and I am on the New London City Council. We plan to take Ms. Kelo’s land using our power of eminent domain and turn it over to a private developer. The developer will build a new facility for a pharmaceutical company that will create hundreds of jobs and $680,000 in new tax revenue for the city. They will also build upscale condominiums. All these things will benefit the community and therefore amount to “public use.”

3. Kelo: I think this is an unconstitutional taking, because the Fifth Amendment only says that property can be taken “for public use.” This means something like a library or highway—something the public will actually use. I am fighting this because I believe it is an unconstitutional infringement on my right to private property. Fourteen of my neighbors are joining me.

4. Helm: The residents of New London can certainly “use” the additional money that will be brought in to this depressed area by the new development. I believe this taking is constitutional because it will benefit the city.
scenario one

In *Nollan v. California Coastal Commission* (1987) the Court held that “where individuals are given a permanent and continuous right to pass to and fro, so that the real property may continuously be traversed,” there was a taking of property. Therefore, the government could not make the public walkway a condition of a building permit. If the government wished to take the property, it would have to exercise its power of eminent domain and provide the owners with just compensation: “If it wants an easement across the Nollans’s property, it must pay for it.”

scenario two

The Court found a taking in *United States v. Causby* (1946) when low-flying jets at an airbase made farming impossible on nearby land even though the government never actually claimed the land itself. The Court held, “As a result of the noise, respondents had to give up their chicken business. As many as six to ten of their chickens were killed in one day by flying into the walls from fright…. Production also fell off. The result was the destruction of the use of the property as a commercial chicken farm.” The Causbys were entitled to just compensation from the government. “It is the owner’s loss, not the taker’s gain, which is the measure of the value of the property taken.”

scenario three

The Supreme Court ruled on *Kelo v. New London* in 2005. The Court agreed with the city of New London and held that the government could take land from citizens in order to turn it over to a private developer. The Court explained that it had “rejected a literal requirement” of the phrase “public use” in the Takings Clause of the Fifth Amendment. The phrase “public use” could be interpreted as “public benefit.” Therefore, the government can take private property from an individual in order to turn it over to a private developer because the taking will result in “economic development” for the region.