

O'CONNOR, J., dissenting

SUPREME COURT OF THE UNITED STATES

No. 04–108

SUSETTE KELO, ET AL., PETITIONERS *v.* CITY OF
NEW LONDON, CONNECTICUT, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF
CONNECTICUT

[June 23, 2005]

JUSTICE O'CONNOR, with whom THE CHIEF JUSTICE,
JUSTICE SCALIA, and JUSTICE THOMAS join, dissenting.

Over two centuries ago, just after the Bill of Rights was
ratified, Justice Chase wrote:

“An ACT of the Legislature (for I cannot call it a law)
contrary to the great first principles of the social com-
pact, cannot be considered a rightful exercise of legis-
lative authority A few instances will suffice to
explain what I mean. . . . [A] law that takes property
from A. and gives it to B: It is against all reason and
justice, for a people to entrust a Legislature with
SUCH powers; and, therefore, it cannot be presumed
that they have done it.” *Calder v. Bull*, 3 Dall. 386,
388 (1798) (emphasis deleted).

Today the Court abandons this long-held, basic limitation
on government power. 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 bene-
ficial to the public—in the process. To reason, as the
Court does, that the incidental public benefits resulting
from the subsequent ordinary use of private property
render economic development takings “for public use” is to

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wash out any distinction between private and public use of property—and thereby effectively to delete the words “for public use” from the Takings Clause of the Fifth Amendment. Accordingly I respectfully dissent.

I

Petitioners are nine resident or investment owners of 15 homes in the Fort Trumbull neighborhood of New London, Connecticut. Petitioner Wilhelmina Dery, for example, lives in a house on Walbach Street that has been in her family for over 100 years. She was born in the house in 1918; her husband, petitioner Charles Dery, moved into the house when they married in 1946. Their son lives next door with his family in the house he received as a wedding gift, and joins his parents in this suit. Two petitioners keep rental properties in the neighborhood.

In February 1998, Pfizer Inc., the pharmaceuticals manufacturer, announced that it would build a global research facility near the Fort Trumbull neighborhood. Two months later, New London's city council gave initial approval for the New London Development Corporation (NLDC) to prepare the development plan at issue here. The NLDC is a private, nonprofit corporation whose mission is to assist the city council in economic development planning. It is not elected by popular vote, and its directors and employees are privately appointed. Consistent with its mandate, the NLDC generated an ambitious plan for redeveloping 90 acres of Fort Trumbull in order to “complement the facility that Pfizer was planning to build, create jobs, increase tax and other revenues, encourage public access to and use of the city's waterfront, and eventually ‘build momentum’ for the revitalization of the rest of the city.” App. to Pet. for Cert. 5.

Petitioners own properties in two of the plan's seven parcels—Parcel 3 and Parcel 4A. Under the plan, Parcel 3 is slated for the construction of research and office space

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as a market develops for such space. It will also retain the existing Italian Dramatic Club (a private cultural organization) though the homes of three plaintiffs in that parcel are to be demolished. Parcel 4A is slated, mysteriously, for “park support.” *Id.*, at 345–346. At oral argument, counsel for respondents conceded the vagueness of this proposed use, and offered that the parcel might eventually be used for parking. Tr. of Oral Arg. 36.

To save their homes, petitioners sued New London and the NLDC, to whom New London has delegated eminent domain power. Petitioners maintain that the Fifth Amendment prohibits the NLDC from condemning their properties for the sake of an economic development plan. Petitioners are not hold-outs; they do not seek increased compensation, and none is opposed to new development in the area. Theirs is an objection in principle: They claim that the NLDC’s proposed use for their confiscated property is not a “public” one for purposes of the Fifth Amendment. While the government may take their homes to build a road or a railroad or to eliminate a property use that harms the public, say petitioners, it cannot take their property for the private use of other owners simply because the new owners may make more productive use of the property.

II

The Fifth Amendment to the Constitution, made applicable to the States by the Fourteenth Amendment, provides that “private property [shall not] be taken for public use, without just compensation.” 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.” *Wright v. United States*, 302 U. S. 583, 588 (1938). In keeping with that presumption, we have read the Fifth Amendment’s language to impose two distinct

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conditions on the exercise of eminent domain: “the taking must be for a ‘public use’ and ‘just compensation’ must be paid to the owner.” *Brown v. Legal Foundation of Wash.*, 538 U. S. 216, 231–232 (2003).

These two limitations serve to protect “the security of Property,” which Alexander Hamilton described to the Philadelphia Convention as one of the “great obj[ects] of Gov[ernment].” 1 Records of the Federal Convention of 1787, p. 302 (M. Farrand ed. 1934). Together they ensure stable property ownership by providing safeguards against excessive, unpredictable, or unfair use of the government’s eminent domain power—particularly against those owners who, for whatever reasons, may be unable to protect themselves in the political process against the majority’s will.

While the Takings Clause presupposes that government can take private property without the owner’s consent, the just compensation requirement spreads the cost of condemnations and thus “prevents the public from loading upon one individual more than his just share of the burdens of government.” *Monongahela Nav. Co. v. United States*, 148 U. S. 312, 325 (1893); see also *Armstrong v. United States*, 364 U. S. 40, 49 (1960). The public use requirement, in turn, imposes a more basic limitation, circumscribing the very scope of the eminent domain power: Government may compel an individual to forfeit her property for the *public’s* use, but not for the benefit of another private person. This requirement promotes fairness as well as security. Cf. *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U. S. 302, 336 (2002) (“The concepts of ‘fairness and justice’ . . . underlie the Takings Clause”).

Where is the line between “public” and “private” property use? We give considerable deference to legislatures’ determinations about what governmental activities will advantage the public. But were the political branches the

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sole arbiters of the public-private distinction, the Public Use Clause would amount to little more than hortatory fluff. An external, judicial check on how the public use requirement is interpreted, however limited, is necessary if this constraint on government power is to retain any meaning. See *Cincinnati v. Vester*, 281 U. S. 439, 446 (1930) (“It is well established that . . . the question [of] what is a public use is a judicial one”).

Our cases have generally identified three categories of takings that comply with the public use requirement, though it is in the nature of things that the boundaries between these categories are not always firm. Two are relatively straightforward and uncontroversial. First, the sovereign may transfer private property to public ownership—such as for a road, a hospital, or a military base. See, e.g., *Old Dominion Land Co. v. United States*, 269 U. S. 55 (1925); *Rindge Co. v. County of Los Angeles*, 262 U. S. 700 (1923). Second, the sovereign may transfer private property to private parties, often common carriers, who make the property available for the public’s use—such as with a railroad, a public utility, or a stadium. See, e.g., *National Railroad Passenger Corporation v. Boston & Maine Corp.*, 503 U. S. 407 (1992); *Mt. Vernon-Woodberry Cotton Duck Co. v. Alabama Interstate Power Co.*, 240 U. S. 30 (1916). But “public ownership” and “use-by-the-public” are sometimes too constricting and impractical ways to define the scope of the Public Use Clause. Thus we have allowed that, in certain circumstances and to meet certain exigencies, takings that serve a public purpose also satisfy the Constitution even if the property is destined for subsequent private use. See, e.g., *Berman v. Parker*, 348 U. S. 26 (1954); *Hawaii Housing Authority v. Midkiff*, 467 U. S. 229 (1984).

This case returns us for the first time in over 20 years to the hard question of when a purportedly “public purpose” taking meets the public use requirement. It presents an

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issue of first impression: Are economic development takings constitutional? I would hold that they are not. We are guided by two precedents about the taking of real property by eminent domain. In *Berman*, we upheld takings within a blighted neighborhood of Washington, D. C. The neighborhood had so deteriorated that, for example, 64.3% of its dwellings were beyond repair. 348 U. S., at 30. It had become burdened with “overcrowding of dwellings,” “lack of adequate streets and alleys,” and “lack of light and air.” *Id.*, at 34. Congress had determined that the neighborhood had become “injurious to the public health, safety, morals, and welfare” and that it was necessary to “eliminat[e] all such injurious conditions by employing all means necessary and appropriate for the purpose,” including eminent domain. *Id.*, at 28. Mr. Berman’s department store was not itself blighted. Having approved of Congress’ decision to eliminate the harm to the public emanating from the blighted neighborhood, however, we did not second-guess its decision to treat the neighborhood as a whole rather than lot-by-lot. *Id.*, at 34–35; see also *Midkiff*, 467 U. S., at 244 (“it is only the taking’s purpose, and not its mechanics, that must pass scrutiny”).

In *Midkiff*, we upheld a land condemnation scheme in Hawaii whereby title in real property was taken from lessors and transferred to lessees. At that time, the State and Federal Governments owned nearly 49% of the State’s land, and another 47% was in the hands of only 72 private landowners. Concentration of land ownership was so dramatic that on the State’s most urbanized island, Oahu, 22 landowners owned 72.5% of the fee simple titles. *Id.*, at 232. The Hawaii Legislature had concluded that the oligopoly in land ownership was “skewing the State’s residential fee simple market, inflating land prices, and injuring the public tranquility and welfare,” and therefore enacted a condemnation scheme for redistributing title.

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Ibid.

In those decisions, we emphasized the importance of deferring to legislative judgments about public purpose. Because courts are ill-equipped to evaluate the efficacy of proposed legislative initiatives, we rejected as unworkable the idea of courts' "deciding on what is and is not a governmental function and . . . invalidating legislation on the basis of their view on that question at the moment of decision, a practice which has proved impracticable in other fields." *Id.*, at 240–241 (quoting *United States ex rel. TVA v. Welch*, 327 U. S. 546, 552 (1946)); see *Berman*, *supra*, at 32 ("[T]he legislature, not the judiciary, is the main guardian of the public needs to be served by social legislation"); see also *Lingle v. Chevron U. S. A., Inc.*, 544 U. S. __ (2005). Likewise, we recognized our inability to evaluate whether, in a given case, eminent domain is a necessary means by which to pursue the legislature's ends. *Midkiff*, *supra*, at 242; *Berman*, *supra*, at 103.

Yet for all the emphasis on deference, *Berman* and *Midkiff* hewed to a bedrock principle without which our public use jurisprudence would collapse: "A purely private taking could not withstand the scrutiny of the public use requirement; it would serve no legitimate purpose of government and would thus be void." *Midkiff*, 467 U. S., at 245; *id.*, at 241 ("[T]he Court's cases have repeatedly stated that 'one person's property may not be taken for the benefit of another private person without a justifying public purpose, even though compensation be paid'" (quoting *Thompson v. Consolidated Gas Util. Corp.*, 300 U. S. 55, 80 (1937))); see also *Missouri Pacific R. Co. v. Nebraska*, 164 U. S. 403, 417 (1896). To protect that principle, those decisions reserved "a role for courts to play in reviewing a legislature's judgment of what constitutes a public use . . . [though] the Court in *Berman* made clear that it is 'an extremely narrow' one." *Midkiff*, *supra*, at 240 (quoting *Berman*, *supra*, at 32).

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The Court's holdings in *Berman* and *Midkiff* were true to the principle underlying the Public Use Clause. In both those cases, the extraordinary, precondemnation use of the targeted property inflicted affirmative harm on society—in *Berman* through blight resulting from extreme poverty and in *Midkiff* through oligopoly resulting from extreme wealth. And in both cases, the relevant legislative body had found that eliminating the existing property use was necessary to remedy the harm. *Berman, supra*, at 28–29; *Midkiff, supra*, at 232. Thus a public purpose was realized when the harmful use was eliminated. Because each taking *directly* achieved a public benefit, it did not matter that the property was turned over to private use. Here, in contrast, New London does not claim that Susette Kelo's and Wilhelmina Dery's well-maintained homes are the source of any social harm. Indeed, it could not so claim without adopting the absurd argument that any single-family home that might be razed to make way for an apartment building, or any church that might be replaced with a retail store, or any small business that might be more lucrative if it were instead part of a national franchise, is inherently harmful to society and thus within the government's power to condemn.

In moving away from our decisions sanctioning the condemnation of harmful property use, the Court today significantly expands the meaning of public use. It holds that the sovereign may take private property currently put to ordinary private use, and give it over for new, ordinary private use, so long as the new use is predicted to generate some secondary benefit for the public—such as increased tax revenue, more jobs, maybe even aesthetic pleasure. But nearly any lawful use of real private property can be said to generate some incidental benefit to the public. Thus, if predicted (or even guaranteed) positive side-effects are enough to render transfer from one private party to another constitutional, then the words “for public

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use” do not realistically exclude *any* takings, and thus do not exert any constraint on the eminent domain power.

There is a sense in which this troubling result follows from errant language in *Berman* and *Midkiff*. In discussing whether takings within a blighted neighborhood were for a public use, *Berman* began by observing: “We deal, in other words, with what traditionally has been known as the police power.” 348 U. S., at 32. From there it declared that “[o]nce the object is within the authority of Congress, the right to realize it through the exercise of eminent domain is clear.” *Id.*, at 33. Following up, we said in *Midkiff* that “[t]he ‘public use’ requirement is coterminous with the scope of a sovereign’s police powers.” 467 U. S., at 240. This language was unnecessary to the specific holdings of those decisions. *Berman* and *Midkiff* simply did not put such language to the constitutional test, because the takings in those cases were within the police power but also for “public use” for the reasons I have described. The case before us now demonstrates why, when deciding if a taking’s purpose is constitutional, the police power and “public use” cannot always be equated.

The Court protests that it does not sanction the bare transfer from A to B for B’s benefit. It suggests two limitations on what can be taken after today’s decision. First, it maintains a role for courts in ferreting out takings whose sole purpose is to bestow a benefit on the private transferee—without detailing how courts are to conduct that complicated inquiry. *Ante*, at 7. For his part, JUSTICE KENNEDY suggests that courts may divine illicit purpose by a careful review of the record and the process by which a legislature arrived at the decision to take—without specifying what courts should look for in a case with different facts, how they will know if they have found it, and what to do if they do not. *Ante*, at 2–3 (concurring opinion). Whatever the details of JUSTICE KENNEDY’s as-yet-undisclosed test, it is difficult to envision anyone but

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the “stupid staff[er]” failing it. See *Lucas v. South Carolina Coastal Council*, 505 U. S. 1003, 1025–1026, n. 12 (1992). The trouble with economic development takings is that private benefit and incidental public benefit are, by definition, merged and mutually reinforcing. In this case, for example, any boon for Pfizer or the plan’s developer is difficult to disaggregate from the promised public gains in taxes and jobs. See App. to Pet. for Cert. 275–277.

Even if there were a practical way to isolate the motives behind a given taking, the gesture toward a purpose test is theoretically flawed. If it is true that incidental public benefits from new private use are enough to ensure the “public purpose” in a taking, why should it matter, as far as the Fifth Amendment is concerned, what inspired the taking in the first place? How much the government does or does not desire to benefit a favored private party has no bearing on whether an economic development taking will or will not generate secondary benefit for the public. And whatever the reason for a given condemnation, the effect is the same from the constitutional perspective—private property is forcibly relinquished to new private ownership.

A second proposed limitation is implicit in the Court’s opinion. 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. See *Lingle*, 544 U. S. ___. 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 shop-

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ping 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).

The Court also puts special emphasis on facts peculiar to this case: The NLDC's plan is the product of a relatively careful deliberative process; it proposes to use eminent domain for a multipart, integrated plan rather than for isolated property transfer; it promises an array of incidental benefits (even aesthetic ones), not just increased tax revenue; it comes on the heels of a legislative determination that New London is a depressed municipality. See, e.g., *ante*, at 16 ("[A] one-to-one transfer of property, executed outside the confines of an integrated development plan, is not presented in this case"). JUSTICE KENNEDY, too, takes great comfort in these facts. *Ante*, at 4 (concurring opinion). But none has legal significance to blunt the force of today's holding. If legislative prognostications about the secondary public benefits of a new use can legitimate a taking, there is nothing in the Court's rule or in JUSTICE KENNEDY's gloss on that rule to prohibit property transfers generated with less care, that are less comprehensive, that happen to result from less elaborate process,

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whose only projected advantage is the incidence of higher taxes, or that hope to transform an already prosperous city into an even more prosperous one.

Finally, in a coda, the Court suggests that property owners should turn to the States, who may or may not choose to impose appropriate limits on economic development takings. *Ante*, at 19. This is an abdication of our responsibility. States play many important functions in our system of dual sovereignty, but compensating for our refusal to enforce properly the Federal Constitution (and a provision meant to curtail state action, no less) is not among them.

* * *

It was possible after *Berman* and *Midkiff* to imagine unconstitutional transfers from A to B. Those decisions endorsed government intervention when private property use had veered to such an extreme that the public was suffering as a consequence. Today nearly all real property is susceptible to condemnation on the Court's theory. In the prescient words of a dissenter from the infamous decision in *Poletown*, "[n]ow that we have authorized local legislative bodies to decide that a different commercial or industrial use of property will produce greater public benefits than its present use, no homeowner's, merchant's or manufacturer's property, however productive or valuable to its owner, is immune from condemnation for the benefit of other private interests that will put it to a 'higher' use." 410 Mich., at 644–645, 304 N. W. 2d, at 464 (opinion of Fitzgerald, J.). This is why economic development takings "seriously jeopardiz[e] the security of all private property ownership." *Id.*, at 645, 304 N. W. 2d, at 465 (Ryan, J., dissenting).

Any property may now be taken for the benefit of another private party, but the fallout from this decision will not be random. The beneficiaries are likely to be those

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citizens with disproportionate influence and power in the political process, including large corporations and development firms. As for the victims, the government now has license to transfer property from those with fewer resources to those with more. The Founders cannot have intended this perverse result. “[T]hat alone is a *just* government,” wrote James Madison, “which *impartially* secures to every man, whatever is his *own*.” For the National Gazette, Property, (Mar. 29, 1792), reprinted in 14 Papers of James Madison 266 (R. Rutland et al. eds. 1983).

I would hold that the takings in both Parcel 3 and Parcel 4A are unconstitutional, reverse the judgment of the Supreme Court of Connecticut, and remand for further proceedings.

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Long ago, William Blackstone wrote that “the law of the land . . . postpone[s] even public necessity to the sacred and inviolable rights of private property.” 1 Commentaries on the Laws of England 134–135 (1765) (hereinafter Blackstone). The Framers embodied that principle in the Constitution, allowing the government to take property not for “public necessity,” but instead for “public use.” Amdt. 5. Defying this understanding, the Court replaces the Public Use Clause with a “[P]ublic [P]urpose” Clause, *ante*, at 9–10 (or perhaps the “Diverse and Always Evolving Needs of Society” Clause, *ante*, at 8 (capitalization added)), a restriction that is satisfied, the Court instructs, so long as the purpose is “legitimate” and the means “not irrational,” *ante*, at 17 (internal quotation marks omitted). This deferential shift in phraseology enables the Court to hold, against all common sense, that a costly urban-renewal project whose stated purpose is a vague promise of new jobs and increased tax revenue, but which is also suspiciously agreeable to the Pfizer Corporation, is for a “public use.”

I cannot agree. If such “economic development” takings are for a “public use,” any taking is, and the Court has erased the Public Use Clause from our Constitution, as JUSTICE O’CONNOR powerfully argues in dissent. *Ante*, at

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1–2, 8–13. I do not believe that this Court can eliminate liberties expressly enumerated in the Constitution and therefore join her dissenting opinion. Regrettably, however, the Court’s error runs deeper than this. Today’s decision is simply the latest in a string of our cases construing the Public Use Clause to be a virtual nullity, without the slightest nod to its original meaning. In my view, the Public Use Clause, originally understood, is a meaningful limit on the government’s eminent domain power. Our cases have strayed from the Clause’s original meaning, and I would reconsider them.

I

The Fifth Amendment provides:

“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 offence 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.*” (Emphasis added.)

It is the last of these liberties, the Takings Clause, that is at issue in this case. In my view, it is “imperative that the Court maintain absolute fidelity to” the Clause’s express limit on the power of the government over the individual, no less than with every other liberty expressly enumerated in the Fifth Amendment or the Bill of Rights more generally. *Shepard v. United States*, 544 U. S. ___, ___ (2005) (slip op., at 2) (THOMAS, J., concurring in part and concurring in judgment) (internal quotation marks omitted).

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Though one component of the protection provided by the Takings Clause is that the government can take private property only if it provides “just compensation” for the taking, the Takings Clause also prohibits the government from taking property except “for public use.” Were it otherwise, the Takings Clause would either be meaningless or empty. If the Public Use Clause served no function other than to state that the government may take property through its eminent domain power—for public or private uses—then it would be surplusage. See *ante*, at 3–4 (O’CONNOR, J., dissenting); see also *Marbury v. Madison*, 1 Cranch 137, 174 (1803) (“It cannot be presumed that any clause in the constitution is intended to be without effect”); *Myers v. United States*, 272 U. S. 52, 151 (1926). Alternatively, the Clause could distinguish those takings that require compensation from those that do not. That interpretation, however, “would permit private property to be taken or appropriated for private use without any compensation whatever.” *Cole v. La Grange*, 113 U. S. 1, 8 (1885) (interpreting same language in the Missouri Public Use Clause). In other words, the Clause would require the government to compensate for takings done “for public use,” leaving it free to take property for purely private uses without the payment of compensation. This would contradict a bedrock principle well established by the time of the founding: that all takings required the payment of compensation. 1 Blackstone 135; 2 J. Kent, *Commentaries on American Law* 275 (1827) (hereinafter Kent); J. Madison, for the National Property Gazette, (Mar. 27, 1792), in 14 *Papers of James Madison* 266, 267 (R. Rutland et al. eds. 1983) (arguing that no property “shall be taken *directly* even for public use without indemnification to the owner”).¹ The Public Use Clause, like the

¹Some state constitutions at the time of the founding lacked just compensation clauses and took property even without providing com-

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Just Compensation Clause, is therefore an express limit on the government's power of eminent domain.

The most natural reading of the Clause is that it allows the government to take property only if the government owns, or the public has a legal right to use, the property, as opposed to taking it for any public purpose or necessity whatsoever. At the time of the founding, dictionaries primarily defined the noun "use" as "[t]he act of employing any thing to any purpose." 2 S. Johnson, *A Dictionary of the English Language* 2194 (4th ed. 1773) (hereinafter Johnson). The term "use," moreover, "is from the Latin *utor*, which means 'to use, make use of, avail one's self of, employ, apply, enjoy, etc.'" J. Lewis, *Law of Eminent Domain* §165, p. 224, n. 4 (1888) (hereinafter Lewis). When the government takes property and gives it to a private individual, and the public has no right to use the property, it strains language to say that the public is "employing" the property, regardless of the incidental benefits that might accrue to the public from the private use. The term "public use," then, means that either the government or its citizens as a whole must actually "employ" the taken property. See *id.*, at 223 (reviewing founding-era dictionaries).

Granted, another sense of the word "use" was broader in meaning, extending to "[c]onvenience" or "help," or "[q]ualities that make a thing proper for any purpose." 2 Johnson 2194. Nevertheless, read in context, the term "public use" possesses the narrower meaning. Elsewhere, the Constitution twice employs the word "use," both times in its narrower sense. Claeys, *Public-Use Limitations and Natural Property Rights*, 2004 Mich. St. L. Rev. 877, 897

pensation. See *Lucas v. South Carolina Coastal Council*, 505 U. S. 1003, 1056–1057 (1992) (Blackmun, J., dissenting). The Framers of the Fifth Amendment apparently disagreed, for they expressly prohibited uncompensated takings, and the Fifth Amendment was not incorporated against the States until much later. See *id.*, at 1028, n. 15.

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(hereinafter Public Use Limitations). Article 1, §10 provides that “the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States,” meaning the Treasury itself will control the taxes, not use it to any beneficial end. And Article I, §8 grants Congress power “[t]o raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years.” Here again, “use” means “employed to raise and support Armies,” not anything directed to achieving any military end. The same word in the Public Use Clause should be interpreted to have the same meaning.

Tellingly, the phrase “public use” contrasts with the very different phrase “general Welfare” used elsewhere in the Constitution. See *ibid.* (“Congress shall have Power To . . . provide for the common Defence and general Welfare of the United States”); preamble (Constitution established “to promote the general Welfare”). The Framers would have used some such broader term if they had meant the Public Use Clause to have a similarly sweeping scope. Other founding-era documents made the contrast between these two usages still more explicit. See Sales, Classical Republicanism and the Fifth Amendment’s “Public Use” Requirement, 49 Duke L. J. 339, 368 (2000) (hereinafter Sales) (noting contrast between, on the one hand, the term “public use” used by 6 of the first 13 States and, on the other, the terms “public exigencies” employed in the Massachusetts Bill of Rights and the Northwest Ordinance, and the term “public necessity” used in the Vermont Constitution of 1786). The Constitution’s text, in short, suggests that the Takings Clause authorizes the taking of property only if the public has a right to employ it, not if the public realizes any conceivable benefit from the taking.

The Constitution’s common-law background reinforces this understanding. The common law provided an express

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method of eliminating uses of land that adversely impacted the public welfare: nuisance law. Blackstone and Kent, for instance, both carefully distinguished the law of nuisance from the power of eminent domain. Compare 1 Blackstone 135 (noting government's power to take private property with compensation), with 3 *id.*, at 216 (noting action to remedy "*public . . .* nuisances, which affect the public and are an annoyance to *all* the king's subjects"); see also 2 Kent 274–276 (distinguishing the two). Blackstone rejected the idea that private property could be taken solely for purposes of any public benefit. "So great . . . is the regard of the law for private property," he explained, "that it will not authorize the least violation of it; no, not even for the general good of the whole community." 1 Blackstone 135. He continued: "If a new road . . . were to be made through the grounds of a private person, it might perhaps be extensively beneficial to the public; but the law permits no man, or set of men, to do this without the consent of the owner of the land." *Ibid.* Only "by giving [the landowner] full indemnification" could the government take property, and even then "[t]he public [was] now considered as an individual, treating with an individual for an exchange." *Ibid.* When the public took property, in other words, it took it as an individual buying property from another typically would: for one's own use. The Public Use Clause, in short, embodied the Framers' understanding that property is a natural, fundamental right, prohibiting the government from "tak[ing] *property* from A. and giv[ing] it to B." *Calder v. Bull*, 3 Dall. 386, 388 (1798); see also *Wilkinson v. Leland*, 2 Pet. 627, 658 (1829); *Vanhorne's Lessee v. Dorrance*, 2 Dall. 304, 311 (CC Pa. 1795).

The public purpose interpretation of the Public Use Clause also unnecessarily duplicates a similar inquiry required by the Necessary and Proper Clause. The Takings Clause is a prohibition, not a grant of power: The

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Constitution does not expressly grant the Federal Government the power to take property for any public purpose whatsoever. Instead, the Government may take property only when necessary and proper to the exercise of an expressly enumerated power. See *Kohl v. United States*, 91 U. S. 367, 371–372 (1876) (noting Federal Government’s power under the Necessary and Proper Clause to take property “needed for forts, armories, and arsenals, for navy-yards and light-houses, for custom-houses, post-offices, and court-houses, and for other public uses”). For a law to be within the Necessary and Proper Clause, as I have elsewhere explained, it must bear an “obvious, simple, and direct relation” to an exercise of Congress’ enumerated powers, *Sabri v. United States*, 541 U. S. 600, 613 (2004) (THOMAS, J., concurring in judgment), and it must not “subvert basic principles of” constitutional design, *Gonzales v. Raich, ante*, at __ (THOMAS, J., dissenting). In other words, a taking is permissible under the Necessary and Proper Clause only if it serves a valid public purpose. Interpreting the Public Use Clause likewise to limit the government to take property only for sufficiently public purposes replicates this inquiry. If this is all the Clause means, it is, once again, surplusage. See *supra*, at 3. The Clause is thus most naturally read to concern whether the property is used by the public or the government, not whether the purpose of the taking is legitimately public.

II

Early American eminent domain practice largely bears out this understanding of the Public Use Clause. This practice concerns state limits on eminent domain power, not the Fifth Amendment, since it was not until the late 19th century that the Federal Government began to use the power of eminent domain, and since the Takings Clause did not even arguably limit state power until after the passage of the Fourteenth Amendment. See Note, The

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Public Use Limitation on Eminent Domain: An Advance Requiem, 58 Yale L. J. 599, 599–600, and nn. 3–4 (1949); *Barron ex rel. Tiernan v. Mayor of Baltimore*, 7 Pet. 243, 250–251 (1833) (holding the Takings Clause inapplicable to the States of its own force). Nevertheless, several early state constitutions at the time of the founding likewise limited the power of eminent domain to “public uses.” See Sales 367–369, and n. 137 (emphasis deleted). Their practices therefore shed light on the original meaning of the same words contained in the Public Use Clause.

States employed the eminent domain power to provide quintessentially public goods, such as public roads, toll roads, ferries, canals, railroads, and public parks. Lewis §§166, 168–171, 175, at 227–228, 234–241, 243. Though use of the eminent domain power was sparse at the time of the founding, many States did have so-called Mill Acts, which authorized the owners of grist mills operated by water power to flood upstream lands with the payment of compensation to the upstream landowner. See, e.g., *id.*, §178, at 245–246; *Head v. Amoskeag Mfg. Co.*, 113 U. S. 9, 16–19, and n. (1885). Those early grist mills “were regulated by law and compelled to serve the public for a stipulated toll and in regular order,” and therefore were actually used by the public. Lewis §178, at 246, and n. 3; see also *Head, supra*, at 18–19. They were common carriers—quasi-public entities. These were “public uses” in the fullest sense of the word, because the public could legally use and benefit from them equally. See Public Use Limitations 903 (common-carrier status traditionally afforded to “private beneficiaries of a state franchise or another form of state monopoly, or to companies that operated in conditions of natural monopoly”).

To be sure, some early state legislatures tested the limits of their state-law eminent domain power. Some States enacted statutes allowing the taking of property for the purpose of building private roads. See Lewis §167, at

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230. These statutes were mixed; some required the private landowner to keep the road open to the public, and others did not. See *id.*, §167, at 230–234. Later in the 19th century, moreover, the Mill Acts were employed to grant rights to private manufacturing plants, in addition to grist mills that had common-carrier duties. See, e.g., M. Horwitz, *The Transformation of American Law 1780–1860*, pp. 51–52 (1977).

These early uses of the eminent domain power are often cited as evidence for the broad “public purpose” interpretation of the Public Use Clause, see, e.g., *ante*, at 8, n. 8 (majority opinion); Brief for Respondents 30; Brief for American Planning Assn. et al. as *Amici Curiae* at 6–7, but in fact the constitutionality of these exercises of eminent domain power under state public use restrictions was a hotly contested question in state courts throughout the 19th and into the 20th century. Some courts construed those clauses to authorize takings for public purposes, but others adhered to the natural meaning of “public use.”² As

²Compare *ante*, at 8, and n. 8 (majority opinion) (noting that some state courts upheld the validity of applying the Mill Acts to private purposes and arguing that the “‘use by the public’ test” “eroded over time”), with, e.g., *Ryerson v. Brown*, 35 Mich. 333, 338–339 (1877) (holding it “essential” to the constitutionality of a Mill Act “that the statute should require the use to be public in fact; in other words, that it should contain provisions entitling the public to accommodations”); *Gaylord v. Sanitary Dist. of Chicago*, 204 Ill. 576, 581–584, 68 N. E. 522, 524 (1903) (same); *Tyler v. Beacher*, 44 Vt. 648, 652–656 (1871) (same); *Sadler v. Langham*, 34 Ala. 311, 332–334 (1859) (striking down taking for purely private road and grist mill); *Varner v. Martin*, 21 W. Va. 534, 546–548, 556–557, 566–567 (1883) (grist mill and private road had to be open to public for them to constitute public use); *Harding v. Goodlett*, 3 Yerg. 41, 53 (1832); *Jacobs v. Clearview Water Supply Co.*, 220 Pa. 388, 393–395, 69 A. 870, 872 (1908) (endorsing actual public use standard); *Minnesota Canal & Power Co. v. Koochiching Co.*, 97 Minn. 429, 449–451, 107 N. W. 405, 413 (1906) (same); *Chesapeake Stone Co. v. Moreland*, 126 Ky. 656, 663–667, 104 S. W. 762, 765 (Ct. App. 1907) (same); Note, *Public Use in Eminent Domain*, 21 N. Y. U. L. Q. Rev. 285, 286, and n. 11 (1946) (calling the

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noted above, the earliest Mill Acts were applied to entities with duties to remain open to the public, and their later extension is not deeply probative of whether that subsequent practice is consistent with the original meaning of the Public Use Clause. See *McIntyre v. Ohio Elections Comm'n*, 514 U. S. 334, 370 (1995) (THOMAS, J., concurring in judgment). At the time of the founding, “[b]usiness corporations were only beginning to upset the old corporate model, in which the *raison d’être* of chartered associations was their service to the public,” Horwitz, *supra*, at 49–50, so it was natural to those who framed the first Public Use Clauses to think of mills as inherently public entities. The disagreement among state courts, and state legislatures’ attempts to circumvent public use limits on their eminent domain power, cannot obscure that the Public Use Clause is most naturally read to authorize takings for public use only if the government or the public actually uses the taken property.

III

Our current Public Use Clause jurisprudence, as the Court notes, has rejected this natural reading of the Clause. *Ante*, at 8–10. The Court adopted its modern reading blindly, with little discussion of the Clause’s history and original meaning, in two distinct lines of cases: first, in cases adopting the “public purpose” interpretation of the Clause, and second, in cases deferring to legislatures’ judgments regarding what constitutes a valid public purpose. Those questionable cases converged in the boundlessly broad and deferential conception of “public use” adopted by this Court in *Berman v. Parker*, 348 U. S. 26 (1954), and *Hawaii Housing Authority v. Midkiff*, 467 U. S. 229 (1984), cases that take center stage in the Court’s opinion. See *ante*, 10–12. The weakness of those

actual public use standard the “majority view” and citing other cases).

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two lines of cases, and consequently *Berman* and *Midkiff*, fatally undermines the doctrinal foundations of the Court's decision. Today's questionable application of these cases is further proof that the "public purpose" standard is not susceptible of principled application. This Court's reliance by rote on this standard is ill advised and should be reconsidered.

A

As the Court notes, the "public purpose" interpretation of the Public Use Clause stems from *Fallbrook Irrigation Dist. v. Bradley*, 164 U. S. 112, 161–162 (1896). *Ante*, at 11. The issue in *Bradley* was whether a condemnation for purposes of constructing an irrigation ditch was for a public use. 164 U. S., at 161. This was a public use, Justice Peckham declared for the Court, because "[t]o irrigate and thus to bring into possible cultivation these large masses of otherwise worthless lands would seem to be a public purpose and a matter of public interest, not confined to landowners, or even to any one section of the State." *Ibid.* That broad statement was dictum, for the law under review also provided that "[a]ll landowners in the district have the right to a proportionate share of the water." *Id.*, at 162. Thus, the "public" did have the right to use the irrigation ditch because all similarly situated members of the public—those who owned lands irrigated by the ditch—had a right to use it. The Court cited no authority for its dictum, and did not discuss either the Public Use Clause's original meaning or the numerous authorities that had adopted the "actual use" test (though it at least acknowledged the conflict of authority in state courts, see *id.*, at 158; *supra*, at 9, and n. 2). Instead, the Court reasoned that "[t]he use must be regarded as a public use, or else it would seem to follow that no general scheme of irrigation can be formed or carried into effect." *Bradley*, *supra*, at 160–161. This is no statement of con-

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stitutional principle: Whatever the utility of irrigation districts or the merits of the Court's view that another rule would be "impractical given the diverse and always evolving needs of society," *ante*, at 8, the Constitution does not embody those policy preferences any more than it "enact[s] Mr. Herbert Spencer's Social Statics." *Lochner v. New York*, 198 U. S. 45, 75 (1905) (Holmes, J., dissenting); but see *id.*, at 58–62 (Peckham, J., for the Court).

This Court's cases followed *Bradley's* test with little analysis. In *Clark v. Nash*, 198 U. S. 361 (1905) (Peckham, J., for the Court), this Court relied on little more than a citation to *Bradley* in upholding another condemnation for the purpose of laying an irrigation ditch. 198 U. S., at 369–370. As in *Bradley*, use of the "public purpose" test was unnecessary to the result the Court reached. The government condemned the irrigation ditch for the purpose of ensuring access to water in which "[o]ther land owners adjoining the defendant in error . . . might share," 198 U. S., at 370, and therefore *Clark* also involved a condemnation for the purpose of ensuring access to a resource to which similarly situated members of the public had a legal right of access. Likewise, in *Strickley v. Highland Boy Gold Mining Co.*, 200 U. S. 527 (1906), the Court upheld a condemnation establishing an aerial right-of-way for a bucket line operated by a mining company, relying on little more than *Clark*, see *Strickley, supra*, at 531. This case, too, could have been disposed of on the narrower ground that "the plaintiff [was] a carrier for itself and others," 200 U. S., at 531–532, and therefore that the bucket line was legally open to the public. Instead, the Court unnecessarily rested its decision on the "inadequacy of use by the general public as a universal test." *Id.*, at 531. This Court's cases quickly incorporated the public purpose standard set forth in *Clark* and *Strickley* by barren citation. See, e.g., *Rindge Co. v. County of Los Angeles*, 262 U. S. 700, 707 (1923); *Block v. Hirsh*, 256

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U. S. 135, 155 (1921); *Mt. Vernon-Woodberry Cotton Duck Co. v. Alabama Interstate Power Co.*, 240 U. S. 30, 32 (1916); *O’Neill v. Leamer*, 239 U. S. 244, 253 (1915).

B

A second line of this Court’s cases also deviated from the Public Use Clause’s original meaning by allowing legislatures to define the scope of valid “public uses.” *United States v. Gettysburg Electric R. Co.*, 160 U. S. 668 (1896), involved the question whether Congress’ decision to condemn certain private land for the purpose of building battlefield memorials at Gettysburg, Pennsylvania, was for a public use. *Id.*, at 679–680. Since the Federal Government was to use the lands in question, *id.*, at 682, there is no doubt that it was a public use under any reasonable standard. Nonetheless, the Court, speaking through Justice Peckham, declared that “when the legislature has declared the use or purpose to be a public one, its judgment will be respected by the courts, unless the use be palpably without reasonable foundation.” *Id.*, at 680. As it had with the “public purpose” dictum in *Bradley, supra*, the Court quickly incorporated this dictum into its Public Use Clause cases with little discussion. See, e.g., *United States ex rel. TVA v. Welch*, 327 U. S. 546, 552 (1946); *Old Dominion Land Co. v. United States*, 269 U. S. 55, 66 (1925).

There is no justification, however, for affording almost insurmountable deference to legislative conclusions that a use serves a “public use.” To begin with, a court owes no deference to a legislature’s judgment concerning the quintessentially legal question of whether the government owns, or the public has a legal right to use, the taken property. Even under the “public purpose” interpretation, moreover, it is most implausible that the Framers intended to defer to legislatures as to what satisfies the Public Use Clause, uniquely among all the express provi-

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sions of the Bill of Rights. We would not defer to a legislature's determination of the various circumstances that establish, for example, when a search of a home would be reasonable, see, *e.g.*, *Payton v. New York*, 445 U. S. 573, 589–590 (1980), or when a convicted double-murderer may be shackled during a sentencing proceeding without on-the-record findings, see *Deck v. Missouri*, 544 U. S. ___ (2005), or when state law creates a property interest protected by the Due Process Clause, see, *e.g.*, *Castle Rock v. Gonzales*, *post*, at ___; *Board of Regents of State Colleges v. Roth*, 408 U. S. 564, 576 (1972); *Goldberg v. Kelly*, 397 U. S. 254, 262–263 (1970).

Still worse, it is backwards to adopt a searching standard of constitutional review for nontraditional property interests, such as welfare benefits, see, *e.g.*, *Goldberg*, *supra*, while deferring to the legislature's determination as to what constitutes a public use when it exercises the power of eminent domain, and thereby invades individuals' traditional rights in real property. The Court has elsewhere recognized "the overriding respect for the sanctity of the home that has been embedded in our traditions since the origins of the Republic," *Payton*, *supra*, at 601, when the issue is only whether the government may search a home. Yet today the Court tells us that we are not to "second-guess the City's considered judgments," *ante*, at 18, when the issue is, instead, whether the government may take the infinitely more intrusive step of tearing down petitioners' homes. Something has gone seriously awry with this Court's interpretation of the Constitution. Though citizens are safe from the government in their homes, the homes themselves are not. Once one accepts, as the Court at least nominally does, *ante*, at 6, that the Public Use Clause is a limit on the eminent domain power of the Federal Government and the States, there is no justification for the almost complete deference it grants to legislatures as to what satisfies it.

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C

These two misguided lines of precedent converged in *Berman v. Parker*, 348 U. S. 26 (1954), and *Hawaii Housing Authority v. Midkiff*, 467 U. S. 229 (1984). Relying on those lines of cases, the Court in *Berman* and *Midkiff* upheld condemnations for the purposes of slum clearance and land redistribution, respectively. “Subject to specific constitutional limitations,” *Berman* proclaimed, “when the legislature has spoken, the public interest has been declared in terms well-nigh conclusive. In such cases the legislature, not the judiciary, is the main guardian of the public needs to be served by social legislation.” 348 U. S., at 32. That reasoning was question begging, since the question to be decided was whether the “specific constitutional limitation” of the Public Use Clause prevented the taking of the appellant’s (concededly “nonblighted”) department store. *Id.*, at 31, 34. *Berman* also appeared to reason that any exercise by Congress of an enumerated power (in this case, its plenary power over the District of Columbia) was *per se* a “public use” under the Fifth Amendment. *Id.*, at 33. But the very point of the Public Use Clause is to limit that power. See *supra*, at 3–4.

More fundamentally, *Berman* and *Midkiff* erred by equating the eminent domain power with the police power of States. See *Midkiff*, 467 U. S., at 240 (“The ‘public use’ requirement is . . . coterminous with the scope of a sovereign’s police powers”); *Berman*, 348 U. S., at 32. Traditional uses of that regulatory power, such as the power to abate a nuisance, required no compensation whatsoever, see *Mugler v. Kansas*, 123 U. S. 623, 668–669 (1887), in sharp contrast to the takings power, which has always required compensation, see *supra*, at 3, and n. 1. The question whether the State can take property using the power of eminent domain is therefore distinct from the question whether it can regulate property pursuant to the police power. See, e.g., *Lucas v. South Carolina Coastal*

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Council, 505 U. S. 1003, 1014 (1992); *Mugler, supra*, at 668–669. In *Berman*, for example, if the slums at issue were truly “blighted,” then state nuisance law, see, *e.g., supra*, at 5–6; *Lucas, supra*, at 1029, not the power of eminent domain, would provide the appropriate remedy. To construe the Public Use Clause to overlap with the States’ police power conflates these two categories.³

The “public purpose” test applied by *Berman* and *Midkiff* also cannot be applied in principled manner. “When we depart from the natural import of the term ‘public use,’ and substitute for the simple idea of a public possession and occupation, that of public utility, public interest, common benefit, general advantage or convenience . . . we are afloat without any certain principle to guide us.” *Bloodgood v. Mohawk & Hudson R. Co.*, 18 Wend. 9, 60–61 (NY 1837) (opinion of Tracy, Sen.). Once one permits takings for public purposes in addition to public uses, no coherent principle limits what could constitute a valid public use—at least, none beyond JUSTICE O’CONNOR’s (entirely proper) appeal to the text of the Constitution itself. See *ante*, at 1–2, 8–13 (dissenting opinion). I share the Court’s skepticism about a public use standard that requires courts to second-guess the policy wisdom of public works projects. *Ante*, at 16–19. The “public purpose” standard this Court has adopted, however, demands the

³Some States also promoted the alienability of property by abolishing the feudal “quit rent” system, *i.e.*, long-term leases under which the proprietor reserved to himself the right to perpetual payment of rents from his tenant. See Vance, *The Quest for Tenure in the United States*, 33 *Yale L. J.* 248, 256–257, 260–263 (1923). In *Hawaii Housing Authority v. Midkiff*, 467 U.S. 229 (1984), the Court cited those state policies favoring the alienability of land as evidence that the government’s eminent domain power was similarly expansive, see *id.*, at 241–242, and n. 5. But they were uses of the States’ regulatory power, not the takings power, and therefore were irrelevant to the issue in *Midkiff*. This mismatch underscores the error of conflating a State’s regulatory power with its taking power.

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use of such judgment, for the Court concedes that the Public Use Clause would forbid a purely private taking. *Ante*, at 7–8. It is difficult to imagine how a court could find that a taking was purely private except by determining that the taking did not, in fact, rationally advance the public interest. Cf. *ante*, at 9–10 (O’CONNOR, J., dissenting) (noting the complicated inquiry the Court’s test requires). The Court is therefore wrong to criticize the “actual use” test as “difficult to administer.” *Ante*, at 8. It is far easier to analyze whether the government owns or the public has a legal right to use the taken property than to ask whether the taking has a “purely private purpose”—unless the Court means to eliminate public use scrutiny of takings entirely. *Ante*, at 7–8, 16–17. Obliterating a provision of the Constitution, of course, guarantees that it will not be misapplied.

For all these reasons, I would revisit our Public Use Clause cases and consider returning to the original meaning of the Public Use Clause: that the government may take property only if it actually uses or gives the public a legal right to use the property.

IV

The consequences of today’s decision are not difficult to predict, and promise to be harmful. So-called “urban renewal” programs provide some compensation for the properties they take, but no compensation is possible for the subjective value of these lands to the individuals displaced and the indignity inflicted by uprooting them from their homes. Allowing the government to take property solely for public purposes is bad enough, but extending the concept of public purpose to encompass any economically beneficial goal guarantees that these losses will fall disproportionately on poor communities. Those communities are not only systematically less likely to put their lands to the highest and best social use, but are also

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the least politically powerful. If ever there were justification for intrusive judicial review of constitutional provisions that protect “discrete and insular minorities,” *United States v. Carolene Products Co.*, 304 U. S. 144, 152, n. 4 (1938), surely that principle would apply with great force to the powerless groups and individuals the Public Use Clause protects. The deferential standard this Court has adopted for the Public Use Clause is therefore deeply perverse. It encourages “those citizens with disproportionate influence and power in the political process, including large corporations and development firms” to victimize the weak. *Ante*, at 11 (O’CONNOR, J., dissenting).

Those incentives have made the legacy of this Court’s “public purpose” test an unhappy one. In the 1950’s, no doubt emboldened in part by the expansive understanding of “public use” this Court adopted in *Berman*, cities “rushed to draw plans” for downtown development. B. Frieden & L. Sagalayn, *Downtown, Inc. How America Rebuilds Cities* 17 (1989). “Of all the families displaced by urban renewal from 1949 through 1963, 63 percent of those whose race was known were nonwhite, and of these families, 56 percent of nonwhites and 38 percent of whites had incomes low enough to qualify for public housing, which, however, was seldom available to them.” *Id.*, at 28. Public works projects in the 1950’s and 1960’s destroyed predominantly minority communities in St. Paul, Minnesota, and Baltimore, Maryland. *Id.*, at 28–29. In 1981, urban planners in Detroit, Michigan, uprooted the largely “lower-income and elderly” Poletown neighborhood for the benefit of the General Motors Corporation. J. Wylie, *Poletown: Community Betrayed* 58 (1989). Urban renewal projects have long been associated with the displacement of blacks; “[i]n cities across the country, urban renewal came to be known as ‘Negro removal.’” Pritchett, *The “Public Menace” of Blight: Urban Renewal and the Private*

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Uses of Eminent Domain, 21 Yale L. & Pol’y Rev. 1, 47 (2003). Over 97 percent of the individuals forcibly removed from their homes by the “slum-clearance” project upheld by this Court in *Berman* were black. 348 U. S., at 30. Regrettably, the predictable consequence of the Court’s decision will be to exacerbate these effects.

* * *

The Court relies almost exclusively on this Court’s prior cases to derive today’s far-reaching, and dangerous, result. See *ante*, at 8–12. But the principles this Court should employ to dispose of this case are found in the Public Use Clause itself, not in Justice Peckham’s high opinion of reclamation laws, see *supra*, at 11. When faced with a clash of constitutional principle and a line of unreasoned cases wholly divorced from the text, history, and structure of our founding document, we should not hesitate to resolve the tension in favor of the Constitution’s original meaning. For the reasons I have given, and for the reasons given in JUSTICE O’CONNOR’s dissent, the conflict of principle raised by this boundless use of the eminent domain power should be resolved in petitioners’ favor. I would reverse the judgment of the Connecticut Supreme Court.