

ANSWER KEY

Document J: *Kelo v. New London* (2005), Dissenting Opinion

1. The Court's prior cases which read "public use" to mean "public purpose."
2. The text of the Constitution, which requires a "public use."
3. Poor communities, i.e., those most likely to be deemed by governments to be in need of economic redevelopment in an attempt to increase such "blighted" neighborhoods' value and the economic benefit to the community and the local government.

Document K: "A Wreck of a Plan," Charlotte Allen, *Washington Post* (2005)

1. Government entities almost always fail badly at effective urban revitalization, at the expense of lost homes, neighborhoods, businesses and jobs.
2. The free market, i.e. individual consensual transactions

Document L: *Newspaper Accounts* (2009)

1. Pfizer left the city.
2. Virtually nothing.
3. Accept reasoned answers.

Document M: *Satellite View of Fort Trumbull* (2010)

1. None

The Issue Endures

1. The vast majority of states have responded to the *Kelo* ruling by enacting reforms providing greater protection for property owners than the Court was willing to enforce in its ruling.
2. This label reveals the Institute for Justice's viewpoint that the use of eminent domain for redevelopment is unjust.

UNIT 3 – CIVIL AND ECONOMIC FREEDOM

EXPLORING CIVIL AND ECONOMIC FREEDOM

Critical Thinking Questions

1. The Founders understood that property is the natural right of all individuals to create, obtain, and control their possessions, beliefs, faculties, and opinions as well as the fruits of their own labor.
2. The Federalists feared that listing certain rights would lead people to think that the rights not listed were less important.
3. Accept reasoned responses.
4. Accept reasoned responses.

5. Accept reasoned responses.
6. Accept reasoned responses.

DBQ: LIBERTY AND THE SUPREME COURT

Document A: John Locke, *Second Treatise of Civil Government* (1690)

1. lives, liberties and estates; his own person; labor of his body, and the work of his hands
2. for the preservation of their property
3. When we remove something from the state of nature and mix it with it our own labor, we make it our property.

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Document B: Declaration of Independence (1776)

1. Life, liberty and the pursuit of happiness.
2. Jefferson wrote that government's purpose is to "secure" rights because rights were pre-existing in individuals. They were not given by government. This means that government's role is to protect peoples' rights that belong to them by nature.
3. Today: synonyms include pleasure, joy, exhilaration, contentment, good fortune.

1776: Ability to take care of oneself, one's family, to build wealth and enjoy the fruits of one's labor. Happiness was attained by living in liberty and by practicing virtue.

Document C: The United States Constitution and Amendments (1789-1791)

1. The First Amendment protects property including beliefs, opinions, and the free expression of them. The Fifth Amendment protects property by requiring due process and just compensation. The Ninth Amendment protects property by stating that individuals have unlisted rights. The Tenth Amendment protects property by reserving to the states and the people any powers not granted by the Constitution to the national government.
2. Government's power is limited, and it is the role of government to protect the rights of citizens.

Document D: James Madison, *On Property* (1792)

1. Madison defines property as everything to which a man may attach a value and have a right: land, merchandise, or money, as well as opinions and the free communication of them, religious opinions, safety and liberty, free use of his faculties. According to Madison, property is an inalienable right: "... (A)s a man is said to have a right to his property, he may be equally said to have a property in his rights."

2. Madison's thinking is consistent with Locke's thinking. An "excess of liberty" (Madison) is what Locke would call the "state of nature." Locke starts with the premise that government exists only because man creates it for his own ends, and that no one but the individual has a right to the work of his own hands. Depriving one of the work of his hands, the free use of his faculties, or the expression of his beliefs corresponds to what Madison called "an excess of power."
3. conscience
4. According to Madison, a just government "will equally respect the rights of property, and property in rights."

Document E: The Fourteenth Amendment (1868)

1. This amendment protects the following from abridgment by states: a. "privileges and immunities" of citizens, b. guarantee of due process before government can take a person's life, liberty, and property, and c. equal protection of the laws for all persons in a state's jurisdiction.
2. Yes. This amendment changed the relationship between the national government and individuals by making the federal government a protector of people's rights against the action of the states. The federal government gained power while the states lost it.

Document F: Slaughterhouse Cases (1873)

1. The decision defined privileges and immunities narrowly, as rights which owe their existence to the national government, as opposed to the state governments.

Examples are: The right to come to the seat of government to assert a claim upon it, or to transact business with it, to seek its protection, to share its offices, and administer its functions; Free access to seaports, land offices, and courts of the

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states; The right to demand the federal government's protection of life, liberty, and property when on the high seas or in the jurisdiction of a foreign government; The rights to peaceable assembly, petition, privilege of *habeas corpus*; The right to use navigable waters; Any rights secured to U.S. citizens by treaties with foreign governments

Document G: This is One of a Hundred Murdered (1911)

1. One of the dead factory workers
2. The title uses the term, "murder" because conditions at the factory were so unsafe. Students may say that the factory's owners were to blame. They may also say that government officials were responsible because no effective process was in place to inspect workplaces or prevent such tragedies.

Document H: *Meyer v. State of Nebraska* (1922)

1. Broadly, as encompassing a wide range of activities: "Freedom from bodily restraint," individual right to contract, "to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates" of conscience, to enjoy common law privileges "essential to the orderly pursuit of happiness by free men." The decision affirmed the teacher's right to teach, the parents' right to hire him to do so, and the authority of parents to direct the education of their children.
2. The government could not abridge the rights of individuals; the ends did not justify the means. "Certain fundamental rights must be respected...a desirable end cannot be promoted by prohibited means."

Document I: *Pierce v. Society of Sisters* (1924)

1. Broadly, as encompassing a wide range of activities. "Parents and guardians, as a part of their liberty, might direct the education of children by selecting reputable teachers and places." (Schools) "have business and property for which they claim protection." "(R)ights guaranteed by the Constitution may not be abridged by legislation which has no reasonable relation to some purpose within the competency of the State."

Document J: *Schechter v. U.S.* (1935)

1. The power of the national government is not made greater by crisis "powers of the national government are limited by the constitutional grants." "Extraordinary conditions do not create or enlarge constitutional power."
2. The ruling asserts that the Founders "anticipated and precluded" the argument that times of crisis would justify enlarging the power of the federal government, and acted to prevent it from taking place by adding the Tenth Amendment to the Constitution.

Document K: *Palko v. Connecticut* (1937)

1. The decision defined liberty as including rights to speech, press, religion, peaceable assembly, benefit of counsel when accused of crime, or those rights "implicit in the concept of ordered liberty...ranked as fundamental."
2. Two rights not included in "the concept of ordered liberty" include the right to trial by jury and immunity from prosecution except as the result of an indictment.
3. Accept reasoned responses.

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Document L: *West Coast Hotel Co. v. Parrish* (1937)

1. Regulation of liberty of contract is constitutional as long as the restraint is reasonable for its goal, and is done with the intent of protecting people.
2. Reasonable in relation to a regulation's subject, and adopted for the protection of the community's health, safety, morals, and welfare.
3. Accept reasoned answers.

Document M: *U.S. v. Carolene Products* (1938)

1. The Court will presume that laws are constitutional. The Court should trust the knowledge and experience of the legislators in laws that regulate commercial transactions, and ask only whether the law is rationally related to a legitimate state interest. The rational basis test is a very low standard and results in most laws that are subjected to it being interpreted as constitutional.
2. Footnote 4 lists circumstances in which the Court might NOT assume the constitutionality of a law: when legislation appears on its face to be a violation of a protection listed in the Bill of Rights, or is directed against particular religious, or national, or racial minorities, or against discrete and insular minorities who lack the normal protections of the political process. In these instances, the Court should apply a stricter standard ("strict scrutiny") in determining constitutionality, and will be less likely to find them constitutional. (Fewer laws survive strict scrutiny from the Supreme Court.)
3. Accept reasoned responses.
4. Accept reasoned responses.

Document N: *Griswold v. Connecticut* (1964)

1. As encompassing "intimate relations," which are protected by virtue of emanations and penumbras of other constitutional protections.

2. Since 1938, the Court had followed the pattern set by Footnote 4 in the *Carolene Products* decision, applying only the rational basis test to laws touching on these areas.
3. Related, implied rights help support stated rights.
4. Accept reasoned responses.

Document O: *Lawrence v. Texas* (2002)

1. Liberty was defined as protection from "unwarranted government intrusions into a dwelling or other private places." Even outside the home, we should have an expectation "of an autonomy of self that includes freedom of thought, belief, expression, and certain intimate conduct."
2. The definition did not include economic rights.



Handout A: Too Much, Too Little, or Just Right?

1-6: Accept reasoned responses.

Handout B: Who Said it? Quote Sorting

1. Founder – The Declaration of Independence, 1776
2. Progressive – Reverends Josiah Strong and W.D.P. Bliss, *The Gospel of the Kingdom* magazine editors, 1914
3. Founder – Thomas Jefferson, *Notes on the State of Virginia*, 1785
4. Progressive – Franklin D. Roosevelt, Speech to the Democratic National Convention, 1936
5. Founder - Patrick Henry, Speech to the Second Virginia Convention, 1775
6. Founder – Alexander Hamilton, *The Farmer Refuted*, 1775