

Federal grants encourage excessive use of eminent domain.

Before *Kelo*

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IN ITS 2005 DECISION IN THE CASE *KELO V. NEW London*, the U.S. Supreme Court upheld the Connecticut city's use of eminent domain to take private property for local economic development. The ruling has created considerable backlash, with many critics decrying the construal of "public use" to include the taking of land to facilitate a private project. But there is ample precedent for the expansive interpretation of public use.

The 1981 Michigan Supreme Court ruling in *Poletown Neighborhood Council v. Detroit* is widely regarded as the nadir of public-use jurisprudence. That decision permitted the use of eminent domain to level a thickly settled neighborhood in Detroit in order to build a General Motors assembly plant. General Motors is often construed as the villain in *Poletown*, but the automaker was not the party most responsible for the project. The institution most responsible for the destruction of more than 1,000 homes and the removal of over 4,000 people was the United States government. The U.S. government did not simply provide the funds to bulldoze Poletown; it provided them in such a way that Detroit had little choice but to demolish the neighborhood.

The lesson to be drawn from this analysis of *Poletown* is that local governments are getting a bum rap for the abuse of eminent domain. They have been the front man, and now the fall guy, for state and federal policies that serve job-related interest-groups and fail to take into account local concerns about quality of life. Left to their own devices, local governments seldom use their own funds to take property for projects that have so little benefit to their citizens as those in *Poletown* and *Kelo*. The real way to stop the abuse of eminent domain is not to forbid its use for economic development, but to make sure that the funds so designated could have been used by the locality for other purposes that likely would have had broader public support and benefits.

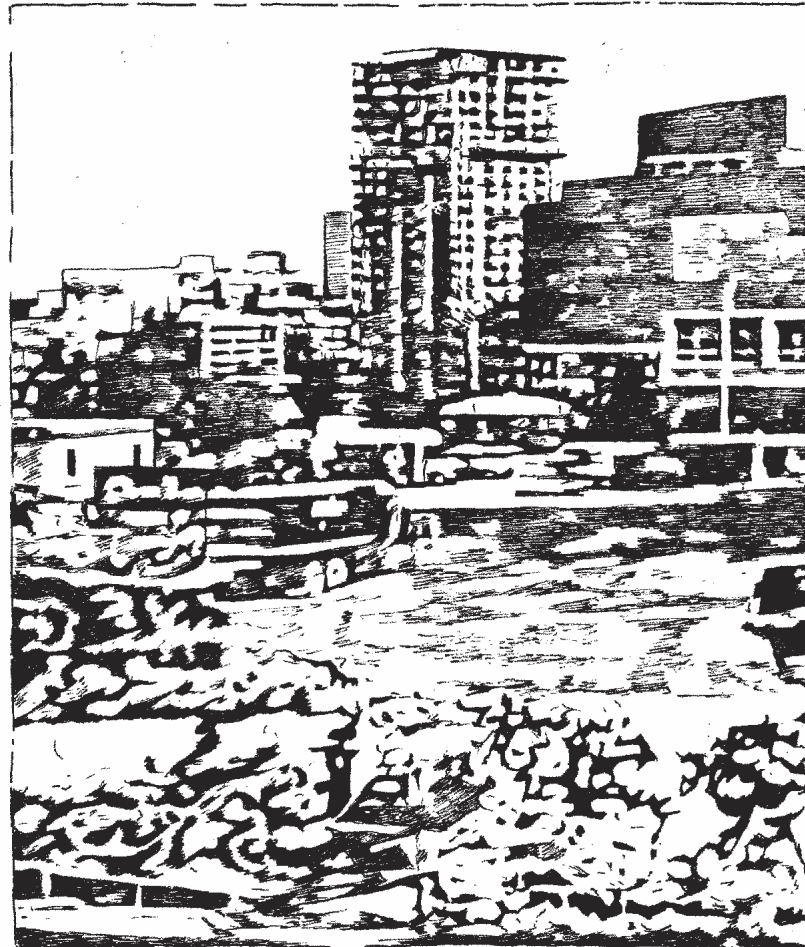
RETAINING GM

The prevailing view of the *Poletown* controversy comes from

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the acolytes of Ralph Nader. They characterize GM as the prime mover and beneficiary of the razing of Poletown. In a popular book and a widely distributed movie, the automaker is pictured as having manipulated the political process so as to get an ideal site for its new plant without much cost to its stockholders. But this view is contradicted by a 1986 book, *The Sustaining Hand: Community Leadership and Corporate Power*, by Wayne State University political scientists Bryan D. Jones, Lynn W. Bachelor, and Carter Wilson. This carefully researched, independent study by onsite scholars is a comprehensive analysis of the entire controversy, and the fol-



lowing account is largely based on their work.

The oil crisis and recession of 1979 hit Detroit like no other city in America. Unemployment was rising to record levels and the city's treasury was in free fall as the automobile industry was busy closing obsolete plants and planning to build new ones outside of Detroit. International competition and technical change prompted the industry's move more than conditions in Detroit. The more efficient, automated assembly plants required almost a full square mile of land on which to operate, and unencumbered acreage of that extent was unavailable in the confines of Detroit.

Coleman Young, who had become Detroit's first African-American mayor in 1973, was determined not to be a passive viewer of the deindustrialization of his city. He demanded that GM give Detroit serious consideration as the location for its new plants. GM could not easily ignore this request because it had been stung by criticism for closing plants in several other cities. Detroit remained its corporate headquarters and the location for several other facilities, and the automaker needed the city's cooperation in redeveloping them. Mayor Young also had some leverage over GM on other fronts, especially through his strong connections with the Carter administration, which was eager to get Michigan votes in the upcoming presidential election.

POLETOWN When it decided to build a new Cadillac plant in 1979, GM complied with Young's request by indicating its need

for nearly a square mile of cleared land and a seemingly unrealistic 18-month timetable for delivery of the site. GM officials probably suspected that no suitable site could be found within the boundaries of Detroit. GM had previously considered the Poletown location, as the northern part of the site had formerly been an auto plant, but dismissed the location as being too costly and requiring the removal of too many homes.

If GM's "give us a site and we will stay" offer was a bluff, Coleman Young and Detroit officials called it. Working with the adjacent city of Hamtramck (pronounced "ham-TRAM-ick") whose largely Polish population favored the Poletown project, Detroit formed the Central Industrial Park. The city got state and federal financing for the project, condemned the land beneath more than 1,000 homes and other properties (including two substantial Catholic churches), removed about 4,200 people, and delivered the site to GM just in time to meet its deadline for starting construction on the plant. (The owner of the churches, the Archdiocese of Detroit, was actually glad to sell the properties because most of their parishioners had long since moved away from the neighborhood.) The plant was built and is still producing Cadillacs, with a workforce of about 3,000.

Poletown was not a prosperous area. The neighborhood's northern section, where the plant is located, had been cut off from the rest of Detroit in the 1950s by construction of I-94, the Edsel Ford Freeway. The entire area had been declining in population since 1950, and the remaining Polish-American



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population consisted mostly of elderly men and women. Considerably less than half of the area's population was of Polish descent. Those who had previously moved out were replaced by African-Americans and by recent immigrants from Eastern Europe and the Middle East.

Poletown was a statistically integrated neighborhood, but not a socially integrated community. Neighborhood blacks were generally not opposed to selling their properties and taking the substantial relocation payments that Detroit offered in order to find homes elsewhere. Even many Poles were willing to sell their homes without the transaction costs of a private sale and leave for the farther suburbs.

Compensation for homeowners was quite generous when compared to most other condemnations, and a few people moved to the area just to be paid to leave. Of those Poletown residents who did oppose the project, only a small fraction

ic costs, let alone the human costs of displacement by eminent domain. But Detroit did not have to consider such factors. The financing of the Poletown project was designed to insulate Detroit taxpayers from having to sacrifice anything in order to obtain it.

Who did pay for the project, then? To some extent, General Motors did. Although it got generous tax breaks and paid only a small fraction of the cost for the site, the Poletown project was still more costly than the rural sites the automaker had been considering for its new plant. Other states and localities were eager to have GM plants, and their land was cheaper and their tax breaks were at least as generous as Detroit's.

Most of the financing for the Poletown project came from the United States government. Many federal programs are designed to assist distressed cities like Detroit. The largest

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actively campaigned against it. The leader of the main opposition group did not live in the project area, and of the activists whose physical removal from the remaining church provided stunning political theater, a majority did not live in Detroit.

Yet the Poletown controversy was not just a media event concocted by a few radicals. It was an enormity. Considered by itself, the removal of a thousand homes and businesses from a viable urban neighborhood in order to keep a manufacturing plant in a location for which technological and market forces had made it largely unsuitable almost defies imagination. However much the neighborhood had gone downhill, it deserved a better end than it got. The area had in fact shown signs of revival, in part because the I-94 construction had made it seem more a part of Hamtramck than Detroit.

ENTER THE FEDS

Mayor Young's eagerness to have GM build its new plant in Detroit was surely a necessary condition for the *Poletown* saga. He sincerely wanted industrial development, and as a former UAW official he was committed to keeping automobile jobs. But Young required two things to do this: money and the approval of the rest of Detroit, including its voters and the nine-member, multiracial city council. Detroit was hardly flush with cash at the time, and even if local tax money had been available, the voters and city council would have to be convinced that buying Poletown for GM was a better use of funds than the many other public projects that could have been funded.

In ordinary situations, cities are loathe to raise taxes to pursue projects whose benefits fall so short of the econom-

source of funds for the project, covering almost half of its total cost, was a \$100 million loan from the U.S. Department of Housing and Urban Development. The loan had to be paid off over time, of course, but few Detroit taxpayers would notice this effect. The repayment would be made by taxes on the completed GM plant itself (via "Tax-Increment Financing") and by future block grants that HUD itself would make to the city.

Almost all of the other \$100 million needed to provide the site came from outright grants from the federal and state government that were earmarked for the Poletown project. Even if the repayment of HUD loans was regarded by city officials and voters as a cost to the city, the perceived price of the project was no more than 50 cents on the dollar for the city of Detroit. Given the haste with which the project was arranged and the obscurity of its financing, it is more likely that Detroit residents outside of Poletown regarded the project as a non-fungible gift (meaning that it could not be converted into any other benefit for the city or its residents).

Thus, the voters and elected officials in Detroit had little financial interest in determining whether the Poletown project made economic sense. This was reflected in the city council's deliberations about the financing arrangements. The budgets were presented to them, but they made little effort to understand the details of the financing. In fact, it was not in the city's interest to debate the financing publicly, for it would have revealed that of all the political layers involved—Detroit, Wayne County, the state of Michigan, and the United States—the city of Detroit, which was exercising its power of eminent domain, was paying the least for the project.

ALTERNATIVES One qualification needs to be considered before concluding that Detroit really was making a decision unmoored by financial constraints. If HUD and other agencies that funded the Poletown project could have been induced by the same event—the threatened departure from Detroit by GM’s assembly plant—to give unrestricted funds to the city, then the city and its voters would have perceived an opportunity cost to leveling the northern third of Poletown. Alternatively, if the newly acquired federal funds earmarked for the Poletown project would have resulted in fewer funds for other projects that benefited Detroit, the city might have thought twice about it.

Neither of those scenarios can be ruled out categorically, but the detailed description of events by Jones, Bachelor and Carter suggests that they were not likely. The enlistment of the federal government was regarded by city officials as an add-on to other federal projects. There was no discussion of alternative use of the funds in case GM backed out or the courts forbade the use of eminent domain. No menu of alternative projects to respond to Detroit’s dire situation was discussed in conjunction with the project.

This was not for lack of local demand for alternative uses of funds. The leaders of the indigenous anti-project protests were actually themselves involved in other urban renewal programs in Detroit. Part of their motivation was a desire that public money should be spent on those programs rather than on demolishing a third of Poletown.

POLITICAL REWARDS It is easy to understand why Mayor Young would not have regarded his contacts in Washington as being amenable to providing additional funds that simply helped out Detroit during its economic distress. Political rewards at the state and national level come from pleasing interest groups that are organized along sources of income. The survival of jobs and industries is paramount. Political rewards at the local level usually come from pleasing interest groups organized along residential property values. Neighborhoods and school are their biggest concerns. That is why *homeowners* are so influential at the local level and *homebuilders* are so influential at the national level. Money that comes to cities from the national government is most likely going to be earmarked for projects that benefit producer-oriented interest groups. Political action committees for unions and corporations reward state and national politicians for saving auto plants, not for saving neighborhoods.

It is thus unlikely that any Detroit political figure could have requested additional funds in 1980 from Washington for anything but an automobile plant. The political bias toward income sources was not peculiar to the Democratic Party, either. After the Reagan administration replaced the Carter administration in January of 1981, HUD could have scrapped the Poletown project as its budget was cut back. Instead, the new administration kept the flow of money coming, with one important change: Instead of the Democratic mayor of Detroit getting the spotlight and credit for the federal largesse, the announcement of additional funds to ensure Poletown’s demise came from the Republican governor of Michigan. Local poli-

tics, which ordinarily would have put up a strenuous fight against raising taxes or using locally controlled funds for dubious projects, were simply made irrelevant by the willingness of the federal government to insulate Detroit voters from the fiscal consequences of the Poletown project.

POLETOWN TO KELO

The *Kelo* case offers facts that bear some resemblance to those of *Poletown*. A local authority has condemned a tired but unblighted neighborhood in order to hand the property over to private developers. The objective is to promote jobs, economic development, and improve the city’s tax base. As in *Poletown*, most of the money for the project is not provided by the city; grants from the state of Connecticut are doing most of the funding for the New London project. Two of my Dartmouth students recently investigated the *Kelo* controversy and a local official orally conceded to them that the project might fall short of its stated goals.

But why should this official or any other in New London care about that shortfall? The city taxpayers are not being asked to contribute much, and it is unlikely that the money for the project could be cashed out and used for public projects that would be of greater benefit to the city. Opposing the project now would look like shooting Santa Claus. It is true that the “gift”—like many a gift from relatives who do not know you well—is worth less to the city than the cost to the “donor,” in this case the state taxpayers. But because there is no way to convert the gift into something that would be more valued by the city, sending it back makes no sense.

If state courts want to impose some rationality on this process, they should invite a simple question about the financial arrangements: Would the city be condemning the land if the money was its own, or if the money received from higher governments could have been used for other local projects? One might object that a city mayor would be foolish to say otherwise, but that neglects that other local voices might give different answers. Advocates for parks, schools, and public transportation could be brought to the witness stand to contest the mayor’s assessment. The prospect of such an examination would persuade the mayor and council to think harder about the merits of the project itself.

This judicial filter would not stop all local economic development projects. Those that truly do pass muster by providing a public benefit would be easy to defend. The projects that the city funds from its own tax revenues or from fungible grants already have to meet that test. Voters and advocates for various public funds have to be convinced that one choice is better than another.

Sometimes that will result in condemnation of private property for the economic betterment of the community. But in that case, we might be more satisfied with the outcome. The process of a city and its citizens arguing about alternative uses of the money and ending up using it to buy a site to promote economic development would make it more convincingly a “public use.”

