

EMINENT DOMAIN: UNUSED TOOL FOR AMERICAN LABOR?

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The deindustrialization of America with the concomitant loss of decent paying jobs, the rise of unemployment, and the increasing poverty among the working class requires a novel response. The challenges of “free trade,” globalization and international competition and technological change are all threatening the viability of the labor movement in the U.S. The use of eminent domain offers a meaningful tool that can be implemented to counter this trend. Eminent domain has been legally used and constitutionally sanctioned for community, infrastructure, and development purposes. The time is ripe for a broad-based coalition of legislatures, community interests, labor unions, and social movements to promote the use of eminent domain to expropriate with compensation enterprises in danger of being abandoned and moved offshore by their owners. Decisions by the owners of enterprises have repercussions and societal externalities that legitimize the rights to regulate them by way of eminent domain on behalf of the public interest. Workers in cooperatives in both the U.S. and throughout the world have shown that they can run factories and enterprises without owners and managers if given the necessary financial and legal wherewithal.

A serious crisis is imminent for American labor unless public sector coalitions including labor, social movements, community entities, city councils, and state legislatures band together to defend working-class jobs. Absolute capital mobility has to be challenged in the arena of legislation and constitutional law. The right of expropriation is ensconced in the U.S. Constitution. The collective property rights of workers who have built up a community interest in their jobs by dint of years of applying their know-how and skill to the value of their firm have to be legally asserted. The absenting companies cannot be free of societal obligations. By outsourcing their functions, they have broken a contract for which there must be reparations and consequences. Labor has few options and the use of eminent domain would begin a debate about the obligations and potentials of communities and public-spirited bodies to dent the silence and retreat of American labor before the loss of jobs with livable wages. Yes, there will inevitably be ebbs and flows in this struggle, contradictions, and some setbacks and even sidebars that redound to business interests. But the inevitability of the crisis requires this kind of broad-based community coalitional involvement. Today there are few alternatives under “free trade,” globalization, international competition, and advancing technology. Lumbering attempts to provide workers with social safety nets, portable health insurance,

or job retraining for displaced workers have not been achieved. We cannot expect labor to win the battle without a survival coalition that entails multiple mobilizations to defend employment in the U.S.

The Democratic Party victory in the November elections creates a more propitious climate for American labor to begin the task of protecting the loss of good paying jobs across the length and breadth of the U.S. Not only did Congress fall to the Democrats but also more than two-thirds of state legislatures across the country now have Democratic majorities in either one or both houses and twenty-eight of fifty of the states have Democratic governors. It was not your usual Democratic electoral coalition made up of largely minority, urban, and women voters. Rather, the results showed a remarkable awakening of the American electorate predicated on class and status. Those locked out, whether through income levels or educational attainment, understood clearly that a vote against the incumbent Republicans might pave the way for a shift in social and economic policy. States with the lowest personal income growth returned the largest democratic majorities. This was a critical election that provides an opening for a labor-led coalition to assert the use of public policy to defend industrial and service employment across America.

Workers are losing steady, high-paying jobs at an astounding rate with no effective response from organized labor. The productive infrastructure is disappearing at a breakneck pace as runaway firms search the world for cheaper labor, tax havens, and developing country governmental subsidies. Even when these skilled workers are able to find new employment, the majority falls to levels barely above the poverty line.¹ Yet, the American labor movement as well as American state and city politicians sit paralyzed before the decisions of corporate businesses, who having fed at the trough of state and local tax breaks, subsidies and a loyal labor force for decades, decide to forsake these communities on behalf of increasing company profits. In product after product, the U.S. governmental entities have sanctioned downsizing and company rebirths offshore while neither labor nor state public officials have even begun to look for equitable solutions for the American workers threatened on a daily basis with the loss of their livelihoods. Representative of this view was the position taken by President Bush's former chair of the Council of Economic Advisors, N. Gregory Mankiw, who in February 2004, spoke of "outsourcing is just a new way of doing international trade."² In August 2006, Federal Reserve chairman, Ben S. Bernanke, took virtually the same position, arguing that increasing U.S. worker productivity even if it costs industrial jobs is to be welcomed.³

The *Kelo* Decision within Eminent Domain Court Precedence

In what I consider a landmark decision with great relevance to the struggling American working class, the U.S. Supreme Court in *Kelo v. New London* (2005) ruled in favor of allowing New London by reason of eminent domain to take over private property for reasons of "public purpose." In conjunction with the previous construction by Pfizer Inc. of an adjacent corporate park and in an

effort to rejuvenate a deteriorating section of New London, the city planning commission developed a commercial, residential, and recreational project in a sweeping attempt at a broad development plan for an economically depressed city. The court ruled on behalf of New London's economic development plan based on the "takings clause" of the U.S. Constitution's Fifth Amendment, which states, ". . . nor shall private property be taken for public use, without just compensation." Justice John Paul Stevens spoke for the majority that expropriation of private holdings as part of urban development is justified for the public purpose of increasing jobs and tax revenues. While *Kelo*, as well as previous uses of eminent domain, presents some risks as to whom it prejudices and whom it benefits, by and large, it can be seized as an opportune legal and constitutional methodology. The eminent domain concept should be embraced by organized labor, public sector interests, and civil society groups committed to socially redeeming activism that redounds on behalf of the weakened and challenged working class in America. What *Kelo* offers is the defense of jobs as a key component of public sector responsibilities to its communities.

In a previous relevant case, *Berman v. Parker* (1954), a unanimous court observed: "The concept of the public welfare is broad and inclusive. The values it represents are spiritual as well as physical, aesthetic as well as monetary." Justice William O. Douglas wrote in part: "It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled. In the present case, the Congress and its authorized agencies have made determinations that take into account a wide variety of values . . . there is nothing in the Fifth Amendment that stands in the way." It becomes clear in *Berman* that public use has been expanded to include "public interest" and "public welfare" by way of displacing "blight" in a poverty-stricken neighborhood. In still another case, the *Hawaii Housing Authority v. Midkiff* (1984), the state legislature transferred landownership from a few owners to multiple owners, again with just compensation, guided by the belief that restricting "social and economic evils of a land oligopoly" qualified as a valid public use and a "rational" effort to "correct deficiencies in the market determined by the state legislature to be attributable to land oligopoly."⁴ In essence *public use* has been substantially reinforced as *public purpose* as a more encompassing and functional interpretation of public policy responsive to the community as a whole whether every individual has direct *use* of the facilities in question. This is eminently fair and realistic. When schools are in question, not all people will use them, similarly in the cases of hospitals, libraries, roads, mass transit, and so on.

Kelo is just the latest Supreme Court finding that can be imaginatively used by labor on behalf of the American working class. In this case, it transfers to the City of New London and the New London Development Corporation the right to create a mixed industrial zone combined with a waterfront park and recreational area focused on creating new sources of employment while opening up a depressed, abandoned waterfront area to community access and enjoyment. Much has been made recently of *Kelo* and the negative impact of eminent

domain in its use of state and municipal powers to transfer property rights from individual homeowners in poorer, marginal neighborhoods and transferring those rights to larger private property enterprises that will achieve simply larger tax revenues.

Most eminent domain initiatives are not used to condemn mom-and-pop groceries or small homes for the sake of replacing them with larger operated businesses but rather for large urban, community mixed public and private complexes that provide increased employment, an enhanced tax base, urban development, and community edification. *Kelo* is a case in point. Complementing Pfizer's Global Research and Development division with its original 2,000 employees, New London's Municipal Development Plan contemplates a harbor front hotel and conference center, a residential housing complex, a Coast Guard Museum, a wellness center and office facilities, a bioscience installation, a public Riverwalk, waterfront and marina with commercial stores, cafes and kiosks, and a "village green" park. This development contemplates new investments of \$170 million and the creation of over 6,000 new jobs and almost an additional 3,000 indirect jobs by way of the development projects as well as an expansion of Pfizer's Global Development facility. Moreover, the entire development process is slated to provide an additional 1,600 construction jobs. In essence, this is a case where both public needs and private interests combine to promote jobs, economic development, and community edification.⁵ As one legal observer indicated, "When desperately poor urban communities are revitalized the vast majority of people in those neighborhoods benefit—the area is more beautiful and livable, jobs are more plentiful and inner city problems are curtailed. In *Kelo*, the city of New London was suffering from deep economic and social disadvantage, steep economic decline, high unemployment and fewer residents today than in 1920."⁶

***Kelo* Backlash and Beyond**

Since the end of 2005 through 2006, forty-seven state legislatures have introduced, have approved by one or other state legislative houses, or have passed bills and had governors sign into law measures restricting the usages of eminent domain based on the protection of small property owners against the designs of wealthier economic interests. While this avalanche of legislative initiatives purport a newfound interest in the rights of small property owners, it really argues for the reassertion of the inalienable defense of private property whatever the origins of the need to assert the rights of public interest and public collective ends.⁷ The new restrictions on the application of eminent domain have usually limited the transfer of private property from one owner to another for commercial development. Many of the states' legislation in the matter continue to contain exceptions when eminent domain is strictly applied for clearly public purposes. The National Conference on State Legislatures has been tracking state legislature initiatives since the *Kelo* decision. In the great preponderance of state legislation, eminent domain is permitted for "stated public purposes" or a

“recognized public purpose.” The criteria has been made more explicit requiring what constitutes “blighted properties,” necessitating extensive public hearings, and, in some cases, requiring super majorities in the legislature.⁸

The *Kelo* decision should focus American labor and community groups to activate municipal councils, state legislatures, and/or the U.S. Congress to promote a constitutionally affirmed right to expropriate factories and enterprises that have decapitalized their firms, fired workers, and announced their plans to leave the U.S. in search of cheaper wage labor and deeper tax concessions, leaving in their wake depressed American communities with ever deepening unemployment and poverty. Based on historical court decisions and the recent applications of eminent domain, a strong case can be made for the American labor movement to promote the use of eminent domain for defending against runaway companies. These companies, without significant penalties or repercussions, leave hundreds of thousands of workers and their respective cities and towns and move their investments, assets and equipment abroad, accentuating unemployment, devastating communities, and undermining the industrial infrastructure of the U.S.⁹ In almost all cases of runaway companies, they search out other venues not because they are losing income or are near bankruptcy but because they simply choose to earn even higher profit margins regardless of the consequences to their labor force.

Eminent Domain as Integral Part of American History

The Fifth Amendment to the federal constitution allows in its “takings clause” the expropriation of property with just compensation. Eminent domain has been used in America for over 175 years. It is not an unusual measure. It requires the expropriation with compensation of private property for public usage and has been considered an attribute at any level of independent sovereignty. It is clearly a part of the vision of the writers of the U.S. Constitution that legislators have the right to expropriate property for a greater public purpose.¹⁰ In the early part of the nineteenth century, gristmills in New England were constitutionally allowed to dam up rivers that often flooded their upstream neighbors. It was defended by the courts that these decisions redounded to the benefit of the general public consumption of processed corn and other grains.¹¹ Before the adoption of the Fourteenth Amendment, eminent domain provision of the Fifth Amendment did not necessarily apply to the states. By extending the rights of private property to all citizens, it also extended the reach of eminent domain with compensation to all state jurisdictions as well. Eminent domain has been used by state legislatures and municipal councils for reasons of the greater public good. It has even been applied by community groups to reclaim vacant properties for the purpose of housing and economic development. The Dudley Street Neighborhood Initiative lying between the Roxbury and Dorchester communities of Greater Boston, culminating with success in 1988, is testament to the positive usages of eminent domain.¹² In fact, one could point to many other instances when the residue from the usages of eminent domain resulted in

the increased potential of people of modest means to buy a home by dint of the general improvement of economic development in their communities.¹³ There are multiple examples of the power of eminent domain to revitalize neighborhoods, create jobs, and provide an enhanced tax base. In cities and towns like Brooklyn, New York, Indianapolis, Indiana, Hartford, Connecticut, Kansas City, Kansas, Estes Park, Colorado, Thomson, Georgia, Canton, Mississippi, among others, eminent domain has proven crucial in creating and maintaining viable alternatives to deindustrialization, unemployment, and poverty.¹⁴

Defending Against Deindustrialization

Conditions exist today throughout America that provide the AFL-CIO, Change to Win, and/or locals thereof, an opportunity to act as a movement soliciting municipalities and state legislatures to expropriate, with compensation, factories and enterprises once the owners announce their intention to abandon their properties and move offshore. The factories and enterprises would then be turned over, with an initial public subsidy, to the workers themselves, who, by and large, have the technical skills and know-how to maintain these industries, be they metal plants, tire factories, meat-packing plants, textile factories, auto parts installations, electronic component suppliers, lumber mills, supermarkets, restaurants, or home-care services, as successful and viable enterprises. It would keep these enterprises in operation, save the jobs of the workers and their families, preserve the health and welfare of the community, and sustain the workers as state and local tax payers.

Eminent domain has been used for many decades for the building of highways, airports, hospitals, municipal offices, schools, libraries, public parks, sport complexes, for reasons of urban development and public benefit. It is appropriate during this critical period of the struggle to defend against the loss of industrial jobs, to apply this same mechanism on behalf of labor and the American working class. It can be defended as preserving a public resource that redounds to community needs and survival. The time is ripe for American labor to pursue the strategy of eminent domain as public policy to protect livelihood and promote the general welfare of millions of workers and their "at risk" communities. Alternatively, these workplaces and their surrounding communities will be condemned to unemployment, poverty, and the continuing erosion of America's skilled labor force. Defining and defending the livelihood of a large group of workers, as a legitimate public responsibility requiring an eminent domain intervention by the state, is a reasonable use of a government confronting difficult social and economic challenges.

Deindustrialization in America has become a fact of life since the mid-1970s and promises to continue as a rising tide without any alternative strategies from American labor unions. Ever since the failure to save the Youngstown Sheet and Tube Company, an Ohio steel mill, in 1977, industrial enterprises have found little to stop them from shifting their investments to developing countries in which labor costs, tax write-offs, and other seductive entitlements provide the

basis for much higher profit margins. In the Youngstown case, community folks wanted to contribute to making the plant a community property. The funds were insufficient to make the buyout and local and national politicians were not amenable to subsidizing the venture with grants or loans.¹⁵ As Barry Bluestone and Bennett Harrison noted a quarter of a century ago, a projected worker-owned factory such as Youngstown needed some kind of short-term public subsidy to support the venture or jobs could not be saved.¹⁶ In its absence, the preservation of enterprises and jobs is arduous if not impossible. At the time of the Youngstown closing, the steel workers went to court to try to save their plant but the judge in the case could not rule on their behalf without plant-closing legislation. He said in part, “. . . the Youngstown community cannot be dismissed as inconsequential. United States Steel should not be permitted to leave the Youngstown area devastated after drawing from the lifeblood of the community for so many years. Unfortunately, the mechanism to reach this ideal settlement, to recognize this new property right, is not now in existence in the code of laws of our nation.”¹⁷ In the last analysis, worker rights were subordinate. Jack Beerman and Joseph Singer make the case well when they write, “the struggle between employers and employees over job security is an example of the larger struggle over property rights in society in which owners are often allowed to exercise their rights without regard for the interest of others . . . The argument over job security is, at bottom, an argument about morals, human dignity and the proper distribution of power in the workplace.”¹⁸ Legislation by way of eminent domain was and is called for and it is already a legal alternative awaiting use at the state and federal level.

In another significant and controversial case before the Michigan Supreme Court in 1981, *Poletown Neighborhood Council v. City of Detroit* has demonstrated the flexibility with which municipalities and courts understand city needs where economic development and jobs are concerned. Here a state supreme court allowed eminent domain for private use based on the understanding that the public would be an important beneficiary of industrial revitalization. In this case, the city of Detroit received an offer from General Motors (GM) to construct a 3-million-square-foot assembly plant at a cost of \$500 million to replace aging Cadillac assembly and Fisher Body plants that GM proposed closing in 1983. For Detroit, this provided an opportunity to retain over 6,000 jobs that would otherwise have permanently been lost to that city if GM were forced to move to a distant alternative site. Poletown, as a sector of the city that was deteriorating, offered significant unused space and was near the rail and highway transportation access required by GM. Detroit was willing to provide the 500 contiguous acres plus a twelve-year, 50-percent tax abatement. The community took its case to the Michigan Supreme Court, which held 5–2 on behalf of the city of Detroit. The court held that the project contained a “public purpose” within statutes governing the general health, safety, and welfare of the community while alleviating unemployment, rehabilitating a blighted neighborhood, and fostering economic development. The court argued that “eminent domain could not be used without substantial proof that the public is primarily benefited.” It further

argued that “the controlling public purpose in taking this land is to create an industrial site which will be used to alleviate conditions of unemployment and fiscal distress. The fact that it will be conveyed to and ultimately used by a private manufacturer does not defeat this predominantly public purpose.” And further, the argument went, “There is no dispute about the law. All agree that condemnation for a public purpose or public use is permitted. All agree that condemnation for a private use or purpose is forbidden. Similarly condemnation for a private purpose cannot be authorized whatever its incidental public benefit and condemnation for a public purpose cannot be forbidden whatever its incidental private gain. The heart of the dispute is whether the proposed condemnation is for public or private use.” And the Michigan legislature had determined that this Detroit/GM initiative met a public need and served a public purpose.¹⁹ *Poletown* is significant in that it presents starkly the importance of political, labor, community, and business interests coalescing around the use of eminent domain in the defense and creation of skilled jobs, the maintenance of an important tax base, and defending against community decline.

Mayor Coleman Young’s testimony at the time spelled out the implications for the Detroit community. “I think it transcends in its economic and social potential for this community the renaissance or any other development that has taken place. What we have here is a development that is being watched by older industries in the Midwest and northeast across the nation. If we can assemble this land, doing justice to those who live there, both the merchants and the residents, and provide a strengthened industrial base for our state, I think we can open up an approach for other northern industrial cities . . .”

Worker-Run Factories and Enterprises

Once workers are explicitly given notice that their factory or enterprise is slated for closing or when rumors abound that that day is imminent, they should hire legal counsel and begin the process of creating a profit-sharing entity, be it a cooperative or another worker association, and initiate proceedings at the municipal council or state legislative level, whichever is more appropriate in that state, that results in the application of eminent domain proceedings against the firm or company. At this juncture, the workers need to include claims to not only the land, facilities, machinery, and trade marks but also, equally importantly, to the list of clients/customers, without which their future viability would be more challenging. The state or municipality would expropriate the factory or enterprise with compensation to the former owners and cede it to the workers as a grant or, if it was found more prudent, require the workers to repay the state, after an interim grace period, in low interest installments over a twenty-year period. It is in the long-term economic interest of the municipality or state to maintain the factory or enterprise in operation and at the same time it signals to other employers its unwillingness to tolerate runaway firms in the future. The eminent domain process provides the warning shot to corporations that the state will not abide by a corporation milking an operation on behalf of an overseas or

out-of-state branch or abide by a purposeful disinvestment or decapitalization preceding a planned withdrawal from the community. Local employment and collateral community impacts trump a private employer seeking more profits. Not only is unemployment the issue when a large firm flees, but the property and corporate tax base will be weakened and this will strain and even jeopardize municipal services impacting upon schools, libraries, parks, fire, and police protection. Such public policy vigilance and oversight regarding major local employers is in no way different from the legislative power to tax or subsidize.

We certainly envision the trade union movement being a principal mover in this venture. It behooves the AFL-CIO/Change to Win to reach out and represent nontraditional categories of workers such as these potential eminent domain workers. To view unionists as simply card-carrying, dues-paying members is, at the very least, suicidal. 2006 saw organized workers decline to just 12 percent among all workers, losing 326,000 unionists, while those in manufacturing dropped to 11.7 percent.²⁰ Eminent domain workers will bring new activism, volatility, and an engagement with public policy often absent with passive union membership. The current crisis of American labor requires new forms of alternative union associations that go far beyond collective bargaining and that encompass public policy in areas of “employment at will,” a living wage, health care, pension security, worker retraining, and labor law reforms to mention only a few. Eminent domain will provide a necessary spark to reconstituting a more vibrant politically conscious working class far beyond our current sense of traditional unionism.²¹ In such a coalition of workers, public spirited representatives of civil society, locally based NGOs, and the community at large, combined with city councils and state legislators, a strong case can be made to protect and sustain the physical integrity of the factory or enterprise as a critical component in preserving the health and welfare of the community. By using eminent domain to protect a community against a runaway factory or enterprise, no new land seizure is required, no displacement of homes or lateral businesses occurs. What is at stake here is the expropriation of the firm with state compensation for the market value of the enterprise and a temporary public subsidy to guarantee the company’s productivity in the initial months of transition. This financial assistance will in most cases be less than the tax concessions, subsidies, and other benefits accrued by the former owners of the enterprise. The state purchase of potential runaway companies would be in lieu of state corporate subsidies and generous corporate tax exemptions. Moreover, it will redound to the state in workers’ continued tax contributions and lateral community economic stimuli. The state becomes in essence the facilitator, allowing the workers autonomy in areas of their expertise and knowledge.

Democracy, Productivity, and the Workplace

The workplace is no doubt the least democratic environment in a capitalist system. From Jean Jacques Rousseau, through John Stuart Mill to Carol Pateman, much has been written about the relationship between people’s participation in

decision-making and their sense of empowerment and capacity.²² Worker-managed factories and enterprises offer not only a democratic environment but also one with increasing productivity. Within the U.S. factory setting, worker control and degrees of responsibility over job requirements and working conditions have beneficial impacts on the morale and productivity of the workers.²³ Outside the U.S., in Western Europe, Asia, and Latin America, including the emblematic Spanish cooperative, Mondragon,—where worker cooperatives have proliferated that have recuperated factories and enterprises—we see dramatic evidence of worker capacity to take on the responsibilities of departed owners and managers while creating democratic and humane conditions in the workplace.²⁴

In an important comparative study, John Logue and Jacquelyn Yates convincingly document that “the survival rate of worker cooperatives and employee owned firms in market economies appears to equal or surpass that of conventional firms . . . because they place more emphasis on job security for employee members and employees’ family members, pay competitive wages (or slightly better than their sector), provide additional variable income through profit-sharing, dividends or bonuses, and offer better fringe benefits. They also support community facilities such as health clinics and schools . . . Worker-owned enterprises anchor capital and jobs locally despite increasingly rapid capital flows in the global economy . . . They are not compelled to have the single-minded fixation on profits that characterize investor-owned business, particularly absentee-owned conventional firms . . . Unlike the conventional capitalist firm which is believed to maximize the single value of profits, employee-owned firms clearly must optimize the balance between various goals. Many of these goals are economic, but some, such as voice for members, a focus on local economic development and community, decent work for employees, and training and education for members, are both highly valued and broadly distributed.”²⁵

Moreover, worker-owned enterprises provide many psychic benefits to its workers. Logue and Yates argue that they achieve “more dignity and respect at the workplace, pride of ownership, the satisfaction of meeting the intellectual and practical challenges of running the firm. Employee-owned firms also contribute to the good of society by leveling the distribution of income, both by paying a living wage and by sharing the wealth generated by profits among many employee-owners.”²⁶

Employees in such cases have the know-how, technical skills to run the factory, and enterprise. As everyone will be involved in increasing productivity, quality control and efficiency will be built into the enterprise. On-the-job alienation will be significantly reduced when workers take responsibility for managing and organizing production. The logic of a recuperated factory or enterprise will be different. They will be able to save the huge overhead traditionally set aside by owners and managers in terms of profits and outsized salaries and use these captured funds for capital investments and profits fairly and collectively distributed among all the workers. Without the extraordinary management salaries, always hundreds of times the wages of the workers, the factory will be able to reinvest that income into the costs of running the factory

and capitalizing its productive capacity. Potential sacrifices in the early months of takeover and recovery would be seen in the context of worker ownership and these relationships will enhance commitment as well as pride in participatory and collective decision-making. Workers will be more willing to take collective pay cuts in difficult times and increase profit distribution in good times. A major motivation will be job protection and community outreach. One can envision a belt of worker enterprises supporting and sustaining each other. Moreover, such worker-run enterprises will usually count on the goodwill of suppliers, retailers, consumers, and the general public once the story is told.

Reasserting Community and Labor Rights

Critical to the impact of *Kelo* is that it was decided by the Supreme Court on behalf of providing jobs for workers in a depressed area, resurrecting the New London community, and the important principle of preserving and creating employment and a viable tax base. This is a critical argument that can be made on behalf of eminent domain siding with worker-run factories and enterprises. Some of the arguments made against the *Kelo* decision have argued that eminent domain transfers wealth from those of modest means to those of wealth. However, the weight of historical eminent domain decisions has in almost all cases aided in creating job opportunities for poor and working-class people. And those whose property are taken are given “just compensation” for their property. In the *Amicus Curiae Brief* in the *Kelo* case, offered by Brooklyn United for Innovative Local Development, their attorneys, in support of the City of New London, argued, “Economic activity is a prime determinant of a city’s vitality—and has a profound effect on the quality of life of its inhabitants and on the life chances of future generations. As the experiences of city after city across the Nation attest, economic stagnation and decline can lead to a painful downward spiral—the departure of jobs and job opportunities, reduces the city’s tax base, causing cutbacks in services, which induce further disinvestment, further fiscal duress, reductions in essential services, which leads to higher crime and diminished educational opportunity.”²⁷ Elsewhere it is argued that “By creating job opportunities for local residents, such projects attack what may well be the single greatest contributor to urban misery. Such projects also boost tax revenues that support services such as public hospitals, public education, and affordable housing. And they can have vast, indirect and intangible benefits, such as attracting and retaining residents, businesses, civil and cultural institutions.”²⁸ Moreover, as argued by William Julius Wilson, “The consequences of high neighborhood joblessness are more devastating than those of neighborhood poverty. Many of today’s problems in the inner-city ghetto neighborhoods—crime, family dissolution, welfare, low levels of social organization, and so on—are fundamentally a consequence of the disappearance of work.”²⁹ In other words, decisions by the owners of enterprises have repercussions and societal externalities that legitimize the rights to regulate by way of eminent domain on behalf of the public interest.³⁰

Last, and perhaps most importantly, we have to confront the issue of simple justice in a democracy. As Joseph William Singer writes, “There should be a normative commitment to recognizing social obligations of property ownership to protect fundamental needs of the community. The most wealthy and powerful owners—the large corporations that control economic life in a community—should have the greatest obligations . . . We have good reasons of equality, democracy and community, as well as efficiency, to redefine property rights to redistribute power from corporate managers to workers and their communities . . . Plant closings should be regulated to protect the interests of the workers in relying on their relationship with the company, to make more equal—therefore more democratic—the power relationship between the workers and the company, to force the corporate managers to take into account the externalities of any decision to close the plant; and to alleviate the social harm caused by the plant closing while allowing desirable economic change to occur.”³¹

Conclusions

The Supreme Court has consistently upheld the right of eminent domain for public purposes. Historically the preponderant, court approved, use of eminent domain has been to understand it broadly as a public benefit. Seen as such, its public purpose has principally included the promotion of economic development. Eminent domain is just another mechanism of legislative public policy, no different from the powers to tax and spend, to zone, to regulate places of work environmentally and for the health and safety of its employees and the surrounding communities. Even should the use of this less than extraordinary mechanism on behalf of a worthy group of at-risk laborers or employees fail to attain the prerequisite legislative majorities in the initial attempts, the process will almost certainly arouse public sentiment as to the value of such a tool and thus serve as a warning to corporate employers that their arbitrary, bottom-line calculations will have legal consequences. Labor unions and public authorities have the prime responsibility to rescue these enterprises for the sake of countless workers involved and on behalf of the communities in which they reside, inclusive of the loss of tax revenues both from the firm as well as from the workers and their families, and the accompanying deleterious impact on spin-off enterprises in local services, commerce, and entertainments. How can communities continue to stand idly by allowing critical employers to make these unilateral decisions that have such a huge bearing on the future well-being of thousands of communities across America? What better way to assert that need than protecting the jobs and income of workers across America’s communities? The use of eminent domain implies a practical step that has very good chances of receiving both political and constitutional sanctions. Once under way, the drive to allow the workers to run their own enterprise or company will initiate extremely high levels of community, labor, and political support, coalitions that will stimulate local pride in worker activism and solidify the roots of local empowerment. Eminent domain represents a viable mechanism that will place worker

autonomy and worker rights at the center of the political debate in the defense against the decline of decent jobs in America.

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Notes

1. See, for example, Louis Uchitelle, *The Disposable American: Layoffs and their Consequences* (NY: Alfred A. Knopf, 2006).
2. *New York Times*, February 11, 2004 and August 13, 2006. Also see Mankiw's extended views in his recent working paper (with Phillip L. Swagel), "Politics and Economics of Offshore Outsourcing" (April, 2006).
3. Ben S. Bernanke, "Global Economic Integration: What's New and What's Not?" (Remarks at the Federal Reserve Bank of Kansas City's Thirtieth Annual Economic Symposium, August 25, 2006). Also see *New York Times*, August 28, 2006.
4. <http://www.caselaw.lp.findlaw.com/data/constitution/amendment05/14html>.
5. Sources: New London Development Corporation Report (1999); RKG Associates, Inc.; Durham, New Hampshire; EDC Application and Economic Impact Update to CCEA study (1999); University of Connecticut Center for Economic Analysis (1998), Pfizer Inc. (2000), State of Connecticut and Department of Environmental Protection (1999); Frank E. Downes Construction Company (2000). Counterpoised to the creation of thousands of jobs, the *Kelo* suit represented nine homeowners (106 sold voluntarily above fair market value plus relocation costs) who were all both middle class and white, not poor and/or minority as has extensively been written by private property advocates.
6. Lawrence O. Goston, "Property Rights and the Common Good" *Hastings Center Report* 36:5 (September/October 2006), 11.
7. As Goston (2006) writes, "It is well to consider that the most vocal critics of *Kelo* were not the people of New London or their elected representatives, but those who routinely defend private entrepreneurs and free markets . . . and the Institute of Justice, which brought *Kelo* and has since waged a tenacious campaign against eminent domain, describes itself as an activist libertarian organization for individual economic freedom (11)."
8. <http://www.ncsl.org/programs/natres/EmindomainMemo.html>, November 30, 2005. For example, eminent domain legislation in some states now require a more explicit definition of what are a "blighted" neighborhood and a clearer public purpose for economic development. In any case, the *Kelo* legislative restrictions largely reinforce the notion that eminent domain initiatives remain an important part of the arsenal of public policy makers. See Edward J. Lopez and Shasha M. Totah, "Kelo and its Discontents," *Independent Review*, 11, 3 (Winter 2007): 406-410.
9. In 1988, Congress passed the Worker Adjustment and Retraining Notification Act (WARN), which requires companies of 100 or more workers to give their employees 60 days notice in advance of plant closings or mass worker layoffs. The law has multiple exceptions and loopholes and very weak financial penalties. It has obviously not deterred the deindustrialization of America throughout the 1990s. See the provision of the law at: <http://www.doleta.gov/programs/factsht/warn.htm>.
10. See Matthew P. Harrington, "'Public Use' and the Original Understanding of the So-Called 'Takings Clause,'" *Hastings Law Journal*, 53 (August 2002): 1245.
11. See *Roxbury Mill Corp. v. Newman* (1832) and *Olmstead v. Camp* (1866).

12. Peter Medoff and Holly Sklar, *Streets of Hope: The Fall and Rise of an Urban Neighborhood* (Boston: South End Press, 1994).
13. Ironically, it is home ownership of the handful unwilling to sell their homes that is often the crux of the legal defense against a community-supported renewal project.
14. See, for example, the *Briefs Amici Curiae* of the Brooklyn United for Innovative Local Development, National League of Cities, National Conference of State Legislatures, U.S. Conference of Mayors, Council of State Governments, National Association of Counties, International Municipal Lawyers Association, and the International City/County Management Associations. Their *Writs of Certiorari* were presented to the Supreme Court of Connecticut in the *Kelo* case in January 2005. Also see the testimony of Mayors Eddie Perez of Hartford, Connecticut and Bart Peterson of Indianapolis, Indiana before the U.S. House and Senate Judiciary Committees in September 2005 after the *Kelo* decision.
15. Sean Safford, *Why the Garden Club Couldn't Save Youngstown: Civic Infrastructure and Mobilization in Economic Crises* (Cambridge, MA: MIT Industrial Performance Center Working Papers, 2004).
16. Barry Bluestone and Bennett Harrison, *The Deindustrialization of America: Plant Closings, Community Abandonment and the Dismantling of Basic Industry* (New York: Basic Books, 1982), 252ff.
17. Staughton Lynd, "What Happened in Youngstown," *Radical America*, 15, 4 (July–August 1981): 43–4.
18. Jack M. Beerman and Joseph William Singer, "Baseline Questions in Legal Reasoning: The Example of Property in Jobs," *Georgia Law Review* (Summer 1989): 951.
19. *Poletown Neighborhood Council v. City of Detroit*, 410 Mich.616, 304 N.W. 2d 455 (1981).
20. John Schmitt and Ben Zipperer, "Union Rates Fall in 2006, Severe Drop in Manufacturing," Center for Economic and Policy Research (January 25, 2007).
21. The AFL–CIO has shown increasingly innovative thinking in regard to nontraditional workers and workers outside of the union movement. For example, of late, labor has seen the potential for representing distinct areas of service workers and immigrant labor through the National Day Labor Organizing Network. See the *New York Times*, June 16, 2006 and August 10, 2006.
22. Mill, for example, argued for worker self-management opposed to traditional notions of "economic freedom." Single-owner ordered workplaces undermined workers' real sense of individuality whereas worker self management, elected and removable by the workers themselves, enhanced a real sense of individuality. See John Medearis, "Labor Democracy, Utility and Mill's Critique of Private Property," *American Journal of Political Science*, 49, 1 (January 2005): 135–49.
23. There is abundant literature here. For example, see Robert Blauner, *Alienation and Freedom: The Factory Worker and his Industry* (Chicago: University of Chicago Press, 1964); Samuel Bowles, Herbert Gintis, and Bo Gustaffson, ed., *Markets and Democracy: Participation, Accountability and Efficiency*, (Cambridge: Cambridge University Press, 1993); Eileen Appelbaum and Rosemary Batt, *The New American Workplace: Transforming Work Systems in the United States* (Ithaca, NY: ILR Press, 1994); Ben Craig and John Pencavel, "Participation and Productivity: A Comparison of Worker Cooperatives and Conventional Firms in the Plywood Industry," *Brookings Papers on Economic Activity*, (1995): 121–60.
24. Worker cooperatives have become increasingly prominent and competitive in Spain, France, Italy, Great Britain, India, Brazil, Argentina, Venezuela, Uruguay and elsewhere. Some of the many success stories are found in William Foote Whyte and Kathleen King Whyte, *Making Mondragon: The Growth and Dynamics of the Worker Cooperative Complex* (Ithaca, NY: ILR Press, 1988); G. Mitu Gulati et al., "When a Worker's Cooperative Works: The Case of Kerala Dinesh Beedi," *UCLA Law Review*, 5 (June 2002); William Bartlett, "Labor-Managed Cooperatives and Private Firms in North Central Italy: An Empirical Comparison," *Industrial and Labor Relations Review*, 46, 1 (1992); Andrew Pendleton, "The Perception and Effects of Share Ownership: Empirical Evidence from Employee Buyouts," *British Journal of Industrial Relations*, 36, 1 (1998); Peter Ranis, "Factories without Bosses: Argentina's Experience with Worker-Run Factories," *Labor Studies in Working-Class History of the Americas*, 3, 1 (Spring 2006); James Petras and Henry Veltmeyer, *Social Movements and State Power: Argentina, Brazil, Bolivia, Ecuador* (London: Pluto Press, 2005); Camila Piñero Harnecker, "The New Cooperative Movement in Venezuela's Bolivarian Process," (December 2005) <http://www.zmag.org>.
25. John Logue and Jacquelyn Yates, *Productivity in Cooperatives and Worker-Owned Enterprises* (Geneva: International Labour Organization, 2005), ix, 2, 3, 53.
26. *Ibid.*, 31.

27. *On the Writ of Certiorari to the Supreme Court of Connecticut*: Brief of the National League of Cities, National Conference of State Legislatures, U.S. Conference of Mayors, Council of State Governments, National Association of Counties, International Municipal Lawyers Association, and International City/County Management Association as *amici curiae* supporting respondents (January 2005), 8.
28. *Ibid.*, 11.
29. William Julius Wilson, *When Work Disappears: The World of the New Urban Poor* (New York: Knopf, 1996), xii.
30. This idea is thoroughly addressed in Joseph William Singer, "The Ownership Society and Takings of Property: Castles, Investments, and Just Obligations," *Harvard Environmental Law Review* Vol. 30 (2006).
31. See Singer's "The Reliance Interest in Property," *Stanford Law Review*, 40 (1988): 611, 702, 705, 732.

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