

AMERICAN CONSTITUTIONALISM  
VOLUME II: RIGHTS AND LIBERTIES  
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Supplementary Material

Chapter 10: The Reagan Era – Individual Rights/Property/Takings

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**Poletown Neighborhood Council v. City of Detroit, 410 Mich. 616 (MI 1981)**

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*The Poletown Neighborhood Council was a community group whose members lived in the Poletown neighborhood of Detroit, a residential neighborhood primarily occupied by first and second generation immigrants. In 1980, General Motors informed Detroit that the company would close two large plants in the city and replace them with more modern plants in a southern state where costs were lower and unoccupied land was more readily available unless the city provided a suitably attractive alternative site for the new manufacturing complex. Under the authority of a 1974 state law, the city moved rapidly to identify a site that met GM's specifications and agreed to undertake all the costs associated with preparing the site for GM's use. Detroit also offered a package of tax concessions to the automaker. That site was the Poletown neighborhood. Making use of the state's recently enacted "quick-take" procedures, the city moved rapidly to condemn property in Poletown and convert that property for GM's use. The Poletown Neighborhood Council filed suit in state court, arguing that the plan violated the state constitutional provision limiting the eminent domain power, as well as environmental regulations. In accelerated proceedings, the trial court ruled in favor of the city. The decision was appealed directly to the Supreme Court of Michigan.*

*The Supreme Court of Michigan by a 5-2 vote upheld the city's plan. The per curiam opinion held that the takings had a public use because the project would clearly benefit the people of Detroit. The key constitutional issue was whether the condemnation violated the state's "takings clause," which declared that "property shall not be taken for public use without just compensation therefore being first made or secured in a manner prescribed by law." The city recognized that the owners of the condemned property were entitled to compensation. The state constitutional controversy was over whether transferring the property to General Motors for a manufacturing plant constituted a "public use." The Poletown case rapidly became nationally notorious, and influential, for its expansive understanding of public use and the constitutionality of government transferring property from one private party to another. Why does the per curiam opinion find a public use? Why does the two dissents fail to find a public use? Who has the better of this argument?*

Per Curiam Opinion.

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This case raises a question of paramount importance to the future welfare of this state and its residents: Can a municipality use the power of eminent domain granted to it by the Economic Development Corporations Act to condemn property for transfer to a private corporation to build a plant to promote industry and commerce, thereby adding jobs and taxes to the economic base of the municipality and state?

[Michigan] Const 1963, art 10, § 2, states in pertinent part that "[private] property shall not be taken for public use without just compensation therefor being first made or secured in a manner prescribed by law". Art 10, § 2 has been interpreted as requiring that the power of eminent domain not be invoked except to further a public use or purpose. Plaintiffs-appellants urge us to distinguish between the terms "use" and "purpose", asserting they are not synonymous and have been distinguished in the law of eminent domain. We are persuaded the terms have been used interchangeably in Michigan statutes and decisions in an effort to describe the protean concept of public benefit. The term "public use" has not

received a narrow or inelastic definition by this Court in prior cases. Indeed, this Court has stated that “[a] public use changes with changing conditions of society” and that “[the] right of the public to receive and enjoy the benefit of the use determines whether the use is public or private.”

The Economic Development Corporations Act is a part of the comprehensive legislation dealing with planning, housing and zoning whereby the State of Michigan is attempting to provide for the general health, safety, and welfare through alleviating unemployment, providing economic assistance to industry, assisting the rehabilitation of blighted areas, and fostering urban redevelopment.

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The Legislature has determined that governmental action of the type contemplated here meets a public need and serves an essential public purpose. The Court’s role after such a determination is made is limited.

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As Justice COOLEY stated over a hundred years ago, “the most important consideration in the case of eminent domain is the necessity of accomplishing some public good which is otherwise impracticable, and . . . the law does not so much regard the means as the need”. *People ex rel Detroit & Howell R Co v Salem Twp Board* (MI 1870).

...

The power of eminent domain is to be used in this instance primarily to accomplish the essential public purposes of alleviating unemployment and revitalizing the economic base of the community. The benefit to a private interest is merely incidental.

Our determination that this project falls within the public purpose, as stated by the Legislature, does not mean that every condemnation proposed by an economic development corporation will meet with similar acceptance simply because it may provide some jobs or add to the industrial or commercial base. If the public benefit was not so clear and significant, we would hesitate to sanction approval of such a project. The power of eminent domain is restricted to furthering public uses and purposes and is not to be exercised without substantial proof that the public is primarily to be benefited. Where, as here, the condemnation power is exercised in a way that benefits specific and identifiable private interests, a court inspects with heightened scrutiny the claim that the public interest is the predominant interest being advanced. Such public benefit cannot be speculative or marginal but must be clear and significant if it is to be within the legitimate purpose as stated by the Legislature. We hold this project is warranted on the basis that its significance for the people of Detroit and the state has been demonstrated.

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The decision of the trial court is affirmed.

JUSTICE FITZGERALD, dissenting.

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In the spring of 1980, General Motors Corporation informed the City of Detroit that it would close its Cadillac and Fisher Body plants located within the city in 1983. General Motors offered to build an assembly complex in the city, if a suitable site could be found. General Motors set four criteria for the approval of a site: an area of between 450 and 500 acres; a rectangular shape (3/4 mile by 1 mile); access to a long-haul railroad line; and access to the freeway system. The city evaluated a number of potential sites and eventually made an in-depth study of nine sites. Eight of the sites were found not to be feasible, and the ninth, with which we are concerned, was recommended. It occupies approximately 465 acres in the cities of Detroit and Hamtramck. A plan was developed to acquire the site, labeled the Central Industrial Park, under the Economic Development Corporations Act. As authorized by the statute, the project plan contemplated the use of condemnation to acquire at least some of the property within the site.

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The city attaches great importance to the explicit legislative findings in the Economic Development Corporations Act that unemployment is a serious problem and that it is necessary to

encourage industry in order to revitalize the economy of this state and to the legislative declaration that the use of eminent domain power pursuant to a project under the act, "shall be considered necessary for public purposes and for the benefit of the public." It is undeniable that such legislative pronouncements are entitled to great deference. However, determination whether a taking is for a public or a private use is ultimately a judicial question. . . . Through the years, this Court has not hesitated to declare takings authorized by statute not to be for public use in appropriate cases. . . . This is as it must be, since if a legislative declaration on the question of public use were conclusive, citizens could be subjected to the most outrageous confiscation of property for the benefit of other private interests without redress. Thus, while mindful of the expression of the legislative view of the appropriateness of using the eminent domain power in the circumstances of this case, this Court has the responsibility to determine whether the authorization is lawful.

Our approval of the use of eminent domain power in this case takes this state into a new realm of takings of private property; there is simply no precedent for this decision in previous Michigan cases. There were several early cases in which there was an attempt to transfer property from one private owner to another through the condemnation power pursuant to express statutory authority. *Board of Health v Van Hoesen* (MI 1891); *Ryerson v Brown* (MI 1877). In each case, the proposed taking was held impermissible.

The city places great reliance on a number of slum clearance cases here and elsewhere in which it has been held that the fact that the property taken is eventually transferred to private parties does not defeat a claim that the taking is for a public use. . . . Despite the superficial similarity of these cases to the instant one based on the ultimate disposition of the property, these decisions do not justify the condemnation proposed by the city. The public purpose that has been found to support the slum clearance cases is the benefit to the public health and welfare that arises from the elimination of existing blight, even though the ultimate disposition of the property will benefit private interests. . . .

However, in the present case the transfer of the property to General Motors after the condemnation cannot be considered incidental to the taking. It is only through the acquisition and use of the property by General Motors that the "public purpose" of promoting employment can be achieved. Thus, it is the economic benefits of the project that are incidental to the private use of the property.

. . . While our decisions have sometimes used the phrase "public purpose" (a phrase often associated with a broad interpretation), the result of our decisions has been to limit the eminent domain power to situations in which direct governmental use is to be made of the land or in which the private recipient will use it to serve the public. The slum clearance cases are really the only significant departure from these principles, and, as noted above, those decisions have been sustained only because of the conclusion that the clearing of a blighted area is a public use. . . .

The majority relies on the principle that the concept of public use is an evolving one; however, I cannot believe that this evolution has eroded our historic protection against the taking of private property for private use to the degree sanctioned by this Court's decision today. The decision that the prospect of increased employment, tax revenue, and general economic stimulation makes a taking of private property for transfer to another private party sufficiently "public" to authorize the use of the power of eminent domain means that there is virtually no limit to the use of condemnation to aid private businesses. Any business enterprise produces benefits to society at large. Now 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. . . .

JUSTICE RYAN, dissenting.

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This case will stand, above all else, despite the sound intentions of the majority, for judicial approval of municipal condemnation of private property for private use. This is more than an example of a hard case making bad law—it is, in the last analysis, good-faith but unwarranted judicial imprimatur upon government action taken under the policy of the end justifying the means.

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Behind the frenzy of official activity was the unmistakable guiding and sustaining, indeed controlling, hand of the General Motors Corporation. . . . In all, the projected *public* cost of preparing a site agreeable to the board of directors of General Motors is over \$200 million. Remarkably, the site will be sold to General Motors for little more than \$8 million.

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The evidence then is that what General Motors wanted, General Motors got. The corporation conceived the project, determined the cost, allocated the financial burdens, selected the site, established the mode of financing, imposed specific deadlines for clearance of the property and taking title, and even demanded 12 years of tax concessions.

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Stripped of the justifying adornments which have universally attended public description of this controversy, the central jurisprudential issue is the right of government to expropriate property from those who do not wish to sell for the use and benefit of a strictly private corporation. It is not disputed that this action was authorized by statute. The question is whether such authorization is constitutional.

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Section 2 of art 10 of the state constitution, the taking clause, provides in pertinent part, “[private] property shall not be taken for public *use* without just compensation”. (Emphasis added.) Although not stated affirmatively, it is axiomatic that the provision proscribes the taking of private property for private use. . . .

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Well over a century ago, a clear line of demarcation was drawn between the powers of eminent domain and taxation, setting the jurisprudences of the taking clause and, if you will, the “taxing clause” on separate, independent courses. What is “public” for one is not necessarily “public” for the other:

. . . The sovereign power of taxation is employed in a great many cases where the power of eminent domain might be made more immediately efficient and available, if constitutional principles would suffer it to be resorted to; but each of these powers has its own peculiar and appropriate sphere, and the object which is *public* for the demands of one is not necessarily of a character to permit the exercise of another.” *People ex rel Detroit & Howell R Co v Salem Twp Board* (MI 1870) (Cooley, J.).

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The issue before the *Salem* Court was whether townships could use tax revenues to lend credit to a private railroad company for the purpose of building a railway line; that is, is railroad construction a public purpose? The court answered no.

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Concededly, much has changed since these words were written in 1870. For example, the concept of public purpose as it relates to government’s taxing power has been greatly enlarged. . . .

Nonetheless, the principle that public purpose and public use are different remains unaffected. . . .

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As a general rule, when the object of eminent domain is to take land for ultimate conveyance to a private corporation to use as it sees fit, the state constitution will forbid it as a taking for private use.

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It is plain, of course, that condemnation of property for transfer to private corporations is not wholly proscribed. For many years, and probably since the date of Michigan’s statehood, an exception to



the general rule has been recognized. The exception, which for ease of reference might be denominated the instrumentality of commerce exception, has permitted condemnation for the establishment or improvement of the avenues of commerce—highways, railroads, and canals, for example—and can be traced to the common law where it was considered an exception to a general rule . . . .

The exception was delineated in the early case of *Swan v Williams* (MI 1852):

The object of the Legislature, being to open and facilitate communications for the public, determines as we have seen, the character of this corporation. The power to delegate the exercise of the *eminent domain*, to effectuate such purpose, from the universality of its exercise, is no longer an open question. In every instance of turnpike, plank road, bridge, ferry, and canal companies, it has been employed, as well as those of railroads. All this class of incorporations have been enacted upon the hypothesis that the lands taken for these purposes were taken for public use, and not for private endowment.

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It cannot for an instant be maintained, however, nor has anyone suggested, that the case before us falls within the instrumentality of commerce exception.

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To justify the exception, this Court has relied on a principle expressed in varying phraseology such as “overriding public necessity”, “necessity otherwise impracticable”, and “necessity of the extreme sort”. The principle has to do not so much with public benefit, which is to a greater or lesser extent invariably present, as with the indispensability of compelled expropriation of property to the very *existence* of the enterprise pursued by the private corporation. The principle, as valid today as when stated years ago, is that “[every] branch of needful industry has a right to exist.” With regard to highways, railroads, canals, and other instrumentalities of commerce, it takes little imagination to recognize that without eminent domain these essential improvements, all of which require particular configurations of property—narrow and generally straight ribbons of land—would be “otherwise impracticable”; they would not exist at all. . . .

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Instead, what defendants are really claiming is that eminent domain is required for the existence of a new General Motors assembly plant within the city limits of Detroit *in order to comply with the specifications of General Motors*. This is an altogether different argument, acceptance of which would vitiate the requirement of “necessity of the extreme sort” and significantly alter the balance between governmental power and private property rights struck by the people and embodied in the taking clause. Just as ominously, it would work a fundamental shift in the relative force between private corporate power and individual property rights having the sanction of the state.

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Another circumstance common to the instrumentality of commerce cases justifying condemnation for private corporations is the retention of some measure of government control over the operation of the enterprise after it has passed into private hands. . . .

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But the fact of the matter is that once CIP is sold to General Motors, there will be no public control whatsoever over the management, or operation, or conduct of the plant to be built there. General Motors will be accountable not to the public, but to its stockholders. Who knows what the automotive industry will look like in 20 years, or even 10? For that matter, who knows what cars will look like then? For all that can be known now, in light of present trends, the plant could be fully automated in 10 years. .

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With this case the Court has subordinated a constitutional right to private corporate interests. As demolition of existing structures on the future plant site goes forward, the best that can be hoped for, jurisprudentially, is that the precedential value of this case will be lost in the accumulating rubble.

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